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Report regarding considerations about the right to freedom of expression, article 19 of the Covenant on Civil and Political Rights, to be taken into account during Mexico fifth periodic report (CCPR/CMEX/5)

January 2010

Members of the Human Rights Committee:

This document aims to offer complementary information for the list of issues indicated by the Human Rights Committee (hereinafter the “Committee”) that must be attended upon examining Mexico’s fifth periodic report, which was presented on 24th July during the 96th period of sessions in Geneva. This report presents information regarding the right to freedom of expression embodied in article 19 of the Covenant on Civil and Political Rights (“the Covenant”).

The World Association of Community Radio Broadcasters (“AMARC” for its acronym in French) is an organization of coordination, exchange and promotion for community and citizen radios. It is recognized as an International Non Governmental Organization which is secular and of non-profit purposes. Its main goal is to advocate for the democratization of communications, specially radio, to increase recognition of freedom of expression and contribute to a sustainable and fair development.

The Mexican Association of Right to Information (“AMEDI” for its acronym in Spanish) is a non-profit organization which promotes the unrestricted respect, from governmental institutions and media, of the rights related to the legal and ethic obligation of guarantee for the Mexicans true and objective information regarding public interest issues. It also drives public discussion about freedom of expression and right to information.

As organizations committed to freedom of expression, we respectfully put forward to the Committee some issues of concern and suggestions to be taken into account upon examining Mexico's fifth periodic report.

On its fifth periodic report submitted to the Committee, the Government of Mexico lists documents containing recommendations on human rights, among them, the National Diagnostic of the Human Rights Situation in Mexico emanated from the Program of Technical Cooperation for Human Rights signed with the Office of the United Nations High Commissioner for Human Rights; the; and the observations made by the Committee following the lift of the fourth periodic report by the Mexican government. These documents, along with other recommendations previously made to Mexico by international bodies, are used in this report as a basis for analyzing human rights obligations of the state.

I. Electronic media: concentration and lack of media diversity

Mexico continues to be one of the countries with the highest level of media concentration in the hands of commercial interests.¹ This is despite the recommendations on human rights that since 1998 various international bodies have made in order to reverse this situation²

This is due to omissions and legislative actions and the implementation of public policies that, contrary to the above recommendations, increase this trend going against diversity of information and the access by citizens groups to media, thereby undermining the right to freedom of expression.

As described by the Mexican Government in its fifth report (paragraphs 744 and 745), in June 2007 the Supreme Court (SCJN) declared unconstitutional various items contained in the Federal Laws of Radio, Television and Telecommunications, which had been modified in 2006³. This alleging that the reforms did not ensure equal access to media, and favored monopolistic practices. The Supreme Court also recommended establishing a firm foundation for the operation of community and independent radio stations.

To comply with the ruling of the Supreme Court, the Senate established a Plural Group for the Review of Legislation on Telecommunications and Broadcasting in September 2007. However, so far the Congress has not carried out the necessary reforms to the legislation, therefore the ruling remains unfulfilled. There is no constitutional control that impose an obligation for the legislature to accept the decisions of the highest judicial body.

¹ As established by the Mexican government in its fifth periodic report to the Committee (paragraphs 756 and 757), only 13 citizens groups (community radios) have a license to operate a radio station of a total of 1487 in the country. That is, less than one percent of radio stations are directly operated by nonprofit communities. 96% of the total number of commercial television stations belong to two families; among radio stations, 86% belong to 13 business groups. This analysis is based on the frequency allocation tables published by the Ministry of Communications and Transport: www.sct.gob.mx

² Inter-American Commission on Human Rights, Mexico Special Report, 1998, Recommendations: 758. "To foster an open and democratic revision of laws regulating Articles 6 and 7 of the Mexican Constitution, so that the guarantees established in those articles are fully effective, pursuant to the right to freedom of thought and expression enshrined in the American Convention." In <http://www.cidh.oas.org/countryrep/Mexico98en/Chapter-11.htm>

³ The reforms are available in spanish at: <http://www.cddhcu.gob.mx/LeyesBiblio/ref/lfirt.htm>

Except for the grant of permits for the operation of community radio, the Federal Executive Branch, rather than conducting actions to comply with the ruling of the Supreme Court and number of international recommendations⁴, has carried out acts that contradict that sentence which are detailed below.

Endorsement of concessions

In the sentence referred, the ministers considered that the endorsement process which is not subject to tender is unconstitutional because it implies a privilege for dealers since they do not have to bid to renew the benefit of the concession title. This relieves them of competing on equal terms with other interested parties without any objective and reasonable grounds to justify the provision.⁵ Furthermore, the State will not receive the benefit of the economic service for the commercial exploitation of a national good concession.

