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Freedom of expression, an acquired right to be protected

**Report on the state of freedom of expression, the media
and access to information in Haiti**

Foreword

“Freedom of expression is one of man’s fundamental rights; without it, public opinion cannot be properly informed. It is guaranteed by the Universal Declaration of Human Rights of 1948 and by the Constitution of Haiti of 1987.”² The opening statements of the Code of Ethics of the Media and Journalists of Haiti adopted in December 2011 leaves no room for doubt: the media and journalists must be free to carry out their work, and citizens must be free to speak out, to express their opinions, their religious beliefs, sexual orientation, etc., and yet...

One cannot speak of freedom of expression in Haiti without speaking of the media, and in particular of the press, which, as we learn through Jean Desquiron³, appeared on the scene in a prolific manner – even before Independence and the division of the island.

If, in the 18th century, the press flourished, this was also largely because it “hosted the very first Haitian authors”. However, though the number of periodicals was important, ensuring their newsfeed was risky and many news-writers found themselves imprisoned, exiled, or even executed. Jean Desquiron inventoried close to one thousand newspapers. Yet only three of them withstood the wear and tear of the centuries, right through to our generation: *Le Moniteur* (1845), *Le Nouvelliste* (1898), and *Le Matin* (1907), although this last ceased publication in 2014. Interestingly, and a fact worth noting, in the 18th century, periodicals also existed in the main provincial towns, which unfortunately is no longer the case. The press has now shrunk dramatically: *Le Nouvelliste* remains the trailblazer resisting all odds, while in 2015 a new daily, *Le National*, made its appearance and filled the big void existing in Haiti, pitting the oldest newsprint title against new competition. How should one interpret this reluctance to create new printed media? How does one understand this *decrescendo* path of the press in Haiti: the more we advance in time, the fewer newspapers there are?

¹ This report that Panos shared with the press on this 25th edition of the World Press Freedom Day, May 3, 2018, was presented and discussed in November 2017 with Mr. Edison Lanza Rabatto, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.

² <http://www.unesco.org/new/fr/port-au-prince/communication-information/code-of-ethics/>

³ *Haiti à la Une, une anthologie de la presse haïtienne de 1724 à 1934* en 4 tomes

Jean Desquiron offers us a marker: “to understand the Haitian press, we need to examine it through time and through the space of its landscape, without ever losing sight of the harsh conditions in which it evolves: a limited public made up of a handful of literate people, shady powers that do not take kindly to criticism... therefore newspapers appear and disappear like shooting stars”. In the 21st century, the economic and political conditions remain difficult and, paradoxically, at certain levels, tend to deteriorate a little more each passing year.

Nevertheless, in 2017, and even over this last decade, we cannot talk of the press being gagged nor of an infringement to the Haitian population’s freedom of expression, in the manner that one would, unequivocally, state it in the case of totalitarian regimes. This said, since the fall of the Duvalier in 1986, civil society organisations have registered cases of abuse against citizens because of their political, religious or other positions.

In any democracy, freedom of expression also encompasses the freedom citizens have to speak of their choices without any authority interfering, in any manner whatsoever, with this freedom. The achievements of these past thirty years have been a long journey towards democracy, which has reasserted itself. But nothing is won in advance. Unfortunately, despite this recovery of democracy, Haiti has experienced cases of journalists murdered because of their work: we mention Jean Dominique (2000), Brignol Lindor (2001), and Jacques Roche (2005) to name but three cases with no room for doubt as regards the motives of the crimes committed against these journalists while exercising their profession. Many other cases of assaults and threats have also been reported.

Among the population, nobody has forgotten the case of human rights lawyer Mireille Durocher Bertin or activist Antoine Lovinsky, among others. Between 2000 and 2004, many of the demonstrations initiated by the opposition were violently broken up by government supporters, under the benign gaze of the National Police. The university community is not ignored either: student demonstrations are also forbidden by the police. In July 2003, the meeting of the group of 184 civil society organisations at Cité Soleil is disrupted, but only the group’s leader, Andy Apaid, is prosecuted. The freedoms of association and of public assembly are suspended simply by communiqué. “Intolerance reaches its peak; only the government has the monopoly of street demonstrations,” describes historian Michel Soukar.

“The freedoms of expression, of the press and of association are among the most affected civil liberties. Since the murders of Jean Dominique and Brignol Lindor, journalists have become the prime targets of the *Organisations Populaires* close to the government. Over a score of journalists were forced to leave the country after the events of 17 December 2001. Close to a dozen correspondents in the provinces sought

refuge in Port-au-Prince so as to escape persecution and the threats of the *Chimeres*⁴. Radio stations in the Cap, in Gonaïves and in Petit-Gôave stopped broadcasting so as not to be burnt down by government supporters,” writes Michel Soukar⁵.

