



CORRUPTION, IMPUNITY, SILENCE:

THE **WAR** ON
MEXICO'S JOURNALISTS

EXECUTIVE SUMMARY

This publication is the result of a joint research project by the International Human Rights Program (IHRP) at the University of Toronto, Faculty of Law and PEN Canada, the Canadian centre of PEN International.

Authors: Cara Gibbons and Beth Spratt

Editors: Brendan de Caires, Renu Mandhane,
Nader Hasan, Clayton Ruby

Design: Diana Tyszko

Translation: Ioana Luca

Cover image: March protesting rising violence against
journalists, Mexico City, August 2010

Photo credit: Keith Dannemiller for John S. and James L.
Knight Foundation
(Creative Commons Attribution License, 2010)

Copies available from:

PEN Canada

24 Ryerson Avenue, Suite 301

Toronto, Ontario, Canada M5T 2P3

Tel: +1 416-703-8448, Fax: +1 416-703-3870

<http://www.pencanada.ca>

International Human Rights Program (IHRP)

University of Toronto, Faculty of Law

39 Queen's Park, Room 106

Toronto, Ontario, Canada M5S 2C3

Tel: +1 416-946-8730, Fax: +1 416-978-8894

<http://www.utorontoihrp.com/>

Copyright © 2011 PEN Canada | IHRP

All rights reserved.

Printed in Canada.

**CORRUPTION,
IMPUNITY,
SILENCE:**

**THE WAR ON
MEXICO'S JOURNALISTS**

JUNE 2011

CONTENTS

Executive Summary	6
Recommendations	8
I. Introduction	10
II. Historical Context	12
III. Violence Against Journalists	13
A. Facts and Percentages.....	13
B. Motivation Behind the Attacks on Journalists.....	15
C. (Self-)Censorship.....	16
D. Violence Against Community Radio Broadcasters.....	17
E. State Repression of Community Radio.....	18
F. Causes of Impunity.....	19
i) Failure to Investigate and Prosecute.....	19
ii) Reasons for Failure.....	20
a) State Corruption and Collusion.....	20
b) Lack of Expertise, Professionalism and Autonomy.....	20
c) Lack of Incentives for Reform.....	21
iii) Lack of Solidarity Among Journalists.....	22
IV. Mexico’s Strategy of Minimization	23
A. Introduction.....	23
B. The Special Prosecutor’s Office.....	23
C. Mechanism for the Protection of Journalists.....	24
D. Special Committee for Dealing with Attacks Against Journalists.....	27
E. Amendments to the Federal Penal Code.....	28
F. Narrow Definition of Journalists.....	28
V. Violence and Impunity: Violating Journalists’ Rights	29
A. Introduction.....	29
B. Right to Freedom of Expression.....	29
C. Right to Life.....	30
D. Prohibition Against Torture.....	32
E. Right to Judicial Protection.....	35

VI. Mexico’s Legal Framework Violates Freedom of Expression	36
A. Introduction.....	36
B. Specific Limitations on Freedom of Expression.....	36
i) Libel, Slander, and Defamation Laws.....	38
ii) Media Regulation and Oligopoly.....	38
iii) Community Radio Stations.....	39
a. Introduction.....	39
b. The Role of Community Radio in a Democratic Society.....	39
c. Exclusion from Mexico’s Regulatory Framework, and Criminalization.....	41
d. Employment Standards.....	42
C. Defamation, Media Regulation, Community Radio Broadcasters, and Employment Standards for Journalists.....	42
i) Introduction.....	42
ii) Freedom of Expression — American Convention and ICCPR.....	43
iii) Slander and Defamation.....	44
iv) Impediments to Media Diversification.....	45
v) Community Radio Broadcasters.....	46
D. The Right to Judicial Protection.....	46
E. The Right to Work.....	46
i) Employment Standards for Journalists.....	46
VII. Recommendations	48
A. Political Action.....	48
B. Law Reform.....	49
i) Introduction.....	48
ii) Federalization of Crimes Against Journalists, Enforcement of Existing Criminal Law.....	49
iii) Defining Journalists.....	50
iv) Radio and Television Law.....	50
v) Employee Protection.....	51
vi) Abolishing Criminal Defamation.....	51
vii) Abolishing Military Jurisdiction over Human Rights Abuses.....	51
viii) Public Legal Education.....	52
ix) Foreign Assistance.....	52
VIII. Conclusions	53

EXECUTIVE SUMMARY

Up to sixty-six Mexican journalists have been killed since President Calderón launched a “war on drugs” after taking office at the end of 2006.¹ During that time, the government’s highly militarized campaigns, particularly in the northern border states, have created staggering levels of violence and an atmosphere in which working journalists face constant threats and vicious, often lethal, attacks. Few of these crimes are investigated properly, much less prosecuted, despite successive administrations’ promises to end the country’s shameful record of impunity. Instead, the government has beguiled international observers and its own citizens with meretricious reforms that do little to halt a grave and worsening human rights crisis.

In these extraordinary circumstances, Mexico’s journalists have also contended with laws that limit freedom of expression and muzzle their attempts to expose corruption at both local and state levels. Consequently, accurate reporting on the drug war has become all but impossible. Yet, faced with this crisis, the Mexican government has dithered over reforms that could protect reporters, while prosecuting citizen journalists who run afoul of the country’s labyrinthine communications legislation.

This report examines why Mexico has failed to confront the sources of its internal corruption. It also looks at the state’s failure to defend Mexico’s journalists from the extreme violence they face at the hands of drug trafficking organizations and corrupt state agents who carry out the most brazen assaults on free and open communication with almost complete impunity. It finds that Mexico is breaching its binding international human rights obligations, including the right to life and the right to freedom of expression.

Key findings

- In addition to the ten journalists murdered in 2010, media workers are regularly targeted for kidnappings, threats, theft, and judicial harassment. Last year, Mexico tied with Pakistan as the deadliest country in the world for journalists.
- Most crimes against journalists are not properly investigated and the authorities have failed to successfully prosecute over 90 percent of cases.
- Despite the broad powers implied by its name, the Special Prosecutor’s Office for the Attention to Crimes Committed against Freedom of Expression has no formal ability to investigate crimes or lay charges, nor is it empowered to tackle cases involving drug traffickers or organized crime. As a result, during its first four years, the Prosecutor has averaged just one prosecution per year.
- One freedom of expression group has reported that state agents were responsible for two out of every three attacks recorded in 2009. However, despite similar findings by other NGOs, the Mexican government maintains the position that crimes against journalists are perpetrated, essentially without exception, by organized crime.

1 D. Rieff, “The Struggle for Mexico” (March 17, 2011) *The New Republic*.

- The ongoing violence and killings have forced many journalists to steer clear of provocative local reportage. In Tamaulipas and Ciudad Juárez the chill has become so severe that practically no information enters or leaves the state unless it has been vetted by state authorities or drug-trafficking organizations.
 - Community radio broadcasters — a group which faces no threats from drug trafficking organizations — are more vulnerable to violence and intimidation than professional journalists. This violence and intimidation comes, instead, from state officials. The state's ongoing failure to create proper licensing regulations leaves community radio broadcasters in an extremely precarious position vis-à-vis the law and constitutes a serious violation of the government's responsibility to protect freedom of expression.
-

Most crimes against journalists are not properly investigated and the authorities have failed to successfully prosecute over 90 percent of cases.

- At least 950 human rights recommendations have been submitted to the government of Mexico since 2000, and it has signed or ratified more than 20 human rights treaties. However, despite its vociferous support for human rights in international fora such as the United Nations, it has allowed serious rights violations within its own borders to continue with almost complete impunity.
- Criminal libel, slander and defamation laws remain on the books in 15 states in Mexico and civil defamation laws continue to be used to harass journalists who work to uncover corruption.
- Despite repeated attempts to diversify media ownership in Mexico, 96 percent of commercial television stations are owned by two families, and 86 percent of radio stations are held by 13 business groups. Only 13 out of the 1,200 radio licenses issued in Mexico have been allocated to community radio stations.
- A lack of employment standards also contributes to journalists' vulnerable situation. Media companies often require journalists to sign contracts waiving their right to sue in the event they are injured during the course of their employment.

RECOMMENDATIONS

TO THE GOVERNMENT OF MEXICO:

- i. Publically condemn all forms of violence against journalists as a violation of the right to life, the right to freedom of expression and the public's right to be informed;
- ii. Acknowledge the role of state actors in violence against journalists and take concrete measures to address it;
- iii. Expedite passing of the proposed constitutional amendment federalizing crimes against freedom of expression, and the passing of all necessary procedural reforms that would empower the federal government to investigate all crimes committed against freedom of expression exercised by journalistic activity;
- iv. Expedite passing of the proposed amendment of the Federal Penal Code to include Section XXVII "Of crimes against freedom of expression exercised by journalistic activity";
- v. Adopt protocols to ensure that crimes against journalists are effectively investigated;
- vi. Ensure that all Mexican states complete the broad criminal law reforms approved in 2008;
- vii. Strengthen the Office of the Special Prosecutor for the Attention to Crimes Committed against Freedom of Expression by formally empowering it to investigate crimes and make charges, including in cases involving organized crime, and by strengthening its institutional autonomy;
- viii. Prioritize the creation of a protective mechanism for journalists, similar to the mechanism used in Colombia, that will involve professional and civil society organizations in a decision-making capacity, and will set out a plan for the provision of resources and technical expertise;
- ix. Amend radio, television and telecommunications laws so that they no longer impede media diversity;
- x. Create a regulatory framework that provides provisions for community broadcasters to obtain licenses, ideally through a state organ independent of the government;
- xi. Amend the regulatory framework governing media advertising contracts so that media outlets are protected from reprisal from public authorities;
- xii. Amend employment laws in order to guarantee employment protections for journalists;
- xiii. Amend laws relating to military jurisdiction so that the investigation and prosecution of all human rights abuses alleged to have been committed by

members of the armed forces are exclusively investigated and prosecuted by civilian authorities;

- xiv. Pass legislation that will give international human rights treaties constitutional status in Mexico; and
- xv. Completely abolish the use of military jurisdiction for all alleged human rights abuses, in accordance with decisions of the Inter-American Court of Human Rights.

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.

TO MEXICAN
MEDIA
CORPORATIONS:

- xvi. Provide staff with the security and wages necessary to do their jobs, regardless of whether they are full employees or contractors. Acknowledge dangers in their work and provide adequate support.

TO CANADA,
THE UNITED
STATES, AND
THE REST OF THE
INTERNATIONAL
COMMUNITY:

- xvii. Place the need for the protection of media workers in Mexico on the foreign policy agenda and insist on the implementation of the above recommendations to protect journalists and the end impunity for crimes against them;
- xviii. Ensure human rights obligations are fully complied with in existing aid initiatives such as the Merida Initiative. If they are not, be willing to hold back funds until the necessary changes are made;
- xix. Condition all future foreign aid to Mexico upon the government of Mexico taking genuine and effective action to redress the serious human rights violations in the country and make future government investment in Mexico conditional upon the government of Mexico taking genuine and effective action to redress the serious human rights violations in the country.

I. INTRODUCTION

Freedom of expression has a precarious history in Mexico. During the twentieth century, seven decades of single-party rule established a culture of state-sponsored media repression and control before sweeping legal and democratic reforms set the stage for a change of government in 2000. But the legacy of the old regime has survived institutional reform and newer threats have further complicated the situation. During the last few years, large parts of Mexico have suffered a massive increase in the violence associated with drug trafficking organizations (“DTOs”), following President Felipe Calderón’s decision to launch an aggressive “war on drugs” upon his election in 2006. Calderón has relied heavily on the military to prosecute this war but, in many cases, journalists have paid the heaviest price for carrying out their duties in the ensuing climate of violence and uncertainty.

In 2010, Mexico tied with Pakistan as the deadliest country in the world for journalists.² Article 19 and *El Centro Nacional de Comunicación Social AC* (hereinafter “Cencos”) include murder, forced disappearance, threats, detention, physical or material aggression, judicial harassment and intimidation and pressure against a person as a result of opinions or information that they have published or plan to publish in a media of communication as falling within the ambit of aggression against freedom of expression.³ In addition to the ten journalists murdered last year, media workers have been regularly targeted with all of these types of aggressions. The government of Mexico has done little to combat these aggressions and lets them occur with almost complete impunity. Most crimes against journalists are not properly investigated and the authorities have failed to successfully prosecute over 90 percent of cases.⁴

This report examines the government of Mexico’s repeated failures to defend the rights of journalists and its complicity in a number of rights violations against them. It also addresses the factors contributing to a mass violation of freedom of expression in Mexico.

These failures stand in stark contrast with the state’s efforts to prosecute media workers who fail to comply with the country’s byzantine regulatory processes, most notably community radio broadcasters. These radio journalists provide valuable non-profit radio services to rural and largely marginalized communities. However, since Mexican telecommunications law has no provisions governing non-commercial radio broadcasters, the attempts of community radios to obtain licences are often ignored. One station, *Radio Huayacocotla*, waited more than 25 years for the state to respond to its request for a licence.⁵ And yet, while unlicensed broadcasters are routinely subjected to vigorous criminal prosecutions that can

2 World Association of Newspapers and News Publishers, <http://www.wan-press.org/pfreedom/jkilled.php?id=5356> [hereinafter World Association]

3 Article 19 and Cencos, *Informe 2009, Entre Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en Mexico*, Article 19, February, 2010 at 12 [hereinafter *Informe 2009*].

4 Committee for the Protection of Journalists, *Silence or Death in Mexico’s Press: Crime, Violence and Corruption Are Destroying the Country’s Journalism* CPJ, September, 2010, at 3 [hereinafter *Silence or Death*].

5 AMARC (Asociación Mundial de Radios Comunitarias –México), *Bases para una Política Pública en materia de Libertad de Expresión y Medios Comunitarios* (Mexico City: Impresos Grafit, 2008) at 49 [hereinafter *Medios Comunitarios*].

lead to long prison sentences, mayors in rural municipalities who operate small unlicensed radio stations have never been prosecuted. The criminal prosecution of community radio stations is not simply excessive, it is discriminatory, and part of a wider tendency to criminalize social protest.

