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# INTERNATIONAL REPORTS

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Media and  
Freedom of  
Expression



# INTERNATIONAL REPORTS

3 | 2021

## Editorial

Dear Readers,

“The press must have the freedom to say anything so that certain people do not have the freedom to do anything.” This was expressed by the French statesman, diplomat, and man of letters Alain Peyrefitte. “Watchdogs”, “gatekeepers”, or the “Fourth Estate”, whatever we choose to call it, a free media is the indispensable guardian of liberal democracy.

But how does this freedom fare in today’s world? In her report, Katharina Naumann draws a picture with some rays of light but many shadows. After all, free journalism is facing mounting pressure in many countries around the world. China, the emerging superpower, is intent on nothing less than exporting its own understanding of journalism, namely propaganda. On the other hand, some positive developments can be seen, as not least due to the COVID-19 pandemic, many people around the world have been reminded of the importance of independent and reliable reporting.

Meanwhile, it is becoming increasingly clear that the media – and particularly new, digital media – require a minimum level of regulation to protect freedom of opinion from abuse through targeted disinformation, with significant harm to public discourse. It is a fine line: a law suited to fighting fake news in a democratic state can quickly become an instrument of censorship in the hands of an autocratic regime, suppressing critical voices. Just as democracy is unthinkable without a free press, it is only in a democratic state that the media can enjoy lasting freedom.

In this edition of International Reports, Tobias Schmid develops an approach for how a free society can fight disinformation on the one hand, without illegitimately stymieing freedom of opinion on the other. He calls for a graduated regulatory model that attempts as far as possible to avoid passing judgment on the content of statements and opinions as right or wrong, good or bad.

Ukraine also faces a difficult balancing act, as Toni Michel analyses in his article. Since 2014, the country has been locked in a hybrid war in which the disinformation campaigns of pro-Russian media play a prominent role. The author pleads for the country to meet this challenge decisively, albeit based on transparent processes and decisions taken by independent bodies.

Mexico is notorious as one of the most dangerous countries in the world for journalists. As Hans-Hartwig Blomeier und Luis Téllez Live point out, in addition to the threat posed by organised crime, media representatives in Mexico are evermore confronted by the aggressive and polarising rhetoric of President Andrés Manuel López Obrador.

Olaf Jacob and Adriana Amado observe similar trends in Argentina. Mounting tensions between President Alberto Fernández and the media, combined with a strong reliance of many newspapers and broadcasters on state-funded advertising, are putting a strain on freedom of the press on the southwestern bank of the Río de la Plata.

Even a look at the country often described as the largest democracy in the world provides cause for concern. Peter Rimmele traces how the Indian government has steadily narrowed the freedom of expression not only of India's journalists but also of its creative artists, despite significant resistance from the Indian judiciary.

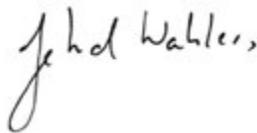
Nonetheless, there is also cause for hope, often due to innovative journalists and media holding their own despite the adverse conditions. Using the examples of two companies in Sub-Saharan Africa, Christoph Plate and David Mbae show how dependability, quality, and faith in new, digital formats are paying off for the media and successfully bringing them through the pandemic. In turn, Ulf Laessing reviews the media landscape in the Middle East and North Africa. Even though many of the democratic promises of the "Arab Spring" remain unfulfilled, the genie of liberty is out of the bottle in the media sector, too, and is breaking fresh ground not least by means of independent, private online formats.

Finally, Ferdinand A. Gehringer, Hartmut Rank, Mahir Muharemović, and Stanislav Splavnic take a closer look not on journalists but on the judiciary in Southeast Europe. How far does freedom of expression extend for judges, where does their duty of independence set legitimate limits to this freedom, and where are governments using this obligation as a pretext to muzzle defiant judges?

The objective of authoritarian rulers is to silence critical voices. They have generally come to understand the formula "no democracy without a free press" and are drawing their own conclusions. Germany and Europe should oppose this by promoting free journalism as an integral component of democracy around the globe while also demonstrating "at home" that even complex problems such as regulating disinformation can be solved by applying a basic principle: always err on the side of free speech!

I hope you will find this report a stimulating read.

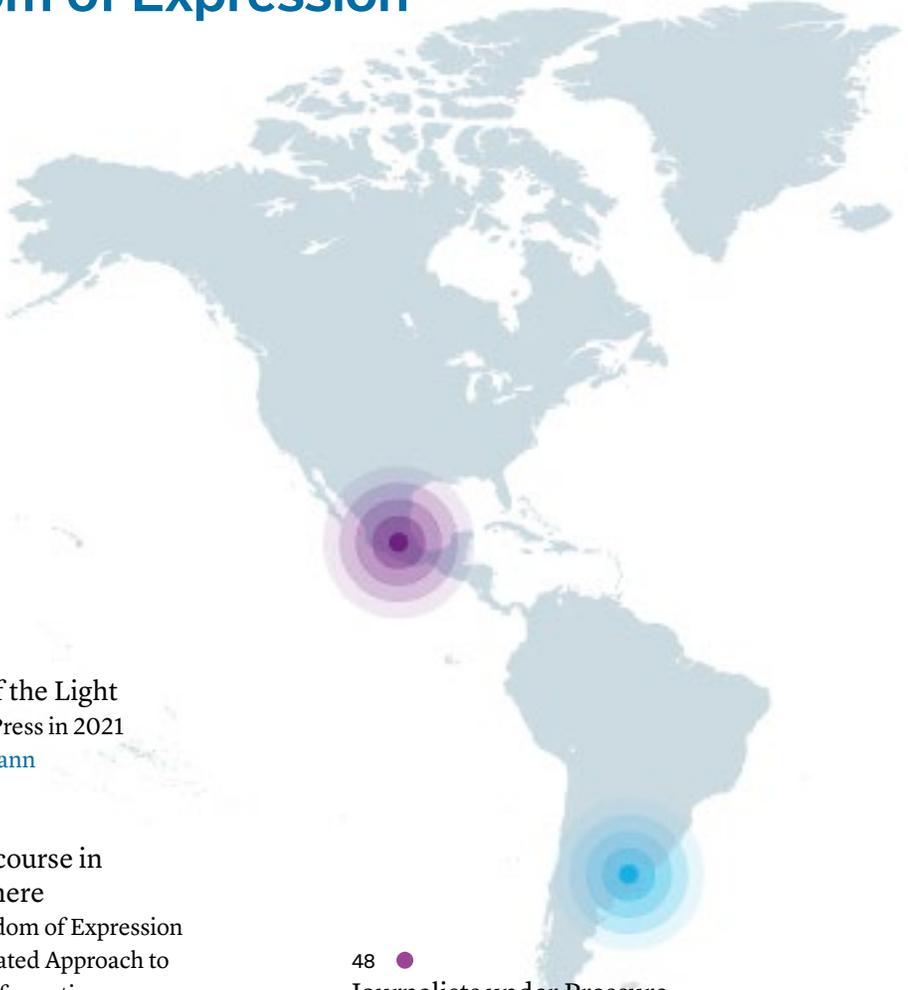
Yours,

A handwritten signature in black ink that reads "Gerhard Wahlers". The signature is written in a cursive style with a large, looped initial 'G'.

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**Dr. Gerhard Wahlers** is Editor of International Reports, Deputy Secretary General and Head of the Department European and International Cooperation of the Konrad-Adenauer-Stiftung (gerhard.wahlers@kas.de).

# Media and Freedom of Expression



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Source: © Darrin Zammit Lupi, Reuters.

[Media and Freedom of Expression](#)

# The Waning of the Light

Freedom of the Press in 2021

Katharina Naumann

Freedom of the press is an essential pillar of functioning democracies. When this pillar crumbles, it is usually due to an erosion of the whole democratic edifice, while also contributing to this ongoing decay. For many years, press freedom has been under pressure around the globe – yet, there are still grounds for optimism. The COVID-19 pandemic has helped to raise people’s awareness of the importance of independent, quality-oriented media.

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“Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”<sup>1</sup> In 1787, these words by Thomas Jefferson, third president and one of the founding fathers of the United States, underlined the importance of the press. More than 230 years later, freedom of the press is one of the key pillars underpinning a free society – but is still not the norm in many parts of the world. On the contrary, it has been declining steadily for years. Press freedom and media professionals needs to be actively defended worldwide and, unfortunately, Europe is no exception here. Afterall, the erosion of press freedom is both a symptom of, and contribution to, the collapse of other democratic institutions and principles. That is why these developments are so alarming.

On the other hand, quality media have regained trust and relevance over the past year. COVID-19 has highlighted the importance of accurate health information and reliable reporting, and a new awareness of the value of independent media for society as a whole has emerged.

### **Ideal vs. Reality: Press Freedom as a Human Right and the Current Situation Worldwide**

The concept of “freedom of the press” as a medium’s independence from influence and directives is a relatively new one. The idea began to evolve during the Enlightenment – a transition from the darkness of the Middle Ages to the light of knowledge – and was first introduced in England at the end of the 17<sup>th</sup> century when

censorship was abolished. In the US, the Constitution’s First Amendment has officially protected freedom of the press, religion, speech, and assembly since 1789. In Germany and the German-speaking countries, however, it took almost another one hundred years to protect media products. It was only with the passing of the Imperial Press Law in 1874 that freedom of press was first uniformly regulated by law in Germany, though its effect was short-lived: only four years later, it was repealed by the Anti-Socialist Law. From 1933 to 1945, the press was forced to toe the party line under the National Socialists. In today’s Federal Republic, Article 5 of Germany’s Basic Law guarantees freedom of the press, along with freedom of opinion, freedom of broadcasting, and freedom of information.

In Europe, these freedoms are also protected under Article 10 of the Council of Europe’s European Convention on Human Rights. Within the European Union, freedom of expression and freedom of the media are also guaranteed for all Member States in Article 11 of the EU Charter of Fundamental Rights. Since 2000, this Charter has brought together all the civil, political, economic, and social rights of European citizens (and has been legally binding since the Treaty of Lisbon’s entry into force on 1 December 2009). This guarantee is one of the key criteria for candidate countries wishing to accede to the Union.

Unfortunately, however, these legal bases do not prevent threats to freedom of press on the continent of Europe. Quite the opposite: according to an assessment by Reporters Without Borders,

many members of the Council of Europe present serious shortcomings regarding freedom of press. The situation in Ukraine, Georgia, and Armenia is “problematic”, while that of Turkey and Russia is described as “bad”.<sup>2</sup> Azerbaijan comes in last among members of the Council of Europe, ranking 167<sup>th</sup> out of 180 countries in the Reporters Without Borders report.<sup>3</sup>

According to that organisation, the situation is also “problematic” in all the candidate countries of the Western Balkans (Northern Macedonia, Albania, Serbia, and Montenegro) as well as in the potential EU candidate countries Bosnia-Herzegovina and Kosovo. This is also confirmed by the European Commission’s reports on candidates for accession to the EU, which assess their progress towards freedom of expression and freedom of press as very poor or virtually non-existent.

## Digital surveillance presents a growing problem for journalistic freedom.

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Within the European Union, Bulgaria stands out particularly negatively as the only country ranked “bad” (112<sup>th</sup> out of 180 in the Reporters Without Borders ranking). The main problem here is that most media outlets are concentrated in the hands of a few owners who coordinate with ruling politicians to set the editorial line. Meanwhile, independent media are thwarted by official harassment involving tax procedures or fines. In other parts of Southeast Europe, too, politicians and media companies are similarly intertwined, which raises concern. Other problems include unattractive working conditions for journalists, legal deficiencies, and weak self-regulation by the industry. Journalists are increasingly the target of attacks, threats, and insults. During the coronavirus pandemic, many countries have also attempted to push through restrictive laws curtailing journalistic freedom. Therefore, the European Commission’s 2020 Rule of Law reports on Bulgaria, Romania, and

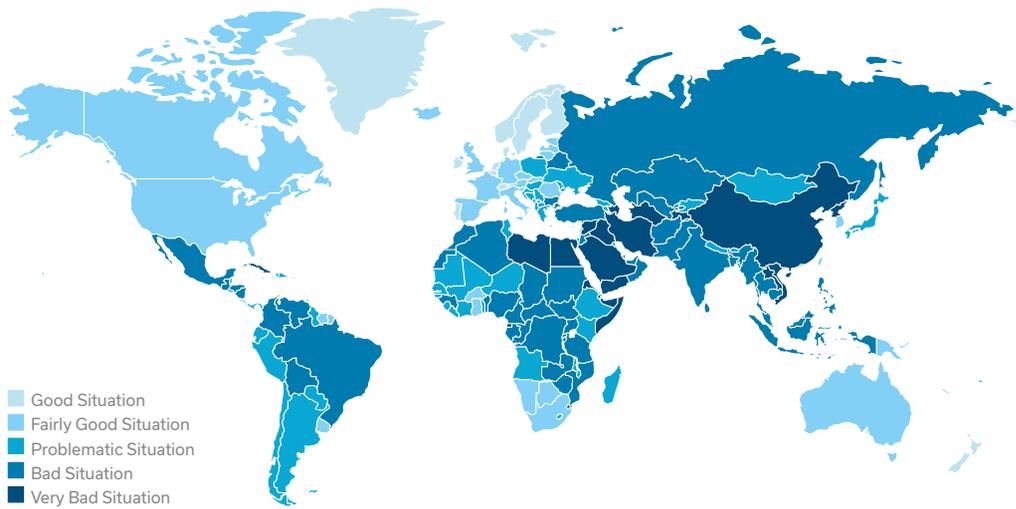
Croatia also address the media situation. The European Commission levels criticism against the lack of transparency in media ownership, the role of state advertising, the lack of independence of regulatory authorities, systematic political pressure, restricted access to public information, and attacks on journalists.<sup>4</sup> The EU’s Eastern states are experiencing problems as well. In Poland, the state and media companies are intertwined in the structure of media ownership. Late last year, the state oil company PKN Orlen acquired the publishing house Polska Press, which owns many regional newspapers. Press freedom is also under pressure in Hungary.

Digital surveillance presents a growing problem for journalistic freedom. In July 2021, this issue increasingly attracted headlines in the wake of reports about Pegasus spyware. At a recent event of the Konrad-Adenauer-Stiftung, Christian Mihr, Executive Director of Reporters Without Borders, reported that half of all journalists who contact his organisation for help now do so on account of digital surveillance. This has led Reporters Without Borders to establish a digital forensics laboratory.

In July, another sad piece of news on press freedom in Europe shook the world: the murder of Dutch journalist Peter de Vries, a specialist in organised crime reporting. Unfortunately, this is not the first time a journalist has been murdered on European soil. Let’s not forget Maltese investigative journalist Daphne Anne Caruana Galizia, who was killed by a car bomb in 2017, and Slovak journalist Ján Kuciak, who was shot dead in 2018. They had also reported on corruption and organised crime, respectively.

A particularly sensational murder was that of exiled Saudi Arabian journalist Jamal Khashoggi in Turkey in 2018. Like many Middle Eastern countries, Saudi Arabia languishes at the bottom of freedom of press rankings. Here, censorship is the order of the day. The situation is also alarming in Libya, Syria, Iraq, Iran, Yemen, and Egypt. Egypt is one of the countries with the most imprisoned journalists. According to

**Fig. 1: Freedom of the Press Worldwide in 2021**



Source: Own illustration based on Reporters Without Borders 2021, n.2.

the Reporters Without Borders Press Freedom Barometer, 28 journalists were behind bars in Egypt as of August 2021, compared to 342 worldwide.<sup>5</sup>

This is hardly surprising given that Article 32 of the Arab Charter on Human Rights guarantees freedom of expression and the right to information on the one hand, while listing a plethora of exceptions to it, on the other.<sup>6</sup> At any rate, Egypt is one of many countries around the globe that is still far from realising the ideal set out in Article 19 of the United Nations Universal Declaration of Human Rights: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Against this backdrop, it was in June 2017 that the German Bundestag called upon the United Nations to appoint a UN Special Representative

for the Safety of Journalists in order to make lasting improvements to the situation of journalists. This is important because the freedom to inform and be informed is also a yardstick for respecting other human rights. This certainly applies to the world’s most populous country: China.

#### **A Global Propaganda Machine: China’s View of the Media**

The concept of freedom of press as it is interpreted in the West does not apply in China, where there is a total lack of freedom. All reporting is centrally controlled, and expressions of opinion are subject to censorship. The internet is monitored with particular rigour. Foreign journalists face numerous obstacles. The situation has further deteriorated over the last two years. Major US media operations have been reduced to one-man shows since many of their journalists were unceremoniously expelled in March 2020. Another major blow to freedom



of press that commanded much international attention was the closure of Apple Daily, a Hong Kong newspaper with a leading voice in the democracy movement. Its closure coincided

with the first anniversary of Hong Kong's National Security Law. After founder Jimmy Lai was arrested and sentenced to 20 months in prison back in the summer of 2020, the closure



Blow to press freedom: The Hong Kong newspaper Apple Daily, one of the most important voices of the democracy movement, appeared for the last time in summer 2021 due to political pressure.

Source: © Tyrone Siu, Reuters.

According to its own figures, it sold one million copies instead of the usual 70,000.

At the same time, China is heavily investing in foreign media, working full steam to expand its role in the global media ecosystem and develop the country's ability to control narratives. This is backed by the global presence of Chinese media through foreign state broadcasters and the foreign-language TV station CGTN, along with a Chinese campaign that above all seeks to contrast “negative Western coverage” of China's global engagement with positive coverage.<sup>7</sup> African countries play a key role in this respect. China has many economic interests on the continent, while also enjoying more favourable public opinion in Africa than elsewhere. The leadership also maintains friendly relations with many African nations and their political elites, making the continent fertile ground for China to experiment with foreign policy tools, including media cooperation.<sup>8</sup>

### **A deterioration of the situation can also be attributed to economic reasons.**

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Another instrument is training, which imparts journalistic expertise in line with the Chinese concept of reporting, which is tantamount to propaganda. In this way, Xi Jinping seeks to not only control the narrative inside and outside China but also to use this expansion to establish China's own norms and standards. The triad of censorship, intimidation, and control of the narrative is what makes the Chinese model so dangerous. Overall, a disparity prevails between the elites: while Chinese elites are well-educated and well-versed in the languages and culture of

led to more journalists being imprisoned on charges of violating the National Security Law. It is little consolation that the paper had its largest-ever circulation on its last day of publication.

Western countries, very few people in Europe speak fluent Chinese or are familiar with its classic literature. It is, therefore, vital to engage with China in a more strategic way so as to counter its aggressive desire to control the narrative and shape opinion, and to stand up for facts, free societies, and media freedom.

Alongside political pressure, a deterioration of the global media situation can also be attributed to economic reasons. The pressure on newspapers, radio, and television is continually growing because of the inexorable rise of online media and social networks. Mainstream media are also struggling with dwindling trust – a trend that, fortunately, has been halted somewhat by the COVID-19 pandemic.

### **Light and Shadows: COVID-19 and its Repercussions for the Media Landscape**

As in many other areas of life, COVID-19 has left its mark on the global media landscape, making it far more difficult for journalists to exercise their function as watchdogs and providers of information. Recurring lockdowns restricted their freedom of movement and hence their ability to research stories. Using the smoke-screen of combating fake news, autocratic governments have attacked freedom of press, and certain political leaders have used the pandemic as an excuse to censor unfavourable reporting and arrest critics.

### **During the pandemic, a new awareness of the value of independent media has emerged.**

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Once again, China stands out in this respect. Chinese authorities have deployed a combination of low- and high-tech tools to not only manage the coronavirus outbreak but also to prevent internet users from sharing information from independent sources and challenging the official narrative. Freedom House attests that China's

regime is the world's worst abuser of internet freedom for the sixth year in a row. Tracing apps and digital health scores are another way of normalising the kind of digital authoritarianism that the Communist Party aspires to.<sup>9</sup>

On this side of the second Chinese wall, the Great Firewall, internet freedom is also threatened by censorship and surveillance. Facebook, Instagram, et al. have long been major sources of information – sources that are forcibly dried up from time to time. Many countries have introduced restrictive online laws under the guise of combating fake news. Governments in at least 28 countries have censored websites and social media posts to suppress unfavourable health statistics, allegations of corruption, and other COVID-19-related content. Others have quite literally pulled the plug – in more than 13 countries, including India, the world's largest democracy, total internet shutdowns lasting for days at a time were no rarity in 2020.<sup>10</sup>

On the other hand, the media have gained trust and relevance during the pandemic. A new awareness of the value of independent media has emerged. For example, Africa has moved away from the freebie mentality. Although a few years ago, people were convinced that paywalls would never work in Africa, the pandemic has demonstrated that readers are prepared to pay for quality journalism. The winners to emerge from the crisis have been young media outlets that were already pursuing a clear digital strategy and no longer dependent on advertising for their survival.

The scientification of the public discourse that has accompanied the pandemic seems to strengthen fact-based discussions – a welcome development after years of media bashing à la Donald Trump. In Asia, for example, small,

Ambivalent influence: The COVID-19 pandemic → has been misused by some governments for censorship in the guise of health protection. At the same time, demand for reliable information has grown.

Source: © Ann Wang, Reuters.



independent media companies providing reliable information have gained momentum. In Sub-Saharan Africa, innovative formats have emerged that also enhance the quality of journalism. Although pseudo journalism and fake news are primarily disseminated via the internet, many regions and countries – not least in Germany – have seen a growing demand for fact-based, reliable reporting, which affords an opportunity for quality-oriented media to regain the trust of its audience.

This has also resulted in an increase in digital subscriptions. In general, as in so many other areas, the COVID-19 pandemic has led the media to push ahead with its digital transformation. Latin America is the only region that (still) lags behind, mainly because of its poorer internet access.<sup>11</sup>

Economic difficulties faced by most of the world's media companies have been exacerbated by the pandemic, albeit with certain differences. In Eastern Europe, for example, pro-government media companies continue to benefit from state-sponsored advertising, while other media outlets have suffered even greater losses. In many parts of the world, media outlets have expanded their online presence to partially compensate for these losses by introducing additional paywalls. Small, independent media companies in Asia and Central Eastern Europe have managed to increase their revenues through growing subscriber numbers. Nevertheless, journalists' livelihoods are threatened by pay cuts or a complete loss of wages. In Africa, thousands of journalists have lost their income. Buyouts of ailing media companies by Chinese investors are increasing as more and more traditional media companies declare bankruptcy.

To sum up, the media faces a broad array of difficulties. Independent reporting becomes even more challenging under these adverse conditions. Against this background, and as part of its worldwide support for democracy, the Konrad-Adenauer-Stiftung places particular emphasis on supporting a free and independent press as a prerequisite for opinion formation in a democratic

system. Through our three media programmes in Asia (based in Singapore), Sub-Saharan Africa (based in Johannesburg) and Southeast Europe (based in Sofia), we are working to strengthen independent and diverse media landscapes. Our aim is to help the media develop professional journalistic standards, provide young journalists with the best possible support as they progress in their profession, and advocate and promote the importance of the media as an integral part of democratic and free societies. Unfortunately, much remains to be done.

*- translated from German -*

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**Katharina Naumann** is Desk Officer for International Media Programmes at the Konrad-Adenauer-Stiftung.

- 1 Lidberg, Johan 2017: 'A government without newspapers': why everyone should care about the cuts at Fairfax, *The Conversation*, 4 May 2017, in: <https://bit.ly/2XnZJhK> [17 Sep 2021].
- 2 The categories in the World Press Freedom Index are as follows: "Very Bad Situation", "Bad Situation", "Problematic Situation", "Fairly Good Situation", and "Good Situation". Reporters Without Borders 2021: *The World Press Freedom Index*, in: <https://rsf.org/en/world-press-freedom-index> [8 Aug 2021].
- 3 Reporters Without Borders 2021: *World Press Freedom Index*, in: <https://rsf.org/en/ranking> [29 Jul 2021].
- 4 European Commission 2020: *Rule of Law 2020. Country Reports*, 30 Sep 2020, in: <https://bit.ly/2WAehdK> [11 Aug 2021].
- 5 Reporters Without Borders 2021: *Press Freedom Barometer 2021*, in: <https://rsf.org/en/barometer> [8 Aug 2021].
- 6 Article 32 of the Arab Charter on Human Rights reads in English translation: "1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries. 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals." Human Rights Library, University of Minnesota: *League of Arab States, Arab Charter on Human Rights*, May 22, 2004, reprinted in *12 Int'l Hum. Rts. Rep.* 893 (2005), entered into force March 15, 2008, in: <https://bit.ly/3t5qi75> [12 Aug 2021].
- 7 Grabitz, Christoph et al. 2020: *Chinas Storytelling, Analysen und Argumente*, Konrad-Adenauer-Stiftung, 28 Nov 2020, in: <https://bit.ly/3mP27ca> [8 Aug 2021].
- 8 Madrid-Morales, Dani / Börekci, Deniz / Löffler, Dieter / Birkevich, Anna 2021: *It is about their story. How China, Turkey and Russia influence the media in Africa*, Konrad-Adenauer-Stiftung, 27 Jan 2021, in: <https://bit.ly/3zGcjNO> [30 Aug 2021].
- 9 Shahbaz, Adrian / Funk, Allie 2020: *Freedom on the Net 2020: The Pandemic's Digital Shadow*, Freedom House, 14 Oct 2020, in: <https://bit.ly/3kHi3KG> [11 Aug 2021].
- 10 Ibid.
- 11 Lu, Shen et al. 2021: *Catalyst or Destabiliser? COVID-19 and Its Impact on the Media Landscape Worldwide*, Konrad-Adenauer-Stiftung, 1 Mar 2021, in: <https://bit.ly/3C234Cm> [22 Jul 2021].



Source: © Jim Bourg, Reuters.

[Media and Freedom of Expression](#)

# On Public Discourse in the Digital Sphere

Supporting Freedom of Expression through a  
Graduated Approach to Regulating Disinformation

Tobias Schmid

Disinformation – we have all been in contact with it at one time or another, even if we were not aware of it. A forsa survey for Safer Internet Day 2021<sup>1</sup> reveals that 83 per cent of young internet users aged 14 to 24 have encountered fake news on social media. But what do we mean when we talk about disinformation and fake news? How much can be tolerated by a democracy before it is described as unstable? And at what point does regulation become necessary to protect this democracy and its vital process of opinion formation?

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## Background

These are just some of the questions that arise when considering freedom of expression and disinformation. The issue becomes even more complex when one considers how, in today's digital age, people can disseminate information across borders and share it millions of times – including anonymously.

But first things first: individual freedom of expression has to be at the heart of all considerations about creating and protecting a functioning process of opinion formation. Even before the start of the COVID-19 pandemic and the key role of digital platforms and social media in the run-up to the last US presidential election, there was an ongoing discussion about the various phenomena encompassed by the collective term “disinformation” and potential responses to them. And yet it is precisely in the run-up to elections that democratic societies rely more than ever on functioning, fair, and equal processes of opinion formation.

For many years now, the processes of discussion and argument that elections require have been gradually shifting to the digital sphere – and hence to spaces that are supported by technology. Almost inevitably, this has been accompanied by new methods of communication and by the technical means to disseminate and manipulate information, which in turn leads to the question of responsibilities.

## The Role of Platforms

The question of who is responsible for the content of online platforms is not a simple one. First of all, there is the content creator, as the party who is disseminating potentially illegal or false information or using manipulative techniques. However, the platform operators also come into the equation because they provide the infrastructure that gives everyone such a wide audience. They are also often easier to identify and address.

The operators of social media platforms are the main beneficiaries of the way public opinion formation has shifted online. As a result, they have a strong interest in the outcome of the discussions about changing responsibilities. The issue of their responsibility for the opinion formation process is not a new one, and a raft of regulations have been introduced at both EU and national levels. Partly in response to this, many operators have included basic strategies to tackle hate speech and various forms of disinformation in their house rules. However, this has not yet been sufficient to eliminate manipulation because of the lack of enforcement on the part of the platforms and the lack of a basic regulatory structure for such enforcement.

Meeting these new responsibilities requires coordination between the platforms' rules and the statutory regulations. But where do we stand on this?

## Disinformation as a European Issue

Like all regulatory discussions relating to occurrences in the digital and hence cross-border space, the fight against disinformation cannot be won solely at the national level. However, we should bear in mind that the EU has only very limited competences in this respect due to the sovereignty of member states over issues relating to culture and media.

### The platform operators will always protect their business model.

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Back in 2018, the European Commission established a tougher process for tackling the phenomenon of disinformation with its Action Plan against Disinformation.<sup>2</sup> This was in the wake of a commitment by the major platforms to develop a self-regulatory framework for the fight against disinformation – the Code of Practice on Disinformation.<sup>3</sup> Among other things, the Code covers their obligations regarding transparency about political advertising, the deletion of fake accounts, and the demonetisation of those which spread disinformation. The Code was initially signed by Facebook, Google, Twitter, and Mozilla, along with sections of the advertising industry. Microsoft and TikTok followed suit in 2019 and 2020. The self-regulation contained in the Code represents an initial step. It shows that platforms are aware of their changing responsibilities and are willing to accept them to a certain extent. However, this is only a first step towards adequately addressing the problem because voluntary commitments have two major drawbacks. First, like any commercial enterprise, the platform operators will always protect their business model. And the rules tend to be so vaguely formulated (and inevitably drawn up from the company's perspective) that implementation can vary widely from platform to platform. Secondly, the Code does not provide for sanctions. Of course, it is possible to check compliance against their

voluntary commitments, but a sound and meaningful assessment of implementation requires a reliable data set. As has already been shown by the assessment of the implementation of the Code conducted by the European Regulators Group for Audiovisual Media Services (ERGA)<sup>4</sup> in 2020, this data is not currently available.<sup>5</sup> The information that is currently provided by the platforms via the Self-Assessment Reports (SAR) has been previously filtered and organised by the platforms, so it is very difficult to make valid statements about the status of the implementation. However, other than verification, it is currently not possible to shift the burden of proof or even to sanction non-compliance.

