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**ANNUAL REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF  
EXPRESSION 2000**

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## **REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION**

### **INTRODUCTION**

1. The twenty-first Century ushered in a period of progress and challenges to the strengthening of democratic progress in the Americas. The hemispheric objective of deepening constitutional forms of participatory democracy has had as its focus addressing problems such as social justice, sustainable development and full respect for individual human rights. Within this context, the right to freedom of expression plays a central role in the consolidation of democracy, as it affects the right of the individual to seek, receive and impart information and opinions as well as the collective right to participation through the free exchange of ideas and information.

2. The Special Rapporteur for Freedom of Expression would like to highlight that in October of 2000, in recognition of the urgent need to develop principles to strengthen democracy in the hemisphere, the Inter-American Commission on Human Rights approved the Declaration of Principles on Freedom of Expression developed by the Office of the Special Rapporteur. This document was prepared as a fundamental reference tool to guide the development of laws on freedom of expression and as a guide to the interpretation of Article 13 of the American Convention on Human Rights. The Special Rapporteur believes that the Declaration of Principles of Freedom of Expression will serve as a model in the hemisphere for the defense, promotion and protection of the right to freedom of expression.

3. The Special Rapporteur notes that in the year 2000, various States have recognized the importance of full respect for freedom of expression and information. In this context, various States have requested recommendations from the Office of the Special Rapporteur, expressing their intention to introduce legislative reforms that expand the protections of this right or to amend existing legislation restrictive of the full exercise of freedom of expression. Nonetheless, in some cases there is a perceptible slowness of the approval

process as well as a lack of leadership, initiative and will to amend the laws that restrict freedom of expression.

4. In addition, the Special Rapporteur continues to be seriously concerned about the assassination of journalists registered in the hemisphere during the last year. This report makes reference to the assassination of seven journalists due to their professional activities. The Office of the Special Rapporteur received information about other cases of assassinations of journalists, which are currently being investigated to determine if these murders were consequences of their journalistic activities. At the same time, the Special Rapporteur received information regarding more than 170 cases of violations of freedom of expression during the year 2000.

5. The Special Rapporteur views with concern the utilization of the judiciary to place limits on freedom of expression and on the informative role of journalists and the media. During 2000, the Special Rapporteur received approximately 60 accounts of legal or judicial actions against journalists and the media. The Special Rapporteur has prepared a study of laws affecting freedom of expression, confirming that in various States, criminal contempt laws (*desacato*) remain in place and are used to silence criticism of public officials. In response to a recommendation of the IACHR, the Office of the Special Rapporteur will carry out an annual investigation of the movement to repeal contempt laws in the hemisphere. Equally important to ensure greater protection for freedom of expression is the review of laws governing criminal slander and libel. During the past year, the Special Rapporteur received numerous reports of cases involving the use of criminal slander and libel laws to silence the press.

6. Finally, given the objective of various States to find strategies to combat the high incidence of corruption afflicting democracies in the Americas, the Special Rapporteur is pressing for the promulgation of laws promoting access to information. Such laws are likely to promote greater control of governmental activities as well as to guarantee ample protection for freedom of expression, which could contribute significantly to increasing transparency in government. The media plays an essential role in democratic systems due to its capacity to investigate, inform the citizenry through public scrutiny and promote public participation. The right to free access to information is structured as a way to strengthen the fundamental

principles of transparency, openness and public scrutiny of the government's activities in a representative democracy. Having in place the procedures that guarantee this right is one of the most effective mechanisms for combating corruption.

## CHAPTER I

### GENERAL REPORTS

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

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

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

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

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

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

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

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

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

5. In creating the Office of the Special Rapporteur, the Commission sought to stimulate awareness of the importance of full observance of freedom of expression and information in the hemisphere, given the fundamental role it plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected

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

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

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

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

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

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

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

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

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

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

#### **B. The Office of the Special Rapporteur's Principal Activities in the Year 2000**

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

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

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

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

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

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

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

14. The Office of the Special Rapporteur receives information through its informal hemispheric network on the status of freedom of expression in member States. Information is submitted by various organizations monitoring this right, journalists and other sources. In cases considered to involve a serious violation of freedom of expression, the Office of the Special

Rapporteur issues press releases about the information it has received, expresses its concern to the authorities, and makes recommendations for reinstating this right. In other cases, the Office of the Special Rapporteur directly contacts government authorities to obtain further information and/or to request that the government take measures to rectify the harm that has been inflicted. The Office of the Special Rapporteur has set up a database comprising numerous press agencies, freedom of expression and human rights monitoring organizations, attorneys specializing in the field and universities, among others, for the dissemination of releases and/or any other information considered relevant.

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

#### **1. Promotion and Publicity Activities**

16. A list of Office of the Rapporteur's principle activities in the areas of promotion and publicity follows.

17. In March 2000, the Special Rapporteur attended the *International Seminar on Human Rights* held in Buenos Aires, Argentina, at the invitation of the Washington College of Law of American University, the Center for Legal and Social Studies and the National University of Lanús. There, he spoke about international standards governing freedom of expression and the right of freedom of expression. The Office of the Special Rapporteur for Freedom of Expression cosponsored this seminar. The Special Rapporteur also participated in the *Semi-annual Meeting of the Inter-American Press Society*, held March 10 through 14, in Mexico.

18. In April, the Special Rapporteur attended the sessions of the United Nations High Commissioner for Human Rights in Geneva, at the invitation of Mr. Abid Hussain, the UN Special Rapporteur for Freedom of Opinion and Expression. During the session, he outlined the Office's primary concerns in the area of freedom of expression, as well as the general status of this right in the Americas.

19. Also in April, in the framework of developing the hemispheric network for the protection of journalists, the Office of the Special Rapporteur organized a panel entitled “*Strengthening Electronic Networks for the Protection of Journalists*,” with the participation of Central American journalists, during the “*Central American Meeting Against Corruption: the Role of the Media*” held in San José, Costa Rica. Panelists included Jorge Salazar, Executive Director of the *Instituto Prensa y Sociedad (Press and Society Institute)* in Lima, Peru; Marylene Smeets, Program Coordinator for the Americas of the *Committee to Protect Journalists*; and Danilo Arbilla, then-Vice-president of the *Inter-American Press Association*.

20. In May, on the occasion of World Press Freedom Day, UNESCO invited the Special Rapporteur to participate in a conference in Geneva, which was attended by the main international organizations working in defense of freedom of expression. At the conference, the Special Rapporteur met with the two other international rapporteurs for freedom of expression, Abid Hussain, UN Special Rapporteur for Freedom of Opinion and Expression, and Freimut Duve, OSCE (Organization for Security and Cooperation in Europe) Representative for Freedom of the Press. The three rapporteurs signed a joint declaration on ongoing threats and murders of journalists in conflict situations.<sup>9</sup>

21. At the end of May, the Office of the Special Rapporteur, in conjunction with Guatemala’s Office of the Presidency, organized an international conference entitled “*The Right to Access to Information in Guatemala*.” The purpose of the conference was to collaborate with Guatemalan authorities on the development of an access to information and *habeas data* project. This conference was the result of a cooperation agreement entered into by the Office of the Rapporteur and the Guatemalan government, following the Special Rapporteur’s April 2000 visit to Guatemala, to work together to promote far-reaching and lasting freedom of expression in the country.

22. In June, the Special Rapporteur, together with the Inter-American Commission on Human Rights (IACHR), participated in the Thirtieth Regular Session of the General Assembly in Windsor, Canada. The IACHR presented to the Assembly the Second Report on

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<sup>9</sup> See annexes.

the Situation of Human Rights in Peru, which included a chapter written by the Office of the Special Rapporteur on the status of freedom of expression in that country.

23. In June, the Special Rapporteur was invited to the *XXX General Assembly of the International Radio Broadcasting Association (AIR)* in Madrid, Spain. He also spoke at a seminar organized by the *Committee to Protect Journalists (CPJ)*, and *Asociación para la Defensa del Periodismo Independiente (PERIODISTAS)* entitled “*When journalism is a Crime—Conference on Criminal Defamation Laws in Latin America*,” in Buenos Aires, Argentina. There, Dr. Canton discussed the international legal framework for freedom of the press. The Special Rapporteur also participated in the Inter-American Human Rights Commission’s 107<sup>th</sup> special session in San Pablo, Brazil.<sup>10</sup>

24. In July, Dr. Canton was invited to be a panelist at the conference entitled *Inter-American Declaration on Freedom of Expression*, sponsored by the *Inter-American Press Association (IAPA)* in Miami.<sup>11</sup>

25. In August, the Special Rapporteur was invited to attend the inauguration ceremony for the *UNESCO–Freedom of Expression Chair* at the School of Journalism of the National University of La Plata in Argentina. At that time, he also participated in a specialized seminar for university faculty on Freedom of Expression in America. The Freedom of Expression Chair has published one of the Office of the Rapporteur’s annual reports in textbook form for instructional purposes.

26. In September, the Special Rapporteur and other Commission officials attended a preparatory meeting in Quebec, Canada, for the Summit of the Americas to be held April 20 through 22, 2001.

27. In October, Dr. Canton attended the 56<sup>th</sup> *General Assembly of the Inter-American Press Association (IAPA)* in Santiago, Chile. Also in October, he participated in the meeting “*Challenge to democracy in the Americas*” sponsored by the *Carter Center* in Atlanta. There,

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<sup>10</sup> See annexes.

<sup>11</sup> See Chapter II – Declaration of Principles on Freedom of Expression.

the Special Rapporteur participated in a working group where he presented for discussion the Declaration of Principles on Freedom of Expression, which the Office of the Special Rapporteur developed as a legal standard for the protection of freedom of expression in the hemisphere. The background of the Declaration and the interpretation of it are analyzed in the next chapter.

28. During the 108<sup>th</sup> regular sessions of the IACHR, held in October of 2000, the IACHR approved the Declaration of Principles on Freedom of Expression. The Office also organized a meeting for nongovernmental human rights organizations to inform them about the principal activities undertaken by the Office since it was created. Another purpose of the meeting was to hear the concerns and comments expressed by these organizations regarding the activities of the Office.

29. In November, the Special Rapporteur participated in the *Sixth European-Latin American Forum on Communication* organized by the *European Press Association* and the *Ibero-American Center for Communication and Social Studies* in Panama. At the forum, he discussed freedom of expression as a prerequisite for development. Also in November, the Special Rapporteur was invited to speak at a seminar entitled *Information for Democracy* organized by the *Consejo de Prensa Peruano (Peruvian Press Council)* and *The British Council* in Lima, Peru. There, the Special Rapporteur gave the closing speech on "Access to Information in America: New Challenges." At the end of the month, the Special Rapporteur traveled to Johannesburg, South Africa, to attend the conference *Freedom of Expression and the African Charter*,<sup>12</sup> during which he spoke about the Office of the Rapporteur's principal activities and discussed the status of freedom of expression in the Americas.

30. At the request of *Article XIX*, Dr. Canton participated in the *International Seminar for the Promotion of Freedom of Expression* in London. There, he had the opportunity to meet for the third time with the other two rapporteurs on freedom of expression, Abid Hussain (UN) and Freimut Duve (OSCE). At the end of the seminar, the three Rapporteurs issued another

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<sup>12</sup> The Charter of the Organization of African Unity, adopted in 1963, reaffirmed the acceptance of the African States of the principles of the United Nations Charter and the Universal Declaration of Human Rights, as a solid basis for peaceful and positive cooperation among the States. For more information, see *International Human Rights in Context: Law Politics Morals*, Henry J. Steiner and Philip Alston, Clarendon Press Oxford, (1996), p.689.

joint declaration on freedom of expression manifesting their concern over the murder of journalists and the existence of laws restricting freedom of expression throughout the world.<sup>13</sup>

31. In December, the Office of the Special Rapporteur organized the *Coordination Meeting for the Third Summit*, inviting representatives of the main organizations working on freedom of expression to coordinate a common agenda comprising the most important issues for freedom of expression, which would be presented at the Third Summit of the Americas. The Office of the Rapporteur also organized the *Workshop on Freedom of Expression in Colombia* for the purpose of coordinating the efforts of the main freedom of expression organizations to search for concrete solutions and to develop effective plans of action for journalists in that country.

## **2. Visits to Countries**

32. Between April 10<sup>th</sup> and 14<sup>th</sup>, the Special Rapporteur visited Guatemala, in response to an invitation from President Alfonso Portillo Cabrera and to subsequent requests from various sectors of Guatemalan society. The Special Rapporteur followed an agenda of activities and meetings with Guatemalan government officials, the Office of the Attorney for Human Rights, directors of mass media, journalists' unions, associations of both mass media proprietors and employees, independent journalists, academic institutions, representatives of indigenous people's organizations, human rights organizations and other civil society institutions, as well as representatives of international missions and agencies, with the aim of establishing contacts, gathering information and analyzing the status of freedom of expression in Guatemala.

33. At the invitation of the Panamanian government and taking into consideration subsequent requests from various sectors of society, the Special Rapporteur visited Panama in July in order to evaluate the freedom of expression situation in that country. During the visit, the Special Rapporteur conducted a schedule of meetings and activities that included a meeting with President Mireya Moscoso and other authorities of the Panamanian state, directors of the mass media, press workers' associations, independent journalists, representatives of human

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<sup>13</sup> See annexes, Joint Declarations on Freedom of Expression.

rights organizations and other civil society organizations, with a view to gathering information and analyzing the state of freedom of expression in Panama.



## **CHAPTER II**

### **DECLARATION OF PRINCIPLES ON 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.

#### **A. Background**

1. In keeping with its mandate, the Office of the Special Rapporteur for Freedom of Expression worked throughout the year 2000 to draft the Declaration of Principles on Freedom of Expression.

2. The idea of drafting a Declaration on Freedom of Expression arose out of recognition of the need for a legal framework to regulate the effective protection of freedom of expression in the hemisphere that would incorporate the principal doctrines set forth in different international instruments.

3. Following widespread debate among different civil society organizations, and in support of the Office of the Special Rapporteur for Freedom of Expression, the Inter-American Commission on Human Rights approved the Declaration of Principles on Freedom of Expression at its 108<sup>th</sup> regular sessions in October 2000. This declaration constitutes a basic document for interpreting Article 13 of the American Convention on Human Rights. Its adoption not only serves as an acknowledgment of the importance of safeguarding freedom of expression in the Americas, but also incorporates international standards into the inter-American system to strengthen protection of this right.

4. The IACHR adopted the declaration recognizing that freedom of expression is essential for the consolidation and development of democracy, and convinced that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of the democratic process.

5. In late July, the *Inter-American Press Association* (IAPA) invited the Special Rapporteur to attend a conference entitled *Inter-American Declaration on Freedom of Expression*, held in Miami. There, the Special Rapporteur participated in a panel on the Declaration of Chapultepec<sup>14</sup> and presented the draft Declaration of Principles on Freedom of Expression to the following civil society organizations: the *Carter Center*, the *Asociación Internacional de Radiodifusión (AIR)*, *CEJIL (Center for Justice and International Law)*, *Americas Watch*, *Asociación Periodistas*, the *World Press Freedom Committee* and the *Committee to Protect Journalists (CPJ)* and jurists specializing in freedom of expression. The Declaration received considerable press coverage internationally, and was very well received by international organizations, many of which expressed their support for the document drafted by the Office of the Special Rapporteur.

6. In light of the importance of these principles in the development of respect for freedom of expression, an interpretation of the principles set forth in the Declaration is presented below.

## B. Interpretation

### Principle 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.*

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<sup>14</sup> See annexes.

7. Respect for and protection of freedom of expression plays a fundamental role without which other elements for strengthening democracy and human rights cannot develop. The right to and respect for freedom of expression serves as an instrument for the free exchange of ideas, strengthens democratic processes and offers citizens an indispensable tool for informed participation. Moreover, through the mass media, citizens are empowered to participate in and/or exercise control over the conduct of public officials. As the Inter-American Court of Human Rights stated:

[F]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. . . . 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. Freedom of expression, therefore, is not just the right of individuals, but of society as a whole.<sup>15</sup>

8. It also should be emphasized that the declaration refers to freedom of expression “*in all its forms and manifestations.*” The right to freedom of expression is not limited to the media or to individuals who exercise this right through the media. The right to freedom of expression includes artistic, cultural, social, religious and political expressions, as well as any other type of expression.

## Principle 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.*

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<sup>15</sup> IACHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, paragraph 70.

9. The Inter-American Commission on Human Rights has stated that Member States must act to eliminate all measures that discriminate against people's ability to participate fully in the political, economic, public and social life of their country. The American Convention on Human Rights enshrines the right of individuals to be free of discrimination as a pillar for the strengthening and functioning of democratic systems in the hemisphere.<sup>16</sup> Articles 33 and 44 of the OAS Charter stipulate:

The Member States agree that equality of opportunity, equitable distribution of wealth and income, and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development [...and foster] the incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system.

10. The lack of equal participation makes it impossible for democratic, pluralistic societies to prosper, thereby exacerbating intolerance and discrimination. Including all sectors of society in communication, decision-making and development processes is essential to ensure that their needs, opinions and interests are taken into account in policy-making and decision-making. In this regard, the Inter-American Court pointed out that:

...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

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<sup>16</sup> See American Convention on Human Rights, Chapter I, General Obligations: Article 1: Obligation to Respect Rights and Chapter II on Civil and Political Rights, Article 13: Freedom of Expression.

himself freely and that of society as a whole to receive information be scrupulously respected.<sup>17</sup>

11. The Special Rapporteur believes that it is precisely through active, peaceful participation in the democratic institutions of the State that the exercise of freedom of expression and information by all sectors of society is manifest and enables historically marginalized sectors to improve their conditions.

### Principle 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.*

12. This principle refers to the *habeas data* writ. The *habeas data* writ is based on three premises: 1) the right of every person to undisturbed privacy, 2) the right of every person to have access to information about him or herself contained in public or private databases and to modify, remove or correct such information due to its sensitive,<sup>18</sup> erroneous, biased, or discriminatory nature,<sup>19</sup> and 3) the right of every person to use the *habeas data* writ as a mechanism to ensure accountability.<sup>20</sup> The right to access to and control over personal information is essential in many areas of life, since the lack of legal mechanisms for the correction, updating or removal of information can have a direct impact on the right to privacy, honor, personal identity, property and accountability in information gathering.<sup>21</sup>

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<sup>17</sup> IACHR, Advisory Opinion OC-5/85 Series A, No. 5, Supra note 15, paragraph 69.

<sup>18</sup> "Sensitive information" is understood as anything having to do with the private life of the person.

<sup>19</sup> See Alicia Pierini, Valentín Lorences y María Inés Tornabene. *Habeas Data: Derecho a la Intimidad*. Editorial Universidad, Buenos Aires, 1999, p. 16.

<sup>20</sup> See Víctor Abramovich y Christian Courtis. *El acceso a la información como derecho*. CELS, 2000, p. 7.

<sup>21</sup> See Supreme Court of Justice of Argentina. *Secretaría de Investigación de Derecho Comparado*, Tomo 1 (1998) p. 121.

13. The *habeas data* writ acquires even greater significance with the emergence of new technologies. Widespread use of computers and the Internet has meant that the State and private sector can gain rapid access to a considerable amount of information about people. It is therefore necessary to ensure that there are specific channels for rapid access to information that can be used to modify any incorrect or outdated information contained in electronic databases. Moreover, the *habeas data* writ gives rise to certain obligations on the part of entities involved in processing data; they must: use the information for the express and specific purpose established; guarantee that data is protected from accidental or unauthorized access or manipulation; and allow the petitioner access to information when State or private sector entities might have obtained it in an irregular or illegal manner.

14. With respect to the accountability aspect of the *habeas data* writ, it should be stressed that in some countries in the hemisphere, this procedure is an important mechanism for monitoring the activities of State security or intelligence agencies. Through access to personal data it is possible to verify the legality of the methods employed by State agencies to collect personal information. Access to such information, moreover, enables the petitioner to ascertain the identity of those involved in illegal data collection, making it possible to punish those responsible.<sup>22</sup>

15. In order for the *habeas data* writ to function efficiently, administrative barriers to access to information should be removed, and user-friendly, simple and low-cost procedures for requesting information should be implemented. Otherwise, the result would be the formal adoption of a procedure that, in practice, does not facilitate access to information.

16. Moreover, it is not necessary to explain the reasons for requesting the information in order to use this procedure. The fact that personal data exists in public or private records is, in and of itself, sufficient grounds for exercising this right.<sup>23</sup>

#### Principle 4

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<sup>22</sup> Abramovich y Courtis, *supra* note 20, p. 9.

<sup>23</sup> See Miguel Angel Ekmekdjian. *Derecho a la Información: Reforma Constitucional y Libertad de Expresión. Nuevos Aspectos. Ediciones Depalma* (1996) p.115.

*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.*

17. Access to information held by the State is a pillar of democracy. As the Inter-American Court of Human Rights has pointed out, “a society that is not well informed is not a society that is truly free.”<sup>24</sup> Based on this principle, access to information held by the State is a fundamental right of individuals and States have the obligation to guarantee it. In terms of the specific objective of this right, it is understood that individuals have a right to request documentation and information held in public archives or processed by the State, in other words, information considered to be from a public source or official government documentation.

18. This right acquires even greater significance because it is closely related to the principle of transparency in administration and the public nature of government activities. The State is a vehicle for ensuring the common good. In this context, the owner of the information is the individual who has delegated the management of public affairs to his or her representatives.

The principle of transparency requires a service-oriented approach to Administration, by supplying whatever information has been previously, properly, and explicitly requested, as long as it is not temporarily exempted from the exercise of this right.<sup>25</sup>

19. Without the information that every person is entitled to, it is clearly impossible to exercise freedom of expression as an effective vehicle for civic participation or democratic oversight of government management. Such oversight is even more necessary given that cases of corruption implicating governments represent a major obstacle to strengthening

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<sup>24</sup> IACHR, OC 5/85, Series A N° 5, *supra* note 15, para. 70.

<sup>25</sup> See Pomed Sanchez, Luis Alberto. *El Derecho de Acceso de los Ciudadanos a los Archivos y Registros Administrativos*. Editorial M.A.P., Madrid, 1989, p.109.

democracies. Lack of effective oversight “gives rise to conduct that runs counter to the essence of a democratic State and opens a door to wrongdoing and unacceptable abuses.”<sup>26</sup> Ensuring access to information held by the State contributes to greater transparency of government activities and the attendant decrease in corruption in government management.

20. This principle, in turn, sets the limits that States must observe when they refuse to release information. Given the need for increased transparency of government activities as an essential element for strengthening democratic institutions in countries in the hemisphere, any limitations on access to records held by the State must be the exception. They should be clearly established by law, and only on grounds of a real and imminent danger to the national security of democratic societies. Therefore, every action to restrict access to information should be resolved on a case-by-case basis. According to the interpretation by the Inter-American Court of Human Rights, restrictions on freedom of expression and information “must be judged by reference to the legitimate needs of democratic societies and institutions” since freedom of expression and information is indispensable for any form of democratic government.<sup>27</sup> Therefore, the State must ensure that, in a situation of national emergency, denial of information held by the State shall be imposed only for the time period strictly necessary under the circumstances and should be changed once the emergency situation has passed.<sup>28</sup> The Special Rapporteur recommends that information considered classified should be reviewed by an independent legal entity capable of weighing the interest of protecting civil rights and freedoms against national security concerns.

## Principle 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*

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<sup>26</sup> See *Pierini y Otros*, *supra* note 19, p. 31.

<sup>27</sup> IACHR, OC-5/85 *supra* note 15, para.70.

<sup>28</sup> American Convention on Human Rights, Chapter IV, Article 27 which contemplates the State's obligations under emergency circumstances.

*imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.*

21. Prior censorship implies control and veto power over information before it has been disseminated, preventing the individual whose expression is censored, as well as society at large, from exercising their right to freedom of expression and information. Article 13 of the American Convention expressly prohibits prior censorship.<sup>29</sup> The duty to refrain from interfering with enjoyment of the right to access to information extends to the free circulation of information and ideas and the exhibition of artistic works that may not have the approval of the government authorities.<sup>30</sup>

22. Restrictions on freedom of expression are only permissible through the subsequent imposition of liability, which must be expressly established by law, where the ends sought to be achieved are legitimate, and the means for establishing liability are necessary to achieve those ends.<sup>31</sup>

23. Subsequent imposition of liability is regulated by Article 13 of the Convention and may only be applied in a limited manner as necessary to ensure respect for the rights and reputation of others. "Restrictions on the subsequent imposition of liability are contemplated as a guarantee of freedom of expression, to preclude certain individuals, groups, ideas or mediums for expression from being excluded, *a priori*, from public debate."<sup>32</sup> The grounds for imposing liability must be necessary to achieve the legitimate end sought. Legitimacy is not an empty concept to be freely and arbitrarily defined by States. Rather, it falls under what legal doctrine refers to as indeterminate legal concepts. These are concepts whose content must be predictable based on the principles of reason and common sense and whose definitive interpretation permits only a fair solution.<sup>33</sup>

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<sup>29</sup> The only exception to the prohibition of prior censorship is for regulating access to public entertainments for the moral protection of childhood and adolescence. See Article 13, Paragraph 4.

<sup>30</sup> ICHR. "The Last Temptation of Christ" *supra* note 2, para. 61c.

<sup>31</sup> IACHR, OC-5/85, *supra* note 15, para. 59.

<sup>32</sup> Court, "The Last Temptation of Christ" *supra* note 2, para. 61e.

<sup>33</sup> Eduardo Garcia de Enterría. *Hacia una Nueva Justicia Administrativa*. Madrid, 1996.

24. The right to guarantees of freedom of expression and thought is inextricably linked to the very existence of a democratic society; open and free discussion keeps society from becoming paralyzed and prepares it for the tensions and frictions that destroy civilizations.<sup>34</sup> A free society, now and in the future, is one that openly fosters vigorous public debate about itself.<sup>35</sup> In this context, the Inter-American Court has stated that abuses of freedom of expression can not be subject to preventive measures, but may be grounds for the subsequent imposition of liability of the person implicated. In this case, the subsequent imposition of liability must be carried out through the subsequent application of civil sanctions rather than prior censorship of the unpublished expression.<sup>36</sup>

25. The Inter-American Court of Human Rights has also emphasized that there are two aspects to freedom of expression: the right to express thoughts and ideas, and the right to receive them. Therefore, limitation of this right through arbitrary interference affects not only the individual right to express information and ideas, but also the right of the community as a whole to receive all types of information and opinions.<sup>37</sup> The Inter-American Court has indicated:

Prior censorship constitutes “an extreme violation of the right to freedom of expression by impeding the free circulation of information, ideas, opinions or news. Here the violation is extreme not only in that it violates the right of each individual to express himself, but also because it impairs the right of each person to be well informed, and thus affects one of the fundamental prerequisites of a democratic society.”<sup>38</sup>

26. The Inter-American Court, citing a decision of the European Court, has declared that protection of freedom of expression must encompass not only favorable information or

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<sup>34</sup> *Denis v. U.S.*, 341 U.S. 494, 584 (1951).

<sup>35</sup> Report N° 11/96, Case 11.230, Chile, Francisco Martorell, May 3, 1996.

<sup>36</sup> IACHR, OC-5/85, *supra* note 15, para. 39.

<sup>37</sup> *Id.*, para. 30-32.

<sup>38</sup> *Id.*, para. 54.

ideas, but also those that “offend, shock or disturb” because “such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.”<sup>39</sup>

27. According to this principle, it is unacceptable for economically powerful sectors or the State to exert economic or political pressure aimed at influencing or limiting the expression of individuals or the mass media. In this regard, the Inter-American Commission has stated that the use of authority to limit the expression of ideas lends itself to abuse, since stifling unpopular or critical ideas and opinions restricts the debate that is essential to the effective functioning of democratic institutions. Limitations on the free flow of ideas that do not incite lawless violence are incompatible with freedom of expression and with the basic principles that form the underpinnings of the pluralistic, democratic way of life in modern societies.<sup>40</sup>

#### Principle 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.*

28. This principle establishes that every person is entitled to fully exercise freedom of expression without the necessity of degrees or membership in associations to legitimize this right. As stated earlier, the Inter-American Court has asserted that the exercise of freedom of expression requires that no one be arbitrarily limited or impeded in expressing his or her own thoughts, since such expression is not only the right of individuals, but also includes the collective right to receive any information whatsoever and to have access to the thoughts expressed by others. When the Convention proclaims that freedom of thought and expression includes the right to impart information and ideas through any medium, it underscores the indivisibility of expression and dissemination of thought. This means that restrictions imposed on

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<sup>39</sup> Castells v. Spain, Judgment of April 23, 1992, Series A, N1 236, para. 20.

<sup>40</sup> IACHR, *Report on the Compatibility of desacato Laws with the American Convention on Human Rights*. Supra note 3.

dissemination represent, directly and in equal measure, a limitation on the right to express oneself freely.<sup>41</sup>

29. The Inter-American Court considered this problem in its consultative opinion on the compulsory membership of journalists in professional associations:

Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional "colegio."<sup>42</sup>

30. The Court also recognizes that journalism could not exist without the ability to exercise freedom of expression, so that there is a symbiotic relationship between the two.

[T]he professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner. [Therefore,] compulsory licensing . . . would have the effect of permanently depriving those who are not members of the right to make full use of the rights that Article 13 of the Convention grants to each individual. Hence, it would violate the basic principles of a democratic public order on which the Convention itself is based.<sup>43</sup>

Lastly, the Inter-American Court has pointed out that:

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<sup>41</sup> IACHR, OC-5-85, para. 30-31.

<sup>42</sup> *Id.*, para. 71.

<sup>43</sup> *Id.*, para. 74-76.

The argument that licensing is a way to guarantee society objective and truthful information by means of codes of professional responsibility and ethics, is based on considerations of general welfare. But, in truth, as has been shown, general welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large. A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.<sup>44</sup>

#### Principle 7

*Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.*

31. Proper interpretation of international standards, particularly Article 13 of the Convention, leads us to conclude that the right to information encompasses all information, including that which we might term “erroneous,” “untimely,” or “incomplete.” Therefore, any prior conditionality to qualify information would limit the amount of information protected by the right to freedom of expression. For example, the right to truthful information would not protect information that, by contrast to truth, we would label erroneous. Therefore, this right would not protect any information that could be considered erroneous, untimely, or incomplete.

32. Requiring the truth or impartiality of information is based on the premise that there is one indisputable truth. In this regard, it is important to distinguish between subjects

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<sup>44</sup> *Id.*, para. 77.

related to concrete facts, and that may be proven factually, and value judgements. In the latter case, it is impossible to speak of the veracity of the information. Requiring truthfulness could lead to virtually automatic censorship of all information that cannot be proved. This would eliminate, for example, virtually all public debate based primarily on ideas and opinions, which are inherently subjective. Even in cases of information regarding concrete events that may be factually proven, it is still impossible to demand veracity since, unquestionably, there may be a considerable number of markedly different interpretations of a single fact or event.