While paying lip-service to the need for substantive change, the Mexican government often responds to criticism with sophisticated spin as part of a strategy of minimization. When confronted with a serious and embarrassing human rights crisis, the government simulates a response by presenting a solution it knows to be ineffective. This placates public outcry but does nothing to alter the situation. One clear example of this disingenuousness is the creation of what is now called the Special Prosecutor's Office for the Attention to Crimes Committed against Freedom of Expression. Despite the broad prosecutorial powers its name implies, the Office has no formal ability to investigate crimes or make charges, nor is it empowered to tackle cases involving drug traffickers or organized crime.⁶ As a result, in its first four years, this Special Prosecutor has averaged just one prosecution per year.⁷ This strategy of minimization is also apparent in the establishment of a mechanism for the protection of journalists that gives more influence to the policing organizations who are frequently implicated in the threats against the media, than to journalists themselves.

Mexican authorities are generally quick to explain that they are not responsible for the recent upsurge in drug-related violence. Victims are often disparaged by authorities and accused of collusion with DTOs, or labeled as unavoidable victims of the crossfire in the drug war. In another attempt to shift responsibility, authorities at all levels of the government frequently assert that they lack the jurisdiction to act. The responsibility, however, lies solely at the feet of the Mexican state, and no amount of political sophistry can place it elsewhere. Mexico is legally obligated to respect freedom of expression and opinion pursuant to its obligations under article 13 of the *American Convention on Human Rights* and article 19 of the *International Covenant on Civil and Political Rights*.⁸ Regardless of how, why, or by whom journalists are attacked while exercising this right, the government of Mexico has a legal obligation to protect them.⁹

Ensuring freedom of expression and requiring an end to rights abuses against Mexican journalists ought to be a priority for Mexico's NAFTA partners, Canada and the USA. But it is not. Besides the strong moral case for intervention, the commercial interests of Mexico's NAFTA partners would be better served by a free

6 Dolia Estevez, "Protecting Press Freedom in an Environment of Violence and Impunity" (Woodrow Wilson International Centre for Scholars: May 2010), online: Woodrow Wilson International Centre for Scholars <<http://wilsoncentre.org>> at 9 [hereinafter Protecting Press Freedom].

7 *Ibid.* at 10.

8 American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II82 doc.8 rev.1 at 25 (1992), acceded to by Mexico on March 2, 1981 [hereinafter American Convention] and International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Mexico on March 23, 1981 [hereinafter ICCPR].

9 American Convention, *Ibid.* at Article 44 and 45, ICCPR, *Ibid.* at Article 2.

press that could foster transparency and fight corruption—both of which are key to successful investment and sustainable economic growth.

Action towards ending impunity needs to be higher on Canada’s agenda, and not only because it is the right thing to do. The Americas are becoming ever more integrated as a trading bloc and Canadian companies are increasingly investing in Mexico, particularly in resource extraction and manufacturing. A robust free press which enables civil society to maintain modern democratic institutions is widely acknowledged as an essential ingredient for continued economic growth.¹⁰

To date, the government of Canada’s response to this pressing issue has been, at best, ambivalent. Despite the fact that it could exert considerable influence, Canada has yet to meaningfully address the problem of impunity. But as journalism in Mexico becomes increasingly lethal, especially within the context of President Calderón’s “war on drugs,” Mexico, its NAFTA partners, and the international community can no longer afford to ignore this brazen assault on free expression. The costs of doing so are simply too great.

II. HISTORICAL CONTEXT

For 71 years, Mexico was ruled by a single party which controlled all levels of political life. The *Partido Revolucionario Institucional* (hereinafter the “PRI”) maintained a firm grip on the media and ensured that freedom of expression was tightly constrained. Despite reforms, this historical pattern persists, and it plays a significant role in present day violations of the right to freedom of expression and the state’s inertia towards impunity for aggressions against journalists.

During the rule of the PRI, Mexico experienced significant economic growth coupled with extremely skewed income distribution. Marginalization from economic and political benefits resulted in the growth of dissident groups, such as student, labour and indigenous activists. From the 1960s to the 1980s, during a period known as *La Guerra Sucia* (the Dirty War), these challenges to the authority of the PRI were met with extreme repression, including extrajudicial executions, massacres and forced disappearances. Impunity has persisted for the overwhelming majority of these crimes.

Extensive electoral reforms eventually led to the federal election of the *Partido Acción Nacional* (hereinafter the “PAN”) in 2000. Yet, although the new government undertook a series of reforms aimed at ameliorating the human rights situation in Mexico, shadows of the long history of impunity remain. Today, despite repeated attempts to overhaul the relevant institutions, the robust civil society needed to support human rights in a modern democracy is noticeably absent in many parts of Mexico.

During this period of legal and democratic reform, illegal DTOs proliferated. In recent years, their influence has spread throughout the country, bringing with it increasing violence and insecurity. Furthermore, Mexico has a long history of responding to threats to its stability with militarization and its armed forces have often been called on to enforce the government’s counter-narcotics and counter-

10 P. Marco, “Corruption and Growth,” (1995) 110 *Quarterly Journal of Economics* 681.

insurgency measures — such as that which occurred in the notorious military campaigns against the insurgency and perceived insurgency in Chiapas and other southern Mexican states in the 1990s.

Mexican authorities generally consider local police forces prone to corruption and often doubt whether they possess the technical expertise and professionalism needed for campaigns against the DTOs. The United States, which has traditionally viewed the Mexican military as more reliable than the police, has underscored this skepticism by providing large amounts of financial aid to the Mexican military's counter-narcotics operations. This support was significantly increased in the late 1990s, and was mainly provided by the International Narcotics Control Account, administered by the U.S. State Department.

After the election of President Fox and the PAN in 2000, violence related to the narcotics trade began to mount slightly with a small government offensive against Mexico's powerful DTOs in the states of Nuevo Laredo, Tamaulipas, and along the U.S./Mexico border. However, the number of casualties has skyrocketed since December 2006, when President Felipe Calderón's newly formed government began its own war on the DTOs in earnest.¹¹ In April, 2011, BBC reported that the Mexican government estimated that around 35,000 people have been killed in drug-related violence since December, 2006 when Calderón first deployed his troops to fight the DTOs.¹²

Regardless of how, why or by whom journalists are attacked, the government of Mexico has a legal obligation to protect them.

III. VIOLENCE AGAINST JOURNALISTS

A. FACTS AND PERCENTAGES

In 2009, two freedom of expression organizations in Mexico, Article 19 and Cencos, registered 244 aggressions against freedom of expression in the context of journalistic work.¹³ Even more concerning, perhaps, is the fact that the number of threats levelled against journalists has mounted steadily during the last 10 years. Indeed, the murders of 25 journalists were registered during the presidency of Vicente Fox Quesada (2000-2006) — before the Calderón government began its crackdown on the DTOs.¹⁴ Since President Felipe Calderón Hinojosa's came into office in December 2006 there have been 34 deaths.¹⁵

11 Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación, *Press Freedom in Mexico: The Shadow of Impunity and Violence*, Article 19, August 2008, online: Article 19 <<http://www.article19.org>> at 7 [hereinafter *Press Freedom*].

12 BBC News, "Mexico's Tamaulipas Police Chief Sacked after Killings", 17 April, 2011, online: BBC <www.bbc.co.uk>.

13 *Informe 2009*, *supra* note 3 at 11.

14 *Ibid.* at 11.

15 There were 22 deaths from Calderón's election to 2009. *Informe 2009*, *ibid.* at 11. In 2010 ten journalists died in the line of duty. World Association, *supra* note 2. Two were killed in the first four months of 2011, according to Reporters Without Borders: <http://en.rsf.org/report-mexico,184.html>.

Journalists are under attack in Mexico from both organized crime and agents of the state. Although the most violent attacks have been attributed to DTOs, in 2009 Article 19 noted that more than 65 percent of the attacks registered against journalists that year came from state agents.¹⁶ However, despite similar findings by other NGOs, the Mexican government maintains the position that crimes against journalists are perpetrated, essentially without exception, by organized crime.¹⁷

In November 2010, Elia Baltazar, founding member of the journalist network *Periodistas de a Pie* (Journalists on the Ground), offered the authors of this report an important caveat about these statistics. Baltazar noted that while recent studies ascribe the majority of the aggressions to state agents, it is worth remembering that threats from DTOs are significantly under-reported because of the greater likelihood that they will be carried out. In other words, noted Baltazar, report on a DTO and its members will probably kidnap and kill you; report on the police, and you are more likely to face arrest and detention. Nevertheless, Baltazar's position was that DTOs and state authorities are, on occasion, one and the same, and that the real problem in Mexico is corruption.¹⁸

The Mexico representative for the Committee for the Protection of Journalists (hereinafter the "CPJ"), Mike O'Connor, shared Baltazar's concerns. He suggested that the violence directed against journalists resulted from an overlap between state authorities and DTOs.¹⁹ O'Connor pointed out that, in addition to their narco-trafficking operations, DTOs effectively control large areas of Mexican territory, frequently displacing local authorities and usurping the functions of police departments.²⁰ In many cases, the Mexican authorities and DTOs have become practically indistinguishable and cannot be meaningfully referred to as separate entities.²¹

Luis Najera, a former correspondent with the *Grupo Reforma* in Ciudad Juárez (the City of Juárez), says the source of the danger varies depending upon the reporter's territory. In southern states, local authorities and moneyed interests are more likely to be involved, especially when a journalist covers issues relating to indigenous peoples, land, or natural resources. In northern states, the threats usually come from DTOs, the police, and the military.²²

In 2009, a total of 11 journalists were killed in Mexico.²³ After documenting and analyzing the cases, Article 19 and Cencos developed what they consider to be an irrefutable hypothesis: that 70 percent of the murders were directly connected to the exercise of freedom of expression, and the reporters' performance of their professional duties.²⁴ Other attacks on freedom of expression recorded in 2009, and confirmed by Article 19 and Cencos, include disappearance, threats, detention, assaults upon property, accusations of libel/perjury/defamation, and intimidation/

16 Interview with Cynthia Cardenas, (3 Nov. 2010) [hereinafter Cardenas Interview].

17 Cardenas Interview, *ibid.*

18 Interview with Elia Baltazar (5 November, 2010) [hereinafter Baltazar Interview].

19 Interview with Mike O'Connor (4 November, 2010). [hereinafter O'Connor Interview].

20 *Ibid.*

21 *Ibid.*

22 Interview with Luis Najera (24 November, 2010) [hereinafter Najera Interview].

23 *Informe 2009, supra* note 3 at 13.

24 *Ibid.*

pressure.²⁵ It is hardly surprising, therefore, that in 2010 Mexico tied with Pakistan as the most deadly country in the world to be a working journalist.²⁶

B. MOTIVATION BEHIND THE ATTACKS ON JOURNALISTS

Without thorough investigations into each assault on a journalist, it is impossible to determine the exact motives for the violence. Indeed, the lack of robust police work generally means that the public rarely learns the reason for a journalist's murder, including whether they were killed because of their work as a journalist. Despite this, many civil society organizations have attempted to map out the issue by looking at the coverage areas of the targeted journalists. For example, of the 11 registered murders of journalists in 2009, four covered police sources, three focused on political questions at the local or state level, and four were responsible for general news coverage.²⁷

A recent CPJ report suggests that the rationale of organized crime networks' for attacking journalists has shifted during the last 10 years. Prior to 2006, DTOs feared journalists exposing their corporate, police, government, military, or customs agency contacts — information that could compromise the integrity of their narcotrafficking operations. Since 2006, however, DTOs have become more concerned with stories that cover violence, and they have even been known to bribe journalists to emphasize the savagery of their rivals. Furthermore, DTOs have become more adept at using the media to influence public opinion, by using journalists to plant stories about corrupt officials and defending themselves against government allegations.²⁸

More than anything, however, DTOs generally wish to avoid “heating up the plaza”²⁹ and seek to diminish the public's knowledge of the drug marketplace.³⁰ CPJ argues that DTOs easily control the local government and fear the media spotlight because it can prompt interventions by the federal government. If there is no news coverage, the federal government can pretend there is no problem, and if citizens are kept in the dark, the pressure for federal intervention subsides.³¹

Various organizations were also asked in interviews for their opinion as to what was motivating the attacks. Cynthia Cardenas of Article 19 explained that journalists are not often attacked for publishing information on organized crime, as such, but for publishing information on links between organized crime and authorities, or publicizing state corruption generally.³² Iñigno Prieto and Daniela Hernández of Cencos agreed that journalists tend to be targeted for stories covering corruption of state functionaries, and links between traffickers and authorities.³³ CPJ, in their

25 *Ibid.* at 12.

26 World Association *supra* note 2.

27 *Informe 2009*, *supra* note 3.

28 *Silence or Death*, *supra*. note 4 at 1.

29 *Ibid.* at 17.

30 *Ibid.* at 17.

31 *Silence or Death*, *supra*. note 2.

32 Cardenas Interview, *supra* note 16.

33 Interview with Iñigno Prieto and Daniel Hernández (4 November, 2010) [hereinafter Prieto and Hernández Interview].

September, 2010 report “Silence or Death in Mexico’s Press” found that, of the 22 journalists murdered between December, 2006 and September, 2010, at least eight were killed in direct retaliation for reporting on crime and corruption.³⁴

C. (SELF-)CENSORSHIP

In an interview with the authors of this report, Elia Baltazar of Journalists on the Ground observed that the term “self-censorship” implies that the act of silencing oneself is, to some extent, voluntary. However, she pointed out, absent the context of violence, the need for censorship vanishes.³⁵ This point is well made. Indeed, censorship in the Mexican media does not take place in a vacuum; it is shaped by a violent and unpredictable environment in which reportage can provoke kidnappings, assaults and murder. Furthermore, censorship sometimes is imposed by the editorial staff or a media director. In the City of Juárez, for example, Luis Najera recalled how his editors redacted stories that revealed too much information. Given the violent context and the complex forces that lead media workers to censor their own work, this report will use the term “censorship” instead of the more common “self-censorship” since the latter implies a level of voluntary action that is simply not consistent with the facts.

