

COLOMBIA: THE RISK TO MEDIA AND FREEDOMS

Executive summary

In Colombia, the risks to exercise the Freedom of Expression and the Freedom of the Press have increased because, in addition to violence and impunity factors, the government policy has not been able to break the regulatory asymmetry that deepens the crisis of the business model threatening not only the business prospects of the media, but also jobs for workers in this field and spaces to guarantee citizens their rights to expression and information as essential goods for the functioning of a democratic and pluralistic society.

Introduction

The study period spans over May 1, 2019 through April 30, 2020, a period in which journalistic activity was affected by a strong influence of judicial decisions and attacks against journalists by armed groups.

Another growing trend is the use of the court system to try to silence whistleblowing by journalists, forcing the media to engage in costly legal battles.

The trend by citizens and entities in resorting to court proceedings, criminal complaints, injunctions, and civil liability actions against the media continues on the rise. The right to be forgotten is also invoked when taking advantage of legal loopholes to remove news from the media's digital archives.

Results analysis

The review conducted by means of the Chapultepec Index showed that Colombia was rated as a country in which there is **PARTIAL RESTRICTION** for the exercise of freedom of expression and freedom of the press, in reason of a moderate influence (40/60) that, in the face of situations discouraging free speech, the following branches of government exercise: Legislative (3.94), Executive (4.44) and Judicial (3.79).

The above constitutes a warning sign for all those involved to consider this report from the perspective of the imperative need to protect the guarantees for the full exercise and permanence over time of the exercise of the fundamental right to impart and receive information.

Finally, and although Colombia has a protection scheme for journalists that has served as an example to several countries in the region, there is still much to do so that its operation and results guarantee the life and safety of communicators in the country.

Executive environment

The overall result of the executive environment is that it exerts a moderate degree of influence in situations discouraging free speech.

Regardless of the above, some issues such as those concerning informed and citizens free to express themselves, information flow, exercise of journalism, and persecution, revealed a strong influence of the Executive on situations discouraging free speech. This influence is especially evident in the difficulties for access to information (public contracts, information on public tender processes, among others) posed by the various Executive branch agencies at national and local levels. This prevents access to data essential for journalists and newsmen to serve one of the main purposes for their role, which is to exert social control over the actions of the officials. Additionally, it is noteworthy that the Superintendence of Industry and Commerce (Superintendencia de Industria y Comercio) issued an order in 2018, with controversial implications during the period under study, whereby it called on the media, via their trade organizations, to "refrain from broadcasting and disseminating advertising campaigns that violate fundamental rights, such as human dignity, equality, and non-discrimination towards women", as this constitutes an act of censorship.

Concerning violence, impunity, direct control and indirect control, the Executive has moderate influence in situations unfavorable to freedom of expression.

Finally, protective actions in the exercise of journalism in Colombia showed a slight influence by the environment of the Executive branch.

Legislative environment

As for the legislative environment, the overall result shows that it has a moderate degree of influence on situations discouraging free speech.

The influence of this environment on situations discouraging free speech was strong, in terms of the persecution of journalism. This is reflected in the existence of draft bills leaning towards imposing restrictions on the exercise of the journalistic profession, such as the bill that sought to revive card-carrying affiliation for journalists, which has been proposed since 2018 but triggered public statements during the period of analysis. Likewise, in 2019, a draft bill seeking to set "rules for the good use and operation of social media and websites in Colombia" was submitted, to name a few.

The Legislative environment has a moderate influence in situations discouraging free speech, regarding violence and impunity, the direct and indirect control over the media. This is because, although the Legislative does not have direct influence on decisions related to these issues, many of the laws regulating them are insufficient to guarantee the protection of newsmen and a serious regulatory asymmetry continues to exist among the different media and news stakeholders. The economic crisis is worsened by the lack of a government policy in this matter. This causes the responsibility for protecting the exercise of journalism, watching over the enforcement of existing laws by exercising the controls bestowed on them by the Constitution, and guaranteeing the stability of companies enabling the exercise of news-related activities throughout the nation to rest with the legislators.

Finally, the Legislative had a strong influence on situations discouraging free speech, related to persecution.

Judicial environment

The overall result for the judicial environment is that it has a moderate degree of influence on situations discouraging free speech.

