

# Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes against the Press: Mexico, Colombia and Guatemala

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## **Abstract**

Attacks on journalists are one of the most serious violations of free expression. Not only victims are affected by these attacks but also society as a whole, as they prevent the effective exercise of the right to information that is a cornerstone of our democracies. To protect this right and guarantee the free exercise of journalism, States have an obligation to prevent all crimes against the press and punish offenders. Although in recent years several steps have been taken to curb high levels of violence against journalists, crimes against the press continue to occur and —more troubling— go unpunished.

For this research, the CELE examined public policies implemented by Mexico, Colombia and Guatemala to protect the press from such attacks and reduce impunity levels. We studied the institutional design implemented by some countries to protect journalists and/or investigate crimes against the press. These institutions were studied taking into account their design as well as their achievements, efficacy and deficiencies.

The research adopted a qualitative methodology, based on a comparative case study that focused on Mexico, Guatemala and Colombia. The comparison of cases was supported by extensive bibliographic review and field work including in-depth interviews to gather the perspectives of the main stakeholders and beneficiaries of the policies under analysis.

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## Executive Summary

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Attacks on journalists are one of the most serious violations of free expression. Not only victims are affected by these attacks but also society as a whole, as they prevent the effective exercise of the right to information that is a cornerstone of our democracies. To protect this right and guarantee the free exercise of journalism, States have an obligation to prevent all crimes against the press and punish offenders. Although in recent years several steps have been taken to curb high levels of violence against journalists, crimes against the press continue to occur and —more troubling— go unpunished.

This research examined public policies implemented by Mexico, Colombia and Guatemala to protect the press from such attacks and reduce impunity levels. In particular, we studied the institutional design implemented by some countries to protect journalists and/or investigate crimes against the press. These institutions were studied taking into account their design as well as their achievements, efficacy and deficiencies.

The research adopted a qualitative methodology, based on a comparative case study that focused on Mexico, Guatemala and Colombia. The comparison of cases was supported by extensive bibliographic review and field work including in-depth interviews to gather the perspectives of the main stakeholders and beneficiaries of the policies under analysis.

### Conclusions on the Mexican Case

- In recent years, the Mexican State has adopted different strategies to deal with the critical situation of freedom of expression which have resulted in the establishment of specific institutions, such as the Program on Attacks Against Journalists and Civil Defenders of Human Rights at the Fifth Investigative Unit of the National Human Rights Commission (CNDH), the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE), the Special Committee to Monitor Aggressions to Journalists and the Media of the National Congress, and the Unit for the Promotion of Human Rights of the Ministry of Interior at the Executive Branch, which created a new space for reversing the country's poor record on free expression: the recently inaugurated Committee to Protect Journalists.
- All the above agencies and spaces for institutional coordination were the focus of our analysis, although we concentrated on the Special Prosecutor's Office, as we believe that this has been the most important institutional response - until this writing - of the Mexican government to improve the conditions for the practice of journalism.

- The report has found that attacks against the press have increased despite institutional efforts to reverse the situation. With regard to the landscape of agencies created to root out this problem, the poor quality of public information, especially in a country like Mexico that has pioneered reforms on access to public information, is a worrying sign.
- An analysis of the institutional design of the Special Prosecutor’s Office enabled us to identify a series of limitations: a narrow legal framework, resulting from an agreement rather than a comprehensive law; administrative dependence on the PGR due to its position in the organizational chart; limited jurisdictional powers<sup>1</sup>; the requirement to confirm that the attack was perpetrated in relation to the practice of journalism and is not associated with organized crime; limited political distinctiveness due to the absence of specific criteria for the appointment and removal of authorities; and budgetary restraints and underqualified staff. However, according to a thorough analysis by the CNDH and the information contained in other documents, independently of the above limitations concerning its institutional design, the Special Prosecutor’s Office has had a poor performance.
- But not only the performance of the FEADLE has raised concerns. The work of other agencies engaged in the protection of journalists and the investigation of anti-press crimes has not been particularly fruitful. Far from creating synergies, inter-agency coordination seems to have yielded negative results. The relationship between the various levels of government is no less problematic, and this undermines the organizational capacity of the entities under analysis to fulfill their institutional mandates.
- The poor performance of the agencies that were created to protect journalists and investigate crimes against the press has resulted in widespread impunity of crimes against journalists: “Of the 108 cases that were handled (by the FEADLE) during its 4 years of work, it has pressed charges in only 4; in other words, the rate of effectiveness is 3.7 %, and in 59% of the cases it has declared that it was incompetent to investigate or has sent the case to the archive.” (A19-CENCOS, 2010: 17) This is an interesting piece of information, particularly if we consider that, pursuant to the CIDAC, the crime clearance rate in Mexico is 2%. According to such indicators, the work of these institutions has nearly doubled such rate, reaching a still disturbing 3.7%.

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1. This aspect should be addressed in light of recent efforts to federalize crimes against the press.

## Conclusions on the Colombian Case

- The Program for the Protection of Journalists was created in 2000 to reverse the dramatic situation of freedom of expression. Together with the program, the Committee for Risk Regulation and Assessment (CRER) was established to assess risk levels and evaluate, recommend and/or approve the protective measures requested by victims. In terms of its institutional framework, the program coexists with other bodies that perform similar functions, such as the Early Alert System of the Office of the Ombudsman or the Witness Protection Program of the Attorney General's Office of the Republic.
- The Protection Program is attached to the Human Rights Office of the Ministry of Interior and Justice and it works in collaboration with the CRER, an inter-agency committee which gathers civil society organizations and that has been internationally celebrated and recognized. The program has a comprehensive budget, but interviewees admit that financial resources are mainly allocated to protection schemes, rather than using funds to train personnel to enhance the positive aspects of the program.
- One of the main findings of this study is that the context of emergence was decisive for the program and it accounts for the difficulties in moving beyond its reactive role and designing effective prevention policies. An aspect which reflects the context in which the program emerges is the emphasis on protection, rather than on investigation.
- In terms of numbers, and considering murder figures, since the Protection Program was first implemented there has been a reduction in the number of fatal victims of crimes against the press, although other attacks against the press have remained stable, at least since 2006. The emphasis on protection rather than on investigations may explain the meager results achieved in the fight against anti-press attacks in Colombia: of 138 journalists killed by reason of their profession, only 5 intellectual authors have been convicted.
- In general terms, all interviewees agree on the importance of the program, as it implies a political recognition of the problem and because protection measures may be a powerful deterrent. In general, however, interviewees have been more critical. This criticism is probably associated with the policy legacy of the program, that is, the need to deal with serious threats to freedom of expression. A first consequence of this situation is the absence of a preventive policy to supplement or reinforce the protection strategy implemented by the program.
- Another aspect which has been pinpointed as a weakness of the program is the lack of political will to demonstrate that the highest authorities are interested in eradicating violence against journalists. Some interviewees underscored the growing bureaucratization of the program, which has slowed the pace of procedures, while other interviewees allege that the programs are discriminatory.

In a context where insecurity is not only experienced by specific sectors of population, but rather by society as a whole, two fundamental questions come to mind: to what extent can targeted protection be legitimate? Do the programs help better implement the constitutional duty to protect those living in the Colombian territory?

- One of the biggest objections to the program is the poor level of inter-agency coordination with the organizations that we have identified as potential rivals to the program. Being an inter-agency body, the Committee can receive resources and information from different sources to fulfill its mission, and the presence of civil society organizations gives the committee greater legitimacy. However, since the Committee is made up of a group of representatives and institutions with different missions and purposes, sometimes this seems to adversely affect the results achieved by the program.
- The greatest tension is between the CRER and the Colombian Attorney General's Office, and the way information is shared by these bodies. Coordination problems between the CRER and the Attorney General's Office can be seen in the administration, systematization and access to information regarding judicial cases.
- The other side of inter-agency coordination problems is the articulation between the different levels of government, the national directives and the realities of the local governments. Although Colombia has a unitary political organization, which facilitates a consistent implementation of policies, the performance of the program (the implementation of risk studies, for instance, or the enforcement of protection measures) still depends on how local officials interpret and apply the directives issued by the central government.
- More specifically, risk assessments have been criticized for different reasons, such as delays in the determination of the risk due to the time interval between the moment the protection is requested, the risk is determined, and the protective measure is implemented. The quality of risk studies has also been the subject of criticism, in particular, because those requesting protection are not usually satisfied with the results of the study, the interviews held to classify their situation, and the arguments underpinning the determination of the risk. Another important problem is distrust of those interviewing the threatened journalists and determining, ultimately, the risk faced by the interviewees. Also the "closed" nature of risk studies has been widely objected.
- And the way the program has implemented protective measures has also been harshly criticized. Critics have also expressed concern about hard protection measures, *i.e.*, those involving private bodyguards, because of mutual distrust between agents and protected individuals.
- Another key issue is the dismantlement of protective measures. In a climate of high impunity, where justice takes long to establish the truth, how can a decision



be made as to the right time to remove a protective measure? Removing a measure before the disappearance of the risk may have fatal consequences, but perpetuating a protection scheme that is no longer necessary would be a waste of resources which could undermine the implementation of protections for other at-risk journalists. However, measures to re-assess the risk are rarely taken.

## **Conclusions on the Guatemalan Case**

- The case of Guatemala is rather peculiar – particularly when compared to Mexico and Colombia - for two basic reasons: first, we are not analyzing a government agency or a specific program, but a multilateral entity created to support the national government’s efforts to combat impunity and violence. The International Commission against Impunity in Guatemala (CICIG) was created in 2006, thanks to the efforts of the international community and the consensus of the various national political forces. And second, the entity in question is special because it has not been developed specifically to solve crimes against the press, but rather to address a more general and structural situation of violence caused by organized crime in Guatemala.
- One of the first problems experienced when we analyze the institutional design of the CICIG are a series of challenges regarding the effect of the agreement which created such commission on Guatemalan institutions, rather than a constitutionality challenge. This can be seen clearly in the articulation of the Commission with local entities under cooperation agreements. Those agreements confer significant discretionary powers to the Commission, but fail to establish strict oversight and accountability mechanisms.
- The coordination between the Commission and local activities is even more vital for the furtherance of its institutional mission than in the other cases under analysis. However, the reports of the CICIG reveal that the reluctance and distrust of local authorities has resulted in the failure of local investigations.
- The results achieved seem to have been particularly poor during the first years of operations, but have improved gradually as the Commission gained experience, although apparently more emphasis has been placed on actions aimed at strengthening institutions and fostering reforms, rather than solving cases that have been admitted and selected. If we consider the gap between the high level of demand (number of complaints received) and the number of investigations in progress, we can assume that there is some level of frustration among complainants who resorted to the Commission - even when their cases did not fall under the institutional mission of the commission - after local institutions failed to render justice.

- It is also striking that the CICIG itself seemed to account for its limitations in one of its reports, using the same arguments that justified its creation to explain its meager results and blaming the same factors that it is supposed to eradicate under its mandate. Four years later, the CICIG seems to be back in the same place where it started and facing the challenges of operating in a State that is under siege by organized crime.
- As regards the contribution of the Commission to the protection of journalists, it is important to acknowledge that investigating crimes against the press is not part of its institutional mission, except when the crime involves the participation of clandestine paramilitary groups. The only case within the scope of the Commission's mandate had not yet been solved.
- Beyond these formalities, the perceptions of the journalists who were asked during the interviews about the contribution of the CICIG to the protection of freedom of expression have been rather skeptical. Some claim that the CICIG should not be expected to perform an additional function, while others believe that the CICIG has only paid attention to journalists as part of an aggressive communicational strategy to gain legitimacy in the local political arena.
- Meanwhile, the efforts of local organizations appear insufficient or, at a minimum, have been challenged in a context of growing distrust of local institutions. In the opinion of some of the journalists who were interviewed, it is essential for journalists to organize themselves to promote and defend their rights, either through the design of a protection mechanism within the local institutional framework or by resorting to international bodies as recipients of complaints or requests for protection.

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# Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes against the Press

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This study is the result of the research conducted by the Center for Studies on Freedom of Expression and Access to Information (Centro de Estudios para la Libertad de Expresión y Acceso a la Información, CELE) in 2011. The purpose of the investigation was to analyze how the creation and the institutional design of the agencies charged with the protection of journalists and/or with the investigation of crimes against the press impact on the outcome of the policies implemented. This investigation was carried out as a comparative case study of three analysis units — Mexico, Colombia and Guatemala — seeking to contribute to the debate on impunity in the region.

## Methodology and Conceptual Framework

The main hypothesis of this project poses that the institutional design of the agencies responsible for the protection of journalists and the investigation of crimes against the press has an impact on the performance of these agencies and, therefore, on the achievement of their institutional objectives. Our goal is to explain why, despite States’ efforts, impunity in crimes against the press has continued to increase. We intend to identify areas not yet addressed that could be enhanced, and in this way improve the policies implemented to reverse the serious threat that affects free speech in the region.

Clearly, these organizations do not work in isolation, but are rather woven into the institutional framework of each country. Therefore the political and administrative system affects (or conditions, as an antecedent variable) the actions of the agencies examined. In a graphic representation, the project hypothesis is as follows:



The diagram shows the explanation system and the variables used to assess the analysis units:

a. Intervening (or antecedent) variable: Description of the political and administrative system.

Since the study was developed as a comparative case study that focused on three units of analysis, it is essential to take into account in what kind of political and administrative system the target organizations were created and operate. For such purpose, the concept of political and administrative system developed by Pollit and Bouckaert (2004), together with the relevant dimensions, was used as reference.

#### b. Independent Variable: Institutional Design

The deductive operationalization of the independent variable is based on the concept of autonomy posed by Carpenter (2001) and Wilson (1989), which aims to incorporate not only the objective conditions in which an agency operates but also the distinctive dynamics of each particular organization. The variable has the following dimensions:

-External: this dimension seeks to assess whether an agency has a clear definition of domain-jurisdiction, which are its powers and whether it has jurisdictional disputes with potentially rival agencies (Wilson, 1989). This dimension should also encompass the position of the agency in the organizational chart, since some analysts who focused on the concept of autonomy have held that the position within the administrative hierarchy is vital (Demarigny, in Majone, 1996); Diaz and Valdivia, 2006; (Majone, 1996).

-Internal: the autonomy of an agency requires organizational capabilities to analyze and create programs, as well as to plan and manage them efficiently (Carpenter, 200). To carry out these tasks, it is essential for agencies to have sufficient resources, qualified staff and entrepreneurs who develop innovative programs to gain political support (Carpenter, 2001;) Evans and Rauch, 1999; (Wilson, 1989). Based on this theoretical framework, the research study analyzed how agencies charged with the protection of journalists and the investigation of attacks on the press are equipped.

-Identity and political distinctiveness: another fundamental aspect for the development of organizational autonomy is that the agency should be able to differentiate itself from its creators and controllers (Carpenter, 2001). This dimension was assessed in terms of the rules for the appointment of officials and based on the actions undertaken to establish an organizational identity (Wilson, 1989).

#### c. Dependent Variable: Agency Performance

Agency performance will be assessed by means of quantitative and qualitative indicators. This variable is made up of two dimensions: first, the policies implemented to protect journalists and/or investigate crimes against the press will be described from a critical point of view. Then the effectiveness of these policies will be assessed by means of quantitative indicators reflecting the impact that the policies implemented have had in each of the countries examined.

The three variables were rendered operational and this enabled the development of questionnaires for conducting in depth interviews. Both the matrix and the analyzed questionnaires are included in Annex II.

## Research Activities

To develop the case study, we conducted a series of research activities.

### *Bibliography Review and Data Collection*

During the first stage of the project we conducted an extensive bibliographic review. The results are presented in Annex I.

To carry out the study on Mexico, we conducted interviews with members of Article 19 and CENCOS so as to expand our bibliographic survey. Both interviews were fundamental for the research study, as the expertise of the local organizations helped us familiarize with the field work. For the Colombian case we held interviews with members of the justice organizations to expand our bibliographic survey.

### *Field Work*

The field work activities in the City of Mexico were conducted in the week of March 6-15, 2011. The following interviews were held:

- Special Prosecutor's Office for Crimes against Freedom of Expression: Dr. Gustavo Salas Chavez.
- Ministry of Interior, Unit for the Promotion and Defense of Human Rights, Director: Omeheira López Reyna.
- National Congress, Chamber of Deputies, Special Committee to Monitor Aggressions to Journalists and the Media, deputy María Yolanda Valencia Valdéz.
- National Center for Social Communication (Centro Nacional de Comunicación Social, CENCOS), Director, Brisa Maya Solís Ventura.
- Article 19, legal consultant, Cynthia Cárdenas.
- Center for Economic Research and Education (Centro de Investigación y Docencia Económica, CIDE), associate researcher, Mariclaire Acosta.

The field work activities in the city of Bogota were conducted in the week of June 12-18, 2011. There, we interviewed the following people:

- La Silla vacía, Carlos Cortés Castillo.
- María Clara Galvis
- Office of the Inspector General of Colombia, Victim Assistance Center (Centro Único de Atención a las Víctimas), Luis Carlos Toledo Ruiz.
- Foundation for Freedom of the Press (Fundación para la Libertad de Prensa, FLIP), Executive Director, Andrés Morales.
- Joint interview with Carlos Julio Castillo Beltrán from the Presidency, and program representatives from the Ministry of Interior and Justice.
- USAID Human Rights Program, Civil Society Coordinator, Jaime Prieto.
- We also conducted an interview with a United Nations official who asked to remain anonymous in this report.
- Interview with Diana Guzmán, from De Justicia.
- We also interviewed Maria Teresa Rondero, Director of Verdad Abierta, when she visited Buenos Aires in October 2011.

The field work activities in the City of Guatemala were conducted in the week of May 21-28, 2011. The following people were interviewed during that period:

- Juan Luis Font, journalist
- CERIGUA, Executive Director, Ileana Aramilla
- Acción Ciudadana, Executive Director, Manfredo Marroquín
- Attorney General of Guatemala, Claudia Paz y Paz
- COPREDEH, Otto René Blanco and Hugo Martínez
- Fundación Myrna Mack, Silvia Barreno
- Marielos Monzón, journalist
- CICIG, Manuel Garrido

#### *Systematization of Information*

All interviews were transcribed and the information was systematized according to the criteria set out in the matrix and in the conceptual framework. Once the information was systematized, the relationship between the variables was analyzed and reported. The results of these activities provided the basis for the chapters below.

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## **Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes Against the Press: the Mexican Case**

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### **Introduction**

The selection of the Mexican case responds to serious concerns regarding the situation of freedom of expression in the country. As explained in this report and according to the Committee for the Protection of Journalists (CPJ), Mexico is among the 10 most dangerous countries for practicing journalism. Coincidentally, to deal with this scenario, the Mexican State has developed an array of institutions that seek to reverse this situation. What results have been achieved? What has been the response from the institutions that were established?

For analytical purposes, this report includes the following sections: the first section describes the political and institutional system in which these agencies operate and the violence that journalists must currently endure in the country; the second section presents the main agencies which were created to protect journalists and social communicators and to investigate crimes against the press; the third section examines the results obtained by the agencies under analysis; and the last section discusses the main findings of our research.

### **1. Description of the Political-Institutional System and the Situation of Freedom of Expression in Mexico**

Mexico is a "...representative, democratic Federal Republic, composed of states that are free and sovereign in all internal matters, but united in a federation established according to the principles of the Constitution. The states also have the free municipality as the basis for their territorial division and their political and administrative organization." (Reply to the OAS Committee of Experts, 2003)

At the federal level, the power of the Federation is divided into a Legislative Branch -a bicameral body-; an Executive Branch, which conducts the administrative businesses of the Federation through a Centralized Public Administration and a Federal Parastatal Public Administration; and a Judicial Branch, in the hands of the Supreme Court of Justice, the Electoral Tribunal, Collegiate and Unitary Circuit Courts, and the District Courts (Reply to the OAS Committee of Experts, 2003). The Mexican State also has public agencies such as the Federal Electoral Institute and the National Human Rights Commission, which have been given autonomy from other branches of government but are subject to the same legal framework as the other administrative institutions.

## Context for the Exercise of Freedom of Expression

*“Systemic impunity allows insecurity to take root. Mexico’s overburdened and dysfunctional criminal justice system has failed to successfully prosecute more than 90% of press-related crimes”*  
(CPJ, 2010: 6).

Describing the context faced by journalists and social communicators in Mexico is already a challenge: statistics on aggressions to the press vary depending on the reporting institution, in spite of strenuous efforts by the Mexican State to recognize the value of public information. Therefore, understanding the scenario in which members of the press exercise their profession involves consultation of different sources and reviewing data in perspective. The Special Prosecutor’s Office for Crimes against Freedom of Expression (Fiscalía Especial para la Atención de Delitos contra la Libertad de Expresión, FEADLE) compiles its own statistics; the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) keeps its own records based on complaints received by this institution; the Ministry of Interior (Secretaría de Gobernación, SEGOB) has admittedly maintained its own database; and non-governmental organizations have contributed to the wealth of information on attacks and homicides by collecting journalistic information or the complaints they themselves receive in their offices. In this respect, the head of the Unit for the Promotion of Human Rights of the SEGOB says that: “There is no national database of attacks against journalists which records all information regarding local cases. Each prosecutor’s office has its own figures, but these numbers are not centralized.” (Interview with López Reina, 2011)

The FEADLE, as part of its institutional mission, compiles information on crimes against journalists. Its most recent report from 2009, available in the FEADLE’s website,<sup>2</sup> lists all cases this Office has dealt with from 2006 to November 30, 2009. During this period, the Special Prosecutor’s Office investigated 108 complaints, while 235 were filed with other areas of the Attorney General’s Office (Procuraduría General de la República, PGR) and 145 were brought before the Prosecutors’ Offices of the Mexican states. This report does not contain statistics on attacks, unlike the 2008 report which recorded 25 killings and 6 disappearances. We should bear in mind that, according to the legal framework of the Special Prosecutor’s Office, for acts against journalists to be offenses under criminal law the following conditions should be met:

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2. At this writing, the FEADLE has not yet sent the 2010 report which, at the time of the interview, was pending approval by the Congress of the Republic. The information on the FEADLE’s website is outdated to the extent that the Office’s name appears as FEADP, which was the previous institutional format of this agency. See <http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Delitos%20Federales/FPeriodistas/FPeriodistas.asp>



- Demonstrate that the victim is a journalist
- The crime must have been committed with the intent to curtail the exercise of the right to freedom of information or freedom of the press
- The offence is a crime subject to federal or local jurisdiction, and in this case the actions should be related (*conexidad*)
- The offense should not be related to organized crime.

Such restrictions to the exercise of its institutional powers result in few cases being registered as “Confirmed pursuant to requirements” (*Confirmados conforme a requisitos y avance*): of the 25 murders, only 3 fall under this category. In this respect, a report by Article 19 notes that: “With regard to aggressions against journalists and communicators, the exact number of aggressions and complaints of crimes against journalists or communication workers before local authorities is uncertain, which leads us to conclude that the specialized authority entrusted with investigating these crimes does not have jurisdiction over the totality of crimes against those who practice journalism. What’s more, the FEADP does not have authority to require information from state authorities, and the states do not have an obligation to inform the Prosecutor’s Office on the reporting or investigation of such crimes, ultimately hindering the possibility of reciprocal cooperation in the investigation (*coadyuvancia*).” (A19, 2009:20).

In this regard, the Prosecutor in charge of the FEADLE comments: “Of course, homicides had been committed before the new political party won the Presidency. But only since 2000 these cases have been documented. I have information on homicides occurring before this period, but most of these crimes remain unpunished. However, figures begin to appear after 2000 for various reasons...(…)...From this moment, we established a course of action: first, we decided to systematize the information. Otherwise we could not have continued our work. We met with sources of information from newspapers, professional organizations, Article 19, the IAPA, etc., as well as national organizations such as the Latin American Federation of Journalists. And we obviously based our work on the information held by the National Human Rights Commission. This information is available from 2000 onwards. Why do we use this date as a benchmark? First, the most reliable figures available are for the period beginning in 2000. Also, there are statutes of limitations in Mexico, so we wanted to focus on cases that could be solved before the expiration of the statutory limitation. We wanted to create a database of cases reported based on consolidated figures. After this, we concentrated on documenting the cases. We tracked case files at the federal and local level. Once the files were found, we began to build an archive. We have dedicated our efforts to fulfilling this daunting task, and by now nearly 55% of this work has been completed. (...) We need to shift to an information system that can cross-reference information.” (Interview with Salas Chavez, 2011)

Meanwhile, the National Human Rights Commission (CNDH) compiles its own statistics based on the complaints registered with this institution. According to the CNDH: “... from 2001 to date (2009) alleged human rights abuses against journalists have doubled compared to data for the decade immediately preceding that year. This increasing trend can be seen in the following figures: 13 complaints were lodged in 2000; 21 in 2001; 43

in 2002; 29 in 2003; 43 in 2004; 72 in 2005; 74 in 2006; 84 in 2007; 80 in 2008; and in July 2009 the number was 46.” (CNDH, 2009: 2)

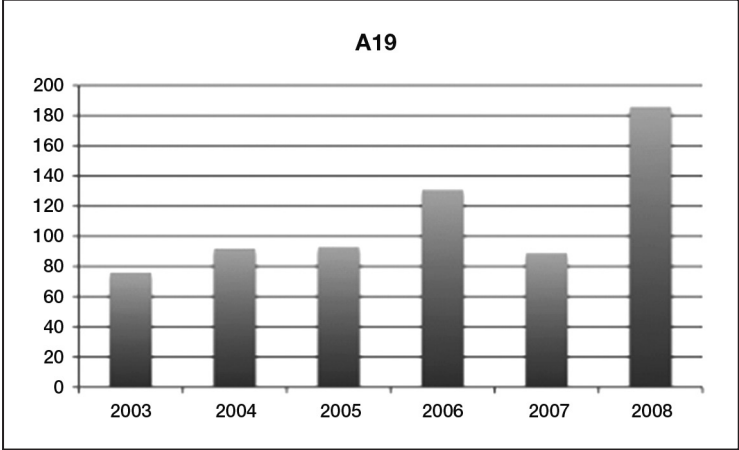
The Committee to Monitor Aggressions to Journalists (Comisión de Seguimiento de las Agresiones contra los Periodistas) also has its own statistics. In its first semi-annual report, the committee created a database of attacks perpetrated in the following states: Oaxaca, Tamaulipas, Mexico state, Sonora, Veracruz, Chiapas, Chihuahua, Mexico City, Puebla and Tabasco. The second semi-annual report notes that this database was extended to include Oaxaca, Tamaulipas, Mexico state, Sonora, Veracruz, Chiapas, Chihuahua, Distrito Federal, Puebla, Tabasco, Baja California, Coahuila, Hidalgo, Jalisco, Sinaloa, Durango, Guerrero, Michoacán, Nayarit, Yucatán and Tlaxcala. Such information is not available in the Committee’s website.

Given the limited public information that is available to assess the scenario, we resorted to the description provided by civil society organizations.

In the document “Complaints concerning failure by the Mexican State to fulfill its freedom of expression obligations” (Señalamientos sobre el incumplimiento del Estado Mexicano en materia de libertad de expresión) (2007), Article 19 and CENCOS conduct a thorough survey of attacks against members of the press in the country. The methodology used for this survey work seems to be the most inclusive in terms of the definition -a journalist is defined as any person who works in the media- and the attacks comprised in the database - including murders, disappearances, crimes of defamation, libel and slander, and intimidation or pressures. To count as an attack against a journalist, it must be demonstrated that the purpose of the aggression is associated with the journalistic work of the victim.

The report records 37 killings between 2001 and 2006. The report also notes that in most cases the attackers are state agents (42% of cases registered), while only 11% of the attacks registered have been attributed to organized crime.

