

LOCAL LEVEL JOURNALISM AND DEMOCRACY INDICATORS IN LATIN AMERICA

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Local Level Journalism and Democracy Indicators in Latin America

By Fernando J. Ruiz

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- Democratization of the State is still the main task to improve freedom of press.
- Press and democracy at "two speeds" in almost every country.
- Outside the black, red or brown areas of Latin America, there is a debate on a new agenda concerning limits on freedom of press and the right to information.
- Growing conceptual discussion on the political role of the media that may influence freedom of press.
- Two sides of the legislative surge on four topics directly related with the practice of journalism.

INTRODUCTORY EXPLANATION

As stated in the first edition, the aim of this report is to provide a better description of the actual freedom of press at a local level. The definition of a national level is avoided because many times, it forces a sort of national average and makes very different regions of journalistic performances look equal. There are countries that may qualify very well at a national level, but have local areas with serious problems. The opposite may also happen.

Names for "local areas" in each country.

Departaments:

Guatemala
Colombia
Honduras
Nicaragua
El Salvador
Haiti
Peru
Bolivia
Paraguay
Uruguay

States:

Mexico
Brazil

Regions:

Chile

Provinces:

Ecuador
Argentina
Costa Rica
Panama
Cuba
Dominican Republic

I. THE WORST AREAS TO PRACTICE JOURNALISM IN LATIN AMERICA ¹

Black Area

1. *The Cuban Provinces.* Cuba is still the only dictatorship on the continent and therefore the absence of freedom of press is in its nature. Freedom of expression is prohibited by law, as well as the exercise of the right of meeting and association. The independent press that emerged in every Cuban province during the 90s was severely repressed in March and April 2003 and around 30% of its members are in prison serving sentences of up to twenty eight years.

The president of Reporters without Borders, Pierre Veilletet, wrote about the repression of the press in Cuba in the prologue of the 2004 report:

"Even if it means being accused of crude anti-Castroism, you have to recognize that the old methods have been recycled in the tropics in 2003: sentences ranging from six to 28 years in prison! Not for exercising the universal right to free speech, since that scarcely exists in Cuba anyway, but just for being suspected of wanting to exercise it one day."

There was repression in every province, but most of the condemned people practiced journalism in Havana. There are eleven jails on the island, from Guantánamo to Pinar del Río, where journalists are serving sentences. Those who are still free can hardly practice journalism. During the last weeks, some of the journalists in jail were given what is called "extra penal license", apparently based on health reasons. An aggravating circumstance in the Cuban case is the weak protest from the rest of the Latin American journalism against the situation of Cuban independent journalists. The terms on which the Cuban situation is discussed in Latin America prevent these journalists from receiving their colleagues' solidarity from other countries in the region. On the other hand, the main journalists' organizations in the world, from the World Association of Newspapers (WAN) to the International Federation of Journalists (FIP), have questioned the repression of the Cuban press. Almost every international award that these organizations grant have been given to independent Cuban journalists, while no prestigious journalistic award has been given to official journalists.

¹ Methodological Note:

Black Area. The practice of freedom of press is forbidden by law and the law is enforced.

Red Area. The practice of the freedom of press is protected by law, but the State does not protect it - up to the point that the journalist/media is at immediate physical risk. This category includes every case in which authorities were involved in a crime against a journalist. The red area can be more dangerous for the journalist's life than the black area, however, there may be more freedom of press in the red area. Democracies that have not been able to build effective national states offer the liberties and the risks of an anarchic situation.

Brown Area. The practice of the freedom of press is protected by law, but the media is harassed, although those who practice journalism are not at immediate physical risk.

Yellow Area. The practice of freedom of press is protected by law, but there are sporadic acts of harassment which do not cause unease among the media, but they do hinder journalists' work.

Blue Area. The practice of freedom of press is protected by law and there is an effective protection of journalists and their professional work.

In Cuba, freedom of press is blocked from the Constitution itself². Article 53 of the Constitution states:

"Citizens have freedom of speech and of the press in keeping with the objectives of socialist society (...)"

And Article 62 states:

"None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and by law, or contrary to the existence and objectives of the socialist state, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law".