33. Moreover, even assuming that it is possible to determine the truth about everything, the debate and exchange of ideas clearly is the best method to uncover this truth and to strengthen democratic systems based on plurality of ideas, opinions and information. Prior imposition of a requirement to report only the truth expressly precludes the possibility of engaging in the debate necessary to reach it. The prospect of penalties for reporting on a subject that free debate later shows to be incorrect creates the potential that informants will engage in self-censorship to avoid penalties, with the attendant harm to citizens who are unable to benefit from the exchange of ideas. The doctrine of truthful information represents a regression for freedom of expression and information in the hemisphere in that the free flow of information will be limited by the prior classification of such information as “truthful” or “erroneous,” in contradiction with the broad conception of this right in the Inter-American system.

34. In this regard, the Inter-American Court has stated that both aspects of freedom of expression (individual and collective) must be guaranteed simultaneously. The conditioning of the information that society can receive through communications media impedes the flow of timely information, diminishing a society’s capacity for informed participation. 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.<sup>45</sup>

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<sup>45</sup> IACHR, OC-5-85, para 33.

35. Unquestionably, the right to freedom of expression also protects information that we have termed “erroneous.” In any event, in accordance with international standards and the most highly developed jurisprudence, only information found to be produced with “actual malice” is punishable.<sup>46</sup> Even in such cases, the sanction must be carried out through the subsequent imposition of liability rather than the establishment of prior conditions.

## Principle 8

*Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.*

36. This principle provides for the right of every social communicator to refuse to disclose sources of information and research findings to private entities, third parties, or government or legal authorities. Professional confidentiality is considered the social communicator’s right not to reveal information or documentation that has been received in confidence or in the course of research. It should be emphasized that this right does not constitute a duty, as the social communicator does not have the obligation to protect the confidentiality of information sources, except for reasons of professional conduct and ethics.<sup>47</sup>

37. A principal rationale underlying the right to confidentiality is that, in the scope of his or her work to supply the public with information necessary to satisfy the right to inform, the journalist is providing an important public service when he or she collects and disseminates information that would not be made known without protecting the confidentiality of the sources.

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<sup>46</sup> The doctrine of “actual malice” refers to the fact that that “the constitutional guarantees require . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with “actual malice”—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times v. Sullivan*, 376 U.S. 255 (1961).

<sup>47</sup> See Felipe Fierro Alvédez. *El derecho y la libertad de expresión en México, debates y reflexiones*. Revista Latina de Comunicación Social, La Laguna. Dec., 2000, #36, p.5.

Professional confidentiality consists of “observing discretion about the identity of the source to ensure the right to information; it has to do with granting legal guarantees to ensure anonymity and preventing possible reprisals that may result from having disclosed certain information.”<sup>48</sup> “Journalists, and others who obtain information from confidential sources with a view to disseminating it in the public interest, have a right not to disclose the identity of their confidential sources.”<sup>49</sup> Confidentiality, therefore, is an essential element of the work of the journalist and of the role society has conferred upon journalists to report on matters of public interest.<sup>50</sup>

### Principle 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.*

38. The Commission has asserted that attacks on journalists are intended to silence them, and therefore also constitute violations of society’s right to have free access to information. An independent and critical press is fundamental to ensuring respect for other liberties that form part of a democratic system of government and the rule of law.<sup>51</sup> In several Latin American democracies, public institutions responsible for oversight of the conduct and functions of the authorities are weak. The press in these countries has become the primary instrument for oversight and dissemination of information about government activities. In many cases, the press has informed public opinion about illegal, abusive or corrupt actions by State agents. As a consequence, the press has been targeted for attacks and persecution.

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<sup>48</sup> See Marc Carrillo. *La clausura de conciencia y el secreto profesional de los periodistas*. Civitas y Centro de Investigación, Barcelona. 1993, p. 170.

<sup>49</sup> Article XIX. *Defining Defamation, Principles of Freedom of Expression and Protection of Reputation*. Principle 6: Protection of Sources.

<sup>50</sup> Fierro Alvédez, *supra* note 47, p. 6.

<sup>51</sup> See IACHR, *Report on the Situation of Human Rights in Mexico*, OEA/Ser.LV/II.100, Doc 7 rev.1, September 24, 1998, para. 649, p.142. and Case #11,739 Report N° 5/99, Hector Felix Miranda .

39. The murder, abduction, intimidation and threatening of journalists, as well as the destruction of press materials, are carried out with two concrete aims. The first is to eliminate journalists investigating attacks, abuses, irregularities or illegal acts of any kind committed by public officials, organizations or private individuals in general. This is done to make sure that the investigations are not completed or never receive the public debate they deserve, or simply as a form of reprisal for the investigation itself. Secondly, such acts are used as an instrument of intimidation that sends an unmistakable message to all members of civil society engaged in investigating attacks, abuses, irregularities, or illicit acts of any kind. This practice seeks to silence the press in its watchdog role, or make it an accomplice to individuals or institutions engaged in abusive or illegal actions. Ultimately, the goal is to keep society from being informed about such occurrences, at any cost.

40. Under the American Convention on Human Rights and other international law instruments, States have the obligation to effectively investigate the events surrounding the murder of journalists and to punish the perpetrators. The Inter-American Court has maintained that the investigation:

Should make sense and be undertaken by the State as its inherent legal duty. It should not be merely a matter of private interest that relies on the initiative of victims and families to file suit or on private sources to submit evidence; rather, the authorities must effectively seek out the truth.<sup>52</sup>

41. The Inter-American Commission on Human Rights has asserted that a State's failure to carry out an effective and thorough investigation of the murder of a journalist and to apply criminal sanctions against the material and intellectual authors is particularly serious in terms of the impact this has on society. This type of crime has an intimidating effect not just on journalists, but on all citizens, because it inspires fear of reporting attacks, abuses and illegal activities of any kind. This effect can only be avoided by concerted government action to punish those responsible for murdering journalists. In this way, States can send a strong, direct

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<sup>52</sup> Inter-American Court of Human Rights, Velázquez Rodríguez Case, Judgment of July 29, 1988, para. 177.

message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.<sup>53</sup>

#### 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.*

42. This principle essentially refers to the need to revise laws created to protect people's reputations (commonly known as libel and slander laws). The kind of political debate encouraged by freedom of expression and information inevitably will generate some speech critical of, or even offensive to, those who hold public posts or are intimately involved in public policymaking. Rather than protecting people's reputations, libel or slander laws are often used to attack, or rather to stifle, speech considered critical of public administration.

43. The Inter-American Commission has stated that the criminalization of speech directed toward public officials or private individuals voluntarily engaged in matters of public interest is a disproportionate punishment compared to the important role that freedom of expression and information plays in a democratic system. "Such sanctions clearly cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations."<sup>54</sup> In a representative democracy, public officials, or anyone involved in matters of public interest, must be held accountable to the men and women they represent. The

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<sup>53</sup> Inter-American Commission on Human Rights. Report N° 50/90, Case 11.739 (Mexico) OAS/Ser/L/V/II. Doc. 57, April 13, 1999.

<sup>54</sup> Article XIX. *Supra* note 49, Principle 4 Comment.

individuals who make up a democratic society confer upon their representatives the task of managing matters of interest to society as a whole. However, society retains ownership of these matters and must enjoy a broad right, with the fewest restrictions possible, to exercise control over the management of public affairs by their representatives.<sup>55</sup> In this regard, the IACHR stated:

A law that targets speech that is considered critical of 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.<sup>56</sup>

44. Thorough and effective oversight of public management as a tool to guarantee the existence of a democratic society requires a different type of protection for those responsible for public affairs than that accorded an individual not involved in matters of public interest. In this regard, the Inter-American Commission has stated that the application of laws protecting the honor of public officials acting in an official capacity unjustifiably grants them a right to protection that other members of society lack. This distinction indirectly inverts the fundamental principle of a democratic system in which the government is subject to controls, including public scrutiny, to prevent or check abuses of its coercive power.<sup>57</sup>

Moreover, the fact that public officials and public figures generally have easy access to the mass media allowing them to respond to attacks on their honor and personal reputation, is also a reason to provide for a lower level of legal protection of their honor.<sup>58</sup>

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<sup>55</sup> See IACHR, *Supra* note 3.

<sup>56</sup> IACHR, Annual Report, OAS/Ser.L/V/II.88.Doc.9.rev. February 17, 1995, p.218. See ECHR, *Linger v. Austria*, Series A, Nº103, 1986; ECHR, *Castells v. Spain*, Series A, No. 236, 1992.

<sup>57</sup> *Id.*

<sup>58</sup> See Bill on the decriminalization of the crimes of defamation and libel contained in the Civil and Criminal Codes of the Argentine Nation (*Proyecto de ley sobre despenalización a los delitos de injuria y calumnia contenidas en los Códigos Civil y Penal de la Nación Argentina*), currently pending ratification in the Senate and Chamber of Deputies of the Argentine Nation. It should be pointed out that this bill was drafted in the context of the Argentine Government's commitment to arrive at a friendly settlement with the Journalists' Association, entered into at the hearing on October 1, 1999, in IACHR case 12.128.

45. The State fulfills its obligation to protect the rights of others by establishing statutory protection against intentional attacks on honor and reputation through civil procedures, and by enacting legislation to ensure the right to rectification or reply. In this way, the State safeguards the private life of all individuals, without exercising its coercive power abusively to repress the individual freedom to form and express an opinion.<sup>59</sup>

46. This principle also establishes the standard of “actual malice” as a legal doctrine used to protect the honor of public officials or public figures. In practice, this standard means that only civil sanctions are applied in cases where false information has been produced with “actual malice,”<sup>60</sup> in other words, produced with the express intention to cause harm, with full knowledge that the information was false or with manifest negligence in the determination of the truth or falsity of the information. The burden of proof is on those who believe they have been affected by the false or inaccurate information to demonstrate that the author of the news item acted with malice.

47. There should be no liability when the information giving rise to a lawsuit is a value judgement rather than a factual assertion. A prerequisite for establishing liability is the ability to demonstrate that the information was false or to prove that the respondent knowingly published a statement that was false or very likely false. If the information is a value judgement, it is impossible to prove its truth or falsity, since it represents a totally subjective opinion that cannot be proved.

48. The Commission has stated that this is particularly the case in the public arena where criticism is often based on value judgments rather than purely fact-based statements.<sup>61</sup> Since value judgments cannot be proven, it may be impossible to demonstrate the veracity of such declarations. Thus, a rule that compels someone who criticizes public officials to guarantee the veracity of the assertions has a chilling effect on criticism of government conduct.

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<sup>59</sup> See Article XIX. *Supra* note 49, Principle 2 Comment.

<sup>60</sup> See *supra* note 43.

<sup>61</sup> Value judgments also include humorous and satirical speech. See Bill on the decriminalization of the crimes of defamation and libel contained in the Civil and Criminal Codes of the Argentine Nation, in The Annual Report of the Office of the Special Rapporteur for Freedom of Expression 1999, Annexes p. 79.

Such rules raise the specter that someone who criticizes the government in good faith may be penalized for his or her criticism.<sup>62</sup>

49. Additionally, according to the doctrine of faithful reporting, the faithful reproduction of information does not give rise to responsibility, even in cases in which the information is not correct and could cause harm to the honor of a person. This doctrine arises from the necessity of freedom of expression and information for the existence of a democratic society. In a democratic society, debate must be fluid and open. The publication of information provided by third parties should not be restricted by the threat of responsibility simply for repeating what has been stated by another person. This constitutes an unnecessary restriction that limits the right of individuals to be informed.

#### 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.*

50. As previously stated, the full enjoyment of freedom of expression is one of the principal mechanisms available to society to exercise democratic oversight of those responsible for matters of public interest. The IACHR clearly pronounced on the incompatibility of *desacato* [contempt] laws with the American Convention:

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

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<sup>62</sup> IACHR, OAS/ser L/V/II.88, Doc. 9 rev (1995), *supra* note 3.

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 public office.

...

*Desacato* laws restrict freedom of expression because they carry with them the threat of imprisonment and/or fines for those who insult or offend a public official. In this regard, the European Court has stated that although the subsequent penalties of a fine and revocation of a published article did not prevent the petitioner from expressing himself, "they nonetheless amounted to a censure, which would be likely to discourage him from making criticisms of that kind again in the future." The fear of criminal sanctions necessarily discourages people from voicing their opinions on issues of public concern particularly when the legislation fails to distinguish between facts and value judgments. Political criticism often involves value judgements.

...

Moreover, the Commission notes that, contrary to the rationale underlying *desacato* laws, in democratic societies political and public figures must be more, not less, open to public scrutiny and criticism. The open and wide-ranging public debate, which is at the core of democratic society necessarily involves those persons who are involved in devising and implementing public policy. Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.<sup>63</sup>

51. The Inter-American Commission has stated that "the open and wide-ranging public debate, which is at the core of democratic society, necessarily involves those persons who are involved in devising and implementing public policy..." and added that "since these

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<sup>63</sup> IACHR, OAS/ser L/V/II.88, Doc. 9 rev (1995), *supra* note 3.

persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.”

52. In this context, a crucial distinction must be made between private persons and public persons. The protection accorded public officials under these *desacato* laws directly contravenes these principles. Such laws completely invert the parameters of a democratic society in which public officials must be subject to greater scrutiny by society. To safeguard democratic principles, these laws must be repealed in countries where they still exist. Because of the way in which they are structured and used, these laws constitute bastions of authoritarianism left over from past eras and must be done away with.

#### Principle 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.*

53. The existence of public or private monopolies constitutes a serious obstacle for the diffusion of individuals’ own thoughts, as well as for access to the opinions of others. Both the Inter-American Court and the Inter-American Commission on Human Rights have stated that freedom of expression requires that the communications media be open to all without discrimination or, more precisely, that no individual or group be excluded from access to such media. They also require certain conditions so that the media can truly be an instrument for freedom of expression. It is the mass media that makes the exercise of freedom of expression a reality and therefore the media must adapt itself to the requirements of this right.<sup>64</sup>

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<sup>64</sup> *Id.*

54. In this context, it is imperative to guarantee the right of every person to equal opportunity to receive, seek and impart information through any communications medium, without discrimination for any reason. Monopolies or oligopolies in the mass communications media represent a serious obstacle to the right of all people to express themselves and to receive information. Control of communications media in the form of monopolies or oligopolies seriously affects the requisite of pluralism. When the sources of information are seriously reduced in quantity, as is the case with oligopolies, or there exists only one source, as with monopolies, the possibility increases that the information diffused has not had the benefit of being challenged by information from other sources, limiting in fact the right to information of all society.

55. In modern society, mass communications media, such as television, radio and the press, have an undeniable power in the cultural, political, religious etc. formation of society's inhabitants. If these media are controlled by a small number of individuals, or by a single one, this in fact creates a society in which a small number of persons exercise control over information and, directly or indirectly, over the opinions received by the rest of society. This lack of pluralism in information is a serious obstacle to the functioning of democracy. Democracy requires the confrontation ideas, debate and discussion. When this debate does not exist or is weakened due to the fact that sources of information are limited, this directly contravenes the principal pillar of democratic functioning.

According to the Inter-American Commission on Human Rights:

The free circulation of ideas and news is inconceivable without multiple sources of information and respect for the communications media. It is not enough to guarantee the right to found or direct organs of public opinion. Journalists and, in general, all those who work professionally in the media, must be able to carry out

their work with sufficient protection of liberty and independence as required by this profession.<sup>65</sup>

### Principle 13

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

56. The State must refrain from using its power and public funds in order to punish, reward, or favor social communicators or the mass media based on their approach to coverage. The State's primary role is to facilitate the most wide-ranging, pluralistic and free debate of ideas. Any interference that restricts the free flow of ideas must be expressly prohibited by law. Direct or indirect pressures aimed at stifling the reporting activities of social correspondents are incompatible with freedom of expression.

57. The use of the State's power to impose restrictive criteria can be a covert means of censoring information that is considered critical of authorities. In analyzing the reach of freedom of expression in the context of the rights protected in the Convention, the Inter-

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<sup>65</sup> OAS, Complaint Before the Inter-American Court of Human Rights. Baruch Ivcher Bronstein vs. Republic of Peru, Case 11.762, p. 27.

American Court recognized that freedom of expression is indivisible from the right of diffusion of thought and information. In this sense, the right has both an individual and a social dimension. The Court stated:

freedom of expression is not complete in the theoretical recognition of the right to speak or write, but when it also includes, inseparably, the right to use any appropriate means to diffuse information and to ensure that it reaches the widest possible audience. . . . Likewise, it is fundamental that journalists . . . enjoy the protection and the independence necessary to carry out their functions fully, since it is they who keep society informed, an indispensable condition so that society may enjoy broad liberty<sup>66</sup>

58. The Special Rapporteur also emphasizes that the imposition of direct or indirect pressure aimed at silencing the informative work of social communicators impedes the full functioning of democracy, inasmuch as the consolidation of democracy in the hemisphere is intimately related to the free exchange of ideas, information and opinions among individuals.

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<sup>66</sup> Inter-American Court of Human Rights. Ivcher Bronstein Case, Judgment of February 6, 2001, para. 147-150. In the individual case of Ivcher Bronstein, the Court indicated that "the resolution that revoked the citizenship of Mr. Ivcher constituted an indirect means of restricting his freedom of expression, as well as that of the journalists who work and investigate for the program *Contrapunto* on Peruvian television *Channel 2*." See para. 162. Additionally, the Court concluded that "By separating Mr. Ivcher from the control of *Channel 2*, and excluding the journalists from the program *Contrapunto*, the State not only restricted the right of these individuals to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, limiting their right to exercise political opinions and develop themselves fully in a democratic society." See para. 163.

## CHAPTER III

### LEGISLATION AND FREEDOM OF EXPRESSION

#### OVERVIEW OF THE INTERNAL LEGISLATION OF THE MEMBER STATES

##### A. Legislation and Freedom of Expression

###### 1. Access to Information

1. The Office of the Special Rapporteur for Freedom of Expression is currently preparing a special report on the right to access to information held by the State and the *habeas data* writ, which will be published in the year 2001. The Office of the Special Rapporteur considers that the right to access to information is one of the fundamental rights in the strengthening of democratic systems. The existence of procedures that guarantee this right to citizens contributes to accountability in administrative management by fostering greater individual involvement in matters of public interest.

2. At the end of May, the Office of the Special Rapporteur and Guatemala's Office of the Presidency jointly organized an international conference entitled "*The Right to Access to Information in Guatemala*" [*El derecho al acceso a la información en Guatemala*]. The purpose of the conference was to underscore the important role that the right to access to information held by the state and the *habeas data* writ play in a democratic society, and the need to appropriately adapt legislation in this area. Additionally, with the assistance of the Office of the Special Rapporteur, the Guatemalan government drafted a bill on access to information held by the State, a process that included the broad participation of Guatemalan civil society. This bill, and the organization of the conference, were the result of a cooperation

agreement entered into by the Office of the Special Rapporteur and the Guatemalan government following the Special Rapporteur's visit to Guatemala in April 2000. Both parties agreed to work together to promote far-reaching, lasting freedom of expression in the country. The Special Rapporteur hopes that the bill will be introduced as soon as possible and, after debate, that it will be enacted and incorporated into the domestic legislation of Guatemala.

3. During 1999, the Office of the Special Rapporteur sent a survey to OAS member States requesting information about the constitutional and legal standards and the regulatory system in place in each country related to enjoyment of the right to access to information and *habeas data*. Of the thirty-five member countries in the Organization of American States, only nine (25.7%) responded officially to the Office of the Special Rapporteur's request for information.

4. Based on the information obtained up to this moment, there are clear distinctions between countries that have already developed constitutional and legal standards and those that continue to rely on general standards such as the "right to *amparo*" (protection) or "freedom of expression and opinion" to safeguard the right to information. Without taking into consideration those countries that have not responded to the Special Rapporteur's request for information, it can be stated that few countries have specific and clear norms with respect to the right to access to information and *habeas data*.

## **2. *Desacato*, or Contempt, Laws**

5. *Desacato*, or contempt laws, violate the human right to freedom of expression as it is expressed in numerous international instruments, including the American Convention on Human Rights and the Universal Declaration of Human Rights. International organizations, including the Commission and the Office of the Special Rapporteur for Freedom of Expression, and NGOs around the world have uniformly expressed the need to abolish such laws, which limit free speech by punishing speech that shows disrespect towards public officials. Such limitations restrict the public debate that is so fundamental for the effective functioning of a democracy. Despite the near-universal condemnation of these laws, they continue to exist in

one form or another in at least 17 states in the Americas. In addition, many of these and other states continue to have criminal libel, slander and defamation laws, which are frequently used in the same manner as *desacato* laws to silence governmental critics.

6. The Inter-American Commission on Human Rights undertook an analysis of the compatibility of *desacato* laws with the American Convention on Human Rights in a 1995 report.<sup>67</sup> The Commission found that such laws were not compatible with the Convention because they lend themselves “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.”<sup>68</sup> The Commission further stated that *desacato* laws give a higher level of protection to public officials than is offered to private citizens. This is in direct contravention to 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.”<sup>69</sup> Citizens must, therefore, have the right “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”<sup>70</sup> *Desacato* laws ultimately deter critical speech because individuals will not want to subject themselves to imprisonment or monetary sanctions. Even those laws providing a defense if the accused can prove that the statements were true improperly restrict speech because they do not allow for the fact that much criticism is opinion and therefore not susceptible to proof. *Desacato* laws cannot be justified by saying that their purpose is to protect “public order” (a permissible purpose for regulation of speech under Article 13), as this is in contravention of the principle that “a properly functioning democracy is indeed the greatest guarantee of public order.”<sup>71</sup> Moreover, there are other, less-restrictive means besides criminal contempt laws by which governmental officials can defend their reputations from unwarranted attacks, such as replying through the media or bringing a civil action against individuals for libel or slander. For all of these reasons, the Commission concluded that *desacato* laws are incompatible with the Convention and called upon states to repeal these laws.

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<sup>67</sup> IACHR, OAS/Ser. L/V/II.88, Doc. 9 rev., February 17, 1995, *supra* note 3, 197-212.

<sup>68</sup> *Id.* at 212.

<sup>69</sup> *Id.* at 207.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 209.

7. The Commission's report also presents certain implications for the reform of criminal libel, slander and defamation laws. Recognition of the fact that public officials are subject to a lesser, rather than greater, degree of protection from public scrutiny and criticism means that the distinction between public and private persons must be made in the ordinary libel, slander and defamation laws as well. The possibility of abuse of such laws by public officials to silence critical opinions is as great with this type of law as with *desacato* laws. The Commission has stated:

[P]articularly in the political arena, the threshold of State intervention with respect to freedom of information is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence . . .

The Commission considers that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's [sic] privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.<sup>72</sup>

8. In order to ensure that freedom of expression is properly defended, states should reform their criminal libel, slander and defamation laws so that only civil penalties may be applied in the case of offenses against public officials. In addition, liability for offenses against public officials should only occur in cases of "actual malice." "Actual malice" means that the author of the statement in question acted with the intention to cause harm, was aware that the statement was false or acted with reckless disregard for the truth or falsity of the statement.

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<sup>72</sup> *Id.* at 211.

9. These standards are enshrined in the Declaration of Principles on Freedom of Expression, promulgated by the Office of the Special Rapporteur for Freedom of Expression, and approved by the Commission at its October 2000 sessions. The Declaration is meant to be a definitive interpretation of Article 13 of the Convention. Principles 10 and 11 deal with offenses against reputation and honor, including *desacato* laws:

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.

10. Other organizations in the international community have reached the same conclusion with regard to *desacato* laws and other laws that protect the honor and reputation of public officials. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, Freimut Duve, OSCE Representative on Freedom of the Media, and Santiago Canton, (hereinafter the Rapporteurs) met for the first time in London on November 26, 1999 under the auspices of Article XIX, the global nongovernmental organization which takes its name from the Universal Declaration of Human Rights' article protecting freedom of expression. The Rapporteurs issued a joint declaration that included the following statement: "In many countries laws are in place, such as criminal defamation laws, which unduly restrict the right to freedom of expression. We urge states to review these laws with a view to bringing them in line with their international obligations." At another joint meeting in November of 2000, the Rapporteurs adopted another joint declaration, which elaborated on the problem of

*desacato* and criminal defamation laws. In this Declaration, the Rapporteurs advocated the replacement of criminal defamation laws with civil laws and stated that the State, objects such as flags or symbols, government bodies and public authorities should be banned from bringing defamation actions. They went on to say that “defamation laws should reflect the importance of open debate about matters of public concern and the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection for public figures, such as *desacato* laws, should be repealed[.]”

11. In his January 2000 report, the UN Special Rapporteur on Freedom Opinion and Expression also spoke out against criminal defamation laws and, in particular, laws providing special protection for public officials.<sup>73</sup> He called upon countries to eliminate the power of governmental organs and public officials to bring charges for defamation on their own behalf. Only civil remedies should be available for defamation, he asserted, and offenses like “defamation of the state” should be abolished altogether. Moreover, any monetary damages must be reasonable and proportional, in order to ensure that the possibility of punishment does not have a “paralyzing effect” on freedom of expression.<sup>74</sup> Finally, he stated that the burden of proof in these cases should be on the alleged defamed party to prove falseness.

12. In March 1994, the Inter-American Press Association (IAPA) held a hemispheric conference on freedom of the press at Chapultepec Castle in Mexico City. The conference brought together political leaders, writers, academics, constitutional lawyers, editors and private citizens from around the hemisphere. The conference produced the Declaration of Chapultepec, a document containing ten principles that are necessary to provide the level of freedom of the press that is sufficient to ensure a true participatory democracy. This declaration has been signed by the Heads of State of 21 of the regions’ States and is widely regarded as a model standard for freedom of expression.<sup>75</sup> With respect to *desacato* laws, the Declaration states in Principle 10, “No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.” IAPA issued a document

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<sup>73</sup> *Los Derechos Civiles y Políticos, en Particular Las Cuestiones Relacionadas con la Libertad de Expresión*, UN Doc. No. E/CN.4/2000/63, January 18, 2000 (also available in English under the same document number).

<sup>74</sup> *Id.* at para. 49.

<sup>75</sup> The Heads of State of the following governments have signed the Declaration of Chapultepec, pledging themselves to abide by its terms: Argentina, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Puerto Rico, Uruguay, United States, Dominican Republic.

interpreting these principles, in which it stated that there should only be legal liability for defamation of “public officials, public figures or private individuals involved in matters of public interest” if the plaintiff can prove “the falsehood of the facts published and actual knowledge of its [sic] falsehood” and “direct malice by the journalist or communications outlet.” This is essentially the “actual malice” standard that is advocated by the Special Rapporteur.

13. Article XIX promulgated a set of Principles on Freedom of Expression and Protection of Reputation.<sup>76</sup> These principles, which were drafted by an international panel of experts on freedom of expression issues, “are based on international law and standards, evolving state practice (as reflected, *inter alia*, in national laws and judgments of national courts), and the general principles of law recognised by the community of nations.”<sup>77</sup> They are intended to serve as a guide to all States as to the extent to which the fundamental human right of freedom of expression can be limited in order to protect the legitimate interest of reputation. The conclusion made in the document is that such restrictions must be “narrowly drawn” and “necessary” to achieve that legitimate purpose. Principle 4(a) states that “all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”<sup>78</sup> In no case should an individual be held criminally liable for defamation “unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed,”<sup>79</sup> according to Principle 4(b)(ii). In Principle 7, the requirements for proof of truth are set forth, stating that “on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.”<sup>80</sup> Principle 8, regarding public officials, states that “Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. This Principle embraces the manner in which complaints are lodged and processed, the standards which are

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<sup>76</sup> Article XIX, *supra* note 49.

<sup>77</sup> *Id.*, Introduction.

<sup>78</sup> *Id.*, Principle 4(a).

<sup>79</sup> *Id.*, Principle 4(b)(ii).

<sup>80</sup> *Id.*, Principle 7.

applied in determining whether a defendant is liable, and the penalties which may be imposed.”<sup>81</sup>

**a. Desacato Laws in the Americas**

14. The 1998 Annual Report of the Special Rapporteur for Freedom of Expression listed seventeen countries in the region which continued to have *desacato* laws. To date, none of these laws has been repealed.

**Bolivia**

Penal Code<sup>82</sup>

Article 162. Persons who by any means slander, libel or insult a public official in the performance of his functions or by reason of them shall be punished by imprisonment ranging from one month to two years.

If the previous acts were directed against the President or Vice-President of the Republic, State Ministers, or members of the Supreme Court or of Congress, the punishment will be enhanced by half.

15. The Penal Code also provides for two-month to four-year prison sentences or labor sentences for libel, defamation, slander or offense to the memory of the deceased. Article 286 establishes a defense of truth to defamation or libel proceedings when the injured party is a public official and the offense relates to his or her duties.

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<sup>81</sup> *Id.*, Principle 8.

<sup>82</sup> The Printing Law of January 19, 1925, provides for a different process for journalists than for regular citizens in cases of libel, slander and defamation. Article 28 states:

The printing violations of the law must be heard by a jury, without distinction of jurisdiction; however, the crimes of slander and libel against individuals shall go optionally before a jury or the common court. The public officials who are attacked by the press as a result of their functions can only file a complaint before a jury. However, if public officials are slandered, defamed or libeled personally with the purpose of combating their actions, they may file a criminal complaint before the ordinary court. When the ordinary court hears the crimes of press, it shall apply the penalties of the Penal Code. But, if the author or responsible person gives before the judge and via the media a complete and ample explanation or apology to the aggrieved party, and he accepts the terms of said explanation or apology, then the penalty shall be deemed fulfilled.

Article 15 provides that those offenses that go before the jury exclusively are punishable only by fines.

## **Brazil**

### Penal Code

Article 331. Showing contempt for a public official in the performance of his functions or by reason of them is punished by imprisonment of 6 months to two years, or a fine.

## **Chile**

### Penal Code

Article 263. Anyone who by word or action commits aggravated slander against the President of the Republic, or a member of one of his governing bodies or their assignments, whether it be in the public acts where they are represented, or in the performance of their specific duties, or the superior courts of justice, shall be sanctioned with lesser incarceration of medium to maximum degree and a fine of eleven to twenty minimum wages.

When the insulting statements are slight, the penalties shall be lesser incarceration of minimum degree and a fine of six to ten minimum wages, or simply the latter.