In another report (A19, 2009), Article 19 describes an increase in the number of attacks against journalists and communication workers:



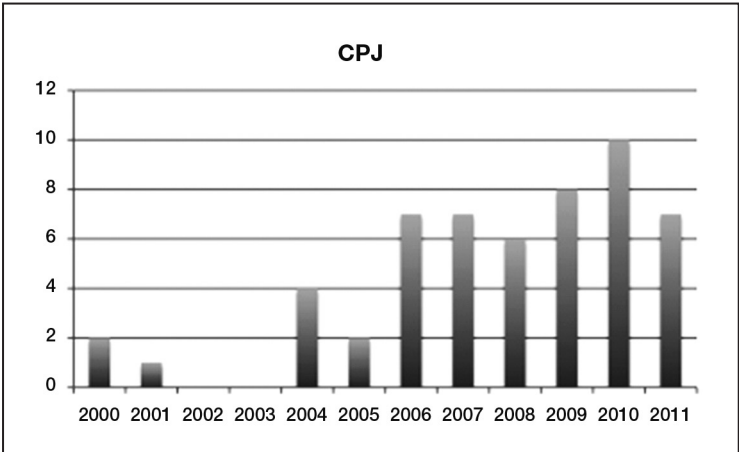
Prepared by the author based on information published by Article 19

The Committee to Protect Journalists (CPJ), in turn, has consistently developed the Impunity Index since 2001. It focuses almost exclusively on documenting cases of killings of journalists and inquires about the progress of judicial investigations to identify those responsible for brutal attacks against the press. The statistics show that Mexico has consistently topped the list of countries that fail to curb attacks on freedom of expression. The CPJ conducts its own measurements and distinguishes cases where the purpose of the murder has been confirmed from those where it was not possible to establish with certainty that the motive was related to the journalistic activities of the victim. Although the CPJ keeps records of both types of cases, only those where there is confirmation of the motive are considered to calculate the Impunity Index.

According to information collected by the CPJ, 25 journalists were killed between 1992 and 2011 for their journalistic activities, other 34 were killed for reasons not yet confirmed, and 4 media workers also died during the practice of their profession. In total, 63 individuals who were professionally associated with the exercise of freedom of expression were killed over the last 20 years, a staggering number considering that only 9% of the cases were solved and that 4% were only partially solved by the justice. The rest of the cases - 89% - have fallen victim to the curse of impunity.

If we consider the 25 killings in which it has been confirmed that the deaths occurred in relation to the victim’s profession, we find that 12 of the dead journalists had received threats, that is, their deaths could have been prevented and this evidences a clear failure of the system of protection.

An analysis of growing yearly homicide rates affecting journalists shows that such increase has intensified since 2006 in spite of institutional efforts:



Prepared by the author based on information published by the CPJ.

The rise in the number of crimes against journalists has been explained by the CPJ in the context of the government’s counternarcotics efforts under President Felipe

Calderón: “When the Calderón administration declared a national offensive against the powerful criminal groups threatening the nation’s stability, it signaled that state and local governments were too weak and corrupt to wage a battle so central to Mexico’s future. But nearly four years after beginning its offensive, the federal government has failed to take responsibility for one of the war’s crucial fronts: the widespread and unpunished attacks that are destroying citizens’ constitutionally and internationally protected right to free expression.” (CPJ, 2010: 23)

The most recent report of the CPJ draws attention to the Mexican case, noting that “...deadly anti-press violence continued to climb in Mexico, where authorities appear powerless in bringing killers to justice (...) Mexico’s situation is deeply troubling, with violence spiking as the government promises action but fails to deliver (...) President Felipe Calderón Hinajosa has adopted some broad reforms— strengthening the office of the especial prosecutor for crimes against free expression, for one –but prosecutors are still failing to win convictions in a corruption–plagued legal system”(CPJ, 2010: 23). According to the Index, Mexico’s record at solving crimes has worsened for the third year running. Mexico currently has a rate of 0.121 solved cases of killings of journalists per million of population, and ranks 8<sup>th</sup> in the institution’s index.

According to the CNDH report, the continuing rise in aggressions has been matched by a poor performance on the part of justice officials resulting in low levels of crime prosecution which foster impunity: “From the year 2000 to date, the Program of the CNDH has become aware of 65 homicides of journalists, and of these only 10 have ended in convictions, that is, 15.62% of the cases. Also, since 2005 evidence has been documented of 12 journalists who have gone missing, and of 17 attacks on the media.” (CNDH, 2010:4)

The CNDH itself has described the situation in stark terms: “...in most cases federal and states authorities have failed to investigate the facts firmly and effectively and, due to this, material and intellectual authors have escaped justice. Apart from denying access to justice in practice, the above suggests that officials from the three branches of government have not contributed to the creation of adequate conditions to guarantee the exercise of journalism in any of its forms.” (CNDH, 2009: 20)

Now, we should note that in Mexico violence is not only directed against journalists. According to a report by CIDAC: “Over the last 15 years, Mexico has failed to tackle the most serious problems affecting citizen security and criminal justice: the absence of a comprehensive vision that focuses on prevention; lack of professionalization of police officers, prosecutors and justice officials; a criminal procedure lacking transparency and plagued by corruption and discretionary practices, as well as extremely high levels of impunity reaching 98.3% (the chances that a person who commits a crime in Mexico will be brought to justice are of 1.7%).” (CIDAC, 2009)

## 2. Independent Variable: Institutional Design

*“No country has that many specialized administrative departments for the protection of journalists and the defense of freedom of the press as Mexico. Nevertheless, the mutual neutralization of institutions explains to a large extent the failure of investigations and the perpetuation of impunity”.*  
(Reporters Without Borders, 2009: 1)

Reporters Without Borders is right to argue that there is in Mexico a wide array of institutions that were created to protect journalists or investigate attacks against them. However, as shown in our description of the general scenario, little progress has been made in reversing the dramatic situation faced by journalists, much less to eradicate entrenched impunity.

The Mexican State has adopted different strategies to deal with the critical situation of freedom of expression. The first strategy has been to create within the scope of the Ombudsman’s Office a Special Program for Journalists in 1991, which was later modified and became what is now the Program on Attacks Against Journalists and Civil Defenders of Human Rights at the Fifth Investigative Unit (Quinta Visitaduría General) of the National Human Rights Commission (CNDH) (A19-Cencos, 2007). Unfortunately, the CNDH is the only institution that we were unable to interview for this report.

In 2005, the Federal Attorney General’s Office (Procuraduría General de la República, PGR) issued a set of general guidelines to handle cases of violence against journalists.<sup>3</sup> Such guidelines were presented as a first strategy to coordinate investigations at different levels of the Mexican State, but up to that point a body with the capacity to deal with such issues exclusively had not yet been created. In 2006, the PGR created the Special Prosecutor for Crimes against Journalists (Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas, FEADP),<sup>4</sup> and gave an institutional dimension to the strategy adopted in the previous year.

In that same period, the Congress created the Special Committee to Monitor Aggressions to Journalists and the Media, composed of 6 deputies from the *Partido de Acción Nacional* (PAN), 4 from the *Partido de la Revolución Democrática* (PRD), 3 from the *Partido Revolucionario Institucional* (PRI) and 2 representatives of other parliamentary groups.<sup>5</sup>

These three organizations were complemented by the work of the Unit for the Promotion of Human Rights of the Ministry of Interior at the Executive Branch, which created a new space for reversing the country’s poor record on free expression: the recently inaugurated Committee to Protect Journalists.

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3. [http://www.ordenjuridico.gob.mx/Federal/PE/PGR/Acuerdos/29072005\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/PGR/Acuerdos/29072005(1).pdf)

4. [http://www.impunidad.com/upload/reformas/det\\_sp\\_2.pdf](http://www.impunidad.com/upload/reformas/det_sp_2.pdf)

5. [http://www3.diputados.gob.mx/camara/005\\_comunicacion/a\\_boletines/2006\\_2006/012\\_diciembre/18\\_18/0490\\_aprueban\\_crear\\_18\\_comisiones\\_especiales\\_y\\_7\\_comites\\_para\\_agilizar\\_el\\_trabajo\\_parlamentario](http://www3.diputados.gob.mx/camara/005_comunicacion/a_boletines/2006_2006/012_diciembre/18_18/0490_aprueban_crear_18_comisiones_especiales_y_7_comites_para_agilizar_el_trabajo_parlamentario)

These agencies and spaces for institutional coordination will be the focus of our analysis in this section, although we will concentrate on the Special Prosecutor's Office, as we believe that this has been the most important institutional response of the Mexican government to improve the conditions for the practice of journalism. We are aware that this assessment could be subject to change in future with the introduction of a new protection mechanism. However, based on the research conducted in 2011, this report examines the institutions operating at the time the field work was conducted.

## **2.1 FEADP-FEADLE**

The Special Prosecutor's Office for Crimes against Journalists (Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas, FEADP) was the first version of this institution which operates within the purview of the Federal Attorney General's Office. This body is tasked with coordinating Public Ministry actions for the prosecution of crimes which affect the exercise of journalism. Initially, the institutional mission of the Special Prosecutor's Office was restricted by its very name: to handle crimes against journalists, excluding any aggression committed against social communicators, media workers or media outlets themselves. Therefore, in 2009 the Special Prosecutor's Office name was changed –together with its mission- to its current version: Special Prosecutor's Office for Crimes against Freedom of Expression (Fiscalía Especial para la Atención de Delitos contra la Libertad de Expresión, FEADLE).

### *Context of Emergence*

In late February 2006, amidst violent attacks against the newspaper La Mañana, the FEADP was created as an agency attached to the Federal Attorney General's Office (A19-Cencos, 2007). According to A19 and Cencos, the creation of the FEADP was a reactive measure "...in response to repeated demands by the civil society rather than as a reaction to the notorious increase in cases of killings, threats or attacks involving journalists and media outlets" (A19-Cencos, 2007). The emergence of this institution is also recalled by the current Prosecutor: "The FEADP was created on February 15, 2006 and continued for 4 years. (...) The FEADP collected information and identified remains of the victims. Based on this, officials were able to establish the circumstances, causes, and the status of each of these homicides, and the scope of the problem was revealed. (...) The Special Prosecutor's Office started with a solid administrative structure, but with limited action. This caused significant social discontent, compounded by escalating violence and enhanced risks for journalism as a result of the war on drugs." (Interview with Salas Chavez, 2011)

### *Nature of the Law which Created the Agency*

The PGR, under the direction of Federal Attorney General Daniel Francisco Cabeza de Vaca Hernández, created in 2006 the FEADP through agreement A/031/06. This was a controversial decision from the outset: "...the only legal basis of the FEADP is this agreement and since it is not part of the organic structure of the PGR, its continued existence depends on the will of the Attorney General" (A19, 2009:34). In another report, A19 and CENCOS criticize the legal status of the Special Prosecutor's Office: "The FEADP, having been created by a "General Agreement" of the Federal Attorney General and being outside the organic structure of the PGR, is subject to unfettered



discretion regarding its continuity, as well as the appointment and removal of the special prosecutor.” (A19-CENCOS, 2010: 19)

The current Special Prosecutor does not agree with this opinion and argues that: “An administrative agreement has the same legal effects as a set of regulations, and the same permanent character. Regulations are adopted by the federal or local executive branch, and an agreement by the Attorney General may be amended at the discretion of the head of the institution in question. Legally speaking, the argument of fragility does not stand critical analysis. If an agreement complies with the provisions of the law which created it, then it fulfills the same requirements as any regulation. A myth began to form that the Special Prosecutor’s Office is useless. Many organizations repudiated the institution, and rightly so. There were plenty of unsolved problems. Ant that Special Prosecutor’s Office shrank. In the end the conditions were very precarious. So we conducted an institutional diagnosis. We found problems such as the inability to deliver, insufficient investigative activity by the federal authorities and technical issues (Interview with Salas Chavez, 2011).

#### *Position of the Office within the Organizational Chart*

Section 1 of the Agreement provides that the FEADP –and later on the FEADLE- is an office attached to the Assistant Attorney General’s Office for Human Rights, Assistance to Victims and Services to Community (Subprocuraduría de Derechos Humanos, Atención a Víctimas y Servicios a la Comunidad) of the PGR. According to a report by A19, this situation creates a certain degree of inflexibility for the Special Prosecutor’s Office: “The legal basis for the Office has administrative and political implications directly affecting its operation. As it arises from an Agreement signed by the Attorney General, the Office is subject to one of the administrative units or assistant attorney general’s offices established under the Regulations of the Organic Law of the Federal Attorney General’s Office (Reglamento de la Ley Orgánica de la Procuraduría General de la República, RLOPGR), issued by the President of the Republic. In this way, its margin of manoeuvre and independence are limited.” (A19, 2009: 10)

Besides the Special Office’s dependence on the PGR, during the interviews with local experts a question was raised concerning the independence of public prosecutors’ offices acting on matters other than this specific topic. A question that frequently comes up is whether the actions of the PGR could be limited due to influence by the Executive.

#### *Powers and Mandates*

Section 2 of the Agreement on the Establishment of the Special Prosecutor’s Office provides that such office “...shall direct, coordinate and supervise investigations and, where appropriate, the prosecution of crimes committed against national or foreign journalists within the national territory, and which were perpetrated in relation to the exercise of their profession”. Section 5 lists the circumstances in which the Special Prosecutor can intervene to shed light on an attack against a journalist: “For the Special Prosecutor’s Office for Crimes against Journalists to investigate acts possibly constituting a crime directed at journalists, certain elements are required:

- a. Demonstrate that the victim is a journalist;
- b. The crime must have been committed with the intent to curtail the exercise of the right to freedom of information or freedom of the press;
- c. The offence is a crime subject to federal or local jurisdiction, and in this case the actions should be related (*conexidad*);
- d. The offense should not be related to organized-crime (FEADP Report, 2009)

The Report by the FEADP (2009) claims that the Special Prosecutor's Office has devised several strategies to protect the physical integrity of journalists who report crimes. A speedy proceeding begins and a record of facts is made within 30 minutes. If the complaint was submitted in writing, the complainant is summoned within no more than 15 days; information is requested from internal and external departments and reminders are sent to accelerate the procedures. These requests are also followed up via phone to speed up administrative procedures.

The powers of the Special Prosecutor's Office have been repeatedly underscored: "... since its creation, it became clear that the Office has been granted limited investigative powers" (A19, 2010: 33). The report by A19 and CENCOS also notes this limitation: "The FEADP has the right name, but does not have the competence or human resources to deal with serious violations of freedom of expression such as murders, attacks and threats against journalists and the media. The impossibility of acting in crimes against journalists which are associated with organized crime (11%); the fact that the majority of cases are heard by local courts beyond the federal jurisdiction, and that so far the possibility of attracting the case has not been exercised" (A19-CENCOS, 2007: 20).

#### *Existence of "Rival" Organizations*

The same Agreement on the Establishment of the Special Prosecutor's Office shows the limitations of this Office compared to another agency which also operates within the PGR: the Assistant Attorney General's Office for Special Investigations on Organized Crime (Subprocuraduría para la Investigación Especializada en Delincuencia Organizada, SIEDO). The report by A19 and CENCOS notes that the intervention of the FEADP in cases falling under the jurisdiction of other departments of the PGR is very limited, acting only as a mere observer: "The FEADP, as implied by its name, is a "Special" Prosecutor's Office created under a specialized regime in order to ensure a more efficient investigation of this type of aggressions, but this feature has been irrelevant in practice. This is what happens when the Office declines to intervene in cases connected to organized crime. This position has restrained victim's access to justice and prevented the implementation of justice and protection mechanisms based on the right to freedom of expression." (A19-CENCOS, 2010: 19)

#### *Territorial Scope*

In its report, the FEADP (2009) details a series of coordination actions with the prosecutors' offices of the Mexican states and in Mexico City to advance in the adoption and implementation of Collaboration Agreements to coordinate the investigation of crimes that fall within the Office's institutional mission. However, the report published by A19 and Cencos notes the following: "The FEADP may only initiate an investigation



of crimes against journalists when there is a connection with a federal crime, as the initial investigations are conducted locally. Aggressions, killings and disappearances are crimes that should be investigated by the local courts.” (A19-Cencos, 2007:20)

In another report, A19 highlights the difficulties the Office faces at the federal level: “The Special Prosecutor’s Office is an institution of the federal government and therefore it is governed by federal rules and operates in the federal sphere. The Agreement on the Establishment of the Special Prosecutor’s Office sets forth clearly that the Office has authority over federal crimes. Most crimes against journalists, including threats, injuries, homicide and abuse of authority, are subject to local laws, and so they should be investigated and tried by local courts and not by the Special Prosecutor’s Office. The FEADP may only exercise its authority to attract investigations conducted by the local courts -a power granted to federal authorities under certain circumstances- when the connection between a local and a federal crime can be proved (related actions). In order to strengthen the authority of the FEADP to attract cases, this Office should be empowered to investigate crimes against freedom of expression without demonstrating first that there is a connection between the facts and a federal crime. In other words, the idea is to facilitate the investigation of cases by the Office without interference by the local courts. As most attacks against journalists come under the local courts and in many cases such crimes are allowed or committed by local authorities, access to justice is denied and the perpetrators become both judge in, and a party to, the proceedings.” (A19, 2009: 16)

The Prosecutor in charge acknowledges the difficulties of operating at the federal level but does not believe this is an obstacle, and speaks of co-responsibility in the resolution of crimes: “We receive all sorts of complaints and act upon them immediately. We ask that these people be heard regardless of whether they first went to the local courts. We are not duplicating, and I will tell you why. We begin an investigation. If we find that, first, there has been a crime and, second, that the victim was targeted because of his journalistic activities, then we assume that the public freedoms protected under international treaties and in the Constitution have been violated and that therefore we are dealing with a federal crime... (...) ...It is presumed that when the public freedoms recognized in the treaties and in the Constitution are abridged, the actions in questions should be investigated by the federal courts.” (Interview with Salas Chávez, 2011)

In our last section, we analyze the discussion concerning the federalization of crimes against the press,<sup>6</sup> which is intrinsically intertwined with the above limitations. We should note that the data collected suggests that a high percentage of these crimes are committed at the local level, which is why it is so important to overcome this obstacle and ensure the intervention of the Office.

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6. When the field work for this research was conducted, the federalization of crimes against the press had still not been debated at the Mexican Congress.

## *Organizational Capacity*

### *Budget*

The position of the Special Prosecutor's Office in the organizational chart means that the Office depends on the PGR to request and administer its resources. At the interview, Cárdenas (2011) told us that the Office is fully dependent on the PGR not only for budgetary administration but also for the appointment of personnel. In the Special Prosecutor's Office reports for 2008 and 2009 there is no budget information. And there is no information regarding the budget on the Office's website. The report by A19 and CENCOS indicates that the Special Prosecutor's Office received in 2006 a budget of MXN 135,900,000, and MXN 120,579,201 in 2007.

The FEADLE is not the only Mexican institution that lacked financial support at the time it was created. In 2001, the Mexican government created the Special Prosecutor's Office for Human Rights but did not set aside adequate financial resources for its work. Human Right Watch (2003) underscored in its report that investigators and prosecutors within the Special Prosecutor's Office operated without the material and human resources they needed, given the large number and the difficulty of the cases. This problem is aggravated by limited access to government documents and the lack of military cooperation. As with the creation of the FEADLE, the Special Prosecutor's Office for Human Rights was created in response to demands by civil society organizations.

### *Staff*

The Special Prosecutor describes the *staff* of the Office as "a small unit, of some 30 individuals. We believe there should be 90 people. I have given priority to young inexperienced people who, because of this, do not have any vices, and they work in collaboration with people from the sub 50, with 20 or 30 years of experience" (interview with Salas Chavez, 2011). During another interview, Cárdenas (2011) admitted that the Office staff is underqualified and apparently the unit has not conducted any training on freedom of expression to strengthen their specialized role. In a similar vein, the CNDH notes in its report: "In addition, public servants with a responsibility to pursue investigations of this nature should receive specialized and continuous training, and should be sensitized on the importance of their work." (CNDH, 2010)

### *Political distinctiveness/independence*

#### *Rules for the appointment /removal of officials/Duration of tenure*

Under section 3 of the Agreement on the Establishment of the Special Prosecutor's Office for Crimes against Journalists, the Special Prosecutor is appointed and removed by decision of the Federal Attorney General. The absence of a "political armor" undermines the Office's discretion to appoint officials: "...the Special Prosecutor's Office does not have its own procedures or criteria to designate and secure the tenure of the prosecutor, so the prosecutor's appointment and removal are subject to the discretion of the Attorney General." (A19, 2010: 34)

There is also no indication of the duration of the Special Prosecutor's mandate, and so he or she could be removed if the Attorney General -or someone above him or her-

so desires. This situation is confirmed by the current Special Prosecutor: “There is no specific duration for the mandate, I could leave right now or tomorrow. There is no security of tenure, these are administrative positions subject to the discretion of the Attorney General.” (Interview with Salas Chavez, 2011)

## **2.2 Special Committee to Monitor Aggressions to Journalists and the Media, Chamber of Deputies of the National Congress**

### *Context of Emergence and Nature of the Law which Created the Agency*

The Mexican Government’s response to this disturbing context of violence against social communicators was the creation of a Special Committee within the National Congress. Initially, the Chamber of Deputies took steps to create a Working Group, made up of a representative from each parliamentary constituency. This group was created in October 4, 2005 through a Sense of the House resolution to assess the progress achieved in the investigations on this topic.

However, in view of the rise in attacks against the press, on December 19, 2006 the Chamber of Deputies approved the creation of a Special Committee to look into this issue. Such Committee, consisting of 15 legislators, was officially established on December 21, 2006.

### *Powers and Mandates*

According to information on the Committee’s institutional website,<sup>7</sup> the goals of the parliamentary committee are:

- To legislate on freedom of expression, freedom of information and freedom of the press.
- o collaborate in the protection of freedom of expression and the right to information in Mexico.
- To help promote a favorable social environment for journalism in our country.
- To help build a culture of social responsibility in media outlets and by journalists.
- To assess the causes of attacks on journalists and the media.

The website does not specify the organizational capacities of the Committee. There is no information regarding its budget or staff, and only the composition of the committee is presented. During our interview with its president, we were able to confirm that the committee does not have a special budget and that, being a special committee, its resolutions are not as binding as those of ordinary committees. Similarly, Cárdenas stated at the interview: “The Committee is a special committee, created by the Legislature. But it does not have its own budget and has no power to legislate because it is a special committee, rather than an ordinary one. The deputies who are members of the committee may introduce proposals individually, but not on behalf of the committee.” (Interview with Cárdenas, 2011)

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7. <http://www.smartweb.com.mx/agresionesaperiodistas/plandetrabajo01.php>

**2.3 CNDH<sup>8</sup>**

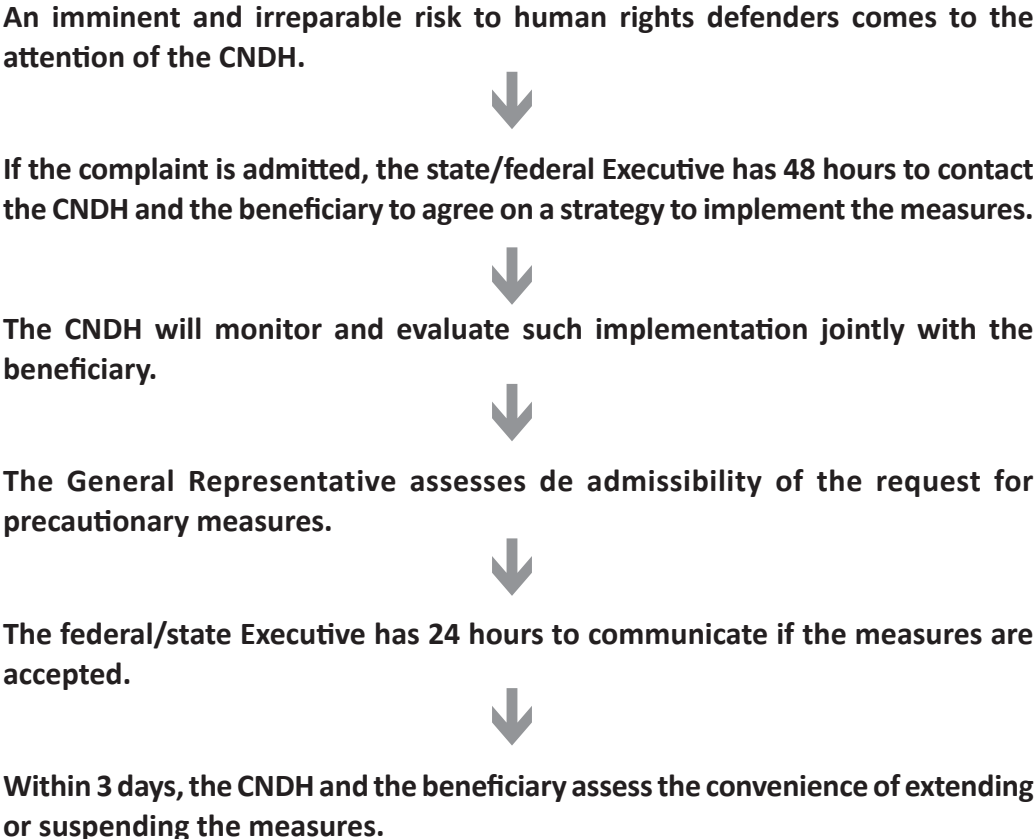
The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) is an autonomous public institution of the Mexican State with a mandate to protect, monitor and promote human rights recognized under Mexican law and international treaties. The institution has engaged in the promotion of mechanisms to prevent attacks on the press in Mexico through the Program on Attacks Against Journalists, created in 1991 as a Special Program of the CNDH and subsequently attached to the Fifth Investigative Unit (Quinta Visitaduría General) as a General Directorate in 2005.

*Powers and Mandates*

The Law on the National Human Rights Commission and its Internal Rules of Procedure regulate requests for precautionary measures and establish the principles of procedural immediacy, concentration and celerity.

“Article 40.- The General Representative for the Investigative Unit may request the competent authorities at any time to take such precautionary measures as may be necessary to prevent violations reported or any irreparable damage resulting from them, and seek to have such measures modified when the reasons that motivated them change. Such measures may have preventive or restorative effects, depending on the case.”

The procedure to request precautionary measures is as follows:



(CNDH, 2009)

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8. Despite our efforts to arrange an interview with the CNDH’s authorities, we received no response.

Annex III describes the main elements for implementing the precautionary measures recommended by the CNDH in the “Guide to Implement Precautionary Measures to the Benefit of Journalists and Communicators in Mexico”.

#### **2.4 Ministry of Interior, Unit for the Promotion and Defense of Human Rights**

Omeheira López Reyna, head of the Unit for the Promotion and Defense of Human Rights, explained during the interview that the division is an administrative entity tasked with coordinating the defense and promotion of human rights in public service at the federal and state levels. The division acts as liaison between the Executive branch and the legislature, federal authorities and social organizations.

##### *Context of Emergence*

López Reyna (2011) notes that the Unit was created during the government of President Fox as part of the constitutional amendment on human rights, and reports to the Undersecretariat for Legal Affairs and Human Rights of the Ministry of Interior.

##### *Powers and Mandates*

According to the internal regulations of the SEGOB, the Unit for the Promotion and Defense of Human Rights has the following powers:

- I. To promote, coordinate, guide and monitor work and activities of public departments and bodies of the Federal Administration to promote and defend human rights;
- II. To help the Minister of Interior coordinate the efforts by the departments and bodies of the Federal Administration to comply with the recommendations of the National Human Rights Commission;
- III. To create, administer and update the record with the recommendations issued by the National Human Rights Commission to the departments and entities of the Federal Administration;
- IV. Within the remit of the Ministry of Interior, to offer support in the promotion of human rights with competent local bodies;
- V. To act as liaison between the Ministry of Interior and civil organizations dedicated to promoting and defending human rights, as well as to handle and, where appropriate, transfer to competent authorities any requests made by such organizations, pursuant to applicable law;
- VI. Within the remit of the Ministry of Interior, to process the recommendations issued by international human right bodies whose procedures and decisions are recognized by the Mexican State;
- VII. Within the remit of the Ministry of Interior, to assist bodies and units that work to promote and defend human rights;
- VIII. To process measures aimed at securing full respect and observance, on the part of Federal Administration authorities, of judicial orders regarding individual guarantees and human rights, to coordinate requests for any precautionary or provisional measures to prevent human rights violations, and to implement such measures, provided that the measures are not within the remit of another Federal Administration department;

- IX. To be a member of the Internal Legal Committee of the Ministry of Interior, and
- X. Any other powers as may be established by the Secretariat, within its competence.”

