

EL SALVADOR: FREEDOMS ON THE BRINK OF THE ABYSS

Executive Summary

The accelerated concentration of power following the legislative elections without integrity in February 2021, and the consequent co-optation of the Judiciary branch in May of the same year, paint a very alarming picture for free speech and freedom of the press in El Salvador. During the second year of President Nayib Bukele's term, the law enforcers committed acts of physical and verbal violence against journalists, government institutions restricted the exercise of journalism and harassed independent media, and citizens did not have institutional tools to rely upon to become aware of information that should have been public. The Central American country is approaching high levels of restraint, in a context unprecedented in its recent history.

Introduction

El Salvador faced serious actions in the consolidation of an authoritarian regime during the period of observation between August 2020 and July 2021. Within the pandemic crisis, the government extended its powers by declaring unconstitutional states of emergency, in disobedience to court rulings; by obtaining a supermajority in the Legislative Council, upon misusing public resources for propaganda purposes; and by cutting public funding received by both political parties and municipalities (Escobar, 2021; OAS, 2021). On the first day of the new legislative majority, the ruling party removed the Constitutional Chamber's and the Attorney General of the Republic's justices and imposed subordinate officials. In June 2021, the Executive Branch expelled the International Committee against Corruption and Impunity in El Salvador (Comisión Internacional contra la Corrupción y la Impunidad en El Salvador, CICIÉS), one of the major promises of President Nayib Bukele's campaign. By the end of this period, it is clear the authoritarian pattern in the President's actions since 2016 (Meléndez-Sánchez, 2021, p. 23) and the installment of a hybrid regime in which there are no checks and balances, no institutional guarantees to ensure full elections, and no respect for fundamental rights (Corrales and Penfold, 2010, p. 11).

Dissident voices, including those of citizen organizations and independent journalism, were faced to a scenario of increasing vulnerability (Fundación Salvadoreña para el Desarrollo Económico y Social -FUSADES-, 2021, p. 165-189). Harassment against journalists rose substantially during the electoral process that culminated in the February 2021 legislative and municipal vote. The system of access to public information is neutralized and inoperative. Attacks on the physical integrity of journalists, the systematic harassment of troublesome media outlets and the expulsion from the country of foreign journalists are now part of the new political dynamics. These actions would be less disturbing if the main government control institutions, such as the Judiciary branch or the Attorney General's Office, were not co-opted by the current administration. At the end of the year, two of four realms studied by this Index already show levels of "high restriction".

Free speech and freedom of the press in El Salvador are at their darkest point in the last three decades. Institutional advances fostered with the end of the armed conflict in 1992 and achieved in recent years –electoral democracy, independence of the Judicial branch and citizen participation– are now a thing from the past. By the end of the period under observation, there is sufficient evidence to anticipate a total decline of the rule of law that threatens the freedom and physical integrity of independent voices in the Central American country.

Analysis of Results

The Chapultepec Index of Freedom of Expression and Press in El Salvador shows a decline from 42.60 points in 2020, to 41.74 points in 2021. In comparison with other countries in the region, El Salvador ranks 18th out of 22 countries; it only tops Brazil, Nicaragua, Cuba and Venezuela; moreover, their score in the “partial restriction” category is the lowest. In other words, El Salvador is the country closest to the “highly restrictive” category. Regarding the previous year, El Salvador dropped one position and is now even below Bolivia, which previously ranked 18th.

A major deterioration is identified in the first realm, linked to the citizens’ practice of access to information and freedom of expression. As will be specified below, the dismantling of the system of access to public information and the consolidation of an environment of disinformation and harassment have to do with this decay. Both this and the third realm, focused on acts of violence and impunity, are within the “high restriction” range. A change that turns on red alerts when compared to the previous year.

Per the Index, too, the influence of the three government environments is “very strong” at the expense of the practice of journalism. The Executive environment has a “very strong” influence over all other realms; in terms of information and citizen action, actions of violence and impunity, and control over the media. It is followed in levels of influence by the Legislative environment, which shows “strong influence” in these areas. Lastly, the Judicial environment shows “strong influence”, with the exception of control over the media, whose influence is still “mild”. However, the co-optation of the courts of justice in recent months may increase the influence of the Judicial environment at the expense of free speech and freedom of the press in the near future.