Although it is difficult to arrive at an objective measure of censorship, freedom of expression groups in Mexico have often tried to indicate the extent of the problem by pointing to the large information blackouts that exist throughout the country.³⁶ According to Article 19, journalists often report that the deaths of colleagues have taught them to avoid provocative subjects. This chilling effect increases with the gravity of the crimes in question. Article 19 reports that these gaps are particularly noticeable in the state of Tamaulipas, where, in practical terms, no information enters or leaves the state unless it has been vetted by state authorities or DTOs. Article 19 believes something similar is taking place in Ciudad Juárez, in the state of Chihuahua.³⁷

Mike O’Connor of CPJ also indicated that there is no true journalistic coverage in the entire state of Tamaulipas, and that Michoacán, Chihuahua, and Guerrero are also heavily compromised, among others.³⁸ Cynthia Cardenas noted that while Article 19 lacks the resources to conduct a statistical analysis of censorship, through its work documenting and litigating freedom of expression cases, it too has found that censorship is becoming more prevalent.³⁹

Former *Grupo Reforma* correspondent Luis Najera was very open with the authors of this report about censorship among the Mexican press. He explained that he would censor his own work when he knew that to publish it would reveal him as someone who “knew too much.” He avoided filing stories in which his source was easily identifiable, and stopped including detailed information about DTOs once he realized that this put him at risk.⁴⁰ Even with these precautions, Najera’s life was

34 *Silence or Death*, *supra* note 4.

35 Baltazar Interview, *supra* note 18.

36 Cardenas Interview, *supra* note 16.

37 *Ibid.*

38 O’Connor Interview, *supra* note 19.

39 Cardenas Interview, *supra* note 16.

40 Najera Interview, *supra* note 22.

threatened as a direct result of his work and he was forced to flee the country. He has since been granted asylum in Canada. Stephanie Brewer of the Miguel Agustín Pro Juárez Human Rights Center (hereinafter “Prodh”) discussed the case of another journalist whom they helped obtain asylum in another country. This journalist had been reporting on the murders of women in Chihuahua State, but was forced to leave when the situation became too dangerous. Consequently, this journalist is no longer reporting to the public on this issue.⁴¹

Another example of how censorship functions in Mexico is demonstrated by the silence of Mexico’s press in the face of headline news occurring on the streets. For example, in February 2010, a gang war erupted on the streets of Reynosa between the Zetas and the Gulf Cartel. Reports from the U.S. put the death count in the dozens,⁴² but local press in Reynosa provided almost no coverage of the incident.⁴³

In light of this information vacuum, people across Mexico are turning to social media such as Facebook, Twitter, and blogs to obtain relevant local news.⁴⁴ One striking example is “*El Blog del Narco*” (“The Narco’s Blog”), maintained by an anonymous college student in Northern Mexico. This site compiles and publishes pictures, stories, and videos about drug-related violence which have been sent in from parts of the country where mainstream reportage is too dangerous. In a recent story, Newsweek described the phenomenon of the Narco’s Blog:

At a time when the cartels have scared much of the Mexican media into submission—when papers like *El Diario de Juárez* feel compelled to publish front-page pleas to the cartels to “explain what you want from us” — the narcoblogger, like a journalistic masked crusader, has stepped into the void.⁴⁵

D. VIOLENCE AGAINST COMMUNITY RADIO BROADCASTERS

Unfortunately, community radio broadcasters are often overlooked in discussions of the dangers that affect journalists in Mexico. A large proportion, if not a majority, of community radio broadcasters are indigenous and live in marginalized communities.⁴⁶ Community radio stations, often under the auspices of the World Association of Community Radio Broadcasters (hereinafter “AMARC”), have engaged in significant organization since 2002.⁴⁷ However, despite their able and dedicated efforts, only 13 community radio stations have been able to obtain broadcast licences.⁴⁸

41 Interview with Stephanie Brewer (8 November, 2010) [hereinafter Brewer Interview].

42 *Silence or Death*, *supra* note 4 at 4.

43 *Ibid.*

44 *Ibid.*

45 Adrian Campo-Flores, “Hiding Behind the Web” Newsweek (Oct. 1, 2010) online: Newsweek <<http://www.newsweek.com>>.

46 Baltazar Interview, *supra* note 18.

47 Interview with Gisella Martínez and Arabella Jiménez (8 November, 2010) [hereinafter Martínez and Jiménez Interview].

48 Reporters Sans Frontières, “Police raid silences Chiapas community radio station” (October 15, 2010) online: Reporters Sans Frontières <<http://en.rsf.org>> .

Community radio broadcasters are in a situation of extreme vulnerability that differs from the situation of other journalists. Community radio stations experience repression from two main sources: they are frequently the target of government attacks,⁴⁹ and they have faced a steady wave of criminal prosecutions for unlicensed access to the airwaves.⁵⁰ These prosecutions are examined in greater detail in Section VI b) (iii). Unlike print journalists, community radio broadcasters face attacks exclusively from state and para-state agents. This is because their broadcasting, which frequently has a social justice element that is critical of government, is viewed as a threat to state interests. AMARC is not aware of a single instance of repression originating from a criminal organization.⁵¹

E. STATE REPRESSION OF COMMUNITY RADIO

In April, 2008, Teresa Bautista Merino and Felicitas Martínez Sánchez, newsreaders for *Radio La Voz que Rompe el Silencio* (The Voice that Breaks the Silence), were killed by a paramilitary ambush while returning home from a community workshop in Oaxaca.⁵² Their deaths were not investigated and no one has been held to account, however a paramilitary organization operating on behalf of state authorities has been implicated.⁵³ Members of *Radio Calenda*, which broadcasts in the community of San Antonia Castillo de Velasco, near Oaxaca City, were harassed in January 2007 by the mayor and his supporters when members of the radio provided media coverage of the mayor's dismissal.⁵⁴ They were beaten and arbitrarily detained in the mayor's office and forced to sign documents requiring them to cease participating in the public life of the community.⁵⁵ Authorities also tried to prevent them from reporting the assault. Although video evidence was provided to the authorities, Oaxacan state authorities have not prosecuted the attacks.⁵⁶

On October 12, 2010, 30 armed and masked members of the Chiapas State Attorney General's Office seized the equipment of *Radio Proletaria* without a warrant and arrested six members of the station, including a 14-year-old boy who was held incommunicado for 24 hours.⁵⁷ The station is no longer broadcasting.⁵⁸ In January 2009, *Radio Eukakua*, which broadcasts in a rural area in the state of Michoacán, was shut down by security forces. One hundred and twenty federal police officers placed the village of 800 Purépecha people under siege.⁵⁹ The police eventually returned to ask villagers to whom the seized radio equipment should be returned and they were given the name of Rosa Cruz. On June 13, 2009, the police

49 Martínez and Jiménez Interview, *supra* note 47.

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 *Press Freedom*, *supra* note 11 at 27.

55 AMARC (Asociación Mundial de Radios Comunitarias –México) and SERAPAZ (Servicios y Asesoría para la Paz), *Radios comunitarias y contexto de conflicto en México* (Mexico City: AMARC, 2008) at 11 [hereinafter *Radios Comunitarias*].

56 Martínez and Jiménez Interview, *supra* note 45.,

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

returned again, not to release the equipment, but to criminally charge Rosa Cruz with unlicensed use of national property, contrary to article 150 of the *General Law on National Properties*.⁶⁰ The station had applied for a broadcasting licence in 2002 and continues to await a reply from authorities.⁶¹

These aggressions are undertaken with impunity. Community radio stations' attempts to report the crimes to authorities are routinely thwarted.⁶² Indeed, many are so convinced of the inevitability of impunity and state inaction, and so doubtful of the independence of judicial authorities, that they no longer attempt to seek justice at all.⁶³

Most attacks or arrests are direct responses by local politicians to the radios stations' coverage of political events.⁶⁴ *Radio Bemba*, for example, is a community radio station based in Hermosillo, Sonora. It experienced constant harassment from local police after reporting on a protest against the construction of a convention centre that would devastate a protected green area.⁶⁵ Furthermore, the attacks are not related to whether the station in question has a licence to broadcast. *Radio Bemba* has all of the required licences.⁶⁶ In the case of the shooting deaths of the newsreaders from *La Voz que Rompe el Silencio*, the authorities in Oaxaca have stressed the context of violence elsewhere in the region and have focused on discrediting the work of the victims instead of identifying and sanctioning the perpetrators.⁶⁷

Community radio stations in Mexico find themselves in a uniquely difficult position compared to other communicators in Mexico. While they face no threats from DTOs, they are frequently viewed with hostility by the state. As highlighted above, authorities, chiefly local and municipal, are primarily responsible for the attacks against them.

F. CAUSES OF IMPUNITY

i) Failure to investigate and prosecute

Despite the growing number of journalists who face attacks for carrying out their professional duties, Mexican authorities have failed to successfully prosecute over 90 percent of the cases brought before them.⁶⁸ The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has indicated that investigations into murders of journalists consistently fail to clarify the facts, identify the perpetrators, make arrests, and bring perpetrators to trial.⁶⁹ A 2008 Organization of American States (hereinafter the "O.A.S.") report indicates that while between

60 Reporters Sans Frontières, "Jail for community radio leader, eighth journalist killed since start 2010" (November 8, 2010) online: Reporters Sans Frontières <<http://en.rsf.org>>.

61 *Ibid.*

62 Medios Comunitarios, *supra* note 10.

63 *Ibid.* at 10

64 Martínez and Jiménez Interview, *supra* note 7.

65 *Press Freedom*, *supra* note 11 at 34.

66 *Ibid.* at 12.

67 *Ibid.* at 27.

68 *Silence or Death*, *supra* note 4 at 3.

69 O.A.S. Special Rapporteurship for Freedom of Expression, *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*, O.A.S., March 8, 2008 online: O.A.S. <<http://www.cidh.oas.org>> [hereinafter *Special Study on the Murder of Journalists*].

1995 and 2005, 20 journalists were killed, there was some type of criminal conviction (often based on questionable evidence) in only four of the cases.⁷⁰

ii) Reasons for Failure

a) State corruption and collusion

During their interviews with stakeholders, the authors of this report found considerable agreement that impunity for attacks on journalists is largely the result of state corruption and collusion. According to Article 19, more than 65 percent of aggressions against journalists originate from state agents.⁷¹ One interviewee who wished to remain anonymous indicated that corruption reaches up to the level of the Mexican Senate and Congress.

Whenever a local authority is involved, directly or indirectly, in an attack on a journalist, they are naturally unwilling to investigate the crimes.⁷² Inevitably, there is delay and inaction, when it falls to the same authority to investigate and prosecute the crime. Furthermore, the existence of the DTOs and the “war on drugs” provides Mexican state actors with a *carte blanche* to blame DTOs for all violence directed at journalists.⁷³ However, if state authorities are succumbing to corruption, it is usually DTOs that are behind the bribes and threats. Between 2004 and 2009, DTOs have experienced massive growth in Mexico and they have used tactics centred on fear and money to corrupt state officials.⁷⁴

b) Lack of expertise, professionalism and autonomy

Major issues facing the state Prosecutor’s offices include a lack of expertise, professionalism, and autonomy. One interviewee who wished to remain anonymous noted the lack of technical capacity to perform efficient investigations into the deaths of journalists, and a resulting lack of action in these cases. Fábian Sánchez, Executive Director of *Litigio Estratégico en Derechos Humanos, A.C. (Strategic Human Rights Litigation, hereinafter “idheas”)*, noted that there is no appropriate policy setting out investigation criteria in many cases.⁷⁵ Other anonymous interviewees commented on a similar lack of professionalism.

Beyond these resource constraints, a serious lack of institutional autonomy, at both federal and state levels, leaves investigations and the decision to pursue a case vulnerable to external influences. The Special Prosecutor’s Office for Crimes Against Journalists (hereinafter the “Special Prosecutor’s Office”), provides one example of a lack of institutional autonomy at the federal level.⁷⁶ The legal foundations of the Special Prosecutor’s Office have a direct impact on its level of autonomy in three important ways. First, the office has no procedure or criteria for the appointment and tenure of

70 These are the cases of Jesús Abel Bueno León, Benjamín Flores González, Philip True, and Gregorio Rodríguez Hernández, see *Special Study on the Murder of Journalists, Ibid.* at 55.

71 *Informe 2009, supra* note 3.

72 Cardenas Interview, *supra* note 15.

73 Interview with Fábian Sánchez (4 November, 2010) [hereinafter Sánchez Interview].

74 Global Integrity, Global Integrity Scorecard: Mexico 2009, Global Integrity, 2009, online: < <http://report.globalintegrity.org> > .

75 Sánchez Interview, *supra* note 73.

76 *Informe 2009, supra* note 3 at 34.

special prosecutors, so their placement and removal are subject to the discretion of the Attorney General. Second, the office reports to the Office of the Attorney General for Human Rights, and thus remains susceptible to undue influence from that office. Finally, the Special Prosecutor depends upon the Attorney General's Office for the allocation of its resources.⁷⁷ Another example of a lack of autonomy can be found in the *Procuraduria General de la Republica* (Federal Prosecution Office). This office is responsible for investigating federal corruption. However, all federal officers are investigated by their own bosses, and political motives often taint investigations.⁷⁸

The Inter American Press Association (hereinafter the "IAPA") recently concluded that the autonomy of state prosecutors' offices is even more precarious than that of federal officials, and that state officials are "more vulnerable to pressure from organized crime or political corruption."⁷⁹ However, by far the more serious problem at the state level appears to be direct corruption or collusion in the violence against journalists on the part of state officials who are themselves tasked with investigating these crimes.

One anonymous interviewee indicated that the federal government regularly uses federalism (i.e. state autonomy) as an excuse to shirk its obligations to intervene. The interviewee suggested that this lack of political accountability works both ways, and, despite the fact that most crimes against journalists currently fall within the jurisdiction of the state, state officials also use claims of federal jurisdiction as an excuse for their inaction.

Unsurprisingly, journalists often choose not to report crimes committed against them because they believe nothing will result from the complaint. Furthermore, they are well aware that police are often involved either indirectly (through corrupt dealings with DTOs) or directly, and are therefore unlikely to provide help. Indeed, complicity between the police and criminals is so common that many believe the justice system is controlled by the DTOs.⁸⁰

c) Lack of incentives for reform

A number of NGOs agreed that the current state of impunity is maintained, at least in part, by a lack of motivation and incentives to reform. Stephanie Brewer of Prodh suggested that the key issue was not the causes of impunity *per se*, but the absence of incentives for accountability. She indicated that there has always been a state of impunity in Mexico and that, especially given the fact that there is corruption and collusion between state authorities and criminal actors, no real motivation exists to correct impunity and punish complicit state agents.⁸¹ CPJ representative Mike O'Connor stated that there are no incentives for reform because those in power may use their influence to obtain their own ends, for example by bribing a judicial official or hiring private security to protect them.⁸²

77 *Informe 2009, supra* note 3 at 34.

