

Violence and Impunity: Protecting Journalists in Colombia and Mexico



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Violence and Impunity: Protecting Journalists in Colombia and Mexico

A Project of the Inter-American Dialogue

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FOREWORD

Violence against journalists is fortunately uncommon in many Latin American countries. But in some parts of the region—rural zones of Colombia and the north of Mexico, for example—it is of great concern.

The democratic governments of these countries have tried to address the terrible scourge of violence against journalists, and some progress has been made. In Colombia, for example, the number of slain journalists has gone down in recent years. Yet the killing of journalists in Mexico has escalated tragically over the past year, when at least ten journalists were killed, making it the most deadly country for journalists in the Americas.

Geographic regions that remain most dangerous for journalists are characterized by lawlessness, drug trafficking, smuggling, organized crime and guerilla conflict. Although these areas are dangerous for everyone, journalists are often targeted in retribution for their investigative work exposing criminal activities. In many cases, editors simply stop assigning staff to carry out investigative reporting because they know that government authorities are either unwilling or incapable of protecting journalists' safety. Thus, many vital issues are potentially not investigated by journalists, such as human rights violations, paramilitary or guerilla violence, corruption, and drug trafficking.

This cycle of intimidation and violence against journalists, an inadequate response from the judiciary, and widespread self-censorship by journalists and editors alike, undermines the role the media should be playing in a well-functioning democracy—and weakens democracy itself. The Inter-American Dialogue wanted to convene the key players on this set of issues—members of the media, judges, legislators, executive branch officials, and press freedom advocates—to analyze the situation, learn from successful protection strategies in place in Colombia, devise new approaches, and commit to taking action to bring those responsible for these crimes to justice.

Toward that end, in 2008 the Dialogue convened two private conferences, one in Colombia and one in Mexico, designed to develop a greater sense of urgency about crimes against journalists; strengthen communication between the media and government officials charged with defending journalists; and

devise a set of recommendations regarding the investigation and prosecution of violence against journalists.

We would like to thank our local partner organizations for their constructive and valuable collaboration in this effort. They are, in Colombia, the Foundation for the Freedom of the Press (FLIP), and in Mexico, the Press and Democracy Foundation (PRENDE), Article 19, and the Mexican International Affairs Council (COMEXI). We also want to thank the authors of the four background papers commissioned for this project: José C. Ugaz Sánchez-Moreno, Darío Ramírez, Eduardo A. Bertoni, and Sauro González Rodríguez. We are also indebted to Dialogue intern Ashley Kosiewicz for his careful editing and updating of the original Spanish version of this report, and to Dialogue program assistant, Daphne Morrison for her expert editing of the English translation.

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INTRODUCTION

Latin American history shows that the work of journalists has frequently placed them in danger—but the nature of the danger has changed over time. From 1960 to 1980, independent journalism was threatened by military regimes whose goals were to hide information from the public and to overtly censor the media. While a return to democracy has brought with it a greater flow of information, the holdover of laws inhibiting free speech and the enduring culture of secrecy has kept many journalists from covering malfeasance by those in power.

Recently, journalism in Latin America is again threatened by criminal interests. In countries such as Mexico and Colombia, violence against journalists and the impunity enjoyed by the perpetrators of these crimes remain a daunting challenge. According to the Inter American Press Association and the Bogotá-based Press Freedom Foundation, between 1987 and 2008 over 120 journalists were murdered in Colombia. The OAS Special Rapporteur for Freedom of Expression reports that of 31 Colombian journalists murdered from 1998 to 2005 for reasons tied to their profession, only six cases have gone to trial. Fully 80 percent of investigations have been shelved or dismissed for lack of evidence, and not one intellectual author of these crimes has been convicted.

According to the Committee to Protect Journalists (CPJ), in 2009 one journalist was confirmed killed in Colombia because of their work,¹ and none in 2007 or 2008, following an overall downward trend since 2003, when five journalists were killed.