The European Commission is now taking further action on a number of issues.<sup>6</sup> This includes guidelines<sup>7</sup> on how the platforms can revise and strengthen the Code and a law<sup>8</sup> to improve transparency in sponsored, political advertising. The widely discussed proposal for a Digital Services Act,<sup>9</sup> which essentially deals with enforcing the rules on illegal content on the internet, also enshrines in law certain key elements of the Code relating to the transparency of advertising. In future, platforms will be obliged to carry out risk assessments and to take appropriate countermeasures relating to any systemic risk to freedom of expression that may arise from the operation or use of their services or from the deliberate technical manipulation of their infrastructure. It remains to be seen whether this somewhat piecemeal approach will work – but it is unlikely to be enough.

### Disinformation as a National Issue – Information against Disinformation

The first steps in the fight against disinformation have also been taken at national level. Germany's new Interstate Media Treaty (*Medienstaatsvertrag*),<sup>10</sup> which entered into force in November 2020, contains a new supervisory structure regarding compliance with journalistic principles in certain telemedia. In addition to the German Press Council and, in future, possibly other institutions of voluntary self-regulation, the state media authorities are now also





Light into the darkness: To combat disinformation, the European Commission launched an action plan in 2018.  
Source: © Johanna Geron, Reuters.

charged with monitoring and enforcing compliance with these principles.

The dispatch of the first letters of advice has already led to tangible results. This less formal approach has increased awareness of diligent journalism, and some telemedia providers who were contacted in this way have already made changes to their offerings. Some of those who have not done so have introduced oversight procedures. These are merely first steps, and a lengthy road lies ahead – persistence and perseverance are required to produce widespread, visible results. But the state media authorities have demonstrated these qualities more than once.

By monitoring compliance with journalistic due diligence, the media authorities are addressing

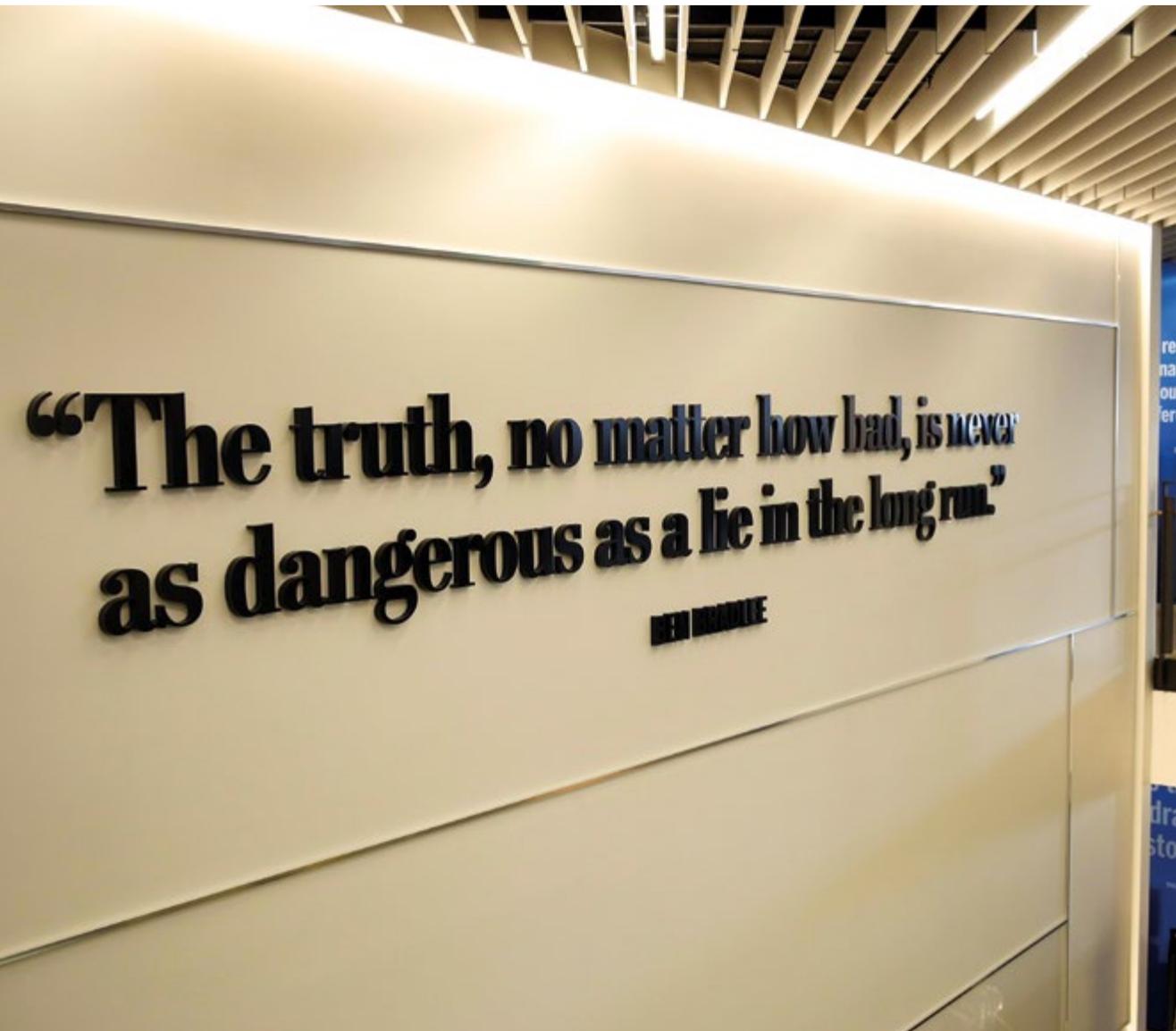
an issue that lies at the heart of opinion formation. Anyone who takes advantage of people's trust in journalism and designs their offering in a way that inspires confidence also has to accept the responsibility that this entails and to work in a professional manner. Naming sources, the correct handling of citations, and meticulous research all increase the reliability of the information service and – in addition to the direct impact of sanctions for violations – provide a counterweight, because information is one of the best ways of countering disinformation.

It is also in line with the idea of easy discoverability, something that is reflected in the Interstate Media Treaty.<sup>11</sup> As of September 2021, all media offerings that make a significant contribution to shaping opinions in Germany must

be provided on user interfaces with easy discoverability. The criteria for this include a high proportion of news reporting, regional and local information, and the predominant use of trained, professional journalists in producing programme content. If users can find these kinds of information services quickly and easily, it makes it much more difficult for deliberate disinformation to get through. In order to maximise the effect of using information to combat disinformation, it is vital to improve and promote media literacy in society.

### **Tools against Disinformation**

But beyond the approaches taken so far, what more can be done to mitigate the threat of disinformation while protecting freedom of expression and the opinion formation process? The change will certainly not be completed with the previously described expansion or shift of this process to the digital sphere. However, the current status of the discussions shows that the debate itself always lags behind tangible developments. This makes it all the more important



to counter disinformation, not only in its current form, but also to create a regulatory environment that contains abstract mechanisms.

Any such approach must be based on treating the expression of opinions separately from their content. It is also important for all posts to remain in the public discourse for as long as possible. Freedom of expression is a precious asset in democratic societies. Everything possible should be done to support but not interfere with the opinion formation process. As a result, many

unpleasant things can and must be tolerated. Steps taken to protect freedom of expression and opinion formation always presuppose an interplay between projects promoting media literacy and legal frameworks. Regulation should only be introduced to support the opinion formation process when it is unable to deal with the factors that affect it.

One example of such support is transparency rules. They can be established and monitored independently of the content of an expressed opinion. Transparency can eliminate information deficits without changing the content itself. This can also make certain behaviours – such as covertly buying followers or likes – less attractive. A post that is displayed frequently but bears a clear indication that its reach has been artificially enhanced has much less potential for manipulation.

### **Interventions that prevent certain forms of expression must remain a last resort.**

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However, transparency also provides a basis for the discussion process. If all parties to a discussion have an equal amount of information, this enables them to classify a post correctly. For example, this might be the case with people who exert greater influence on public opinion because of their prominent position in society. Once this fact is made transparent, it is much easier to classify an expression of opinion. This is an advantage that should be available to everyone. But this does not mean an end to anonymous or pseudonymous online communication, as people who communicate in this way are unable to benefit from their social status.

Quote in the Washington Post's newsroom: "The truth, no matter how bad, is never as dangerous as a lie in the long run." [Source: © Gary Cameron, Reuters.](#)



Due diligence obligations are another instrument for combating disinformation. They already apply to broadcasting and journalistically designed tele-media in the form of the obligation to observe journalistic principles – as outlined above – and are monitored by state media authorities and self-regulatory bodies, such as the German Press Council. Due diligence obligations only indirectly target the outcome of the sourcing, aggregation, and presentation of information and take into account the underlying craft in the production of news and opinion. Akin to transparency rules, they should, therefore, be regarded as content neutral. The instrument of due diligence can be handled flexibly and proportionately in terms of both the scope of its application and the parties that it addresses in the opinion formation process.

Interventions that prevent certain forms of expression must remain a last resort. Prohibition can only be considered if the aforementioned obligations prove insufficient. For example, in the event that misuse of the platforms' technical infrastructure means a post is given a prominence that is not reflected in the public debate and thus only serves to distort the formation of public opinion.

Monitoring of future regulations in this area should also draw on ERGA's experience in its above-mentioned assessment of the Code. The aforementioned lack of access to information, which would make it possible to assess the Code more effectively, could also be remedied by shifting the burden of proof. When regulators identify systemic failures, they would report them to the platform operator, who would then be required to prove that no breach has occurred. This would solve a structural problem and allow operators and regulators to reduce their personnel costs. This is because it is difficult for the platforms to judge what data is necessary for the regulators to conduct a full assessment. However, the regulators' lack of knowledge about company structures means they cannot define which precise data they need to do their work. In addition to these instruments, ERGA<sup>12</sup> calls for the introduction of a regular review of the implementation of the Code and the possibility

for the media regulators or for ERGA to issue a formal public reprimand to ensure they can point out deficits as appropriate.

## A Graduated Regulatory Approach

Overall, the aforementioned instruments and the classification of various phenomena under the heading of disinformation should make it possible to take a content-neutral view and adopt an appropriate, proportionate, and graduated response. It is also important to stress that this also avoids the difficulty of evaluating whether statements are true or false, something that is highly subjective. On the basis that the right to freedom of expression protects any statement as long as it does not cross the line to become a punishable offence, these subjective standards must be disregarded in any objective regulation. The graduated regulatory approach involves measures that affect both content creators and communication platforms. In this way, it fosters an appropriate distribution of responsibilities between these two key players in the communication and opinion formation process and provides a framework for social discourse under these – no longer particularly new – conditions.

*– translated from German –*

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## Disinformation – Categories, Actors, and Counterstrategies

### Daphne Wolter

Disinformation often has a political background and aims to manipulate public debate or damage the reputation of a person or institution. Especially actors from authoritarian states use targeted campaigns in an attempt to exert political influence, undermine democratic debate, and increase social polarisation. Authoritarian regimes also seem to benefit from the digital revolution by using their citizens' data as a way of controlling and manipulating them. This is why the laws relating to human rights, copyright, and data privacy that apply in the analogue world also have to be constantly defended in the digital sphere.

This systemic rivalry is particularly obvious when key elections are being held and targeted disinformation campaigns are used in an attempt to influence public opinion. Germany and other EU Member States have a duty to protect their open democracies from such influence. Therefore, in addition to existing legislative initiatives and task forces,<sup>13</sup> it is important to educate the public on this issue and to build resilience. For instance, it is only by understanding how messaging works on such platforms that we are better equipped to identify disinformation and protect ourselves from it. Using regulation to directly combat disinformation is a difficult balancing act: a “law against disinformation” drafted in Germany to protect freedom of expression could be “repurposed” in authoritarian states to suppress and restrict freedom of expression by pushing their own narratives rather than true facts and thereby manipulating the public with fake news. In this respect, liberal democracies should ensure that potential laws are written so transparently and unambiguously that authoritarian regimes cannot interpret them in such a way that plurality of opinion and the media could be severely impaired. This also applies in the event that these democracies themselves experience unfavourable domestic power shifts.

### What Are the Different Types of Manipulative Disinformation?

**Fake news** is false or misleading information that is circulated with the intention of harming a person, institution, or organisation. Rumours and false reports are supported by fake “evidence” and combined into one post. Corresponding posts from other users then flow into the supposed “chain of evidence”. This can result in entire fake plots. Images are also often taken out of context in order to deliberately change a story.

**Deepfakes** are a subcategory of fake news that use the persuasive power of audiovisual media to achieve their manipulative effect. These are electronically modified moving images or photographs that alter or simulate people and events.

**Social bots** are machine-controlled and programmed profiles on social media. They pretend to be normal human users, so they usually have a photo and a made-up name. Their aim is to influence social interaction and opinion formation on social networks by spreading fake news.

**Trolls** are human users. They specifically try to disrupt or interrupt discussions on social media. Trolls try to polarise, provoke, and vilify other users by calling them trolls.

## Who Are the Perpetrators and What Are the Motives?

Disinformation often has a **political background**. It is organised directly by **state or non-state actors**. In countries without stable democratic conditions, for example, content can also be disseminated and thus amplified by the state-controlled media.

Other motivations can be entertainment (in the negative sense) and **attention-seeking**. Deliberate provocations designed to annoy and challenge have, unfortunately, long been a hallmark of the online culture. In most cases, however, these campaigns also have a substantive political goal; the vehicle for this – often via memes or deepfakes – is **entertainment**.

Finally, **advertising** can also be a financial motive behind disinformation campaigns. These campaigns aim to generate as much traffic as possible. They manipulate content to get a higher click-through rate for their adverts. Politically emotive topics are often used as clickbait.

## What Increases the Effectiveness of Disinformation?

Disinformation campaigns are run by different groups of perpetrators and have various motivations. But the breeding ground is always the same:

- The growing importance of social media as a source of news
- A polarised political landscape
- Lack of trust in traditional media

Emotive topics have strong potential to go viral. In order to appear as genuine as possible, fake sources are quoted and media logos can sometimes be misused.

## What Can Civil Society Do about it?

Digital disinformation is an ongoing threat. It will also evolve in line with technological advances.

**News, research, and information literacy** must be expanded in every age group. Through systematic clarification, state institutions, authorities, and above all journalists in their reporting can contribute to highlighting and preventing the problem of disinformation.

**Personal responsibility** – every single person can take responsibility for preventing the spread of fake news. If the source of a news item is unknown or cannot be traced, there is a good chance that it is fake news. Linguistic inaccuracies are also often a hallmark of disinformation.

What gives us hope? There is a growing demand for **quality journalism** among internet users. This offers a great opportunity for newspapers and broadcasters to also provide reliable information on the web. This would require the legal possibilities relating to discoverability to be adapted accordingly.

*- translated from German -*

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- 1 Klicksafe 2021: forsa survey on Safer Internet Day 2021, in: <https://bit.ly/3BXGR8X> [30 Jul 2021]
- 2 European Commission 2019: Action Plan against Disinformation: Progress Report, Jun 2019, in: <https://bit.ly/3il16Wx> [3 Aug 2021].
- 3 European Commission 2021: Shaping Europe's digital future: Code of Practice on Disinformation, 13 Jul 2021, in: <https://bit.ly/3BVhjte> [30 Jul 2021].
- 4 European Regulators Group for Audiovisual Media Services (ERGA): <https://erga-online.eu> [3 Aug 2021].
- 5 ERGA 2019: ERGA Report on Disinformation: Assessment of the Implementation of the Code of Practice, in: <https://bit.ly/3iejJLI> [30 Jul 2021].
- 6 European Commission 2020: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Democracy Action Plan, 3 Dec 2020, in <https://bit.ly/3z00OgI> [30 Jul 2021].
- 7 European Commission 2021, n. 3.
- 8 European Commission 2020, n. 6.
- 9 European Commission: The Digital Service Act: ensuring a safe and accountable online environment, 15 Dec 2020, in: <https://bit.ly/378T2lj> [30 Jul 2021].
- 10 Die Medienanstalten 2020: Interstate Media Treaty (MStV), 7 Nov 2020, in: <https://bit.ly/3j2nmEO> [3 Aug 2021].
- 11 Ibid., paragraph 84 MStV.
- 12 ERGA 2021: ERGA position on the next instalment of the Code of Practice on Disinformation, May 2021, in: <https://bit.ly/3zP6Eyq> [30 Jul 2021].
- 13 EUvsDISINFO: <https://euvsdisinfo.eu> [3 Aug 2021].



[Media and Freedom of Expression](#)

# Greyscales

Ukraine's Challenging Task in Combatting Disinformation  
while Protecting Freedom of Expression

Toni Michel

After years of hybrid warfare, the Kyiv government is cracking down on pro-Russian media, whose owners it accuses of supporting the “People’s Republics” in the east of the country. But its decision-making process is raising questions. How can Ukraine effectively defend itself against disinformation campaigns without setting dangerous precedents or disproportionately restricting freedom of expression?

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Ukraine has found itself under heavy pressure for many years after the Maidan Revolution, the illegal annexation of Crimea, and the war in eastern Ukraine that was to a large extent instigated by Russia. The international community was reminded of this in April 2021, when Russia temporarily massed more than 80,000 troops in Crimea and along its almost 2,300 kilometres-long border with Ukraine.<sup>2</sup> Belarusian units were also mobilised on Ukraine’s northern border, just like a Russian military task force in Transnistria, a breakaway statelet from Moldova, where these troops officially serve as peacekeepers.<sup>3</sup> As a result, Ukraine found itself caught in a pincer grip – a situation that has changed little, despite the subsequent withdrawal of some Russian troops.

Far removed from the international headlines, however, reports about new victims of the conflict have been a steady monthly or even weekly occurrence in Ukraine itself. Close to 3,400 civilians and over 4,400 Ukrainian military personnel have been killed since 2014. Moreover, the country has to bear the economic costs of the military operation in Donbas, amounting to some seven million US dollars a day.<sup>4</sup>

Ukraine is also the target of coordinated disinformation campaigns, which range from biased reporting to deliberate exaggeration or even outright fake news.<sup>5</sup> However, Russian state media are by far not the only actors involved here. Ukrainian media outlets and influential people with huge social media followings are also actively involved in deepening the strong polarisation that already exists in the country

via insinuation, exaggeration, and fake news.<sup>6</sup> Some of them also parrot Russian narratives about the conflict in the east of the country, claiming, for example, that the West is using Ukraine as a staging ground for invading Russia, or that the Kyiv government is dominated by fascists. It is also often implied that the annexation of Crimea and Moscow’s intervention in Donbas in 2014 prevented a massacre of the Russian-speaking population by the Ukrainian army (which, of course, also includes large numbers of Russian-speaking Ukrainians).<sup>7</sup>

As part of this narrative, in April 2021, the word went round that a Ukrainian combat drone had killed a young boy in separatist-controlled territory in Donbas. Civil society fact-checking organisations soon ascertained that the events took place outside the direct combat zone and far beyond the range of Ukrainian drones. Witnesses at the scene reported an accident after a child found explosives stored by a local collector. A photo supposedly showing the boy had already appeared in 2014 to illustrate alleged civilian victims of the Ukrainian army. Other narratives claim that the US army is conducting experiments on the Ukrainian population in secret laboratories, and that men like George Soros and Bill Gates are secretly controlling the country.<sup>8</sup>

All this has changed the Ukrainian media space, which traditionally encompasses a broad spectrum of opinion with strong, independent research platforms, albeit also subject to oligarchic influence, especially in the TV market.<sup>9</sup> To some extent, the media has seen the emergence of parallel societies with fundamentally different

views on key political, social and economic issues. However, rifts in Ukrainian society are nothing new. Some explain this by Ukraine's supposed division into pro-Russian and pro-Western camps. And certainly, such a split is evident in the structures of political parties, the media, and discourse. This is particularly true with regard to the country's foreign policy orientation and the historical assessment of individuals and movements involved in the independence struggle of the 1920s to 1950s. This has led to a harsh tone prevailing between these two roughly drawn camps, with people generally talking over rather than to each other.<sup>10</sup>

### **Much less attention is paid to the group of people who do not clearly fall into either the pro-Russian or pro-Western camp.**

However, the media and academia are paying much less attention to the not inconsiderable group of people who do not clearly fall into one of these two camps. This is especially the case in central Ukraine, in the rough triangle formed between Kyiv and Kryvyi Rih in the south and Poltava a little further northeast. It is also echoed in nationwide polls, in which around 35 per cent regularly say they do not actively favour closer ties with either Russia or the EU.<sup>11</sup> Accordingly, many of them switch back and forth between different TV channels with different orientations, and just over half of the country's population says the internet is now their main source of information.<sup>12</sup> Unfortunately, this does not translate into true media literacy. Many people tend to retreat into apolitical and demobilising cynicism, while large numbers of Ukrainians also follow dubious online sources.<sup>13</sup>

#### **Different Approaches to Combatting Disinformation**

In this complex situation, Ukraine's government and the country's extremely active civil society

have responded in a variety of ways to the challenges of the spread of disinformation in the information space. NGOs such as StopFake<sup>14</sup> and the Academy of Ukrainian Press have launched fact-checking initiatives in cooperation with international actors, along with a range of training and educational activities that aim to improve media literacy.<sup>15</sup> However, the problem is that these initiatives tend to be piecemeal rather than part of a holistic, coordinated approach and are often limited to younger target groups in larger cities. Meanwhile, oligarchic power structures in the media industry remain untouched – the TV market, which remains very important, still seriously lacks diversity in terms of independent journalism.<sup>16</sup>

The Ukrainian government is also pursuing a few "soft" approaches, notably through the establishment of a Russian-language, state-funded TV station for people in the non-government-controlled areas.<sup>17</sup> There are also plans to provide better equipment for the public broadcaster Suspilne, a serious and credible organisation that has been massively underfunded for years.<sup>18</sup> In March 2021, President Zelensky also announced the establishment of two public fact-checking centres to highlight disinformation and improve Ukrainians' media literacy.<sup>19</sup> However, it remains to be seen whether these institutions will be adequately resourced, and to which extent they will be accepted as credible sources.

Since 2014, however, the government has mostly pursued tougher ways when it came to fighting disinformation, which has also raised questions about freedom of expression and press freedom. Its actions include a ban on the distribution of 25 books published in Russia on the basis of historical narratives classified as propagandistic, as well as entry bans on Russian and certain international journalists whose activities allegedly undermine Ukraine's sovereignty and territorial integrity.<sup>20</sup> Since 2017, numerous Russian news sites and social media channels have also been inaccessible in Ukraine. This list was extended further in 2021.<sup>21</sup> More controversy arose in late 2019 and early 2020 with two ultimately unsuccessful bills drafted by the governing parliamentary majority and the Ministry of Culture, which would have



granted government agencies broad unilateral powers to identify and sanction fake news and narratives against Ukrainian territorial integrity.<sup>22</sup>

### **A Surprise Move by the President**

A major turning point occurred on 2 February 2021 when President Volodymyr Zelensky, elected in 2019, issued a decree revoking the broadcasting licences of three pro-Russian TV stations – 112, ZIK and NewsOne – for five years,

based on a 2014 sanctions law and a resolution by the National Security and Defence Council. By the next day, these three channels had disappeared from cable TV.<sup>23</sup> Together, they had previously occupied a 15 to 20 per cent share of the Ukrainian TV audience.<sup>24</sup> Shortly afterwards, the government also sought to have the broadcasters blocked on YouTube, but these efforts were ultimately unsuccessful, and the stations are still airing together online as “First Independent” to some 135,000 subscribers.<sup>25</sup>



Fight for territorial integrity: President Volodymyr Zelensky visits soldiers in eastern Ukraine. Since 2014, nearly 3,400 civilians and more than 4,400 Ukrainian military personnel have been killed in the conflict. [Source: © Reuters.](#)

## The government's actions have certainly provided fuel for its critics.

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The government justified its action against these three channels, accusing their owner, Taras Kozak, of funding terrorism. According to Ukrainian media reports, Kozak engages in coal trade with the “People’s Republics” in Donetsk and Luhansk.<sup>26</sup> The issue gained an explicitly political dimension due to the fact that Kozak is widely seen as a front man for the openly pro-Russian politician and Putin confidant Viktor Medvedchuk. Zelensky is competing for votes with Medvedchuk and his Opposition Platform – For Life party in southern and eastern Ukraine, as recently demonstrated in the local elections in October 2020.<sup>27</sup> Later, in May 2021, Medvedchuk was charged with treason and initially placed under house arrest.<sup>28</sup>

Shortly thereafter, the President and the Security and Defence Council imposed sanctions on the pro-Russian YouTube blogger Anatoliy Shariy and blocked the online newspaper Strana.ua, which is also regarded as pro-Russian. Their participation in the information war against Ukraine has been sufficiently proven in the eyes of the security services.<sup>29</sup> However, all channels and sites can still be reached, either directly on YouTube or via digital detours.

### Mixed Reactions from Civil Society

President Zelensky’s revocation of the licences of these three channels was greeted with a mixed reception in Ukraine. Some commentators agreed that the three channels repeatedly justified the Russian annexation of Crimea and blamed Ukraine for the war in the east of the country. In the eyes of these commentators, all of this is part of Russia’s disinformation campaigns, which have been spreading demonstrably distorted, biased, or completely fabricated reports about alleged atrocities by the Ukrainian government since 2014. Therefore, they felt that the government was in the right given the importance of defending Ukraine’s statehood.<sup>30</sup>

However, other observers argued strongly against the move, pointing out that the entire process was not reviewed by a court in advance and took place almost exclusively within the executive branch, which is dominated by the president.<sup>31</sup> And although the legal basis for Zelensky’s decision dates back to 2014, this is the first time sanctions have actually been used against domestic media – a serious precedent that will now be available to future Ukrainian presidents as a more or less legitimate tool. In this context, the brief and very general explanatory memorandum to the decree was also criticised for failing to formulate clear standards for such consequential government action.<sup>32</sup>

And, ultimately, an alternative would have been available, that would have enjoyed greater procedural legitimacy: the National Council of Television and Radio Broadcasting, which is appointed equally by the president and parliament, could have applied to the courts for revoking broadcasting licences on the grounds of incitement to racial hatred and hate speech. The Council already attempted to use this method against the re-broadcasting of Russian TV shows in 2014. Furthermore, in August 2021 it requested cancelling the licence of the Ukrainian channel Nash, which is considered to be pro-Russian.<sup>33</sup> However, in view of the clear parliamentary majority enjoyed by Zelensky’s party and the ongoing problems with judicial independence, it is also unlikely that this path would have been able to address the mentioned concerns.

In response to the shutdown of the TV stations, the pro-Russian camp immediately accused the president of trying to silence unwelcome voices of political rivals.<sup>34</sup> Such accusations are, of course, no surprise, but Zelensky also has to ask himself whether, in the eyes of more or less pro-Russian Ukrainians, his actions have not actively served the Kremlin’s narrative that seeks to portray Ukraine as a repressive state towards its Russian-speaking population. This narrative is and remains false – despite some controversy, for instance, around the language issue, it should not be forgotten that Article 10 of the Ukrainian

constitution explicitly protects the use of the Russian language.<sup>35</sup> Nevertheless, the government's actions have certainly provided fuel for its critics. In this light, it seems questionable whether the shutdown of the three pro-Russian TV channels is an effective defence against disinformation campaigns and propaganda while protecting freedom of speech and the press – and even whether it was politically wise.

### **A Question of Defending Democracy?**

It is worth pausing here for a moment. After all, such criticism is primarily based on liberal theories of discourse that assume a free and unhindered exchange of opinions in order to jointly formulate a solution in the interest of the common good. But hasn't history shown us that – in order to survive – liberal and democratic systems have to be able to recognise their enemies and ultimately fight back? Hasn't Zelensky's presidential decree sent a signal that Ukraine will actively resist the gradual undermining of its sovereignty, democracy, and statehood from within and without?

The answer is ambivalent: restrictions on freedom of expression and press freedom, even when they have the legitimate aim of combating disinformation and hate speech, take place within a larger context. And this is precisely what is important in society's response to government actions. Can a narrative suggesting that the state is suppressing dissent take root? Is a media ban flanked, for instance, with other measures that might be viewed as discriminatory? If so, this opens up a number of dangerous scenarios, including the radicalisation of sections of the population and the potential for political violence.<sup>36</sup> Or are such accusations of censorship unfounded because a government communicates its legitimate goals clearly and openly, involves social groups broadly and extensively, and chooses a transparent process involving independent oversight bodies when it comes to considering harsh measures such as curtailments of freedom of expression and press freedom? Lithuania provides an interesting example in this respect.

### **Can Lithuania Serve as a Model?**

Since 2014, the Lithuanian government has temporarily revoked the broadcasting licences of Russian TV stations on several occasions for, in the eyes of the regulators and courts, deliberately disseminating misinformation – particularly about the events surrounding the killing of 13 Lithuanian protesters by the Soviet army in January 1991 – and for hate speech, by rebroadcasting a programme from Russian state TV.<sup>37</sup> What is most important here is the procedure established within Lithuanian law for such a harsh state intervention.

**The broad involvement of civil society, independent institutions, and the judiciary severely hampers the possibility of politicised suppression of minority voices in Lithuania.**

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The country's chief media regulation authority is the Radio and Television Commission of Lithuania, which is accountable to parliament. It is independently financed by a small levy on the licence income of local broadcasters and consists of eleven members. Two are appointed by the president and three by parliament (one by the opposition) – so even with coordinated voting, the executive and legislative branches do not have a majority in the Commission. The Lithuanian Bishops' Conference, the Lithuanian Journalists' Association and Lithuanian Journalists' Union each appoint one additional member. Another three members are appointed by the Lithuanian Association of Artists.

If, on the basis of its own monitoring or a complaint, the Commission comes to the conclusion that a broadcaster is in breach of youth protection or hate speech rules, it can, following a prescribed process with clear deadlines, seek statements from all parties involved and file an application for temporary revocation of the broadcasting licence



Battle of narratives: Ukraine is the focus of disinformation campaigns. In February 2021, three TV channels with a pro-Russian orientation had their broadcasting licences revoked – not an uncontroversial measure. [Source: © Vasily Fedosenko, Reuters.](#)

with the Vilnius Regional Administrative Court. Appeals against the subsequent court decision can also be taken as high as the country's Supreme Administrative Court.<sup>38</sup> The broad involvement of civil society, independent institutions, and the judiciary severely hampers the possibility of politicised suppression of minority voices.

