

Chile: Leadership in freedom of expression

Executive summary

With an average of **80 points** out of a maximum of 100, Chile leads the **Chapultepec Index** from South America's Southern Cone, in a positive and respectful climate, with mild extent of influence from the Legislative, Judicial and Executive environments, the last being the lowest of all (1.00). The same is evident in realms **A** ([citizens] informed and free to express themselves), **B** (exercise of journalism), and **D** (control over media). Only realm **C** (violence and impunity) shows a difference regarding the detention of reporters covering the protests of the so-called "social outburst" starting in October.

Introduction

The period under study (May 1, 2019 through April 30, 2020) is unique regarding the situation in Chile, since the whole country – starting with the Sebastián Piñera administration – was taken by surprise with the violent protests of groups weary of socio-economic inequality and institutionalized abuse. It was called a "social outburst" (which took place between October 2019 and February 2020) and its first rally resulted from an increase of 30 Chilean Pesos in public transportation fares, discontent breeding unprecedented radical actions, such as the burning of subway stations (Paul, 2019).

There was also a turning point in news, since the unexpected social mobilization leading to the need for an executive order declaring the state of emergency and curfews (Presidential Press, 2019), made evident a reality that the media had not been showing, paradoxically being in full freedom to exercise their role of timely and accurate reporting. They also had to take seriously, in their agenda setting, the issue of a new Constitution, a process that started last November and that will be put to referendum next October 25.

There has been significant criticism among citizens, yet mild self-criticism, regarding the role of the press and the media, which did not reflect the reality in the country. Detrimentially so, social media were prominent, with consequential disinformation and fake news largely. Later, with the advent of the COVID-19 pandemic (on March 3, 2020, the first positive case was announced), the press once again took precedence with non-stop news reporting, supported by public health sources to calm the public's anxiety by assisting in awareness and protection measures from the pandemic.

Report

Generally, in Chile there are no obstacles to starting or operating media outlets. There is persistent criticism over the existing **El Mercurio SA-Copesa SA** duopoly, as two major conglomerates because of their concentration of media ownership nationwide; but, in practical terms, any self-funding media can operate. There is full respect for the rule of law, its statutes and regulations in force, and this freedom is what the five experts surveyed have expressed in their responses.

The problem consists of the fact that they have all suffered from the crisis of a change in a business model based on direct advertising, which has migrated to digital platforms and left mainstream press with serious economic problems. It has been especially critical in magazines (practically non-existent today) and in local media, as small newspapers have had to reinvent themselves or shut down, and in the case of large ones, to reduce their staff. All this has been worsened by the pandemic and related lockdown, which have seriously damaged the overall economic activity.

Therefore, the period under study (May 1, 2019 through April 30, 2020), is unique in Chile in light of three converging situations: the media's financial crisis, social crisis, and COVID-19-related health crisis. Fortunately, all this has been taking place within a functioning legal framework that prevents shutdowns, censorship, or arbitrary intervention from any agent on the media. The **Professional Association of Journalists** (Colegio de Periodistas AG) and the **National Media Federation** (Federación de Medios de Comunicación Social) – which gathers the National Television Association (Asociación Nacional de Televisión), the National Press Association (Asociación Nacional de la Prensa) and the National Radio Broadcasters' Association of Chile (Asociación Nacional de Radiodifusores de Chile) – constantly stand by in order to report abuse.

Environments

Legislative environment

Among the citizens of Chile, there is a consensus on high respect for and commitment to existing laws, regulations, and international agreements executed. However, for some time now, some groups have been calling for changes to the Magna Carta and for a new Congress. They call for a new, more up-to-date, constitutional framework, especially regarding provisions for regulating private property, expanding social protection of such fundamental rights as education and health, and including native peoples, among other issues.

After the social outburst of October 18, this demand intensified and, on December 27, President Piñera called for a national referendum so that citizens can make a decision, as he stated that "civilized societies settle their differences within the framework of the Constitution, and therefore it is important to establish the relevance of the process" (Carvajal, 2019). This is how he once again stressed the Chilean trait of respect for the law. Due to the COVID-19-related lockdown, the referendum was postponed from April

to upcoming October 25. In this contest, voting to APPROVE or REJECT a new constitution will be required as well as the means to draft it: a constituent convention or a mixed constitutional convention.