¹ Two other journalists were killed in 2009, but the motive is still under investigation. According to their website (www.cpj.org) “CPJ investigates the death of every journalist to determine whether it is ‘work-related.’ We consider a case ‘confirmed’ only if we are reasonably certain that a journalist was murdered in direct reprisal for his or her work; was killed in crossfire during combat situations; or was killed while carrying out a dangerous assignment such as coverage of a street protest.”

A chilling effect
results when officials
fail to investigate
the intimidation of
journalists.

While this tendency is encouraging, it is important not to overlook signs that self-censorship by journalists may be increasing.

In Mexico, 20 journalists were murdered between 1995 and 2005, according to the OAS Special Rapporteur for Freedom of Expression, and another 17 over the next three years. Recent numbers don't show signs of improvement. According to the OAS Special Rapporteur for Freedom of Expression, at least ten journalists were killed in 2009 alone and another two in the first month of 2010. Some 525 less violent forms of pressure, including the arrest of 34 members of the press, were documented through April 2006. In 2008, the OAS Special Rapporteur reported that journalists continue to receive threats, and have suffered from acts of violence and intimidation for their coverage of organized crime activities and corruption.²

Also worrisome is the chilling effect that results when local officials fail to investigate acts of intimidation. This complex situation requires effective as well as creative solutions to form part of a comprehensive strategy that recognizes the many forms censorship can take—and the many solutions required to protect the integrity of the media.

Against this backdrop, the Inter-American Dialogue teamed with local partners dedicated to the defense of democracy and free speech to co-organize meetings in Bogotá and Mexico City in 2008. Both events focused on the disturbing trend of increased violence against journalists, and the mechanisms available to protect them. While the issues addressed were specific to each country, both meetings identified a range of common themes and challenges. Participants recognized that pressures on journalists, both in the public and private spheres, pose a serious obstacle to a healthy democracy, and emphasized that protecting journalists requires the political will of the parties and a strong government commitment.

The following report summarizes the discussions, with emphasis on five issues: (1) the role of journalists in a democratic system; (2) strengths and weaknesses of protection mechanisms; (3) the root causes of impunity; (4) self-censorship and its implications; and (5) policy recommendations.

² Office of the Special Rapporteur - IACHR, 2008 Annual Report, Vol. II, Chapter II, para. 160 and 167. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

THE ROLE OF JOURNALISTS

Participants raised fundamental questions about the journalist's role in a democracy. What is the function of a professional who disseminates information and provides a public good for society at large? How are crimes against them to be considered? Should they be distinct from crimes committed against ordinary citizens?

While views varied, most participants agreed that their unique role places journalists in a special category. Their work is crucial for accountability in government and other institutions that provide a public good. Participants agreed that while violence does not necessarily distinguish between journalists and ordinary citizens, violence specifically directed at journalists hurts society at large. They added that protecting the common good, a crucial requisite of any democratic society, requires granting journalists special status.

Participants in the Bogotá meeting took note of article 74 in the Colombian Constitution—granting journalists special protection—and of a Constitutional Court ruling requiring government to take positive action to protect journalists. The decision prompted new risk management criteria that establish a presumption of prior need for protection, and the obligation to provide it without delay.

Linking journalism to democratic practice, some participants proposed treating attacks against freedom of the press as crimes against humanity because such attacks threaten democracy. Others dismissed this proposal, arguing that elevating such attacks to the category of crimes against humanity would require revising the Rome Statute³ and would pose the extra complication of having to substantiate the systematic nature of such acts.

An alternative proposal called for removing statutes of limitations in crimes committed against journalists under domestic law. Proponents of this argument noted that while treaties exempt crimes against humanity from statutory limitations, they do not bar states from using a similar provision for domestic crimes.

³ Adopted in 1998, the Rome Statute establishing the International Criminal Court set up new mechanisms on human rights and impunity. Article 19 of the statute states that crimes against humanity are not subject to any statute of limitations. Currently, journalists are not protected under the statute's definition of "crimes against humanity."

The Colombian
Constitution grants
journalists special
protection.

Mexican law does not define journalism nor extend special protection to journalists.

Irrespective of whether it would be sound criminal policy, at least international human rights law would not preclude it.

