

## PANAMA

# JUDICIAL HARASSMENT AND COVERING OF PUBLIC INFORMATION

### Executive Summary

Like in 2022, the Republic of Panama was rated as a low-restriction country. This year it went from ninth to sixth place among the twenty-two countries measured in the Chapultepec Index of Freedom of Expression and the Press. This fact could be regarded as an improvement, as it has escalated three places in the chart; however, numerically, although it shows a slight positive evolution with an score of 65.24 points out of a possible 100, it is only nine hundredths above that of the previous year when it scored 65.15 points. According to the assessment carried out by the experts surveyed for the making of this year's poll, there is ample freedom of expression and of the press in Panama, although some entities linked to the executive and legislative environments have implemented restrictive measures for the exercise of journalism. Likewise, the limitations resulting from the application of the Criminal Code - which provides for crimes against honor - remain, a cause frequently used by powerful players, or linked to it, to exert undue pressure on the media and journalists.

### Introduction

The period analyzed by this report takes place during the fourth year of the presidency of Mr. Laurentino Cortizo Cohen, who will end his five-year term in July 2024. Suffering from health problems, but remaining in office, Cortizo has occupied a somewhat discreet site during this period which has been filled by the vice president-elect José Gabriel Carrizo, following his plan in 2019, and who disputed and won his party's presidential nomination in mid-June for the elections that will take place in May 2024 (Aparicio, 2023).

Although mass public demonstrations that filled the weeks between July and September 2022 have progressively reduced, these have not completely ceased as they have been fueled by new conflictive matters like the demonstrations demanding the government to stop dealing with the company *First Quantum*, which operates an open-pit copper mine in the province of Colón (TVN, 2023 a; *Vatican News*, 2023).

Organizations and individuals who oppose open-pit mining activities have warned about the enormous amount of advertising and propaganda in public or private press, radio, and digital media, with the intention of persuading public opinion in favor of signing a contract that the public consider harmful to the country's sovereignty. Despite this climate of dispute for control of the narrative around mining contracts, in general terms, both the media and journalists have reported on the different positions with wide degrees of freedom.

On the other hand, court cases related to media outlets and journalists are still active, and initiatives to ensure that public bodies avail data are progressing slowly. A fine imposed on a media outlet and an initiative aimed at reforming the transparency law have produced an extensive rejection by organizations defending freedom of expression and the press, media companies, and associations of journalists (Morales and Grinspan, 2023).

Following the analysis of the experts surveyed for this report, none of the environments analyzed appears to have a very strong influence. The highest score (degree of unfavorable influence) was obtained by the legislative with 2.88 points (moderate influence), followed by the executive with 2.50 points (slight influence) and the judiciary with 1.06 points (slight influence).

As for the realms studied, the legislative appeared with a strong influence, with 7 points, and the executive, with 6.83 points out of the 10 possible, both in Realm "B", corresponding to the "Exercise of Journalism", in which the judicial environment appeared with a lower (moderate) influence of 2.83 points.

Realm A, corresponding to "Citizens Free to Express Themselves", also revealed a moderate influence for both, the legislative and executive branches, with 3.42 and 2.92 points, respectively. The judicial branch scored 1.42 points displaying a slight influence. For Realm C pertaining to "Violence and Impunity", the legislative environment exhibited a moderate influence with 3.06 points. Both the judiciary and the executive had a slight influence with 2.44 and 0.94 points, respectively. Realm D, related to "Control over the media", seemed to be free of any influence, with zero (0) points in all three environments.

## **Analysis of the environments: veiling public information**

### **The Executive Environment**

The executive environment amassed a total score of 2.50 points. It only reported a strong influence of almost seven points (6.83) out of a possible 10.00 for Realm B, on the "Exercise of Journalism". The lowest degree of influence stood out in Realm C, "Violence and Impunity", where it was exhibited as slight; while moderate influence was revealed in Realm A, corresponding to "Citizens Free to Express Themselves". This environment did not report any type of influence over Realm D, referring to "Control over the Media".

A case that shocked both journalists and the media was the USD 5,000 (US Dollars) fine imposed by the National Authority for Transparency and Access to Information (Autoridad Nacional de Transparencia y Acceso a la Información, ANTAI) against the newspaper *La Prensa* for publishing - within the context of a journalistic investigation into the client-related use of public resources - the photo of a sitting deputy from the ruling party (*SwissInfo*, Spain). 2023).