On the other hand, the amendment of the Freedom of Opinion and Information Law (Ley sobre la Libertad de Opinión e Información) No. 19,733 (2019) is undergoing legislative proceedings in the concerned House of Representatives committee regarding Article 1 thereof enshrining the right of individuals to be informed on general interest matters. Sufficient protection is requested to ban establishing unlawful prohibitions or restrictions, such as requests for authorization and payment of fees, municipal ordinances on advertising and publicity.

Judicial Environment

Shortly before the social outburst, in the aftermath of a rally in September to raise awareness of the climate crisis, hooded men attacked five newsmen who were reporting the event, including journalists and TV channel camera operators. The **National Media Federation** issued a statement condemning the events as damaging to freedom of expression and free exercise of journalism, and met with the **Office of the Secretary-General of Government**, which filed a criminal complaint on this matter, in order to devise collaboration protocols (Gallardo, 2019; Ministerio Secretaría General de Gobierno, 2019).

Then, stemming from the massive protests that took place in Santiago and other provinces (regions), violent and confusing situations arose that, in some cases, reached journalistic teams covering these demonstrations. Their recordings and audiovisual files were material evidence of injuries on demonstrators caused by excessive use of force with rubber bullets on the part of the Carabineros (Chilean police body). A landmark case was that of student **Gustavo Gatica**, who lost his sight after sustaining non-lethal shots. In the investigation regarding him, images captured by camera operator José Luis Martínez were decisive, since the Attorney General's prosecutors charged the Carabineros with not submitting evidence (The Clinic, 2020).

Also noteworthy are the statements by Judge **Dobra Lusic**, Justice to the Supreme Court nominee, who, when speaking before the Senate's Legislation, Constitution, and Justice Committee, declared: "The press, the media must be regulated". This declaration triggered concern and a press release from the **National Media Federation**: "We believe that the unfortunate statements of the justice [nominee] have been the consequence of a reaction to criticism from the public regarding her nomination and that she has not weighed the implications of such statements" (2019). Additionally, **La Tercera** daily made similar remarks in its May 10 editorial: "In a context of concerning setbacks in freedom of expression throughout the region – as noted by the IAPA [Inter-American Press Association] – the continued recognition from all across the Chilean society that it is essential to protect the work of media, even with its flaws and risk of making mistakes, is a positive fact " (2019).

Executive environment

The Executive's relationship with the media has been intense, especially stemming from inquiries for timely information regarding, in the first place, citizen restriction measures (state of emergency and curfew) resulting from the situation of social outburst, and secondly, from the pandemic-related lockdown. There have been no reports on record for censorship, content control, or restriction on access to information or freedom of publication and broadcast by mainstream media. However, in January, during its National Congress in Antofagasta, the **Professional Association of Journalists** has announced its decision to "suspend all relations with government authorities and to participate in the Media Fund administered by the Office of the Secretary-General of Government, as provided for in the current Press Law (Ley de Prensa), resulting from serious human rights violations" (Edición Cero, 2020).

The most tense situation was experienced in April following a statement by the then Minister of Health, **Jaime Mañalich**, who, true to his style, referred disparagingly to the work of the press during an interview on TV Channel 13. When inquired on a controversial declaration by of the Chinese ambassador to La Tercera daily regarding the donation of mechanical ventilators to Chile, the minister said: "the job of the press is to sell things based on making up lies" (El Desconcierto, 2020).

The **National Press Association** immediately replied: "We hope that Minister Mañalich will not confuse the exceptional health and legal situation that our country is experiencing, with a personal authority to revile and insult those who subject his words and deeds to scrutiny as a public official of a democratic government" (Asociación Nacional de la Prensa, 2020). There are no other frictions with the Executive on record.