The judiciary had a moderate influence on some situations discouraging free speech in the assessment of citizens informed and free to express themselves, information flow, free speech, the exercise of journalism, the protection and persecution of journalists. The above results stem from court rulings by judges in Colombia, mostly in the framework of constitutional protective injunctions. As a case in point, we have that of a judge who ordered, last February 2020, ten days' arrest and a fine of ten minimum wages against journalist Lucio Torres for refusing to retract from whistleblowing publications involving Miguel Arrázola, a pastor leading a Christian church. Similarly, it is of concern the fact that the cases of murdered journalists are on the verge or reaching their statute of limitations under the Colombian legal system: Sentences for those who perpetrated and masterminded the killings of Carlos José Restrepo Rocha, murdered on September 7, 2000 in San Luis, Tolima; Juan Camilo Restrepo Guerra, murdered on October 31, 2000 in Ebéjico, Antioquia; Gustavo Ruiz Cantillo, murdered on November 15, 2000 in Pivijay, Magdalena; Guillermo León Agudelo, murdered on November 30, 2000 in Florencia, Caquetá; and Alfredo Abad López, murdered on December 13, 2000 in Florencia, Caquetá, have not been issued.

The judicial environment was found to have a slight influence on discouraging situations regarding issues related to violence and impunity, direct control and indirect control, such as protection and impunity. The reason for this is that its actions are aimed at delivering justice on crimes committed against the life and personal safety of journalists, and that they have the duty to hear slander and defamation cases brought against newsmen. At this point, it is worth reminding that Colombia is one of the few

countries that still makes it a crime to engage in the above behaviors, and those who work as journalists may be prosecuted for such offenses.

Finally, the Colombian judiciary has had a slight influence on protective actions and actions against impunity.

The four realms assessed

Valoradas las dimensiones de ciudadanía informada y libre de expresarse, ejercicio del periodismo, violencia e impunidad y control de medios, Colombia obtuvo 57,5 sobre 100 puntos en el Índice Chapultepec, quedando clasificada como un país en el cual existe restricción parcial para el ejercicio de las libertades de Libertad de Expresión y Prensa.

Following the assessment for the realms informed citizens and free to express themselves, the exercise of journalism, violence and impunity and control of the media, Colombia obtained 57.5 out of 100 points in the Chapultepec Index, being rated as a country in which there is partial restriction for the exercise of the freedoms of Freedom of Expression and Press.

REALM A: Informed citizens free to express themselves

The assessment for the realm of informed citizens free to express themselves includes, on the one hand, analysis on government action encouraging the flow of plural and timely information to citizens. In this regard, Colombia scored 5.8 out of 11 points.

In this sub-realm, the experts assessed the limitations on access to public information and to rights in connection with freedom of expression and the press, the appropriate enforcement by the government of the rights of reply and to be forgotten, as well as the use of public and private media to further the government's views, in addition to constraints on citizens from obtaining reliable, quality, and accessible Internet service.

In the sub-realm of citizens free to express themselves, which explores whether the government provides resources for citizens to express themselves in the public arena, Colombia scored 4 out of 12 points.

In this regard, the assessment focuses on encouraging censoring information deemed negative for the political groups in power, burdensome regulations and penalties in place restricting statements regarding public interest matters online, as well as the existence of criminal provisions for slander, defamation, and contempt.

REALM B: Exercise of journalism

The second realm of the Chapultepec Index explores whether the government guarantees the exercise of journalism. To this end, it assesses the protection from plagiarism or improper use of intellectual property of journalistic content; the mandatory affiliation to journalists' unions and associations; the requirement of an academic degree to practice such activity; and the restriction or denial of access to official sources, as well as the impact on the disclosure of journalistic sources, and the imposition of punitive measures. In this item, the experts rated Colombia at 7.8 out of 10 points.

In this regard, it is noteworthy that Colombia has entered into international agreements and has domestic laws intended to protect intellectual and related rights on journalistic content. It also has a specialized agency (National Copyright Bureau [Dirección Nacional de Derechos de Autor]) for protecting such rights, initiate administrative and court actions required to recognize and verify matters related to intellectual property. Journalism is considered a profession that does not require an academic degree or mandatory affiliation. However, as mentioned above, there are draft bills in Congress aimed at setting regulations to require card-carrying affiliation from newsmen. Access to public information and official sources is severely restricted, despite the existence of a law on access to public information. In many cases, it is necessary to resort to petition rights and injunctive action to gain access to documents that are in the public domain by nature.

In an important ruling last May, Colombia's Constitutional Court (Corte Constitucional) protected the fundamental right to freedom of information and expression by granting the injunctive action filed by journalists who were denied access to a courthouse in order to cover a public hearing on a general interest case. The Court found that the judge's decision to deny the journalists access on grounds of "averting risk to the victims and guaranteeing the proper course and success of the investigation" violated freedoms of expression, information, and of the press.

An illegal wiretapping plan against journalists, human rights advocates, judges, politicians, and other public officials was unveiled. This unlawful surveillance was allegedly performed by military units and targeted several journalists at the media outlet that uncovered the existence of this plan.

During the social demonstrations that took place between November 2019 and January 2020, there was an increase in complaints regarding the excessive use of force (aggressions and arbitrary detentions) against journalists by law enforcement bodies.