Participants in the Mexico City meeting noted that Mexican law does not define journalism or its practitioners. While it protects freedom of expression and access to information, Mexican law does not extend special protection to journalists or otherwise distinguish between journalists and ordinary citizens. Thus crimes committed against journalists are considered by the Public Ministry as common crimes.

Absent a distinction, crimes against journalists cannot be prosecuted as crimes against a formally designated category of citizens. Participants recommended legally defining the journalistic profession as an important first step toward bestowing special protection.

STRENGTHS AND WEAKNESSES OF PROTECTION MECHANISMS

In both meetings, the discussion about solutions for confronting the disturbing degree of violence facing journalists centered on identifying mechanisms to protect their legal rights and physical integrity. The role of institutions tasked with these issues was discussed and their strengths and shortcomings analyzed. Several ideas were debated.

Participants shared their experiences with mechanisms designed to strengthen the legal rights of journalists. In 2006, Mexico created the office of a special prosecutor to investigate crimes against journalists, and it was suggested that Colombia follow suit. But lessons learned from the Mexican initiative generated lively debate on the merits and pitfalls of creating a similar post in Colombia. And while Bogotá has created a program specifically designed to protect the physical integrity of journalists, evaluation of it has been both positive and negative.

Legal Protection

In Mexico, most crimes against journalists are investigated by state rather than federal authorities. It is at this local level that justice is most vulnerable—in many cases it is likely that the investigation of a crime against a journalist might not be in the interest of local authorities. The resulting absence of political will often leaves most such crimes unpunished, lending

support to the suggestion that crimes against journalists be prosecuted as human rights violations.

Since crimes against journalists are not classified under Mexican federal law, federal officials seldom cooperate with local investigators. Participants felt that making these crimes a federal offense, and increasing the punishment, would be a major step in the right direction. It would automatically involve federal authorities in the investigation of the crimes, which would in turn bring greater resources and visibility to the process, thus raising the level of public attention and scrutiny. Several discussants recalled that political crimes were made a federal offense in the early nineties following a spate of violent attacks against members of the Party of the Democratic Revolution (PRD). To the extent that federalization is effective in bringing the perpetrators of violence against journalists to justice, it would also contribute to reducing such violence. But participants also felt that the federal government could do a better job of supporting overall efforts against corruption and narco-trafficking.

During 2009, a group of press freedom advocates including Article 19 and others worked with Mexican lawmakers to draft a reform of the federal Criminal Code and Justice System Act to define the journalistic profession and crimes against its practitioners. The proposal envisions trying these crimes in federal court. The Chamber of Deputies approved the reforms and submitted the proposal to the Senate, where it still awaits consideration.

In February 2006 the Mexican government created the Special Prosecutor's Office for Crimes against Journalists (FEADP) in response to a growing number of attacks against journalists. Several Mexican civil society organizations speculated that the initiative was an attempt by then-president Vicente Fox to defuse public anger over the killing of journalists. Created by executive order, the FEADP was placed under the Attorney General's Office (PGR), the body responsible for prosecuting federal crimes.

The FEADP, however, has limited capacity to protect journalists mainly because it lacks the authority to investigate and punish such crimes—a key shortcoming that has been criticized by journalists and NGOs. And while some participants argued that it's still too early to determine whether FEADP can

Making crimes against journalists a federal offense would bring greater resources and visibility to criminal investigations.

Muddied information and reluctant witnesses leave room for impunity or judicial inaction.

fulfill its obligations as an organization, mounting criticism is reflected in public perceptions.

In Colombia, journalists and press freedom organizations have been pushing the attorney general to create a new sub-unit comprised of a team of prosecutors dedicated exclusively to crimes committed against journalists. (Previously, a similar unit existed under the Human Rights Unit.) But the Attorney General's Office has responded to the appeals by pointing to difficulties inherent in investigating threats against journalists, adding that prosecutors in the Human Rights Unit do not have the necessary expertise to assume such investigations. In the meantime, crimes against journalists continue to be addressed by special prosecutors.