The New Hegemonic Environment

The February 2021 legislative elections reconfigured the Salvadoran state apparatus in a drastic way. With a majority of more than two thirds of the deputies, the ruling party dismantled the Constitutional Chamber and dismissed the attorney general on his first day in office, May 1, 2021. In this context, the Executive branch kept closing spots of expression and information at a boosted rate using a narrative sustained against the independent press, in a situation where the lack of inter-institutional control paves the way to impunity (Asociación de Periodistas de El Salvador -APES-, 2021a). Unlike the previous year, in which it was recorded an overall “mild influence” of institutional environments on these freedoms, the Index provides a new “very strong influence” rating for the period under observation.

The influence of the central government against free speech and freedom of the press has been looked into in various forms. In a nutshell, the Executive branch has hindered these

freedoms directly through at least five methods: by dismissing non-ruling-party officers at the head of the Institute for Access to Public Information (Instituto de Acceso a la Información Pública, IAIP), and replacing them with government-related individuals; by using law enforcement officers to intimidate and attack journalist both physically and verbally; by utilizing diatribe, disqualification and ongoing stigmatizing statements against voices critical of the government, both against civil society organizations and human rights advocates, as well as against independent journalists and media; by turning the Ministry of Finance into an instrument to exercise fiscal harassment against the Media; and by exploiting the General Directorate of Migration and Foreign Nationals Affairs to expel from the country foreign journalists assigned to the investigation of corruption cases.

These methods are set in motion within an environment of government propaganda. In October 2020, the Executive branch launched the television program “Noticiero El Salvador” (*News El Salvador*) and began to issue the newspaper “Diario El Salvador”. In each case, far from showing an independent editorial line, these government-supporting media stick to the ruling party’s version of the facts under the leadership of the Office of the President’s Office of the Press Secretary.

The influence of the Legislative Council over the practice of journalism has gone from a “mild” to “strong” rating. One of the main deficits of the outgoing legislature, which has not been addressed by the new legislative majority, is the lack of a legal framework that provides safeguards and institutional resources for journalists. In October 2020, the Journalist Protection Roundtable submitted to the Legislative Council the draft of the Special Act for Comprehensive Protection of Journalists, Communicators and Press Workers, which involves the creation of a unit within the Attorney General's Office which specialized in aggressions against journalists, and the implementation of security protocols.

The Legislation and Constitutional Points Committee formally initiated the discussion of the project few weeks before the end of the previous legislature. However, when the new legislature took office, the discussion did not go on, despite the fact that the proposal was drafted by a broad citizen coalition formed by the Association of Journalists of El Salvador (Asociación de Periodistas de El Salvador, APES), the Association of Participatory Broadcasting of El Salvador (Asociación de Radiodifusión Participativa de El Salvador, ARPAS), the Universidad Centroamericana José Simeón Cañas (UCA), the Female Journalists, Communicators and Press Workers’ Group (Colectiva de Mujeres Periodistas, Comunicadoras y Trabajadoras de la Información, MPCTI), the Foundation for Applied Law Studies (Fundación de Estudios para la Aplicación del Derecho, FESPAD) and the Human Rights Advocacy Solicitor’s Office (Procuraduría para la Defensa de los Derechos Humanos, PDDH); all organizations comprising the Mesa de Protección de Periodistas (Journalist Protection Roundtable).

The new legislative majority’s agenda includes actions tending to restrain access to public information and to somewhat impact certain media outlets. In the first group is a draft amendment sent by the Ministry of Internal Affairs that weakens basic components of the Bill on Access to Public Information, such as allowing the hiding of information that currently must be mandatorily posted by all government institutions –called “informal information”– and holding back the patrimonial statements of public officials (Benítez, 2021). In the second group is the May 2021 amendment made to the Printing Press Law, which mandates newspapers to pay import tariffs for raw materials and equipment. Also included was an elimination of income tax exemptions, which has existed in Salvadoran legislation since 2014 but was used by the ruling party to falsely accuse newspapers of not paying taxes (FUSADES, 2021, p. 185).