#### *Existence of “Rival” Organizations*

A first difficulty encountered by the Unit is similar to that faced by FEADLE: operating in a federal country. The head of the Unit stated during the interview: “As a federal country, we have to respect the autonomy of states (...) We monitor all the recommendations by the CNDH as an autonomous body that is independent from federal authorities. We monitor compliance and coordinate the policy on human rights. The CNDH does not implement measures, but instead requests and recommends such implementation. It is a recommending body, which assumes a coordination, prevention and recommendation function when precautionary measures are requested. The FEADLE does have power to order precautionary measures and enforce them. And we can implement them even if nobody recommends them.” (Interview with Lopez Reyna, 2011)

Another relevant aspect that causes tensions with other organizations is the enforcement of precautionary measures at the state level, as the Unit only acts at the federal level: “such measures may have been requested by the CNDH or by some journalist. Then we immediately accepted them and decide whether to implement them directly with the affected party, and in this case we begin to discuss what kind of protection they need. This is also coordinated with state authorities. When the request reaches the PGR or the SEGOB, very often this is because they don’t trust the state for security. We make efforts to ensure that the measures are taken by local state authorities. If we see that they don’t want the state to provide the protection, we try to find alternatives to implement them through the federal system, using our security institutions.” (Interview with López Reyna, 2011).

Also in this regard, the head of the Unit says: “The SEGOB tries to coordinate the actions of states, and this relationship will never be terminated. There may be differences beyond party politics. You may or may not have to work with people from your own party. This has to do with the issue of competencies. The Federation has its own competence, and perhaps this is perceived as a lack of coordination, but these links have never been broken and a solution will always be found. In some very specific cases, clearly there will be disagreements as to jurisdiction. Although the Federation may want to bring a case within its jurisdiction, a local judge can tell you that you do not have jurisdiction. Sometimes, what seems to be unwillingness is actually an issue of legal order. It is in this respect that many of us still struggle to understand the matter of competencies.” (Interview with López Reyna, 2011)

Now, this situation takes place when the complaint or the request for protection is submitted by the journalist before a federal institution, and none of the above happens when such complaints or requests are filed with state authorities. It is also not clear which procedure is used by these bodies at the federal level to learn about the issue and keep track of it: “...this is the limitation on jurisdiction...”, explains López Reyna, “...Federal authorities cannot interfere with matters falling within the remit of prosecutors’ offices of the states”. This also invites us to reconsider the importance of the federalization of crimes against the press.



Another consequence of this is that a complaint may be filed with the FEADLE, the CNDH, the state or the SEGOB. The complainant has a menu of options or four different alternatives to resort to in case of an attack, and this may be perceived both as an advantage or an overlapping of functions: "...I think this creates more opportunities. Very often the journalist will not trust the PGR and resort instead to the SEGOB. Sometimes they feel that only the Prosecutor's Office or the state is not enough. There are more avenues for this type of protection." (Interview with López Reyna, 2011)

### *Budget*

The financial resources for the Unit are part of the SEGOB's budget, which is approved by the National Congress: "The Unit has special items in the budget. There is an appropriation of 25 million Pesos to address the issue of anti-press violence, but such funds may only be used for precautionary measures" (interview with López Reyna, 2011). In a similar vein, Cárdenas contends that: "The mandate of the Unit is too limited, and it does not have a budget to implement the precautionary measures granted by the Inter-American System or the CNDH. It's purely a matter of coordination." (Interview with Cardenas, 2011).

## **2.5 Committee to Protect Journalists**

### *Context of Emergence*

In February 2010, representatives of the United Nations Office of the High Commissioner for Human Rights in Mexico, the Ministry of Interior and the CNDH met to discuss the most important guidelines for designing a mechanism to protect journalists that is centralized, effective, fast, flexible, reliable and with an immediate ability to respond and adapt (CNDH, 2010). Two spaces for inter-agency coordination emerged from this context: an Agreement for the Protection of Human Rights and an Agreement for the Protection of Journalists. The latter created a Protection Committee, "...an inter-agency coordination mechanism to provide greater protection and prevention to journalists. It is a space for dialogue and conversation, where civil society organizations or representatives of professional associations can present cases." (Interview with López Reina, 2011)

Cárdenas says about the Committee: "...it is focused on preventing more serious attacks, based on the Colombian experience. The idea is to develop hard as well as soft protection mechanisms for at-risk journalists; to assess the risk, adopt a protocol and establish if there is a real threat. We apply this mechanism given the State's lack of responsiveness in the implementation of precautionary measures. For instance, we have created a contingency fund for journalists whose security is at risk, we document the case, establish if there is a link between the offense and the practice of journalism, and assess the risk to decide on a course of action" (interview with Cárdenas, 2011). Please note that here "we" refers to the activities conducted by civil society organizations to protect journalists whose work has put them in danger.

### *Nature of the Law which Created this Space*

On July 7, 2011, an agreement was executed which established the foundation for a mechanism to protect human rights defenders. The mechanism depends on the

coordinated actions of the SEGOB, the departments and entities of the Federal Administration (Dependencias y Entidades de la Administración Pública Federal) and the PGR, with human rights entities and the governments of the Mexican states.

This section will focus on an agreement signed by journalists, which is also an inter-agency agreement for dealing with journalists and media outlets under the framework of the General Law of the National Public Security System (Ley General del Sistema Nacional de Seguridad Pública) with participation from the SEGOB, the Ministry of Public Security, the Ministry of Foreign Affairs and the PGR. It is based on the inter-agency and inter-governmental cooperation, collaboration and joint responsibility of federal and state Public Security authorities to ensure the efficacy, convenience and unity of their actions (CENCOS, 2011).

The Committee is made up of:

“I. A representative appointed by each of the officials in charge of the Ministries that are party to this agreement and the ‘PGR’. Such representative shall be at least a Deputy Minister (*Subsecretario*) or its equivalent, and may appoint an alternate who, at a minimum, shall hold the position of General Director or equivalent;

II. Representatives of the state governments which adhere to this Agreement. Such representatives shall be at least a Minister or equivalent, and may appoint an alternate who, at a minimum, shall hold the position of Deputy Minister or equivalent;

III. A representative of the ‘CNDH’, appointed by the head of this institution or, where appropriate, the General Representative (Visitador General) for the relevant Investigative Unit, and

IV. Three representatives of the professional association of journalists, who shall be invited to participate under the terms established in the Operational Guidelines for Functioning of the Committee (Lineamientos de Operación y Funcionamiento del Comité) as permanent guests.

(...) A representative from the Office of the High Commissioner for Human Rights and another from the United Nations Office of Drugs and Crime may be invited to participate under the terms established in the Guidelines for the Operation and Functioning of the Committee.”

The agreement sets forth the specific powers and activities for each of the participating agencies:

“I. The Ministry of Interior (“SEGOB”) shall coordinate and monitor activities for the promotion and defense of human rights conducted by the departments and entities of the Federal Administration, in particular regarding freedom of expression, and shall take such measures as may be necessary to ensure that they are carried out;

II. The Ministry of Public Security (“SSP”) and the governments of the Mexican states, acting within their competences, shall take such security measures as may be necessary to ensure the safety of those who practice journalism;

III. The Ministry of Foreign Affairs (“SRE”) shall act as liaison between the Mexican State and international human rights bodies to follow up on their recommendations and measures for the protection of journalists;



IV. The “PGR” and the Governments of the Mexican states shall investigate and prosecute the crimes which occur in their jurisdiction, and the PGR may also acquire jurisdiction of cases involving attacks against the press that can be attracted to its jurisdiction by virtue of the applicable legal rules. The PGR and the Governments of the Mexican states shall also take such measures as may be necessary to ensure the safety of journalists when so required by the state or local Public Ministry, and

V. The “CNDH” shall implement the Guide to Implement Precautionary Measures to the Benefit of Journalists and Communicators in Mexico.

In addition to the above powers of each body, the committee has the following functions: “I. To issue a set of Guidelines for the Operation and Functioning of the Committee defining at least:

a. The activities to be conducted by each Committee member, as well as the rules for inviting representatives from the professional association of journalists;  
b. The criteria for adopting, implementing, preserving, modifying or terminating preventive and protective measures in favor of journalists, and  
c. The mechanisms to adequately use and preserve any items furnished as a personal protection measure;

II. To examine, propose and, where appropriate, define institutional actions to coordinate the enforcement of preventive and protective measures, as well as their scope and extent when such aspects have not been established, and to maintain or cancel those measures as requested by the authorities with power to receive complaints or issue recommendations, based on the recommendations referred by the Subcommittee on Evaluation, without prejudice to any instructions from the Public Ministry;

III. To facilitate coordination among competent authorities at the federal and local level for implementing the preventive and protective measures through the Committee’s Technical Secretariat;

IV. To gather, by any means, supplementary information to assess the situation of the requesting party;

V. To monitor the preventive and protective measures being implemented and pending implementation;

VI. To propose and, where appropriate, order the termination of preventive and protective measures;

VII. To transfer to the Subcommittee on Evaluation all requests for preventive and protective measures through the Technical Secretariat.”

The Subcommittee, made up of civil society organizations which assist the mechanism to protect journalists, has the following functions:

- to diagnose risks
- to request information on the monitoring of precautionary measures that have been enforced
- to verify if the reasons that justified the issuance of protective measures continue to exist
- to respond to any questions raised by the Committee

As this sphere was in formation when the field work was conducted, we are unable to provide further details as to its organizational capabilities and political differentiation.

### **3. Dependent Variable: Agency Performance**

*“...it is unacceptable that justice authorities should fail to conduct thorough and effective investigations into attacks targeting communication professional, or that as a result of such negligence the material and intellectual authors of such crimes should not be held accountable, which would be particularly troubling considering that this contributes to a climate of institutionalized impunity” (CNDH, 2010)*

#### *About the Outcomes*

In the section dedicated to the Mexican political-institutional system and the situation of freedom of expression, we have commented on the increase in anti-press crimes in spite of institutional efforts to reverse this trend. As we noted early in this report, a crucial aspect to review the performance of this agency are the statistics prepared by the bodies responsible for implementing policies to protect journalists and for investigating crimes against the press. However, as we mentioned, public information on the level of aggressions is scarce. According to the report published by A19: “The FEADP’s report for 2009 contains confusing figures and it is nearly impossible to assess the performance of the Special Prosecutor’s Office on a yearly basis, as the reports include information from 2006, when it was created, to 2009” (A19, 2010: 25). The CNDH also notes in this regard: “On the other hand, the reports published by the Special Prosecutor’s Office can be misleading and are meant for dissemination and promotion rather than for accountability. For instance, the reports contain the totality of cases registered in the country, the majority of which are not handled by this Office. And although it is possible to identify the allocation of cases among the different departments of the Federal Attorney General’s Office, there is no detailed breakdown of the Office’s outcomes” (CNDH, 2010). Not only the Special Prosecutor’s Office has struggled to produce statistics on aggressions; the statistics disclosed by CNDH are based on the complaints received by this institution; the parliamentary Committee claims to have consolidated a database for several states, but the information is not available on its website; and the SEGOB allegedly has a good quality database, but its statistics cannot be accessed online.

The previous section addressed the institutional design limitations affecting the Special Prosecutor’s Office: a narrow legal framework, resulting from an agreement rather than a comprehensive law; administrative dependence on the PGR due to its position in the organizational chart; limited jurisdictional powers; the requirement to confirm that the attack was perpetrated in relation to the practice of journalism and is not associated with organized crime (according to the report by A19: “...of a total of 13 cases reported during 2009 by the PGR as homicides and illegal deprivations of liberty, the FEADP claims that none of them falls within its jurisdiction”); limited political distinctiveness due to the absence of specific criteria for the appointment and removal of authorities;

budgetary restraints and underqualified staff. According to the CNDH: “This response by the State, however, has been insufficient to solve the problem considering that the Special Prosecutor’s Office has several limitations that result from its legal structure, as it can investigate crimes at the local level only when there is a connection to federal crimes, which takes on added significance as the majority of attacks occur in the territory of the Mexican states. On the other hand, the Special Prosecutor’s Office has only limited powers to investigate matters where the participation of organized crime can be presumed.” (CNDH, 2010)

However, according to a thorough analysis by the CNDH, independently of the above limitations concerning its institutional design, the Special Prosecutor’s Office has had a poor performance and “...there have been shortcomings in the investigations. The National Human Rights Commission found that the Special Prosecutor’s Office has rejected cases without having exhausted all investigative leads for establishing if a crime has been committed. In addition, its discretionary power to claim jurisdiction over cases should be regulated to define its scope more clearly. The absence of well-defined criteria favors the selection of certain cases and causes delays on other investigations, and as a result the Office has no authority to initiate investigations on a high percentage of the cases that come to its attention. Also, it does not immediately take over cases within the jurisdiction of local courts that are related to federal crimes (*conexidad*)” (CNDH, 2010).

Reporters Without Borders has included similar allegations concerning the administration of this Office in its report: “The Office has sent the cases to the archives or, even worse, it has systematically discarded the professional motive when a journalist is attacked. All individuals, departments and organizations interviewed during our mission spoke harshly of the FEADP. (...) Reporters Without Borders does not intend to stir up controversy but the opinion of the detractors has confirmed that the Special Prosecutor’s Office has not been useful in an increasingly disturbing scenario...” (Reporters Without Borders, 2009: 9).

In this context, civil society organizations have been highly critical of the Special Prosecutor’s Office, especially immediately after its creation: “...until now, the Office has managed to avoid justifying its existence without making any difference in the fight against this problem” (A19, 2010: 33). The report is packed with criticism, especially regarding the resources that are allocated to the Office compared to its achievements: “In short, if during 2009 the work of the FEADP boiled down to handling a minimum number of cases, and the Office is not in charge of the investigation and prosecution of the most serious human rights violations against journalists, such as killings and disappearances, then how are most of the resources spent? What are the specific results of these resources? In terms of effectiveness, if the purpose of the FEADP is to investigate and prosecute anti-press crimes, the number of indictments for 2009 had a cost of 1,402,450 Pesos. If we take into account that the Special Prosecutor’s Office claims to have followed up on 235 cases at the federal level and 145 cases at the local level, and that it has prepared 31,621 informative press analysis and looked into 42 matters, most of which did not end in legal actions or

complaints, then the Office is failing to fulfill its mandate and has focused instead on monitoring attacks against those who practice journalism, which certainly won't help, let alone solve the problem " (A19, 2010: 36). Similarly, the CNDH calls into question the effectiveness of the Special Prosecutor's Office: "Clearly, taking into consideration the data from its last report, which covers the period from February 2006 to November 2008, the Office has pressed criminal charges in only 3 cases —an average of one criminal case per year. Based on these results, we can conclude that its actions have not impacted significantly on the fight against impunity for attacks against journalists and media outlets, either as a result of its limited powers or of its flawed investigations" (CNDH, 2010). Also the investigation of Reporters Without Borders agrees that: "Other than handling cases (...) the FEADP only asserted its jurisdiction over 88 of the 274 cases that were reported to this institution since it was created in 2006 and until 2008. And the office only pursued criminal actions in three of those cases. (...) The FEADP has no authority to act when a case is related to organized crime, and then the case would be referred to the SIEDO." (Reporters Without Borders, 2009: 10)

Not only the performance of the FEADLE has raised concerns, but also the work of other agencies has not been particularly fruitful.<sup>9</sup> According to the CNDH: "...in most cases federal and states authorities have failed to investigate the facts firmly and effectively and, due to this, material and intellectual authors have escaped justice. Apart from denying access to justice in practice, the above suggests that officials from the three branches of government have not contributed to the creation of adequate conditions to guarantee the exercise of journalism in any of its forms." (CNDH, 2009: 20)

The Program on Attacks Against Journalists and Civil Defenders of Human Rights at the CNDH reflects on the actions of this agency. The CNDH claims to have received 492 complaints that led to requests for information being submitted to the authorities tasked with investigating those crimes, and follow up actions were taken with regard to a criminal complaint filed with the Public Ministry. In addition to those information requests, the institution notes that: "...other actions were taken, including field work and direct consultations regarding investigations or administrative files; where the authorities failed to respond, newspaper articles were compiled about the case and, in general, about attacks against journalists, public safety and impunity, prosecution and administration of justice" (CNDH, 2009). The CNDH also issued 51 recommendations aimed at redressing human rights violations and punishing those responsible. However, according to the report prepared by A19 and CENCOS, since 2000 until the date of the report the program has issued only one general recommendation on the subject. It is worth remembering that recommendations are non-binding, but help increase the visibility of the problems.

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9. The only space that has not been considered is the Protection Committee, as at this writing the institution had only recently been created.

Another issue related to the work of the CNDH has to do with the nature of its recommendations and the implementation of the precautionary measures it suggests: “Slack implementation by the Mexican State of the precautionary measures requested by the IACHR and the CNDH fails to address the seriousness and urgency of the reasons behind them, and this has resulted in inadequate protection of beneficiaries and has increased their vulnerability. Such has been the case with the enforcement of precautionary measures MC-192-09 issued by the IACHR, which the State failed to implement under the pretext of financial restraints, among other reasons. The absence of a specific budgetary allocation as well as of clear, efficient and effective mechanisms to comply with all international commitments, in particular those aimed at safeguarding the integrity of individuals, is a direct violation of international human rights commitments.” (A19-CENCOS, 2010: 23)

Cárdenas added during the interview: “The CNDH is empowered to grant precautionary measures, but even when those measures were issued promptly, their implementation has been absolutely ineffective. The duty to comply with the recommendations rests with the relevant institutions (...) and the recommendations are few, specific and for general as well as particular cases. The problem with the CNDH is that it does not have a specific mechanism to monitor the recommendations, and thus they can fail through.” (Interview with Cárdenas, 2011)

#### *About Inter-Agency and Intra-Government Coordination*

Far from creating synergies, the complex institutional landscape of organizations with a similar mandate seems to have yielded negative results. In the report prepared by A19 and CENCOS, the Director of the Program on Attacks Against Journalists and Civil Defenders of Human Rights claimed that the relationship with the FEADP was not easy, as they were reluctant to provide information. At the interview, Cárdenas noted: “There is no coordination, it’s nothing but a simulation. All mandates and structures have been insufficient and can only mitigate the problem. The Prosecutor’s Office can be called to account for its actions by the Commission, but at informal meetings only. Not at plenary meetings.” (Interview with Cárdenas, 2011)

With regard to coordination with the states, Cárdenas said (2011): “actions are not regularly coordinated, there is no agenda of meetings (...) Governors meet more or less periodically to discuss matters unrelated to anti-press violence, and of a more political nature. The FEADLE supposedly has authority to request information from local prosecutors’ offices about cases, but if these offices refuse to provide the information, there is nothing the FEADLE can do, there is no obligation”.

Coordination problems affect also basic functions. When a journalist is threatened, the organizations responsible for providing protection are supposed to take action, but also fact-finding bodies should initiate an investigation. Although most stakeholders agree that prevention and investigation go hand in hand –if the circumstances of crimes remain unclear it is unlikely that violence against this sector will be tackled-, the priority today is to save lives. In view of alarming and disappointing impunity rates of 98%, social organizations have tried to safeguard the most precious value: life.



Coordination problems pose specific difficulties for case resolution. This is shown in the cases surveyed in the report by Reporters Without Borders (2009), documenting among other cases the disappearance of two journalists from the Michoacán state in 2008. The approach to the case, the wording of the arguments and the difficulty in establishing jurisdiction evidence the weaknesses of the current institutional design: “Very soon, families feel that the complex landscape of legal institutions will leave them in a Catch 22. The Michoacán Governor Leonel Godoy (of the PRD) admits being in dire straits: the time for the investigation was sufficient in both cases. Family members, colleagues and neighbors were interrogated. Cars were searched and fingerprints were collected. Under the Mexican law, the federal authority has power to take over cases that are pending before other courts. In such case, communication with the state in question deteriorates very quickly. The problem with these two cases is also a matter of definition. These cases could be disappearances, and in that case the state courts would not have jurisdiction, or they might as well be kidnappings associated with drug-trafficking, and then the federal authorities will have jurisdiction.” (Reporters Without Borders, 2009: 2).

In an insightful article, Mariclaire Acosta (2010) associates impunity with an authoritarian tradition that still remains in spite of the political alternation established in 2000. According to Acosta, the political system created in 1910 developed a pro-corporate machinery that was secretive, centralized, arbitrary and monocratic: “...the informal power arrangements, complicities and coercive capacities of the ancient regime were not replaced by the rules and mechanisms of democratic governance” (Acosta, 2010: 625). In this context, measures taken to cope with disturbingly high levels of human rights violations have come halfway, such as the creation of the Special Prosecutor’s Office: “...it was initially well funded, but with time it became evident that it lacked the proper tools, the legitimacy and the independence to produce convincing results...(…)... the inability of the justice system to investigate and punish these crimes is disturbing. Impunity for violent crimes is chronic, reaching more than 98% according to reliable estimates.” (Acosta, 2010: 627)

A debate associated with inter-agency coordination is the concerted actions of the different levels of government involved in a federal political system. We have described in the previous sections the challenges faced by the FEADLE in the states, where it deals with rival organizations, such as state prosecutors’ offices. This challenge has led civil society organizations to advocate for the federalization of crimes,<sup>10</sup> in other words, to recognize anti-press crimes a legal status that would permit central authorities to take over those cases exclusively: “The need for federalization can be seen, for example, in the statistics of the FEADP, indicating that of 13 cases of homicides and illegal deprivations of liberty reported during 2009, 9 fall under the exclusive jurisdiction of the local courts. Also, according to the 2009 report by ARTICLE 19 and Cencos, of the 160 attacks

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10. At the time the final review of this report was completed, we learned that a legal reform is under way to change this. It remains to be seen how the new institutional design will adjust to the new legal framework.

allegedly committed by public officials, 71.87% were perpetrated by officials of the Mexican states and municipalities” (A19-CENCOS, 2010: 18). At the interview, Cárdenas said compellingly: “We have advocated federalization for various reasons. Our records indicate that more than 75% of cases of aggressions against journalists are committed by state authorities. And state authorities are not going to investigate. These cases go unpunished. Investigations don’t even go beyond the evidence produced by family members.” (Interview with Cárdenas, 2011)

The head of the Unit for the Promotion of Human Rights agrees with Cárdenas’ opinion and notes with regard to the Executive’s initiative: “Federalization could mark an important step forward. There is a bill in Congress introduced by President Calderón two years ago” (interview with Lopez Reyna, 2011). Also de CNDH has claimed in this respect: “...the Federal Attorney General’s Office should take effective measures to transform the Special Prosecutor’s Office and press forward with reforms of its legal framework so that all serious crimes against journalists fall under the purview of the Special Prosecutor’s Office for Crimes against Journalists, irrespective of where they were committed. Federal jurisdiction over such cases would prevent an overlap of competencies with local authorities, and so the PGR should also promote urgent approval of legal reforms to make attacks against freedom of expression a criminal offense.” (CNDH, 2010)

The only dissenting voice comes from the Prosecutor: “Yes, we should adopt some sort of mechanism regarding jurisdiction. I would suggest a system of concurrent jurisdiction rather than exclusive federal jurisdiction. Local and federal authorities being co-responsible for handling such cases. (Interview with Salas Chavez, 2011)

What is unclear about the efforts to federalize crimes against freedom of expression is the institutional design that would come with this reform. Advocates of the reform claim that the federalization of these offenses would place them under the jurisdiction of the FEADLE, although this would not end issues of jurisdiction with the SIEDO.

#### *About Organizational Capacities*

Other problems mentioned in the reports are insufficient resources to effectively protect journalists. About this, López Reyna says: “I think we need to sensitize people about the seriousness of this issue. There has been progress in the area of freedom of expression over the last 10 years. There was some degree of post-transition openness. (...) I think that absent a public policy and a congressional strategy to secure sufficient funds, and because there is no specific political or party approach on the subject, there is a lot of backwardness and insensitiveness. This has required greater efforts on our part. The Federal Government sees this as one of its priorities. The Congress has created a Special Committee, and this has been our starting point.” (Interview with López Reyna, 2011)

Another concern identified by López Reyna is the degree of specificity of the budgetary appropriation initially meant for journalists, when according to the head of the Unit for the Promotion of Human Rights, only a minority of beneficiaries are actually journalists. Therefore: “We want Congress to amend this, so that we can open the budget and use

the same resources that we use now, but allocate more funds to other items. That is what I am now asking for in Congress... that they amend the purpose of the appropriation. For the next budget, I am asking them to open the item on precautionary measures. (...) We created the mechanism to protect journalists as an immediate public policy, but we need a protection mechanism that encompasses everyone, and that it's not about precautionary measures. I believe this is the direction we should be heading in. Ideally, we would not need to protect anyone." (Interview with López Reina, 2011).

Perhaps the budget is not to blame for the meager results, but the fact that political bodies fail to address most actors' claims about insufficient resources for developing protection and investigation policies is eye-catching. The government claims that the authorities are firmly committed to remedying the serious situation of freedom of expression, but the discourse is not reflected on specific budget appropriations to develop activities that can put an end to attacks against the press.

The poor performance of the agencies that were created to protect journalists and investigate crimes against the press has resulted in impunity of crimes against journalists: "Of the 108 cases that were handled during its 4 years of work, it has pressed charges in only 4; in other words, the rate of effectiveness is 3.7 %, and in 59% of the cases it has declared that it was incompetent to investigate or has sent the case to the archive." (A19-CENCOS, 2010: 17) This is an interesting piece of information, particularly if we consider that, according to the CIDAC, the crime clearance rate in Mexico is 2%, and the establishment of institutions designed to eliminate threats on freedom of expression has nearly doubled such rate, reaching a still disturbing 3.7%. This is perhaps the scenario described by the Special Prosecutor: "We have made progress little by little, and in most states we have not encountered any problems. We issued 32 precautionary measures and, to tell you the truth, there were no repeat attacks or more serious threats than those already suffered by the victims." (Interview with Salas Chavez, 2011)

## 4. Conclusions

The report has found that attacks against the press have increased despite institutional efforts to reverse the situation. With regard to the landscape of agencies created to root out this problem, the poor quality of public information, especially in a country like Mexico that has pioneered reforms on access to public information, is a worrying sign.

The previous section addressed the institutional design limitations affecting the Special Prosecutor's Office: a narrow legal framework, resulting from an agreement rather than a comprehensive law; administrative dependence on the PGR due to its position in the organizational chart; limited jurisdictional powers;<sup>11</sup> the requirement to confirm that the attack was perpetrated in relation to the practice of journalism and is not

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11. This aspect should be addressed in light of recent efforts to federalize crimes against the press.



associated with organized crime, limited political distinctiveness due to the absence of specific criteria for the appointment and removal of authorities; and budgetary restraints and underqualified staff. However, according to a thorough analysis by the CNDH and the information contained in other documents, independently of the above limitations concerning its institutional design, the Special Prosecutor's Office has had a poor performance.

But not only the performance of the FEADLE has raised concerns. The work of other agencies has not been particularly fruitful and, far from creating synergies, inter-agency coordination seems to have yielded negative results. The relationship between the various levels of government is no less problematic, and this undermines the organizational capacity of the entities under analysis to fulfill their institutional mandates.

As we noted earlier, the poor performance of the agencies that were created to protect journalists and investigate crimes against the press has resulted in impunity of crimes against journalists: "Of the 108 cases that were handled during its 4 years of work, it has pressed charges in only 4; in other words, the rate of effectiveness is 3.7 %, and in 59% of the cases it has declared that it was incompetent to investigate or has sent the case to the archive." (A19-CENCOS, 2010: 17) If the report by A19-CENCOS (2010) is right in that the rate of effectiveness is 3.7%, it is revealing to compare this figure with the CIDAC's indicator, which suggests that the crime clearance rate in Mexico is 2%. A comparison of these two indicators shows that the establishment of institutions designed to eliminate threats on freedom of expression has nearly doubled crime clearance rates, reaching a still disturbing 3.7%.

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# **Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes against the Press: the Colombian Case**

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## **Introduction**

The selection of the Colombian case responds to serious concerns regarding the situation of freedom of expression in the country. As explained in this report and according to the CPJ, Colombia has made some progress regarding the situation of journalism, although several practices threaten the free and safe exercise of freedom of expression. Coincidentally, to deal with this scenario, Colombia has implemented a Protection Program that is seen as a benchmark in the region among similar institutions created to protect the press. What results have been achieved? What has been the response from the institutions that were established?

For analytical purposes, this report includes the following sections: the first section describes the political and institutional system in which this program operates and the violence that journalists must currently endure in the country; the second section presents a program created to protect journalists and social communicators and to investigate crimes against the press; the third section examines the results obtained by the agencies under analysis; and the last section discusses the main findings of our research. The field work for this report was conducted during the first half of 2011 and therefore any changes to programs and mechanisms implemented after that period have not been reviewed.

