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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE  
QUESTION OF FREEDOM OF EXPRESSION**

**The right to freedom of opinion and expression**

**Report of the Special Rapporteur, Ambeyi Ligabo**

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\* Reissued for technical reasons.

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## Summary

This report, submitted pursuant to Commission resolution 2002/48, is the twelfth report presented by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Commission on Human Rights and the third general annual report of Ambeyi Ligabo, appointed as Special Rapporteur on 26 August 2002. A summary of communications sent to and received from Governments is contained in addendum 1 to the present report.

Section I describes the activities of the Special Rapporteur during the past year, especially urgent appeals, allegation letters and press releases. Governments, international, regional and national organizations and local non-governmental organizations, associations of media professionals, writers' associations, trade unions and members of political parties from all regions of the world provided the Special Rapporteur with information. The analysis of the material received by the Special Rapporteur allowed him to identify trends, reiterate issues already discussed in previous reports, and bring to the attention of the international community new policies, practices and measures taken in the field of freedom of opinion and expression. Additionally, it also allowed the Special Rapporteur to intervene in individual cases of alleged violations of human rights. In this section, the Special Rapporteur also makes available information concerning invitations for country visits and reports on the meetings he attended during the year. A report on the Special Rapporteur's mission to Côte d'Ivoire is contained in addendum 2, his mission to Colombia in addendum 3, his mission to Serbia and Montenegro in addendum 4 and his mission to Italy in addendum 5.

Section II contains a follow-up on the right to access to information, a matter that was included in the last Special Rapporteur's general report, a historical overview of the mandate and a short section on protection and security of media professionals. The Special Rapporteur believes that the right of access to information is one of the central challenges of the future. In many countries, decisions of public bodies and bodies performing public functions still are of a confidential nature and unavailable to any but the individuals or parties involved. In the year of the second and final phase of the World Summit on the Information Society, the Special Rapporteur examines, through a historical analysis of the action of the United Nations on freedom of opinion and expression, the main trends, achievements and shortcomings of his mandate since its inception. This exercise will allow the Special Rapporteur to gather new elements for future action and to make recommendations to the Commission on Human Rights for the reinforcement of the mandate. Protection and security remain great concerns because these factors are the source of great distress among media professionals and their families. The absence of remedial action may endanger the indispensable role of imparting information that media professionals play.

Section III contains conclusions and recommendations in which the Special Rapporteur takes stock of the situation of freedom of opinion and expression as a global phenomenon, with specific references to the security of journalists, media concentration, national legislation on defamation, Internet governance and the right of access to information. The Special Rapporteur also recommends to Governments that they reinvigorate their action regarding the security of citizens and impunity, and invites them to adopt legislation on access to information, Internet governance and defamation in conformity with international human rights standards.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	4
I. ACTIVITIES .....	5 - 35	4
A. Communications and requests for information .....	5 - 13	4
B. Press releases .....	14 - 21	6
C. Country visits .....	22 - 24	7
D. Participation in seminars and conferences .....	25 - 35	8
II. ISSUES .....	36 - 48	9
A. Implementing the right of access to information .....	36 - 44	9
B. Protection and security of media professionals .....	45 - 48	11
III. CONCLUSIONS AND RECOMMENDATIONS .....	49 - 71	12
A. Conclusions .....	49 - 61	12
B. Recommendations .....	62 - 71	15
<b>Annex</b>		
Historical overview of the mandate .....		17

## **Introduction**

1. The Commission on Human Rights established the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in its resolution 1993/45. The present report, submitted pursuant to Commission resolution 2004/42, is the third general report by Ambeyi Ligabo (Kenya), appointed Special Rapporteur on 26 August 2002.

2. Since the inception of the mandate, the concept of freedom of opinion and expression has faced new challenges from technological evolution. New information and communication tools may represent effective instruments for the promotion of freedom of opinion and expression around the world. Yet, a genuine development in this field would be to make these new tools universally available. The information community will also have to face new forms of repression that will also use these tools to influence the enjoyment of the right to freedom of opinion and expression.

3. Issues addressed in this report include an update of matters analysed in the Special Rapporteur's previous report (E/CN.4/2004/62 and Add.1-4), in particular the right of access to information in the framework of the implementation of the right to freedom of opinion and expression. In light of the forthcoming final session of the World Summit on the Information Society, the Special Rapporteur also decided to include in the present report a comprehensive review of United Nations action in the field of freedom of opinion and expression so as to make fresh proposals for a new direction in the future.

4. The Special Rapporteur reiterates the contents of the terms of reference and methods of work of his mandate, as elaborated in his previous general annual reports E/CN.4/2003/67 and E/CN.4/2004/62.

## **I. ACTIVITIES**

### **A. Communications and requests for information**

5. One of the most significant features of the Special Rapporteur's mandate is the analysis of the communications received in order to identify trends, reiterate issues already discussed in previous reports and bring to the attention of the international community a number of policies, practices and measures having an impact on the respect for freedom of opinion and expression.

6. Customarily, the Special Rapporteur considers communications brought to his attention from a variety of sources - Governments, international, regional, national and local non-governmental organizations (NGOs); associations of media professionals, writers' associations, trade unions and members of political parties - and from all regions of the world. The Special Rapporteur emphasizes that a plurality of sources of information, in addition to being essential to the discharge of his mandate, is a significant indicator of the degree of implementation of the right to freedom of opinion and expression.

7. The Special Rapporteur notes that a large number of allegations continue to refer to the following situations: civil unrest due to social troubles; states of emergency in general; internal armed conflict; racial conflicts; electoral processes; defamation cases; repressive action against

the use of new information technologies. The Special Rapporteur observes that the communications received are not confined to alleged violations in countries where the political, social and economic situation is particularly difficult, but also refer to violations occurring in emerging or long-established democracies.