Article 264. Persons who commit the following acts are considered to be acting in contempt against security:

1. Those who cause serious disruption of the sessions of the governing bodies or those who threaten or defame an accused person or a senator during the sessions;

2. Those who cause serious disruptions of the court hearings and those who defame or threaten a member of said court in such hearings.

3. Those who defame or threaten: first, a senator or representative for opinions expressed during a Congress; second, a member of a court of justice for a sentence he has dictated; third, State ministers or such authorities in the performance of their official duties and fourth, a superior officer in the performance of his/her duties.

Article 265. If the accusation of insult consisting of disturbing the peace, or slander or threat, referred to in the previous article, is deemed grave, the guilty party shall be punished by lesser incarceration of any degree and a fine of eleven to twenty minimum wages. If the crime is deemed slight, the penalties shall be lesser incarceration of minimum degree and a fine of six to ten minimum wages.

Article 266. For purposes of the preceding provisions, it is understood that the ministers of government and other authorities with permanent duties or those who are called upon to exercise such duties in any case and in all circumstances exercise that authority continuously.

It is also understood that an authority is offended in the performance of his functions when the threat or insult takes place as a result of the performance of the duties or as a result of his office.

#### State Security Law

Article 6. Crimes against the public order are committed by:

...

b) Those who publicly insult the flag, the national coat of arms, the national anthem and those who libel, offend or slander the President of the Republic, Ministers of State, Senators or Representatives, Members of Superior Courts of Law, the Attorney General of the republic, the commander in chief of the armed

forces or the director general of the Carabineros, whether or not the libel, offense or slander is related to the official duties of the offended party[.]

#### Code of Military Justice

Article 284. One who threatens in the terms of Article 296 [threats against persons or property] of the Penal Code, offends or defames, verbally, in writing or using any other means, the Armed Forces, one of its members, units, divisions, or specific class or corps, shall be sanctioned with lesser incarceration, in its minimum to medium degree.

16. Provisions in the Penal Code allow for a defense of truth in the case of libel or slander against a government employee with regard to facts related to his or her post.

17. The Law of Advertising Abuses, in Article 12, also provides that the director of a news medium “will be punished as the author of the crime of contempt (*desacato*)” if he or she disobeys an order to publish a retraction of a statement. The penalties include lesser incarceration, fines and suspension of publication or transmission.

18. In April 2001, the House of Representatives approved a law called the “Ley sobre Libertades de Opinión e Información y Ejercicio del Periodismo” (“Law on Freedom of Opinion and Information and the Practice of Journalism”), which among other provisions, modifies Article 6(b) of the State Security Act.<sup>83</sup>

### **Costa Rica**

#### Penal Code

Article 307. Any person who offends the honor or decorum of a public official or threatens him by reason of his functions, addressing him personally or publicly or

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<sup>83</sup> For more information, see Chapter IV, section corresponding to the situation of freedom of expression in Chile.

by written, cable or telephone communication, or by line of authority, shall be punished by imprisonment of one month to two years.

The penalty shall be six months to three years, if the offended party is the President of the Nation, a member of the supreme powers, a judge, a magistrate of the Supreme Election Board, or the Comptroller or Assistant Comptroller-General of the Republic.

19. On February 1, 2001, Costa Rican President Miguel Angel Rodríguez announced his commitment to work for the repeal of Costa Rica's *desacato* law. This announcement came at the end of a four-day mission to Costa Rica of the World Press Freedom Committee. The president also said that he would support the reform of Costa Rica's defamation laws. A committee of journalists and judges has been created to begin considering how this may be accomplished. The Special Rapporteur expresses his approval of these pledges and offers his support of the Costa Rican endeavors.

## **Cuba**

### Penal Code

Article 144.1. Any person who threatens, slanders, libels, defames, insults, or in any way offends or affronts, in speech or in writing, the dignity or decorum of an authority or public official, or their agents or aides, in the performance of their functions or on the occasion or by reason of them, shall be punished by deprivation of freedom for a term ranging from three months to one year or a fine of one hundred to three hundred cuotas (daily wages) or both.

2. If the act referred to in the previous section is committed against the President of the Council of State, the President of the National Assembly of Popular Power, the members of the Council of State or the Council of Ministers or the Delegates to the National Assembly of Popular Power, the punishment is deprivation of freedom of one to three years.

Article 204. One who publicly defames, denigrates or slights the institutions of the Republic, the political organizations, the social groups of the country, or the heroes and martyrs of the Fatherland, shall incur a sanction of deprivation of liberty for three months to one year or a fine of one hundred to three hundred cuotas.

## **Ecuador**

### Penal Code

Article 230. Whoever offends the president of the Republic or the person acting as chief executive with threats, menaces or slander is subject to six months to two years of prison and fines of 100 to 500 sucres.

Article 231. Whoever resorts to threat, slander, violence or similar actions against civil servants listed in article 225 when the latter exercise their functions, or as result of said exercise, shall be penalized with imprisonment from 15 days to 3 months and a fine from 50 to 300 sucres. Those who commit offenses included in the previous clause against another public official lacking jurisdiction shall be punished with imprisonment from eight days to one month.

Article 232. One who fails to show respect to any court, corporation or public official when he is exercising his duties, with contemptuous words, gestures or actions, or who disturbs him or interrupts him when he is acting shall be punished with eight days to one month imprisonment.

Article 233. The same penalties apply to one who insults or offends any person who is appearing before or in the presence of the courts or public officials.

## **El Salvador**

### Penal Code

Article 339. Whoever offends the honor or decorum, by deed or word, of a public official in the performance of his duties, or threatens such an official verbally or in writing, shall be punished with a prison term of six months to three years.

If the injured party is the President or Vice President of the Republic, a Deputy to the Legislative Assembly, a Minister or the Assistant State Secretary, a magistrate of the Supreme Court of Justice or Court of Appeals, a lower court judge, or a justice of the peace, the sanction may be enhanced by one-third of the maximum sentence.

## **Guatemala**

### Penal Code

Article 411. Whoever offends the dignity or honor of, or threatens, insults or defames any of the presidents of state organs shall be punished with one to three years in prison.

Article 412. Any persons who threaten, insult, or slander or in any other way offend the dignity or decorum of a public official or authority in the performance of his functions or on occasion of them shall be punished with a prison term of six months to two years.

Article 413. The accused of slander against officials or public authorities shall be allowed to submit proof of his imputation if it refers to acts performed in the exercise of their duties. In this case, if the imputation is proven correct, he shall be absolved.

20. These laws contradict Guatemala's own Political Constitution. Article 35 of the Constitution, which governs the right to freedom of expression, states the following with respect to *desacato*:

Article 35. The publications that contain denunciations, criticisms or accusations against officials or public servants for acts done in the exercise of their duties do not constitute a violation of law or offense.

Officials and public servants may demand that a non-judicial court made up in the form determined by law, declare that the publication which affects them is based on inexact facts or that the charges against them are unfounded. The verdict that vindicates the offended party shall be published in the same media that published the accusation.

21. This Article also provides that the right to freedom of expression shall be governed by the Constitutional Law on Expression. The law's status as a constitutional law means that it also supercedes the Penal Code. The Constitutional Law on Expression states in Article 35:

Criticism of public employees or officials for purely official acts performed as part of their official position shall not constitute the crime of slander or libel, even if they have left those public offices at the time that the accusations are made.

## **Haiti**

### Penal Code

Article 183. Whenever one or several administrative or other judges or a commander of a commune, in the performance of their duties or on the occasion of such performance, have been subjected to insults, whether verbally or in writing, which tend to jeopardize their honor or their sensitivities, the person who has insulted them shall be punished by imprisonment for no less than three months and no more than one year.

Article 184. Insults by way of gestures or threats against a judge or a commune commander while in the performance of their duties shall be punished by imprisonment for no less than three months and no more than one year.

Article 185. Insults by way of words, gestures or threats, to any ministerial officer or agent in charge of law and order, while in the performance of their duties or on the occasion of such performance, shall be punished by a fine of no less than sixteen and no more than forty gourdes.

Article 390-10. They shall be punished by a fine of from two to up to and including four piasters who without provocation proffer insults against any individual other than those provided in Articles 313 through 323.

Article 393. The persons covered by Article 390 shall in all cases be sentenced to imprisonment for three days.

## **Honduras**

### Penal Code

Article 323. Anyone who offends the President of the Republic in his physical integrity or in his liberty shall be sanctioned with incarceration of eight to twelve years.

Article 325. The crimes addressed in the three prior articles committed against the Secretaries of State, Delegates of the National Congress and Magistrates of the Supreme Court of Justice, shall be sanctioned respectively with the penalties stated in said articles, reduced by one fifth.

Article 345. The penalty of two (2) to four (4) years of incarceration shall be applied to anyone who threatens, defames, slanders, insults or in any way offends the dignity of a public authority as a result of his functions, whether it is done verbally or in writing.

If the offended person is the President of the Republic or a senior official stated in Article 325 above, the period of incarceration shall be three (3) to six (6) years.

Article 158. The person accused of slander may not present evidence of the truth of the imputation, unless the offended party is a public official or employee and it relates to facts about the offended party's duties. In this case the accused person shall be exonerated if he proves the truth of the imputation.

## Mexico

### Penal Code<sup>84</sup>

Article 189. Anyone committing an offense against a public servant or agent of authority in the act of lawfully carrying out his duties or by reason of them shall be subject to one to six years' imprisonment in addition to that which corresponds to the crime committed.

22. Although this section does not refer specifically to crimes of disrespect, or *desacato*, against public officials, but rather to any crime when it is committed against a public official, the effect is to make the penalties greater for criminal defamation, libel and slander when these are committed against public officials. Articles 350 through 363 of the Penal Code

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<sup>84</sup> In a letter to the Office of the Special Rapporteur dated January 12, 2000, the Government of Mexico stated that "there do not exist any so-called *desacato* laws in Mexico." It stated that Mexico's Constitution strongly protects freedom in numerous articles. Article 6 establishes that "the manifestation of ideas cannot be the object of a judicial or administrative inquiry, except in the cases of an attack against morals, the rights of a third party, a provocation to commit a crime, or the public order." Article 7 establishes that "the right to write and publish on any topic is inviolable." Again, according to this article, the only possible limitations on this right are those that ensure respect for privacy and protection of morals or public order. Article 70 "provides mechanisms to protect free expression from the ideological currents of the Chamber of Deputies." Article 109 states that "there can be no political trial (juicio político) for the mere expression of ideas." The government also noted some examples from the jurisprudence of the Supreme Court that strongly support the right to freedom of expression. In one statement, the Court asserted that "[a]mong the rights of man is the power to judge public officials[.]" (*Pleno, Quinta Época Seminario Judicial de la Federación, Tomo X, página 452, Martínez H. Alberto.-21 de febrero de 1922.-Seis votos*). The Court later stated that public officials "carrying out a function in the interest of society, are subject to the criticism of the governed, who have the right in accordance with Articles 6 and 7 of the constitution that the free expression of their ideas will not be the subject of any judicial or administrative inquiry, except in the limited cases which constitute attacks against morals, the right of a third person or disturb the public order[.]" (*Primera Sala, Quinta Época, Seminario Judicial de la Federación, Tomo XLV, página 3810, Arriola Valadez Agustín.-28 de agosto de 1935.-Cuatro votos*). The government asserts that the provisions of Article 189 of the Penal Code and Article 3 of the Ley sobre Delito de Imprenta (Law on Press Crimes) are secondary legislation that must be interpreted within the context of the constitution. These provisions, the government asserts, are subject to the principles of the Constitution and the interpretation given to them by the judiciary, which applies jurisprudential tests described above that "in the spirit of the Magna Carta" assure the governed the full exercise of individual rights in the area of freedom of expression.

deal with libel, defamation and slander. The defense of truth is available in cases of defamation in which the allegedly defamed party is a public official or person acting in a “public character,” if the imputation was related to the exercise of his or her functions.<sup>85</sup>

Article 361. Slander, defamation and libel of Congress, either of the legislative chambers, the courts or any other official corporate body or institution shall be punishable under terms of the provisions set out herein, without prejudice to those in Article 190 of this Code.

Press Law of 1917

Article 3. It shall constitute an attack against public order o peace:

. . .

II. Any manifestation or expression made publicly by any of the means listed in the previous section, with which . . . one insults the authorities of the country for the purposes of causing hatred, scorn or ridicule of them; or for the same purpose, attacks professional public bodies, the Army or the National Guard, or the members of those groups by reason of their functions; insults friendly nations, their sovereigns, their leaders or their legitimate representatives in the country . . .  
. [.]

23. Article 33, Sections IV through VIII establish the penalties for violations of Article 3. Depending on the position of the person insulted, penalties range from a maximum of one year-and-a-half in prison for insults to the president to a maximum of three months and a fine for insults minor public officials.

Article 34. Whenever the slander of an individual or a public official is perpetrated in a covert or unclear manner and the defendant refuses to give a satisfactory explanation in the view of the judge, he shall be subject to the penalty

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<sup>85</sup> Article 351 (I) of the Penal Code of Mexico.

corresponding to the offense having not been committed in such circumstances. If a satisfactory explanation is given, there shall be no penalty whatsoever.

## Nicaragua

### Penal Code

Article 347. The following persons shall be in contempt of authority:

1. Those who . . . libel, slander or insult by word or deed, threaten a public official in the course of his duties or as a result of them, in his presence or in a notification or message they send him.<sup>86</sup>

24. Article 348 states that violations of Article 347 carry a penalty of six-months' to four-years' imprisonment.

## Panama

25. The legality of *desacato* laws and other forms of enhanced protection for public officials is established in Panama's Political Constitution. Article 33 provides:

The following can impose punishment without a prior trial, in the cases and within the precise terms of the law:

1. Public servants who exercise command and jurisdiction, who may impose fines on or arrest whoever offends or disrespects them in the carrying out of their duties or in attempting to carry out these duties. . . .<sup>87</sup>

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<sup>86</sup> It should be noted that Article 176 of the Penal Code states: "Criticism of issues of a political nature, of acts of the Government, of its institutions or organs, or of the philosophy of laws or the actions of public officials does not constitute injury (injuria)."

<sup>87</sup> According to the Human Rights Ombudsman of Panama (*Defensor del Pueblo de la República de Panamá*), this section of the Constitution would have no effect if the *desacato* laws were to be repealed because the language of the section with regard to "the precise terms of the law" implies the need for supporting legislation. However, the section is still cause for concern as it provides a legal basis for *desacato* laws.

The Penal Code contains the following provisions relating to *desacato*:<sup>88</sup>

Article 307. Persons who publicly offend or insult the President of the Republic or the person replacing him in his functions shall be punished by imprisonment of 6 months to 10 months and a 20 to 50 days' fine.

Article 308. Persons who publicly denigrate a government body shall be punished with a prison term of 6 months to one year, and a 50 to 100 days' fine.

26. In addition to the Penal Code, *desacato* provisions appear in several other codes. Article 202 of the Judicial Code allows magistrates and judges to arrest someone who offends or disrespects them for up to five days. Article 386 of the Judicial Code provides that agents of the Public Ministry can arrest those who disobey or disrespect them. This section also allows the Attorney General and the Solicitor General to fine individuals up to 50 balboas or put them in jail for up to eight days for disobedience or disrespect.

27. Article 45 of the Administrative Code allows mayors to arrest those who disobey or disrespect them. Article 827 of the same code permits the President of the Republic, the Provincial Governors or the District Mayors to punish those who disobey or disrespect them with detention for five days to two months. Finally, Article 922 establishes that anyone who injures or mocks a government Minister, although the act may not constitute a crime, shall be punished with six to eighteen days in jail.

28. At the outset of the administration of President Mireya Moscoso, there were great hopes that these laws would be reformed; however, a year and a half later, these hopes have not materialized. On December 20, 1999, Laws 11 and 68, known as the "gag laws," were repealed by Law 55. At the same time, the government announced prompt reform of laws which restrict press freedom. Law 55 included a requirement that the government submit a comprehensive press-law reform bill by June 2000. Bill 56 was submitted to the Commission on Human Rights of the Legislative Assembly in June of 2000, by the Human Rights

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<sup>88</sup> In criminal provisions for ordinary libel, slander and defamation, the truth is accepted as absolute defense in cases of libel, however, for slander, proof of truth is only accepted in cases involving public officials and public or private corporations (Article 176). Article 178 provides that "no crime against good reputation is committed through discussion, criticism and opinion about actions or omissions by civil servants."

Ombudsman. The bill would have repealed Articles 307 and 308 of the Penal Code, Articles 202(2) and 386 of the Judicial Code and Articles 45(12) and 827 of the Administrative Code. The bill was presented to the full legislature and the Commission on Government, Justice and Constitutional Issues accepted it for the first of three debates, as required under Panamanian law. After a debate of less than 24 hours, however, the bill was rejected by this Commission by an overwhelming majority. The Special Rapporteur is concerned to hear of this failed effort to repeal these laws, commends the Human Rights Ombudsman for his commitment to their repeal in the face of such adversity and urges continued efforts to reintroduce bills similar to Bill 56.

## **Peru**

### **Penal Code**

Article 374. Anyone who threatens, insults or in any way offends the dignity and decorum of a public official as a result of the exercise of his functions or when he is performing them, shall be subject to incarceration of no more than three (3) years.

If the offended party is the President of one of the Branches of Government, the penalty shall be no less than two and no more than four years.<sup>89</sup>

29. With reference to the crime of defamation, set forth in Article 132 of the Penal Code, the Penal Code allows for a defense of truth when the defamed individual is a public official.<sup>90</sup>

## **Dominican Republic**

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<sup>89</sup> But see Penal Code, Article 133, which states that slander or defamation is not committed in the case of commentaries or information that contain unfavorable opinions about a public official in the performance of his obligations.

<sup>90</sup> See Penal Code, Article 134.

30. The Law on Expression and Propagation of Ideas regulates contempt and other offenses that are committed through the use of the media. If the offense is not perpetrated through the media, the Penal Code governs.

#### Law on Expression and Propagation of Ideas

Article 26. An offense directed at the President of the Republic by any of the media listed in Article 23 shall be punishable by a prison term of three months to one year, plus a fine of RD\$100 to RD\$1,000, or with only one of the two sanctions.

The sanctions established in this same article apply to offenses directed at the person who exercises all or part of the prerogatives of the President of the Republic.

31. Article 30 provides that defamation of the courts, armed forces, national police, legislative chambers, city halls and other institutions are punishable with prison terms of one month to one year, plus fines of RD\$50 to RD\$500. Article 34 punishes defamation against cabinet members, members of the legislative chambers, public officials, law enforcement agents, private individuals charged with public duties or witnesses, who testify with six days to three months in prison and a fine of RD\$6.00 to RD\$60. The defense of truth is available when the aggrieved person is in the public sector.<sup>91</sup>

#### Penal Code

Article 368. Public defamation or libel against the Head of State shall be punished by a sentence ranging from three months to one year in prison, and a fine of ten to one hundred pesos and accessory or additional punishment during a period of time equal to the sentence, complete suspension of the civil and political rights set forth in Article 42.

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<sup>91</sup> Article 37 of the Law of Expression and Propagation of Ideas.

Article 369. Acts of defamation or libel against deputies or representatives to Congress, State Secretaries, magistrates of the Supreme Court or trial courts, or heads or sovereigns of friendly countries shall be punished by imprisonment of one to six months and a fine of fifty pesos.

## **Uruguay**

### Penal Code

Article 138. (Attacks against life, physical integrity, freedom or honor of foreign Heads of State or Diplomatic Representatives)

One who, within the territory of the State, by direct acts, attacks the life, personal integrity, freedom or honor of a foreign head of state or a diplomatic representative will be punished with four to 10 years imprisonment in case of an attempt on life and two to nine years imprisonment for other offenses.

If death results from the event, the punishment will be 15 to 30 years imprisonment.

Article 173. (Desacato)

Insult, impairing the authority of officials, is committed in any of the following ways: 1. By means of real written or verbal offenses carried out in the presence of the official or in the place where the latter carries out his duties, or outside his location and presence, but in these two latter cases with regard to or by reason of his duties. 2. By means of open disobedience to the orders of the official. Regarded as real offenses are armed entry into the place where the officials carry out their duties, violent behavior, and offensive words and gestures, even

when not directed against them. The offense is punishable by three to 18 months' imprisonment.

Article 174. (Aggravating circumstances)

The aggravating factors listed in paragraphs 2, 4 and 5 of Article 172 of this code are applicable to this crime.

Article 175. (Definition of Public Official)

For purposes of this Code, officials consist of all who exercise a duty or perform a function, paid or unpaid, permanent or temporary, of a legislative, administrative or judicial character, in the State, in a municipality or in any public entity.

32. Article 366 allows for a defense of truth or the notoriety of the alleged facts when the offended person is a public official and the facts or characteristics attributed to him refer to the carrying out of his duties and which are such that they could give rise to legal or disciplinary proceedings against him.

## **Venezuela**

### Penal Code

Article 223. Whoever offends in any way, by word or deed, the honor, reputation or decorum of a member of Congress or other public official shall be punished as follows, provided the offense took place in the presence of the offended and was motivated by his position:

1. For an offense against a law enforcement officer, one to three months in prison;
2. For an offense against a member of Congress or a public official, one month to one year in prison, determined by the rank of the offended party.

Article 225. If an offense is committed against a public official not because of his functions but while he is performing them, the same penalties, reduced by one-third to one-half, apply.

Article 226. Whoever offends in any way, by word or deed, the honor, reputation, decorum or dignity of any judicial body, political or administrative, shall be liable to punishment. If the offense is committed while the body is in session or against a magistrate during hearings, the sentence will be three months to two years in prison....

Article 227. In the cases stipulated in the preceding articles, the offending party may not present any proof as to the truth or the notoriety of the acts or errors with which the party is charged.

Article 228. The provisions established in the preceding articles shall not apply if the public official has given cause for the act by arbitrarily exceeding the confines of his powers.

Article 229. In all other cases not covered by a special provision of the law, persons who commit any crime against a member of Congress or any public official by reason of his functions shall be liable for the punishment established for the crime committed, plus an enhancement of one-sixth to one-third.

#### Code of Military Justice<sup>92</sup>

Article 502. One who threatens or offends with words or gestures a sentinel, shall be punished with detention of six months to one year. If the act occurs during a military campaign, the penalty shall be one to two years in prison.

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<sup>92</sup> Civilians who violate this law are subject to prosecution in a military tribunal.

Article 505. One who in any form insults, offends or shows contempt for the National Armed Forces or one of its units shall incur a penalty of three to eight years in prison.

**b. Violations of the Right to Freedom of Expression through the Use of *Desacato* and Criminal Defamation Laws**

33. Throughout the region in 2000, *desacato* and criminal defamation laws were used to protect public officials and deter speech critical of governments. While each violation of the right to freedom of expression is problematic in and of itself, the more serious problem is the effect that these incidents may have on public discourse. Each incident sends the message that those who exercise their right to criticize the government will be punished, causing many potential critics to remain silent. The following pages make note of a number of prominent examples from the region.

34. In **Chile**, journalist José Ale Arevena, of the daily *La Tercera*, was convicted in February 2000 of “insulting” the former president of the Supreme Court of Chile, Servando Jordán. The charges stemmed from a 1998 article in which Ale commented on the reasons that Jordán had left his former position. Ale was convicted under Article 6(b) of the State Security Law and received a suspended sentence of 541 days in prison, which requires him to report to the authorities regularly. Charges were also brought against Fernando Paulsen, the director of *La Tercera*, but he was later acquitted by the Supreme Court.

35. Another ongoing case is that of Alejandra Matus, who left Chile in April 1999 in order to avoid being arrested for the publication of her book, *The Black Book of Chilean Justice*. Matus continues to live in exile in the United States, where she has been granted political asylum. The book criticized the Chilean judiciary for its lack of independence and for the corruption of judges during the regime of General Augusto Pinochet. Charges were filed against Matus under Article 6(b) of the State Security Law by Supreme Court Judge Servando Jordán because of accusations directed at him. On December 19, 2000, a ruling by Santiago Appeals Court Judge Jaime Rodríguez “temporarily halted legal proceedings . . .”, thus upholding an order for Matus’ arrest issued in November, which implies that with no further

recourse to appeal she may not return to her homeland until a statute of limitations expires in 13 years' time."<sup>93</sup>

36. On January 24, 2001, the Third Chamber of the **Costa Rican** Supreme Court upheld a lower court ruling against journalist Mauricio Herrera Ulloa and the daily *La Nación* for defamation. The charges were filed by the former Costa Rican Honorary Ambassador to the International Atomic Energy Organization, whom Herrera had linked to financial scandals in articles he wrote for *La Nación*. These allegations had been previously printed in a number of well-known and respected European publications, but the court held against Herrera because the reports were not adequately verified. The Inter-American Press Association denounced this ruling, calling it "a form of insult or contempt law seeking to protect public servants in an unprecedented fashion through punishment. . . . Rather than reparation, the sentence seeks to set a deterrent penalty aimed at intimidating and promoting self-censorship."<sup>94</sup>

37. In **Cuba**, Angel Moya Acosta, a member of the *Movimiento Opción Alternativa*, and Julia Cecilia Delgado, director of the Gertrudis Gomez de Arellaneda Library and president of the *Asociación por la Reconciliación Nacional y el Rescate de los Valores Humanos*, were tried for "disrespect" and both were sentenced to a year in prison. Angel Moya Acosta was also banned from travelling to Havana, where his wife and children live, for ten years. They were arrested in connection with the mass detentions of dissidents that took place leading up to December 10, 2000, Human Rights Day, in order to prevent them from organizing peaceful protests.

38. In July 2000, Nestor Rodríguez Lobaina, president of the *Movimiento de Jóvenes Cubanos por la Democracia* (Cuban Youth Movement for Democracy), was convicted of *descato*, public disorder and damages and sentenced to 6 years and 2 months in prison. Eddy Alfredo Mena y González, a member of the same movement, was convicted on the same counts for 5 years and 1 month.

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<sup>93</sup> Inter-American Press Association, "IAPA Reiterates Call for Repeal of Insult Laws, Court Upholds Journalist's Conviction on Contempt Charges," December 27, 2000.

<sup>94</sup> Inter-American Press Association, "IAPA Condemns Ruling Against Journalist and Daily "La Nación," January 29, 2001.

39. In addition to the convictions of the past year, two journalists remained in prison throughout 2000, serving prison sentences for *descato*. Journalist Manuel Antonio González Castellanos, a correspondent for the independent news agency *Cuba Press*, is currently serving two years and seven months in prison for showing “disrespect” to President Fidel Castro. He was arrested on October 1, 1998 for criticizing Castro to State Security Agents who had stopped him and insulted him on the street. Bernardo Arévalo Padrón, founder of the independent news agency *Línea Sur Press*, is currently serving a six-year prison sentence for “disrespect” to Fidel Castro and Carlos Lage, a Cuban State Council member. He was convicted on October 31, 1997, after publishing an article on the privileges granted to Cuba’s political leaders.

40. On September 19, Jesús Antonio Pinedo Cornejo, editor of the magazine *Seminario* in Ciudad Juárez, **Mexico**, was arrested on charges of defamation. A complaint was filed by then-Commissioner of Public Security, Javier Benavides González, against Pinedo and journalist Luis Villagrana. The complaint arose out of an article written by Villagrana and published in *Seminario* that alleged that Benavides and other local police chiefs had helped to protect drug traffickers. Pinedo stayed in prison for one night and was released on a 15,000 peso (US\$1.590) bond. Villagrana appeared voluntarily before the court and was also ordered to pay a 15,000 peso bond. Benavides withdrew the petition on October 2. Had the case gone forward, the two journalists would have faced possible sentences of two years in prison.

41. In November 2000, the Special Rapporteur received word that Juan Manuel Handal, director of *La Carta de Panama* had been sentenced to 18 months in prison for “libel and slander.” The complaint was brought against him by the mayor of Panama, because of an opinion article Handal had written about him during his campaign. The sentence was later replaced with a fine of 400 balboas.

42. On August 8, Gustavo Gorriti, the associate director of *La Prensa*, and three journalists from the newspaper, Miren Gutiérrez, Mónica Palm and Rolando Rodríguez received a summons to testify in the case against them for “libel and slander.” The complaint was brought against them by Attorney General José Antonio Sossa, because of articles they had published in *La Prensa* in which they alleged that Sossa had protected a US businessman who was suspected of drug trafficking. The complaint is brought under Article 175 of the Penal

Code, which provides, “Any person who publishes or reproduces information harmful to an individual’s reputation in any media may be sentenced to 18 to 24 months in prison.” The trial was set for November 2000.

43. Jean Marcel Chéry, a journalist with the newspaper *El Panamá América*, was sentenced to 18 months in prison on July 14, 2000 for the crime of “libel and slander”. The charges stemmed from an article he published in 1996 in *El Siglo*. The sentence is currently being appealed to the Second Superior Court of Justice.

44. On June 22, 2000, Carlos Singares, director of the daily newspaper *El Siglo*, was sentenced to eight days in prison for *desacato* by Attorney General José Antonio Sossa, under Article 386 of the Judicial Code. Singares had published an article containing sexual allegations against Sossa. Article 386 gives the Attorney General summary power to jail anyone who offends him for up to eight days, without allowing an opportunity for defense. Singares appealed this conviction by writ of *habeas corpus* to the Supreme Court, which found that Article 386 was constitutional, according to Article 33 of the Constitution. Singares was imprisoned from July 28 through August 4. Additionally, on August 2, the Second Superior Tribunal of Justice upheld a 20-month sentence against Singares in a case against him for allegedly defaming former president Pérez Balladares. The sentence was commuted to a fine of US \$ 1,875 and is currently on appeal before the Supreme Court.

45. In addition to these cases, according to one report published by the non-governmental organization Reporters Without Borders, there are currently as many as 40 journalists who are being prosecuted in **Panama** for “insults” or “defamation.”<sup>95</sup>

46. In December 2000, James Beuzeville Zumaeta, the director of the radio program *La Razón* in **Peru**, was sentenced to a one-year suspended prison term and civil damages in the amount of 8,000 new soles (approximately US \$2,300) for insult and aggravated defamation against José Tomás Gonzales Reátegui, former president of the Consejo Transitorio de Administración Regional (CTAR) (Provisional Council of Regional Administration) of Loreto and former minister of the Presidency. Beuzeville had made allegations on his

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<sup>95</sup> Reporters Sans Frontières (Reporters without Borders) (RSF).

program of irregularities and acts of corruption committed by Gonzales during his leadership of CTAR.

47. On October 31, 2000, Adrián Aguilar Reyes, director of the radio program *Huandoy Noticias*, received a one-year conditional prison sentence and was ordered to pay monetary damages of 1500 soles (about US \$430). Aguilar was convicted of defamation of Mayor Pedro Crisólogo Castillo Flores as a result of a report in which he told of some serious irregularities during an election on April 9. After these statements, the signal was suddenly cut, and Aguilar accused Mayor Castillo of having done this in order to prevent more information about election irregularities from reaching the public.

