

# FREEDOM OF EXPRESSION & IMPUNITY CAMPAIGN

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CHALLENGING IMPUNITY:  
A PEN REPORT ON  
UNPUNISHED CRIMES  
AGAINST WRITERS AND  
JOURNALISTS

*PEN* CANADA  
for FREEDOM of EXPRESSION



*PEN Club de México*

Writers in Prison Committee  
**International PEN**  
defending writers under attack



Department of Foreign Affairs  
and International Trade



## **PROLOGUE**

The year-long Campaign on Freedom of Expression and Impunity, focusing on unsolved and unpunished crimes aimed at silencing writers and journalists, was launched on November 25, 2002, in San Miguel de Allende, Mexico, during a conference of the Writers in Prison Committee (WiPC) of International PEN. Direct actions have been taken throughout the year and culminated with the release of this PEN report on the problem of impunity and a roundtable during International PEN's 69th World Congress of Writers in Mexico in November 2003. Please visit <http://www.pencanada.ca/impunity/index.html>.

The campaign was led by PEN Canada and found partners in the Writers in Prison Committee of International PEN, PEN American Center and PEN Mexico. Thanks to all who took part.

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“Through my experience as co-plaintiff in the on-going trial to resolve the murder of my sister, Myrna Mack, I have seen impunity up close, along every step of this tortuous path in search of justice. I have felt it when essential information has been denied that would determine individual criminal responsibility; when judges and witnesses have been threatened; when the lawyers for the accused military officials use the same constitutional guarantees of due process in order to obstruct judicial procedures; and when my family, my lawyers, my colleagues and I have been threatened or been victims of campaigns to discredit us.

“In every action that is oriented toward generating impunity, one can clearly see the hand of agents of the State who use the same judicial and security institutions to pervert, once again, the goal of reparation through judicial means as well as the right to the truth and to justice.

“Nevertheless, I must acknowledge that, by being familiar with impunity so directly, it has made it possible for me to reflect on it and on the ways of combating it. This has allowed us to undertake studies and investigation whose sole aim is to identify the problems, propose comprehensive solutions and have a certain impact in order to contribute to the eventual modernization and democratization of the apparatuses of justice and of security.”

- *Helen Mack, sister of anthropologist Myrna Mack, who was murdered in 1990 on orders carried out by the Guatemalan military. Myrna Mack's killer was convicted in 1993; Helen Mack is still pursuing justice against the three former officers said to have ordered her sister's murder. PEN has advocated for justice in the murder of Myrna Mack for over a decade.*

## **INTRODUCTION**

### **What gives rise to impunity and how to put an end to it**

One would think that in a stable democracy such as Japan violent attacks against journalists and writers would be very rare. And that person would be correct: the last murder of a Japanese journalist occurred on May 3, 1987, when an unidentified gunman shot and killed *Asahi Shimbun* reporter Tomohiro Kojiri.

The last one, that is, until September 12, 2003, when Japan awoke to the shocking news that another member of the profession had been violently killed. Police found the body of freelance journalist Satoru Someya near a pier in Tokyo Bay. His body was wrapped in a weighted chain, his hands were tied with rope and he had eight stab wounds in his back and two gashes in his head. Someya had been missing since September 5.

The 38-year-old journalist had reported for various magazines about organized crime in Tokyo. In July, he published a book titled *Kabukicho Underground* about Chinese criminal groups operating in Kabukicho, Tokyo's notorious red light district. In the postscript to *Kabukicho Underground*, the journalist wrote that he might be in danger because of his investigations.

While authorities are said to be thoroughly investigating Someya's murder in order to identify and apprehend those responsible, hopes for a resolution to the case are not high, if one is to judge by the follow-up to Kojiri's killing: no one was ever convicted of that murder, and the statute of limitations on the case expired in May 2002.

The situation in Japan is troubling, not only because a prosperous, Western-style democracy is not immune to crimes against those who make a living by the written word but also because, if such a country fails to solve the murder of a journalist over a fifteen-year time span, what hope can there be for those seeking justice for the murder of journalists and writers in countries where democratic and judicial institutions are weak and/or corrupt?

The unpunished murder of writers and journalists around the world is a scourge that has hindered democratic development and the administration of justice. While some cases have resulted in the apprehension and punishment of those who both carried out and ordered the killings, the vast majority of cases remains unresolved.

The conditions that give rise to impunity are many. In several countries, a lack of a democratic culture impedes the thorough and successful investigation of the murder of writers and journalists. Several countries where the killings have occurred are not democratic, their citizens subjected to authoritarian rule. In these nations – where the media and writers often act as the de facto political opposition – the murders go unpunished, often without any investigation being undertaken. Other countries emerged from non-democratic rule only recently in their history, so have fledgling, inexperienced institutions that are currently incapable of carrying out the proper procedures that would result in the identification and condemnation of the killers. Furthermore, the politicians, technocrats and government authorities in some of those countries once belonged to the authoritarian

structure that existed before, and are now defenders of a so-called democracy that protects them, often through a form of “pardon and forgetting” that reigns in the country. In this environment, the structures that allow impunity will continue with greater strength.

A lack of political will means that governments often spend more time making excuses for their incompetence than devoting themselves to investigate the crimes. Some will even go as far as to launch smear campaigns against the victim. Bob Rivard, director of the *San Antonio Express-News* daily of Texas, commented, after a trip to Mexico to investigate the 1998 murder of American journalist Phillip True, that “[Mexican officials] never lacked for excuses, and we had to put up with the critical comments against [True] that served absolutely no purpose in advancing the investigation.”

Behind this government inaction usually lurks corruption. A deliberate unwillingness to intervene and to investigate is rooted in individuals occupying influential political and judicial positions who have been co-opted into not complying with the demands of justice and the rule of law. Government officials and judges are often complicit with those who violate the law. As noted journalist Jesús Barraza once asked rhetorically about his country, Mexico: “What class of country is this in which impunity is so great that criminals fear a reporter more than a policeman?” Journalists who denounce corruption and impunity, he said, “are becoming a kind of people’s prosecutor, displacing those who are charged with carrying out justice. In the people’s name we should continue to denounce prosecutors, police commanders, judges and magistrates so they all assume their real responsibility.”

The process to identify and prosecute those responsible for the murder of writers and journalists is lengthy and rarely yields successful results. In many countries, judicial authority is not independent of political power, which serves only to favour impunity. Independent of such ties, police and other arms of the judiciary are ill equipped to provide proper follow-up to cases. Investigative units – particularly those specifically designed to deal with such cases – are weak or non-existent. The lack of systematic documentation of the killings and information related to them makes exhaustive follow-up almost impossible. In general, action on attacks against journalists and writers is reactive, not proactive. “Threats are investigated only when they have been realized,” would be their motto – meaning only after the murder has been committed.