The text of the journalists' sentences confirms that it is illegal to exercise freedom of press in Cuba. The indictment against journalist Raul Rivero, who received the UNESCO freedom of press award in 2004, includes the following proof the Cuban State presents to condemn him to twenty years of prison:

"Confiscated during an inspection of the home of defendant Rivero Castañeda were a Sony radio, a recorder, a battery charger, a typewriter, a Samsung laptop personal computer with attachments, a video camera adapter, several audio and video cassettes containing information destined to subvert the economic, political and social system of Cuba, five books titled "Ojo Pinta" written by Raul Rivero, eighteen envelopes containing newspaper articles, clippings of independent press articles belonging to Raul Rivero, three files containing documents from the so-called independent press, as well as other materials of a subversive nature."

Cuba is the only black area regarding freedom of press in Latin America since it is prohibited by law and the State enforces this authoritarian law homogeneously throughout the country³.

Red Areas

2. **Cúcuta City** (Department of Norte de Santander, Colombia). Barrancabermeja was the worst city during the first months of 2004, but Cúcuta has now displaced it. "Cúcuta presented the most complicated situation for professional practice", stated the Inter-American Press Association (IAPA) in its last report on Colombia. "Reporters without Borders is very worried about the situation of the press in Cúcuta", reads a press release dated 16 June. There has been a surge of threats and aggressions by public officers over the past months, especially against the newspaper *La Opinión*, the local transmitter of Radio RCN and the *Voz del Norte* radio station. They have all been targets of explosive attacks over the past years. On April 22, a journalist saved his life in an attack but his 20-year-old-stepdaughter died. Cúcuta is the most important city in an area with many of the worst Colombian problems: drug trafficking, guerrilla and paramilitary groups. According to *El Tiempo* of Bogotá (24 October, 2004), this city has had the second highest rate of homicides in the country for the last three years, after Medellín. AUC (United Self-Defense Forces of Colombia), FARC (Revolutionary Armed Forces of Colombia) and the ELN (National Liberation Army) operate there. These groups put great pressure on journalists. President Uribe indicated that paramilitary elements have infiltrated the city government. The Mayor of Cúcuta was even arrested and sent to Bogotá due to his connections with paramilitary groups and his possible involvement in murders committed in the city.

3. **Barrancabermeja City** (Department of Santander, Colombia). This city is still a dangerous place to practice journalism, as was described in this year's first CADAL / Austral University report. The mayor was arrested in 2003 in connection with a journalist's murder. A Fundación para la Libertad de Prensa (FLIP; Foundation for Freedom of Press) mission confirmed that the press is still under pressure. According to the FLIP, "an

² "Las once peores zonas para ejercer el periodismo en América Latina", CADAL / Austral University. 1 / 2004.

³ For a general view on independent press in Cuba, see Ruiz, Fernando J, Otra grieta en la pared: informe y testimonios de la nueva prensa cubana, CADAL / Adenauer, Buenos Aires, 2003. For updated information, see www.cubanet.org and www.nuevaprensa.org

unprecedented incident connected to freedom of press in Colombia" occurred this last semester: a TV journalist was tortured by paramilitary troops so as to make her quit her job as a reporter for a local channel.

4. Northern Border of Mexico. This has become the most dangerous place for a Mexican journalist's life. The power of drug trafficking penetrates politics and security forces and does not tolerate challenges that journalists may pose. Thirteen journalists have been murdered near this border over the last ten years, and three out of the four journalists who have been murdered in Mexico this year, died in this area. The border of the State of Tamaulipas is where most journalists were murdered (six). According to the Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos (Centre of Frontier Studies and Promotion of Human Rights), since the present governor took office to April this year, twenty-seven attacks on journalists have been committed in the ten municipalities of this State that borders with the U.S.. The most dangerous cities along the entire border are Tijuana (Baja California), Ciudad Juárez (Chihuahua) and, in the most dangerous state, Tamaulipas, the following cities: Matamoros, possibly the most dangerous in the country, Reynosa, Miguel Alemán and Nuevo Laredo. As with the Colombian cities of Cúcuta and Barrancabermeja, the highest government officials of Tijuana are suspected of belonging to criminal organizations. The mayor-elect, Jorge Hank Rhom (a member of one of the richest families in the country) is, according to the Sociedad Interamericana de Prensa (SIP; Inter-American Press Society), "suspected of being the intellectual perpetrator of the murder of journalist Hector Félix Miranda, founder of the weekly publication Zeta, which took place on April 20, 1998". This presumption is based on the fact that both material murderers were Hank Rhom's direct employees. In March 2004, the SIP signed an agreement with the Mexican government to review the case; Francisco Javier Ortiz Franco, who was co-editor of Zeta and

