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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission
on Human Rights on the situation of human rights in Bosnia and
Herzegovina, the Republic of Croatia and the Federal Republic
of Yugoslavia

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there is misinformation on the mandate and activities of the ICTY, efforts should be made to improve the knowledge of the population in general of the work of the ICTY, in particular its mandate, procedures and decisions issued so far.

34. The Special Rapporteur believes that the reconciliation process would benefit from the establishment of some kind of truth commission. The local actors whom the Special Rapporteur has spoken with all seem to support this kind of process.

35. The Special Rapporteur believes that accession to the Council of Europe should not be granted before Bosnia and Herzegovina meets the minimum conditions which had been set for the opening of the procedure. The assessment has to be made on the real situation and not on formal grounds or for political reasons.

II. REPUBLIC OF CROATIA

A. Introduction

36. The present report is based on information compiled from a variety of sources by the Zagreb office of the (United Nations) High Commissioner for Human Rights (OHCHR). It takes into account information from the Government of Croatia, including the Government's reactions to the reports of OHCHR Croatia. It is further based on first hand field work, the reports of other international organizations, Croatian lawyers, and local and international non-governmental organizations (NGOs).

37. The Special Rapporteur wishes to thank the Government of Croatia, as well as local and international organizations in the field, for their assistance to OHCHR in Zagreb and for their generous cooperation in the exercise of his mandate.

B. Returnees and refugees

38. On a positive note, in the context of the Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons endorsed by Parliament on 26 June 1998, the Government of Croatia has adopted recommendations for legal reforms related to the return process, which had been suggested by a group of international and government legal experts in October - such as a new Law on Areas of Special State Concern - which are designed to overcome existing discriminatory legal provisions that have impeded return and repossession of property. It is to be hoped that these changes will help ensure the equality of all eligible persons, regardless of nationality, with respect to entitlements, benefits and obligations.

39. The Government, in November 1998, began issuing temporary green cards affirming returnee status to both organized and spontaneous returnees who returned to their places of origin in Croatia, with the intention of making it easier for them to have access to rights and entitlements while awaiting identification and other documents. Preliminary reports, however, note that the temporary cards do not provide substantial benefits, particularly access

to health care. The process for acquisition of permanent green cards has been criticized by several international organizations in Croatia as a time-consuming, complicated and expensive process. Returnees are required to provide a large number of documents and are expected to travel several times to regional offices, often at relatively great expense. Spontaneous returnees, who are more numerous than organized ones, find the process even more difficult.

40. Progress in the implementation of core aspects of the Return Programme, such as improved procedures for the repossession of property, has been generally uneven. In this regard, the Special Rapporteur notes with concern that the Government continues to maintain that tenancy rights no longer exist in Croatia and that returnees will not be able to regain such rights. A major problem for returnees continues to be the occupation of Serb houses by Croat settlers. Also, there is a lack of information about the procedure for obtaining Croatian documents, as well as restrictive administrative requirements to fulfill this procedure. The Special Rapporteur realizes the tremendous difficulties that widespread unemployment and the prevalence of land mines also present to the success of the return process.

41. The complex process of organized returns to Croatia continues to be closely monitored by the international community. On 10 November, a group of 33 persons, the first to be repatriated from the Republika Srpska (Bosnia and Herzegovina) under the Return Programme, came back to Sisak, Kostajnica, Dvor and Petrinja in the former Sector North. Of the 6,930 people cleared for return from the FRY and the Republika Srpska, the Office for Displaced Persons and Refugees (ODPR) reports that 1,541 persons returned under the organized mechanism and 1,172 returned spontaneously.

42. Meanwhile, the Government Commission on Return met on 20 November, its third meeting in six months. Key issues, such as returnee benefits and the provision of alternative accommodation to those currently occupying Serb houses - which could facilitate the return programme, are still outstanding and would appear to require more urgent attention from the Commission.

43. The often-postponed Conference on the Reconstruction and Development of Croatia - the so-called donors' conference to focus attention on Croatia's longer-term development - was finally held in Zagreb on 4-5 December, with 47 countries and 27 international organizations participating. According to local media, the Government was dissatisfied with the donations that the conference produced, while the European Union reiterated its concern on democratization issues.

