



STATEMENT

MEXICO: PROSECUTION AND VIOLENCE AGAINST TWITTER USERS MUST STOP

Mexico, 21.09.2011: On 25 August 2011, Ms Maria de Jesus Bravo Pagola and Mr Gilberto Martinez Vera were arrested and charged with terrorism for disseminating false information on their Twitter accounts. ARTICLE 19 finds these charges to be in clear breach of international law standards on the protection of freedom of expression. ARTICLE 19 is also alarmed at the report that on 15 September 2011, two mutilated bodies, were found in Nuevo Laredo with a note threatening reprisals for users of specific social media websites - indicating that social media users are being targeted by organized crime. ARTICLE 19 calls on the law enforcement authorities in Veracruz to immediately drop all charges against Ms Bravo Pagola and Mr Martinez Vera. ARTICLE 19 also calls on the Mexican Government to promptly investigate the killings in Nuevo Laredo and to adopt the complex measures needed to protect journalists, bloggers, human rights defenders and cyber-activists so that they can work in a free and safe environment.

Social media in Mexico

ARTICLE 19 has repeatedly expressed concern about the impact of the ongoing drug cartel-related violence on freedom of expression in Mexico in recent years, such as the silencing of the press and in particular of local media. Some people even talk about the emergence of “narcocensorship”, with criminal organizations threatening local newspapers with reprisals for reporting on drug-related crimes and other violent events. Journalists and publishers who cover drug wars are frequently killed and harassed and even the largest media houses frequently report incidents of serious threats and violent attacks against them because of their reporting.

As ARTICLE 19 has documented, freedom of the press in Mexico has been dangerously deteriorating over the past year with regular reports of journalists being killed, and often without proper investigations being conducted into their deaths.¹

This climate of fear and distrust of the authorities has led many Mexican citizens to become increasingly reliant on social media as a source of news.² Hashtags have become an important sorting mechanism, and are even considered to be *ad hoc* news services.³

The reliance on social media is prevalent in the state of Veracruz, which has a problematic record on protecting freedom of expression, including impunity for those who commit violence against

¹ See for example: <http://www.article19.org/resources.php/resource/1827/en/lydia-cacho:-threats-continue-as-authorities-fail-to-protect>.

² See for example: <http://socialmediacollective.org/2011/08/31/shouting-fire-in-a-crowded-hashtag/>.

³ See for example: <http://thelede.blogs.nytimes.com/2011/09/15/in-mexico-social-media-becomes-a-battleground-in-the-drug-war/>

journalists. For example, two newspaper journalists disappeared in the Veracruz state in the course of a year - Evaristo Ortega Zárate, editor of *Espacio* on 20 April 2010 Noel López Olguín, a journalist, on 8 March 2011. Moreover, on 20 June 2011, Miguel Angel Lopez Velasco, a newspaper columnist known for writing about corruption and drug violence, was shot, together with his wife and son, in the city of Veracruz.

The events of 25 August 2011

Against this background, on 25 August, @gilius_22 tweeted a message using the #verfollow hashtag on his Twitter account. He claimed that five children had been kidnapped at a local school in Veracruz. The tweet, allegedly, read as follows:

“#verfollow I confirm that in the school ‘Jorge Arroyo’ in the Carranza neighborhood 5 kids were kidnapped, armed group, panic in the zone.”

The message was re-tweeted by a number of people, one of whom was @VerFollow, a popular Twitter account with more than 5,000 followers that was created to report on the violence in the city. The news rapidly spread on other social media, with different versions being reported, including that one of the drug cartels was threatening to kill a child for each cartel member killed. Several other twitter users also reported other school incidents and that helicopters were flying at low altitude.

The governor of Veracruz promptly responded by tweeting a message dismissing the rumour. However, it came too late to avert the rapid spread of panic and chaos across the city, with scores of parents rushing to remove their children from school and several schools temporarily closing. The governor subsequently tweeted that there would be legal consequences for those who had spread the rumours and a statement was later issued on his website listing sixteen Twitter accounts involved in the incident.⁴

Shortly thereafter, María Jesús Bravo Pagola and Gilberto Martínez Vera were accused of disturbing the peace and spreading fear among fellow citizens of Veracruz by disseminating false information on social networks. Martínez Vera, a schoolteacher, tweeted from @gilius_22 Twitter account; Bravo Pagola, a local journalists re-tweeted Martínez’s original posts from her Twitter account (@maruchibravo).