### **Impetus for Ukraine**

If Ukraine were to seek similar ways to better legitimise measures against disinformation campaigns, forcefully advancing judicial reform must be the first order of business – because credible procedures require actors that are demonstrably independent. After making good progress since 2014, reforms to Ukraine's legal system have recently begun to stall. The judiciary has to remove corrupt actors and free itself from political influence. Specific proposals on how to achieve this are already available.<sup>39</sup>

Already today, Ukraine's strong civil society with its myriad of specialised NGOs is able to flank an independent judicial review process. In this way, an inclusive procedure involving independent state and civil society actors could maximise its legitimising effect while simultaneously being an effective way of preventing political abuse.

At the same time, the society-wide context has to be considered when it comes to the legitimisation of government action. As mentioned above, governments should use proportionate means to attain objectives on the basis of a transparent and reasoned communication. In this vein, Ukraine could emphasise debate, compromise, and incentives when it comes to controversial issues within society. For example, pursuing the quite legitimate goal of promoting the use of the Ukrainian language could be achieved through free, widely available educational programmes coupled with incentives and rewards for completing such



courses – be it free trips within the country to promote nationwide exchange, vouchers for further trainings, or lotteries.

The government could also create social platforms to promote open discussions about controversial historical debates relating to the independence movement of the 1920s to the 1950s and its role in the Second World War, rather than formulating official politics of memory in this area.<sup>40</sup> All of this would allow Ukraine to complement its strengths – pluralism, freedom, and an active civil society – with legitimate defence mechanisms against disinformation campaigns, should this be necessary as a last resort.

With all of this in mind, it is worth considering once more the big picture of the challenges facing Ukraine. Compared to Germany and other EU member states, this is a poor and very polarised country with immature political institutions, still carrying a heavy legacy from the Soviet era. Add to this a volatile and at times dangerous foreign and domestic threat environment that leaves very little room for mistakes. Against this background, European governments and civil society should work more closely both with each other and with Ukraine in order to accompany the country along its path – with support wherever needed and constructive criticism whenever required. They should also remember that the question of how far to take the fight against disinformation in critical situations can suddenly catch up with the open societies of the West, despite a growing distance to the shocks of Brexit and the 2016 US presidential election. Crisis or no crisis – what is clear is that media literacy, inclusion, and a healthy culture of debate are and remain the first and best remedies against all forms of disinformation – and to avoid getting lost within greyscales.

*– translated from German –*

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- 1 Aljukov, Maksim 2019: Von Moskaus Gnaden. Genese und Geist der “Volksrepublik Donezk”, in: Osteuropa 69: 3–4, pp.123–131; von Twickel, Nikolaus 2019: The State of the Donbass: A Study of Eastern Ukraine’s Separatist-Held Areas, Understanding the EU’s Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia (3DCFTAs), 1 Mar 2019, pp.3–6, in: <https://bit.ly/3x5aaTI> [29 May 2021].
- 2 Dienstbier, Philipp / Wörmer, Nils 2021: Mehr als nur Säbelrasseln! Der russische Aufmarsch an der Grenze zur Ukraine, Die Politische Meinung, Konrad-Adenauer-Stiftung, 10 May 2021, in: <https://bit.ly/36Zjw8T> [10 Jul 2021].
- 3 The Warsaw Institute 2021: A Stab in Ukraine’s Back? Russian Exercises in Breakaway Transnistria, Russia Monitor, 9 Apr 2021, in: <https://bit.ly/3eZHSnQ> [10 Jul 2021].
- 4 United Nations 2021: Report on the Human Rights Situation in Ukraine, 15 Feb 2021, p.7, in: <https://bit.ly/3yam2Fk> [18 Jul 2021]; Laschtschenko, Oleksandr 2018: The Price of War in Donbas for Ukraine and Russia (Ціна війни на Донбасі для України і Росії), Radio Swoboda, 6 Mar 2018, in: <https://bit.ly/2TzbNLU> [10 Jul 2021]; Radio Swoboda 2021: In 2020, 50 Ukrainian soldiers were killed in action in Donbas – Defence Ministry (У 2020 році в ході бойових дій на Донбасі загинули 50 військових ЗСУ – дані Міноборони), 15 Jan 2021, in: <https://bit.ly/3iQfKE5> [10 Jul 2021].
- 5 Sokol, Sam 2019: Russian Disinformation Distorted Reality in Ukraine. Americans Should Take Note, Foreign Policy, 2 Aug 2019, in: <https://bit.ly/3kYS4Qz> [29 May 2021].
- 6 Bratuschtschak, Oleksiy / Romanjuk, Oksana 2020: A Nuclear Strike and Magic. Fakes and Manipulations are flourishing in the Ukrainian Media – Institute of Mass Information (Ядерний удар і магія. Фейки та маніпуляції процвітають в українських медіа, Інститут масової інформації), 1 Oct 2020, in: <https://bit.ly/3VGZ3DR> [29 May 2021]; Schtschur, Marija 2020: The Kremlin’s Propagandists Use Ukrainian Media for their Fight Against Ukraine – Experts (Пропагандисти Кремля використовують українські ЗМІ у боротьбі з Україною – експерти), Radio Swoboda 19 Dec 2020, in: <https://bit.ly/3ryuQm8> [29 May 2021].
- 7 Poptsova, Galina 2020: Portnov vs. the Maidan. Who is Discrediting the Revolution of Dignity and Why (Портнов проти Майдану. Хто й навіщо дискредитує Революцію гідності), Detector Media, 19 Feb 2020, in: <https://bit.ly/3kWBAlQ> [29 May 2021].
- 8 Triebel, Brigitta / Leznov, Oleksii 2021: In der Dauerschleife: Die Ukraine im Fokus russischer Desinformation, Länderberichte, Konrad-Adenauer-Stiftung, 11 Jun 2021, in: <https://bit.ly/3iRSMwm> [10 Jul 2021]; Gentile, Michael / Kuznetsova, Yevgeniya 2020: Descent Into the Mariupol Disinformation Maelström, Vox Ukraine, 3 Dec 2020, in: <https://bit.ly/3i2faE6> [10 Jul 2021]; StopFake 2021: Fake: A child died in

- Donbas as a result of a Ukrainian drone attack, 5 Apr 2021, in: <https://bit.ly/37gxK5v> [10 Jul 2021].
- 9 Minakow, Michail / Rojansky, Matthew 2018: Democracy in Ukraine: Are We There Yet?, Kennan Cable 30, Jan 2018, p.9, in: <https://bit.ly/3zJGP2T> [29 May 2021].
  - 10 Applebaum, Anne et al. 2020: From “Memory Wars” to a Common Future: Overcoming Polarisation in Ukraine, London School of Economics (LSE), Jul 2020, in: <https://bit.ly/3BJc13W> [29 May 2021].
  - 11 International Republican Institute (IRI) 2021: IRI Poll in Ukraine Finds Continued Support for European Integration Against Backdrop of COVID-19 Pandemic, 17 May 2021, in: <https://bit.ly/2WqxFTj> [29 May 2021].
  - 12 Biloskurskiy, Orest 2021: What Makes Audiences Watch the Channel “Nash”: Ideology or Infotainment? (Що змушує глядачів дивитись канал “Наш”: ідеологія чи інформаційні розваги?), Detector Media, 28 Feb 2021, in: <https://bit.ly/3y71TzK> [29 May 2021]; Buttschenko, Maksym 2021: Sorry TV. In Ukraine, the Internet has for the First Time Over-taken TV as the Main Source for News (Прощайте, теленовости. В Україні інтернет вперше обогнав телебачення, став головним джерелом новостей), Nove Wremja, 3 Apr 2021, in: <https://bit.ly/3y7ulBr> [29 May 2021].
  - 13 Moroz, Oksana 2020: 54% of Ukrainians on Facebook Publish Fakes, Manipulations or Content of Questionable Sites – Nationwide Study (54% українців в Facebook публікують фейки, маніпуляції та сайти-сміттярки. Всеукраїнське дослідження), Ukrajinska Prawda, 14 Sep 2020, in: <https://bit.ly/372nddV> [29 May 2021].
  - 14 StopFake enjoyed many years of popularity before the organisation suffered reputational damage due to questionable connections and online statements by its founders. See Fedchenko, Yevhen 2017 via Twitter, 5 Oct 2017, in: <https://bit.ly/3x4kOoF> [29 May 2021]; Starchenko, Anastasiia 2020: Zaborona vs. StopFake: what is hiding behind Ukraine’s ongoing media conflict?, New Eastern Europe, 3 Aug 2020, in: <https://bit.ly/3x73apg> [29 May 2021].
  - 15 Bilotserkovets, Kateryna 2019: Haben Zeitungen eine Zukunft? Seminar für Journalisten lokaler Printmedien, Konrad-Adenauer-Stiftung, 21 Oct 2019, in: <https://bit.ly/3VJfa3K> [29 May 2021]; IREX, 2021: Strengthening Media Literacy in the Ukrainian Education System, in: <https://bit.ly/3iV8vLa> [29 May 2021].
  - 16 Rybak, Vitalii 2020: The Clash of Oligarchs: Key Features of Ukraine’s Media Sphere, Ukraine World, 4 Jun 2020, in: <https://bit.ly/3BJyrCe> [29 May 2021].
  - 17 Reuters 2019: Ukraine to launch Russian-language TV channel in battle for hearts and minds, 29 Jul 2019, in: <https://reut.rs/3ybK3vx> [29 May 2021].
  - 18 Rozkladai, Igor 2019: Financing of Suspilne: Can the Channel Become Profitable? (Фінансування суспільного: чи може суспільне заробляти?), Prostrir, 4 Oct 2019, in: <https://bit.ly/3f26Li9> [29 May 2021].
  - 19 Holubow, Oleksandr 2021: A Centre to Each. How the Security and Defence Council Will Fight Disinformation (Кожному по центру. Як у РНБО боротимуться з дезінформацією), Deutsche Welle, 7 Apr 2021, in: <https://p.dw.com/p/3rdsM> [12 Jul 2021].
  - 20 Human Rights Watch 2016: Ukraine: 17 Russian Journalists Banned, 1 Jun 2016, in: <https://bit.ly/373Tu4c> [29 May 2021]; Denber, Rachel, 2018: Ukraine’s Misguided Curbs on Freedom of Expression, Human Rights Watch, 26 Jan 2018, in: <https://bit.ly/3iVQahd> [29 May 2021].
  - 21 Dam, Philippe / Gorbunova, Julia 2021: In Ukraine, taking three pro-Russia channels off the air raises complex issues, Open Democracy, 11 Feb 2021, in: <https://bit.ly/3x7M8Ht> [29 May 2021].
  - 22 Dutsyk, Diana / Dyczok, Marta 2020: Ukraine’s New Media Laws: Fighting Disinformation or Targeting Freedom of Speech?, Wilson Center, 10 Feb 2020, in: <https://bit.ly/3iKosiA> [29 May 2021].
  - 23 Office of the President of Ukraine 2021: Order of the President of Ukraine No. 43/2021 (Указ президента України № 43/2021), 2 Feb 2021, in: <https://bit.ly/3kYFC3k> [29 May 2021].
  - 24 Detector Media 2020: How the Media Preferences and Interests of Ukrainians have Changed After the Elections of 2019 and the Beginning of the Pandemic (Як змінилися уподобання та інтереси українців до засобів масової інформації після виборів 2019 р. та початку пандемії COVID-19), 29 Sep 2020, in: <https://bit.ly/3iKkbjK> [29 May 2021].
  - 25 Tkatschenko, Oleksandr 2021: The Ministry of Culture and Informational Policy has Forwarded the Decision of the National Security and Defence Council Against “NewsOne”, “ZIK” and “112 Ukraine” to YouTube, Asking for the Closure of these Sites (Міністерство культури та інформаційної політики направить до компанії YouTube рішення РНБО України щодо санкцій проти телеканалів “NewsOne”, “ZIK”, “112 Україна” з проханням закрити їхні сторінки на YouTube), via Telegram, 3 Feb 2021, in: <https://t.me/otkachenkoyiv/518> [29 May 2021]; First Independent [Channel] (Перший Незалежні 2021): YouTube channel, in: <https://bit.ly/3xhKxzb> [29 May 2021].
  - 26 Dzerkalo Tyzhnja 2021: The Basis for Sanctions Against Kozak were Coal Deliveries from the Non-Government Controlled Areas: ZN.UA Learned the Details of the Decision of the National Security and Defence Council Regarding the TV-Channels of Medvechuk (Підставою для санкцій проти Козака стали поставки вугілля з ОРДЛО: ZN.UA дізналося подробиці рішення по каналах Медведчука, ZN.UA), 3 Feb 2021, in: <https://bit.ly/3BMDodm> [29 May 2021]; Ukrajinska Prawda 2021: Medvechuk’s Channels are Financed from the Non-Government Controlled Territories – Sources (Канали Медведчука фінансуються з компанії в ОРЛО – джерела), 3 Feb 2021, in: <https://bit.ly/3rE5WRz> [29 May 2021].

- 27 Korba, Halyna 2021: Medvechuk's Kozak. Why is the Politician Considered a Man of Putin's Godfather (Козак Медведчука. Чому політика називають людиною кума Путіна), BBC Ukraine, 3 Feb 2021, in: <https://bbc.in/2URtLtm> [29 May 2021]; Peters, Tim B. et al. 2020: Kaum Überraschungen bei den Kommunalwahlen, Länderberichte, Konrad-Adenauer-Stiftung, 2 Nov 2020, in: <https://bit.ly/3zEkZgX> [29 May 2021].
- 28 Politjuk, Pawel 2021: Ukrainian court orders house arrest for pro-Russian lawmaker, Reuters, 13 May 2021, in: <https://reut.rs/3iSaDDx> [29 May 2021].
- 29 The Presidential Office of Ukraine 2021: The President Chaired a Meeting of the National Security and Defense Council to Discuss the Preservation of the Architectural Heritage in Ukraine and the Introduction of Sanctions Against a Number of People (Президент провів засідання РНБО, на якому були розглянуті питання збереження архітектурної спадщини в Україні та запровадження санкцій щодо низки осіб), 20 Aug 2021, in: <https://bit.ly/3yQQu6k> [25 Aug 2021]; Rudenko, Olga 2021: Security Council imposes sanctions on high-profile pro-Kremlin figures, 20 Aug 2021, in: <https://bit.ly/2WTPcKY> [25 Aug 2021].
- 30 Ukraine verstehen 2021: Sanctions against Viktor Medvechuk and his allies: implications for domestic politics and national security of Ukraine, 23 Feb 2021, in: <https://bit.ly/370FCaW> [29 May 2021].
- 31 National Journalists' Association of Ukraine 2021: The National Union of Journalists of Ukraine Does not Defend the "Channels of Medvechuk", the State has the Right to Defend the Information Space (Declaration of the Secretariat of the NUJU) (НСЖУ не захищає "канали Медведчука", держава має право на захист інформаційного простору [Заява Секретаріату НСЖУ]), 9 Feb 2021, in: <https://bit.ly/3x5SS8Q> [28 Jul 2021].
- 32 Romanjuk, Oksana 2021: Sanctions Against the "Channels of Medvechuk". First Reactions (Санкції проти "телеканалів Медведчука". Перші оцінки), 3 Feb 2021, in: <https://bit.ly/3x2CLsx> [29 May 2021].
- 33 Columbia University 2018: Ukrainian National Council for TV and Radio Broadcasting v. Torsat, TOV and Others, Global Freedom of Expression, 29 May 2018, in: <https://bit.ly/3y8KwyE> [29 May 2021]; National Council of Television and Radio Broadcasting of Ukraine 2021: For Hate Speech During Symonenko's Appearance on "Maxi-TV" a Fine of Over 100.000 Hryvnias will be Levied and "Nash" to be Sued to Revoke its Licence (За мову ворожнечі у висловлюваннях Симоненка "Максі-ТВ" сплатить штраф понад 100 тисяч гривень, а "НАШ" отримає позов до суду про анулювання ліцензії), 19 Aug 2021, in: <https://bit.ly/3BNmKcV> [25 Aug 2021].
- 34 Roschtschenko, Olena 2021: Rabinovych Threatened Selensky with Impeachment: "Fascist Devil" (Рабінович пригрозив Зеленському імпічментом: "Фашистський диявол"), Ukrainska Prawda, 3 Feb 2021, in: <https://bit.ly/2VbCTJ5> [29 May 2021].
- 35 Verkhovna Rada of Ukraine 1991: Constitution of Ukraine (Конституція України), 28 Jun 1991, in: <https://bit.ly/3zFITc1> [12 Jul 2021].
- 36 Schulman, Jekaterina 2018: Practical Political Science: Props for the Contact with Reality (Практическая Политология. Пособие по контакту с реальностью), Moscow, pp. 214–216.
- 37 Gerdziunas, Benas 2017: Baltics battle Russia in online disinformation war, Deutsche Welle, 8 Oct 2017, in: <https://p.dw.com/p/2lJRa> [29 May 2021]; Eurasia Daily 2016: Lithuania has Again Taken up the Fight Against Russian TV-Channels – this Time, it's the Turn of "NTV Mir" (В Литве возобновили борьбу с российскими телеканалами – на очереди "НТВ Мир"), 7 May 2016, in: <https://bit.ly/3iQMnrQ> [29 May 2021].
- 38 Parliament of the Republic of Lithuania 2019: Republic of Lithuania Law on the Provision of Information to the Public, Article 47, 26 Apr 2019, in: <https://bit.ly/2UMD6mm> [29 May 2021].
- 39 Zhernakov, Mykhailo / Khymchuk, Andriy 2019: Judicial Reform: A Fresh Start is Needed, DeJuRe, Nov 2019, in: <https://bit.ly/3zHxFnA> [29 May 2021].
- 40 Hausmann, Guido / Martyniuk, Olha 2020: Analyse: Geschichtspolitik unter der Präsidentschaft von Wolodymyr Selenskyj, Federal Agency for Civic Education, 15 May 2020, in: <https://bpb.de/310080> [28 Jul 2021].



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[Media and Freedom of Expression](#)

# Journalism in Unstable Democracies

Restrictions on Press Freedom in Argentina

Olaf Jacob/Adriana Amado

The changes facing journalism around the globe are particularly pronounced in countries with weak economies and flawed democracies. The example of Argentina illustrates the challenges affecting journalism in an environment of restricted press freedom and tensions between political power and the media.

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Over the last few years, right across the globe, journalism has been in crisis on numerous fronts. The sector is struggling with an economic crisis due to changes in the media market and with a technological crisis caused by the direct impact of the digital revolution on the production and dissemination of information. However, the impact that these structural transformations have on journalism varies according to the particular context, as different journalistic cultures also play a role in this respect.<sup>1</sup> Since its emergence, the internet has accelerated information cycles so that we now have a constant stream of news that keeps us informed 24/7. During the coronavirus pandemic, this constant, globally networked stream of information coalesced with an issue that affected the whole world. This certainly facilitated access to high-quality information regardless of location, but it also revealed the limitations of journalism that is restricted to a national context.

This global exchange of information sheds new light on journalistic problems, such as disinformation, the threat to freedom of expression, and the influence of news outlets. These phenomena affect journalism worldwide,<sup>2</sup> but they have a greater impact in countries such as Argentina – a country that lacks the legal, professional, ethical, and educational institutions<sup>3</sup> that we are familiar with in the West. The same applies to the financial independence of the media.<sup>4</sup> For a country like Argentina, which had been in crisis for decades, the global economic downturn caused by the pandemic has led to a 9.9 per cent drop in GDP, according to the World Bank.<sup>5</sup> These difficulties come on top of the structural deficiencies in the health care system that led the government to impose a harsh lockdown of

more than 100 days, which further exacerbated the economic crisis. In the second semester of 2020, 42 per cent of Argentina's urban population were living in poverty. Extreme poverty affected 10.5 per cent of the population, while child poverty stood at 57.7 per cent. In the midst of this economic recession, most of Argentina's media outlets survived thanks to income from government advertising. The situation is similar in other Latin American countries. For years now, the region has had to deal with the fact that incumbent governments are the main source of information and funding. The situation is particularly critical for local media outlets, which are almost totally dependent on the government for information and funding.

Lack of press freedom is one of the reasons behind the poor ranking given to democracies in the region. Recent setbacks led the Democracy Index 2020 to place Latin America on a par with Eastern Europe. Together, the two regions make up half of all countries with flawed democracies. These countries share common deficits, such as lack of transparency, poor access to public information, as well as tensions between government officials and the press – ranging from the absence of press conferences to explicit attacks on the media and journalists.<sup>6</sup>

This article provides an overview of the situation regarding journalism in Argentina and highlights three factors that illustrate the particular conditions affecting journalism in Latin America: public distrust of the news, restrictions on press freedom, and how the profession has had to adapt to these conditions.

## Distrust and Political Use of Disinformation

According to a study by the Reuters Institute, only one in three Argentines trusts the news disseminated by the media. The degree of trust in traditional media (33 per cent) is similar to trust in social media (28 per cent). However, according to the results of this survey, trust in the news in Argentina declined by ten percentage points between 2018 and 2020. During this same period, trust in the national media ranged between 39 per cent and 57 per cent. The percentage of respondents who consider themselves distrustful or neutral towards the media is similar to the percentage of those who say they trust the media.<sup>7</sup>

### Very few media outlets have codes of ethics or ombudsmen for their readers.

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In the 2019 presidential elections, Argentina consolidated a two-party system in which two competing party coalitions, Frente de Todos (centre-left) and Juntos por el Cambio (centre-right) garnered nine out of ten votes. This social polarisation is reflected in the media and in the attitudes of journalists – many openly disclose their political views, which affects the credibility of the news. The fact that no single medium attracts trust levels in excess of 50 per cent is indicative of a precarious relationship with journalism. In Argentina, no single medium is preferred by the majority of the population and hence is in a position to shape public opinion. The government exploits the public's fragile relationship with information to openly denounce the media and journalists as perpetrators of lies and confusion.<sup>8</sup> At the start of the pandemic, in March 2020, the Edelman Trust Barometer revealed that the media, journalists, and politicians were viewed as the least trusted sources of information.<sup>9</sup> It was predictable that this situation would deteriorate further over the following months, especially in a country like Argentina, which has a poor record in the fight against

COVID-19 (2,336.19 deaths and 108,846.63 infections per million inhabitants, as of 30 July 2021).<sup>10</sup> According to the 2021 Edelman Trust Barometer, 59 per cent of respondents in the 28 countries surveyed (including Argentina) believe journalists spread false information. This percentage is roughly in line with the two-thirds of respondents who do not trust the news, according to the studies cited above.

The quality of information and its counterpart, disinformation, are also indicative of the conditions under which journalism is practised.<sup>11</sup> An evaluation of disinformation indicators in 32 digital media channels in Argentina concluded that 21 of these media presented a high risk in terms of disinformation, ten presented a medium risk, and only one truly met information quality criteria. The lowest ranking was given to areas relating to operational and editorial integrity, such as transparency of ownership, financing, and handling comments and corrections. This result is also linked to the fact that Argentina's media does not traditionally have institutions for dealing with issues of ethics and self-regulation – bodies that are needed for the establishment of common guidelines.<sup>12</sup> Very few media outlets have codes of ethics or ombudsmen for their readers, and only one newspaper has joined global initiatives to promote quality standards in journalism, such as the Trust Project.<sup>13</sup>

In this general climate of public distrust of the news media, during the pandemic, the national government under President Alberto Fernández (Frente de Todos) ramped up tensions with the press still further. In the name of fighting disinformation and fake news, government agencies promoted initiatives that stirred up controversy with journalists and the organisations that represent them. An official advertising campaign told citizens that they were living in an “infodemic”. “That’s why, if you need information, we ask you to consult official sources. Preventing the infodemic is another way of looking after each other”<sup>14</sup> went the message, in this way discrediting other, non-governmental sources. Although Argentina's civil society has two fact-checking organisations, the government officially





Polarised media – polarised society: A demonstrator in Buenos Aires turns against the country's most widely read daily newspaper with the slogan "Clarín lies". Source: © Enrique Marcarian, Reuters.

supported two initiatives tasked with flagging up information about the coronavirus that the authorities viewed as fake news. We should mention here that Argentina has a public

broadcasting system that is very different from its counterparts in Europe. The Argentinian system has no budgetary autonomy, and its governing bodies are politically appointed by the

government in power.<sup>15</sup> The state news agency Télam – from which one of the two aforementioned initiatives originated – is also not comparable to other publicly run news agencies, as it is under the control of the Secretariat of Media and Public Communications. Télam created Confiar, an internet platform tasked with fighting the “infodemic”, which the website describes as an “information epidemic within the pandemic”.<sup>16</sup> Another initiative in this direction was the Defensoría del Público (strictly speaking, a government agency under the control of the supervisory body stipulated in the Audiovisual Media Law), which tracks the “symbolic violence and malicious information that has been previously broadcast”.<sup>17</sup>

Professional associations, such as the Foro de Periodismo Argentino (FOPEA) and the Asociación de Entidades Periodísticas Argentinas (ADEPA), have expressed their concern about government authorities dictating what pandemic-related information is deemed appropriate.<sup>18</sup> Indices, such as the Freedom House’s Global Freedom Index, view such measures, taken under the guise of a health crisis, as restriction of information and pressure on the press.<sup>19</sup> Although Argentina’s ranking fell in this report, it is still categorised as a free country.

## **The aggressive behaviour of presidents towards the press is not unprecedented in Latin America.**

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The low level of trust in the news identified by the surveys reflects a general climate of distrust. However, within this environment, people have a thoroughly pragmatic relationship with the media. Indeed, in the specific case of the coronavirus pandemic, international studies have shown that the public appreciated the role of the press, despite their general distrust of news organisations. A special study on misinformation about the coronavirus revealed that the majority of Argentines felt the media helped them to

understand the crisis (67 per cent of respondents) as well as the countermeasures in place (75 per cent). These percentages were higher than in the UK, the US, Germany, Spain, and South Korea.<sup>20</sup>

### **Press Freedom under Pressure**

The public debate is affected by the problematic relationship between the government and the press. These tensions are also reflected in press freedom indices, such as the annual ranking published by Reporters Without Borders. This index is based both on direct attacks and structural factors such as pluralism in the media system, the legal framework, infrastructure, transparency, and censorship. Until 2019, Argentina was in the top third of the 180 countries assessed. Since then, only two South American countries have made it into the top third: Uruguay (18) and Chile (54). Argentina (69) is now in the middle of the table, along with Ecuador (96), Brazil (111), and Bolivia (110). At the bottom of the table are countries where journalists face a severe threat of violence, such as Colombia (134), Mexico (143), and Venezuela (148). Of the countries mentioned above, only Uruguay, Mexico, and Ecuador have recorded a slight improvement in journalistic freedom over the last five years, which points to a general deterioration in the Latin American region.<sup>21</sup>

The aggressive behaviour of presidents towards the press is not unprecedented in the region. Heads of state, such as Rafael Correa (Ecuador, 2007 to 2017) and Cristina Fernández de Kirchner (Argentina, 2007 to 2015), regularly attacked journalists through official channels and their personal Twitter accounts.<sup>22</sup> This antagonistic style is not limited to one side of the political spectrum but tends to be a typical feature of populists on both right and left. The deterioration of relations between Latin American presidents and the press was evident at the 2021 meeting of the Inter American Press Association, which explicitly mentioned heads of state who harassed journalists: “The political powers continue to discredit and stigmatize

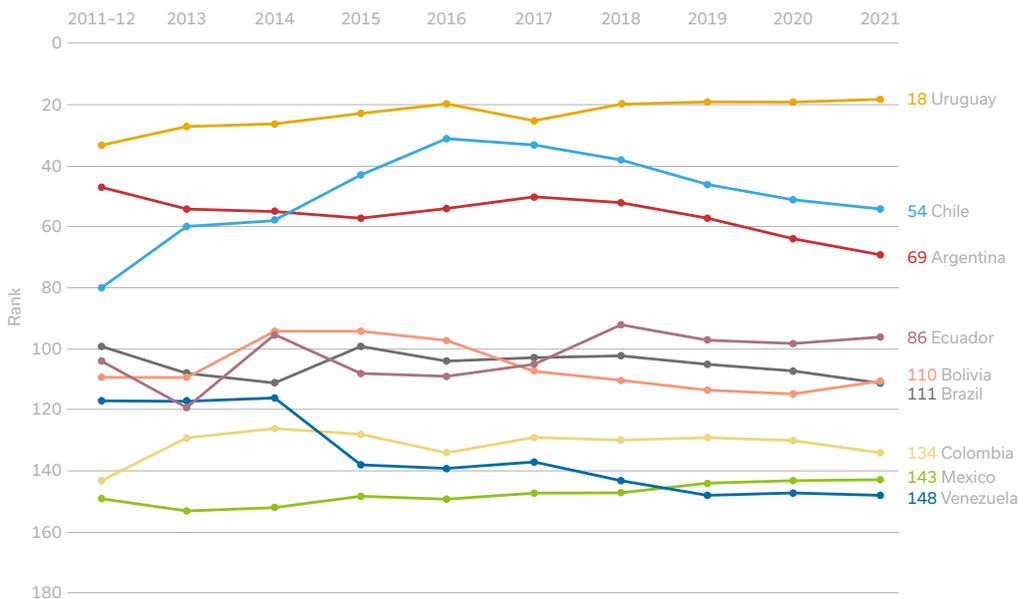
the practice of journalism – creating a hostile climate that may degenerate into concrete violent actions against the media and journalists. Presidents Nayib Bukele of El Salvador, Jair Bolsonaro of Brazil, Andrés Manuel López Obrador of Mexico, and Alberto Fernández of Argentina are the main harassers of journalism. Also, in Bolivia, Venezuela, Cuba, El Salvador and Nicaragua, governments use state-run media and social networks to discredit journalists.”<sup>23</sup>

The same organisation also drew attention to the risk that governments could use this tension to restrict the legal space in which journalism operates. One example is the Argentine government’s proposal to enshrine in law the word “lawfare”. This legislative manoeuvre is intended to criminalise investigative journalism that is supposedly based on a conspiracy between journalists, politicians, and the judiciary. Professor Carmen Fontán defines the term “lawfare” as “the interplay between judges, media, and political and economic power with the intention of manipulating the application

of the law to the disadvantage of certain political figures or political groups from the [editor’s note: leftist] national populist camp.”<sup>24</sup> Argentina’s government also introduced a bill to the Mercosur Parliament that aimed to provide a legal framework for combating alleged “lawfare” throughout the region. The term is also frequently used in public by Rafael Correa and Cristina Fernández de Kirchner – alluding to the corruption trials in which they are involved and the media coverage of them, which they describe as part of a “war” that is being waged against them “by the justice system and communications media”.<sup>25</sup>

This open harassment of journalists by government officials has been accompanied by an increase in direct attacks by protesters when the press attempts to cover a public event. After a decline over the last few years, 2020 saw a 40 per cent increase in attacks on journalists in Argentina, according to the Argentine Journalism Forum. However, the number is still far below the pre-2014 level.