44. The Office for Displaced Persons and Refugees has recently estimated that around 1,000 asylum seekers from Kosovo arrived in Croatia through Bosnia and Herzegovina, their first country of refuge. The Ministry of the Interior (MOI) reportedly confirmed, after meeting with international representatives, that border officials would be instructed to allow entry, on humanitarian grounds, to those seeking asylum in Croatia, in keeping with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to which Croatia is a party by succession. According to the MOI, all applications for asylum will be dealt with on an individual basis. International

representatives have met with the MOI to initiate a joint process for the drafting of a national law on asylum.

C. Administration of justice

45. The Special Rapporteur notes that there are some positive signs that the Croatian judiciary is trying to work more effectively and independently. However, there continue to be sporadic rulings which appear to reflect improper ethno-political factors in the judicial process. The appointment, discipline and dismissal of judges is conducted by the State Judicial Council, which operates under a law that has been criticized by international observers and which the Croatian Government is attempting to amend. The proposed amendments, which at this writing are still in parliamentary discussion, appear positive in that they aim to increase judicial efficiency, but this improvement may come at the expense of greater control over the judiciary by the executive branch. The Special Rapporteur has learned that disciplinary proceedings concerning the former President of the Supreme Court, Krunislav Olujic, were marked by the Council's refusal of Dr. Olujic's request to introduce new evidence on his behalf, while the prosecution was allowed to introduce new incriminating evidence.

46. Many Croatian courts suffer from an enormous backlog of cases. The Special Rapporteur has learned from the latest report from the Minister of Justice that there are over 1 million unsolved cases. The Croatian Government has yet to introduce an effective solution of this difficult problem which, along with the court fees that place judicial remedy out of the reach of many Croats, jeopardizes the public's faith in the judicial system as an effective remedy. Certain cases are settled with extraordinary speed while other cases remain unsolved for a disproportionate amount of time, both a reflection of external intrusions into the courts. It is with concern that the Special Rapporteur notes that some positions for judges remain unfilled and that judges are not provided with adequate staff and resources.

47. It has come to the Special Rapporteur's attention that some court decisions have not been adequately enforced. According to the Norwegian Refugee Council's Civil Rights Project, rulings regarding the return of property have at times remained unenforced for several years despite numerous court orders for eviction and subsequent orders to enforce the eviction. The Special Rapporteur is further concerned that the Magistrate Courts in the Danube Region exclude the public from all hearings. This exclusion stems from explicit instructions from the Supreme Court in Zagreb. Furthermore, judges work under the pressure of the Supreme Court President's order to not cooperate with international observers.

D. War crimes trials

48. As has frequently been noted, the adoption of the 1996 Amnesty Law was a positive step toward reconciliation. However, ambiguities and uncertainties with regard to the law's application continue to exist. In the meantime, a number of cases regarding war crimes remain unresolved. According to a list of the Government of Croatia dated 14 September 1998, a total of 61 persons are currently imprisoned on charges of war crimes. In addition, according to

information received by the Special Rapporteur, an unknown number of people have been either convicted in absentia or indicted. This has created a general atmosphere of uncertainty among the Serb community, and is an inhibiting factor in the return of Serbs to Croatia.

49. Some progress has been made in the case of the so-called Sodalovci group, a group of 19 individuals from the village of Sodalovci, charged on 30 August 1994 with crimes against humanity and humanitarian law violations against the civilian population and convicted in absentia on 25 May 1995. During the second half of 1998, a number of important developments in this case occurred, namely the arrest and subsequent release of three members of this group. On 20 July, the Supreme Court accepted the appeal lodged by eight members of the group - including the three individuals arrested - against the decision of the Osijek County Court of 21 May rejecting their requests for retrial. The Supreme Court annulled the decision and returned the case to the first instance court for reconsideration and a new decision on retrial. The appeal of two members of the group was rejected on the basis that they resided in the FRY.

