

## CHAPTER II

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

#### I. A. Introduction

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

#### B. Evaluation

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

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

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

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

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

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

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<sup>12</sup> IACHR, Report No. 50/99, Case 11.739 (Mexico), April 13, 1999. In addition, the Inter-American Court of Human Rights has ruled that: "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Argentina**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Judicial Actions**

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

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

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

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

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



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

### **Intimidation**

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

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

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

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

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

## Other

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

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

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

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

## **Bolivia**

### **Assassinations**

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

### **Aggression and Threats**

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

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

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

## **Intimidation**

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

## **Brazil**

### **Assassinations**

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

### **Judicial Actions**

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

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

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

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

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

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

### **Prior Censorship**

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

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

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

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

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

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

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

### **Other**

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

### **Canada**

#### **Aggression and Threats**

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

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

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

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

## **Detentions**

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

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

## **Legislation**

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

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

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

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

## **Chile**

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

## **Judicial Actions**

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

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



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

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

### **Prior Censorship**

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

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

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

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

### **Positive Actions**

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

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

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

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

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

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

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

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

### **Colombia**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Assassinations**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Intimidation**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Other assassinations in Colombia**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Costa Rica**

### **Assassinations**

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

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

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

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

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

## **Other**

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

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

## **Cuba**

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

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

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

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

### **Aggression and Threats**

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

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

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

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



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

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

### **Detentions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Ecuador**

### **Aggression and Threats**

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

### **Judicial Actions**

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

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

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

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

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

## **El Salvador**

### **Judicial Actions**

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

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

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

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

## Guatemala

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

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

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

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

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

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

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

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

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

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

The Court has further stated that:

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

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

## Assassinations

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

## Aggression and Threats

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

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

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

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

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

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

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

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

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

## Legislation

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

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

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

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

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

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



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

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

## **Haiti**

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

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

## **Assassinations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Aggression and Threats**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Intimidation**

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

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

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

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

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

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



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

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

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

## **Honduras**

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

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

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

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

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

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

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

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

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

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

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

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

### **Intimidation**

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

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

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

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

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

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

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

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

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

## Legislation

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

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

<sup>137</sup> COFADEH.

<sup>138</sup> COFADEH.

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

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

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

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

## **Mexico**

### **Assassinations**

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

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

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

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

## Threats and Attacks

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

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

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

## Legislation

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

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

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

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

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

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

## **Nicaragua**

### **Threats and Attacks**

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

### **Intimidation**

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

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

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

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

## **Panama**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## **Detentions**

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

## **Judicial Actions**

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

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

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

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

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

### **Prior Censorship**

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

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

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

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

## **Positive Actions**

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

## **Paraguay**

### **Assassinations**

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

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

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

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

### **Threats and Attacks**

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

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

### **Judicial Actions**

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

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

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

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

### **Other**

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

### **Positive Actions**

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

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

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

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

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

## **Peru**

### **Threats and Attacks**

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

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

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

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

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

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

### **Judicial Actions**

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

### **Legislation**

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

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

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

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



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

## **United States**

### **Detentions**

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

### **Judicial Actions**

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

### **Intimidation**

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

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

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

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

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

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

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

## Legislation

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

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

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

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

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

### **Bolivarian Republic of Venezuela**

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

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

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

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

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

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

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

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

## **II. Judicial Actions**

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

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

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

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

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

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

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

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

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

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

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

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

### III. Intimidation

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

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

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

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

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

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

#### IV. Legislation

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

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

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

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

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

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



## **Other**

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

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

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

## Assassinations of Journalists

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

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

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

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

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

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



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