Attempts by victims’ colleagues, family and friends to seek justice are often met with acts of intimidation from elements connected to the crime. For example, following the 2002 murder of Philippine journalist Edgar Damalerio, his family became active in investigating the murder and bringing the perpetrators to justice. However, they faced harassment and obstruction as they searched for justice. Moreover, two witnesses to the killing were subsequently killed, while his family was forced to leave their home in Pagadian City out of fear for their safety after having received death threats.

Failure to investigate the murders thoroughly – which results in the killers remaining at large – effectively condones the crime. Why should someone who wishes to end the life of a journalist or writer refrain from carrying out the action, especially if that individual knows that no retribution or punishment will follow? For practitioners of the written word, to survive in such a climate of impunity invariably means compromise. That usually takes the form of self-censorship. The fear and uncertainty that result lead the writer and journalist to think first of protecting themselves and their families. What results is a form of writing and reporting that is selectively informative, hesitates to denounce, takes on a superficial appearance and fails to carry out a role of vigilance and criticism.

Proposed solutions put forward by those who seek to put an end to impunity for the killers of writers and journalists are, on the face of it, simple and not extensive. Herewith a sampling of the measures that can be taken:

- Have countries modify their legislation to allow for prosecution and punishment of those behind the killings
- Have the killers tried by regular courts (not special or, in some cases, secret courts)
- Ensure that authorities conduct immediate and tireless investigations
- Ensure that governments provide sufficient investigative and prosecutorial resources in order to identify those responsible
- Ensure that the judiciary be both independent and capable of condemning those responsible
- Have judicial authorities oversee reliable processes and provide for a real consequence of punishment, which will diminish such crimes in the future
- Have free expression organizations around the world collaborate on the matter of impunity
- In conflict situations, have the belligerents treat the media as part of the civilian population
- Have journalists and writers made aware of security and protection measures and be equipped with the tools necessary to protect themselves
- Encourage public (citizen) outrage at the murder of journalists and writers, since they represent their right to free expression and their outcry would encourage respect for that right
- Where perceived to be a benefit to the administration of justice, have domestic legislation modified so that the responsibility of investigating the murders be transferred from local/provincial authorities to federal ones; this would constitute a way of preventing the manipulation and pressure during investigations that is exercised by local police, public prosecutors and judges who are compromised or corrupt, as well as by those responsible for the murders, since they often have links to local authorities
- Moreover, by having national investigative and judicial entities oversee cases of murdered writers and journalists, they would be able to identify commonalities in the cases, to have clarity in regard to antecedents and to facilitate, among other things, how many of the murders had been preceded by threats – something that is not always easy to identify
- Have governments create a sub-unit in their prosecutorial branch that deals specifically with the murder of journalists and writers

The goal of seeing these proposed solutions become reality is difficult. However, courageous individuals and organizations around the world have persisted in seeking justice for fallen writers and journalists. Speaking this year from exile in the United States of America, Michèle Montas, the widow of slain Haitian journalist Jean Dominique, commented on the struggle to bring to justice those who ordered her husband's murder. Although six men have been convicted of the killing, five people involved in the case have died. In addition, the judge in the case was forced into exile.

Montas, herself a journalist, vowed to continue her fight from afar. "I feel sadness and betrayal," she said. "Anger. A lot of anger. Anger got me into this business in the first place. To me, Jean's assassination changed the meaning of my life. I am fighting to get justice. Not just for Jean, but the country we fought for."



## **COLOMBIA**

Universally acknowledged as currently the most dangerous place in the world to make a living through journalism or writing, Colombia has the statistical evidence to back up that assessment: since 1988, approximately 300 journalists in Latin America have been killed for doing their jobs, at least 115 in Colombia alone.

The embattled country's four-decade-long civil war has limited the full expression of human rights and, in the case of journalists, often placed them between the warring sides – with deadly consequences. Regardless of how they report, journalists invariably and unwittingly offend someone in this polarized conflict – primarily leftist rebels or right-wing death squads – and thus become targets of retaliation.

Members of the media also find themselves pressured by politicians accused of corruption or by elements in the country's lucrative drug trade. Several journalists have lost their lives due to their reporting on these other areas of the socio-political dynamic in Colombia.

In Colombia, the threats against journalists and freedom of expression are unique in the hemisphere, since they come mainly from groups that are beyond the law. That is to say, the violence does not originate with the state. Rather, government authorities have failed by omission. Successive administrations have not provided safeguards to protect journalists, particularly those who are explicitly threatened. This has perpetuated a climate of impunity and leaves the media wide open to deadly attacks. (In 2002 alone, at least 26 journalists were threatened with death; 20 of them fled their region or the country.)

Colombia's overburdened justice system is largely incapable of solving the crimes and punishing those responsible. For example, perpetrators were convicted in two murder cases in 2002; however, their acquittal in two other cases raised doubts about the workings of the justice system. Moreover, Colombia's decision last year to use the exemption allowed under article 124 when it ratified the Rome Statute creating the International Criminal Court (ICC) deprived Colombians of a new weapon against impunity. This article allows a country to declare that the court has no jurisdiction over war crimes committed in its territory for the first seven years of the court's existence. Yet more than half the crimes committed in Colombia are war crimes.

At the beginning of 2003, Colombia President Alvaro Uribe pledged to investigate crimes against journalists and to wage a battle against impunity.





## IRAN

Although it is estimated that some 30 writers and journalists have been killed in Iran since the Islamic Revolution in 1979, an analysis of the problem of impunity in the country can be done through the representative case of Nasser Zarafshan, the lawyer representing the victims of writers and intellectuals murdered in 1998.

The distinguished attorney is currently in prison after being convicted of “disseminating state secrets and the possession of firearms and alcohol.” Following a secret trial, a military court sentenced Zarafshan in March 2002 to five years’ imprisonment and fifty lashes. Zarafshan, who is also an author and translator, was serving as legal representative for the relatives of two of the families of Iranian writers and journalists who were assassinated in November 1998 in what came to be known in Iran as the “serial murders” case. The murdered journalists included Majid Charif, an editorialist with the monthly *Iran é Farda*, writer-journalists Mohamad Mokhtari and Mohamad Jafar Pouyandeh, and freedom of expression activists Darioush and Parvaneh Forouhar. The killings deeply shocked Iranians and outraged much of the reformist media.