REALM C: Violence and impunity

In this third realm, the experts rated Colombia at 15.5 out of 42 points, comprehending the assessment of three sub-realms:

One: Persecution. In this regard, the Index seeks to ascertain whether the government encourages the persecution of journalists and media outlets publishing statements that

may be deemed potentially offensive to officials, or whether government officials uttering harassing, stigmatizing, or hate speech against journalists and media outlets. In these items, Colombia achieved 9,3 out of 15 points.

Two: Protection. In this sub-realm, the index assesses whether the government provides efficient mechanisms for protecting journalists or actions aimed at preventing threats, attacks, and aggressions against journalists and the media; in addition, whether it provides judges with training to address the investigation and punishment of assaults, killings, and crimes against journalists and the media. In these items, Colombia was rated at 2.5 out of 10 points.

Three: Impunity. In this sub-realm, the experts surveyed assessed whether there are pieces of legislation or court rulings stipulating harsher punishment for murders or waiving the statute of limitations on killings, assaults and threats against journalists and the media; likewise, they reviewed whether the government complies with sentences or rulings by international bodies whereby it is held responsible for crimes against journalists and the media and whether it makes reparations to the victims. The score obtained by Colombia was 3,8 out of 17 points.

The increasing siege by armed groups against community leaders and people known for their work on behalf of their communities tragically reached the media, as the lives of several newsmen were taken. In addition to these deaths, there have been assaults and threats against journalists by government agents and private individuals, particularly in territories where there exist disputes between rogue groups.

Another growing trend is the use of the court system to try to silence whistleblowing by journalists, forcing the media to engage in costly legal battles. The trend by citizens and entities in resorting to court proceedings, criminal complaints, injunctions, and civil liability actions against the media continues on the rise. The right to be forgotten is also invoked when taking advantage of legal loopholes to remove news from the media's digital archives, which distorts society's historical memory.

REALM D: Control over the media

Regarding control over media, Colombia was rated at 21 out of 25 points. This assesses the effect of control over the media, exercised by means of discretionary resources and penalties.

In this sense, the sub-realm of direct control over the media investigates the closing, revocation of licenses, expropriation, or seizure of media on political grounds; the discriminatory use of tax provisions or fiscal privileges for media outlets aligned the government, or whether the government allows for the granting of media licenses, as well as the allocation of public funds and government advertising, to be conducted in an arbitrary and discriminatory manner, rewarding those media favorable and undermining those others contrary to its position.

In the sub-realm above, the experts rated Colombia at 9.5 out of 16 points.

The sub-realm regarding indirect control of the media assesses whether the government allows or direct restrictions or blockages of various digital information platforms considered contrary to the interests of the powers-that-be.

Therefore, on the one hand, it is reviewed whether the government applies pressure on technological intermediaries – such as pay TV systems, ISPs, and suppliers – in order to prevent the media from disseminating certain contents.

On the other hand, it examines whether the government encourages applying restrictions on intermediate goods suppliers (newsprint, materials, IT components, electrical power, etc.) affecting the production and dissemination of information by the media.

With regard to indirect control of the media, the experts who applied the Chapultepec Index on Colombia rated it at 9 out of 9 points.

As documented by recent studies cited in the references, neither the National Development Plan (Law 1955/19, Plan Nacional de Desarrollo [Ley 1955/19]) nor the Law to Update the Information and Communication Technologies (ICT) Sector (Law 1978/19, Ley que moderniza el sector de Tecnologías de la Información y las Comunicaciones [Ley 1978/19]), which set forth official incentives for the ICT sector, preserved the same standard of government treatment in ensuring the strengthening and sustainability of the national communications and media industry organizations that, by 2018, had reported losses of over US\$100 million.

With this type of biased and discriminatory measures, the government policy continues to deepen regulatory asymmetries between mainstream or flagship media outlets, since the Law has provided for incentives, discounts on economic obligations with the government, as well as the choice of paying financial obligations with services or pledges of activities, and national and foreign internet service providers (ISPs) as well as digital content providers.

Conclusions

Considering that the study period runs from May 1, 2019, to April 30, 2020, the assessment conducted by the experts who applied the Chapultepec Index to the Colombian reality regarding freedom of expression and the press allow the following conclusions to be drawn:

During this period, journalistic activity was affected by a strong influence of judicial decisions: Attacks on journalists by armed groups, a financial crisis compromising the business prospects of the media and the sources of employment for journalists, as well as the possibility for citizens to have spaces for pluralistic expression and information in the different regions of the country.

