



## Written Comments of ARTICLE 19: Global Campaign for Free Expression

### MEXICO

*For the consideration at the 93rd Session of the UN Working Group on Enforced  
or Involuntary Disappearances*

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## **Introduction**

ARTICLE 19, Global Campaign for Free Expression (ARTICLE 19), an international human rights organisation, respectfully submits these Written Comments concerning Mexico for consideration by the United Nations Working Group on Enforced or Involuntary Disappearances at its 93rd session in Mexico.

In these Written Comments, ARTICLE 19 focuses on areas of concern relating to the disappeared journalist and its relation to the exercise of the right to freedom of expression in Mexico.

### **1. Violence against journalists**

Violence against journalists (and human rights defenders) is exacerbated by the insecurity that is affecting society as a whole. As reported by ARTICLE 19, violence against the press is a well known phenomenon that has severely deteriorated the exercise of freedom of expression. Although the free flow of information is essential at all times, even more when a country is at distress, as Mexico is. Since 2000, violence against media and journalists has systematically increased<sup>1</sup>. The following figures generated by ARTICLE 19 and other civil society organisations, show the sustained increase in the number of cases of violent aggressions committed against journalists<sup>2</sup>:

<b>Year</b>	<b>Number of aggressions</b>
2003	76
2004	92
2005	93
2006	131
2007	89
2008	186
2009	244
<b>TOTAL</b>	<b>911</b>

Numbers of complaints presented before the National Commission of Human Rights records also show the increase of complaints of violations to human rights of media workers<sup>3</sup>:

<b>Year</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
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<sup>1</sup> Just in 2009 ARTICLE 19 and Centro Nacional de Comunicación Social recorded 244 aggressions against journalists.

<sup>2</sup> *Recuento de daños 2006: un acercamiento a la libertad de expresión e información en México* (Harms recount 2006: an approach to freedom of expression and information in Mexico), Network to Protect Journalists and Media, National Centre for Social Communication, ARTICLE 19, May 2006; Report 2009, *Entre la Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en México*, ARTICLE 19 and the National Centre for Social Communication, February 2010, page 11.

<sup>3</sup> National Commission of Human Rights CNDH. Report 1999-2009, pag. 177. Report available at: <http://www.cndh.org.mx/lacndh/informes/informes.htm>

<b>Complaints</b>	14	21	42	27	41	66	73	77	103	79 <sup>4</sup>	69 <sup>5</sup>
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The Chamber of Deputies created a *Special Commission to Follow up on Aggressions against Journalists and Media* to follow up on the violations of freedom of press in Mexico. The Special Commission has registered the assassination of journalists since 1983. Numbers reveal that 33 journalists were killed from 1983 to 1999, while since 2000 77 journalists were killed<sup>6</sup>. This is, murders of journalists have almost duplicated since 2000.

## 2. Disappeared journalists

ARTICLE 19 has registered the disappearances of 10 journalists since 2000:

	Name	Date and place of disappearance	Media	Authority in charge of the investigations
1	Jesús Mejía Lechuga	Martínez de la Torre, Veracruz. 12 July 2003	Presenter. Radio MS-Noticias	Local Attorney's Office (Procuraduría de Justicia del Estado de Veracruz)
2	Alfredo Jiménez Mota	Hermosillo, Sonora. 2 April 2005.	Reporter. "El Imparcial"	Attorney Office Specialized in Organized Crime (Subprocuraduría de Investigación Especializada en Delincuencia Organizada SIEDO), dependent on the Federal Attorney General  Local Attorney's Office (Procuraduría General de Justicia del Estado de Sonora)
3	Rafael Ortiz Martínez	Monclova, Coahuila. 8 July 2006.	Reporter and presenter. "Zócalo"	Local Attorney's Office (Procuraduría General de Justicia del Estado de Coahuila)  Federal Attorney's Office in Monclova, Coahuila
4	José Antonio García Apac	Tepaltepec, Michoacán. 20 November 2006.	Director and reporter. "Ecos de la Cuenca de Tepaltepec"	Local Attorney's Office (Procuraduría de Justicia del Estado de Michoacán)  Federal Attorney's Office in the state of Michoacán