The action against Zarafshan is said to be both in retribution for his criticism of the official investigation carried out into the murders and also a means of silencing others who seek the truth behind the killings.

In the spring of 2002, Zarafshan told Radio Free Europe’s Persian service that the charges against him were groundless. “Hundreds of people talked about the serial murders case and nobody was prosecuted until after November 1999, when the head of the judiciary issued an announcement that ‘whoever talks about this case will be prosecuted.’ But according to [the Islamic Republic’s] law on punishment, only those who commit a crime are punishable, not those who merely talk about a crime,” he said.

Zarafshan has reportedly appealed to the Supreme Court, and is said to be undergoing medical examinations to ascertain whether he is healthy enough to face the flogging sentence.

The deadly circumstances that befall writers and journalists in Iran again returned to the spotlight this year with the killing of Zahra Kazemi, an Iranian-born photojournalist who held Canadian citizenship. Kazemi had returned to her homeland on assignment. She was arrested on June 23 outside Tehran’s Evin prison for taking unauthorized photographs and died from a brain haemorrhage on July 10. An official report into her death concluded that

she died after a blow to the head received in custody. An Iranian magistrate ruled out premeditated murder in Kazemi's death but upheld charges of "quasi-intentional murder" against an intelligence agent.

In October, Iranian lawyer and Nobel Peace Prize laureate Shirin Ebadi announced that she had agreed to represent Kazemi's mother at trial in Tehran of an intelligence agent implicated in Kazemi's death. In addition, a Canadian delegation of two government observers and one independent observer have been given permission to attend the trial, which was scheduled to begin in November 2003, in Tehran. This agreement could allow an unprecedented view into Iran's usually secretive legal system.



**MEXICO**

In a country where good news regarding the resolution of unsolved murders of journalists is rare, the recent acknowledgement by the Mexican government that it was prepared to pursue investigations into the murder of two journalists was viewed as a minor breakthrough in combating impunity in the country.

In late October 2003, government representatives met with the Inter American Press Association (IAPA) at the Inter American Commission on Human Rights (IACHR) office in Washington, where a readiness was achieved to reach a "follow-up agreement" between the parties to resolve the cases. The murders in question concern those of Héctor Félix Miranda and Víctor Manuel Oropeza, murdered in 1988 and 1991, respectively. In the case of Félix, the mastermind behind the crime has not been identified, while in the case of Oropeza neither have those who carried out the murder. The cases were taken up by the IACHR in 1999, the year in which that agency noted that the Mexican state had an "international responsibility" due to the delay in justice being done and the violation of the right to freedom of expression and to legal guarantees and protection under the law, to the detriment of the victims' family members.

Three years after the historic election of Vicente Fox, which ended 75 years of one-party rule in Mexico, the country is being governed somewhat more democratically. However, threats, attacks and intimidation of journalists remain commonplace in provinces where those responsible are often local politicians, officials and police who find it hard to accept an independent press. Meanwhile, reporters covering high-crime areas, especially near the U.S.-Mexico border, which is rife with drug traffickers, still face danger. Since 1988, at least 37 journalists have been killed in Mexico. Impunity reigns in the majority of these cases.

A measure that press freedom organizations have identified as key to securing convictions of those behind the murders is to have crimes against journalists regarded as federal, not state, offences. This would ensure greater transparency in the judicial process and that the cases be dealt with openly and rapidly. As IAPA commented following the October 2003 meeting with the Mexican government, “this could be a great opportunity to combat impunity.”



## **PHILIPPINES**

The Philippines is generally viewed as having one of the freest media in Asia. The country's journalists take pride in the vibrancy of their profession, which is largely free of government controls. Unfortunately, that energy has come with a price. The Philippines is the most dangerous country in the region for journalists. To date, 37 journalists have been killed since the restoration of democracy in 1986, all without a conviction.

Despite the existence of constitutional and legal safeguards designed to protect human rights and ensure a fair trial, a climate of impunity persists to this day. The results of police investigations have rarely been made public nor have any perpetrators been brought to justice. In the case of Edgar Damalerio, a journalist who was murdered in 2002, two witnesses have been killed, while his family has received threats and been forced to leave their home in Pagadian City out of fear for their safety.

The most recent murders of journalists highlight the threats that they face. On September 2, police announced the discovery of the body of Rico Ramirez on August 20 in San Francisco, in Agusan del Sur province; but they did not explain the two-week delay. A journalist for DXSF radio station, Ramirez was shot dead, in apparent reprisal for his recent reports on local organized crime and drug trafficking.

His death followed the August 19 killing of journalist Noel Villarante. The reporter for DZJV radio and the *Laguna Score* newspaper was shot and killed by a gunman outside his house in Santa Cruz City. Villarante was known for his critical reports on allegedly corrupt local officials and drug traffickers. Soon after the murder, Santa Cruz police chief superintendent Renato Paras said that investigators were hesitant to reveal too many details about the case because high-profile individuals could be behind the killing.

In response to this climate of impunity, the Centre for Media Freedom and Responsibility (CMFR) in Manila and other media organizations, including the Philippine Centre for Investigative Journalism, established the Freedom Fund for Filipino Journalists. The FFFJ raises funds to protect journalists under threat and provide assistance to the families of

journalists killed in the line of duty. It will also follow up the prosecution of cases involving attacks against journalists and promote responsible journalism as a way to protect journalists. Most recently, the government of the Philippines has offered a 1 million Peso (US\$18,000) reward for the capture of individuals who have murdered journalists in the past five years.



## **RUSSIA**

Since Communism collapsed in the former Soviet Union and Eastern Europe at the end of the 1980s, the independent states that emerged from the ashes of that political structure have struggled to erect lasting democratic institutions.

In Russia, as in many of its neighbouring countries, that effort continues. In the meantime, members of the Russian media have become targets for elements in society who would wish to keep them silent. Since 1991, over 120 journalists and media workers have been killed, the majority of them as a result of their professional activities.

The majority also remain unsolved. According to Aleksei Simonov of the Glasnost Defense Foundation in Moscow, since 1994, approximately 90 per cent of the killings of journalists remain unsolved. In general, local governments are often slow to investigate, and Russian bureaucracy is notoriously lethargic. This is especially true concerning the cases of murdered journalists.

