



人权理事会

第十七届会议

议程项目 3

增进和保护所有人权——公民权利、政治权利、
经济、社会和文化权利，包括发展权

促进和保护意见和表达自由权问题特别代表弗兰克·拉鲁先生的报告

增编

对墨西哥的访问***

概要

应墨西哥政府的邀请，特别报告员 2010 年 8 月 9 日至 24 日与美洲人权委员会表达自由问题特别报告员卡特丽娜·布特罗对该国进行了联合正式访问。这是两位特别报告员的首次联合正式访问。特别报告员感谢墨西哥政府在邀请他们访问该国方面表现出的开放态度，并强调了该国政府在访问之前、期间和之后给予的配合。除联邦区外，他们还访问了齐瓦瓦州、格雷罗州、锡那罗亚州和墨西哥州。特别报告员与联邦一级和州一级的政府、立法和司法机关以及民间社会组织、记者组织和其他相关利益攸关方举行了会晤。

本报告分析了墨西哥意见和表达自由与信息获取方面的立法框架以及历史和政治背景。它介绍了暴力行为和有罪不罚的现状，并举例说明 2000 年至 2010 年 12 月期间发生的 66 起谋杀记者案件中只有少数得到解决。由于未对大多数案件进行彻底调查，因此无法明确确定这些案件的原因和凶手。仅 2000 年至 2010 年 12 月，就有 12 名记者失踪。本报告还提及最近对若干媒体单位的攻击。在一些地区，记者受到恐吓和自我审查。报告认为，墨西哥的表达自由面临严重障碍。上述数字使得墨西哥成为美洲从事新闻业最危险的国家。

* 本报告的概要以所有正式语文分发。报告本身载于概要附件，仅以提交语文和英文分发。

** 迟交。



为应对这一严峻局面，报告指出，需要创建一个保护记者的国家机制。它称，这一新机制必须通过一个高级别官方机构间委员会加以落实，由联邦政府的一个部门领导，能够在各个机构和各级政府之间进行协调，拥有自身的充分资源，并确保记者和民间社会组织参与其设计、运作和评估。特别报告员建议加强总检察长办公室和地方检察官办公室下设的危害表达自由罪问题特别检察官办公室。

报告指出，在墨西哥，被分配广播频率的媒体的所有权和控制高度集中。在向社区广播电台授予运作频率方面没有明晰、精确和公平的程序。特别报告员建议通过一个立法框架，提供法律确定性，降低广播电台和电视台所有权和控制方面的集中度，并协助催生多元化的媒体，使人口中的所有人群都能接触到媒体。他对根据不符合国际标准的监管框架关闭某些社区广播电台表示关切。

报告指出，政府广告方面的公共支出很高且仍在不断上升。有些情况下，官方广告被用作根据编辑视角对媒体施压、奖赏、惩罚或偏袒的手段。应设立客观、明晰、透明和不歧视的标准，用于在各级政府划拨官方广告支出。

本报告详细分析了刑法与表达自由以及与行使表达自由有关的民事行动之间的关系。联邦政府 2007 年取消了对口头诽谤、中伤和书面诽谤的刑事定罪，18 个州随后起而效尤。然而，规定可判处监禁的 1917 年《媒体犯罪法》仍然有效。总检察长办公室曾对在有必要许可证的社区广播电台工作的记者提起刑事诉讼。特别报告员认为，对公共事务感兴趣、特别是对腐败或不法行为案件进行调查的记者和媒体工作者不应受到司法部门或其他部门的骚扰，以打击报复他们的工作。在随后评估民事责任时，应制定有差别标准，包括“真实恶意”标准，以及惩罚措施的严格相称性及合理性标准。

Annex

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Mexico

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I. Introduction

1. At the invitation of the Government of the United Mexican States, the Special Rapporteur visited the country from 9 to 24 August 2010, on a joint official mission with Catalina Botero Marino, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), to observe the situation of freedom of opinion and expression in Mexico.
2. The Special Rapporteur thanks the Mexican Government for its invitation and emphasizes its cooperation and openness in ensuring all necessary conditions for the joint visit, the first of its kind to a country of the region. He likewise thanks all the federal and state government authorities, civil society organizations and journalists with whom he met during the course of his visit. He acknowledges the considerable efforts made by the staff of the Ministry of Foreign Affairs and the Office of the United Nations High Commissioner for Human Rights in Mexico in providing support for the visit.
3. The visit included the Federal District and the states of Chihuahua, Guerrero, Sinaloa and Mexico. The Special Rapporteurs met with officials from over 40 federal and state public institutions belonging to the executive and legislative branches and the judiciary, as well as representatives from autonomous bodies. They held meetings with over 100 journalists, relatives of murdered journalists, media representatives, publishers, reporters, representatives of civil society organizations and members of the international community based in Mexico.

II. Institutional and legal framework

4. The right to freedom of expression is enshrined in articles 6 and 7 of the Political Constitution of the United Mexican States, as well as in article 19 of the Universal Declaration of Human Rights and in fundamental international instruments to which Mexico is a party: article 19 of the International Covenant on Civil and Political Rights and articles 13 and 14 of the American Convention on Human Rights.
5. The Human Rights Committee of the United Nations has stated that restrictions on the exercise of the right to freedom of expression must be provided by law, be imposed only for specific purposes and be necessary.¹
6. The Inter-American Court of Human Rights has likewise stated that the right to freedom of expression is not an absolute right and may therefore be subject to restrictions. Restrictions on freedom of expression must be proportional to the interest invoked as justification and adhere closely to that objective.² The Inter-American Court has also defined the dimensions of the right to freedom of expression: an individual dimension (the right to express one's thoughts and to receive information) and a social dimension (the collective right to seek and receive information).³ Freedom of expression may also serve as a tool for the enforcement of other rights.
7. In Mexico, the Supreme Court of Justice has defined the content and limits of the right to freedom of expression in its case law, in addition to prohibiting prior censorship. Limitations on freedom of expression must be enforced by the attribution of liability. The Supreme Court has also highlighted the instrumental value of that right by emphasizing that

¹ Human Rights Committee, General Comment No. 10 on freedom of opinion (art. 19 of the Covenant), paras. 3 and 4.

