

EL SALVADOR: JOURNALISTS AND ACTIVISTS CRIMINALIZED

Executive Summary

El Salvador remains stable in position 18 of the Chapultepec Index of Freedom of Expression and the Press. However, the unfavorable influence of the Executive environment has permeated the other branches of government to create legal reforms that could penalize – from a Judiciary allegiant to the Executive – the freedom of expression of Salvadorans and the exercise of journalism, as well as encourage the increase of impunity and violence against journalists. El Salvador is only 2.42 points away from moving from a country of "moderate" to "high restriction" on the press.

Introduction

The Salvadoran government consolidated a legal framework for criminalizing the media and journalists during the period under review. In December 2021, the Legislative Assembly approved punishing leaks of information deemed "confidential" with eight to ten years in prison, in a context where most of it has been declared classified by the Law on Access to Public Information (*Ley de Acceso a la Información Pública*, LAIP) (Portillo, 2021).

The initiative also included an amendment of the Criminal Procedure Code (*Código Procesal Penal*) whereby the National Civil Police (*Policía Nacional Civil*) is authorized to conduct surveillance by means of "digital undercover operations", on orders from the Attorney General's Office and judges, with the purpose of collecting evidence by electronic or digital means (Vichez, 2022). This legal provision is adopted a month after the confirming that 35 journalists and activists were surveyed by the government with the Israeli spyware Pegasus (Gavarrete, 2022).

Four months later, the Assembly passed a new amendment of the Criminal Procedure Code to punish media outlets disseminating gang-related messages with up to 15 years in prison (Arévalo, 2022). In September this year, the public force detained – without an arrest warrant and for a period of six hours – an expert in cryptocurrency information systems on charges of financial fraud (Hernández, 2022).

El Salvador ranked 18th in the Chapultepec Index of Freedom of Expression and the Press for the period 2021-2022. The country maintains the same position as in the previous study, that is, there is still a partial restriction on freedom of the press and expression. In the overall average, the country obtained 40.82 points, only 0.92, decimals more than the previous edition, when 41.74 was obtained. El Salvador is located just above Guatemala (in position 19 and rated with high restriction), Cuba, Venezuela, and Nicaragua, considered countries "without freedom of expression" and in positions 20, 21 and 22, respectively.

In the third year of President Bukele's government, actions under the LAIP are further restrictive, and the foundations are laid for criminalizing the practice of journalism and freedom of expression by setting up more hurdles on public funds oversight, as well as implementing broader pieces of legislation on the coverage of issues that call into question transparency, efficiency, and management of the current government administration.

Results analysis

The study reveals that the influence of the legislative, judicial, and legislative environments on freedom of expression and the press in El Salvador is unfavorable.

The legislative environment becomes unfavorable at a "very strong" degree by passing laws, decrees, or reforms amending legislation on the exercise of freedom of expression of citizens, by codifying certain digital conduct as cybercrime and putting at risk the privacy of citizens and officials who blow the whistle on acts of corruption by the government (*Derechos Digitales*, 2022).

The unfavorable influence on the exercise of journalism was also rated as "very strong" because the approved reforms are considered as a "Gag and Censorship Law" seeking to prevent media and journalists from covering the issue of gangs (Bernal, 2022).

Unfavorable influence is considered "strong" in the realm of Violence and Impunity because the official narrative on journalists and other civil society organizations seeks to establish that they are allies and defenders of gang members (Martínez d'Aubuisson, 2022). In the realm of Control over the Media, the Index indicated that the influence of the legislative environment is "slight" since, in the period under analysis, it has not yet sought to legislate on the closure of news media.

The influence of the Judicial environment is also considered unfavorable at a "very strong" degree in the realms of Citizens Free to Express Themselves and in Exercise of Journalism because of a coopted Legislative in May 2021 following the removal of the attorney general and the judges of the Constitutional Chamber of the Supreme Court of Justice. The alignment of power generates an outlook leaving journalists and citizens who could be spied on or criminalized without legal protection (Oliva, 2022).

In the realm of Violence and Impunity, the influence is estimated as "moderate" in the period of analysis and as "slight" in the Control over the Media realm.

The Executive environment has a "very strong" unfavorable influence with respect to the realm of Citizens Free to Express Themselves and that of Exercise of Journalism. An example of this are the rallies that have been organized in protest against the Bukele administration and in which there is a strong military presence that seeks to hinder, through checkpoints, free mobility and the right to demonstrate and protest (Reyna, 2021). The use of rhetoric to downplay citizen demonstrations is also a tactic by cabinet members on their social media (Labrador, Guzmán, Cáceres & Nóchez, 2021).

In the realm of Violence and impunity, the unfavorable influence is "strong" because the Salvadoran government, far from protecting journalists, preventing assaults and attacks on media professionals and outlets, has introduced legislation to criminalize independent and traditional

media – especially the press – that publish information underscoring violations of the rule of law, the weakening of democratic institutions and the lack of transparency (Avelar, 2022).