<sup>4</sup> National Commission of Human Rights CNDH. Report 2009, pag. 68. Report available at: [http://www.cndh.org.mx/lacndh/informes/anuales/Informe2009/Informe\\_2009.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/Informe2009/Informe_2009.pdf)

<sup>5</sup> National Commission of Human Rights CNDH. Report 2010, pag 89. Available at: <http://www.cndh.org.mx/lacndh/informes/anuales/2010activ.pdf>

<sup>6</sup> *Comisión Especial para dar seguimiento a las Agresiones contra Periodistas y Medios de Comunicación*, Chamber of Deputies. Information available at: [http://www3.diputados.gob.mx/camara/001\\_diputados/010\\_comisioneslxi/002\\_especiales/009\\_agresiones\\_a\\_periodistas\\_y\\_medios\\_de\\_comunicacion/006\\_noticias/\(offset\)/36](http://www3.diputados.gob.mx/camara/001_diputados/010_comisioneslxi/002_especiales/009_agresiones_a_periodistas_y_medios_de_comunicacion/006_noticias/(offset)/36)

5	Rodolfo Rincón Taracena	Villahermosa, Tabasco. 20 January 2007	Reporter. Periódico “Tabasco Hoy”	Local Attorney’s Office (Procuraduría General de Justicia del Estado PGJE)  Federal Attorney’s Office in the state of Tabasco
6 y 7	Gamaliel López Candanosa y Gerardo Paredes Pérez	Monterrey, Nuevo León. 10 May 2007	Reporters. TV Azteca	Local Attorney’s Office (Procuraduría General de Justicia del Estado de Nuevo León)
8	Mauricio Estada Zamora	Apatzingán, Michoacán. 12 February 2008.	Reporter and photographer. “La Opinión de Apatzingán”	Local Attorney’s Office (Procuraduría General de Justicia del Estado de Michoacán)
9	María Esther Aguilar Cansimbe	Zamora, Michoacán. 11 November 2009	Correspondent. “Cambio” de Michoacán.	Office of the Special Prosecutor for Crimes against Journalists dependant on the Federal Attorney’s Office.
10	Ramón Ángeles Zalpa	Paracho, Michoacán. 6 April 2010.	Correspondent. “Cambio” de Michoacán.	Federal Attorney’s Office in the state of Michoacán.

ARTICLE 19 documented the cases of the 10 journalists. Findings are explained below with elements that concur in the cases of disappearances of journalists:

- Disappearances of journalists occurred where groups of organized crime have a high level of presence and/or influence<sup>7</sup>.
- The majority of journalists did crime coverage, reported on organized crime and/or their possible links with the authority.
- Disappearances took place in those states where there is no legislation on forced disappearance nor considered a crime: Michoacán, Veracruz, Tabasco, Nuevo León, Coahuila y Sonora; therefore, authorities investigate under other crimes.
- Fear and discourage to denounce or push for investigations. While documenting the cases, the journalists’ relatives and colleagues expressed their fear of providing elements or reporting on their cases fearing ulterior punishment. Some of them pointed out the authorities being colluded with the perpetrator of the disappearance which increases their fear to present their testimonies.
- Authorities try to discredit the disappeared journalists by stating that journalists were involved with groups of the organized crime without any evidence or investigation against

<sup>7</sup> 4 of the dissapearances of journalists have taken place in the State of Michoacán: Mauricio Estrada Zamora, María Esther Aguilar Cansimbe, Ramón Ángeles Zalpa, José Antonio García Apac. This state is known for the presence of the drug trafficking group called “La Familia Michoacana”.

them and/or that they were having sexual or romantic relation with another than their spouse.

- There is no information on the location of any of the missing journalists or their corpses. In the case of Rodolfo Rincón Taracena, the Local Attorney's Office reported having found the corpse of the journalist, nevertheless, there is no evidence and it is scientifically impossible to determine it.
- Some members of the journalists' families, particularly wives and parents are the ones heading demands of justice and in some cases they have suffered reprisals for demanding adequate investigations.