Harassment of journalists is not uncommon in Russia's provinces, where powerful local leaders and businessmen are often intolerant of any critical reporting. Indeed, since Communism's fall, Russia has become a perilous place in which to be a journalist. In contrast to well-publicized administrative and political harassment of news media in Moscow and other major areas, the murders of journalists happen mostly far from the public eye, in provincial towns where criminal overlords enforce a particularly brutal form of censorship. This class of gangsters, which emerged from the chaos of the Soviet Union's collapse, often bought the local police, prosecutors and judges, who accepted bribes to supplement their meagre salaries. In essence, they bought virtual impunity. Consequently, fewer Russian journalists believe that muckraking and investigative reporting is worth the effort anymore.

One recent glimmer of hope occurred in May 2003, when the Military Collegium of the Supreme Court yesterday overturned a June 2002 acquittal of six men accused of organizing the 1994 murder of popular Moscow journalist Dmitry Kholodov. The Court ruled that the Moscow Circuit Military Court had "failed to take all available evidence into account" during the 18-month trial, which began in November 2000. However, it remains to be seen if justice in this case – which is nearly a decade overdue – will result.

**The following is a list of writers and journalists around the world who have been killed since 1992 in violation of their right to freedom of expression. International PEN has documented all of these murders in its case lists.**

Luis Filipe Batalha, ANGOLA  
 David Bernadino, ANGOLA  
 Fernando Marcelino, ANGOLA  
 Rahbar Bashiroglu, AZERBAIJAN  
 Salim Haggi, AZERBAIJAN  
 Zawtika, BURMA  
 d'Albo Madjigoto, CHAD  
 Lacides Casas, COLOMBIA  
 Fredy Mario Erazo, COLOMBIA  
 Carlos Alberto Llanos, COLOMBIA  
 Arnaldo Andrés Rivas Ronquillo, ECUADOR  
 Fereidoun Farokhzad-Araghi, GERMANY  
 Manuel Estuardo Peñá, GUATEMALA  
 Chan Kang-nan, HONG KONG  
 Mustapha Jeha, LEBANON  
 Ignacio Mendoza Castillo, MEXICO  
 Moubarak Shahov, TAJIKISTAN  
 Tura Kobilov, TURKEY  
 Halit Gungen, TURKEY  
 Musa Anter, TURKEY  
 Huseyin Deniz, TURKEY  
 Izzet Keser, TURKEY  
 Yekta Okur, TURKEY  
 Manuel de Dios Unanue, USA  
 Paul Jenks, YUGOSLAVIA  
 Mahfoud Boucebsi, ALGERIA  
 Tahar, Laadi Flici, ALGERIA  
 Jose Manuel, ANGOLA  
 Jose Maria Dos Santos, ANGOLA  
 Kamo Marioukian, ARMENIA  
 Guido Puletti, BOSNIA  
 Ranko Elez, BOSNIA  
 Ibrahim Goskel, BOSNIA  
 Milos Vujovic, BOSNIA  
 Carlos Lajud Catalan, COLOMBIA

Eustorgio Colmenares, COLOMBIA  
 Gerardo Didier Gomez, COLOMBIA  
 Jorge Carpio Nicolle, GUATEMALA  
 Dinesh Pathak, INDIA  
 Giuseppe Alfano, ITALY  
 Vitas Lingys, LITHUANIA  
 Jessica Elizalde De Leon, MEXICO  
 Roberto Mancilla Herrera, MEXICO  
 Rosauro Lao, PHILIPPINES  
 Ding Sade, PHILIPPINES  
 Callixte Kalissa, RWANDA  
 Calvin Thusago, SOUTH AFRICA  
 Saidmurad Yerov, TAJIKISTAN  
 Tohizdjon Azimov, TAJIKISTAN  
 Mouhtor Bougdiev, TAJIKISTAN  
 Djamched Davlatmamedov, TAJIKISTAN  
 Tohir Malik, TAJIKISTAN  
 Tohir Olimov, TAJIKISTAN

Ihsan Karakus, TURKEY  
 Ugur Mumcu, TURKEY  
 Makoba Bidimu, ZAIRE  
 Mirwais Jalil, AFGHANISTAN  
 Abdelkader Alloula, ALGERIA  
 Hassan Benaouda, ALGERIA  
 Yahia (Djamel) Benzaghoul, ALGERIA  
 Ferhat Cherkit, ALGERIA  
 Abdelkader Hireche, ALGERIA  
 Mohamed Salah Benachour, ALGERIA  
 Tayeb Bouterfif, ALGERIA  
 Yasmina Drici, ALGERIA  
 Ahmed Issaad, ALGERIA  
 Mohamed Lamine Legoui M'Sila, ALGERIA  
 Nasserredine Lekhal, ALGERIA  
 Said Mekbel, ALGERIA  
 Smail Sbaghdi, ALGERIA  
 Farah Ziane, ALGERIA  
 Mohamed Hassaine, ALGERIA  
 Varges Petrosyan, ARMENIA  
 Joao Alberto Ferreira Souto, BRAZIL  
 Hemogenes Da Silva Almeida, BRAZIL

**Thun Bun Ly, CAMBODIA**

“I want to do whatever I can so that Cambodia has democracy the same as other people in the world...There is less democracy if we can't print.” These are the words of newspaper editor Thun Bun Ly, some six months before he was shot dead in Phnom Penh on May 18, 1996. Ly was managing editor of *Uddomgatkhemer*. One week before his murder, in the columns of his paper, he had virulently criticised the wife of the country's Second Prime Minister and the ruling party's strong man, Hun Sen. In 1995, Ly had been sentenced to close down the publication because of his anti-government comments. In 2002, his murderers still roam free and no serious inquiry has been launched to find them and put them on

Arkady Rouderman, TAJIKISTAN  
 Kourbon Tagoev, TAJIKISTAN  
 Ousmon Touychiev, TAJIKISTAN  
 Fayzouloev, TAJIKISTAN  
 Kichvaroy Charifova, TAJIKISTAN  
 Mourodoulo Cherabiev, TAJIKISTAN  
 Metin Altiok, TURKEY  
 Dr Behcet Sefa Aysan, TURKEY  
 Asim Bezirci, TURKEY  
 Nesimi Cimen, TURKEY  
 Hasret Gultekin, TURKEY  
 Ugur Kaynar, TURKEY  
 Asaf Kocak, TURKEY

Alexis Bandyatuyaga, BURUNDI  
 Tou Chhom Mongkol, CAMBODIA  
 Chan Dara, CAMBODIA  
 Nun Chan, CAMBODIA  
 Abelardo Marin Pinzon, COLOMBIA  
 Horacio Yepes Lozano, COLOMBIA  
 Martin Eduardo Munera del Rio, COLOMBIA  
 Orlando Vilar Jimenez, COLOMBIA  
 Manuel Cepeda Vargas, COLOMBIA  
 Mohammad Hussein Navab, CROATIA