The influence of the Judiciary branch presents an important change in comparison to the previous year, in which it registered a “slight influence” in general terms while now presents a “strong influence”. This trend takes place in a period during which the new legislative majority appointed two thirds of the 15 justices of the Supreme Court of Justice in only a couple of months –May and June 2021–, violating the Constitution and its 1991 amendments that established a gradual integration of the Court precisely to avoid that one political wing had too much power concentrated in their hands.

The Supreme Court of Justice’s co-optation in favor of a new hegemonic regime echoed in two instances of infringement of free speech and freedom of the press during the last months of the period under observation. The first instance is an incident from June 2021, in which new Chief Justice Oscar López discredited a journalist and accused him of having “a rather poor mentality” in order to evade his questions (APES, 2021a).

The second instance is the prosecuting process initiated in July 2021 by the Professional Investigation Section of the Supreme Court of Justice against lawyer Enrique Anaya, who is a renowned columnist from an independent newspaper and has been overtly critic to the current administration. The process accuses the lawyer of “professional misconduct” and could conclude with the suspension of his legal practice (Anaya, 2021).

The realms

Less information and more intolerance to criticism

The greatest damage identified during the period under observation has to do with the Index’s first realm, which addresses the capability of citizens to get informed and express themselves freely and is labeled as “highly restrictive”. By April 2021, it was recorded a drastic reduction in the effectiveness of the Institute for Access to Public Information based on the number of cases handled on requests for access to public information that were denied, the number of cases finalized, and the number of resolutions that favored the citizens, while they forced government institutions to provide the requested information (Acción Ciudadana, 2021, p. 13).

Ordered by President Bukele, the dismissal in April 2021 of IAIP commissioner Liduvina Escobar was another action aimed at undermining the access to public information system. The former commissioner had been critical to the current administration because of the opacity the government has shown while handling the pandemic and the appointment of commissioners submitted to the President’s Office. Following her dismissal, the Bill on Access to Public Information Promoting Group highlighted “the escalation of setbacks that have been taking place lately in the IAIP and that have led to greatly deteriorate the exercise of access to public information” (Grupo Promotor, 2021). Added to the appointment of commissioners linked to the President’s Office and the dismissal of several public employees within the IAIP, this decision has been valued by representatives from civil society organizations as a “dismantling” of the institution and the access to public information system (Rodríguez, 2021). By the end of the period under observation, basic information such as the purchase of vaccines during the pandemic or the data of operations and payroll of the Legislative Council is held back for five and seven years, respectively (Flores, 2021 and Avelar, 2021).

In this scenario, the freedom of expression of certain critics to the government has been significantly infringed. In July 2021, former President Antonio Saca and his former private

secretary Elmer Charlaix, sentenced to several years in prison for corruption offenses, participated in a special legislative commission that evaluates the use of the President's Office expenditure items to have bonuses paid. In the records for this item, presented by the former president and his former private secretary, members of the now defunct National Development Commission, most of them critical to the government, emerged as beneficiaries of the fees, recognized as consultants of said commission. In spite of the fact that these payments did not constitute a bonus, the following day's pro-government newspaper "Diario El Salvador" front page included the names and pictures of Peace Accords' signer Salvador Samayoa, columnist Sandra de Barraza and representative of Transparency International Roberto Rubio, in the list of people who received bonuses (Diario El Salvador, 2021).

Journalism under attack

In comparison to the previous period, the second realm in the Index, Exercise of Journalism, shows a setback. Since this was an election year, the APES' Journalist Aggression Monitoring Center monitored incidents that took place during the election campaign and on Election Day. In total, APES recorded 84 aggressions –26 of which corresponded to the electoral campaign while 58 occurred on Election Day– in contrast to the 2018 and 2019 electoral processes, in which 26 and 24 cases of aggressions were correspondingly recorded (APES, 2021b). Most of these cases were linked to restrictions on the exercise of journalism, although seven instances of physical and verbal violence against journalists were also recorded (APES, 2021b).

The use of government institutions as instruments aimed at directly restraining the exercise of journalism is a new reality in El Salvador. In July 2021, the General Direction of Migration and Foreign Nationals Affairs arbitrarily expelled two foreign journalists from the digital newspaper El Faro, Daniel Lizárraga and Roman Gressier (Avelar, 2021). Weeks later, members of the National Civil Police arrested four journalists from newspaper Diario El Mundo and the television station Telecorporación Salvadoreña for more than an hour while they were covering the recovery of a corpse in San Salvador, in addition to damaging the equipment of one of the journalists (Villarroel and Aquino, 2021).

