Mexico

Government, Politics and Regulation

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Media and Journalism Research Center

Media and Journalism Research Center (MJRC) is an independent media research and policy think tank that seeks to improve the quality of media policymaking and the state of independent media and journalism through research, knowledge sharing and financial support. The center’s main areas of research are regulation and policy, media ownership and funding, and the links between tech companies, politics and journalism.

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OBSERVACOM (Latin American Observatory of Regulation, Media and Convergence) is a regional think tank specializing in regulation and public policies related to the media, telecommunications, the internet and freedom of expression. OBSERVACOM addresses these issues from a rights perspective, focusing on access, diversity and pluralism. OBSERVACOM brings together experts and researchers committed to the protection and promotion of democracy, cultural diversity, human rights and freedom of expression in Latin America and the Caribbean.

University of Santiago de Compostela (USC)

The University of Santiago de Compostela (USC), founded in 1495, is one of the world’s oldest public universities and has two campuses in the cities of Santiago de Compostela and Lugo, in Galicia (Spain). The USC partner in this project is the research group Novos Medios, which is part of the USC’s Department of Communication Sciences. Novos Medios specializes in studying the relationship between technology and media, as well as the changes that affect today’s journalism in terms of audiences, funding, innovation and public service.
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The Media Influence Matrix Project is run collaboratively by the Media & Power Research Consortium, which consists of local as well as regional and international organizations. The consortium members are academic institutions (universities and research centers), NGOs, journalism networks and private foundations.
Legal Overview

Mexico is a federal, democratic, presidential and secular republic made up of 32 federative states, governed by a Constitution that has been in force since 1917 and amended multiple times.

Laws and regulations emanate from it and the country’s political system is based on the principle of separation of powers between the executive power (consisting of the president, state governors, municipal presidents, mayors and their cabinets), the legislative power (consisting of local and federal deputies and senators) and the judiciary (consisting of several institutions and headed by the Supreme Court of Justice of the Nation).

The Mexican political system also includes autonomous constitutional bodies(1) whose autonomy is justified by the need for technical and administrative specialization(2).

The regulatory and public policy framework for the media in Mexico is built on an institutional infrastructure whose parts are in constant interaction and that is shaped by its relationship with civil society and the private sector. The media system in Mexico is also governed by international frameworks, such as human rights and trade treaties(3).

For decades, the media system in Mexico has been faced with two key structural problems: high levels of market concentration; and clientelistic practices as part of a system of mutual benefits between the political power on the one hand, and private businesses and media players on the other.

The former has hindered the development of universal coverage in telecommunications and broadcasting as well as access to plural sources of information, thus violating the rights of citizens to freedom of expression and access to information.

Furthermore, widespread drug trafficking and organized crime, and their relationship with the State since 2006, have led to an environment of extreme violence towards journalists in the country.


A series of reforms in the last 20 years and, in particular, the constitutional reform of telecommunications in 2013, the central theme of this report, have been the result of pressure from civil society, academia and political actors.

In the context of the structural problems mentioned above, these reforms have brought about regulatory advances in:

a) economic competition

b) convergence and investment

c) coverage and access

d) plurality and cultural diversity (i.e., public and community media)

e) human rights (access to information and freedom of expression, health, education).

However, there are still challenges, delays and inertia that represent a barrier to reaching the objectives of the 2013 constitutional reform as well as other reforms aimed at democratizing communication and guaranteeing the rights to freedom of expression and information.
Regulatory Landscape

The constitutional reform of 2013 and the secondary laws of 2014

The 2013 constitutional reform was partly a result of pressures from civil society organizations that fight for the democratization of the media in Mexico(4).

Product of a political agreement between the three most prominent political forces at the time, the party in power, the centrist Institutional Revolutionary Party (PRI), the National Action Party (PAN, from the right) and the Party of the Democratic Revolution (PRD, from the left), the reform was known as the Pact for Mexico, a joint commitment to carry out a series of structural reforms. The Pact for Mexico, however, also meant the continuity of corrupt(5) practices(6), lack of transparency, as well as different forms of press censorship(7).

As part of the reform, the Federal Telecommunications and Broadcasting Law (LFTR) was enacted in 2014, replacing the Federal Broadcasting Law (1960) and the Federal Telecommunications Law (1995).

The LFTR recognized for the first time telecommunications and broadcasting as public services of general interest in addition to creating specialized courts focused on those matters and a new autonomous constitutional body in charge of regulating economic competition in the telecommunications and broadcasting sectors.

As part of the legal framework instituted by the reform, the Federal Law of Economic Competition (LFCE) was also issued the same year, guaranteeing autonomy for another body that has regulatory powers in the broadcasting sector, namely the Federal Economic Competition Commission(8).

However, these institutions are still not immune to political influence or independent from private interests.

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(5) Such as cases of bribes from the Odebrecht company to several lawmakers to approve the energy reform as part of the Pact for Mexico: Cristian Márquez Romo, “Odebrecht en México: anatomía de una trama”, Política Exterior, 8 September 2020. https://www.politicaexterior.com/odebrecht-en-mexico-anatomia-de-una-trama/
The most important provisions introduced by the reform in telecommunications and broadcasting include:

1) The recognition of the fundamental rights of the audiences and users (including the creation of the ombudsman for audiences) to access to information, the media, digital networks and accountability.

2) Provisions securing at least 10% of the frequency spectrum for social use both in telecommunications and broadcasting (practically, guaranteeing access to community media).

3) The establishment of the Public Broadcasting System of the Mexican State (SPR) to provide impartial information, space for independent production and plurality of ideas.

4) In broadcasting, the rules on broadcast licensing were democratized and made transparent; the transition to digital television was planned and scheduled; time limits on advertising on radio and television as well as must-carry and must-offer rules for pay television were established; and foreign investment in broadcasting was legalized (49% of the total shares in a company for broadcasting and 100% for telecommunications as long as there is reciprocity with the investors’ countries of origin).

5) The establishment of more efficient mechanisms to regulate competition in telecommunications and broadcasting. The reform introduced, for example, the concept of economic dominance for media with a nationwide penetration greater than 50% (measured mainly by the number of users, subscribers, size of audience, network traffic or by the network capacity used).