78 *Silence or Death, supra* note 4 at 24.

79 *Ibid.*

80 *Ibid.*

81 Brewer Interview, *supra* note 41.

82 O'Connor Interview, *supra* note 19.

iii) Lack of Solidarity Among Journalists

Though journalists in Mexico are professionals who understand the importance of their trade, they are not immune from Mexico's pervasive corruption.⁸³ Indeed, it is not unusual for journalists to be on the payroll of DTOs, in return for sympathetic coverage.⁸⁴ Mike O'Connor points out that this is more a situation of self-preservation than true corruption, as often journalists who take money from DTOs do so because they are told if they do not take the money and follow the cartel's orders, they will be killed.⁸⁵ Some journalists occasionally request payment from politicians in exchange for not printing negative stories about them, or as an incentive to print positive stories.⁸⁶ Indeed, a serious threat to solidarity amongst journalists is the phenomenon of narco-journalism, where DTOs pay reporters for access to sensitive information. The corruption of some journalists undermines solidarity amongst all journalists in Mexico, as it is difficult, if not impossible, to know who to trust.

Cynthia Cardenas of Article 19 indicated that the lack of solidarity between journalist groups was clearly evident in the responses of some media workers to attacks on journalists. Victims are often accused of complicity with organized crime, or the violence is dismissed as the probable result of incompetent journalism. Recently, however, Article 19 has noticed that there is more solidarity among independent journalists.⁸⁷ The recent creation of Journalists on the Ground, an organization aimed at building solidarity among journalists, is one positive development in this direction.

The importance of solidarity was vividly demonstrated when media workers recently organized a rally to call for the release of some kidnapped colleagues. The rally was successful and the abducted journalists were freed. Elia Baltazar of Journalists on the Ground mentioned this action (which occurred in Torreon, Coahuila state, in July 2010)⁸⁸ and indicated that this was the first time, to her knowledge, that Mexico's journalists and freedom of expression groups had worked together to combat attacks on freedom of expression.⁸⁹

83 Cardenas Interview, *supra* note 16.

84 O'Connor Interview, *supra* note 19.

85 *Ibid.*

86 *Ibid.*

87 Cardenas Interview, *supra* note 16.

88 Baltazar Interview, *supra* note 17. The media workers in Torreon were kidnapped after they filmed family members of inmates of a jail, which included narco traffickers. These media workers were detained and the kidnappers negotiated with their lives to demand that two major television networks, Televisa and Millenium, broadcast videos which purported to show members of a rival cartel discussing how they had corrupted local officials and police. The networks agreed to transmit the video clips in question only in their regional broadcasts; however, this marked the first time that one of the great media giants ceded to DTO pressure. However, after the broadcast, the media workers were not released and the emboldened DTOs demanded that the videos be rebroadcast nationally. At this point, Televisa cancelled the negotiations, though the lives of the kidnapped media workers were still at risk. In response, Journalists on the Ground started a "Los Queremos Vivos" (We Want Them Alive) movement and journalists in 14 cities across Mexico marched in protest. The journalist and cameramen were eventually released.

89 Baltazar Interview, *supra* note 18.

IV. MEXICO'S STRATEGY OF MINIMIZATION

A. INTRODUCTION

One of Mexico's great contradictions is its strong stance in support of human rights in international fora such as the United Nations, while allowing serious rights violations within its own borders to occur with impunity. Indeed, since 2000, Mexico has had an open-door policy approach to the different mechanisms, whether they be from the UN or OAS, allowing for scrutiny over the human rights situation in Mexico.⁹⁰ During this timeframe various international organizations have made at least 1,000 recommendations to the government of Mexico, which has signed or ratified over 80 international instruments that are intended to protect human rights.⁹¹ Yet, despite all this activity, the government had done little to address some of its most pressing human rights concerns.

Instead, when confronted with a human rights crisis, the Mexican government tends to simulate a serious response while taking minimal effort to effect substantive changes.⁹² In doing so, they obfuscate the issues, which in turn stifles public outcry. We refer to this strategy as "minimization." In their 2009 report, Article 19 and Cencos indicated that the measures Mexico has taken in recent years to deal with the issues facing journalists are so ineffective that they consider them smokescreens or palliative measures.⁹³

In the case of major decisions that come down from the Inter-American Court of Human Rights, minimization means that the government will craft a minimal concession, such as a bill or policy that does not actually solve the problem, and then claim that the solution is compliant with the court order. This attracts international media attention and the government's spin is widely reported, which temporarily dissipates pressure for further reform.⁹⁴ (This issue is addressed in greater detail in section V of this report.)

Many NGOs in Mexico fear that this strategy of minimization has reached beyond Mexico's borders to include international governments and actors. Indeed, in early 2010, Center Prodh's Director visited Canada to inform officials and the public about the true human rights situation in Mexico and found that the Canadian Government's own rhetoric on asylum-seekers fleeing Mexico suggested erroneously that there were few real cases of persecution or failures of state protection in the country,⁹⁵ which generally follows President Calderon's practice of deflecting responsibility for the problems in Mexico from the Mexican government to DTOs.

B. THE SPECIAL PROSECUTOR'S OFFICE

The Mexican government's efforts to protect journalists under threat have been largely ineffective. In February 2006, the Chamber of Deputies created the Special Prosecutor's Office for Crimes against Journalists (hereinafter the "Special Prosecutor"). When it was created, the Fox government stated that the Special

90 Sánchez Interview, *supra* note 73.

91 *Ibid.*

92 *Ibid.*

93 *Informe 2009*, *supra* note 3 at 33.

94 Brewer Interview, *supra* note 41.

95 *Ibid.*

Prosecutor would be given the task of directing investigations and prosecuting crimes committed against journalists wherever the crime was connected with the exercise of their professional duties. In reality, however, the Prosecutor's Office is not empowered to tackle cases involving drug traffickers or organized crime, and has no formal ability to investigate crimes or lay charges.⁹⁶ The result of this setup has been that, in its first four years, the Special Prosecutor has averaged only one prosecution per year.⁹⁷

The Special Prosecutor's institutional weaknesses have been exacerbated by weak leadership. A new Special Prosecutor, Gustavo Salas Chávez, was appointed in February 2010.⁹⁸ Mr. Salas Chávez is a lawyer, although he lacks both previous prosecutorial work experience and a background in human rights or freedom of expression.⁹⁹ It was reported that he was instructed by former Attorney General Arturo Chávez Chávez to review the office's backlog of cases, combat impunity and reorganize the office. In a recent hearing before the Inter-American Commission on Human Rights, Salas stated that the office was undergoing institutional review to improve its operations in various areas.¹⁰⁰ He also stated that the office is planning to expand its duties to include all crimes against freedom of expression and therefore is changing its name to the *Fiscalía Especial para la Atención de Delitos Cometidos contra la Libertad de Expresión* (the "Special Prosecutor for the Attention to Crimes Committed against Freedom of Expression").¹⁰¹ As of this writing, almost a year has passed since the change in Special Prosecutors, and there have been no reports indicating any progress. Although the Special Prosecutor claims the office's mandate will be extended to include all persons working in freedom of expression, including community radio broadcasters, no changes have yet been reported. At this juncture, the reforms seem merely cosmetic. This institution needs to be strengthened in more than just name, and its mandate broadened to enable effective investigations and prosecutions. At the same time, the reporting structure should be changed to allow the prosecutor a direct report to the Attorney General instead of to the Deputy Attorney General for Human Rights.

C. MECHANISM FOR THE PROTECTION OF JOURNALISTS

For more than two years, civil society advocates have campaigned for the Mexican government to establish a formalized mechanism for the protection of journalists and human rights defenders, similar to the one created in Colombia.¹⁰² The approach taken by Colombia (a country with a comparable history of

96 Protecting *Press Freedom*, *supra* note 6 at 9.

97 *Ibid.* at 10.

98 Prieto and Hernández Interview, *supra* note 33.

99 PGR, News Release 172/10, "Designa el Procurador Arturo Chávez a Gustavo R. Salas como Titular de la Fiscalía Especial para Periodistas" (Feb. 15, 2010) Online: PGR www.pgr.gob.mx.

100 Gustavo R. Salas, Intervención del Fiscal Especial para la Atención de Delitos Contra Periodistas, before the 138th Period of Sessions of the Inter-American Commission on Human Rights (IACHR-OAS), March 22, 2010. Title of the hearing: Attacks on Journalists in Mexico; petitioners: Article 19 and Cencos [hereinafter Intervención] cited in *Protecting Press Freedom*, *supra* note 6

101 *Ibid.*

102 Martínez and Jiménez Interview, *supra* note 17.

attacks against journalists) is considered a model by many Mexican journalists and civil society organizations.¹⁰³ The *Programa de Protección a Periodistas y Comunicadores Sociales de Colombia* was founded in 2000 to protect and prevent violence against journalists. As part of its five-year program to strengthen democratic institutions in Colombia, USAID worked with a mixed Ministry of Interior-NGO committee to create safeguards for journalists. These included the security remodeling of the journalists' offices and the purchase and delivery of radios and bulletproof vests.¹⁰⁴

According to an anonymous interviewee, a process for development of the mechanism was started in Mexico in February 2010 at a meeting between the Inter-American Commission on Human Rights, representatives of the Ministry of the Interior, Mexican civil society organizations, and Colombians involved in their country's protective mechanism. Reportedly, there were also subsequent meetings with the Human Rights Unit of the Ministry of the Interior, which was open to developing the mechanism. However, when former Secretary of the Interior Fernando Gómez-Mont and his entire staff were replaced in July 2010, the process stalled.

This changed with the visits of the UN and OAS Special Rapporteurs for Freedom of Expression to Mexico in August 2010. Their strongly-worded preliminary report, released in October 2010, raised significant concerns about impunity for attacks against journalists. The English executive summary of the Spanish-language report states that:

*the full enjoyment of freedom of expression in Mexico faces grave and diverse obstacles, including most notably the murder of journalists and other very serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity in these cases. The Rapporteurs are also concerned about the existence of legislation at the federal level and in a significant number of states which contemplates the application of criminal sanctions to the exercise of freedom of expression. The Rapporteurs also consider that the vigor, diversity and pluralism of the democratic debate in Mexico is seriously limited by a number of factors, including: the high concentration of ownership and control of mass media outlets which have been assigned radio and television frequencies; the absence of a clear, well-founded and equitable legal framework governing the allocation of said frequencies; the inexistence of mechanisms that provide access to alternative media; and the lack of regulations regarding government advertising. Finally, the Rapporteurs observe with concern an emerging trend toward the restriction of the right to access public information.*¹⁰⁵

103 *Silence or Death*, *supra* note 4 at 25.

104 USAID, News Release, "USAID Colombia: Support to Democratic Institutions" (June 1, 2001) Online: USAID < www.usaid.gov > Protecting *Press Freedom*, *supra* note 6 at 8.

105 United Nations Special Rapporteur on the right to freedom of opinion and expression and Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression, *Visita Oficial Conjunta a México: Observaciones Preliminares, 2010* online: CIDH <http://www.cidh.org>. [hereinafter *Visita Oficial*].

An anonymous interviewee noted that, after the release of this report, civil society organizations requested a further meeting at the Inter-American Commission to once again propose the creation of a mechanism of protection, and the government agreed.

According to the same interviewee, on November 3, 2010, representatives from various government offices announced that they had reached an agreement with respect to the creation of a mechanism for protection. Government officials have stated that the proposed mechanism would create a state-funded emergency response system to provide protection to threatened journalists.¹⁰⁶ A range of protective measures are envisioned, including the provision of bodyguards, physical relocation, cell phones, and armoured cars.¹⁰⁷

The government's recognition of the seriousness of the problem is welcome. However, Mexican civil society organizations have strongly criticized the mechanism as currently conceived, for significant flaws that will seriously hamper its effectiveness.¹⁰⁸ A primary concern is the fact that journalists and civil society organizations will have no official role. Instead, the committee responsible for the mechanism will be run by the Ministry of the Interior, a department which acquired an unsavoury reputation in Mexico prior to democratization, when it ran the political police that kept the PRI in power.¹⁰⁹ Also at the table are the Secretary of Public Security, the Attorney General, and the Ministry of Foreign Relations.¹¹⁰ Civil society organizations will be included only by way of a consultative sub-committee, and they will have no decision-making authority.¹¹¹ Three journalists will eventually be appointed to the committee, but they will be hand-picked by government officials.¹¹²

This lack of civil society involvement has been criticized for its failure to address the lack of confidence most journalists have in government representatives.¹¹³ in the oversight is particularly striking given the fact that much of the committee will be made up of police, who have been implicated both in threats against journalists and for failing to investigate those crimes.¹¹⁴ A further problem arises from plans to include in the mechanism state authorities, even more commonly implicated in threats and failures to investigate.¹¹⁵ The authors of this report were told of one threatened journalist who, when confidentially offered the protection of federal police, stated that he did not feel comfortable having members of the police force know where he lived.¹¹⁶

106 O'Connor Interview, *supra* note 19.

107 *Ibid.*

108 Prieto and Hernández Interview, *supra* note 33.

109 O'Connor Interview, *supra* note 19.

110 *Ibid.*

111 *Ibid.*

112 *Ibid.*

113 Prieto and Hernández Interview, *supra* note 33.

114 *Ibid.*

115 Cardenas Interview, *supra* note 16.

116 O'Connor Interview, *supra* note 19.

The mechanism has also been criticized for its lack of explicit plans for the provision of resources and technical expertise.¹¹⁷ Providing protection to persons under threat is an expensive matter that requires experts in risk assessment and risk mitigation.¹¹⁸ Without a clear plan in place for financing the mechanism, it risks becoming yet another ineffective Mexican institution that functions in name only. What is more, the proposed mechanism of protection has excluded human rights defenders.¹¹⁹ According to an anonymous interviewee, initial discussions indicated that the mechanism was intended to include both journalists and human rights defenders, since both groups are routinely targeted for exercising their rights to freedom of expression. This narrowing of the mechanism's scope will result in a bifurcated system where human rights defenders have to avail themselves of *ad hoc* applications for protective measures before the National Human Rights Commission, the Inter-American Court and the Inter-American Commission for Human Rights. It is also not clear whether the definition of journalist under the mechanism will be sufficiently broad to incorporate community radio broadcasters.