Martínez and Bravo were charged with terrorism and sabotage offences under Article 331 of the Veracruz state Criminal Code. The crime of “terrorism” under Article 311 prohibits “using explosives, toxic substances, firearms, fire, flood, or *any other means* against the people, public property or services to produce alarm, fear, or terror in the population or group thereof; *to disturb the public peace; or to undermine the authority of the state or to pressure it to act*, is punishable by three to thirty years in prison, a fine of up to seven hundred and fifty times the minimum wage, and suspension of political rights up to five years.”⁵ [emphasis added]

⁴ Available in Spanish at: <http://www.comsocialver.gob.mx/?sala-de-prensa=se-castigara-con-todo-el-peso-de-la-ley-a-ciberterroristas-pgj>.

⁵ The Criminal Code of the Veracruz state is available (in Spanish) at <http://statecasefiles.justia.com/estatales/veracruz/codigo-penal-para-el-estado-libre-y-soberano-de-veracruz-de-ignacio-de-la-llave.pdf>.

Terrorist charges against Twitter users violate freedom of expression

ARTICLE 19 is deeply concerned that the Twitter users in this case may be convicted of terrorism offences and be sentenced for up to 30 years imprisonment for disseminating what turned out to be false information on Twitter. ARTICLE 19 argues that the charges against Martinez and Bravo should be dropped immediately for the following reasons.

1. Overbroad definition of the crime of terrorism in the Veracruz Criminal Code

ARTICLE 19 finds the definition of the crime of terrorism in Article 311 of the Veracruz Criminal Code to be vague and overbroad and that it fails to meet the requirements of international standards.

We remind the Veracruz authorities that even though States have a duty to protect their people from terrorist and public disorder threats, their actions must be appropriate and without excess. Under international law, it is well recognized that human rights, including freedom of expression, must be respected in the fight against terrorism and cannot be arbitrarily limited. For example, the UN Security Council Resolution 1456 (2003) states that:

States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.⁶

Despite the fact that there is no agreed universal definition of terrorism, a number of international treaties deal with various aspects of the phenomenon. For example, the International Convention for the Suppression of the Financing of Terrorism⁷ and Security Council Resolution 1566 (2004)⁸ described terrorism as:

“...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act...”

International standards also stipulate that although freedom of expression may be restricted in order to protect public order and national security, any restriction must be clearly and narrowly defined by law, must serve a legitimate aim and be “necessary” in a democratic society. This implies that the criminal offences on terrorism should be narrowly defined and applied with due restraint.

⁶ Resolution 1456 (2003), §6.. See also General Assembly resolution 60/288 of 20 September 2006 on “Global Counter-Terrorism Strategy”.

⁷ International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly Resolution 54/109 of 9 December 1999; available at: <http://www.un.org/law/cod/finterr.htm>.

⁸ Resolution 1566 (2004), adopted by the Security Council at its 5053rd meeting, on 8 October 2004 ; available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement>.

The UN Human Rights Commission issued resolutions reminding nations to “refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways which are contrary to their obligations under international law”.⁹ On several occasions, the Human Rights Committee also urged states to

[E]nsure that its counter-terrorism legislation and practices are in full conformity with the Covenant. In particular, it should address the vagueness of the definition of terrorist act ..., in order to ensure that its application is limited to offences that are indisputably terrorist offences.¹⁰

Other international bodies have made similar recommendations. The Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, along with counterparts at the UN, the African Commission on Human and Peoples’ Rights and the Organisation for Economic Co-operation and Development, has called for countries to adopt definitions of terrorism which ensure that they do not criminalize speech that does not directly incite violent activities:

The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.¹¹¹³

Similarly, under the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*¹², a set of principles developed by ARTICLE 19 and international experts, freedom of expression may be limited on national security grounds only if the government can demonstrate that: (i) the expression is *intended* to incite imminent violence; (ii) it is *likely* to incite to such violence; and (iii) there is a *direct* and *immediate* connection between the expression and the likelihood or occurrence of such violence (Principle 6).

ARTICLE 19 argues that the definition of the crime of terrorism under Article 311 of the Veracruz Criminal Code fails to meet these requirements by being both vague and excessively broad in its reach. It criminalises not only acts that are widely understood to be “terrorist” in nature, but also many forms of behaviour that, while unlawful, cannot be regarded as “terrorism”. The definition also allows for prosecution of activities that are lawful and creates the opportunity for abusing it to suppress legitimate activities.

