



**PEN International and PEN Guadalajara
Contribution to the 17th session of the Working Group
of the Universal Periodic Review
Submission on Mexico**

March 2013

1. PEN International and PEN Guadalajara welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the state of human rights in Mexico. This report focuses on infringements of the right to freedom of expression in the country, specifically on-going attacks on writers and print journalists, since the 2009 Universal Periodic Review (UPR).

Introduction

2. Mexico is bound by international commitments to freedom of expression, having ratified the International Covenant on Civil and Political Rights (ICCPR) in 1981. Like all state parties to the United Nations, Mexico is also bound by the Universal Declaration of Human Rights. At a national level, the right to freedom of expression and press freedom are guaranteed in Articles 6 and 7 of the Mexican Constitution.
3. Mexico accepted a number of recommendations relating to freedom of expression as a result of the 2009 UPR, as follows:
 - On combating violence against journalists and ensuring their protection (recommendations 53-60)
 - On eradicating impunity (recommendations 45-48)
 - On addressing forced disappearances (recommendations 24-25)
4. However, Mexico has failed to make adequate progress towards implementing these recommendations.

Attacks on writers and print and internet journalists

5. Official figures released by the Mexican Attorney General (Procuraduría General de la República, PGR) in January 2012 stated that 47,500 people died in Mexico as a result of drug trafficking related violence between December 2006 – the beginning of former president Felipe Calderón’s mandate and his armed offensive against the drug cartels – and September 2011. By December 2012 that figure was estimated to be closer to 60,000, according to media reports. Despite promises to restore peace and security, drug related violence continues unabated under President Enrique Peña Nieto.
6. This violence has had an increasing impact on Mexican journalists and writers. Since December 2006, according to PEN’s information, at least 46 print and internet journalists and writers have been killed in Mexico, as follows: December 2006 (1); 2007 (2); 2008 (7); 2009 (7); 2010 (9); 2011 (10); 2012 (10). It can be seen that the numbers of murders has escalated since 2008, with a particular spike in 2011 and 2012.
7. At least eight other print journalists have disappeared since December 2006. Breakdown as follows: 2007 (1); 2008 (1); 2009 (1); 2010 (3); 2011 (2).

8. As far as PEN is aware, few if any of these murders and disappearances have been solved. Information on the investigations into these crimes is scant, despite regular communications with the Mexican authorities, and in many cases it is difficult to ascertain whether the investigations are still on-going.
9. At least 172 other writers have suffered some other form of attack since December 2006, the majority of them print journalists, according to PEN International research. The most common forms of attack were death threats (48) and other types of threats (29), physical assault (45) and harassment (29). Most of these crimes, too, remain unpunished.

Murders of writers

10. Since December 2006, PEN has highlighted the murders of a number of non-journalist writers whose cases remain unsolved to PEN's knowledge, as follows:
 - [Miguel Ángel Gutiérrez Ávila](#) (53), anthropologist, linguist and author of a number of books on the indigenous people of Guerrero state and activist for the rights of the Amuzgo people. Gutierrez's body was found covered in bruises and cuts by the side of the Acapulco-Pinotepa highway in Guerrero state on 26 July 2008. Although initial police reports suggested that Gutiérrez died as the result of a car accident, it was later thought that he was beaten to death. He had been working on a documentary on indigenous cultures and traditions and had also been documenting human rights violations by the authorities, particularly against the staff of Radio Ñomndaa. According to his family, the vehicle in which Gutiérrez was travelling was untouched and only his filming equipment had been stolen, suggesting that he had not been a victim of a robbery.
 - [Susana Chávez Castillo](#) (37), a prominent poet and women's rights activist. Castillo's body was found strangled and mutilated in Ciudad Juárez on 6 January 2011. The authorities denied that her murder was related in any way to her activism and poetry, or to organised crime, despite the recent murder and harassment of numerous other local rights defenders. Chávez had led protests against the unsolved murders of women in Ciudad Juárez since the early 1990s. She was active in organisations supporting the families and friends of the deceased women, and took part in poetry readings that she dedicated to the victims.
 - [Guillermo Fernández García](#) (79), poet and translator, was found dead at his home in Toluca on 31 March 2012. His murderers had bound his feet and hands, and had taped his mouth before killing him with a blow to the head. Computers and other valuables had been left untouched, and the motive for the murder is unknown. Fernández was a noted poet and had published 12 volumes of poetry. He was also regarded as one of the Mexico's finest translators of Italian literature.

