Mexico City, August 24, 2010– The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations Special Rapporteur on Freedom of Expression and Opinion, Frank La Rue (hereinafter “the Rapporteurs”), today concluded their official joint visit to the United Mexican States, which took place from August 9-24, 2010. The purpose of the visit was to observe the status of freedom of expression in the country.

They met with over forty federal and state institutions pertaining to the executive, legislative and judicial branches, as well as with representatives of autonomous bodies. In addition, they held meetings with more than one hundred journalists, representatives of civil society organizations, relatives of murdered journalists, and members of the international community based in Mexico.

The preliminary observations set forth today are based on information received prior to and during the visit. Each Special Rapporteur’s Office will also prepare a final report that will be published at the beginning of next year.

The Rapporteurs have verified that Articles 6 and 7 of the Mexican Constitution explicitly protect the rights to freedom of expression and access to information. Mexico also has notable legal advances to its credit such as the Transparency and Access to Government Information Act and its local level equivalents; the decriminalization of crimes against honor at the federal level and in several states; the right to protect the confidentiality of sources provided for in the Federal Code of Criminal Procedure; and Article 134 of the Mexican Constitution, insofar as it refers to government advertising. The Rapporteurs likewise regard positively the amendment to Article 1 of the Constitution passed by the Senate of the Republic, which grants constitutional status to international human rights treaties and which is pending before the House of Representatives.

Nevertheless, the full enjoyment of freedom of expression in Mexico faces grave and diverse obstacles, including most notably the murder of journalists and other very serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity in these cases. The Rapporteurs are also
concerned about the existence of legislation at the federal level and in a significant number of states which contemplates the application of criminal sanctions to the exercise of freedom of expression. The Rapporteurs also consider that the vigor, diversity and pluralism of the democratic debate in Mexico is seriously limited by a number of factors, including: the high concentration of ownership and control of mass media outlets which have been assigned radio and television frequencies; the absence of a clear, well-founded and equitable legal framework governing the allocation of said frequencies; the inexistence of mechanisms that provide access to alternative media; and the lack of regulations regarding government advertising. Finally, the Rapporteurs observe with concern an emerging trend toward the restriction of the right to access public information.

The two Rapporteurs were motivated to undertake their joint visit, and to present this report, precisely by the need to acknowledge this crisis and to join forces to find solutions together with the Mexican State and society.

Conclusions and preliminary recommendations

The situation of freedom of expression in Mexico requires urgent action. Bearing this in mind, and based on the information gathered prior to and during the joint visit, the Rapporteurs find it appropriate to formulate preliminary conclusions and to highlight below some of the recommendations mentioned in their full preliminary report, without prejudice to the subsequent observations made in their respective final reports. The Special Rapporteurs place themselves at the disposition of the Mexican State, and offer their assistance in order for their recommendations to be heeded as soon as possible.

1. **Violence, impunity and self-censorship.**

The Rapporteurs find that freedom of expression in Mexico faces grave obstacles, mainly due to the acts of violence and intimidation against journalists in the country. According to the information received, 64 journalists have been murdered in the last ten years and 11 have been disappeared, making Mexico the most dangerous country in the Americas in which to practice journalism. The Rapporteurs were able to verify that most of the recent murders, disappearances and kidnappings of journalists have occurred in states where organized crime has a strong presence, including the States of Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa, and Tamaulipas. In some of these states there are communities that have been completely silenced by the chilling effect of the climate of violence and impunity.

Incomplete investigations in most of the cases prevent an exact determination of the causes and perpetrators of these crimes. However, the information received by the Rapporteurs’ Offices makes it possible to assert that in these places organized crime is the greatest threat to the lives and physical safety of journalists, especially those who cover local affairs such as government corruption, drug trafficking, organized crime, public safety, and related subjects.

The Rapporteurs are aware that the issue of violence in Mexico affects all sectors of the population. Nevertheless, they observe that the attacks against journalists and members of the media have multiplying effects that impact all other journalists and media workers, generate fear and self-censorship, deprive society in general of its
right to be informed, and discourage reports or complaints, all of which increases impunity.

The Rapporteurs are convinced that the protection of the right to freedom of expression must be a fundamental part of the citizen security agenda in Mexico. Accordingly, they commend the existence of a Special Prosecutor’s Office to attend crimes against freedom of expression, as well as the nascent discussions surrounding the creation of a mechanism for the protection of journalists at the national level and in some states. Nevertheless, the Rapporteurs are seriously concerned to have verified the impunity that is typical of crimes against journalists in Mexico, a phenomenon that perversely encourages the recurrence of these types of crimes.

Without a comprehensive public policy aimed at guaranteeing the freedom to seek, receive and disseminate information through any media, it is impossible for Mexican society to contribute to the fight against crime and corruption, and for it to exercise active and informed oversight of the State’s actions to deal with crime and protect the public.