To conclude, the reform significantly revamped the institutional design of the Mexican State as both regulator and operator of the radioelectric spectrum, broadband and networks(9).

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Right of access to ICTs and content

Through the constitutional reform, the right to access information and communication technologies, broadcasting and telecommunications services, including broadband and Internet, was enshrined in article 6(10).

On the one hand, the recognition of broadband access as a fundamental right by the Constitution posed a series of challenges because of the deficit of technological infrastructure. This is due mainly to the high market concentration where broadband is unequally distributed in the different regions of the country, with large areas in the north and south lacking coverage or served by a single operator(11).

The Mexican State resumed playing a key role in the deployment of networks and in promoting competition of private companies on the market. The reform created the legal framework to build two telecom networks through a public-private partnership scheme(12):

1) Red Troncal (public tender was launched in 2018) was conceived as a wholesale fiber network designed to provide services to telecommunications dealers and marketers to increase their coverage. The plan was to use 38,000 kilometers of fiber optic owned by the Federal Electricity Commission (CFE) and operated by the Telecomunicaciones de Mexico (Telecomm). However, the project was canceled in 2019 by the then newly-elected administration headed by Andrés Manuel López Obrador (2018–2024) of the left-wing party Morena, which proposed instead the creation of a public company, CFE Telecomunicaciones Internet para Todos, which was to have 50,000 kilometers of network(13).

2) Red Compartida (public tender concluded in 2017) is a public-private association (consisting of Promtel and Altán Redes) created with the objective of increasing the coverage of telecommunications services to the unattended population in less densely populated areas by promoting affordable prices and raising the quality of services. The LFTR reserved a large part of the frequency spectrum for creating a wholesale network for providers and Mobile Virtual Network Operators (MVNO), with an estimated investment of US$ 7.5bn. However, the goals of the project were not achieved for years. In June 2022, with Altán Redes threatened with bankruptcy, the Government of López Obrador bought most of the company’s shares to continue the deployment of the network and achieve the goal of providing Internet to the target population(14).

(11) Judith Mariscal, “El nuevo rol del Estado en el sector de las telecomunicaciones: el caso de la Red Compartida en México, Revista Mexicana de Ciencias Políticas y Sociales, 67(244), 2022.
Some experts had criticized the initial design of the Red Compartida for leaving out the participation of more private investment, which they thought was crucial for the deployment of the network.

Moreover, experts criticized that only MVNOs were allowed to access the network when there were only a few of them in Mexico and lacked the capacity to meet high demand (they accounted for 1.47% of the Mexican market). Thus, investments of large mobile operators were limited, which dented the network’s competitiveness (15). Furthermore, the network design was also criticized because it covered areas of the country that already had telecom infrastructure.

On the other hand, in its intention to close the digital gap, the Mexican government set a goal of providing broadband access to 70% of households and 85% of micro, small and medium-sized enterprises (MSMEs).

Those objectives were pursued through several governmental projects of the Peña Nieto administration between 2012 and 2018, yet those goals were not met at the end of its six-year term when only 52% of households and 43% of MSMEs had broadband coverage (16).

In fact, some studies have pointed out that the growth of the telecommunications sector in Mexico has been slower than countries where there were no major constitutional reforms.

Between 2013 and 2017, Mexico’s wireline grew by only 5%, broadband by some 27% and the number of Internet users by nearly 47% (17), prompting Bravo to remark:

*Legal changes are insufficient when there is a lack of comprehensive public policies focused on vulnerable social sectors that have been marginalized from connectivity benefits. […] Without broadband infrastructure, telecommunication services and a more developed digital ecosystem that includes content and applications, there are no chances to materialize other fundamental rights such as education, health […] information, knowledge and opportunities for social, economic, cultural and digital development* (18).

(15) Mariscal, El nuevo rol…, 2022, cit.
Audience Rights

After the constitutional reform, the 2014 Federal Telecommunications and Broadcasting Law introduced provisions on audience rights such as the obligation to provide clear details that would allow the audiences to distinguish between opinion and information, the prohibition to present advertising as news (in newscasts) and a list of tasks for the ombudsman. In addition, it gave the IFT the power to issue guidelines on topics covered by the law, monitor media players and supervise their compliance with the law(19).

However, a series of obstacles prevented the exercise of these rights in full, among them being the public lack of awareness and the reluctance of the commercial media, represented by the Chamber of the Radio and Television Industry (CIRT), to adopt those obligations, which they consider burdensome, as well as the delayed appointment of the ombudsman. The CIRT and the country’s large media companies ran a campaign to discredit those rights, arguing that they “violated freedom of expression.”

In the run-up to the 2018 electoral process, the LFTR was modified by Congress in October 2017, the changes affecting the rights of the audience that had been recently gained. This counter reform was the result of the pressure from media groups which, presumably, offered in exchange support of the PRI, the party in government(20).

It was left to broadcasters to self-regulate. Fortunately, a group of senators and the Mexican Association for the Audience Ombudspersons (AMDA) pushed back against the counter reform through a motion of unconstitutionality and an amparo proceeding, respectively. After the Supreme Court of Justice of the Nation ruled in AMDA’s favor in 2019, the decision was challenged by the Congress and the ombudsman of the CIRT(21).

Eventually, in 2020, a court established that the counter reform violated legal provisions defending human rights, and obliged the Congress to restore the previous legislation that allows the IFT to issue and enforce guidelines.

The motion of unconstitutionality filed by the senators is still pending. Media owners represented by the CIRT resist changes that make them accountable for audience rights. Nonetheless, the judiciary institutional powers also work as a counterbalance to resolve controversies.

(20) Solórzano, “Un lustro...”, 2020, cit.
Broadcast License for Social Use

Following the constitutional reform of 2013, the article 28 introduced four categories of licenses in broadcasting and telecommunications, namely for commercial, public, private, and social use, the latter including community and indigenous people(22). During the constitutional reform, it was the indigenous peoples who demanded a special regime to acquire, manage and operate their own means of communication, in line with a legal provision from the San Andrés Larráinzar Agreements, which were signed in 1996 to grant autonomy to the indigenous populations of Mexico, provision incorporated into the Constitution(23) in 2000(24). The inclusion of licenses for the third sector in the LFTR was a great victory for civil society in Mexico after it had been systematically blocked by the CIRT since the end of the 20th century(25).