The ratings assigned by the experts surveyed to Colombia lead us to infer that, in their opinion, to varying extents, the branches of government (legislative, executive, and judicial) have, by action or omission, been ineffective in guaranteeing Colombian citizens the full exercise of the rights to expression and information, since, on the one hand, the concerned government agencies have not been able to fully quell the violence against journalists or punish those responsible.

While asymmetrical and discriminatory measures have been taken (National Development Plan and ICT Law), all of Colombia's print, audiovisual, radio, digital, and outdoor communication media are subject to heavy and unequal tax and parafiscal levies jeopardizing the media's business prospects as a special and fundamental estate for democracy.

The discriminatory legal measures provided for in the National Development Plan (Law 1555/19) and in the ICT Law (1978/19) dangerously deepen the regulatory asymmetries that have been crippling the communications and media industry in Colombia; constituting a serious and imminent risk for the media's business prospects.

Inasmuch as these direct control actions are banned in international communications law, they must be urgently repealed by the executive and legislative branches of Colombia in order to guarantee the full exercise of freedom of expression, information and the press.

The financial crisis and the eventual expense cuts of are not only a serious risk for owners and investors in the sector, but they also put at risk the existence of the communications and media industry, generating employment in the country's regions and inland, energizing the economy but, above all things, ensuring national and local citizens spaces for pluralism and the exercise of their rights to expression and information.

References

Barrios, A. (2019, March 25). El periodismo en la era de las redes sociales. In: *razonpublica.com*. Retrieved from: <https://razonpublica.com/el-periodismo-en-la-era-de-las-redes-sociales/>

Círculo de periodistas de Bogotá. (2020, February 10). El desempleo, las amenazas y la estigmatización, atentan contra el periodismo de investigación en Colombia: Gloria Vallejo, Presidenta CPB. *Círculo de periodistas de Bogotá*. Retrieved from: <https://www.circuloperiodistasdebogota.org/intervencion-gloria-vallejo-premios-cpb-2020/>

El Encierro. (2020, May 4). La situación de los medios es difícil: Tulio Ángel Arbeláez. W Radio Ilega con El Encierro para hacer más agradable el aislamiento. El abogado especialista en derecho de telecomunicaciones y tributario conversó con Alberto Casas. W In: *Radio*. Retrieved from: <https://www.wradio.com.co/noticias/actualidad/la-situacion-de-los-medios-es-dificil-tulio-angel-arbelaez/20200504/nota/4035686.aspx>

El tiempo. (2020, April 11). La necesidad de priorizar la situación de los medios es urgente. In: *El tiempo*. Retrieved from <https://www.eltiempo.com/economia/empresas/la-necesidad-de-priorizar-la-situacion-de-los-medios-es-urgente-483440>

Fundación para la Libertad de Prensa (FLIP). (2020). Informe anual 2019: Callar y fingir, la censura de siempre. Retrieved from <https://flip.org.co/index.php/en/publicaciones/informes-anuales/item/2463-informe-anual-2019-callar-y-fingir-la-censura-de-siempre>

Garzón, J. (2019, August 3) Crisis de la industria de la comunicación en Colombia, ¿oportunidad para reinventarse? In: *Universidad Nacional de Colombia*. Retrieved from <https://unperiodico.unal.edu.co/pages/blog/detail/crisis-de-la-industria-de-la-comunicacion-en-colombia-oportunidad-para-reinventarse/>

Garzón, J. (2019, June 10). La ley TIC no modernizará las telecomunicaciones ni la información. In: *razonpublica.com*. Retrieved from <https://razonpublica.com/index.php/politica-y-gobierno-temas-27/12045-la-ley-tic-no-modernizara-las-telecomunicaciones-ni-la-informacion.html>

Federación Colombiana de Periodistas – FECOLPER. (2020). Periodismo: Trabajo Indecente. Colombia. Retrieved from <http://fecolper.com.co/wp-content/uploads/2020/08/Periodismo-trabajo-indecente.pdf>

REY, G. (2020, July 13). El duro destino de los medios de comunicación. In: *razonpublica.com*. Retrieved from <https://razonpublica.com/duro-destino-los-medios-comunicacion/>

Rincón, O. (2020, June 15). La comunicación de los pobres / El otro lado. In: *El Tiempo*. Retrieved from <https://www.eltiempo.com/cultura/cine-y-tv/la-comunicacion-de-los-pobres-columna-de-omar-rincon-506988>

Rueda, M. (2020, April 13). ¿Cómo ayudarles a actrices, actores y guionistas nacionales? In: *El Tiempo*. Retrieved from <https://www.eltiempo.com/cultura/cine-y-tv/como-ayudarles-a-actrices-actores-y-guionistas-nacionales-en-este-paro-de-produccion-483600>

Reporteros sin fronteras. (2019). Informe anual 2019 de RFS. Retrieved from <http://m.informeanualrsf.es/>

