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Overflow and impunity



Guatemala is one of the countries with the larger number of murdered journalists in Latin America, according to the Special Rapporteur on Freedom of Expression of the Inter-American Commission of Human Rights. Similar to other countries of the continent, laws in Guatemala guarantee freedom of expression in the country and create institutions to protect journalists. In this Central American nation, beyond the paper statements and the laudable attempts to address a very difficult issue, the impunity that affects the murder of journalists is almost standard, dragging a legacy of a civil war that caused a wound that is not healed.

1. CONTEXT

Introduction

The Constitution of the Republic of Guatemala was issued on May 31, 1984, and acknowledges individual rights and guarantees such as life, liberty, equality, security and human dignity. The right to freedom of expression is established in Article 35 and in the Law of Thought.

National institutional mechanisms that protect human rights are in place, such as the Human Rights Ombudsman and the Presidential Human Rights Commission. These institutions do not receive complaints, but deal with cases that have been submitted to the Commission on Human Rights and the Unit for Crimes against Journalists

In Guatemala, the National Civil Police (PNC) is an armed security force responsible for safeguarding public order and security of the civilian population. The PNC, however, does not undertake special investigations on cases of journalists. The institution in charge of handling that kind of aggressions is the Prosecution Unit for Crimes against Journalists. That unit was created as a Special Prosecutor for Crimes against Journalists and Unionists by means of agreement 14-2011 of the Public Ministry (MP), issued on June 4, 2001.

On November 30, 2005, the MP issued Agreement 03-2005, creating the Prosecution Unit for Crimes against Human Rights Activists, Judicial workers, Journalists, and Unionists.

Regarding the cases of impunity, there is no relevant case law about aggressions against journalists in the country. However, some cases have been taken to the Inter-American system, as Foppa Alaide, journalist disappeared in December 1980, and that of Jorge Carpio Nicolle, editor of "The Graphic", killed on July 3, 1993.



The country still has to deal with impunity in crimes against journalists committed during the armed conflict. According to the Mutual Support Group (GAM), a human rights organization founded in 1984, at least 342 journalists were killed and 126 were missing during the civil war (1960-1996). A similar number of cases were forced to flee into exile.

A special study on Assassinations of Journalists conducted by the Special Rapporteur for Freedom of Expression of the Inter-American Court of Human Rights (IACHR) in Guatemala, states that the killings of six journalists between 1995 and 2007 have not been clarified, and there are no decisions or convictions in those cases.

According to a research conducted by the Rapporteur about several cases of murder between 2000 and 2005, she also reported that official investigations in such cases are excessively slow. Guatemala ranks as one of the countries with higher numbers of murder of journalists, along with Colombia, Brazil, and Mexico.

The Rapporteur identified cases where the evidentiary proceedings were omitted. According to his data, between 1995 and 2005 nine crimes against journalists were committed in the country, and to the date the study was published, in 2008, not a single conviction had been issued, although the processes had already initiated.

Indeed, impunity in Guatemala is widespread, and is not only restricted to the murder of journalists.

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War... and peace?

During the armed conflict illegal bodies and clandestine security organs were created as part of the repressive institutions of the state, and as an instrument in the hands of elites to maintain the status quo by repressing political enemies.

After the peace settlement, these devices have persisted and have become allies, serving to various powers (economic, political and even criminal) providing their expertise, organizational skills and intelligence, their proficiency in organizing and deploying illegal operations, as well as its relations within the State, especially with security and justice institutions.

Due to this situation, the International Commission against Impunity in Guatemala (CICIG) was created in September 2007. Its objectives under its creation Agreement are: to support, strengthen, and contribute to the state institutions responsible for the investigation and prosecution of crimes allegedly committed during the activity of illegal security forces and clandestine security mechanisms, and any other criminal conduct in connection with those operating in the country, as well as in determining their structures, activities, operating methods, and funding sources, promoting both the dismantling of these organizations, and the criminal punishment of the participants in the crimes these committed.

CICIG was not created to lead and solve cases, but to help dismantle illegal groups and clandestine security organizations (CIACS) and prevent that their crimes remain unpunished, by determining their structures, integration, operation and funding sources.