On June and July 2008, the secretariats of the federal executive authorities (Ministry of Interior -Segob-, Ministry of Communications and Transportation -SCT- and the Federal Telecommunications Commission -Cofetel-) gave respectively 5 and 35 endorsements to commercial radio stations in the absence of a tender process.⁶ The current federal administration has conducted a total of 131 endorsements, of which only 29 cases were justified given that the concession expiry was prior to April 11 2006, date on which came into force the challenge reform of 2006. In all the other cases the bidding proceeded, as stated in the ruling of the Supreme Court.⁷

Frequency allocation

On September 2008, was published an agreement that establishes the framework for carrying out the change of frequencies authorized for offering radio service and which operate on the Modulated Amplitude band for the purpose of optimizing the use, application and the exploitation of an asset within the public domain in transition to digital radio⁸. This is a series of

⁴ In the recent Universal Periodic Review of Mexico before the UN Human Rights Council, conducted in february 2009, the Mexican government was in agreement with the recommendation made by the Russian Federation and the Netherlands as to “carrying out the legal reforms to guarantee the openness and transparency of the nation’s media institutions and reviewing the legislation relating to radio, television and the media, and to follow the ruling of the Supreme Court of Justice of the Nation for a new legal framework which would allow the diversity of the media”.

⁵ SENTENCE concerning the Interpretation of unconstitutionality 26/2006 sponsored by Senators members of the Fifty-Ninth Legislature of the Congress, against the Congress and the Constitutional President of the United Mexican States, p 545, in:

http://www.senado.gob.mx/telecom_radiodifusion/content/cronologia_trabajos/docs/resolucion_suprema.pdf

⁶ In his own press release the office of the President acknowledge that this took place with the support of the President of the Republic, available in Spanish at: <http://calderon.presidencia.gob.mx/prensa/comunicados/?contenido=37219>

⁷ Sosa Plata, Gabriel, “Endorsements: the opinion of the Ministry of Communication”, the Universal newspaper, September 8, 2008, available in Spanish at: <http://www.mexiconews.com.mx/columnas/73662.html>

⁸ Available at Official Gazette, 15 September 2008: <http://compilacion.ordenjuridico.gob.mx/obtenerdoc.php?path=/Documentos/FEDERAL/o1516025.doc&nombreclave=o1516025.doc>

administrative measures issued by the Ministry of Communications and Transport which circumvent the provisions established by the Supreme Court about the need to carry out a process of tendering for any new allocation of radio or television licenses. Although apparently these measures purport to substitute the frequency of Amplitude Modulation (AM) with that of Frequency Modulation (FM), they actually allow a new frequency allocation in addition to the ones already operated by dealers in AM:

Contrary to what is stated in this agreement, the measures contained in it closes the possibility of new entrants in the frequency modulation broadcast band, saturating the portion of the spectrum with the same operators and exacerbating the broadcasting media ownership concentration.

II. Community Radios Broadcasters

Lack of recognition

Legislation on radio, television and telecommunications does not guarantee the conditions for decent existence of community radio stations in the country. Despite the guidelines that the very Mexican State has outlined domestically⁹ and international recommendations in the area¹⁰, community radio stations have still not given express recognition by authorities.

Non of the criteria developed at international level designed to ensure citizen focused radio-broadcasting have been incorporated into Mexican legislation, in administrative regulation or agreements emitted by the Executive. In this way, the Mexican state is contravening what is established in its own National Development Plan 2007-2012, quoted by the Mexican government in its fifth report to the Committee (paragraph 755).¹¹.

⁹ National Human Rights Program (2008-2012), Action goal: “Promote the juridical recognition of community radio broadcasting, as well as facilitating its operation and development through regulations and administrative norms, see:

http://www.derechoshumanos.gob.mx/archivos/anexos/PROGRAMA_NACIONAL_DE_DERECHOS_HUMANOS_2008-2012.pdf

¹⁰ The IACHR recommended to States, through its annual report from the Special Rapporteur on Freedom of Expression of 2007, “Legislate in the area of community broadcasting to assign part of the spectrum to community radio stations, and to ensure that democratic criteria be taken into account in assigning these frequencies that guarantee equal opportunity for all individuals in accessing them”. The Special Rapporteur that regulations relating to community broadcasting should take into account at least the following: “the existence of simple procedures for obtaining licenses; no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the state; and the possibility of using advertising to finance their operations. Along the same lines, there is a need for legislation that appropriately defines the concept of community radio and that includes its social purpose, its nature as comprised of non-profit entities, and its operational and financial independence. The Office of the Special Rapporteur has already highlighted the importance of community radio in fostering the pluralism and diversity of sources of information, as well as their fundamental role as instruments of access to information and channels of participation for distant or marginalized communities.” http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