8. Most of the cases received by the Special Rapporteur relate to violations against media professionals. Violations also occur, however, in relation to political groups and their members, opposition and pro-democracy activists, lawyers, students, academics, trade unionists, persons participating in public demonstrations, women, peasants, members of religious minorities and other minorities, authors, cartoonists, newspaper vendors, distributors and printers, medical personnel and others.

9. Analysing the increasing amount of information sent to the Special Rapporteur, it was clear that violations of the right to freedom of opinion and expression are still a widespread phenomenon in all regions of the world. Continuing violations to freedom of opinion and expression seem to be a common feature of certain political systems that methodically repress the traditional sources of freedom of expression and opinion making: journalists, trade unionists, social workers, students and teachers, writers and artists.

10. The nature of the alleged violations can vary enormously, depending on the level of respect for the rule of law and good governance in a society. The range of violations goes from killings, enforced disappearances, arbitrary arrests and detentions, mistreatment, threats and harassment, unfair trials, and various types of judicial and administrative measures. Criminal charges, sentencing to prison terms and the imposition of heavy fines for defamation, libel and slander are still common even though a few countries have adopted new legislation moving this kind of offence under civil law.

11. From 1 January to 17 November 2004, the Special Rapporteur sent 610 communications: 449 urgent appeals, 325 of which were signed jointly with other rapporteurs, and 161 allegation letters, 85 of which were signed jointly with other rapporteurs. Communications covered 1,782 individuals: 11 per cent of them were women and 68 per cent men, while the remaining were institutions or enterprises. The following table reflects the geographical breakdown:

Region	Number of communications	Percentage of total
African region	126	21
Arab region	92	15
Asian-Pacific region	168	28
European and North American region	100	16
Latin American and Caribbean region	114	19

12. While the nature and the seriousness of the violations may vary significantly, even well established protection systems can be at risk in the face of sudden crises. New technologies, today available almost everywhere, have definitely challenged repressive strategies and systems as well as environments traditionally favourable to freedom of expression. At the same time, they have opened a large debate on the limits and shortcomings of information provided without any ethical and professional backgrounds, and which is often used as blatant political

propaganda. Such use of these technologies, which have reached remarkable peaks of sophistication, contribute to the persistent and eventual proliferation of extreme ideas and positions, racial conflicts and ethnic tensions.

13. The Special Rapporteur is grateful to those Governments that, in a spirit of collaboration and mutual understanding, answered his appeals and letters, thereby exercising their right of reply. The correspondence is contained in document E/CN.4/2004/62/Add.1.

#### **B. Press releases**

14. In a joint statement adopted on 18 December 2003, the Special Rapporteur, the Representative on freedom of the media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on freedom of expression of the Organization of American States (OAS) condemned limitations on freedom of expression and attempts to control the media through regulatory mechanisms which lack independence or otherwise pose a threat to freedom of expression.

15. In a press release dated 22 January 2004, the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions, expressed their strong concern about the situation of human rights in Haiti, especially since the start of violent confrontations between militias supporting and opposing the Government, as well as those involving members of the police. They deplored the fact that the political violence continued to cause great distress among the civilian population and noted that the previous months had also seen numerous attacks against political activists, journalists and radio stations.

16. In a press release dated 9 March 2004, the Special Rapporteur, the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention reiterated their profound concern over the deteriorating human rights situation in Nepal in light of the intensification of the conflict between the Government and the Communist Party of Nepal (Maoist). The experts also stated that they had received disturbing reports of impunity for the security forces responsible for human rights violations and about increasing indiscriminate attacks against civilians by both sides.

17. On 15 April 2004, the Special Rapporteur, the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the Secretary-General on human rights defenders issued a statement in which they expressed their deep concern over the situation of Tenzin Deleg Rinpoche, a prominent lama who promoted the re-establishment of Tibetan Buddhism in the region and was involved in social work on behalf of the Tibetan community in the Kardze Tibetan Autonomous Prefecture of Sichuan Province.

18. On 21 May 2004, the Special Rapporteur, the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions issued a statement in which they echoed the profound concerns expressed by the Security Council in its resolution 1544 (2004) and by the Acting High Commissioner for Human Rights about violence and loss of life during a peaceful demonstration in the Rafah refugee camp in the Gaza Strip on 19 May 2004.

19. On 14 July 2004, the Special Rapporteur, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, the Special Rapporteur on extrajudicial, summary and arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Representative of the Secretary-General on human rights defenders, the Chair of the Working Group on Enforced or Involuntary Disappearances, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, issued a statement in which they reiterated their serious concern regarding the extremely grave human rights situation in Nepal. The experts regretted that the Government had failed to respond to many of their appeals, and that it provided virtually no information on the fate of people detained in unknown locations.

20. On 27 July 2004, the Special Rapporteur, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the question of torture, issued a statement in which they expressed their profound concern regarding the unanswered questions which had resulted from the acquittal of an Iranian intelligence officer on 24 July, after a two-day trial, for the killing of journalist Zahra Kazemi.

21. In a press release dated 18 August 2004, the Special Rapporteur, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the independent expert on the situation of human rights in Burundi, the Special Rapporteur on violence against women, and the Special Adviser to the Secretary-General on the Prevention of Genocide strongly condemned the massacre, and its ethnic dimension, which took place during the night of 13 August in Gatumba refugee camp in Burundi close to the border with the Democratic Republic of the Congo.

### **C. Country visits**

22. Since his appointment, the Special Rapporteur has visited Colombia, Côte d'Ivoire, Equatorial Guinea, the Islamic Republic of Iran, Italy, and Serbia and Montenegro. He would like to thank those Governments for their cooperation.

