

COLOMBIA: RISK OF EXERCISING JOURNALISM

Executive Summary

Colombia continues to fight the daily and permanent risk involved in journalism throughout the country. Additionally to the daily battle against illegal armed groups, lawsuits, complaints against the media and journalists, the serious financial crisis of companies in the industry, and murders of media workers, different congressmen try to launch laws aimed at regulating the freedoms that we have been constitutionally granted and set a fundamental foundation of democracy and protection of the rule of law.

Introduction

This report scopes the period from August 2, 2021 to August 1, 2022, and presents us with an influence that impacts the exercise of journalism, especially from the Executive environment (mayors, governors, ministers and the President) due to the difficulty of access to information that must be public, the head-on attacks on the press and the rampant impunity that continues to reign in crimes against journalists.

Another serious situation is the tendency to implement limitations, restrictions and obstacles to the exercise of journalism through all kinds of legal actions.

The exercise of journalism is hindered and both investigations and complaints are silenced through prosecutions, protective actions and civil liability lawsuits of politicians, companies and all kinds of players against the media and press workers.

Development

During the survey of this period, Colombia still qualifies as a country with partial restriction on the exercise of freedom of expression and the press. The results show that the influence exercised by the environments changed from moderate to slight in the unfavorable actions towards freedom of expression: the Legislative environment scored 1.21, the Executive 1.79 and the Judiciary 1.00.

According to the Chapultepec Index, in Colombia there are still restrictions on freedom of expression and the press, especially when it comes to the Violence and Impunity realm showing the highest level of influence in the exercise of journalism, followed by Control over the Media. Violence against journalists and communicators seriously affects the social control that the media performs over the actions from the State, consequently impacting the rights of all Colombians.

Lastly, it should be noted that the Executive is the only one that yields a strong adverse influence on freedom of expression. This is very worrying in a country with social and economic difficulties, and high levels of corruption that the free media have a duty to fight.

Executive Environment: The media devoid of the right to criticize

Although the overall result shows the Executive's moderate degree of influence in situations unfavorable to freedom of expression, it is worrying that this influence is strong in the Exercise of Journalism realm.

While it is true that in the realms of Informed Citizens Free to Express Themselves and of Violence and Impunity there is a moderate unfavorable influence of the Executive, in the Exercise of Journalism realm the strong influence is reflected in frontal expressions of politicians against the media, e.g. by then presidential candidate (now President) Petro against *RCN*, and by candidates Rodolfo Hernández and Enrique Gómez against the media overall. This situation delegitimizes the work of the media, intimidates journalists and originates virtual and physical attacks against media and press workers by the followers of these political players, contributing to generate an unfavorable climate for the free exercise of freedom of expression and the press.

On the other hand, we highlight that, despite the media crisis, the Ministry of Information and Communications Technologies (*Ministerio de Tecnologías de la Información y las Comunicaciones*, Mintic) ended the public call to deliver resources for digital transformation early and without successful bidders. This was the outcome despite the fact that the parliamentary initiative purported to encourage the media recovery upon the pandemic's impact.

As to the Control Over the Media realm, it should be noted that there is a slight influence from the Executive environment in the practice of journalism in Colombia.

Legislative Environment: The temptation to regulate the media

Figures from the Legislative environment indicate a moderate influence in situations unfavorable to freedom of expression.

The highest percentage is the Exercise of Journalism realm moderately influencing in situations unfavorable to freedom of expression with 3.71. Bills such as the Electoral Code Amendment that imposes restrictions on social media's freedom of expression, or the bill seeking to make the media liable under the pretext of protecting the rights of children and adolescents, or the one intending to increase regulatory unbalances by incrementing regulations for private TV stations through the Communications Regulation Commission that could limit its freedom on prime time programming, or the project that already had a first rounds of discussions and creates a Commission of Experts whose functions would include a function to define a content catalog – which is an act of censorship in itself– without a doubt represent actions violating the freedoms of expression and the press.

Both the Informed Citizens Free to Express Themselves and Violence and Impunity realms showed a moderate degree of influence in situations unfavorable to freedom of expression. It is worth noting that the passing of an act that stretched the deadline to reply to

requests for information to the authorities, as well as the processing of act aiming at stopping the abuse of the legal system to intimidate and censor matters of public interest, contribute to improving the climate to exercise the journalism in Colombia.

Ultimately, with regard to the Control Over The Media realm, the unfavorable influence is slight influence (1.21). This measurement indicates that, although it is true that some acts affecting the rights for freedom of the press have been discussed and passed, in general the Legislative environment has not sought to take ownership and do so through laws directly affectin to those exercising the right to inform in Colombia.