The Attorney General's Office also noted that it is concurrently dealing with other highly complex issues including attacks on union leaders, extrajudicial executions and violence against indigenous groups. Still, threats and abuses against media members retain high priority. Important advances have also been achieved—including the improvements in investigating threats. But muddied information and reluctant witnesses leave room for impunity or judicial inaction.

Participants also discussed Constitutional Court rulings that have paved the way for civil society involvement in judicial investigations, including a decision that revised legislation used to prosecute paramilitary group members. For example, the court ruled that it behooves investigators to gather additional evidence from victims and victim protection organizations, after investigating allegations that the Justice and Peace Act required prosecutors to lay charges based solely on uncorroborated statements made by paramilitary leaders.

But some participants questioned this approach, arguing that overworked prosecutors forego the Court's recommendation choosing instead to prosecute paramilitary leaders on the basis of their own statements, as before.

The Attorney General's Office appealed to anyone aware of attacks against journalists for help in collaborating with authorities to launch judicial investigations. In response, civil society representatives expressed concern about the many obstacles journalists face when reporting intimidation. For example, they are often told that the conduct reported is not an

indictable offense, while other times they are directed to call the police.

Protection of Physical Integrity

Participants in both meetings also discussed the need to safeguard journalists from bodily harm as well as the type, method and timeframe of such protection.

Colombia's journalist protection program was established in 2000 as part of a larger initiative protecting entire classes of individuals in high-risk positions—including lawmakers, city councilors, ombudsmen, mayors and labor leaders. The program offers relocation assistance, bulletproof vests, armed escorts and armored cars, among other benefits.

Requests are reviewed by a Risk Evaluation Committee (CRER) headed by the deputy minister of the interior with representatives from government, law enforcement, and independent oversight agencies. According to Ministry reports, from 1999 to October 2007 some 673 journalists benefitted from such protection, including 116 journalists in 2007 at a cost of some US\$1.6 million.

Most criticism of CRER was targeted at the lag time between approval and implementation of protection measures. CRER reviewed 102 cases in 2007. In 46 cases (45 percent), these measures were implemented in part or not at all. While in some cases journalists themselves failed to submit required information in support of their appeal for protection, the volume of measures that went unimplemented was a matter of concern. Committee members were also criticized for working in isolation and failing to leverage CRER as a forum for developing preventative policies, as well. Moreover, civil society organizations trying to obtain information on CRER said they have found themselves facing an uphill battle.

This brief overview of CRER segued into a discussion on the challenges and road blocks facing protection policies. Participants underscored the importance of a Constitutional Court ruling ordering new risk assessment criteria. Drawing on an analogy of internally displaced persons, the Court wrote that when individuals face imminent risk, the protection system has to sidestep its usual procedure that calls for assessing risk before approving protection measures. The court wrote that the mere presumption of a need for protection must trigger an

The Colombian Constitutional Court held that the mere presumption of a need for protection must trigger an immediate response.

While murders of journalists may have decreased in Colombia, reports of self-censorship are on the rise.

immediate response. The court also concluded that subsequent reviews should not be intended to approve protection—rather to decide whether or not to keep protection measures in place.

The Attorney General’s Office said it is in the process of conducting a review of these issues, while Interior Ministry representatives—conceding some of the criticism—pledged to improve program information. There was a consensus to designate CRER as a meeting point for discussion on preventing attacks, reducing impunity and training public servants on free speech issues.

Participants noted that while government response in Colombia has helped reduce the number of murders, it is not at all clear whether it has helped reduce intimidation, and they called for further monitoring and research into the factors that account for intimidation and threats. Participants also noted with concern that while murders of journalists may have decreased, reports of self-censorship are on the rise. This is a disturbing development, as the purpose of reducing violence against journalists is to uphold freedom of expression, not to send the message that the only way to survive is to be silent.