**Fig. 1: Development of Freedom of the Press in Latin American Countries 2011–2021**



Source: Own illustration based on Reporters Without Borders 2021: World Press Freedom Index 2011–2021, in: <https://rsf.org/en/ranking> [16 Apr 2021].

## Restricting Journalists' Access to Information

The strained political and economic situation also complicates the issue of press funding, as governments are major advertising customers in the media market.<sup>26</sup> Public advertising campaigns mean the Argentine government has become the number one advertising client of many media companies.<sup>27</sup> One indicator of the need for alternative funding is the number of media outlets that have applied for the Global Journalism Emergency Relief Fund for local news, launched by the Google News Initiative in April 2020. In the first two weeks of the call for applications, it received 2,350 applications from 17 countries in Latin America. Of the 1,000 organisations selected for funding, 90 per cent were small, struggling operations with fewer than 26 local journalists. Government advertising, as the main source of funding for journalism, has a major influence on journalistic activity because governments provide both funding and official information. From this privileged position, they can restrict access to official documents or obstruct independent investigations.

### Press conferences as an opportunity to hold governments to account have not yet gained a foothold in the country's democratic culture.

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The difficulty of accessing public information is one of the main differences from journalistic practice in the West. Argentina only passed a law granting access to public information in 2017. It was supposed to end the longstanding political culture of secrecy and absence of public statistics; however, reports on the management of the pandemic reveal that problems still remain. Official websites only began publishing data about the public health system in July 2020. And information about the vaccination campaign was only published two months after its launch

in December 2020 – and even then, the data was incomplete. Inconsistencies in the COVID-19 test registry led Oxford University's Our World in Data website to exclude data from Argentina between September and December 2020. The graphs on the website also show a sudden jump in the number of deaths between 30 September and 7 October 2020, confirming that deaths had been inadequately recorded over the preceding months. As a result, the figures had to be readjusted over the following weeks.

Additionally, journalists were particularly affected by the general restrictions imposed as a result of the pandemic as they depend upon access to information and require the ability to move around freely, both at home and abroad. Journalism is considered an essential service in Argentina, so it is not subject to restrictions on movement, but the general restrictions on public transport that were imposed in the world's eighth largest country have been particularly tough, at times involving the complete shutdown of services. According to Oxford University's Response Stringency Index, Argentina is one of the countries that has imposed the most restrictions. The index looks at nine indicators, including school closures, workplace closures, and travel restrictions. On a scale of 0 to 100, with the higher values representing greater restrictions, Argentina was given a score of 100 in the weeks that immediately followed the declaration of a health emergency on 23 March 2020. On 3 November 2020, this still stood at 80, despite lockdown restrictions being eased.<sup>28</sup> In some districts, the restrictions on citizens' freedom of movement went so far that the national press were banned from entering and had to go to court to report on the existence of detention centres for suspected COVID-19 cases. It was thanks to social media posts by citizens and opposition parties that this situation was echoed in the press<sup>29</sup> and by international organisations.<sup>30</sup> This made it possible to escape prosecution, for example, by the government of the province of Formosa under its Peronist governor Gildo Insfrán. Insfrán has been continuously re-elected for the last three decades. This situation illustrates how provincial governments can abuse

**Fig. 2: COVID-19 Deaths in Argentina (per Million Inhabitants)**



Source: Own illustration based on Our World in Data 2021: COVID-19 Data Explorer. Argentina, in: <https://bit.ly/3klFric> [30 Jul 2021].

their power and prosecute anyone who voices criticism by claiming it is disinformation or hostile media coverage.

Another issue that highlights the difficulties involved in accessing information is the absence of press conferences. This vital means of communication during a pandemic has been utilised only rarely in Argentina, and this has been the case for the last 20 years. Press conferences, as an opportunity to hold governments to account, have not yet gained a foothold in the country's democratic culture. Since democracy was restored in 1983, Argentina has alternated between governments that hold press conferences fairly regularly and others that only use this instrument in exceptional cases or suspend it altogether. Ever since the social and political crisis that beset Argentina in 2001 and led to the installation of a transitional government until 2003, press conferences have only been held sporadically. National and local governments prefer to bypass the press and make their

announcements via their own channels or social media. This method was introduced by Peronist president Néstor Kirchner (2003 to 2007). He also used it to openly attack journalists who attended presidential press conferences,<sup>31</sup> and it was continued by his successor, Cristina Fernández de Kirchner (2007 to 2015). She maintained very few contacts with the press during her term as president, and since her appointment as vice president in 2019, these dwindled to virtually nil. Mauricio Macri (2015 to 2019), the first democratically elected president of a non-Peronist alliance this century, held more press conferences in one term than his predecessor held in two. However, they became less frequent towards the end of his term, falling from 26 conferences in 2016 to just seven in 2019. After taking office in December 2019, President Alberto Fernández initially chose to hold press conferences to make announcements about lockdown restrictions, but he later switched to recorded speeches and interviews with a few carefully selected media outlets. The press releases



section of the government website states that President Fernández gave 15 press conferences and 95 exclusive interviews during his first 16 months in office. It is now common for events to be broadcast by official media, as was the case with the opening of parliament in 2020. Other press outlets are refused access, so journalists are limited to commenting on the images broadcast by the Office of the President.

### **Conclusion**

Argentina provides a good example of certain conditions that are also prevalent in many other countries in the region. The press has operated under political and economic constraints for many years. Many media outlets are so dependent on government advertising that any reduction in their budgets can lead to job losses. For



Hard lockdown for journalists, too? In view of severe restrictions on freedom of movement, Argentine media had to go to court to gain access to relevant information during the pandemic.

Source: © Matias Baglietto, Reuters.

mean an explicit political positioning, which is often linked to financial investments.

These limitations have shaped a journalistic culture that is more akin to an interpretive model than to journalism proper,<sup>32</sup> which actually holds governments to account. The term interpretive model refers to a surfeit of opinion and analysis at the expense of an objective presentation of the facts. One symptom of this trend is the decline in investigative journalism that has been observed since the turn of the millennium.<sup>33</sup> Since journalists often lack opportunities to control those in power, civil society has taken an active role in demanding transparency and access to public information.<sup>34</sup> In doing so, it supports journalists in their research. This builds a strategic alliance between civil society and the media.<sup>35</sup>

The restrictions on freedom of information in Argentina are different from the dangers faced by journalists in countries such as Mexico or the state persecution of the media that exists in Venezuela. Nevertheless, they have a negative impact on the practice of independent journalism. On the other hand, the global nature of information about the pandemic has rapidly transformed reporting, improved the transparency of official data, and attracted support from international organisations that support press freedom. Interaction with international media is also helping to raise standards in the Argentinian press.

example, Buenos Aires alone has seven 24-hour news channels (Todo Noticias, La Nación Más, A24, Crónica, C5N, IP, Canal 26) on pay-TV. All these broadcasters compete directly with each other for advertising revenue. Some of them gain a competitive edge by giving sympathetic coverage to certain parties and trade unions. Analysts refer to this type of journalism as “*militante*” (committed) journalism, by which they

– translated from German –

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- 1 Hanitzsch, Thomas et al. (eds.) 2019: *Worlds of Journalism. Journalistic Cultures Around the Globe*, New York.
- 2 Newman, Nic et al. 2020: *Reuters Institute Digital News Report 2020*, Reuters Institute for the Study of Journalism (RISJ), in: <https://bit.ly/3z0mtBX> [15 Jul 2021].
- 3 Amado, Adriana / Waisbord, Silvio 2015: *Divided we stand: Blurred boundaries in Argentine journalism*, in: Carlson, Matt / Lewis, Seth C. (eds.), *Boundaries of Journalism: Professionalism, Practices and Participation*, London, pp. 51–66.
- 4 The word medium implies any means of communicating information that is used by journalists to disseminate news.
- 5 The World Bank 2021: *The World Bank in Argentina, Overview*, 5 Apr 2021, in: <https://bit.ly/3hHYMJ0> [12 Jul 2021].
- 6 The Economist Intelligence Unit 2021: *Democracy Index 2020*, in: <https://bit.ly/3gt0qNw> [24 Aug 2021].
- 7 Newman et al. 2020, n. 2.
- 8 In the 2019 presidential election, the two parties with the most votes were Frente de Todos (48.24 per cent), a Peronist coalition, and Juntos por el Cambio (40.28 per cent), an alliance of the PRO and Unión Cívica Radical (Radical Civic Union) parties.
- 9 Edelman Trust Barometer 2021, in: <https://bit.ly/3rbNsb4> [12 Jul 2021].
- 10 Our World in Data 2021: *COVID-19 Data Explorer. Argentina*, in: <https://bit.ly/3jcfwsl> [24 Aug 2021].
- 11 Szewach, Paula / Ortiz Freuler, Juan 2020: *Desinformación en los medios digitales en la Argentina: niveles de riesgo*, *Global Disinformation Index (GDI)*, in: <https://bit.ly/3hGeu7q> [12 Jul 2021].
- 12 Amado, Adriana 2017: *Periodismo argentino: ética ideal para prácticas coyunturales*, in: Oller Alonso, Martín (ed.): *Culturas Periodísticas Iberoamericanas*, Sociedad Latina de Comunicación Social, pp. 79–94.
- 13 Roitberg, Gastón 2021: *Herramientas para el periodismo de calidad: la experiencia de La Nación*, in: Amado, Adriana / Bongiovanni, Maximiliano 2021: *Información y Confianza: Comunicación contra la desinformación*, Konrad-Adenauer-Stiftung, Infocudadana, pp. 72–76, in: <https://bit.ly/3wEytaz> [15 Jul 2021].
- 14 Casa Rosada 2020: *Saber es la mejor forma de prevenir. Por eso, si necesitás información te pedimos que consultes fuentes oficiales. Evitar la infodemia también es cuidarnos entre todos y todas. #Argentina Unida #CuidarteEsCuidarnos*, 28 Mar 2020, via Facebook, in: <https://bit.ly/3egs8Mn> [12 Jul 2021].
- 15 Amado, Adriana (ed.) 2014: *La Comunicación Pública Como Espectáculo*, Konrad-Adenauer-Stiftung, in: <https://bit.ly/2UcxUb0> [12 Jul 2021].
- 16 Confiar 2021: *Infodemia*, in: <https://confiar.telam.com.ar> [12 Jul 2021].
- 17 Defensoría del Público 2020: *Nodio: una iniciativa de la Defensoría para fortalecer la pluralidad de voces*, 12 Oct 2020, in: <https://bit.ly/3kl3azd> [12 Jul 2021].
- 18 AdepA 2020: *Monitorear el pensamiento no favorece la libertad de expresión*, 11 Oct 2020, in: <https://bit.ly/2VLvj8r> [12 Jul 2021].
- 19 Shahbaz, Adrian / Funk, Allie 2020: *Information Isolation: Censoring the COVID-19 Outbreak*, Freedom House, in: <https://bit.ly/3r9xxdc> [12 Jul 2021].
- 20 Kleis Nielsen, Rasmus et al. 2020: *Navigating the 'Infodemic': How People in Six Countries Access and Rate News and Information about Coronavirus*, RISJ, Apr 2020, in: <https://bit.ly/36DxSvq> [15 Jul 2021].
- 21 Reporters Without Borders 2021: *Clasificación 2021 de RSF: En América Latina, casi todos los indicadores están en rojo*, in: <https://bit.ly/3yYBlAP> [12 Jul 2021].
- 22 Manfredi-Sánchez, Juan-Luis / Amado-Suárez, Adriana / Waisbord, Silvio 2021: *Presidential Twitter in the face of COVID-19: Between populism and pop politics*. *Comunicar* 29: 66, pp. 83–94, in: <https://doi.org/10.3916/c66-2021-07> [24 Aug 2021].
- 23 Sociedad Interamericana de Prensa (SIP) 2021: *Conclusiones de la Reunión de Medio Año de la SIP*, 23 Apr 2021, in: <https://bit.ly/3hDZvur> [12 Jul 2021].
- 24 Foro de Periodismo Argentino (FOPEA) 2021: *El Periodismo En Pandemia: Desinformación, Lawfare y Libertad de Expresión En Argentina 2021*, p. 8, in: <https://bit.ly/3enNK9I> [15 Jul 2021].
- 25 Alfie, Alejandro 2019: *Alberto Fernández presenta un libro sobre la "guerra judicial-mediática" contra Cristina Kirchner*, Clarín, 20 Nov 2019, in: <https://bit.ly/36DB1ve> [4 Jul 2021].
- 26 Waisbord, Silvio 2010: *Latin America*, in: Norris, Pippa (ed.): *Public Sentinel. News Media & Governance Reform*, The World Bank, pp. 305–328, in: <https://bit.ly/2UOc90Y> [15 Jul 2021].
- 27 Crettaz, José 2019: *La publicidad gubernamental en Argentina entre 2000–2017: crecimiento exponencial, usufructo electoral y crisis de los medios*, *Cuadernos.info* 44, 17 Apr 2019, pp. 99–115, in: <https://bit.ly/3h16lzn> [15 Jul 2021].
- 28 Hale, Thomas et al. 2021: *A global panel database of pandemic policies (Oxford COVID-19 Government Response Tracker)*. *Nature Human Behaviour* 5, 8 Mar 2021, in: <https://go.nature.com/3wBBLvv> [12 Jul 2021].
- 29 Abé, Nicola 2021: *Argentinien's autoritäres Corona-regime*, Spiegel Online, 8 May 2021, in: <https://bit.ly/3xMAH9m> [28 Jul 2021].
- 30 Human Rights Watch 2021: *Argentina: Formosa adopta medidas abusivas en su respuesta al Covid-19*, 26 Mar 2021, in: <https://bit.ly/3wNeIOs> [12 Jul 2021].
- 31 Lavalle, Dolores / Schmidt-Liermann, Cornelia 2009: *Las Conferencias de Prensa En La Argentina: Situación Actual y Herramientas Alternativas Para El Diálogo Entre Periodistas y Políticos*, Konrad-Adenauer-Stiftung, Jun 2009, in: <https://bit.ly/3xHkkWS> [15 Jul 2021].
- 32 Mellado, Claudia (ed.) 2020: *Beyond Journalistic Norms: Role Performance and News in Comparative Perspective*, London.

- 33 Pinto, Juliet 2008: Muzzling the watchdog: The case of disappearing watchdog journalism from Argentine mainstream news, *Journalism* 9: 6, 1 Dec 2008, pp.750–774, in: <https://bit.ly/3emVPLB> [15 Jul 2021].
- 34 Poder Ciudadano 2021: Siete organizaciones pidieron audiencia a Alberto Fernández sobre la futura autoridad de la Agencia de Acceso a la Información Pública, 26 Mar 2021, in: <https://bit.ly/3wGgCAh> [12 Jul 2021].
- 35 Amado, Adriana 2018: Entre el big data y el small data. Información pública y periodismo, *Diálogo Político* 2, pp.69–83, in: <https://bit.ly/3B2GOsa> [15 Jul 2021].



[Media and Freedom of Expression](#)

# Journalists under Pressure

Is Freedom of Expression at Risk in Mexico?

[Hans-Hartwig Blomeier / Luis Téllez Live](#)

Mexico is one of the most dangerous countries in the whole of the Americas for journalists. In addition to threats from organised crime groups and cartels, representatives of the press are increasingly exposed to state repression when they critically report on the government of the incumbent Mexican President Andrés Manuel López Obrador and his party.

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### **Freedom of Expression as a Key Element of Democracy**

The essential components of a functioning democracy are diversity of opinion, political and social pluralism, and, above all, the ability and willingness to engage in dialogue. Of course, democracy also involves a functioning rule of law, the separation of powers, access to and holding of free and fair elections, a political system with democratic parties and organisations, and an active, organised, and participatory civil society. However, if freedom of expression and press freedom are at risk, and if a certain opinion or political position is unilaterally asserted so that criticism of the country's government, rulers, and politicians is restricted or even suspended, then this liberal democracy is endangered, and the door is opened to authoritarian structures and mechanisms.

Authoritarian states and regimes are vehemently opposed to unrestricted freedom of expression and press freedom. Open and free dialogue, discussion, criticism, evaluation, or disagreement with their political position are perceived as a direct threat that has to be countered. This is why the degree of freedom of expression and press freedom provides a clear indicator of the functioning, quality, or even viability of a democracy.

In the case of Mexico, it is almost a tradition for freedom of expression to be in direct confrontation with political power. Over the last ten to fifteen years, it has been further eroded by a spiral of rapidly escalating violence perpetrated by organised crime, which is dominated by the country's increasingly powerful drug cartels.

Since 2000, the spread of democracy in Mexico has facilitated greater media plurality, provided space for analysis and reflection across the political spectrum, and increased the diversity of publicly voiced opinions and viewpoints, but this has not reduced the number of violent acts, including assassinations, directed against journalists.

### **A High-Risk Profession**

For 71 years – until the election of Vicente Fox in 2000 – Mexico was governed without interruption by one political party, the Partido Revolucionario Institucional (PRI), which severely restricted freedom of expression in the country. The PRI regime used censorship and state funding to exert constant pressure on the media, suppress dissidents, monitor publications, and discredit the independent media. On the other hand, the pro-government media enjoyed official favours and direct financial benefits (such as major government advertising campaigns), including bribing journalists to ensure they gave the government positive coverage.<sup>1</sup> For the sake of completeness, one should mention that such behaviours and actions were not limited to the federal government but were also practised by state governments and governors, at times in an even more draconian fashion.<sup>2</sup>

Even today, many media outlets are financially dependent on government advertising when their revenue from commercial advertising, sales, and subscriptions is insufficient to cover their expenses. In 2020, ten media outlets accounted for 54 per cent of Mexico's budget for government advertising, with the remainder distributed across 387 other media outlets.<sup>3</sup>

It should also be noted that during the 70 years of uninterrupted PRI rule, the only supplier of newsprint in Mexico was a state-owned monopoly, and newspaper distribution at the national level was controlled by PRI-affiliated unions.<sup>4</sup>

State control of the media was relaxed a little in the early 1990s when the country enjoyed a gradual opening up on the political front. This was triggered by the economic crisis at that time, which led to a serious programme of trade liberalisation and a degree of stagnation and attrition for PRI governments. The state monopoly on newsprint was also ended, and new rules were introduced relating to how public money was allocated to the media and regarding the public relations activities of federal and state governments.

### **Journalists who spotlight the lack of social justice and high rates of impunity put their lives at risk.**

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In 2000, the election of the Partido Acción Nacional (PAN) led by President Vicente Fox ushered in reforms to transparency laws with a view to facilitating access to public information. Overall, this led to a significant improvement in press freedom and to freedom of expression in Mexico, which increased the importance of public opinion as a factor in consensus building and in the appraisal of government policies and actions.

The media also began to act as a counterweight to the executive power. This position of greater strength led to growing public demands for greater accountability and transparency in public administration. However, despite this political shift and the corresponding changes in the law, this period continued to be marred by attacks on journalists.

The Colombian writer, journalist, and Nobel Prize winner Gabriel García Márquez once described journalism as “the best job in the world”,<sup>5</sup> but in Mexico it is also one of the most

dangerous. Reporters Without Borders currently ranks Mexico as one of the most dangerous countries in the Americas for journalists. And the World Press Freedom Index ranks Mexico 143<sup>rd</sup> out of 180 nations and places it in the “difficult situation” category along with countries such as Myanmar, India, Cambodia, and Pakistan.<sup>6</sup>

According to ARTICLE 19, an international human rights organisation that defends freedom of expression and information, 138 journalists have been murdered in Mexico since the turn of the millennium.<sup>7</sup> Working with civil society organisations and media, many of these journalists put their lives at risk by spotlighting the lack of social justice, high rates of impunity, and the ineffectiveness of the police and justice system in prosecuting criminal activities. To date, the Mexican authorities have largely ignored these complaints and demands.

Indeed, Mexico is one of the countries with the highest rate of impunity for crimes against journalists. According to the Global Impunity Index 2020,<sup>8</sup> the Committee to Protect Journalists (CPJ) ranks Mexico sixth in the world for the number of murders of journalists that go unsolved, or fail to result in conviction. The study also shows that this situation is essentially due to corruption, weak institutions, and lack of political will.

### **Social Transformation and Freedom of Expression – The Discrepancy between Words and Deeds**

When leftist politician Andrés Manuel López Obrador (AMLO) took office in the wake of the 2018 elections, his victory was accompanied by high hopes of social and political change. These hopes included strengthening civil society and significant improvements in freedom of expression and press freedom, including providing journalists with far greater protection against verbal and physical attacks. However, nearly three years on, these hopes and expectations remain unfulfilled. Indeed, the opposite is true: President AMLO’s relations with journalists and the media are very strained. There is a clear discrepancy between the



Good journalist, bad journalist: For President López Obrador, media outlets are either with him or against him – and, hence, against “the people”. Source: © Carlos Jasso, Reuters.

official line and AMLO’s claim that he guarantees “respect for different opinions”<sup>9</sup> on the one hand, while government officials and the president himself regularly attack the national and international media whenever they ask difficult questions or criticise the government’s policies.

AMLO’s narrative and political discourse are clearly focussed on his so-called Cuarta Transformación (4T)<sup>10</sup> project. He makes extensive use of symbolism and historical analogies from Mexico’s past to embed this project and his socio-political ideas in the mind of the public. The 90-minute press conferences (*mañaneras*) that he holds every weekday morning play a key role in this respect. He uses them as a comprehensive and very effective tool for setting his agenda, laying out his political plans, setting new priorities, and ultimately for steamrolling the media and opposition.

Three factors support the initial argument that press freedom and freedom of expression in Mexico are not only endangered by the very real threat to journalists’ lives but also by newer, current developments and actions:

#### *Stigmatisation of the Press*

Since assuming office on 1 December 2018, AMLO has taken the social and political polarisation that he pursued so consistently throughout the 2018 election campaign and extended it to the media and journalists. He divides them into “good” and “bad” reporters, which equates to pro-government (good) and anti-government (bad). So he does not engage in general media-bashing and repeatedly stresses the importance of freedom of expression, but then he launches vicious and personal attacks on critical commentators. This applies equally to national and

foreign media and journalists. The president then usually accuses these critical journalists and media outlets of being “conservative” and funded by corporate interests linked to previous “neoliberal governments”.<sup>11</sup>

For instance, on 25 September 2020, he used his morning press conference to specifically name media outlets and journalists who he believed had written negative articles about his government’s policies. He noted that a total of 148 articles in the national and local media had been reviewed, and complained that 66 per cent of these articles were opposed to his 4T project.<sup>12</sup>

### **In AMLO’s world, there is little room for dissent or diversity of opinion.**

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Another example is the response to criticism of the Tren Maya, an infrastructure project initiated by AMLO.<sup>13</sup> The plan to build a 1,525 kilometres-long railway line to connect tourist destinations in the states of Tabasco, Chiapas, Campeche, Yucatán, and Quintana Roo is opposed by many experts, as well as by large swathes of the population. Journalists, environmental NGOs, and academics have particularly highlighted the potential damage to the environment and the negative economic and social impact on the communities affected. This led the president’s press secretary, Jesús Ramírez Cuevas,<sup>14</sup> to accuse certain media and civil society organisations of being paid to criticise the project.

Another episode at a morning press conference (23 September 2020) illustrates AMLO’s stance and relations with the press. A reporter in the room asked what he thinks “good journalism” is, and whether it means journalism that defends his government. AMLO replied that “good journalism defends the people and is far removed from power”, but “what we have now is journalism that is very close to economic power [...], it is elite journalism that does not defend the people”.<sup>15</sup> This description reflects the polarisation

that the president is also fostering with regard to political parties, the private sector, and non-governmental organisations.

In this way, AMLO repeatedly stresses his view of himself as someone whose sole purpose is serving the people (*el pueblo sabio y bueno*, the wise, good people) – but only those people who share his political vision and view him as their legitimate president and hope for the future. Nearly three years on, his approval rating stands at a remarkable 60 per cent, so this approach seems to be working for him.

Anyone who publicly criticises the president is accused of supporting inequality, corruption, and impunity. “Helping the poorest, fighting corruption, and improving the lives of Mexicans” have been the buzzwords and goals of the 4T project since the 2018 election campaign. The argument is simple: anyone who attacks the president or federal government is also against these goals.

This argument leaves little room for dissent or diversity of opinion. An executive that believes itself to be the sole possessor of the truth also defines which media outlets or journalists are lying. Since 20 June 2021, this line of reasoning has been given concrete form at the morning press conferences, which now kick off with “Who’s who in this week’s lies?”, a segment designed to delegitimise media outlets that are critical of the government.<sup>16</sup>

In the run-up to Mexico’s recent midterm elections on 6 June, the president’s confrontations with the press ramped up to international level when *The Economist*, *Le Monde*, *Die Welt*, and *The Nation* all published lengthy articles criticising AMLO’s performance after three years in office. Although these publications are positioned across the political spectrum, the authors of all the articles agreed that Mexico’s main problems remain unresolved (no significant improvement in the daily lives of Mexicans; omnipresent and growing violence due to organised crime; unabated corruption and impunity). They also highlighted how the Mexican government, unlike most of the world, continues to

rely on fossil fuels while neglecting renewable energy, and how authoritarian elements are increasingly creeping into the administration.

The government was particularly stung by The Economist's cover story of 27 May 2021, which called AMLO "Mexico's false messiah".<sup>17</sup> The president used his morning press conference as an opportunity to denounce the report as "rude, deceitful, propagandistic, and neoliberal". He also accused the magazine of being "conservative" and failing to report on the corruption of previous governments. In the end, Foreign Minister Marcelo Ebrard was asked to write a letter to the magazine's editor (which, of course, was immediately published by the government).<sup>18</sup> In his letter, the minister accused the magazine of "being insensitive and of failing to understand López Obrador and his national project", because the president's vision "prioritises the most marginalised sections of society".<sup>19</sup>

#### *Lack of Safeguards for Journalists*

As part of its austerity programme, in October 2020 the government decided to dissolve 109 public trusts (*fideicomisos*), some of which were lavishly funded, and transfer these funds to the central budget. It justified this move by claiming that the use and allocation of the trusts' funds had not been managed transparently or efficiently and that the money was urgently needed elsewhere. More specifically, it earmarked these funds for the country's additional health care needs and economic recovery in the wake of the COVID-19 pandemic. It remains to be seen to what extent the – as yet unproven – accusations of corruption and lack of transparency are justified (a blanket statement is not enough to make a serious assessment). There is also no clear answer to the question of whether the funds that have flowed into the national budget are actually being used to address the effects of the pandemic.

What is clear, however, is that abolishing these trusts has not only led to drastic cuts and hence a reduction in opportunities for scientific and research projects (which received the majority

of the funds), but also to the disappearance of a specific fund for the protection of human rights defenders and journalists.<sup>20</sup> Abolishing this fund could endanger the lives and safety of victims, human rights defenders, and journalists because the money was used for relief activities such as food, shelter, transportation, security, funeral expenses, and sundry medical costs.<sup>21</sup>

A similar mechanism is planned to be set up within the remit of the Ministry of Interior, but it remains unclear whether this will be allocated additional resources to carry out such activities.<sup>22</sup> In addition, there are (justified) doubts about the extent to which a government-controlled fund would preserve the political neutrality of an independent public trust. This is a factor that should not be ignored in light of the polarisation mentioned above.

For the sake of completeness, one should also mention here that the existing military trust funds were continued, and their funding even increased from 2.5 billion pesos in 2019 to 31 billion in 2020 – a remarkable contrast.<sup>23</sup>

#### *Attacks on Social Media*

Just as the traditional media has had to adapt to digital platforms and social media, the repression and intimidation of journalists has also changed and expanded or shifted to these new channels.

### **The #RedAMLO network produces content directed against journalists who are critical of the president.**

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Signa Lab at ITESO, the Jesuit university in Guadalajara, specialises in these issues. Its research demonstrates how social media is used for political purposes, censorship, and intimidation. The report titled "Democracy, freedom of expression and the digital sphere. Analysis of trends and topologies on Twitter: the case of #RedAMLO"<sup>24</sup> demonstrates that there is a

network (#RedAMLOVE) on Twitter whose main purpose is to attack the president's opponents.

The authors of this study found that this network pursues a sophisticated strategy of producing and massively replicating content directed against journalists and media outlets that are critical of the issues raised by AMLO at his press conferences. Specific examples or victims of these online attacks include the journalists Carlos Loret de Mola, Joaquín López Dóriga, and Ivonne Melgar.<sup>25</sup>

According to the Signa Lab report,<sup>26</sup> these orchestrated attacks are characterised by deliberately violent language, which leads to greater social polarisation, more extreme political positions, and even a degree of self-censorship, as people feel reluctant to air their views in public for fear of attacks and threats. #RedAMLOVE has also been successful in getting pro-government tweets trending on Twitter through appropriate use of hashtags, in this way reducing the visibility of the president's critics.

However, this is not an isolated case: Signa Lab and ARTICLE 19 have also published research proving that verbal attacks on journalists have emanated directly from the public news agency NOTIMEX. The report "Targeted Attacks: Smear Strategies"<sup>27</sup> illustrates how the Twitter accounts of certain journalists who complained about the agency were attacked. Numerous testimonies confirm that Sanjuana Martínez, director of NOTIMEX, directly ordered the attacks against journalists and former employees of the news agency.