In 2015, the IFT earmarked a segment of the frequency for social licenses. Telecomunicaciones Indígenas Comunitarias A.C (TIC A.C.), a cooperative made up of 16 communities that operate cell phone networks in Oaxaca, whose social objective was to communicate with underserved communities, obtained a license for indigenous social use.

Other communities that wanted to operate their own cell phone system could join the association. However, they soon faced obstacles. The IFT imposed tax obligations of MXN 700,000 (US$ 44,000) on the cooperative for the use of the frequency(26).

Analysts have emphasized the contrast between this decision and others that favored commercial companies including the case of Fundación Azteca (one of the two largest commercial television stations in Mexico), which was given a social license for lucrative sporting events when in fact the broadcaster should have bid directly in a tender to obtain those rights due to the commercial nature of its activity.

(22) Congreso de la Unión (2013), cit.
After TIC A.C. filed for an amparo proceeding, the court decided in 2018 that the IFT should guarantee the broadest protection of the indigenous community right(27). IFT adopted a new resolution exempting TIC A.C. from paying the tax, not for being an indigenous community but for being a tax deductible association. The latter meant that Fundación Azteca was exempted too. TIC A.C. filed for another amparo proceeding that is still to be resolved.

Nonetheless, with the new government administration, the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público, SHCP) presented its spending budget for 2020 which amended the Federal Law Tax to exempt all the indigenous licensees from any frequency-use fiscal obligations(28).

Public Broadcasting System

Before the constitutional reform of 2013, broadcasting was not considered a public service nor was the notion of public media contemplated in the regulation. The new Constitution stipulates that:

*Public media must have editorial independence; financial management autonomy; guarantees for citizen participation; clear rules for transparency and accountability; independence to generate content; options for financing; access to technologies and rules for the representation of diverse ideological, ethnic and cultural expressions*(29).

Although 80% of the public media at federal level had appointed a citizen council by 2020, article 86 of the LFTR left it to broadcasters to design their own mechanisms of editorial independence and citizen participation. Consequently, there has been resistance to complying with the Constitution(30). Most citizen councils were awarded only advisory powers rather than legally binding competences, which turned them into powerless bodies.

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The Constitution defines the Public Broadcasting System (SPR) as a decentralized body with technical, operational and administrative autonomy. Unlike other public media, three of the nine members of its citizen council have the power to vote in the governing board. Thanks to the infrastructure deployment and multiplexing, it shares with other public media the coverage of its free-to-air TV signals (31).

The main objectives of the SPR are to provide a free broadcasting service; to reach the largest number of people possible in the country; to create content that allows dissemination of a diversity of ideas and plurality of opinions in the society; to provide impartial, objective, timely and truthful information; as well as to encourage independent production by allocating to it 30% of its broadcast space every week (32).

However, specialists have pointed out the persistence of some setbacks in the performance of all public media, both at federal and state levels (33).

First, public media continue to be confused with government media and do not enjoy real management autonomy as the IFT has not regulated this aspect in spite of having the power to do so. Second, they lack accountability mechanisms. Third, they are limited by their dependence on the federal government or state governments who elect the directors of public media (except for the SPR where two-thirds of the Senate are required for the appointment), which makes them vulnerable to political changes and to government pressures. Finally, they are allocated a discretionary and insufficient budget.

The Organization for Economic Cooperation and Development (OECD) pointed out in 2017 that the financing of public media in Mexico is one of the lowest compared to other member countries. From 2013 to 2018, the financing granted to them was equivalent to only a fifth of what was paid in state advertising to commercial media. Televisa, a major broadcaster, received during that period more money from the federal government than all public media at the federal level (34).

The main regulatory challenges related to public media are to guarantee their editorial independence and financial management autonomy, to establish rules to guarantee citizen participation, to generate mechanisms for accountability, as well as to adopt structural public policies that ensure the development and economic sustainability of these media.

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Broadcasting

During the rule of the Institutional Revolutionary Party (PRI) in Mexico, there was “a concentrated, centralized and domesticated structure of broadcasting(35) where radio and television broadcasters and the government established relations of mutual benefit: the governments protected the business of the broadcasters and in exchange, broadcasters promoted an uncritical view of the party in power and other institutions needed by the government such as the Army or the Church(36).

There were some exceptions, especially in the print press and at various radio stations that were critical of the government or had certain independence from the political power throughout the second half of the twentieth century. The print press included Excelsior, Proceso, El Unomásuno in the early 1980s, La Jornada, the weekly Zeta (Tijuana) and El Norte, Mural and Reforma in the 1990s. In radio, there were Radio Red by Gutierrez Vivo, Radio Universidad with Plaza Pública by Miguel Ángel Granados Chapa, and MVS radio with Javier Solorzano and Carmen Aristegui also in the 1990s.

This media system has gradually opened up as democratic plurality and the demands of civil society gained ground.

The media system experienced a turning point in the year 2000 with the accession to power of the conservative National Action Party (PAN) of Vicente Fox and Felipe Calderón. Yet, although the dynamics changed, inertia and collusion practices between political power and media remained. The two largest commercial television networks (Televisa and TV Azteca) used MPs and senators from different political parties to lobby for their interests. This group of legislators got to be known as the “telebancada(37).”

In 2006, they managed to push through amendments to the 1960 Law where the interests of the two television stations were favored to such an extent that said initiative remained known as “Televisa Law.”

Following a series of developments including an unconstitutionality motion filed by a group of senators in 2006(38), the Supreme Court resolved the illegal character of several dispositions such as the duration of the TV licenses, their renewal, the frequency use, and the fact that the commercial networks were allowed to offer convergent telecommunication services (voice, data and video), which was a key competitive advantage over other companies. This was an example that the media in Mexico are de facto power players that can have a strong influence on the political system(39).