During the last year, the escalation in hostilities towards the work of journalists and the impunity surrounding it are to be highlighted. As of July 2021, the APES' Journalist Aggression Monitoring Center summed up 153 violations against journalists during the first half of the year. These figures evince a significant deterioration compared to 2020, when 125 were recorded during the entire year (APES, 2021a).

The Hazards from the Exercise of Journalism

Several journalists' safety and physical integrity was threatened and even violated on several occasions during the period under observation, beyond the electoral round. Hence, the Violence and Impunity realm ranks as "high restraint" in the Index. In July 2021, unknown subjects entered the home of journalist Julia Gavarrete's, then a digital newspaper GatoEncerrado team member, and stole her laptop and tablet while she was covering a news story. The case was immediately reported to the Attorney General's Office and there has been no progress to date (Moreno, 2020).

Threats and aggressions to the work journalists do were not only carried out by people lurking from anonymity, but in broad daylight by government officials whose duty is precisely to protect the safety of citizens. In June 2021, Minister of Security and Justice Gustavo Villatoro made the following statements when asked about a case regarding the discovery of several corpses in the municipality of Chalchuapa:

Why have they been hounding something that we should all be united on? We have to approach the security issue, contribute or make contributions in a responsible way, not like these crime-advocating publications for people to feel anxiety and some others want to engage in activities that they are communicating. It is being managed recklessly [...] There's a limit for everything, and we are following up on many journalists who are no longer making that sickening communication, but have a clear intention of being advocates (YSKL, 2021).

The rhetoric of high-ranking officials such as Minister Villatoro has already led to cases of physical violence against journalists. The most noticeable, since it was recorded on video by the journalist victim of assault, took place a month after the minister's statements, when National Civil Police Vice-Inspector Raúl Martínez slapped journalist Jorge Beltrán, from newspaper *El Diario de Hoy*, for covering the recovery of a student's corpse (Alfaro, 2021). To date, neither Vice-Inspector Martínez nor any government institution has been held accountable for the incident. Hence, the hegemonic environment favors these events to remain in impunity (APES, 2021a).

Harassment against Uncomfortable Media

Control over the Media is the realm that scored the highest last year when it comes to the influence of the environments. Apart from the identification of a decline in the score, the environments influence went from being “mild” (the Executive branch) and “slight” (the remaining two) to having “very strong” Executive branch's, “strong” Legislative branch's and “mild” Judicial branch's influence. Direct control over the media identified in the previous period, which consisted of the publicizing of pro-government advertising spots only in state-owned media, went on during the period under observation.

The most overt instance of control over the media is that of digital newspaper *El Faro*, whose investigative journalism has shed a light on acts of corruption during the handling of the pandemic and negotiations between the government and gangs toward having the number of homicides decrease. In September 2020, President Bukele devoted quite a few hours to ravage independent media. During the conference, the President discredited *Revista Factum* because of receiving money from Open Society Foundations and admonished *El Faro* about an ongoing money laundering investigation (Guzmán, 2020). Weeks before the incident, the President had labeled *El Faro* on his social networks as a “trash outlet” (Cáceres, 2020).

Ministry of Finance's formal notification, in which *El Faro* was informed that according to a tax audit they had committed the offense of tax evasion, came in April 2021. Weeks earlier, both the Inter-American Committee on Human Rights and the Constitutional Chamber, which were closed down months later by the new majority, established precautionary measures in favor of the digital newspaper's team of collaborators (DW, 2021).

Conclusions

The accelerated dismantlement of the rule of law in El Salvador poses a serious danger to Salvadorans' most fundamental rights, including free speech and freedom of the press. As this report goes to press, there are no institutional safeguards protecting anti-government independent, critical voices. In fact, there are serious impacts on the exercise of journalism that have gone unpunished.