When the report was published and the media began to cover it, AMLO personally intervened and took ARTICLE 19 to task at one of his morning conferences. At this press conference which, as usual, was aired live on national TV, he accused the organisation of accepting money and resources from the US government and using them against his administration. More specifically, he called ARTICLE 19 a "coup organisation".<sup>28</sup>



While it is true that the organisation has long received funding from USAID, the US Agency for International Development (well before AMLO took office in 2018), the same agency also provides funding for numerous governance and development projects run by the current Mexican government.

The conflict finally escalated to the point that, following another similar accusation against a Mexican NGO (Mexicanos Contra la Corrupción



Loving AMLO, agitating against his opponents: A protestor shows her support for Mexico's president. Meanwhile, on social media, his critics are defamed under the hashtag #RedAMLOVE. Source: © Jose Luis Gonzalez, Reuters.

y la Impunidad, also funded by USAID), the president wrote to the US government demanding that it cease funding the projects and activities of organisations that, in his view, were working against his government and the Cuarta Transformación.

To date, the Biden administration has not responded directly to this letter, but President Biden's subtle remarks that he will continue to work internationally against corruption, and

also the fact that this issue was not discussed during Vice President Kamala Harris's recent visit to Mexico on 8 June 2021 reveal that the US side will not be so easily swayed.

In the wake of these accusations, Amnesty International, Red de Rendición de Cuentas (an accountability network), and journalists such as Lydia Cacho, who was tortured in 2005,<sup>29</sup> immediately voiced their support for ARTICLE 19. They condemned the attacks and

underscored the importance of the organisation, which “has saved the lives, integrity, and freedom of dozens of journalists and communicators.”<sup>30</sup>

## Conclusion

As we have seen, freedom of the press and freedom of expression in today’s Mexico face a dual challenge: on the one hand, the unrelenting direct threats to, and murders of, journalists, which in most cases can be attributed to organised crime, and on the other, the disconcerting approach to these freedoms adopted by the Mexican government.

The fact that this is undermining one of the key elements of a liberal democracy and weakening democracy in Mexico itself is a cause for concern. It is also paving the way for greater social polarisation, something that is clearly part of the Mexican government’s political strategy.

It is too early to draw a final conclusion about how this will affect the success of the AMLO administration. The Cuarta Transformación initiated by AMLO has identified Mexico’s development deficits quite accurately, and accordingly it enjoys the support of the majority of the population. However, halfway through the president’s term, there are at the very least doubts about whether the proposed solution will actually resolve these problems. The deficits in press freedom and freedom of expression as described above serve to fuel this scepticism.

*- translated from German -*

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- 1 Buendía Hegewisch, José 2018: Libertad de expresión y periodismo en México: Situación del ejercicio y percepción de la libertad de prensa en el contexto de las alternancias políticas de 2000 a 2015, in: <https://bit.ly/3rBiysN> [20 Jul 2021].
- 2 Examples include concealing the violent suppression of student protests in 1968 and 1971, covering up corruption scandals, and using private and public funds to trumpet government actions.
- 3 Reyes Márquez, Ricardo 2021: Publicidad oficial: el deber de informar y el derecho a recibir información, *Animal Político*, 15 Feb 2021, in: <https://bit.ly/3xbLk4E> [20 Jul 2021].
- 4 The PRI’s control of the Mexican media was so well known that former President José López Portillo (1970–1976) commented: “I don’t pay them to hammer me”, a quote that illustrates the PRI administrations’ view that media and journalists who receive public money should bestow flattery and praise on the government, not criticism.
- 5 García Márquez, Gabriel 1996: El mejor oficio del mundo, *El País*, 20 Oct 1996, in: <https://bit.ly/373sz8S> [30 Jun 2021].
- 6 Reporters Without Borders 2021: 2021 World Press Freedom Index, in: <https://rsf.org/en/ranking> [29 Jul 2021]; McCarthy, Niall 2021: The State Of World Press Freedom, *Statista*, 20 Apr 2021, in: <https://bit.ly/3AARmxJ> [13 Aug 2021].
- 7 According to Article 19, of the 138 journalists murdered in Mexico between 2000 and 2021, 47 were killed during the administration of Enrique Peña Nieto (2012–2018) and 18 during the current administration of Andrés Manuel López Obrador (from 2018). ARTICLE 19 2021: Periodistas asesinadas/os en México, en relación con su labor informativa, in: <https://articulo19.org/periodistasasesinados> [23 May 2021].
- 8 Beiser, Elana 2020: Getting Away with Murder, Committee to Protect Journalists (CPJ), 28 Oct 2020, in: <https://cpj.org/?p=63336> [23 May 2021].
- 9 López Obrador, Andrés Manuel 2018: Ejerceré siempre mi derecho de réplica de manera respetuosa, que nadie se sienta ofendido: AMLO, Comunicado 073, 5 Nov 2018, in: <https://bit.ly/3i31Cbn> [30 Jun 2021].
- 10 AMLO believes his project of deep political and social change to be the Fourth Transformation, being the historical successor to Mexican independence (1810 to 1821) as the First Transformation, the “Reforma” with Benito Juárez (1858 to 1861) as the Second Transformation, and the Mexican Revolution (1910 to 1917) as the Third Transformation.
- 11 The national media outlets that AMLO has identified and attacked as “conservative” and as “opponents” of his political project are: Reforma, El Universal, Milenio, Excelsior and El Financiero.
- 12 *Animal Político* 2020: AMLO analiza a la prensa: el 66 % de las columnas son contra el proyecto de la 4T, 25 Sep 2020, in: <https://bit.ly/36XxJ6e> [20 Jul 2021].

- 13 Caso, Diego 2020: Gobierno de AMLO acusa a fundaciones de financiar oposición a Tren Maya, El Financiero, 28 Aug 2020, in: <https://bit.ly/3eWDkhg> [8 Jun 2021].
- 14 The president's spokesman specifically accused the Ford Foundation, the Kellogg Foundation, the NED, the Rockefeller Foundation and the Climate Works Foundation of paying Mexican media outlets and organisations to oppose the Tren Maya.
- 15 Animal Político 2020: Nunca la prensa le había pegado tanto a un gobierno: AMLO dice que no hay periodismo independiente, 22 Apr 2020, in: <https://bit.ly/373MPXI> [23 May 2021].
- 16 Pérez, David Marcial 2021: El 'quién es quién' de López Obrador o la nueva ofensiva contra la prensa, El País, 24 Jun 2021, in: <https://bit.ly/3x3B9yY> [30 Jun 2021].
- 17 The Economist 2021: Mexico's false messiah: Voters should curb Mexico's power-hungry president, 27 May 2021, in: <https://econ.st/3BEWzWt> [20 Jul 2021].
- 18 El Financiero 2021: Majadera, muy grosera y mentirosa: AMLO responde a The Economist, 28 May 2021, in: <https://bit.ly/3ryv2BB> [1 Jun 2021].
- 19 El Financiero 2021: Ebrard responde a The Economist: Entiendan que no están entendiendo, 28 May 2021, in: <https://bit.ly/3xbOntC> [30 Jun 2021].
- 20 This refers to the "Fondo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas".
- 21 ARTICLE 19 2020: La eliminación de los fideicomisos pone en riesgo la vida de personas defensoras de derechos humanos, periodistas y víctimas, 21 Oct 2020, in: <https://bit.ly/3eWVpw1> [3 Jul 2021].
- 22 Vivanco, José Manuel 2020: Un nuevo revés para los periodistas y defensores de derechos humanos en México, Human Rights Watch, 3 Nov 2020, in: <https://bit.ly/3kXnZkE> [29 May 2021].
- 23 Reina, Elena 2020: López Obrador aumenta el poder del Ejército con un incremento histórico de fondos en cuatro fideicomisos, El País, 14 Oct 2020, in: <https://bit.ly/3rAg2D0> [29 May 2021].
- 24 Signa Lab 2019: Democracia, libertad de expresión y esfera digital. Análisis de tendencias y topologías en Twitter: el caso de la #RedAMLOVE, 28 Feb 2019, in: <https://bit.ly/3kV7NAa> [20 May 2021].
- 25 Martínez, León 2019: Estudio del Signa Lab sobre la #RedAMLOVE no es un ataque contra el presidente, El Economista, 13 Mar 2019, in: <https://bit.ly/3zExIQG> [20 May 2021].
- 26 The report shows that #RedAMLOVE consisted of 176 Twitter accounts that generated and mobilised thousands of tweets in order to carry out their attacks.
- 27 Signa Lab 2020: Ataques selectivos: estrategias de desprestigio y descalificación, 12 May 2020, in: <https://bit.ly/2UHpl2U> [22 May 2021].
- 28 Pérez, David Marcial 2021: López Obrador acusa a EE UU de financiar a organizaciones "golpistas", El País, 7 May 2021, in: <https://bit.ly/3x3FsKE> [1 Jul 2021].
- 29 Barragán Almudena 2021: La ONU pide a México esclarecer la tortura contra la periodista Lydia Cacho, El País, 30 Jul 2021, in: <https://bit.ly/3z7t8uz> [16 Aug 2021].
- 30 Forbes México 2021: Amnistía Internacional defiende a 'Artículo 19' tras críticas de AMLO, 31 Mar 2021, in: <https://bit.ly/3BB17jj> [1 Jun 2021].



Source: © Francis Mascarenhas, Reuters.

[Media and Freedom of Expression](#)

# Under Pressure

Freedom of Speech and Press in India

Peter Rimmele

In its latest annual report, Reporters Without Borders describes the situation for freedom of press in India as “difficult”. The country is ranked 142 out of 180 countries in the 2021 World Press Freedom Index. India is one of the world’s most dangerous countries for journalists; in recent years many press representatives have lost their lives in the course of their work. Indian officials claim this ranking to be a reflection of Western bias. Yet freedom of press continues to be curtailed, journalists are arrested for expressing an opinion, and attempts are made to control narratives on social media.

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### **Background to Freedom of Press in India**

Discussions about freedom of the media in India often revolve around controlling free speech. The freedom to express opinions is essential for the fourth pillar of a democracy. As emphasised by UN Secretary-General António Guterres: “No democracy can function without press freedom – the cornerstone of trust between people and their institutions.”<sup>1</sup>

Indian Nobel Prize laureate Rabindranath Tagore expresses it as follows:

*Where the mind is without fear and the head is held high;*

*Where knowledge is free; [...]*

*Where the mind is led forward by thee into ever-widening thought and action*

*Into that heaven of freedom, my Father, let my country awake.*<sup>2</sup>

However, his poem seems to have lost all of its meaning in today’s India. The country is far removed from this longed-for “heaven of freedom”. The state of the media in India is characterised by police violence against journalists, guerrilla attacks, and reprisals by criminal groups and corrupt politicians. The high number of murdered journalists and editors highlights the dangers inherent in their work. The freedom of expression protected in Germany by Article 5

(1), line 1 of the Basic Law finds its counterpart in Article 19 (1) of the Indian Constitution. It is a cornerstone of every democracy. All Indian citizens have the right to freely express their opinions without hindrance, and thus the same applies to journalists and the press. However, the Indian Constitution does not contain a specific guarantee of freedom of press similar to that found in Article 5 (1), line 2 of Germany’s Basic Law and an absence of censorship. In India, Article 19 (2) gives the government the right to impose “reasonable restrictions” on the exercise of these freedoms.

Although there is still no consensus on what constitutes “reasonable” restrictions, the increasing criminalisation of critical reporting has to some extent been countered by a Supreme Court ruling in favour of freedom of press. Article 19 (2) of the Indian Constitution sets out three conditions for restricting freedom of expression and freedom of press:

1. The restrictions are subject to a legal provision.
2. They must be in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality, or related to contempt of parliament or the court, defamation, or incitement to an offence.
3. They must be proportionate.<sup>3</sup>

Freedom of the media encompasses the traditional print media, radio, and television but also other formats such as theatre, cartoons, graffiti, film, over-the-top (OTT) platforms<sup>4</sup>, blogs, and various social media platforms such as Twitter and Facebook. A new medium that is emerging, particularly in India, is stand-up comedy. Any medium can be the target of government restrictions and private influence in order to suppress opinions or steer them in a particular direction.

### How Is Freedom of the Media Restricted?

In recent years, efforts to stifle critical reporting and prevent participation in protests have increased. The government and police have exploited new constraints and made extensive use of old restrictions, while the private sector is also able to exert a major influence. The latter is generally done with a view to promoting rather than suppressing a particular opinion.

Criticising the government or its policies does not make someone a terrorist or a criminal. The legal validity of this obvious fact has to be constantly established in individual cases, even going as far as the Indian Supreme Court. A country cannot stifle its citizens' freedom of expression by involving them in criminal proceedings for simply expressing an opinion.

**Despite the courts having repeatedly taken corrective action, this has had little effect on police practices.**

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The sedition law (section 124A of the Indian Penal Code) was introduced by the British colonial administration in 1870 to prevent Indians from expressing their opinions. It was abolished in Britain back in the 1920s, but was retained in the colonies and, even following independence, extensively exploited by successive Indian governments, mainly as a way of silencing their critics. In 1922 – still during the colonial era – Mahatma Gandhi was sentenced to six years

imprisonment under this law for calling on people to resist the British administration.

More recently, under the coalition government led by the Bharatiya Janata Party (BJP), annual cases have almost doubled compared to figures under the previous Congress Party administration. The Supreme Court of India has therefore rightly ruled that journalists cannot be detained for sedition merely for criticising the government.<sup>5</sup> Despite the courts having repeatedly taken corrective action in such cases, this has had little impact on police practices, which are presumably intended to at least act as a deterrent. The law is now being scrutinised by India's Supreme Court and examined for its compatibility with the Constitution. Remarks made by Chief Justice N.V. Ramana left no doubt that "the Supreme Court is prima facie convinced that sedition is being misused by the authorities to trample upon citizens' fundamental rights of free speech and liberty".<sup>6</sup>

### Ongoing Criminalisation and Attacks on Freedom of the Media

Freedom of expression has also been effectively curtailed by the Unlawful Activities Prevention Act (UAPA) of 2019. The act – introduced to better combat terrorism – expands the previous definition of "terrorist" and the powers of law enforcement officers. This is problematic: according to experts, this law does not allow any kind of dissenting opinions, since it already criminalises mere thoughts that supposedly cause discontent.<sup>7</sup> As a result, it criminalises political protests against the government.<sup>8</sup> In this respect, it constitutes an assault on citizens' rights to freedom of speech. In addition, those arrested under UAPA can be detained for up to 180 days without a charge sheet being filed. This may also violate Article 21 of the Indian Constitution (protection of life and personal liberty).

In favour of freedom of press: The Supreme Court of India has ruled that journalists cannot be detained for sedition merely for criticising the government.  
Source: © Anindito Mukherjee, Reuters.



In mid-June 2021, three student activists who had spent more than a year in detention awaiting trial for “terrorist activities” for having organised demonstrations were finally released on bail – an example of how the State can abuse counter-terrorism tools to suppress freedom of speech. The Delhi High Court rightly maintained: “It seems, that in its anxiety to suppress dissent, in the mind of the state, the line between the constitutionally guaranteed right to protest and terrorist activity seems to be getting somewhat blurred. If this mindset gains traction, it would be a sad day for democracy.”<sup>9</sup> Nevertheless, the instrument is likely to succeed as a deterrent, as the amended law will be used to suppress dissent through intimidation. This threatens the very existence

of public debate, freedom of speech and press. A number of people have been detained for expressing their views under suspicion of terrorism.

Another instrument is set out in Section 144 of the Indian Code of Criminal Procedure. In this way, too, the freedom of expression can be suppressed, at least temporarily. However, this implies the existence of an urgent, specific threat to public order. Mere probability or possibility is not sufficient for this purpose. Given that case law<sup>10</sup> has clarified the application only in the case of incitement to commit a crime, this instrument no longer plays a major role here. However, as will be discussed later, it is used as



a legal basis for the frequent internet shutdowns occurring in India. Another form of restriction is blocking news channels and portals in the event of undesirable reporting. In 2020, India blocked AsiaNet News and MediaOne TV for reporting on the unrest in Delhi (farmers protesting new farm laws).

### Attacks on Journalists

Today, Indian journalists are regularly charged with sedition or disturbing public order. They are charged in the name of national integrity – especially when criticising the government – and have to face criminal proceedings. They are often decried as being anti-national. On 3 July 2020, the journalist Patricia Mukhim, an editor at Northeast India’s Shillong Times, wrote a Facebook post condemning the attack on five youths by a group of masked men. A “first information report” was filed against her for allegedly creating communal disharmony. Her case went as far as the Indian Supreme Court, which ruled that her post “cannot by any stretch of imagination be considered ‘hate speech’”.<sup>11</sup>

## Filmmakers and cartoonists sometimes face the wrath of the government.

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Journalists who voice criticism face a growing risk of physical assault or even death. Some 200 serious attacks on journalists were reported between 2014 and 2019, with 36 occurring in 2019, mainly clustered around the protests in Delhi. Journalists were killed in 40 of these cases, 21 of which were proven to be related to their work, particularly as investigative journalists. Yet these offences rarely result in prosecution, let alone conviction. Journalists regularly find themselves the target of angry mobs, supporters of religious sects, political parties, student groups, security agencies, criminal gangs, and local mafia groups. However, journalists have also been murdered in the past for exposing illegal economic activities, such as alcohol

smuggling or the illicit extraction of mineral resources. In any event, killing journalists because of their work must surely be considered the ultimate form of censorship.<sup>12</sup>

### Restrictions on Artists and Cultural Workers

Four years ago, the film “Padmaavat” and more recently the web series “Tandav” attracted the attention of Hindu groups and Rajput caste organisations; the core constituency of India’s ruling parties. Protests escalated into vandalism and threats against the filmmakers and cast. In both cases, the filmmakers were forced to make compromises, such as changing the title to avoid confusion with a historical figure.<sup>13</sup> The film “Bhobishyoter Bhoot” (2019), a satirical comedy in Bengali, was removed from several theatres in Kolkata immediately following its release. The Supreme Court directed the West Bengal government to pay compensation to the film’s producer for restricting its screening. The Court also imposed a fine on the government led by Mamata Banerjee (of the All India Trinamool Congress party) stating that “free speech cannot be gagged for fear of the mob”.<sup>14</sup> However, it is not only filmmakers but also cartoonists who sometimes face the wrath of the government if they dare to criticise it or its policies. In April 2021, Ambikesh Mahapatra, a chemistry professor, was arrested and detained overnight for forwarding a cartoon to friends that mocked the West Bengali Prime Minister Banerjee.

On 4 April 2021, the Indian government ordered the abolition of the Film Certificate Appellate Tribunal (FCAT), which heard appeals from filmmakers seeking certification for their films. The abolition means that filmmakers will now have to approach the High Court if they want to challenge a particular certification or its denial by the Central Board of Film Certification (CBFC). In India, all films must have a CBFC certificate prior to being broadcast on TV or screened in public. The CBFC can also refuse to certify a film. In the past, it was often the case that filmmakers and producers were unhappy about the CBFC’s certification or denial, but they had the option of appealing

to the FCAT. And in many cases, the FCAT overturned the decision.

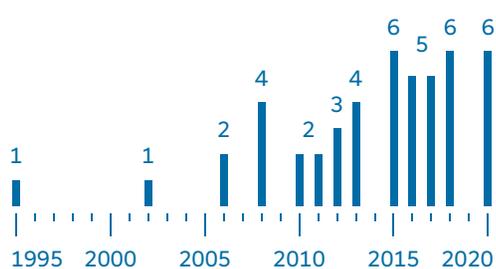
The film “Haraamkhor” (2015) was denied CBFC certification as it depicted the relationship between a teacher and a young female student. The FCAT cleared the film on the grounds that it could be used for “furthering a social message and warning girls to be aware of their rights”.<sup>15</sup> The film “Lipstick Under My Burkha” (2016) was denied certification in 2017.<sup>16</sup> Director Alankrita Shrivastava appealed to the FCAT, after whose verdict some scenes were cut, and the film was released with an A certificate (for adults only). Thus, the main function of the FCAT was to hear the complaints of filmmakers applying for certification who were aggrieved by the CBFC’s decision. Numerous filmmakers, including the award-winning Vishal Bhardwaj, have voiced their concern following the abolition of the FCAT and taken to social media to protest the decision.<sup>17</sup>

Fairly recently, the police also arrested stand-up comedian Munawar Faruqui for allegedly making jokes about Hindu gods. Meanwhile, in Goa, members of the rock band Dastaan LIVE were acquitted of charges of “hurting religious sentiments” while performing at an arts festival. The court noted that when it comes to the offence of hurting religious sentiments, the police should be more sensitive as freedom of speech and expression is at stake.<sup>18</sup>

### Abuse of Freedom of Speech

In India, media houses are sometimes accused of being corrupted and pro-government. This is illustrated by recent coverage of the COVID pandemic. According to German media reports, last year the government pressured the owners of 15 daily newspapers to report positively on its handling of the pandemic.<sup>19</sup> These media outlets failed in their duty to inform, which led to problems being swept under the carpet rather than solutions being found. However, when the pandemic hit India on a truly horrific scale, the facts could no longer be concealed.

**Fig. 1: Number of Journalists Killed in India per Year 1995–2020**



Source: Own illustration based on UNESCO 2021: UNESCO observatory of killed journalists – India, in: <https://bit.ly/3sGXd1A> [24 Aug 2021].

The influence of large corporations, which significantly impact on media outlets’ income through their advertising, also leads to restrictions on freedom of expression. Despite the huge number of media outlets in India, there is a high degree of market concentration. The Indian government is their largest advertising customer, which means that – together with its allies in the private sector – it has a major influence on their revenues. India’s richest businessman, Mukesh Ambani, a close ally of Prime Minister Modi, has “backed” five media companies with loans.<sup>20</sup> To a great extent, large-scale media corporations determine what is published. However, “paid news” interferes with freedom of press and violates ethical principles.

Another problem in India is the phenomenon of the media proclaiming the guilt of the accused before the court pronounces its verdict, known as “trial by media”. Such reporting by news outlets hinders investigations essential for the justice system and permanently damages the victim’s reputation. Although the press is obliged to report on cases of public interest, before publishing they must carefully examine whether the article or statement crosses the boundaries of freedom of press. It is easy to cross the line and descend into trial by media. The suicide of actor Sushant Singh Rajput became the subject of such a trial. The press destroyed the reputation of the late

actor's partner, actress Rhea Chakraborty. She found herself the target of a vicious hate campaign propagated by high-profile journalists and social media trolls that pronounced her guilty of all kinds of crimes. In the murder case of 13-year-old girl Aarushi Talwar, the media had declared who was and was not guilty even before the actual trial began. It later turned out that the domestic worker, already "convicted" of murder by the press, was not the perpetrator. Yet there are also a few positive cases to report. In the past, the fourth pillar of Indian democracy has proven to be a potent weapon in promoting victims' interests in some notable murder cases.<sup>21</sup>

## Control of the Internet and Electronic Media

Today, with an estimated 630 million users, the internet is one of the main methods of disseminating information in India and is therefore covered by the right to freedom of expression guaranteed in Article 19 (1) (a) of the Constitution.

India, too, is aware of how modern terrorists are exploiting these new cross-border opportunities for their own ends. A temporary ban on the internet may be an appropriate way of curbing terrorism when the web is used to incite violence. Nevertheless, recent years have seen internet shutdowns become a widespread



True diversity of opinions? In India, media houses are accused of being corrupted and pro-government, the biased coverage of the COVID-19 pandemic being one example. Source: © Sanna Irshad Mattoo, Reuters.

phenomenon in India on the grounds of curbing fake news and terrorism. India has experienced more internet shutdowns than anywhere else in the world and represented 70 per cent of global shutdowns in 2020 (109 known cases). It also came top of this ranking in 2018 and 2019.<sup>22</sup> As in previous years, most cases were recorded in the Union Territory of Jammu and Kashmir. Faced with these alarming numbers, the question arises: to what extent do these shutdowns undermine citizens' constitutionally guaranteed freedom of expression?

### **In 2019, the Indian Supreme Court noted in the case of Facebook vs. Union of India that the misuse of social media had reached dangerous levels.**

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The Indian Telegraph (IT) Act of 1885 empowers the government in Section 5 (2) to block the transmission of messages in the interests of maintaining public safety or in an emergency. Following a Supreme Court intervention over a five-month long shutdown on 10 January 2020, the Modi government finally decreed that internet shutdowns can last no longer than 15 days. Section 69A of the IT Act 2000 empowers the Indian government to block online content and arrest offenders. Originally intended to protect democracy, this instrument now seems to be used more as a tool to contain the media's watchdog role.

In mid-June 2021, the Indian press reported that the Indian delegation at the recent G7 meeting had succeeded in amending the communiqué to remove criticism of Indian internet shutdowns and to place national security above individual freedoms. India's Minister of External Affairs, Subrahmanyam Jaishankar, stressed that public safety arguments ought to be prioritised when designing communication flows.

Work on the internet is (still) relatively free of regulation and censorship, which gives content

creators the intellectual freedom to experiment without fear of being censored. OTT platforms have given their creative ideas a new lease of life. These relatively new platforms are free from the accepted moral standards prevailing in the largely conservative India. What is more, films released on an OTT platform do not require a licence from the Central Board of Film Certification. However, the regulation of content on OTT is of fundamental importance, not least to guarantee a level playing field with traditional – regulated – media and to take effective action against phenomena such as hate speech and fake news. In 2019, the Indian Supreme Court noted in the case of Facebook vs. Union of India that the misuse of social media had reached dangerous levels and urged the government to develop guidelines to address the issue.

It was now a matter of creating an appropriate framework that balanced freedom of expression with the necessary restrictions for maintaining law and order. The Supreme Court also directed the central government to take responsibility for the digital content presented on these media channels. The Internet and Mobile Association of India (IAMAI), the body representing OTT platforms, had previously proposed a voluntary model for self-regulation.<sup>23</sup> However, the government rejected this proposal and issued its own Guidelines for Intermediaries and Digital Media Ethics Code Rules in 2021. These are intended to address people's concerns while removing any misconceptions about restrictions on creativity and freedom of expression. The law regulates OTT platforms by requiring them to comply with the laws of the country in which they broadcast. These platforms are also required to set up a mandatory complaints procedure. Considering the political climate previously described here, the fear that an interpretation of these rules could get out of hand and result in more restrictions not only for the creativity of out-of-the-box content, but also for journalistic freedom, is probably justified.

There have been clashes ever since the Indian government began regulating social media



channels such as WhatsApp and Twitter. For example, if ordered to do so by a court or the government, social media companies have to disclose who is the author of specific posts. The government can also demand the extensive blocking of tweets or entire accounts. According to critics, what was striking is that this related to media criticism of the government's management of the pandemic and the highlighting of certain tweets by ruling BJP politicians as being manipulative. This has fuelled the debate about the limits of social media freedom, with numerous court cases now pending. One Indian response to the debate is to create a rival app to Twitter (Koo), which welcomes the government's "user-friendly rules" and requires foreign companies to comply with them too.

## Conclusion

Indian journalists merely enjoy the general right to freedom of expression that applies to all Indians under the Constitutional Article 19. Freedom of press is not regulated by constitutional law. A constitutional amendment to give freedom of press a stronger constitutional status is not expected in the foreseeable future. However, clearer media regulations should be considered at the level of simple legislation in order to protect freedom of press. The focus should not only be on the traditional media, but also on the digital sphere and future advances in communication technology above all.

Internet shutdowns are now time-limited by order of the Supreme Court but are still to be expected in future. Having said that, the negative impact on the right of citizens and journalists to communicate – and thus the harm to democratic principles – could at least be mitigated if the government did not constantly resort to total shutdowns. It may also be possible to achieve the intended security outcomes through less draconian measures according to the principle of proportionality. An example is the proposal not to shut down the network completely in such situations, but to restrict technical ability to send messages. Shifting from 4G to 2G connectivity would make it impossible to

share videos or audios inciting violence, but the population would still retain this vital means of communication.

When journalists are attacked, one should expect the government and particularly the security forces to take a more proactive approach to protecting them. Monitoring bodies could be involved in the judicial processing of offences against journalists in order to prevent it founding. A good start would be if executive authorities could show more restraint in the face of criticism. Academics, journalists, even entire media outlets have been repeatedly labelled as anti-national, hatemongers, or urban Naxalites (a Maoist-influenced guerrilla movement). All over the world, it is normal for people to have different views of government policies, however. The fact that these are allowed to be voiced and often lead to improvements in these policies, is one of the hallmarks of a democracy. If this is prevented, democracy itself is ultimately endangered.

The steady decline of India's ranking regarding the quality of freedoms, including freedom of press, has little to do with Western bias. It is a consequence of the measures outlined or lack of action and is also perceived as such in India. As a result, complaining about the rankings will do little to change the situation. Instead, what is needed is a proactive approach or forbearance, as described above. If this is pursued, we can expect to see improvements to freedom of press in India. The fact this is likely to improve its ratings and rankings is a secondary effect.