Sabaratnam Sabalingam, FRANCE  
 Marquense Oliviero Munoz Barrios, GUATEMALA  
 Victor Hugo Lopez Escobar, GUATEMALA  
 Ram Narain Gupta, INDIA  
 Ghulam Muhammad Lone, INDIA  
 Reverend Mehdi Dibadj, IRAN  
 Reverend Tatavous Michaelian, IRAN  
 Lissy Schmidt, IRAQ  
 Hani Abed, ISRAEL/PALESTINE  
 Vincent Tulloch, JAMAICA  
 Victor Randrianarina, MADAGASCAR

Charles Bideri-Munyangabe, RWANDA  
 Thirty-four print and TV journalists, April 1994, RWANDA  
 Johann Heyns, SOUTH AFRICA  
 Olim Abdulov, TAJIKISTAN  
 Khoshvakht Haydarsho, TAJIKISTAN  
 Rifat Oztungor, TURKEY  
 Ahmet Ozturk, TURKEY  
 Pierre Kabeya, ZAIRE  
 Adolphe Kavula Missamba, ZAIRE  
 Ali Abboud, ALGERIA  
 Mohammed Abderrahmani, ALGERIA  
 Boukerbache Ali, ALGERIA

Aristeu Guida Da Silva, BRAZIL  
 Zaqueu de Olivera, BRAZIL  
 Marcos Borges Ribeiro, BRAZIL  
 Reinaldo Couthino Da Silva, BRAZIL  
 Pamphile Simbizi, BURUNDI  
 Francis Vincent, BURUNDI  
 Gu Jieshu, CHINA  
 Alvaro Gomez Hurtado, COLOMBIA  
 Ernesto Acero Cadena, COLOMBIA  
 Gabriel Cruz Diaz, COLOMBIA  
 Alberto Antoniotti Monge, GUATEMALA  
 Ahmad Miralai, IRAN  
 Ruperto Armenta Gerardo, MEXICO  
 Ken Saro-Wiwa, NIGERIA  
 Vladislav Listyev, RUSSIA  
 Vadim Alferyev, RUSSIA  
 Natalya Alyakina, RUSSIA  
 Muhiddin Olimpuri, TAJIKISTAN  
 Bekir Kutmangil, TURKEY  
 Sayfettin Tepe, TURKEY  
 Al-Haji Musa Hussein Mjuki, UGANDA  
 Vladimir Ivanov, UKRAINE  
 Tarsem Singh Purewal, UNITED KINGDOM  
 Allaoua Ait M'Barak, ALGERIA  
 Abdallah Bouhachek, ALGERIA  
 Djamel Derraz, ALGERIA  
 Mohammed Dorbane, ALGERIA  
 Mohamed Mekati, ALGERIA  
 Belkacem Saadi, ALGERIA  
 Khaled Aboulkacem, ALGERIA  
 Mokrane Amouri, ALGERIA  
 Farida Bouzain, ALGERIA  
 Mohamed Guessab, ALGERIA  
 Atonio Casemero, ANGOLA  
 S.M. Alauddin, BANGLADESH  
 Thun Bun Ly, CAMBODIA  
 Norvey Diaz, COLOMBIA  
 Kutlu Adali, CYPRUS  
 Xavier Gautier, FRANCE  
 Reza Mazhouman, FRANCE  
 Kandiah Gajendram, FRANCE  
 Kandiah Perinpanatham, FRANCE  
 Juan Jose Yantuche, GUATEMALA  
 Israel Hernandez Marroquin, GUATEMALA  
 Cesar Armando Pena, HONDURAS  
 Parag Kumar Das, INDIA  
 Ghulam Rasool Sheikh, INDIA  
 Fuad Muhammad Syafrudin, INDONESIA  
 Veronica Guerin, IRELAND  
 Yolanda Figueroa, MEXICO  
 Fernando Balderas, MEXICO

**Norbert Zongo. BURKINA FASO**

Norbert Zongo was the publisher of the weekly newspaper *l'Indépendant*. He and three friends were found dead in his burnt-out car on December 13, 1998. His death set off a wave of demonstrations throughout the country. On May 7, 1999, a government-appointed independent commission of inquiry concluded that his murder was connected with the investigations he had made as a journalist over the years, especially one of his last probes, into the death of David Ouedraogo, the driver of François Compaoré, an official adviser to his brother, President Blaise Compaoré. Over four years later, Zongo's murder remains unpunished. Journalists who are especially critical of the Compaoré regime continue to be subject to threats and harassment.

Jorge Martin Dorantes, MEXICO  
 Enrique Peralta Torres, MEXICO  
 Jose Luis Rojas, MEXICO  
 Lokendra Kumar Burathoki, NEPAL  
 Mohammed Salahuddin, PAKISTAN  
 Mohammed Samdani Warsi, PAKISTAN  
 Sergei Dubov, RUSSIA  
 Andrei Azderdzis, RUSSIA  
 Dmitry Kholodov, RUSSIA  
 Vincent Rwabukwizi, RWANDA  
 Andre Kameya, RWANDA  
 Emmanuel-Damien Rukondo, RWANDA  
 Alfonse Rutsindura, RWANDA  
 Gratien Karambizi, RWANDA  
 Charles Karinganire, RWANDA  
 Marcellin Kayirnaga, RWANDA  
 Sixbert Mbuguje, RWANDA  
 Jeanne d'Arc Mukamuson, RWANDA  
 Venant Ntawucikayenda, RWANDA  
 Ignace Ruhatana, RWANDA  
 Anastase Seruvumba, RWANDA  
 Obed Bazimaziki, RWANDA

Bakhti Benaouda, ALGERIA  
 Mekhlouf Bouzker, ALGERIA  
 Nabila Djahnine, ALGERIA  
 Rachida Hammadi, ALGERIA  
 Mourad Hmaizi, ALGERIA  
 Nasser Ouari, ALGERIA  
 Malika Sabour, ALGERIA  
 Azzedine Saidj, ALGERIA  
 Zineddine Aliou Salah, ALGERIA  
 Abdelmajid Yahiaoui, ALGERIA  
 Djamel Ziatar, ALGERIA  
 Mohammad Belkacem, ALGERIA  
 Said Brahmi, ALGERIA  
 Yasmina Brikh, ALGERIA  
 Khedidja Dahmani, ALGERIA  
 Saida Djebaili, ALGERIA  
 Brahim Gueroui, ALGERIA  
 Naima Hamouda, ALGERIA  
 Hamid Mahiout, ALGERIA  
 Ameur Ouageni, ALGERIA  
 Omar Ouartilan, ALGERIA  
 Said Tazrout, ALGERIA  
 Ricardo de Mello, ANGOLA  
 Adalerto Costa, ANGOLA  
 Guillermo Cherasny, ARGENTINA