² Case of Herrera Ulloa. Judgment of 2 July 2004. Series C No. 107, Inter-American Court of Human Rights, para. 121.

³ Case of Ricardo Panese v. Paraguay, Judgment of 31 August 2004, Series C No. 111.

it is indispensable for shaping public opinion.⁴ The full and safe exercise of freedom of expression is part of the public interest and creates a connection between individual rights and the political system.

III. Violence, impunity and self-censorship

A. The challenging context of violence and insecurity

8. The Mexican State is facing a critical situation of violence and insecurity, in which the full enjoyment of freedom of expression and opinion has been seriously compromised. The grave and diverse obstacles with which Mexico has to contend include the murder of journalists and other very serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity that prevail in these cases. The various sources consulted by the Special Rapporteur confirm that violence against journalists is on the rise in Mexico.

9. The State has the obligation not only to guarantee that its agents do not commit acts of violence against journalists but also to take reasonable steps to prevent attacks by private individuals. It also has the obligation to investigate, prosecute, try and, where applicable, punish the perpetrators of such violence. The fact that the Special Rapporteur makes reference to an act of violence does not necessarily mean that the act is directly attributable to the State. However, such acts do make clear the State's obligation to prevent, protect against and, where necessary, punish such acts.

10. The Special Rapporteur is struck by the fact that the National Human Rights Commission (CNDH) is the only State institution that keeps a public, documented record of crimes against journalists. There is also a data-analysis unit in the Special Prosecutor's Office for Crimes against Freedom of Expression, which has taken various actions. According to CNDH, 66 journalists were murdered between 2000 and December 2010 and 12 were disappeared between 2005 and 2010. There have also been 18 attacks on media outlets over the past five years.⁵

11. While the figures compiled by CNDH are useful for understanding the seriousness of the worsening situation faced by journalists, there is no institution entrusted with collecting, updating and documenting data on violence against members of the press or on administrative and criminal proceedings conducted in that regard.

12. Through his various meetings with journalists, the Special Rapporteur was able to observe that threats and harassment are a regular feature of the practice of journalism, particularly local journalism covering issues of corruption, organized crime, drug trafficking and public security. The vast majority of attacks on local or regional journalists are not reported because there is no confidence in the actions of the respective authorities and no faith in the outcome.

13. The figures reported and the additional information received confirm that since 2000, Mexico has been the most dangerous country in the Americas in which to practise journalism.

14. Among the many murders for which no one has been punished, the Special Rapporteur received information on the following cases:

Héctor Félix Miranda, murdered in April 1988

Víctor Manuel Oropeza, murdered in July 1991

⁴ See, for example, action of unconstitutionality No. 45/2006 and joined action No. 46/2006.

⁵ CNDH, press release No. CGCP/001/11 of 2 January 2011.

Rafael Villafuerte Aguilar, editor of *La Razón* newspaper, murdered in December 2003 (pretrial investigation MIN/SC/02/302/2003; criminal case No. 005/2009-II)

Gregorio Rodríguez Hernández, reporter for *El Debate*, murdered in November 2004

Bradley Will, freelance reporter, murdered in October 2006

Amado Ramírez, *Televisa* correspondent, murdered in April 2007 (conviction handed down by the Tabares fourth criminal judge of first instance)

Teresa Bautista Merino and Felicitas Martínez Sánchez, community radio presenters, murdered in April 2008

Selene Hernández, journalist from the state of Mexico, found hanged in a hotel in 2008. This case has not been investigated at all

Armando Rodríguez Carreón, reporter for *El Diario de Juárez*, murdered in November 2008. The investigation was conducted by the Attorney General's Office. The judicial authorities have denied his widow access to the case file on three occasions

Eliseo Barrón Hernández, reporter and photographer for Grupo Multimedios newspaper *La Opinión de Torreón*, murdered in May 2009

Valentín Valdés Espinosa, reporter for *Zócalo de Saltillo*, murdered on 8 January 2010 in Coahuila

José Luis Romero, journalist for the radio news programme *Línea Directa*, whose body was found on 16 January 2010 in Tamaulipas

Jorge Ochoa Martínez, murdered on 29 January 2010 in Guerrero (criminal case No. 47-1/10)

Jorge Rábago Valdez, murdered on 2 March 2010 in Tamaulipas

Elvira Hernández Galeana and Juan Francisco Rodríguez Ríos, murdered on 28 June 2010 in Guerrero (criminal case No. 182/II/2010)

Hugo Alfredo Olivera, murdered on 6 July 2010 in Michoacán

Guillermo Alcaraz Trejo, shot dead on 10 July 2010 in Chihuahua

Marco Aurelio Martínez Tijerina, found dead on 10 July 2010 in Montemorelos, Nuevo León.

15. In addition to the above cases, there is the disappearance of María Esther Aguilar Cansimbe, a reporter for *Cambio de Michoacán*, in November 2009.

B. Impunity

16. There is a climate of widespread impunity with regard to cases of violence against journalists, even when it comes to the most serious acts such as murders, disappearances and kidnappings. In the course of his visit, the Special Rapporteur did not receive specific or adequate information on criminal and administrative convictions in these cases. Impunity prevails, fostering the chronic repetition of human rights violations and the total defencelessness of victims and their relatives.⁶

17. Impunity promotes a climate of uncertainty and distrust and is one of the main obstacles to the exercise of freedom of expression in Mexico. Violence has become so widespread that in the first half of 2010, national media were intimidated and pressured by organized crime to publish or withhold certain information, a situation that had previously affected mainly state and local media.

⁶ See Inter-American Court of Human Rights, Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of 25 November 2000. Series C No. 70, para. 211.

18. The federal Government reacted to this situation of violence and impunity by creating a special prosecutor's office within the Attorney General's Office: the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE). The Special Prosecutor's Office has launched 143 investigations since 15 February 2010. However, since its creation in 2006, it has failed to convict a single perpetrator and has brought only four cases to trial.⁷ Its tendency to decline competence for cases referred to its jurisdiction also reveals a lack of political will that was corrected only in recent months when a new prosecutor was appointed.