Even though the Salvadoran government claims not to threaten the safety of journalists, there is evidence from the Association of Journalists of El Salvador (*Asociación de Periodistas de El Salvador*, APES) that shows that aggressions from the Legislative, security forces, and government officials constantly stigmatize journalists (*Editorial Infodemia*, 2022).

Regarding the Control over the Media realm, the report reflects that the influence is "slight". Even though, in the period under analysis, the Salvadoran government has not expropriated or confiscated media directly or indirectly, it has blocked media outlets not aligned to its political rule and maintains more subtle or covert forms of control.

On environments: Control of the Executive over the Legislative and the Judicial environments

El Salvador's results in the Chapultepec Index for the period 2021-2022 reflect the trend towards the consolidation of absolute power in the Bukele administration. In reason of this, the Executive environment is positioned with 6.39 points out of 10 above the Legislative (5.71) and the Judiciary (5.38), and its influence is rated as unfavorable for the exercise of freedom of expression and the press.

The handling of the crisis of the COVID-19 pandemic during the period 2020-2021 created an unfavorable scenario for timely information to citizens by means of information flow from the media, in the form of restrictions on official information regarding how the pandemic was being addressed (*Salud con Lupa*, 2020). For the 2021-2022 study, the Salvadoran government increased to 7.93 points out of 10 since it restricted citizen access to information by blocking the accounts of opponents and critics on social media from its Twitter account (Human Rights Watch, 2021).

With regards to the practice of journalism, the proclivity to limit access to the press remained in a "very strong" influence. There is a decrease in the rating from "very strong" to "strong" for the period under analysis because, although the discrediting of the journalistic profession remains, direct attacks by the president and his officials have decreased or are more covert. Finally, the score for the Control over the Media realm decreased from 3.29 to 1.86.

The unfavorable influence of this environment increased from "strong" (5.71) for the previous study to "very strong" (7.57) for the current one. This means that there are fewer guarantees for access to information through the information flow from the media to citizens, and the existence of provisions, on the part of the Legislature, aimed at increasing criminal charges of defamation, slander, and contempt.

The amendment of Special Law against Computer and Related Crimes (*Ley Especial contra los Delitos Informáticos y Conexos*) Article 25, the reforms to the Criminal Procedure Code, namely Article 35-B, are indications of the criminalization of free expression and of citizens by the government through the figure of "electronic espionage" (Velásquez, 2022).

The realm of Exercise of Journalism keeps a score similar to the study of the previous period, rating the unfavorable influence on the journalistic activity by the media and information

professionals as "strong". Although the perception over government Control over the Media remains "slight", it fell from 2.0 to 0.86 in the present Index.

On the topic of influence of the judicial environment, this went from "moderate" to "strong" (5.58) in one year. The perception of citizens' freedom of expression and information rose from 4.21 to 7.79, that is, the judicial environment is considered "very strong" and highly unfavorable for citizen expressions that can be prosecuted and criminalized today.

The realm of Violence and Impunity is perceived as "moderate" although Martínez Avelar (2022) reports the exile of the latest commissioner of the Institute of Access to Public Information (*Instituto de Acceso a la Información Pública*, IAPI), and El Salvador is one of the countries with the most petitions for asylum to the United States. The perception of Control over the Media remains "mild."

Realm A: The Bukele administration curbs and criminalizes freedom of expression

The Salvadoran government only obtains five points out of 23 for its performance in favor of plural and timely information flow and of guaranteeing freedom of expression to its citizens.

A closer look at the scores achieved by the country in the above sub-realms reveals that the country only obtained 3 of the 11 points to evaluate this citizen guarantee. The latest report of the Human Rights Observatory of the *Universidad Centroamericana José Simeón Cañas* (UCA) (2022) reveals that the weakening of access to plural and timely information flows is evident in "... the closure of spaces for citizen participation, in the increasing reluctance of public institutions to provide data, in arbitrary rulings of classified information," (pp. 26-27) and, finally, the digital surveillance laws approved in the period under analysis.

The score achieved in the sub-realm of Citizens Free to Express Themselves reveals that the Bukele administration only obtained 2 of a maximum 12 points. Instead of strengthening citizens' expression in the public arena, the Salvadoran government limits them when the president downplays the protests against his administration from his Twitter account (Villaroel, 2021), or when his government officials – e. g. Minister of Labor – consider that attendance at the rallies is in support of gangs and criminal groups (Delcid, 2022), as well as when citizen organizations blow the whistle on police agents taking photographs (Sandoval, 2021).

Realm B: "Muzzling" and "censorship" on the Exercise of Journalism

The realm of Exercise of Journalism reached 5.4 out of 10 points. Although the realm includes other aspects such as the protection of the intellectual property of news content, or the government requirement of a college degree to exercise journalistic duties, this will be assessed based on only two aspects because no indications were found of the generation of guarantees with respect to these items. Therefore, the indicators to be assessed will consist of restrictions on access to sources and punitive actions against them.