50. One important issue in this case had been the question whether there would be a possibility to waive the custodial requirement while the retrial was in process, which the group had been promised previously in an agreement between the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and the Government of Croatia. After a decision of the County Court of Osijek on 31 August, the three individuals were released and allowed to remain at liberty while standing trial. On 7 September, another of the eight mentioned above surrendered to the police and was released on 11 September, and will also be granted retrial without being subject to detention. According to one source, an additional number of the remaining members of the Sodalovci group have stated their willingness to stand trial before a Croatian Court if given the same treatment as the four individuals noted above. The main hearing in this case began on 10 September during which the three accused pleaded not guilty. It was adjourned without specification of the date for the next hearing.

51. In the ongoing trial of another member of the Sodalovci group, Goran Vusurovic - whose case was described in detail in the Special Rapporteur's report to the General Assembly (A/53/322) - a hearing scheduled to take place from 1-3 September was cancelled due to the absence of a ballistics expert in Zagreb. As of this writing no new date for the next hearing has been announced.

52. Regarding the case of Milos Horvat - discussed in detail in a previous report of the Special Rapporteur (E/CN.4/1998/14, paras. 60-61) - who was sentenced on 25 June 1997 to five years in prison on charges of genocide, the Supreme Court considered his case on 16 December 1998. At the time of writing, the decision had not yet been announced.

53. Sixteen prisoners are currently detained in Split prison, in accordance with three different verdicts. All allege that after their arrest they were mistreated or tortured by police officials for the purpose of obtaining information and/or confessions. Statements claimed by defendants to have been extracted under torture or ill-treatment were not removed from the record but

were admitted as evidence. Both international and local trial observers and lawyers noted deficiencies in the application of international standards of fair trial, such as the presumption of innocence, and lack of evidence of the alleged act, and thus the failure on the part of the Court to prove the alleged offence of war crimes as stated in the indictments.

54. The first of the above noted indictments concerns 39 persons convicted by the Split County Court in May 1997 for artillery and other weapons attacks against civilian targets, for forcing a mass exodus of civilians, and for looting and burning property and otherwise terrorizing civilians during the war. They were found guilty of violating article 120, paragraphs 1 and 2, as well as article 122 of the Criminal Code of the Republic of Croatia for mass killings and material damage and received sentences of between 5 and 20 years in prison. Twenty-seven of the prisoners were tried in absentia, while 10 are currently in Split County Prison and two have been transferred to Lepoglava Penitentiary. The court found all indictees collectively guilty for criminal acts based on their individual responsibility in contributing to a planned criminal plot. Their appeals with the Supreme Court have been pending since the issuance of the verdict.

55. One individual among the group, Petar Bjelobrk, was subject to three indictments. He had been in the United Nations Confidence Restoration Operation (UNCRO) camp in Knin and was handed over by the United Nations to the Croatian authorities. According to information received by the Special Rapporteur, when Mr. Bjelobrk was first taken from the camp, he was indicted in accordance with article 120 of the Croatian Criminal Code - on charges of murder and raping old women. After the charges were reportedly dropped, he was recharged with armed rebellion under article 235 of the Criminal Code. However, he was allegedly not amnestied as were the other 38 persons of a group of 39 handed over by the United Nations to the Croatian authorities, because it was held that he, as a reserve officer, was an organizer and thus more responsible for the armed rebellion. He was subsequently charged with mining the Peruca dam and sentenced to 14 years' imprisonment. According to information received by the Special Rapporteur, an expert in explosives testified on Mr. Bjelobrk's behalf, noting that it would have been impossible for him to have committed the alleged act.

56. Another eight persons, known as the Stikovo group, were convicted of having committed war crimes, under article 120, paragraph 1, of the Croatian Criminal Code. Five among the group have been detained in Split prison since August 1995. The remaining three have been convicted in absentia. The charge against them was based on the fact that from August 1991 to August 1995, the group had been organized as a Stikovo platoon of the army of the so-called Republic of Serb Krajina. Their trial, held in Split County Court, did not begin until March 1998, and lasted three months. Most have been convicted to between 12 and 20 years' imprisonment. According to a number of observers the trial fell short of international standards of fair trial with, for instance, the Court allegedly having failed to establish individual guilt for the crimes listed in the indictment. Their appeals have since been pending with the Supreme Court.