19. The fact that FEADLE has achieved so little is attributable, in part, to the unwillingness of previous prosecutors to take on cases and implement an adequate work plan, but also to its lack of autonomy and resources and the failure to define its jurisdiction clearly. FEADLE maintains that it does not a priori prejudge the question of jurisdiction. For the first time, its current work plan reflects a seriousness consistent with the gravity and urgency of the situation it faces. The Special Rapporteur hopes that this work plan will translate into tangible results in the near future and he will remain attentive to its execution and development.

20. It is not enough, however, to strengthen the Special Prosecutor's Office by giving it greater autonomy and its own budget and allowing the exercise of federal jurisdiction over crimes against freedom of expression. The judiciary must also be strengthened by giving it the necessary instruments to try crimes committed with the aim of preventing or impeding the exercise of freedom of expression. It is particularly important to promote the necessary reforms to enable federal judges to handle such crimes.

21. Individual states must also make an effort to give their criminal justice bodies and their judges greater and better operational guarantees, including greater autonomy, resources and technical expertise. The Special Rapporteur was informed of the adoption of a special investigation protocol for handling crimes committed against journalists in the Federal District. The Federal District also has a specialized agency for handling crimes committed against journalists in the exercise of their profession and a project providing safe houses for journalists, while the Special Prosecutor's Office has a basic homicide investigation guide for murders committed against freedom of expression. All prosecutor's offices should adopt special investigation protocols for handling crimes committed against journalists, which would have to include exhaustive investigation of the possibility that the crime was motivated by the victim's professional activities.

22. In order to combat impunity, the State must continue to reinforce complementary oversight mechanisms. Of the 23 recommendations relating to freedom of expression made by the National Human Rights Commission since 2005, only six have been implemented fully by the responsible authorities. The Special Rapporteur believes that public human rights bodies' capacity for action must be strengthened. The adoption of constitutional amendments in the area of human rights is essential for this purpose. Prosecutor's offices must also be more transparent and have greater autonomy and technical expertise. To achieve this, the State must pursue the overhaul of the criminal justice system. The special commission of the Chamber of Deputies that is responsible for monitoring attacks on journalists and media outlets has carried out a number of activities and should become a regular commission. The possibility could also be considered of creating an equivalent commission in the Senate of the Republic and in the legislative bodies of those states where violence against journalists is most severe.

C. The phenomenon of self-censorship

23. According to the information received by the Special Rapporteur, journalists in some parts of the country are subject to a climate of intimidation that causes them to self-

⁷ Special Prosecutor's Office for Crimes against Journalists, 2009 report; interview with the Special Prosecutor's Office for Crimes against Freedom of Expression, 12 August 2010.

censor. It is extremely difficult in those areas to investigate and publish material on issues such as organized crime, corruption, lack of public security and similar matters, given the vulnerability and high risk to which journalists would be exposed. As a result, Mexican society as a whole is less and less aware of what is going on in those areas and the authorities and social organizations are being deprived of information that is very important to the public and also essential for combating some of the crimes faced by Mexican society.

24. The Special Rapporteur was informed that the Special Prosecutor's Office has ordered police authorities to adopt 48 precautionary measures in favour of journalists, their families and media outlets. However, the fact that journalists are defenceless and receive no support from the authorities means that self-censorship is being used as a means of self-protection. Increasingly, information is being withheld for fear of possible reprisals and investigations into possible acts of corruption are being abandoned. Fear of seeking and disseminating information is spreading because of the lack of protection and effective safeguards. In some states where there is a major presence of organized crime, such as Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa and Tamaulipas, self-censorship has reached such serious levels that the local press has been reduced to silence and does not report on extremely violent events occurring in the area. At best, such events will be reported in the national press.

25. According to the information received, in some particularly extreme cases drug trafficking groups have tried actively to influence what the media report. This serious trend, which previously affected local media in places where organized crime is very prevalent, is now beginning to affect national media.

26. Most of the worst attacks on journalists take place in states where there is a strong presence of organized crime, such as Chihuahua, Guerrero and Sinaloa, which the Special Rapporteur visited. In these states, organized crime is the biggest threat to the life and physical integrity of journalists, particularly those covering local news about corruption, organized crime, drug trafficking, public security and related issues. However, the authorities' failure to complete their investigations in the vast majority of cases prevents an exact determination of the causes and perpetrators of these crimes.

27. The Special Rapporteur was informed that, in some regions, armed groups with alleged links to political factions are responsible for violence and intimidation against journalists. In April 2010, a group of journalists were attacked on their way to San Juan Copola, in the state of Oaxaca, while travelling as part of a humanitarian convoy to report on the 2008 murder of community radio journalists Teresa Bautista Merino and Felicitas Martínez Sánchez. Two activists were killed and two journalists, one of them with a gunshot wound, remained trapped in the area for two days before they could be rescued. An illegal armed group operating in Oaxaca allegedly carried out the attack.

D. Attacks committed by members of the forces of law and order

28. The Special Rapporteur fully recognizes the efforts made by the Mexican State to combat crime and guarantee the safety of its inhabitants. However, he is deeply concerned at the information received about harassment and attacks allegedly committed by members of both the armed forces and the police against journalists who cover the security situation. In the lawful exercise of their profession, journalists have the right and the duty to cover the security situation without hindrance or undue pressure.

29. According to CNDH figures, the five authorities allegedly responsible for most of the reported offences against journalists are involved in security and law enforcement: the Attorney General's Office, the Ministry of Public Security, the Ministry of National Defence, the Oaxaca Attorney General's Office and the Veracruz Attorney General's Office. More worryingly, three of these authorities are actually responsible for the investigation and prosecution of crimes.⁸

⁸ CNDH, press release CGCP/001/11 of 2 January 2011.