Impunity

11. Impunity in crimes against journalists in Mexico stands at around 90 per cent.¹ Such impunity results from: inadequate investigations that disregard the motive of attacks; government corruption and collusion, especially at local and state level; lack of incentives for reform; and a lack of solidarity among journalists.
12. While some of the attacks on journalists in Mexico come from organised crime groups, many come from government agents, particularly at state and local level, a fact publically

¹ Source: National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) and the Committee to Protect Journalists (CPJ).

recognised by members of the Mexican government as well as by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.² Research by free expression organisations in Mexico indicates that state agents are likely responsible for between half and two-thirds of all attacks on journalists.³ It is thought that many of the journalists and writers attacked are targeted for investigating or commenting on drug trafficking, corruption and violence in the country.

Institutional and legal measures to protect journalists and combat impunity

13. Since the UPR review in 2009, the Mexican government has introduced a number of institutional and legal measures aimed at protecting journalists and the right to freedom of expression, and at combating impunity. Despite some positive initiatives, in practice most of the changes have proved largely cosmetic to date, while the rate at which journalists are being attacked and killed in the country continues to spiral.

- **Special Prosecutor for Crimes Against Freedom of Expression (FEADLE)**

14. In response to the situation of impunity, in February 2006 the Mexican government created the Special Prosecutor for Crimes Against Journalists (Fiscal Especial para la Atención de Delitos Cometidos contra Periodistas, FEADP). On 5 July 2010, the office was modified to become the Special Prosecutor for Crimes Against Freedom of Expression (Fiscal Especial para la Atención a Delitos cometidos contra la Libertad de Expresión, FEADLE). Despite this expanded mandate and increased authority to investigate and prosecute, the office can claim little in the way of concrete results to date. In January 2012, FEADLE told a PEN International delegation that of the 55 indictments sought by the office since 2006, only five had proceeded to federal courts – the rest were referred to state courts on jurisdictional grounds – and none had resulted in a conviction.

15. FEADLE faces a number of obstacles. One of the main problems is that, as a federal body, it is unable to investigate most crimes against journalists, which mainly fall under state jurisdiction. This should change once the recent ‘federalisation’ of crimes against journalists comes into effect (see below). Another major obstacle is that FEADLE is not empowered to take on cases where there are indicators that the perpetrators are members of criminal organisations including drug cartels; such cases must be referred to the Assistant Attorney General’s Office for Special Investigations on Organized Crime (Subprocuraduría de Investigación Especializada en Delincuencia Organizada, SIEDO). In addition, FEADLE still lacks sufficient financial, material and human resources in order to carry out its work.

- **‘Federalisation’ of crimes against journalists**

16. On 6 June 2012, an amendment to the Mexican Constitution enabled federal authorities to investigate and prosecute crimes against “journalists, people or outlets that affect, limit, or impinge upon the right to information and freedom of expression and the press” (Article 73, Clause 21). This change in law, which PEN International and other free expression organisations had long called for, is a significant step since it takes investigations into attacks on journalists out of the hands of state and local authorities, which are susceptible to corruption, and gives overall responsibility to the federal authorities (including FEADLE).

17. However, in order for the changes to become reality, secondary laws must be passed to define the responsibilities of federal law enforcement agencies and provide them with the resources and training to investigate and prosecute those who attack journalists. The necessary changes

² Ballinas, V & Becerril, A (8 February 2013) ‘El Estado también ejerce violencia: Frank La Rue’, *La Jornada*, retrieved from: <http://www.jornada.unam.mx/2013/02/08/politica/007n2pol>

³ See Article 19 among others.

to the Federal Penal Code (Código Penal Federal), the Federal Code on Penal Procedures (Código Federal de Procedimientos Penales) and the Organic Law of the Federation's Judiciary (Ley Orgánica del Poder Judicial de la Federación) are yet to be made and approved by Congress. This is reportedly expected to happen by July 2013.⁴ Once it has, FEADLE will theoretically be able to start investigating all crimes against free expression, provided it receives appropriate resources from the Executive.

