



## STATEMENT

21 February 2008

### **Mexico: Impunity prevailing in cases of aggression and assassination of journalists is a clear violation of the Mexican State's human rights obligations**

On the occasion of the official visit to Mexico of the United Nations High Commissioner for Human Rights (UNHCHR), Louise Arbour, ARTICLE 19 wishes to raise its serious concerns regarding the overall climate of impunity prevailing in cases of aggression against media personnel, which we consider to constitute one of the most alarming characteristics of the overall human rights situation in the country, and one that is gravely affecting the exercise of freedom of expression, and press freedom.

This statement is motivated by the silence and seemingly lack of political will of the present Government, led by President Felipe Calderon Hinojosa, to comply with the obligations of the Mexican State to prevent and investigate human rights violations within its national territory and bring to justice those responsible.<sup>1</sup> The resulting circle of violence, danger, impunity, and self censorship is deeply affecting Mexican democracy, and is preventing the free circulation of ideas and information

We respectfully call on Louise Arbour to request from the Mexican authorities that they abide by their international obligations, in particular to promptly and thoroughly investigate aggressions against journalists and bring to justice those

#### **Mexican State Obligations to Guarantee Freedom of Expression**

International human rights, in general, the Inter-American Democratic Charter, in particular, provides that freedom of expression is fundamental to the full protection and exercise of human rights, and essential to the existence and working of democratic societies

The Inter-American Declaration of principles on Freedom of Expression points out that:

*“The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications*

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<sup>1</sup> Comité de Derechos Humanos, Observación General N° 28, párrafo 3.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)

*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.”*<sup>2</sup>

In contradiction with this well accepted international position, the Mexican authorities have argued that attacks against journalists constitute a public security issue, rather than a flagrant violation of the right to freedom of expression.<sup>3</sup>

The obligation to protect placed upon the Mexican state requires it to take measures that prevent third parties from interfering with human rights guarantees, including freedom of expression. The Inter-American Court of human Rights has stated that, “said general obligation is imposed not only in relation to the power of the state but also in relation to private persons”.<sup>4</sup> According to international standards, the state remains ultimately responsible for protecting journalists against crimes perpetrated by non-state actors, be they criminal organizations, drug traffickers or any other groups.

As a state party to the American Convention on Human Rights, the Mexican State is obliged to investigate all violations of human, the Inter-American Court has stated that “if the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same applies when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention”<sup>5</sup>.

These attacks on freedom of expression and the state’s failure to address them, affects not only democracy, but the enjoyment of other human rights for which the state is responsible. In a context of impunity like the one which prevails in Mexico, violations of freedom of expression and press freedom open the door to the violation of other rights also recognized in the American Convention on Human Rights such as:

- The Right to Life (Art. 4)
- Right to the Humane Treatment (Art. 5)
- Right to Personal Liberty (Art. 7.1)
- Right to a Fair Trial (Art. 8)
- Right to Judicial Protection (Art. 25)
- Right to Participate in Government (Art. 23)

Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights,

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<sup>2</sup> Principle 9 of the Inter-American Declaration of principles on Freedom of Expression. In the same way, principle 4 of the Declaration of Chapultepec reinforces the same point.

<sup>3</sup> La Jornada, “Digan lo que digan, la libertad de expresión está garantizada, aseveró Calderón en Zinapécuaro”, 24 de noviembre.

<http://www.lajornadamichoacan.com.mx/2007/11/24/index.php?section=politica&article=005n1pol>

<sup>4</sup> Cfr. Caso de Paz de San José de Apartadó. Medidas Provisionales, supra nota 1, considerando séptimo; Caso Comunidades del Jiguamiandó y del Curbaradó. Medidas Provisionales, supra nota 1, considerando séptimo; Caso Bácama Velásquez. Medidas Provisionales, supra nota 1, considerando séptimo; y Caso Eloisa Barrios y otros. Medidas Provisionales, supra nota 1, considerando séptimo.

<sup>5</sup> I/A Court H.R., Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para 176.

regardless of where they live, their gender or race, or their religious, cultural or ethnic background. Inalienable because people's rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others.

In particular, there cannot be full exercise of freedom of expression where impunity prevails and where judicial means and bodies are ineffective and unwilling to tackle aggressions against journalists.

The climate of impunity violates article 17 of the Political Constitution of the United States of Mexico which establishes that the state is obliged to guarantee the right of the victims and their families to access justice:

“(…)All persons have the right to have justice by courts that will be able to provide them justice in the time and terms that the laws set, and give them resolutions in a quick, complete, and impartial manner”<sup>6</sup>

### **Circle of Violence and Impunity**

In recent years Mexico has confronted a growing number of aggressions and attacks against journalists. Independently of the different methodologies adopted by various human rights and press freedom organizations, they all concur in their conclusions: there has been a sustained increase in the wave of violence in the past few years.<sup>7</sup> They have all revealed the ineffectiveness of judicial investigations that should have brought to justice those responsible, thus generating a favorable environment to free exercise of freedom of expression and press freedom.

The Special Prosecutor for Crimes Committed against Journalists (FEADP) was established on February 15<sup>th</sup>, 2006. Of the 54 cases directly considered by this office, a total of 32 are listed as having obtained a result. However, this is often to the detriment of the rights of the victims of such aggressions, and their families. These ‘solutions’ often do not bring to justice and punish those responsible. They are more often than not, about the completion of a necessary administrative process. Of the 32 cases, only one was listed as having reached a conclusion, three of them as not meriting penal action, eleven were archived due to lack of information, eleven more were said not to warrant federal legislation, and six were elevated to criminal offences. Twenty two are still being considered.