E. Freedom of expression and information

57. A key issue concerning the media in Croatia continues to be the situation of HRT (Croatian Radio and TV), its role in political and public life, and the difficulties in attempts to widen and democratize HRT management and subsequently programming. The proposed new act on HRT, based on suggestions by international organizations, resulted in another protest by opposition MPs. One draft was debated in the House of Representatives on 18 October. Following the official conclusion of the discussion, the ruling party added two amendments, one of which granted seats on HRT's council to expatriate Croatians. Many opposition members deemed this procedure illegal, and boycotted in protest. The suggestions of the Council of Europe's media experts, particularly in regard to the composition of the management, have so far been overlooked. Recommendations by the international community included provisions concerning representation on the HRT Council and procedures for the appointments of the managing director and the supervisory board.

58. The Special Rapporteur notes that there have been allegations of interference by the Croatian secret service in the work of some newspapers, including illegal tapping of telephones, especially those of journalists. These serious allegations have not been adequately investigated by the Government.

59. The Croatian media continues to work under the restriction of a law which has resulted in over 400 lawsuits against journalists for "emotional anguish" which allegedly results from their articles. Furthermore, journalists can, and in several cases, do face criminal prosecution for defamation of the President of the Republic, the Prime Minister, the Supreme Court President, the Speaker of Parliament and the President of the Constitutional Court.

F. Missing and detained persons

60. To date, the Government of the Republic of Croatia lists 1,824 persons as officially missing in the 1991-1992 conflict, and approximately 800 missing since the 1995 army operations "Flash" and "Storm". The majority of the missing are Croats, and the official list also includes Serbs, Muslims and nationals of Hungary, Russia, Albania, Slovenia, the Czech Republic, Ukraine, Germany, Romania, Argentina, Austria, Italy, the former Yugoslav Republic of Macedonia and France.

61. Between September 1995 and December 1998, a total of 2,850 bodies were exhumed from both individual and mass graves, and 2,134 bodies identified, according to information provided to OHCHR in Zagreb by the Commission for Detained and Missing Persons (hereinafter, the Government Commission). In 1998, 33 mass graves were opened, 30 of them in the Danube region - including the New Cemetery in Vukovar - one in the county of Karlovac and two in the county of Sisak-Moslavina, with a total of 1,145 bodies exhumed, of which 718 were positively identified. The mass grave in the New Cemetery in Vukovar, exhumed between 28 April and 26 June this year, is the largest in Europe since the 1939-1945 war. Of the 938 bodies exhumed from this cemetery, 622 had been identified by early December. Overseeing the exhumation process are experts from the Ministries of the Interior, Defence, Health and Justice, and of the Government Commission. Also present are representatives of the

European Community Monitoring Mission (ECMM) and the International Criminal Tribunal for the Former Yugoslavia (ICTY).

62. Discussions at the 38th meeting of the Croatian Government Commission and its FRY counterpart in Belgrade on 28-29 October reportedly included discussions over the handing over by the FRY of some 300 protocols of Croatians who were killed and buried in the FRY in 1991-1992, in exchange for the 669 protocols already submitted by Croatia. The Government of Croatia maintains that the Granic-Jovanovic Agreement announced in August, outlining details for the release from Croatian and FRY prisons of illegally detained prisoners-of-war on an "all for all" principle, should be respected in its entirety. The Special Rapporteur, however, notes that the FRY Commission stated at the meeting that the implementation of this Agreement was not within its jurisdiction but came under the Ministry of Justice. Consequently, the meeting was unable to establish any criteria for the exchange of prisoners.

G. Liberty and security of the person

63. As reported by the OSCE Police Monitoring Group, there was a recent decrease in the number of reported incidents of ethnically motivated intimidation in the Danube region, a fact that it ascribes to the steady exodus of Serb residents. It is also reported that the nature of the incidents has shifted from being predominantly housing-related to being overwhelmingly non-housing-related.

64. The Special Rapporteur is concerned that, according to the Joint Council of Municipalities in Vukovar, of the 56,138 Serbs domiciled in the Danube region in 1995, 27,178 have since left the region. The fact that many are emigrating to the FRY, with few economic prospects, leads the Special Rapporteur to express his concern that factors such as the lack of personal safety and the slow process of reconciliation are among the major causes of the continuing departure of Serbs from Croatia.