- **Protection mechanism for human rights defenders and journalists**

18. On 22 June 2012, President Calderón enacted the decree on the Law for the Protection of Human Rights Defenders and Journalists (Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas). The law stipulates the creation of three institutions to receive formal complaints, instigate various security measures and administer a budget allocated for the implementation of such measures. Positive aspects of the protection mechanism include the involvement of members of civil society in the institutions established and the allocation of specific resources for the protection of journalists and human rights defenders.⁵ This addressed shortcomings of a previous journalist protection scheme set up in November 2010, which was widely criticised for failing to provide journalists or civil society with a meaningful role or explicit plans for the provision of resources and technical expertise, as well as for excluding human rights defenders in its remit, among other aspects.⁶
19. However, the new protection mechanism has been criticised for delays in implementation and for its failure to address the main cause of attacks against journalists, i.e. impunity for perpetrators. Also targeted for criticism are its procedures for implementing security measures, many of which reportedly cannot be implemented on the ground. The mechanism also fails to take into account the fact that most attacks on journalists and human rights defenders take place without warning and that in order for the measures to be effective, coordination agreements must be in place between federal institutions and state authorities, when it is recognised that many of the latter have been infiltrated by organised crime groups.⁷
20. The new protection mechanism was finally set up in November 2012, by which point 25 out of 32 states had reportedly signed cooperation agreements. A budget of 41 million pesos (US\$3.2 million) was allocated to the mechanism for 2013.⁸ In January 2013 this was reportedly more than tripled to 129.5 million pesos (US\$10.1 million) – approximately six times more than a year before. At this point the mechanism was said to have received requests for help from some 30 journalists, of which about a third had been granted assistance of some

⁴ World Association of Newspapers and News Publishers (WAN-IFRA) (15 February 2013) 'Safety of Journalists Draws International Mission to Mexico', retrieved from: <http://www.wan-ifra.org/press-releases/2013/02/15/safety-of-journalists-draws-international-mission-to-mexico>

⁵ Hastings Bonilla, R. (4 September 2012) *Violence Destroying Press Freedom in Mexico: A WAN-IFRA Report*, pp. 9-10, retrieved from: http://www.wan-ifra.org/system/files/field_article_file/MEXICO_REPORT_ENGLISH_3.pdf

⁶ Gibbons, C. & Spratt, B. (2011) *Corruption, Impunity, Silence: The War on Mexico's Journalists*, PEN Canada/ University of Toronto - Faculty of Law - International Human Rights Program, pp. 26-27, retrieved from: http://ihrp.law.utoronto.ca/sites/ihrp.law.utoronto.ca/files/documents/WorkingGroup_Clinic/CorruptionImpunitySilence_revised%20e-version%20%28English%29%20%281%29.pdf

⁷ Hastings Bonilla, R. (4 September 2012) *Violence Destroying Press Freedom in Mexico: A WAN-IFRA Report*, p. 8, retrieved from: http://www.wan-ifra.org/system/files/field_article_file/MEXICO_REPORT_ENGLISH_3.pdf

⁸ Peace Brigades International (17 December 2012) 'PBI Mexico: New Mexican Government commits to effective application of the Protection Mechanism', retrieved from: http://www.pbi-mexico.org/field-projects/pbi-mexico/news/news/?no_cache=1&tx_ttnews%5Btt_news%5D=3709&cHash=7b123eb14b814aa069413053b4126b3c

kind. Civil society organisations have asked for a breakdown of spending to date⁹ but at the time of writing this had not yet been provided.