had in-depth knowledge of the judicial file of Miranda's murder, joined the aforementioned commission. Ortiz Franco was murdered in that city on June 22. Jesús Blancornelas, current president and co-founder of Zeta, miraculously saved his life in an attack in November 1997, but his bodyguard died. Zeta is a weekly publication that has a print run of about 50 thousand copies and reminds one of the outright battle the Colombian newspaper El Espectador, run by Guillermo Cano, unleashed against drug trafficking in his country. Zeta has won the most important international freedom of press awards. (www.zetatijuana.org).

5. City of Azua de Compostela (Province of Azua, Dominican Republic). A criminal gang called "Los Sayayines" terrorizes the province and declared they were going to kill all the journalists in the city. On September 24, they killed a Listín Newspaper correspondent, Juan Adujar, and they wounded another journalist's arm, which had to be amputated. Many journalists sought protection at police stations. The police have arrested many members of the gang but journalists still receive threats. Moreover, journalists continue to see gang members on the streets, including Vladimir "Blas" Pujol who is the head of the gang and despite being a fugitive, keeps on intimidating journalists in public⁴. According to the main newspaper of the country, "criminals who are backed political leaders, police officers who were accomplices of criminals and a justice system that dealt with the whole situation "weakly", have created the monster that made two hundred thousand people bow down, according to different sectors of this district.⁵

Brown Areas

6. Chiapas (Mexico). The Congress of this state upholds the regulation that places the punishment for libel at the same level as sexual abuse, injuries or kidnapping. Although there are several Mexican states that punish this crime, none has such a

⁴ "Periodistas de Azua siguen atemorizados" *Listín Newspaper*, 30 September 2004. The name "Blas Pujol" is the same name that a mafia chief used in a well-known Argentine soap opera called "The President's Wife".

⁵ Pérez Reyes, Ramón, "Violencia en Azua se incubó bajo la protección del poder", *Listín Newspaper*, 17 September 2004.

severe punishment. It is possibly the most severe punishment in Latin America, with the exception of Cuba. It is not a case of a law that exists but is not enforced, like in other countries of the region. Almost ten news media are being charged by public officers for libel, according to the OAS' Office of the Special Rapporteur for Freedom of Expression's 2003 report.

7. Caracas (Venezuela). The social and political polarization creates a dangerous scenario for journalism, although it is worth noting that the number of aggressions does not match the degree of polarization. The situation here has led to a disagreement among international freedom of press organizations. While the SIP sees Chavez' supporters as the main threat, the CPJ as well as the Reporters without Borders (RSF) point a finger at the responsibility of the mass media that is aligned with anti-Chavists. Chavist and anti-Chavist journalists seem to be wrought between their political inclinations and their professional practice. This situation is common when there is such an intense polarity as in Venezuela. President Chavez has no doctrinal respect or political value for freedom of press, he merely sees it as an argument his rivals use in battle. Therefore, there is an official or extra-official degree of administrative, legislative and judicial harassment.

II. IMPROVEMENTS SEEN FROM MAY TO NOVEMBER IN SOME OF THE WORST AREAS MENTIONED IN THE FIRST REPORT.

The military intervention in Haiti, as well as the federal intervention in the Argentine province of Santiago del Estero has improved the protection of journalism in these areas. In Santiago del Estero, preparations for elections will soon be underway and the press will most likely have an especially relevant role due to its strong connections with the government that was deposed by the intervention. In Haiti, violence has decreased to a lesser degree; according to a report by CPJ, there are aggressions against journalists who are associated with the previous government of Aristide. Also, the Haitian Resistance Front, the group that took up arms against the previous government of Jean Bertrand Aristide, is in an escalating conflict with the

United Nations troops. Barricade wars are cropping up in several cities again as a result of the recurrence of clashes between the followers of the deposed president and the aforementioned Front.

In Brazil, organizations that defend freedom of expression have not registered new violent attacks on journalists in the *favelas* of Río de Janeiro. However, the situation in the state of Mato Grosso is still dangerous.