## **1. Description of the Political-Institutional System and the Situation of Freedom of Expression in Colombia**

Colombia is “a unitary, decentralized Republic, with autonomous territorial departments, that is democratic, participatory, and pluralist, based on the respect for human dignity, work, and the solidarity of its people and the prevalence of the general interest”<sup>12</sup> (OAS, 2003:1). The Colombian State has an Executive Branch, a Legislative Branch and a Judiciary.

The head of the Executive Branch is the President of the Republic (Head of State and Government, and highest administrative authority), whereas the National Administration is made up of the President of the Republic, the cabinet ministers and the directors

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12. The document can be found in: [http://www.oas.org/juridico/english/mec\\_rep\\_col.pdf](http://www.oas.org/juridico/english/mec_rep_col.pdf)

of the administrative departments. As a unitary system, “[o]ther components of the executive branch include governors’ and mayors’ offices, superintendencies, public institutions, and government industrial or commercial enterprises.”

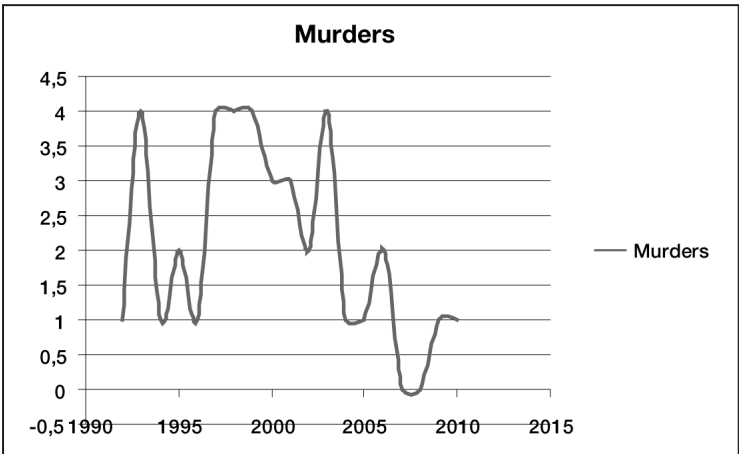
The legislative power rests with the Congress of the Republic, a bicameral parliament made up of the Senate and the House of Representatives, responsible for “amending the Constitution, enacting laws and exercising political checks on the government and administration.”

The administration of justice has been entrusted to several bodies: the Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judicature, the Attorney General’s Office, the courts, the judges, the military criminal justice system and, in some cases, the Congress of the Republic.

*Context for the Exercise of Freedom of Expression*

The last issue of the CPJ’s Impunity Index identified some progress at the local level for the practice of journalism, but it also raised concerns of continued practices that threaten the free and safe exercise of freedom of expression: “Historically one of the most murderous places in the world for journalists, Colombia has earned its very poor ranking on the index. But the country showed its fourth consecutive year of improvement as deadly anti-press violence has slowed and authorities have had some success in prosecuting journalist murders. Much work remains: Eleven journalist murders over the past decade remain unsolved. (...) Colombian journalists, particularly in provincial areas, say they still work under extreme duress and often practice self-censorship”<sup>13</sup> (CPJ, 2011). In this most recent measurement, Colombia obtained a score of 0.241, representing 0.241 killings of journalists solved by million inhabitants.

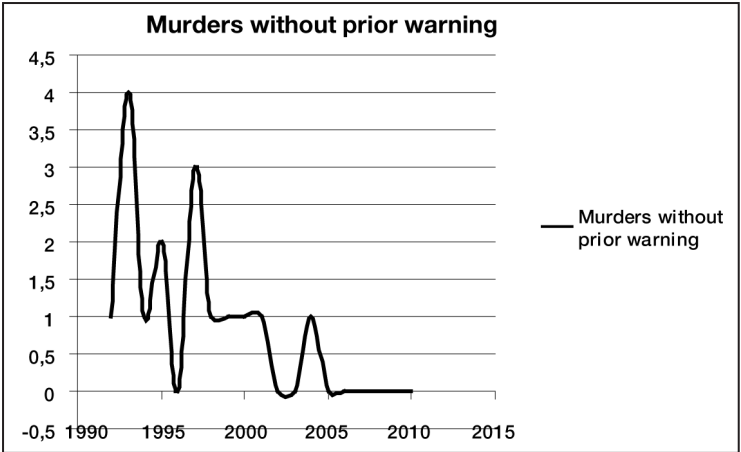
If we take into account the research conducted by the CPJ, the evolution of attacks against journalists is encouraging:



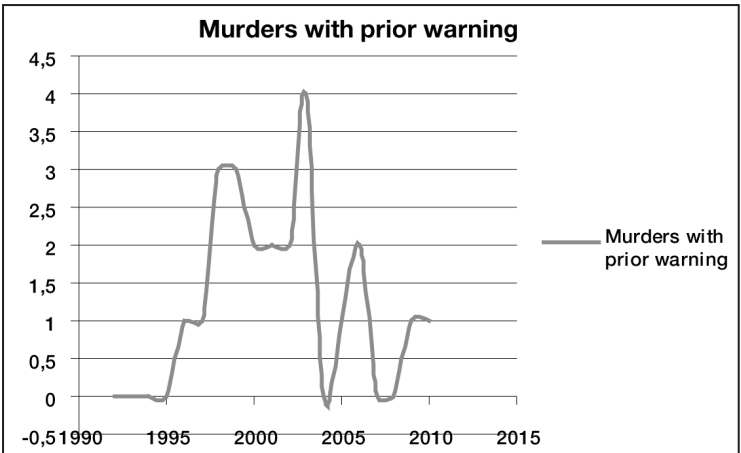
Prepared by the author based on information from the CPJ’s website.

13. The document is available at the website: <https://cpj.org/reports/2011/06/2011-impunity-index-getting-away-murder.php>

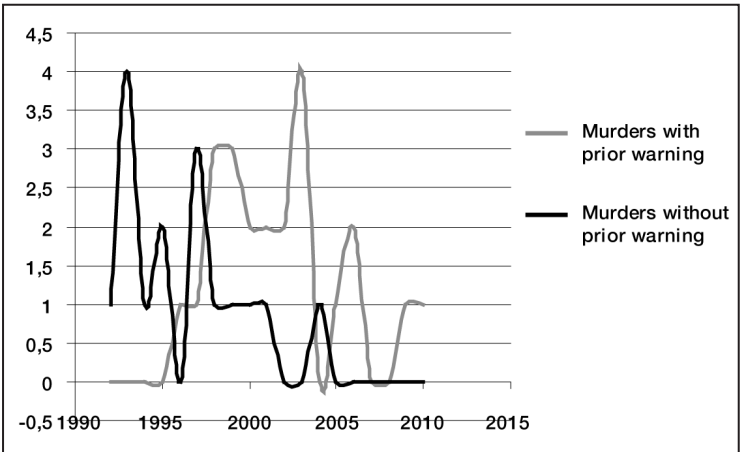
As shown in the chart, by 2000 there was a spike in the number of attacks that accounts for the emergence of the Program for the Protection of Journalists, discussed below. Then, in 2003 there was another spurt of attacks and, from then on, the number of murders dropped sharply. Now, in terms of the circumstances of those killings, a significant change can be seen: before the program was created, killings were committed almost exclusively without any previous warning. This trend was later reversed and we find that killings are carried out after a period of threats.



Prepared by the author based on information from the CPJ

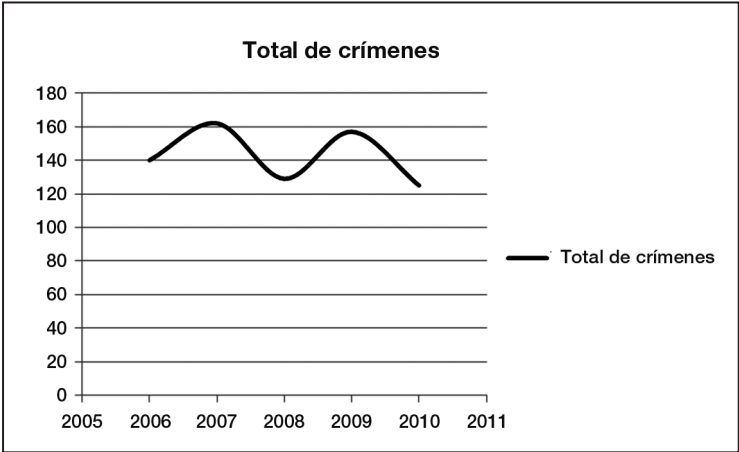


Prepared by the author based on information from the CPJ



Prepared by the author based on information from the CPJ

The killing of journalists is not the only type of violence that can be inflicted to curtail freedom of expression. The Foundation for Freedom of the Press (Fundación para la Libertad de Prensa, FLIP) has documented attacks against the press and posts on its website information from 2006 onwards:



The FLIP has reported on impunity in Colombia: “The FLIP has monitored proceedings related to journalists killed since 1977, and recorded 138 homicides of journalists, cameramen or communicators by reason of their profession. Judicial proceedings have been characterized by the slow pace of investigations and the unwillingness to solve crimes, as well as by an absence of data and coordination to offer this information on the part of judicial authorities. Out of the 138 cases of attacks against individuals related to their journalistic activities that were identified, in 14 cases more than one judicial proceeding or investigation has been commenced, as there is more than one person involved in the crime.”<sup>14</sup> (FLIP, 2010:47)

## 2. Independent Variable: Institutional Design

### 2.1 Program for the Protection of Journalists and Social Communicators. Ministry of Interior and Justice

*“The authorities of the Republic are appointed to protect the life, honor, property, beliefs, and other rights and freedoms of residents of Colombia...”*  
Political Constitution, Article 2

Pursuant to this general mandate, the protection of individuals living in the Colombian territory has been entrusted to institutions such as the Colombian National Police, the Armed Forces, the National Penitentiary and Jail Institute (Instituto Nacional Penitenciario

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14. This document can be found at [http://flip.org.co/alert\\_display/0/1851.html](http://flip.org.co/alert_display/0/1851.html)

y Carcelario, INPEC) and the Intelligence Office (Departamento Administrativo de Seguridad, DAS) (Procuraduría-Libreros, 2008:8). Within the political-institutional structure of the government, the Ministry of Interior must “ensure the exercise and respect of the fundamental rights, freedoms and guarantees of all inhabitants of the Colombian territory” (Law No. 199/95). In view of the dramatic prevalence of violence, this law mandated the Ministry of Interior to create “...a Special Administrative Unit reporting to the Ministry of Interior, to undertake preventive action in case of an imminent threat to the rights of citizens and to develop programs aimed at protecting, preserving and restoring the human rights of the complainants.” (Law No. 199/95)

Thereafter, and in addition to this legal rule, Law No. 418 of 1997 ordered the Attorney General’s office and the Ministry of Interior and Justice to establish special programs to protect populations that may be particularly at risk. Since then, a series of programs have been created by Colombian institutions to serve specific populations (civic and community leaders, human rights defenders, trade unionists, mayors, ombudsmen, members of the House of Representatives, members of the UP and PCC political parties, displaced populations and leaders, and the Justice and Peace program). Also a program on journalists was created in 2000, in response to a sharp increase in anti-press attacks. Today, and pursuant to Decree No. 1740 of 2010, the program is directed at:

- “1. Leaders or activists of social, civic and community organizations, as well as of professional, labor, peasant and ethnic groups.
2. Leaders or activists of human rights organizations and members of the medical mission.
3. Witnesses in cases of violations of human rights and international humanitarian law, whether or not the relevant disciplinary, criminal and administrative procedures have been instituted, in accordance with the applicable regulations.
4. Journalists and social communicators.
5. Leaders, representatives of organizations of displaced populations or individuals who face extraordinary or extreme risk.
6. Officials in charge of the design, coordination or implementation of the Colombian Government’s Human Rights or Peace Policy.
7. Former officials who were in charge of the design, coordination or implementation of the Colombian Government’s Human Rights or Peace Policy.
8. Leaders of the group Movimiento 19 de Abril M-19, Corriente de Renovación Socialista (CRS), Ejército Popular de Liberación (EPL), Partido Revolucionario de los Trabajadores (PRT), Movimiento Armado Quintín Lame (MAQL), Frente Francisco Garnica of the Guerrilla Coordination Group, Movimiento Independiente Revolucionario Comandos Armados (MIR - COAR) and the Popular Militias of and for the People, the Independent Militias of the Aburra Valley and the Metropolitan Militias of the City of Medellin, which signed peace deals with the Colombian Government in 1994 and 1998, returned to civilian life and, due to their political, social, journalistic, humanitarian or professional activities, face extraordinary or extreme risk.” (Decree No. 1740, article 4)

In this context of multiple programs, several Committees for Risk Regulation and Assessment (Comités de Reglamentación y Evaluación de Riesgos, CRER) were set up

to regulate protection programs, assess risk levels and evaluate, recommend and/or approve the protective measures required in each specific case (Evaluation Report, 2002).

However, not only the Executive has created programs to protect specific populations. As we will see below, the Colombian Attorney General's Office has a special human rights unit, the goals of which are in line with a mandate similar to that of the programs implemented by the Ministry of Interior. The functions of the Witness Protection program also overlap with the programs of the Executive. In addition to this specific institutional framework, the Early Warning System of the Office of the Ombudsman of Colombia also plays a key role in protecting individuals from potential attacks for belonging to a specific community.

This document will only focus on the Program for the Protection of Journalists, and we will refer to these other organizations or institutions when their functions overlap or collide with those of the Protection Program.

It should be noted that, at the time this report was concluded, a comprehensive reform of the protection programs was being crafted, which would become effective in 2012. According to the report by the Ministry of Interior and Justice (2011), the authorities were evaluating the possibility of: "... combining all programs and beneficiary populations into a single program, except the two programs which are currently entrusted to the Attorney General's Office. The Colombian State spends some 400 billion Pesos annually to provide material protection to individuals from the 43 existing populations; the Protection Program of the Ministry of Interior and Justice alone allocated 144,208,326 million pesos for the protection of 8 vulnerable populations in 2010. (...) With the combination of the protection programs, the State tries to streamline the resources that are currently allocated to different institutions, improve the quality of the protection, and enhance the speed and efficiency of the Risk Level Studies (Ministry, 2011: 163).

### *Context of Emergence*

Jaime Prieto, current coordinator of the civil society division at USAID, explained in detail the origins of the protection program, which can be linked back to a time when not only the Program on Journalists was created, but also of other programs which served as a precedent and a point of reference for the creation of the program under analysis: "Violence was prevalent at that time, with levels far beyond present-day values, and affected human rights defenders and union leaders, among other leaders. These groups had greater capacity to mobilize and draw international attention, in particular to engage in a debate with the Colombian Government. In general, the human rights movement was actively involved in looking for ways, together with the authorities, to provide protection. Step by step, a basic demand transformed into more specific demands about how to provide protection...(...)... The idea was not to relieve the symptoms but to actually root out the causes: paramilitarism, statements by officials which made defenders appear as outlaws, and creating a favorable political climate that would reduce the public stigmatization that encouraged threats and physical attacks." (Interview with Prieto, 2011)



María Teresa Rondero, current Director of Verdad Abierta and a prominent figure in the group that advocated for the creation of a program to protect journalists states: "... some of us were very concerned about the situation of journalists, as the number of killed journalists and the number of threats had increased (...) I asked for a meeting with President Pastrana and we arranged for him to meet with a group of journalists from the FLIP. We told him about the need to protect the group as a vulnerable population; Pastrana was very responsive and his assistant immediately sat down with us and said 'let's write', and we sat there for a while, drafted the decree together and soon after it was issued and became effective." (Interview with Rondero, 2011)

In addition to efforts by civil society organizations and victims of violence in the country, there has been action by international bodies, such as the Inter-American Commission on Human Rights. According to a UN official: "The IACHR urges States to take the steps that are necessary, together with the beneficiary, to protect his/her life and integrity pursuant to domestic procedures. And the Colombian State decided that such measures be taken through the protection program. The program has a chapter for different population sectors, including one for journalists, another for trade unionists, defenders, and a chapter for preventive measures." (Interview with FNI, 2011) This aspect will prove to be decisive for the program, to the extent that the Colombian Government, as shown below, has been taking action to address the impunity of crimes against freedom of expression, with the eyes on Washington.

The agents working for the Ministry's program who were interviewed during our field work agree with the description of the context in which the program was created: "... the programs emerged due to temporary circumstances and actions taken against members of vulnerable groups. In 2000, when the rate of attacks against journalists was high, the idea of a program for the protection of journalists was considered for the first time. In part, all programs were created because of this situation of repeated violation of the rights to life and freedom of individuals." (Interview at the Ministry, 2011)

The pressure from these entities accounts in part for an immediate and almost spasmodic response from the State: "Unfortunately, the protection programs have not been the result of a careful study of the root causes behind the threats and risks faced by the beneficiary individuals and populations, or of the profiles of criminals, and have not led to adequate and effective measures for their protection. These programs are a consequence of temporary political situations." (Attorney General's Office, 2011:1). The context of emergence explains what is probably the greatest problem of the program: its extraordinary nature aimed at addressing a threat. One of the main consequences associated with the context of its emergence is that the program fails to move beyond its reactive role and design effective preventive policies based on the information that has been gathered throughout its more than 10 years: "...the CRER was created as an emergency measure to prevent more serious consequences. It is understood that the State should create the conditions for the CRER to eventually disappear. We assume that the CRER is a temporary, emergency measure." (Interview with Morales, 2011)

An aspect which reflects the context in which the program emerged is the emphasis on protection, rather than on investigation. Our research analyzed the bodies, agencies and programs designed to protect journalists and/or investigate crimes against the press. In the Colombian case, faced with an urgent need to address the disturbing levels of violence (not only against the press, but against other sectors of the population and society as a whole), protection measures have been implemented. An explanation can be found when looking at the context: "... we spoke about protection because that was the most pressing issue at that time" (interview with Rondero, 2011). Andrés Morales, of the FLIP, agrees: "...when the program was created, an emergency program was necessary, so that no more journalists would be killed. Unfortunately, identifying the individuals responsible for those killings was not regarded as an essential prerequisite. This aspect was not taken into account, though the Attorney General's Office was designed as part of the Committee. Above all, the program was basically a temporary reaction at a particular moment in time. (...) At that time, the authorities invested in the creation of a protection mechanism." (Interview with Morales, 2011)

The emphasis on protection could also explain the difficulties in inter-agency coordination, discussed below. Colombia's institutional organization is meticulous and complex, and the agenda of public organizations is determined by the separation of powers and the allocation of responsibilities. This siloed approach could account for the difficulties in coordinating actions with judicial investigation stages and the emphasis on the protection of journalists.

#### *Nature of the Law which Created the Program*

The above section discussed the institutional context and framework of the Program for the Protection of Journalists. Although the Political Constitution itself and Law No. 199 may be understood as the program's regulatory framework, it was in fact Decree No. 1592/2000 that created the Program for the Protection of Journalists and Social Communicators "...who, in the exercise of their professional activity, assume the promotion, defense, protection and restoration of human rights, and the enforcement of international humanitarian law and whose life, integrity, safety or freedom is at risk because of that activity, for reasons related to political or ideological violence or the long-running armed conflict in Colombia." (Art 1).

#### *Position of the Program within the Organizational Chart*

The Program for the Protection of Journalists and Social Communicators is run by the Human Rights Office of the Ministry of Interior (Art. 1, Decree No. 1592/2000). Irrespective of the position of the Program in the chart, the Committee for Risk Regulation and Assessment, entrusted with establishing the risk levels for each case, must be considered. Initially, and based on Decree No. 1592/2000, the Committee for Risk Regulation and Assessment was established only for the Program as an inter-agency entity made up of: the Vice Minister of Interior (or his delegate), the General Director of the Human Rights Office of the Ministry of Interior, and a representative from the Intelligence Office (DAS) (Art. 2, Decree No. 1592/2000). Delegates of the Vice-President's Office and of the National Police also participated in the meetings as special invitees with the right to speak and vote; and so did delegates of the journalist

associations appointed by the Ministry of Interior (Art. 2, Decree No. 1592/2000). In order to coordinate the activities, the Committee had an Executive Secretariat headed by the Coordinator of the Protection Department of the Ministry of Interior's Human Rights Office, responsible for holding meetings every 15 days.

Decree No. 2788/2003 changed this design and combined the risk assessment committees of all protection programs run by the Human Rights Office of the Ministry of Interior and Justice. This decree created the Committee for Risk Regulation and Assessment for the Protection Programs (CRER). The CRER is composed of the Vice Minister of Interior (or his/her delegate), the Director of the Human Rights Office of the Ministry of Interior and Justice (or his/her delegate), the Director of the Presidential Program for Human Rights Promotion, Respect and Protection and for the enforcement of International Humanitarian Law (or his/her delegate), the DAS Director (or his/her delegate) of the Protection Office, the Human Rights General Director of the National Police (or his/her delegate), the Director of the Social Solidarity Network (or his/her delegate). Other participants in the meetings are the representatives of the Attorney General's Office of Colombia, the Office of the Ombudsman, the Office of the Comptroller General of the Republic; the Office of the UN High Commissioner for Human Rights and four (4) representatives of each of the populations covered by the Protection Programs run by the Human Rights Office of the Ministry of Interior and Justice, as special and permanent invitees (Article 1, Decree No. 2788).

Then, Decree No. 1740 of 2010 changed this composition: "The Committee for Risk Regulation and Assessment of the Protection Programs run by the Human Rights Office of the Ministry of Interior and Justice will be formed as follows:

1. The Minister of Interior and Justice, who will chair the committee.
2. The Director of the Presidential Agency for Social Action and International Cooperation.
3. The Director of the Presidential Program for Human Rights Promotion, Respect and Protection and for the Enforcement of International Humanitarian Law.
4. The Director of the Human Rights Office of the Ministry of Interior and Justice.
5. The Director of Protection and Special Services of the National Police.
6. The Coordinator of the Human Rights Group within the General Inspectorate of the National Police.

Paragraph 1. The Minister of Interior and Justice may delegate its participation to the Vice Minister of Interior.

Any other delegation by other members of the CRER shall be made in writing and to executive officers.

Paragraph 2. Special Invitees to the CRER. Representatives of the Office of the Inspector General of Colombia, the Office of the Ombudsman, and the Office of the Attorney General of Colombia shall take part in the Committee, with the right to speak only.

Likewise, the UN High Commissioner for Human Rights or his/her delegate and four (4) representatives of each of the populations under the Protection Programs run by the Human Rights Office of the Ministry of Interior and Justice will participate as special invitees.

The UN High Commissioner for Refugees or his/her delegate will participate, as special invitees, in the CRER's sessions dealing with cases of displaced populations.

Furthermore, delegates from public or private entities may be invited to participate in meetings dealing with cases under their purview.

Paragraph 3. Considering their constitutional and legal responsibilities, each of the members shall be liable for their actions and omissions within the framework of the Committee's functions.

Paragraph 4. The representatives of the beneficiary population before the Committee shall only attend those sessions in which issues related to the population they represent are discussed. One session may deal with matters concerning several beneficiary populations; in such case, the Committee will hold a meeting with the participation of representatives from those populations." (Decree No. 1740, article 7)

According to Morales, the composition of the Committee has caused two problems: on the one hand, the participation of high-ranking officials, and, on the other hand, the turnover of middle-ranking officials: "The Vice Minister is a member of the CRER. This is a huge mistake. This causes technical problems, and one of the mistakes is that the decree failed to make any further delegations. The CRER's meetings are subject to the agenda of the vice minister, who deals with many other issues simultaneously, and his presence may not necessarily have any impact. What is most problematic is that in the rest of the institutions there is a high turnover of officials. And this became a case-by-case approach. Only the cases for that week are analyzed, but not the previous ones. Just to start, there are many cases in which the measures were not even enforced." (Interview with Morales, 2011)

One of the aspects that make the Colombian Program for the Protection of Journalists one of the most special and celebrated programs is the participation of the civil society in the CRER. The civil society found in Samper's administration a space for systematic dialogue through the CRERs, and this continued during Pastrana's administration: "I think the first advantage of this program was the involvement of civil society through professional associations of journalists during Pastrana's government. This empowered the organizations, which in turn helped to create the program. And this is what makes it different from other programs. Having participated in the creation of the program, we feel entitled to criticize it, acknowledge its achievements or discuss about it. The program was established in early 2000, and we were actively engaged in its creation. In the case of journalists, there are four professional associations, made up not of journalists but of individuals working on freedom of expression issues. These organizations rely on the FLIP as their spokesperson for all matters related to protection." (Interview with Rondero, 2011)

According to the Evaluation Report on the Witness Protection Program of the Ministry of Interior, the civil society had, from the outset, a key role not only for the legitimacy of the mechanism, but also for its operation: "The (political) intent demonstrated from the very beginning was to prevent these committees from becoming another space for consensus, and that they should have the capacity to implement the protection requested. Thus, delegates from the different sectors of the beneficiary

population submit and study the cases, verify the accuracy of the information, propose and approve protective measures, and undertake actions jointly with State agents. They play a fundamental role in confirming the truth of the information and they will ultimately determine what the beneficiary population is, who is excluded, who may become beneficiaries and in which cases. This form of participation enables, in principle, a more intimate co-operation between the different participants of the program, making procedures faster and ensuring the quality of information available on the cases” (Evaluation Report, 2002:9). In a similar vein, Morales describes the activities of the program: “We document all cases of attacks and threats against journalists, we submit them to the program and request measures of protection, and then the program and the CRER decide which measures will be granted.” (Interview with Morales, 2011)

The participation of non-governmental organizations in a State program entails, on the one hand, overcoming prejudices, but also moving towards critical involvement. If organizations are to track progress on a program in which they participate, then they should perfect their analytical skills, create a sense of ownership and, at the same time, keep a safe distance so as to stay critical. To that regard, Ronderos claims that “Colombia has learned to play the game of organizations and the game of the Government. We learned a lot by working together.” (Interview with Ronderos, 2011) Jaime Prieto agrees with this and says: “...regardless of the good or poor participation by the representatives, the Government has been cautious to avoid co-optation. In general, the Government has respected the role of members as representatives, without trying to co-opt. I believe this has legitimized the proceedings of the CRERs in the sense that the opinion of the organizations is independent.” (Interview with Prieto, 2011)

The report of the *Somos Defensores* Program shows that there has been a slight change in the performance of organizations during Pastrana’s administration, and that due to the lack of opportunities for political dialogue during Samper’s administration: “... organizations increasingly applied for preventative provisional measures to the Inter-American Commission and Court of Human Rights, and once those bodies granted such measures, they requested the creation of spaces where they could reach consensus on the measures to be adopted, with the participation of the individuals protected and the representatives of the petitioning organizations.” (Somos Defensores Program, 2008)

### *Powers and Mandates*

Pursuant to Decree No. 2788, the CRER has the following powers:

- “1. To evaluate the cases submitted by the Human Rights Office of the Ministry of Interior and Justice and, exceptionally, by any of the members of the Committee. Such evaluation will be made considering the target populations of the Protection Programs and the applicable regulations.
2. To assess the technical evaluations on the seriousness of threats and the technical studies concerning the security of facilities, taking into account the specific circumstances of each case.
3. To recommend such protective measures as it deems advisable.



4. To follow-up regularly on the implementation of the protective measures and recommend any adjustments.
5. To adopt its own regulations.
6. And any other powers as may be necessary to achieve its purpose” (Art. 2, 2788).

Within this framework, and in order to fulfill its institutional mission, the program conducts risk studies to determine if an individual (in the case of the program on journalists, a journalist or social communicator) qualifies to receive the protection. The procedure followed by the risk study could be described in this way:

- 1 .When the individual comes to the office, he/she is offered guidance, interviewed and informed about the procedure, and an explanation is provided about the documents to be attached.
- 2 .After the request is filed, it is delivered by the mail person to the professional in charge of the request. Depending on the organizations and/or departments assigned, this takes at least two days, according to the officials surveyed.
- 3 .The professional in charge reads and reviews the requests, analyzes the documents, and makes any relevant verification calls.
- 4 .Requests that are not supported by documentation or incomplete requests are sent to the petitioner so that she/he can re-submit the request.
- 5 .If the analysis suggests that the petitioner may not be included among the target population, then a reply is sent to him and a copy of his request is forwarded to the Police, the Attorney General’s Office, the Solidarity Network or another competent entities. The petitioner is nevertheless informed that he/she may appeal the decision.
- 6 .If the petitioner can be included in the target population, then a form is filled to be delivered to the CRER, it is filed in a folder and included in the agenda for the next Committee’s meeting.
- 7 . Simultaneously, a preventive action is requested to the Police and, depending on the measure requested, the DAS and/or the National Police are asked to conduct a technical study on the risk level, if possible, before interviewing the petitioner and verifying the existence of a cause-effect relationship between the threat and the risk.
- 8 .Based on the above information, a summary sheet of the petitioner is prepared. If there are reasons to submit the case to the CRER, the sheet is included in the record for analysis. Time frame: the discussion of each case, depending on its complexity, may take one or several days.
- 9 .The case is submitted to the CRER.
- 10 .The same day or the following day, the interested party is notified of the decision.
- 11 .The decision is notified to the administrative area in order to implement the measures granted.