H. Labour rights

65. It is with concern that the Special Rapporteur notes that over 100,000 workers in Croatia continue to suffer from late payment of wages - at times delayed for two years - reduced wages or no wages at all. The Croatian government has not yet established an effective remedy for this situation. Strikes on this issue have been banned by the Supreme Court, a decision that leaves workers with the judiciary as their only remedy. However, because of the slow speed of the courts and the frequency with which companies declare bankruptcy before paying court-ordered arrears, workers do not find this an adequate solution. In certain State-owned companies in the Danube region, management disclaims responsibility for paying wages, the result - apparently - of a privatization process that lacks transparency. Compounding the problem of non-payment, the Ministry of Labour and Social Welfare's labour inspectors are not provided with adequate resources to be an effective investigative mechanism to enforce the payment of wages.

66. Union shop stewards, the trade union representatives within companies, work under special protection of article 182 of the Croatian Labour Law. In

practice, however, there are cases of harassment. Several cases of shop steward harassment are pending in court and these decisions and their enforcement will reflect the degree of protection that shop stewards are actually afforded, a protection which the Special Rapporteur notes as one of the cornerstones of union rights. One union leader, Bozica Jurec, has appealed for the third time her conviction (and prison sentence) for allegedly slandering an employer in statements which appear to fall well within the expected work of a trade unionist. This case has also been marked by decisions being delivered within days, a speed which indicates that the court could be operating under external pressure. This decision could effectively silence this union leader and the difficulties which this lawsuit has created for Ms. Jurec has, the Special Rapporteur fears, served as a threat to the freedom of expression and the work of unionists.

67. Several articles from a 1996 Agreement between the Government and two trade union confederations have not been enacted. The Special Rapporteur would like to draw attention to two important and unenforced clauses of this Agreement: clause No. 8, which guarantees that labour-related cases be handled within one year; and No. 9, which orders that the government calculate a Croatian "consumer basket", a monetary amount with which a four-member family could procure food, clothes and shelter, and which, when calculated, should be used to establish a reasonable minimum wage.

I. Gender issues

68. In September 1998 the Special Rapporteur began monitoring the situation of gender rights in the Republic of Croatia. He commends the praiseworthy national policy for the promotion of equality to be implemented by the State Commission on Issues of Equality established in May 1996, in compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

69. The new Criminal Code, which came into force in 1998, contains provisions that seem inadequate to protect certain rights of women. Specifically, provisions referring to the prosecution of cases of domestic violence, as prescribed in article 102, paragraph 2, of the Code, for the criminal act of inflicting physical injury, and for the criminal act of rape (art. 188, para. 5), state that when perpetrated within the family (except against children) or among partners, these acts will be prosecuted only following a motion by the victim; the former Criminal Code provided for ex officio prosecution for the same crimes. Under the new law neither physicians nor the police are legally obliged to report severe physical injury to the State Attorney. The Special Rapporteur acknowledges that this law protects the privacy of victims, but he expresses serious concern regarding these changes. They could, in effect, increase the number of unprosecuted acts of domestic violence which, reportedly, are on the rise in Croatia.

70. One case of reported sexual harassment in the workplace occurred in Split in August. A female doctor and five female patients and employees of the Split Clinic Hospital accused the Chief of the Orthopaedics Department of sexually harassing and intimidating as well as blackmailing them by threatening to transfer them to lesser paid jobs, forbidding them from performing operations and preventing them from receiving promotions. The

doctor and her colleagues reported the case to the Commission on Medical Ethics and the Croatian Physicians' Assembly, which then conducted an investigation and concluded in its report that there was a grave violation of the code of medical ethics. The case is currently at the Court of Honour of the Croatian Physicians' Assembly which is to issue a penalty. It raises concern, however, that no preventive action has been taken by the hospital's management.

71. The Special Rapporteur voices concern over the unequal representation in the country's public, political and economic life that women face. Women's participation in the national parliament and in regional and municipal political structures has dropped significantly since 1990, a trend that was confirmed in the 1997 elections.

