

MEXICO: THE EXPRESSION OF SILENCE

Executive Summary

The Chapultepec Index places Mexico in the 17th position of 22 countries, with a score of 42.14 out of 100 points. Freedom of the press in this country continues to deteriorate in a context of violence, lack of transparency, and limited action by the Mexican government to protect and guarantee this human right. The Executive environment shows a strong influence in this regard, while the Legislative and Judicial environments maintain a moderate influence on the creation, implementation, and execution of public policies to guarantee the enjoyment of basic rights of the population in general, and specifically of journalists.

Introduction

The end of 2021 and the beginning of 2022 were marked by the beginning of a new normal throughout the world, after the health crisis caused by COVID-19 pandemic. Economic recovery has turned out to be a challenge for Mexico and for the entire planet, not only because of the health crisis, but also because of the armed conflicts between nations such as Russia and Ukraine, which triggered a shortage in the international food supply and, consequently, Mexico has reached historic levels of inflation. This shocks the economic, political, and social situation of the country.

In this scenario, freedom of expression in Mexico is going through a delicate and crucial moment for its free exercise; Mexican institutions focused on giving continuity to their political communication project, which aims to establish a monopoly of public information that permeated all government agencies, as well as their checks and balances such as the Legislative and Judiciary.

By means of a strategy from the government, all the media spotlight has been monopolized at the national level, thereby blurring events of local relevance and, at the same time, distancing the different government bodies from any type of responsibility, mainly those at state and municipal levels, which also seize the opportunity to disregard the aggressions against journalists in the country. This comes amid an anticipated race for presidential succession, which has undermined freedom of expression across almost the entire national territory.

Background

According to the results of the 2022 evaluation of the Chapultepec Index, Mexico is closer to the total restriction of freedom of expression than to the full freedom of this citizen right. The

country achieved a score of 42.14 out of 100 points, which means that it fell one position from the previous year's study.

The worst rating obtained is in the realm of the Exercise of Journalism, where there is a strong influence from the Executive environment, with 6.14 out of 10 points, and followed by the realm of Violence and Impunity with a rating of 6.0 points. This makes sense when we review the role of the presidential office, which practically concentrates all the power of the Executive environment, coupled with the crisis of violence that will give freedom of expression a break in its various realms. On the other hand, the Legislative and Judicial environments have been marked by submission to the agenda of the Executive and its apathy to generate better conditions for freedom of expression in general; both institutions achieved ratings with a moderate influence of 4.57 and 4.29, respectively, adding to the uncertainty of those who exercise freedom of the press and social protest.

The legal loopholes in terms of transparency of public information and the failure of institutions to comply with the law in force, as well as the spiraling violence in which the country is immersed, have opened a range of possibilities for government agents to exploit for their benefit and against society's right to information, thereby compromising the health of Mexican democracy.

Environments: At the gates of authoritarianism

The Chapultepec Index indicates that the level of influence of the Executive environment in situations unfavorable to freedom of expression is moderate, with a rating of 4.3 out of 10, although of the three branches of government in Mexico is the one that exerts the most influence. Regarding Realm A, Citizens Free to Express Themselves, there is a moderate influence with 4.57 points; in Realm B, Exercise of Journalism – the worst rated – there is a strong influence on situations unfavorable to freedom of expression, with a score that reaches 6.14 points; in Realm C, Violence and Impunity, it obtained 6 points; and Realm, D on Control over the Media, is the one that achieves the best rating of all the study for this environment with 0.64 points, which shows a slight influence in this type of unfavorable situations.

Executive environment

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There is a very strong influence from the environments on unfavorable situations for freedom of expression in Realms B and C, stemming to a large extent from the communication

policy exercised everyday by the head of the Executive Branch who, on the one hand, continues to decry and disqualify events reported by the media disseminating information contrary to the narrative from the public power and, on the other hand, it exposes private information on journalists to intimidate, discredit or deny, without producing any evidence against the news reported by them.

The Executive has shown no willingness to devise a public policy of the government or submit any legislative initiative to amend the current law regarding the protection and safety of journalists' lives at risk; on the contrary, it has kept safety for journalists centralized by the Protection Mechanism for Human Rights Defenders and Journalists, under the Ministry of the Interior (*Secretaría de Gobernación, Segob*), which is overextended amid its lack of resources, inter-institutional coordination, trained staff, versus the large number of people who demand protection nationwide.