Realm A: Free, unrestricted information flow

In both sub-realms, information flow from the media and citizens free to express themselves, the scores achieved are very close to the maximum values, 10.60 and 11.40 respectively, with very low influence from the environments. In addition, the social outburst has encouraged freedom of citizen expression to an extent not covered by the mainstream media. Social media, radio, and television have made room previously occupied by entertainment in order to welcome opinions.

The news output from those print media surviving the financial crisis, stemming from a shift in the business model of revenue exclusively from advertising, has undergone changes: Some have stopped circulating in print on weekdays, leaving it only for weekends; others have moved to digital publishing; others only circulate digitally on weekends; and others have shut down.

By no means does the government restrict citizens' access to public information or their rights of freedom of expression and the press. The only state-run media outlet is

Televisión Nacional de Chile, amidst a deep economic crisis (Cooperativa.cl, 2020) and with representatives from different political groups in its board of directors to guarantee balanced information, also under scrutiny from viewers who file complaints with the **National Television Council**¹ (Consejo Nacional de Televisión). Internet service providers are in the hands of private companies and service is available to anyone who can afford it.

Realm B: Free exercise of journalism on all types of platforms and media sizes

There are no known cases of government measures regarding intellectual property or protection of news content from plagiarism and misuse. If there are problems, relevant laws are consulted. Nor have there been any known restrictions on access to sources against any accredited media, and as never before – due to the social and health crisis – both President Piñera and his ministers respond to inquiries from the press every day. The daily report of the public health team is delivered collectively and [the conference is] open to free, unscripted questions, leaving room for differences of opinion with the authority without censorship.

Exercise of journalism has been disrupted by some attacks on the media, such as the fire that swept through the offices of **El Líder** daily in San Antonio last November and attacks against **El Mercurio** Antofagasta, **El Mercurio** Valparaíso and **El Pingüino** at Punta Arenas.

Jobs for news professionals have also been on the decline in reason of media closures and mass layoffs in the face of the financial crisis. Alternative digital media, YouTube channels, and podcasts have emerged, which report and stream freely. Furthermore, polls show that people have turned to getting news on social media stemming from lower confidence in the mainstream media. Especially regrettable has been the closure of magazines starting in February 2019 with the bankruptcy of **Televisa**, and continued with the end of **ED** and **CAPITAL** magazines in May this year. Even after the period for this study, their closure processes have marked this series of events.

Membership in the Professional Association of Journalists is not mandatory and even a diploma in journalism is not required for practice. Outstanding news show hosts are not journalists, such as Juan Manuel Astorga (MEGA Holding) and Nicolás Vergara (DUNA radio).

Realm C: Social outburst and alternative media

In this item, Chile scores the lowest as a direct influence of the social outburst. The presence of alternative, citizen-run media, and foreign correspondents has been greater in these protests as they are the ones reporting complaints. In responses from the experts

¹ TN: Chile's media regulatory agency.

inquired for feeding data into this Index, it is stated that: "Complaints have only been filed regarding the actions of law enforcement in the coverage of public disorder in which reporters and photographers have been temporarily detained, even after they have been released and no court actions have been brought against them".

In sub-realm 1 (Protection – 4.8), protection of journalists is conducted in compliance with the legislation in force and, following the attacks, the government has filed lawsuits against those responsible, and the Carabineros involved have been removed, as commented on in the section on the Judicial environment. In sub-realm 2 (Persecution – 13.6), neither persecution by the government on journalists or media outlets, nor any instances of intimidation or hate speech has been reported.

In sub-realm 3 (Impunity – 5.0), relevant laws are observed. Additionally, as international support, the **Inter-American Commission on Human Rights (IACHR)** made an *in loco* visit to Chile (January 25-31), to monitor the situation regarding human rights stemming from social protests. In its report, the IACHR thanked the State for the logistical support and assistance provided, and recognized that "[...] Chile has a democratic system in place, where the rule of law prevails through solid democratic and human rights institutions" (OAS, 2020).