Since November 2010, government officials and civil society organizations have met to discuss the issue, including a January 2011 trip to Colombia to observe the protective measures used there.¹²⁰ However, on March 14, 2011, a group of Mexican civil society organizations issued a press release decrying the lack of substantive action.¹²¹

An effective protective mechanism must address the lack of confidence journalists have in the police to keep them safe. The Colombian model, which is widely regarded as a success, was more flexible and included journalists. Whatever form the mechanism of protection ultimately takes, it must be buttressed by a preventative approach that includes legal reforms, measures to strengthen the Office of the Special Prosecutor, and plans to increase the capacity of the judicial system the mechanism should also be made operational without further delay.

D. SPECIAL COMMITTEE FOR DEALING WITH ATTACKS AGAINST JOURNALISTS

In 2006, the federal Chamber of Deputies established a Special Committee for Dealing with Attacks against Journalists and News Media (*Comisión Especial para el Seguimiento a las Agresiones y Medios de Comunicación*).¹²² This had some success raising awareness about the rising number of victims and worsening security situation.¹²³ Although it was disbanded by the Chamber of Deputies in September 2009, the Committee was reinstated in February 2010.¹²⁴ This committee needs to do more to press the government for necessary legal reforms.

117 Prieto and Hernández Interview, *supra* note 33.

118 *Ibid.*

119 Cardenas Interview, *supra* note 16.

120 Cencos, News Release, "Estado incumple gravemente su obligación de proteger a periodistas y defensoras y defensores de derechos humanos," (14 March, 2011) online: Cencos <<http://www.cencos.org>> [hereinafter Estado Incumple].

121 Estado Incumple, *Ibid.*

122 Protecting *Press Freedom*, *supra* note 6, at 17.

123 *Ibid.*

124 *Ibid.*

E. AMENDMENTS TO THE FEDERAL PENAL CODE

In April 2009, the Chamber of Deputies approved the addition of a section XXVII to the Federal Penal Code, which denominated “crimes against freedom of expression exercised by journalistic activity.”¹²⁵ As this report goes to press, the amendment is still awaiting approval by the Senate.¹²⁶ The initiative is positive because it recognizes that attacks on journalists violate the right to freedom of expression; it also recognizes that the motive is to silence the communicator.¹²⁷ Furthermore, the scope of the amendment extends to all communicators, including community members, independents, and freelancers.¹²⁸ However, Article 19 warns that this measure, while important, does not provide procedural reforms needed for the federal government to investigate crimes committed against communicators, particularly those handled by local courts.¹²⁹ Until these crimes are federalized, federal authorities will continue to lack the jurisdiction necessary for thorough investigations.¹³⁰

F. NARROW DEFINITION OF JOURNALISTS

This report has already examined the repression of community radio broadcasters and their particularly vulnerable position in society. This vulnerability is exacerbated by another element in Mexico’s strategy of minimization: the manipulation of the legal definition of journalists so as to exclude individuals involved in journalistic activities who face threats and violence as a result of their work. The authors were informed by members of AMARC that it is still unclear whether community radio broadcasters will be included in the government’s proposed mechanism for the protection of journalists.¹³¹ To date, neither AMARC nor any of its member stations have been consulted on the matter.¹³² AMARC also reported that government officials frequently state that community broadcasters do not meet the definition of journalists in order to minimize repression against them.¹³³ The sixth principle of the *American Declaration of Principles on Freedom of Expression* states that every person has the right to communicate his/her views by any means and in any form.¹³⁴ The second principle states that all people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination.¹³⁵ As this principle demonstrates, everyone engaged in journalistic activities, regardless of professional status, is exercising their right to freedom of expression. Any attempt to artificially narrow the category of journalists cannot be justified.

125 México, Cámara de Diputados, *De la Comisión de Justicia, con proyecto de decreto que adiciona el Título Vigésimo Séptimo, “De los Delitos cometidos contra la Libertad de Expresión”, al Código Penal Federal* (2 April 2009), Gaceta Parlamentaria, número 2728-IV, martes 31 de marzo de 2009.

126 *Ibid.* at 39-40.

127 *Ibid.* at 40.

128 *Ibid.*

129 *Ibid.*

130 *Ibid.*

131 Martínez and Jiménez Interview, *supra* note 47.

132 *Ibid.*

133 *Ibid.*

134 O.A.S., *Inter-American Declaration of Principles on Freedom of Expression*, adopted at the 108th regular session, October 19, 2000 at Principle No. 6 [hereinafter *Principles*].

135 *Ibid.*, Principle No. 2.

V. VIOLENCE AND IMPUNITY: VIOLATING JOURNALISTS' RIGHTS

A. INTRODUCTION

The continuing violence and aggression directed at journalists, as well as the ongoing impunity for such crimes, puts Mexico in violation of various human rights provisions under the *American Convention on Human Rights*¹³⁶ (hereinafter the “American Convention”) in the Inter-American regional human rights system (hereinafter the “Inter-American System”) and the *International Covenant on Civil and Political Rights* (hereinafter the “ICCPR”) in the UN human rights system (hereinafter the “UN System”). Mexico signed and ratified the American Convention in 1981 and acceded to the ICCPR and thereafter ratified the Optional Protocol, which provides the United Nations Human Rights Committee (hereinafter the “HRC”) with jurisdiction to hear complaints brought pursuant to the ICCPR, in 2002.¹³⁷

B. RIGHT TO FREEDOM OF EXPRESSION

In the Inter-American system, states have positive obligations with respect to the rights established in the American Convention. Pursuant to the American Convention, the state is obliged to respect, protect, and fulfill the human rights obligations contained in that treaty.¹³⁸ The state is further obligated to deter and prevent violations of the rights contained in it, and to investigate and remedy any violations of those rights.¹³⁹

Articles 13 and 14 of the American Convention establish a legal right to freedom of expression. Article 13(1) sets out the core of this right under the American Convention:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.¹⁴⁰

With respect to the ongoing violence against journalists and other social communicators in Mexico, the Inter-American Declaration of Principles on Freedom of Expression (hereinafter the “American Declaration of Principles”) clarifies the state's obligations with respect to the right to freedom of expression as follows:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.¹⁴¹

136 American Convention, *supra* note 8.

137 United Nations Treaty Collection, “Chapter IV: Human Rights”, (Dec. 16, 2010) online: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en>.

138 Human Rights Watch, Mexico's National Human Rights Commission: A Critical Assessment, HRW, 2008, Vol. 20, No. 1(B) at 17 [hereinafter Critical Assessment].

139 *Ibid.*

140 American Convention, *supra* note 8 at Article 13(1).

141 Principles, *supra* note 134 at Principle No. 9.

The ongoing violence against journalists in Mexico, perpetrated by both state and non-state actors, and the impunity surrounding this violence constitute a violation of Article 13 (Freedom of Thought and Expression) of the American Convention pursuant to Articles 1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects), as well as Principle No. 9 of the American Declaration of Principles.

Under the UN System, Article 19(2) of the ICCPR sets out the core of the right to freedom of expression:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹⁴²

Mexico's obligations under the ICCPR are similar to those under the Inter-American System; namely, to respect, protect, and fulfill the human rights obligations found in that treaty, and to deter and prevent, investigate and remedy violations of those rights.¹⁴³ Pursuant to Article 2(3)(a) of the ICCPR, governments have an obligation "to ensure that any person whose rights or freedoms as [t]herein recognized are violated shall have an effective remedy."¹⁴⁴

Journalists who take money from DTOs do so because they are told if they do not take the money and follow the cartel's orders, they will be killed.

In their 2010 Concluding Observations on Mexico, the HRC noted journalists as one of their principle subjects of concern and recommendations. In making their recommendations, the HRC indicated that Mexico should "guarantee the right of journalists and human rights defenders to freedom of expression in the conduct of their activities."¹⁴⁵ Indeed, pursuant to Article 19(2) there is both a right to impart information, as well as the public's right to seek and receive information. Both rights are violated by the circle of violence and impunity surrounding Mexico's press.

C. RIGHT TO LIFE

Article 4(1) of the American Convention establishes that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.¹⁴⁶

142 American Convention, *supra* note 8 Art. 19(2).

143 Critical Assessment, *supra* note 138 at 17.

144 ICCPR, *supra* note 8 at Art 2(3)(a).

145 Human Rights Committee, Concluding Observations: Mexico, UN HRC, 2010, UN Doc. CCPR/C/MEX/CO/5 at 2 [hereinafter Concluding Observations 2010].

146 American Convention, *supra* note 8 at Article 4(1).

Pursuant to the American Convention, the right to life includes “both the right of all human beings not to be deprived of life arbitrarily as well as the right not to be prevented from having access to conditions that guarantee a life of dignity.”¹⁴⁷ The Inter-American Court has shed light on the relationship between Article 1 (Obligation to Respect Rights) and Article 4, indicating that “[c]ompliance with Article 4, in relation to Article 1.1 of the American Convention, not only presupposes that no person may be arbitrarily deprived of life (negative obligation), but also requires that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.”¹⁴⁸ This positive obligation to both prevent and punish violations of this right extends not just to the legislature, but to all state institutions, including those tasked with safeguarding security, and including both the police and the military.¹⁴⁹ Mexico is in violation of Articles 4 and 1 of the American Convention due to the direct and indirect involvement of the state in the murder of journalists, and the ongoing state of impunity surrounding these crimes.

Under the UN System, Article 6(1) of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In their General Comment No. 6 on the Right to life, the UN Human Rights Committee sets out the obligation of state parties to prevent and punish violations of the right to life thus, “States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.”¹⁵⁰ State parties are also required to take effective measures to prevent the disappearance of persons and are specifically required to “establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”¹⁵¹ Thus, as under the ICCPR, state parties are under a positive obligation to both prevent and punish violations of the right to life.

In their 2010 Concluding Observations on Mexico, relating to the state of impunity surrounding the killing of journalists, the HRC expressed its concern “at the lack of significant progress in the implementation of its previous recommendations, including those relating to ... the lack of protection of human rights defenders and journalists.”¹⁵² The HRC recommended, amongst other measures, that Mexico:

(a) Take immediate steps to provide effective protection to journalists and

147 Case of Ximenes-Lopes (Brazil) (2006), Inter-Am. Ct. H.R. (Ser. C) No. 149 at para. 124.

148 Case of Zambrano-Vélez et al., (Ecuador) (2007), Inter-Am. Ct. H.R. (Ser. C) No. 166 at para. 80.

149 *Special Study*, *supra* note 69 at 30.

150 Human Rights Committee, General Comment No. 06: The right to life, UN CCPR, 04/30/1982 [hereinafter HRC General Comment No. 6].

151 *Ibid.*

152 Concluding Observations 2010, *supra* note 145 at 2.

human rights defenders whose lives and security are under threat due to their professional activities; [and]

(b) Ensure the prompt, effective, and impartial investigation of threats, violent attacks and assassinations perpetrated against journalists and human rights defenders and, where appropriate, prosecute and institute proceedings against the perpetrators of such acts.

As under the American Convention, the right to life has been violated under the ICCPR by the Mexican state's direct and indirect involvement in the killing and forced disappearances of journalists, and by the ongoing state of impunity surrounding these crimes.

When confronted with a human rights crisis, the Mexican government tends to simulate a serious response while taking minimal effort to effect substantive changes. In doing so, they obfuscate the issues, which in turn stifles public outcry. We refer to this as a strategy as "minimization."

D. PROHIBITION AGAINST TORTURE

In the UN System, Mexico became a signatory to the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter the "CAT") in January 1986, and ratified the Optional Protocol thereto in April 2005. Pursuant to Article 1 of the CAT, there are four threshold requirements to demonstrate torture: 1) intentional infliction of, 2) pain and suffering (physical or mental), 3) for a specific purpose such as discrimination, and 4) involving a public official or a person acting in an official capacity.¹⁵³ The Committee against Torture has made it clear that state parties bear the responsibility for torture committed by private actors where officials "know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention."¹⁵⁴ Articles 2 and 16 of the CAT require state parties to take effective measures to prevent torture and cruel, inhuman or degrading treatment within their jurisdiction.¹⁵⁵

153 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987.at Article 1. [hereinafter CAT]

154 UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, available at: <http://www.unhcr.org/refworld/docid/47ac78ce2.html> [accessed 14 March 2011] at para. 18 [hereinafter CAT General Comment 2].

155 CAT, *supra* note 153 at Articles 2 and 16.

Article 7 of the ICCPR further emphasizes the international prohibition on torture, indicating that:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*¹⁵⁶

This definition of torture is intended to encompass the actions of private actors. Indeed, the HRC's General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment indicates that "[i]t is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity."¹⁵⁷

In their 2010 Concluding Observations on Mexico, the HRC noted with concern "the continued occurrence of torture and ill-treatment [*sic*] by law enforcement authorities, the limited number of convictions of those responsible, and the low sanctions imposed on the perpetrators."¹⁵⁸ The HRC recommended that Mexico "bring the definition of torture in legislation at all levels in line with international and regional standards, with a view to covering all forms of torture [and that an] investigation should be opened into each case of alleged torture."¹⁵⁹ They further recommended that "[t]he State party ... reinforce its measures to put an end to torture and ill-treatment, to monitor, investigate and, where appropriate, prosecute and punish the perpetrators of acts of ill-treatment and compensate the victims."¹⁶⁰

Regarding the torture of journalists specifically, numerous reports, including the CPJ's 2010 report "Silence or Death in Mexico's Press", and the 2008 O.A.S. "Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that May Be Related to their Work in Journalism" have reported cases of journalists being subjected to torture, or whose murdered bodies were found with signs of torture.¹⁶¹ Because of the failure to investigate, it is often impossible to definitively conclude whether the culprits in these cases were state or private actors. However, as this report has attempted to demonstrate, Mexican officials have consistently failed to exercise due diligence to prevent, investigate, prosecute, and punish those responsible for these crimes. At a minimum, the acquiescence of state officials towards the torture of journalists puts Mexico in violation of Articles 1, 2, and 16 of the CAT. By failing to protect journalists from torture, both at the hands of those acting in an official and in a private capacity, Mexico is also in violation of Article 7 of the ICCPR.

156 ICCPR, *supra* note 8 at Article 7.

157 UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, available at: <http://www.unhcr.org/refworld/docid/453883fb0.html> [accessed 14 March 2011].