The government, like previous administrations, insists that crimes perpetrated against journalists are perpetrated by organized crime, or for personal motives; It does not create a distinct category or profiling of this crime; this is risky because, in the face of high rates of violence and the high impact on society, generalizations dilute and discourage cooperation from citizen witnesses for fact finding.

Legislative environment

As Mexico experiences concentration of government power in one person, it has marginalized other bodies such as the Legislative, putting at risk not only checks and balances, but also the plurality of voices dissenting with the exercise of public power, and freedom of expression itself.

The Chapultepec Index reveals a moderate degree of influence of the legislative environment in situations unfavorable to the exercise of freedom of expression, with 3.02 points; but this indicator increases 1.5 points when referring to Realm B on the Exercise of Journalism, at 4.57 points on a scale of 0 to 10, which shows the lowest rating for this environment. Realm A, Citizens Free to Express Themselves, and C, Violence and Impunity, almost achieve the same score of the Index, 3.50 and 3.67 respectively. Regarding Control over the Media – Realm D – this is its best result with 0.36 points.

This explains how the Legislative went from being an independent entity to a sounding board for the federal Executive, acting in synchronicity with governmental actions of the Executive environment; for this reason, although it has a fundamental role in the exercise of freedom of expression, it has neglected updating laws essential for the full exercise of freedom of the press, causing old practices such as the prosecution of journalistic endeavor, behind which political and business power players hide, to generate the chilling effect known as judicial harassment against the media and journalists.

There is no federal law for the protection of human rights defenders and journalists binding the different government bodies and preventing states and municipalities from hiding behind autonomy and circumventing their duties and responsibilities in this regard by not being bound to them. This disregards not only prevention but also the service of justice in cases of aggression against these two sections of the population.

Judicial Environment

The results of the Chapultepec Index estimate that the level of influence of the judicial environment in situations unfavorable to freedom of expression is moderate, with a score of 2.62. Regarding Realm A, on Citizens Free to Express Themselves, reached 2.57 points; while Realm B obtained 4.29 points, which shows a moderate influence and the worst rating for this environment; for Realm C, Violence and Impunity, the score is 2.90, and realm D, Control over the Media, only obtained 0.36 points, the best rating for this environment.

Mexico positioned itself first in the Americas, at least so far in 2022, as the country with the highest number of murders of journalists according to data from the United Nations Educational, Scientific and Cultural Organization (UNESCO). From 2010 to February of this year, the Special Prosecutor's Office for Crimes Committed against Freedom of Expression (*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*, Feadle) has achieved 29 convictions out of a total of 1,483 open inquiries for crimes committed against journalists, which means 2% effectiveness during the above period of almost 12 years.

The judicial environment has not managed to reconcile constructions for a diversity of federal and state laws in this regard since, on many occasions, judges do not know the meaning of the sentences of the highest court, that is, the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) and the international law governing this matter. Therefore, they interpret the law away from the challenge presently posed to freedom of expression, by applying the highest standards, and [they end up] granting protection to aggressors. These interpretations become contrary to international human rights agreements, thereby ceasing to prosecute, judge, and issue punishment to those found responsible for violations and offenses against journalists. In this way, they increase the extent of impunity for these acts that can reach from 89% to 98% nationwide.

Realm A: Broken dialogue

Citizens Free to Express Themselves

Mexico's position in the results of this Chapultepec 2022 Index regarding this realm should be understood and interpreted as concerning, with 9.9 points out of a maximum of 23. It means that it is located below half, with a failing grade. This is because the system of institutions and political practices in Mexico is moving towards an authoritarian regime that will narrow choices for political participation beyond the channels controlled by the government, which will reduce the availability of authentic instances of the public arena where citizens and government officials could concur for the discussion and joint resolution of collective problems.

Citizens, in general, are numbed and besieged amid the media noise generated by the communication strategy of the sitting administration. This explains that, for citizens, only 18% of the media is spared from the influence of political power as indicated by the Digital News Report 2022, conducted by the Reuters Institute.

The information flow comes from a single source, which means that it is reflected in the score obtained in our study with 3.0 out of 11 points. This means that we continue below a rating reflecting compliance with the right to information; a single-sided source implicitly reveals the bias of the perception of society in general, distorts it and, at the same time, restricts it.

Despite legislative attempts to regulate the General Law on Mass Communications (*Ley General de Comunicación Social*), government advertising spending continues to be concentrated on aligned media stakeholders under the same practices of the past: Discretion and opacity.