However, during a meeting with members of the press, journalists reported being subjected to pressure or fired because of their opinions. Meanwhile, the president of the **Professional Association of Journalists**, Margarita Pastene, declared that, "three months after the beginning of the social outburst, attacks against journalists and newsmen, mainly those from independent media, continue, in addition to the criminalization of social protest on mainstream media and the concealment of information to citizens" (Colegio de Periodistas, 2020). For his part, during a meeting held with members of the press on occasion of the *in loco* IACHR visit to Chile (OAS, 2020), Alvaro Caviedes, vice president of the **National Press Association**, expressed his concern for the upcoming constitutional process. "We think – he said – that the regulation of freedom of expression is going to be tremendously sensitive, with different opinions; but the best regulation is the least regulation" (A. Caviedes, personal communication, January 26, 2020).

Realm D: Maximum scores achieved

Although the answers of the five experts inquired agreed on placing maximum reference values (25.0), since no media shutdown, expropriation, or seizure by the government, arbitrary tax or economic pressures against them, or any privileges for some have been on record. Additionally, licenses are respected according to the specifications of sub-realm 1 (Direct control - 16.0). However, in the case of sub-realm 2 (Indirect control - 9.0), there are mild concerns: There is no direct control, restriction, or blocking, but pressure is exerted.

In October 2019, the **Journalists' Association** questioned the government about the pressure exerted on television channels, regarding their news coverage on street protests throughout the country. "We request, by legal means of public transparency, to report on the meeting held at **La Moneda**² by President Piñera and the CEOs of the television channels" (Colegio de Periodistas, 2020), the press release stated. They also denounced abusive attempts of economic pressure by some major businessmen, who called for cancelling advertising from the media that had begun to report on the social outburst and the people's demands.

A landmark case was that involving the president of Empresas Sutil, **Juan Sutil**, who cancelled his advertising in November due to "the appalling attitude of **CNN**³ and **CHV**⁴ at a time when Chile needed serious, objective journalism free from political bias" (Prensa Radio AGRICULTURA, 2019). In March, Sutil became the new president of the Production and Commerce Confederation (Confederación de la Producción y del Comercio, CPC), the Chilean business association. Additionally, **Agrosuper** holding company suspended its advertising campaigns across all media.

Conclusions

In overall balance, Chile's institutions show an excellent support of full freedom of expression and the press, with slight interferences of the Executive, Legislative and Judicial environments, hence its 80-point score. The four realms surveyed did not yield concerning results either, although some instances of aggression and impunity that may affect news professionals during protests and rallies in support of social demands need to be watched closely.

In the period under analysis, the country has faced two important crises: First, a violent social outburst as of October, and later the Coronavirus pandemic along with related lockdown and standstill on production. Added to this, the media are undergoing serious economic problems resulting in mass layoffs and reinvention of their platforms. The financial emergency constrains them to a weak deployment of journalists and production resources to report at 100% of their capabilities.

The renewed rise of audience confidence in mainstream media resulting from the pandemic compared to that in social media, shown in recent polls (T13.cl, 2020), is a good indicator for their reinvigoration. The constitutional process that the country will undergo in upcoming months towards the October 25 referendum demands a solid informative coverage with quality content appealing to increasingly demanding audiences.

In terms of public opinion, the scenario has been complex, since groups on both sides –approve and reject – have appeared and changed all across the population in the face of events of protest and violence. The percentages of one and the other have been

² TN: Seat of the national Executive.

³ TN: CNN operates a local news channel in Chile.

⁴ TN: Spanish acronym for Chilevisión.

oscillating in the polls and in ongoing debate, in news and opinion shows as well as on social media. The media will have to remain vigilant in case that, once the pandemic lockdown is over, the climate of tension returns in the form of social protests and attacks on newsmen.

In view of functioning institutions and laws, as shown by the 80 points achieved in this Index, it is to be expected that, if a new Constitution is approved, freedom of expression, press and media creation will be further upheld.

As the Inter-American Commission on Human Rights concluded in its report: "However, the country's democratic institutions are facing a profound challenge, in the context of a social crisis that has had a major impact in Chilean society and can only be overcome with determined measures" (OAS, 2020).

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