The official instance argued that the sanction was in accordance with the provisions of the Personal Data Protection Law (Ley de Protección de Datos Personales, LPDP), and that the newspaper should have obtained permission from the lawmaker to publish his photo as it is considered as sensitive data. The argument was refuted by the Panamanian chapter of Transparency International, guilds, and journalists (Redacción TVN, 2023) who stressed that the Transparency Law sets forth the public nature of information concerning the use of public resources by officials. Also, journalist Mary Triny Zea, author of the report, questioned the issue because if it had some kind of validation, it would imply that the media, in order to publish photographs of public interest authorities, such as officials, would have to request permission from them first (Cajar, 2023).

With respect to attempts to restrict access to public information, already in 2022 the National Bar Association (Colegio Nacional de Abogados) and the National Association of Journalists (Colegio Nacional de Periodistas, Conape), with the support of the National Journalism Council (Consejo Nacional de Periodismo, CNP) and the Journalists' Forum (Fórum de Periodistas), had introduced a request in the Legislative Branch to amend the LPDP, alleging that it opened another door to file proceedings against media outlets and journalists while undermining the free exercise of journalism (Redacción *Metro Libre*, 2022).

Within the surveyed period, a significant event connected to the Executive Branch also occurred. Officials from the Ministry of Labor (Ministerio del Trabajo, Mitradel) carried out a visual inspection of several media outlets – in some cases in the company of cameramen from the state-owned television station – as it happened with the newspaper *La Prensa* - allegedly in response to complaints filed by the Journalists' Union. Officials, however, pointed out that these had been requested by employees in the companies (*La Estrella de Panamá*, 2022). Some journalists considered the officials' visit a reprisal for the publication of sensitive information in which Vice President Carrizo would be involved (Bacal, 2023).

Also noteworthy from this period was the massive advertising campaign aimed at promoting the alleged achievements of the presidential administration conducted through the Ministry of the Presidency (Ministerio de la Presidencia). Although officials claimed that the advertisement had been distributed among a large and diverse group of media outlets and agencies, neither the names nor the amounts awarded to those were disclosed. (Pichel, 2022)

## **The legislative environment**

In total, the legislative environment amassed 2.88 points and recorded a strong influence on the unfavorable situation for freedom of expression corresponding to Realm B, in relation to the "Exercise of Journalism", with 7.00 points. It was the highest score recorded by this environment and in that particular realm. Realms A and C, referring to "Citizens Free to Express Themselves" and "Violence and Impunity", received 3.42 and 3.06 points, respectively, for a moderate influence.

In April 2023, the unions that amalgamate media corporations, reporters, and NGOs raised an alert on the presentation of a draft amendment to the Transparency Law at the National Assembly. Although it was presented by the Minister of the Presidency (Presidency of the Republic, 2023), it had the support of lawmakers from the ruling party who welcomed its discussion. The Latin American chapters of Transparency International supported the arguments of the Panama chapter, claiming that the country's law was a pioneering legislation in the region on the struggles against opacity over the administration of public affairs (Libertad Ciudadana, 2023).

Although the fine imposed on the newspaper *La Prensa* for allegedly transgressing provisions of the LPDP was an operation of ANTAI, experts have stressed that this was an action directly solicited by Dep. Benicio Robinson who has held a seat since 2000. The lawmaker, who is also the president of the ruling party since 2012, is considered a player who holds a lot of power (Díaz and Batista, 2023).

## **The judicial environment**

The judicial environment is the area that recorded the least degree of unfavorable influence on freedom of the press, although the decisions that resulted from it - based on the application of the Criminal Code – had an impact over the freedom of expression and the press. Its influence was rated as slight with a total of 1.06 points. In numbers, the greatest impact was exhibited in corresponded with the "Exercise of Journalism", that is, Realm B, in which it reached 2.83 points for a moderate influence. Realms A, corresponding to "Citizens Free to Express Themselves", and C, corresponding to "Violence and Impunity", recorded a slight influence with 1.42 and 0.94 points, respectively.

This environment was marked by the use of the Criminal Code (Código Penal, CP) that defines libel and slander as crimes against honor, and are considered aggravated cases when committed through verbal or written means of social communication or by using a computerized system. For libel, the Criminal Code provides for penalties ranging from six to twelve months or a fine per day of those years; for slander, it provides for penalties from twelve to eighteen months' of prison or its equivalent in fine per days. (Public Prosecutor's Office, 2016). Although there is no penalty for public servants, civil liability is not excluded, so the penalties provided for are pecuniary in nature, and civil lawsuits have no limits to the amounts (Marine Botero *et al.*, 2017).