The return of the once-hegemonic party, PRI, to the presidency of the republic in 2012, took place in the context of the social movement #YoSoy132 where a series of students’ protests were organized demanding the democratization of the media and an end of the political influence in the television stations(40), especially, after promoting the PRI candidate, Enrique Peña Nieto.

That was the backdrop that helped shape the constitutional reform of 2013, which dismantled the old system of license granting that depended discretionarily on the government and allowed corrupt relations between the political system and the media. Until 2014, for example, licenses were awarded to broadcasters without a public tender. The Constitution gave the Federal Telecommunications Institute the power to make licensing-related decisions as well as required the regulator to invite bids for new broadcast entrants(41). Following such an official call in 2014, CadenaTres/Imagen Televisión of Grupo Empresarial Ángeles obtained a broadcast license, adding a third player in the commercial television segment (dominated by Grupo Televisa and Televisión Azteca).

The reform created the legal framework for the entry of more digital radio and television players. But the growing number of tenders for broadcasting frequencies did not mean a greater variety of content(42). Moreover, the IFT did not introduce broadcasting indicators to measure plurality and diversity in broadcasting.
One of the most important projects made possible by the constitutional reform of 2013 was the switchover to digital television that foresaw the end of analog television broadcasting by the end of 2015. The process involved modernization of digital facilities as well as a program to deliver digital TV screens and decoders for analog devices to the Mexican population to ensure people do not lose access to broadcast content (43). The government of Peña Nieto chose to deliver 11 million digital TV screens instead of cheaper digital decoders, a decision that was heavily criticized by experts and the opposition as it increased the cost of the switchover from US$ 525m to US$ 1.646bn, followed a clientelistic logic and entailed corrupt bidding practices to obtain the screens (44).

**Competition**

The telecommunications market in Mexico is one of the most concentrated in the world (45). National and international experts agree that as long as there are compact oligopolies, it is difficult to ensure effective and sustainable competition (46).

The constitutional reform of 2013 addressed the obstacles to regulate competition. In the past, the Federal Competition Commission (CFC), the Federal Telecommunications Commission (Cofetel) and the judiciary were involved in regulation of competition. The Federal Telecommunications Law of 1995 aimed to impose specific obligations on broadcasters with dominant positions, yet its implementation faced multiple obstacles including lack of criteria to define dominant power (47). The IFT was also in charge of identifying dominant players in telecommunications and broadcasting, which were supposed to comply with a number of regulations related to cross-ownership, exclusive content and sale of advertising space, among other things. Such obligations started to be more methodically implemented after 2014 as several players, including América Móvil and Grupo Televisa, were targeted by the new legal provisions because of their dominant market position (48).

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América Móvil concentrated 68.9% of the wireless market, 82% of wirelines and 71.5% of broadband. As a result of the asymmetric measures, mobile fees dropped by more than 35% for 2020, however, the company kept concentrating more than 70% of the wireline market and the company’s income concentration measured by the Herfindahl–Hirschman Index (HHI) increased 9.4%(49). Grupo Televisa, was also declared a dominant player(50) on free-to-air TV, as it commanded 67% of the audience and 54% of the television broadcasting operators. However, following the asymmetric dispositions, Televisa only lost 5 p.p. of its free-to-air market share and maintained its dominance. Moreover, the IFT decided against labeling Televisa as a dominant player on the pay-TV market, despite having a 64% share of all subscribers at the end of 2014, which boosted its market concentration (IHH) for 2018 by 13%, further cementing its domination.

Analysts agree that the strict regulation of competition in the telecommunications sector and the lax regulation in broadcasting is a result of political interests rather than any other factors. One of the main criticisms faced by the IFT has been its decision to measure market dominance by sector, either telecommunications or broadcasting, instead of service: wireline, wireless, internet, free-to-air TV, pay-TV, etc(51). Furthermore, asymmetric regulation does not cover all the aspects of the competition process and, therefore, it should be combined with other mechanisms of economic competition(52).

The Federal Economic Competition Commission (Cofece) is the other body created through Article 28 of the Constitution with a mission to guarantee free competition.

(49) Estavillo, “Preponderancia…”, 2020, cit.
(52) Estavillo, “Preponderancia…”, 2020, cit.
Investment

Mobile broadband and fixed Internet access are key drivers of growth in the Mexican telecommunications sector (which have an influence on other economic sectors’ growth)(53).

One of the objectives of the constitutional reform of 2013 was to stimulate investment in telecommunications by removing entry barriers for national and foreign investment. To this end, four initiatives were launched(54):

1) The reorganization of the spectrum to ensure more space for broadband, taking advantage of the digital frequencies available after the analog switch-off (see Broadcasting in this report)

2) The establishment of Red Compartida and Red Troncal (see Right of access to ICTs and coverage in this report)

3) The identification of players with dominant position (see Competition in this report)

4) Full liberalization of the Foreign Direct Investment (FDI) regime in telecommunications

However, recent studies suggest that investments are concentrated in a total of 10 private companies (América Móvil, Grupo Televisa, AT&T, Megacable, Telefónica, Dish-MVS, Axtel, Altán and Total Play). Moreover, investment in mobile telephony has been depressed in recent years (only 11.7% of total income has been invested) despite being the one that generates the highest income (57% of the sector’s total in 2018). This started to change in 2022, according to Telcel and Telmex, as US$ 1.8bn are slated to be invested that will include the introduction of the 5G mobile technology, which is planned to grow from 18 cities in February 2022 to 120 by the end of 2022(55).

In television, a recent significant investment is related to the merger of Grupo Televisa with Univisión (a U.S.-owned company). Whilst the former is the major shareholder, Univisión invested US$ 3bn in cash and US$1.5bn in combined shares that Televisa will use to pay its debt. SoftBank and ForeLight LLC invested US$ 1bn in shares, and Google and The Raine Group were participants as well. IFT and the Federal Communication Commission (FCC), the media and telecom regulator in the U.S., approved the merger. (For more information on foreign investment, see Technology, Public Sphere and Journalism in Media Influence Matrix Mexico)

Protection of Journalists

One of the most serious problems in Mexico is the violence against journalists in the form of murder, threats, kidnapping, espionage, and legal pressures aimed to censor or force them to reveal their sources.