Zafar Iqbal, PAKISTAN  
Ghulam Sarwar Jatak,  
PAKISTAN  
Ferdinand Reyes, PHILIPPINES  
Roberto Berbon, PHILIPPINES  
Nadezhda Chaikova, RUSSIA  
Viktor Mikhailov, RUSSIA  
Nina Yefimova, RUSSIA  
Anatoly Belousov, RUSSIA  
Nikita Chigarkov, RUSSIA  
Kim En Chan, RUSSIA  
Ramzan Khadzhev, RUSSIA  
Sergei Semisotov, RUSSIA  
Victor Nikulin, TAJIKISTAN  
Metin Goktepe, TURKEY  
Selahattin Daloglu, TURKEY  
Igor Grouchetsky, UKRAINE  
Sergei Grebenyuk, UKRAINE  
Jose Luis Cabezas,  
ARGENTINA  
Milorad Ostojic, BOSNIA  
Natan Pereira Gatinho, BRAZIL  
Edgard Lopes de Faria, BRAZIL  
Gerardo Bedoya Borrero,  
COLOMBIA  
Alejandro Jaramillo, COLOMBIA  
Francisco Castro Menco,  
COLOMBIA  
Jairo Elias Marquez, COLOMBIA  
Altaf Ahmed Faktoo, INDIA  
Saidain Shafi, INDIA  
Mohammad Sayuti Bochari,  
INDONESIA  
Ebrahim Zalzadeh, IRAN  
Christopher Gehring,  
KAZAKHSTAN  
Abel Jesus Bueno Leon,  
MEXICO  
Benjamin Flores Gonzalez,  
MEXICO  
Victor Hernandez Martinez,  
MEXICO  
Latif Azeem, PAKISTAN  
Manzar Imkani, PAKISTAN  
Muzaffer Sharma, PAKISTAN  
Miguel Bravo Quispe, PERU  
Pilco Mori, PERU  
Danny Hernandez,  
PHILIPPINES  
Vadim Biryukov, RUSSIA  
Valery Krivosheyev, RUSSIA  
Alexander Krutik, RUSSIA  
Appolos Hakizimana, RWANDA  
Pyotr Shevchenko, UKRAINE  
Boris Derevyanko, UKRAINE  
Mahmoud Sarem,  
AFGHANISTAN  
Saiful Alam Makul,  
BANGLADESH  
Norbert Zongo, BURKINA  
FASO  
Fabien Fortune Bitoumbo,  
CONGO  
Donziete Aduato, BRAZIL

Tara Singh Hayer, CANADA  
Saul Alcazar, COLOMBIA  
Jose Arturo Guapacho,  
COLOMBIA  
Luz Amparo Jimenez Pallares,  
COLOMBIA  
Mohamad Mokhtari, IRAN  
Mohammad Ja'far Pouyandeh,  
IRAN  
Majid Sharif, IRAN  
Pirouz Davani, IRAN  
Hassan Hamiye, LEBANON  
Claudio Cortes Garcia, MEXICO  
Fernando Martinez, MEXICO  
Pedro Valle Hernandez,  
MEXICO  
Philip True, MEXICO  
Lakhano Siyal, PAKISTAN  
Anatoly Levin-Utkin, RUSSIA  
Mauricio Cristovao, ANGOLA  
Ricardo Gangeme,  
ARGENTINA  
Tigran Hayrapetian, ARMENIA  
Jaime Garzon, COLOMBIA  
Guzman Quintero Torres,  
COLOMBIA  
Shivani Bhatnagar, INDIA  
Anil Rattan, INDIA  
N.A. Lalrohlu, INDIA  
Supriadi, INDONESIA  
Sander Thoenes, INDONESIA  
Agus Muliawan, INDONESIA  
Hamid Al-Moukhtar, IRAQ  
Abdoulaye Bakayoko, IVORY  
COAST  
Bolade Fasasi, NIGERIA  
Fidelis Ikwuebe, NIGERIA  
Sam Nimfa-Jan, NIGERIA  
Nawaz Zulfiqar Memon,  
PAKISTAN  
Slavko Curuvija, SERBIA  
Alpha Amadu Bah Bah, SIERRA  
LEONE  
Jenner Cole, SIERRA LEONE  
Mohammed Kamara, SIERRA  
LEONE  
Paul Manasaray, SIERRA  
LEONE  
Charles Hinga, SIERRA LEONE  
Abdulai Jumah Jalloh, SIERRA  
LEONE  
Mabay Kamara, SIERRA  
LEONE  
James Ogogo, SIERRA LEONE  
Munir Turay, SIERRA LEONE  
Rohana Kumara, SRI LANKA  
Atputharajah Nadarajah, SRI  
LANKA  
Suleyman Yetter, TURKEY  
Ahmet Taner Kislali, TURKEY  
Konca Kuris, TURKEY  
Illais Hossain, BANGLADESH  
Shamsur Rahman,  
BANGLADESH

Maria Elena Gallego,  
COLOMBIA  
Antonio Gomez Gomez,  
COLOMBIA  
Carlos Restrepo Rocha,  
COLOMBIA  
Humberto Garces Angulo,  
COLOMBIA  
Antonio Russo, GEORGIA  
V. Selvaraj, INDIA  
Thoumaojam Brajamani Singh,  
INDIA  
Xhemajl Mustafa, KOSOVO  
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MEXICO  
Carlos Cardoso,  
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Igor Domnikov, RUSSIA  
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LEONE  
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SPAIN  
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KINGDOM  
Harunur Rashid,  
BANGLADESH  
Maria Teresa Guzman de  
Carrasco, BOLIVIA  
Orlando Sierra Hernandez,  
COLOMBIA  
Victor Omar Acosta,  
COLOMBIA  
Felix Alonso Fernandez Garcia,  
MEXICO  
Krishna Sen, NEPAL  
Daniel Pearl, PAKISTAN  
Edgar Damalerio, PHILIPPINES

Valery Ivanov, RUSSIA  
Sergei Kalinovsky, RUSSIA  
Natalia Skryl, RUSSIA  
Valerii Balyuev, RUSSIA  
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Parvaz Mohammed Sultan, INDIA  
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Luis Eduardo Alfonso Parada, COLOMBIA  
Efraín Valera, COLOMBIA  
Kloueu Gonzreu, IVORY COAST  
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#### **Georgy Gongadze, UKRAINE**

On September 16, 2000, 31-year-old journalist Georgy Gongadze, publisher of the Internet journal *Ukrainska Pravda*, disappeared. His body was later found decapitated in a ditch in a suburb of Kiev. Gongadze had been investigating corruption at the heart of Ukraine's government. A key witness in the case, Igor Goncharev, died in police custody in mysterious circumstances. Goncharev, in a written statement, had implicated several top government officials in Gongadze's murder. Since his death, at least two more journalists in Ukraine have also been killed.