Due to the provisions of the Criminal Code, complaints and lawsuits filed by powerful players, or associated to it, with the purpose of silencing the media and journalists, are frequent. This results in a form of judicial harassment. There are frequent civil lawsuits seeking very high amounts on pecuniary compensation for alleged crimes against honor; thus, causing the seizure and/or freezing of assets. Such are the cases against the newspaper *La Prensa*, and the digital website *Foco*, introduced by two former presidents of the Panama. The sums claimed in both cases amount to approximately USD \$45 million (US Dollars) (SIP, 2023).

The experts consulted for the Index insisted on questioning the judicial procedures. When a claim for damages is filed, even in the absence of a favorable ruling, the claimant may seek the freezing of media assets, seize the assets of the media executives, or intervene in the management of media companies.

Both, the Attorney General of the Nation and Deputy Gabriel Silva, from the independent caucus, have presented bills or reforms to the Criminal Code intended to protect the media and journalists. Some of the requests are the incorporation of the injunction against procedural harassment, the decriminalization of slander and libel, and the inclusion of the concept of actual malice as necessary evidence for the determination of civil liabilities (TVN, 2023). To date, none has been discussed in the parliament.

## **Realm A: Threats to transparency**

Out of a theoretical maximum of 23 points, Realm A, "Citizens Free to Express Themselves" obtained 10.33 points; 5.67 points for the flow of information; and 4.67 points corresponding to free expression. According to the people surveyed, the greatest influence on this realm comes from the legislative environment, which scored 3.42 points, for a moderate influence. The executive environment, with 2.92 points, also appears to be moderately influential; the judicial environment, on the other hand, has a slight influence, with 1.42 points.

The statement that Panama is a country with freedom of expression and the press has been questioned. Restrictions on access to public information promoted by ANTAI, and the behavior of some officials have raised serious concerns. The attempts to amend the Transparency Law brought together various social sectors to defend it.

During the last period (2022) surveyed, ANTAI fined a news website for disseminating a marriage certificate, alleging that it violated the LPDP. Finally, after requesting for reconsideration, the website was exempted from the payment. This year, ANTAI again imposed another fine based on the same law. This time, to a print media outlet and for a larger amount. This activated the mobilization of press unions. As for the government effort resulting from the open data policy, few institutions comply with providing citizens with public information (DAP, 2023).

## **Realm B: Uncomfortable journalism**

Realm B, corresponding to the "Exercise of Journalism" obtained 6.33 points out of ten possible points. It is the realm that registers the greatest influence of all environments, with the legislative and executive sectors rating as strong, with 7 and 6.83 points, respectively; and the judicial environment as moderate with 2.83 points.

Although journalists generally exercise their profession freely, some facts stain this atmosphere. In addition to the actions by some entities linked to the Executive and Legislative Branches, journalists have expressed their concern and disgust with the actions of the Institutional Protection Service (Servicio de Protección Institucional, SPI), the security forces from the Ministry of the Presidency, whose actions have sometimes prevented coverage of specific events involving high-ranking officials (*La Prensa*, 2023).

There are also reports on actions against some reporters, such as TV journalist Isaías Cedeño, who was the object of attacks through social media aimed at questioning his sexual orientation after he made some critical comments about the government's performance (Cedeño, 2022, *Redacción Web Crítica*, 2022). Some journalists also report that they have been victims of hidden threats through messages circulated by anonymous people through private messaging applications (WhatsApp).

On the other hand, the exercise of journalism in Panama does not face any kind of restrictions. Affiliation is not compulsory and professionals may or may not join the various existing trade unions. The profession is also unregulated and unreserved. The exercise of journalism, despite the existence of the career in several universities, does not require a university degree. The so-called professional suitability is only required for the performance of positions in the public administration. This is issued by Conape or the Union of Journalists of Panama.

## **Realm C: Women in the crosshairs**

This realm obtained a total of 25.91 points out of a total of 42 possible points from the experts consulted. The legislative environment, with 3.06 points, showed a moderate influence; the executive had a slight influence of 2.44 points, as did the judiciary, with the lowest score of all: 0.94 points.

Violent events recorded 19.99 points out of a possible maximum of 21.00. Prosecution actions scored 4.17 points out of a theoretical maximum of seven points, followed by actions corresponding to impunity, with 1.17 points out of a possible 8.50. In terms of protection, it scored 0.58 points out of a possible 5.00.