In the Free Speech sub-realm, the score obtained is 6.9 out of 12 points, which reflects that the widespread practice of the federal public administration, replicated in state administrations, is successful, yet with its limitations, in the respondents' view. For example, the resort to loopholes when interpreting provisions in the Law on Transparency and Access to Public Information (*Ley de Transparencia y Acceso a la Información Pública*) offers a gateway to opacity by adhering to the principles of national security so as not to disseminate the execution of public spending. Such great public works as the Mayan Train (*Tren Maya*), the Felipe Ángeles Airport (*Aeropuerto Felipe Ángeles*), the Trans-Isthmus Corridor (*Corredor Transístmico*), local airports and the Dos Bocas Refinery (*Refinería de Dos Bocas*), are precedent and common denominator of the treatment given by the Mexican government to the right to information of its society. This is how the current administration engages in dialogue with its constituency, through silence.

On record we find a draft bill introduced in 2021 –currently shelved in the Senate of the Republic– seeking to regulate social media, at the behest of the ruling party, and that could seriously restrict freedom of expression. It includes requiring social media companies to censor vast categories of online content, which infringes international standards. The president of Mexico would also have demanded major social media Facebook and Twitter to disclose their sources of income.

Realm B: “If you publish, you’ll die!”

Exercise of Journalism

In this edition of the Chapultepec Index, Realm B obtained a score of 6.3 out of 10 points, which means that the those inquired to this end indicated that the free exercise of freedom of the press is almost at an intermediate point stemming from the actions and omissions of the Mexican government, despite showing a decrease of five decimals with the study from the previous year.

The general conditions of journalism continued to deteriorate during the referential period for this study, with 56 journalists killed so far, according to official data. In addition, the president continued to encourage attacks against those engaged in the exercise of freedom of expression and of the press. The government criminalized the actions of journalists opposing the regime, and exposed from the presidential podium.

The post-pandemic economic crisis, as well as the discretion of public resources that the media receive for advertising, worsened their economic situation, making working conditions of journalists even more precarious, forcing them on many occasions – mostly in the interior of the country – to take side jobs so that they can earn enough income for their families, circumstances

that officials exploit to dismiss investigations when a journalist has been attacked, thereby increasing impunity in this field and encouraging more violence.

Although the federal government launched a program to enroll freelancing journalists who do not enjoy entitlements so that they can gain access to social security, through a mechanism developed jointly the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*), this palliative plan is insufficient: Freelancing journalists will obtain insurance for illness, pregnancy, disability, or retirement, as well as childcare and social benefits; but in the face of the adverse circumstances under which they conduct their activity, the protection provided to them only covers healthcare items and does not protect them against violence or their unique working conditions.

Realm C: Total silence

Violence and Impunity

The violence exercised against the journalistic guild can be considered at this time as uncontainable. Neglect by authorities continues to be an ongoing conduct: They do not carry out investigations to seek justice or to prevent attacks on journalists and human rights defenders. That is why this realm is at 7.7 points as an overall category. However, in its variables, nuances arise: Protection for journalists, 3 out of 5 points; Persecution by those who attack journalists, 0.6 out of 7.5 points; actions against Impunity 3.1 out of 8.5 points, and influence of the three environments to end the violence reported against journalists, 1 out of 21.

The landmark case most suitable to illustrate the situation of this realm is the murder of photojournalist Lourdes Maldonado, who showed up to the president of Mexico during one of his morning addresses to request protection from him and express her concern about a possible attack on her physical safety for being engaged in a dispute with the then governor of Baja California, who was also a senator on leave and friend of the president. Nine months later, she was murdered at the door of her home in Tijuana, Baja California.

Out of the news professionals under the Mechanism for the Protection of Journalists, 53% is concentrated in six states: Mexico City, 79; Guerrero, 58; Tamaulipas, 49; Quintana Roo, 42; Veracruz, 26, and Oaxaca, 22.

Protection:

There is a Protection Mechanism for Human Rights Defenders and Journalists. It works as a government program under a federal law that is not binding or mandatory for state prosecutors' offices; the absence of a [comprehensive] legal framework in this regard has brought about lack of coordination and concentration of all cases of attacks against journalists in the Federal Mechanism, which does not have sufficient resources to protect journalists at risk.

The only actions performed by the mechanism for the moment are the geographical relocation of the journalists at risk and their sheltering in safe houses rented by this federal agency.

Persecution:

The rating of this sub-realm is 0.6 out of 7.5 points.

