

PANAMA: CONTROLLED INFORMATION BUT NO OPEN CENSORSHIP

Executive Summary

The Republic of Panama ranks 9th among the 22 countries covered by the Chapultepec Index of Freedom of Expression and Freedom of the Press, with a score of 65.97. Although freedom of expression and freedom of the press exist, the Panamanian legal framework - especially the Criminal Code - allows some restrictive measures such as common legal proceedings for offenses against the honor of individuals associated to the political sphere which results in undue pressure on the media and journalists. There is also inequality on allocation of government advertising, which could be interpreted as attempts to control the media. The amendment implemented to the Law on Transparency and Access to Public Information (Ley de Transparencia y Acceso a la Información Pública), in force since 2002, has been stalled, and the observance of the guarantees for access to public information continues to be both a demand by the citizens and a challenge for government institutions. Journalists have been assaulted while covering popular protests arising due to the economic crisis.

Introduction

The study period falls within the second year of the presidency of Laurentino Cortizo Cohen, and amid a national state of emergency implemented in March 2020 to address the health crisis caused by COVID-19. While journalists, media agencies and media distributors were not affected by mobility restrictions, they have encountered limitations to access relevant information, especially on the vaccination plan and the extraordinary government procurement process implemented within the context of the pandemic.

In general terms, the media and journalists operate in an environment of broad freedom in Panama. However, the health emergency accelerated the intensification of the economic crisis, and growing allegations of corruption have arisen as consequence of the economic decline. Social dissatisfaction has been expressed through protests and mobilizations. While covering these events, freedom of expression and freedom of the press have been infringed.

Some legal cases related to the media and journalists are still underway and, apparently, with no clear means to resolution. The most remarkable cases are the seizure of the assets of *Corporación La Prensa, S.A.* (CORPRENSA) - the publishing company of *La Prensa* newspaper – which resulted from a civil lawsuit filed by former president and member of the current ruling party, Ernesto Pérez Balladares, which amounts to more than USD 1 million for alleged damages. Also underway is the court case of former president Ricardo Martinelli for illegally wiretapping journalists' phones using software called *Pegasus*.

Results Analysis

The Environments

According to the evaluation by the experts surveyed for this report, none of the three environments reviewed, Executive, Legislative, and Judicial, appear with a very strong influence record. The Executive and the Legislative appear with a record of moderate influence, with a score of 3.33 for the Legislative and 2.90 for the Executive. The Judiciary environment appear with a low influence, with a score of 2.36 points. The higher influence is in the Realm B of the Executive branch, related to exercise of journalism, with a score of 5.71 points out of the possible 10. The lowest score is for Legislative and Judiciary, in realm D related to control over the media, both with 0.57 points.

Executive

The Executive environment accumulates a total score of 2.90 points and stands out for its mixed influence in situations unfavorable to freedom of expression. This ranges from a slight one, of 0.64 points, in dimension "D" relative to the control of the media, to a strong one, of 5.71 points in dimension "B", corresponding to the exercise of journalism. According to data from official sources, the Executive has developed selective contracting strategies in state advertising services with which it could be seeking media control. (Eliana Morales Gil, 2021). Analysts have also pointed out on the Executive's intervention to prevent access to public information, too.

The non-governmental organization, Foundation for the Development of Civic Freedom (Fundación para el Desarrollo de la Libertad Ciudadana, FDLC), in its chapter on International Transparency in Panama (FDLC, 2021), negatively appraised the first two years of the Executive's administration due to failing to apply periodic control and transparency procedures over the public procurement processes implemented during the health emergency. Likewise, FDLC questioned the government's refusal to allow citizen oversight of the emergency plans carried out during the pandemic which have been classified as discretionary and implemented in a under crony-friendly practices.

Regarding violence, by the end of 2020, during the demonstrations around the National Assembly, National Police officers attacked and arrested two journalists. In October, while covering a demonstration, a journalist from the newspaper *La Estrella de Panamá*, Juan Cajar, was briefly arrested. This incident has not been fully cleared out (María Alejandra Carrasquilla Reina, 2020). Two months later, in December, EFE News Agency photojournalist, Bienvenido Velasco, was attacked by law enforcement officers (EFE Servicios, 2020a).

Legislative

In total, the Legislative environment collects 3.33 points and, like the Executive environment, has a mixed influence on situations unfavorable to freedom of expression. This goes from slight in realm "D" relative to the control of the media, with 0.57 points, to strong in realm "B", related to the exercise of journalism, which shows the highest score of all, of 5.14 points.