48. On August 9, 2000, a defamation complaint was filed against Alfredo del Carpio Linares, director of a radio program entitled *Veredicto: La Voz del Pueblo* (Verdict: The Voice of the People). The provincial mayor of Camaná, Enrique Gutiérrez Sousa, brought the complaint based on an interview of Oficialista Party Congressman Rubén Terán Adriazola, in which del Carpio asked about some irregularities in the public expenditures of the municipality of Camaná. At last report, the mayor was seeking a sentence of three years in prison and the maximum fine allowable by law, approximately US \$28,000. In August 2000, proceedings were launched against the newspaper *Liberación* for the alleged aggravated defamation of Juan Miguel Ramos Lorenzo, a member of the Superior Court of Lima.

49. In **Venezuela**, attorney and university professor Pablo Aure was detained by the military authorities on January 8, 2001, because of the publication of an article in which he made fun of the supposedly submissive attitude of the military towards president Hugo Chávez. He was released on January 10, but he continues to face charges under the military's jurisdiction for violating Article 505 of the Code of Military Justice.

## **Conclusion**

50. As the cases above indicate, *desacato* laws and criminal defamation laws are used throughout the region in order to punish journalists and others for reporting on information that the public has a legitimate right to know in a democratic society.

51. Regardless of the frequency with which these are invoked or enforced, their existence produces a chilling effect on speech that is critical of the government. For this reason, the Special Rapporteur urges the immediate repeal of all the *desacato* laws cited in this report. For the same reason, states should take steps to eliminate criminal defamation, libel and slander laws, particularly in cases in which the offended party is a public official, and to incorporate the doctrine of actual malice into their laws regarding offenses against honor and reputation.



## CHAPTER IV

### EVALUATION OF THE SITUATION OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

#### A. Introduction

1. This chapter contains an analysis and overview of the status of freedom of expression in countries in the hemisphere. It indicates the principal problems which exist as well as the progress made in the year 2000. It also includes a discussion of countries meriting special attention by the Special Rapporteur due to the situation of freedom of expression. This chapter presents all information received by the Office of the Special Rapporteur regarding violations of this right in different OAS Member States. Additionally, it contains a list of the journalists murdered during the year 2000.

#### B. Evaluation

2. Freedom of expression continues to be seriously threatened in many States in the hemisphere. The murder of journalists; the failure to punish those responsible for these murders; threats, attacks and intimidation directed against journalists and the mass media; laws contravening the American Convention on Human Rights and other international instruments; and the use of the judiciary as an instrument for intimidating and harassing journalists are the main reasons that the exercise of the right to freedom of expression is imperiled in the hemisphere.

3. The murder of journalists is the most brutal form of curtailing freedom of expression. Based on the information received, seven journalists in different countries in the region were assassinated during 2000 because of their journalistic activities. This figure is higher than that registered for 1999, when the murders of six journalists were reported.<sup>96</sup> In

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<sup>96</sup> IACHR, Annual Report 1999, Report of the Office of the Special Rapporteur for Freedom of Expression, April 13, 2000, p.48.

1998, the number of journalists murdered was eighteen.<sup>97</sup> In the two years and four months that the Office of the Special Rapporteur has been working, 31 cases of murders of journalists have been recorded. The seriousness of these assassinations increases alarmingly when investigations to punish the perpetrators of these crimes fail to produce positive results. With regard to these murders, it is important to recall Principle 9 of the Declaration of Principles on Freedom of Expression, which stipulates:

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

4. Because freedom of expression plays a fundamental role in the functioning of democratic systems, States must work harder to fulfill their obligation to investigate, prosecute and punish the perpetrators of these murders. The Commission has stated that the failure to seriously investigate, prosecute and punish the material and intellectual authors of these crimes against journalists constitutes a violation not only of due process guarantees and other rights, but also of the right to disseminate information and to express oneself freely and publicly, thereby triggering the international liability of the State.<sup>98</sup>

5. This report includes a special section on the assassinations of journalists that occurred in the year 2000. The circumstances surrounding these assassinations and the related investigations are analyzed in this section. The Special Rapporteur received information about other cases of murders of journalists, which are currently being investigated to determine if these murders were consequences of the victims' journalistic activities.

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<sup>97</sup> IACHR, Annual Report 1998. Report of the Office of the Special Rapporteur for Freedom of Expression, April 16, 1999, p.50.

<sup>98</sup> IACHR, Report N° 50/99, Case 11.739 (Mexico), April 13, 1999. Additionally, the Inter-American Court of Human Rights stated: "The State is obliged to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely or with impunity to the detriment of the rights recognized by the Convention."

6. According to the information received on an ongoing basis by the Office of the Special Rapporteur, it is evident that the most common methods of curtailing freedom of expression are physical and psychological threats, harassment, intimidation and the use of domestic legislation to file suit against the press and other social communicators. One section of this chapter presents the information received throughout the year 2000.

7. With regard to the domestic legislation of countries in the hemisphere, the Special Rapporteur notes with concern that some States have failed to demonstrate sufficient political will to undertake significant reforms in the area of freedom of expression. To the contrary, *desacato* (contempt) laws continue to be used to stifle the press and, in countries where there are no such laws, other legal definitions such as defamation and libel are used to stifle the press. Actions of this nature violate Article 13 of the Convention and contravene Principles 10 and 11 of the Declaration of Principles on Freedom of Expression. Prior censorship, moreover, continues to be applied in many States, even though such actions seriously imperil the right of every person to choose the information that he or she wishes to receive. This violation figures in various international treaties, in the American Convention and, more recently, in Principle 5 of the Declaration. Further, many Member States continue to violate the freedom of expression of their citizens by requiring licenses and compulsory membership in associations as conditions for journalists to practice in their field. Such measures contravene the provisions of Principle 6 of the Declaration.

8. In the Special Rapporteur's judgment, the strengthening of freedom of expression in the hemisphere necessitates more concerted action by States that reflects a serious commitment to observance of this right. Significant changes have not been observed in most States and for this reason, the Special Rapporteur stresses once again that stronger steps must be taken in favor of freedom of expression and that the domestic legislation of OAS member States must be made compatible with international standards on freedom of expression.

9. In the area of domestic legislation, Guatemala, Peru and Argentina are developing measures directed at offering their citizens full guarantees of the right to freedom of expression. With the collaboration of the Office of the Special Rapporteur, Guatemala has

prepared draft legislation regulating the right to access to information. As this report was being published, the Office of the Special Rapporteur received information that this bill had been introduced in Congress. For its part, Argentina introduced a bill to decriminalize the offense of libel and slander, which is currently under debate in the Parliament. This bill was the product of a friendly settlement in a case before the Commission.

10. With respect to Peru, in February of 2001, the Human Rights Ombudsman introduced a bill before Congress to repeal Article 374 of the Penal Code, which defines the crime of *desacato*. This bill is currently under the consideration of the Peruvian Congress. The Special Rapporteur urges the authorities to work for the approval of this bill during the next Congressional sessions. In the case of the Argentine bill, the Special Rapporteur urges the Argentine authorities to expedite the legislative procedures that might lead to the adoption of the decriminalization bill.

11. The Special Rapporteur expresses his strong interest that these bills be adopted in the near future. The adoption of these bills would constitute a significant step forward for freedom of expression in those countries, as well as an example that should be followed by other member States.

12. The restoration of the democratic system in Peru, with the attendant improvement in freedom of expression, represents the most significant progress in the area of freedom of expression in the year 2000. On many occasions, the Office of the Special Rapporteur has remarked on the deplorable state of freedom of expression in that country. Through judicial persecution, threats, torture, etc., the regime headed by former president Alberto Fujimori and former intelligence agent Vladimiro Montesinos carried out a campaign of persecution, intimidation and harassment against all those attempting to freely exercise their right to freedom of expression. Clearly, the return to the path of democracy has restored to Peruvian citizens the free exercise of the right to freedom of expression. This is particularly significant for the current Peruvian electoral process. The Office of the Special Rapporteur has had the opportunity to comment on the importance of freedom of expression, especially during electoral processes.

The importance of respect for freedom of expression and information becomes extremely critical in times when citizens need information to elect the individuals who will be responsible for governing them. The State must guarantee, without discrimination, the enjoyment of the rights to transmit and receive information in accordance with respect for the political rights of all citizens to participate in the electoral process, either as candidates or as voters.<sup>99</sup>

13. Cuba continues to be of primary concern for the Office of the Special Rapporteur as the most critical situation for freedom of expression in the Hemisphere. The absence of a pluralistic democracy translates in practice as a systematic violation of freedom of expression. Compounding this lack of democracy is the government practice of persecuting, intimidating and harassing numerous independent journalists in Cuba.

14. Regarding the above, The Inter-American Court of Human Rights has stated that “[f]reedom 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.”<sup>100</sup>

15. The Office of the Special Rapporteur considers the state of freedom of expression in Chile to be particularly grave. The practice of prior censorship and the application of *desacato* laws by the Chilean authorities severely curtail freedom of expression. The Special Rapporteur recognizes the good will of the current administration, as well as its predecessor, to seek mechanisms that will ensure the unrestricted enjoyment of freedom of expression. Nonetheless, the efforts made by the authorities have not yet had the desired results. Cases of prior censorship of films and books, the judicial persecution of journalists Alejandra Matus and José Ale of the newspaper *La Tercera*, and the recent lawsuit brought against the daily

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<sup>99</sup> See Annex, Press Release 21/2000 Office of the Special Rapporteur for Freedom of Expression, March 8, 2000.

<sup>100</sup> See Inter-American Court of Human Rights, Compulsory Membership in a Professional Association Prescribed by Law for the Practice of Journalism (Arts. 13 & 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70.

newspaper *El Metropolitano* are clear examples of the worrisome state of freedom of expression in that country. The Office of the Special Rapporteur is confident that the current Chilean authorities will find mechanisms conducive to the immediate improvement of this situation.

16. The Special Rapporteur views with great satisfaction the approval by the Chamber of Deputies of the “Ley sobre Libertades de Opinión e Información y Ejercicio de Periodismo” (“Law on Freedom of Opinion and Information and the Practice of Journalism”), known as the Press Law, which among other reforms, modifies Article 6(b) of the State Security Law. Although as of the date of the publication of this report, this law continues to be pending before the Senate, various authorities have expressed the support that exists for the passage of this bill and its prompt conversion into law. Additionally, the Special Rapporteur received information about a bill that would modify Article 19 of the Constitution, repealing the provision on censorship of films. The Special Rapporteur expresses his satisfaction with these initiatives, which, if approved, will represent a significant advance towards bringing domestic legislation into conformity with Article 13 of the American Convention.

17. The Special Rapporteur also notes that the mentioned modifications must be accompanied by other initiatives that would repeal other Chilean legal norms that violate Article 13 of the American Convention, such as the *desacato* provisions found in the Penal Code.

18. The Office of the Special Rapporteur continues to be seriously concerned about the situation of the press in Colombia. The murder of four journalists and the forced exile of seven journalists during the year 2000, without taking into account those who did not report their departure from the country nor the attacks they suffered, and the hundreds of death threats and other attacks on journalists taking place on a daily basis in Colombia present an alarming panorama for the free and full enjoyment of freedom of expression. In December of 2000, the Office of the Special Rapporteur organized a *Workshop on Freedom of Expression in Colombia* that was attended by important independent organizations working in defense of this right. These groups agreed to coordinate with the Office of the Special Rapporteur on activities aimed at seeking a rapid solution to this situation.

19. The Office of the Special Rapporteur recognizes the efforts made by the Colombian authorities to implement measures that will put an end to the current crisis. In particular, it supports the creation of the Sub-unit specializing in the investigation of murders of journalists within the Human Rights Unit of the Attorney General of the Nation. According to several local organizations, as well as other Colombians consulted, this represents a positive step in the quest for solutions to the current problems. In addition to the work of the Sub-unit, the work of various civil society organizations engaged on a daily basis in the endless task of defending and protecting this right must be recognized.

20. However, given the seriousness of the internal conflict in Colombia, the Special Rapporteur considers that current efforts are insufficient to ensure full respect for the enjoyment of the right to freedom of expression. Both the work of the Sub-unit and of the independent organizations must be supported with more human and financial resources if they are to be more effective in protecting the physical integrity of journalists in Colombia and the free exercise of their duty to impart information. Attacks on Colombian journalists and the mass media are not only attempts against their physical integrity but also violations of the right of all Colombians to information.

21. The Special Rapporteur expresses his great concern about some statements made during the year 2000 by Hugo Chavez, President of the Bolivarian Republic of Venezuela, against the press. Public officials like President Chavez must defend, promote and guarantee the full exercise of freedom of expression. In some circumstances, the expressions of public officials, particularly those of the President, can create an atmosphere of hostility for the free exercise of freedom of expression. The Office of the Special Rapporteur considers that some expressions of President Chavez during the past year could constitute a mechanism of direct and indirect pressure on the communications media, journalists and other social communicators. Due to the exemplary influence which the President of a Republic has, his expressions might serve as a model for lower ranking public officials who might consider it legitimate to address the media in a similar manner.

22. In this chapter, the Special Rapporteur also makes reference to information received during the final stages of drafting this report regarding events in Guatemala and

Panama which could jeopardize the right to freedom of expression in both countries. Additionally, the Special Rapporteur mentions with concern passage of the law on Compulsory Membership in the Journalists' Association in Nicaragua and the inquietude expressed by various sectors of Honduran civil society about the existence of serious violations against freedom of expression.

**C. Status of freedom of expression in some member States**

**1. Progress made in freedom of expression**

**a. Peru**

23. The Special Rapporteur wishes to acknowledge the major strides made by Peru in re-establishing freedom of expression since Alberto Fujimori's renunciation of the presidency in November of the year 2000.

24. It should be noted that in the two-and-a-half years of his Office's existence, the Special Rapporteur has received over 160 reports of harassment, threats, judicial persecution and violent attacks on investigative journalists and independent media or media critical of the government. The information received during the year 2000 from different organizations that work for the defense and protection of freedom of expression is detailed later in this chapter. The Special Rapporteur repeatedly reported that, during the Fujimori government, there was a systematic plan of harassment on the part of intelligence and security forces in Peru, designed to silence criticism and the investigation of corruption and acts of violence.<sup>101</sup>

25. The Special Rapporteur hopes that the new government will take the necessary steps to guarantee and protect freedom of expression in Peru, in accordance with the existing international human rights standards and with the Declaration of Principles on Freedom of Expression. It is also recommended that a serious, effective and independent investigation be conducted into acts of harassment and violence to which media personnel and investigative journalists may have been subjected in Peru under the former government.

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<sup>101</sup> See Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 1999. p.41.

**b. Guatemala**

26. Without prejudice to the serious concern of the Special Rapporteur regarding the cases of aggression and threats against social communicators that are mentioned in a later section, the Special Rapporteur expresses his satisfaction with some measures recently adopted by the Guatemalan government, seeking to comply with the recommendations developed during the Special Rapporteur's visit in April of 2000.<sup>102</sup>

27. The Office of the Special Rapporteur received information that on April 2, the Secretary of Strategic Analysis of the Office of the President of the State made public during a press conference a bill on free access to information that had been submitted to the Congress of the Republic.

28. Additionally, the Office of the Special Rapporteur was informed that on March 7, a Ministerial Agreement (No. 395-2001) was issued. This authorized the loan of a radio frequency to the National Association for Communication, Culture, Art and Development so that it could share the use of the broadcast time, without charge, with municipalities, non-profit foundations and associations and community organizations.

29. Finally, the Special Rapporteur learned that the President of the Republic announced on March 23 that he had recommended that the Secretary of Strategic Analysis begin studying a legislative reform project on radio and television concessions in order to incorporate democratic criteria that guarantee equal opportunity of access to these.

30. This information was received while the Commission was finalizing the chapter on freedom of expression for this annual report. Due to the lack of available time, the Office of the Special Rapporteur could not evaluate whether or not the information received complied with the recommendations formulated during the visit. Without prejudice to this, the information

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<sup>102</sup> See Annex, Press Release 24/00.

received is a good indication of the will of the authorities to comply with the Special Rapporteur's recommendations, in search of a broader protection of freedom of expression in Guatemala.

## **2. Countries without freedom of expression**

### **a. Cuba**

31. Cuba denies its citizens' rights to freedom of expression and access to information. The legal system places countless restrictions on the ability to disseminate and receive information. Moreover, tactics of intimidation and repression are used to put further pressure on journalists and dissidents to prevent them from criticizing the government.

### **a. Legal Framework for Freedom of Expression**

32. The right to freedom of expression is guaranteed in the Cuban Constitution only insofar as its exercise "conforms with the purposes of a socialist society."<sup>103</sup> Article 62 declares it a punishable offense to exercise any of the constitutional freedoms in a manner that is "contrary to that which is established in the Constitution and the laws, or contrary to the existence and aims of the socialist State, or contrary to the Cuban people's decision to build socialism and communism."

33. Any obstacle to the free discussion of ideas and opinions restricts freedom of expression. Prior conditioning of expression, such as truthfulness, timeliness or impartiality, among other conditions, is incompatible with the rights provided for in international instruments. The Special Rapporteur believes that the prohibition of speech that does not conform with the purpose of a socialist society is a form of prior conditioning.

34. The Constitution further limits freedom of expression by establishing control over communications media. Article 15 of the Constitution states that the means of communication are the property of the state and may not be privately owned. Article 53 indicates that the

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<sup>103</sup> Article 53 of the Constitution of Cuba.

purpose of this restriction is to ensure that the press, radio, television, cinema and other means of communication can only be used for the benefit of “the working people and in the interest of society.” The Special Rapporteur believes that the imposition of legal mechanisms to exercise control over the media and other social communicators has a negative effect on the respect for and protection of freedom of expression. Such impositions deny individuals their fundamental right to participate fully in social, political, economic and cultural life.

35. The government uses this provision on ownership and control to censor the official media and prevent them from reporting any information considered disadvantageous to government interests.<sup>104</sup> On this point, the Declaration of Principles on Freedom of Expression emphasizes:

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 pluralistic and diversity which ensures the full exercise of people’s right to information. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.<sup>105</sup>

36. This principle applies to state controlled as well as privately controlled monopolies.

37. In addition to the provisions of the Constitution, numerous sections of the Penal Code are used to suppress journalists and others who speak out against the government. Many of the offenses, which subject the accused to prison terms, are vaguely defined so as to apply to a wide range of speech. Such offenses include: “*desacato*,” or disrespect;<sup>106</sup> sedition;<sup>107</sup> “enemy propaganda”;<sup>108</sup> “acts against the security of the state”;<sup>109</sup> “resistance”;<sup>110</sup>

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<sup>104</sup> See discussion of official and independent media, *infra*.

<sup>105</sup> Principle 12, Declaration of Principles for Freedom of Expression.

<sup>106</sup> Article 144.1 of the Penal Code of Cuba.

<sup>107</sup> Article 100 of the Penal Code.

<sup>108</sup> Article 103.1 of the Penal Code.

<sup>109</sup> Articles 124 & 125 of the Penal Code.

<sup>110</sup> Article 143.1 of the Penal Code.

“public disorder”,<sup>111</sup> “instigation to commit a crime”,<sup>112</sup> “damages”,<sup>113</sup> “spreading of unauthorized news”; “insulting of patriotic symbols”,<sup>114</sup> “illicit association”,<sup>115</sup> and “dangerousness.”<sup>116</sup>

38. In February of 1999, the “Law on Protection of the National Independence and Economy,” was passed. Now widely known as “Law 88,” this law allows the government to control information that is disseminated within its borders. Law 88 makes it a crime to impart, search for or obtain subversive information or to bring subversive materials into the country, reproduce them or circulate them. It also criminalizes collaboration—either direct or through third parties—with radio transmitters, newspapers, magazines or other mass communications media for the purpose of disseminating subversive materials. This law establishes penalties of up to 20 years imprisonment, confiscation of personal belongings and large fines for the authors of these acts and their accomplices.

#### **b. Institutional Framework of Media**

39. The official media in Cuba consists of the daily newspapers *Granma* and *Juventud Rebelde*, the weekly *Trabajadores*, the magazine *Bohemia*, a number of national and regional radio stations and two television stations. According to a recent report by Reporters Without Borders, a French-based non-governmental organization devoted to press freedom, these media “publish or broadcast articles and reports chosen, reviewed and amended to suite [sic] the government’s ideological interests.”<sup>117</sup> They “devote a large part of their meagre columns or limited broadcasting time (six hours per channel per day during the week and fifteen hours per day over week-ends) to speeches made by Fidel Castro and official propaganda.”<sup>118</sup>

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<sup>111</sup> Article 200-201 of the Penal Code.

<sup>112</sup> Article 202 of the Penal Code.

<sup>113</sup> Article 339 of the Penal Code.

<sup>114</sup> Article 203 of the Penal Code.

<sup>115</sup> Article 208 of the Penal Code.

<sup>116</sup> Article 72 of the Penal Code.

<sup>117</sup> Reporters without Borders, “Harassment, exile, imprisonment: One hundred independant journalists face the state,” Sept. 2000, available at <http://www.rsf.fr/uk/html/ameriques/rapport/cubauk.html>.

<sup>118</sup> *Id.*

40. Independent media, which operate outside the scope of the Cuban Constitution, are growing despite the fact that they are subject to constant government harassment and lack of funding. *Reporters Without Borders* noted in a 2000 report that there are 18 independent news agencies in Cuba, four of which operate in the provinces. There are over one hundred independent journalists, most of whom are affiliated with one of these agencies, an increase in the past decade. Independent journalists attempt to transmit news to foreign radio, print and Internet sources by telephone or fax. According to the information received, the government tries to deprive independent journalists of phone lines and frequently taps the phone lines—their own or those of friends and family members—that they use to transmit information.

41. There is also an independent library movement, which offers the public access to books that have been banned by the government. Several independent libraries have been established in Cuba since 1998, when the first such library, the *Biblioteca “Félix Varela”* was established. Independent libraries are subjected to the same types of harassment as the independent media, including searches, confiscation, and arrests and detentions of librarians.<sup>119</sup>

42. The government also restricts the flow of information to and from the country. It attempts to jam foreign radio transmissions. Many Cubans rely on short-wave radios as their primary source of information about the outside world.

43. Access to the Internet is limited. Anyone wishing to have access to the Internet must have government permission, according to the law. However, many Cubans have found other ways to connect to the Internet. The government filters sites that it finds objectionable and also makes those who are granted Internet access sign a contract which restricts them from looking at material that “violates moral principles of Cuban society or the laws of the country.”<sup>120</sup> Those that have access to e-mail “strongly suspect that . . . messages are read by

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<sup>119</sup> Amnesty International.

<sup>120</sup> Reporters sans Frontières, *supra* note 14.

the secret services since messages from abroad arrive several hours after being sent or not at all.”<sup>121</sup>

### **c. Violations of Freedom of Expression in 2000**

#### **Detentions**

44. In 2000, there were several cases of arrests, detentions, interrogations and threats against independent journalists and dissidents. On January 20, José Orlando González Bridon, president of the *Cuban Confederation of Democratic Workers* and writer for the *Prensa Libre de Cuba* was detained for several hours and questioned about his writings. He was threatened with prosecution under Law 88 for discrediting the Cuban state, but was not charged.<sup>122</sup>

45. On July 15, Ricardo González Alfonso, an independent journalist and a correspondent for *Reporters Without Borders*, was detained, interrogated for six hours and released.<sup>123</sup>

46. On July 21, Luis Alberto Rivera Leyva, director of the *Agencia de Prensa Libre Oriental* (APLO), was arrested before the trial of two opponents and released afterwards, allegedly to prevent his reporting on it. Rivera was threatened, detained and put under house arrest at least seven more times in 2000.<sup>124</sup>

47. On September 15, Jesús and Jadir Hernández Hernández, two brothers who report for the independent news agency *Havana Press*, were detained for over three days in a small town outside Havana, according to foreign press reports and *Committee to Protect Journalists* (CPJ) sources in Cuba. The agents confiscated a typewriter, electronic organizer,

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<sup>121</sup> *Id.*

<sup>122</sup> Human Rights Watch, New York.

<sup>123</sup> Reporters without Borders, Paris, France.

<sup>124</sup> Human Rights Watch.

and manuscript articles written by the brothers. They were interrogated and threatened with prosecution for “contempt” and “spreading false news” and with additional charges under Law 88. They were released September 18. The brothers have been harassed on numerous other occasions, ordered to appear at the State Security Department and interrogated.

48. On November 9, independent journalist Omar Rodríguez Saludes, director of the independent news agency *Agencia Nueva Prensa*, was arrested by the Department of State Security. His home was searched and he was detained for a day at the Sixth Unit of the National Police and the headquarters of the State Security Department.<sup>125</sup>

49. The Special Rapporteur has received additional reports of at least nineteen similar incidents involving independent Cuban journalists or dissidents. Many of these incidents have involved threats of prosecution under Law 88. Another tactic that has become increasingly common in these situations is releasing detainees in remote locations, with no money or identification.

50. Arrests and detentions were also used to harass foreign journalists and to prevent them from obtaining information about the situation of independent journalists and dissidents in Cuba. On June 18, Italian freelance journalist Carmen Butta was detained after meeting with independent journalists as part of her research for an article on the Cuban independent press.<sup>126</sup>

51. On August 17, French journalist Martine Jacot was detained and interrogated at the Havana airport by six members of the Cuban security forces. She had spent a week in Cuba, on a mission for *Reporters Without Borders*, interviewing independent journalists and family members of incarcerated journalists. Jacot’s video camera, two video cassettes and some documents were seized.<sup>127</sup>

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<sup>125</sup> Inter-American Press Association (IAPA).

<sup>126</sup> Human Rights Watch.

<sup>127</sup> Reporters without Borders, Paris, France.

52. On August 29, Birger Thureson, Peter Götell and Elena Söderquist, three Swedish journalists, were arrested in Havana by state security agents after meeting with independent journalists at a workshop on freedom of the press. They were accused of violating their tourist visas by engaging in journalistic work and were deported after spending two days in detention.<sup>128</sup>

53. On January 12, 2001, two prominent citizens of the Czech Republic were arrested on charges of “subversion” and of being US agents because they met with two Cuban dissidents. Ivan Pilip is the former Czech Minister of Finance and is currently a member of Parliament. Jan Bubenik, a member of a pro-democracy foundation, was an anticommunist student leader during Prague’s “Velvet Revolution” of 1989. The two were held in jail for 24 days, despite the international outcry over this incident and efforts to resolve the issue through diplomatic channels. They were finally released after signing a “confession” for breaking the law on subversion.<sup>129</sup>

### **Mass Arrests**

54. In the weeks leading up to December 10, according to an *Amnesty International* report, as many as 200 people were arrested because of their suspected involvement in planning anti-government demonstrations or marches for Human Rights Day. The arrested individuals were held in custody in order to prevent their participation in “counter-revolutionary” activities. Most were released within 48 hours, but several were held for longer periods of time and at least two were tried and sentenced. Angel Moya Acosta, a member of the illegal *Movimiento Opción Alternativa*, and Julia Cecilia Delgado, director of the Gertrudis Gomez de Arellaneda Library and president of the *Asociación por la Reconciliación Nacional y el Rescate de los Valores Humanos*, were tried for “disrespect” and both were sentenced to a year in prison. Angel Moya Acosta was also banned from travelling to Havana, where his wife and children live, for ten years. Acosta had also been arrested in December 1999, again for being involved in the organization of peaceful protests for Human Rights Day. He was charged with resistance, public disorder and instigation to commit crime, but was released in August 2000

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<sup>128</sup> Human Rights Watch, CPJ, RSF.

<sup>129</sup> *The Miami Herald*, Miami, United States.

without ever having been tried. Leonardo Bruzón Avila, president of the *Movimiento Pro Derechos Humanos 24 de Febrero*, and Marcos Lázaro Torres León, national coordinator of the *Partido Democrático 30 de Noviembre Frank País*, were reportedly still held in detention without charge as of the issuing of *Amnesty International's* report, more than 10 days after their arrest.<sup>130</sup>

### **Criminal Convictions**

55. According to information received, in January, Victor Rolando Arroyo Carmona, a longtime government opponent who wrote for the independent press agency *Union of Independent Cuban Journalists and Writers*, was sentenced to six months in prison for “hoarding toys.” He had toys in his home that had been paid for by Cuban exiles in Miami and that he was planning to donate to poor children. His house was searched on January 25 and over 140 toys were confiscated. *Amnesty International* believes that his arrest was due to government disapproval of his journalistic activities and his links with Miami exile groups. Arroyo was released in July after serving the full six-month prison term. This was not the first time Arroyo had been imprisoned. He had previously been jailed for one year and 9 months in 1996 for *desacato* involving a police officer. *Human Rights Watch* also reports that on October 16, after Arroyo had been released from prison, he was beaten and insulted by state security agents. “He and another dissident were picked up from a friend's house, driven to the police station in Güines, beaten *en route*, and then driven dozens of miles away and released after having been beaten again.”<sup>131</sup>

56. On February 25, Dr. Oscar Elías Biscet González, president of the *Lawton Human Rights Foundation*, received a three-year prison sentence for dishonoring patriotic symbols, public disorder and instigating delinquency. Dr. Biscet had been arrested in the context of the November 1999 incidents surrounding the Ibero-American Summit.<sup>132</sup> He was planning a march to protest human rights abuses and was arrested during a press conference

<sup>130</sup> Amnesty International, “Cuba marks Human Rights Day with mass detentions and sentences for dissidents,” December 14, 2000.

<sup>131</sup> Human Rights Watch, *World Report 2001*, at 123.

<sup>132</sup> During the November 1999 Ibero-American Summit held in Havana, an estimated 260 dissidents were detained and others placed under house arrest in an effort to prevent anti-government demonstrations. Most were released after short periods of time, but several remained in prison, some for many months without ever being charged or tried.

at his home. The same day, two other protesters, also arrested during the Summit in November 1999, were convicted of “public disorder.” Eduardo Díaz Fleitas, vice president of the *Fifth of August Movement*, was sentenced to a year in prison. Fermín Scull Zulueta was sentenced to a year of house arrest. The two had been involved in a demonstration to demand respect for human rights when some government supporters tried to stop them.<sup>133</sup>

57. In July, Nestor Rodríguez Lobaina, president of the *Movimiento de Jóvenes Cubanos por la Democracia* (Cuban Youth Movement for Democracy), was convicted of *desacato*, public disorder and damages and sentenced to 6 years and 2 months in prison. Eddy Alfredo Mena y González was convicted on same counts for 5 years and 1 month. Rodríguez has been arrested and imprisoned on several other occasions due to his opposition activities. *Amnesty International* has called both men prisoners of conscience, saying that they have been imprisoned for the non-violent exercise of their right to freedom of expression and association.