30. As established by the United Nations Human Rights Committee and the Inter-American Court of Human Rights,⁹ in no event may military courts judge cases of human rights violations committed against journalists. At the same time, both the armed forces and the police must cooperate fully with the investigations carried out by public human rights bodies and internal oversight bodies in order to determine the responsibilities of personnel who dishonour the institutions established to guarantee people's safety.

31. The Special Rapporteur was informed that efforts are being made to bring article 57 of the Code of Military Justice into line with international standards. He acknowledges the training efforts undertaken for police and soldiers with a view to preventing abuses. However, the absence of clear and transparent criteria for how the army and security forces should interact with journalists in the context of the operations they carry out undermines trust and encourages abuse. The press must be seen and viewed as an ally of the State and society in building democracy and the rule of law.

E. National mechanism for the protection of journalists

32. Various civil society organizations for the protection and defence of human rights and journalists' organizations have raised the need for the State to take comprehensive action to safeguard the work of journalists and human rights defenders. Given the absence of a protocol or clear mechanism for the implementation of precautionary measures or temporary measures of protection for journalists, a number of State bodies, in conjunction with journalists, members of the media, civil society organizations and international and national human rights organization, have embarked on a process aimed at creating a national mechanism for the protection of journalists and human rights defenders.

33. Since the Special Rapporteur's visit, progress has been made in guaranteeing the safety of journalists. At the state level, the state of Chihuahua adopted the implementation agreement for the comprehensive security system to protect journalists.¹⁰ At the federal level, in October 2010 the National Human Rights Commission adopted two guides for implementing precautionary measures for journalists and media workers and for human rights defenders. In November 2010, the Ministries of the Interior, Foreign Affairs and Public Security and CNDH signed a coordination agreement for the implementation of preventive and protective actions for journalists. Lastly, in late 2010, the Chamber of Deputies approved an allocation for the protection of journalists in the federal spending budget for the 2011 financial year.¹¹ Further progress needs to be made, however, given the scale of the violence and insecurity confronting journalists in Mexico.

34. In addition to the Special Prosecutor's Office, a special commission of the Chamber of Deputies is responsible for monitoring attacks on journalists and media outlets. CNDH also has a programme dealing with offences against journalists and human rights defenders and there are similar programmes in the Federal District and the states of Guerrero, Tabasco and Veracruz.

35. The Special Rapporteur considers it essential that a national mechanism for the protection of journalists, designed and implemented through a high-level official inter-institutional committee, be created immediately. Such a mechanism should be headed by a federal authority, be able to coordinate among the various authorities and levels of

⁹ Human Rights Committee. Concluding observations on the fifth periodic report of Mexico (CCPR/C/MEX/CO/5), para. 18. Inter-American Court of Human Rights, Case of Radillo Pacheco v. United Mexican States, Judgment of 23 November 2009; Case of Fernández Ortega et al v. Mexico, Judgment of 30 August 2010; Case of Rosendo Cantú et al v. Mexico, Judgment of 31 August 2010; and Case of Cabrera García and Montiel Flores v. Mexico, Judgment of 26 November 2010.

¹⁰ *Periódico Oficial del Gobierno Libre y Soberano del Estado de Chihuahua*, 8 September 2010.

¹¹ *Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2011*, published in the *Diario Oficial de la Federación* on 7 December 2010.

government, have sufficient resources of its own and guarantee the participation of journalists and civil society organizations in its design, creation, operation and evaluation.

36. One simple but effective measure of protection would be for the highest State authorities to recognize constantly, clearly, publicly and firmly the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical, inconvenient or inopportune for the Government's interests. Similarly, it is essential that those authorities vigorously condemn attacks against journalists and media workers and encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.

IV. Freedom, pluralism and diversity in the democratic debate

37. Mindful that one of the basic requirements for the right to freedom of expression is that there should be a broad diversity of sources of information, the Special Rapporteur evaluated the degree of pluralism and diversity in radio broadcasting.¹² The regulation of the broadcast spectrum, the situation of community radio stations and the regulation and allocation of government advertising are examined below.

A. Allocation of broadcast frequencies

38. With regard to regulation of the broadcast frequency spectrum and the implementation of broadcasting laws, the Special Rapporteur was informed that in June 2007, the Supreme Court ruled that a number of provisions of the Federal Telecommunications Act and the Federal Radio and Television Act were unconstitutional.¹³ Its ruling invalidated various aspects of the procedures for acquiring radio broadcasting and telecommunications concessions and licences, which the Court deemed could jeopardize freedom of expression, legal certainty and the prohibition of monopolies.¹⁴

39. The Special Rapporteur notes that, four years on, Congress and the federal executive branch have still not created the necessary regulatory framework to fill the gaps identified by the Supreme Court. This has given rise to a situation of legal uncertainty in the country with regard to the regulation of broadcasting.

40. Ownership and control of the media to which broadcast frequencies have been assigned remain highly concentrated in Mexico. The IACHR Declaration of Principles on Freedom of Expression states 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 exercise of the right to information". The Special Rapporteur urges Congress and the federal executive branch to adopt legislation that meets with the requirements of the Supreme Court and international bodies for reducing concentration in the sector and contributes to creating pluralist media accessible to all sectors of the population.

41. The State must also ensure the existence of public media that are genuinely independent of the Government, in order to encourage diversity and guarantee society, *inter alia*, certain educational and cultural services.

¹² See IACHR, Office of the Special Rapporteur for Freedom of Expression, *Inter-American Legal Framework regarding the Right to Freedom of Expression*, 30 December 2009, paras. 225 and 231.

¹³ Supreme Court of Justice of the Nation, action of unconstitutionality No. 26/2006, ruling of 7 June 2007.

¹⁴ *Loc. cit.*

B. Community radio broadcasting

42. Communication media such as community radio stations and channels play a fundamental role in democracy and in preserving and fostering peoples' cultures. Article 2 of the Mexican Constitution and article 16 of the United Nations Declaration on the Rights of Indigenous Peoples enshrine the right of indigenous peoples to establish their own media. However, indigenous communities have often been frustrated in their attempts to set up radio stations that contribute, among other things, to reflecting their ethnic and cultural diversity and to disseminating, preserving and promoting their culture and history.