According to the experts inquired, one of the issues that stand out among the actions relating to this environment is the behavior of some congresspersons who, taking advantage of their position and power, try to prevent media coverage. In a case that has not been fully

explained, journalists complained that while the Budget Commission (Comisión de Presupuesto) of the National Assembly was approving an additional credit by USD 22 million, the journalists and cameramen covering the event were expelled from the palace (Dalia Pichel, 2020).

Moreover, there is controversy over the actions by some congresspersons who - oblivious of the international standards granting guarantees to freedom of expression and information - promote laws like the one passed at the Committee on Government, Justice and Constitutional Affairs (Comisión de Gobierno, Justicia y Asuntos Constitucionales) of the National Assembly, intended to penalize those who take videos or photographs of disasters, catastrophes, accidents, (and) quarrels, and disseminate them through social media (Redacción de TVN Noticias, 2020). This could lead way to censorship and self-censorship measures. (Redacción de TVN Noticias, 2020).

Other congresspersons have also been criticized for taking legal actions against journalists like the case of Mauricio Valenzuela, a reporter charged for alleged gender violence by the House Vice President of the Legislative Assembly, also a member of the ruling party. The associations of journalists estimated that the action is an attempt to obstruct the free exercise of journalism and, therefore, regarded it as an attack against freedom of expression and information (Maycol Núñez, 2021b).

Judicial

With 2.36 points, the Judicial environment is the one with the least influence among the three. Its impact is reflected within a score of 2.36 points. Numerically, its impact is reflected in a range of 0.57 points, in relation to media control; to 5 points, which indicates a strong influence on the exercise of journalism.

Panama's Criminal Code classifies slander and defamation as crimes against honor. They are considered as serious felonies when committed through spoken or printed media or through the use of a computer-based system. In such cases, the penalty goes from 6 to 12 months (jail term) or its equivalent in *per diem* fines for slander, and from 12 to 18 months in prison or its equivalent in *per diem* fines for defamation. (Public Prosecutor's Office, 2016).

There is an exemption or non-penalized circumstance on this type of offenses when it involves public servants. In such cases, this is not penalized because it is considered a sort of citizen control over the performance of officials. However, civil liability is not excluded, hence the penalties provided for crimes against honor are essentially pecuniary in nature and civil lawsuits awards are not capped (Catalina Botero Marino et al., 2017).

In this context, there are complaints and lawsuits for substantial amounts, such as those filed by former President Ricardo Martinelli against CORPRENSA alleging crimes against honor. The claims reach amounts over USD 45 million (IAPA, 2021).

The law in Panama also allows that, in a context of a lawsuit for damages, even if a favorable sentence has not been ruled, the claimant may request for freezing of assets. Under this premise, a civil court ordered the seizure of CORPRENSA's bank accounts and assets for USD 1.13 million in its ruling regarding the lawsuit filed by former President Ernesto Pérez Balladares; a process that dates back to 2012 (EFE Servicios, 2020b).

Analysts also question the fact that justice officials may process and request pressing charges, but do not dismiss the lawsuits with the sole purpose of preventing the free exercise of journalism. This type of action may be a sign of likely manipulation by justice courts to enforce censorship. This could be considered as a serious abuse by the judicial branch.

Realm A: Citizens Free to Express Themselves

Out of a theoretical maximum of 23 points, the realm Citizens Free to Express Themselves attained 12.57 points, essentially half of the possible score, while attaining 5.71 points on information flow, and 6.86 points on free speech. According to respondents, this realm is moderately influenced by the Legislative and Executive environments, with 4.50 and 2.93 points, respectively; to a lesser extent, it receives a slight influence from the Judiciary, with 2.09 points.

Although it can be argued that there is full freedom of expression and information in Panama, within the period surveyed, some events contributed to undermine this perception. Among those, are the actions by the Executive to restrict access to public information during the pandemic, as well as those by some power players, particularly former high-rank officials who have brought criminal and civil actions against the media and journalists.

An FDLC (2021) report assessing transparency measures promoted by the Executive stressed on the lack of timely responsiveness to requests for access to information. In the event that the information is published - points out the report - it appears incomplete and under closed formats. Equally, the same report underscores the lack of accountability by the Supportive Panama Emergency Plan (Plan de Emergencia Panamá Solidario), intended to provide financial relief to people affected by the pandemic by means of a budget close to USD 200 million (Lourdes García Armuelles, 2021).

As for government's open-access data, while the site for this purpose is live and more government entities join every day, they are still very few, and the information, in many cases, is outdated, and therefore, not very relevant. FDLC spokespersons have also focused their attention on the loopholes in the transparency law and have also expressed fears that its amendment by the National Assembly could result in setbacks instead of improvements (Carlos Barsallo, 2021).