58. Three journalists continued to be imprisoned throughout 2000, based on earlier convictions. Manuel Antonio González Castellanos, a correspondent for the independent news agency *Cuba Press*, and Bernardo Arévalo Padrón, founder of the independent news agency *Línea Sur Press*, were serving prison terms for *desacato*. Manuel Antonio González Castellanos was released on February 26, 2001 after two-and-a-half years in prison; his sentence was 31 months. Arévalo Padrón remains in prison as of this writing. Jesús Joel Díaz Hernández, the executive director of the independent news agency *Cooperative Avileña de Periodistas Independientes* (CAPI), had served two years of a four-year sentence for “dangerousness,” when he was released on January 17, 2001.<sup>134</sup> Also imprisoned throughout 2000 was dissident Vladimiro Roca Atúnez, one of the four leaders of the *Grupo de Trabajo de la Disidencia Interna* (Internal Dissidents’ Working Group) who were incarcerated and convicted in March 1999 for “acts against the security of the state” and sedition because of an analytical paper they had released entitled “La Patria es de Todos” (“The homeland is for everyone”). The paper critiqued aspects of the Cuban economy, Cuba’s approach to human

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<sup>133</sup> Human Rights Watch, Amnesty International.

<sup>134</sup> Reporters without Borders, Paris, France.

rights and its one-party political system.<sup>135</sup> Roca Atúnez has not been released as of this writing.

59. There were also some releases of political prisoners in 2000. On April 7, Orestes Rodríguez Horruitener was conditionally released after serving 3 years of a 4-year sentence for “enemy propaganda,” and he left the country on October 26, 2000. On June 1, Maritza Lugo Fernandez, vice president of the illegal *Partido Democrático 30 de Noviembre Frank País* was released after serving over 5 months in prison without a trial. She was eventually charged with “public disorder,” charges which may still stand, according to *Amnesty International*. On June 10, Guido Sigler Amaya was transferred from prison to house arrest, and was freed on July 9. His brother Ariel Sigler Amaya was freed on August 5. They, along with Angel Moya Acosta, are members of the *Movimiento Opción Alternativa* and were arrested on December 15, 1999 after a demonstration in Pedro Betancourt village in Matanzas province on December 10 to celebrate the 51<sup>st</sup> Anniversary of the Universal Declaration of Human Rights. Charged with resistance, public disorder and “instigation to commit a crime,” they were never tried or sentenced.<sup>136</sup>

### **Other Forms of Harassment**

60. In addition to arrests and detentions, other means have been used to harass journalists and prevent them from releasing information that is objectionable to the government. On August 9, two presumed State Security agents posed as journalists and gained entry to an apartment where *Cuba Press* had been operating. According to information received, they took documents, books, magazines and office equipment, which have never been recovered.<sup>137</sup>

61. According to *Amnesty International*, “[s]ometimes dissidents are told not to leave their homes and threatened with punishment if they do so. The tactic of house arrest is often

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<sup>135</sup> In May 2000, the other three leaders—Martha Beatriz Roque Cabello, Felix Antonio Bonne Carcasses and Rene Gomez Manzano—were granted conditional early release.

<sup>136</sup> Amnesty International.

<sup>137</sup> RSF

used when the government wishes to keep a large number of dissidents away from events such as international meetings, public events or trials[.]”<sup>138</sup>

62. There have been numerous reports of physical assaults of journalists by unidentified attackers. These attacks are often presumed to have been carried out by members of the Department of State Security. Amnesty International reported the following:

63. These are organized by government officials using mass organizations that support the government and which involve being verbally abused and sometimes physically assaulted by government supporters for being a “counter-revolutionary.” Government supporters are given certain rights to intimidate, threaten, or even attack those seen to be counter-revolutionaries. According to Article 3 of the Constitution, “All citizens have the right to fight using all means, including armed struggle, when no other resort remains, anyone who tries to damage the political, social and economic order established by the Constitution.”<sup>139</sup>

64. Sometimes journalists and dissidents or their families are denied permits to exit or enter the country. For example, in April 2000, Ohalys Victores, a reporter with *Cuba Voz*, was denied an exit permit for “unspecified reasons of state.” The brother of independent journalist Raúl Rivero, of *Cuba Press*, was prevented from entering the country in May when he tried to visit his elderly mother. Rivero’s wife was also refused permission to travel to Miami to visit her daughter.

65. Other harassment tactics that have been reported include eviction, dismissal from jobs, smear campaigns by the official media and forced exile.

### **Conclusions and Recommendations**

66. In Cuba, there is a climate of hostility and fear with respect to the exercise of the right to freedom of expression. The Special Rapporteur urges the authorities to respect the

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<sup>138</sup> Amnesty International, “Cuba: Short Term Detention and Harassment of Dissidents,” April 2000, available at <http://www.web.amnesty.org>.

<sup>139</sup> *Id.*

independent press organizations in order to allow for a plurality of voices in the media. Additionally, he asks that the government end censorship of the printed, electronic and broadcast media and repeal laws restricting freedom of expression. The Special Rapporteur urges the authorities to stop the harassment and intimidation of dissidents and independent journalists as well as the destruction of materials produced by communications media. Finally, the Special Rapporteur exhorts the Cuban government to recognize its citizens' right to the full enjoyment of freedom of expression and information, as established under international human rights standards.

### **3. Countries with serious limitations on freedom of expression**

67. Although the status of freedom of expression in some member States continues to be of serious concern to the Special Rapporteur, in 2000 this office considered that, despite the existing problems with the exercise of that right, there is no State in which freedom of expression is seriously restricted through the use of a state policy aimed at controlling the free expression of ideas and opinions in a broad and systematic manner.

### **4. Countries that Merit Special Attention**

68. This section cites other incidents of concern for the Special Rapporteur that have occurred during 2000. In one form or another, problems exist in every state in the hemisphere with respect to the exercise of freedom of expression. However, in this section, states which merit greater attention by the Special Rapporteur are mentioned, due to the seriousness of the information received, which indicates a significant limitation in the exercise of the right to freedom of expression.

#### **a. Chile**

##### **Overview**

69. Chile celebrated its return to democracy in 1989, after a plebiscite held in 1988, in which the "NO" vote by citizens removed then dictator Augusto Pinochet Ugarte. The first

democratic president took office in 1990. Despite the previous negotiation of amendments to the Political Constitution of the Republic, which represented a definite step towards greater human rights protection, sections of the Constitution and the laws still reflect a certain authoritarian tradition, which must be changed.

70. The progress Chile made by ending the persecution and harassment of journalists, so common during the dictatorship, is clearly a major step. However, the Special Rapporteur observes with concern that more than 11 years after the return to democracy, legislation and practices that are clearly restrictive of freedom of expression continue to exist. The advances made have resulted in the repeal of some administrative measures, such as the requirement of authorization to publish print media, and the gradual elimination of prior censorship (according to information received by the Special Rapporteur, the last time a film was censored in Chile was in 1994). These measures have been inadequate, however. Chilean legislation continues to be some of the most restrictive in the hemisphere in terms of freedom of expression.

71. Among the most serious problems are the contempt, or *desacato*, laws and the legislation on prior censorship in force in the country.<sup>140</sup> The Special Rapporteur has received numerous reports of the use of these standards to limit freedom of expression. This report focuses on these two issues. However, the Special Rapporteur has been informed of a growing concern about other limitations on the exercise of this right.<sup>141</sup>

72. For example, the Special Rapporteur views with concern the existence of criminal libel and slander laws. The laws regarding the protection of individuals' honor should be revised to create a distinction between public and private persons. The Declaration of

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<sup>140</sup> The Inter-American Court of Human Rights stated that the State of Chile had failed to honor its general obligation to respect and guarantee the rights protected by the Convention and to adapt its domestic laws to the provisions thereof, as established in Articles 1.1 and 2 of the American Convention on Human Rights. See Inter-American Court of Human Rights, Case: *The Last Temptation of Christ*, Judgment of February 5, 2001, *supra* note 2, paragraph 90.

<sup>141</sup> See *La Invisible Mordaza, El Mercado contra la Prensa* (The Invisible Gag: the Market vs the Press), by Hernan Uribe, Editorial Cuarto Propio, Santiago, Chile. First edition, September 1999; Working Documents, Freedom of Expression Program, School of Journalism, University of de Chile, issues 1,2,3, and 4; "*Los límites de la Tolerancia: libertad de expresión y debate público en Chile*" [Limits on Tolerance: Freedom of Expression and Public Debate in Chile], Human Rights Watch, Lom Ediciones, Santiago, Chile, 1998.

Principles on Freedom of Expression establishes in its Principle 10 that: "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."

73. The Special Rapporteur has received a number of troublesome complaints regarding the use of these norms as a means to restrict citizens' freedom of expression. Among these, he has received the following information: on January 8 of 1998, Fernando Paulsen, director of the newspaper *La Tercera*, and a journalist from the same newspaper, José Ale, were charged with libel and slander. The charges were based on a complaint submitted by the Minister of the Supreme Court, Servando Jordán, alleging a violation of the State Security Law. In another case, on August 20, 1991, retired General Sergio Arellano Stark filed a complaint for slander against the journalist Patricia Verdugo, author of the book *Los Zarpazos del Puma*, which describes the so-called "caravan of death."<sup>142</sup> The same year, Augusto Pinochet filed a complaint for libel and slander against the Director of the magazine *Punto Final* because of an article published in the periodical.

74. The Special Rapporteur visited Chile in June of 1999, invited to participate in two seminars on freedom of expression and information, related to the censorship of *El Libro Negro de la Justicia Chilena* (The Black Book of Chilean Justice).

75. As a result of this visit and acting on the mandate received from the IACHR, he expressed concern in his 1999 annual report about the existence of anachronistic legislation on freedom of expression in Chile. During his visit, the Special Rapporteur received a commitment from a number of authorities that they would introduce bills to modify or repeal the existing

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<sup>142</sup> Information based on *Documento de Trabajo No. 3, Cronología de la Libertad de Expresión en Chile, 1999-2000*, Claudia Lagos and Marcela Ravanal. May 2000. School of Journalism, University of Chile; *Documento de Trabajo No. 2, Los Usos de la Libertad de Expresión*, Felipe Gonzalez, Diego Portales, Rafael Otano. November 18, 1999. School of Journalism, University of Chile.

legislation on freedom of expression and information that is incompatible with the American Convention and other international human rights instruments.

76. During the Commission's recent visit to Chile for its 111<sup>th</sup> Extraordinary Sessions, the Commission received information regarding several bills that may be approved within a short period of time, which would repeal Article 6b of the State Security Law and Article 19 of the Constitution, which refers to the prior censorship of films. In the final stages of drafting this report, the Office of the Special Rapporteur received word of the approval by the House of Representatives of the previously mentioned Press Law, which, among other important reforms regarding freedom of expression that will be analyzed by the Special Rapporteur, modifies Article 6(b) of the State Security Law. The Special Rapporteur expresses his satisfaction with these initiatives, which in the event that they are passed, would represent an important step towards bringing domestic legislation into conformity with Article 13 of the American Convention on Human Rights.

77. Notwithstanding other standards that limit freedom of expression, this report focuses on the urgent need to amend contempt laws and those that authorize prior censorship. These laws are especially serious because they have been used on numerous occasions by the Chilean authorities to restrict freedom of expression, which seriously limits the work of social communicators.

## **1. Prior Censorship**

### **Political Constitution**

78. The Political Constitution of the Republic of Chile establishes freedom of expression as a general principle:

Article 19 N° 12

First subsection: [All persons are guaranteed] “The freedom to utter opinions and impart information, without prior censorship, in any form or by any means, without prejudice to the right of response to those offenses and abuses committed in the exercise of that freedom, in accordance with the law ...”

79. However, the final subsection of this article establishes: “The law shall establish a system of censorship for the screening and advertising of film productions.”

80. This article made it possible to create the Film Rating Council (*Consejo de Calificación Cinematográfico*), which has censored many films, including *The Last Temptation of Christ*<sup>143</sup>. The Film Rating Council was created by Decree Law No. 679 of October 1, 1974. This law empowers it to set guidelines for the screening of films in Chile and to rate films. The regulations for implementing that law are contained in Supreme Decree on Education No. 376 of April 30, 1975. The Film Rating Council is part of the Ministry of Education.

The Council is composed of:

- 1 director of Libraries, Archives, and Museums
- 3 members of the judiciary
- 3 representatives of the Board of University Rectors
- 1 representative of each one of the armed forces and police (4 in all)
- 3 representatives of the Ministry of Education
- 2 representatives of the public and private school centers for parents and guardians
- 3 representatives of the Professional Association of Journalists

Among the Council's tasks is that of rating films and videotapes in one of four categories:

- a) Approved for the general public

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<sup>143</sup>The Inter-American Court of Human Rights has established that: “the [Chilean] State has failed to comply with the general obligations to respect and guarantee the rights protected by the Convention and to adapt its domestic laws to the provisions of the Convention, enshrined in Articles 1.1 and 2 of the American Convention on Human Rights.” *The Last Temptation of Christ*, supra note, 2, paragraph 90.

- b) Approved for persons at least 14 or 18 years of age
- c) Approved for educational purposes
- d) Rejected

Rejected films fall into four categories:

- a) Films that promote or propagate doctrines or ideas contrary to the foundations of the nation or nationality, such as Marxism, etc.
- b) Those that offend states with which Chile has international relations
- c) Those that are contrary to public order, morality or good manners
- d) Those that incite people to commit antisocial or criminal acts

81. Similarly, the approval of any film may be “temporarily or permanently” suspended by a joint decision of the Minister of the Interior, Minister of Defense and Minister of Education “if the circumstances so warrant.”

82. Article 63 of the Regulations of the Council expressly regards videotapes as films and Law 18.853 established a regime for the inspection of videos.

83. The Special Rapporteur has learned that all film reels or videos, even for private use, upon clearing customs, are sent to the Council for rating. Once a film is rated, if it is approved by the Council, it is returned, and if it is rejected, it is confiscated. All film reels or video cassettes must go through this process. The Rapporteur has learned of a number of cases where individuals have made purchases on the Internet and by other means and have been subjected to censorship or bureaucratic red tape to recover their purchase once it is approved by the Council.

84. Prior censorship is expressly prohibited by the American Convention. The aforementioned standards are therefore in clear violation of this international instrument. The Rapporteur’s Report urges the Chilean Government to adopt immediate measures to conform its laws with international standards.

85. Additionally, the Special Rapporteur recalls that which is established in Principle 5 of the Declaration of Principles on Freedom of Expression with respect to prior censorship:

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.

86. On prior censorship, the Inter-American Court, in its judgment of February 5, 2001, indicated:<sup>144</sup>

72. This Court considers that a state can incur international liability for acts or omissions by any branch or agency of government in violation of the American Convention, irrespective of its rank. In other words, the state is internationally liable for any act or omission imputed to the state, in violation of the rules of international human rights law. In this case, said liability was incurred by virtue of Article 19.12 of the Constitution [of Chile], which establishes prior censorship of film production and, therefore, determines the acts of the executive, legislative, and judicial branches.

87. The Rapporteur's Report expresses serious concern about the existence of numerous censored films in Chile during the democratic period. According to information received, 11 films have been censored since 1990 and many others were censored before then and still cannot be shown. These figures do not include all the censored videos, which would make the violation even worse, because the government is censoring what citizens may or may not view in private.

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<sup>144</sup> *The Last Temptation of Christ*. *Supra* note 2, para 88.

## 2. Contempt, or *desacato*, laws<sup>145</sup>

88. Law 12.927 of the State Security Law is the legal text embodying the contempt provisions that are most frequently used in Chile.<sup>146</sup> This law was passed in 1958 for the purpose of protecting the democratic system of government. However, as the Inter-American Commission has indicated:

The use of 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 indirectly 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's and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office."<sup>147</sup>

89. The Commission's opinion is reaffirmed by what happened in Chile during the military dictatorship when such provisions were systematically used to silence criticism of the government. During that period, moreover, punishable acts were broadened and sentences substantially increased, especially for crimes against public order. The reforms during the transition to democracy—known as the *Leyes Cumplido*—merely involved the elimination of most of the aggravating factors introduced during the dictatorship, but the current law closely resembles the one in force prior to the military dictatorship.

90. The preservation of these laws, which are contrary to the fundamental principles of democracy, has made it possible for them to be used against social communicators and persons critical of the authorities during the eleven years of democratic government. Among

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<sup>145</sup> See text and analysis of the *desacato* laws in Chile in the section of this report dedicated to *desacato* laws in the member States.

<sup>146</sup> See Working Document N° 2, *Los usos de la Libertad de Expresion*, Felipe Gonzalez, Diego Portales y Rafael Otano. November 18, 1999, School of Journalism, University of Chile. Article "*Leyes de Desacato y Libertad de Expresion*", page 17.

<sup>147</sup> IACHR, Annual Report 1994, Report on the Compatibility of *Desacato* Laws With the American Convention on Human Rights, page 218.

other cases, the Special Rapporteur has received information regarding the following judicial proceedings under the State Security Law: In February 2001, Hernan Gabrielli, Commander in Chief of the Chilean Air Force brought a complaint against Carlos Bau, Hector Vera and Juan Ruz. The complaint was based on a supposed violation of the State Security Law when Bau, Vera and Ruz accused Gabrielli of having committed acts of torture against Eugenio Ruiz-Tagle in 1973 at the air base of Cerro Moreno; on February 15, 2000, José Ale of the newspaper *La Tercera*, was sentenced by the Second Chamber of the Supreme Court to 541 days in prison, based on a complaint filed against him under Article 6(b) of the State Security Act by Servando Jordán, the ex-president of that tribunal, in January of 1998. Jordán felt that he had been insulted by a note written by the journalist and accused him of defamation of a public authority. Ale had been absolved in July of 1999 by the minister of the interior Alejandro Solis and later by a unanimous decision of the Court of Appeals of Santiago; on April 14, 1999, *El Libro Negro de la Justicia Chilena* by the journalist Alejandra Matus was requisitioned due to a complaint brought by the judge Servando Jordán, Minister of the Supreme Court. This complaint was based on the State Security Law. On April 20 of the same year, the Court of Appeals rejected two petitions for protection filed by the author; On June 17, 1999, the editors Carlos Orellana and Bartolo Ortiz of Editorial Planeta were charged with defamation and detained in connection with the publication of the *El Libro Negro de la Justicia Chilena*. Two days later, they were released on bond. On July 29, 1999, the Fifth Chamber of the Court of Appeals of Santiago revoked the indictment.

91. The existence of these norms and their use by the authorities constitutes a clear transgression of the right of all persons to express themselves freely and to receive information. The Special Rapporteur has confidence that the bills currently under consideration will be approved shortly in order that the internal legislation will begin to be brought into conformity with Article 13 of the American Convention.

**b. Colombia**

92. Based on information received from different human rights and freedom of expression organizations, the Special Rapporteur found that violence against Colombian journalists had not stopped. The situation in Colombia is different from that of the rest of the

member States because of its internal armed conflict. Many of the attacks and assaults on the press are carried out by armed dissident groups. It is the responsibility of the Colombian state “to prevent and investigate such occurrences, to punish the perpetrators, and to ensure that victims receive due compensation,” as established in Principle 9 of the Declaration of Principles on Freedom of Expression. The Special Rapporteur reiterates that violence against journalists, whether by means of assassinations, kidnappings, assaults or other types of threats, constitutes a violation of international and humanitarian law by the armed dissident groups and by the Colombian Government.<sup>148</sup>

93. In early 2000, María Alejandra González Mosquera, a journalist for the radio station *Super de Popayán* and a member of the NGO *Fundación para la Comunicación Popular*, fled the country after receiving threats from an armed dissident group.<sup>149</sup> Also, at the beginning of 2000, journalists Francisco Santos Calderón, editor of the daily newspaper *El Tiempo*; Ignacio Gomez, editor of the daily newspaper *El Espectador*; and Claudia Gurisatti, a television presenter, left the country after receiving death threats.<sup>150</sup>

94. On January 22, 2000, journalist Guillermo Cortés, Editorial Director of *Hora Cero*, a televised news program broadcast by *Channel A* in Bogotá, was kidnapped by six armed men from his estate in Bogotá. He was released on August 13.<sup>151</sup>

95. On February 14, 2000, two press vehicles belonging to *RCN* and *Radio Caracol*, were attacked by armed dissident groups. The attackers burned the vehicles and endangered the lives of the journalists, to express their dissatisfaction with the fact that, according to them, the press was controlled by the government and the army.<sup>152</sup>

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<sup>148</sup> Under humanitarian law, neither the civilian population nor civilians may be the targets of a military attack. Combatants, including those that do not belong to the country’s armed forces, are required to respect this law.

<sup>149</sup> IFJ.

<sup>150</sup> The principal independent organizations for the promotion and protection of freedom of expression have reported other cases of Colombian journalists who have had to leave Colombia as the result of attacks and attempts against their lives. Those mentioned in this paragraph are only a few examples.

<sup>151</sup> Committee to Protect Journalists (CPJ).

<sup>152</sup> IFJ.

96. On March 6, 2000, television announcer Fernando González Pacheco reported that he had received threats on his life and would have to leave the country.<sup>153</sup>

97. On April 10, 2000, two journalists were wounded in an explosion while they were covering an “armed strike” by some armed dissident groups in Cajibío, in the Cauca department. Carlos Andrés Gómez, a reporter for the news broadcast *90 Minutos* and correspondent for *TV Informativo 11 P.M.*, was wounded in his right leg and cameraman Genaro Muñoz, from *Pentavisión* and correspondent for *Noticiero de las 7*, was wounded in the knee.<sup>154</sup>

98. On April 13, 2000, the editorial room of the magazine *Alternativa* in Bogotá was broken into. The intruders locked two employees who happened to be at the office in a bathroom and took away documents, diskettes and other information belonging to the magazine. It is assumed that the motive of the attack was to prevent the publication of an article on an alleged conspiracy by some armed dissident groups to seize power in Colombia.<sup>155</sup>

99. On May 8, 2000, a group of eight journalists was attacked by gunmen on the Cimtarra river, between the departments of Bolívar and Santander, while they were traveling by boat. Although the journalists showed their press equipment and a white flag, the attackers did not hold their fire. The journalists were: Rafael Poveda from *Caracol TV*; Oscar Obregoso, *Caracol TV* cameraman; Germán Espejo, John Ripe, and Mauricio Anzola, *Caracol TV* technicians; Andrés Gil from *RCN TV*; Fernando Giraldo, cameraman from *RCN TV*; and Harold Joya, sound engineer from *RCN TV*. No one was wounded.<sup>156</sup>

100. On May 25, 2000, Jineth Bedoya, journalist with Bogotá’s *El Espectador*, was kidnapped and brutally attacked, allegedly by armed dissident groups. The kidnapping occurred in broad daylight, opposite a prison just outside Bogotá. She was released 10 hours later. It is

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<sup>153</sup> IFJ.

<sup>154</sup> IFJ.

<sup>155</sup> CPJ.

<sup>156</sup> IFJ.

believed that the motive for the kidnapping was the coverage by *El Espectador* of a conflict in the same prison, involving prisoners who were members of paramilitary groups.

101. On June 14, 2000, Eduardo Pilonieta, attorney and contributor to the daily newspaper *Vanguardia Liberal* in Bucaramanga, was wounded by two unidentified persons on a motorcycle. The journalist was shot three times. In December 2000, the Bucaramanga District Attorney's Office prosecuted the perpetrators of the attack.<sup>157</sup>

102. On June 20, 2000, more than 50 members of armed dissident groups intercepted a van delivering the daily newspaper *El Tiempo* in Bogotá, between Caracolicito and Alto del Bálsamo. The attackers held up the occupants of the van, seized the 3,000 copies of the newspaper and burned them in the street. This attack was not the first one reported against *El Tiempo*. On April 4, other armed dissidents had stolen 3,000 copies of *El Tiempo* in Aracataca and thousands more in the vicinity of Caperrucho.<sup>158</sup>

103. On August 16, 2000, investigators from the technical investigation team of the Public Prosecutor's Office in Colombia raided the premises of *RCN TV*. The operation was intended to seize some footage aired in the news on June 15, 2000, showing an interview with a member of an armed dissident group. *RCN TV* expressed its concern that such an operation by the courts could result in the removal of material from their archives in violation of source confidentiality and professional secrecy. The confidentiality of information sources is protected in Principle 8 of the Declaration of Principles on Freedom of Expression.

104. On October 5, 2000, journalist Andrés Gil Gómez, cameraman Gustavo González of *RCN TV* and the their driver, Pedro Manuel Pinto, were kidnapped by an armed dissident group on their way from Medellín to Bogotá. On October 6, armed dissidents kidnapped journalist Jaime Horacio Arango of the daily newspaper *El Colombiano* and a photographer for the same daily newspaper Jesús Abad Colorado. In both cases, the men were released hours later on the condition that press releases addressed to the government or the public were delivered or read.

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<sup>157</sup> Reporters Without Borders.

<sup>158</sup> CPJ.

105. On November 2, 2000, Carlos Armando Uribe and Jorge Otálora were kidnapped in El Olimpo, Tolima department, by a group of armed dissidents. Uribe, an agronomist, makes ecological programs for television and radio and is also a Sunday columnist for the newspaper *La Tarde de Pereira*. Otálora produces Uribe's television program, *Las aventuras del profesor Yarumo*. Uribe was released on November 9, but Otálora is still being held.<sup>159</sup>

106. On November 4, 2000, District Attorney Frontino Milton Javier Rodríguez Moreno, from the Antioquía region, was kidnapped by an armed dissident group. Rodríguez is known for his role in defending freedom of the press and expression in Colombia. Three other local officials had been kidnapped by armed groups the day before: Dr. Dora Helena Muñoz Perez, Amalfi Circuit Judge (*Juez Promiscuo del Circuito de Amalfi*); Dr. Jorge Humberto Betancur Echeverri, Amalfi District Attorney; and Jairo Manuel Carvajal Perez, Secretary of the Amalfi District Attorney's Office.

107. On December 6, 2000, a number of reporters, cameramen and photographers were taken hostage by armed dissident groups in the Antioquía department. The following individuals were kidnapped: Oscar Montoya, Oscar Alvarez and Alexander Cardona from *Caracol Televisión*; Fernando Tabares, Sergio Goez and Pedro Pinto from *RCN Televisión*; Yolanda Bedoya, Luis Fernando Marín and Gildardo Alvarez, from *CM&*; Diego Argáez from *Channel A*; Luis Benavides from *El Espectador*; and Miguel Jaramillo and his technical team from *El Noticiero de las 7*. The journalists were trying to reach Granada, on the eastern side of the department to cover a raid by the ninth front of the Revolutionary Armed Forces of Colombia (FARC). They were released 18 hours after their kidnapping.<sup>160</sup>

### **c. Bolivarian Republic of Venezuela**

108. During the year 2000, President Hugo Chavez expressed himself in ways that could be considered threatening to communications media and journalists. The Head of State's

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<sup>159</sup> *Id.*

<sup>160</sup> Press and Society Institute (IPYS) Lima, Peru.

attitude could contribute to the creation of an atmosphere of intimidation toward the press, which is not conducive to public debate and the exchange of opinions and ideas, necessary for a democratic society.

109. Unrestricted public debate of ideas and opinions is fundamental for the strengthening of democracy. The debate is enriched even further when public officials actively participate in it, allowing members of society to know the ideas and opinions of their leaders.

110. However, the Office of the Special Rapporteur considers that in some circumstances, the expressions of public officials can contribute to the creation of an environment that is counterproductive for the exercise of freedom of expression. Hostile and insulting expressions against social communicators in a repeated and sustained form can, in time, have a chilling effect on journalists and communications media, which can lead to self-censorship.

111. President Chavez hosts a weekly radio show called *Aló Presidente*, lasting for four to six hours, in which he has expressed himself in an intimidating manner against social communicators and communications media. The expressions of President Chavez, coming from the position of authority that he occupies, could have an intimidating effect on the press and on society.

112. Additionally, the President of the Republic's expressions carry with them the extra burden of being considered a model for public officials to follow. Lesser public officials may consider it acceptable to refer to communications media and journalists in the same way that the President does. Furthermore, public officials, in particular in the country's interior, are generally less subject to citizen control, due to the fact that their expressions are not limited by the criticism of the national mass media, as is the case with the President of the Republic. In this manner, a climate that is hostile to the press can be constructed, which facilitates criticism and attacks against the press and leads to self-censorship.

113. The Special Rapporteur trusts that the President of the Republic and other public officials will moderate their expressions against communications media and journalists, to avoid

creating a climate of intimidation and hostility against them that will prejudice the exercise of freedom of expression.

114. On October 20, 2000, the president broadcast a speech on television and radio insulting Dr. Andrés Mata Osorio, editor of *El Universal*, as well as the international press. Among other things, he called journalist Mata Osorio “caudillo,” “tyrant,” “corrupt,” “scoundrel” and “enemy of the rule of law and enemy of the people.” On November 7, 2000, he called a press conference of foreign correspondents, during which he discredited some Venezuelan magazines and newspapers and a group of Venezuelan journalists. He also attacked Colombian magazines *Semana* and *Cambio 16*, calling them “a disgraceful Colombian and continental oligarchy.”

115. In February 2001, during the celebration of the ninth anniversary of the 1992 *coup d'état*, Chávez denigrated journalists by saying: “Down with journalists and capitalism” and incited citizens to “call any journalist they see in the street names.”<sup>161</sup>

116. According to information provided by various independent organizations, on August 4, 2000, Judge Graudi Villegas ordered the house arrest of the journalist Pablo Lopez Ulacio, director of the weekly *La Razón*, for failing to appear at a hearing on that day. Lopez Ulacio was accused of defamation by Tobias Carrero, president of the company Multinacional de Seguros. The journalist had published articles in which he denounced supposed irregularities in the obtaining of public contracts by Multinacional de Seguros, by taking advantage of a personal relationship with the President of the Legislative Commission, Luis Miquilena. On February 7, 2001, the Inter-American Commission on Human Rights authorized precautionary measures in favor of Lopez Ulacio, who is currently in Costa Rica.

117. On January 8, 2001, Pablo Aure Sanchez, professor of law at the University of Carabobo, was detained by military intelligence forces because of a letter he wrote that was published in the daily newspaper *El Nacional*. The Third Military Tribunal considered that there were sufficient merits for the attorney to be tried for the crime set forth in Article 505 of the Code of Military Justice, which establishes penalties of three to eight years in prison for one

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<sup>161</sup> *Id.*

who “in any form insults, offends or slights the Armed Forces.” Venezuelan authorities informed the Special Rapporteur that the Armed Forces freed the attorney after three days in custody. The Special Rapporteur spoke by telephone with Dr. Pablo Aure, who expanded on the information about his arrest and explained that he was freed for health reasons, but that the process against him under the military’s jurisdiction continues.