43. In its ruling mentioned above, the Supreme Court declared that some parts of article 20 of the Federal Radio and Television Act, on the procedure for awarding broadcasting licences to non-commercial media, were unconstitutional in that they gave government authorities discretionary powers in applying this procedure.¹⁵ Since then, according to the information received, clear, precise and equitable procedures by which community radio stations can apply for and obtain broadcasting frequencies have not been adopted. States must have a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community broadcasting and includes simple, accessible procedures for obtaining licences; a legal framework that does not impose excessive technological requirements, that allows community radio stations to use advertising as a means of financing and that does not impose discriminatory limits on their financing and reach.¹⁶

44. There is no reason why community radio stations have to be few, poor and have limited frequencies. Just because they are non-commercial does not mean that they should not generate resources to ensure their sustainability and modernization. Above all, they must have the necessary facilities to be able to operate legally. The lack of clear and simple procedures for obtaining frequencies means that applicant stations are uncertain about the procedure, the requirements and the time it will take for a decision to be reached on their application. The federal Government has closed down some community radio stations on the basis of a regulatory framework that does not conform to international standards. The Special Rapporteur is concerned about the criminalization of unauthorized community radio stations. The use of an unauthorized frequency should constitute an administrative misdemeanour, not a crime, yet a warrant was issued for the arrest of radio presenter José Maza, of *Radio Comunitaria Radio Diversidad* of the Paso de Macho peasant community in Veracruz, in a criminal case brought against him for using a broadcast frequency without the corresponding permit. In one positive development, the Federal Telecommunications Commission (COFETEL) awarded six permits to community radio stations in January 2010.

45. Legislation must be adopted that responds to the Supreme Court ruling and international standards, in order to provide a clear legal framework for the award of operating licences and the functioning of community radio stations.¹⁷

C. Government advertising

46. States have an obligation to adopt laws prohibiting discrimination in the allocation of political advertisements.¹⁸ Public spending on government advertising is high and increasing. In 2009, the federal Government spent 49 per cent more on official advertising than in 2008. Article 134 of the Constitution is not subject to regulation (except during

¹⁵ Loc.cit.

¹⁶ See IACHR, Office of the Special Rapporteur for Freedom of Expression, *Inter-American Legal Framework regarding the Right to Freedom of Expression*, 30 December 2009, paras. 234-235.

¹⁷ See COFETEL, press release No. 05/2010, 27 January 2010.

¹⁸ See IACHR, Office of the Special Rapporteur for Freedom of Expression, *Inter-American Legal Framework regarding the Right to Freedom of Expression*, 30 December 2009, para. 223.

electoral periods). There are no legally established criteria for allocating government advertising. Although the Ministry of the Interior issues public guidelines each year aimed at regulating media processes for that year, such guidelines do not establish objective, clear, open, transparent and non-discriminatory procedures and criteria for the award of government advertising contracts.¹⁹ They are binding only on the federal executive branch and do not apply to the other branches of government and autonomous bodies, or to individual states, where the allocation of government advertising is often even more arbitrary and less transparent. The lack of clear rules leaves excessive room for discretion and may lead to arbitrary conduct.

47. In the state of Veracruz, spending on social communication and government advertising is considered confidential information.²⁰ Handling government advertising may have a deterrent effect, comparable in practical terms to that of censorship. There are cases where official advertising has allegedly been used as a means to pressure and punish, or reward and favour, communication media according to their editorial angle. CNDH found, for instance, that after *Contralínea* magazine published a series of articles critical of the State-owned company Petróleos Mexicanos (PEMEX), the company ended all contracts for official advertising in the magazine.²¹ CNDH also found that the Guanajuato state government cancelled and cut back on the government advertising previously placed in the *A.M.* and *Al Día* newspapers as an indirect way of limiting their freedom of expression.²² *Proceso* magazine filed a complaint with CNDH after the federal Government allegedly ended its official advertising contract with the magazine, despite the fact that the magazine has a broad and recognized circulation.

48. Given the existence of a legal framework that appears to allow the discretionary allocation of government advertising, the Special Rapporteur considers it urgent to adopt clear, objective, transparent and non-discriminatory rules for contracting this service at both the federal and state levels. In this context, he was informed of the publication on 30 December 2010, in the *Diario Oficial de la Federación*, of the agreement establishing general guidelines for directing, planning, authorizing, coordinating, supervising and evaluating the media strategies, programmes and campaigns of units and entities of the federal public administration for the 2011 financial year.

V. Legal actions relating to the exercise of freedom of expression

A. Criminal law and freedom of expression

49. Freedom of expression is one of the fundamental values of democracy and is inherent in respect for other human rights. It is protected by articles 6 and 7 of the Mexican Constitution and by the international instruments to which Mexico is a party (International Covenant on Civil and Political Rights, article 19, and Inter-American Convention on Human Rights, article 13, among others). The Mexican State has made significant progress in transforming its criminal law so that freedom of expression is no longer criminalized. The federal Government decriminalized slander, defamation and libel in April 2007 and the recent adoption of criminal law reforms in the states of Veracruz and Puebla brings to 18 the number of states to have decriminalized them. In June 2009, the Supreme Court, ruling on a direct *amparo* application for review (application No. 2044/2008), declared articles 1

¹⁹ See CNDH, Recommendation No. 57/2009, p. 26.

²⁰ State of Veracruz, Directorate of Social Communication, official note No. DGCS/UAIP/037/2010, 28 June 2010.

²¹ See CNDH, Recommendation No. 57/2009, pp. 21 to 25.

²² See CNDH, Recommendation No. 60/2009.

and 30, Fr. II, of the Print Act of the state of Guanajuato, which criminalize invasion of privacy, to be incompatible with the Constitution in the case in question.²³

50. However, the persistence of so-called press crimes and crimes against honour in 14 states and the survival at federal level of the 1917 Print Offences Act, which provides for custodial sentences and remains in force even though it predates the Constitution, are an unacceptable obstacle to the full exercise of freedom of expression in Mexico.