IMPUNITY

According to CPJ, impunity occurs when government authorities are unable or unwilling to bring perpetrators to justice after a crime has been committed against a journalist—such as a death threat, physical assault, kidnapping or murder. Conversely, justice has been served when perpetrators are both arrested and prosecuted for their crimes. Sadly, impunity remains a pressing issue for political, social and legal reasons. In addition to addressing its pervasiveness, there is a need to recognize impunity for the menace it is—even when it is difficult to identify. While the connection may not be evident at first glance, impunity and the threat it poses are closely intertwined and must be confronted together. As explained by the OAS Special Rapporteur for Freedom of Expression, the deterrent effect of criminal law is rooted in “the imposition of effective and proportionate sanctions against those who commit crimes” that merit such sanctions. Nevertheless, at least in terms of crimes committed against journalists, this basic deterrence measure does not appear to be carried out satisfactorily.

Understanding impunity requires an examination of its underlying factors. Participants in both meetings commiserated over how governments—especially the judiciary—often lack the technical capacity to investigate crimes. There also may be a lack of will on the part of politicians, bureaucrats, or law enforcement officials to push for justice for fear that they too will suffer reprisals at the hands of powerful criminal networks. Also at play are social norms connected with how societies view these crimes and the journalistic profession, underscoring the need to move toward legal definitions of the role of journalism. For example, one legacy of authoritarian regimes may be a culture of acceptance of impunity for crimes against journalists. Moreover, procedural and bureaucratic constraints often promote delayed responses and even corruption. Against these obstacles many journalists choose not to report threats or incidents of physical attack, further fueling the cycle of impunity.

SELF-CENSORSHIP: DEFINITION AND CAUSES

One of the consequences of impunity is self-censorship. Often imperceptible, self-censorship inhibits and reduces the free flow of information and opinion. This growing trend is a subtle, incipient force that stifles the work of journalists who labor under the constant stress of knowing that publishing a story may place them in very serious danger.

But how exactly does self-censorship in the media arise? And what level of risk fuels it?

Participants in the Mexico meeting discussed two key factors: the power of state governors and organized crime. Many state governors have been known to allocate public advertising funds to like-minded media. Similarly, public officials can use the threat of removing funds as a tool of intimidation. Especially vulnerable are small, local media outlets in communities and regions that depend almost entirely on public funding. This phenomenon is less frequent in urban areas, where larger news organizations are less sensitive to pressure from government officials. Sadly, all too often there is no legal or regulatory framework to monitor and penalize the stifling of independent local voices.

Governments—
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and political will to
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Fearing reprisals, journalists prefer to dispense with a byline while some editors refuse to cover stories on drug cartels altogether.

The growing influence of drug barons poses another substantial threat to journalists. Local writers and investigative teams often find themselves in the untenable position of covering stories that implicate drug cartels—without protection or sufficient resources to handle the high personal risk involved. The quandary is well reflected in the experience of the *Cambio Sonora* news daily which shut down briefly in May 2007 after a hand grenade attack. Fearing reprisals, journalists prefer to dispense with a byline while some editors refuse to cover stories on drug cartels altogether.

Not surprisingly, media reports often trigger violent reprisals from members of organized crime. Participants spoke of journalists who have vanished, believed dead at the hands of narco-traffickers, and of attacks against local journalists, editors and media outlets. In general, governments were criticized for their inability to protect journalists covering organized crime.

Participants in the Bogotá meeting also described the multiple forms self-censorship can take. Self-censorship can, for example, emerge from an overall adverse context where insecurity, violence and impunity lead journalists to conclude that it is best to keep quiet. As a psychological phenomenon, this type of self-censorship is not easy to quantify.

A second form of self-censorship arises from direct coercion. It can be external—as when the target of an investigation angrily confronts a journalist—or internal, including the abuse of editorial discretion.

Sadly, coercion is becoming an increasingly popular way to manipulate the media. Colombia's Press Freedom Foundation (FLIP) says that over half of 162 reports filed in 2007 involved intimidation, up from 44 in 2004.⁴ The Foundation adds that of 85 journalists threatened in 2007, 16 relocated within Colombia and seven went into exile.⁵ In a poll of 300 journalists, almost a quarter admitted to self-censorship after being targeted for violence. Almost 48 percent acknowledged being coerced, pressed or ordered to limit or drop a story. Asked about their reaction, 32 percent admitted having relented. In 28 percent of the cases pressure had to do with coverage of government stories, while

⁴ Fundación para la Libertad de Prensa (FLIP). "Freedom of the Press in Colombia 2007." www.flip.org.co/secciones/informes/2007/anual_2007.pdf, p. 4.