23. The Special Rapporteur requested invitations to visit the following countries: Algeria, Angola, Azerbaijan, Bangladesh, Belarus, China, Cuba, Democratic People's Republic of Korea, Eritrea, Ethiopia, Indonesia, Liberia, Nepal, Russian Federation, Spain, Sudan, Swaziland, Turkmenistan, Venezuela, Viet Nam and Zimbabwe. In addition, on 29 June 2004, the Special Rapporteur sent a letter asking to be invited to the following countries: Ecuador, Georgia, Guatemala, Honduras, Libyan Arab Jamahiriya, Peru, Philippines, Saudi Arabia, Serbia and Montenegro, Sierra Leone, Sri Lanka, The former Yugoslav Republic of Macedonia and Ukraine. So far, he has received positive replies from Guatemala, Honduras, Serbia and Montenegro - the Rapporteur visited the country at the end of October 2004 - Sri Lanka, The former Yugoslav Republic of Macedonia and Ukraine. He also received an invitation from the Government of Azerbaijan to visit the country. The Special Rapporteur wishes to express his appreciation to these countries for their cooperation.

24. In 2004, the Special Rapporteur visited Côte d'Ivoire, Colombia, Serbia and Montenegro and Italy. Mission reports are contained in documents E/CN.4/2005/Add.2, E/CN.4/2005/Add.3, E/CN.4/2005/Add.4 and E/CN.4/2005/Add.5, respectively.

#### **D. Participation in seminars and conferences**

25. On 1 April 2004, the Special Rapporteur presented his report to the sixtieth session of the Commission on Human Rights. He stated, among other things, that the exercise of the right to freedom of opinion and expression was a significant indicator of the level of protection and respect of all other human rights in a given society. Yet, violations of the right to freedom of opinion and expression, attacks against journalists, media workers, trade unionists and, in general, against all those who dare express their different opinion, continued to occur in all regions and countries, whatever their system, and took various forms and shape. Most of the time, he underlined, perpetrators of those crimes were not punished; the conduct of serious investigations was essential to ensure greater protection for journalists.

26. The Special Rapporteur also mentioned a number of issues that, in his view, were of special interest for his mandate: the role of media in armed conflicts, the consequences of anti-terrorism legislation on freedom of opinion and expression, media concentration, and the implementation of the right to information.

27. During the sixtieth session of the Commission, the Special Rapporteur had the opportunity to consult with representatives of the following countries: Algeria, Bangladesh, Canada, Côte d'Ivoire, Indonesia, Iran (Islamic Republic of), Pakistan, Poland and the United Kingdom of Great Britain and Northern Ireland. He also had a briefing with the press and met representatives of the Group of African States and several non-governmental organizations.

28. In those meetings the Special Rapporteur reiterated that Governments should not feel targeted by the thematic mechanisms of the Commission on Human Rights, since they were global mandates relating to all countries. He emphasized that the full cooperation of Governments was an essential factor for a successful outcome of country missions. He pointed out that during country visits, Governments should guarantee free access to all people and places that special rapporteurs asked to visit. Likewise, Governments should be open to dialogue with the rapporteurs on issues that might come up during the visit. With regard to his working methods, the Special Rapporteur stated that Governments and relevant authorities should carefully consider the issues arising from urgent appeals and allegations and provide exhaustive replies, with a view to establishing a constructive dialogue.

29. The African Commission on Human and Peoples' Rights, in collaboration with the Media Institute for Southern Africa, the NGO Article 19 and the Media Foundation for West Africa, invited the Special Rapporteur to the Africa Conference on Freedom of Expression, held in Pretoria on 19 and 20 February 2004. The aims of the conference were to raise awareness about the African Commission's Declaration of Principles on Freedom of Expression in Africa, to discuss the establishment of a special mandate to monitor freedom of expression in Africa and to explore ways of implementing the Declaration.

30. The Special Rapporteur participated in the celebration of World Press Freedom Day on 3 May 2004 in Belgrade. The event was organized jointly by the United Nations Educational, Scientific and Cultural Organization and the UNESCO National Commission of Serbia and Montenegro. In parallel, UNESCO organized, on 2 and 3 May, a conference to discuss the theme "Support to media in violent conflicts and in countries in transition". Media professionals

from all over the world debated topics such as “Informing the local population in crises and emergencies”, “Capacity-building and the culture of journalism”, and “Infrastructure, market and legal reform”. The conference was followed, on 4 May, by a regional seminar, organized jointly by UNESCO and OSCE in consultation with professional partners, focusing on the media in South-East Europe.

31. The Special Rapporteur was also invited to participate as a panellist in the dialogue “The value of the word”, held from 16 to 21 May 2004 in Barcelona, Spain, and organized within the Universal Forum of Cultures. On the same occasion, International PEN and Forum Barcelona 2004 invited the Special Rapporteur to participate in the Fifth International Conference of the Writers in Prison Committee of International PEN.

32. The Special Rapporteur attended the eleventh meeting of the special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures and advisory services programme of the Commission on Human Rights, held in Geneva from 21 to 25 June 2004. The report of the meeting is contained in document E/CN.4/2005/5.

33. The Special Rapporteur also attended the first preparatory meeting for the Tunis phase of the World Summit on the Information Society, which took place in Hammamet, Tunisia, from 24 to 26 June 2004. The meeting agreed on the structure of the preparatory process for the second phase of the World Summit, in particular on two major issues: the follow-up and implementation of the Geneva Declaration of Principles and Plan of Action by stakeholders at national, regional and international levels, with particular attention to the challenges facing the least developed countries; and Internet governance, with the consideration of the report of the Working Group on Internet Governance and appropriate action.

34. The Justice Initiative of the Open Society Institute - an NGO - invited the Special Rapporteur to an international meeting on freedom of information litigation and advocacy strategies, entitled “Access to information: from soft law to hard law”, held in London, on 22 and 23 November 2004. Unfortunately, owing to his tight schedule, the Special Rapporteur was unable to participate in that meeting.