51. In some cases, the abovementioned laws have allowed criminal proceedings to be brought against journalists for expressing opinions on matters of public interest. This is what happened to journalist Lydia Cacho, who was charged with defamation and slander for having published a book on child pornography in which she made allegations about, inter alia, a textile manufacturer and leading politicians.²⁴ Although the case was settled in 2007 in favour of Lydia Cacho, admission of the complaint initially resulted in her arrest in irregular circumstances.²⁵

52. The Special Rapporteur has also received information about criminal proceedings brought by the Attorney General's Office against journalists working for community radio stations that did not have the necessary permits. One such case was that of Rosa Cruz, a member of the Purépecha indigenous group in the state of Michoacán, who participated in the *Uékakua de Ocumicho* community radio station. The radio station had three watts of power and was the only station in the Ocumicho community that transmitted in the Purépecha language. A large number of Federal Investigation Agency agents burst into the radio station's premises on 29 January 2009 and the Attorney General's Office later instituted criminal proceedings against Ms. Cruz.

53. Arrest warrants have been issued for three staff members of *Radio Diversidad* community radio station in the municipality of Paso del Macho in the state of Veracruz. The Attorney General's Office closed down the radio station in March 2009. On 26 March 2010, a district judge issued a detention order against one of the three staff members for the alleged crime of using, benefiting from and exploiting property belonging to the nation without a State permit or licence.

54. In the state of Guerrero, other criminal law provisions are reportedly being used to limit the exercise of freedom of expression, especially with regard to views expressed in the context of social protests. On 29 September 2009, the editor of *El Sur* newspaper was arrested by six members of the Guerrero ministerial police because of an article published on 3 September in connection with the death of the President of the state Congress. At the Ayutla de los Libres prison in the state of Guerrero, the Special Rapporteur talked to Mr. Raúl Hernández, a human rights defender and indigenous leader of the Me'phaa Indigenous People's Organization, who had been in pretrial detention for nearly two years even though, according to staff of the Guerrero state Commission for the Defence of Human Rights, there was insufficient evidence to charge him with the offence for which he had been imprisoned. Mr. Hernández was finally released weeks after the Special Rapporteur's visit.

55. Social protest is important for the consolidation of democratic life. Such participation in public life, as a way of exercising freedom of expression, is of keen social interest. For that reason, States have very narrow margins for restricting that form of free expression.²⁶ The Special Rapporteur therefore welcomes the recent decision by the First Chamber of the Supreme Court to release 12 persons detained in connection with the

²³ Supreme Court of Justice, direct *amparo* application for review No. 2044/2008, 17 June 2009 ruling.

²⁴ *La Jornada*, "Pierde Kamel Nacif demanda contra Lydia Cacho" (Kamel Nacif loses complaint against Lydia Cacho), 3 January 2007, available at: www.jornada.unam.mx/2007/02/03/index.php?section=politica&article=005n2pol.

²⁵ CNDH, Recommendation No. 16/2009.

²⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, chapter IV, para. 34.

demonstrations that took place in Atenco, state of Mexico, in 2006. The Special Rapporteur concurs fully with the Supreme Court that the authorities should not act on the basis of a prejudice about the behaviour of a person who demands, by means of social protest, that his or her interests be taken into account, and that protest should not be stigmatized as violent and subversive.²⁷

B. Civil actions

56. The Special Rapporteur also received information about civil actions brought against journalists and media outlets. In some cases, the alleged purpose of these actions was to harass critical journalists and media. For instance, the National Human Rights Commission characterized as “harassment” the civil actions against journalists from the magazines *Contralínea* and *Fortuna, Negocios y Finanzas* initiated by individuals and companies linked to the same business group, who filed at least five civil lawsuits against them in three different states.²⁸ *Contralínea* published articles documenting alleged acts of corruption and conflicts of interest in the award of PEMEX contracts. Its editor was arrested in circumstances questioned by CNDH.²⁹ Personnel of the Federal District’s Ministry of Public Security and several civilians claiming to represent the plaintiffs raided the magazine’s premises. These incidents would seem to indicate an attempt to use the criminal justice system to harass and silence journalists.

57. In Guerrero, a civil action for 10 million pesos was brought in 2007 against the editor and journalists of *El Sur* newspaper by the brother of the then state Governor, following the publication of information of public interest on the award of contracts by the state Ministry of Education.

58. The Special Rapporteur recalls that, as the Inter-American Court has pointed out, opinions cannot be considered true or false and, as such, cannot be the object of any sanction.³⁰ There must be differentiated standards for evaluating the subsequent liability of those who disseminate information on matters of public interest or political criticism, including the standard of actual malice, as well as strict proportionality and reasonability of penalties.³¹

59. Media workers who investigate cases of corruption or wrongdoing should not be targeted for legal or other harassment in retaliation for their work.³²

VI. Access to information

60. The Special Rapporteur expresses his satisfaction at the considerable progress made by the State in recent years with regard to the right of access to information. The country’s performance in this area has been exemplary. The right of access to information is enshrined in Mexico’s Constitution. The Federal Act on Transparency and Access to Governmental Public Information created the Federal Institute for Access to Information

²⁷ First Chamber of the Supreme Court of Justice, direct *amparo* application No. 4/2010, 30 June 2010.

²⁸ CNDH, Recommendation No. 57/2009, pp. 12 to 14.

²⁹ CNDH, Recommendation No. 57/2009, p. 16.

³⁰ Inter-American Court of Human Rights. Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of 20 November 2009. Series C No. 207, para. 86.

³¹ See IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, chapter III, para. 7.

³² See Joint Declaration of the special rapporteurs for freedom of expression of the United Nations and the Organization of American States (OAS) and the representative for media freedom of the Organization for Security and Cooperation in Europe (OSCE), 2003.

and Protection of Data (IFAI), which has played a crucial role in protecting people's right of access to information and in developing a culture of transparency in institutions of the federal public administration.