According to a report by the CICIG, the country has 98 percent impunity in cases of murder. A similar figure is reported in the murders of women, according to Alba Trejo, Presidential Commissioner against Femicide.

Social and Union Defense

In Guatemala there are several associations of journalists, but very few who externalize solidarity against attacks on journalists, except when it comes to serious cases, such as murder.

Although other organizations keep count of the attacks against journalists, Cerigua is the only one that keeps a systematic and rigorous follow-up to aggression, and provides support and solidarity to colleagues.

Cerigua issues alerts to show solidarity to attacked journalists, and conducts semi-annual reports on freedom of expression and write daily and bimonthly notes on that particular topic.

Guatemalan society is still ignorant to the importance of the right to freedom of expression, which is very underrated by civil society organizations. However, there is widespread disapproval when crimes against journalists occur.

However, each case is given more or less attention, depending on the media outlet that the journalist belonged to and his years of work. In general, journalists from the countryside are usually given less public attention. There are very few cases that transcend, not even the major cases have media coverage, and very little is published about them.

Numbers and attacks

According to studies conducted by Cerigua, in the last five years there have been at least 214 attacks on the press. This total includes 14 murders of journalists and media workers, although we have not been able to establish which of these cases have to do with their exercise of journalism.

In 2007, the last year of President Oscar Berger, 35 attacks occurred, less than in 2006, when 54 were registered. 67 aggressions occurred in 2008 and 60 in 2009, showing an increase in the figures. In 2010 there was a reduction with 19 attacks, followed by 33 in 2011.

Cerigua has recorded more assaults against journalists in the capital city, although in 2011 there was a higher number in the countryside. In that year's



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annual report, Cerigua determined that many of the aggression came from public officials. Very few attacks came from organized crime.

The physical and verbal abuse are the third most frequently reported type of aggression between 2007 and 2011, after the death threats, and the restriction of access to sources. In these years there were no attempts against the lives of journalists, such as attacks or serious physical assault, but death threats were a constant.

From 2007 to 2011, Cerigua's Observatory recorded at least 37 threats against journalists, from a total of 214 attacks that were recorded in that period. Most murders that occurred during this period did not show previous threats. The cases that did have previous attacks were the murders of Rolando Santiz, Jorge Merida and Yensi Ordonez. (See separate chart)

There is attention from the State to these kinds of attacks, but journalists do not trust the justice system, let alone the local prosecutors. The Public Ministry (MP) authorities, meanwhile, point out that often journalists do not confirm their complaints, and therefore they are unable to investigate the cases.

The mentioned study conducted by the Special Rapporteur on Freedom of Expression of the IACHR, regarding the legal actions taken by the authorities in the case of murder, investigations are very slow, and evidentiary proceedings were omitted.

An example of the slow pace of investigations is the case of a journalist killed in Chiquimula, dating back to 1997, which is still awaiting a conviction because the perpetrator of the crime was never captured, even though he has already been identified.

According to the study by the Rapporteur, none of the nine murders committed between 1995 and 2005 in Guatemala reached the conviction process.

The state response

According to the prosecutor of the Unit for crimes against journalists, Noe Yat,¹ investigations of murders have no maximum or minimum time limitations. Each case is different and can be solved either in a couple of years, or exceed 15 years.

There is no statutory limitation of the time in which cases can be resolved, although there are deadlines to be respected, as the audience that should be conducted within 72 hours after the commission of the murder. When a person is linked to a particular crime, is because there is sufficient evidence

that the person, whose arrest was required, was involved in the incident. The formal complaint must be raised in a maximum period of three months.

The legal steps to initiate an investigation into crimes against journalists are stipulated in the law.

In the first phase, investigation, urgent judicial proceedings are conducted within the 72 hours after the commission of the crime, and then the case is referred to the prosecutor in charge (Unit for Crimes against Journalists).

The creation of the Unit for Crimes against Journalists, seeks the prompt, thorough and more specific prosecution of those responsible for the attacks against journalists. According to the prosecutor, the existence of this specialized unit allows them to focus on the cases of journalists.