35. The Special Rapporteur appreciates the work done by the participants in the second Amsterdam Internet Conference (27-28 August 2004), who adopted a collection of recommendations and examples of best practices on guaranteeing media freedom online. The first Internet conference in 2003 produced the “Amsterdam Recommendations”, which constitute an excellent basis for further thinking and action in this field.

## **II. ISSUES**

### **A. Implementing the right of access to information**

36. The Commission on Human Rights, in its resolution 2004/42 (para. 7), invited the Special Rapporteur, within the framework of its mandate, to continue to carry out his activities in accordance with paragraph 17 (a) to (d) and (f) of resolution 2003/42. Accordingly, the Special Rapporteur decided to continue the examination of the question of the existence and extent of the right to access to information.

37. An increasing number of countries have recently been adopting information laws. New legislation often includes access to information provisions that should reinforce transparency efforts of public institutions. The effective implementation of the laws, however, remains a major challenge as some common obstacles have emerged: lack of political will at senior levels, inadequate information management, insufficient training of public officials and an excess of bureaucratic obstacles to timely information release. Moreover, in some countries it has proven to be nearly impossible to submit requests for information orally or without filling out an official form. Persons belonging to vulnerable or excluded groups, such as disabled individuals or ethnic minorities, are less likely to receive positive reactions than journalists or NGOs submitting the same requests.

38. The Special Rapporteur wishes to commend the work done by the Open Society Justice Initiative, which in 2003 carried out a pilot study to develop a tool for monitoring access to information. The study had the objective of assessing whether national laws are effectively implemented in conformity with international standards and to aid civil society groups in promoting transparency and good governance. Indeed, the right of access to information held by public bodies has become a benchmark of democratic development and approximately 60 countries around the world now have laws establishing mechanisms for the public to request and receive Government-held information. A variety of factors, ranging from civil society campaigns to pressure from intergovernmental organizations and multilateral donors, pushes Governments and legislatures to adopt freedom of information laws.

39. Although international standards establish only a general right to freedom of information, the right of access to information, especially information held by public bodies, is easily deduced from the expression “to seek [and] receive ... information” as contained in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. At the regional level, legal provisions and recommendations on the right to access official documents, a right that can be subject to only a few restrictions, are on the increase. Restrictions should be provided for by law and concern issues such as the protection of the rights of others, national security, and the prevention of advocacy of national, racial or religious hatred or any form of discrimination. Consequently, all information held by public bodies shall be publicly available unless it is subject to a legitimate exemption, and all bodies performing public functions, including governmental, legislative and judicial bodies, should be obliged to respond to requests for information. The expression “bodies performing public functions” also pertains to enterprises, societies and associations performing a unique role and/or receiving public funds.

40. Under laws on the right to access information, these bodies should designate an office or officer to handle requests for information. In smaller institutions, an officer can be sufficient who might have other duties, while in larger bodies, a department might be dedicated to promoting transparency and providing information. In addition, all bodies performing public functions should publish an annual report and a financial account of their activities, and make them easily available to the public even in the absence of any information requests.

41. Anyone should be able to file information requests and should not have to provide grounds or reasons for their request: the right of access to information is a fundamental human right which can be exercised by all. Information requests should be treated equally without discrimination with regard to the requestor, regardless of his/her social, racial and political affiliation.

42. There are other important factors contributing to the correct implementation of the right of access to information and to the availability of information. For instance, replies should be provided in a timely fashion. Formalities for requests should be kept to a minimum and it should be possible, especially in countries with a low literacy rate, to make requests orally. For similar reasons, access should be to information rather than to documents, and its cost to the requestor should be limited to the supply costs and should not be so high as to prove an obstacle to access.

43. Refusals to provide information should always be grounded in law and be made within the time frames specified by law. The refusal should be made in writing and detail the grounds for not disclosing the information, as established by law. Legislation should guarantee the right to appeal refusals to provide information.

44. On 6 December 2004, the Special Rapporteur, together with the Representative on freedom of the media of the OSCE, Mr. Miklos Haraszti, and the Special Rapporteur for freedom of expression of the OAS, Mr. Eduardo Bertoni, issued a joint statement within the framework of the programme Global Campaign for Free Expression of the non-governmental organization Article 19. The statement highlighted the fundamental importance of access to information and commended the decision taken by an increasing number of countries to adopt laws recognizing a right to access information. It underlined that access to information is a citizen's right and that the procedures for accessing information should be simple, rapid and free or low cost. It condemned the attempts by some Governments to limit access to information, either by refusing to adopt access to information laws or by adopting laws that fail to conform to international standards. It affirmed that public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.<sup>1</sup>

## **B. Protection and security of media professionals**

45. The protection and security of journalists have become central factors of their professional, and very often private, lives. Some NGOs provide consistent and comprehensive figures on journalists killed on duty or because of their professional activity. According to their data, 2004 has been one of the deadliest years for media professionals in the last decade. On 1 November 2004, the World Association of Newspapers reported that 56 journalists had been killed since the beginning of the year; according to the International Press Institute, that number was 61. Other organizations also include in their figures media workers like camera operators and other kinds of assistants. Reporters Without Borders stated that, in the same period, 45 journalists and 14 media assistants had been killed, while the Committee to Protect Journalists said that 44 journalists and 17 media workers had lost their lives. Many of these NGOs have taken a variety of initiatives on this subject, including scientific analyses of the phenomenon and practical advice for journalists working in conflict areas.

46. A geographical breakdown of the data mentioned above shows that Iraq was by far the most dangerous country for the press: approximately 23 journalists were killed in the first 10 months of 2004. The majority were Iraqi nationals killed during military operations, by either one side or the other, or specifically targeted because of their work. Latin American countries, such as Mexico, Brazil and Peru, and the Philippines have been dangerous places as

well. Almost all the journalists killed in those countries were investigating corruption and alleged mismanagement. In Asia, the security of journalists is especially at risk in Bangladesh, Nepal and Sri Lanka. The trend known as “censorship by killing” noted by the former Special Rapporteur (E/CN.4/2002/75, para. 48) is still thriving.