ARTICLE 19’s main concerns over Article 311 relate to the following issues:

⁹ See e.g. Commission on Human Rights resolution 2003/42; Commission on Human Rights Resolution: 2004/42; The right to freedom of opinion and expression, Human Rights Resolution 2005/38.

¹⁰ Concluding observations of the Human Rights Committee, Australia, CCPR/C/AUS/CO/5/CRP/1, 2 April 2009.

¹¹ The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, 9 December 2008. Available at www.osce.org/documents/rfm/2008/12/35705_en.pdf.

¹² These Principles were developed by media experts and reflect both international and regional law standards and best practice around the world in this area. Available at <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

- *Ambiguity about the violent nature of the crime:* As noted above, under international standards, antiterrorism legislation (either in the criminal codes or in specific legislation) should be limited to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public. The UN Special Rapporteur on counterterrorism and human rights also stated that the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages, and should not include property crimes. Contrary to these requirements, the definition in Article 311 includes acts that do not involve violence or injury to people. It is entirely unclear whether any actual violence (or possibility of actual violence) is needed in order to qualify the act as “terrorism”. At the same time, Article 311 allows for prosecution for property-related crimes and for disruption of “public peace”.
- *Lack of intent requirement:* Article 311 does not require the acts prosecuted as “terrorism” to be intentional. This is especially important in the light of the fact that a crime under Article 311 can be committed by a wide variety of actions (apart from using explosives, toxic substances, firearms etc), including publications, speeches and demonstrations. ARTICLE 19 notes that international jurisprudence considers intent to be a crucial factor in reviewing the legitimacy of restrictions on the grounds of national security. The intent requirement further serves to shield speakers from responsibility for unintended responses on the part of their listeners. Article 311 completely omits this factor.
- *Overbroad reach of the provisions of Article 311:* We are concerned that Article 311 allows for the possibility of targeting behaviour that does not reach the level at which the extraordinary intrusive measures provided under antiterrorism legislation can justifiably be used. The definition extends to forms of behaviour that would warrant a public order response but cannot be widely understood to be “terrorist” in nature. For example, some anti-globalisation or animal rights protests have in the past been violent and would fall within the definition of terrorism under Article 311; however, ARTICLE 19 has previously questioned whether the use of these provisions against the protests in question would be proportionate, bearing in mind the powers already available to the authorities to deal with such situations.
- *Potential for prosecuting legitimate activities:* The section of Article 311 that sanctions “any other act” [apart from those using violent means] that “disturbs the public peace; or undermines the authority of the state or pressures it to act” applies to many legitimate, non-violent protests, gatherings, demonstrations or other forms of dissent. An action that “undermines the authority of the state” can cover anything from publishing a report about human rights violations to open discussion about many different issues. Similarly, broad prohibition of activities that “pressure the state to act” can be used to penalize activities that are a part of the normal functioning of a democratic society, e.g. citizens demanding the state to address problems related to public transport, or the public demanding transparency of government operations, improvement of educational system and the like.

ARTICLE 19 therefore urges the Government of the state of Veracruz to revise the wording of Article 311 of the Criminal Code. The definition of the crime of “terrorism” should be narrowed to include only acts of serious crime that pose a serious threat to life, safety or property and that

are intended to advance an ideological, religious or political cause and influence the government by inflicting terror on the public.

2. Excessive application of criminal law in the Twitter users case

Apart from the narrow definition of criminal offences of “terrorism”, international standards also require that severe restrictions on freedom of expression should be employed only if they are truly “necessary.” As noted above, international courts examine national security claims under the ‘necessity’ requirement under two key principles: i) whether statements were made with intent to cause harm to national security, and ii) whether there is a clear nexus between the statement and the likelihood of this harm occurring.¹³

In ARTICLE 19’s view the Veracruz law enforcement authorities have applied neither of these requirements when initiating criminal charges against Bravo Pagola and Martinez Vera. ARTICLE 19 is concerned that:

- The requirement of intent seeks to draw a line between legitimate political debate on matters of national security and incitement to illegal action. The right to freedom of expression covers all kinds of ideas, including some unpopular sentiments. On the other hand, when the speaker intends to spur others on to concrete acts against national security, it might be considered ‘necessary in a democratic society’ to limit his or her freedom of expression. While it is yet not known what the intentions of Bravo Pagola and Martinez Vera were, they have vehemently denied that they intended to cause any harm to national security or any kind of public disorder. It also remains unclear whether they knew that the information they were disseminating was false as there had been a great deal of confusion over what had actually happened at the given day on the location in question. Hence, the fact that Bravo Pagola and Martinez Vera could have simply unknowingly distributed false information is an essential factor to be considered by the Veracruz law enforcement authorities.
- The requirement that there must be a clear nexus between the statement and the likelihood of the harm occurring has also not been met in the criminal prosecution of Twitter users. Although it appears that residents of Veracruz rely heavily on social media due to the relative weakness of local newspapers and broadcast media, it is also very well-known that Twitter is not meant as a substitute for accurate reporting. As the recent London riots made clear, while social media can be extremely effective in sharing information among its users, the information shared is not always reliable. Most importantly, individuals have to judge for themselves whether the information is sufficiently reliable to act upon it.
- We also note that under international standards, the right to freedom of expression requires that the least intrusive remedy must be employed when restricting speech to protect overriding public or private interests. The restrictions must be proportionate, meaning that the harm to freedom of expression must not outweigh its benefits. In this

¹³ See for example the decision of the Human Rights Committee in *Keun-Tae Kim v. Korea*, Communication No 574/1994, UN Doc. CCPR/C/64/D/574/1994(4 January 1999) or *Sener v. Turkey*, 18 July 2000, Application No. 26680/95 (European Court of Human Rights).

case, although the exact content of the messages which were tweeted or re-tweeted by Bravo Pagola and Martinez Vera remains unclear, there is no relationship of proportionality between what Ms Bravo and Mr Martinez did – disseminating false information, whether knowingly or not – and threat to national security. In the complicated situation in Veracruz, the use of criminal sanctions for terrorism, with the possibility of up to 30 years prison sentence for sending false information on a twitter account, is clearly a disproportionate restriction.

Therefore, in ARTICLE 19's view, although the tweets were certainly problematic and may even have been malicious, it is difficult to see how the Twitter users could have foreseen the reaction of recipients of the tweets.

3. False news

ARTICLE 19 also reminds the Veracruz authorities that using criminal law - especially terrorist offences - to punish those who disseminate false information, whether knowingly or unknowingly, is contrary to international standards for the protection of freedom of expression.

ARTICLE 19 also notes that the UN Human Rights Committee previously stated that criminal prosecution for “false news” is inconsistent with the guarantee of freedom of expression. The Human Rights Committee specifically concluded that “the prosecution and punishment of journalists for the crime of publication of false news merely on the grounds, without more, that the news was false [is a] clear violation of Article 19 of the Covenant.”¹⁴

The UN Special Rapporteur on Freedom of Expression has adopted a similar position in relation to false news which causes a threat of public unrest: “In the case of offences such as ...publishing or broadcasting “false” or “alarmist” information, prison terms are both reprehensible and out of proportion to the harm suffered by the victim”¹⁵.

There are a number of reasons why the dissemination of false news in this case ought not to be criminalized. Apart from the problematic situation of freedom of media in Veracruz and the reliance on social media, ARTICLE 19 requests the Veracruz authorities to consider the following.

- False news laws can have a serious chilling effect on the free flow of information, including “true” information. In particular, they impose a burden on users to check the accuracy of the information they publish. However, given the speed at which news travels on Twitter, it is unrealistic to expect users to check the accuracy of thousands of different sources of information, which may be contradicting each other. If such requirements were to be imposed, this would deter Twitter and other social media users from sharing “true” information. Ultimately, this would deprive citizens from potentially vital information.

¹⁴ Concluding Observations of the Human Rights Committee: Cameroon, CCPR/C/79/ Add. 116, 4 November 1999, para 24.

¹⁵ Annual Report to the UN Commission on Human Rights, Promotion, and the protection of the right to freedom of opinion and expression, 18 January 2000, UN Doc. E/CN.4/2000/63, para. 205.