In the greater Buenos Aires area, the number of aggressions has decreased in the last months, but this trend can change due to the decisive elections that will take place at the end of 2005. There, journalists are becoming increasingly professional while political and criminal structures are still connected. On April 24, *Asociación Periodistas* (Association of Journalists) sent the Governor of the province of Buenos Aires a letter that expressed their concern about aggressions against journalists from the cities of Quilmes and Berazategui - two particularly dangerous areas of the urban corridor that surrounds the Argentine capital. The other Argentine provinces where the situation of the independent press is particularly critical are San Luis and Formosa, since their respective governments' political hegemony hinders freedom of press. All the same, the structures of repression are not adequately reported due to an ineffective alert mechanism.

In Arauca, Colombia, neither the FLIP, nor the report that Enrique Santos (director of *El Tiempo*, Bogotá) presented to the SIP, nor the international organizations CPJ and RSF have registered any aggression against the press over the last semester. Within the Antonio Mariño Project framework, many institutions have improved the protection of journalists in the area. A FLIP mission that visited the area pointed out some of the steps that were taken in this direction: distribution of bulletproof jackets among journalists and the airing of radio advertisements to raise awareness of the importance of journalists for the community. However, conditions that promoted the surge of attacks against the press in Arauca have not improved, so it may reappear. Armed groups still exist and are an underlying threat.

The good news is that the defense of journalists has improved in Brazil as well as in Mexico, two

countries that were rather behind in terms of the construction of alert mechanisms and defense of journalism. In the last months, an unheard of demonstration of journalists has taken place in Mexico. There have been public demonstrations that gathered hundreds of journalists in several states of Mexico repudiating the murders. "We are a group of reporters who are sick of sending e-mails regarding abuses and crimes that have been committed against our co-workers, so we have decided to write the declaration that was read by journalists of nine states in the Republic," said Leonarda Reyes (*Centro de Periodismo y Etica Pública* -Center of Journalism and Public Ethics-) on October 11. In Brazil, the ANJ announced that the Network for the Defense of Freedom of Press would be released in November. In Argentina, however, the mechanism of alert has deteriorated since the Association of Journalists was dissolved; it was an organization that had had an essential role in the defense against aggressions over the last decade, especially in the provinces of the country.

III. DEMOCRATIZATION OF THE STATE IS STILL THE MAIN TASK TO IMPROVE FREEDOM OF PRESS.

The most lethal combination for the practice of journalism is the existence of a State of low democratic quality and a Press with a growing professional vocation. In places where the State does not comply with the Rule of Law, or where it is authoritarian (as in Cuba), freedom of press is poor or non-existent. If there are also journalists in those areas who are willing to improve their professional performance, conflict is inevitable and different forms of censorship worsen.⁶ The only three Latin Americans who appear on the world list of "Predators of Press Freedom" elaborated by Reporters without Borders respond to this paradigm. On one side, the paramilitary leader Salvatore Mancusi and the guerrilla leader Manuel Marulanda, who defy the power of the Colombian State and make its democratization difficult; and

on the other side, Fidel Castro, who governs an authoritarian state.

Many areas in Paraguay, Brazil (a journalist in Alagoas and another in Pernambuco have died in these months), Peru (a journalist died in Pucallpa) and, with less violence, Argentina, fill this description, so it is not surprising that journalists are the target of aggressions on their job.⁷ One of the strongest trends in Latin America over the past years has to do with the increasing professionalization of journalism. And the paradox is that, in many areas, professionalization entails the outbreak of dangerous conflicts with established powers.

The absence of a State that is able to comply with and enforce a democratic Rule of Law creates an array of causes for the aggression against the press. Drug trafficking and political violence are especially important factors, but corruption also takes advantage of this powerless State. As FLIP says about Colombia, political violence or drug trafficking are not the only reasons why journalism is punished. Reports on administrative corruption generate as many threats to the press as the internal conflict or drug dealers. (FLIP. First Semester Report 2004)

The State must discipline its physical as well as its economic action as regards to journalism. The State's influence on the economy of journalism affects its practice. This occurs mainly because the public officers' decisions that involve journalism's economy are generally obscure and arbitrary. We do not need laws that regulate the practice of journalism, but laws that regulate the economic relationships between the State and these professionals and their media. The laws should include standards for the distribution of official publicity, and each country should determine tax, tariff or banking policies for this sector. Up to now, in Latin America, government officers and media directors often come to obscure agreements that are detrimental to freedom of press and right to information. Transparency in the State-press

⁶ For more information on the relationship between quality of the State and violence against the press, see Waisbord, Silvio, "Antipress Violence and the Crisis of State", *Press / Politics*, 7 (3): 90-109.