⁵ Ibid. p. 33.

in about 20 percent of cases pressure emerged where journalists were covering stories on guerrilla groups.⁶ The FLIP study reports that 12 percent of violations were committed by the FARC and 21 percent by public officials or police members.⁷

A final form of self-censorship is when journalists realize that certain issues are off bounds for reasons that are best not discussed but which are very clear to them.

The impact of violence is clearly reflected in the stories journalists cover—and, concurrently, the stories they choose to avoid. Journalists fearing a violent reaction to their coverage will steer clear of sensitive issues, and some will even switch professions altogether. These decisions inhibit the free flow of information, and exchange of ideas and opinions—a crucial requirement of any democratic society.

There is a strong correlation between impunity, intimidation and the self-censorship that follows. When killers go unpunished, the marketplace of ideas grows smaller. When an assassination against a member of the media is not met with justice, then journalists are likely to abstain from covering topics that put them at risk of reprisals.

RECOMMENDATIONS

Participants in both meetings agreed that effective solutions require recognition of the scope of the threat involved. The proposals and legal and social strategies they discussed reflect a growing consensus on the decisive role of journalists in a democratic society. In Colombia, civil society and government representatives pledged to increase communication and collaborate in search of effective solutions. Their commitment made for a candid, enriching debate, demonstrating that interaction between government and civil society does not have to be adversarial.

But in Mexico, journalists are still getting used to their emerging role as government watchdog after 70 years of single-party rule—a time when political interests were in firm control

⁶ González Rodríguez, Sauro. “An Analysis of Journalists’ Perceptions on Violence against the Press, Impunity and Self-Censorship in Colombia.” (Presentation delivered at a conference on *Violence Against Journalists and Impunity in Colombia* held in Bogotá, Colombia in April 2008). p. 7–8.

⁷ FLIP. p. 6.

When killers of journalists go unpunished, the marketplace of ideas grows smaller.

of news media outlets. This challenge is compounded by the wave of violence ripping through their country.

Participants in both events underscored the importance of legal protection in reducing self-censorship, and the need for national, regional and local media to stand together against the coercive use of public funds. Participants further agreed on the importance of training judges and prosecutors to use existing legislation to protect journalists, bring perpetrators to justice, and instruct journalists engaged in sensitive investigations on how to protect themselves.

Mexico

Participants agreed on the following agenda:

- Adopt legislation defining crimes against journalists and institute higher penalties.
- Encourage solidarity and partnerships among national, regional and local media.
- Provide training and legal and logistical support to journalists conducting high-risk investigations.
- Increase cooperation and communication across state and federal levels to prevent perpetrators of crimes against journalists from taking advantage of shortcomings in federal laws.
- Train state and federal judges, prosecutors and administrators to apply legislation protecting journalists; appoint special units to deal with corruption and drug issues.
- Reform Mexican law to enable FEADP to investigate and punish crimes against journalists and appropriate the necessary human, logistical and financial resources.

Colombia

Participants recommended several proposals on mechanisms to combat impunity and violence against journalists.

- Create an inter-agency mechanism to fight impunity, similar to an existing agency created to protect union leaders.
- Urge the attorney general to set up a special unit to investigate crimes against journalists and establish a mechanism to centralize investigations as needed.

- Use the protection program not just to consider specific measures, but also to review their adequacy and the possible alternatives.
- Evaluate how well protection measures are implemented and how national and local authorities discharge their respective responsibilities to this end. Such a review should include a financial audit and an impact assessment.
- Based on recent Constitutional Court rulings—encourage the involvement of civil society groups in judicial investigations.

Violencia Contra Los Periodistas E Impunidad En Colombia

April 3-4, 2008, Bogotá, Colombia

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16-17 De Junio 2008, México, D.F.

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