158 Concluding Observations 2010, *supra* note 145 at 5.

159 *Ibid.*

160 *Ibid.*

161 See *Silence or Death*, *supra* note 4 and *Special Study on the Murder of Journalists*, *supra* note 69.

In the Inter-American System, Mexico ratified the *Inter-American Convention to Prevent and Punish Torture* (hereinafter the “American Convention on Torture”) in 1987. Pursuant to the American Convention on Torture, state parties are required “to take effective measures to prevent and punish torture within their jurisdiction.”¹⁶² Only public servants or those acting at the instigation of public servants can be found guilty of torture, pursuant to Article 3.¹⁶³ However, state parties are also required to “take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.”¹⁶⁴

Mexican law is silent when it comes to regulating community radio stations, but robust and vigorous when it comes to criminally prosecuting them for unlicensed use of the radio spectrum.

Article 5(1) and (2) of the American Convention, which sets out a right to humane treatment, states:

- 1. Every person has the right to have his physical, mental, and moral integrity respected.*
- 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*¹⁶⁵

The Inter-American Court has indicated that state parties have a duty to investigate, identify, prosecute, and punish all perpetrators of torture.¹⁶⁶ Furthermore, these investigations must “take into consideration international standards of documentation and interpretation of the elements of proof regarding the commission of the acts that make up the violation.”¹⁶⁷ The standards for such investigations are set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Istanbul Protocol”).¹⁶⁸ Mexico is in violation of the right to humane treatment pursuant to the American Convention due to the ongoing state of impunity surrounding these crimes.

162 Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force Feb. 28, 1987, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc. 6 rev.1 at 83, 25 I.L.M. 519 (1992) at Article 6 [hereinafter Inter-American Torture Convention].

163 *Ibid.* at Article 3.

164 *Ibid.* at Article 6.

165 American Convention, *supra* note 8 at Article 5.

166 *Vargas-Areco Case [Paraguay]* (2006), Inter-Am. Ct. H.R. (Ser. C), No. 155 at para. 93.

167 *Ibid.*

168 *Ibid.*

E. RIGHT TO JUDICIAL PROTECTION

Article 25(1) of the American Convention states that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

The Inter-American Court has held that the right to judicial protection in Article 25 is “one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.”¹⁶⁹ This provision requires states to exercise due diligence in addressing human rights violations.¹⁷⁰ This duty includes four aspects: the obligation to prevent, to investigate, to punish and to provide redress for human rights violations.¹⁷¹ In the leading case of *Velasquez Rodriguez*, the Inter-American Court held that:

*This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, states must prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.*¹⁷²

Mexico’s failures to prevent, investigate, punish and provide redress for the human rights violations set out in this report therefore also constitute violations of Mexico’s convention obligations. These violations occur in conjunction with violations of Article 1 (the obligation to respect the rights in the Convention) Article 2 (the requirement to adopt measures to give effect to the rights under the American Convention, and Article 8 (the right to a fair trial and to the determination of one’s legal rights and obligations of a civil or other nature).

169 *Loayza Tamayo* Case (Peru) (1998), Inter-Am. Ct. H.R. (Ser. C) No. 42 at para. 169 [hereinafter *Loayza Tamayo*].

170 *González Pérez et al. v. Mexico* (2001), Inter-Am. Ct. H.R. (Ser. C.) No. 53/01 [hereinafter *González Pérez*].

171 *Velásquez Rodríguez* Case (Honduras) (1988), Inter-Am. Ct. H.R. (Ser. C), No. 4, at para. 149 [hereinafter *Velásquez Rodríguez*].

172 *Ibid.* at para. 166.

VI. MEXICO'S LEGAL FRAMEWORK VIOLATES FREEDOM OF EXPRESSION

A. INTRODUCTION

Mexico's legal framework, in turn, violates and impedes the right to freedom of expression through both acts and omissions on the part of the state. This leaves journalists even more vulnerable in Mexico's current state of extreme violence and impunity. Criminal libel, slander and defamation laws remain on the books in 15 states in Mexico,¹⁷³ while civil defamation laws continue to be used to harass journalists who work to uncover corruption. Media regulation laws continue to favour media concentration in the hands of few media corporations. Furthermore, the independence of media outlets remains precarious, as they are often forced to censor their coverage or risk losing valuable government advertising contracts.

The failure to create employment standards or to regulate the profession of journalism in any way has also left journalists vulnerable to corruption and often without recourse if they are injured on the job. The ongoing failure of the Mexican government to create regulations for the licencing of community broadcasting leaves these journalists in an extremely precarious position vis-à-vis the law and also constitutes a serious and an almost certainly wilful omission on the part of the state. Criminal prosecutions and the use of threats and violence on the part of state actors have further been employed against community broadcasters to silence them. Many of these failings, and the failure of Mexican authorities to address them, also constitute violations of the right to judicial protection.

B. SPECIFIC LIMITATIONS ON FREEDOM OF EXPRESSION

i) Libel, Slander, and Defamation Laws:

Article 13(1) and (2) of the American Convention state:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or*
- b. the protection of national security, public order, or public health or morals.¹⁷⁴*

These principles clarify the scope of the right to freedom of expression under the Inter-American System. Under the American Convention, prior censorship is prohibited, and a subsequent imposition of liability is authorized only when necessary

173 Article 19, "Press Release: Puebla State Decriminalizes Defamation", Feb. 25, 2011, Article 19 online: <http://www.article19.org/pdfs/press/mexico-puebla-state-decriminalises-defamation.pdf>. [hereinafter Puebla Press Release].

174 American Convention, *supra* note 8 at art. 13.

to respect the rights or reputations of others or for national security, public order, public health or morals.¹⁷⁵ The January 1999 report of the UN Special Rapporteur reflects both the fact that “[t]he only legitimate purpose of defamation, libel, slander and insult laws is to protect reputations,” and also that “[s]anctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied.”¹⁷⁶

Despite this, both civil and criminal laws of libel, slander, and defamation exist in different parts of Mexico, and can be used to accuse media workers for the content of a publication or expression.¹⁷⁷ Indeed, in 2009 alone, there were five registered cases of such accusations made in Mexico.¹⁷⁸ Although defamation was decriminalized in the Federal Criminal Code of Mexico in 2008,¹⁷⁹ as of February 2011, laws criminalizing defamation, libel and slander continued to be present in 15 of the 32 states in Mexico.¹⁸⁰ In many states jail sentences are imposed on those found guilty of defamation, and sentences can be as severe as four years’ imprisonment.¹⁸¹

According to Article 19 and Cencos, civil defamation laws have been used to censor journalists. Indeed, the magazine *Contralínea* was the object of two actions initiated by *Grupo Z*, a management group contracted by *Petroleos Mexicanos* (“PEMEX”), the state-owned petroleum company with a monopoly on the exploration, processing, and sale of petroleum. *Grupo Z* brought defamation suits relating to the content of magazine articles which explored irregularities in the assignment of million-dollar contracts involving PEMEX. These cases were decided against the plaintiffs in 2008, and were the subject of a recommendation of the National Commission for Human Rights (the “CNDH”). The recommendation, *inter alia*, indicated that these kinds of suits can create an indirect means of restricting freedom of expression, which is the purpose of journalistic work.¹⁸² Unfortunately, since then, PEMEX has successfully appealed the lower court decision to the Court of the Federal District. On January 3, 2011, Judge Tolamatl Alonso ruled against *Contralínea* and its journalists for moral damages, in favour of the PEMEX contractors.¹⁸³ According to Article 19, this precedent amounts to prior censorship, in part because it disallows the use of “insulting” language, without defining what constitutes “insulting”.¹⁸⁴ Indeed, this decision sets out an overly broad interpretation of “insulting” that includes legitimate journalistic critique.

175 Grossman, Claudio, “Freedom of Expression in the Inter-American System for the Protection of Human Rights” (2001) 25 *Nova L. Rev.* 411 at 416 [hereinafter Grossman].

176 Report of the UN Special Rapporteur on the Protection and Promotion of the Right to Freedom of Expression and Opinion, UN Doc. E/CN.4/1999/64, 29 t para. 28(a) and (h). [hereinafter UN Special Rapporteur 1999]

177 *Informe 2009, supra* note 12 at 14.

178 *Ibid.*

179 *Ibid.* at 41.

180 Puebla Press Release, *supra* note 18.

181 *Informe 2009, supra* note 12 at 42.

182 *Ibid.* at 14 at footnote 7.

183 Cynthia Cárdenas, “Condena Condenable” (Jan 27, 2011) *El Universal*, available at: <http://blogs.eluniversal.com.mx/weblogs_detalle13159.html> [hereinafter *Condena*].

184 *Ibid.* at 191.

ii) Media Regulation and Oligopoly

Regarding highly concentrated media sectors, the Inter-American Declaration of Principles on Freedom of Expression sets out the following principle:

*Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.*¹⁸⁵

The federal *Radio and Television Law* and the *Telecommunications Law* came into force in Mexico in 1960 and 1995, respectively. Both were significantly reformed in 2006, on the eve of the presidential election. The reforms were strongly criticized for favouring existing media companies and inhibiting media diversification.¹⁸⁶ Already, media is heavily concentrated in Mexico. Today, two families own 96 percent of commercial television stations and 86 percent of radio stations are held by 13 business groups.¹⁸⁷ A group of senators challenged the constitutionality of the amendments in the Supreme Court of Justice for the Nation. In a transparent and thorough decision, the court agreed, and struck down the majority of the amendments.¹⁸⁸ However, despite this robust legal decision, Mexican communications law still impedes the creation of media diversity, as the laws that heavily favour large media companies remain in effect. In addition, there is a legislative vacuum for the regulation of community broadcasters, who frequently face serious criminal sanctions for failing to meet regulatory requirements that should not apply to them since the law makes no provision for non-commercial private broadcasters.¹⁸⁹

Regarding public advertising, the Inter-American Declaration of Principles on Freedom of Expression explains that:

*The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies ... with the intent to ... pressure, ... punish or reward ... communications media because of the opinions they express, threaten freedom of expression, and must be explicitly prohibited by law. [Media] have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon [them] to stifle the dissemination of information are incompatible with freedom of expression.*¹⁹⁰

Many media outlets in Mexico are heavily dependent on government

185 Principles, *supra* note 142 at Principle No.12.

186 Medios Comunitarios, *supra* note 5 at 20.

187 Radios Comunitarias, *supra* note 49 at 7.

188 Medios Comunitarios, *supra* note 5 at 20.

189 *Ibid.* at 50

190 Principles, *supra* note 134 at Principle No. 13.

advertising for their financial survival. Many outlets are forced to censor their coverage or risk the loss of lucrative advertising contracts. The regulatory framework governing these contracts must be reformed in order to permit media outlets to practice their professions without fear of reprisal from public authorities.

iii) Community Radio Stations

a) Introduction

As mentioned above, the unique circumstances of community radio broadcasters are often overlooked in discussions about journalists in Mexico. Community radio broadcasters operate in a situation of extreme vulnerability that differs from the situation of professional journalists. A large proportion of community broadcasters, if not a majority, are indigenous and most serve marginalized communities.¹⁹¹ Community radio stations, often under the auspices of AMARC, have engaged in significant organization since 2002.¹⁹² However, despite their able and dedicated efforts, only 13 community radio stations have been able to obtain licences to broadcast.¹⁹³ In fact, out of the 1,200 radio licences issued in Mexico only these 13 have been allocated to community radio stations.¹⁹⁴

As previously stated, community radio stations experience repression from two sources: as the target of frequent government attacks¹⁹⁵ and as the subject of criminal prosecutions for unlicensed access to the airwaves.¹⁹⁶

b) The role of community radio in a democratic society

Community radio stations in Mexico have a modest presence in the Mexican communications landscape. They are few and far between and they tend to be located in remote areas.¹⁹⁷ They do not affect existing commercial broadcasters and do not interfere with their signals.¹⁹⁸ In fact, small radio stations of the kind discussed here do not harm full power broadcasters.¹⁹⁹ Yet, despite their small size, they are commonly targeted by the state.²⁰⁰ According to UNESCO, community radio stations provide an extremely valuable service to their communities and to wider society:

The main functions of community radio include enhancing democratic processes at a local level by giving a voice to the marginalized and the poor; increasing diversity of content and pluralism of information at the local level in order to promote and

191 Baltazar Interview, *supra* note 18.

192 Martínez and Jiménez Interview, *supra* note 47.

193 Reporters Sans Frontières, "Police raid silences Chiapas community radio station" (October 15, 2010). <http://en.rsf.org/mexico-police-raid-silences-chiapas-15-10-2010,38558.html> (accessed November 27, 2010).

194 *Ibid.*

195 Martínez and Jiménez Interview, *supra* note 47.

196 *Ibid.*

197 Aleida Calleja and Beatriz Solís, *Con permiso: La radio comunitaria en México*, 2nd ed. (Mexico City: Fundación Friedrich Ebert-México, 2007) [hereinafter *Con permiso*] at 13.

198 Martínez and Jiménez Interview, *supra* note 47

199 Fatima Fofana, "Creating a Diversity of Voices: Local Expression Through a Law Power Radio Service" (1999) 7 *CommLaw Conspectus* 409 at 414.

200 Martínez and Jiménez Interview, *supra* note 47.

*reflect local identity, character and culture; assisting in creating diversity of voices and opinions and encourage individual expression and encouraging participation, sharing information and innovation.*²⁰¹

Indeed, community radio aims to respond to the needs, interests and problems of impoverished and marginalized sectors of civil society. Nearly half of AMARC's approximately 30 member stations are run by indigenous groups.²⁰² The radio stations tend to be political and to seek social transformation, if not of broader Mexican society, then at least of the conditions of the communities they serve.²⁰³ According to one interviewee who wished to remain anonymous, Mexican authorities tend to view organizing by such small communities with suspicion. Yet, community radio can play a significant role in ameliorating the living conditions of marginalized sectors of society. In a 2002 report, the United Nations Special Rapporteur acknowledged that the diffusion of ideas by community radio broadcasters helps marginalized communities to secure basic conditions of dignity, security, subsistence, and development.²⁰⁴

The following provides a brief description of the work engaged in by community radio stations. *Radio Tierra y Libertad* is a community radio show for the working class in Monterrey, Nuevo León. For many years its broadcasts have addressed issues of education, health, culture, and human and labour rights.²⁰⁵ *Radio Calenda* in Oaxaca promotes Zapoteca culture and language.²⁰⁶ *Radio Jen Poj*, also in Oaxaca, serves the Sierra Mixe population and transmits 80 percent of its broadcast in the Mixe language.²⁰⁷ *Radio Nandia (Pop Mazateca de Oaxaca)* transmits in Mazateca, Náhuatl and Spanish.²⁰⁸ In the western state of Michoacán, *Radio Uandarhi* serves the migrant indigenous population in Uruapan and transmits 50 percent of its programming in Purépecha.²⁰⁹ *Radio Erandi*, also in Michoacán, serves 20 small indigenous and farmer communities.²¹⁰ *Omega Experimental* transmits in the state of México. Their work includes giving recognition to the indigenous minority who live in the region.²¹¹ *Radio Huayacocotla* in Veracruz serves the low income farmer and Tepehua indigenous populations in its broadcast area.²¹² Because of Mexico's long history of media being concentrated in the hands of a small corporate elite, combined with general societal discrimination, indigenous people and the poor have traditionally been unable to access media communications in Mexico.²¹³ Community radio stations work to remove those historic barriers.