47. Article 79 of the Additional Protocol I to the Geneva Conventions of 12 August 1949 is the most relevant international legal provision regarding the protection of journalists in areas of armed conflicts. Article 79 states that journalists engaged on dangerous professional missions shall be considered as civilians and protected, provided they take no action adversely affecting their status as civilian. The Protocol provides a model of an identity card to be issued by the Government of the State of which the journalist is a national. In 1990, the Sub-Commission on Prevention of Discrimination and Protection of Minorities discussed the feasibility of a study on the ways and means of extending additional protection and assistance to journalists and mass media personnel while they carry out their duties to expose human rights violations.

48. The idea of an international instrument protecting the life and the professional activity of media professionals was often discussed in the past, to no avail. The existence of many controversial issues and an unveiled reluctance of professionals to be bound to a juridical instrument made the proposal difficult to realize. It was also observed that the number of journalists killed on duty was closely linked to the existence and evolution of national and international armed conflicts. Nevertheless, there is an urgent need for strong, common action in this regard because such a situation is unacceptable: national and international institutions, together with professional associations, should take the lead and prepare a set of draft measures for increasing the security and protection of journalists and media workers.

### III. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

49. **The Special Rapporteur considers that the right to freedom of opinion and expression is a fundamental and inalienable right that contributes to the consolidation and the development of democracy, in addition to creating bridges between different peoples and civilizations. Any obstacle to the free movement of ideas and opinions limits freedom of expression and its beneficial consequences.**

50. **The Special Rapporteur believes that democratic institutions, while not able to prevent all violations of the right to freedom of opinion and expression, do offer guarantees for its protection, as well as an enabling environment for its exercise. Freedom of opinion and expression not only benefits from a democratic environment, it also contributes, and is indeed instrumental, to the emergence and existence of effective democratic systems. However, violations of the right to freedom of opinion and expression may occur in all regions and countries, whatever their system, and may take various forms.**

51. **The Special Rapporteur notes that, although some positive measures are being taken in a number of countries, several Governments have recently adopted restrictive legislation, in particular against new forms of freedom of opinion and expression and against defamation. Legislation on media ownership and functioning often appears to favour monopolistic or oligopolistic regimes.**

52. **Despite some progress, the situation is still grim: numerous trends and patterns of violations remain substantially active and unchanged. The Special Rapporteur gathered information and examined a number of specific issues in depth: media security and media concentration, national legislation on defamation, the Internet as a tool for the promotion of freedom of expression, and access to information.**

53. **Media security remains a grave problem: in 2004, numerous journalists and media workers have been killed while performing their duties. The majority of them were killed in conflict areas, either because they were considered as being part of the enemy troops, or because they were identified as journalists and deliberately eliminated. Several other journalists were murdered because of their investigative activities regarding social and economic issues. The identity of the killers may vary: paramilitary groups, undercover law enforcement officials, rebel groups, terrorists. Most of the time these crimes are not adequately punished; on the contrary, in many cases there were strong suspicions of an involvement by legal authorities.**

54. **The number of journalists and reporters killed in war zones has also increased because media, especially television, reporting is now considered as an essential element of war propaganda. Media reports may substantially create, and eventually change, the public's views on a conflict depending on the perspective they offer. On the other hand, in many instances, journalists have offered a multifaceted view of conflict and have contributed to the ordinary citizen's independent assessment of it.**

55. **The Special Rapporteur is especially concerned about the growing phenomenon of media concentration, which is very active and visible in developing as well as developed countries. The Special Rapporteur notes that media directly run by private business corporations tend to be less impartial and professional than media run by an independent body such as a media authority or a blind trust. Moreover, professional associations and trade unions are incessantly challenged by the profit-oriented attitude of media owners. Reversing this phenomenon will contribute to the emergence of a more pluralistic approach to information and will contribute to a more efficient, and often less expensive, service to customers.**

56. **Furthermore, the Special Rapporteur notes that the increasing development of television, radio and the Internet has created a deep crisis for the print media which has brought about the merging of national and international print groups and the dismissal of many professionals. This situation might greatly endanger the independence of professional journalism, especially in one of its most challenging sectors: investigative journalism. The print media are an irreplaceable instrument for the dissemination of ideas and opinions and its disappearance will encourage the dominance of information-as-entertainment, and even fiction, in the media world.**

57. **The Special Rapporteur believes that guaranteeing freedom of opinion and expression on the Internet and other new communication tools is the central challenge for the future. The achievement of a global information society, in which the poor can also have access to modern technologies, may represent a leap forward for mankind, opening**

**new paths for human and economic development. Should the information society miss the opportunity of making technologies available globally, the social and economic cleavage between developed and developing countries will deepen.**

**58. The Special Rapporteur is particularly alarmed by the increasing use of forms of expression having discriminatory connotations for ethnic and other vulnerable groups. Hate speech and similar forms of expression can contribute substantially to the deterioration of a precarious stability and drive a country to armed confrontation. In post conflict societies, biased reporting could rekindle violence and destroy laborious efforts for peace and reconciliation. Respect for human rights, professionalism and a sense of personal responsibility are indispensable elements for independent journalism, and they should be carefully preserved and developed.**

**59. Libel and defamation remains a disturbing feature of communication today. It is sometimes used as a political tool to strike at individuals in the sphere of their private life. On the other hand, elected officials and authorities' officials should be aware that, because of their role, they might attract the attention of the press in the carrying out of their functions (see, for example, the report of the former Special Rapporteur (E/CN.4/2000/63, paras. 45-52)). Bearing in mind the vital role played by the media in creating broad awareness of political, economic and social issues, the fact that many journalists were tried for libel is, in the Special Rapporteur's opinion, totally unacceptable.**