The current Salvadoran administration has been characterized by the creation of restrictions on access to government information, statements by officials at press conferences, and low transparency. In February 2022, the Legislative Assembly prepared a list of new

amendments to the LAIP; however, these did not receive enough support on the congressional floor due to the political cost for the Legislative (Labrador & Lazo, 2022).

To counter the punitive actions of Criminal Code (*Código Penal*) Article 345 and Act to Outlaw Gangs (*Ley de Proscripción de Pandillas*) Article 1, the APES and the NGO Cristosal filed an injunction on unconstitutionality grounds because introducing vague legal language in legislation that may constitute censorship on the media (Urbina, 2022).

Realm C: Violence and more impunity regarding attacks on journalists

This realm encompasses government actions aimed at protecting journalists, preventing aggressions and attacks on media professionals and outlets. It also includes harsher punishment and legislation conducive to avoiding impunity in the case of crimes against journalists and the media. It is built upon on three sub-realms: Persecution, Protection, and Impunity, which jointly add up to 42 points of the total index.

With a total of 0 points out of a maximum 5, the results reveal that the Salvadoran government does not provide for or promote mechanisms for the protection of journalists; furthermore, it has not performed actions aimed at preventing attacks and aggressions against journalists and the media; far less is there willingness to provide training to judges in matters of aggression, murders, and crimes against journalists and media.

Persecution on journalists corresponds to 7.5 points in this sub-realm; however, the responses reveal that the perception of the persecution of journalists by the Salvadoran government is only 0.3 points. This result is paradoxical because the violence on record, corresponding to 21 points, reveals 13.2 [*sic*]. The sum of sub-realms reveals that out of 42 maximum points, El Salvador achieves 15.

In El Salvador, there is a draft bill introduced by the APES since the 2018-2021 legislature (*Asociación de Periodistas de El Salvador*, 2018). However, this has not resonated with the current legislature. Currently, Salvadoran journalists do not have government support so that rulings or court decisions stipulate harsher penalties in cases of crimes. Nor does it comply with sentences or rulings by international bodies whereby it is held responsible for crimes against journalists and media and bound to make reparations to the victims. Out of 85 maximum points, the Index reveals that this sub-realm only obtained 1.4 points.

Realm D: Indirect control of the Salvadoran media

This realm adds up to 25 points in the Index. Of this score, the country totals 15.4 points that are broken down into two sub-realms: Direct and Indirect Control over the Media. Direct Control measures whether the government has closed, expropriated, or confiscated media outlets. It also reviews the discriminatory use of tax provisions to generate fiscal privileges for those aligned with the government stance and, otherwise, undermine those media or media sectors contrary to official views.

The study reveals that Direct Control over the Media scores 9.1 out of 16. That is, the Salvadoran government favors with government advertising those digital or traditional media that support its presidential performance.

Indirect Control scores 6.3 out of 9.0. In this regard, the survey revealed that the Bukele administration accommodates restrictions or direct blockades of different digital news platforms considered contrary to the interests of the agents of political power. For the criterion regarding applying pressure to technological intermediaries and restrictions on access to vendors of supplies, no evidence was found.

Conclusions

El Salvador's position in the 2021-2022 study reflects Salvadoran institutions being held hostage, which translates into the weakening of the system of checks and balances and directly undermines the constitutional guarantees of free expression, freedom of the press, and access to public information.

Comparison with the study of the previous period, although it does not reflect a decrease in the position, does detail the unfavorable influence of the repercussions of the El Salvador's three branches of government for the benefit of the Bukele administration, but to the detriment of the free expression of the citizenry and the exercise of journalism, as well as for the persecution of the press, impunity in violence against the guild, and indirect control over the media.

The period 2021-2022 shows a "very strong" influence from the Legislative on the realms of Informed Citizens Free to Express Themselves and Exercise of Journalism, with the passing of pieces of legislation that arguably lay the foundations for criminalization, via the court system, against citizens, journalists, and independent media that question the rule of the Executive.

The above shows the condition of the press at the time of carrying out its investigative work: Limited access to public information, restriction of official information on the part of government agencies, decrease in requests to Information Offices, and absence of information in the government's transparency websites.

In the Salvadoran case, the study about violence and impunity was paradoxical because, although the government does not generate the legal framework or respect international frameworks, the results reflect low scores when compared to the increase in complaints made by journalists and media professionals to the APES. Underreporting for this realm may respond to many complaints filed anonymously due to the fear of reprisals by the government that could put economic livelihoods at risk.

Regarding the realm of Control over the Media, be it direct or indirect, the score of the sub-realm of Indirect Control stands out. However, the opacity of these control mechanisms is not evident in news coverage, specialized reports, or other empirical evidence that allows keeping record of government actions regarding the kidnapping of the media or TV news and interview shows in which there is a strong presence of public officials on prime time.

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