201 UNESCO Community Media Programme (-portal.unesco.org/ci/), cited in *Con Permiso*, *supra* note 205 at 19.

202 *Ibid.* at 151-154.

203 Radios Comunitarias, *supra* note 49 at 12.

204 *Ibid.* at 15.

205 *Ibid.* at 11.

206 *Con Permiso*, *supra* note 197 at 151.

207 *Ibid.*

208 *Ibid.* at 152.

209 *Ibid.*

210 *Ibid.* at 153.

211 *Ibid.* at 154.

212 *Ibid.* at 155.

213 Martínez and Jiménez Interview, *supra* note 47.

c) Exclusion from Mexico's regulatory framework, and criminalization

Mexico's radio regulatory framework does not recognize non-commercial private radio. Since it was first drafted in 1960, the federal *Radio and Television Law*²¹⁴ has been used to encourage media consolidation.²¹⁵ It is likely as a result of this that 86 percent of radio stations are owned by 13 business groups.²¹⁶ Although the *Radio and Television Law* sets out that these media are to have strong social objectives, in practice this is not enforced. The law provides only for public and private commercial broadcasters. There is no reliable regulatory mechanism by which community radio broadcasters may attempt to legally access the radio spectrum. Radios that try to apply for licences anyway frequently do so in vain, as state authorities often fail to respond, or take years to do so.²¹⁷ *Radio Huayacocotla* waited 27 years for the state to approve its request for a licence.²¹⁸ When licences are distributed, they are allocated in a discriminatory manner.²¹⁹ Community radio stations are therefore faced with a Hobson's choice: broadcast illegally or don't broadcast at all.

However, while Mexican law is silent when it comes to regulating community radio stations, it is robust and vigorous when it comes to criminally prosecuting them for unlicensed use of the radio spectrum.²²⁰ Although there are civilian offences that specifically target such unauthorized use in the *Radio and Television Law*, and provide for fines, authorities have generally opted to pursue a general criminal provision under the *General Law on National Properties* that is punishable by up to 12 years in prison.²²¹ This serious potential penalty is considered disproportionate by AMARC and its members.²²²

Héctor Camero of *Radio Tierra y Libertad* (Land and Freedom Radio) was criminally charged under the *General Law on National Properties* in 2009.²²³ This non-profit community radio station provides public interest information to low-income communities. The station applied for a broadcasting licence in 2002, but the authorities did not reply to its request. The station was raided by Federal Preventative Police in 2008 and Mr. Camero originally spoke to prosecutors as a witness to alleged police abuses. In 2009, however, at the behest of the Ministry of the Interior, he was charged. Although the station received its licence to broadcast in 2009, the prosecution against Mr. Camero continued. On November 3, 2010, he was sentenced to two years in prison and ordered to pay a fine of 15,000 pesos.²²⁴

214 Ley Federal de Radio y Televisión, Última Reforma, DOF 19-06-2006, (<http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf> - accessed March 9, 2011).

215 Darren Wallis, "The Media and Democratic Change in Mexico" (2004) 57(1) *Parliamentary Affairs* 118 at 120.

216 *Radios Comunitarias*, *supra* note 49 at 7.

217 Martínez and Jiménez Interview, *supra* note 47.

218 *Medios Comunitarios*, *supra* note 5 at 49.

219 Martínez and Jiménez Interview, *supra* note 47.

220 *Ibid.*

221 Ley General de Bienes Nacionales, art. 149.

222 Martínez and Jiménez interview, *supra* note 47.

223 *Ibid.*

224 *Ibid.*

Criminal prosecutions of members of community radio stations under the *General Law on National Properties* have increased significantly since 2006.²²⁵ This must be placed in a context where attacks against radio station employees, like print journalists, are not seriously investigated or prosecuted. What is more, the many mayors in rural municipalities who also operate small unlicensed radio stations have not been prosecuted.²²⁶ In this light, the criminal prosecution of community radio is not simply excessive, but discriminatory.

d) Employment Standards

A lack of employment standards for journalists also contributes to their vulnerable situation. First of all, low pay generally increases vulnerability to corruption within the profession. Elia Baltazar of Journalists on the Ground pointed out how underpaying journalists makes them susceptible to accepting bribes.²²⁷ Indeed, the CPJ reports that approximately 90 percent of journalists in Reynosa are on the public payroll, an arrangement encouraged by senior editors partly because it helps to reduce their payroll expenses.²²⁸ Furthermore, media workers have no employment benefits and most are hired as subcontractors so they are not even employees of the news agencies they work for.²²⁹

The former Juárez journalist Luis Najera explained that all media companies in Mexico pay a fee to the Mexican Institute of Social Security. Under this system, certain companies pay higher fees due to the higher risk associated with the jobs they perform. Reporting even one incident of work-related injury can result in an increase in fees. In response, media companies require journalists to sign contracts waiving their right to sue in the event they are injured during the course of their employment.²³⁰

C. DEFAMATION, MEDIA REGULATION, COMMUNITY RADIO BROADCASTERS, AND EMPLOYMENT STANDARDS FOR JOURNALISTS

i) Introduction

The legal status of defamation, media regulation, and the treatment of community radio broadcasters also limits freedom of expression in ways inconsistent with Mexico's commitments under the ICCPR and the American Convention. Similarly, poor employment standards for professional journalists not only compromise their ability to provide the public access to information, but fail to meet Mexico's obligations under the International Covenant on Economic, Social and Cultural Rights (hereinafter the "ICESCR").²³¹ Mexico has signed and ratified

225 Martínez and Jiménez interview, *supra* note 47.

226 IFEX, NGOs condemn proposed Federal Radio and Television Law amendment, December 7, 2009, <http://www.ifex.org/mexico/2009/12/08/proposed_amendments/>.

227 Baltazar Interview, *supra* note 18.

228 *Silence or Death*, *supra* note 2.

229 Najera Interview, *supra* note 22.

230 *Ibid.*

231 *International Covenant on Economic, Social and Cultural Rights*, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976 [hereinafter ICESCR].

the American Convention,²³² the ICCPR,²³³ and the ICESCR²³⁴ and is therefore legally bound by them.

ii) Freedom of Expression – American Convention and ICCPR

Article 13 of the American Convention sets out the right to freedom of expression:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

*2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, or public health or morals ...*²³⁵

In the Inter-American System, states have positive obligations to respect, protect and fulfill the rights set out in the American Convention.²³⁶ The state must also deter and prevent violations of these rights, and investigate and remedy any violations.²³⁷

Freedom of expression is also protected in the ICCPR, under Article 19:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

*(b) For the protection of national security or of public order (ordre public), or of public health or morals*²³⁸

232 Organization of American States, B-32: American Convention on Human Rights "Pact of San Jose, Costa Rica, (March 14, 2011) online: <http://www.oas.org/juridico/english/sigs/b-32.html>.

233 United Nations Treaty Collection, "Chapter IV: Human Rights", (March 14, 2011) online: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en> [hereinafter Chapter IV].

234 *Ibid.*

235 American Convention, *supra* note 8.

236 Critical Assessment, *supra* note 138 at 17.

237 *Ibid.*

238 ICCPR, *supra* note 8.

Mexico's obligations under the ICCPR are similar to those under the American Convention: to respect, protect, and fulfill the human rights obligations found in the treaty, and to deter and prevent, investigate and remedy violations of those rights.²³⁹

Freedom of expression under the American Convention and the ICCPR includes the protection of two main functions: the right to impart information, and the public's right to seek and receive it. Both aspects of the right are impacted by Mexico's legal frameworks in several key areas.

iii) Slander and defamation

As mentioned above, under the American Convention prior censorship is prohibited, and a subsequent imposition of liability is authorized only when necessary to respect the rights or reputations of others or to protect national security, public order, public health or morals.²⁴⁰ The January 1999 report of the UN Special Rapporteur reflects both the fact that "[t]he only legitimate purpose of defamation, libel, slander and insult laws is to protect reputations", and also that "[s]anctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied."²⁴¹ The continued existence of criminal defamation in 15 Mexican states is, therefore, a clear violation of the right to freedom of expression.

Criminal defamation, however, is not the only area of concern. The *Contralínea* case discussed above also raises serious concerns about the use of civil legal processes to inappropriately limit freedom of expression. Both the ICCPR and the American Declaration permit limits on freedom of expression in order to protect reputations, but only to the extent necessary. Any restrictions must also be provided by law. The broad definition of "insulting" language taken by the Mexican court in this case is greater than is necessary to protect the reputation of the plaintiffs. Indeed, as noted above, the National Human Rights Commission found that the *Contralínea* case was an attempt to stifle legitimate journalistic critique.²⁴² Furthermore, the Inter-American Commission on Human Rights has elaborated on the scope of freedom of expression with respect to prior censorship and interference or pressure on expression in the Inter-American Declaration on the Principles of Freedom of Expression at Principle 5:

Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression. ²⁴³

239 Critical Assessment, *supra* note 138 at 17.

240 Grossman, *supra* note 175 at 416.

241 UN Special Rapporteur *supra* note 176 at para. 28(a) and (h).

242 CNDH Recommendation 57/2009 cited in *Informe 2009*, *supra* note 3 at 14 at footnote 7.

243 Principles, *supra* note 134 at Principle No.5.

The civil law of defamation as it was applied in this case operated as prior censorship and an interference in *Contralínea's* expression. It demonstrates even when criminal defamation provisions are repealed, civil defamation may be invoked to limit freedom of expression.

iv) Impediments to Media Diversification

As discussed in S. VI (b), Mexican media regulation continues to favour existing media and impede diversification. The Inter-American Declaration of Principles on Freedom of Expression states at Principle 12 that:

*Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.*²⁴⁴

The increasing concentration of Mexican media, supported by the 2006 amendments to the *Federal Radio and Television Law*, therefore limit the exercise of free expression in Mexico by limiting the public's ability to access information. This is relevant to all sectors of Mexican society, including community radio broadcasters, whose specific situation is discussed further below.

Regarding public advertising, the Inter-American Declaration of Principles explains that:

*The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies ... with the intent to ... pressure, ... punish or reward ... communications media because of the opinions they express, threaten freedom of expression, and must be explicitly prohibited by law. [Media] have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon [them] to stifle the dissemination of information are incompatible with freedom of expression.*²⁴⁵

The fact that many outlets are forced to censor their coverage or risk the loss of lucrative advertising contracts is a violation of Mexico's obligation to respect freedom of expression. The regulatory framework governing these contracts must be reformed in order to permit media outlets to practice their professions without fear of reprisal from public authorities.

²⁴⁴ *Ibid.* at Principle No.12.

²⁴⁵ *Ibid.* at Principle No. 13.

v) Community Radio Broadcasters

Principle 12 of the Declaration of Principles on Freedom of Expression stipulates that the concessions of radio and television frequencies must provide all individuals with equal opportunity for access.²⁴⁶ As discussed above, the regulatory framework makes no provision for non-commercial private broadcasters. In addition, broadcasters who seek licences under the existing provisions must often wait years for a response.²⁴⁷ The above-mentioned case of Héctor Camero of *Radio Tierra y Libertad* is one such example. The station waited seven years for a licence and finally obtained one in 2009. However, by that time, Mr. Camero was already subject to criminal prosecution. The failure of the Mexican state to provide a reliable mechanism for access on the one hand, while vigorously criminally prosecuting those who broadcast without a licence on the other, places undue pressure on community radio broadcasters and interferes with the exercise of their right to expression. It also presents obstacles to the free flow of information. According to Principle 5 of the Declaration of Principles of Freedom of Expression, such interference, pressure, and obstacles on the part of the state violates the right to freedom of expression.²⁴⁸

D. THE RIGHT TO JUDICIAL PROTECTION

Mexico's failure to prevent, investigate, punish and provide redress for the human rights violations set out in this report all constitute violations of Mexico's convention obligations. These violations occur in conjunction with violations of Article 1 (the obligation to respect the rights in the Convention) Article 2 (the requirement to adopt measures to give effect to the rights under the American Convention, and Article 8 (the right to a fair trial and to the determination of one's legal rights and obligations of a civil or other nature).

E. THE RIGHT TO WORK

i) Employment Standards for Journalists

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that states are required to recognize the right of everyone to enjoy just and favourable conditions of work, in particular ensuring fair wages, a decent living, and safe working conditions.²⁴⁹ As noted by the UN Committee on Economic, Social and Cultural Rights, states are required to take immediate steps towards the full realization of this right.²⁵⁰ In making such steps, states must move "as expeditiously and effectively as possible."²⁵¹ The Committee has interpreted the right to find that it contains three obligations, the obligation to respect the right to work, the obligation to protect, and the obligation to fulfill. Violations of the obligation to protect the right to work can follow from state failure to take all the necessary measures to safeguard

246 *Ibid.* at Principle No.12.

247 Radios Comunitarias, *supra* note 49 at 49.

248 Principles, *supra* note 134 at Principle No. 5.

249 ICESCR, *supra* note 231 at Article. 7.

250 UN Committee on Economic, Social and Cultural Rights, "The Right to Work, General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights," E/C.12/GC/18, 06/02/2006 [hereinafter General Comment No. 18] at para. 19 [hereinafter General Comment No. 18].