The violence is similar to the levels of countries at war, in addition to a climate of impunity where out of 5,151 cases of aggressions against journalists until June 2020, only 210 had resulted in criminal action(56). In the three years of the current administration there have already been 1,945 attacks against the press, including 33 murders of journalists and two disappearances, “marking the most violent period against the press in history(57).” In most cases, the origin of the attack has been identified as coming from the Mexican State, mainly state level, followed by the local and, to a lesser extent, the federal level. However, other aggressors have been civilians, political parties, and organized crime.

The escalation of armed violence in the country, however, saw a turning point in 2006(58), a consequence of the “War on drugs” of Felipe Calderón’s government (2006–2012) initiated by his Secretary of Public Security (now facing charges in the U.S. for drug trafficking and favoring the Sinaloa cartel). The “war” saw the increased attacks among drug cartels and the State, but also the collusion of authorities at all-levels with organized crime.

Journalists themselves and civil society, as well as international organizations, have been fundamental in putting pressure on the Mexican government to promote protection mechanisms. In 2010, the Special Prosecutor for Attention to Crimes Committed against Freedom of Expression (FEADLE) was created with a task to coordinate and supervise investigations into crimes committed against journalists(59). In 2012, the Law for the Protection of Human Rights Defenders and Journalists was published. Mexico’s states also adopted their own legal framework in the last decade, mostly replicating the federal law(60). However, the uneven democratic transition at the local level has led to delays in implementation of these laws in some regions, allowing violence to persist(61).


(60) De León, “Desafíos en la protección de la libertad…”, 2020, cit.

(61) Rubén Arnoldo González, Víctor Hugo Reyna, “They don’t trust us; they don’t care if we’re attacked: Trust and risk perception in Mexican journalism”, Communication & Society, 2019, 32(1), 147–160. https://doi.org/10.15581/003.32.147-160
State Advertising

The publication of official government information by the media, known as state (or official) advertising, is a legal and legitimate practice in Mexico. In recent years, it has become a significant source of funding for some media, especially traditional ones that have suffered losses following the entry of new digital media and the decline in revenue from commercial advertising. However, since it is not properly regulated, state advertising in Mexico implies much more than the publication of official information: it requires favorable coverage of the government bodies that pay for it, “which is a direct violation of freedom of expression.” (62)

For this reason, the law was called the “Chayote Law”, a colloquial term well-known in journalistic slang that was popularized in the 1970s to describe the gifts that governments used to corrupt journalists (63). In fact, the continuing lack of rules for the allocation of public resources to private media outlets gives rise to many suspicions and to an unabated promotion of clientelistic practices in the political and media system in Mexico. For instance, the discretionary allocation of resources is illustrated by comparing the governments of Peña Nieto and Calderón, each of whom spent around US$ 3bn in their six-year tenure, with Lopez Obrador only spending US$ 339m in three years of government (64).

The constitutional electoral reform of 2014 highlighted the need to reform the General Law of Social Communication, but subsequent reforms have failed to put an end to discrecional and excessive allocations of state advertising or to boost transparency in the process. At the time of writing, discussions among MPs to legislate on the matter (mandated by the Supreme Court in 2021) were not being fruitful (65).

The Right to Freedom of Expression and Information

Mexican Constitution since its enactment in 1917 pioneered the right to freedom of expression (66). The constitutional reform of 2013 included the right to freedom of expression and information in new technologies.

Freedom of expression is also regulated in the Press Crimes Law. This law defines what attacks on morality (article 2) as well as on public peace and order (article 3) are. It has been strongly criticized by activists and experts in the field of freedom of expression since many of its articles go against the ideas and spirit of the Mexican Constitution, which is governed by a framework of protection and respect for human rights (67). Although anachronistic, this law continues to be used by politicians and public servants to intimidate journalists and dissuade them from doing critical investigations. In a recent case, the academic and journalist Sergio Aguayo was sued by Humberto Moreira, former governor of Coahuila, who sought moral damages from him due to a journalistic column that Aguayo published in 2016. A judge ordered Aguayo to pay MXN 10m (US$ 466,000) in compensation for damages. However, the academic was eventually acquitted by the Supreme Court of Justice of the Nation (68).

In a related development, in 2007, the right to reply was added to article 6 of the Mexican Constitution and, in 2015, the Regulatory Law of the Right to Reply was published, establishing that a person affected by inaccurate or offensive information has the right to request rectification.

Whilst the Mexican legislation has moved forward to include those rights, the implementation and enforcement of those provisions lag behind. Moreover, mainstream media is concentrated in the hands of a dozen families, which has hindered freedom of expression in terms of guaranteeing a plurality of perspectives. Instead, such concentration has favored the political agendas related to those companies’ commercial interests (69).

Broadcast and Frequency Spectrum Regulation

Federal Institute of Telecommunications (IFT)

Remit and Tasks

The Federal Institute of Telecommunications (IFT) was created during the constitutional reform of 2013 as an autonomous body, independent from the federal government, with legal personality and having its own assets. Its goal is to regulate broadcasting and telecommunications.

In accordance with article 28 of the Constitution, the IFT is in charge of:

[...] the regulation, promotion and supervision of the use, running and operating of the broadcasting spectrum, the networks and the provision of radio broadcasting and telecommunications services, as well as access to active and passive infrastructure and other essential inputs(70).

The IFT was granted authority in matters of economic competition in the broadcasting and telecommunications sectors including award and revocation of licenses in telecommunications and broadcasting and regulation of cross-ownership cases to eliminate barriers to competition.

Board Composition

The governing body of the IFT is a commission consisting of seven members appointed by the Executive.

They have to be approved by the Senate (after passing an examination of their knowledge and fulfilling a set of personal and professional requirements). The IFT commission chair is elected by two-thirds of the Senate. The establishment of the IFT was an extremely important decision as it has created a regulatory framework for the media and telecommunications system.

The institutional design of the IFT is robust enough to achieve its objectives, which are to regulate the media and telecom markets, respecting the principles of competition and ensuring diversity and pluralism.