The practice bringing criminal and civil lawsuits against the media and journalists was kept as in the case of journalist Mauricio Valenzuela who was charged with gender-based violence following a complaint by the House Vice President of the Legislative Assembly (Getzalette Reyes, 2021). Also, the ongoing legal procedure by former President Ricardo Martinelli who filed complaints and lawsuits against CORPRENSA on alleged crimes against honor which affect a total number of 38 journalists, directors or executives, with claims for an outstanding amount of USD 46 million (IAPA, 2021).

Also ongoing, is the legal case whereby a court ruled the seizure of CORPRENSA's assets following a lawsuit for alleged damages to the reputation and honor of former president Ernesto Pérez Balladares who is claiming more than USD 1 million.

During a long process that took almost 10 years, a judge ordered the seizure of the assets of legal affairs journalist, Linett Lynch, on alleged moral damages to Justice Geneva Ladrón de Guevara, whose court had been reported for influence peddling for rigged rulings (Edwin Cabrera,

2021). The lawsuit was used against the journalist and the media outlet she worked for, La Estrella de Panamá, but the penalty only fell on the reporter.

There is a state-owned educational and cultural broadcasting service (SerTV) chaired by the Minister of Education, whose board of directors also comprises members of the Executive, the Legislature, civil society, and the Comptroller General of the Republic. The service comprises a digital broadcast TV station and three radio stations (one of them AM). The National Assembly and the Panama Canal also have digital broadcast TV stations. All the above TV channels also feature streaming on the Web and their penetration rate is 47.8%, according to official data from the regulatory authority (Autoridad Nacional de los Servicios Públicos, 2020) In the digital sphere, the frequent use of trolls intended to smear and disrupt public opinion in social media is also a matter of concern (Raisa Urribarri, 2020).

The approval of the IV Open Government National Action Plan 2021-2023 (IV Plan de Acción Nacional 2021-2023 de Gobierno Abierto) should be considered as auspicious. The Plan, presented on July 31, 2021, establishes commitments toward openness and transparency over the national budget, education, and agribusiness, among others (Autoridad Nacional de Transparencia y Acceso a la Información, 2021).

Realm B: Exercise of journalism

This realm scored 6.29 points out of ten according to the appraisal made by the experts inquired for this study. It is the dimension that registers the greatest influence of all environments, being moderate that of the Judicial, with 5 points, and strong those of the Executive and Legislative, with 5.71 and 5.14 points, respectively.

Although there were restrictions to access of information during the particularly sensitive time of the pandemic, there were no reports on the obstruction of access to official sources by the media or journalists who differ with the government administration. Conversely, in general terms, the media disseminated and provided room for the circulation of official information, especially referring to COVID-19.

However, the protests that arose from the deterioration of the economy were the subject of actions by the organs of control of public order, which ended with attacks on journalists.

The Political Constitution of Panama guarantees freedom of association. There is no mandatory affiliation for journalists; however, there are different guilds and associations such as the Union of Journalists of Panama (Sindicato de Periodistas de Panamá), the National Guild of Journalists of Panama (Colegio Nacional de Periodistas de Panamá, CONAPE) and the Forum of Journalists for Freedom of Expression and Information (Fórum de Periodistas por las Libertades de Expresión e Información).

The National Council of Journalism (Consejo Nacional de Periodismo, CNP), which has a Committee on Journalistic Ethics to promote self-regulation of the members of the association, comprises guilds, associations, media, colleges, and schools of communication. The exercise of journalism is not regulated in Panama, and its practice does not require a university degree. However, professional qualification is required to work in government agencies which is issued by CONAPE or by the Union of Journalists of Panama.

Realm C: Violence and Impunity

This realm achieved a total of 25.12 points from the experts inquired. Violence amounted to 20.12 points, followed by a score of 3.07 points for persecution, 1.43 points for impunity, and 0.5 points for protection. The Legislative environment is the one that appears as the greatest influence, with 3.10 points. Both the Executive and the Judiciary exhibit a slight influence, of 2.33 and 1.76 points, respectively.

During the period under study, there were violent actions by the National Police against journalists. Such were the cases of the arrest of Juan Cajar, from the newspaper *La Estrella de Panamá*; and the attacks by law enforcement officers against Bienvenido Velazco, from EFE.

According to the National Police, Cajar was arrested for being among a group of young protestors who were demonstrating in the area surrounding the National Assembly while holding no visible credentials like the rest of the journalists who were covering the events. Nevertheless, video footage circulating on social media and later disseminated by *La Estrella de Panamá*, Cajar's workplace, contradict the official version. Finally, the police dismissed the charges on public order disturbance against the reporter (Adelita Coriat, 2020). Association of Journalists and Press Associations notably stressed that, although President Laurentino Cortizo had requested for the immediate release of Cajar, "the order was not immediately complied with by the director of the National Police" (Henry Cárdenas, 2020).