⁷ As with the mayors of Cúcuta, Barrancabermeja and Tijuana, the mayor of Coronel Portillo (Pucallpa, Peru) is being investigated for the murder of a journalist.

THE WORST AREAS TO PRACTICE JOURNALISM IN LATIN AMERICA

MAY 2004



REFERENCES:




- (A) BLACK AREAS
- (B) RED AREAS
- (C) BROWN AREAS

THE WORST AREAS TO PRACTICE JOURNALISM IN LATIN AMERICA

DECEMBER 2004



REFERENCES:

-  (A) BLACK AREAS
-  (B) RED AREAS
-  (C) BROWN AREAS

relationship would greatly increase freedom of press and consequently, improve the quality of journalism. Besides, the lack of a transparent relationship between the State and media directors has contributed to shut out new players, particularly in the audiovisual area. In most countries of the region, the State has been pressured to forestall the creation of new radios and TV channels that would diversify the supply available to society.

IV. PRESS AND DEMOCRACY AT "TWO SPEEDS" IN ALMOST EVERY COUNTRY.

Reporters without Borders recently pointed out that Latin America has a mixed press freedom, or "a press with two speeds".⁸ On one hand, the great press of large urban centers usually has more freedom, protection and works more professionally. On the other hand, the provincial press is more restricted by local powers, has less protection against arbitrary action, and journalists work less professionally.⁹

The possibility for the intensity of citizenship to be evenly distributed in every region requires that the press also run at an even "speed" throughout the whole country.

The press at two speeds implies a political regime at two speeds, particularly very different federal and local judicial powers. This is why one of the main claims during the recent journalists' protests in Mexico is that crimes against journalists become "federal crime" so that what is considered to be a better judicial body can interfere. A recent report written in the State of Tamaulipas points out:

"Mexico is currently a country in transition where freedom of expression has greatly improved

at the federal level. In many states and cities, however, censorship and control of news media continues within an old, practically unchanged structure which resists criticism and public scrutiny".¹⁰

Organizations that defend freedom of expression first started at an international level and later spread to the national level, and are slowly developing at the local level. That is to say, the international organizations were born first, then the national ones, whereas hardly any local ones exist. At present, the national organizations interfere in the protection of the press in local areas. Modern, large urban centers (where democracies are generally stronger) usually take initiatives to protect journalists that are trapped in areas of low democratic quality. The improvement of the quality of citizenship will depend on the development of organizations that defend freedom of press at the local level, or the development of local centers for correspondents of large national organizations (something that the *Instituto de Prensa y Sociedad* -Institute of Press and Society- is doing in Peru and Venezuela, for instance).

V. OUTSIDE THE BLACK, RED OR BROWN AREAS OF LATIN AMERICA, THERE IS A DEBATE ON A NEW AGENDA CONCERNING LIMITS ON FREEDOM OF PRESS AND THE RIGHT TO INFORMATION.

There is a growing debate on new limits on freedom of press in some countries where no shocking aggressions take place. These are the yellow areas in the map.¹¹ Specifically, the issues that are being debated are the economic relationships between State and journalism and the

⁸ The RSF's quote refers to three countries in the region. However, that concept could be extended to every country in the region. RSF points out, "Mexico, Peru and to some extent Brazil have mixed press freedom, with a largely confident national press and a provincial one facing serious problems." "Third Annual Worldwide Press Freedom Index", RSF, 2004.

⁹ For information on recent events, see "Freedom of Press Threatened in Provinces". RSF, June 2, 2004.

¹⁰ Report on the visit to Nuevo Laredo (Tamaulipas) from 22 to 24 April 2004, *Comisión en Memoria de Roberto Mora García*, May 30, 2004.

¹¹ See "methodological note", in footnote 1.

internal censorship in editorial rooms. This debate is far from taking place in countries where the situation of the press is more serious.

The reports of the Special Rapporteur for Freedom of Expression (OAS), Eduardo Bertoni, may contribute to widen this conceptual matrix. His 2002 annual report included a chapter called "Freedom of Expression and Poverty", and his 2003 annual report included a chapter about "Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity". At the same time, the *Instituto de Prensa y Sociedad* (Institute of Press and Society) is promoting studies on the self-censorship of journalists.¹²

If these new issues regarding censorship are to be fought, the organizations that defend freedom of expression will need to elaborate a new conceptual matrix to reinforce their role. Organizations that defend freedom of press in the region seldom refer to these issues, since they concentrate on more urgent restrictions.