(Evaluation Report, 2002)



At the interview, the officials of the Ministry of Interior said about the risk studies: “The risk level study is a technical exercise which comprises several steps. The first part is the interview with the individual. Whenever a study is to be performed, the officials seat with the individual and ask him/her about the risk situations, or what has happened. They document every detail related to the threat. Based on the information provided by the individual, the officials conduct some relevant field work (...) Additional checks can be done. In addition to all this, if the interviewee tells them when the event took place, officials go and check with the police. They also verify with the Attorney General’s Office: they want to know what happened with the investigation, if there were sufficient grounds for inquiry or the complaint was found to be entirely without basis. The risk study is prepared using the information provided by the interviewee. (...) Then, urgent measures are adopted if the existence of an imminent risk is presumed. In that case, the Ministry of Interior may take urgent measures. For instance, if someone claims that he/she has received a threat shortly before the risk study, then he/she is removed from the area and given assistance to relocate. Through the risk study, the measures are corrected and extended.” (Interview at the Ministry, 2011)

Following the Ministry’s report, the measures implemented by the program may be preventive and/or protective: “The former are generally recommended to all the population targeted under the Program and such measures translate into the Self Protection and Security Course, the Rounds of the National Police and the dissemination of the Guidelines on Preventive Measures. Physical protection measures may include, among others, domestic and international air tickets, help for temporary relocation, help to move personal belongings, protection schemes, means of communication, bulletproof vests, armoring products for houses and installation of technical security systems.” (Ministry, 2011: 160).

Protection measures can be *soft*, *i.e.*, measures such as the provision of bulletproof vests or the armoring of facilities, which do not require the intervention of armed personnel and only enhance the security conditions in the place where the beneficiary lives or works as well as in the vehicles or means of communication that he/she uses, in order to reduce the vulnerability of the individuals who are threatened. Measures can also be *hard*, when the intervention of armed escorts with vehicles and means of communication is required. In extreme cases, support measures may be granted to accompany and help the beneficiary take the decision to abandon the place where the risk is high (Evaluation Report, 2002:79).

#### *Existence of “Rival” Organizations*

The Program for the Protection of Journalists and the CRER operate within an institutional framework in which other organizations carry out similar or almost identical activities. The following section will analyze if such similar functions create positive synergies or, on the contrary, they jeopardize their institutional missions.

As noted earlier, Law No. 418 of 1997 vests with the Ministry of Interior and the Attorney General’s Office of the Republic the responsibility of fulfilling the constitutional obligation to protect individuals. While the Ministry of Interior, by Law No. 199, creates

the protection programs, the Attorney General's Office works to create a Human Rights Unit: "Colombia has a Human Rights Unit that is part of the Attorney General's Office, a specialized unit. This subunit, which is rather informal, legally speaking, was created within that unit. It has not been fully established yet, but there is a prosecutor in charge of investigating certain crimes against journalists." (Interview with Morales, 2011) Indeed, and according to the performance report of the Attorney General's Office, of a total of 102 prosecutors working for the Human Rights Unit, one prosecutor has been assigned to investigate crimes against journalists.

Also within the remit of the Attorney General's Office there is a Witness Protection Program which may eventually operate as a rival organization of the program. The Attorney General's Office must "take measures to ensure the protection of victims, witnesses and other parties intervening in the process" (CP, art. 250) and, by virtue of this obligation, a protection program was created in 1992 with national scope. Apparently, the target population of this program has not been clearly established: "Representatives of the Ministry of Interior and the Attorney General's Office have met on several occasions to shape the powers of the programs on witness protection. To date, the target populations of each program have not been clearly defined, but it should be noted that one of the criteria adopted by the Program of the Attorney General's Office's is that the witness that receives protection under such program must in fact contribute to the criminal process." (Evaluation Report, 2002:16) According to María Clara Galvis, one of the individuals interviewed during the field work period, the Witness Protection Program "... is much more demanding. If you are under threat and the Attorney General's Office allows you to be part of that program, then you are actually protected, you are removed from the risk. It is really more demanding. It actually provides protection, but the decision to be included in the program can only be made when you are in a situation of high risk, as the person in question will disappear from his environment and his world." (Interview with Galvis, 2011)

Another area which seems to have powers to deal with this issue is the negotiating table created by the Foreign Office: "The Foreign Office created negotiating tables, such as the CRER, which oversees the protection provided by the State to the beneficiaries. We have detected that there is no complementarity. The Foreign Office responds to the Inter-American Commission on Human Rights (IACHR) saying that we are taking measures. But the Foreign Office does not take protective measures. They are not complementary; they are different in nature." (Interview with Morales, 2011) At these tables, the Attorney General's Office communicates to the Foreign Office any progress in the investigations, so that the Foreign Office can meet the recommendations of the Inter-American system. The Attorney General's Office states about this role in its performance report: "Of particular importance is the work conducted to investigate facts related to complaints that have been filed against the State before the Inter-American Human Rights system. To do this, the coordination with agencies such as the National Directorate of Prosecutors, the International Affairs Office and other Units of the Attorney General's Office, such as the Justice and Peace Unit, as well as the Office for the Protection of Witnesses, Victims and Parties Intervening in the Criminal Process has been essential." (Performance Report, 2009: 134)

An Early Warning System is also in place, which is formed by a network of organizations that operate in coordination with the Office of the Ombudsman to prevent human rights violations. According to the evaluation report: "...this institution communicates any relevant information to the competent authorities, so that they can take action before the occurrence of events. The Ministry of Interior and the Office of the Ombudsman have common projects aimed at protecting high risk communities; and several territorial commissions have been created as a result. The head of the National Directorate for Complaints Processing of the Office of the Ombudsman told this team that the communication between the two institutions was quite poor and that even she ignored the internal operation of the Ministry of Interior's programs, despite having requested such information in the past in order to refer the relevant cases. Other Ombudsmen consulted about this during the field visits also claimed that they ignored the procedures and conditions of the Ministry's programs." (Evaluation Report, 2002)

### *Organizational Capacity*

#### *Budget*

The resources for the operation of the Program for the Protection of Journalists are established by the Ministry of Economy and Public Credit (Art. 4, Decree No. 1592/2000). The total amount allocated to protection programs from August 2010 to June 2011 was \$111,895,149; of that amount, \$4,617,791 were used in the program for the protection of journalists (Ministry, 2011). The interviewees agree that the program's resources, which are adjusted taking into account the protection required, are sufficient. During the interview, the Ministry's representative said about the budget: "I believe that this is a permanent process, we are always trying to find a way to make things more effective, to respond faster to the requirements, all things that we have been thinking over a long period of time; we try to draw lessons from each meeting of the CRER. As far as the budget is concerned, we never 'run out of money'...(...)..., although it is true that in 2009 we had no budget for four months, and we were unable to pay the staff under contract. The measures approved two months ago could not be implemented until some time later. There was a boost in protection, as the budgetary provisions are always quite generous. But this time, there was an excess. I think it is important to strengthen the budgetary issue in the bottle neck caused by risk assessments. I believe that is the major shortcoming of the program. A study may be carried out in two or three months, but it is also a matter of timing. They are not implemented as fast as they should, in particular considering that the life of individuals is at stake, and that the effects could be permanent." (Interview at the Ministry, 2011) Another of the interviewees states that: "The program has no resource problems. In my opinion, the Ministry of Interior is understaffed. They act as a technical secretariat. They lack certain information, because there is no one who can sit and download the information. But they have no money problems. However, I believe there should be a balance between the money given and the number of beneficiaries". (Interview with Castillo, 2011)

Objections to budgetary aspects are related to the efficiency and effectiveness of the resources allocated to the program: "The Ministry's human rights policy is structured around the CRER. The Ministry invests some 64 million dollars. In our opinion, the problem is that too many resources have been allocated to the physical protection of

individuals at-risk. A lot of money goes to bodyguards, weapons, armored vehicles. But not enough funds are invested in investigations.” (Interview with Morales, 2011) Prieto mentions other difficulties: “There are more cases, but they are handled more poorly. In 2003 we performed an evaluation and the results are no longer as effective as they use to be... (...)... I believe fewer resources could be allocated. If the Government created a favorable environment for the work of trade unionists, defenders, etc., if preventive actions were taken, for instance... If the Government paid much more attention to risk factors, there would be no need for a one-to-one assignment. That would probably cost less.” (Interview with Prieto, 2011)

Two of the interviewees agree on the importance of having their own funds to finance the program: “... 90% of the program was financed with American funds; now, the program is fully financed with funds from the Colombian State” (interview with FNI, 2011); “USAID began to support the program in 2001. During the first four years, it was financed with funds from the national budget. In 1998, the budget was USD 250,000. Now, that program is worth USD 70 million.” (Interview with Prieto, 2011)

### *Staff*

According to the evaluation report: “Individuals working for the protection programs of the Human Rights Office of the Ministry of Interior were appointed if they met the conditions under Decree No. 861 of May 11, 2000. This decree establishes general requirements for the different levels of public officials, but it does not set forth requirements to select the candidates who will assume responsibilities related to the protection of individuals who have received threats under the framework of the promotion and protection of human rights and compliance with international humanitarian law.” (Evaluation Report, 2002:31)

In connection with the expertise of the staff working in the protection programs, the evaluation report was blunt: “Most officials of the Protection Group have no specialized training on human rights (...) or significant professional experience in helping people at risk, and as a result they look insecure in performing their duties. An excessive workload and the lack of clear and specific proceedings do little to create a working environment where objective criteria can be developed, based on a sound knowledge of the context, the legal framework and the beneficiaries. On the other hand, there are no government training programs to improve the skills of officials in the above areas. Thus, on many occasions, these officials consider that those who seek protection or some beneficiaries should not be granted protective measures because they fail to comply with certain rules of conduct.” (Evaluation Report, 2002:122)

### *Political Distinctiveness/Independence*

Given the membership structure of the CRER, which was created as a space for inter-agency coordination with existing officials, the political distinctiveness feature does not apply to the program’s authorities. This means that these aspects should not be evaluated when under the organization’s mandate the members of the Committee are officials such as the Vice Minister of Interior or the Director of the Human Rights Office of the Ministry of Interior and Justice. The intention of the lawmaker has not been to

shield the institution from political influence, but to persuade the highest officials of the Executive Branch to lead the efforts aimed at protecting specific communities from any attacks.

### 3. Dependent Variable: Performance of the Program for the Protection of Journalists

In terms of numbers, and considering murder figures, since the Protection Program was first implemented there has been a **reduction in the number of fatal victims** of crimes against the press. The numbers are discouraging if we look at the figures for anti-press crimes as a whole: although there are less murders, threats and other attacks have remained stable, at least during the period examined by the FLIP. The murder clearance rate and the resulting impunity are not encouraging either: “Impunity of attacks against journalists is not exceptional, it is part of the general problem of impunity rates. Since 1977, there have been 138 cases of journalists murdered because of their professional endeavors. There were only 5 convictions of intellectual authors out of these 138 cases.” (Interview with Morales, 2011)

At the time this report was concluded, the Ministry of Interior (2011) reported that the total number of beneficiaries under the protection programs was 5,395 and that only 60 of them were journalists. These 60 journalists have received a total of 115 protective measures, including support actions for temporary relocation (20), support for transportation (5), air tickets (70), bulletproof vests (6), avatel telephones (9) and cell phones (5) (Ministry, 2011). According to the information provided by the FLIP, from 2000 to September 2011, the Committee has dealt with 1,301 protection requests.<sup>15</sup> An analysis of the progress achieved in cases that reached the Committee shows the following trend:

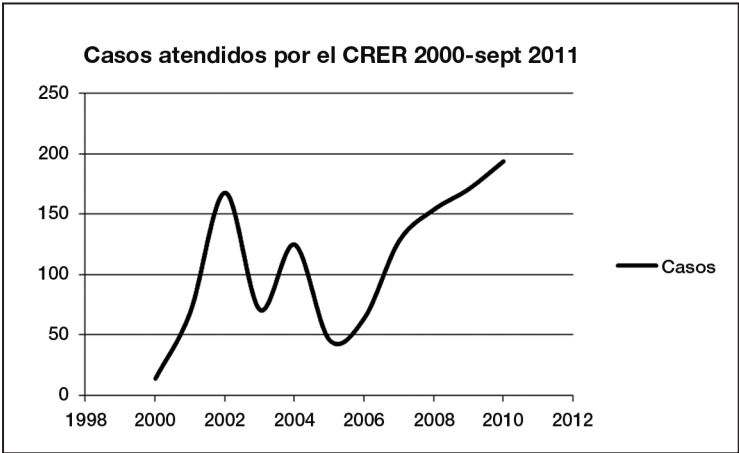


Chart prepared by the author based on information provided by the FLIP.

15. Please note that cases do not always coincide with the number of individuals seeking protection. There may be several cases for a single individual.



How should the above data be interpreted? Does the fact that more cases reached the Committee mean that attacks against journalists have increased? Or does it mean that the program is increasingly reliable as a source of protection and, thus, victims feel encouraged to ask for help? As we noted earlier in this report, there has been a reduction in the number of killings, as well as in the number of attacks. On its face, this could suggest that the program has been successful. But, how should we interpret the increase in the number of cases that are handled? What does it mean that out of 1,301 protection requests only 60 journalists have benefited from protective measures? Let's look at the qualitative aspects of these questions.

In general, all interviewees acknowledge the **relevance of the program**: “the existence of a program for the protection of individuals at risk is important in that it is a recognition of reality and a positive political response. I believe the program has helped save lives, not only because of the physical protection provided, but because, as many of those threats come from State agents, after filing a report many of the victims take things back.” (Interview with FNI, 2011) Prieto agrees: “I believe that the fact that the Government (or Governments) has (or have) more or less willingly accepted to provide protection to these individuals who are not high-ranking officials and whose situation is not known to the authorities, has been a good decision.” (Interview with Prieto, 2011)

In general, interviewees have been more critical. This criticism is probably associated with the policy legacy of the program, that is, the need to deal with serious threats to freedom of expression. A first consequence of this situation is the **absence of a preventive policy** to supplement the protection strategy implemented by the program. One of the interviewees agrees with the opinion of the beneficiaries: “At its inception, the program had two purposes: to provide protection and to take preventive action. This never happened.” (Interview with FNI, 2011)

When asked about this, the agents of the Ministry answered: “Together with journalists' organizations we have implemented preventive measures and dealt with other censorship-related issues, so that journalist can take self-protection measures. We have organized workshops. We are in the process of checking the origin of most of these requests. But now the question is how we are going to build on this, what is the status of journalists in Arauca, a rough area. One of the most critical components of the Government's human rights policy is prevention; to that end, we are working on the risk areas, by department. Here we see that journalists, members of indigenous communities, etc., are at risk. This is in addition to general human rights policies and policies for protection against the *guerrilla*.” (Interview at the Ministry, 2011)

Another item which has been pinpointed as a weakness of the program is the **lack of political will** to prove that the highest authorities are interested in eradicating violence against journalists: “... if the Ministry of Interior sent a letter to the local authorities that are known to have been involved in threats to journalists, this could be a powerful deterrent. There is a lack of political will to ensure respect of freedom of expression in all spheres of government. When something similar was done, the results were promising. For instance, in 2008, Uribe decided to put an end to crimes against journalists. That



year there was not a single killing. Reversing the situation is possible, and political will is indispensable.” (Interview with Rondero, 2011) The importance of political will in reversing the impunity for crimes against freedom of expression is rarely admitted, and Uribe’s administration has been harshly criticized, both locally and internationally, for its performance in ensuring respect for freedom of expression (RELE, 2006). Similarly, Jaime Prieto highlights the absence of a national policy that could be applied consistently at the local level: “...the Ministry of Interior neglected high level political administration. Some governors needed to be encouraged, they needed someone to say to them: ‘come with us and we will design a new space, we will create CRERs here’. I am not happy about decentralizing things, because there are many unresolved issues in the regions. Considering the influence on prosecutors and a strong subordination to governmental officials, it would be hardly advisable. However, there could have been, and there is at present, an increasing opportunity to decentralize the protection without abdicating this responsibility, taking local authorities further into consideration, and promoting more favorable environments for protection.” (Interview with Prieto, 2011)

Some interviewees underscored the growing **bureaucratization** of the program, which has become slower: “... the program is now more bureaucratic; sometimes, the time period between the request for protection, the risk study, and the protective measure is too long, and in other cases a protection was granted while the risk was being assessed, which was actually an excuse, a reason to further postpone the risk study.” (Interview with Rondero, 2011) María Clara Galvis agrees with Rondero and goes on to argue that: “... the same thing has happened in Colombia, that is, we have been very effective in designing structures that are useless. You see it and the structure seems perfect, there is an organizational chart. But what is actually the problem? We are trapped by the pace of slow bureaucratic institutions. Because when something is overused, in the end it could be worn out. The first time a person is threatened, people react promptly, but now that we have 120 preventative measures, every new case is just another measure. Not only was the program institutionalized, but it also became more bureaucratic.” (Interview with Galvis, 2011)

Other interviewees refer to the discriminatory nature of the programs. In a context where insecurity is not only experienced by specific sectors of population, but rather by society as a whole, to what extent can targeted protection be legitimate? Do the programs help better implement the constitutional duty to protect those living in the Colombian territory? In this regard, one of the interviewees says that: “People could be right in thinking that sometimes these cases can seem discriminatory; so many things happen in this country everyday... why shouldn’t other groups get protection?” (Interview with FNI, 2011)

One of the biggest objections to the program is the poor level of **inter-agency coordination** with the organizations that we have identified as potential rivals to the program. Being an inter-agency body, the Committee can receive resources and information from different sources to fulfill its mission, and the presence of civil society organizations gives the committee greater legitimacy. However, since the Committee is made up of a group of representatives and institutions with different missions and purposes, sometimes this seems to adversely affect the results achieved by the program.

The evaluation report is very clear on this point: “The Ministry of Interior and the Vice-President’s Office have similar obligations regarding the design of policies and the coordination of the activities conducted by institutions responsible for the promotion, protection and defense of human rights, and the boundaries of their respective powers have not been clearly established. This leads to diluted responsibility on the part of the Government, and there is no monitoring or control of policy enforcement. The activities of the many committees, commissions and programs that were created within the purview of different entities clearly illustrate this phenomenon: they have similar goals and membership, but their operation lacks continuity and there is no follow-up, enforcement or control of the commitments made by those committees, commissions and programs. They require constant application by governmental officials given the number of meetings and the need to travel, but they have no effective or efficient mechanisms to implement those decisions.” (Evaluation Report 2002: 118)

The greatest tension is between the CRER and the Colombian Attorney General’s Office. Although the decree which created the CRER failed to include among the members of the Committee any representatives from the Attorney General’s Office, can someone really be protected if the criminals are not identified, or if the threats are never solved? How can protective measures be revoked when the courts have not established the truth surrounding the threats received by journalists? The interaction between the protection program and the Attorney General’s Office, although not legally established, is crucial to the success of the program: “From its inception, the program required that at least two institutions have a close relationship with the program: one of them was the Attorney General’s Office. One of the obligations of the person seeking protection is to inform the Attorney General’s Office. But if there is no coordination with the Attorney General’s Office, the system will not work.” (Interview with Prieto, 2011)

However, the performance of the Attorney General’s Office and its involvement have been, at least, irregular, and were strongly criticized by the interviewees. At the interview, officials of the Ministry of Interior voiced their opinion on the relationship between the Protection Program and the Attorney General’s Office, and spoke also of the relationship between prevention and investigation: “Each entity has its responsibilities. Within the State apparatus, a particular concern has been investigations conducted by the Attorney General’s Office, through its Program for the Protection of Victims and Witnesses. It does not mean that more emphasis is placed on one aspect or the other; a clear line has been drawn between prevention and protection. Investigations are essential to remove threatening factors. But the protection factor is mandatory, and its implementation should be immediate. Perhaps this is why it was given a little more importance. Or why people see it that way. Physical protection measures are more visible than investigations, which are often not informed to us when there are confidentiality issues at stake and preventive actions are being taken.” (Interview at the Ministry, 2011)

These failures in inter-agency coordination have undermined the mechanism. Participating organizations have preferential access to information and this could enhance, through the CRER, the capacities of the mechanism not only to protect program beneficiaries

more efficiently, but also to provide information that will help courts put an end to threats. On this point, Rondero believes that: "... the CRER is an inter-agency forum in which the Attorney General's Office, the Police, the Vice-President's Office, and others participate. If they all contributed equally, things would progress more smoothly. The Office of the Inspector General has remained quite active, and this is a good thing, because it criticizes other bodies. If you are an official at the Ministry, the office will tell you that you are not doing things the right way. But the Office of the Inspector General should go and say: 'Clodomiro, a reporter, is being threatened by the Police and the Office of the Inspector General has found that the head of the Police was responsible for this, and he has been sanctioned'. However, this is not the case. The information held by these bodies is disconnected to the extent that, for instance, some threats to journalists have been detected as a result of intelligence efforts, but they were never reported to the program or the journalist at risk." (Interview with Rondero, 2011)

The role of the Office of the Inspector General has also been criticized. Although this Office has focused on identifying the weaknesses of the programs (an example of that is the report mentioned in this paper), interviewees complain that the Inspector General's Office won't push forward judicial investigations: "The Attorney General's Office is the main participant and stakeholder in a thorough investigation. However, a representative from the Office of the Inspector General could oversee the process and request evidence. Such representative could take up part of the investigation, but has failed to do so. It is like a coin: on the one side, the Inspector General's Office performs an oversight function, but on the other side the office should also take action. Taking this into account, on the part of the CRER this system works, but not on the other side." (Interview with Morales, 2011)

Coordination problems between the CRER and the Attorney General's Office can be seen in **the administration, systematization and access to information regarding judicial cases**. One of the interviewees described the difficulties experienced in gaining access to information on cases related to threats that target human rights organizations. Although this report does not focus on that program, the testimony is nevertheless relevant as it apparently evidences a flaw in the way the Attorney General's Office handles internally the information concerning its cases: "It is difficult to follow-up on a case that is handled by the Attorney General's Office. They often don't know the status of the processes. For instance, the program has dealt with all cases of theft of information and threats to human rights NGOs. These are approximately 100 cases, such as *Corporación Jurídica Yira Castro*, an NGO that works on land-related issues. They have been robbed 5 or 6 times, and have received threats for two years. They filed 5 or 6 complaints with the Attorney General's Office. Such complaints are handled by different divisions, like the Unit of Crimes against Property. A computer, a flash memory and folders with information have been stolen. This has nothing to do with it. A representative from the prosecutor's office comes to the protection program, and wants to know what happened with the 5 complaints filed by the *Corporación Jurídica*. "Oh, I don't know. I have to look it up," they will respond. At the next meeting, a different representative from the attorney general's office will show up. There is no commitment whatsoever. Unless there is some degree of political will... Now, what

does the *Corporación Jurídica* do? Together with Iguarán, they never get through the backlog, and all the cases pile up... for instance, at the Unit of Crimes against Property. Now that Mario Iguarán leaves, Mendoza takes over and wants to do things separately. Not even the ladies there (I say ladies because all the attorneys there are women) know where they stand. Really. The same happened with cases of trade unionists, until a political decision was made to change the way in which information was handled.” (Interview with FNI, 2011)

Indeed, one of the greatest obstacles to access to information is the systematization of information on cases. And such systematization demands clear criteria for organizing the judicial investigation. The FLIP, an organization which participates actively in the CRER, explains the difficulties associated with informing the Committee’s actions with data from the Attorney General’s Office: “It handles murder cases, but one of the biggest problems with the justice system is that they don’t know where the cases are... cases are unknown. The FLIP knows more about the cases than the Attorney General’s Office. And these are cases of killings and threats. One of the difficulties faced by the subunit is that not all cases are there... many cases are handled by local, sectional prosecutors’ offices, many of them have been archived and others cannot be found. Databases are in utter disarray. You have to struggle just to make State authorities find out what was it that they did. The State has not adequately systematized cases and, as a result, cases are classified by perpetrator, rather than by victim...(…)... In many cases at the regional level, the authorities are not aware of the fact that the victims are journalists or they fail to treat them as such. Therefore, we record the case as related to the exercise of the profession, and meanwhile the attorney general’s office treats the case as murder. In this way, the role of the communicator begins to blur, particularly at the regional level, and there is no consistency between the databases of the FLIP and those of the attorney general’s office. We believe that the attorney general’s office does not have full figures.” (Interview with Morales, 2011)

Some interviewees think that these problems in the systematization and recording of information can be seen in the way judges understand the administration of justice: “I believe that prosecutors, because of the training they received, consider each case individually without taking into account the context; they do not try to find a connection between different cases. And the same holds true for every aspect of the Colombian attorney general’s approach to cases.” (Interview with Galvis, 2011)

As we explained earlier in this report, unfortunately we were unable to interview any members of the Attorney General’s Office. The possibility of sharing information on the resolution of judicial cases is probably limited by considerations regarding the damage that could result from the disclosure or publication of information on a case. On this point, one of the officials from the Ministry said at the interview: “I believe that the question is how we can find elements and help with the investigation. All information handled by the CRER is strictly confidential; the CRER may not disclose anything, or otherwise we could endanger the person.” (Interview at the Ministry, 2011) Although we cannot ascertain if the Attorney General’s Office shares this opinion, the interviewees seem to suggest that this office does not have a consistent approach to exchanging

information with other institutions. While the coordination between the CRER and the Attorney General's Office seems poor or non-existent, the articulation between the Attorney General's Office and the Foreign Office seems to work rather smoothly: "The advantage of the negotiating table is that the Attorney General's Office has a more effective participation, the office is better prepared when it comes to the table. And as a result some cases are discriminated. If preventive measures have not been issued, the case does not get the same attention." (Interview with Morales, 2011) Another interviewee agrees with that: "They are afraid of the Court because chances are they will be convicted. Everything is centralized there, all cases of trade unionists are there, and there are people who care about human rights." (Interview with FNI, 2011)

The opinion of the interviewees is further confirmed by an interesting observation in the performance report of the Attorney General's Office. The Human Rights Unit accounts for its actions concerning the Inter-American system, but not in respect of the CRER. In the report, the Attorney General's Office informs on the progress of cases relating to crimes against journalists: "In November 2008, the National Human Rights Unit was handling 42 cases in which the victims were journalists; in 12 of those cases a formal inquiry had been opened, 14 individuals had been formally charged and one case was under trial. Three convictions were rendered against five individuals. In April 2009, the National Human Rights Unit was handling 47 cases; in 8 of those cases a formal inquiry had been opened, 17 individuals had been formally charged, and 9 convictions had been rendered against 15 individuals." (Performance Report, 2009: 115)

Pressures from multilateral bodies prompted the emergence of the mechanism and it still operates as an incentive for action. As previously explained, the Attorney General's Office does not contact the Ministry when it receives a case concerning an attack against a journalist, and the Ministry, in turn, fails to communicate with the Attorney General's Office; "... it only does so in cases before the IACHR in which preventative measures have been granted." (Interview with Prieto, 2011) In practice, and according to the account of one of the interviewees, the information circulates in the following way: "The International Affairs Unit of the Attorney General's Office communicates with the Foreign Office; we have a plan for the supply of information. Not the confidential part of the process, but objective information which can be disclosed." (Interview with Galvis, 2011)

Galvis argues that the key importance of the negotiating table at the Foreign Office can be explained by an interest on the part of non governmental organizations to take the cases to the international system: "... people say that NGOs and representatives do not provide information to the authorities, and that they only communicate with the IACHR. This could be true. In fact, some claim that the strategy of victims is to not cooperate fully with the Attorney General's Office. I don't think this is the case. Also, this could lead to misinterpretation. If I have the information, I give it to the attorney general's office; and if the case does not reach the international system, even better." (Interview with Galvis, 2011)

As we previously mentioned, the executive decree provides that the members of the Committee may appoint delegates for that space. In practice, this gives rise to serious problems associated largely with a **high turnover of participating officials**. This turnover



means that officials participating in the mechanism must not only deal with new cases, but also get through the backlog of existing cases, understand how the committee works, and relate with the other members of the committee. In the case of the Attorney General's Office, the situation seems to be more complex: "The main problem with the CRER is that the institution itself is siloed, not just the information. Therefore, the official from the Attorney General's office who sits at the CRER never knows who is investigating the case of the journalist, or that person changes every two months." (Interview with Castillo, 2011)

The other side of inter-agency coordination problems is the articulation between the different **levels of government**, national directives and the realities of the local governments. Although Colombia has a unitary political organization, which facilitates a consistent implementation of policies, the performance of the program (the implementation of risk studies, for instance, or the enforcement of protection measures) still depends on how local officials interpret and apply the directives issued by the central government. The officials of the Ministry of Interior describe the coordination with local governments as follows: "There is territorial administrative autonomy. This means that this is a unitary republic, but our departments have administrative autonomy. There are transfers from the central to the territorial level, as specified in the complementarity and subsidiarity requirements. (...) There is coordination. Some measures must be coordinated with law enforcement agencies. In particular, preventative measures such as police rounds, bodyguards, etc. However, in terms of resources for protective measures, the situation is different, as everything is centralized. Things are narrowed down and implemented here. It is also important to highlight that local authorities have responsibilities relating to the protection of individuals. The Ministry has tried to draw a map, taking into account the issue of displaced populations. Some situations can be dealt with at the local and regional level. Not all cases should reach this Ministry. Also, measures could take some time here, whereas in the regions some risk factors could be addressed more quickly." (Interview at the Ministry, 2011)

Castillo also believes that local instances should be strengthened, as well as the capacity of local bodies to collect evidence, investigate, solve cases and provide protection more quickly, as this would reduce the time interval between the moment the protection is requested, the risk study is conducted, and the protective measure is implemented. However, it notes the difficulties of working at this level: "I think there are local prosecutors who know the cases better before they are brought to Bogota. What seems to be the problem? They are in a city; there is a lot of pressure. However, some investigations could be conducted at the local level. Rather than a subunit, I think that what we need is increased coordination." (Interview with Castillo, 2011) In some cases, this vulnerability at the local level is further aggravated by ignorance of the programs implemented at the national level, which multiplies risks and diminishes the chances of resolving cases: "Ignorance by departmental and municipal authorities of programs attached to the Ministry of Interior is another example of the lack of cohesion between state and Government institutions." (Evaluation Report, 2002:118)

**Risk studies** are the essence of the program and receive a great deal of criticism. Risk assessments have been criticized for different reasons, such as delays in the



determination of the risk, and the time elapsed from the moment the protection request is filed until the risk is established and the protective measure is actually implemented. In this regard, Morales claims that: “A journalist is threatened and the result of the risk assessment can take four months to arrive. In addition to that, the study can conclude that the risk is extraordinary.” (Interview with Morales, 2011) So the delay could have fatal and irreversible consequences: “When I defended the case of a human rights advocate who was murdered on May 18 last year, he had reported receiving threats about six months earlier. In February (after his death), he was asked to appear for an interview to discuss the threats he had received.” (Interview with Morales, 2011)

The quality of risk studies has also been the subject of criticism, in particular, because those requesting protection are not usually satisfied with the results of the study, the interviews held to classify their situation, and the arguments underpinning the risk determination: “... in my experience, one of the main objections is the lack of clarity. The individuals never know how or for what reasons they have been classified in a certain way. Those reasons are not very clear; there is little certainty as to what elements are considered.” (Interview with Guzman, 2011) Some interviewees argue that routine questions are asked during the evaluation interview, but that journalists are not asked about what they were investigating or if they have any suspicion regarding the origin of the threat. Unless such questions are made, risk studies will fail to establish the risk effectively and gather crucial information to identify the assailant and resolve the judicial case.