Also see General Comment No. 10: Freedom of expression in: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument)

¹¹ “The National Development Plan 2007 – 2012 establishes actions aimed at guaranteeing freedom of expression and access to the operation of media outlets. In particular: a) Draft a precise definition of community and citizen media outlets and promote its recognition b) Analyze the existing normative framework to identify the

By contrast, the procedures and requirements in force compounded by the reforms in 2006¹², continued to be excessive for communities to have access to licenses to operate radio and television frequencies. In addition there is undue delay in the responses by the federal executive to permit applications submitted by communities who are trying to meet the requirements in law. This is a violation of the right to security and legal certainty.¹³

With this omission, the Mexican state fails in its obligation to guarantee media pluralism, because de facto excludes large sectors of the population, particularly those in vulnerable situations, to operate electronic media.

In addition to this situation of institutional discrimination, the few community radio stations that have permits to operate are facing adverse conditions for their survival given its lack of legislative recognition. Proof of this is the ban on using air time to broadcast commercials. This restricts one of the most important opportunities for funding and hinders economic sustainability.

Impunity in assaults

Additionally, almost all the assaults¹⁴ suffered by community radio members remain unpunished. Most of the attacks that community radio have experienced, some by private agents but other by government members¹⁵, remain unpunished. The Mexican state thus sends a

aspects that allow for the legal operation of community and citizen media outlets, considering their objectives, social, cultural, technical and economic characteristics.” Paragraph 755, Mexican Fifth Report to the Committee.

¹² Amendments to the Federal Law of Radio, Television and Telecommunications conducted on 4 April 2006 (Available at: <http://www.cddhcu.gob.mx/LeyesBiblio/ref/lfrt.htm>) worsen the conditions for community radio as they set up the auction process for access to frequencies. This causes only those with economic power may access them, and promotes a greater concentration of already existing in the country. They also allow dealers to provide telecommunications services added without going through a bidding process and allow the endorsement of the frequencies in perpetuity granted by the State. In the case of permissions, including community radio stations, the reforms of 2006 deepened the discretionary authority to issue permits. Establish a quasi-police procedure, and cancels the possibility that they may have financial resources for their livelihoods. With that community media are doomed to disappear before the impending process of technological convergence that will have a high economic cost.

¹³ Only 19 licenses have been granted to community radios. The permissions granted to 6 community radio in January 27 took over a year and a half in the process. More information in the base document prepared by AMARC-Mexico: http://ia301515.us.archive.org/3/items/DocBase_TierrayLibertadv1.pdf/DocBase_TierrayLibertad.pdf

¹⁴ The following attacks on community radio stations have been documented: threats, physical assaults, harassment, arbitrary detentions, torture, attempted murder, manslaughter, actions relating to blackout coverage. All unpunished. More information: AMARC-Mexico, Bases for Public Policy on Freedom of Expression and Community Media, Chapter 2, "Attacks on Community Radio" in: http://amarcmexico.org/index.php?option=com_remository&Itemid=26&func=startdown&id=8

¹⁵ Some of these attacks on community radio stations have warranted the issuance of precautionary measures by the Inter-American Commission on Human Rights. View report IACHR 2006, paragraph 156: <http://www.cidh.oas.org/annualrep/2006sp/LE%20ANUAL%202006%20ESP%206%20de%20marzo%202007.pdf> and report IACHR page 110 in: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>

message of possibility of perpetuating these attacks against members of community radio stations.

This scenario is exacerbated when members of the radios are not recognized as journalists. In the Mexican federal legislation there is no definition of journalist. The Initiative Draft of Federalization of Crimes Committed Against Journalists, presented by the Deputy Human Rights, Victim Care and Community Services of the Attorney General of the Republic¹⁶, proposes a definition of journalists that does not include everyone who fulfilled a journalistic activity for the community. This proposal has set the policy of the Attorney for the recognition of journalists.

In this sense, investigations on attacks on journalists and community media have not produced results, even though in most cases perpetrators are fully identified, some of them being even government agents. This violates the corpus of international protection to freedom of expression that imposes an obligation on the State to take appropriate actions to prevent, investigate and punish those responsible for these violations.

On 6 February 2006 presidential decree created the Special Prosecutor for Attention to Crimes Committed Against Journalists¹⁷, which has jurisdiction only in federal investigations. These deficiencies in their field of competence limit their involvement in local research and organized crime. The majority of assaults against members of community media happen at the local level, so that these issues fall outside the jurisdiction of the Prosecutor. In the states, only in Veracruz and Chiapas there is a Special Prosecutor for Attention to Crimes Committed Against Journalists. In other states there is no specialized body care legislation for attacks on journalists. This causes the investigation to be verified for ordinary crimes without regard to whether the assault occurred following the exercise of freedom of expression. To this there are the shortcomings to consider as journalists the members of community media.