61. The Special Rapporteur is grateful to the Supreme Court and the Federal Electoral Tribunal both for their case law guaranteeing the right of access to information and for their innovative policies on transparency. He calls on the country's other courts, particularly state courts, to emulate these examples of transparency and public accessibility.

62. Despite the progress made, some challenges can still be observed with regard to the effective guarantee of this right. The institutional and legal framework guaranteeing the effective exercise of the right of access to information in relation to the federal executive branch does not always exist at state and municipal level. Many state and municipal authorities seem to be unaware of their obligations in this area and do not have specific established procedures for enabling the public genuinely and effectively to exercise this right.

63. The Special Rapporteur also observes that IFAI oversees compliance with the Federal Act on Transparency and Access to Governmental Public Information only in the federal public administration, while the legislative branch and the judiciary and other autonomous bodies do not have an independent oversight body.

64. Lawsuits have been filed that seek to dispute the definitive, unchallengeable nature of the decisions of IFAI and state transparency bodies. While, traditionally, the courts had rejected attempts by the public authorities to contest IFAI decisions judicially, the Special Rapporteur was told that the Federal Court of Fiscal and Administrative Justice (TFJFA) has recently begun to accept challenges to IFAI decisions.

65. The Supreme Court is currently reviewing an action of unconstitutionality against the Act on Transparency and Access to Public Information of the state of Campeche. The Act allows affected public entities to contest decisions of the state Commission on Transparency and Access to Public Information judicially. A decision has yet to be taken on the action of unconstitutionality. The Special Rapporteur believes that giving affected entities an opportunity to contest the decisions of IFAI and its state counterparts through ordinary judicial remedies effectively denies others the right to obtain the requested information by means of a simple, speedy and specialized process, thereby nullifying the right of access to information.

66. CNDH filed an action of unconstitutionality alleging the invalidity of article 16 of the Federal Code of Criminal Procedure, which regulates access to the case files of pretrial investigations. On the basis of this article, the Attorney General's Office has refused to provide public versions of pretrial investigations that have been completed or have been inactive beyond a reasonable period of time, even when it comes to cases of grave human rights violations or crimes against humanity such as the investigations into the enforced disappearances of Rosendo Radilla Pacheco and others.

67. Like the National Human Rights Commission, IFAI has held that unjustified restrictions on access to already completed or totally inactive pretrial investigations violate the guarantees of access to public information contained in article 6 of the Constitution.

68. The Special Rapporteur recognizes the need to maintain the confidentiality of ongoing pretrial investigations so as not to jeopardize the investigation and to protect sensitive information. However, providing a public version of information on investigations that have been completed or that have been inactive for years, subject to the protection of sensitive information and of elements which it has been proved must remain confidential in order to protect other legitimate interests, helps publicize the case and guarantee proper inter-institutional and public oversight of criminal justice institutions. This is precisely the purpose of the right of access to information.

69. The Special Rapporteur was informed that in some states such as Sinaloa and in the Federal District, sentencing grounds are kept secret from the public until all stages of the corresponding proceedings are complete. This practice affects the right of access to information and prevents public oversight of judicial sentences.

VII. Conclusions

70. Based on the information gathered before, during and after the visit and in view of the situation of freedom of expression in the country, the Special Rapporteur draws the following conclusions:

71. Although the current problem of violence in Mexico affects all sectors of the population, attacks on journalists and media workers have multiplier effects that affect other members of the profession, generate fear and self-censorship, deprive society in general of its fundamental right to information and discourage critical reporting, all of which increases impunity.

72. The impunity that characterizes crimes against journalists and media workers in Mexico has the perverse effect of encouraging further crimes of this nature.

73. Freedom of expression faces serious obstacles in Mexico, mainly because of the acts of intimidation and violence suffered by journalists. Over the past 10 years, 66 journalists have been murdered and 12 have been disappeared, making Mexico the most dangerous place in the Americas in which to practise journalism.

74. Most murders, disappearances and kidnappings of journalists are concentrated in states where organized crime has a large presence, including Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa and Tamaulipas. In some of these states, there are communities that have been completely silenced by the chilling effect of the climate of impunity and violence.

75. In these states, organized crime is the biggest threat to the lives and physical integrity of journalists, especially those who cover local news on administrative corruption, drug trafficking, organized crime, public security and related issues. Incomplete investigations in the vast majority of cases prevent an exact determination of the causes and perpetrators of these crimes.

76. Without a comprehensive public policy aimed at guaranteeing the freedom to seek, receive and disseminate information through any medium, it is impossible for Mexican society to contribute to the fight against organized crime, criminality and corruption and to exercise active and informed oversight of the State's actions to deal with crime and protect the public. Protection of the right to freedom of expression must be a fundamental part of the public security agenda in Mexico.

77. Accordingly, the Special Rapporteur commends the existence of a Special Prosecutor's Office and the preliminary discussions on the creation of a mechanism for the protection of journalists both nationally and in some states.

78. The situation in Mexico is not conducive to diversity and pluralism. With regard to the regulation of the broadcast spectrum and the implementation of broadcasting laws, the Special Rapporteur observes that ownership and control of the media to which broadcast frequencies have been assigned are highly concentrated. The existing legal framework does not offer guarantees of certainty, pluralism and diversity and there is no independent regulatory body.

79. With regard to community radio stations, there is no legal framework for their recognition and there are no clear, precise and equitable procedures for awarding them operating frequencies. The only legal mechanism is the permit for non-commercial cultural stations.

80. Spending on government advertising is high and increasing. The absence of a regulatory framework has allowed official advertising contracts to be awarded on a discretionary basis, meaning that the allocation of government advertising can be used to pressure, reward, punish or favour communication media according to their editorial angle.

81. The Special Rapporteur acknowledges the progress made at the federal level and in most states in decriminalizing slander, defamation and libel. Nevertheless, there are still criminal law provisions that allow the exercise of freedom of expression

to be criminalized. Criminal law provisions continue to be used against journalists who cover matters of public interest, individuals who work for community radio stations and social activists who engage in acts of social protest.