Another important problem is distrust of those interviewing the threatened journalists and determining, ultimately, the risk faced by the interviewees: “There are individuals who refuse to be examined by the Police. There is a unit, a human rights group at the National Police. People trust this unit a little bit.” (Interview with FNI, 2011) Jaime Prieto agrees with the above and claims that: “... risk reports are prepared by institutions which raise suspicion among people at risk. Victims feel intimidated during the interviews. In some cases it was the DAS or the State that threatened them. Also, they are asked to provide evidence; or told that their allegations are not credible. They must also show that the risk is related to the victim’s exercise of journalism. But that is the responsibility of officials; victims have no obligation to show the origin of the threats.” (Interview with Prieto, 2011) Distrust of those asking for protection is aggravated by the lack of relevant training or the indifference of some police officers during the interviews: “... risk studies are entrusted to low ranking individuals who are not interested in the case. This is sheer negligence. Besides, this group is understaffed. In addition to that, people don’t trust the police, and rightly so. They have well founded reasons to believe that the information could be used for an improper purpose. Also, some of these police officers lack any education or human rights awareness. And they are prejudiced against those who request protection. There’s fear on the one side, and people who don’t help on the other.” (Interview with FNI, 2011)

Another aspect that has been widely criticized is the “closed” nature of risk studies. According to the interviewees, the results of those studies are presented as a general outcome with little indication of the rationale underlying the decision. This closed aspect is the “blind” dependence of the program on the studies: “One of the biggest

problems associated with risk studies is that they are considered a fundamental source... an absolute truth to determine risk, that will tell us 'yes or no'. The majority of us know that the studies are poorly prepared and that one of the biggest problems is that there is no access to the information contained in the risk studies." (Interview with Morales, 2011) Once again, information is perceived as a source of conflict. One of the claims of non-governmental organizations is that they want to be able to have access to information before it is processed, and not once the risk study is concluded as ordinary or extraordinary: "All we receive are documents titled: 'Risk study of journalist Andrés Morales: ordinary.' What does 'ordinary' mean? What are the reasons for such decision? We have made progress, and gradually we have been able to gain more access to information. I understand that information should be protected, but at least we should be able to learn the basic facts. These are the elements that, within the CRER, will help us provide a more accurate evaluation." (Interview with Morales, 2011)

In this context of widespread criticisms, the Constitutional Court has made a significant contribution for the adoption standards about what should be considered a 'risk': "... in order to determine if the risk level is extraordinary, the official must consider if the risk is specific and identifiable, concrete, current, important, grave, clear and discernible, exceptional, disproportionate, as well as serious and imminent; the more of the above characteristics are present, the higher the level of protection that should be provided by the authorities to ensure the safety of the affected individual. However, if all such characteristics are present, then the seriousness of the risk should be regarded as extreme; and so the rights to life and personal integrity should be enforced directly." (Inspector General's Office, 2011)

According to the report prepared by the Inspector General's Office, this progress at the judicial level has not been emulated by the institutions charged with performing risk studies: "The criteria established by the Constitutional Court have not been fully applied by the National Police or by all departments. This situation is further aggravated by the institution's refusal to grant the members of the CRER full access to the studies, so that they can examine and possibly re-assess the risk in order to recommend a protective measure consistent with the risk alleged by the petitioner or the representative of the target population, and so the decision as to the measure is made based on a subjective judgment (Inspector General's Office, 2011).

The Ministry's officials who were interviewed acknowledged that there are some flaws and described the measures taken to correct them: "We have a commission that studies the risk level. This has been one of the greatest obstacles, as the results of the studies have always been controversial. Many people believe that such risk studies should not be the only factor taken into account for the assessment. This has been strongly criticized... a recommendation... a revision of all aspects related to the studies. Instructions were given to standardize a technical study matrix to assess risk levels. Clearly, neither of the entities is an expert, and so they sought the collaboration of the police and the DAS to design this tool and, finally, it was presented to the Court. And this is the tool used for risk studies. They have trained a significant number of

individuals at the national level and not all of them have that expertise on the subject; they have worked pretty hard on the training.” (Interview at the Ministry, 2011)

The program is also heavily criticized for how **protective measures** have been implemented. According to the information obtained from the interviews and the documents that were collected, the program beneficiaries recognize that protective measures have a significant deterrent effect, but they criticize the training and rotation of bodyguards, the lack of evaluation or follow-up of the measures, the relevance of their permanence and effectiveness, as well as the process that is followed to grant such measures. Apparently delays are common and sometimes the consent of beneficiaries is not obtained, or the measures impede the work of the beneficiary. In some cases, critics argue, measures are lifted unexpectedly.

With regard to hard protective measures, i.e., those involving bodyguards, there was a difficult moment for the program when it was discovered that escorts assigned by the Intelligence Service were gathering intelligence on the journalists who were at risk: “... originally, the institution responsible for ensuring protection was the Intelligence Service. Inexplicably, it had protection functions. And it was found that many escorts gathered intelligence on the individuals they were supposed to protect. That brought the program into discredit; it was a very delicate issue. At present, the DAS no longer has that power, and protection is now provided by a private company, also highly contested.” (Interview with Morales, 2011)

The replacement of DAS bodyguards with private escorts sparked further controversy: “The procurement process to contract mobile protection services only took into account market conditions and the most economical offer, and no attention was paid to human rights considerations, such as the characteristics of individuals requiring the protection. During the bidding process, the Deputy Minister of Interior convened a Multidisciplinary Inter-Agency Committee and an Evaluation Committee, and no representatives of the target populations were invited to participate. The procurement process resulted in the selection of the firm Vigilancia y Seguridad Ltda. VISE is a company that provides private security to sectors unrelated to the protection mechanisms for human rights defenders and social leaders, i.e., without any relevant experience or knowledge of this type of protection programs, and it is not known to have provided protection to public officials who received threats or who may have suffered attacks on their lives and personal integrity. The Ministry of Interior and Justice failed to consult or formally engage social and human rights organizations during the privatization of the protection schemes. In addition, such organizations are concerned about possible leaks or the lack of legal controls to prevent intelligence on the individuals that are part of the program, as well as by the unequal treatment of journalists participating in the program and the fact that the company has no record of participating in protection programs of this nature. The outsourcing of protection programs dilutes the State’s responsibility, which should be undertaken directly by a State body reporting to the Ministry of Interior or the National Police. Such body will implement and manage the protection schemes, following the performance of a study and the submission of proposals; and those proposals should take into account the issue of bodyguards.” (Novoa, 2009)

The distrust in the evaluation of risk previously described also exists regarding the implementation of the protection measures. Distrust and prejudice work both ways: those receiving protection feel that the people protecting them could have links with their attackers or could use the information on their movements or journalistic investigations for other purposes; and the bodyguards or those granting the protection measures distrust beneficiaries as they think that, in some cases, they take advantage of State resources: “There is a more alarming issue related to the Colombian culture. And that issue is polarization. Beneficiaries are distrusted. They are believed to be exaggerating the risk, to be giving themselves airs, or lying. There is some sort of suspicion. The allegations of beneficiaries are not always accepted as true. There are a series of arguments, but all of them have in common a disbelief in the person requesting the protection. This won’t motivate you as an official, and instead causes inertia. On the other hand, that distrust, worsened by the polarization observed during Uribe’s government, divided society in two. Under this view, the person requesting protection is on one side, while the State official is on the other.” (Interview with Galvis, 2011)

According to some of the interviewees, a percentage of the individuals protected were using the program to mitigate the costs of their organization, and this had discredited the program. Having a cell phone or a car with a driver, in some cases, can reduce the costs of an organization or give the beneficiary a certain status.

Another key issue is the **dismantlement of protective measures**. In a climate of high impunity, where justice takes long to establish the truth, how can a decision be made as to the right time to remove a protective measure? Removing a measure before the disappearance of the risk may have fatal consequences, but perpetuating a protection scheme that is no longer necessary would be a waste of resources which could undermine the implementation of protections in cases of imminent risk: “Measures cost a lot of money to the State. The CRER is quite effective, but systems are maintained over very long periods of time, sometimes imposing a disproportionate cost. This could actually limit protection in future cases.” (Pedro x, Morales, 2011) In this regard, the Ministry’s representative explains during the interview: “The State must ensure protection. But such protections cannot be permanent, or otherwise protection mechanisms would become unreasonable. Therefore, we need to be careful when we decide to lift a measure. If in doubt, we request a reassessment and, in the meantime, the measure is maintained.” (Interview at the Ministry, 2011)

But measures to re-assess the risk are rarely taken. Trapped by its statutory mandate, the program responds to demands and new protection requests, but it struggles to move beyond this stimulus, to follow-up on measures, systematize information, cross-check data or coordinate with judicial stages to further the resolution of cases. According to the information gathered from the interviews, beneficiaries are rarely aware of reassessment instances.

At this point, the question that comes to mind is how to measure the **program’s effectiveness**. As we noted previously, the number of murders dropped steadily since the program was first implemented: “It is impossible to make a comparison with the

number of killings of journalists that could have been prevented, but it is striking that the number of killings has fallen significantly over the last 10 years. Last year, two journalists were murdered; and in 2008, there were no such murders, for instance.” (Interview with Morales, 2011) The demand for the program is much more difficult to analyze. As we have observed, the demand for the program has increased. Should the higher number of protected journalists be interpreted as a success or as a failure of the program?: “There are two readings of this. If we have more journalists on the program, we could say “that’s great, it means that we are able to provide more protection.” But we can also assume that there is increased vulnerability. Those would be “perverse figures.” For the State, a higher number of protected individuals would mean the contrary.” (Interview at the Ministry, 2011)

#### **4. Conclusions**

The Program for the Protection of Journalists was created in 2000 to reverse the dramatic situation of freedom of expression. Together with the program, the Committee for Risk Regulation and Assessment (CRER) was established to assess risk levels and evaluate, recommend and/or approve the protective measures requested by victims. In terms of its institutional framework, the program coexists with other bodies that perform similar functions, such as the Early Alert System of the Office of the Ombudsman or the Witness Protection Program of the Attorney General’s Office of the Republic.

The Protection Program is attached to the Human Rights Office of the Ministry of Interior and Justice and it works in collaboration with the CRER, an inter-agency committee which gathers civil society organizations and that has been internationally celebrated and recognized. The program has a comprehensive budget, but interviewees admit that financial resources are mainly allocated to protection schemes, rather than using funds to train personnel to enhance the positive aspects of the program.

One of the main findings of this study is that the context of emergence was decisive for the program and it accounts for the difficulties in moving beyond its reactive role and designing effective prevention policies. An aspect which reflects the context in which the program emerges is the emphasis on protection, rather than on investigation.

As stated in the previous section, in terms of numbers, and considering murder figures, since the Protection Program was first implemented there has been a reduction in the number of fatal victims of crimes against the press, although other attacks against the press have remained stable, at least since 2006. The emphasis on protection rather than on investigations may explain the meager results achieved in the fight against anti-press attacks in Colombia: of 138 journalists killed by reason of their profession, only 5 intellectual authors have been convicted.

In general terms, all interviewees agree on the importance of the program, as it implies a political recognition of the problem and because protection measures may be a



powerful deterrent. In general, interviewees have been more critical. This criticism is probably associated with the policy legacy of the program, that is, the need to deal with serious threats to freedom of expression. A first consequence of this situation is the absence of a preventive policy to supplement the protection strategy implemented by the program.

Another item which has been pinpointed as a weakness of the program is the lack of political will to prove that the highest authorities are interested in eradicating violence against journalists. Some interviewees underscored the growing bureaucratization of the program, which has slowed the pace of procedures, while other interviewees allege that the programs are discriminatory. In a context where insecurity is not only experienced by specific sectors of population, but rather by society as a whole, to what extent can targeted protection be legitimate? Do the programs help better implement the constitutional duty to protect those living in the Colombian territory?

One of the biggest objections to the program is the poor level of inter-agency coordination with the organizations that we have identified as potential rivals to the program. Being an inter-agency body, the Committee can receive resources and information from different sources to fulfill its mission, and the presence of civil society organizations gives the committee greater legitimacy. However, since the Committee is made up of a group of representatives and institutions with different missions and purposes, sometimes this seems to adversely affect the results achieved by the program.

The greatest tension is between the CRER and the Colombian Attorney General's Office, and the way information is shared by these bodies. Coordination problems between the CRER and the Attorney General's Office can be seen in the administration, systematization and access to information regarding judicial cases.

The other side of inter-agency coordination problems is the articulation between the different levels of government, the national directives and the realities of the local governments. Although Colombia has a unitary political organization, which facilitates a consistent implementation of policies, the performance of the program (the implementation of risk studies, for instance, or the enforcement of protection measures) still depends on how local officials interpret and apply the directives issued by the central government.

More specifically, risk assessments have been criticized for different reasons, such as delays in the determination of the risk due to the time interval between the moment protection is requested, the risk is determined, and the protective measure is implemented. The quality of risk studies has also been the subject of criticism, in particular, because those requesting protection are not usually satisfied with the results of the study, the interviews held to classify their situation, and the arguments underpinning the determination of the risk. Another important problem is distrust of those interviewing the threatened journalists and determining, ultimately, the risk faced by the interviewees. Also the "closed" nature of risk studies has been widely objected.



And the way the program has implemented protective measures has also been harshly criticized. Critics have also expressed concern about hard protection measures, *i.e.*, those involving private bodyguards, because of mutual distrust between agents and protected individuals.

Another key issue is the dismantlement of protective measures. In a climate of high impunity, where justice takes long to establish the truth, how can a decision be made as to the right time to remove a protective measure? Removing a measure before the disappearance of the risk may have fatal consequences, but perpetuating a protection scheme that is no longer necessary would be a waste of resources which could undermine the implementation of protections in cases of imminent risk. And measures to re-assess the risk are rarely taken.

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# **Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes Against the Press: the Guatemalan Case**

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## **Introduction**

When I was conducting the fieldwork for this report in the City of Guatemala, the dismembered body of the prosecutor of Cobán was found. His head appeared in the city market, and his body was found in the municipal building. Despite the brutality of the murder, some local newspapers decided not to print the horrific news on their front pages. The news about the killing were clear enough, and their significance was even more compelling than any other reports or monitoring efforts. In Guatemala, freedom of expression is under threat, not only due to the serious violations that take place, but because of the high level of self-censorship revealed by the circumstances explained above.

The Guatemalan case is noteworthy for its peculiar institutional innovation: the creation of the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, CICIG). Although this institution is not specifically aimed at investigating crimes against the press, the purpose of this study is to understand how such international support entities and institutions can help counteract the impunity that reigns in the country. This general question is accompanied by a more specific question related to the purpose of our work: what is the possible contribution of an international institution such as the CICIG to the protection of freedom of expression?

For analytical purposes, this report will be divided into various sections: the first section will introduce the institutional and political system in which the commission operates and the context of violence in which journalism is enmeshed; the second section will describe the CICIG and the programs developed to protect journalists and social communicators, and to investigate crimes against the press; the third section examines the results achieved by the agencies under analysis; and, lastly, the fourth section on conclusions discusses the main findings of our research.

## **1. Description of the Political-Institutional System and the Situation of Freedom of Expression in Guatemala**

Guatemala has a republican, democratic, and representative form of government, with a unicameral Legislature, an Executive Power composed of a President and a Vice-President, and a Judicial Power with a Supreme Court of Justice whose members are appointed by the Congress of the Republic. As regards the administrative structure, the territory is divided into departments and municipalities responsible for electing their own authorities, obtaining and allocating their resources, delivering local public

services, organizing the territory under its jurisdiction and pursuing their own goals (OAS, 2005).

This institutional framework includes various oversight bodies such as the Office of the Comptroller General of Accounts, “...the mandate of which is to oversee revenues, expenditures, and, in general, all financial interests of state agencies, municipalities, decentralized and autonomous entities, and any person receiving funds from the State or making public collections (Articles 232 to 236 of the Political Constitution); the Public Prosecution Service (*Ministerio Público*), responsible for prosecuting offenses on behalf of the State (Article 251); and the Office of the Attorney General of the Republic, the function of which is to advise and consult with state organs and entities, and to represent the State (Article 252).” (OAS, 2005). Pursuant to the information provided by the government of Guatemala to the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption, the new constitutional model introduced 3 new mechanisms to exert legal and political control: “...the Supreme Electoral Tribunal, responsible for all matters relating to the right to vote, political rights, political organizations, electoral authorities and agencies, and the electoral process (Article 223 of the Political Constitution); the Constitutional Court, a permanent court, the basic function of which is to uphold the constitutional order (Article 268 to 272); and the Human Rights Ombudsman, as a commissioner of the Congress of the Republic, responsible for defending basic freedoms (Articles 274 to 275)” (OAS, 2005).

#### *Context for the Exercise of Freedom of Expression*

The violence that has plagued the country is not limited to journalistic activities. According to a report by the Office of Human Rights of the Archdiocese of Guatemala, after signature of the Peace Agreements, violence has escalated and claimed 64,000 deaths from 2000 to this date (CERIGUA, 2011b). These figures are consistent with the report of the CPJ on the situation of Guatemala, which reveals that nearly 16 murders are registered every day, out of which 10 are never solved (CPJ, 2009);<sup>16</sup> and impunity rates have raised to absurd levels of 99.75% (CICIG, 2010). Also, in 2011 -an electoral year-, political violence reached unprecedented levels when 30 candidates, officials and relatives of candidates from various parties were murdered (CERIGUA, 2011b).

The generalized context of violence justifies a special approach to attacks on journalists: “In this situation of extreme violence and impunity, crimes against journalists are highly important but are likely to get mixed up with other cases” (interview with Font, 2011). Marielos Monzón expressed a similar opinion during the interview for this project: “I believe that the situation is not alien to what is happening in other sectors, such as that of the administrators of justice, human rights defenders, or trade unionists. This is related to the context of impunity that prevails in the country. The issue is even more staggering each day.” (Interview with Monzón, 2011).

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16. <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-guatemala.php>

A survey carried out by the CPJ revealed that Guatemala has registered the death of 18 journalists since 1992, and of these only 5 have been confirmed as murders connected with the practice of journalism. A chart prepared based on the information provided by the CPJ shows that it is difficult to identify a clear trend in anti-press violence:

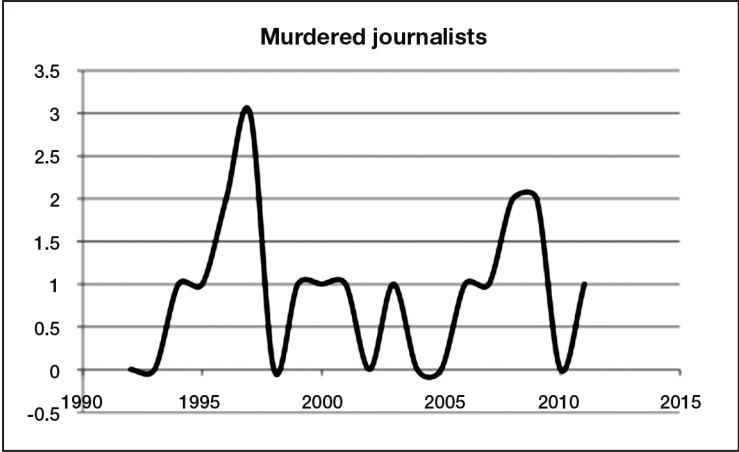


Chart prepared by the author based on the information published by the CPJ

The survey conducted by CERIGUA, on the other hand, records the total number violations of free expression –including threats, limitations to access to sources, harassment and killings- that occurred over the last few years. The survey found that, from 2003 to the first half of 2011, 409 violations to freedom of expression were reported (CERIGUA, 2011b).

In this scenario, CERIGUA raises concern over the low number of complaints for violations of freedom of expression, and notes that this situation may be explained by the use of “...self-censorship as a means to preserve the life and safety of journalists, and censorship imposed by actors who, in fact, are the censors of freedom of expression” (CERIGUA, 2011b). José Luis Font adheres to this diagnosis: “This is a country with alarming rates of impunity, a high level of conflict that is reflected in print media—though not so much on free-to-air TV, given its monopolistic nature and the fact that it tries to stay on good terms with State agents. The print media basically support the ruling system and do not perform a challenging work. That notwithstanding, in terms of attacks against journalists, there has been evidence of egregious cases, hostage situations, killings -most of them outside the capital-, pressures in intermediate cities, but also in the broader national press.” (Interview with Font, 2011)

Manfredo Marroquín offers more information on this point during the interview, in particular about self-censorship: “...There has been an ongoing trend of countless threats and even murders of journalists, but such attacks have been targeted and were perpetrated at the rural level; that is my perception. Most cases involve rural journalists, from the provinces. However, the situation over the last 5 or 10 years is associated with the emergence of drug trafficking and other forms of organized crime in the country. This context is much more dangerous for journalists in general... also for journalists working for large-scale media. More journalists conduct independent investigations

and have less protection. But the signs of violence are more threatening each day... This has also given rise to some kind of self-censorship.” (Interview with Marroquín, 2011)

According to some interviewees, this situation is compounded by some loopholes in the unionization of journalists: “I, as a journalist, took part in a transition to a journalism that is now becoming a little bit more professional. A little bit, but still not strictly professional: we have no labor union identity, there is no single association to represent our interests. I cannot identify myself with a single association to which I would like to belong. This lack of professional cohesion can be seen in the defense of the rights of access to information. There have been, and there still are, people who support attacks on journalists. A few years ago we tried to implement a system similar to that in Peru –the IPYS- for early warnings. Such efforts were unsuccessful because journalists failed to see the risk. Now people are frightened. Drug trafficking does not make the headlines. I think we are moving towards a context where we will all feel that we need to ask for protection measures for journalists. However, to this date they have been extremely inconsistent.” (Interview with Font, 2011)

## **2. Independent Variable: Institutional Design**

The case of Guatemala is rather peculiar –particularly when compared to Mexico and Colombia- for two basic reasons: first, we are not analyzing a government agency or a specific program, but a multilateral entity created to support the national government’s efforts to combat impunity and violence. Second, this entity is special because it has not been developed specifically to solve crimes against the press, but rather to address a more general and structural situation of violence caused by organized crime in Guatemala. The International Commission against Impunity in Guatemala (CICIG) was created in 2006, thanks to the efforts of the international community and the consensus of the various national political forces. This document will focus on the special structure and institutional design of the Commission, and will explore how it could contribute to the resolution of crimes against the press. We will also analyze the institutions that were created specifically by the government of Guatemala to protect and investigate crimes against the press, though our main focus will be on the CICIG.

### **2.1 International Commission against Impunity in Guatemala (CICIG)**

*“The CICIG is an unidentified political object. Among its most salient features are independence from the Guatemalan institutional system and, at the same time, respect and adherence to the rules of such system. Is that possible? From the perspective of the CICIG, it is.”* (Interview with Barrueto et al, 2008: 19).

#### *Context of Emergence*

According to the information provided by the CICIG, the climate of violence and the difficulties posed by the implementation of the Peace Agreements were the main arguments to press for the creation of an entity that would put an end to the

country's institutional weaknesses. In a context where an average of 6,000 murders were registered per year –of which only 2% end up in the courts - it was necessary to look for alternatives to halt the advance of organized crime and impunity. As we are told, following a series of attacks in 2002 which caused great concern, a human rights coalition petitioned authorities to set up a special body to investigate those attacks: “The CICIG emerged as a result of demands from social activists who complained about the State’s inability to investigate human rights issues. Above all, they united.” (Interview with Marroquín, 2011)

The CICIG says about its origins: “Early in 2003, the Government of Guatemala asked the United Nations Department of Political Affairs (DPA) for assistance to develop a mechanism to help the State investigate and prosecute its members. After much debate and a fact-finding mission, the United Nations signed an agreement with the Government of Guatemala on January 7, 2004, which contained provisions for establishing the *Commission for the Investigation of Illegal Groups and Clandestine Security Organizations* in Guatemala (CICIACS)” (CICIG, website).