The assault on a journalist is not only an affront to his personal guarantee of freedom of expression but also a violation of the right to information of society. Because of this emphasis has been on the federalization of crimes against journalists. This implies that the aggressions committed against journalists will be known by federal criminal judges. This will speed up investigations into attacks against journalists, as it will be considered as an aggravating the aggression committed against journalists.

Criminalization

From June 2008 to date we have seen a hardening of government policy of persecution of radios that operate without permits. The Mexican state, through the Interior Ministry has sent Federal Police operatives with over 120 items to close radios with less than 5 watts of power

¹⁶ See in: http://www3.diputados.gob.mx/camara/005_comunicacion/b_agencia_de_noticias/004_2008/003_marzo/13_13/3592_presenta_subprocurador_de_derechos_humanos_propuesta_para_federalizar_delitos_contra_periodistas

¹⁷ Available in: <http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Delitos%20Federales/FPeriodistas/Quienes%20Somos.asp>

where there were only 5 people, including women and children.¹⁸ These facts constitute excessive use of public force.

These human rights violations join the initiation of criminal proceedings against members of community radio by the Interior Ministry itself, the integration of illegal and unfounded preliminary investigations by the Attorney General's Office and the issuance of arrest warrants by the Judiciary of the Federation.

The persistence by the authorities in the use of criminal law instead of administrative procedure, sufficient to recover the frequency, represents the continuation of a policy of persecution and criminalization against community radio.

Criminal prosecution against persons who exercise the right to freedom of expression in vulnerable communities, is a way excessive, disproportionate and unnecessary, especially when these radios have demonstrated their willingness to legality. It was the authority which has failed to respond to its requests for permission.

These facts, since they constitute human rights violation, violate international treaties on human rights that Mexico has committed to and what the international agencies have said about the criminal proceedings should only be used to protect assets legal principles of the most serious offenses that harm and endanger. Criminal law is the last reason and its application should be subsidiary, should be used less damaging ways, otherwise its use is abusive and criminalizing.¹⁹

Community radio, by its social nature, in any way endanger or create serious damage to the asset. Therefore, the use of the criminal procedure is neither necessary nor proportionate.

Following these events, the National Human Rights Commission (NHRC) issued its first statement on community media. In it, the body calls on the authorities to criminalize not community radios and to establish fair criteria for communities to access directly to operate electronic media.²⁰

However, in November 2009 the Institutional Revolutionary Party (PRI) presented an initiative to reform the Federal Radio and Television (LFRT) by which amended regulations to include in it the penalty against who operate an electronic medium without prior authorization. If approved this reform would eliminate entirely the administrative proces and thus directly initiate criminal proceedings. That is, legalize the criminalization.²¹

¹⁸ For further information in the cases of the radios Tierra y Libertad and Huekakua see: http://ia301515.us.archive.org/3/items/DocBase_TierrayLibertadv1.pdf/DocBase_TierrayLibertad.pdf and http://ia301518.us.archive.org/0/items/DocBase_RadioUekakuav1.pdf/Ficha_RadioUekakua.pdf

¹⁹ In this respect American Court of Human Rights says: "(...) the Criminal Law is the most restrictive and severe to establish responsibility for wrongful conduct (...) In a democratic society punitive power is exercised only to the extent strictly necessary to protect the fundamental legal rights of the most serious offenses that harm or endanger. Otherwise lead to the exercise of punitive power of the state. "See Kimel v. Inter-American Court case. Argentina www.corteidh.or.cr/docs/casos/articulos/seriec_177_esp.doc

²⁰ Available in: <http://www.cndh.org.mx/comsoc/compre/2009/140.html>

²¹ Available in: <http://gaceta.diputados.gob.mx/Gaceta/61/2009/dic/20091203-II.html#Ini20091203-14>

III. Conclusions

Despite what the Mexican government has said, the right to freedom of expression is infringed. The lack of plurality and diversity of information in the electronic media constitutes a continuing violation of this right.

We are concerned by the lack of concrete actions by the Mexican government to comply with the ruling of the Supreme Court to ensure equal access to media, the endorsement of more than 100 grants to commercial media without the relevant tender, the lack of recognition of community media that does not allow them to survive with dignity, and impunity for acts of aggression against members of community media and the use of criminal courts to prosecute members of community radio in cases in which has achieved the goal of protecting the legally protected right, ie the airwaves.

Thus organizations that sign this report respectfully request the Committee to take these issues into account during the consideration of Mexico's fifth periodic report.

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