

### **Paraguay: Impunity and weak institutional framework, a risky path for freedom of expression**

#### **Executive summary**

The Republic of Paraguay shows low levels of restrictions on freedom of expression and the free dissemination of public interest information, ranking seventh among the 22 countries in the Chapultepec Index, with 67.4 points out of 100. Institutional action from the judicial environment is regarded as the most influential against freedom of expression, resulting from a pattern of impunity, the lack of suitable legal instruments, weak institutional framework, and a scenario increasingly putting freedom of expression in jeopardy. The murder of a journalist in reason of his professional work has given rise to the need to move forward with upgrading protective mechanisms.

#### **Introduction**

The period under study for this report covers part of the first and second year of the government of Mario Abdo Benítez, who, in general, has shown to be a man in favor of freedom of expression and, in times of political crisis, given interviews to different media.

In spite of the above scenario, his government is besieged by numerous complaints of alleged acts of corruption and secrecy. In turn, the right of access to public information has been curtailed, since there persists a pattern showing a high rate of unattended and/or poorly replied queries.

#### **Report**

Paraguay has a low level of restrictions on freedom of expression and the free dissemination of public interest information, ranking seventh among the 22 countries in the Chapultepec Index of Freedom of Expression and the Press, with 67.4 points out of 100.

Despite the favorable environment for the exercise of freedom of expression, on February 12, 2020, Brazilian journalist Lourenço "Leo" Veras was murdered in his home in the city of Pedro Juan Caballero, Department of Amambay. According to reports available, he was shot twelve times while he was having dinner with his family

and, allegedly, his was a “contract killing” (ABC Color 2020). The journalist ran Porã News website, and worked as a correspondent for some Brazil-based media.

He was working in a border area where drug trafficking was rampant, a topic on which Veras was probably reporting, and the reason for which he was allegedly the victim of death threats (Office of the Special Rapporteur for Freedom of Expression). According to data from the Ministry of the Interior (Ministerio del Interior), on February 23, 2020, ten alleged hitmen on drug cartels’ payroll were apprehended, as “responsible for contract killings”. Among them might be one of those who committed the crime (Ministerio del Interior de la República del Paraguay, 2020).

On March 4, 2020, members of the Inter-Institutional Roundtable for the Protection of Journalists (Mesa Interinstitucional de Protección a Periodistas), which gathers government institutions and unions, met to discuss upgrading measures for the protection of journalists at risk (Ministerio del Interior de la República del Paraguay, 2020).

Along with this crime comes the fear that it may be left unpunished, in view of the high rates of impunity compared to other crimes committed in previous years and the weak institutional framework for prosecuting the perpetrators, also a consequence of the lack of suitable laws and protective mechanisms.

On the other hand, the lack of adequate regulation to prevent concentration of media ownership and guarantee plurality compromises journalists’ independence. Additionally, government advertising tends to be allocated under political criteria, although social media are increasingly giving signs of being alternative means for the free exercise of journalism.

### **Environments: Institutional action against freedom of expression**

According to the score given by the experts surveyed, the three environments show similar ratings, although the judicial environment appears to have the greatest degree of influence against freedom of expression, with a score of 5.73; while the executive environment achieved a score of 5.72; and the legislative environment scored 5.2. In general, this rating by the experts shows a “strong influence” against freedom of expression, where the realm of “violence and impunity” is viewed as the most critical, with a score of 23.6 out of 42.

### **REALM A: Informed citizens free to express themselves**

Citizens are taking an increasingly prominent role through social media platforms that are increasingly displacing mainstream media and “democratizing” the freedom to inform, express opinions, and make an impact. According to the score given by the experts, this realm shows a strong influence, with 14.2 out of 23 points. The

influence of the judicial environment is rated at 7.22, the executive environment at 6.99, and the legislative environment at 5.6.

With respect to the sub-realm "Information flow from the media", the score achieved was 7.6 out of 11, with the executive environment having a "very strong" influence at 7.78 points, followed by the judicial environment at 7.22, and finally, with a lesser degree of influence, the legislative environment at 5.83, the latter two having a "strong" influence.

Regarding the sub-realm "actions encouraging free speech", the rating given by the experts surveyed was 6.6 out of 12, with all three environments regarded as having "strong" influence. The judicial environment shows greater weight, with 7.21, followed by the executive environment with 6.21, and finally the legislative environment with 5.38.