The President's Office has become hegemonic in this context. The influence of the other government bodies is determined by the agenda President Bukele and his officials are furthering, with a lack of institutional counterweights. Accordingly, civil society organizations, independent media and their members are beginning to turn to international human rights instances, given the absence of independent national instances.

Documentation and effective systematization in such a scenario is critical. Although there's record of efforts to monitor violations of human rights and free speech and freedom of the press in the country, such as the Central American University José Simeón Cañas Human Rights (Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas, IDHUCA)' Human Rights Observatory and the Monitoring Center of Aggressions against Journalists of APES, challenges to inform the international community in a more fluid manner are still up.

The problem, however, is far more complex. The deepening of the institutional co-optation process and the construction of a disinformation and harassment environment from online and institutional sources will continue, as well as the lack of a multiparty party system with functional opposition parties. As long as the regime's popularity dwindles down, it is possible to anticipate more aggressive actions toward criticism and public scrutiny. The latest acts of physical aggression against journalists forerun a probably more difficult year for informing and expressing oneself freely in El Salvador.

The process of constitutional reform and the deterioration of institutions key for the development of the following electoral processes will have an impact on free speech and freedom of the press in the months to come. Likewise, citizen mobilization and emerging collective actions will further strain the relationship between the law-enforcement agents and segments of civil society. After decades of an apparently stable political system, which turned out to be unsustainable for various reasons, El Salvador is moving towards becoming the next dictatorship in Latin America in which there will be scarce room for independent voices.

References

- Alfaro, X. (July 7, 2021) VIDEO: Oficial de Policía golpea a periodista de El Diario de Hoy que cubría hallazgo de cuerpo de joven desaparecido (*Police officer beats El Diario de Hoy journalist who was covering the discovery of the body of a missing young man*). *El Diario de Hoy*. <https://www.elsalvador.com/noticias/nacional/el-salvador-apes-edh-oficial-pnc-agrede-a-periodista/856454/2021/>
- Anaya, E. (July 7, 2021) *Hola. Buenos días, de nuevo. Abro breve Les informo: apenas 12 minutos después de la divulgación de mi artículo en la columna semanal en EDH, la CSJ me notificó la iniciación de un procedimiento sancionatorio por "mala conducta profesional"* *Empieza #LaRepresiónJudicial* [Tweet]. https://twitter.com/enrique_anayasv/status/1412797829983182853?s=24
- Acción Ciudadana (2021). *¿IAIP en favor del ciudadano? (Pro-citizen IAIP?)*: <https://accionciudadana.org/informes/Informe.-%C2%BFEl-IAIP-en-favor-del-ciudadano%3F-Accion-Ciudadana.-2021.pdf?t=1622816927>.
- Asociación de Periodistas de El Salvador (8 de julio de 2021 [a]). Mesa de Protección a Periodista condena vulneraciones a la prensa cometidas por el Estado. Link: <https://apes.org.sv/mesa-de-proteccion-a-periodista-condena-vulneraciones-a-la-prensa-cometidas-por-el-estado/>
- Asociación de Periodistas de El Salvador (1 de marzo de 2021 [b]). Sobre afectaciones a periodistas durante las elecciones 2021. <https://apes.org.sv/centro-de-monitoreo-de-agresiones-a-periodistas-durante-las-elecciones-municipales-legislativas-y-al-parlamento-centroamericano/>
- Avelar, R. (July 12, 2021). Gobierno niega permiso de trabajo a otro periodista de El Faro. *El Diario de Hoy*. <https://www.elsalvador.com/noticias/nacional/el-faro-denuncia-extranjeria-denego-permiso-periodista/858293/2021/>
- Avelar, R. (March 24, 2021). Legislative Council holds information on expenditures, purchases and paperwork for up to seven years *El Diario de Hoy*. <https://www.laprensagrafica.com/elsalvador/Asamblea-Legislativa-reserva--informacion-de-gastos-compras-y-planillas-20210824-0062.html>
- Benitez, B. (July 13, 2021). Bukele pide ocultar las declaraciones patrimoniales y propone otras 12 reformas en contra de la transparencia. *GatoEncerrado*. <https://gatoencerrado.news/2021/07/13/bukele-pide-ocultar-las-declaraciones-patrimoniales-y-propone-otras-12-reformas-en-contra-de-la-transparencia/>
- Cáceres, G. (September 14, 2020). El Faro presenta amparo Constitucional contra Hacienda por solicitud de datos no tributarios. *El Faro*. https://elfaro.net/es/202009/el_salvador/24815/El-Faro-presenta-amparo-Constitucional-contra-Hacienda-por-solicitud-de-datos-no-tributarios.htm
- Corrales, J. and Penfold, M. (2010). *Un dragón en el trópico*. La Hoja del Norte: 2012.