2. EMBLEMATIC CASE

Rolando Santiz de León

Rolando Santiz de Leon was a journalist and a reporter for channel Telecentro 13. He was killed on April 1, 2009 in the capital city, by two men on a motorcycle, while he was driving a car belonging to the news program. He was accompanied by a cameraman.²



¹ Results of the visit conducted by Cerigua to the Public Ministry on 12/07/2012.

² Cameraman Antonio de Leon Villatoro, who was accompanying Santiz that day and occupied the seat next to the driver, was taken in critical condition to the Hospital General San Juan de Dios.

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A woman, who witnessed the attack, said the men fired several shots into the car. The former Police Deputy Director came to the scene and reported that the Minister of Interior had expressed concern and ordered a group of detectives in the Homicide Section of the Criminal Investigation Division to make inquiries.

According to information from the newspaper Prensa Libre, Santiz de León, 42, had suffered other attacks. On March 6, 2009, security agents under the command of Marlene Blanco Lapola, former Police Director, had beaten him when he was trying to interview her, after a shooting at a currency exchange office located at the 7th Avenue, Zone 1.

On January 22, 2007, León Santiz was the victim of an assault while traveling in his car in Zone 1 of the capital area. According to the information, the criminals beat his wife, Lorena de Santiz.

In his first statement to the press, the Interior Minister Salvador Gandara said that the organized crime was allegedly responsible for the murder. The former director of the PNC said that, according to the data collected, the crime may have been committed by hit men.

On April 5, 2009, Prensa Libre reported that according to a statement by Noe Moya, prosecutor for crimes against Journalists, drugs and weapons were found in at least five properties located in an area of the city where the journalist had done a report on the day of his death.

The assassination of Santiz León was condemned nationally and internationally. The Journalists' Observatory condemned the killing and demanded a thorough investigation from the authorities. Cerigua's Correspondents Network issued a similar statement. They were joined by the Guatemala Association of Journalists (APG), other local press freedom organizations, the media, and various columnists.

Various sectors of the Guatemalan civil society also made statements, such as, the Human Rights Ombudsman (PDH), local human rights organizations, indigenous groups, and unions.

The Inter American Press Association (IAPA), the Committee to Protect Journalists (CPJ), Reporters without Borders (RWB) and the International Federation of Journalists in Latin America and the Caribbean (FEPALC) expressed their dismay and requested the government to solve the crime.

On April 15, 2009, the press reported that the Public Ministry (MP) investigated three hypotheses about the murder of the television reporter.



Cerigua y el caso Santiz de León

In April 2009, the month of the murder of Rolando Santiz, Cerigua released 14 alerts demanding the authorities to make an effort so that the case did not go unpunished.

On April 2, 2009, a day after the crime, the Cerigua's Observatory for Journalists -Cerigua's Correspondent Network- regretted and condemned the killing of Santiz and urged the authorities to investigate the case.

Cerigua worked and published statements from other entities that commented on the murder of Santiz, such as the Federation of Journalists in Latin America and the Caribbean (FEPALC), the Association of Journalists of Guatemala (APG), Reporters without Borders (RSF), the Committee to Protect Journalists (CPJ), the Association of Journalists of Huehuetenango (APEHUE), among others.

Cerigua also published communiqués issued by the Guatemalan civil society and opinions published in the media.

In May 2009, Cerigua addressed the issue again. Three notes were published, including one in particular that was a compilation of the attacks suffered by the press on the previous two months (March-April).

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A year later, other reports would raise the fateful and final assault against Santiz de Leon as a landmark case. Especially in a special note released on March 2010, “Freedom of Expression 2009, between violence and official harassment” and in another one, issued on May 2010, “Press Freedom, corollary to freedom of expression.”³

The report of the first half of 2009 highlighted the case with concern: “Among the violations of freedom of expression in the first semester, the most serious events were the cases of intimidation and the murders of three journalists: Luis Alberto Oliva Orellana, 52, public relations officer of the municipality of Chiquimula; the TV reporter Rolando Santiz -during the attack his cameraman, Juan Antonio de León, was also wounded-; and Marco Antonio Estrada, correspondent for Telediario in the eastern department of Chiquimula.”⁴