During the period covered by this report, a high number of requests for public information were submitted at the Unified Public Information Portal (Portal Unificado de Información Pública at: <https://informacionpublica.paraguay.gov.py/>), which were not satisfactorily replied, a situation that, in some cases, resulted in court action seeking the information requested. The exercise of this right, in turn, takes the form of an advocacy tool on social media, since users can share their requests and replies, thereby spawning interaction of various sorts even with the authorities themselves.

Per portal statistics, between May 1, 2019 and April 30, 2020, a total 9,696 requests for public information were submitted, of which 976 were not replied (10.1%), and 488 were subject to reconsideration by users (5%), while 6,990 requests were "replied" (72.1%) – regardless of the quality of responses, among other categories. Against statistical data from a previous year, 7,820 requests were submitted, of which 771 were not replied (9.9%), 296 were reconsidered (3.8%) and 5,690 were "replied" (72.8%). These data show that, while the scenario remains favorable, there is a high and increasing volume of public information that is not disclosed. Furthermore, in numerous cases reviewed on the Portal, incongruent or incomplete responses are found.

During the period covered by this report, various laws directly affecting freedom of expression were passed. Below is a mention of the most significant ones.

On May 3, 2019, Law 6299 "to establish the disclosure of sessions of the Supreme Court of Justice, the Governing Body of Courts, the Jury for the Prosecution of Justices, and the Executive Cabinet"<sup>1</sup> entered into force, a law that also makes it mandatory to keep and disclose audiovisual records of the sessions held by these institutions part of the branches of government. This law has been decisive in times where triads of Justices to the Supreme Court have been nominated, although it has also been the object of non-compliance. For example, on

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<sup>1</sup> Translator's Note (TN): Literally, "ley 6299 que establece la publicidad de las sesiones de la Corte Suprema de Justicia, del Consejo de la Magistratura, del Jurado de Enjuiciamiento de Magistrados y del Consejo de Ministros"

June 11, the Governing Body of Courts arbitrarily withheld from disclosure a session during which it had to discuss the "honor" of a competing triad of nominees, a fact that led a civil society organization to file an injunction so that the proceedings and the session could be disclosed (ABC Color 2019).

On August 8, 2019, Law 6355 came into force, a law that modified the regulatory framework of sworn financial and asset disclosures of public officials, and indirectly restricted access to these records since it ambiguously sets forth the need to previously obtain a court order. This statute was a political reaction to a precedent of the publicity drawn by sworn disclosures acknowledged by some judicial authorities and to the closing ruling on a case being heard the Supreme Court of Justice, during the period covered by this report, regarding access to sworn disclosures from high government officials in office in the period between 1998 and 2018.

On March 26, 2020, Law 6224 "to declare a state of emergency throughout the territory of the Republic of Paraguay in view of the COVID-19 or Coronavirus Pandemic declared by the World Health Organization and establish administrative, fiscal, and financial measures"<sup>2</sup> went into effect. This law sets forth a chapter on "transparency and accountability measures" and establishes a novel duty, from the legal perspective, to create a website "granting access to all relevant information, in open data format, on the corresponding budgetary execution thereof [of said measures] during the current emergency period. This information shall be accessible to the citizens, without restrictions of any kind, by the appropriate virtual means" (Art. 54, §2).

On May 7, 2019, Law 6292 came into force, thereby declaring the situation of persons with disabilities as an emergency and providing for the "Mandatory use of Sign Language in the News Releases or Programs on Broadcast Media"<sup>3</sup>.

During the period covered by this report, some court actions were ruled in favor of the right of access to public information and others against it. Per data on the Supreme Court of Justice website, between May 2019 and April 2020, at least 11 court cases to gain access to public information were filed. However, this number is not very significant if we take into account the high number of requests that are not favorably replied according to data on the Unified Portal.

Among the judicial cases on record, most of the actions involve information related to alleged acts of corruption, a fact that has attracted a great deal of media interest in following up on these cases and disseminating the information obtained stemming from the acquittals granted.

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<sup>2</sup> TN: Literally, "ley 6224 que declara estado de emergencia en todo el territorio de la República del Paraguay ante la Pandemia declarada por la Organización Mundial de la Salud a causa del COVID-19 o Coronavirus y se establecen medidas administrativas, fiscales y financieras"

<sup>3</sup> TN: Literally, "Obligatoriedad del uso de Lengua de Señas en los Informativos o Noticieros de los Medios de Comunicación Audiovisual"

In August 2019, a "judicial case observatory" was launched on the Supreme Court of Justice website to monitor "landmark" public corruption cases. Notwithstanding, the quality of the data disseminated is far from optimal.

