



RECOMMENDATIONS TO MEXICAN STATE

UNIVERSAL PERIODIC REVIEW

1. The World Association of Communities Radios (AMARC-Mexico) is an association of coordination, interchange and promotion of communities and citizen radios. It is recognized as a Non Governmental International Organization, of non profit and lay nature. Its mission is to promote democratization of media, especially radio, in order to favor freedom of expression and to contribute to equitable and sustainable development.

2. The Mexican Association of Right to Information (AMEDI) is a non profit organization that promotes the unrestricted respect, by governmental institutions and media, of legal rights related with ethical and legal obligations to guarantee truthful and objective information about issues of public interest to Mexicans. They impel in addition the public discussion on the freedom of expression and the right to the information.

3. As organizations with full commitment with the freedom of expression and information, we put to consideration of the Council of Human Rights and the international community some points of concern.

4. The Mexican State, when presenting its candidacy to accede to the Council of Human rights, voluntarily displayed promises and contributions to the promotion and protection of human rights and recognized as deficiency the subject of the freedom of expression. In this context, it indicated that it is necessary “to strengthen the general standardisation in the subject of freedom of expression and to adopt special measures to guarantee the protection to journalists and avoid impunity” and “To implement the recommendations and observations derived from the Diagnosis of human rights, of the special procedures, the treaty organs, the national Ombudsman” This is taken as a source to analyze the obligations of the State to which we add those derived by virtue of the international right of the human rights.

Legislative omission

5. In accordance with the diagnosis of human rights, it was recommended to the Mexican State “to create a public and independent organ that considers the origin of the concessions and permissions to operate radio stations and television, by means of a transparent procedure; to establish conditions of fairness so that communities and citizen radios accede to frequencies to fulfill their social function; to

develop an independent system of public radio and television; and to establish within the federal laws of Economic Competition and Telecommunications, a specific chapter on broadcasters and signals of television”¹

6. At April 11, 2006 it was published in the Official Diary a decree in which the State reform, adds and abolish diverse dispositions of the Federal Law of Telecommunications and the Federal Law of Radio and Television”. The reforms established in that Decree, created inefficiency in the benefit of the services and would allow the existence of phenomena of concentration in the allocation of the radioelectric spectrum, opposite to public interest in terms of article 28 of the Constitution. This is only favorable for businessmen of radio and television, by virtue of which it was allowed them to extend his businesses and it influences.

7. By such reason, at May 4, 2006 a group of 47 Senators - who were against the legal reform-promoted in the Supreme Court an action of unconstitutionality in which they asked for the dissability of this Decree, which was solved the 7 of June of 2007, to effect to declare disabled some normative portions of both Laws that talk about the process of Auction of the concessions, the automatic countersignature of the same, the objection of the Senate of the members of the COFETEL, the period of 20 years of the concession and the permisión of obtaining digitized services in the same spectrum. At August 20, the sentence in the Official Diary was published, in agreement with a legal mandate.

8. At July 4, 2007, in session celebrated by the Political Coordination of the Senate, the conformation of a Working Group was approved, in order to review the legislation in the matter of telecommunications and broadcasting, as a result of the sentence, for which at August 16 , it was communicated to presidencies of the Commissions of Radio, Television and Cinematography; of Communications and Transports, and Legislative Studies, that the Working Group of reference was integrated by the Coordinators of the Parliamentary Groups; the Presidents of the Commissions of Radio, Television and Cinematography, of Communications and Transports and Legislative Studies and by diverse senators, who altogether conformed a group of 19 persons.

9. This group indicated its interest and obligation in adjust the legal frame of the telecommunications and broadcasting, reason why it was considered necessary to initiate a responsible, plural and including work to adjust legislation, indicating that “it is indispensable that the method that settles down in the adjustment of this normative frame is guided by the principles of legality, plurality, inclusion, transparency and diffusion. In the works that are carry out, it is important to pay comprehensive attention of all points of the sentence of the Supreme Court, and take as a guide the principles that the Supreme Court defined in the subject.

10. In this context we may comment about the letter directed to the Mexican State on the part of Pablo Carozza, President of the Inter-American Commission of Human rights (CIDH), as well as of Andrew Radolf Communication and Information Adviser of UNESCO for Central America and Mexico, directed to AMARC, where it was recommended to the Mexican State to observe the international frame in the matter of communitarian broadcasting and to protecte the right of freedom of expression, obligation that involves article 2 and 19 of the Pact the International of Civil and Political Rights, ratified by Mexico.

11. At August 21, 2007 Presidents of the Commissions of Radio, Television and

1 Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos, “Diagnóstico sobre la situación de los Derechos Humanos en México, ed, OACNUDH, México, 2003, pág., VIII.

Cinematography; of Communications and Transports, and Legislative Studies, put under the consideration of the Political Coordination of the Senate, the Program of Work that informs the general agenda, the methodology and the period of validity of the Work group, which was approved by the Political Coordination the past 28 of August and ratified by the plenary session of the Plural Group, in its session of celebrated at September 7, 2007.