- Facts and opinions are not always easily distinguished. In many cases, opinions are expressed through superficial statements, such as sarcastic, hyperbolic or comical remarks. Given that statements on Twitter are limited to 140 characters, they may be open to mixed interpretations. A ban on false news could therefore rapidly become a ban on opinions not favoured by the authorities.
- False news laws are open to abuse by the authorities. Such laws are often excessively broadly drafted so that individuals may end up being prosecuted for engaging in perfectly legitimate behaviour. On the same day as criminal charges against Bravo Pagola and Martinez Vera were levied, it was reported that the Mexican state of Tabasco adopted a law that punishes those who provoke “social chaos and insecurity” through phone calls or online posting with a jail term of up to two years¹⁶. We reiterate that under international human rights law, legal measures that restrict rights must be narrowly drafted and be proportionate to the aim pursued. Laws that fail these criteria (including the use of vague and unclear criteria such as “social chaos” or “insecurity”) cannot meet the ‘provided by law’ and ‘necessity’ tests. Moreover, the example of the prosecution of Bravo Pagola and Martinez Vera indicates that the law enforcement authorities are prone to overreact. It is therefore of the utmost importance that both the legislation and the regulations under which they act provide clear and narrow guidance on the circumstances under which these provisions may be used.

Recent case of violence against users of social media

Social media users reporting or commenting on drug cartels are not immune from violent reprisals. ARTICLE 19 notes with great concern that on 15 September 2011, the mutilated bodies of a man and a woman, bound and displaying signs of torture, were found hanging from a pedestrian bridge in Nuevo Laredo, the Mexican state of Tamaulipas, bordering Veracruz. The corpses had a note attached, allegedly stating:

“This will happen to all the Internet snitches (Frontera al Rojo Vivo, Blog Del Narco, or Denuncia Ciudadano). Be warned, we’ve got our eye on you. Signed, Z.”

The sites and blog mentioned in this note are sites that denounce drug cartel activities and that report on violence. The ‘z’ signature is a reference to the Zetas drug cartel,¹⁷ a group known for its use of extreme violence against law enforcement officials, innocent citizens, informants, and rival drug gangs. The identity of the bodies has not yet been confirmed.

Although bloggers have been targeted in Mexico in the past, this is the first reported case of the violence related to users of social media. ARTICLE 19 believes that the case of the Nuevo Laredo killing must be taken extremely seriously in the light of the general climate of violence against journalists working for traditional media, and because of the level of impunity for those committing violations.

¹⁶ <http://www.miamiherald.com/2011/09/09/2398566/mexico-politicians-declare-war.html>

¹⁷ See for example: <http://edition.cnn.com/2011/WORLD/americas/09/14/mexico.violence/index.html> or http://www.washingtonpost.com/world/americas/in-mexico-a-deadly-threat-to-scandal-mongers-using-social-media/2011/09/14/gIQA0WZ23SK_story.html.

Moreover, the fact that this case comes in the aftermath of the charges against Bravo Pagola and Martinez Vera sends an incredibly chilling message to those who dare to comment, report or share news about trafficking and drug cartel violence in Mexico. It is deplorable that instead of putting in place effective mechanisms for preventing violence, the authorities are investing resources in prosecuting and silencing online speech. In the situation where on the one hand, the Veracruz state authorities are prosecuting Twitter users for posts distributed online and, on the other hand, drug cartels violently target social media users and bloggers with impunity, few citizens will be willing to engage in online discussion and exchange. Online self-censorship will ultimately prevail also on social media.

Conclusions

In ARTICLE 19's view, the terrorism charges against the Twitter users, Bravo Pagola and Martinez Vera, are clearly an overreaction on the part of the authorities, who were apparently unable to deal with the situation in the city. The charges are also highly likely to seriously hamper the free flow of information on social networks in Mexico, which is needed in the absence of other reliable sources of information for Veracruz citizens.

ARTICLE 19 urges the prosecuting authorities in Veracruz to drop all charges against Bravo Pagola and Martinez Vera.

ARTICLE 19 also urges the Mexican authorities to promptly and effectively investigate the murders and threats in Nuevo Laredo in order to bring the perpetrators to justice, and to put in place specific measures to prevent such crimes occurring again.

The Mexican Government must also urgently adopt and effectively implement all necessary political and legal measures to protect both traditional journalists and users of social media, and defend the right to freedom of expression in their societies, in accordance with their international responsibilities.

End notes:

- For more information, please contact Darío Ramirez, Director of ARTICLE 19 Mexico and Central America at dario@article19.org or +52 55 1054 6500; or Barbora Bukovska, Senior Director for Law and Policy at ARTICLE 19, at barbora@article19.org or +44 20 7324 2500.
- ARTICLE 19 is an independent human rights organisation that works globally to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech. For more information, please visit: <http://www.article19.org>