**d. Guatemala**

118. In April of 2000, the Special Rapporteur visited Guatemala at the invitation of its president, Alfonso Portillo Cabrera, and in response to a request by various sectors of Guatemalan society. After the visit, the Special Rapporteur issued a press release with a preliminary analysis of the information gathered. The Special Rapporteur is currently preparing a special report about the state of freedom of expression in Guatemala that will be published in the next few months.

119. Without prejudice to the information that will be presented in the report on freedom of expression in Guatemala, the Special Rapporteur expressed his serious concern regarding the information received, which reflects a climate of tension between state authorities and some communications media, as well as an increase in recent months in the number of cases of intimidation of and threats against journalists.

120. Additionally, there exists in Guatemala a *de facto* monopoly in open VHF television channels. The existence of a *de facto* monopoly in television channels has been criticized by a number of Guatemalan authorities and nongovernmental organizations, and it is also an issue of great concern for the Special Rapporteur. The existence of a *de facto* monopoly in television channels seriously affects the Guatemalan people’s right to freedom of expression and information.<sup>162</sup> In this respect, the vast majority of the people interviewed by

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<sup>162</sup> In this respect, the nongovernmental organization IDEA (*Instituto para la Democracia y la Asistencia Electoral*) has established that:

[T]he evolution of television shows the characteristics of the formation of a private monopoly, with lower levels of competence. The operation of four (3, 7, 11 and 13) of the five open television channels is associated with the property of a predominantly Mexican capital consortium. This high level of media power, concentrated in a foreign consortium, becomes an extraordinary source of informative, cultural and economic power, with negative implications for the national democratic process.

the Special Rapporteur during his visit to Guatemala said that although the open television channels are registered to anonymous societies, the majority holder is essentially a single person. The Special Rapporteur wishes to reiterate that the existence of this monopoly is a serious obstacle to the full exercise of freedom of expression in the various sectors of Guatemalan society. The existence of monopolistic practices in communications media in the realm of television as well as radio and print media, is not compatible with the free exercise of freedom of expression in a democratic society.<sup>163</sup>

121. The following is some of the information received by the Special Rapporteur during his visit regarding incidents that constitute violations of freedom of expression.

122. On February 20, 2001, according to information received, a group of demonstrators who identified themselves as supporters of the government's party, the Frente Republicano Guatemalteco, gathered at the doors of the newspaper *El Periódico* with the aim of backing the Ministry of Communications, causing serious damage and physically assaulting journalists of this and other media. The demonstrators stated that the protest was motivated by some journalistic investigations undertaken by the newspapers *El Periódico* and *Prensa Libre* in relation to supposed irregularities in the concession of contracts by the Ministry. This type of attack against communications media restricts the fundamental rights of individuals and the full exercise of freedom of expression.

123. On May 14 and 19, 2000, Martín Juárez, Luis Escobar, Enrique Castañeda and Silvia Gereda, journalists of the newspaper *El Periódico* were the target of surveillance and telephone threats intended to persuade them not to publish the results of an investigation into the structure of Guatemala's intelligence services.<sup>164</sup>

124. On May 22, 2000, Sergio Méndez, a reporter for the radio news program *Guatemala Flash*, and Eduardo Pinto, a reporter for the newspaper *Nuestro Diario*, received

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International IDEA (*Instituto para la Democracia y la Asistencia Electoral*), *Democracia en Guatemala: La Misión de un Pueblo Entero*, Santa Fe de Bogotá, 1999, p. 199 and 201.

<sup>163</sup> See interpretation of Principle 12 of the Declaration of Principles on Freedom of Expression in Chapter II of this Report.

<sup>164</sup> Reporters without Borders (RSF).

death threats and harassment to try to force them to stop covering the trial of the assassination of Bishop Juan Gerardi.<sup>165</sup> In relation to these threats, the State of Guatemala reported that it has asked the General Director of the National Civil Police, as well as the Attorney General of the Republic, to facilitate and deepen the investigations with the aim of establishing the identity of those responsible.

**e. Panama**

125. The Special Rapporteur visited Panama in July of 2000, in response to an invitation from the government of President Mireya Moscoso and to requests from various Panamanian civil society organizations that the Special Rapporteur evaluate the situation in this country. After the visit, the Special Rapporteur issued a press release with his preliminary evaluations of his visit<sup>166</sup> and he is currently working on a report on the state of freedom of expression in Panama, which will be published in 2001.

126. Without prejudice to the information that will be presented in the report on freedom of expression in Panama, the Special Rapporteur expresses his concern for the increase in the use of *desacato* laws and other similar laws to silence journalists. During his visit to Panama, the Special Rapporteur was informed of the government's intention to introduce legislative reforms that would repeal these types of laws. Although the Panamanian state has implemented a series of reforms that repealed some of these laws, other laws remain in effect that continue to be used by public officials. In the Annual Report of the Office of the Special Rapporteur in 1999, the Special Rapporteur expressed his satisfaction about the advances in freedom of expression in Panama due to the repeal of part of the gag laws and urged the authorities to continue along this path. However, according to information received during the year 2000 and part of 2001, freedom of expression in Panama is facing new threats from public officials who are using the laws to silence some communications media and social communicators. According to information received, 70 journalists are being criminally prosecuted for libel and slander.<sup>167</sup>

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<sup>165</sup> *Id.*

<sup>166</sup> See Annex, Press Release No. 29/00.

<sup>167</sup> Panamanian daily newspaper *Panamá América* and Forum de Periodistas por la Libertad de Expresión.

127. On March 14, 2001, Juan Díaz, journalist with *Panamá América* and Rainer Tuñón, journalist with the daily newspaper *El Universal* were condemned to 18 months in prison for “crimes against the honor” of a public official. This prison sentence could be commuted to a fine of \$400 and a suspension of the right to exercise public functions for six months.<sup>168</sup> On March 19, 2001, a judge with the 14<sup>th</sup> Circuit of the Penal Court, Secundino Mendieta, replaced the prison sentence of both journalists with a 200 day fine (US \$2.00 per day).<sup>169</sup>

128. On May 25, 2000 journalist Carlos Singares, director of the daily newspaper *El Siglo*, was served a warrant for his arrest for publishing news, the content of which “attacks and offends the dignity, honor, and decorum of the Attorney General of the Nation, José Antonio Sossa,” who personally ordered the detention of the journalist for eight days. Also, on June 22, the same Panamanian official ordered a raid on the offices of the newspaper and the immediate arrest of the journalist. However, the journalist was not on the premises. Both the Office of the Special Rapporteur and other organizations that defend freedom of expression expressed their concern about this measure and sent letters to the Panamanian authorities. On July 7, the IACHR adopted precautionary measures in favor of the journalist. The Commission authorized the precautionary measures for a period of 30 days and asked the state to vacate the order of arrest against Mr. Singares and to guarantee his right to integrity, personal liberty and freedom of expression as established in the American Convention on Human Rights. On July 27, 2000, the Supreme Court of Panama denied the *habeas corpus* petition on behalf of Carlos Singares. On August 4, while the journalist was serving the eight-day prison sentence, a new contempt judgment was handed down, with a sentence of 18 months in jail, with reference to a newspaper article published in 1993 on former President Ernesto Pérez Balladares, who felt defamed by it and accused Singares of *desacato*.

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<sup>168</sup> Reporters without borders (RSF).

<sup>169</sup> *La Prensa* Corporation, March 23, 2001.

129. On July 14, 2000, journalist Jean Marcel Chéry, of the daily newspaper *Panamá América*, was sentenced to 18 months in jail, accused of contempt for publishing an article in the daily newspaper *El Siglo* in 1996.

130. On July 31, 2001, Law 38 was enacted, regulating the Charter of the Public Prosecutor's Office and General Administrative Procedure and restricting access to public information in its Article 70. One part of the law describes as "confidential or restricted information that which for reasons of public or private interest cannot be disclosed because it could cause serious harm to the society or the government or to the person subject to the restriction."<sup>170</sup> This restriction on access to information contravenes Principle 4 of the Declaration.

131. On October 2, 2000, journalist Mariella Patriau Hildebrandt and graphic reporter Adriana Navarro de Vivanco from the daily newspaper *Liberación* in Lima, Peru, were threatened and physically assaulted by Jaime Alemán, one of the attorneys of Vladimiro Montesinos, while they were trying to conduct an interview in Panama City.<sup>171</sup>

132. In December 2000, the Legislative Assembly of Panama rejected the bill to remove the contempt laws from its domestic law books. The Rapporteur received a letter from the Human Rights Ombudsman of Panama, Italo Isaac Antinori-Bolaños, expressing concern about the decision made by the Committee on Governance, Justice and Constitutional Matters preventing the expunging of contempt laws from Panamanian legislation. As indicated repeatedly, these laws are inimical to freedom of expression and to Principle 11 of the Declaration of Principles on Freedom of Expression. The action taken also contradicts the statements of made by President Mireya Moscoso to the Special Rapporteur during his visit to this country in July 2000.

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<sup>170</sup> RWP, IAPA, CPJ.

<sup>171</sup> Latin American Section, Human Rights Division, International Federation of Journalists, Lima, Peru.

133. Since October 1999, journalist Gustavo Gorriti,<sup>172</sup> who served as Associate Director of *La Prensa*, has been the object of a campaign of defamation, which apparently arose out of a series of articles published in August in *La Prensa* on alleged links between Attorney General José Antonio Sossa and drug traffickers. Surprisingly, an independent organization, called the *Committee for Freedom of Expression in Panama*, appeared and began to post defamatory posters against the journalist in Panama City that read: "Meet the killer of freedom of expression in Panama." This organization also referred to him as a "foreign spy" and called him an "untrustworthy person predisposed to commit treason." For its part, the *Frente de Abogados Independientes* called Gorriti *persona non grata* and urged him to leave the country.<sup>173</sup> The newspaper *La Prensa* reported that as part of this campaign of defamation, money was offered to other Panamanian journalists to write negative articles about *La Prensa*. Attorney General Sossa publicly accused Gorriti of having initiated a campaign of "discredit and lies" against him.

134. At the root of the incidents described, Attorney General Sossa filed a criminal complaint for defamation against Gorriti and in August of 2000, he and three of his colleagues—Miren Gutiérrez, Editor-in-Chief of the Business Section, and reporters Mónica Palm and Rolando Rodríguez—were summoned to testify. In an act of intimidation, the house of Gorriti and those of two of his colleagues were surrounded by the police in order to obligate the journalists to appear in the proceedings.

135. As a result of the proceedings, orders of detention were issued against the journalists, which were not executed due to a petition for *habeas corpus*. The journalists stated that the complaint presented by Sossa was not served in a timely manner and from the beginning the process was plagued by judicial irregularities.<sup>174</sup>

136. On January 12, 2001, Gorriti was granted a provisional stay of proceedings because there was insufficient evidence to prove the charges against him. On February 15,

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<sup>172</sup> Gustavo Gorriti, a Peruvian national, is a renowned journalist who has received a number of international awards, among them the prestigious *International María Moors Cabot Prize* and the *Rey de España Award*. He is also an important defender of freedom of expression in the Americas.

<sup>173</sup> CPJ, Annual Report 2000.

<sup>174</sup> Panamanian daily newspaper *La Prensa*, August 8, 2000.

2001, the journalist was dismissed from his job at *La Prensa*. On February 21, 2001, the Penal Court of Panama prohibited the journalist from leaving the country due to the ongoing judicial proceedings against him.<sup>175</sup> According to information received, due to an appeal filed on his behalf by his lawyer, Gorriti is currently in Peru, his country of origin.

137. On March 12, 2001, the Minister of Government and Justice, Winston Spadafora, presented a penal complaint for libel and slander and crimes against honor against the director of the daily newspaper *Panamá América*, Octavio Amat, the journalists Gustavo Aparicio and Jean Marcel Chéry and photographer John Watson Riley. This complaint was presented after the publication of an article in which it was reported that the farms belonging to Minister Spadafora and Comptroller Alvin Weeden were among the beneficiary properties of the Social Investment Fund.<sup>176</sup>

138. On March 20, 2001, Marcelino Rodríguez, of the daily newspaper *El Siglo*, was accused of libel and slander by the Solicitor General, Alma Montenegro de Fletcher, as a result of the publication of one of his articles in which he referred to the official as the owner of a dwelling acquired under dubious circumstances. The Solicitor General denied the allegation and filed charges against the journalist.<sup>177</sup>

139. On March 27, 2001, Vladimir Rodríguez, journalist from the daily newspaper *Crítica Libre* and *RCM Noticias*, was sentenced to a year in prison for the charges of libel and slander filed against him by the relatives of the Panamanian citizen, Rafael González. The journalist was accused by González's family of publishing erroneous information about the cause of his death. The journalist wrote in his article that González had died of starvation, when in reality he had died of pneumonia. According to information received, the sentence against the journalist was executed even though no evidence was presented in the case that the journalist had used information irresponsibly.

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<sup>175</sup> Panamanian daily newspaper *Panamá América*, February 21, 2001.

<sup>176</sup> *La Prensa* Corporation, March 22, 2001.

<sup>177</sup> *Id.* March 23, 2001.

**f. Nicaragua**

140. The Special Rapporteur notes with extreme concern the new Professional Association of Journalists Act, which contravenes the American Convention on Human Rights. On December 13, 2000, the National Assembly approved the new Professional Association of Journalists Act, which states that journalists must be entered in the journalism professionals' register, to be managed by the Association. It also establishes that only persons holding journalism licenses and those having 10 or more years of experience in the profession will be recognized as journalists. The law also adds that individuals working in the field who do not meet these criteria shall be prosecuted by the courts and punished with criminal sanctions.

141. The Special Rapporteur reminds the Government of Nicaragua that the IACHR has declared this type of requirement for practicing the profession of journalism to be restrictive to freedom of expression and contrary to the American Convention. As such, that law contravenes Principle 6 of the Declaration of Principles on Freedom of Expression.

On this matter the Inter-American Court stated

The professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner. As a result, compulsory licensing cannot be invoked in the case of journalism because they would have the effect of permanently depriving those who are not members of the right to make full use of the rights that article 13 of the Convention grants to each individual. Hence, it would violate the basic principles of a democratic public order on which the Convention itself is based<sup>178</sup>

142. Lastly, the Special Rapporteur notes that when the American Convention proclaims that freedom of expression and thought includes the right to express information and ideas through any medium, it is underlining the fact that the expression and the diffusion of ideas are indivisible. Therefore, a restriction of the possible means of diffusion represents a restriction of the right of freedom of expression.

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<sup>178</sup> CIDH, OC 5-85, *Supra* note 15, para. 74-76.

**g. Honduras<sup>179</sup>**

143. According to the information received by the Special Rapporteur, the practice of journalism in Honduras faces a number of limitations that could inhibit freedom of expression. The Office of the Special Rapporteur has learned that social communicators are suffering from judicial persecution, threats and aggression as a result of the exercise of their profession. Additionally, legislation exists that violates Article 13 of the American Convention on Human Rights and contradicts that which is established in the Declaration of Principles on Freedom of Expression and which should be modified in order to bring it into compliance with international standards.

144. In 2000, journalist Leonarda Andino, from the daily newspaper *El Herald*, was summoned to appear in criminal court to answer charges concerning a report on the situation of the justice system in Honduras, based on a preliminary report by the National Human Rights Commissioner, Leo Valladares. The court threatened to sue her for defamation and slander of judges and magistrates.

145. In 2000, Journalists Renato Alvarez and Roxana Guevara, Press Director of *Channel 63*, and Press Director of *Vica Noticias*, respectively, were summoned to appear before the Public Prosecutor for having reported to the *Inter-American Press Association* (IAPA), violations of freedom of expression by the government. Shortly thereafter, Roxana Guevara was harassed until she was forced to resign from her job. The journalist had published a caricature by Allan McDonald, calling attention to the fact that surveys carried out by the government showed that the Honduran Head of State was more popular than the Pope John Paul II. According to information received, the major shareholders of the network were threatened that it would be shut down—using the pretext of the debt of several million it owed to the national electricity company—if it did not force the journalist to resign.

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<sup>179</sup> The information presented below was received by this Rapporteur from the Committee of Relatives of Missing Detainees in Honduras (COFADEH), the Citizens' Forum, and the Honduras Documentation Center.

146. In 1999 and early 2000, two human rights agencies—COFADEH and CODEH—reported that the *Centro Conjunto de Informaciones* (Joint Information Center) (COIN) was functioning as a center for electronic espionage targeting the press, the opposition, government officials and businessmen, for intelligence purposes.

147. According to information provided by the two human rights agencies, if a criticism by a journalist is considered serious, the President calls the owners of the media and sends them the transcript of the content of radio and television programs or newspaper clippings. The content profiles are sent as a warning to the media owners of “transgressions” by journalists of the policy of not criticizing the government.

148. On April 26, 2000, journalist Julio César Pineda, news coordinator for *Radio Progreso* in the locality of Yoro, was the victim of a criminal attack. According to information received, Pineda was wounded by a bullet in an attack that occurred in front of his home in San Pedro Sula. Months earlier, as a member of a local human rights commission, Pineda had investigated issues related to labor unions, migration and medical negligence in public hospitals.

### **Laws Limiting the Practice of the Journalistic Profession**

#### **a. Compulsory Membership in the College of Journalists**

149. Honduras has had the Honduran College of Journalists since 1979. According to information received by this Rapporteur, the College of Journalists has become an organization that restricts freedom of expression and limits the free practice of journalism. This labor association is responsible for seeing that non-member journalists are fired.

150. The Honduran Criminal Code provides for jail terms for the illegal practice of journalism. Furthermore, the Law of the College of Journalists stipulates fines for news organizations that hire journalists not licensed by the College.

#### **b. Desacato and Libel and Slander**

151. Other legal restrictions on the practice of freedom of expression in Honduras are found in Article 345 of the Penal Code, which provides for jail sentences for journalists who denigrate the image of the President and government officials:

Any person who threatens, libels, slanders, insults, or in any other way attacks the character of a public official in the exercise of his or her functions, by act, word, or in writing, shall be sentenced to two to four years in prison. If the offended party is the President of the Republic or one of the senior officials mentioned in Article 325, above, the sentence shall be three to six years.

## **5. Information received concerning the countries in the hemisphere during 2000**

152. The information presented in this section was received by this office during the year 2000. In some cases, this information was sent directly by the victims of violations of freedom of expression. In others, it was sent by prestigious international and national organizations that work in the defense of freedom of expression and human rights in general.

### **Argentina**

153. On January 4, 2000, the Minister of Security of Buenos Aires province, Aldo Rico, threatened and insulted a group of media photographers who were covering his visit to Pinamar. Angered by the presence of the photographers, the official accused them of printing “lies and hypocrisy” and threatened to send the police “to chase them.” A few days later, he publicly apologized.<sup>180</sup>

154. According to information received in the office of IAPA in Salta province, on January 6, 2000, the commander of the Infantry Corps of the Santiago del Estero police, Major Daniel del Castillo, called a group of journalists “hoodlums” and attempted to punch a

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<sup>180</sup> *Periodistas.*

photographer covering the courts when the police were testifying in a case involving blackmail and bribery. Last year, the same officer had physically and verbally assaulted three journalists, but the case was never investigated.<sup>181</sup>

155. On January 18, 2000, the Press Syndicate of Santa Cruz province complained of a series of measures taken by the Provincial Secretary of Security, Néstor Peña, which restricted free access to information. Peña gave express orders to all the police chiefs of the province not to give information of any sort to the media, under threat of penalties. Journalists in Santa Cruz province alleged that the Security Department had instituted measures that limit freedom of expression and journalists right to inform. The provision violates Law 120.808, which guarantees “free access to all sources of information of public interest and open access to all offices of the provincial or municipal government.”

156. On March 29, 2000, the journalist Luis Giménez of the *Telam* news agency was informed that two unknown individuals had been staking out his home and taking pictures of his car license plate and the front of his house. The next day, the journalist received a telephone threat from a person who said he was from SIDE and warned him: “You’re going to be another Cabezas,” a reference to the news photographer José Luis Cabezas, who was assassinated in 1997. Giménez said he had received telephone threats before.<sup>182</sup>

157. On March 29, 2000, unidentified persons fired on the house of Bernardo García Hamilton, a member of the board of directors of the newspaper *La Gaceta de Tucumán*, in the province of the same name. The family was asleep at the time of the attack. The business executive says the attack occurred because *La Gaceta* had uncovered cases of corruption.<sup>183</sup>

158. On April 29, 2000, journalist Maria Julia Oliván of the *D Day* program and *Veintidós (22)* magazine was insulted by Monsignor Emilio Ogñenovich, archbishop of Mercedes-Luján, who also condoned physical aggression by one of his staff. The event occurred as they were leaving a mass, when the reporter asked the archbishop about legal

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<sup>181</sup> IAPA.

<sup>182</sup> International Federation of Journalists.

<sup>183</sup> *Periodistas*.

complaints filed regarding the situation of a children's home that was under the aegis of the archdiocese. In front of the television cameras, Ogñenovich accused the reporter of belonging to the "gang" and called her a "tramp." Before he left, he asked one of his aides to get the reporter's name, and she was later physically assaulted by one of them.<sup>184</sup>

159. On May 17, 2000, Monsignor Julio Forchi, in the community of Mercedes, Buenos Aires province, said that some journalists needed a lobotomy "to see if they would calm down a bit and respect their neighbor." The expression was reflected in a column in the newspaper *El Oeste* of that community, in reaction to investigative reporting that revealed that in a children's home belonging to the diocese, the residents were living in deplorable conditions.<sup>185</sup>

160. On May 28, 2000, a group of armed individuals attacked distribution centers for the newspaper *La Gaceta* in Tucumán province. The assailants broke down the doors, seized copies of the paper, and burned them in the street. The attack is presumed to be a result of the newspapers conflicts with union of newspaper and magazine vendors. As a result of the attack, people were injured, vehicles were damaged, there were threats against employees and the sale of national newspapers was interrupted.<sup>186</sup>

161. In June of 2000, the governor of Santiago del Estero province, Carlos Juárez, banned the showing of the work *El Cartero de Neruda (The Mailman of Neruda)* in the May 25<sup>th</sup> Provincial Theater because it contained erotic scenes. The Rapporteur sent a letter to the governor expressing concern for this act of censorship.

162. Beginning in July 2000, there were reports from various organizations that defend press freedom<sup>187</sup> expressing concern over repeated allegations by the newspaper *El*

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> IAPA.

<sup>187</sup> See press releases of Adepa, IAPA, *Periodistas*.

*Liberal* of Santiago del Estero province that it was the target of anonymous threats, tapping of its telephone lines and distribution of inflammatory pamphlets against its reporters. The events were linked to recent investigative reporting of irregularities on the part of the provincial government in bids on and allocation of housing. The threats and warnings were repeated on August 1, 2000, this time also against the newspaper *La Voz del Interior* of Cordoba province. The editorial office of this newspaper received an anonymous telephone call that referred to the presence of a correspondent of *La Voz del Interior* in Santiago del Estero and threatened his life. Previously, a distributor of the Cordoba newspaper had been threatened by an anonymous person who warned him that the newspaper would be torched if it continued publishing stories that displeased "Tata" (Governor Carlos Juárez). The newspaper had criticized the activities and dealings of Governor Juárez.

163. On August 28, 2000, Jorge Larrosa, a photographer of the newspaper *Página 12*, received telephone threats. The journalist attributed the threats to a reprisal for his photographs that had implicated police in a bank robbery that occurred in September 1999. On November 14, 2000, Oscar Angel Flores, news editor of *Radio Dimensión* of San Luis and correspondent of the newspaper *Clarín* of Buenos Aires, and Mario Otero, host of radio programs on *FM Radio Universidad San Luis*, both in San Luis province, contacted the Rapporteur to report that an advisor of Governor Adolfo Rodríguez Saá, Eduardo Anibal Endeiza, was upset because of the broadcast of an investigative report on corruption, and threatened both journalists. The journalist reported that this was one more element in a series of threats and harassment from local authorities.

164. On November 28, 2000, Eduardo Delbono, owner and journalist of the *Merlo City* radio station, alleged that two unidentified individuals threatened his life. The journalist reported that he had received the threat while driving his car and that the person who threatened him was armed. The journalist attributed the threat to the station's refusal to honor a request from the city that it not air calls from some listeners who criticized the Merlo City government. He also said that the city at one time wanted to take down its transmitter tower on the pretext that it lacked a proper permit.

## **Bolivia**

165. The Rapporteur now presents information received on harassment of various media in the context of the state of siege decreed by the government on April 8, 2000. The measure was decreed in reaction to a social protest movement begun by peasant associations and student groups.<sup>188</sup>

166. On March 17, 2000, Ximena Vásquez, a photographer for the newspaper *Presencia*, was assaulted by police while covering a strike in the city of La Paz.

167. On April 10, 2000, Oswaldo Rioja, a reporter for the television channel *PAT-Channel 39* of Cochabamba, was threatened. The channel had aired scenes of repression of demonstrators by the army in Cochabamba. In addition, radio stations *Chaka*, *Radio Ondas del Titicaca*, and *Radio Omazuyos* of Achacachi were occupied by the army.

168. On April 13, 2000, the editorial offices of the newspaper *Presencia* received a telephoned bomb threat. News editor Gloria Eyzaguirre and reporter Jaime Buitrago of the newspaper received death threats. Previously, the newspaper had published information about illegal gambling halls and drug trafficking linked to some people in power.

169. On June 11, 2000, journalist Roland Méndez Alpire was wounded in one leg when he left the house of deputy Roberto Landivar, in the city of Santa Cruz. Méndez Alpire has undertaken several investigations of corruption and drug trafficking.<sup>189</sup>

## **Brazil**

170. On January 3, 2000, the Syndicate of Professional Journalists of Rio de Janeiro reported aggression against news photographers Fernando Bizerra of the *Jornal do Brasil*, Edivaldo Ferreira, José Paulo Lacerda, and Rosa Costa of the *Estado* news agency, and Sheila Chyagas, who works for the *Abril* publishing house. The journalists were brutally

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<sup>188</sup> Reporters without Borders.

<sup>189</sup> IAPA.

attacked by soldiers of the military police while they were covering the year-end celebration at Copacabana Fort. The soldiers also threatened to kill Bizerra.<sup>190</sup>

171. On February 23, 2000, reporter Erick Guimaraes, photographer Marco Studart and his driver Valdir Gomez Soares, of the newspaper *O Povo* in the city of Fortaleza were arrested while they investigated reports of corruption in the municipal government.<sup>191</sup>

172. In March of 2000, Almir Carvalho, publisher of the newspaper *A Palavra*, had his life threatened by the mayor of Alegre, Gilvan Dutra, for publishing an article.<sup>192</sup>

173. In April of 2000, journalist Claudia Bastos, of *TV Tapajós*, had her life threatened several times. Unidentified individuals broke into her house to search her belongings. The journalist had reported on the alleged involvement of officials, business executives and politicians of the city of Itaituba in drug and weapons trafficking.<sup>193</sup>

174. In July of 2000, Judge Adair Longhini prohibited newspapers and radio and television stations from releasing any news about the local elections, arguing that it could be interpreted as electioneering.<sup>194</sup>

## Canada

175. On May 1, 2000, freelance photographer Valerie Remise and Andrew Dobrowolskyj and Yves Schaeffner of the Montreal weekly *Ici* were detained while covering a demonstration in Montreal. The photographers were released the following morning and charges were filed against them for “illegal gathering, damages and disturbing the public order.”

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<sup>190</sup> International Federation of Journalists.

<sup>191</sup> WAN.

<sup>192</sup> International Federation of Journalists.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

176. On June 15 2000, Toronto police seized news film and videotapes from 14 Canadian media organizations. The films and videotapes contained shots of the anti-poverty protest that took place on the same day at Queen's Park (the Ontario Legislature). On November 1, 2000, the Supreme Court of Justice in Toronto rejected an appeal for the rescinding of the search warrant for the films and videotapes on the basis of an infringement of the constitutional rights of the media.

177. The Special Rapporteur expresses concern over reports received about seizure of press footage for investigations. Journalists must not be made to perceive themselves as acting as agents of the police in newsgathering. Such a perception interferes with their role as independent sources of information on affairs of public concern.

### **Costa Rica**

178. In March of 2001, according to information received, the Third Chamber of the Supreme Court affirmed the criminal penalty for alleged "moral damage" against the journalist Mauricio Herrera Ulloa, imposing a penalty upon him of 120 days' fine and the registration of his name in a judicial criminal register, for having reported information published in the European media that raised questions about the former Costa Rican Ambassador to the Atomic Energy Commission, Felix Przedborski. In addition, the Special Rapporteur received information about a judicial prohibition against the newspaper *La Nación* to "remove the existing link on the Internet in *La Nación Digital*, between the last name Przedborski and the articles complained of, as well as to establish a link between these articles and the dispositive part of this sentence, which is ordered to be published." *La Nación* was also ordered to pay the legal fees of the plaintiff's attorney.

### **Ecuador**

179. In the context of the institutional crisis experienced in Ecuador at the beginning of 2000, the Rapporteur received the following information:

180. On February 16, 2000, Rafael Costa, editor of the television news program *Telecentro* received a letter bomb in his office. According to the information received, the bomb exploded when an envelope containing a videocassette was opened. The letter had been mailed from Cuenca, capital of Azuay province. Journalists Andrés Carrión and Gonzalo Ortiz Crespo also received threats.

181. The Special Rapporteur expresses his concern over recent initiatives taken in the Congress to limit freedom of expression. On April 20, 2000, a Congressional resolution blocked media access to the legislative chamber for coverage of the regular session. Furthermore, President of Congress Juan José Pons ordered a review of the employment contracts of some journalists who are advisors to deputies and who took part in a protest against the resolution.

### **United States**

182. On March 25, 2000, Errol Maitland, a journalist for the radio station *WBAI* and technical director of the program *Democracy Now* of *Radio Pacifica*, was attacked by New York City Police Officers while covering the funeral of Haitian-American Patrick Dorismond, who was shot by New York Police on March 16, 2000. At the time of the incident, Maitland was transmitting directly through his cellular phone and upon seeing the police force a woman to the ground, he drew closer and identified himself, in order to request a commentary on this incident. Maitland told CPJ that four police officers grabbed him and threw him to the ground. Maitland was detained for disobedience of an authority. According to information received, Maitland was suffering from breathing difficulties and was taken to the hospital, where he was kept handcuffed to the bed until March 27.