*– translated from German –*

*Prasanta Paul, a student at the Statesman Print Journalism School<sup>24</sup>, Kolkata, class of 2020–2021, assisted with the preparation of this article.*

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- 1 Guterres, António 2020 via Twitter, 5 May 2020, in: <https://bit.ly/3gyh5z7> [29 Jun 2021].
- 2 Tagore, Rabindranath 1915: *Gitanjali* (Song Offerings), New York, pp. 27 f.
- 3 Government of India, Ministry of Law and Justice 2020: *The Constitution of India (As on 9<sup>th</sup> September, 2020)*, New Delhi, p. 27, in: <https://bit.ly/3B9h2l7> [23 Jun 2021].
- 4 Over-the-top refers to the transmission of video and audio content via internet access points without an internet provider being involved in the control or distribution of the content.
- 5 Mahapatra, Dhananjay 2021: Journalists can't be arrested just for criticising govt: Supreme Court, *The Times of India*, 4 Jun 2021, in: <https://bit.ly/3jdiHAb> [23 Jun 2021].
- 6 Rajagopal, Krishnadas 2021: Sedition law | Supreme Court sends strong message to government, *The Hindu*, 15 Jul 2021, in: <https://bit.ly/3yfxAek> [10 Aug 2021].
- 7 Bhandari, Deepali / Pokhriyal, Deeksha 2020: The Continuing Threat of India's Unlawful Activities Prevention Act for Free Speech, *Jurist*, 2 Jun 2020, in: <https://bit.ly/3zcDysS> [10 Aug 2021].
- 8 Fähnders, Till 2021: Mit Antiterrorgesetzen mundtot gemacht, *Frankfurter Allgemeine Zeitung*, 20 Jul 2021, in: <https://faz.net/-gq5-adxf9> [22 Sep 2021].
- 9 *The Indian Express* 2021: Moral high court, 16 Jun 2021, in: <https://bit.ly/3jfhLuW> [25 Aug 2021]; *The Economic Times* 2021: Sad day for democracy, if line blurs between right to protest, terrorist activity: HC, 15 Jun 2021, in: <https://bit.ly/38dEa5O> [25 Aug 2021].
- 10 Case of Shreya Singhal vs. Union of India: The dissemination of "grossly offensive" or "threatening information" using a computer was deemed punishable. The Supreme Court rejected the provision as unconstitutional because it was incompatible with the guaranteed freedom of speech.
- 11 Indian citizens' freedom of speech cannot be stopped by opening criminal proceedings against them. *The Indian Express*, 25 Mar 2021.
- 12 Mantri, Geetika 2019: 40 journalists killed in India, 198 serious attacks in last five years, finds study, *The News Minute*, 23 Dec 2019, in: <https://bit.ly/3sJ69nc> [23 Jun 2021].
- 13 BBC 2018: Padamaavat: Why a Bollywood epic has sparked fierce protests, 25 Jan 2018, in: <https://bbc.in/3yg9w6i> [10 Aug 2021].
- 14 *Scroll.in* 2019: SC orders West Bengal to pay 'Bho-bishyoter Bhoot' producer Rs 20 lakh for 'virtual ban' on film, 11 Apr 2019, in: <https://bit.ly/3znzBSs> [10 Aug 2021].
- 15 *Hindustan Times* 2016: FCAT reverses Censor Board's ban on Nawazuddins Haraamkhor, 23 Dec 2016, in: <https://bit.ly/3jfZHkp> [25 Aug 2021].
- 16 *The Hindu* 2017: FCAT directs CBFC to grant A certificate to 'Lipstick Under My Burkha', 26 Apr 2017, in: <https://bit.ly/3jefsZ6> [10 Aug 2021].
- 17 Kumar, Pradeep 2021: Abolition of Film Certification Appellate Tribunal leaves film industry puzzled, anxious, *The Hindu*, 10 Apr 2021, in: <https://bit.ly/3DgMn7C> [10 Aug 2021].
- 18 *Journovitya* 2021: Goa: Bombay HC quashes FIR filed against band Dastaan LIVE booked in 2019 for 'hurting religious sentiments', *India Today*, 11 Apr 2021, in: <https://bit.ly/3kr2CGk> [10 Aug 2021].
- 19 *Mitteldeutscher Rundfunk* 2021: Indien: Regierung schränkt Pressefreiheit massiv ein, 3 May 2021, in: <https://bit.ly/3kn2O9N> [10 Aug 2021].
- 20 Khan, Ruhi / Kahn, Darish 2021: India cannot breathe. Is the media choking it further? *The London School of Economics and Political Science (LSE), Media@LSE*, 7 May 2021, in: <https://bit.ly/2WiJJgu> [25 Aug 2021].
- 21 Deshmukh, Vishwajeet 2021: Media Trials in India: A Judicial View to Administration, *Jurist*, 19 Jan 2021, in: <https://bit.ly/3dJJByb> [23 Jun 2021].
- 22 Ajmal, Anam 2021: 70% Of Global Internet Shut-downs in 2020 Were in India: Report, *The Times of India*, 4 Mar 2021, in: <https://bit.ly/3DYd5Sx> [8 Sep 2021].
- 23 Bhardwaj, Vrinda / Rana, Ankur 2021: Netflix and Chill: Online Content Regulation in India, *Jurist*, 10 Feb 2021, in: <https://bit.ly/3myj7mK> [23 Jun 2021].
- 24 The Statesman Print Journalism School set up by the Irani Foundation in Kolkata is an Indian journalism school supported by the Konrad-Adenauer-Stiftung.



[Media and Freedom of Expression](#)

# Everything Has Changed

Two African Media Houses Creatively Master the Pandemic

[Christoph Plate / David Mbae](#)

While willingness to pay for good journalism has long been considered low among African media consumers, appreciation for reliable information has recently increased noticeably in the course of the COVID-19 pandemic. Anyone prepared to be innovative and to focus on quality can succeed even in these difficult times, as 263Chat from Zimbabwe and the pan-African project The Continent impressively demonstrate.

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The pandemic has changed perceptions, including among publishers and media consumers on the African continent. When the Sub-Saharan Africa Media Programme of the Konrad-Adenauer-Stiftung organised a conference in Ghana's capital Accra at the end of 2018, the publishers and editors-in-chief from over a dozen African states who gathered there all agreed that a paywall for serious journalism, for verified news, could never, ever work. In Africa, people prefer to get news for free and use the various platforms to be reasonably well informed, but wherever possible avoid paying for it. Spending money on good journalism – until the pandemic, that was the preserve of just a few bank directors or ministers who could afford a digital subscription to The Economist or the Financial Times. But, for a media house to survive, it takes a critical number of readers, listeners, or viewers who are willing to pay.

### **Quality Has its Price**

Three years and a devastating pandemic later, the media situation has changed dramatically: tens of thousands of journalists on the continent have lost their jobs. Advertising revenues have plummeted disastrously. And a growing number of publishers are asking themselves how and why they should actually keep going.

But just as every crisis presents an opportunity, there are now paywalls in newspapers and websites in South Africa, Nigeria, and Kenya. Anyone who wants to access specific or special media content will have to get out their credit card or be forcefully reminded that journalists need to survive, too.<sup>1</sup> During the pandemic,

the ever-growing middle classes in countries like Kenya, Ghana, Nigeria, and South Africa seem to have realised that you have to pay for good and verified journalism. When it comes to dealing with a threat like the pandemic, it is not enough to simply look at random websites. If you want reliable information, you ideally should pay something to show your appreciation for this kind of journalism. Good journalism will continue to exist, but it will have to look for new distribution channels and financing models.

In Zimbabwe and South Africa, two very innovative media start-ups have shown, during the pandemic, that it takes creativity and the highest degree of entrepreneurial flexibility to steer a media outlet through difficult times, continue paying wages, and, above all, reliably supply the public in the usual manner. 263Chat in Zimbabwe's capital Harare and The Continent, the first WhatsApp newspaper to be distributed and read throughout Africa, are evidence of the importance of serious journalism in Africa.

In Zimbabwe in particular, the absence of free debate about the right path for society is clearly felt. Some churches and foundations are trying to initiate such a debate. But the ruling party, Zimbabwe African National Union – Patriotic Front (ZANU-PF), has always used the media to consolidate its own power. It deliberately uses them as a tool to shape public opinion in its own favour, rendering informed debate about the country's problems and challenges difficult.

Like every sector in Zimbabwe, the media are a product of the political and socio-economic

environment. Since the turn of the millennium, the country has been in a continuous crisis, which some attribute to the crisis typical of developing countries when transitioning to a middle-income economy.<sup>2</sup> However, the thesis that complex political and economic factors, intertwined with national, regional, and international factors, are at work in Zimbabwe's case seems more plausible.<sup>3</sup>

## The multitude of publications gives the impression of a diverse media landscape – but this is an illusion.

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Whatever the verdict, the impact of the crisis is clear for all to see. Internal political power struggles within the ruling party and the suppression and weakening of a legitimate opposition are clearly evident. This is leading to an ongoing erosion of civil, socio-economic, and cultural freedoms, thus fulfilling all the characteristics of an increasingly dysfunctional state.<sup>4</sup>

Visitors to Zimbabwe may get the impression that the media landscape is diverse and that a democratic process is being promoted, in view of the multitude of publications. But this is an illusion. The main media (television, radio, and print) are directly controlled by the Ministry of Information and the president's office. They belong to the state, to private individuals with close ties to ZANU-PF, or to high-ranking military officers.

Media legislation does not adequately protect free access to information and thus enable and promote the democratic process. Rather, the regulations are intended to help maintain the political status quo, the goal being to ensure that critical voices remain muted, if not silenced.

### 263Chat: Independent Information for Zimbabwe

In September 2012, under these far from favourable auspices, the story of 263Chat began. Publisher

Nigel Mugamu started with a Twitter account in his own name and a hashtag. +263 is the international telephone code for Zimbabwe. Founder and CEO Mugamu, a trained accountant, has since taken on the poetic title of "Chief Storyteller". His parents went to Fiji on a scholarship in the late 1970s. They returned as accountants to an independent Zimbabwe, where Nigel Mugamu grew up. His parents, traditional on the one hand, cosmopolitan on the other, taught him early on to think outside the box and prepared him and his younger sister for life in two worlds. Here the traditional family life of the Zimbabwean middle class, there the fast pace of Europe and the West, including their customs. Nigel Mugamu completed his bachelor's degree in Australia, where he then worked as an accountant for another five years. After a year back home, he applied for a master's degree at the University of Edinburgh in Scotland. He financed his studies by working for an American company that specialised in data storage. In 2012, he was already discussing political, economic, and social issues, such as the country's political polarisation and economic path on Twitter using the hashtag #263. At that time, Nigel Mugamu did not have his own website.

Awareness began to grow in 2013, an election year. More and more Zimbabweans had access to social media. The election campaign was at the forefront of the news, and a growing number of citizens were looking for reliable information beyond the traditional media. This led to international media such as the BBC and Al Jazeera citing 263Chat as a source when reporting from Zimbabwe. Regional visibility was the result. In 2013, 263Chat received an award from Highway Africa, a conference at Rhodes University in Grahamstown, South Africa. Highway Africa was sponsored by businesses, the South African government, and development cooperation organisations; it honoured innovations in digital

Digitisation as an opportunity: 263Chat → produces a daily newspaper for Zimbabwe that is sent to subscribers as an e-paper via WhatsApp.

Source: © Philimon Bulawayo, Reuters.



technologies, journalism, and media. As a result, 263Chat started cooperating with embassies and development agencies in Zimbabwe.

In the subsequent years, 263Chat's offer was expanded to include multimedia channels such as YouTube and SoundCloud. The #263Chat hashtag had become established, so international media houses such as CNN and the BBC used the #263Chat hashtag and the Twitter account @263Chat in their reports to capture the mood of the country.

The real story of the 263Chat company began in 2015, when it succeeded for the first time in making journalistic work commercially viable. It gathered, edited, and shared information through its team of four journalists spread across the four largest cities (Harare, Bulawayo, Gweru, and Mutare). From then on, this news was not only disseminated on social media but also collated on its website 263chat.com.

**Since many of the devices are not internet-enabled, text messaging is the main means of communication for many citizens.**

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In June 2016, more than 63,000 people followed the account on Twitter. There were also 8,300 followers on Facebook and 1,300 on Instagram. As a result, 263Chat established itself as one of the leading providers in the production and live-streaming of events held by civil society organisations and private companies. The year 2017, which marked a turning point in Zimbabwe with the ousting of long-term president Robert Mugabe, was also a crucial one for 263Chat. At the time when the military leadership deposed the long-serving ruler and placed him under house arrest, 263Chat first published its e-paper, which remains an important reporting tool to this day. The e-paper is a daily newspaper published from Monday to Friday and sent to subscribers as a

PDF file via WhatsApp. Financed by advertising, the publication is free of charge for readers. The number of subscribers has been growing steadily ever since.

### **Successful Innovators, despite the Pandemic**

263Chat has also been severely affected by the COVID-19 pandemic. Reporting was made much more difficult by restricted freedom of movement. In addition, the Media Commission, which is responsible for accrediting journalists, did not issue press credentials until mid-2020, so journalists could not prove that they were providing an essential service. The Media Commission's policy has been criticised by independent journalists for years for making free reporting difficult and criminalising journalistic work. Numerous journalists have been arrested or intimidated by the security forces.<sup>5</sup> An employee of 263Chat was also temporarily detained. Despite the increasingly deteriorating economic situation of a large part of the population, e-paper subscriber numbers have increased, as has website traffic. More and more companies wanted to advertise digitally, which gave 263Chat an advantage over traditional media.

Technical innovation is important, especially in times of a pandemic. And so, since June 2021, the company has been able to distribute news via text messages. This may seem old-fashioned to outsiders, but it is immensely significant: Zimbabwe had 14.7 million registered mobile connections as of January 2021.<sup>6</sup> Many devices are not internet-enabled. Text messages are, thus, the most important means of communication for many citizens. The number of potential recipients has increased enormously, and access to daily news has been made available to people whose previous contact with independent media was non-existent or only sporadic. Looking ahead to future elections, this represents a transformation of the media landscape in Zimbabwe that should not be underestimated.

263Chat is commercially successful today because it has used digital media from the beginning and in so doing has attracted advertisers. In

addition, the company has entered into agreements with four universities in Zimbabwe to help train young journalists and raise their standards. With a team now consisting of ten journalists, 263Chat today publishes content on 263chat.com, in the e-paper, on Twitter, on Facebook, and on Instagram, and now also by text message. Meanwhile, 263Chat has 488,000 followers on Twitter, 198,000 on Facebook, 54,000 on YouTube, and 46,500 people receive the e-paper via WhatsApp. This rapid growth can be explained by increasing digitisation and the public's shift to media that offer a low-access threshold by providing independent news free of charge to the general public. This is significant because almost three-quarters of all Zimbabweans live in rural areas. Their votes decide elections, but, in the past, they have often been misled by the ruling elites.

In Zimbabwe's polarised political landscape, 263Chat always reports the news without political bias. Credibility and the resulting trust of a growing readership also determine the attractiveness of the media for advertisers in Zimbabwe in the long term.

### **The Continent: A Pan-African Project**

The creativity and innovative spirit of Nigel Mugamu inspired Simon Allison in South Africa to launch his start-up The Continent despite, or perhaps because of, the pandemic. A little over a year after the WhatsApp newspaper first appeared in April 2020 – the first pan-African publication that is not controlled by any censorship authority, that cannot be prevented from printing, and that cannot be held up at a mail distribution centre – it has grown to 11,000 subscribers. It is estimated that, on average, each weekly issue sent via WhatsApp is redistributed to at least six different recipients, which means that there might be almost 100,000 readers per week. “We are probably the most widely read continental publication in Africa,” Allison says with pride. And donors are clamouring to be part of such a project: George Soros' Open Society Foundation has just approached the small editorial team at The Continent with a request to be allowed to fund an elaborate research project in

terror-stricken northern Mozambique. Simon Allison will go to Maputo and tell the Mozambican journalists set to carry out research in the north about the issues that interest a continental audience. From experience, he knows that: “These journalists have the contacts and insights that a foreigner would never have.” The US National Endowment for Democracy in Washington, D.C. funds some editorial positions. At present, eleven people are employed, including four full-time editors, with part-time staff including a designer, a distribution expert, and a final editor.

### **The Continent must be careful not to become a victim of its own success.**

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The Continent was created with the help of the long-established Mail & Guardian newspaper in Johannesburg. The publication and its predecessors, such as the Rand Daily Mail, where Allison's father worked during apartheid times and which was banned, or the Weekly Mail & Guardian under then editor-in-chief Anton Harber, have done great service in exposing the human rights violations of the apartheid regime. Today, however, many of the almost 30,000 subscribers only buy the newspaper out of habit. The attempt under former owner Trevor Ncube to become a pan-African publication ended in financial disaster. Even though the newspaper's header still bears the words “Africa's best read”, it was traumatic for the majority white editorial staff to witness the failure of the attempt to achieve a pan-African readership. The Mail & Guardian's willingness to get involved in the new project, The Continent, was therefore limited to providing occasional texts for republication and allowing the paper's Africa editor, Simon Allison, to work on this pan-African project.

New technologies such as WhatsApp, alongside increasing digitisation, especially in Sub-Saharan Africa, gave him the opportunity. At a conference of the Konrad-Adenauer-Stiftung's Media Programme in Gaborone in 2019 on the



media credibility crisis, Allison presented his idea of a truly African publication. He would never have guessed at the time how quickly The Continent would become a reality. He was

helped in this by meeting the innovative Zimbabwean newsman Nigel Mugamu at that very same conference in Gaborone. Mugamu shared the idea of distributing his 263Chat publication



Diverse reporting: The pan-African publication The Continent covers a wide range of topics – from the political situation in Mali to arms trafficking in the Republic of Congo and fishing in Sierra Leone. Source: © Cooper Inveen, Reuters.

to Zimbabwean readers via WhatsApp. Allison was inspired. Today, there are 11,000 subscribers and an estimated 100,000 readers in 105 different countries, which is very respectable

compared to the circulation numbers of other publications on the continent. Besides surprising countries like Kazakhstan and Kyrgyzstan, most subscribers live in South Africa, Kenya, Nigeria, Zimbabwe, or the US.

The diaspora craves information and reading The Continent on a smartphone or tablet meets this need. Readers in the diaspora are usually also willing to pay some money to keep their publication of choice going. Premium Times in Nigeria is a successful example of this. And since their founder Dapo Olorunyomi and Simon Allison have also met at conferences of the Konrad-Adenauer-Stiftung’s Media Programme, the Nigerian experience of tapping into the diaspora will also benefit the creators of The Continent in South Africa.

The newspaper publishes weekly city portraits, from Mogadishu to Khartoum to Lagos. It reports on money laundering in Kinshasa, arms trafficking in Brazzaville, the situation of homosexuals in Uganda, and fishermen in Sierra Leone, whose lives are made difficult by Chinese fishing associations. Short analyses question why there has now been another military coup in Mali, or whether the leader of Nigerian terrorist group Boko Haram is really dead or not.

### **Small Team, Big Dreams**

In the meantime, the advertising industry has shown an interest in The Continent – for instance, a large South African bank that wants to enter the continental banking business. However, their attempts to put sponsored content into the newspaper were rejected by the editors. Zitto Kabwe, a key Tanzanian opposition politician, has described The Continent’s work as one of the most important contributions to

democracy and freedom of expression during the rule of dictator John Magufuli.

Because the team at The Continent is very small, everyone has to do a bit of everything; the editor is currently also doing some of the bookkeeping; the staff are creative and have lots of ideas. Yet, The Continent has to be careful not to become a victim of its own success. It has to avoid growing too fast and, above all, not make the mistake that plagues its parent paper – reprinting feature reports and essays that politically interested readers have often already seen days before on other websites and opinion forums on Africa. Long and well-told stories are also possible in the WhatsApp newspaper, which is limited to 30 pages per issue. 150 journalists from Africa wrote for The Continent in its first year and, according to Simon Allison, they were all paid.

A French edition is planned for the future, which could be a no-brainer given the rather uninspiring media landscape in West Africa. Simon Allison also dreams of voice notes that could turn the newspaper into an audio experience. The greatest merit, however, is not only having launched a courageous and visionary project during a pandemic but, for the first time, to have given readers in Sierra Leone an opportunity to experience good journalism from Zimbabwe, and vice versa.

The main task now is to maintain quality, avoid journalistic mistakes, and further consolidate the trust in serious journalism that has grown significantly during the pandemic with weekly editions of The Continent. The Continent and 263Chat are still free to consumers. This is also thanks to certain philanthropists, in particular from the US. But ideally, these two creative ventures will also be able to stand on their own two feet at some point.

Just as 263Chat was very popular in Zimbabwe, especially during the crisis, and promoted the democratic process, The Continent succeeds in something else: it provides information about the whole of Sub-Saharan Africa across colonial and linguistic boundaries. African journalism is

also not about reinventing the wheel. But now, particularly after the pandemic, media makers have to question themselves more often than before: is this the right way to go? How can I use new technologies? Am I reaching the people I want to reach?<sup>7</sup>

Creative ideas have emerged from the crisis. However, many of these projects or start-ups need to free themselves from their dependence on powerful sponsors in the medium term. That is why it is promising that publishers like Nigel Mugamu and editors like Simon Allison never tire of emphasising that, particularly in these difficult times, senior journalists also have to think like managers. Only in this way will this kind of important journalism be successful in the medium term.

*- translated from German -*

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- 1 Toff, Benjamin /Badrinathan, Sumitra et al. 2021: Listening to what trust in news means to users: qualitative evidence from four countries, Reuters Institute for the Study of Journalism, 22 Apr 2021, in: <https://bit.ly/3yeoBGq> [28 Jul 2021].
- 2 Moore, David 2003: Zimbabwe's Triple Crisis: Primitive Accumulation, Nation-State Formation and Democratization in The Age of Neo-Liberal Globalization, *African Studies Quarterly* 7: 2-3, in: <https://bit.ly/3ldOLXA> [23 Jul 2021].
- 3 Murithi, Tim /Mawadza, Aquilina 2011: Zimbabwe in Transition: A View from Within, Institute for Justice and Reconciliation, Johannesburg.
- 4 Mlambo, Alois / Raftopoulos, Brian 2010: The Regional dimensions of Zimbabwe's multi-layered crisis: an Analysis, in: <https://bit.ly/2WwfgM3> [22 Jul 2021].
- 5 The Economist 2021: Censorious governments are abusing "fake news" laws, 11 Feb 2021, in: <https://econ.st/3BRLdPa> [22 Jul 2021].
- 6 Kemp, Simon 2021: Digital 2021: Zimbabwe, Data-reportal, 12 Feb 2021, in: <https://bit.ly/3ymXtEU> [22 Jul 2021].
- 7 Lu, Shen et al. 2021: Catalyst or Destabiliser? COVID-19 and its Impact on the Media Landscape Worldwide, Konrad-Adenauer-Stiftung, 1 Mar 2021, in: <https://bit.ly/3BpP6K4> [22 Jul 2021].



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Media and Freedom of Expression

# Between Awakening and Repression

The Arab Media Landscape in Transition

Ulf Laessing

Ten years after the uprisings of the “Arab Spring”, the media landscape in the Middle East and North Africa is in a state of radical transition. Mass media in countries like Tunisia and Sudan, which were once loyal to the state in their reporting, now report in a more balanced manner. At the same time, the rich Gulf states and Egypt in particular are investing in their state media. However, a whole range of private online formats, such as blogs and podcasts, are attempting to defy the dominance of state media and to report objectively for the people in the region.

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### **The Facebook Revolution and the Politicisation of Arab TV Stations**

When mass protests erupted against Egypt’s President Hosni Mubarak in January 2011, the hour of social media and Qatari TV channel Al Jazeera arrived. Young people had long since turned away from local newspapers with their daily photos of Mubarak on their front pages and were using social media as their main source of information. Activists used Facebook to call for protests in Cairo’s Tahrir Square. Those who did not join the demonstrations watched day and night on Al Jazeera as Mubarak was overthrown.<sup>1</sup>

Al Jazeera had earned respect since its launch in 1996 when it broke the monopoly of state broadcasters, whose programming was largely limited to official announcements.<sup>2</sup> The channel introduced talk shows featuring opposition figures, which quickly led to problems with many Arab governments.

Nevertheless, Al Jazeera was never fully detached from Qatar’s politics, according to critics, and this was also evident in Egypt and other countries where mass protests also broke out. The enthusiasm of many viewers for the Egypt reports ended when the channel came under suspicion of taking sides – for instance in Syria, where the regime’s suppression of protests was reported, but acts of violence by the opposition were often ignored.<sup>3</sup> Many prominent journalists left the station as a result.<sup>4</sup> The channel’s credibility suffered further

when Qatar suppressed calls for democratic reforms in its own country.<sup>5</sup>

Other Gulf states such as Saudi Arabia and the United Arab Emirates (UAE), which found Al Jazeera’s influence to be a thorn in their side, mounted a media counteroffensive. The Dubai-based Saudi TV station Al Arabiya was launched in 2003 and, after the overthrow of Mubarak in Egypt, became a platform for governments such as Saudi Arabia, which expressed concern about the rising influence of Islamists, Iran, and Tehran-allied militias, such as Hezbollah in Lebanon. Sky News Arabia, another UAE-based broadcaster, was launched in 2012.<sup>6</sup>

### **New Freedoms for Old and New Media**

Many young people have turned away from traditional media since 2011 in the face of the polarisation of television broadcasters, as credible alternatives emerged with the upheavals. On the one hand, these were already existing media, such as newspapers – for example in Tunisia, Egypt, and Morocco – where journalists were now taking advantage of newly won freedoms. In addition, new formats such as political talk shows were launched to discuss previously taboo topics, such as the role of the army or Islamists. Newspapers like Al-Masry Al-Youm critically monitored the chaos that ensued after Mubarak’s overthrow, when Islamist President Mohammed Morsi was narrowly elected in 2013 without ever being accepted by many Egyptians.

## Tunisian media provide credible reports on the country's transformation.

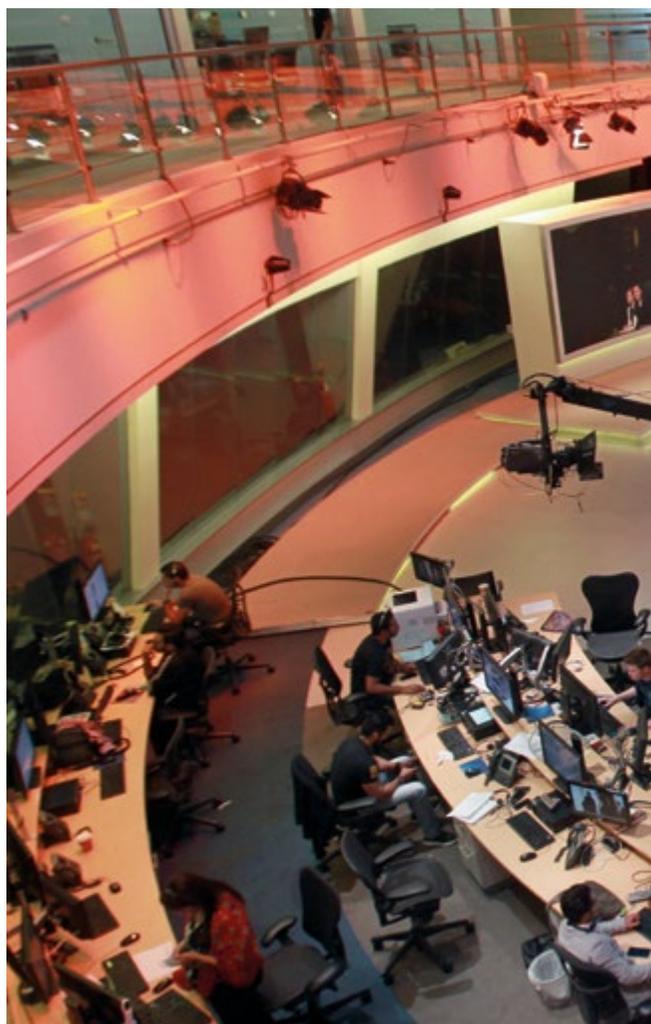
Tunisia, the birthplace of the Arab Spring, is another example of the changes in the media landscape in the region. Many Tunisians turned away from Arabic TV channels because of the polarisation described above, while traditional media in this North African country, from newspapers to private radio stations to state media, reported professionally after the fall of Ben Ali. Radio broadcaster Mosaique, which also operates a news website, and state news agency TAP were the government's mouthpieces prior to 2011. Since 2011, they have been reporting credibly on the transformation of the country in all its facets: from almost daily anti-government protests, government crises, and the new democratic constitution, to attacks by jihadists.

### *Mada Masr and Tunisie Numérique*

Additionally, a number of media start-ups have also emerged in the region. The most prominent example is the online platform Mada Masr in Egypt, launched in 2013, which is known for its investigative reporting and features on politics and economics and remains one of the region's best-quality media outlets. The editorial team has since expanded its coverage beyond Egypt to Sudan, Libya, and other countries. Mada Masr emerged from the online newspaper Egypt Independent, another start-up after 2011.<sup>7</sup> In Tunisia and Morocco, new media have also been added or existing ones have expanded. A popular news portal is Tunisie Numérique, which reports objectively on politics, economics, culture, and local and consumer issues from

Tunisia, the region, and the world in Arabic, French, and now also in English.<sup>8</sup>

Mada Masr was not the only innovation in post-revolutionary Egypt: in 2011, Egyptian political satirist Bassem Youssef, who had previously criticised long-time ruler Mubarak in YouTube videos, began hosting a TV show in which he regularly made fun of newly elected President Morsi and pilloried grievances such as power cuts. However, his show was discontinued when the current head of state, President Abdel Fattah al-Sisi, came to power in 2013. Youssef had to leave Egypt a year later after a court conviction and he now lives in exile in the United States.<sup>9</sup>



Influential and controversial: The Qatari television station Al Jazeera went on the air in 1996. Since 2006, there is also an English version.

Source: © Naseem Zeitoun, Reuters.