Other legal reforms

- **Partial decriminalisation of defamation**

21. On 29 November 2011, the Senate unanimously voted to decriminalise slander and libel, as laid out in Articles 1 and 31 of the Print Offences Law (*Ley sobre Delitos de Imprenta*), finally bringing the law in line with the federal penal and civil codes. As a result, journalists no longer run the risk of a prison sentence at the federal level for so-called ‘honour’ crimes – such violations of the law are now treated as civil offences.
22. However, 14 out of Mexico’s 32 states still have criminal defamation, libel and slander laws on their statute books. Federal law does not supersede state laws in Mexico, meaning that journalists still face up to four years in prison for these offences.
23. As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has pointed out, the complete decriminalisation of defamation is a necessary step in exposing and addressing the involvement of federal and state authorities in crimes against journalists, since such laws are currently used to persecute those who criticise officials.¹⁰

- **Reform of Article 33 of Mexican Constitution**

24. Until June 2011, Article 33 of the Mexican Constitution expressly forbade foreigners from “meddling” in the political affairs of Mexico and granted the Federal Executive branch (the President) powers to expel foreigners whose presence in the country was deemed “inappropriate” (*inconveniente*) “immediately and without the need for prior legal action.”
25. PEN is concerned that the use and threatened use of Article 33 may be affecting non Mexican writers’ and journalists’ right to freedom of expression in the country. According to PEN’s information, in recent years a number of foreign journalists have been deported under Article 33 after reporting on popular protests and uprisings, while a number of other foreign journalists, prominent artists and politicians have been threatened with expulsion. PEN has also received reports of foreign writers being the victim of abuse of authority on the part of local official and police forces under alleged authority of Article 33 based on various grounds, such as discourse on Mexican politics or suspected and actual participation in political affairs.
26. On 1 June 2011, Article 33 of the Mexican Constitution was amended as part of human rights reforms enacted by Congress so that the Federal Executive branch is obliged to grant a hearing to foreigners before determining their expulsion from the country. The subjective element of the foreigner’s presence being deemed “inappropriate” was also removed. Additionally, the new text provides that expulsions must be supported by a statute, which should also lay out the administrative proceedings and detention requirements to be observed. Article 5 of the transitory provisions of the June 2011 Amendment determines that this statute, referred to as the Article 33 Regulatory Law (*Ley Reglamentaria del artículo 33*), should be enacted by Congress no later than 9 June 2012.

⁹ La Redacción (30 January 2013) ‘Piden a Segob detallar gastos de protección a periodistas y activistas’, *Proceso*, retrieved from: <http://www.proceso.com.mx/?p=332233>

¹⁰ Ballinas, V. & Becerril, A. (8 February 2013) ‘El Estado también ejerce violencia: Frank La Rue’, *La Jornada*, retrieved from: <http://www.jornada.unam.mx/2013/02/08/politica/007n2pol>

27. However, to date Congress has yet to enact the Article 33 Regulatory Law. In the meantime, the above-mentioned transitory provision states that Article 33 shall continue being applied in the terms of its prior language. As a result, foreigners whose presence in Mexico is deemed “inappropriate” may still be expelled by the head of the Federal Executive branch without a prior hearing and with a considerable margin of discretion. Article 13 of the ICCPR establishes a foreigner’s right to submit the reasons against his expulsion to the competent authority.

Recommendations

28. PEN International and PEN Guadalajara call on the Mexican authorities to:

- Ensure that the 46 murders and eight disappearances of writers and print and internet journalists that have taken place since December 2006, as well as any other unsolved murders and disappearances from previous periods, are properly investigated and the perpetrators brought to justice;
- Make public information on the state of the investigations into the murders of writers Miguel Ángel Gutiérrez Ávila, Susana Chávez Castillo and Guillermo Fernández García;
- Ensure that all allegations of attacks against writers and print and internet journalists carried out by government entities at any level are fully and promptly investigated as a matter of urgency;
- Ensure that all necessary secondary laws are passed in order to implement fully the amendment to Article 73, Clause 21 of the Mexican Constitution enabling federal authorities to investigate and prosecute crimes against journalists and freedom of expression, including making the necessary changes to the Federal Penal Code, the Federal Code on Penal Procedures and the Organic Law of the Federation’s Judiciary;
- Ensure as a matter of urgency that FEADLE is allocated sufficient financial, material and human resources in order to carry out its work;
- Address criticisms of the current protection mechanism for journalists and human rights defenders in consultation with these groups, and release a breakdown of related spending to date;
- Ensure that steps are taken towards the complete decriminalisation of defamation in all 32 Mexican states;
- Ensure that the Article 33 Regulatory Law is enacted as a matter of urgency and to provide assurances that foreigners are not being expelled from Mexico in violation of their right to freedom of expression.