VI. GROWING CONCEPTUAL DISCUSSION ON THE POLITICAL ROLE OF THE MEDIA THAT MAY INFLUENCE FREEDOM OF PRESS.

There is a growing consensus among important sectors in the region on the media turning into an obstacle to the quality of democracy. Many relevant players, intellectuals and citizens in general believe the media combine of excessive concentration of power with a limited interest in the public welfare. From this point of view, the media is seen almost exclusively as a mere conglomerate of economic interests or power, and for instance, its professionalization is underestimated. Whereas there was a biased view of the media during the 80s, when they were considered to be purely democratic institutions,

now the pendulum is on the other side. Neither standpoints do justice to the complexity of the world of media, since both approaches are equally partial.

This consensus is reflected, for example, in an important report the United Nations Development Program (UNDP) sponsored at the beginning of the year titled *Democracy in Latin America: towards a Citizens' Democracy*.¹³ It is the result of an analysis of regional leaders' and intellectuals' opinions and public opinion polls. Therefore, the report can be considered to reflect the true feelings of wide social and political sectors in Latin America.

The UNDP report refers to the media as "factual powers" compared to "institutional powers" (congress or political parties) and states that the low quality of democracy in the region is determined by the fact that the "factual powers still play a very important role" (p. 160). When listing the three main potential threats to democracy, it mentions different forms of economic power, drug trafficking and, in third place, the media (p. 161). The report points out that "there is a high consensus among interviewees on the media's influence on limiting the power of political institutions" (p. 162). About 80 % of the interviewees believe businesspeople, the financial sector and the media are the main power bloc that "limits governments' decision-making ability" (p. 164)

In response to this standpoint that tends to view actual democracies as "mediacracies", large political sectors have legislations that include restrictive elements, or that encourage a new generation of restrictions on the practice of journalism. The term "mediacracy" was used by the president of Ecuador, Lucio Gutierrez, this year¹⁴.

There are two countries where the intellectual discussion provides elements for the construction

¹² A study that presents some of these issues is Otano, Rafael and Sunkel, Guillermo, "Libertad de los periodistas en los medios", *Comunicación y medios*, Universidad de Chile, n° 14, 2/2003, pp. 65-80.

¹³ This report is available at www.democracia.undp.org

¹⁴ Report on Ecuador for SIP, October 2004. See also Trejo Delarbe, Raul, *Mediocracia sin mediaciones: Prensa, televisión y elecciones*, Cal y Arena, México, 2001. A recent work on the Bolivian press points out that politicians, who have the function of legislating, have an increasingly negative image among the media. Rojas Ríos, Cesar and Peñaranda, Raúl, *Prensa & Poder en Bolivia*, Fundación Adenauer, La Paz, 2003.

of this critical vision that tends to restrict freedom of press: Chile and Venezuela.

The expression "factual power" in Latin America is generally associated to the Chilean case. There, the Right wing has had a strong presence in the media (the well-known example is the *El Mercurio* newspaper). A key Chilean intellectual who surely played a role in including the idea of "factual power" in the aforementioned report is Manuel Antonio Garretón. He collaborated on a book edited by the UNPD after the report was published and wrote, "political parties do not seem to control the effective management of power and the State, rather the factual power of the mass media, the multinational companies or the state technobureaucracy appear to do so". When analyzing the 2000 Chilean presidential elections, Garretón wrote that the entire media supported the right wing candidate, "with the exception of a few radio stations and a TV channel".¹⁵ Former president of Chile, Patricio Aylwin, wrote, "The public opinion in our countries is not always well-informed, since information is highly manipulated". And he referred to the "control and manipulation of information by the large monopolies and oligopolies that control the media".¹⁶

The other example is Venezuela, where the term "mediacracy" is part of the public debate between Chavists and anti-Chavists, particularly after the military coup on April 13, 2002. One of the main theorists of this concept, Britto García, defines it in the following ways:

- "the attempt to replace democracy for a new political model, in which mediators are replaced by the media" (p.40)
- "the elected powers have been kidnapped by the factual powers" (p. 56)
- "Venezuela has been subject to an extreme

experiment of death of politics and its perverse replacement by the media. The traditional model assumed that society should decide and elaborate its demands on its own, for political mediators to later present them to a power that would try to satisfy them through answers. In the new situation, the media elaborate demands, present them and mean to become the power that decides on them, and at the same time benefit from them. The media tries to replace the message, the vehicle with the passenger, the container with the content, the social communicator with society" (p. 89).