#### **a. Impunity *de facto***

ARTICLE 19 notes that there have been a number of problems identified in the Government's investigations into cases of aggressions committed against journalists and media workers noted above. In particular, these include a prevailing failure to address the cases of aggressions against journalists including omissions, delays and lack of diligence in the investigations.<sup>8</sup>

Particular omissions on the investigations were identified in the cases of the missing journalists. Most of these cases have been declared "on reserve" which means that all investigations have been suspended until new evidence arises, yet the authorities did not exhaust all investigations and the only evidence in the case file is the evidence that the family provided.<sup>9</sup> ARTICLE 19 believes that the impunity prevailing on attacks committed against journalists contributes to encourage further future aggressors<sup>10</sup>, which statistically is reflected in the sustained increase of aggressions.

A recent reform to the Federal Code of Criminal Procedures violates the right to information and strengthens the impunity by rendering legal files regarding all legal investigations indefinitely secret, with the sole exception of decisions not to prosecute, which may only be released after a period equal to the statute of limitation for the crime, or up to 12 years. The reform also violates the principles of legal certainty and security, to the extent that a victim may not be informed of the bases and motives for a failure to prosecute for many years. Based on the aforementioned recent reform there is no possibility for the victims' families and/or society to access the files and to know the truth about what occurred.

Elements in common in the investigations on the cases of the disappeared journalists are as follows:

1. Lack of immediate actions on searching, localizing and investigating whenever a journalist disappeared:

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<sup>8</sup> Further information available at *Recomendación General No. 17 sobre los casos de agresiones a periodistas y la impunidad prevaleciente* (General Recommendation no. 17 on the cases of aggressions against journalists and the prevailing impunity), National Human Rights Commission, August, 2009, p.15.

<sup>9</sup> Database of ARTICLE 19.

<sup>10</sup> More information available at: <http://www.article19.org/pdfs/publications/mexico-impunity-statement.pdf>

- Lack and omission on issuing a missing person comprehensive data sheet with physical description necessary for his identification for his search and localization pointing out the region or area where the disappearance took place;
  - Not considering the distribution of these data sheets in hospitals, detention centers, highways and authorities in charge of searching;
  - Omission on implementing immediate actions for searching and localizing the journalists.
2. The authority lacks of a protocol or designed strategy to investigate in these cases.
  3. Investigations fall short on considering the work of journalism, therefore the right for free expression, as a motive of the disappearance. Even though almost all disappeared journalists received previous threats.
  4. Unjustified delays. The authority does not investigate proactively and leaves long periods of time without investigating.
  5. Contrary to the criminal law provisions, the burden of proof (*onus probandi*) falls on the victims' families and the only evidence in the case file is the evidence that the family provided<sup>11</sup>.

These omissions and lack of diligence are recorded at local and federal level.

Due to defective investigation, cases of aggressions against journalists rarely reach courts. For example, the Office of the Special Prosecutor for Crimes against Journalists, meant to persecute these crimes, reported charges being brought in only one case during 2009.

#### **b. Lack of public policies**

There is lack of public policies in order to address these cases. There is lack of sensibility in the attention of relatives and colleagues whenever a journalist disappears.

- Authorities regret to initiate investigations for search and localization of journalists alleging that they might return trying to discredit the journalists.
- Omission on providing legal advice, psychological attention, protection measures to protect and assist the journalists' relatives.
- Lack of legal measures to suspend the payments of credits of housing and debts imposed to relatives while a journalist is missing and lack of authorization for the relatives to be able to dispose of assets and financial resources.

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<sup>11</sup> In the case of Alfredo Jiménez Mota, the Federal Attorney's Office stated that they needed further elements from citizens to investigate deeper or initiate other lines of investigation. This reveals a) delay since the investigation initiated in April 2005, b) inaction as all investigations are suspended until new evidence arises, and c) bringing onus of the prove to the citizenship.

### **3. Chilling effects on the free flow of information**

Besides the effects of a disappearance, the effects of impunity on the exercise of the right to freedom of expression are particularly troubling. They discourage and promote fear of reporting, denouncing and follow up on the case of a journalist to avoid retaliation; encourage perpetrators on future aggressions; cause media and journalists' self censorship, all of which results on a misinformed society and on a weakening democratic system<sup>12</sup>.

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<sup>12</sup> Further information in Mexico: Impunity prevailing in cases of aggressions and assassinations of journalists is a clear violation of the Mexican State's human rights obligations, ARTICLE 19, 2008. Available at: <http://www.article19.org/pdfs/publications/mexico-impunity-statement.pdf>