Therefore, the Special Rapporteurs make the following specific recommendations:

- Strengthen the Office of the Special Prosecutor for Crimes against Journalists of the Office of the Attorney General of the Republic and the local prosecutors’ offices. It is especially recommended that the necessary reforms be made to permit the exercise of federal jurisdiction over crimes against freedom of expression.

- Give the Special Prosecutor’s Office and the local prosecutors’ offices greater autonomy and greater resources, and adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim’s professional activity.

- Establish a national mechanism for the protection of journalists. The mechanism must be implemented through a high-level official and inter-institutional committee; be led by a federal authority; have the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.

- Provide training to members of the security forces on the subject of freedom of expression.

2. Freedom, diversity and pluralism in democratic speech.

With respect to the regulation of the electromagnetic spectrum and the enforcement of broadcasting provisions, the Rapporteurs observe a high degree of concentration in the ownership and control of the communications media to which television and radio frequencies are allocated.

In addition, they note that there is no independent regulatory body, and that the legal framework currently in force does not provide guarantees of certainty, pluralism and diversity. In particular, there is no legal framework that recognizes
community broadcasters and establishes clear, well-founded, and equitable procedures whereby such broadcasters can apply for and obtain operating frequencies.

With regard to government advertising, government spending is high and increasing. The absence of a regulatory framework has allowed government advertising to be used discretionally, and therefore it can be employed to pressure, punish, reward or favor communications media according to their editorial slants.

Therefore, the Offices of the Special Rapporteurs make the following specific recommendations:

- Adopt a legal framework that provides legal certainty, promotes the decentralization of radio and television, and contributes to the creation of a media market that is pluralistic and accessible to all sectors of the population, especially community broadcasting.
- Create a public body to regulate radio and television that is independent of the government.
- Establish objective, clear, transparent and nondiscriminatory criteria in the allocation of government advertising for all levels and bodies of government.

3. Legal actions related to the exercise of freedom of expression.

The Rapporteurs acknowledge the progress made at the federal level and in the majority of the states with regard to the decriminalization of libel, slander and defamation. Nevertheless, there are still criminal law provisions that allow the criminalization of the exercise of freedom of expression. The Rapporteurs are concerned about the use of criminal provisions against journalists who cover topics of public interest, individuals who work at community radio stations, and social activists in the context of social protest.

The Rapporteurs are concerned about civil legal actions against journalists and media outlets in a legal environment lacking specific standards to evaluate the subsequent liability of individuals who disseminate information on matters of public interest or politics. Furthermore, the Rapporteurs received information concerning civil actions that may be meant to harass and to silence criticism, and that have been filed against journalists and media outlets.

Therefore, the Offices of the Special Rapporteurs make the following specific recommendations:

- Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act and in the state criminal codes, and refrain from using other criminal provisions to suppress the legitimate exercise of freedom of expression.
- Guarantee that journalists not be subjected to judicial harassment or other types of legal harassment in retaliation for their work. This entails establishing specific standards for evaluating subsequent civil liability, including the standard of actual malice and the strict proportionality and reasonableness of any subsequent penalties.
4. **Access to information.**

The Rapporteurs acknowledge the notable progress made by the Mexican State in recent years, which has made the country a point of reference on the subject of access to information. At the same time, they observe that the institutional and legal framework to guarantee the effective exercise of the right to access to information before the federal executive branch does not always exist at the state and municipal levels. The Rapporteurs also were informed of the existence of state legislation and legal actions which seek to reverse the final and unchallengeable nature of the decisions of the Federal Institute for Access to Information and Data Protection and of the state transparency bodies.

The Rapporteurs were informed of practices that limit transparency in the justice system. Thus, for example, some state courts keep lower court judgments that have been appealed confidential until all corresponding remedies are exhausted in the case. Likewise, pretrial investigations are kept confidential until a period of time has elapsed equal to the one provided for in the statute of limitations for the offense in question. This is based on a recent amendment to Article 16 of the Federal Code of Criminal Procedure, which is under review by the Supreme Court.

Therefore, the Offices of the Special Rapporteurs make the following specific recommendations:

- Preserve the advances made with respect to access to information, ensuring that the transparency bodies are autonomous and that their decisions are final and unchallengeable.

- Deepen transparency in the justice system, guaranteeing access to the judgments of the courts and to a public version of pretrial investigations that have either concluded or have been inactive for an unreasonable period of time.

The Special Rapporteurs acknowledge once again the openness displayed by the Mexican State in inviting them to conduct a joint visit to the country, and they express their continued willingness to support all efforts by the State to strengthen the freedom of expression of all Mexicans. They respectfully urge the State to implement the recommendations included in this report as quickly as possible. The urgent state of freedom of expression in Mexico requires immediate and effective actions such as those identified in this report.