Presidents of a number of countries hold different levels of verbal clashes with the press, and this pollutes public debate. Chavez in Venezuela and Gutierrez in Ecuador usually make critical comments or have restrictive attitudes towards the practice of journalism. In Brazil, Lula has also displayed shocking attitudes towards foreign journalists. These arguments and small or large verbal wars contribute to an atmosphere of opinion that increasingly influences the many legislative debates on the practice of journalism that are being held in the region.

VII. TWO SIDES OF THE LEGISLATIVE SURGE ON FOUR TOPICS DIRECTLY RELATED WITH THE PRACTICE OF JOURNALISM.

There have been legislative initiatives related to the practice of journalism in almost every country over the last months.

But it is evident that the debate on these questions is usually quite irrational. There are suspicions about the hidden intentions of proposals, and the recent and not so recent history of the region contributes in many cases to foment the lack of credibility among different actors.¹⁸

¹⁵ *Contribuciones para el debate*, PNUD, 2004, p. 388. Garretón, Manuel A. "Chile's Elections: Change and Continuity", *Journal of Democracy*, vol. 11, n° 2, April 2000.

¹⁶ Aylwin, Patricio, "Democracy in the Americas"; *Journal of Democracy*, Vol. 9, n° 3, July 1998.

¹⁷ All these quotes were taken from Britto García, Luis, *Dictadura mediática en Venezuela: Investigación de una prensa por encima de toda sospecha*, Le Monde Diplomatique, Buenos Aires, 2004. The prologue of the book mentions that the Argentine situation "particularly over the last years, is following the footsteps of the Venezuelan media". Bilbao, Luis, "Prólogo", p. 5.

¹⁸ For information on the debate in Brazil, see Lima, Venicio de, "CFJ & ANCINAV: Licoes de um debate inconcluso", *Observatorio da Imprensa*, October 19, 2004.

In many countries, the reputation of organizations of media owners is being tarnished after decades of using the freedom of press argument to protect their own economic interests and not having, in most Latin American countries, a particularly prominent role in defending this and other freedoms during the period in which the region was virtually one great dictatorship. Moreover, radio and television stations have pressured governments to prevent new players from entering the market.

There is little analysis of the different international realities. While freedom of press is mostly associated to the lack of state regulation in the United States, on the European continent it often entails some degree of State regulation. In Scandinavian countries, political parties have great influence on newspapers and there is also an explicit public policy regarding subsidies. These subsidies are often granted to smaller newspapers in order to preserve market diversity and prevent monopolies. In France and Austria, the State supports the press in different direct and indirect ways. The German Supreme Court considers it is the State's duty to ensure the functioning of the press. Therefore, the German State has to prevent any interference and also preserve the conditions for the existence of a free and diverse press. These are the countries that are ranked highest on the two indexes of freedom of press that are elaborated in the world (Freedom House and Reporters without Borders).¹⁹

The Latin American model for the State-press relationship has considered all these measures, but it has done so in an arbitrary, obscure manner, without taking society's interests into account, and in non-public negotiations. In our countries, "support" of the State tends to interfere with the freedom of press and the citizens' right to information. In European countries, on the other hand, the support of the State tends to promote and strengthen the freedom and diversity for the practice of journalism.

The four topics that are most often debated in Latin American parliaments are the following:

1. Compulsory association or some sort of professional formalization.

Over the last years, the most relevant initiative is the project the federal Brazilian government presented to Parliament for the creation of a Federal Council of Journalism, written up by the FENAJ (the country's national federation of journalists). The CFJ's function would be to: "guide, discipline and supervise the practice of the profession of journalism and the activity of the media". It generated a strong debate among journalists and the association of editors considered it to be "an example of pressure on freedom of press" (*Relatoría ANJ 2004*). The project does not seem to have a political future.