During the period reviewed by this report, on March 26, 2020, the Executive signed the Emergency Act (Ley de Emergencia) into law. Executive Order 3506 Article 70 of March 31, 2020, which regulates the Emergency Law, recognizes emergency fund administrators' duty to file "sworn interest disclosures", a novelty in the Paraguayan regulatory framework, in order to prevent potential conflicts of interest between government officials and suppliers.

### **REALM B: Exercise of journalism**

Paraguay does not have a restrictive context for the free exercise of journalism, in the understanding that any person can practice journalism without any licensing or professional association affiliation requirements. This realm received a score of 7.6 out of 10, with the three environments assessed showing a "slight" influence: The legislative environment, 1.93; the judicial environment, 2.13; and the executive environment, 2.2. During the period covered by this report, there were no discernible obstacles to the free exercise of journalism in the environments assessed, although there were numerous unwarranted dismissals in the media.

On the other hand, during the period reviewed by the report, there were slander and defamation lawsuits filed against journalists investigating and reporting corruption cases, based on remaining criminal "contempt" statutes. For example, on May 31, 2019, a complaint was admitted against ABC Color's journalist Juan Carlos Lezcano, filed by a former lawmaker who had been removed from Congress after the release by the journalist of a video allegedly showing influence peddling (Ñandutí, 2019). The journalist stated that, in the video, a former congressperson tried to "bribe" him so that he would stop further publications, an assertion that motivated the complaint.

### **REALM C: Violence and Impunity**

The realm of "violence and impunity" was rated at 23.6 out of 42, which shows a low assessment. The judicial environment is the one that shows the largest extent of, or "very strong", influence, with 7.67; the executive environment 7.5; and the legislative environment, with 7.33.

However, the sub-realm "impunity" is the one showing to be the most critical, or having "very strong" influence, with all three environments achieved a score of 9, while the sub-realm "persecution" obtained 10 in the legislative environment, followed by 9 in the judicial environment, and 8.5 in the executive environment. With respect to "protection", the three environments assessed show a "moderate"

influence, with the executive and judicial environments scoring 5 and the legislative environment 3.

In the period covered by this report, there were no relevant actions seeking lower impunity and violence against, or improved protective mechanisms for, journalists, and there is little progress in investigations against crimes and acts of violence perpetrated in previous years.

In February 2020, criminal "charges" were filed for the murder of journalist Leo Veras (La Nación, 2020). On the other hand, although there is an Inter-Institutional Roundtable for the Protection of Journalists, under the responsibility of the Attorney General's Office and the Ministry of the Interior, among other institutions, it lacks the authority and budget to ensure appropriate measures.

The Supreme Court of Justice has a site devoted to freedom of expression and justice, where it constantly posts relevant information for justices and judges. On December 26, 2019, it published a "Guide for Judges on Freedom of Expression and Public Information" (Guía para Jueces sobre Libertad de Expresión e Información Pública) and held a series of workshops in different locations of the country.

#### **REALM D: Control over the media**

This realm achieved a score of 22 out of 25. The legislative and judicial environments scored 2.17, and the executive environment 2.67, with this being the most influential with "moderate" weight. The assessment for the sub-realm "actions preventing indirect control" obtained equal scores in all three environments, 3.33, reflecting "moderate" influence, while the sub-realm "actions preventing direct control" obtained equal scores in the legislative and judicial environments, 1, and the executive environment, 2, all three with "slight" influence.

During the period reviewed by the report, there were no discernible direct or indirect actions against the media, or attempted blocking of social media, although there were reports of personal accounts of government authorities on social media being blocked by users critical of them. Finally, Paraguay shows a high concentration of media ownership, a situation that has a direct impact on the independence of the media and journalists.

#### **Conclusions**

Although Paraguay shows a favorable environment for freedom of expression, this scenario is at risk if vigorous action is not taken in a timely fashion to improve the legislative and institutional framework allowing for pre-emptive protective measures, repealing criminal penalties on contempt, and ensuring greater plurality.

During the period covered by this report, there have been legislative acts aimed at restricting information of high public interest, particularly regarding access to the sworn disclosures of senior government officials. The political reaction, especially in the House of Representatives, compromises pro-transparency and anti-corruption measures.

In addition, requests to access public information from the court system have been unsuccessful, although the trend favors this right. In this regard, the right of access to information is generally upheld, although the number of requests for information that are not approved is also on the rise.

The correlation between the number of requests for information that have not been replied to and the number of lawsuits is negative, which demonstrates a scenario where it is impossible to legally compel government institutions to provide public information. This also leads to a reflection on the measures to protect this right and the need to have a guaranteeing body with simpler and more flexible procedures, a scenario that should be discussed *de lege ferenda*.

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