**60. The Special Rapporteur reiterates his concern over the poor implementation of the right to information, especially the right of access to information. Several countries have indeed adopted legislation on the right of access to information, but concern remains about their capacity to implement those laws in an effective way. In many countries, public bodies and bodies performing public functions continue to retain information and treat it in a confidential manner, even though there is no legal or other reason for this. Courts, parliaments, including their committees and subcommittees, and other institutions of public interest should be open to the citizen's request for information. Moreover, all national authorities and other institutions with a direct connection to the interest and welfare of the citizen should prepare an annual report that includes a financial section. Generally speaking, only documents directly linked to the security of the State and its population should be covered, if necessary, by confidentiality provisions. Even in those cases, for the sake of transparency and for the development of the democratic process, after the conclusion of all judicial proceedings, followed by a time of reflection, confidentiality should be removed.**

**61. The Special Rapporteur again notes that many Governments use anti-terrorism and national security legislation to restrict, partially or totally, freedom of opinion and expression and the right of access to information. Abuse of powers and prerogatives granted under such laws often leads to both prolonged and short-term arbitrary detention; torture; extrajudicial, summary or arbitrary executions; disappearances; threats and intimidation; the closure of various media enterprises; the banning of publications; bans on public gatherings; bans and prohibitions on organizations and groups that are not associated with terrorism; censorship on forms of communication; and judicial lenience for the abuses and crimes committed by police, armed forces and paramilitary groups.**

## **B. Recommendations**

62. The Special Rapporteur urges Governments to implement the necessary measures to review existing practices and take remedial actions in all fields related to the promotion and protection of freedom of opinion and expression. The Special Rapporteur especially encourages Governments of emerging democracies to promote and protect the freedom of opinion and expression of the press, political parties, trade unions, students, teachers, social workers, writers and artists. As appropriate, Governments may also consider the possibility of seeking technical assistance from OHCHR to eliminate the causes of human rights violations.

63. The Special Rapporteur encourages members and organizations of civil society to continue to provide him with information on the realization and violations of the right to freedom of opinion and expression around the world.

64. The Special Rapporteur wishes to recall that Governments have the responsibility of protecting the security of citizens, regardless of their political or social affiliations. Armed conflicts and widespread violence do not provide fertile ground for freedom of opinion and expression. Governments should take all necessary measures to protect journalists, as well as other professional categories at risk, from attacks, be they from officials, law enforcement officers, armed groups or terrorists.

65. In this context, the Special Rapporteur urges national authorities, both civilian and military, and, where applicable, international authorities to conduct inquiries into killings and attacks against media professionals, trade unionists, social workers, students and teachers and artists, wherever they occur, including in war and conflict zones. An end to impunity for the perpetrators of such acts would reinforce the crucial role that the rule of law must play in all societies.

66. The Special Rapporteur wishes to reiterate his proposal to the Commission on Human Rights concerning the need for an in-depth, impartial study on the issue of the security of journalists, in particular in situations of armed conflict, based on information from and the experiences of Governments and intergovernmental and non-governmental organizations.

67. The Special Rapporteur encourages Governments to ensure that the exercise of the freedom of opinion and expression through the media is open and accessible to various actors of the civil society, including local communities and minorities and vulnerable groups, in addition to economic and political groups.

68. The Special Rapporteur invites Governments to adopt laws and regulations allowing people to communicate freely over the Internet and to remove all present obstacles to the free flow of information. In this connection, the Special Rapporteur underlines that licensing procedures should be transparent, non-discriminatory and impartial and that limitations should be directed only at thwarting cybercrime, with special attention to the most heinous crimes such as paedophilia and trafficking in persons.

69. **To conform to international standards, national legislation should provide for libel and defamation cases to be dealt with under civil law. Any fines that are levied should not prevent the continuation of press activities and investigations and should be appropriate to the financial resources of journalists. The Special Rapporteur also notes that libel/defamation cases could equally be solved without recourse to the judiciary, but through the good offices of a mediator. National press associations and relevant independent authorities should be enabled to resolve such cases.**

70. **The Special Rapporteur encourages and supports the development of national and international initiatives aimed at monitoring the implementation of the right to information, including the right of access to information. He encourages all relevant national and international bodies to examine carefully proposals to develop these rights by the adoption of global and regional instruments or regulations on this matter.**

71. **The Special Rapporteur urges the United Nations and other intergovernmental organizations to contribute to such initiatives in order to enhance their transparency and credibility. In this context, the Special Rapporteur wishes to support the work done in relation to financial transparency and accountability, and its link with sustainable development, with special reference to the activities of multilateral development institutions. The Special Rapporteur would also give further consideration to the drafting of a set of recommendations supporting a comparative study of measures to better implement the right of access to information.**

## Annex

### HISTORICAL OVERVIEW OF THE MANDATE

1. In this section of the report, the Special Rapporteur wishes to cite some noteworthy activities, especially those carried out within the United Nations system, leading to the creation of the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The Special Rapporteur is convinced that, in the year of the second and final phase of the World Summit on the Information Society, such an exercise could make a contribution to a global assessment of recent, and less recent, achievements in the field of freedom of opinion and expression and could show new paths for action.

2. First, the Special Rapporteur wishes to note that the concept of freedom of opinion and expression, together with its ancillary rights, the right to freedom of information and the right of access to information, as well as the right to association, are well rooted in the most common international human rights instruments. Beyond the fundamental vision of article 19 of the Universal Declaration of Human Rights, substantive legal provisions support the concept of freedom of opinion and expression in most of the core human rights instruments. Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights; articles 8 and 15 of the International Covenant on Economic, Social and Cultural Rights; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 13 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families deal with various aspects of freedom of opinion and expression relevant to the mandate.