## *Media Debates in Libya*

In Libya, a similar development was observed after the overthrow of Muammar Gaddafi in 2011. New newspapers, television and radio stations, and news websites emerged in which politicians debated the future course of the country. It has not been forgotten that after the disputed election of Prime Minister Ahmed Maiteeq in 2014, two parliamentary vice-presidents discussed the validity of the election on live television – under Gaddafi there had not even been any debates.<sup>10</sup> With the division of the country into western and eastern camps in 2014 and the intervention of several foreign powers in the conflict, television broadcasters and the

wider media landscape also became polarised. Pressure on journalists grew, and from then on all national media outlets supported one of the opposing factions. As a result, many people lost interest in traditional mass media and formats, as is the case in other countries.<sup>11</sup>

## **Development of New Formats Abroad**

The new freedoms enjoyed by the media also began to decline in other countries in the region. Egypt is the best example: since 2013 its government has been exploiting a desire among elements of the population to return to a “strong” state after the chaotic years following the overthrow of Mubarak. Talk shows and media are now



allegedly controlled by the authorities through directives to editors-in-chief via a WhatsApp chat room.<sup>12</sup> In Yemen, Libya, and Syria, civil wars have intensified, making access for journalists more difficult. Other countries, such as Morocco, Kuwait, Algeria, and Jordan, also continue to grant freedom to the media as long as certain red lines are not crossed. This applies in particular to criticism of the security forces, ruling families, or heads of state. Jordan, for example, banned any reporting on a dispute in the royal family in April 2021.<sup>13</sup> Morocco has recently intensified its crackdown on media reporting on corruption cases involving companies owned by the royal family or members of the government. According to Reporters Without Borders, opposition newspaper Akhbar Al-Youm ceased operations in March 2020 after authorities stopped running ads for some time and denied the publisher aid in the coronavirus pandemic that was given to other, less critical media houses.<sup>14</sup> Several senior editors have been arrested in recent years, and in July 2021 editor-in-chief Soulaïmane Rais-souni was given a five-year prison sentence.<sup>15</sup> In another setback for press freedom, investigative journalist Omar Radi was sentenced to six years in prison, also in July.<sup>16</sup>

**New formats have emerged, and editorial offices have relocated abroad whenever it has become difficult to work professionally at the local level.**

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Despite the polarisation of local media and increasing pressure on media professionals in some countries, progress made since 2011 still outweighs the challenges. Independent quality media are now also present in the Middle East and journalism is a very attractive profession, despite all the challenges. Foreign media, such as news agencies with offices in the region, constantly receive applications from university graduates, for example from the American University in Cairo (AUC), which continues to

train journalists despite an increasingly difficult environment, sometimes in collaboration with foreign universities.<sup>17</sup> New formats have emerged, and editorial offices have relocated abroad whenever it has become difficult to work professionally at the local level, or when visas have been hard to come by – as during the 2019 mass protests in Algeria, when the government refused entry to foreign reporters.

This is a trend that was already visible in Sudan under the autocrat Omar al-Bashir. The government granted few press visas during its time in office and made independent work in conflict regions like Darfur practically impossible. Due to this, media supported by foreign donors, such as Radio Dabanga and Nuba Reports, moved abroad and, thanks to good local sources, provided professional reports from Darfur and the conflict region of South Kordofan.<sup>18</sup> Both media have now extended their coverage to the whole of Sudan.

A similar development can now be seen in civil war-riven countries such as Syria, where several online formats have emerged, based in Lebanon or Europe. They use the input of local reporters and sources that no longer have a platform in the country for political reasons. One example is the Syrian online portal Al-Jumhuriya, which produces features and background reports on Syrian refugees in exile, life in Syria under President Bashar al-Assad, and other topics, in both Arabic and English.<sup>19</sup> The articles are written by opposition members but are often worth reading and not just clumsy counter-propaganda. Quality reporting on universities and higher education courses in the Arab world with a somewhat more politically neutral tone can also be found, for example, in the student online magazine Al-Fanar.<sup>20</sup> Other formats offering balanced reporting are Syria Direct<sup>21</sup> and Syrian Observer<sup>22</sup>.

*New Supraregional Magazines*

There are now also high-quality transnational portals such as Newlines, a magazine launched in 2021 to cover the Middle East with excellent feature reports and background articles. It is run by a team of mainly Arab journalists from

Washington who commission experts from the region to cover topics.<sup>23</sup> Another quality online magazine is *Jadaliyya*, which was launched shortly before the start of the Arab Spring to provide political and scientific analysis from the countries of the region. The portal has expanded its offer in recent years and provides background information on current issues and conflicts.<sup>24</sup>

## For many young people in the region, social media or private blogs are the main source of information.

Increasingly, foreign investigative formats are also working with journalists in the region to research articles on topics such as corruption or migration that would be difficult to publish in the country itself. Prominent examples are the German online investigative magazine *Correctiv* and the international portal *Organized Crime and Corruption Reporting Project (OCCRP)*, among several similar projects. With the help of a Syrian journalist, *Correctiv*, for instance, has uncovered inaccuracies in Middle East reports by German television stations and interviewed survivors of a chemical weapons attack on the Syrian town of Khan Shaykhun.<sup>25</sup>

### The Rise of Blogs, Digital Media, and Citizen Journalism

For many young people in the region, the polarisation of traditional national and regional media has led them to use the internet – such as social media or private blogs – as their main source of information. The number of internet users in the Middle East and North Africa has more than doubled since 2011 to 65 million.<sup>26</sup> Arabic posts account for a higher-than-average share of pages on the 100 most popular pages on Facebook, Twitter, and other platforms.<sup>27</sup> The previously mentioned online news portal *Tunisie Numérique*, for example, has almost half a million followers on Facebook alone.

In Algeria, one of the most popular news sources is the portal *alHirak.com*, which is mainly run by activists who organise protests against the government and desire political change. The portal mostly consists of posts that are critical of the government, but there are also links to foreign media, as well as sports and cultural reports.

In many countries, private blogs, operated not least by young people and women, have also been started to write about everyday problems. They often fail to meet journalistic standards due to a lack of appropriate training, but they nevertheless reach a wide audience.

The latest innovation consists of dozens of thematic groups on the Libyan conflict on Clubhouse, an iPhone app launched in 2021. The portal has become the main medium for Libyans who want to discuss their country objectively, which is no longer possible in their mass media because of politicisation. New Libya forums are added to Clubhouse every week.<sup>28</sup> Also present in Egypt, Saudi Arabia, Iran, and Yemen, Clubhouse facilitates dialogue between journalists, activists, and the public, and has so far bypassed state censorship.<sup>29</sup>

“Citizen journalists” like these are for many an alternative to traditional mass media such as newspapers, which in Egypt and Syria, for example, are mostly state-owned and printed, regardless of whether they are read or not – comparable to the *Neues Deutschland* newspaper in the former GDR. In October 2020 Information Minister Osama Heikal admitted that none of Egypt’s under-35s get information from local newspapers or television stations.<sup>30</sup> He had to resign as a result, but it is no secret that state newspapers like *Al-Ahram* have little appeal for a young population that has grown up with social media.

The biggest challenge for new digital media is to develop a sustainable business model and to implement journalistic standards. Non-governmental organisations, such as the American Institute for War and Peace Reporting (IWPR),

offer advice and workshops on this. New media often get little advertising revenue from public authorities and have suffered additional losses from private clients in the course of the coronavirus crisis. Critical media like Mada Masr rely on subscribers and donations. They have no problem finding interested readers and winning journalism awards, but they have difficulty financing themselves.

### *Gulf Media are Expanding*

According to experts, support for new digital media is important because more and more governments are clamping down on press freedom, as shown by the example of The National newspaper of Abu Dhabi. The English-language UAE state newspaper is currently the biggest growth project in the print market in the region. New correspondent offices are currently being set up in addition to the editorial office in order to make this the leading newspaper in the region. Thanks to attractive salaries, the newspaper has attracted prominent Western and Arab reporters who report objectively on the Syrian conflict, as well as the situation in Iraq and Jordan. The situation is different in countries where the UAE is militarily and politically active, such as in Libya, where Turkey's military intervention is reported without referring to the fact that the Emirates are supplying arms to the eastern Libyan commander Haftar, as documented by the UN.

## **On the whole, journalists have retained many of their newfound freedoms.**

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The picture is similar for TV stations like Al Arabiya, which has expanded with the Alhadath brand. An offshoot of Alhadath is Haftar's home station in eastern Libya. On the other side of the political spectrum is Al Jazeera, which critics say continues to report positively on its Arabic channel about countries with close ties to Qatar, such as Turkey.

## **Outlook and Scope for Action**

State repression has increased in some countries, such as Egypt, in recent years, but on the whole journalists have retained many of their newfound freedoms. The journalism profession remains attractive to young people despite all the difficulties and state repression. Relatively good working conditions continue to exist in Tunisia, Lebanon, Sudan, Morocco, and, to a lesser extent, Kuwait and Jordan. In Tunisia, private daily newspapers and radio stations continue to report critically on politics and the recent wave of protests. In the Gulf Emirate of Kuwait, too, newspapers regularly criticise the government and parliament, but direct criticism of the ruling house and of the Emir remains taboo. Jordan tolerates the work of journalists as long as they do not report negatively on the royal house and the monarch.<sup>31</sup>

There is a lot of scope, including for international actors, to support targeted local media – especially digital platforms and other actors, such as press officers.

### *Hope in Sudan after al-Bashir's Overthrow*

There are high hopes that conditions for journalists will improve in Sudan after the overthrow of long-time ruler al-Bashir following mass protests in 2019. Under his dictatorship, Sudan was one of the worst countries in the region for repressing journalists. Opposition newspapers were regularly censored, and critical reporters were imprisoned. With the establishment of an interim civilian government, supported by the still-powerful military, media professionals are now enjoying new freedoms. The online portal Ayin was already reporting undercover from civil war areas, such as South Kordofan under al-Bashir, but now it has expanded its activities.<sup>32</sup> The state news agency SUNA now reports objectively and live from press conferences, similarly to state media in Tunisia.

Nevertheless, there is a lack of support for civil authorities desirous of providing better working conditions for journalists. The new information minister, Faisal Saleh, faced restraints as

an opposition journalist under al-Bashir. The new civilian government is committed to press freedom and has announced new laws to give the media more access to official information. However, they lack the resources to offer training courses for press spokespersons in the ministries and agencies.

### **Some press officers still treat information that should be public like state secrets.**

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While the climate has generally improved significantly, some press officers still treat information that should be in the public domain as state secrets – as they did under al-Bashir’s rule. This concerns not only unofficial taboo areas for journalists when researching the role of the military and allied militias, which control parts of the economy, such as the gold mines that are important for exports,<sup>33</sup> but also less controversial areas, such as economic data on state finances. Until now, access to such information has often been dependent on personal relationships. Training courses could also have an important role to play here by initiating a rethink to end the stigmatisation of media professionals who have made a career in media close to the former autocrat al-Bashir and now feel marginalised in the “new Sudan”. The Sudanese Professionals Association or the Sudanese Journalists Network, both of which are held in high regard by the public, could be considered as local partners.

Moreover, local newspapers would benefit from help in improving their online presence. The main problem for independent media in Sudan, as in other countries, is still how to develop a business model during the country’s worst economic crisis in decades. Many projects, such as Radio Dabanga, remain dependent on grants from foreign donors. Daily newspapers, such as Al-Sudani, have very rudimentary online versions, which limits their reach beyond the main circulation area in Khartoum and other major cities like Port Sudan.<sup>34</sup> Targeted training would

help here to improve the quality of the online offer and thus the marketing opportunities.

### *Balancing Acts in Algeria, Morocco, Iraq, and Jordan*

Algeria, Morocco, Iraq, and Jordan, along with Sudan, are promising countries for projects to support media professionals. These countries have media markets where journalists enjoy more freedom than in Egypt, for example, and can work if they avoid certain sensitive issues. In particular, the regime change in Algeria with the resignation of President Abdelaziz Bouteflika in 2019 following mass demonstrations has brought about a slight improvement in working conditions, which opens up potential courses of action for international actors. During the weeks of unrest, state media, such as the official news agency APS, also reported on the protests, after some initial hesitation. Since then, journalists have been writing regularly about the demonstrations, which did not die down with the departure of Bouteflika but were now also directed against the dominance of the army and political elite. Following a protest, President Abdelmadjid Tebboune declared an amnesty in February 2021 to release a number of critical media professionals and activists, such as Khaled Drareni. Drareni is one of Algeria’s most prominent journalists with 165,000 followers on Twitter; he works for French broadcasters<sup>35</sup> and runs his own news website, the Casbah Tribune<sup>36</sup>. He is also an activist for press freedom in the organisation Reporters Without Borders and has repeatedly criticised the role of the army and what he sees as an undemocratic transition since Bouteflika’s departure. Some observers view his release as a sign of greater freedom being allowed, despite the many problems that still exist.<sup>37</sup> Several blogs and independent newspapers and the website alHirak.com are monitoring the still unclear direction of the country’s ongoing transformation, but some of them are quite inexperienced in terms of journalistic standards, offers, and marketing. Training courses can help here, especially to improve local reporting, which often does not rise to the level of the media in Morocco.



Reliable information? In recent years, working conditions for Iraqi media have deteriorated. Source: © Teba Sadiq, Reuters.

Morocco is one of the few countries in the region where there is a whole range of professional media – for example, the online news medium Le Desk, known for its investigative reports on sensitive issues, such as corruption by government officials and companies belonging to the royal family’s extensive business empire. Other professional online formats providing excellent business news include Lakome2, Telquel,

and Medias24. The pressure on independent media and journalists not to report on taboo subjects, such as corruption in the royal house, has increased<sup>38</sup> – but there is still a certain amount of freedom. For example, independent local media regularly report on protests and poverty.

In Morocco, collaboration between foreign investigative platforms such as Correctiv or



OCCRP and Moroccan journalists could drive joint research on topics that could also attract interest in Europe or the United States – such as economic migration to Spain. Le Desk and other media outlets report on this range of issues almost every week and could do much to improve the often superficial reporting by the European media. Such a project would also make sense in cooperation with Algerian media, since many unemployed Algerians attempt to reach Europe by boat. There are regular reports on this in local newspapers but very little in foreign media, which are rarely present in Algeria. With cooperation of this type, the European and German media could support their colleagues in Morocco and Algeria to carry out ambitious long-term research on local issues from an international perspective.

In Morocco, workshops on economic reporting would also make sense. The Casablanca Stock Exchange is one of the most important trading locations in North Africa, and listed Moroccan companies and banks have expanded heavily into Sub-Saharan Africa in recent years as part of the Kingdom's foreign policy. Coverage in local media often does not go beyond the official announcements. Workshops could bring about qualitative improvements here.

### **Some local media in Iraq have to reduce staff and cut costs as advertising volumes have collapsed in the coronavirus pandemic.**

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Journalists in Iraq are currently performing a balancing act. Since the overthrow of Saddam Hussein in 2003, many new media have entered the market – both independent and party-affiliated. In recent years, the climate has deteriorated further.<sup>39</sup> The government has suspended television stations and, at times, foreign media such as the Reuters office in Baghdad.<sup>40</sup> Nevertheless, there are still media outlets there that

continue to do their work professionally, such as Radio Al Mirbad, which reports from Basra in southern Iraq – a region that suffers from corruption, poverty, and pollution, although it is the main source of income for the Iraqi state budget thanks to its oil wealth.<sup>41</sup>

International partners could help local broadcasters, news websites, and newspapers in the capital Baghdad and in Iraqi Kurdistan to improve their journalistic output, especially in the often superficial local sections. Better-quality reporting on issues such as poor public services resulting in dirty drinking water would probably attract great interest and raise the profile of such media. Some local media have had to reduce staff and cut costs as advertising volumes have plummeted in the coronavirus pandemic. They barely have any resources to train reporters – another task for international actors. Here, too, special training for press officers or joint workshops with journalists would help to improve the relationship between the media and the authorities and to reduce mutual prejudices. Similar projects could be considered for Jordan. Internships or editorial visits to Germany would give journalists from the region valuable experience.

#### *Wanted: Fact-Checking in Civil War Regions*

In civil war regions such as Libya, Yemen, and Syria, where there are virtually no independent media, international actors can contribute to building basic knowledge and developing tools for private blogs to check facts – an extremely important task in times of fake news campaigns by governments and their supporters on social media. In Libya and Syria, but also in Egypt and the Gulf states, public discourse is dominated by state media and troll campaigns that use automated bots to make false claims and attack perceived opponents on social media.

In Libya, for example, there is not a single media outlet that does not belong to an opposing faction. The main forums for debate are social media and the new Clubhouse app, where Libyans seek factual information – fact-checking webinars

would also help to bring quality to debates and exchanges between Libyans of different backgrounds and political views. In Libya, private and interactive blogs and podcasts enjoy greater credibility than mass media controlled by opposing factions. Workshops could help blogs and podcasts become more professional and give minorities and women a greater voice.

Both media consumers and journalists in other countries, such as Lebanon, or countries in the midst of democratic transition, such as Tunisia or Sudan, often have little basic knowledge about political and economic interrelationships or of how to recognise misinformation. Projects that also contribute to general political education or media ethics would also be beneficial for this target group.

State repression and the politicisation of state broadcasters in some countries of the Middle East and North Africa seem likely to increase, but the new freedoms created in 2011 have permanently changed the thinking and ambitions of journalists in the region. The media landscape will continue to be in flux in the coming years, and new formats and channels will emerge, some of them abroad, to provide balanced reporting from individual countries despite state censorship. International actors can play an important role in supporting journalists on this journey.

*- translated from German -*

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- 1 Pintak, Lawrence 2011: The Al Jazeera Revolution: The satellite television station is seizing the message away from the bland propaganda of Arab autocrats, *Foreign Policy*, 2 Feb 2011, in: <https://bit.ly/2UBgrtO> [22 Jul 2021].
- 2 Since 2006, there has also been an English-language version, Al Jazeera English, which is much more objective than the Arabic Jazeera product and is used by the broadcaster specifically to improve its image with high quality feature reports and documentaries, for example from Africa. Even now, tensions continue to arise between mostly Western journalists from Al Jazeera English and the station's editorial management in Doha - many of the Al Jazeera English staff do not want to be identified with the often sensationalist programming on the Arabic channel.
- 3 Suliman, Akhtam 2012: Ein Abschied von Al Dschazira: Vergiss, was du gesehen hast!, *Frankfurter Allgemeine Zeitung*, 11 Dec 2012, in: <https://faz.net/-gsb-74yqu> [28 Jul 2021].
- 4 Ibid.
- 5 The Economist 2013: Democracy? That's for other Arabs: Rumours of change at the top do not include moves to democracy, 8 Jun 2013, in: <https://econ.st/3wWB8ge> [22 Jul 2021].
- 6 Sky News Arabia is a joint venture between Robert Murdoch's Sky News television broadcaster and Abu Dhabi Media Investment Corp, which is owned by a member of the UAE royal family.
- 7 Egypt Independent was an online newspaper that produced an English-language edition of Al-Masry Al-Youm until it was closed in 2013.
- 8 Tunisie Numérique: <https://tunisienumerique.com> [28 Jul 2021].
- 9 Paget, Sharif 2018: Bassem Youssef: The wild story of Egypt's Jon Stewart, *BBC*, 10 Jan 2018, in: <https://bbc.in/3eMcdFT> [22 Jul 2021].
- 10 For more on the background to Maiteeq's election, see Bosalum, Feras / Laessing, Ulf 2014: Maiteeq installed as Libya's new premier but dismissed by speaker, *Reuters*, 5 May 2014, in: <https://reut.rs/3y0hocC> [22 Jul 2021].
- 11 The Alnabaa television channel is the best example. Until summer 2014, the station, which is based in the capital Tripoli, reported in a relatively balanced way and had a popular evening talk show in its schedule, in which politicians, activists, and businessmen held controversial discussions on the future course of the country. Afterwards, Alnabaa became an organ for Islamists and a parallel government that controlled western Libya from 2014 to 2016. Prominent journalists such as talk show host Heba Alshibani left the station. A militia stormed the editorial office in 2016 and set the building on fire. After that, Alnabaa did not go back on air.
- 12 Reuters 2019: Special Report: Sisi's Script: Egypt's strongman extends crackdown to a new foe: soap operas, 12 Dec 2019, in: <https://reut.rs/3kH1MqH> [22 Jul 2021].

- 13 Petra 2021: Attorney General issues gag order on Prince Hamza issue, 6 Apr 2021, in: <https://bit.ly/3jSZxQc> [7 Sep 2021].
- 14 Reporters Without Borders 2021: At least 22 newspapers “murdered” in the past five years, 28 Jun 2021, in: <https://bit.ly/3wXWidF> [22 Jul 2021].
- 15 Like other critical journalists Raissouni was charged, among other things, with rape, a baseless accusation according to human rights groups. Csey, Nicholas / Alami, Aida 2021: Journalist’s Monthslong Hunger Strike Points to Perils of Reporting in Morocco, The New York Times, 3 Jul 2021, in: <https://nyti.ms/3wYijsI> [22 Jul 2021].
- 16 Radi was convicted of espionage and rape. Several human rights organisations had described the charges against Radi as fabricated and the trial as unfair. Reporters Without Borders 2021: “Disgraceful” prison sentence passed on two Moroccan journalists, 21 Jul 2021, in: <https://bit.ly/3hUZUc8> [22 Jul 2021].
- 17 For example, the AUC website lists a project in collaboration with the City University of London: The American University in Cairo (AUC) 2021: Announcements, 8 Jul 2021, in: <https://bit.ly/3eGZT9W> [22 Jul 2021].
- 18 Radio Dabanga is based in Amsterdam and is supported by Dutch non-governmental organisations. The station is considered to be the most reliable source of news from Darfur thanks to a network of informants in the hard-to-reach conflict region.
- 19 Al-Jumhuriya: <https://aljumhuriya.net> [28 Jul 2021].
- 20 On the financial difficulties of Syrian private universities, see Alkousaa, Riham 2021: Syria’s Private Universities Struggle With Costs but Still Grow, Al-Fanar Media, 26 Apr 2021, in: <https://bit.ly/3yXZKQW> [7 Sep 2021].
- 21 Syria Direct: <https://syriadirect.org> [28 Jul 2021].
- 22 Syrian Observer: <https://syrianobserver.com> [28 Jul 2021].
- 23 Newlines Magazine: <https://newlinesmag.com> [29 Jul 2021].
- 24 Jadaliyya: <https://jadaliyya.com> [29 Jul 2021]. Articles appear in Arabic, French, English, and Spanish.
- 25 Alhamdo, Bassel et al. 2020: Hey, Auslandsbericht-erstattung – Wir müssen reden!, Correctiv, 9 Mar 2020, in: <https://bit.ly/3rFpyVN> [28 Jul 2021].
- 26 The World Bank: Individuals using the Internet (% of population) – Middle East & North Africa, in: <https://bit.ly/36WS63r> [22 Jul 2021].
- 27 For more on the regional media market, see Northwestern University of Qatar 2016: Media Industries in the Middle East 2016, in: <https://bit.ly/377wodc> [22 Jul 2021].
- 28 Interviews with Libyan journalists and other experts in May 2021.
- 29 The Economist 2021: Clubhouse gives Arabs a space to speak freely: The region’s autocrats are taking notice, 31 Mar 2021, in: <https://econ.st/3Bn1ATs> [22 Jul 2021].
- 30 Middle East Monitor 2021: Egypt’s information minister resigns amidst confrontation with journalists, 26 Apr 2021, in: <https://bit.ly/3zpgTJz> [22 Jul 2021].
- 31 Petra 2021, n.13.
- 32 Ayin: <https://3ayin.com/about-us> [28 Jul 2021].
- 33 Interviews with two Sudanese journalists.
- 34 Al-Sudani: <http://alsudaniya-sd.com> [29 Jul 2021]. The newspaper’s website is essentially a list of articles without specific adaptation for digital readers.
- 35 Reporters Without Borders 2020: Who is Khaled Drareni, symbol of press freedom in Algeria?, 14 Sep 2020, in: <https://bit.ly/3hX2Wgc> [22 Jul 2021].
- 36 Casbah Tribune: <https://casbah-tribune.com> [29 Jul 2021].
- 37 The new online magazine Twala (Twala.info) stopped work in May 2021 because of “obstruction” by the authorities.
- 38 Several prominent journalists such as Omar Radi were arrested in 2020 on what human rights organisations said were flimsy charges. Radi was sentenced to six years in prison in July 2020. N. 16; Human Rights Watch 2021: Morocco: Release Omar Radi and Guarantee Fair Trial Proceedings. Joint Call to Moroccan Authorities, 6 Apr 2021, in: <https://bit.ly/2UEBCdJ> [22 Jul 2021].
- 39 In the current Reporters Without Borders ranking, Iraq is 163<sup>rd</sup> (out of 180) and is only two places above Libya. Reporters Without Borders 2021: World Press Freedom Index, in: <https://rsf.org/en/ranking> [29 Jul 2021].
- 40 The Reuters office was temporarily closed in April 2020. The reason for this was a report revealing that official COVID-19 infection rates are underreported. Reuters 2020: Iraq lifts suspension of Reuters licence, 19 Apr 2020, in: <https://reut.rs/3yavtUU> [22 Jul 2021].
- 41 Al Mirbad was founded in 2005 with the help of media NGO BBC Media Action. BBC Media Action: Al Mirbad: an independent media outlet in southern Iraq, in: <https://bbc.in/3BEYxGy> [22 Jul 2021].



Source: © Vincent Kessler, Reuters.

[Media and Freedom of Expression](#)

# The Public Opinion of Judges

Between Freedom of Expression and the  
Judicial Duty of Independence

Ferdinand A. Gehringer / Hartmut Rank / Mahir Muharemović / Stanislav Splavnic

In recent years, judicial independence has increasingly been the subject of court decisions. The European Court of Human Rights (ECtHR) recently sought to draw a line regarding the freedom of expression of judges. In Southeast Europe, numerous disciplinary actions have been initiated against judges as a result of expressions of opinion on social media. Have the dignitaries in these cases really failed to fulfil their judicial duty of independence, or is this increasingly becoming an instrumentalised political issue?

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The Council of Europe stressed in late autumn 2010 that “the independence of the judiciary secures for every person the right to a fair trial and is therefore not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system”.<sup>1</sup> However, judges, like all citizens, have a right to freedom of expression, as emphasised by the International Association of Judges,<sup>2</sup> and the principle is similarly determined by the United Nations in Point 4.6 of the Bangalore Principles of Judicial Conduct.<sup>3</sup> However, this right is limited to the extent that the dignity of the judicial office and the impartiality and independence of the judiciary must always be respected when it is being exercised. Accordingly, judges are obliged to orientate their conduct towards this and to exercise restraint if the aforementioned principles are endangered.<sup>4</sup> Thus, a judge is required to refrain from any conduct, actions, or statements that might affect confidence in his/her impartiality and independence.<sup>5</sup>

The theoretical principles form a manageable guide for judges and a good orientation aid, but they have already been the subject of judicial proceedings several times in the past. We will initially examine where the limits of dignitaries’ freedom of expression should be drawn in legal practice so as to ensure adequate protection of the judicial duty of independence by studying the case law of the European Court of Human Rights in Strasbourg. Subsequently, a closer look at the current regulations and jurisprudence

in selected countries of Southeast Europe will shine some light on the state of freedom of expression of judges in the region. For example, some countries in Southeast Europe already have codes of conduct for judges. In recent years, there has been an increase in disciplinary proceedings in the eastern part of Europe as a result of public statements, especially on social media. One country even felt compelled to enact separate regulations for the behaviour of judges on social media. Did the judges in these cases actually cross the line of freedom of expression or did judicial independence serve as a smokescreen for the suppression of undesirable expressions of opinion?

### **The Limit of Freedom of Expression According to the ECtHR**

In its jurisdiction as presented in the Report on Human Rights of the European Commission for Democracy through Law (Venice Commission), the European Court of Human Rights concludes that judges have the right to express themselves publicly, but that each statement must be analysed in terms of content and in the context of an evaluation of society as a whole.

The case “Baka vs. Hungary”<sup>6</sup> was about the president of the Supreme Court of Hungary, András Baka. In 2011, he criticised to the press the constitutional reform planned under the leadership of the Hungarian Fidesz party. The reform included lowering the retirement age for Supreme Court judges from 70 to 62 and

an amnesty for convicted right-wing protesters. Baka addressed the press and condemned the reform efforts. Above all, he expressed the criticism that this would violate basic principles of independence of the judiciary – first and foremost the irremovability of judges through lowering the retirement age. The Hungarian parliament passed the law to amend the constitution, despite widespread public opposition. Baka was also directly affected by the law. When, in 2009, he was elected President of the Supreme Court, his term was originally supposed to be six years. However, the law amending the constitution stipulated that the President of the Supreme Court’s term of office ended on 1 January 2012, three years and six months earlier than foreseen when Baka was elected.<sup>7</sup>

### Judges have not only a right but also a duty to talk about reform in the judiciary.

In the 2016 proceedings, the ECtHR found that there was a causal link between Baka’s public statements and the termination of his mandate.<sup>8</sup> Moreover, the Court judges stated on record that public discourse on reforms in the judiciary and administration of justice is of fundamental importance to a democratic society and enjoys special protection. Representatives of the judiciary are accorded a special role as guarantors of the rule of law. The Court stated that the judge not only had the right but also a duty to speak out about reforms affecting the judiciary.

Judge Olga Borisovna Kudeshkina suffered a similar fate, which was heard in the ECtHR in the case “Kudeshkina vs. Russia”.<sup>9</sup> Kudeshkina was removed from office after she publicly criticised the behaviour of public officials. She also accused politicians, among others, saying that it is not unusual in Russian courts for them to exert pressure on the judiciary during their decision-making. The ECtHR concluded that such criticism was covered by the judge’s freedom of expression, as it was a matter of particular

public interest. In principle, due to their special position vis-à-vis the state, all civil servants – and thus also the judge – are bound by a duty of loyalty and confidentiality. However, the duty of political loyalty cannot be given general precedence over freedom of expression, provided that the statements have been made on issues of public interest.<sup>10</sup>

The court in Strasbourg does not make freedom of expression absolute in its jurisprudence, but it is increasingly making it clear that in certain cases, parts of the judiciary are able to assess that there is a special public interest in a given issue.

### Freedom of Expression in Southeast Europe and the Influence of Social Media

With the tremendously rapid growth in importance and the increasing presence of new media, especially social media such as Facebook and Twitter, the tension with self-imposed judicial restraint is becoming particularly clear. Thus, certain recent judicial decisions relating to this tension have shaped jurisdiction or become part of regulatory processes in Southeast Europe. In Romania, special regulations have been issued for judges regarding their use of, and conduct on, social media. In other countries of the region, however, the general principles of freedom of expression and its restrictions apply.

We will now look at the existing limitations on freedom of expression by considering selected countries in Southeast Europe and presenting case studies. In some cases, the threshold for abuse of judicial independence used to restrict expression may already have been crossed.

#### *Bosnia and Herzegovina*

In Bosnia and Herzegovina (BaH), judges are generally permitted to publicly express and defend their own opinions and convictions. Freedom of expression is also an important element of judicial activity in BaH.

Yet, there too, judges are not granted this right without limitation. Rather, the freedom of

expression of judicial dignitaries is subject to certain restrictions in relation to their judicial position. Thus, they are free to express their opinions on all issues without compromising their independence or impartiality. At the same time, however, they cannot make any statements that, in the estimation of an objective

observer, could cast doubt on their judicial impartiality and independence.