183. In October 2000, the United States Congress passed the Intelligence Authorization Act, which included provisions that would impose criminal sanctions on government officials for any unauthorized disclosure of classified information. The broad definition of what constitutes “classified” information would have made this law extremely damaging to the free flow of information about governmental activities, by discouraging government officials from speaking to the press for fear of possible sanctions. The Special Rapporteur expressed his concern about this measure to then-Secretary of State Madeline

Albright in a letter of November 2, 2000. Former President Bill Clinton later vetoed the legislation.

## Haiti

184. On April 3, 2000, the editorial offices of *Radio Vision 2000* received several telephone calls threatening the station's installations. On that same day, the residence of Daly Valet, news director of *Radio Vision 2000* and co-host of the program *Vision 2000 a l'ecoute* was shot at.<sup>195</sup> According to information received by the Office, the journalists on this program, Daly Valet and Donald Jean had to go into exile in Canada after receiving numerous threats because of their criticism of the government of Jean Bertrand Aristide and of the political party Famille Lavalas (FL).<sup>196</sup>

185. On April 3, 2000, the offices of *Radio Unité*, a community station in the city of Saint-Michel de L'Attalaye, was looted by unidentified persons.

186. On April 5, 2000, employees of the radio station *Echo 2000* in Petit Goavem denounced that an armed group entered the station and threatened to burn it if the station would not stop its broadcasts.<sup>197</sup>

187. On May 3, 2000, the offices of the community radio station *Voix des Paysans du Sud*, in Cavaillon-Pliché, were looted.<sup>198</sup>

188. On September 5, 2000, Haiti's *National Public Television Channel* was the target of a bomb that caused considerable damage.<sup>199</sup>

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<sup>195</sup> RSF.

<sup>196</sup> Committee to Protect Journalists (CPJ).

<sup>197</sup> *Id.*

<sup>198</sup> Reporters without Borders (RSF).

<sup>199</sup> *Id.*

189. After the presidential elections on November 26, 2000, there was a considerable increase in the threats against media reporting doubts about the legitimacy of the presidential elections. According to the information received by the Office of the Special Rapporteur, several radio stations were threatened after commenting on the small number of participants in the presidential elections. The private radio station *Radio Galaxie* received numerous phone calls asking it to increase its estimates of the number of votes. *Radio Galaxie* suspended its transmissions while the elections were taking place and restarted its activities four days later. It was acknowledged that, after the presidential elections, about six media stations received threatening phone calls because of their criticism of the government and the political party of Aristide.<sup>200</sup>

190. In January of 2001, radio *Caraibes FM*, radio *Kiskeya* and radio *Rotation FM* received threatening phone calls. According to the information received by the Office of the Special Rapporteur, on December 23 of 2000, radio *Caraibes* had to suspend its activities for three weeks after receiving daily phone calls from groups close to the FL party asking the radio station to cease its activities. The phone calls were received after a weekly political news program called *Ranmase*, during which members of an opposition group criticized the government and questioned the legitimacy of the November 26 elections.<sup>201</sup> Moreover, Carlos Sainristil, programming director of this radio station, informed that he and other journalists had received threatening phone calls before. Amos Duboirant, director of radio *Rotation FM*, in the town of Lascahobas in the center of Haiti, declared, on December 28 of 2000, that his station received threatening phone calls and intimidation's after denouncing health problems in the city.<sup>202</sup>

191. On January 9 of 2001, during a press conference, leaders of organizations close to the FL party of Aristide threatened the journalist Liliane Pierre-Haul, program director and co-owner of radio *Kiskeya*, and the editor of the newspaper *Le Nouvelliste*, Max Chauvet to death in public. According to the information received, these organizations have a list of 100 important people, including these two journalists, who were identified as opponents of the

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<sup>200</sup> CPJ.

<sup>201</sup> *Id.*

<sup>202</sup> RSF.

current government. Moreover, it was reported that after the press conference on January the 9<sup>th</sup>, unidentified persons threw a gas container in the yard of radio *Kiskeya*.<sup>203</sup>

## **Mexico**

192. In March of 2000, the Mexican Migration Institute (IMM) denied a visa to reporter Helene Poux, an Austrian national employed by the magazine *Suedwind*. According to the information received, the IMM claimed that the decision was made on the grounds that the journalist had undertaken unauthorized activities during a previous visit to the country. On those occasions, the reporter covered activities of the International Civil Commission for Observation of Human Rights (CCIODH) in Chiapas state. The reporter's work was in keeping with the visa she had been given to cover the CCIODH and do investigative reporting on the human rights situation in the area.<sup>204</sup>

193. In June and July of 2000, journalist Freddy Secundino Sánchez of the weekly *Epoca* was victim of harassment and intimidation. On July 15, he reported to the Mexican Commission for Defense and Promotion of Human Rights that he was physically attacked by two persons posing as judicial police. They held him captive in a taxi for more than two hours before they released him. Days later, his life was threatened in a telephone call. The Complaint Program of the Commission asked the Rapporteur to assist in ensuring respect for the journalist's physical and emotional integrity.<sup>205</sup> The Commission requested information from the Mexican government, which, in its reply on August 3, stated that the journalist was under the protection of the authorities.

194. On June 22, 2000, journalist Lilly Téllez of *Aztec Television* and three other people were victims of an attack when unidentified persons fired on the car in which they were traveling. The journalist escaped unharmed from the attack, which occurred in Mexico City, but

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<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Mexican Commission for the Defense and Promotion of Human Rights, D.F., Mexico.

the driver and two of her bodyguards were wounded. The attack was believed to have been motivated by her investigative reporting.<sup>206</sup>

195. On August 15, 2000, journalist Ricardo Alemán, an employee of the daily *El Universal* of Mexico City and the *Radio 13* broadcast station, was the victim of an attack when unknown individuals fired on his office from a nearby building. The bullets caused physical damage to the office. The attack was believed to be in reprisal for his reporting.<sup>207</sup>

196. On September 19, 2000, journalist Antonio Pinedo Cornejo, editor of the magazine *Seminario* of Ciudad Juárez, was arrested on charges of libel. The journalist was arrested after the commissioner of public security, Javier Benavídez González, had filed a complaint against him because of the content of an article published in the weekly. Journalist Luis Villanagra was also accused of the same crime. Days later, the former police chief withdrew the criminal libel complaint against the journalists.<sup>208</sup>

## Paraguay

197. The Special Rapporteur expresses his concern about the information received by the office that several social communicators could have been directly affected by the climate of political instability in this country during the attempted *coup d' état* of May 18, 2000 against the constitutional and democratic stability of Paraguay and other later attacks. Among the information received, the following is highlighted<sup>209</sup>:

198. On May 18, 2000, six armed men dressed as military members entered the installations of *Radio Cardinal* and the television studios of *Canal 13* by force. They left after being reprimanded by the journalists. Two of the perpetrators were detained. Also, approximately six armed men dressed as military members entered the installations of Radio

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<sup>206</sup> Inter-American Press Association and Reporters without Borders

<sup>207</sup> Reporters without Borders.

<sup>208</sup> Inter-American Press Association.

<sup>209</sup> This information has been provided primarily by the Sindicato de Periodistas del Paraguay, a member organization of IFEX and the Inter-American Press Association.

9.70 AM by force and ordered the station, under threats, to broadcast revolutionary propaganda.

199. On May 19, 2000, unknown persons entered the station *Ybyturuzú*, Villarica, and destroyed its transmission equipment. The same day, Miguel Fernández and Adriana Fernández, the owners of *Radio Asunción*, were detained by members of the security forces, who destroyed all the transmission equipment. Both social communicators were accused of defending the Ex-General Lino Oviedo.

200. On May 20, 2000, President González Machi signed a decree ordering the arrest of Hugo Ruiz Olazar, a reporter of the daily *ABC Color* and correspondent of *Agence France Presse* and the Argentine daily *Clarín*, on charges of participating in an attempted coup in May of 2000. Violating articles of the Constitution and contemporary social standards. The journalist remained in hiding for several days in the editorial offices of *ABC Color* for his physical safety. According to the information received, the accusations against the journalist were considered as an attempt to end his journalistic labor in the various media which he was working. At a news conference, Government minister Walter Bower stated that the journalist was accused of violating the Constitution and contemporary social standards, and that the charges against Ruiz Olazar included not only a attempted coup but also "a series of acts and activities."<sup>210</sup>

201. In August of 2000, amidst a climate of post-electoral uncertainty regarding the outcome of the elections for the vice presidency of Paraguay, various threats were directed at the media and journalists:

202. On August 13, 2000, *Radio Primero de Marzo*, in Asunción, received several threatening phone calls about a possible attack. On August 15<sup>th</sup> of 2000, *Radio Ñiandutí*, in Asunción, was attacked by groups linked to the Partido Colorado because they did not agree with the electoral results that the radio station was transmitting. Also, journalists that belong to the *Tribunal Superior de Justicia Electoral* (Superior Electoral Tribunal) were verbally attacked by Juan Carlos Galaverna, a senator of Partido Colorado, while he was interviewed on the counting of the votes.

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<sup>210</sup> Reporters without Borders.

203. On August 17, 2000, Elizabeth Palma, a reporter for *Channel 9*, was struck by the car of Daniel Fretes Ventre, former national comptroller, when she tried to film him.

204. On August 19, 2000, the home of journalist Marlene Franco, of the newspaper *Diario Noticias*, was struck by five bullets after she received telephone death threats. On August 18 and 20, 2000, the newspaper's office in Asunción received several anonymous bomb threats by telephone.<sup>211</sup>

205. On August 21, 2000, César Olmedo, a photojournalist for the daily *La Nación*, was attacked and his photographic camera destroyed for a policeman that was trying to deactivate a bomb.

206. On August 25, 2000, Camilo Cantero, director of *Radio Libertad* in San Ignacio city, Misiones, and correspondent of the daily *Ultima Hora*, was detained because of charges against him for "false denunciation" and imprisoned for six days. This process started after the journalist denounced a judge because of questionable acts as a judge. The journalist's attorneys sought substitute measures. As a consequence, on August 31, 2000, Judge Juan Carlos Paredes forbid the journalist to talk and write through the media about the judicial process against him. This restriction was imposed by Judge Paredes as a substitute measure for the imprisonment, of which the journalist had already fulfilled six days.<sup>212</sup>

207. On August 28, 2000, Aldo Zucolillo, director of *Diario ABC Color*, testified before a criminal court judge, who ordered him not to leave the country. This judicial process began when electoral prosecutors accused the paper of publishing "electoral propaganda" outside of the time period authorized by law. *Diario ABC Color* published two editorials in support to one of the vice-presidential candidates in the August 13<sup>th</sup> elections. The electoral prosecutors considered that these two editorials were "electoral propaganda."

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<sup>211</sup> *Sindicato de Periodistas del Paraguay* (SPP), (Paraguayan Press Union).

<sup>212</sup> *Id.*

208. On October 3, 2000, Omar Jara, correspondent for *La Nación News*, in San José de los Arroyos, 100 kilometers east of Asunción, declared that he was subjected to threats and was verbally attacked by two transit agents because he had accused these transit agents of accepting bribes from drivers in order to avoid receiving citations for moving violations.

209. On October 5, 2000, the Court of Appeals confirmed a lower court judgment that ordered journalist Héctor Guerin, of *Diario Local Vanguardia*, to pay a fine of 285 jornales (US\$1,650) because of an action initiated by the governor of Alto Paraná, Jotvino Urunuaga, for defamation, libel and slander. This lawsuit arose out of publications by the newspaper about apparent administrative irregularities in the government, based on reports from the Contraloría General de la República (Office of the Comptroller General of the Republic) and declarations of departmental authorities.

210. According to information received, on December 19, 2000, Mauri Konig, correspondent of the *Diario Brasileño*, was tortured by three people presumably linked to the police force, when he was doing investigative reporting at the San Alberto police station in connection with forced recruitment of Brazilian teens by Paraguayan police.<sup>213</sup>

211. April 26, 2000 marked the ninth anniversary of the assassination of journalist Santiago Leguizamón, editor of *Radio Maburucuya*. The Paraguayan Press Union and Reporters without Borders asked the Paraguayan government to pursue the police investigation of the case and punish those who ordered and carried out the homicide.<sup>214</sup>

## Peru

212. All of the events described below correspond to information received by the Office of the Special Rapporteur during the year 2000, before Alberto Fujimori renounced the presidency and when a climate of intimidation and judicial persecution against independent journalism existed.

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<sup>213</sup> International Federation of Journalists.

<sup>214</sup> Paraguayan Press Union (SPP).

## Kidnappings

213. In January of 2000 Angel Rojas Montero, a former cameraman for the suspended program *Hildebrandt en Enlace Global* (Hildebrandt Around the Globe), was kidnapped for 30 minutes in the district of La Perla, in Callao province. During his detention, he received death threats from an unidentified individual who aimed a pistol at him and shouted that he would be killed because he was a “tattletale journalist.”<sup>215</sup>

214. On March 1, 2000, Ana Maria Tejada Purizaca, a reporter for the daily *La República*, was kidnapped for half an hour and her notes were ransacked. According to the information received, the suspected responsible party for the aggression (which occurred in the city of Tacna) was Walter Chipoco Espinoza, who headed the election campaign of candidate Carmen Lozada de Gamboa.<sup>216</sup>

## Intimidation

215. In January of 2000, the defamatory pamphlet called *Repudio* (Repudiation) reappeared in the kiosks after having been out of circulation for nearly three months. As in prior issues, it insulted the congressman and editor of the daily *La República*, Gustavo Mohme Llona. According to information received, the 12-page tabloid continued in the sensationalist style that has characterized it since its inception, this time devoting nine full pages, including the cover and pictures, to damaging the political and personal image of Gustavo Mohme<sup>217</sup>, who opposed the government of Alberto Fujimori.<sup>218</sup>

216. On February 29, 2000, Alberto Enrique Piñado, a journalist for *Radio Galaxia* in Bagua Grande, Amazonas department, reported that on February 17, plainclothes individuals who identified themselves as members of the Public Relations Office of the “*Las Brisas*” section of the city appeared at several radio and television stations asking for information about their

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<sup>215</sup> Press and Society Institute (IPYS).

<sup>216</sup> International Federation of Journalists.

<sup>217</sup> Journalist Gustavo Mohme Llona, director of *La Republica* newspaper died on April 23, 2000.

<sup>218</sup> IPYS.

staff and the names and times of programs. While the radio station refused to provide any information, the television station supplied it. This gave military personnel the opportunity to ask about the political history and personal and professional connections of the then candidate for congress for Amazonas Donald Mejía Yoplac of the Somos Peru party.<sup>219</sup>

217. In March of 2000 journalist Alberto Ramos Romero, news director of *Radio Ancash* in Huaraz, was forced to resign by the owners of the station because of criticism he had aired on March 26, 2000, against the government of President Alberto Fujimori and the activities of ruling party congresswoman Maria Espinoza Mattos and other officials. Ramos alleges that the pressure began months earlier, and became more acute. In the first two weeks of March a similar fate befell journalists Robin Hood Ipanaque of *Radio Vision Alegria*, Edgar Palma Huerta, publisher of the bi-weekly *La Jornada*, and Gerardo Rocha Chocos, news director of *Radio Huascartin*.<sup>220</sup>

218. On April 3, 2000, unidentified individuals attempted to shoot at Hernán Carrión, a journalist from *Radio Ancash*, in the port of Chimbote. The journalist had been receiving telephone threats and his news program was suspended as a result of its critical coverage of the Fujimori government. On April 18, 2000, then President Fujimori visited Chimbote as part of his presidential election campaign. Mobile units of *Radio Ancash* conducted an opinion poll in the city. The results of the survey indicated widespread discontent with the government because of the high unemployment rate and political repression. Journalist Hernán Carrión de la Cruz alleged that this coverage prompted the Internal Revenue Service (SUNAT) to notify the owner of *Radio Ancash*, Dante Moreno, that the station would have to file its tax return within three days or else be fined 150,000 sols (about US\$45,000), despite the fact that the station had already paid its taxes. Later, Moreno directed journalist Hernán Carrión to “take a week off” because it was his fault that the station was going to have to pay the fine. On May 25, 2000, Moreno cancelled the radio program on the grounds that he was worried about the journalist’s safety.<sup>221</sup>

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<sup>219</sup> *Id.*

<sup>220</sup> International Federation of Journalists/IFEX.

<sup>221</sup> CPJ.

219. On April 8, 2000, the daily *Liberación* reported in its pages a new form of harassment, this time presumably perpetrated by the electric energy company that supplies power to the northern zone of Lima, Edelnor. According to the newspaper, a few minutes before the presses of LEA S.A. (which prints the paper) began to roll, an extremely high voltage surge of electricity damaged the control panel for the press, causing an immediate halt to the work. When Fernando Viaña, a stockholder of the paper, complained, four repair technicians from Edelnor showed up at the pressroom. They confirmed that Edelnor had interrupted one of the service circuits. Service was swiftly restored. Because of this incident, the newspaper *Liberación* was late in coming out and the press run was incomplete.<sup>222</sup>

220. On April 7, 2000, Peria Diana Villanueva Pérez, a journalist of *Channel N* in Trujillo, requested protection for her life and the life of her family from the deputy mayor of the province, Sergio Sánchez. The journalist alleged that unidentified individuals had been staking out her house and trailing her and her sister very closely. Villanueva Pérez also said that while she was going about her reporting duties, unidentified persons took pictures of her. She expressed fear for the life of her family members.<sup>223</sup>

221. On April 24, 2000, journalist Alberto Pintado Villaverde of the radio station *Galaxia Stereo* in Bagua Grande province, Amazonas department, alleged that he was the victim of manipulation by the departmental coordinator of Peru 2000, Milecio Vallejos Bravo. According to the information received, Vallejos Bravo attempted to bribe the station by offering money to its news director, Carlos Flores Borja, to air a letter against then- presidential candidate Alejandro Toledo and to change the news orientation of the program. Alberto Pintado mentions in his report, by way of background, that two days before the election of April 9, 2000, Flores Borja was threatened to stop sending reports to *Radio Marahón* de Jaén by a person who presented an identification card from that station. Upon checking, it was discovered that the individual did not in fact work for the station.<sup>224</sup>

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<sup>222</sup> IPYS.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

222. On May 22, 2000, the Press and Society Institute told the Rapporteur that it had been experiencing systematic blocking of its e-mail system since March. This problem made it impossible to send and receive the alerts that it transmitted daily from its offices. The organization said that there was apparently a selective blocking, because all of the alerts sent to the International Freedom of Expression Exchange (IFEX) network were stopped while other types of information sent to other e-mail addresses did not usually have any problem.<sup>225</sup>

223. On May 29, 2000, journalist Leddy Mozombite Linares, host of the program *Soncco warmi (A Woman's Heart)* on *Radio Santa Rosa*, was stopped by four unknown individuals who physically attacked her. The incident occurred precisely when she was on the way to the broadcast studios. Mozombite alleged that the unidentified assailants caught her by surprise from behind and held her arms while they tried to strip her. Witnesses who were in the area came to her aid. However, before one of the attackers fled he threatened to kill her. The journalist is also a leader at the Training Center for Household Workers. The president of that institution and director of the program, Adelinda Diaz Uriarte, has said in the daily *La República* that the incident is but one of several examples of harassment which have beset them since February of 2000, as a result of criticism of the government on the radio program. Diaz added that the assault and the threats are also due to her organization's refusal to cooperate in the presidential electoral campaign of then-candidate Alberto Fujimori. Agents of the government offered them computers and the placement of their program on a station with a larger audience. In view of the incidents, journalist Mozombite went to the Office of the Human Rights Ombudsman to seek protection for her life.<sup>226</sup>

224. On July 28, 2000, Paul Vanotti, a reporter for the *Public Media Center* agency, was struck by a tear gas grenade in his right eye during a street demonstration called "La Marcha de los Cuatro Suyos." Vanotti was accompanying U.S. journalist Lizabeth Hasse when the incident occurred. She and Vanotti had been working for several weeks on an investigative report on the situation of democracy in Peru for *The Nation Magazine*, edited in New York City.<sup>227</sup>

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

225. On August 14, 2000, Alexander Carbajal Soto, director of the news program *Centinela: Testigo de la Noticia* (*Sentinel: Eyewitness News*) was the victim of an attack by two persons passing in a station wagon. Besides wounding him, the attackers threatened to kill him. The journalist's program had uncovered the case of a professor at a local university who was questioned because of committing "negative acts" against certain students, and violence against a person in May of 1999 that resulted in the death of the individual. In addition, the journalist said that on the day he was attacked, his program denounced irregularities in the Regional Labor Office.<sup>228</sup>

226. At the end of August of 2000, journalist Cecilia Valenzuela, director of the news agency *imediaperu.com* was the victim of harassment for the publication of a series of articles that questioned the role of the National Intelligence Service (SIN) in a case involving arms and drug trafficking. For several days, a station wagon was parked outside the agency office and on September 4, a car attempted to run her over in front of her house. Valenzuela had been the target of a smear campaign by a sector of the Peruvian media known as "prensa chicha."<sup>229</sup>

227. On September 26, 2000, Johnny Pezo, host of the radio program *La Revista del Mazaterillo* on *Radio Panamericana*, in the city of Yurimaguas, alleged that he was the victim of harassment and intimidation by the Peruvian National Police (PNP) after reporting details of a drug bust during a police operation on his program.<sup>230</sup>

228. Since August of 2000 Marilu Cambini Lostanau, correspondent of the daily *Liberación* in the city of Chimbote, alleges that she has been the victim of harassment by presumed agents of the Peruvian National Police (PNP) and the National Intelligence Service (SIN). According to information received, the journalist had investigated and revealed irregularities in those two agencies. The journalist says that because of her investigations she was denied access to various police installations on the pretext that they were restricted areas. On September 6, after receiving repeated telephone threats, she came to a local government

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<sup>228</sup> *Id.*

<sup>229</sup> Reporters without Borders.

<sup>230</sup> IPYS.

office to seek guarantees for her safety and that of her children. In her request, she said that people had an interest in silencing her. She was given formal guarantees of security by the deputy mayor of Salta province, Dr. Manuel Torres Vásquez, in a resolution dated September 18, 2000. However, the journalist has testified that the guarantees never took effect. On October 26 of the same year, unidentified individuals entered the Gambini residence and took documents related to investigations that were underway. The journalist did not report the incident to the police because she felt that they would not give her any guarantee for her safety. She went instead to the office of the Human Rights Ombudsman in Chimbote, where she filed a complaint and received counseling.<sup>231</sup> On November 18 of that year, one of the journalist's children was kidnapped for nearly 10 hours. After a hunt that lasted until after midnight, the two-and-a-half year old boy appeared at the door of the house with a note on his clothes that said: "Tattle-tale, this is only a warning...."<sup>232</sup>

### **Arrests**

229. On December 2, 2000, Yehude Simon Munaro, former publisher of the magazine *Cambio*, was freed after eight years in prison. Simon had been arrested on June 11, 1992, and sentenced to 21 years in prison on charges of supporting terrorist activities through his reporting for the magazine.<sup>233</sup>

230. On December 14, 2000, according to information received, a review was began of the cases of journalists Hermes Rivera Guerrero, Antero Gargurevich Oliva, Juan de Mata Jara Berrospi, Javier Tuanama Valera, and Pedro Carranza Ugaz, who were imprisoned serving terms of from 12 to 20 years, accused of complicity and/or conspiracy with the armed subversion in the last decade.<sup>234</sup> The National Association of Journalists of Peru and the Office of Journalists' Human Rights, whose leaders visited the prisons in Cajamarca, Chiclayo, and Lima to gather fresh evidence of the journalists' innocence, reported that they had been in prison since the beginning of the 1990's. In some cases, the original complaints against the

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<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> World Press Freedom Committee (WPFC).

<sup>234</sup> *Id.*

inmates have been withdrawn, and in others they are held because they made false confessions after being tortured by the police, who even asked for payment to release them.<sup>235</sup>

231. The situation of Hermes Rivera, who has been in Picsi prison, Chiclayo, since May 8 1992; Antero Gargurevich Oliva, in Miguel Castro Castro prison, Lima, since March 6, 1993; Juan de Mata Jara Berrospi, since June 10, 1993 in Miguel Castro Castro prison, Lima; Javier Tuaiama Valera, since October 16, 1990, in Huacariz prison, Cajamarca; and Pedro Carranza Ugaz, since November 29, 1993, in Huacariz prison, Cajamarca, is similar to that experienced by 45 other journalists, who after being detained unjustly during the Fujimori regime have now been released.<sup>236</sup>

### **Legal and/or Judicial Actions**

232. In April of 2000, the Fourth Civil Court in Lima temporarily froze the bank accounts and four properties of the *Correo Publishing House* in Piura, Lima, and Arequipa, because of a libel suit filed by Congressman Miguel Ciccía Vásquez, then candidate of the Alliance of Peru.<sup>237</sup>

233. On May 23, 2000, the Press and Society Institute reported that a few days before the runoff presidential election scheduled by the National Electoral Board for May 28, two offices of the Public Prosecutor blocked the dropping of a criminal suit against the *El Comercio* publishing house for alleged irregularities in the use of dollars from the Mercado Unico de Cambios (MUC) during 1989 and 1990.<sup>238</sup>

234. In August of 2000, Manuel Ulloa Van Peborgh, director of the Central Reserve Bank (BCR) and owner of the newspaper *Expreso*, accused Cesar Hildebrant, editor of *Liberación*, and reporters Mariella Patriau and Fernando Viana, of aggravated defamation of character and sued them for civil damages of three and a half million sols (about one million US

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<sup>235</sup> *Id.*

<sup>236</sup> National Association of Journalists of Peru.

<sup>237</sup> IPYS.

<sup>238</sup> *Id.*

dollars). The suit was based on a news account published in the daily *Liberación*, which related a series of events that occurred after the death of former Senator and Economy Minister Manuel Ulloa Elias, father of the plaintiff.<sup>239</sup>

235. In August of 2000, Alfredo del Carpio Linares, editor of the program *Veredicto: La voz del pueblo de Radio Armonia* (Verdict: The People's Voice) in Camana, was sued by Enrique Gutiérrez Sousa, Provisional Mayor of Camaná, for alleged slander in an interview with Congressman Rubén Terán Adriaola, in which he was questioned about investments in programs for the municipality.<sup>240</sup>

236. In August of 2000, Congressman Jorge del Castillo of the American Revolutionary Popular Alliance (APRA) filed a criminal suit against the editorial committee of the magazine *Etecé* on charges of libel and defamation because of the magazine's publication of a series of photos identifying him attacking a police officer during the so-called "*Marcha de los Cuatro Suyos*." *Etecé* issued a press release apologizing for the involuntary error that it published in the magazine.<sup>241</sup>

237. On August 29, 2000, journalist Rosana Cueva of the daily *Liberación* was notified by the 290<sup>th</sup> Criminal Court of Lima of a case against her on charges of alleged aggravated defamation of a member of the Superior Court of Lima, Juan Miguel Ramos Lorenzo, stemming from an article published in said newspaper that called into question his actions as an official. Mr. Ramos demanded civil damages of at least one hundred thousand dollars.<sup>242</sup>

238. On September 14, 2000, Jimmy Arteaga, a former employee of *Channel 2—Frecuencia Latina* when it was owned by Baruch Ivcher, told the Press and Society Institute that for three years both he and his wife, journalist Mónica Ceballos, had been victims of legal

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<sup>239</sup> *Id.*

<sup>240</sup> International Federation of Journalists (FIP).

<sup>241</sup> IPYS.

<sup>242</sup> International Federation of Journalists (FIP).

harassment. Arteaga was accused four times of various criminal offenses, allegedly contrary to the interests of the Latin American Broadcasting Company, Inc.<sup>243</sup>

239. On October 13, 2000, Hugo Meza Layza, a journalist in Coishco, was sentenced to one year in prison (suspended) and payment of 300 sols in damages. The verdict, pronounced by the head judge of the Second Specialized Criminal Court, was based on a complaint against journalist Meza Layza (according to information received) for “falsely assuming the title of professional journalist and a college degree that he did not have.”<sup>244</sup>

240. On October 31, 2000, Adrián Aguilar Reyes, editor of the *Huandoy Noticias* program of *Radio Huandoy*, in Caraz, was given a conditional sentence of one year in prison and ordered to pay 1,500 sols in cash for civil damages for the alleged offense of slander against Mayor Pedro Crisólogo Castillo Flores for his denunciation of serious irregularities during the elections of April 9, 2000.<sup>245</sup>

241. In December of 2000, James Beuzeville Zumaeta, editor of the radio program *La Razón*, broadcast on *Radio Arpegio* in Iquitos, was sentenced to one year in prison (suspended) and required to pay civil damages of eight thousand new sols for the crimes of slander and aggravated defamation of José Tomás González Reátegui, former chairman of the Regional Administration Transition Council (CTAR) of Loreto and former Minister of the Presidency.<sup>246</sup>

### **Censorship**

242. On January 8, 2000, journalist Oscar Diaz's political radio program, *La Revista del Momento* (News of the Moment), which is broadcast on the station *Radio Miraflores*, was publicly censored by the station's owner, journalist Ricardo Palma. The censorship occurred as

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<sup>243</sup> IPYS.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

a result of separate interviews Diaz did with exiled businessman Baruch Ivcher and exiled former president Alan Garcia Perez.<sup>247</sup>

243. On February 9, 2000, Fernando Alfaro Venturo, director and host of the political analysis program *Linea de Mira* (Line of Vision) protested a decision to stop broadcasting reruns of the show, which have been aired every Sunday night for over four years. The program broadcasts live every Sunday at 7:00 a.m. (local time) and the reruns air at 10:00 p.m. (local time), on the *Canal 6-Video Oriente* television station, in Pucallpa, department of Ucayali. However, from now on, music videos will be broadcast in place of the later show. The interruption occurred precisely at the moment when the journalist began to report on a clash between members of the Peruvian National Police and the Navy, which had occurred a few days earlier in the city of Pucallpa, in full public view.<sup>248</sup> Moreover, Alfaro Ventura informed that he had been told by the owner of the channel, Emerson Benzaquen, “not to report on any issues that could affect President Alberto Fujimori or the presidential advisor Vladimiro Montesinos.”