However, the 2014 law (LFTR) took away some of the IFT’s organizational and operational autonomy. Although the IFT had the opportunity to defend its independence by filing a constitutional appeal, as proposed by two of its commissioners, the other commissioners decided not to do so, preferring to address legal deficiencies on a case-by-case basis(71). Instead, the LFTR gave more powers to the Executive, making the regulator easier to be captured by political interests(72). For example, the president of the IFT, elected by a majority of the Senate, has many powers including full control of the agenda discussed by commission, internal processes, information and human resources, which thus reduces the power of the commission to run the institution.

Another threat to the IFT’s independence is the interference of other regulatory authorities. For example, there is a very fine line between the powers of the IFT and those of the Federal Economic Competition Commission (Cofece), which often leads to jurisdictional conflicts between them(73). Furthermore, the influence of economic, political and media interest groups on the IFT is still a pressing concern(74).

Taking into account the institutional challenges faced by the IFT and its experience in its ten-year history, experts say that, to improve the body’s independence, a more horizontal governance structure must be introduced along with performance evaluation mechanisms, solid HR strategies, an accessible system to obtain internal and external information, standardized processes to end the organization’s excessive bureaucratic burden and measures to boost the transparency of its decision-making processes.

(72) Labardini, “Hacia la excelencia regulatoria...” 2020, cit.
Financing

Since the beginning of the López Obrador administration (2018-2024), IFT has been criticized for being inefficient and expensive. In fact, the Mexican president pointed out several times that the country’s autonomous constitutional bodies are costly institutions that hinder the actions of the executive power. He added that these bodies were established following the “neoliberal” logic “to facilitate privatization.”(75) Hence, they have no social function, the president added, referring to the little progress made by the IFT in fighting dominant players, which has resulted in low Internet coverage across the country.

López Obrador said that his administration does not have time to reform these organizations, and a constitutional reform that would change them requires a qualified majority, which the governing coalition does not have(76).

Therefore, the IFT has been operating with only four commissioners since February 2022 after the Mexican president made two appointments in 2021 that were rejected in the Senate. He has not made any new appointments since then, arguing that the list of proposed candidates did not follow procedure(77). As a result, the IFT’s activities have been frozen as the institution needs at least five commissioners to make certain decisions(78).

(76) Andrés Manuel López Obrador, Conferencia presidente, cit.
(77) Karla Rodríguez, “AMLO rechaza validez de candidatos del IFT y Cofece”, El Financiero, 1 April 2022, https://www.elfinanciero.com.mx/empresas/2022/04/01/amlo-rechaza-validez-de-candidatos-de-ift-y-cofece/.
Print Media Regulation

In Mexico, the written press is regulated by the Press Offense Act, which was previously called the Press Act. This legislation was enacted by President Venustiano Carranza in 1917, and has since been modified multiple times. Originally, it was adopted as a temporary regulation added to articles 6 and 7 of the Mexican Constitution. However, more than a century later the law is still in force.

The Press Offense Act has 36 articles, three of which have been abolished over time. Two key issues are regulated through this law: the limits imposed on freedom of expression through various provisions such as respect for the rights of third parties, public order and morality (see The Right to Freedom of Expression and Information in this report); and the regulation of the print media. Article 13 requires anyone who establishes a publishing enterprise to inform the local authority. Article 15 states that, to be disseminated, a printed material must have the identification data of the publisher as well as the printing house and the place where it was published. Article 26 explains that no one can act as director or editor of a publication if they are based abroad or if they are in “prison or on parole, or under bail.”

This law is clearly unfit for today’s realities, representing an anachronistic legal system. The regulation is over a hundred years old, a period in which the Mexican Revolution took place, a semi-authoritarian regime ruled for more than seven decades and a transition to a multi-party system that lasted almost 20 years has unfolded. After such a long time, the relationship between the press and public authorities has changed substantially. Moreover, the technological conditions have changed dramatically with the rise of electronic media followed by the fast spread of digital media that prompted print media to switch in droves to digital platforms. Finally, from a legal point of view, the provisions put forward by this law are incompatible with the standards for freedom of expression that have been developed through the international legal system in the past decades.
Hence, the Press Offense Act has been of little use in recent decades. No specific regulatory authority for print media exists in Mexico. Instead, the print media industry has been regulated in a discretionary way through negotiations between various public authorities and the print media, which led to a collusion that for a long time affected the independence of a large part of the print media system. As a result, many newspapers tended to be pro-government and carried out journalistic coverage favorable to the regime in exchange for tax forgiveness, discounts on the purchase of basic supplies for the production of newspapers such as ink and paper, and state advertising contracts (79). Although such practices have decreased in intensity and frequency, they still appear, especially at the state and municipal levels.

Internet Regulation

In Mexico, there is no specialized regulator of the Internet. Yet, various regulators take charge on Internet-related issues, depending on the case. They include the Cofece, the IFT and to a lesser extent the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI). (See respective sections for a discussion of those regulators)

When it comes to content moderation in social media, the regulatory gap is clear and both the IFT and the INAI are expected to start working together on such issues. In this regard, some proposals have been made, but as of March 2022, there was no official specialized Internet regulator (80). In terms of international commerce, the United States–Mexico–Canada free trade agreement (USMCA) incorporated in Chapter 19 on digital commerce, data protection for e-commerce, cybersecurity and free flow of data provisions among the three countries (81).


Data Regulation

National Institute of Transparency, Access to Information and Data Protection (INAI)

The Federal Law on Transparency and Access to Public Government Information was adopted in 2002 and the Federal Institute for Access to Information (IFAI) was created through a presidential decree. Both came after the democratic change of power (when the hegemonic party lost the presidency of the Republic after 70 years) and the work of a group of journalists and academics known as Grupo Oaxaca.(82) IFAI's mission was to ensure the exercise of the right of access to information and protect personal data held by the Federal Public Administration, as well as to force the authorities to make their actions transparent. Each state of the Mexican Republic had in turn the obligation to adopt its own law and establish mechanisms to ensure implementation of the legal provisions. The regulators in charge of monitoring legal compliance have changed over time(83).