During the period under study, there were no reports of physical violence against journalists, detentions, or incidents of harassment or intimidation. However, women journalists have pointed

out that there is discrimination against them within the media. However, they stressed that data were required to validate the certainty of this situation (García Armuelles, 2022).

In the case of the journalist accused of gender-based violence after a complaint made by the vice-president of the Legislative Assembly, the Public Prosecutor's Office requested that the case be dismissed in favor of the journalist. The deputy went to the Court, but the Supreme Court of Justice did not admit the appeal of unconstitutionality (*Foco*, 2022).

## **Realm D: Indirect control over the media**

Realm D was the best evaluated during the survey as it scored a total of 22.67 out of a total of 25.00 possible points. A total of 16.67 points were registered in correspondence to direct control over the media, out of a maximum of a possible 19.00, and 6.00 points in relation to indirect control, i.e. the maximum possible. None of the environments resulted to be influential in this realm. All received a rating of zero (0) points.

Panama holds a great diversity of media, especially digital media, which have been contributing to the diversification of information. There have been no blockades of digital platforms, or any reports of undue pressure on technology intermediaries or suppliers of the necessary resources for the collection, preparation, or dissemination of news reporting.

The questioning of the control over the media indirectly falls on the selective allocation of advertising, specifically by the entities of the Executive Branch or linked to it. Complaints about the allocation of large advertising contracts - while lacking transparency of their allocation - are frequent in the media, particularly, during a pre-electoral period that has the Vice President of the Republic running for office as the presidential candidate of the ruling party, it has become an issue that domains media discussions.

After more than five years of investigation, the money laundering case (known as "New Business"), in relation to the purchase - with public funds - of the publishing company *Panama America* (Epasa) which took place during the administration of former President Ricardo Martinelli; finally resulted in a conviction that ordered the confiscation of the shares of a group that prints three newspapers in nation. Media organizations and guilds expressed their concern about the transparency of the process that will define the future of the editorial group (Judicial Body, 2023).

In the digital sphere, and in view of the upcoming elections in 2024, the previous report had alerted on the risk of the use of disinformation factories dedicated to tarnishing and obscuring the public opinion on the networks. With the elections just around the corner, the presence of influence operations has begun to roam around this year. The Electoral Tribunal has proactively promoted the signing of the Digital Ethical Agreement (Pacto Ético Digital) and strengthened the Center for Digital Monitoring and Studies (Centro de Estudios y Monitoreo Digital) (Quesada, 2023, Pinilla, 2023). However, experts have alerted on the limitations of the Electoral Code that rules over this matter (Correa, 2022).

## **Conclusions**

Two elements contribute to casting a shadow over freedom of expression and the press in Panama. First: The existence of a Criminal Code that infringes the Inter-American standards on freedom of expression. The cases initiated on the basis of its provisions, infringe the exercise of



journalism, which is referred to as the most affected realm. Second: the lack of transparency in relation to the allocation of official advertising. Although Realm D, corresponding to "Control over the Media", appears as one without any influence, the phrase "indirect control" accumulates all of the six points available.

The operations aimed at undermining access to public information by entities linked to the Executive Branch and to some legislators, continue to raise concern among the press, the media and NGOs. Both in the previous period and in this one, some actions were promoted with the purpose of reinforcing official opacity based on the application of provisions provided for in the LPDP; additionally, the Executive Branch took an initiative to amend the Transparency Law, which did not undergo prior consultation with media outlets, journalists' unions, or NGOs associated to the sector.

The Judiciary appears with a slight influence, but journalists' and media associations hope that justice authorities refrain from pursuing cases that openly seek to coerce and limit the exercise of journalism. Lawsuits alleging crimes against honor are considered a form of harassment, and judicial persecution that restricts freedom of the press and expression in Panama.

In the near future, with a view to the holding the 2024 general elections, greater controls and pressures on the media and journalists are expected; especially for those who report and expose cases of corruption. In the same way, the increase of disinformation in the media and in socio-digital networks is also expected to increase. A reassuring fact is the recent reactivation of the Ethics Committee of the National Council of Journalism (Comité de Ética del Consejo Nacional de Periodismo), which organizes events with the purpose of strengthening the profession through the compliance with ethical standards during the coverage of the electoral process.

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#LaPrensaSecuestrada <https://t.co/c4woZAV2jl> [Tweet]. Twitter.  
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