251 *Ibid.* at para. 20.

persons from infringements of the right committed by third parties, including individuals or corporations.²⁵²

In addition, Article 9 of the ICESCR requires that state parties recognize the right to social security.²⁵³ In its General Comment on the Right to Social Security, the United Nations Committee on Economic, Social and Cultural Rights states that states parties are required to take measures to the maximum of their available resources to ensure that the social security system covers workers who are currently inadequately protected by social security.²⁵⁴

Under the ICESCR, Mexico is therefore obligated to take immediate steps to address the low pay, lack of physical safety, lack of protection by employers, and inadequate access to social security experienced by professional journalists. Even if these violations of the Covenant have been caused by third parties, the state remains obligated to expeditiously attempt redress. Inaction not only constitutes a failure to live up to its ICESCR commitments, but undermines the journalists' ability to play the key role required of them as disseminators of information in a free and democratic society.

252 *Ibid.* at para. 35.

253 ICESCR, *supra* note 231 at Article 9.

254 UN Committee on Economic, Social and Cultural Rights, "The Right to Social Security, General Comment No. 19," E/C.12/GC/1, 4 February 2008 [hereinafter General Comment No. 19], para. 33.

VI. RECOMMENDATIONS

A. POLITICAL ACTION WITHIN MEXICO

A variety of measures should be adopted immediately to address threats to journalists and limitations on the exercise of freedom of expression:

- o Law reforms federalizing crimes against freedom of expression and enforcement of existing criminal law are necessary to end the current state of impunity for attacks on journalists.
- o Any definition of journalists used in furtherance of their protection must be sufficiently broad as to include community radio broadcasters.
- o The *Radio and Television Law* should be amended to provide for greater media diversification and to remove criminal sanctions for broadcasting without a licence.

Mid- to long-term countermeasures against impunity should also include:

- o the creation of formal regulatory processes to provide a clear legal framework for licensing non-commercial private broadcasters;
- o strengthening employee protections to improve the working conditions of professional journalists, thereby reducing their vulnerability;
- o the abolition of criminal defamation in the states where it is still in effect; and,
- o compliance with recent decisions of the Inter-American Court of Human rights and abolition of the use of military jurisdiction to investigate and prosecute members of the armed forces who are accused of human rights abuses against civilians (including journalists).

The authors of this report also suggest the continuance and strengthening of public legal education campaigns to promote widespread social awareness of the issues faced by journalists in Mexico today. Mexican civil society organizations are to be commended for the substantial work they have done in this area. Their efforts should be supported and strengthened. Finally, the international community should insist that Mexico take substantive action to end impunity for abuses against journalists. Any assistance funds tied to the observance of human rights requirements should be withheld if these conditions are not fully met.

B. LAW REFORM

i) Introduction

Effectively addressing the vulnerable situation of journalists in Mexico will require legal reform in several areas. In order for these reforms to be more than cosmetic,

they must be accompanied by the political will and institutional reform necessary to ensure enforcement.

ii) Federalization of crimes against journalists and enforcement of existing criminal law

There is widespread support by Mexican journalists and freedom of the expression advocacy organizations for automatically placing all crimes against freedom of expression under federal jurisdiction in order to combat the impunity so often found at the state level. Since 2007, there has been some movement from the federal government towards this approach. A proposal for a Constitutional amendment federalizing crimes against freedom of expression was approved by the Chamber of Deputies in 2009, but has not yet been voted on by the Senate, apparently due to a lack of political will.²⁵⁵ However, the recent killing of a 21-year-old photographer for the newspaper *El Diario* in Ciudad Juárez and the paper's subsequent plea to the DTOs in an editorial for an end to the bloodshed led to a public uproar that resulted in President Calderón stating, on September 24, 2010, that he will expedite legislative reform in this area.

Most crimes against journalists are under the jurisdiction of state authorities. Most of these crimes are never investigated. A constitutional amendment to permit the federalization of crimes against journalists (and human rights defenders) would be an important step in the right direction. It would automatically involve federal authorities, with their increased resources and visibility, in the investigation of crimes against journalists. In addition, federal police are generally better trained and subject to more civilian oversight. This approach was successfully taken with respect to political crimes in the 1990s after many attacks were made against members of the left-wing Party of the Democratic Revolution.

The standards used must be broad enough to ensure that journalists, and other persons who are victimized for exercising their right to expression, are protected. A federal bill to achieve this by reforming Article 73 of the Mexican Constitution was submitted in 2008. In September 2010, President Calderón affirmed his desire to increase lobbying in support of the bill. This affirmation must be followed up by concrete action in order to assure the bill's passage into law, lest Calderón's statement become simply one more point on Mexico's agenda of minimization.

One reason for Mexico's chronic problems with impunity is that so many authorities fail to investigate crimes. Criminal procedure codes should be amended to state specifically the lines of investigation that should be exhausted when investigating a case. Failure to do so should be sanctioned. In 2008, the Mexican government began an ambitious eight-year plan to overhaul its state and federal criminal justice systems. The Public Security and Criminal Justice Reform Program includes modernization and professionalization of all areas of the justice system, including establishing an accusatory, oral criminal trial system. This is a very positive step. Right now, only 2 percent of drug-trafficking cases are successfully prosecuted at trial. Most crimes are not adequately investigated, let alone prosecuted. It is hoped that these reforms will be coupled with the institutional overhaul necessary to make them effective.

255 Protecting Press Freedom, *supra* note 6 at 17.

iii) Defining journalists

Journalists are not defined in Mexican law. However, in practice Mexican authorities have taken a narrow view of journalists that excludes many media communicators who are regularly threatened, such as community radio broadcasters. One of the Special Prosecutors, for example, stated that community radio broadcasters are not journalists and therefore did not come within the ambit of his office. This is not in accordance with the perspective of international human rights law, which has been interpreted to support the important role played by community broadcasters in democratic societies.²⁵⁶ Any official definition of journalist must be sufficiently broad to protect all media actors in Mexico.

iv) Radio and Television Law

Freedom of expression in Mexico is further threatened by the legal structure governing media communications in Mexico. The federal *Radio and Television Law and Telecommunications Law* came into force in 1960 and 1995. On the eve of the presidential election in 2006, they were both significantly reformed. The reforms were strongly criticized for favouring existing media companies and inhibiting media diversification. Already, media is heavily concentrated in Mexico. Today, 96 percent of commercial television stations are owned by two families, and 86 percent of radio stations are held by 13 business groups.²⁵⁷ The amendments were challenged by a group of senators, who brought a complaint to the Supreme Court of Justice for the Nation, alleging the amendments were unconstitutional. In a transparent and thorough decision, the court agreed, and struck down the majority of the amendments. However, despite this robust legal decision, Mexican communications law still impedes the creation of media diversity. In addition, there is a legislative vacuum for the regulation of community broadcasters, who frequently face serious criminal sanctions for failing to meet regulatory requirements that don't exist for them because the law makes no provision for non-commercial private broadcasters.

Community radio broadcasters do not suggest that there should be no penalty for unlicensed access to the radio spectrum, but that a proportionate penalty would be a regulatory offence included as part of a regulatory framework that provides provisions for community broadcasters to obtain legitimate access, ideally through a state organ independent of the government.²⁵⁸ Creating diversity in media ownership would also serve to decrease the vulnerability in which commercial print, television and radio journalists practice their profession.

In addition, many media outlets are heavily dependent on government advertising for their financial survival. Many outlets are forced to censor their coverage or risk the loss of lucrative advertising contracts. The regulatory framework governing these contracts must be reformed in order to permit media outlets to practice their professions without fear of reprisal from public authorities.

256 UNESCO Community Media Programme (-portal.unesco.org/ci/), cited in *Con Permiso*, *supra* note 201 at 13.

257 Radios Comunitarias, *supra* note 49 at 7.

258 Martínez and Jiménez Interview, *supra* note 47.

v) Employee protection

The employment conditions of most journalists are tenuous at best. They have no employment benefits and most are hired as subcontractors. The authors of this report interviewed one journalist who was made to sign a waiver in 2006 surrendering his right to any claim against the company if he was injured or killed in the course of his work.²⁵⁹ Employers in Mexico pay into the Mexican social security system. Certain companies are required to pay higher fees because of the higher risk associated with the jobs. In one incident, two photographers and one reporter were called to investigate a report that on-duty uniformed police officers were drinking alcohol and partying in front of a residential home. The reporters took pictures of the officers. The officers then followed the reporters, shot out their tires, and beat them. One photographer was struck in the face and received permanent damage to his eye. After being discharged from hospital, he asked his employer to help complete the paperwork for a claim to obtain early retirement benefits as a result of his injury, as the injury left him unable to work. The newspaper told him to not to file the papers. Instead, it suggested he sign a letter of resignation so the paper's social security fees would not increase. The paper promised to pay him compensation and rehire him in a few weeks. The photographer agreed and signed his resignation, but the newspaper did not honour its side of the bargain. They never paid him, and never called him back to work.²⁶⁰

Journalists need employment security in order to perform effectively. Mexican laws should be reformed to provide this security.

vi) Abolishing criminal defamation

In March 2007, the Mexican congress abolished articles 350 and 363 of the *Federal Criminal Code* that criminalized defamation and transferred them to the *Federal Civil Code*. Seventeen of the 32 Mexican federal entities have followed suit. This is a welcome development that significantly reduces the risk of journalists facing criminal prosecution in retaliation for their work. Those states which have not yet decriminalized defamation must make it a priority to do so.

vii) Abolishing military jurisdiction over human rights abuses

As the statistics cited above demonstrate, the Mexican armed forces are implicated in a number of threats and aggressions against Mexican journalists. The *Mexican Constitution* authorizes the military to enforce “crimes against military discipline.” The Mexican *Code of Military Justice* gives military officials jurisdiction to investigate and prosecute any crimes committed by active duty military personnel, including grave human rights abuses, such as torture, murder, disappearance, and rape.

Military jurisdiction in Mexico has resulted in near total impunity for human rights abuses committed by military personnel.²⁶¹ This has created serious problems as the government has increasingly relied on the military in its counter-narcotics strategy. The military therefore functions in the role of the civilian police, but without civilian oversight. The military justice system does not meet Mexico's

259 Najera Interview, *supra* note 22.

260 *Ibid.*

261 Human Rights Watch, *Uniform Impunity Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* (2009).

human rights obligations. This was recently confirmed by the Inter-American Court of Human Rights in its decisions in *Radilla v. Mexico*, *Fernando Ortega v. Mexico*, and *Rosendo Cantú v. Mexico* and *Cabrera García and Montiel Flores v. Mexico*.²⁶²

Although the *Radilla* ruling was released in November 2009, none of the above judgments have been implemented. In October 2010, after the release of the *Fernando* and *Rosendo* decisions, President Calderón promised to seek an amendment that would place the prosecution of the crimes of rape, torture, and disappearance in the hands of civilian authorities. However, such a reform would not comply with the judgments, since it would not address other serious crimes such as extra-judicial execution. In addition, investigation would remain in the hands of the military. Since the current impunity for abuses committed by members of the armed forces is largely caused by the failure of military personnel to conduct adequate investigation, this reform will do nothing to solve the problem.

This is another striking example of the state's strategy of minimization. This proposed reform was widely publicized as a solution to the problem and the matter has since fallen off the radar. Mexico must reform its laws so that the investigation and prosecution of all human rights abuses alleged to have been committed by members of the armed forces are exclusively in the hands of civilian authorities.

viii) Public Legal Education

A broad-based legal education campaign directed at the public in general and journalists in particular might be of assistance in combating impunity for attacks against journalists. It should be said at the outset that the responsibility for ensuring that the rights of journalists are protected ultimately lies with the Mexican state. Nevertheless, public education may lead to an increase in pressure on the Mexican state to meet its obligations. Many of the persons interviewed for this report said Mexican society has largely accepted, and even come to expect, that the state will not protect them. There is consequently a noticeable lack of outrage when journalists, for example, are killed in retaliation for their work. It is also worth noting that although most Mexicans get their news from television, its coverage tends to exclude this kind of information. Several persons noted to the authors of this report that, if the killing of a journalist was viewed as a scandal and met with widespread social outrage, those who seek to harm them would think twice before doing so.

Several groups interviewed for this report believed that an education campaign would help journalists to realize the need for professional solidarity, especially in order to protect one another. This is an urgent challenge given the extremely competitive and often corrupt climate in which they work.

ix) Foreign Assistance

Despite the current human rights crisis in Mexico, no foreign governments are applying the kind of diplomatic pressure that could effect serious change. Indeed,

262 *Caso Radilla Pacheco vs. Estados Unidos Mexicanos* (2009) Corte IDH (Ser. C) N. 209, *Caso Fernández Ortega y Otros vs. México* (2010) Corte IDH (Ser.C) N. 215, *Caso Rosendo Cantú y Otra vs. México* (2010) Corte IDH (Ser. C) N. 216 and *Caso Cabrera García y Montiel Flores vs. México* (2010) Corte IDH (Ser. C) N. 220.

foreign investment and aid, such as the Merida Initiative with the U.S., continue to flow into Mexico despite the problematic human rights situation in the country. Under the terms of the Merida Initiative, 15 percent of the funds were conditional depending upon certain advances in human rights in Mexico,²⁶³ but in 2008, despite a lack of compliance, and anger in the U.S. Congress, the funds were released.

In 2009, the State Department released the funds again, then unilaterally made the transfer of other funds conditional upon the introduction of a legislative bill that was set to be introduced and Constitutional amendments that were already set to be passed.²⁶⁴ Foreign aid donors should insist that meaningful human rights requirements are actually met.

VII. CONCLUSIONS

Journalism in Mexico has reached a state of emergency. Reporting the news in certain parts of the country has become as deadly an undertaking as living in a war zone. But Mexico is not engaged so much in a war on drugs as in a battle for its fledgling democracy, its grasp on the rule of law, and its very future. It is a war with two fronts: terrifyingly violent DTOs are pressing from one side and Mexico's legacy of impunity from the other. It is ordinary citizens who are feeling the squeeze, and journalists, in particular, who are caught in the middle. Yet the media which, in a less violent context would be exposing this situation for the world to see, become quieter with each passing day. Mexico's journalists can no longer take action to protect themselves without putting their lives at grave risk. It is time for the world to act. The risk of not doing so is far too great.

ACKNOWLEDGEMENTS: The International Human Rights Program and PEN Canada would like to thank the many people who made this report possible, especially the many NGOs, activists, and journalists who agreed to speak with our researchers both in Mexico and Canada.

²⁶³ Brewer Interview, *supra* note 41.

²⁶⁴ *Ibid.*

PEN CANADA
for FREEDOM of EXPRESSION



INTERNATIONAL
HUMAN RIGHTS
PROGRAM