In the first six months of 2009, 28 violations against freedom of expression occurred in Guatemala. The murders of journalists Luis Alberto Oliva Orellana, Rolando Santiz (Juan Antonio de León was also injured during the attack), and Marco Antonio Estrada were the most serious, along with physical and verbal aggression (3), and death threats (1).⁵

In the “Balance of Freedom of Expression 2009,” Cerigua highlights Santiz’s, as one of the most serious. The report notes that according to Sergio Morales, Human Rights Ombudsman (PDH), most of the threats against journalists took place in the smaller cities in the countryside and were linked to local authorities, with the exception of some cases, such as the case of Rolando Santiz. Morales said his office had 10 reports of attacks on journalists, which included two murder cases: Rolando Santiz’s case that occurred in April; and Marco Antonio Estrada’s case, perpetrated in June 2012.⁶

Cerigua’s Report on the first semester of 2010 included a list of names of journalists killed in 2009. Furthermore, in its report on Freedom of Expression from 2008 to 2011, issued in 2012, Cerigua highlighted Santiz’s case once more, along with seven more murder cases, and noted that most of these are not being investigated by the Unit for Crimes against Journalists of the Public Ministry (MP).

Cerigua made a timeline of the crimes committed during the government of President Alvaro Colom, whose term ended on January 14, 2012. It specified that the authorities have not determined whether most of the crimes were related to the journalistic work of the victims, except in the case of Rolando Santiz, reporter of Telecentro 13, whose case is being investigated by the Unit for Crimes against Journalists of the MP.

According to the report, “In April 2009, Rolando Santiz reporter of Telecentro 13 was killed by suspected hit men in Guatemala City, while returning from coverage. His cameraman Juan Antonio de León Villatoro was wounded by three bullets. The crime against Santiz is currently being investigated by the General Prosecutor, currently the only murder case under investigation by this agency. The journalist had over 20 years experience and covered the crime report for the newscast Telecentro 13”.⁷

The status of the case

How many activities or proceedings has the prosecution made in the case of Rolando Santiz? The MP has 12 case files. In fact, this is the only murder case occurred between 2007 and 2011 that is being investigated by the Unit for Crimes against Journalists.⁸

Both the prosecutor of the Crimes Unit and the prosecutor in charge of the case say there has been progress in the investigation, but no progress has been made due to the complexity and the lack of accurate information about the case. Some of the obstacles found in the investigation, are the lack of testimonies.

They have argued that the only thing missing in the investigation is to find evidence that might help to identify the person responsible for the crime. They have said to be following four investigation hypotheses, but gave no details on the matter. One of the lines has to do with his journalistic work.

Cerigua has been told that the case has received special attention, and at the beginning of the investigation external consultants were called to work on it.

³ See notes on Cerigua’s web page: <http://cerigua.org/1520/>

⁴ CERIGUA. Report on Freedom of Expression, first semester of 2009. Page 18.

⁵ Idem. Page 26.

⁶ CERIGUA. Situation on Freedom of Expression, 2009. Page 4.

⁷ CERIGUA. Current situation of freedom of expression 2008-2011. Page 23.

⁸ This is the only murder case indeed. According to the information given to Cerigua, the MP is investigating other kinds of cases: 54 miscellaneous complaints, 6 reports from the Citizen Registry, 6 cases from the prison system, 3 report calls, 6 reports of police searches, 27 expert assessment reports, 24 field investigations, among others.

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SIDE BOARD

With warning

Two murder cases of previously threatened journalists

Few murders have been preceded by threats. The case of Jorge Mérida, correspondent for Prensa Libre in Coatepeque, Mazatenango is one of them. From 2007 to 2011, few cases of murder had previous threats.

Yensi Ordóñez, assassinated in May 2011, was threatened but it is unclear whether these threats were due to his journalistic work. The case was investigated by the Unit for Crimes against Journalists.

Most journalists were killed without previous threat. Only one of the 14 cases is being investigated by the Unit for Crimes against Journalists of the Public Ministry, the case of Rolando Santiz.