Likewise, journalists and TV presenters Flor Mizrachi (Telemetro) and Sabrina Bacal (TVN) received threats from unidentified individuals via telephone and social media. Mizrachi received them after revealing a clandestine case of COVID-19 vaccination not authorized by the Ministry of Health (Federación Internacional de Periodistas, 2021); and Bacal after exposing cases of alleged government corruption (Martha Vanessa Concepción, 2021).

Panama's Criminal Code Article 195 defines slander and defamation as crimes which are considered as serious offenses when committed through the use of the media. The Criminal Code establishes imprisonment penalties ranging from 6 to 18 months, or the equivalent in *per diem* fines for slander; and from 12 to 18 months or the equivalent in *per diem* fines for defamation (Ministerio Público, 2016). When it involves national rank officials, they have been decriminalized, but civil liability is not waived, so the penalties provided for crimes against honor are essentially pecuniary in nature and civil lawsuits awards are not capped. This type of civil actions is frequently filed by current or former officials and can be labeled as a form of harassment against freedom of expression and freedom of the press.

Realm D: Control over the Media

This realm received a total score of 22 points, with 16.29 points related to direct control over the media, and 5.71 in the indicator of indirect control. The three environments showed a very strong influence, but greatest being that of the Executive with a total of 0,64 points, also the highest among all the situations unfavorable to freedom of expression. The legislative and judicial environments received 0,57 points each.

There have been no media shutdowns or seizures in Panama. There is no record on the existence of mechanisms aimed at controlling or blocking digital platforms, nor is there pressure

on technological intermediaries or suppliers of the resources needed for gathering, producing, or disseminating news.

The controversy on the control over the media relates to the selective allocation of advertising, specifically by government institutions. According to official records, during the period under study, the Executive allocated a little more than USD 7 million for advertising. The two most important radio conglomerates (Medcom and Telemetro) received unequal amounts: USD one and two million, respectively. With regards to print media, the small amount allocated to the newspaper *La Prensa* stands out, (only USD 248,000 of a total of nearly USD 2.7 million). Only one advertising agency was favored with almost USD 1.5 million allocated (Eliana Morales Gil, 2021). With a score of 8, the legislative environment also shows a very strong influence; more due to the actions by some congresspersons against some journalists with the purpose of restricting freedom of expression and freedom of the press, than because of the actions by the Legislative itself.

With respect to the Judiciary, it is noteworthy the Supreme Court of Justice's ruling supporting the decision of a High Court to prevent the newspaper *La Prensa* from publishing the photo of a lawyer, and stop investigating him, following a defamation lawsuit filed by him against the president and associate editor of this newspaper. This infringes the international standards on freedom of the press as it implies an action of prior censorship. The lawyer also requested the judge to remove the recordings from the digital platforms of *La Prensa*, but it was overruled (Redacción Panamá América, 2021).

Conclusions

In general terms, it can be said that both journalists and the media enjoy broad freedom of expression and press freedom in Panama. However, the facts described in this report allow us to assert that the control over information, although subtle, is also a reality, especially that related to the exercise of journalism.

In the section on media control, the Executive environment recorded the highest score among the three environments. By the end of the period surveyed, Office of the Chief of Staff of the President (Ministerio de la Presidencia) declared restricted access to the minutes of proceedings of Cabinet Meetings for a period of ten years. This action, along with the occurrence of violence against some journalists by law enforcement agents, raises serious concerns.

The legislative environment also has a strong influence, especially in relation to the exercise of journalism, with 5.14 points. More than the Legislative itself, the actions that harm freedom of expression are those carried out by various congresspersons trying to arbitrarily restrict the work of the press, as well as the attempts to adopt laws restricting freedom of information and freedom of the press; if successful, this would mean a setback for the guarantees that protect such liberties.

Although the judicial environment appears with a slight influence, analysts debate over justice officials admitting those lawsuits with the sole purpose of preventing the free exercise of journalism, like those arising from the enforcement of Article 185 of the Criminal Code on crimes against honor, which sets forth claims for money with no ceiling on their amounts. This represents a form of judiciary harassment.

By the end of the period under review, the discussions over the electoral reform that will regulate the 2024 elections began in the National Assembly. In the midst of the discussions, the possibility of a modification to the concept of propaganda by the Electoral Code (Código Electoral) was discussed, so that any kind of content published in any media would be considered as such. This fact caused rejection among journalists' unions, and in the news industry (Maycol Núñez, 2021a).

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