“In 2003, human rights organizations, together with the Attorney General, urged the State of Guatemala to honor the global agreement on human rights (section D, chapters 7 and 15) which provides that the government must define protection mechanisms for human rights defenders and, particularly, dismantle clandestine groups, organizations and security mechanisms outside the State. This initiative began in Guatemala with the mobilization of civil society, the abolition of the military commissioner, some actions related to the disintegration of the presidential military staff, some other sources of military intelligence (...). By 2003, the Guatemalan society had a need for an entity of this sort. The idea at that time was to create a commission to investigate clandestine security groups. There was political quorum among prosecutors, the Minister of Foreign Affairs and human rights organizations. In 2003, President Portillo said “all right.” (...) In conclusion: an agreement was signed to develop this entity.” (Interview with COPREDEH, 2011)

This first agreement -the predecessor of the current commission- gave rise to considerable debate and in the end the Constitutional Court found that the agreement violated “the exclusive constitutional delegation of power on the Attorney General’s Office.” As stated in the Commission’s website, that ruling offered the Government of Guatemala the necessary elements to re-design a cooperation body and submit a new proposal in line with the findings of the Constitutional Court. Hence: “The Government of Guatemala rewrote the text to eliminate all unconstitutional issues raised by the CC and, by late 2005, approached once again the Department of Political Affairs with a petition to negotiate the establishment of a commission with a revised mandate and a new document was delivered to the General Secretary on May 31, 2006.” (CICIG, website)

#### *Nature of the Law which Created the Agency*

Following the negotiations between the Government of Guatemala and the UN DPA, an Agreement for the establishment of the Commission (CICIG, 2006) was signed and subsequently ratified by the Congress of the Republic of Guatemala in August 2007.



### *Position of the Agency within the Organizational Chart*

The Commission "...is an independent body from the political, organizational and financial standpoint" (CICIG, 2008). The commission operates as an independent special court investigating those cases that fall under its institutional mandate, although all decision-making and procedural activities are in the hands of the Guatemalan State. In the words of the CICIG: "...[it] operates as an international prosecutor's office, investigating cases under its mandate, but promotes criminal prosecution through the national justice system." (CICIG, 2009: 4)

While the CICIG is an entity that is outside the institutional organizational chart of the Guatemalan State, it needs to develop linkages with local bodies. This goal was achieved by establishing several entities or executing institutional agreements.

The Commission operates as a coordinator of the Special Prosecutor's Office for the CICIG (Unidad Especial de Fiscalía Adscrita a la Comisión, UEFAC), established specifically by the Attorney General's Office to coordinate the actions of the commission with local prosecutors. The UEFAC was established under the Bilateral Agreement entered into by the Public Prosecutor's Office and CICIG "...to implement technical assistance and support of criminal investigations carried out by the CICIG. The UEFAC is made up of Guatemalan assistant and auxiliary prosecutors, who are supported in the investigative activities by the Coordinator's Office, staffed by international and Guatemalan CICIG personnel" (CICIG, 2009: 10). The UEFAC is also made up of investigators from the Division of Criminal Investigations (División de Investigaciones Criminológicas, DICRI) and members of the National Civilian Police.

The UEFAC is part of the structure of the Attorney General's Office, under direct supervision of the Federal Public Prosecutor and, pursuant to CICIG's report (2010), it is a "model prosecutor's office". This unit is composed of a Coordinator's Office –integrated by a General Coordinator, an Associate Coordinator and a Legal Advisor, who are all staff from the CICIG- and four agencies, each of them having its own Prosecutor, an Auxiliary Prosecutor II, two auxiliary Prosecutors I -officials from the Attorney General's Office-, two National Civilian Police officers and two investigators from the DICRI. The functions performed by the unit can be classified into four areas: investigation, coordination of prosecutors and auxiliary prosecutors, institutional strengthening and training.

Later on, the Special Prosecutor's Office against Impunity (Fiscalía Especial contra la Impunidad, FECI) was established to replace the UEFAC. Within the FECI, an agency specializing in the criminal investigation and prosecution of crimes related to human trafficking, femicide and other forms of violence against women was created in January 2011 (CICIG, 2011).

In addition to establishing the special prosecutor's office, the Commission signed agreements with the Superintendence of Banks, the Comptrollers' Office, the First Lady's Social Works Secretariat (Secretaría de Obras Sociales de la Esposa del Presidente, SOSEP), the Office for the Defense of Indigenous Women (Defensoría de la Mujer Indígena, DEMI), the Presidential Secretariat for Women (Secretaría Presidencial de la

Mujer, SEPREM), the Tax Administration Bureau (Superintendencia de Administración Tributaria, SAT), the Public Prosecutor's Office and the Ministry of the Interior. It also entered into agreements with multilateral entities such as UNIFEM, UNICEF and UNODC.

### *Powers and Mandates*

The Agreement grants the Commission the powers to "...ascertain the existence of illegal security groups and clandestine security organizations; cooperate with the State in dismantling such groups and organizations; promote the investigation, criminal prosecution and punishment of crimes committed by their members; and recommend to the State the adoption of public policies aimed at eradicating such groups and organizations and preventing their reorganization. The Commission has the authority to initiate criminal and/or disciplinary actions before the relevant authorities against public servants who obstruct the Commission's activities or functions and thus contribute to impunity" (CICIG, 2008).

The Commission has the authority to gather, evaluate and systematize information provided by individuals, entities or organizations, and select the cases that will be admitted based on three aspects: the likelihood of links with illegal groups and clandestine security organizations; the short and long-term political impact of the case on the fight against impunity; and the probability of success in advancing the case in the criminal process (CICIG, 2009).

The Commission's report states that the CICIG "...has no authority to press criminal charges, and must do so through the Attorney General's Office, i.e. the body exclusively authorized to pursue public criminal prosecution. The CICIG has developed and implemented a system of levels of involvement in criminal prosecution: technical advice to the prosecutor in charge of the case within the Attorney General's Office; allocation of the case to the UEFAC; direct participation by the CICIG as complementary prosecutor (*querellante adhesivo*)."

 (CICIG, 2010: 12)

The Commission hears cases that meet the two following criteria: on the one hand, admissibility criteria regarding its institutional purpose: "...it does not address impunity in general and is not a parallel Attorney General's Office, but it is concerned with a limited number of cases that are aimed at achieving the goals of such mandate, that is, those that promote the dismantlement and eradication of illegal groups and clandestine security organizations" (CICIG, 2010: 13); and selection criteria to determine which of the admissible cases will be accepted.

The Commission has a two-year mandate that can be extended for an additional two years based on its achievements and the need to sustain this institutional space. At this writing, the Commission has successfully renewed its mandate until 2013.

### *Organizational Capacity*

#### *Budget*

The Commission is financed entirely through voluntary contributions from the international community that are initially administered by the UNDP through a trust fund and then through its own financial computer system (CICIG, 2009).

According to the 2008 report, the CICIG had received a total of USD 13,792,785 in voluntary contributions from 13 donors. The State of Guatemala undertook to provide the Commission with office space and take all necessary measures to ensure the security and protection of the Commission's staff.

### *Staff*

The Commission is made up of a Commissioner and five units: The Commissioner's Office, the Investigations' Office –which comprises the Departments of Financial, Police and Legal Investigations, and of Analysis and Information-, and the Litigation, Administration, Human Resources and Security Offices (CICIG, 2010; CICIG, 2011). Pursuant to the first performance report, the CICIG had 109 officials, i.e. 73% of the staff projected for in the operational budget (CICIG, 2008). At the time the second report was published, the staff had increased to 159 national and international officials (CICIG, 2009); by the third report (CICIG, 2010), national and international officials working for the Commission totaled 196. As of August 31, 2011, CICIG's staff was composed of 207 national and international officials. (CICIG, 2011)

### *Political Distinctiveness/Independence*

Performance reports only rarely make reference to the method used for hiring staff for the Commission, though we can assume that such methods conform to the guidelines defined by the United Nations for this type of appointments. Therefore, we could assume that the requirement of independence and political distinctiveness of the organization with respect to other local political agencies has been met. The Commissioner is directly appointed by the Secretary General of the United Nations. "The director of the CICIG has the rank of Under-Secretary General of the United Nations, the highest possible rank." (Interview with Marroquín, 2011)

The reports do mention the recruitment conditions for the staff at the UEFAC, who "... were subject to a selection process by CICIG that looked to incorporate those officials who voluntarily manifested their interest in joining this special unit, had no administrative or criminal records, have demonstrated ability, experience and knowledge of the situation in the country, the national regulatory framework and CICIG's mandate and passed the reliability tests developed especially for this purpose" (CICIG, 2009: 10). The prosecutors of the UEFAC are not officials of the CICIG. They are all career officers who were especially selected for the position and who receive training from the CICIG.

## **2.2 Guatemalan State Agencies Engaged in the Protection of Journalists**

The Guatemalan institutional structure includes three agencies that are engaged in the protection of journalists: The Presidential Commission for Coordinating Executive Policy on Human Rights, the Human Rights Ombudsman's Office and the Unit for Crimes against Journalists and Trade Unionists of the Attorney General's Office. The last two are in charge of receiving complaints of crimes against journalists. That is the opinion of one of the journalists who were interviewed, when asked about the institutional instances that victims could resort to in the event of attacks against the press: "There are two options. The Attorney General's Office and the Human Rights Ombudsman's Office. The complaint can be filed with both entities; the Ombudsman's Office normally

gives notice to the Attorney General's Office and the Inter-American Commission on Human Rights, and, if appropriate, the Commission will grant precautionary measures to be enforced by the Guatemalan State." (Interview with Font, 2011)

### **COPREDEH**

The COPREDEH is the Presidential Commission for Coordinating Executive Policy on Human Rights (Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos), and is responsible for the promotion and protection of the human rights of all Guatemalans. The Commission was established to coordinate the actions of the Executive's agencies, to ensure the observance and protection of human rights and guarantee communication and cooperation between the President of the Republic and the Judiciary and the Human Rights Ombudsman's Office regarding those rights. (CERIGUA, 2011)

Its responsibilities include:

- "To provide support in the mediation of conflicts in the country, particularly regarding the protection of human rights defenders;
- To design public administration advocacy strategies to incorporate the issue of human rights into State policies;
- To strengthen education on human rights and foster a culture of peace, mainly among public officials;
- To improve the international perspective on the implementation of human rights in the country, conducting analysis and issuing reports on the country's reality;
- To follow-up and promote compliance with the recommendations made under conventional and non-conventional mechanisms for international protection of human rights;
- To improve the assistance provided to victims of the internal armed conflict and of human rights violations who, in the absence of domestic accountability, resort to international and regional instances to have their cases heard, by promoting the enforcement of Amicable Settlements, Agreements on Recommendations and the Decisions of the Inter-American System." (COPREDEH, website)

As explained above, the protection of journalists is not specifically mentioned in the Commission's mandate, but it is part of such mandate and the Commission in fact takes measures to protect the work of journalists in Guatemala. Pursuant to the document prepared by CERIGUA on protection mechanisms: "The COPREDEH does not receive complaints, it rather handles cases that have been submitted before the Inter-American Commission on Human Rights –IACHR-, which orders precautionary measures for the benefit of the victims, or the Inter-American Court of Human Rights –I/A Court H.R.- , which grants provisional measures. It also handles urgent requests from the Rapporteurs of the UN System. Those who believe that their rights have been infringed can resort to the Human Rights Ombudsman's Office (PDH) and/or the Attorney General's Office so that these bodies can establish if a crime has been committed. A complaint may also be filed with the National Civilian Police (PNC) or a court. The affected individuals may apply for precautionary measures with the IACHR –directly, through the Human Rights Ombudsman's Office or an attorney or organization- in accordance with article 25 of the Rules of the IACHR. While the IACHR decides on the precautionary measure, the State must take measures to

secure the physical integrity of the victim, which is done through a national mechanism designed for protecting aggrieved parties and their families.” (CERIGUA, 2011: 70)

In the words of the members of the COPREDEH who were interviewed: “...The Inter-American Commission on Human Rights has paid a great deal of attention to the cases of violence against journalists in Guatemala (...). The most similar thing to the recommendations that we found is the report of Guatemala “*Justicia e inclusión social*” of 2003 where, following a visit, the Commission analyzed the situation of human rights defenders, trade unionists, journalists, etc. Other more vulnerable groups such as women, children, and indigenous people were also examined by the Commission. There was a similarity between the attacks suffered by human rights advocates and justice officials.

At this point, the idea that Guatemala has to ensure effective enforcement of the protection program begins to take shape. A witness protection law was adopted, in 2009 the implementing regulation was passed, and the program was amended. However, this executive order is very special in that both journalists and trade unionists have the chance to request the Attorney General’s Office for protection. Having said that, the Commission has the conviction that Guatemala should have a protection policy... that Guatemala should have a program to develop preventive measures in order to guarantee physical integrity.” (Interview with COPREDEH, 2011)

### **Human Rights Ombudsman’s Office (PDH)**

The Human Rights Ombudsman (Procurador de Derechos Humanos, PDH) is a Commissioner of the Congress of the Republic who has been entrusted with defending the human rights guaranteed in the Political Constitution of the Republic of Guatemala, the Universal Declaration of Human Rights, and the international treaties and conventions signed and ratified by Guatemala. (PDH, website)

The Ombudsman does not report to any entity, therefore, the office enjoys considerable autonomy in the exercise of its powers. The methods for appointment and removal of the ombudsman are restrictively established, and so the entity is shielded from political influences: “The person appointed to serve as Human Rights Ombudsman shall meet the same requirements to become a Magistrate of the Supreme Court of Justice. The Ombudsman enjoys the same immunities and prerogatives as the members of the lower chamber of Congress. The person appointed as Ombudsman may not serve in any other public office nor act as leader of political parties, trade unions, labor or employers’ organizations. The Ombudsman may not privately exercise its profession or act as cleric of any religion. In Guatemala, the Human Rights Ombudsman is elected by Congress at a plenary session for a single non-renewable period of five years. The Ombudsman is elected at a special session of Congress by a two-thirds vote. The Ombudsman is appointed from a list of three candidates nominated by the Human Rights Commission of Congress, within 30 days after submission of such list.” (PDH, website)

The responsibilities of the Human Rights Ombudsman include:

- “Promoting the effective operation and speed of government administrative procedures on human rights;



Investigating and reporting any administrative conduct that is detrimental to the interests of individuals;

- Investigating all complaints filed by any individual regarding human rights violations;
- Making private or public recommendations to officers so that they change administrative actions that have been challenged;
- Issuing resolutions of “public censure” (*censura pública*) against acts or conduct that infringe institutional rights;
- Initiating administrative or judicial remedies or actions, where appropriate; and
- Any other functions and powers set forth by law.
- Promoting and coordinating with the relevant agencies the inclusion of Human Rights as a subject of study in the private and public education curriculum, which shall be taught as part of the regular class schedule and at all educational levels.
- Developing a permanent program of activities to examine the main aspects of human rights and to prepare reports, compilations, surveys, legal scholarly research, publications, dissemination campaigns and any other promotional activities, in order to raise awareness among different sectors of the population on the relevance of these rights.
- Establishing and maintaining communication with various inter-governmental and non-governmental organizations, both national and foreign, engaged in the defense and promotion of human rights.
- Ensuring that each year in January the annual report and other special reports referred to in the Law on the Human Rights Commission passed by Congress and in the Human Rights Ombudsman Law are released to the media.
- Participating in international human rights events.
- Receiving, examining and investigating any complaint about human rights violations filed orally or in writing by any group, individual or legal entity.
- Initiating, of its own motion, any investigations deemed necessary in cases brought to this office involving human rights violations.
- Searching any premises or facilities when there is a reasonable suspicion that a human rights violation has been committed, pursuant to a judicial order issued by a competent judge. Such inspections shall not require prior notice to the officials who are directly or indirectly in charge of those premises or facilities.
- Requiring that any individuals, officials and public servants, irrespective of their rank, at the above premises and facilities immediately submit all books, documents, files, records, including those kept in computers, accompanied by technical experts, notwithstanding the provisions of Articles 24 and 30 of the Political Constitution of the Republic of Guatemala.
- Issuing resolutions of “public censure” against the perpetrators and/or instigators of human rights violations, when deemed appropriate based on the results of the investigation.
- Administering the Human Rights Ombudsman’s Office, and appointing, cautioning and terminating its staff members, in accordance with applicable rules; and
- Preparing a draft annual budget for the office and forwarding it to the Human Rights Commission of the Congress of the Republic, to be included in the State’s General Budget of Income and Expenditure.” (PDH, website)

In accordance with the above responsibilities and powers, any person who considers that his or her rights have been violated may file a written or oral complaint at



the office of this institution, at any branch offices or by phone. Pursuant to the Protection Manual for Journalists drafted by CERIGUA (2011), "...The PDH shall investigate and issue a resolution that will not be binding but that will be of moral value. The PDH initiates its own investigation and will refer the complaint to the Attorney General's Office if any evidence of criminal acts is found; the PDH will also grant basic security measures and, in more serious cases, personal security will be assigned for a specific period of time if the journalists so requires" (CERIGUA, 2011: 66)

### **Attorney General's Unit for Crimes against Journalists and Trade Unionists**

The Special Prosecutor's Office for Crimes against Journalists and Trade Unionists was established 10 years ago, in June 2001, under Agreement No. 14-2001 of the Attorney General's Office to investigate crimes against journalists and trade unionists. Subsequently, this Special Prosecutor's Office would become a unit within the structure of the Human Rights Unit. CERIGUA's report (2011) notes that such unit "...is integrated by the Head Prosecutor, two prosecutors, 6 auxiliary prosecutors, 1 official from the prosecutor's office and a driver". As regards the process for establishing such unit, the members of COPREDEH who were interviewed said that "...in 2001, the statements and comments of the *rapporteurs* on freedom of expression resulted in changes and modifications by the Attorney General's Office to its organizational structure. In 2001, the Human Rights Unit was established and such office includes several special prosecutors' offices: an office on crimes against justice officials, an office on crimes against human rights defenders and an office on crimes against journalists and trade unionists" (interview with COPREDEH, 2011). José Luis Font argues that journalists, in general, do not realize that their activities are under serious threat and "...this is the main reason why there is no State protection mechanism. Clearly, ten years ago when we tried to establish the system for the protection of journalists, the response from the prosecutor's office and the Attorney General's Office was to create a special prosecutor's office for crimes against journalists, which has now been reduced to a unit. But this was never complied with by the prosecutor's office; in addition to crimes against journalists, they are in charge of crimes against trade unionist. So, I would not oppose to having a prosecutor that worked efficiently." (Interview with Font, 2011)

Complaints on crimes against the press can be filed with this entity. As explained in the document prepared by CERIGUA: "The victim registers a complaint with the Attorney General's Office for an allegedly punishable act; that is, an act that may be classified as an offence. The Attorney General's Office is asked to investigate the facts, and the victim provides as much information as possible. When a search is involved, investigators are sent to the crime scene in order to gather the necessary evidence. The complaint must be filed immediately. If the first authority contacted by the victim is the National Civilian Police, this entity will register the complaint and immediately give notice to the Attorney General's Office. If the Attorney General's Office considers that the events constitute a crime, it may automatically commence prosecution proceedings; i.e. no request by third parties being required." (CERIGUA, 2011: 71)

### 3. Dependent Variable: Performance of the CICIG and Other Local Entities

*“Basically, what the State said was: ‘the State is incapable of investigating and needs help to conduct investigations, the State abdicates its sovereignty and will let international prosecutors take over’”*

(Interview with Marroquín, 2011).

#### Performance of the CICIG

In order to assess the performance of the CICIG, we need to analyze its particular **institutional characteristics** which, in some cases, may operate as structural limitations to the powers of the CICIG. In 2007, the Court was asked to decide on the constitutionality of the agreement under which the CICIG was established. The Court found that such agreement “...was constitutional as it establishes a commission to assist in the investigation of crimes that are subject to public prosecution, as specified in that agreement, and to advise the Guatemalan State on matters described therein. For the Agreement to have full force and effect, it must be construed and enforced in accordance with the applicable constitutional and statutory provisions of the Guatemalan legal system; therefore, any approval instruments issued by the Congress of the Republic and any ratification instrument signed by the Executive Branch shall contemplate such provisions in order to ensure constitutional supremacy...” (CC, 2007: 36).

An aspect that was analyzed by the Constitutional Court and that was later challenged by some of the individuals who were investigated<sup>17</sup> by the Commission is the independence and autonomy of the Attorney General’s Office after the execution of the agreement establishing the CICIG. On this point, the Constitutional Court held: “...the Attorney General’s Office retains its autonomy...(…)...since the provisions contained in the agreement (...) do not restrict or diminish the powers conferred by the Constitution and the statutes. Furthermore, for the Attorney General’s Office to undertake obligations related to the Commission (...), an agreement should be executed between such office and the aforementioned commission in order to preserve its autonomy.” (CC, 2007: 36)

Now, if such independence and autonomy are maintained thanks to the agreements signed with the CICIG, those instruments should be analyzed in detail.

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17. “CICIG’s participation in investigative and procedural activities has been attacked with injunctions (*amparos*) and constitutional challenges. In general, all of them put forward the following arguments: investigations and criminal proceedings conducted by a prosecutor’s office that “depends” on CICIG violate due process, the right to a defense and the principle of non-retroactivity of the laws; the appellant does not belong to an illegal security group or clandestine security organization; the Agreement on the creation of CICIG, and hence the Commission’s participation in the investigation and/or as a complementary prosecutor cannot be applied retroactively because the fact occurred before the signature and entry into force of the Agreement” (CICIG, 2009: 21).

As explained above, the Commission signed agreements with various entities: the Superintendence of Banks, the Comptrollers' Office, the First Lady's Social Works Secretariat (SOSEP), the Office for the Defense of Indigenous Women (DEMI), the Presidential Secretariat for Women (SEPREM), the Tax Administration Bureau (SAT), the Attorney General's Office and the Ministry of the Interior. Notwithstanding the findings of the Constitutional Court, the wording of these agreements, in some cases, may threaten the autonomy of the entities as they place the Commission in an advantageous position for handling the information held by the State of Guatemala. Note that the State of Guatemala is now subject to the recently enacted law on access to information, while the CICIG is not bound by any similar provisions; and this imbalance is often aggravated by such agreements. The agreement signed with the Ministry of the Interior, for instance, grants the Commission the power to have unlimited access to information on files. Only some agreements, such as that signed with the Tax Administration Bureau, set forth the obligation of the CICIG to provide any information that could strengthen legal actions to eradicate tax fraud.

The report prepared by Barrueto also refers to such concerns, but it goes further as to its impact: "Undoubtedly, the CICIG is a stakeholder that invades, with the full consent of the State, the sovereignty of Guatemala as regards justice and security. Based on the wording of the agreement, the CICIG seems to be organized as an "independent" and "immune" entity, that cannot be affected by the actions of the Guatemalan judiciary. This is one of the first unintended consequences of the Agreement: The CICIG, in an attempt to fight impunity, becomes an immune entity that is not subject to any control whatsoever." (Interview with Barrueto *et al*, 2008: 21)

#### *Inter-Agency Coordination*

The CICIG declares that it mostly interacts with three entities, with which it had to build effective relations to perform its institutional mission: the Ministry of Interior –including the PNC and SP-, the Attorney General's Office and the Judiciary. In the case of the Attorney General's Office, the relation between these institutions has been reflected in the creation of the Special Prosecution Unit attached to the CICIG. (CICIG, 2010)

Some of the reports prepared by the Commission reflect a certain degree of reluctance within the Attorney General's Office to progress on the work commenced by the Commission: "...in cases where relations with the Attorney General's Office have not been productive or where the Commission's investigative work has even been systematically obstructed, the investigation of cases has lagged behind" (CICIG, 2008: 4). At the interview conducted during our research, Marroquín agreed on the difficulty of articulating effectively with the Attorney General's Office: "At the beginning, the Commission would compete with the Attorney General's Office and the judges. The Commission was considered useless by some people, and it was accused of conducting investigations behind the back of federal prosecutors. There has always been this friction." (Interview with Marroquín, 2011)

The 2008 report reveals a certain degree of distrust that hinders inter-agency coordination, not only in the Commission's attitude towards local entities, but also among State entities themselves, as in the case of the complex relationship between the Attorney General's Office and the National Civilian Police. In view of this adversity, the CICIG tried to devise instances of coordination: "...in order to overcome the distrust between the Office of the Public Prosecutor and the National Civilian Police, which makes coordination between the two bodies difficult, the Commission has encouraged the creation of joint investigation teams." (CICIG, 2008: 4)

A high **turnover of officials** is another obstacle identified by the CICIG for the development of its institutional mission: "...subsequent ministerial appointments and constant turnover among high-ranking National Civilian Police officials have made it difficult to design and implement medium and long-term security plans despite their extreme necessity. Progress has been made, although not at the desirable pace, in removing corrupt officials from the PNC and incorporating into CICIG's activities other police officers, whose backgrounds were checked and who receive constant training." (CICIG, 2009: 9)

The turnover of officials at the Ministry of Interior seems to have improved, as explained in the 2011 report (CICIG, 2011). During the fourth year of the Commission's work, certain problems were observed in the Judiciary: "...irregular conducts by certain judges were detected –particularly illegal resolutions which favored impunity in highly relevant cases-, and the mechanisms of the justice system failed to take adequate action to correct such irregularities." (CICIG, 2011: 6)

These difficulties in coordinating their work effectively have been interpreted in some cases as a threat to Guatemalan institutions: "Many critics argue that the CICIG, based on its objectives and powers, has undermined the weak institutional structure of the Guatemalan judicial service." (Interview with Barrueto *et al*, 2008: 23)

#### *Performance, Results and Structural Problems*

As reported by the CICIG, in its first stage of operations the Commission received considerable criticism and was marked by a slow bureaucratic pace that yielded no specific results. Later on, from September 2008 through September 2009, the Commission established its internal operating structure, appointed officials and formed teams of investigators. It was not until the following year that the CICIG announced specific results, particularly in the institution-strengthening component of its mandate (CICIG, 2010). The 2011 report highlights the institutional strengthening activities conducted by the Commission, and this could be interpreted as evidence that it has encountered difficulties in progressing with its prosecutorial functions and the need to focus on proposals and legislative amendments to justify its continuity.

The CICIG claims to have accomplished the following achievements in its performance reports:

<b>Description</b>	<b>Number</b>
Complaints received	1,937
Investigations opened	62
Debates in progress	1
Participation as complementary prosecutor	20
Judgments	6
Pre-trial procedures	4
Court procedures	1,544
Statements	512
Fact-finding missions	919
Searches	248
Arrests	157
Hard copy and electronic files	225,149
CICIG officers handling substantive work	86

Based on the information contained in the report for the third and fourth years of activities of the CICIG (CICIG, 2010; CICIG, 2011)

Asked about the performance of the Commission, the interviewees said: “It has the authority to investigate crimes originated in the so-called parallel power structures. Or any other crime involving weapons, protection networks, etc. Clearly, when the CICIG was established, they did not know that such mandate would mean all this: that in a country with a population of 15 million, they would receive millions of cases each day. At the beginning, many conservative groups opposed to the CICIG on the grounds that it was a source of shame, that the State had failed and that we are supposed to solve our own problems, etc. Then, progress was made in some investigations and that seemed to confer legitimacy on the Commission. But as more powerful people were investigated, things began to collapse.” (Interview with Marroquín, 2011)

The emphasis on the communication strategy -which will be discussed later- seems to have defined the criterion for the selection of cases. The 2008 report says that “high impact” cases were given priority in order to make the activities of the Commission more visible. Font agrees with Marroquín that in its early days the Commission sought to gain legitimacy by working on high-profile cases: “I believe this evidences the lack of a clear strategy to approach the problem. I’m afraid the CICIG needed approval from the population and so it took on those challenges that would attract considerable media attention, but these were not necessarily the most important cases. And so there were delays in some cases due to lack of independence from the private sector and, in other cases, because they did not have the resources to determine how powerful these people and groups really were.” (Interview with Font, 2011)

It is also striking that the CICIG itself seemed to account for its limitations in one of its reports, using the same arguments that justified its creation to explain its meager results: “The dismantling of the illegal groups and clandestine structures entrenched in many public entities in Guatemala is the responsibility of the State. The CICIG will continue to provide the State of Guatemala with all the support and assistance it can offer to ensure that these groups and structures are finally eradicated. In order to meet this objective, however, the State of Guatemala must ensure that all agents of the justice system who consistently strive for fairness in the administration of justice can operate freely and not in a climate of threats, pressure or even killings. Since early 2008, at least eight security and justice officials have been killed. All of them were working on or had information about high-impact cases. Despite the above, a careful analysis of the convictions handed down shows that the justice system’s effectiveness is at an unacceptably low level. While it is true that the Office of the Public Prosecutor and the National Civilian Police have the fundamental responsibility for investigation and criminal prosecution, judges are ultimately responsible for ensuring that the investigation is carried out effectively and in line with the requirements of due process, so that it will lead to a conviction where appropriate. This is the responsibility of the judiciary in a State governed by the rule of law.” (CICIG, 2008)

José Luis Font adheres to this approach: “I believe, four years later, that the CICIG faces the same obstacles as Guatemalans do to fight this battle. Of course, progress has been made and there have been positive actions to fight impunity, but I don’t think they are dismantling these mafias, or clandestine organizations, not even by far. They have dealt with some of the cases. But, where is the military mafia that was supposedly the main counterinsurgency group? They have not reached them; they have not even tickled them... (...) However, we have seen many proceedings at the CICIG and they are similar to those of the Guatemalan justice, you will find the same internal conflicts -from romantic conflicts to problems of unfair competition— among investigators... decisions are made for political reasons and not for the sake of justice, etc. At this point, I realize that all human beings are the same, and it’s not that we the Guatemalans are particularly incapable. People have no principles.” (Interview with Font, 2011)

#### *The CICIG and the Protection of Journalists*

The reference made to social communicators in performance reports appears to be utilitarian. Journalists are only mentioned as the target of a communication strategy that will get the Commission onto the local public and political agenda. The report of the CICIG (2009), drafted two years after its creation, identifies journalists as key players of its strategic structure, but not as a target group that should be protected. The report also reflects a secretive attitude with regard to public information due to the nature of the documents handled by the commission: “Since the Commission’s installation, security has been an ongoing concern. As a result, a series of security measures were taken to limit the possibility of the public accessing persons, documents and locations where investigation and analysis work is done.” (CICIG, 2009: 7)



Barrueto's report is consistent with our diagnosis: "Having analyzed the CICIG's website and many publications and articles about this commission, apparently there is no clear concern for the protection of the rights related to freedom of expression and, in particular, for all matters relating to the protection of the practice of journalism and freedom of the press...(...)... the CICIG has not been entrusted with the protection of freedom of expression in Guatemala and will only address a case related to freedom of expression if the issue "overlaps" with a matter related to parallel groups and organized crime." (Interview with Barrueto et al, 2008: 35).