In 2015, a new General Law on Transparency and Access to Public Information was promulgated, and IFAI changed its name to the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), becoming an autonomous body with new powers, its remit extending to trade unions, political parties, legislators, autonomous bodies and any individual or legal entity that receives or uses public resources, as well as states and municipalities.

INAI’s tasks include guaranteeing the right of access to public information and protection of personal data, promotion of transparency and openness of public institutions and protection of human rights and gender equality at the institutional level.

Thanks to these legal provisions, journalistic investigations of great importance had the conditions to be conducted. Some of them uncovered serious corruption cases such as La Casa Blanca that dug into the corrupt affairs of the former Mexican president Peña Nieto, La Estafa Maestra that investigated disappearance of public funds, or the fictitious companies of the former governor of Veracruz Javier Duarte. Some of these investigations led to arrests of high–level politicians(84).

(84) Maza, “Del Ifai al Inai…”, 2021, cit.
Other Regulators With Influence in the Media

Federal Economic Competition Commission (Cofece)

Created through the alteration of article 28 of the Constitution, the Federal Economic Competition Commission (Cofece) is another regulatory body that plays a role in telecommunications and broadcasting, albeit strictly limited to ensuring free competition.

Like the IFT, the Cofece is an autonomous constitutional body with legal personality and its own assets. Due to the specialized powers of the IFT in telecommunications and broadcasting, Cofece does not have primary competences in those sectors. However, with the rise of digital platforms of different kinds including Uber, Netflix and Amazon, doubts emerged about who the competent authority to assess possible cases of concentrations is.

Hence, the Federal Law of Economic Competition established tribunals specialized in economic competition, broadcasting and telecommunications whose main task is to determine which body has jurisdiction over a certain matter when two authorities claim to be competent.
The main public actors involved in decision-making on public policies for the communication sector come from different state agencies. The executive power runs the Secretariat of Infrastructure, Communications and Transportation with a decision-making role in the field. In the legislative branch, decisions are made by MPs and senators. The judicial power consists of specialized courts and the Supreme Court of Justice of the Nation.

This division of powers has had a positive impact in media regulation. It has allowed a balance in opinion and the possibility to counter any attempt at unilateral decision-making.

Such are the following cases:

- The ruling of the Supreme Court of Justice of the Nation on the audience rights in favor of the Mexican Association for the Audience Ombudspersons (AMDA) against the modification of the LFTR, the 2017 legislative counter reform that reversed the audience rights as a result of pressures from the corporate media.

- The initiative of the Ministry of Finance and Public Credit for the 2020 fiscal budget and its approval in Congress, which modified the Federal Rights Law to exempt indigenous broadcasters from paying taxes for the use of the frequency spectrum.

On the other hand, there are still important private actors that exert undue interference in public decision-making, for example in the decisions of regulators such as the IFT. Improved regulation of lobbying, conflict of interest, revolving door practices and collusion is still needed along with increased transparency of decision-making processes.
Influential Actors

Local Influencers

Industry associations

National Chamber of the Radio and Television Industry

The National Chamber of the Radio and Television Industry (CIRT) is a business association that brings together the country’s large corporate radio and television media. Its activities include running analysis and assessment of key issues affecting the industry; representing the interests of its partners in lobbying the public administration; providing technical, legal, fiscal and administrative advice to its members(86).

The CIRT has played an important role in the legislative and judicial battles that accompanied the constitutional reform. In one, CIRT pushed back against the obligation to distinguish information from opinion in the media. In February 2022, when the latest controversy on the matter was being discussed, the CIRT called on the Supreme Court of Justice of the Nation to consider Minister González Alcántara’s proposal to distinguish between information and opinion as a form of censorship. If approved, considered the leader of the CIRT, such a provision would be a setback as it would not allow the population to be duly informed(87). This remains an important topic stirring heated debates in the context of media practices of distortion and manipulation of information.

MX Internet Association

The MX Internet Association represents affiliated companies that operate in the Internet industry. One of the association’s purposes is to represent the interests of its members and provide expertise in the Internet field based on principles of a free and open Internet, the development of infrastructure and the reduction of the digital divide, freedom of expression and the right to information, privacy and data protection, the free flow of cross-border data, cybersecurity, open data, technological neutrality and competition, net neutrality and the digital economy(88).

Many of these principles coincide with the interests of U.S. industrial associations such as the Information Technology and Innovation Foundation, which group communication technology and Internet associations. Such principles were incorporated into the United States–Mexico–Canada Treaty (89). The Association participated in discussions focused on the regulation of Internet platforms, specifically opposing payment of taxes.

Civil Society/Non-Governmental Organizations

AMDA

The Mexican Association of Audience Ombudsmen (AMDA) aims to ensure that the audience rights are respected and the role of the ombudsmen is fulfilled. It is made up of individuals who are in charge of tasks aimed to ensure audience defense. They belong to programming councils or other groups that act as intermediaries between the media and its audiences. AMDA’s activities include communication with the audience ombudsmen, holding events to promote the audience rights, conducting studies, providing training, evaluation, technical advice and consulting services on the matter (90).

Thanks to pressures from AMDA, the Supreme Court of Justice of the Nation found unconstitutional the reform to article 256 of the LFTR that eliminated provisions to defend the audience rights (91).

AMEDI

The Mexican Association for the Right to Information (AMEDI) works on promoting and defending the right of citizens to information and communication, as well as the fight for the democratization of the media, the guarantee of the right to inform and the right to reply. Historically, it has consisted of NGOs and academics, and has operated in different states of the country (92). Its activities include establishing networks with related associations, authorities and the media, and offering public opinions about communication-related topics. Recently, AMEDI has been vocal in calling for the independence of IFT and INAI.
Article 19 Mexico and Central America

Article 19 in Mexico and Central America is a non-governmental organization that promotes and defends the rights of freedom of expression and access to information under international human rights standards with the aim to contribute to democracy. Its activities include defending the right to disseminate information and opinions in the media, investigation of threats and trends, documentation of violations of the rights of freedom of expression, assisting people whose rights have been violated and contributing to debates on public policies in the media.

The organization produces reports that are an essential reading on topics such as state advertising spending (see more in Public Advertising in this report) and violence and threats against journalists (see Protection of Journalists in this report). The organization has been very active in criticizing the corruption in the decision-making process around state advertising spending.