Judicial environment: Impunity continues to reign

The Judicial environment in Colombia scored 2.87 in the Index, showing moderate influence on situations unfavorable to freedom of expression.

Analyzing each of the four aspects evaluated, we found that the actions related to the realms Informed Citizens Free To Express Themselves, Exercise of Journalism and Violence and Impunity present a moderate influence in situations unfavorable to freedom of expression, being Exercise of Journalism the aspect that was closer to a strong influence. Unpunishment for criminal offenses against journalists with statutes of limitations closing in (and these statutes are many to this extent), as well as the sentence against the State of Colombia for crimes against journalist Yineth Bedoya while she was on duty, reflect the risk for press workers and the ineffectiveness of the State's judicial system. Likewise, the civil and criminal proceedings against journalists and the media, plus the stalled investigations into the Army for illegally monitoring and profiling journalists, show that the Judiciary is inefficient and does not contribute to the protection of journalists and the media as part of how the State guarantees protection for the right to freedom of the press and information.

It deserves to be highlighted the ruling of the Constitutional Court that denied the protective actions filed by several clergymen against journalist Juan Carlos Barrientos due to the content of his book that denounces numerous cases of harassment and sexual abuse of minors by priests.

Lastly, the environment had a slight influence on Control Over The Media (direct and indirect) in situations unfavorable to freedom of expression.

Four realms' assessment

Upon the assessment of the *Citizens Free to Express Themselves, Exercise of Journalism, Violence and Impunity, and Control Over The Media* realms, Colombia scored 59.34 out of 100 points in the Chapultepec Index, thereby qualifying as a country with partial restriction for the exercise of freedom of expression and the press.

Realm A. Act on Access to Public Information: Only on paper

On one hand, the assessment of the Informed Citizens Free to Express Themselves realm includes information-flow-related considerations. Colombia scored 5.6 out of 11 points in this aspect.

As to this analysis, it is noteworthy that access to public information continues to be limited by officials at all levels –especially by mayors and governors in whose cities in the region they have opponents they have labeled as “enemies”– despite the existence of the Act on Access to Public Information. Corruption is concealed and knowingly makes it difficult to access information about public procurement and tenders.

In the Citizens’ Free Speech sub-realm, the score is 13.0 out of 23; it is measured whether the State enables citizens to express themselves in the public space.

Realm B. Some encouraging decisions

The second Chapultepec Index realm explores whether the State guarantees the exercise of journalism. Therefore, it assesses protection of journalistic intellectual property against plagiarism or misuse, compulsory membership of journalists’ guilds and associations, the requirement to have a degree for the exercise of journalism, and the restriction or denial of access to official sources. Also, the impact on the disclosure of journalistic sources and the establishment of retaliations. In this item, the experts assigned Colombia 7.1 out of ten points.

In accordance with what was analyzed in the realm above, both citizens and the media have little access to public information. Although Colombia has an act on access to public information, officials do not comply with it and hide work-related relevant information, preventing the media from exercising oversight work, subjecting them to a wear-and-tear filing of delayed petition rights and protective actions that order them to comply with the law by court ruling. On the other hand, administrative authorities such as the Superintendence of Industry and Commerce, judicial authorities such as the National Directorate of Copyright’s Directorate of Jurisdictional Affairs and judges of the Republic do their best to protect intellectual property rights (trademarks, patents, copyrights on writings, caricatures and photographs, among others) in Colombian territory.

It is worth mentioning that the Council of State’s sentence to the Government of Colombia for their responsibility in the psychological torture, threats, forced exiles, illegal interceptions and persecution of journalist Claudia Julieta Duque and her family by the Administrative Department of Security (*Departamento Administrativo de Seguridad, DAS*), as well as the sentence by a judge with jurisdiction in Amazonas who sentenced Alan Benjumea –user who threatened director of *La FM*’s Director, Luis Carlos Vélez, through social media– to two years in prison and a fine of 6.66 legal monthly current minimum wages.

Realm C. Aggressions and prescriptions are the *daily bread*

In this third realm, the experts qualified Colombia 21.3 out of 42 points, taking into account the examination of four sub-realms:

- Actions against protection. Here the score was 2.6 out of 5.0.
- Actions against persecution. In this item Colombia was rated 1.6 out of 7.5.
- Actions against immunity. The assigned grade was 3.6 out of 8.5.
- Recorded violence. The assigned score as 13.5 out of 21.0.

In this period analyzed, attacks against journalists and the media have not receded. So far in 2022, the Foundation for Freedom of the Press (*Fundación para la Libertad de Prensa*, FLIP) sums up 365 violations to freedom of the press coming from all kinds of players.