This limit is also formally defined in the form of a disciplinary offence under Article 56, Point 23 of the High Council of Judges and Prosecutors Act of BaH. This specifies what conduct and



New media, new questions: With the rapid increase in the importance of social networks such as Facebook and Twitter, the tension between judicial restraint and freedom of expression is becoming increasingly clear.

Source © Dado Ruvic, Reuters.

which actions constitute a disciplinary offence. As per the article, this includes “any other conduct constituting a serious breach of official duty or calling into question public confidence in the impartiality and credibility of the judiciary”. Exceeding these limits of freedom of expression – in social media or elsewhere – automatically leads to impairment of the principle of judicial independence, so not even the judiciary is immune to misconduct on social media in BaH. In this situation, the trade-off between the right to freedom of expression and the safeguarding of judicial independence works at the expense of freedom of expression.

### **Issues relating to the functioning and independence of the judiciary constitute an exception to the ban on participation in discussions.**

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The general question of the admissibility of appearances and expressions of opinion by judges in public and on social media is the subject matter of various disciplinary proceedings in BaH. The Code of Ethics for Judges and Prosecutors (EC) is decisive for the scope of public appearances by judges. For example, Article 2.4a of the EC stipulates that “a judge may publicly express his or her views and opinions in order to optimise existing legal regulations and the legal system and to comment on social discourse, always taking into account the principles of impartiality and independence of the judiciary”.

Further restrictions also arise from Article 2.2.3e of the EC, which prohibits judges from publicly “participating in controversial political discussions”. Exceptions to this are “matters directly related to the functioning of the courts, the independence of the judiciary, and fundamental aspects of the administration of justice”. The EC also contains a “ban on judicial comment”. The confidentiality regulation states: “A judge

shall not comment, either publicly or privately, on any proceedings over which he is himself presiding, or on any proceedings over which he might yet preside. Nor shall he comment on another judge’s proceedings in such a way as to cast doubt on his impartiality or give the impression of undue influence.”

The disciplinary proceedings against judges were triggered by direct statements of personal opinion or indirect expressions of opinion on social media. In all these proceedings, the persons concerned were accused of violating the principles of impartiality and independence of their judicial function. In one case, for example, the judge presiding over a pending civil case uploaded a selfie on Facebook accompanied by a comment in which she expressed how happy she felt while sitting in a restaurant. However, this was not just any restaurant but the restaurant of a party involved in the case, the plaintiff in the civil proceedings. At the end of the proceedings, the presiding judge upheld the claim and ruled in favour of the plaintiff, the restaurant operator. Disciplinary proceedings were initiated against the judge. As a result, the judge received a warning, which was made public.<sup>11</sup>

Another case that is still ongoing is not directed against a judge, but this time against a public prosecutor. In BaH, however, prosecutors enjoy the same status as judges. In a post on Facebook, someone discredited the Bosnian judiciary and made negative comments about conditions in the judiciary. The prosecutor liked the post. However, this case once again illustrates the restrictions imposed on the freedom of expression of certain members of the judiciary. The proceedings against the prosecutor were initiated due to the “statement” (insofar as a ‘like’ can be considered as such), and this despite the exception in Article 2.2.3e of the EC, allowing expression on “fundamental aspects of the administration of justice”. In view of the media attention now directed at these proceedings, it remains to be seen whether the disciplinary proceedings will result in a sanction for the public prosecutor, or whether they will be discontinued.

## Moldova

In the Republic of Moldova (Moldova), judicial dignitaries are similarly, in principle, allowed to express their opinions. Unlike the situation in BaH, no explicit rules of conduct or special requirements in regard to the permissible behaviour of judges on social media have been enacted or established in Moldova. Rather, general ethical principles and the jurisprudence of the Moldovan Constitutional Court (MCC) apply when evaluating comments on social media or placing them in context.

In cases relating to judicial freedom of expression, the interpretation of national regulations is subject to the case law of the ECtHR. In addition, the Code of Ethics for Judges adopted by the Supreme Magistrates' Council provides for several practical restrictions on judicial freedom of expression.<sup>12</sup> Accordingly, judges are prohibited from disclosing or commenting on confidential information or information entrusted to them professionally (least of all on social media). The confidentiality clause is similar to the rule in BaH. However, judges in Moldova are allowed to publicly contest defamatory remarks directed against them in sub judice cases. Accordingly, a public statement by a judge on remarks directed at him or her is only permissible to the extent that it does not infringe the rights of the person affected by the judicial statement. The Code does not provide for any restrictions within the framework of judicial freedom of expression on the content of statements that can be classified as sensitive with regard to (legal) policy. In this context, no distinction is made between traditional and social media.

The law relating to the status of judges provides for more extensive requirements and restrictions. As per the law, judges are obliged to refrain from actions that could discredit the judiciary and the dignity of a judge or raise doubts about their impartiality. Thus, the exercise of a political activity may also constitute sufficient reason to initiate disciplinary proceedings against the judge in question.<sup>13</sup> However, the possibilities for restricting freedom of expression must

be interpreted and applied restrictively where the provisions conflict with judicial freedom of expression. In principle, judges should be granted the opportunity to participate in political discourse.

### Negative assessments of some judges have led to them being banned from performing their duties.

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This approach is also reflected in legal reality. In recent times, judges have almost exclusively not been disciplined or sanctioned for statements made in public. Statements criticising the system have not been used directly to remove judges from their posts and hence from their systemically important positions. Rather, subliminally perceptible sanctioning mechanisms have become apparent over time. For example, in some cases the working conditions of judges perceived to be too critical of the constitution have deteriorated. This method was used in Moldova as an attempt to bring the actors to their senses. In some cases, an attempt has been made to question the competence of the judge or the quality of his judicial work by means of poor work assessments. As a result, the negative evaluations of some judges have led to them being banned from performing their duties.

A different standard is applied to judges working at the Constitutional Court when evaluating and classifying their statements – regardless of whether or not their statements are supplementary explanations of the reasons for the judgement. The dignitaries employed at the highest court are exposed to a different level of media attention, and a heightened public presence is expected of them.

In a 2015 interview, for example, the former chairman of the MCC commented on several constitutional issues, including on the conditions for the dissolution of the Moldovan parliament, a possible constitutional reform, and the

form of government existing in Moldova at the time. Some members of the Moldovan parliament took these statements as an opportunity to have the judicial independence of the then constitutional judge examined by the MCC within the framework of a complaint.

The complainants took the view that, due to their political effect, public statements by constitutional judges on constitutional reform efforts were not covered by their freedom of expression. The MCC did not follow this line of argument and stated in its reasoning that ECtHR case law shows that the mere fact that a constitutionally relevant statement could also have political implications does not prevent or exclude freedom of expression. Indeed, it was considered to be the duty of the constitutional judges not only to explain the judgements of the MCC to the public but also to give assessments of the constitutional and legal protection system. Dismissal from judicial office as a result of such statements would therefore be inadmissible and would seriously jeopardise judicial independence.<sup>14</sup> In this case and in contrast to the standards applied in BaH, the liberal approach to the possibility of expression clearly bears the hallmark of the Strasbourg judges. Whether or not this approach by the MCC is due to Moldova's aspirations to join the European Union will probably not be fully answered, but in any case no ostentatious attempts to use judicial independence as an instrument to limit judicial expression are being made in Moldova.

### *Romania*

The situation is different in Romania, where judicial independence requires judges to refrain from making critical or defamatory comments about organs of the legislative and executive branches, according to new provisions in the law passed by the government of social democrat Viorica Dăncilă (2018 to 2019). Nor are judges in Romania allowed to explain the reasons for their judgements in greater detail in the media. The law as it stands provides for detailed regulations with regard to freedom and demarcation of judicial expression. Thus, according to

Romanian law on judicial status,<sup>15</sup> judges are prohibited from being members of a political party. In addition, they are explicitly excluded from participation in political activities.

These restrictions offer little room for exercising the right to free expression and, given the significant restrictions on freedom of expression, are likely to be abolished in the foreseeable future (also due to increasing international pressure). Further restrictions, already adopted in 2012, also reinforce the impression that judges in Romania are now barely allowed any freedom of expression. They are prohibited from carrying out public (especially politically motivated) activities of any kind. Any statements that conflict with their professional ethos, or which could jeopardise the reputation of the judiciary, are banned. Derogatory comments to other members of the judiciary, or to representatives of other institutions, during the performance of official duties are similarly not tolerated. The broad wording of the provision and the lack of clearly definable rules of conduct leave plenty of scope to enact restrictions and to impose arbitrary sanctions on how judges express themselves.

## **The Romanian inspectorate's approaches rarely meet international standards.**

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Romanian law sets very precise rules regarding how judges use, and conduct themselves upon, social media and networks. In a catalogue of regulations, a distinction is made in two parts between the courts and judicial bodies on the one hand, and the judges, on the other. The first part describes the general communication strategy of the Romanian courts. The second part of the catalogue specifies and defines the scope of judges to exercise freedom of expression. Accordingly, judges are not allowed to comment negatively in any way on the professional and moral probity and integrity of their colleagues. Ideas or orientations that might suggest a connection to a party, or to partisan structures, must not be expressed on



What are judges allowed to do? In Moldova, no explicit rules of conduct have been established with regard to expressions of opinion on social media. Source: © Gleb Garanich, Reuters.

social media. Judges are also prohibited from supporting, promoting, or evaluating in any manner campaigns, pages, or posts by activists or groups if this could damage the reputation of the judiciary. In this law, with all its concrete guidelines and requirements, there are also broad and vague formulations that are unlikely to ensure that statements are evaluated in a non-arbitrary manner.

Attempts are made to partially compensate for the above limitations on freedom of expression by allowing judges to promote and protect universally recognised human rights and the rule of law. The extent to which this is actually allowed is, however, not made clear. Such promotional behaviour is only permitted and accepted if the judicial opinion is expressed in a duly scientific manner that is justified in accordance with the

academic degree. In the same breath, it also suggests that judges express this criticism primarily within the framework of an institutional dialogue. Socio-political polarisation of views is to be avoided at all times.

It is the task of the Romanian judicial inspectorate to balance the restrictions with the freedoms granted by law in a proportionate manner. However, the inspectorate's approaches to finding solutions rarely meet international standards. This is also made clear by the fact that several cases brought against judges critical of the system are currently pending before the European Court of Justice.<sup>16</sup>

Only last year in the case of "Kövesi vs. Romania", the ECtHR confirmed that the dismissal of

the head of the anti-corruption department of the public prosecutor's office (DNA) was based on her public statements against systemic corruption. The ECtHR deemed this action to be a violation of freedom of expression (Article 10 of the European Convention on Human Rights).<sup>17</sup> Recently, the Romanian judicial inspectorate initiated disciplinary proceedings against eight judges for certain critical comments made in discussions about the state of the Romanian judiciary in a non-public Facebook group. It reasoned that this compromised the integrity of the judiciary. Three of the judges are now facing suspension. The extent to which judicial independence in Romania is being used to restrict judges' freedom of speech should be clear. Subliminal sanctions, which are common practice in Moldova, are the exception in Romania.

## Conclusion

A look at the different developments and jurisprudence in Central and Southeast Europe shows that the level of protection judicial freedom of expression is accorded currently varies considerably (regardless of its worthiness of protection). The ECtHR increasingly takes into account the role of judges and – in accordance with their professional ethics – grants them more extensive powers of expression in the overall context. However, the situation in certain countries in Southeast Europe clearly shows the attacks that judicial freedom of expression still faces, despite adequate demarcations, for example through the Bangalore Principles of Judicial Conduct. In some of these countries, for example, the freedom of expression of judges is determined by legal professional codes and is limited to the point of explicitly regulated bans on commentary. Judicial independence is sometimes used as a tool to suppress certain opinions. Occasionally, governments use this to restrict critical public opinion still further.

It remains to be seen how jurisdictions will develop in the light of the increasing importance and use of social media, including by members of the judiciary. The next few years will show whether the rapid spread and wide reach

of the spoken word in the media will be given separate consideration, or whether increasing disciplinary constraints on judges with regard to their ability to express their opinions will be seen. It will not be possible to deprive judges per se of the right to speak out in public. This is also undesirable in view of the supreme value of freedom of expression, which undoubtedly conflicts with judicial duty as a public servant and its incorporated impartiality and independence. In the modern digitised world, sufficient ways and means can be found to express one's opinions. Checks and evaluations of statements will only ever be possible retrospectively. In any case, each assessment requires individual consideration of the individual case, along with careful balancing of the particularly protection-worthy concept of freedom of opinion, as well as sufficient safeguarding of judicial impartiality, all the while ensuring the functionality of the judiciary. However, it is noticeable that some countries are particularly tough and resolute in cases where the statements are critical of the existing system. It remains to be seen whether restrictions that are compatible with the case law of the ECtHR will be applied by codifying a professional ethos, or whether the principles developed in the case law are able to create sufficient legal certainty and legal protection for judges.

*– translated from German –*

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- 1 Council of Europe 2010: Judges: independence, efficiency and responsibilities, Recommendation CM/Rec(2010)12 and explanatory memorandum, 17 Nov 2010, in: <https://bit.ly/3ygS7et> [30 Jul 2021].
- 2 International Association of Judges (IAJ) 2017: The Universal Statute for Judges, 14 Nov 2017, in: <https://bit.ly/3iP7sOD> [16 Aug 2021].
- 3 United Nations, United Nations Office on Drugs and Crime (UNODC) 2018: The Bangalore Principles of Judicial Conduct, in: <https://bit.ly/3j3g9TR> [30 Jul 2021].
- 4 IAJ 2017, n.2.
- 5 Ibid.
- 6 European Court of Human Rights (ECtHR) 2014: Case of Baka v. Hungary, 27 May 2014, in: <https://bit.ly/3xbd359> [30 Jul 2021].
- 7 Fuchs, Marie-Christine / Rinke, Franziska 2020: Absetzung von Richtern und Staatsanwälten als Bedrohung für den Rechtsstaat – Die Rechtsprechung des Europäischen und des Interamerikanischen Gerichtshofs für Menschenrechte zur Unabhängigkeit der Justiz, in: Europäische Grundrechte-Zeitschrift (EuGRZ) 47: 13–16 2020, pp. 398–409, here: p. 400.
- 8 The ECtHR even went one step further and considered there to be prima facie evidence in the course of presentation of indirect evidence.
- 9 ECtHR 2009: Case of Kudeshkina v. Russia, 26 Feb 2009, in: <https://bit.ly/3ibcmEM> [30 Jul 2021].
- 10 Fuchs / Rinke 2020, n.7.
- 11 A distinction is made between “public warnings” and warnings that are not made public and can only be found in the official files.
- 12 General Assembly of the Judges of the Republic of Moldova 2016: Codul de etică și de conduită profesională a judecătorului (The Code of Judicial Ethics), 11 Mar 2016, in: <https://bit.ly/3lbYgoL> [30 Jul 2021].
- 13 Parliament of the Republic of Moldova 2011: Lege Nr. 544 Cu privire la statutul judecătorului (Law No. 544 on the Status of Judges), issued on 4 Apr 2011, in: <https://bit.ly/2WASUZU> [30 Jul 2021].
- 14 Constitutional Court of the Republic of Moldova 2016: Decizie Nr. 20 Libertatea de exprimare a judecătorilor (Decision No. 20 Judgement on judicial freedom of expression) of 29 Apr 2016, in: <https://bit.ly/3rGaKpC> [30 Jul 2021].
- 15 Ministry of Justice of Romania: Lege nr. 303 din 28 iunie 2004 (republicată) privind statutul judecătorilor și procurorilor (Law No. 303 on the Status of Judges and Prosecutors, revised version), in: <https://bit.ly/3lzoOf1> [30 Jul 2021].
- 16 Rank, Hartmut / Popa, Christoph 2021: Romanian judiciary before the ECJ, Country Reports, Konrad-Adenauer-Stiftung, 23 Mar 2021, in: <https://bit.ly/3l8ujpz> [30 Jul 2021].
- 17 Splavnic, Stanislav / Rank, Hartmut 2020: The case of KÖVESI vs. ROMANIA, Country Reports, Konrad-Adenauer-Stiftung, 12 May 2020, in: <https://bit.ly/375FiI6> [30 Jul 2021].



Source: © Michael Sohn, Reuters.

*Interjection*

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# Focussing on the Economy

The Opportunities and Challenges of Germany's Africa Policy

Christoph Kannengießner

No German head of government has made a stronger, more constructive, and more sustained commitment to our neighbouring continent than Angela Merkel. The next German government would do well to continue along this path and to place Africa even more firmly at the centre of its policies. The positive steps taken in recent years should be used as a springboard for taking our relations with African partners to a whole new level.

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### **Merkel's Africa Policy Legacy**

Anyone who has accompanied outgoing German Chancellor Angela Merkel on one of her many trips to Africa, or observed her in dialogue with African politicians, will swiftly have noticed how the subject of Africa and its people are dear to her heart. For her, it was never just about “combating the causes of flight”. Better life opportunities and true partnership were the goal. Despite the many crises that have had to be faced, Merkel regularly visited African countries during her time in office and devoted a great deal of time to welcoming African political guests in Germany. In Africa in particular, she enjoys an excellent reputation, which radiates back to Germany and the EU. She has given the economy an increasingly central role. This became clear during Germany's G20 and G7 presidencies and in the context of the Compact with Africa (CwA), an initiative that she played a key role in promoting. Long after its G20 presidency, Germany continues to be a pacesetter for the Africa policies of industrialised countries.

Quite rightly, the aim of the CwA is to bring more investment to Africa. Its premise is not one of simply increasing development aid but of promoting and supporting job-creating investment from industrialised nations. In return, the participating African countries have committed to reforming their frameworks and making them more transparent. With the three CwA conferences in Berlin, Angela Merkel has created a kind of German “Africa summit” in which investment and investment conditions

play a central role. This framework includes, inter alia, the creation of the German Development Investment Fund, with state guarantees being cautiously improved. This process is far from complete. And yet the tender seedling of German direct investment in Africa has already produced some new blooms in the form of growing and more diversified engagement. The initiative is definitely a step in the right direction for Germany's Africa policy, even if it certainly still needs to be adjusted, for example in terms of the participating countries or the support and financing instruments in Germany and Europe.

### **What Should the Next German Government's Africa Policy Look Like?**

Germany's Africa policy is approaching a turning point, and not only because Development Minister Gerd Müller will not be part of the next government. African partners are playing an increasingly important role in solving global challenges: in climate and environmental protection; in economic and geopolitical global competition – not least with China; in migration; and in pandemic control and prevention. The African continent plays a key role in all these issues, if only because of its population size and dynamics, precisely because it is located in our immediate neighbourhood. There is therefore no alternative to forming a closer partnership with Africa. This should be one of the core tasks of a future German government. We have outlined a desirable structure for this partnership, below:

The basis should be a modern and differentiated image of Africa. The African continent has undergone major changes in recent decades. Africa is still all too seldom seen as a continent with numerous stable democracies, an ambitious young generation, great economic dynamism, and significant innovative strength. A modern German and European Africa policy must reflect the diversity of the African continent's 54 different states, choose differentiated approaches to cooperation, and be equally committed to exploiting opportunities and jointly solving problems.

### **There is more to discuss with our partners in Africa than development aid and local or regional crises.**

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Germany and Europe need partners in order to assert their interests. Our neighbouring African continent, as well as individual African states, can be important allies in a time of growing global friction. Germany enjoys an excellent reputation on the African continent – not least due to the strong and appreciated commitment of Angela Merkel – and is valued as a partner. It is in our own interest to invest even more in our relations with the continent and with individual African states, and we should articulate and assert our own interests. This is also what our African partners expect of us.

An essential element is shuttle diplomacy at the senior and the highest levels. There is plenty of room for improvement here in many departments of the federal cabinet. There is more to discuss with our partners in Africa than development aid and local or regional crises. At the forefront is economic exchange. Partnerships in the scientific and technical field are just as much a part of this as genuine youth exchanges and grants for stays by young Africans in Germany and young Germans in Africa.

This includes, in particular, supporting the economic activities of German companies on the

African continent with high-level political assistance at the local level. To this end, political visits should be augmented with business delegations and economic diplomacy expanded. This approach has always been part of France's Africa policy, which is still clearly ahead of Germany's in this respect. In the African context in particular, however, this personal level is of key importance.

Right at the beginning of the legislative period, the structures of departments and budgets must be designed to reduce barriers to effective initiatives on the African continent. The urgent need to strengthen resources for managing foreign economic relations – particularly with the Global South – could justify a separate ministry. A minister of state with appropriate responsibilities could be a step in that direction. There is still a need for effective coordination of Africa policy in the Chancellery. In any case, though, use of budget funds for direct promotion of entrepreneurial projects should not continue to fall short due to limitations such as the ODA ratio or the taboo subject of tied aid. Alongside poverty alleviation and promotion of the rule of law, democracy, and education, this is a central pillar that helps determine the success or failure of development. Effectiveness must be the decisive criterion here.

### **Focussing on Business and the Economy**

The economic development of African states and stronger integration of the African continent into global value chains need to become a key priority of Germany's Africa policy. This should be designed and implemented proactively with Africa and oriented towards future potential. Issues with key importance for the African continent include: improving economic prospects through growth, diversifying national economies, creating millions of jobs, ensuring a climate-friendly energy supply and industrialisation process, and building efficient health systems. In all these areas, private sector involvement by German companies can contribute considerably more than in the past.

This is also in our own interests. After all, Africa is a continent full of opportunities that have not





Seizing opportunities: Economic growth and job creation are crucial for the African continent. Source: © Thomas Mukoya, Reuters.

yet been (or cannot be) fully exploited by the German economy. Progress within the framework of the pan-African free trade area, AfCFTA, in particular, promises great opportunities. However, China's continued attention and the growing interest of the US, the EU, and the G7 will also help Africa to develop strong, dynamic economies. This is of paramount importance for Germany as an international economy in terms of its own economic dynamism but also with a view to additional cooperation projects. Last but not least, the COVID-19 crisis has further stimulated considerations about greater diversification of global value chains; this will also serve to increase the relevance of the African continent.

In this context, the next German government should rely on the principles of the social market

economy as regards its economic cooperation with Africa. Specifically, this means stimulating entrepreneurial initiative through good general conditions but also through financing. Of particular importance are access to capital and state guarantees to protect against risk in trade, investment, and projects. The aim must be to render it easier for businesses to invest and trade. In principle, there is consensus on this, but, in terms of implementation, there is still considerable need for improvement, not least because of the still unresolved artificial conflict between foreign trade promotion and development cooperation.

African countries must be regarded as economic partners with equal status and not always as mere aid recipients. This requires an even more

radical rethink of policy. More specifically, it means turning the spotlight on businesses and their projects while sharpening and synchronising the tools of development cooperation and the promotion of foreign trade. Africa is home to future markets and investment locations – especially in times of necessary changes in the international division of labour and the emergence of value chains based on green hydrogen. German SMEs in particular should be supported in gaining a stronger foothold on the African continent. If successful, this will lead to employment opportunities for the local population, a strengthening of local demand, and sustainable activities in the field of vocational training geared towards real employment – in short, to development.

### German dependence on supply chains from Asia could be reduced by shifting focus to Africa.

In terms of sharpening the tools, it is equally about trade and investment. State guarantees are a market-based instrument that should be strengthened wherever possible. Exports to African countries must be further facilitated by Hermes covers, export credit guarantees by the German Federal Government, and their conditions must be made internationally competitive. For this to happen, policy-makers must significantly reduce the risk borne by German companies in their transactions. The benchmark for this should be the most favourable conditions granted by other OECD countries. In some cases, these provide a close to zero per cent deductible, while Germany has a five to ten per cent deductible, i.e. costs borne by the company. Plans for an Economic Fund for Africa have

already been drawn up – an instrument that the next German government can utilise to support eligible German exports to Africa with more favourable credit conditions and grant elements, topping up the instrument as needed and providing it with the required follow-up financing. This would promote development and significantly improve the competitiveness of German companies in African markets.

Exports also stimulate investment. In order to specifically promote German investment in African countries and thus contribute to job creation, selected economic risks in countries on the African continent must also be covered



Success factor education:  
African countries are in need of a skilled  
workforce to achieve economic success.

Source: © Feisal Oma, Reuters.

by government instruments – in addition to the political risks covered by federal investment guarantees – at least when investments have a particularly positive impact on local development or climate protection. The economic risks to be hedged include payment and currency risks, which continue to be key obstacles for German companies in financing investments in Africa using outside capital.

Development cooperation funds could also be used to secure and promote job-creating investment in African states. The next federal government could place particular emphasis on the areas of climate, environment, mobility, nutrition,

and health. The local relocation and diversification of supply and value chains to African countries is an obvious option here. This would reduce German dependence on supply chains from Asia. This requires suitable frameworks and financial incentives for German companies wanting to relocate individual production stages or entire production operations to African countries. In return, companies will create what the young continent needs most urgently, namely jobs with high added value that improve people's lives.

The establishment of the pan-African free trade area, AfCFTA, also plays an important role, especially for investments that satisfy local demand.



If the fragmentation into countless small national markets is overcome, enormous opportunities will arise for intra-continental trade, which is still completely underdeveloped. But international investment will also naturally become much more attractive if larger integrated markets can be served. The next German government should support AfCFTA in the European framework through close cooperation with the African Union (AU). An African continent that represents a common economic area offers previously unheeded opportunities for Germany and Europe to place the economic relations between the almost two billion inhabitants of the two continents on a completely new and joint basis.

### Energy and Climate

Access to reliable energy supply on the African continent is a basic prerequisite for economic development and remains a major deficit. The next German government must provide more support to German companies engaging in sustainable and climate-friendly activities on the African continent, especially in the environmental technology and renewable energy sectors. After all, the need for additional energy is nowhere greater than in Africa. Growth and industrialisation should therefore be designed to be as climate-friendly as possible and not fuelled by new coal-fired power plants.

German companies, which have extensive expertise in the field of renewable energy, are particularly well placed to drive Africa's climate-friendly industrialisation through investment. However, this requires innovative financing and risk hedging instruments that also take into account project development and the often poor creditworthiness of local electricity consumers. At the same time, German policy should advocate a mechanism that expands the CO<sub>2</sub> emissions trading system regionally, and holds out the prospect of an Africa-Europe climate protection zone. If German companies implement climate-friendly projects in Africa, and thus contribute to avoiding further emissions, they should receive a bonus in the form of certificates. This will stimulate more investment in Africa, which will protect

the climate and also create much-needed jobs in the process. The leverage effect of such projects in preventing CO<sub>2</sub> emissions is enormous compared to the possibilities of achieving savings within the national framework.

Green hydrogen will be an essential energy source of the future. The hydrogen partnership with Africa initiated by the current government must be further extended and aggressively driven forward. This is about local energy needs as well as exports to Europe. The involvement of German companies is of strategic interest. Flexible funding instruments are required in order to be able to enter into targeted partnerships with interested African states. Many African countries are ideally suited for the production of green hydrogen. Entire new industries can be created here – with significant job and wealth creation potential for the whole continent.

### The German government must work closely with the private sector to build up a medical industry in Africa.

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### Health

The current pandemic has revealed how dependent Africa is on the import of vaccines, medicines, and medical and hygiene products. The need to build an independent industry including the production of medicines, vaccines, and medical equipment is recognised by the German government, which has finally also strengthened bilateral cooperation in the health sector. The next federal government must quickly address this issue and implement corresponding projects with selected African partner countries. German industry is ready for this, but for such a partnership between the German health sector and suitable African countries to succeed, policy-makers must provide tailored measures and strengthen existing instruments. The pandemic has shown us how important it is for sufficient vaccinations to be carried out everywhere in the world. In the

short term, the aim is to provide vaccines and medical equipment – especially bilaterally – to African countries. In the long term, however, the next German government must work closely with the private sector to build up a medical industry at multiple locations in Africa.

### **Education and Science**

Promotion of practical and business-oriented vocational and higher education in Africa requires targeted funding. This applies in particular to activities in the education sector that arise as a result of the involvement of German companies. The opportunities currently available to young Africans to complete vocational or higher education in Germany should be massively expanded. These are still far too narrow in scope. Africa needs a skilled workforce for economic success. To achieve this, the barriers to Africans gaining qualifications in Germany and in German companies must be largely dismantled. In addition, scientific research on African issues in Germany also needs to be promoted, and scientific exchange strengthened. Instead of creating more and more new positions and institutes for this purpose, the next federal government should rely on existing institutions, improve functioning networks, bundle competences, network the actors more closely, and increase their financial resources.

### **Migration Policy**

Germany's next government will also have to deal with the issue of migration from Africa to Europe. It is important to note that the aim should not be to prevent all migration from Africa. An essential element of modern migration policy is regular flows of labour and educational migration to Germany. At the same time, the most important goal of migration policy should be to ensure that young Africans have good professional and economic prospects in their home countries and on the African continent. A much stronger focus on expanding economic cooperation and creating high-potential jobs is by far the most effective and sustainable way to combat the causes of flight and migration.

### **Conclusion**

Outgoing Chancellor Angela Merkel has massively raised awareness of Africa in Germany and Europe. She has acted on the conviction that there are more opportunities than risks in Africa. She not only understood how much remains to be done, but also launched initiatives at national, European, and global levels that would never have come about without her intervention.

As far as the new German government is concerned, it is to be hoped that the understanding will continue to increase that investment – and the economic growth it triggers – is the only sustainable way to offer local people real prospects for the future. To achieve this, Africa must be removed even further from the “sole responsibility” of the Development Ministry than it has been in recent years. A cross-departmental and holistic policy approach is required. The importance of Africa has undoubtedly grown in many ministries. However, development is still not sufficiently linked to foreign trade, for instance, and foreign trade is not sufficiently linked to the African continent. All in all, despite the undeniably great merits of the outgoing chancellor, Germany's Africa policy is still dominated by caution and small steps rather than by the bold, ambitious approach that is required. For the future development of Germany, Europe, and Africa, it would not only be desirable but in fact necessary if the new German government were to take bold and powerful initiatives in cooperation with Africa, the continent of opportunity – keeping in mind that this will only work if we place the economy at the heart of our actions.

*– translated from German –*

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