Observatel

Observatel A.C. is a telecommunications observatory in Mexico that investigates, monitors and issues opinions and articles on the media and telecommunications. Recently, it has attracted attention through its call on the Government to issue the Universal Digital Inclusion Policy, a public policy required by the Constitution, and a law to guarantee the population’s access to ICTs.

R3D

The Network for the Defense of Digital Rights (R3D) is a Mexican organization dedicated to the defense of human rights in the digital environment. The organization’s main activities include policy research, strategic litigation and campaigns to promote digital rights in Mexico such as freedom of expression, privacy, access to knowledge and culture.
External Influencers

IACHR

The Inter-American Commission on Human Rights (IACHR) is an autonomous body of the Organization of American States (OAS) whose purpose is to promote and protect human rights on the American continent. Together with the Inter-American Court of Human Rights, it is part of the Inter-American System for the protection of human rights. Among its activities, the IACHR has an individual petition system, monitoring of the human rights situation in member states, and it attends to priority thematic lines (97). IACHR plays a key role in influencing media policies in Mexico.

UNESCO

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has among other priorities the defense of freedom of expression, a fundamental right and an essential condition for democracy and development. UNESCO promotes the adoption of international standards by member countries and manages programs that promote the free circulation of ideas and the exchange of knowledge (98). UNESCO is seen as a major player in influencing the debates around media regulation and policy in Mexico.

Rapporteurs for freedom of expression

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression of the United Nations Commission on Human Rights have the purpose to stimulate the defense of the right to freedom of thought and expression, due to its fundamental role in the consolidation and development of the democratic system. Both rapporteurs made an official visit to Mexico from 27 November 2017 to 4 December 2017, at the Government’s invitation. It was a joint follow-up visit after one they had carried out in 2010. Published in 2017, the report constitutes an international claim against the Mexican State for the violation of the right to freedom of expression, calling for immediate solutions to be sought to guarantee it (99).

Observacom

The Latin American Observatory of Regulation, Media and Convergence (Observacom) is an independent professional organization specialized in regulation and public policies for the media, telecommunications, the Internet and freedom of expression with an emphasis on rights, access, diversity and pluralism. It comprises expert researchers from Latin America and the Caribbean who generate information and analysis, as well as policy recommendations. The organization engages with actors from different fields, including academics, businesses and state bodies, who are involved in communication issues\(^{100}\). One of Observacom’s recent projects in Mexico was an event held jointly with UNESCO to discuss online content moderation and protection of freedom of expression on social media, which brought together government representatives, academics, civil society organizations, regulation experts and user associations\(^{101}\).

AMARC

The World Association of Community Radio Broadcasters (AMARC) is an association with a mission to promote, cooperate, coordinate and exchange advisory services for community radio stations and protect their right to freedom of expression. In Mexico, it has the legal status of Red de Radios Comunitarias de México A.C. made up of 62 community and indigenous radio stations\(^{102}\).

Article 19

At the international level, Article 19 aims to defend freedom of expression and access to information. For this reason, it carries out monitoring and research tasks and takes stances and makes recommendations in the countries in which it works and where it has regional offices. Its main thematic focus is on censorship, digital rights, religious freedom, freedom of the press, and the safety of journalists and of human rights defenders\(^{103}\). The work of the regional office in Mexico has focused its attention on the threats against journalists and the high levels of impunity, as well as on other attacks on human rights including the refusal by authorities to disclose documents on human rights violations and to reveal public information, the manipulation of media outlets’ editorial agenda through the discretionary allocation of state advertising and the Pegasus case of espionage against journalists, lawyers and human rights defenders\(^{104}\).

\(^{100}\) Observacom, Quiénes somos, 2022, https://www.observacom.org/quienes-somos/. Full disclosure: this report is produced as part of a project run by Observacom. The organization, however, has not participated in any way in the research conducted for this study or in its drafting.

\(^{101}\) Brant, Álvarez, and Gómez, “Moderación de contenidos en Internet…” 2021, cit.


\(^{103}\) Article 19, What we do, 2022, https://www.article19.org/what-we-do/.

Conclusion

Despite the positive impact of the constitutional reform of 2013 and other previous or related regulations, media policy in Mexico is still faced with numerous challenges. Many objectives of the 2013 reform, in fact, could not be achieved because of a series of secondary laws that have been adopted in the meantime. Controversial cases remain unresolved.

The Mexican media system thus remains one of the most concentrated in the world. Therefore, more comprehensive economic competition measures and policies are needed (for instance, asymmetric policies by service and not by sector). On the other hand, as the goals of the governments in the media have not been achieved, the digital divide remains wide, which means that vast swathes of the Mexican population do not fully enjoy the benefits of digitization. Part of the reason is that post-reform investments were below expectations, at much lower levels than in other countries (except for a recent investment in a 5G network).

Public media remain financially vulnerable as authorities have discretionary power in approving their budget and exert significant influence in their editorial coverage. Moreover, public media remain reluctant to be held accountable.

Despite advances in bolstering the autonomy of regulators, economic, political and industry influences persist. To prevent them, a lobbying law that establishes what is legal and what is not is needed. The current administration also needs to improve the functioning of the IFT by identifying and removing practices that make its work ineffective. Generally, regulatory authorities need to be more self-critical and further focus on their professionalization by establishing methods of evaluations of their work to be able to adjust their strategies and better coordinate in achieving their objectives.

The media sector is also affected by clientelistic practices, which are rife in Mexican media, one reason being the delay in amending the General Law of Social Communication to include provisions regulating state advertising. Moreover, legal advances in creating mechanisms for protection of freedom of expression have not resulted in a decrease in violence against journalists.

Finally, the legal framework ensuring audiences’ rights derived from a verdict of the Supreme Court of Justice of the Nation is still not implemented.

To address all these challenges, above all, a multisectoral public policy on communication and digital matters is necessary. As Bravo wrote “legal changes are insufficient when comprehensive public policies are lacking”(105).

For more information about the project:
Media Influence Matrix
http://journalismresearch.org