## **PEN Recommendations and Advocacy on Impunity**

### **1. The United Nations**

International PEN welcomes the various resolutions emerging from the UN Commission on Human Rights on impunity that recognise the importance of combating impunity for all human rights violations and calls on States to take action to hold accountable perpetrators, including their accomplices, of violations of international human rights and humanitarian law. PEN is confident that the Special Rapporteur on Freedom of Expression, alongside other special rapporteurs and mechanisms of the Commission, will follow the resolutions' recommendation to continue to give due consideration to the issue of impunity in the discharge of their mandates.

PEN centres and others are requested to write to their own government delegations to the UN Commission on Human Rights:

- Raising concerns that over 400 writers and journalists have been killed in the practice of their right to freedom of expression since 1992;
- Pointing out that few of those who have committed murder or ordered the killing of writers and journalists are brought to justice, and that the vast majority are thus granted impunity;
- Urging that all States take note of and abide by the UNCHR resolutions and that government delegations to the UN Commission session promote and support further measures ensuring that those who carry out murder to silence their critics can no longer do so without fear of prosecution.

International PEN supports consideration by the UN Commission on Human Rights to appoint an independent expert to examine all aspects of impunity. In this regard, the organisation:

- Supports the appointment of an independent expert to prepare an updated version of a set of principles, with a view to its adoption by the Commission;
- Notes the need to take account of the many possible types of action against impunity that may be adopted, depending on cultural, legal and judicial particularities, and to take steps to ensure that it take account of the ethical and moral aspects of the duty to remember the victims and provide redress;
- Asserts that exposing violations of human rights and holding their perpetrators and accomplices accountable are integral to the promotion and implementation of all human rights and fundamental freedoms and to the prevention of future violations;
- Also calls on the UN Special Rapporteur for Freedom of Expression to continue to give due consideration to the issue of impunity in the discharge of his/her mandate.

## 2. Latin America and regional institutions

International PEN:

- Asks that national governments, where appropriate, give the necessary co-operation to the Inter-American Commission on Human Rights and its Special Rapporteur for Freedom of Expression, which have agreed to take up the investigation and corresponding legal proceedings of specific cases in those countries;
- Urges the Inter-American Court of Human Rights to resolve those matters that have been brought before it concerning freedom of expression and crimes committed against journalists and writers during the course of their work, creating case-law on the issue of freedom of expression, the right of people to information and the safety of journalists and writers;
- Requests that the Inter-American Commission on Human Rights include as a subject for review in its on-site visits and in its general country-by-country reports the issue of freedom of expression and the question of the safety of journalists and writers;
- Urges all governments in the Americas to provide for the necessary resources so that the Inter-American Commission on Human Rights can exercise its function of protecting human rights, specifically the processing of individual cases concerning the murder of journalists and writers, and to require that the American states provide the Inter-American Commission on Human Rights with all relevant information in their possession concerning cases of murders of journalists and writers within the legal time frames required.

## 3. Governments and international institutions

International PEN:

- Urges the prohibition of amnesties or pardons of those responsible for these crimes;
- Urges enactment in those countries, where necessary, of laws prohibiting trial by military or special tribunals of those accused of crimes against journalists and writers;
- Recommends to multilateral and bilateral institutions of international co-operation and financial assistance that they require from recipient countries as a specific condition of eligibility full respect for freedom of expression and effective protection of the exercise of press freedom, also to recommend to these institutions that the murder of journalists and writers and the lack of punishment toward those responsible should be cause for revision, suspension or revocation of such co-operation;
- Calls upon governments and national congresses to adopt the principle that there should be no statute of limitations for crimes against persons when these are perpetrated to prevent the exercise of freedom of information and expression or when their purpose is the obstruction of justice;
- Calls upon governments and national congresses to refine legislation to make it possible to prosecute and sentence those who instigate the assassination of persons exercising the right to freedom of expression;

- Urges that legal provision be made for the persons responsible for offences against journalists and writers exercising their professional duties and the media to be judged before civil and/or ordinary courts.

### Freedom of Expression and the Administration of Justice

International PEN states that:

- Special restrictions on commenting on courts and judges cannot be justified; the judiciary play a key public role and, as such, must be subject to open public scrutiny;
- No restrictions on reporting on ongoing legal proceedings may be justified unless there is a substantial risk of serious prejudice to the fairness of those proceedings and the threat to the right to a fair trial or to the presumption of innocence outweighs the harm to freedom of expression;
- Any sanctions for reporting on legal proceedings be applied only after a fair and public hearing by a competent, independent and impartial tribunal; the practice of summary justice being applied in cases involving criticism of judicial proceedings is unacceptable;
- Courts and judicial processes, like other public functions, are subject to the principle of maximum disclosure of information that may be overcome only where necessary to protect the right to a fair trial or the presumption of innocence;
- Judges' right to freedom of expression, and to comment on matters of public concern, should be subject only to such narrow and limited restrictions as are necessary to protect their independence and impartiality;
- Although the decision to prosecute lies primarily within the competence of the State, supplementary procedural rules should be introduced to enable victims to institute proceedings, on either an individual or a collective basis, where the authorities fail to do so, particularly as civil plaintiffs. This option should be extended to non-governmental organisations with recognized long-standing activities on behalf of the victims concerned.

#### 4. Other human rights / freedom of expression organisations

As part of an international group of organisations dedicated to the defence of freedom of expression, International PEN pledges to:

- Encourage the dispatch of multi-organisation investigative missions to the countries concerned to highlight to authorities the safety of journalists and writers and the need to conduct investigations and legal proceedings without delay;
- Raise awareness of the issue of impunity with country officials and within PEN centres through an ongoing Impunity Watch;
- Study ways to fund legal actions and investigations so that crimes against journalists and writers do not go unpunished; and,
- Intensify and promote the exchange of information and objectives among organisations dedicated to the protection, defence and promotion of freedom of

expression, making the issue of lack of punishment in the murder of journalists and writers a priority.