82. The use of direct or indirect pressure to silence journalists' news reporting is incompatible with freedom of expression as enshrined in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. News coverage of complaints or the expression of opinions critical of public officials enjoy broad protection under international human rights law.

83. According to the highest international standards in the area of freedom of expression, persons in public office have a duty to face a higher level of criticism and scrutiny than the rest of society because they have voluntarily assumed public responsibilities.

84. Civil actions continue to be brought against journalists and media outlets in a legal environment in which there are no differentiated standards for evaluating the subsequent liability of those who disseminate information on matters of public interest or political criticism. Civil lawsuits have allegedly been brought against journalists and media outlets as a means of harassing them and even silencing criticism.

85. In recent years, Mexico has led the way in ensuring access to information. Nevertheless, the institutional and legal framework guaranteeing the effective exercise of the right of access to information with regard to the federal executive branch does not always exist at the state and municipal levels. State-level laws have been promulgated and judicial appeals lodged in an attempt to reverse the definitive, unchallengeable nature of the decisions of the Federal Institute for Access to Information and Protection of Data and of state transparency bodies.

86. Practices exist that limit transparency in the criminal justice system. Some state courts maintain the confidentiality of appealed lower court judgements until all stages of the corresponding proceedings are complete. Likewise, under a recent amendment to article 16 of the Federal Code of Criminal Procedure, pretrial investigations remain confidential for a period of time equal to that of the statute of limitations for the offences in question. The amendment is currently under review by the Supreme Court.

87. The Special Rapporteur recognizes the fundamental importance of the work done by civil society organizations that monitor all aspects of the exercise of freedom of expression in Mexico, including attacks on journalists.

VIII. Recommendations

88. Based on the above conclusions, the Special Rapporteur makes the following recommendations, while reiterating that he is fully at the disposal of the Mexican State to work with it on their implementation:

89. The State party should expedite the adoption and entry into force of the constitutional amendments on human rights and *amparo* and issue the corresponding secondary legislation as soon as possible, in order fully to respect and guarantee the right to freedom of expression.

A. Violence, impunity and self-censorship

90. The Special Rapporteur makes the following recommendations:

(a) Recognize the importance of journalists' work and vigorously condemn attacks on the press;

(b) Strengthen the Special Prosecutor's Office for Crimes against Freedom of Expression, as well as local criminal justice bodies;

- (c) Take the necessary measures to permit the exercise of federal jurisdiction over crimes against freedom of expression;
- (d) Give the Special Prosecutor's Office and local prosecutor's offices greater autonomy and resources;
- (e) Adopt special protocols for the investigation of crimes and offences against journalists, requiring that the possibility that the crime or offence was motivated by his or her professional activities is given full consideration and is investigated exhaustively;
- (f) Strengthen public human rights bodies and set up specialized programmes on freedom of expression and protection of journalists in state human rights commissions;
- (g) Establish a national mechanism for the protection of journalists, which should be implemented through a high-level official inter-institutional committee, be headed by a federal authority, be able to coordinate among the various authorities and levels of government, have sufficient resources of its own and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation. The Special Rapporteur notes the signing on 3 November 2010, by the Ministries of Foreign Affairs, Federal Public Security and the Interior, the Attorney General's Office and the National Human Rights Commission, of the cooperation agreement for the implementation of preventive and protective actions for journalists;
- (h) Provide training on freedom of expression to security forces.

B. Freedom, diversity and pluralism in the democratic debate

91. The Special Rapporteur makes the following recommendations:

- (a) Adopt a regulatory framework that offers legal certainty, reduces the concentration of television and radio ownership and control and helps create pluralist media that are accessible to all sectors of the population;
- (b) Ensure the existence of public media that are genuinely independent of the Government in order to promote diversity and guarantee society, inter alia, certain educational and cultural services;
- (c) Create a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community radio broadcasting and includes simple, accessible procedures for obtaining broadcast frequencies;
- (d) Create a public body that is independent of the Government to regulate radio and television;
- (e) Establish objective, clear, transparent and non-discriminatory criteria for the allocation of official advertising at all levels and in all areas of government.

C. Legal actions relating to the exercise of freedom of expression

92. The Special Rapporteur makes the following recommendations:

- (a) Amend state criminal codes in order to remove offences that are used to criminalize freedom of expression and refrain from using other criminal law provisions to punish the lawful exercise of freedom of expression;
- (b) Repeal the 1917 Print Offences Act;
- (c) Guarantee that journalists and media workers are not subjected to judicial or other harassment in retaliation for their work by establishing differentiated standards for the evaluation of subsequent civil liability, including the standard of actual malice, and strict proportionality and reasonability of any subsequent penalties;

(d) Adopt legislation to regulate the right of reply in accordance with article 6 of the Constitution and international standards;

(e) Ensure that community radio broadcasting is not subject to criminal prosecution;

(f) Guarantee the right to freedom of expression exercised lawfully through acts of social protest.

D. Access to information

93. The Special Rapporteur makes the following recommendations:

(a) Preserve the progress made with regard to access to information;

(b) Guarantee that the decisions of transparency bodies are final and unchallengeable;

(c) Ensure that the authorities do not flout the decisions of transparency bodies;

(d) Give transparency bodies constitutional autonomy so that they can perform their promotion and oversight functions with respect to all those who are bound by the laws governing access to information;

(e) Consider public interest entities, particularly political parties, and other publicly funded entities to be bound by the laws on access to information;

(f) Increase transparency in the criminal justice system by guaranteeing access to the judgments of judicial bodies and to a public version of pretrial investigations that have been completed or that have been inactive beyond a reasonable period of time.

E. Final recommendations

94. The Special Rapporteur calls on the owners of communication media to provide appropriate support to journalists, including safety protocols and appropriate training to reduce risk. Journalists and their family members should have social security coverage.

95. The Special Rapporteur urges Mexican society and the international community to continue supporting the work and efforts of the civil society organizations that monitor the exercise of freedom of expression in Mexico. These organizations must be able to work in safety.

96. The Special Rapporteur makes a special appeal to journalists to continue and expand solidarity and mutual support initiatives.