- Escobar, V. (June 7, 2021). El uso de recursos públicos aventajó a Nuevas Ideas en elecciones 2021. *GatoEncerrado*. <https://gatoencerrado.news/2021/06/07/uso-de-recursos-publicos-aventajo-a-nuevas-ideas-en-elecciones-2021/>
- Diario El Salvador [@elsalvador]. (July 23, 2021). *Esta es la portada de #DiarioElSalvador de este viernes 23 de julio del 2021. #DiarioES #DES* [Tweet]. <https://twitter.com/elsalvador/status/1418435707408814080?s=24>
- Flores, A. (August 25, 2021). Legislative Council holds information on expenditures, purchases and paperwork for up to seven years *La Prensa Grafica*. <https://www.laprensagrafica.com/elsalvador/Asamblea-Legislativa-reserva--informacion-de-gastos-compras-y-planillas-20210824-0062.html>
- Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES) (2021). *El Salvador. Political year*. https://fusades.org/publicaciones/DEP_El%20Salvador.%20A%C3%B1o%20Pol%C3%A9tico%202020-2021.pdf
- Grupo Promotor de la Ley de Acceso a la Información Pública (April 23, 2021). Incrementan ataques al derecho de acceso a la información. <https://twitter.com/grupopromotorsv/status/1385694722526691336?s=12>
- Guzmán, V. (September 25, 2020). Bukele anuncia en cadena nacional que Hacienda investiga a El Faro por lavado de dinero. *El Faro*. https://elfaro.net/es/202009/el_salvador/24855/Bukele-anuncia-en-cadena-nacional-que-Hacienda-investiga-a-El-Faro-por-lavado-de-dinero.htm?st-full_text=all&tpl=11
- Meléndez-Sánchez, M. (2021). Latin America Erupts: Millennial Authoritarianism in El Salvador. *Journal of Democracy*, 32(3), 19-32. <https://journalofdemocracy.org/articles/latin-america-erupts-millennial-authoritarianism-in-el-salvador/>
- Moreno, K. (July 9, 2021). Idhuca presenta aviso a Fiscalía por hurto de laptop a periodista de GatoEncerrado. *GatoEncerrado* <https://gatoencerrado.news/2020/07/09/idhuca-presenta-aviso-a-fiscalia-por-hurto-de-laptop-a-periodista-de-gatoencerrado/>
- Organization of American States (March 3, 2021). Informe Preliminar de la Misión de Observación Electoral de la OEA en El Salvador. <http://www.oas.org/eomdatabase/MoeReport.aspx?Lang=en&Id=431&MissionId=512>
- DW Newsroom (June 23, 2021). El Salvador convocado ante CIDH por medidas cautelares a El Faro. *DW*. <https://www.dw.com/es/el-salvador-convocado-ante-cidh-por-medidas-cautelares-a-el-faro/a-58009167>
- Redacción YSKL (8 de junio de 2021). 'Todo tiene su límite': Ministro de Seguridad sobre 'apología del delito'. *YSKL*. <https://radioyskl.com/2021/06/08/todo-tiene-su-limite-ministro-de-seguridad-sobre-apologia-del-delito/>
- Rodríguez, M. (29 de mayo de 2021). 'Es urgente rescatar al IAIP', señalan expertos. *El Diario de Hoy*. <https://www.elsalvador.com/noticias/nacional/iaip-el-salvador-urgente-rescate-expertos/843489/2021/>

Villarroel, G. and Aquino, G. (August 20, 2021). PNC priva de libertad por una hora a periodistas de Diario El Mundo y TCS. *Diario El Mundo*. <https://diario.elmundo.sv/pnc-priva-de-libertad-por-una-hora-a-periodistas-de-diario-el-mundo-y-tcs/>