As a result of technical legal difficulties, limited capacities, and the absence of an appeal process in the FEADP, the legal obligations to, and the search for justice of, the victims and their families remain too often unfulfilled.

These numbers particularly highlight two factors: the growing number of acts of violence against journalists, and the incapacity and/or lack of will of the state to address the situation in an effective manner in order to guarantee access to justice for the

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<sup>6</sup> Article 17, paragraph 2 of the Political Constitution of the United States of Mexico.

<sup>7</sup> For instance, according to the Committee to Protect Journalists (CPJ), “Since 2000, six journalists have been murdered in direct reprisal for their work in Mexico, and CPJ is investigating the circumstances surrounding the slayings of 12 others. In addition, five journalists have disappeared since 2005; three of them this year.” <http://www.cpj.org/news/2007/americas/mexico25may07na.html>

victims, and the conditions for the exercise of the right to freedom of the press and freedom of expression.

### **The Vicious Effects of Impunity**

The United Nations Commission for Human Rights has pointed out that “impunity for violations of human rights and international humanitarian law that constitute crimes encourages such violations and is a fundamental obstacle to the observance and full implementation without discrimination of any kind of human rights and international humanitarian law.”<sup>8</sup>

The effects of impunity on the exercise of freedom of expression are **particularly troubling**:

- **Discourage denunciation of violent acts:** Such cases have a history of inefficient investigations and a lack of results. This coupled with the reasonable possibility of a ruling in favor of the aggressors, means that journalists who have been victims of aggression often opt not to file a complaint.
- **Encourage perpetrators:** In Statistical terms, the cases that have passed through the FEADP have a high probability of remaining unpunished. The impunity that prevails as a result of the Mexican State’s incapacity and/or lack of will to investigate in an effective manner the aggressions, disappearances, and assassinations of journalists further encourage future aggressors.
- **Self-Censorship:** An ever increasing number of media outlets, principally at local level, are opting against giving coverage to certain themes as a means of protection. Some journalists choose not to sign their articles, and in the more extreme cases, some have opted for abandoning the profession altogether. These **results prevent or** inhibit the distribution of information of **public** interest. The Inter-American Commission on Human Rights considers that aggressions against media professionals are crimes have the effect of creating a climate of fear among other journalists and the population in general and generate fear of denouncing abuses and illegal acts of all kinds.<sup>9</sup>
- **Uninformed society:** Withdrawal or lack of publication and information owing to threats, directly affects the realization of the right to freedom of expression and is particularly difficult to monitor and denounce.
- **Weakening of democratic system:** All democratic societies require respect of freedom of expression: without an open dialogue, transparency, and a free press, a democratic system cannot be maintained and fortified.

### **Lack of Political Will of the Mexican State**

There is an evident discrepancy between the discourse and the reality of human rights guarantees in Mexico. The Mexican State is notably active in diverse international forums and organisations. Their true commitment however is unclear; this is best illustrated by the lack of concrete results inside the country. The declarations that

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<sup>8</sup> Text of the Resolution on Impunity adopted by the UN Commission on Human Rights at its 61st session. 2005/81, April 21 2005. <http://www.derechos.org/nizkor/impu/impuresol.html>

<sup>9</sup> CIDH, Informe Anual 1999, Informe 50/99, Caso 11.739 (Hector Felix Miranda), Mexico, parr. 52 y CIDH, Informe Anual 1999, Informe 130/99. Caso 11.740 (Victor Manuel Oropeza), Mexico, parr. 58

express the commitment of the Mexican Executive to freedom of the press and freedom of expression do not reflect the reality which is one of threats to exercise of these rights.

Upon close examination we can see the failure of the Mexican State to uphold the agreements they have committed to uphold during the 128<sup>th</sup> period of hearings before the Inter-American Commission of Human Rights. There the Mexican government recognized the gravity of the situation and agreed to “realize all of those means necessary for the clarification of the assassinations, disappearances, and aggressions against journalists as well as studying the means to strengthen the FEADP and to raise crimes against informers up to the federal level”. Also during the same hearing, the Mexican State agreed that the Special Rapporteur on Freedom of Expression for the Organization of American States would make a visit in order to monitor and present a report on the follow up of the information provided by civil society organizations. However the federal government has subsequently decided to delay this visit until April of next year.

Although a number of actors and non-governmental organizations have spoken in favor of strengthening the FEADP, evidence of the political will of the federal executive to adopt the necessary means is still lacking. The number of aggressions, principally threats, are rising continuously, and contributing further to the incidences of impunity. The failure of the Ministry of the Interior to search for effective means of prevention and protection of journalists is particularly notable. Their silence denotes the little understanding that authorities have of the seriousness of the situation. A country without a free press, capable of doing their work, can only damage the government, the country, and democracy.

## **Recommendations**

ARTICLE 19 respectfully calls on the Mexican State to comply with its obligation to prevent, investigate, and sanction human rights violations that have taken place within the national territory, in particular violations of the freedom of expression of journalists.

ARTICLE 19 respectfully calls on the local authorities that form part of the Mexican state to comply with the obligations to prevent investigate, and sanction human rights violations that have taken place in their jurisdiction, and to fully collaborate with federal authorities.

ARTICLE 19 reiterates its call on the competent authorities to make the necessary legal amendments in order to extend and fortify the faculties of the FEADP.

ARTICLE 19 respectfully calls on the Ministry of the Interior in accordance with its mandate and responsibilities, to coordinate effectively the political executive in dealing with the prevention and protection of journalists.

ARTICLE 19 respectfully calls on the Federal Government to create a forum for dialogue where principal actors on the subject of freedom of expression and the press can gather in order to coordinate and document incidents, and to search for effective solutions for the problems regarding attacks on the press in terms of prevention and journalists’ protection.