3. It is worth recalling some of the very first resolutions of the General Assembly on freedom of opinion and expression. Resolution 59 (I), adopted in 1946, declared: "Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated"; and "Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent." Resolution 110 (II), adopted in 1947, condemned "all forms of propaganda ... which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression". Resolution 127 (II), also of 1947, invited Member States to "study such measures ... as might be taken ... to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States".

4. A first element that can be gathered from those resolutions, as well as other documents, is that the concept of freedom of information, perceived as freedom of the media, prevailed over the more comprehensive concept of freedom of opinion and expression. The term "freedom of opinion and expression" appeared with force in article 19 of the Universal Declaration of Human Rights. Secondly, the wording used in the context of freedom of opinion and expression was heavily influenced by the outcome of the Second World War and by the beginning of the cold war. Not surprisingly, one of the recurring issues within the United Nations at that time was the maintenance of peace and the building of friendly relations among States. The use of false and distorted reports - a basic instrument of political propaganda - was considered a major threat to peace and a deterrent to the institution of a productive dialogue among countries.

5. The UNESCO Constitution, which entered into force in 1946, states that “States Parties to this Constitution, believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other’s lives”. Article 2 (a) of the Constitution states that the organization will “collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image”.

6. The first United Nations Conference on Freedom of Information was held in Geneva in March/April 1948 with the purpose of formulating views concerning the rights, obligations and practices that could be included in the concept of freedom of information. The Conference endorsed the concepts set out in Assembly resolutions 59 (I), 110 (II) and 127 (II) and endeavoured to reconcile them. Three draft conventions were annexed to the Final Act of the Conference<sup>1</sup> namely, the first one on gathering and international transmission of news; the second one concerning the institution of an international right of correction; and the third one on freedom of information.

7. The general aim of the draft convention on gathering and international transmission of news was to implement the right of peoples to be fully informed and to improve the understanding between peoples through the free flow of information and opinion. The draft convention contained 14 articles and dealt primarily with the duties of States with respect to “foreign correspondents”. The convention imposed on contracting States a number of duties with the aim of encouraging the freest possible movement of foreign correspondents in the exercise of their functions.

8. The draft convention on freedom of information was premised on the belief that free interchange of information and opinions in the national and the international sphere is a fundamental human right, as well as being essential in the cause of peace and for political/economic progress.<sup>1</sup> The main duty on contracting States was the obligation, set in article 1, that each State secure to all its nationals and to the nationals of every other contracting State lawfully within its territory, freedom to impart and receive information and opinions, orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices without governmental interference.

9. Since the Conference, United Nations bodies have had trouble in expounding and elaborating the concept of freedom of opinion and expression, agreeing upon its legitimate limitations and recommending effective measures for its realization. In spite of many efforts, the draft convention on freedom of information was never finalized nor opened for signature; this item appeared on the agenda of each regular session of the General Assembly from 1962 to 1980 before being abandoned. A similar, unfortunate fate surrounded the draft declaration on freedom of information, adopted by the Economic and Social Council, transmitted to the General Assembly in 1960 (resolution 756 (XXIX), annex) and finally dropped in 1980.

10. However, it is worth noting that the Conference, in its resolution No. 39, recommended that the Council extend the mandate of the Sub-Commission on Freedom of Information and of the Press, a body established in 1947 by the Commission on Human Rights, for a further three years. The Conference also recommended that the Sub-Commission initiate studies and make recommendations to the Council regarding, inter alia, the promotion of a wider degree of freedom of information and the minimization of restrictions thereto; the promotion of dissemination of true information to counteract Nazi, fascist or any propaganda of aggression or of racial, national and religious discrimination; the improvement of intergovernmental agreements and measures to facilitate the work of foreign news personnel.

11. In 1950, the Department of Social Affairs of the United Nations Secretariat prepared a two-volume compilation of materials on *freedom of information*.<sup>1</sup> Volume I contains the replies received from 33 Governments in response to a request from the Secretary-General to supply information on the status of freedom of information in their respective countries, including on measures to combat the diffusion of false or distorted reports likely to injure friendly relations between States. Volume II includes relevant articles of constitutions, legislative enactments and regulations, judicial decisions, codes of honour, and other related materials received as annexes to the replies published in volume I.

12. Another legal standard pertaining to the field of freedom of information was the Convention concerning the International Right of Correction.<sup>1</sup> It was opened for signature on 16 December 1952 and entered into force in August 1962. The Convention developed the concept of correction in the context of peaceful international relations with the aim of sharpening the sense of responsibility of various media of information. It was felt that the publication of inaccurate reports would endanger the maintenance of friendly relations between peoples and the preservation of peace. The Convention characterized inaccurate reports as “false” or “distorted” reports without criminalizing their publication. It acknowledged the impossibility - and undesirability - of envisaging the institution on the international level of a procedure for verifying the accuracy of reports that might lead to the penalizing of such publication. Thus, the approach promoted by the Convention was to offer to those directly affected by reports which they considered false or distorted the “possibility of ensuring commensurate publicity for their corrections”.

13. In resolution 442 C (XIV) of 13 June 1952 the Economic and Social Council appointed, for an experimental period of one year, and in a personal capacity, a rapporteur on matters relating to freedom of information. The Rapporteur - Salvador López - was charged with preparing a report covering major contemporary problems and developments in the field of freedom of information, together with recommendations regarding practical action which might be taken by the Council in order to surmount those obstacles to the fuller enjoyment of freedom of information.