244. On May 22, 2000, when *Channel N* was broadcasting live a ceremony involving then President Alberto Fujimori in the *Plaza de Armas* in Arequipa, there was a sudden interruption of the television signal. The newspaper *La República* reported that the station was taken off the air because outside parties cut the cable connecting the satellite dish with the *Plaza de Armas* in five places. At the end of the ceremony, the correspondent for *Channel N*, Carlos Torres Salas, was attacked, surrounded, and beaten by a group of supporters of Peru 2000 who stole his portable radio and a microphone.<sup>249</sup>

245. On October 25, 2000, in an apparent move to limit television coverage of anti-government demonstrations in Lima, the Peruvian Air Force imposed flight restrictions that effectively barred news stations from flying helicopters over the capital. On September 14, according to local press reports and sources contacted by the CPJ, the government abruptly declared an expanded no-fly zone over downtown Lima. Previously, only the presidential

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<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

palace and certain military zones were off limits, but the new no-fly zone covered most of Lima's historic district, where the demonstrations were taking place. The new policy particularly affects the Lima-based cable news station *Canal N*, which was launched just over a year ago by the owners of the daily *El Comercio*. *Canal N* is one of only a few Peruvian media that have dared to criticize the government of President Alberto Fujimori.<sup>250</sup>

246. On September 23, 2000, journalist Francisco Rodríguez Robles, editor of the news program *El Informante* on *Radio Alpamayo* in Huaraz, alleged that his program was suspended because of criticism it aired about television anchor Laura Bozzo and former adviser of the National Intelligence Service (SIN), Vladimiro Montesinos. According to complainant, the person in charge of management of the station urged him to change the news tone of his program, because otherwise the Ministry of Transport and Communication would not renew the station's license.<sup>251</sup>

### **Threats and Aggressions**

247. On January 6, 2000, reporter Bayron Horna and cameraman Miguel Ascencios of *Channel 2—Frecuencia Latina*; reporter John Ariza and cameraman Dany Felipa, of *Channel 9—Andean Television*; and reporter Aldo Kom of *Channel N* were attacked with stones, glass bottles, and wooden planks while they covered a demonstration of a group of people opposed to the re-election of then President Fujimori.<sup>252</sup>

248. On February 9, 2000, security guards of President Fujimori's former minister Valle Riestra attacked a reporter and photographer of the daily *Liberación*, Jair Ramírez, who were attempting to approach Valle Riestra to ask him for statements on political issues.<sup>253</sup>

249. On February 9, 2000, Gilmer Díaz, a reporter for the Municipal channel and host of the program *La Revista de impacto* (The Review with Impact) and José Flores Burgos, cameraman and news correspondent of *Panamericana Television*, were physically and verbally

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<sup>250</sup> CPJ.

<sup>251</sup> International Federation of Journalists (FIP).

<sup>252</sup> *Id.*

<sup>253</sup> IPYS.

attacked in Jaén province, Cajamarca department, while they covered the second round of protests organized by the Committee for Defense of Consumers of Jaén, which was calling for a reduction in electricity rates by Electronorte. Also attacked were reporter John Seclén and his cameraman Manuel Pereyra, both correspondents for *Channel 2—Frecuencia Latina*.<sup>254</sup>

250. On February 10, 2000, unidentified individuals broke into the installations of Channel 10, a subsidiary of Global Television, to steal valuable transmission equipment, cash and documentation of payments to the Internal Revenue Service. According to information received, the thefts occurred during the early morning hours, before the re-airing of the news program *Contacto Directo* (Direct Contact).

251. On February 16, 2000, Teobaldo Menéndez Fachín, editor and host of the program *Inédito* on *Radio Stacion X* in Yurimaguas, Loreto department, was physically attacked and threatened with death by two unidentified individuals. According to information received, they ordered the journalist to stop criticizing Nely Salinas, a congressional candidate for Peru 2000.<sup>255</sup>

252. On February 26, 2000, Mayor Sánchez Cabanillas verbally attacked and threatened to kill journalist Luis Villanueva López, editor and host of the news program *La Voz Informativa* (The Informative Voice) on Radio Los Angeles. According to information received, the program was investigating corruption by civil servants and criticized the municipal administration.<sup>256</sup>

253. On March 5, 2000, unidentified individuals placed a bomb at the doors of the studio of *Radio Junín*, causing material damage to the entrance and waiting room of the station. Furthermore, the editor of *Radio Junín*, Jacinto Figueroa Yauri, received threatening telephone calls in February and March after he reported incidents that occurred during the

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<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

general strike called by the Committee for the Defense of Junín province and criticized the activities of the government.<sup>257</sup>

254. On March 14, 2000, journalist Luis Ugaz Espinoza of *Radio Astoria* was physically attacked and threatened with death. Also, on March 16, two individuals broke into the house of journalist Carlos Martínez Chávez of the same station, causing material damage.<sup>258</sup>

255. On April 3, 2000, Hernán Carrión de la Cruz, editor of the news program *Ancash en la Noticia* (Ancash in the News), alleged that he was the target of an attack by an unidentified person who attempted to shoot him from a vehicle. The journalist attributes the failed attempt to his criticism of the government.<sup>259</sup>

256. On April 9, 2000, a group of unidentified individuals attacked a team of journalists of *Panamericana Television* who were covering a demonstration in support of candidate Alejandro Toledo.<sup>260</sup>

257. On April 30, 2000, journalist Ronald Ripa Casafranca, editor for *Radio Panorama* of Andahuaylas, had his life threatened after he broadcast several live reports of a peasant strike in the region and the aftermath of the demonstration.<sup>261</sup>

258. On May 4, 2000, Uriel Meza Mayhua, a journalist with *Radio Sicuani*, was attacked by two employees of the Canchis province municipal government, Cusco department. According to the information received, Meza was doing a live broadcast of information about irregularities in personnel changes in the area's Public Works Department.<sup>262</sup>

259. On May 12, 2000, Hugo González Hinostrroza, a correspondent of the daily *Liberación*, Omar Robles Torre, publisher of the biweekly *Presencia*, and Roger Luciano, a

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<sup>257</sup> International Federation of Journalists (FIP), Lima, Peru.

<sup>258</sup> IPYS.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

freelance photographer, were attacked by a group of employees in the sports field La Florida de Marcará, in Carhuaz province. According to information received, the aggression occurred while the journalists were taking photos and video of a demonstration of more than one hundred persons wearing t-shirts of the ruling party, Peru 2000.

260. On May 29, 2000, journalist Leddy Mozombite of *Radio Santa Rosa* was attacked by four unidentified individuals when she was leaving the station. Five days earlier, Jaime Pedroza Ruiz of the same station was attacked by two unidentified persons. On their radio programs the two journalists had revealed alleged irregularities committed by Peru 2000.<sup>263</sup>

261. In May of 2000, journalist Santiago González Coronado had his life threatened in Putumayo district. The journalist had reported in the daily *El Popular* on alleged irregularities committed by Mayor Pablo Cumary Ashanga.<sup>264</sup>

262. On June 8, 2000, Mónica Vecco, a journalist in the investigative unit of the daily *La República*, received several threats. Vecco had published an investigative report alleging that the Peru 2000 alliance had used the print shop of an official who worked for the National Intelligence Service to prepare campaign advertising.<sup>265</sup>

263. On July 4, 2000, José del Carmen Parraguez Pérez, host of the news program *Análisis* of *Radio FVC* in Nueva Cajamarca, a district in Rioja province, was the victim of physical attacks and death threats. According to information received, Parraguez had been the frequent target of death threats because of his stories about corruption in the state administration.<sup>266</sup>

264. On July 7, 2000, Alejandro Miró Quesada, editor of the daily *El Comercio*, alleged yet another threat against journalists of his paper and *Channel N* because they had

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<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> IPYS.

<sup>266</sup> International Federation of Journalists (FIP).

investigated and reported the falsification of signatures of supporters of the Peru 2000 Independent Front.<sup>267</sup>

265. On July 28, 2000, a dozen journalists and several media offices were attacked during a demonstration. According to information received, Miguel Carrillo and José Tejada, of the magazine *Etecé*, reporter Roberto Silva of Radio Programs of Peru (RPP), Guillermo Venegas and Virgilio Grajeada of the daily *La República*, Fidel Carillo of the daily *Liberación*, Luis Choy and Carlos Lezama of the daily *Ojo*, Rosario Vicentell of *Channel A*, Paul Vanotti of the U.S. agency Public Media Center, and a team from the Colombian television channel *Caracol TV* were attacked by demonstrators and members of the police when they covered a demonstration organized by the opposition to protest a third presidential candidacy for Alberto Fujimori.<sup>268</sup> Journalist Paul Vanotti, of the news agency *Public Media Center*, alleged that government officials asked him to change his version of the source of the attack, which had caused serious injury. Vanotti says he was attacked with a bullet fired from a police car.<sup>269</sup> Miguel Carrillo Pérez del Solar, photo editor of the magazine *Etece*, was another of the journalists who was attacked. He was beaten while taking pictures. During the incident he lost his camera and the film he had shot.<sup>270</sup> On the same day, some demonstrators attacked the offices of *Channel 4—America Television* and *Radio Programs of Peru (RPP)*, causing material damage. The driver of a mobile unit of *Channel 9—ATV* was attacked and the assailants partially dismantled the vehicle. During the night of June 28 to 29, a car with no license plates and tinted windows stopped twice at the door of the private *Channel N*. The first time, one of the occupants of the vehicle threatened the guard, and the second time, he fired four shots in the air with a weapon.<sup>271</sup>

266. On August 17, 2000, James Beuzeville, editor and host of the program *La Razón* on *Radio Arpegio* of Iquitos, Loreto department, had his life threatened by an unidentified individual because of his criticism of tourism business executive Roberto Rotondo. According to

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<sup>267</sup> *Id.*

<sup>268</sup> Reporters without Borders (RSF).

<sup>269</sup> IFEX.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

the information received, for years Beuzeville has been a major target of threats, legal complaints, blackmail, and smear campaigns by people and institutions, including media in Iquitos, which were linked with the government of Alberto Fujimori .<sup>272</sup>

267. In July and August of 2000 journalist Moisés Cotrina del Aguila, editor of the *Síntesis de la Información* program on *Radio Mira* in Uchiza, Tocache province, San Martín department, was threatened by two low-ranking agents of the Peruvian National Police (PNP) and received strange police summons to report to a precinct. The journalist had denounced on his program a series of irregularities and arbitrary detentions by members of the PNP.<sup>273</sup>

268. On September 12, 2000, journalist Alexis Fiestas Quinto and photographer Víctor Granda, both with the daily *El Popular*, were attacked and kidnapped for two hours by people hired by the mayor of the Lima district of San Juan de Lurigancho, Ricardo Chiroque. The incident occurred when the journalists were covering a protest march by residents of a settlement who were demanding action to correct a health problem in the zone. The journalists also had their working materials confiscated.<sup>274</sup>

269. On September 15, 2000, Juan Herrera, correspondent of *Radio Cutivalú* in Bellavista district, Sullana province, was attacked by unidentified persons. According to the information received, the journalist was “attacked by people believed to have been hired by district mayor Emilio Pasapera Calle,” who was under fire for allegations of serious irregularities in his administration.<sup>275</sup>

270. On September 4, 2000, journalist Vicky Bazan Cossi, news director of *Radio Rimelsa* in Majes, correspondent for the daily *La República* and *Channel Fenix* in the city of Camaná, cameraman Esmeregildo Paz Pinto and assistant Alejandro Anconeyra Provincia,

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<sup>272</sup> IPYS.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> IAPA.

were physically attacked by police officers in the town of Majes. The police broke in, firing shots in the air and tear gas bombs, and the scenes were captured on the journalists' film.<sup>276</sup>

271. On October 13, 2000, journalists César Ascues Uribe, of the daily *Liberación*, and César Romero Calle of the daily *La República*, alleged that they received telephone death threats because of their journalistic investigations that implicated high government officials.<sup>277</sup>

272. On October 16, 2000, unidentified individuals attacked the offices of *Panamericana Television* 24 hours after it broadcast a news report on excessive violence by police during a public protest march in the city of Tacna. The attackers took all the equipment from the editing room.<sup>278</sup>

273. On October 10, 2000, Jara Montejó, correspondent of the *Coordinadora Nacional de la Radio* (National Radio Coordinator) (CNR) and of the *Diario Regional de Huánuco*, was wounded in the right leg by the impact of a teargas bomb fired by a police officer. The journalist was covering a protest of agricultural workers of the Acayacu district in the Huanuco department.<sup>279</sup>

274. On October 25, 2000, journalist José del Carmen Parraguez Pérez, host of the radio news program *Análisis* of *Radio FVC*, in Nueva Cajamarca, was attacked by eight unidentified individuals. Days before the attack, the victimized journalist had been urged by a group of other unidentified individuals to give up his journalistic work and his continuous denunciations of state corruption.<sup>280</sup>

275. On October 27, 2000, journalist Sebastián Castro Mendoza, editor and host of the news program *Despertar Campesino* (Farmers' Wakeup) of *Channel 11* and *Radio San Sebastián*, in the city of Chepén, was threatened with death by Victor Izquierdo de la Cruz, president of the Rice Producers' Association and then-governor of the district of Guadalupe.

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<sup>276</sup> International Federation of Journalists.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

According to the information received, the journalist had been reporting on irregularities in the Rice Producers' Association in the Valley of Jequetepeque.<sup>281</sup>

276. On November 15, 2000, Willy Zárate Araujo, a photographer for the daily *El Tío*, was physically attacked by a group of police who fired a tear gas bomb during a street demonstration. The incident occurred while Zárate Araujo was using his camera to record the violent repression meted out to the demonstrators.<sup>282</sup>

277. On November 13, 2000, Eduardo Geovanni Acate Coronel, host of the program *El Estelar of Radio Oriente* in San Lorenzo, Loreto department, alleged that he was attacked verbally and threatened by the governor of Barranca district, Héctor Huansi. The aggression occurred while Acate was interviewing the official.<sup>283</sup>

278. On November 16, 2000, journalist Roxana Aquino Garcia, a reporter of *Radio Lider* in Arequipa, was physically attacked and threatened by unidentified individuals presumably linked to Manuel Saiki Rios, treasurer of the Melgar club of the first division of Peruvian professional soccer. Aquino had blown the whistle several times against the treasurer of the club in recent months.<sup>284</sup>

279. On December 2, 2000, a fire destroyed the entire installations of the transmitter of *Radio Super Continental 1480 AM*, a station in Chulucanas province, in Piura. The incident occurred at dawn. The attackers doused the cabin of the transmitter with gasoline after the station aired investigative reports on irregularities in the local government of Chulucanas.<sup>285</sup>

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<sup>281</sup> IFEX.

<sup>282</sup> IPYS/IFEX.

<sup>283</sup> IPYS.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

280. On December 12, 2000, Angela Talledo, a photographer for the daily *Liberación*, was attacked by the mayor of the Chaclacayo district of Lima, Delia Vergara (linked with the Fujimori movement *Vamos Vecinos* (Let's Go, Neighbors), while she was carrying out her journalistic duties in the Palace of Justice. When Angela Talledo recognized the mayor, she began photographing her. Delia Vergara repeatedly struck the journalist with a leather jacket and injured her on the arm. On the night of the same day, the reporter was victim of a strange robbery in which she lost her photographic equipment. An unidentified person threatened her with a weapon and stole her camera.<sup>286</sup>

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<sup>286</sup> *Id.*

#### D. Assassinations of Journalists

### JOURNALISTS ASSASINATED IN THE YEAR 2000

Data on the Journalist	Place and Date	Description of the Events	Background	Status of the Investigation*
Julio César Da Rosa, owner and editor of <i>Radio del Centro</i> . 36 years old	Baltasar Brum, Artigas, URUGUAY, February 24	Assassinated by former local official Carmelo Nery Colombo, who fired on the journalist, then killed himself.	The journalist had hinted on his program that the official was unqualified to hold public office.	The Uruguayan government condemned the act and began an investigation.
Zezinho Cazuza, journalist for the local station <i>Radio Xingó FM</i> .	Canindé de São Francisco, BRAZIL, March 13	Assassinated by gunshot while he was leaving a party.	On several occasions, the journalist had accused Mayor Genivaldo Galindo da Silva of corruption. Local media reported the mayor had publicly threatened to kill the journalist.	Two days after the assassination, police arrested a person who said the mayor had paid him US\$1,500 to kill the journalist.
Jean Léopold	Port-au-Prince,	Assassinated	The victim was an	There are 6 people

<p>Dominique, owner and director of <i>Radio Haiti Inter</i>. 69 years old</p>	<p>HAITI, April 3</p>	<p>by gunshot when he was entering his workplace. The station's security guard was also killed.</p>	<p>influential political journalist with strong background in defending freedom of expression.</p>	<p>detained accused of being the material authors of the crime. There are other suspects. The investigation has registered a series of irregularities including threats to judges and witnesses.</p>
<p>Roberto Martínez, photographer for the daily <i>Prensa Libre</i>. 37 years old</p>	<p>Guatemala City, GUATEMALA, April 27</p>	<p>Assassinated by private security agents who fired against a group of street demonstrators. The journalist-- covering the story—was shot in the head. Two other demonstrators</p>		<p>The Guatemalan Government informed the Office of the Special Rapporteur that the police arrested two suspects for the crime against the photographer. According to the government, the arrested individuals belonged to a private security</p>

		<p>were killed.</p> <p>Other journalists and photographers were wounded.</p>		<p>agency and were in service of a local store when the crime occurred.</p> <p>The Appeals Court sentenced one of the private police agents to 15 years of imprisonment after holding him guilty of the crime.</p>
<p>Juan Camilo Restrepo Guerra, of the community radio <i>Galaxia Estéreo</i>. 26 years old.</p>	<p>Sevilla, COLOMBIA, October 31</p>	<p>Assassinated by a gunshot presumably fired by a member of an armed dissident group. His brother witnessed the assassination.</p>	<p>The journalist had severely criticized the local government.</p>	<p>There have been no arrests for the assassination.</p> <p>According to government investigators, the journalist was probably killed for his reports critical of local government.</p>
<p>Gustavo Camilo Restrepo Guerra, director of the local radio <i>Galeón</i></p>	<p>Pivijay, Magdalena, COLOMBIA, November 15</p>	<p>Assassinated with a bullet wound in the head by two unidentified persons in a city plaza.</p>		

<p>Alfredo Abad López, editor of the local radio <i>La Voz de la Selva</i> and professor of social communication at the <i>Universidad Nacional Abierta y a Distancia</i>. 36 years old</p>	<p>Florencia, COLOMBIA, December 13</p>	<p>Assassinated with a shot fired by presumed members of an armed dissident group. The assassins fired on him from a motorcycle as he was saying goodbye to his wife in front of his house.</p>	<p>Just a week before the assassination, in a telephone call to the Press and Society Institute of Peru, he said he did not know the background of threats received by his colleague Guillermo León Agudelo, killed two weeks earlier.</p>	<p>There have been no arrests for the assassination.</p>
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\* The events described in this section include information received as of the publication of this annual report (April, 2001).



## CHAPTER V

### FREEDOM OF EXPRESSION CASES WITHIN THE INTER-AMERICAN SYSTEM

#### 1. Cases before the Inter-American Court of Human Rights

1. **Case of Baruch Ivcher Bronstein vs. Peru.** The Inter-American Commission on Human Rights (hereafter “the Commission”) submitted a case on behalf of Mr. Baruch Ivcher Bronstein (hereafter “Mr. Ivcher”) to the Inter-American Court of Human Rights (hereafter “the Court”) for violation of Article 13 among others of the Convention and the principles established in Principles 1, 5, and 6 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights. On February 6, 2001, the Court issued a judgment to the effect that “the [Peruvian] State arbitrarily withdrew the citizenship of Mr. Ivcher Bronstein, a naturalized Peruvian citizen, majority shareholder, director, and chairman of the board of directors of *Channel 2—Frecuencia Latina*, a Peruvian television channel, for the purpose of removing him from editorial control of said channel and restricting his freedom of expression, which he was exercising through denunciation of serious violations of human rights and corrupt practices.”<sup>287</sup>

2. Based on the evidence, expert testimony and the demonstrated facts, the Court concluded that the Peruvian State violated the right to freedom of expression, guaranteed in Article 13(1) and 13(3) of the American Convention on Human Rights, to the detriment of Mr. Ivcher. Furthermore, it ruled that “removal of Mr. Ivcher from control of *Channel 2* and exclusion of the journalists of the *Contrapunto (Counterpoint)* program not only deprived them of their right to transmit news, ideas, and opinions, but also adversely affected the right of all Peruvians to receive information, thereby restricting their freedom to express political opinions and develop fully in a democratic society.”<sup>288</sup>

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<sup>287</sup> Inter-American Court of Human Rights, Case of Baruch Ivcher Bronstein vs. Peru, Judgment of February 6, 2001, page 1.

<sup>288</sup> *Id.*, Section XIV, Violation of Article 13 (Freedom of Expression), page 65.

3. **Case “The Last Temptation of Christ” (Olmedo Bustos et al. vs. Chile).** The Inter-American Commission presented a case against the Republic of Chile (hereafter “the State” or “Chile”) in order for the Court to decide whether Chile violated Article 13, among others, of the Convention. Said violations “would have occurred to the detriment of Chilean society and, in particular, of Mr. Juan Pablo Olmedo Bustos, Mr. Ciro Colombara López, Mr. Claudio Márquez Vidal, Mr. Alex Muñoz Wilson, Mr. Matías Insunza Tagle, and Mr. Hermán Aguirre Fuentes as a result of the judicial censorship imposed on the screening of the film *The Last Temptation of Christ*, ratified by the Honorable Supreme Court of Chile [...]”<sup>289</sup>

4. During the public hearing on November 18, 2000, the Commission testified to the Court that “the ban on the showing of the film *The Last Temptation of Christ* [...] violates Article 13 of the Convention, which states that the exercise of the right of thought and expression shall not be subject to prior censorship. Furthermore, the intent of this rule is to protect and encourage access to information and ideas of all kinds and strengthen pluralistic democracy [...]”<sup>290</sup>

5. Based on the documentary evidence, testimony, expert opinions and the demonstrated facts, the Court concluded that the State violated the right to freedom of thought and expression because “the ban on the showing of the film ‘The Last Temptation of Christ’ constituted prior censorship imposed in violation of Article 13 of the Convention.”<sup>291</sup>

## 2. **Cases declared admissible during the last period of sessions of the Inter-American Commission on Human Rights in the year 2000.**

6. **Case 12.142 Alejandra Matus Acuña, Chile.** The Commission ruled the case admissible for alleged violations of Article 13, among others, of the American Convention. The case deals with the confiscation of the book “The Black Book of Chilean Justice,” written by

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<sup>289</sup> Inter-American Court of Human Rights, Case of “The Last Temptation of Christ” (Olmedo Bustos et al. vs. Chile), Judgment of February 5, 2001, Introduction to the cause, paragraph 1.

<sup>290</sup> *Id.*, Section VIII, Article 13, Freedom of Thought and Expression, paragraph 61.b.

<sup>291</sup> *Id.*, paragraphs 71-73.

journalist Alejandra Marcela Matus Acuña and published by Editorial Planeta in that country. On the date indicated, all copies of said book were seized on a court order for violation of the State Security Law of Chile. On June 16, 1999, Messrs. Bartolo Ortiz and Carlos Orellana, directors of Editorial Planeta of Chile, were arrested in the same case. They were released and exonerated two days later. Since journalist Matus Acuña was threatened with immediate arrest, the United States granted her political asylum and she has been in that country since June of 1999. As of the date of this report, the books remain confiscated and the case is still open, with the journalist having been declared in contempt of court.

7. **Case 11.395 Juan José López, Argentina.** Without prejudging the substance of the case, the Commission ruled this case admissible for the alleged violation of the right to freedom of thought and expression guaranteed in Article 13 of the Convention. On September 29, 1994, Lopez, who worked at *L.R.A 7—Radio Nacional* of Cordoba (hereafter "*Radio Nacional*") filed his petition before the Commission because he did not received funds for his journalist pension during the time of his services to the radio station. Lopez was elected an alternate member of the Press Union of Cordoba, and during the exercise of his union functions he was deprived of his work at *Radio Nacional* without explanation in July 1990.

### 3. Precautionary Measures

8. **Baruch Ivcher Bronstein et al., Peru.** After a public hearing held on November 20 and 21 in San José, Costa Rica, and at the request of the Commission, the Inter-American Court of Human Rights on November 21 requested precautionary measures to protect Mr. Ivcher and his family. It requested that the Peruvian government "adopt without delay all measures necessary to protect the physical, emotional and moral integrity of the parties and the right to legal guarantees." The court requested the same measures for Rosario Lam Torres, Julio Sotelo Casanova, José Arrieta Matos, Emilio Rodríguez Larraín and Fernando Viaña Villa.

9. **Fabián Salazar Olivares, Peru.** On May 26, 2000, the Inter-American Commission requested precautionary measures to protect Mr. Fabián Salazar Olivares, in the context of Case 12.286. According to the information received, agents of the National Intelligence Service entered the office of the newspaper where Mr. Salazar worked and tortured him for the purpose of obtaining some videocassettes. The Commission asked the Peruvian State to adopt measures to protect the life, personal integrity and freedom of Mr. Salazar. On July 14, 2000 the State replied that it could not take the requested precautionary measures because Mr. Salazar had left the country on May 31, 2000.

10. **Genaro Delgado Parker, Peru.** On March 10, 2000, the Commission requested precautionary measures to protect Mr. Delgado Parker, who according to the information received had been removed from control of the *Global Network* television chain and had been deprived of the transmitter equipment for his radio station, *Radio 1160*. Since the Peruvian State failed to take precautionary measures by the first deadline, on November 2, 2000, the Commission extended the precautionary measures for six additional months so that ownership of *Global Network—Channel 13* could be restored to Mr. Delgado Parker and that steps could be taken to return to *Radio 1160* the transmitter and other equipment needed to resume its regular broadcasts immediately. On December 18, 2000, the Peruvian State informed the Commission that it had complied with the precautionary measures.

11. **Carlos Singares Campbell, Panama.** On July 7, 2000, the Commission approved precautionary measures to protect Mr. Carlos A. Singares Campbell, editor of the daily *El Siglo*. According to the information received, Mr. Singares had been arrested on charges of violating the libel laws after publishing a critical news report possibly linking the Attorney General, José Antonio Sossa, to illegal acts. The Commission granted precautionary measures for 30 days and asked the State to set aside the arrest order and guarantee Mr. Singares' right to integrity, personal freedom and freedom of expression.

12. **Pablo López Ulacio, Venezuela.** On February 7, 2000, the Inter-American Commission on Human Rights approved precautionary measures to protect journalist Pablo López Ulacio, editor of the weekly *La Razón*. The Commission said that Mr. López Ulacio "was in grave danger" and requested a halt to deprivation of the journalist's freedom of expression,

and that the measure of prior censorship against him and the weekly *La Razón* be lifted. According to the information received, the weekly *La Razón* published, starting in February 1999, a series of investigative reports on corrupt practices involving high officials in the Venezuelan government. The reports allegedly led to death threats to journalist Pablo López and his family members. It is further alleged that the journalist was victim of other forms of harassment including smear campaigns, cancellation of government advertising and criminal charges of libel.

13. **Mauricio Herrera Ulloa and Fernán Vargas Rohmoser of the daily *La Nación*, Costa Rica.** On March 1, 2000, the Inter-American Commission on Human Rights asked Costa Rica to adopt precautionary measures to protect the rights of Messrs. Mauricio Herrera Ulloa and Fernán Vargas Rohmoser of the daily *La Nación*. According to the information received, the Third Chamber of the Supreme Court upheld journalist Mauricio Herrera Ulloa's sentence of 120 days in prison and a fine, and ordered his name inscribed in the Judicial Criminal Register because he reported information from European media that questioned the moral integrity of former honorary Ambassador of Costa Rica to the Atomic Energy Commission, Félix Przedborski. In addition, because it published the story, the newspaper *La Nación* was ordered to pay the legal fees of the plaintiff's attorney and to "remove the link to the digital version of the newspaper on the Internet, between the surname Przedborski and the impugned articles, and to establish a link between these articles and the resolution of this verdict, the publication of which has been ordered."

14. The Commission maintains that the alleged acts could constitute "irreparable damage" to the human rights of the journalist Herrera Ulloa and Mr. Fernán Vargas Rohmoser of the daily *La Nación*, and irreparable damage as well to the Costa Rican citizens who have been deprived of access to information regarding the actions of public officials. With regard to Article 13 of the American Convention on Human Rights, on freedom of expression, the Commission has interpreted as "irreparable damage" the taking of measures that limit freedom of expression. The right of respect for freedom of expression is an instrument to permit the free flow of ideas and functions as a strengthening element for the democratic process, as well affording the public a basic tool for informed participation.

## CHAPTER VI

### FINAL CONSIDERATIONS AND RECOMMENDATIONS

1. In the Hemisphere there is a broad gamut of violations of the right to freedom of expression. These violations run from a state of near total censorship, as is the case in Cuba, to simple administrative or bureaucratic barriers to the search for information.

2. The Rapporteur's primary concern is the assassination of journalists, because it mocks the value of human life and causes a chilling effect on speech throughout society. The Special Rapporteur recommends that the member States undertake a serious, impartial and effective investigation of assassinations, kidnappings, threats, and harassment of journalists, and prosecute and punish all those responsible.

3. Aside from the seriousness of the assassinations of journalists, the main obstacle to the full enjoyment of the right to freedom of expression is the use of legislation by authorities to silence critics. It is essential to amend these laws in some cases and to include in others norms that will guarantee the right of freedom of expression. The law, and respect for the law, as well as freedom of expression, are the cornerstones of a democratic society. Weaknesses in both areas, which exist in some states in the hemisphere, constitute a constant threat to democratic stability in the hemisphere.

4. The Special Rapporteur recommends that the member States modify their domestic legislation to conform with the parameters established in the American Convention on Human Rights, and comply fully with the provisions of Article IV of the American Declaration on the Rights and Duties of Man. Furthermore, the Special Rapporteur recommends to the Member States that their internal legislation and practices be guided by the set of standards set forth in the Declaration of Principles on Freedom of Expression.

5. The Special Rapporteur recommends that the member states abrogate the *desacato* laws because they restrict public debate, which is an essential element of the democratic process, and they contravene the American Convention on Human Rights.

6. Moreover, the Special Rapporteur recommends that States include in their legislation the dual protection system, which differentiates levels of legal protection between public and private figures and uses the actual malice doctrine as the standard for defamation law suits against the press, as well as the decriminalization of libel and slander laws.

7. The Special Rapporteur recommends that the member States guarantee access to information and *habeas data*, both *de jure* and *de facto*, for all citizens, because both elements are essential for freedom of expression and the democratic system.

8. The Rapporteur also recommends the elimination of any requirement that could imply prior censorship of freedom of information, such as the demand to prove the truth of the news.

9. The Rapporteur wishes to thank the various States that cooperated with the Office of the Special Rapporteur during this year, and also the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support.

10. Finally, the Special Rapporteur wishes to thank all those independent journalists who day after day carry out the most indispensable duties in a democratic society, by informing the citizens so that they can exercise their rights and fulfill their obligations on the basis of the information that they need.