The definition of the powers and responsibilities of the Commission does not expressly exclude crimes against the press from the scope of its work, but such crimes are not directly included. For an attack against a journalist to be addressed by the Commission, it must be related to its institutional mission. In 2010, the Commission undertook the case of Luis Felipe Valenzuela, General Director of the radio conglomerate *Emisoras Unidas*, who was shot in the face during an armed robbery. According to the 2010 report (CICIG, 2010): "On April 8, 2010, journalist Luis Felipe Valenzuela was severely injured during an attack with firearms. The case is under investigation to establish if the event was connected to his work as a journalist or was merely an ordinary criminal act. No one has been arrested to this date." (CICIG, 2010: 18)

Beyond the investigation of this case, some journalists interviewed by Barrueto for his report on the contribution of the CICIG to the protection of journalists express a skeptical opinion: "All three believe that rather than strengthening freedom of expression and of the press, the actions of the CICIG have weakened the system. On this point, Giovanni Fratti states that "there is no commitment whatsoever to freedom of the press". Marta Yolanda Díaz Durán, after being asked the same question, commented that "a complaint was filed against me both with the CICIG and the Attorney General's Office... because of an article entitled *"El beso de Espada"*. My freedom of expression was violated by the Vice-President. I have a recording where he threatens me, but the prosecutor of the CICIG is calling *me* to give a statement. Now they are infringing on freedom of expression." (Barrueto et al, 2008: 35)<sup>18</sup>

Other journalists consider the contribution of the CICIG using a more systemic approach, "...in this context, it is unlikely that the CICIG will prosecute crimes against journalists. They are overwhelmed. The CICIG was a guarantee and worked meticulously at first..." (Interview with Font, 2011). Marielos Monzón, who was also interviewed during this investigation says about the contribution of the CICIG and the expectations surrounding this commission: "Look, I think that what the CICIG can do is identify the structures; that is important. They can build a paradigmatic case. But we cannot refer all cases to them..." (Interview with Monzón, 2011).

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18. <http://mydda.blogspot.com/2010/11/cicig.html>

## Performance of Local Institutions

*“A protection mechanism provided by the State is unthinkable here. The State itself is incapable; who could be assigned to protect you?”  
(Interview with Marroquín, 2011).*

The COPREDEH has been deeply involved in the preparation and dissemination of materials for the protection of journalists, such as the “Brochure for the Protection of Journalists”, the “Journalist Protection Protocol” and the “Manual for the Protection of Journalists and Social Communicators.” At the interview, the members of this entity mentioned other achievements: “...we worked with the Department of Planning on Individual Protection Mechanisms and we have heard 44 cases from journalists. Protective measures have only been granted in 5 of those cases, because not all have accepted the measures.” (Interview with the COPREDEH, 2011)

José Luis Font believes that the work conducted by the PDH or the Special Prosecutor’s Unit is insufficient: “Even if, as I have heard, the victims feel that someone listens to them, these precautionary measures can offer little security, as this is an extremely violent society” (interview with Font, 2011). And this situation is reflected in the information provided by Marielos Monzón: “A month ago, I received from the Prosecutor’s Office for the Protection of Journalists a summons to give a new deposition for a complaint for threats that I had filed in 2005. Six years later! This country does not try to solve people’s problems. No one has investigated the threats.” (Interview with Monzón, 2011)

In more systemic terms, the members of the COPREDEH analyzed the special circumstances and the context in which these institutions operate: “...the Human Rights Unit received considerable international cooperation, but when that help began to diminish, the Attorney General’s Office and the prosecutors’ offices changed their approach, and an idea started to form that the prosecutor’s office for journalists should engage in other issues related to freedom of expression, which eroded the work of the unit. The prosecutor’s office for crimes against trade unionists and journalists had successfully processed around 40 cases by 2005, some of them with positive outcomes, but this approach would shift in 2006. We see this as a weakening. In terms of protection, there has not been a comprehensive approach, unlike the Commission suggested. We are working on something since 2008, with the new administration... a protection policy for human rights defenders and other vulnerable groups, and also a protection program for human rights defenders, journalists and justice officials. (...) One of the problems we have with journalists when it comes to offering protection is that... first, the Attorney General’s Office does not respond as promptly as they wished, and we believe that many journalists ignore that they are entitled to this protection mechanism under the law. As a result, they file requests for precautionary measures with the IACHR or the United Nations. Moreover, they eventually have to come back to us and we offer a protection scheme which is very limited and consists in police protection in the workplace or at specified locations. These mechanisms affect the activities of journalists; it ends up being uncomfortable for them. We know that this impairs their activities and ideally they should be able to work with the highest possible level of security. Today journalists

not only face the consequences of discrediting, challenging or ruining the reputation of public officials; now that they investigate issues such as corruption, drug trafficking, illegal networks, human trafficking or criminal acts, they are themselves at high risk.”

With regard to the performance of these institutions, Ileana Alamilla said: “Look, I believe we have a very serious problem that affects the general operation of the justice system. This is precisely what fosters a climate that is prone to crime and attacks. Obviously, the decision to involve the Attorney General’s Office has a very negative impact. The authorities fail to conduct effective investigations or follow up on cases; and people are apathetic and indifferent. Thus, cases remain in a limbo and this encourages perpetrators of threats and crimes against the press. Impunity is entrenched at every level of the State and society, and we –the journalists- remain unprotected. Even if there is legislation that guarantees our rights at the constitutional level, it is precisely the enforcement of such rights that is so problematic. The second mechanism, that of the Human Rights Ombudsman’s Office, is implemented by a very large institution that provides some comfort to citizens when the system fails. The Ombudsman has some highly effective powers, such as legal actions to protect journalists. In the case of international entities such as the Office of the High Commissioner, their presence is relative, to tell you the truth. It is important that they receive reports on freedom of expression or attacks on journalists. But these international reports actually mean nothing. The last report of the Office of the High Commissioner did not even include any recommendations. The report just called on the State to comply with the recommendations that had been previously made.” (Interview with Alamilla, 2011)

#### **4. Conclusions**

One of the first problems experienced when we analyze the institutional design of the CICIG are a series of challenges regarding the effect of the agreement on Guatemalan institutions, rather than a constitutionality challenge. This can be seen clearly in the articulation of the Commission with local entities under cooperation agreements. Such agreements confer significant discretionary powers to the Commission, but fail to establish strict oversight and accountability mechanisms.

The coordination between the Commission and local activities is even more vital for the promotion of its institutional mission than in the other cases under analysis (Mexico and Colombia). However, the reports of the CICIG reveal that the reluctance and distrust of local authorities has resulted in the failure of local investigations.

The results achieved seem to have been particularly poor during the first years of operations but have improved gradually as the Commission gained experience, although apparently more emphasis has been placed on actions aimed at strengthening institutions and fostering approval of legal reforms, rather than solving cases that have been admitted and selected. If we consider the gap between the high level of demand (number of complaints received) and the number of investigations in progress, we can assume that there is some level of frustration among complainants who resorted to the

Commission -even when their cases did not fall under the institutional mission of the commission- after local institutions failed to render justice.

It is also striking that the CICIG itself seemed to account for its limitations in one of its reports, using the same arguments that justified its creation to explain its meager results. Four years later, the CICIG seems to be back in the same place where it started and facing the challenges of operating in a State that is under siege by organized crime.

As regards the contribution of the Commission to the protection of journalists, it is important to acknowledge that investigating crimes against the press is not part of its institutional mission, except when the crime involves the participation of clandestine paramilitary groups. The only case within the scope of the Commission's mandate has not been solved yet.

Beyond these formalities, the perceptions of the journalists who were asked during the interviews about the contribution of the CICIG to the protection of freedom of expression have been rather skeptical. Some claim that the CICIG should not be expected to perform an additional function, while others believe that the CICIG has only paid attention to journalists as part of an aggressive communicational strategy to gain legitimacy in the local political arena.

Meanwhile, the efforts of local organizations appear insufficient or, at a minimum, have been challenged in a context of growing distrust of local institutions. In the opinion of some of the journalists who were interviewed, it is essential for journalists to organize themselves to promote and defend their rights, either through the design of a protection mechanism within the local institutional framework or by resorting to international bodies as recipients of complaints or requests for protection.

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## General conclusions of our study

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The case study examined the institutions responsible for protecting journalists and investigating crimes against the press in three countries: Mexico, Colombia and Guatemala. The analysis of each country described and evaluated the bodies and policies which were established to address serious threats against freedom of expression.

To respond to demands for protection, the Mexican State created several institutions such as the Program on Attacks Against Journalists and Civil Defenders of Human Rights at the Fifth Investigative Unit of the National Human Rights Commission (CNDH), the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE), the Special Committee to Monitor Aggressions to Journalists and the Media of the National Congress, and the Unit for the Promotion of Human Rights of the Ministry of Interior at the Executive Branch, which recently created the Committee to Protect Journalists.

In the case of Colombia, the State created the Program for the Protection of Journalists to reverse the dramatic situation of freedom of expression. Together with the program, the Committee for Risk Regulation and Assessment (CRER) was established to assess risk levels and evaluate, recommend and/or approve the protective measures requested by victims. In terms of its institutional framework, the program coexists with other bodies that perform similar functions, such as the Early Alert System of the Office of the Ombudsman or the Witness Protection Program of the Attorney General's Office of the Republic. The Protection Program is attached to the Human Rights Office of the Ministry of Interior and Justice and it works in collaboration with the CRER, an inter-agency committee which gathers civil society organizations and that has been internationally celebrated and recognized. The program has a comprehensive budget, but interviewees admit that financial resources are mainly allocated to protection schemes, rather than using funds to train personnel to enhance the positive aspects of the program.

Guatemala, in turn, is a rather peculiar case for two basic reasons: first, we are not analyzing a government agency or a specific program, but a multilateral entity created to support the national government's efforts to combat impunity and violence. The International Commission against Impunity in Guatemala (CICIG) was created in 2006, thanks to the efforts of the international community and the consensus of the various national political forces. And second, the entity in question is special because it has not been developed specifically to solve crimes against the press, but rather to address a more general and structural situation of violence caused by organized crime in Guatemala.

### *Institutional Design*

As described in the section on methodology, each of the analysis units were assessed based on their institutional design. In the Mexican case, the analysis of the institutional design focused on the Special Prosecutor's Office for Crimes against Freedom of Expression. This analysis of the Special Prosecutor's Office has enabled us to identify

a series of limitations: a narrow legal framework, resulting from an agreement rather than a comprehensive law; administrative dependence on the PGR due to its position in the organizational chart; limited jurisdictional powers;<sup>19</sup> the requirement to confirm that the attack was perpetrated in relation to the practice of journalism and is not associated with organized crime, limited political distinctiveness due to the absence of specific criteria for the appointment and removal of authorities; and budgetary restraints and underqualified staff. However, according to a thorough analysis by the CNDH and the information contained in other documents, independently of the above limitations concerning its institutional design, the Special Prosecutor's Office has had a poor performance.

In the analysis of the Colombian Program for the Protection of Journalists, considering that it was created as an inter-agency space, we focused our attention on inter-agency coordination aspects. One of the biggest objections to the program is possibly the poor level of inter-agency coordination with the organizations that we have identified as potential rivals to the program. Being an inter-agency body, the Committee can receive resources and information from different sources to fulfill its mission, and the presence of civil society organizations gives the committee greater legitimacy. However, since the Committee is made up of a group of representatives and institutions with different missions and purposes, sometimes this seems to adversely affect the results achieved by the program. The greatest tension is between the CRER and the Colombian Attorney General's Office, and the way information is shared by these bodies. Coordination problems between the CRER and the Attorney General's Office can be seen in the administration, systematization and access to information regarding judicial cases.

The other side of inter-agency coordination problems is the articulation between the different levels of government, the national directives and the realities of the local governments. Although Colombia has a unitary political organization, which facilitates a consistent implementation of policies, the performance of the program (the implementation of risk studies, for instance, or the enforcement of protection measures) still depends on how local officials interpret and apply the directives issued by the central government.

In the case of Guatemala, one of the first problems experienced when we analyze the institutional design of the CICIG are a series of challenges regarding the effect of the agreement which created such commission on Guatemalan institutions, rather than a constitutionality challenge. This can be seen clearly in the articulation of the Commission with local entities under cooperation agreements. Such agreements confer significant discretionary powers to the Commission, but fail to establish strict oversight and accountability mechanisms. The coordination between the Commission

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19. This aspect should be addressed in light of recent efforts to federalize crimes against the press.



and local activities is even more vital for the promotion of its institutional mission than in the other cases under analysis. However, the reports of the CICIG reveal that the reluctance and distrust of local authorities has resulted in the failure of local investigations.

### *Performance of the Entities*

If we analyze the performance of the entities tasked with reducing attacks against the press, the results have been inconsistent. In Mexico, the report has found that attacks against the press have increased despite institutional efforts to reverse the situation. There are also concerns about the low quality of public statistics on anti-press attacks. In the Colombian case, in terms of numbers, and considering murder figures, since the Protection Program was first implemented there has been a reduction in the number of fatal victims of crimes against the press, although other attacks against the press have remained stable, at least since 2006. The emphasis on protection rather than on investigations may explain the meager results achieved in the fight against anti-press attacks in Colombia: of 138 journalists killed by reason of their profession, only 5 intellectual authors have been convicted.

In Mexico, not only the performance of the FEADLE has raised concerns. The work of other agencies engaged in the protection of journalists and the investigation of crimes against the press has not been particularly fruitful. Far from creating synergies, inter-agency coordination seems to have yielded negative results. The relationship between the various levels of government is no less problematic, and this undermines the organizational capacity of the entities under analysis to fulfill their institutional mandates. As we noted in the chapter on Mexico, the poor performance of the agencies that were created to protect journalists and investigate crimes against the press has resulted in impunity of crimes against journalists: “Of the 108 cases that were handled by the FEADLE during its four years of work, it has pressed charges in only 4; in other words, the rate of effectiveness is 3.7 %, and in 59% of the cases it has declared that it was incompetent to investigate or has sent the case to the archive” (A19-CENCOS, 2010: 17). This is an interesting piece of information, particularly if we consider that, according to the CIDAC, the crime clearance rate in Mexico is 2%. According to such indicators, the work of these institutions has nearly doubled such rate, reaching a still disturbing 3.7%.

One of the main findings of Colombian study is that the context of emergence was decisive for the program and it accounts for the difficulties in moving beyond its reactive role and designing effective prevention policies. An aspect which reflects the context in which the program emerges is the emphasis on protection, rather than on investigation. In general terms, all interviewees agree on the importance of the program, as it implies a political recognition of the problem and because protection measures may be a powerful deterrent. Beyond this positive evaluation, interviewees underscored that criticism is probably associated with the policy legacy of the program, that is, the need to deal with serious threats to freedom of expression. A first consequence of this situation is the absence of a preventive policy to supplement or reinforce the protection strategy implemented by the program.

Another aspect which has been pinpointed as a weakness of the program is the lack of political will to demonstrate that the highest authorities are interested in eradicating violence against journalists. Some interviewees underscored the growing bureaucratization of the program, which has slowed the pace of procedures, while other interviewees allege that the programs are discriminatory. In a context where insecurity is not only experienced by specific sectors of population, but rather by society as a whole, two fundamental questions come to mind: to what extent can targeted protection be legitimate? Do the programs help better implement the constitutional duty to protect those living in the Colombian territory?

More specifically, risk assessments have been criticized for different reasons, such as delays in the determination of the risk due to the time interval between the moment protection is requested, the risk is determined, and the protective measure is implemented. The quality of risk studies has also been the subject of criticism, in particular, because those requesting protection are not usually satisfied with the results of the study, the interviews held to classify their situation, and the arguments underpinning the determination of the risk. Another important problem is distrust of those responsible for interviewing the threatened journalists and determining, ultimately, the risk faced by the interviewees. Also the “closed” nature of risk studies has been widely objected.

And the way the program has implemented protective measures has also been harshly criticized. Critics have also expressed concern about hard protection measures, *i.e.*, those involving private bodyguards, because of mutual distrust between agents and protected individuals. Another key issue is the dismantlement of protective measures. In a climate of high impunity, where justice takes long to establish the truth, how can a decision be made as to the right time to remove a protective measure? Removing a measure before the disappearance of the risk may have fatal consequences, but perpetuating a protection scheme that is no longer necessary would be a waste of resources which could undermine the implementation of protections for other at-risk journalists. However, measures to re-assess the risk are rarely taken.

In Guatemala, the results achieved seem to have been particularly poor during the first years of operations but have improved gradually as the Commission gained experience, although apparently more emphasis has been placed on actions aimed at strengthening institutions and fostering reforms, rather than solving cases that have been admitted and selected. If we consider the gap between the high level of demand (number of complaints received) and the number of investigations in progress, we can assume that there is some level of frustration among complainants who resorted to the Commission—even when their cases did not fall under the institutional mission of the commission—after local institutions failed to render justice.

It is also striking that the CICIG itself seemed to account for its limitations in one of its reports, using the same arguments that justified its creation to explain its meager results and blaming the same factors that it is supposed to eradicate under its mandate.

Four years later, the CICIG seems to be back in the same place where it started and facing the challenges of operating in a State that is under siege by organized crime.

As regards the contribution of the Commission to the protection of journalists, it is important to acknowledge that investigating crimes against the press is not part of its institutional mission, except when the crime involves the participation of clandestine paramilitary groups. The only case within the scope of the Commission's mandate had not yet been solved.

Beyond these formalities, the perceptions of the journalists who were asked during the interviews about the contribution of the CICIG to the protection of freedom of expression have been rather skeptical. Some claim that the CICIG should not be expected to perform an additional function, while others believe that the CICIG has only paid attention to journalists as part of an aggressive communicational strategy to gain legitimacy in the local political arena.

Meanwhile, the efforts of local organizations appear insufficient or, at a minimum, have been challenged in a context of growing distrust of local institutions. In the opinion of some of the journalists who were interviewed, it is essential for journalists to organize themselves to promote and defend their rights, either through the design of a protection mechanism within the local institutional framework or by resorting to international bodies as recipients of complaints or requests for protection.

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## Annex I: Bibliography and interviews

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## **Interviews**

(Interview with Font, 2011), Interview with Juan Luis Font, May 2011.

(Interview with Aramilla, 2011), Interview with Ileana Aramilla, May 2011.

(Interview with Marroquín, 2011) Interview with Manfredo Marroquín, May 2011.

(Interview with Paz, 2011), Interview with the Attorney General of Guatemala, Claudia Paz y Paz, May 2011.

(Interview with the COPREDEH, 2011), Interview with Otto René Blanco and Hugo Martínez, May 2011.

(Interview with Barreno, 2011), Interview with Silvia Barreno, May 2011.

(Interview with Monzón, 2011), Interview with Marielos Monzón, May 2011.

(Interview with the CICIG, 2011), Interview with Manuel Garrido, May 2011.

## Annex II Matrix and Questionnaires

### Independent Variable: Institutional Design

Variable	Type	Dimension	Indicator	Data type	Collection method	Source	Alternative source
Institutional design	Independent	External aspects	Context in which agency was created	Qualitative	Survey and documentation analysis (laws, reports, newspapers). Interviews with stakeholders	México: Special Prosecutor's Office for Crimes against Freedom of Expression; Federal Attorney General's Office. Colombia: Special Program for Journalist Protection (Programa Especial para la Protección de Periodistas). Guatemala: International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala).	Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
			Nature of the laws which created the agency	Qualitative	Survey and documentation analysis (laws).		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other key actors from outside the agency
			Position of agency in the organizational chart / territorial coverage	Qualitative	Survey and documentation analysis (laws). Interviews with stakeholders		
			Powers	Qualitative	Survey and documentation analysis (laws).		-
			Existence of rival organizations	Qualitative	Survey and documentation analysis (laws). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
		Internal aspects	Budget	Quantitative	Survey and documentation analysis (budget). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency



Variable	Type	Dimension	Indicator	Data type	Collection method	Source	Alternative source
			Staff	Qualitative/ Quantitative	Survey and documentation analysis (budget). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
			HR expertise	Qualitative	Survey and documentation analysis (high management curricular information). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
			Actual territorial coverage	Qualitative	Survey and documentation analysis (laws/ reports). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
		Political distinctiveness	Rules for appointment and removal	Qualitative	Survey and documentation analysis (laws). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
			Duration of tenure	Qualitative	Survey and documentation analysis (laws). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency

**Dependent variable: agency performance**

Variable	Type	Dimension	Indicator	Data type	Collection method	Source	Alternative source
Agency performance	Dependent	Effectiveness of implemented policies	Number of attacks on the press (per year, comparison of last 10 years, and before and after creation of agency)	Quantitative	Survey and documentation analysis (official reports, reports of human rights agencies, newspapers).	Mexico: Special Prosecutor's Office for Crimes against Freedom of Expression; Federal Attorney General's Office. Colombia: Special Program for Journalist Protection (Programa Especial para la Protección de Periodistas) en Colombia. Guatemala: International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala).	CPJ, IAPA. Office of the Special Rapporteur for Freedom of Expression
			Number of journalists killed (per year, comparison of last 10 years, and before and after creation of agency)	Quantitative	Survey and documentation analysis (official reports, reports of human rights agencies, newspapers).		
			Impunity for killings (rate of crimes solved = number of killings/killings solved and punished)	Quantitative	Survey and documentation analysis (official reports, reports of human rights agencies, newspapers).		
		Implementation of public policies	Implementation of policies for the protection of journalists	Qualitative	Survey and documentation analysis (management reports). Interviews with stakeholders	Mexico: Special Prosecutor's Office for Crimes against Freedom of Expression; Federal Attorney General's Office. Colombia: Special Program for Journalist Protection (Programa Especial para la Protección de Periodistas) en Colombia. Guatemala: International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala).	Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency
			Implementation of policies for investigation, resolution and punishment of crimes against journalists	Qualitative	Survey and documentation analysis (management reports). Interviews with stakeholders		Interviews with civil society organizations, journalist organizations, journalists, victims and relatives of victims of attacks and other stakeholders from outside the agency

## Questionnaire for Interviews with Agencies (model questionnaire)

1. First, we would like to learn some aspects regarding the establishment of the Special Prosecutor's Office and some formalities:
  - 1.1. In this regard, can you describe the context in which the Office emerged and the nature of the law that created it?
  - 1.2. A key factor to understand the institutional design of the Special Prosecutor's Office is its position within the organizational chart and its scope: what is the position of the agency in the organizational chart of the Federal Attorney General's Office and what is its territorial coverage?
  - 1.3. What is the mandate and what are the powers of the Special Prosecutor's Office?
  - 1.4. What are the mechanisms to appoint and remove authorities at the Special Prosecutor's Office?
2. Secondly, we would like to ask some specific questions regarding its operation:
  - 2.1. What is the annual budget of the Special Prosecutor's Office? How would you describe the budget allocation for policy development? Is the Special Prosecutor's Office autonomous in terms of budget administration?
  - 2.2. How many people work at the Special Prosecutor's Office? In your opinion, does the Special Prosecutor's Office have enough personnel to carry out its activities? Is the Special Prosecutor's Office autonomous regarding the management of its human resources?
  - 2.3. We have noted that there are other agencies engaged in the protection of journalists and the defense of freedom of expression. How would you describe the coordination with agencies such as the National Human Rights Commission, the Special Committee to Monitor Aggressions to Journalists and the Media of the National Congress or the Unit for the Promotion of Human Rights of the Ministry of the Interior?
  - 2.4. Previously, we asked about the jurisdictional scope of the Special Prosecutor's Office under the applicable law. How would you describe the actual territorial coverage of the Special Prosecutor's Office? How would you describe the coordination with the state agencies?
3. Could you describe the policies implemented by the Special Prosecutor's Office for the investigation, resolution and punishment of crimes against journalists? How would you describe the results achieved?

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## **Annex III Precautionary Measures (Mexico)**

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### **Risk study**

Precautionary measures are sought after analyzing the existence of an extraordinary or extreme risk, as well as the threats and vulnerabilities of the case, in order to determine whether there is a need for specific protection by the relevant authorities.

### **Risk assessment criteria**

#### **Ordinary**

The risk to which every person, under the same circumstances, is exposed just for being a member of a specific society. It creates a State's obligation to adopt general security measures by means of an effective public security program.

#### **Extraordinary**

It threatens the right to personal security of victims or witnesses, and requires the adoption of special and particular measures by the State to avoid the infringement of fundamental rights. This level of risk has the following characteristics:

- Specific and identifiable;
- Concrete, based on particular and evident actions or events and not on abstract assumptions;
- Present, not remote or eventual;
- Significant, threatening to damage property or juridical interests which are valuable for the individual;
- Clear and distinct;
- Exceptional in the sense that it must not be borne by most individuals;
- Disproportionate compared to the benefits obtained by the individual from the situation that poses the risk; and
- Likely to materialize under the circumstances of the case.

#### **Extreme**

The risk that, besides being extraordinary, is serious, imminent and may affect an individual's life or physical integrity. Extreme risk is one that, at any time, may no longer be a threat and become a concrete violation of the rights to life and personal integrity.

### **Protection schemes**

- a. Individual schemes. These are protection mechanisms provided to a beneficiary.
- b. Collective schemes. These are protection mechanisms granted to two or more beneficiaries.
- c. Real property protection. These are mechanisms to protect the real property owned by the human rights organizations, where their staff works.

### **Urgency**

The implementation of the measures must be prompt and timely.

### **Temporary nature**

The protection measures shall be temporary. Measures shall be applied as long as the risk factors and the threat on the beneficiary exist and shall be subject to periodic review and assessment.

### **Characteristics**

Precautionary measures may be aimed at maintaining the status quo, which means that the authorities should take appropriate actions to keep things as they are, or at restitution, which requires implementing actions to effectively return things to their previous state, in order to protect the human rights of the person or group in question.

### **Police forces**

It is necessary to determine whether the police forces, in the three levels of government, should take protection measures, bearing in mind that this should not create an additional risk in the situation at hand. In this connection, when the local police forces do not seem to be reliable, other institutions must be contacted to seek their support.

### **Telecommunications**

The following measures should be considered to determine if they are necessary:

- Have the local or federal prosecutors' offices set up cameras and closed circuits, both inside and outside the workplace or home of human rights advocates.
- Provide defenders with a telephone (radio or cell phone) with 24/7 service which can be used to communicate in an emergency. Such number must be used for prevention and reporting purposes with utmost responsibility to ensure that adequate and effective decisions are made.
- Appoint a person to act as liaison, with the necessary skills to take measures and make decisions in the event of risk.

### **Liaison and communication**

The beneficiary of the precautionary measures must always be in communication with the authorities appointed as liaison, so as to keep those responsible for their protection informed on their location and movements.





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