14. In section 1 of his report, “Freedom of Information, 1953”<sup>1</sup> Mr. López presented an overview of the historical development of the concept of freedom of information, which he calls the most vulnerable freedom, prior to the United Nations; an overview of the work of the United Nations and specialized agencies; and an analysis of the reasons for the success or failure

of these efforts. Section 2 dealt with a number of related issues: rights and responsibilities of the media of information; propaganda for war and false/distorted information; internal censorship and the suppression and coercion of media of information; censorship of outgoing news dispatches; status and movement of foreign correspondents; laws affecting the press (constitutional trends, legislation aimed at preventing misuse of information, measures to protect freedom of information, and radio and newsreels); monopolies; professional standards; independence of information personnel; protection of sources; development of radio, film radio and television; professional training; the production and distribution of newsprint; press rates and priorities; international broadcasting; postal services; tariff and trade practices, and copyright. He concluded his report with a number of recommendations for immediate action by the Council, and on machinery and future tasks. Finally, Mr. López also prepared an update published as a supplementary report.<sup>1</sup>

15. In 1961, a consultant of the United Nations, Mr. Hilding Eek, prepared a report on developments in the field of freedom of information since 1954<sup>1</sup> which summarized the debates and the discussion on several issues surrounding freedom of information and related issues: freedom of information and the United Nations; the concept of freedom of information, legal approach and pragmatic approach. The report also included a section on facilities and obstacles to the free flow of information; a section on content and quality of information. Finally, the last part of the report was devoted to the availability of United Nations news.

16. Following a seminar held in New Delhi in 1962,<sup>1</sup> the Secretary-General organized a seminar on freedom of information, at the invitation of the Government of Italy, in April 1964 in Rome. The agenda of the seminar included: the role of Government; press laws; the role of publisher and proprietor; the role of the professional journalist; standards of journalism and the role of the reader. The general conclusions of the debates stated, inter alia, that in all countries, regardless of their social and political systems, the same basic problem existed: how to ensure that the great powers of the information media were used for the good of humankind and not as an instrument of tyranny. All countries delegations recognized certain common standards and aspirations, albeit that the ways of reaching the goals would differ, such as: information media should strive to enhance human dignity, broaden intellectual and moral outlook of peoples, bring about a better understanding between individuals and enable readers to play a responsible role in the affairs of the community and the world.

17. In the 1970s, the General Assembly remained seized of the issue of freedom of information and new resolutions adopted during that period were influenced by the debate on a new world economic order. In effect, in its resolution 33/115 B of 18 December 1978, the Assembly affirmed the need to establish a new, more just and more effective world information and communication order, intended to strengthen peace and international understanding and based on the free circulation and wider and better-balanced dissemination of information.

18. The issue of the right to freedom of opinion and expression surfaced at the level of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) during the late 1980s. In 1987, Louis Joinet produced a working paper concerning the detention of persons exercising the right to freedom of opinion or expression (E/CN.4/Sub.2/1987/15, annex I), followed by a working paper by Danilo Türk (E/CN.4/Sub.2/1989/26). By decision 1990/117, the

Sub-Commission took note of those authors' preliminary report (E/CN.4/Sub.2/1990/11), as Special Rapporteurs, entitled "The right to freedom of opinion and expression: current problems of its realization and measures necessary for its strengthening and promotion".

19. Mr. Joinet and Mr. Türk produced a final report in 1992 (E/CN.4/Sub.2/1992/9 and Add.1). The addendum contained the conclusions and recommendations of the two special rapporteurs. They stated that the report "endeavours above all to be an instrument for analysis, whose purpose is to help assess the extent to which the standards concerning freedom of opinion and expression are respected when decisions are taken in this area" (para. 3). In particular, the report showed that in most instances, criminal convictions of journalists are based on provisions of internal law, which, upon verification, invariably turn out to be restrictions that are inadmissible in a democratic society. Thus, journalists and other professionals in the field of information could have used the report as an instrument for the defence of their rights.

20. Moreover, the special rapporteurs stated that in cases where Governments take measures to restrict and/or prohibit xenophobic, racist, revisionist and/or neo-Nazi ideas, it is important to ensure that the admissible restrictions are not worse than the evil they are designed to remedy. They added that "restrictions must be interpreted and applied restrictively. In particular they must be in conformity with the principles of legitimacy, legality, proportionality and democratic necessity" (para. 5).

21. As to recommendations, the special rapporteurs proposed a discussion, in consultation with the professional information media and the specialized NGOs, of the "conditions under which the Sub-Commission could take the initiative of drawing up specific safeguard standards, especially with a view to lessening the possible risks to democracy of the theory of the so-called 'admissible' restrictions". Simultaneously, the Sub-Commission should study the "desirability of identifying those elements that constitute the 'hard core' of the freedom of opinion, expression and information which in no circumstances might give rise to restrictions or derogations".

22. It is worth emphasizing that the special rapporteurs proposed the introduction of a special procedure to assure the protection of professionals in the field of information, against the background of journalists too frequently subjected to many irregular sanctions or serious persecution. They proposed a number of options: a special rapporteur, the solution that they favoured; a working group of the Commission on Human Rights; or a request to the Secretary-General to produce periodic reports.

23. It is impossible here to do justice to all UNESCO initiatives in the field of freedom of expression. The Special Rapporteur nevertheless wishes to mention a few examples:

(a) In 1978, the Executive Board of UNESCO laid down a confidential procedure for the examination of complaints (called communications) received by the organization concerning alleged violations of human rights in its fields of competence, namely education, science, culture and communication. A subsidiary organ of the Executive Board, the Committee on Conventions and Recommendations, implements it. From 1978 to 2003, the Committee on Conventions and Recommendations considered 508 communications;

(b) The UNESCO General Conference at its twentieth session in 1978 proclaimed the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War;

(c) The best known UNESCO effort in this field is the proclamation in 1993 by the General Assembly, in its decision 48/432 of World Press Freedom Day to be celebrated on 3 May. In this connection, the Special Rapporteur wishes to commend the work of the advisory group on press freedom, which includes media professionals from all parts of the world, and the establishment in 1997 of the UNESCO/Guillermo Cano World Press Freedom Prize.

#### **Note**

<sup>1</sup> The full text of the statement is available at [www.ohchr.org](http://www.ohchr.org).

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