J. Conclusions and recommendations

72. The Special Rapporteur continues to express his concern at the uneven and slow progress of returns, and at reports of the inefficacy of the Housing Commissions, the essential element in the return programme. With regard to the return process, the Special Rapporteur recommends that the question of tenancy rights be addressed by the Croatian Government, as has been done by Bosnia and Herzegovina, in order to foster the return of Serbs to their former homes in urban areas, and that the Government provide all Housing Commissions with alternative accommodations for equitable distribution. The Special Rapporteur urges the Government to undertake reconstruction and economic revitalization projects which directly benefit all ethnicities. Furthermore, the Special Rapporteur recommends that the National Committee for Reconciliation create concrete projects and measures to benefit all citizens of Croatia.

73. The Special Rapporteur recommends that the Croatian government begin to provide sufficient resources to the judiciary as well as to fill all empty posts, in order to alleviate the burden of unresolved cases. He welcomes educational programmes for new Croatian judges. Delays in - and lack of enforcement of - court rulings should be of primary concern to the Croatian Government, and the Special Rapporteur recommends that steps be taken to guarantee the execution of court orders.

74. The Special Rapporteur notes with concern the attitude of certain court officials toward international observers as well as the general public. He urges that all court proceedings be opened to the public, in accordance with Croatian law, and that international observers be granted full cooperation.

75. Perpetrators of war crimes must be brought to justice. However, at present, the process of prosecuting perpetrators of war crimes is not conducted in accordance with international standards. As the above cases show, there have been serious shortcomings in the trials of persons convicted for war crimes, such as a lack of credible evidence. Some trials have been ongoing for several years, and the appeals with the Supreme Court have been subject to unreasonable delays. On the other hand, violations of human rights committed during or in the wake of operation "Storm" in 1995, documented by the Special Rapporteur in previous reports (see A/50/727) have never been

adequately addressed by the Government. The prompt resolution of outstanding issues relating to war crimes is crucial for reconciliation and democratization to take place.

76. The Special Rapporteur wishes to express his concern at the ruling party's domination of the media and urges the Government to adopt the necessary measures to ensure that public broadcasting can fulfil a public interest mandate and is independent of political or financial interests. With regard to defamation suits, due attention should be given to the importance of free political debate in a democratic society and to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals.

77. The Special Rapporteur notes that labour-related cases require prompt resolution, preferably by courts which specialize in such issues, as dictated by the November 1996 agreement with trade union confederations. Furthermore, the Special Rapporteur recommends that the labour inspection force of the Ministry of Labour and Social Welfare be granted adequate funds so that it can investigate widespread instances of non-payment or late payment of wages.

78. The Special Rapporteur encourages the State Commission on Issues of Equality and women's non-governmental organizations to continue strengthening their cooperation and to work closely on the full implementation of the national policy on the promotion of equality. The Special Rapporteur encourages specific affirmative action, such as the introduction of a quota system, for improving women's representation in decision-making and political positions in the country's public life.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

A. Introduction

79. Since his appointment in late March 1998 through this writing, the Special Rapporteur has conducted three comprehensive field missions to the Federal Republic of Yugoslavia (FRY): (1) from 5-8 April 1998; (2) from 10-21 September 1998; and (3) from 21-29 October 1998. He submitted a letter on his first visit (E/CN.4/1998/164) to the Chairman of the Commission on Human Rights, whose statement of 24 March 1998, requesting that the Special Rapporteur undertake a mission, had focused on concern over developments in the province of Kosovo. During his first mission, the Special Rapporteur visited Belgrade and Pristina. On his second visit, he travelled through Montenegro, Sandzak and Kosovo and raised countrywide issues such as the administration of justice, freedom of expression, and the rights of persons belonging to minority groups. Shortly after the 13 October accord between FRY President Slobodan Milosevic and United States envoy Richard Holbrooke and the 16 October agreement with the Organization for Security and Cooperation in Europe (OSCE) which created the Kosovo Verification Mission, the Special Rapporteur returned to the FRY. During this visit, he focused on rapidly evolving developments in Kosovo and on the situation of media in Serbia, in the wake of government restrictions on independent newspapers and broadcast media.

B. Steps to provide current information