The presidential candidates and the current President of the Republic, made serious public assertions against media and press workers, calling into question the guaranteed constitutional exercise of freedom of expression and the press but, above all, their intention to contribute to respect for differences in an evidently polarized country.

In addition to the above, threats persist from illegal armed groups, common criminals, drug trafficking and politicians for whom the publication of information about their criminal actions is inconvenient, thereby resorting to legal and illegal means to hinder the work of the media and giving wings to fear that will lead to the media workers' self-censorship.

As a result of the strike promoted by the armed group known as "*Clan del Golfo*", in Antioquia and Córdoba, in May of this year, fifteen media –regional and local– were forced to go silent.

Last December journalist Álvaro Alonso's crime went on statute of limitations, as did in January Marco Antonio Ayala's murder, as well as those of Walter López and Héctor Sandoval, which had statute of limitations in April of this year, that of Víctor Omar Acosta in May and that of Mario Prada Díaz in July 2022. These added to the 92 with statute of limitations in 2021, i.e., bringing justice to crimes against journalists is not a priority for the Colombian State. The proceedings taking place for threats against journalists and the media progress slowly and very rarely the authors (intellectuals) and materials of the same are condemned.

Realm D. The State's debt to the media

In this realm, Colombia's rating was 17.9 out of 25 points. It was assessed:

[...] the incidence of actions that avoid direct control of the media, exercised through the use of resources and sanctions in a discretionary manner [...] and the shutdown, revocation of concession agreements, expropriation or seizure of media under political criteria; the discriminatory use of tax provisions or privileges for media supporting of the government or if the State allows that granting permits, allocating public funds and official advertising, be done under arbitrary and discriminatory criteria, rewarding supporting media outlets and harming those media contrary to the official point of view.

As for direct control, the score is 11.1 out of 16.0. This shows how much is to be done for the protection of media and, above all, to seek guarantees of its survival as a foundation of democracy. In this scenario, the Mintic events are worrisome: it ended early and with no successful bidders the tender to deliver resources destined for the digital conversion of the media in development of an initiative passed by the Congress. The media's financial crisis becomes deeper, and the State remains a passive spectator of the situation. As for advertising allocation,

officials from the administration still use it to reward or punish the media they deem with or against them.

The indirect control that assesses “... if the State allows restrictions or direct blocking on digital information platforms considered contrary to the interests of agents of political power” scored 6.7 out of 9.0.

Taking into account no incentives, initiatives, aid or supports are available to traditional press, radio and television media, while regulatory unbalances favoring providers of domestic and foreign connectivity networks and services are maintained, the State of Colombia holds an outstanding balance with both the media and the need to ensure they remain a foundation of democracy. To further darken this, the Congress deliberates over 2021 Bill 600, which aims to create a commission of experts to be established as a form of prior censorship since it would be enabled to define contents that, preliminarily and generically, are considered capable of harm the moral, mental or physical integrity of children and teenagers, so it is clearly an act of prior censorship not supported in the Constitution.

Lastly, growing concern among the media is brought up by the social sharing of a bill by pro-government parties which aims at “strengthening community and alternative media”, but whose scope may restrict or affect freedom of expression and the press in different ways.

Conclusions

The surveyed period elapses between August 2, 2021 and August 1, 2022, a time of enormous political and social upheaval in Colombia that affected the environment and freedoms of expression and the press, for which our conclusions are the following:

Attacks against journalists and the media by illegal armed groups, including Clan del Golfo, escalated dramatically. Also, as recorded in the FLIP’s report, in 2022 only there have been 22 obstructions to journalism, 13 aggressions, 6 illegal detentions and 14 instances of harassment by the Judiciary, among other violations on exercising freedom of the press.

Criminal proceedings, actions of protection and convictions continue to be the sword of Damocles that hangs over media and communicators, seeking to silence them by intimidation, or further affecting the already battered media finances.

Impunity continues to prevail in the murder of journalists, sending a serious message to outlaws. Additionally, prosecutions for threats, as of yet, interceptions and illegal monitoring of journalists do not yield exemplary convictions against masterminds and perpetrators of these crimes.

The deliberate and permanent non-acknowledgement by public officials of the act on access to public information prevents the media and press workers from adequately performing their duties of supervising the actions and management of public resources.

The financial crisis, cuts on spending, media workers layoffs, do not pose a serious risk only for owners and investors in the industry but –as had been evidenced in previous surveys– endanger the existence of the communications and media industry that creates jobs in the regions

and the center of the country, boosts the economy, but, above all, guarantees national and spaces for local citizens pluralism and the exercise of the rights to expression and information.

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