A case that shows infringement of various laws and regulations by the federal executive to intimidate, revile [news professionals], and divert the attention of society, is the one that involved one of the president's sons in alleged acts of corruption and conflict of interest (*Casa Gris Case*). The president repeatedly violated tax secrecy as set forth in Federal Tax Code (*Código Fiscal de la Federación*) Article 69, by disclosing personal data of taxpayers (journalists). He violated the right to the protection of personal data, enshrined in Article 16 of the Constitution; the right to privacy of individuals, as provided in the General Law on Protection of Personal Data Regarding Subjects under Duty (*Ley General de Protección de Datos Personales en Sujetos Obligados*) Article 6, General Law on Administrative Accountability (*Ley General de Responsabilidades Administrativas*) Article 57. The reason for this is that he abused his authority by making statements regarding journalistic whistleblowing at a press conference, in a government facility, and during working hours.

Impunity:

Albeit unrelated, there are several draft bills on the subject: Among others, the one that seeks to add to the Federal Criminal Code (*Código Penal Federal*) a title on crimes committed against journalists and human rights defenders; and the repeal of National Code of Criminal Procedure (*Código Nacional de Procedimientos Penales*) Article 21. This proposal aims to increase the penalty for the murder of journalists to an additional third of the term.

However, these initiatives are not moving forward towards approval and do not resonate nationwide, so it can be said that there is no political will.

Realm D: The means of power

Control over the Media

With a score of 18.3 out of a maximum 25 points, Realm D shows a strong influence on the part of the government to control the media. From the sub-realm Direct Control, it obtained 10 out of 16 points, and from Indirect Control 8.3 out of 9.

The above ratings show that there is great pressure, either direct or indirect, towards all media, regardless of their dissemination platforms. Government advertising spending is extremely committed to broadcast TV networks, print media, and websites aligned with the federal executive. In this context, a statement by the president of Mexico on August 30, 2022, held: "... 98 percent of the media was against us."

Conclusions

Violence against journalists has not diminished in the yearly period under study of this Index. On the contrary, the stakeholders generating violence have diversified, as well as the spheres where it is exercised. All this stems from the prevailing corruption, generalized and systemic violence, as well as impunity suffered by our country for many years.

The uncontrolled trend of murders, attacks, and violations of the human rights of people devoted to journalism is the result of a problem of lack of institutional capability of the government to prevent attacks and protect them, such as the Protection Mechanism for Human Rights Defenders and Journalists, which simply does not deliver although currently there exist more institutions and technological tools to counter attacks against journalists in the country. Likewise, institutions responsible for security show no capability to deal with attacks. The power vacuums generated by the absence of effective State presence in many areas of the country brought about an increase in attacks against journalists, seriously impairing freedom of expression.

Four years into the currently sitting government, finally, the Ministry of the Interior issued, in October 2022, the first call to create the Advisory Council of the Mechanism for the Protection of Human Rights Defenders and Journalists (*Consejo Consultivo del Mecanismo para la Protección de Defensores de Derechos Humanos y Periodistas*), of honorary nature. Eleven people from the guild are called to be part of this body.

One of the few advances regarding protection of freedom of expression is found in Sinaloa State, where the Law for the Protection of Journalists (*Ley de Protección a Periodistas*) was recently enacted. It establishes that any official who violates, hinders, or attacks the work of a journalist can be imprisoned for up to eight years and pay a fine equivalent to 600 days of minimum wage. Its enforcement will have to be evaluated in the future.

Omission and collusion with perpetrators of violence against journalists by authorities at all three levels of government continues to be an ongoing and systemic conduct. Investigations are not performed to seek justice or to prevent attacks on journalists and human rights defenders.

The deteriorating conditions for the free exercise of journalism is largely due to the strong influence of the Executive environment on the Judicial and Legislative environments. This means that public policies cannot be devised to change a reality that increasingly damages not only journalists but citizens in general who see their right to information and the full exercise of free expression impaired. Mexico is just five steps from the bottom, a position that reveals an authoritarian country.

The healthy democratic life of a nation requires citizens trained and informed regarding public affairs and the mechanisms of transparency and accountability that authorities must follow. If the effectiveness of citizen rights is undermined, the balance will tip towards the other end, giving rise to what has been happening every day in Mexico for the last year: The cycle of society-government power dialogue is currently broken; there are clear signs that society is tired of political confrontation; under this scenario, there are no guarantees of respect for the full rule of law. Today, many actors promote this imbalance by seriously damaging the cornerstone of a free and democratic society: Freedom of expression.

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