5. General statements on impunity

International PEN:

- Notes that impunity generally arises from a failure by States to meet their obligations to investigate violations, to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that they are prosecuted, tried and punished, to provide victims with effective remedies and reparation and to take steps to prevent any recurrence of such violations;
- Repudiates the murder of and all physical violence directed against journalists and writers as one of the greatest crimes against society, in that it restricts freedom of expression and, as a result, all other rights and freedoms;
- Repudiates acts of commission or omission by those who have the responsibility to investigate and mete out punishment for those crimes but fail to do so, allowing the guilty to go unpunished, thus making the matter even more serious;
- Demands that the authorities carry out their duty to prevent, investigate and mete out punishment for these crimes and to make good for their consequences;
- Irrespective of any legal proceedings, notes that victims, their families and relatives have the right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate.

## **Resources on Impunity**

### **Legislation and resolutions:**

Commission on Human Rights Resolution 2003/72: Impunity

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.72.En?OpenDocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.72.En?OpenDocument)

Commission on Human Rights Resolution 2003/42: Right to freedom of opinion and of expression)

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.42.En?OpenDocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.42.En?OpenDocument)

Commission on Human Rights Resolution 2002/79: Impunity

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/cd893dbd5bbd5ed7c1256bab0051565d?OpenDocument>

International Mechanisms for Promoting Freedom of Expression – Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (2002)

[http://www.osce.org/documents/rfm/2002/12/190\\_en.pdf](http://www.osce.org/documents/rfm/2002/12/190_en.pdf)

Resolution of the General Assembly of the Organization of American States concerning assaults upon freedom of the press and crimes against journalists (1998)

[http://www.impunidad.com/articles/resol\\_oeaE.htm](http://www.impunidad.com/articles/resol_oeaE.htm)

UNESCO resolution on crimes against journalists (29 C/DR.120, 1997)

[http://www.impunidad.com/articles/resol\\_unescoE.htm](http://www.impunidad.com/articles/resol_unescoE.htm)

African Charter on Human and Peoples' Rights

<http://www1.umn.edu/humanrts/instree/z1afchar.htm>

American Convention on Human Rights of the Organization of American States

<http://www.oas.org/juridico/english/Treaties/b-32.htm>

Charter of Fundamental Rights of the European Union

<http://ue.eu.int/df/docs/en/CharteEN.pdf>

### **Organizations and Reports:**

Amnesty International

<http://www.amnesty.org/>

Coalition for International Justice

<http://www.cij.org/index.cfm?fuseaction=homepage>

Damocles Network: the judicial arm of Reporters sans frontiers

[http://www.rsf.org/rubrique.php3?id\\_rubrique=193](http://www.rsf.org/rubrique.php3?id_rubrique=193)

Derechos Human Rights: working for the respect and promotion of human rights throughout the world

<http://www.derechos.org/>

How to bring information before the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1999.64.En?OpenDocument#annex](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1999.64.En?OpenDocument#annex)

Human Rights Watch

<http://www.hrw.org>

Impunity Campaign of the Inter American Press Association

[www.impunidad.com](http://www.impunidad.com)

Inter American Commission on Human Rights of the Organization of American States

<http://www.cidh.oas.org/what.htm>

International Freedom of Expression Exchange

[www.ifex.org](http://www.ifex.org)

Mexico: Under the Shadow of Impunity (Amnesty International Canada, 1999)

<http://www.amnesty.ca/library/1999/1AMR4102.htm>

OSCE Representative on Freedom of the Media

<http://www.osce.org/fom/mandate/>

Office of the High Commissioner for Human Rights

<http://www.unhchr.ch/>

Office of the Special Rapporteur for Freedom of Expression of the Organization of American States

<http://www.cidh.oas.org/Relatoria/English/FuncObject.htm>

PROBIDAD: managing regional anti-corruption and free press activities in Latin America

<http://www.probidad.org/>

Report of the Secretary-General on Impunity, Commission on Human Rights, 58<sup>th</sup> session, 2001-2002 (E/CN.4/2002/102 and E/CN.4/2002/102/Add.1). The report reflects varying views on the issue of whether or not the Commission should appoint an independent expert to examine all aspects of impunity

<http://www.hri.ca/forthecord2002/documentation/commission/e-cn4-2002-102.htm>

<http://www.hri.ca/fortherecord2002/documentation/commission/e-cn4-2002-102-add1.htm>

Report on Combating Impunity, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 49<sup>th</sup> session, 1997 (E/CN.4/Sub.2/1997/20/Rev.1). It recommends adoption by the United Nations General Assembly of a set of principles for the protection and promotion of human rights through action to combat impunity

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a0a22578a28aacfc8025666a00372708?Opendocument>

Rights International: fighting for those rights recognized by the Universal Declaration of Human Rights and other international human rights treaties

<http://www.rightsinternational.org/>

Transparency International

[www.transparency.org](http://www.transparency.org)

United Nations Educational, Scientific and Cultural Organization

[www.unesco.org](http://www.unesco.org)

UNESCO Communications and Information Sector

[http://portal.unesco.org/ci/ev.php?URL\\_ID=2493&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=205&reload=1050802917](http://portal.unesco.org/ci/ev.php?URL_ID=2493&URL_DO=DO_TOPIC&URL_SECTION=205&reload=1050802917)

Victims' Guide to the International Criminal Court (ICC)

[http://www.rsf.org/article.php3?id\\_article=7372](http://www.rsf.org/article.php3?id_article=7372)

## **INTERNATIONAL PEN'S IMPUNITY WATCH**

A centrepiece of PEN's campaign against Impunity has been the launch of Impunity Watch. Since November 2002, International PEN has circulated regular advisories of journalists and writers around the world who have been killed because of their work. Included in the Impunity Watch bulletins are case details as well as appeals for use by recipients to protest the killings and call for thorough action on the part of authorities to identify and punish those responsible. Although PEN's impunity campaign is coming to a close, Impunity Watch will remain a regular component of the organisation's ongoing efforts to promote freedom of expression internationally and to have justice done in cases of individuals who are killed for speaking out.

If you are interested in receiving Impunity Watch bulletins by electronic mail, please send a message to [intpen@gn.apc.org](mailto:intpen@gn.apc.org).

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### **PEN American Center**

Media Coordination; press releases: Larry Siems

Spanish Translation: Clara Anich and Anna Kushner

### **PEN Mexico**

María Elena Ruiz Cruz

### **PEN Québec**

French Translation: Roger Gilbert

### **Writers in Prison Committee, International PEN, London**

Impunity Watch: Sara Whyatt and Dixie Wills

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