Compulsory association exists in countries such as Venezuela, Honduras and Ecuador, among others. In Brazil, journalists must have a university degree but this norm is currently suspended due to judicial action. In Bolivia, the regulation states that journalists must have a university degree and be enrolled in a professional register, but this is not fully enforced. In Colombia, the Constitutional Court declared the law that recognizes the profession of social communicator to be constitutional, but rejected all the articles that sought to establish state certifications or academic requirements to practice journalism. In Nicaragua, journalists' groups are promoting compulsory association. In most of these countries, compulsory association is promoted by journalists' unions.

2. Considering crimes committed through the press to be penal code crimes.

This issue presents the largest contradiction between the inter-American system's recommendations and the member countries. It can almost be considered to be a silent rebellion of most Latin American countries against the inter-American system. "In order to ensure that freedom of expression is properly defended, states should reform their criminal libel, slander, and defamation laws so that only civil penalties may be applied in

¹⁹ Holtz-Bacha, Christina, "The difficulty of measuring freedom of the press worldwide", work presented at the International Association for Media and Communication Research (IAMCR), Porto Alegre / Brazil, July 25-30, 2004.

the case of offenses against public officials", says the Special Rapporteur for Freedom of Expression (OAS) in his 2002 Annual Report, together with the tenth point of the Principles about Freedom of Expressions approved by the Inter-American Court of Human Rights (IACHR).²⁰ Freedom of press is also limited in most countries because 'desacato' crimes and defamation crimes are still penalized with jailing. The Supreme Court of Venezuela considered the figure of 'desacato' to be constitutional, contradicting the recommendations made by the Inter-American Court of Human Rights (IACHR). Countries with high democratic qualifications such as Costa Rica, Uruguay and Chile still have laws that include some of these traits that thwart freedom of expression. Claudio Paolillo, editor of the weekly magazine *Búsqueda* and in charge of preparing the SIP report on Uruguay, pointed out that fifteen journalists and three media were subject to criminal proceedings for publishing information or opinions this year. In Panama, since the end of Noriega era in 1989, every administration has promised the revoke laws that punish libel with jail and transfer it to the civil area, but it is yet to happen. They seem to prefer to hang the sword of Damocles over journalism so as to foment a kind of self-censorship. A former president of Panama, Mireya Moscoso, pardoned about eighty journalists who were facing libel charges towards the end of her term in mid-2004.

3. *Laws of access to public information*

The legislative surge regarding this issue promotes access to public information, but the laws that are finally passed often have sides for the practice of journalism. A resolution titled *Access to public information: strengthening democracy* was passed at the OAS General Assembly held in Quito in June 2004. It encourages the creation of laws to fight non-transparent government actions, offering genuine resources for journalists and other social actors, and establishing informative obligations for public officers. This is the type of law that was passed in Ecuador (Organic Law of Transparency

and Access to Public Opinion), based on a project presented by the organization of local newspapers. In Mexico, one of the main campaigns to promote transparency is taking place, and the change in federal legislation is being imitated on the state level. The new president of Panama, Martín Torrijos, revoked the Law of Free Access to Public Information, which in fact -according to SIP- actually annulled it.

The other side of this trend entails laws that are passed with the intention of promoting access to public information, but were modified during the legislative process. They lost their original spirit and ended up being potential tools to control information or intimidate journalism in some way. These types of laws exist in countries such as Paraguay, where they hinder the publication of the government officers' affidavits; in Dominican Republic (Law of Free Access to Public Information), where they do not establish deadlines for officers to hand over information; in Argentina, where they try to extend the right to information to the media (Access to Public Information Law project); in Honduras, the SIP is afraid that the new Right to Access Public Information Law will be used as a tool hinder freedom of press.

4. *Laws that regulate audiovisual media.*

The second surge in legislation, less massive than the previous one, entails the renovation of regulation of audiovisual journalism. This legislation also has two sides, depending on the country. In Peru, the local journalism approves of the new Radio and Television Law, while in Venezuela, the Radio and Television Social Responsibility Law is being questioned by a large sector of the Venezuelan journalism. In Brazil, organizations of editors have also rejected a project concerning the creation of the National Cinema and Audiovisual Agency (ANCINAV) that is being presented in parliament.

²⁰ The 10th point states: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

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The Center for the Opening and Development of Latin America (CADAL), with headquarters in Buenos Aires, Argentina, was established as a foundation on February 26, 2003 with the aim of promoting the strengthening of democracy, rule of law and economic liberties in the countries of the region. With this objective, CADAL organizes activities of analysis, research and diffusion.

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