12. In the conformation of the working group it was indicated that they would have a validity up to 6 months and within that term they would have to conclude with the presentation of an Initiative of Reforms to the Federal Laws of Telecommunications and Radio, Television and Cinematography, and deliver it at the Plenary session of the Senate. It is important to indicate that they were committed to give an Initiative in January 31, 2008. At the day of August 31 te reform do not exists, although previous commitment.

13. From October 10, 2007 up to January 2008, a series of sessions of work in that plural group were celebrated, consisting of consultations to diverse public and private institutions and with the purpose of give to access and voice to the sectors involved, affected or interested in the subjects of the legislative work; nevertheless, giving the lack of results in the subject, at February 20, 2008 the National Front for a New Media Law was created, which in principle was composed by 47 organizations: independent groups, media analyst, feminists, actors, film directors, publishers, journalists, editors, farmers, writers, dramatists, broadcasters, students, indigenous, among others.

14. The concern today is Legislative Power's lack of political will to impel the legal reform to which they were committed and that is necessary to democratise mass media in our country, since the Supreme Court was very clear in the legal portions they declared unconstitutional. Unfortunately any means of constitutional control do not exist, it is not possible to impose that obligation to them and the Executive authority. This situation is verified, in the right of the indigenous to acquire, to operate and to administer media which is guaranteed by article 2 of the Constitutional, but that article is not reflect it in a secondary law and is impossible to exercise that right.

15. From our point of view, revision of the legislation for telecommunications and broadcasting must be oriented by a search of an authentic project of information's society for Mexico, thus, we think that legal decisions on the matter would have to lean in principles like the following.

- *Citizen's rights.
- *Public service.
- *The radioelectric spectrum is and must continue being property of the nation.
- *Full use of the digital convergence.
- *A single law: Congruent legislation with the digital convergence.
- *Un regulating organ: independent, with sufficient attributions and precise responsibilities.
- *Universal access.
- *Connectivity
- *Diversity
- *Freedom, plurality, responsibility.
- *Right to reply
- *Regulated and transparent foreign investment.
- *Promote of public media.

Aggressions against journalists and freedom of expression

16. Mexico is one of the most dangerous countries for the press in Latin America, which is

become serious in one of the most vulnerable sectors of the communication; communities radios. The aggressions to communitaries media have increased from year 2006, closing of radios with the due permission or without it, physical threats, aggressions, harassment, arbitrary haltings, torture, attempt of homicide, homicide. This situation has deserved that the Inter-American Commission of Human rights granted precautionary measures to protect the life and physical integrity of the journalists of the Radio Calenda in Oaxaca and the Voladora Radio.

17. The previous scenario worsens when radios broadcast without legal permission, and when communitary journalists are not recognized as journalist. In the Mexican legislation a journalist definition does not exist, nevertheless the Draft Initiative for Federalisation of Crimes Committed against Journalists, presented by the attorney general of Human rights (PGR), propose a definition of journalists that does not include all the people who could actually fulfill in an activity journalistic in benefit of the community. Proposal that has marked the policy of the PGR for the recognition of journalists.

18. The strategy implemented for closing radios does not solve the basic problem since without the regulation adapted in the subject, on the one hand they leave in defenselessness state the radios that wish to accede to a permission being forcing them to boradcast without it and on the other hand a policy of closing he radios without permission is implemented; the closings have been carry out by the administrative law without observing due process and by corresponding and by criminal law in disobedience to national and international corpus iuris of freedom of expression.

19. Prosecution and investigation of aggressions to communitaries journalists and media have not thrown results, even though in the majority of cases aggressors are fully identified, some of them being even state agents. This transgresses the international corpus iuris of protection to freedom of expression that imposes the obligation to States, to take pertinent actions to come up to investigate and to sanction the people in charge of these violations.

20. At February 6, 2006 it was created by presidential decree the Special Office of the public prosecutor for the Attention of Crimes Committed against Journalists, their competence is limited in scope to a federal level, pointing out that in aggressions against communitaries media are in local level.

21. An aggression to a journalist is not only an insult to its individual guarantee of freedom of expression but also a violation to society right of information. It has been urged to the federalisation of crimes committed against journalists, this implies that in case of aggression the case will be known by federal judges.

22. We emphasize the necessity to advance in this subject in the local level, in order to guarantee, protect and sanction attacks against freedom of expression.

Recommendations.

- Give a close follow up to legislation's reform in agreement with the standards developed by the international system of human rights offers.
- To exhort Mexican State, to adapt to those standards the legislation in the subject of broadcasting and telecommunications, that recognize and regulate communitary media. It supposes the elimination of the discriminatory criteria in the distribution of radiofrecuencias

and television, and in return to establish a standardisation that allows the plurality, sustainability and equitable access to electronic media.

- To investigate of immediate, expeditious and impartial way the aggressions and harassment against members of communities radios.
- To strengthen the Special Office of the public prosecutor for the Attention of Crimes Committed against Journalists, giving it autonomy and full competence to investigate the crimes against journalists and mass media.
- To reform at local level laws on defamation and calumnies
- To urge the Mexican State to present an initiative of federalisation of crimes against journalists and media