On another level, apart from the exception that presented itself recently (2013-2017) with the debate about homosexuals’ rights, in Haitian society no enacted legislation had as yet condemned free citizens for having and defending their sexuality in relation to national life. But things change and not always for the better. Religious groups organised demonstrations against the gay community in Haiti. A few cases of assault, or even murder, have been registered against people suspected of having a different sexual orientation to that of the majority. A law on reputation was tabled and enacted by parliament whereby homosexuality is categorised as offending common decency on the same footing as paedophilia⁶.

Recently, the Vaudou (or Vodou) religion, always relayed to the lowest rank and stifled by the Catholic and Protestant religions, acquired the right to officiate. Although their swearing-in as officers of the State has been repeatedly postponed, it would seem that this is an important step in the Vaudou practitioners’ right to freedom of expression and assembly and a clear recognition of this religion by the Haitian State.

The decade 2007-2017 has therefore seen a number of the rights of citizens and journalists violated and, even if not according to a systematic formula, one can only regret that the country’s sons and daughters are subjected to intimidation, veiled threats, exile, or death, because they dare to disagree.

The presentation that follows will try to shed light on the existence, the pathway and the questions accompanying the right to freedom of expression in Haiti.

The Gabriel/Jeanty case, the battering to date⁷

At the beginning of this affair, Jean Nazaire Jeanty, a journalist working for Radio Lebon FM and a correspondent in Port-au-Prince for Caribbean FM, produced a feature story on the health risks at the Gélée beach (Cayes, Département du Sud) two weeks before the district’s most important patronal feast, that of Notre-Dame (Our Lady) of 15 August. Up to here, there is nothing to report, just that a few short hours later the unwise mayor of Cayes, Jean Gabriel Fortuné, remonstrated: “*in any serious country, the secret services, without receiving instructions, would kill this journalist*”. In the media, he reiterated that view: “*because he ‘lied’ in a broadcast that harms the town’s interests, I*

⁴ Armed gangs using violence to meet political and criminal ends.

⁵ Haïti : Vingt ans d’histoire immédiate (1994-2014), p.54

⁶ <http://lenouvelliste.com/article/174502/le-senat-a-vote-une-loi-sur-la-reputation-et-le-certificat-de-bonnes-vie-et-moeurs#undefined.uxfs>

⁷ <http://lenouvelliste.com/article/174503/gabriel-fortune-dans-tout-pays-serieux-les-services-secrets-sans-recevoir-dinstructions-tueraient-ce-journaliste>

say that he deserves to die, because the wages of sin are death. I said and I'll say it again: this gentleman deserves death."

This caused an outcry from the press associations. Protests were raised on all sides: the Association of Haitian Journalists (AJH), the National Association of Haitian Media (ANMH), and the Association of the Independent Media of Haiti (AMIH) all revolted against the thinly-veiled threats of an elected representative of the Republic to a press worker. Interviewed by the daily newspaper *Le Nouvelliste*, Jean Nazaire Jeanty said: *"he chose to attack me because he doesn't like the work I do."*

Freedom of expression, seen from the outside

In 2016 and in 2017, Reporters without Borders (RSF) ranks Haiti 53rd out of 180 States in its annual report on freedom of expression in the world. According to RSF, *"the Index ranks 180 countries according to the level of freedom available to journalists. It is a snapshot of the media freedom situation based on an evaluation of pluralism, independence of the media, quality of legislative framework and safety of journalists, media environment and self-censorship, legislative framework, transparency, and the quality of the infrastructure that supports the production of news and information."*⁸

Furthermore, its 2016 report titled *"Media: when oligarchs go shopping"* *"describes a world in which journalism and freedom of information run up against an invisible wall consisting of money and conflicts of interest. From now on, RSF intends to keep addressing these new threats to journalistic independence, which constitute a major challenge for democracy."*⁹ Haiti is no stranger to these new challenges – far from it.

Freedom of expression, seen from here

In 2017, a law on defamation, whose content most journalists and media are ignorant of, shook up the apparent tranquillity enjoyed by the press world. For some journalists and for other observers, *"this law, passed without any prior consultation with the press corps, can be nothing other than a disguised attempt to gag the press once again. Even if most admit that there are more and more deviations from, or circumventions of, the rules of professional conduct and abuses towards a true freedom of expression, they do not think this warrants introducing a law on defamation."*¹⁰

⁸ <https://rsf.org/en/world-press-freedom-index>

⁹ <https://rsf.org/en/reports/media-when-oligarchs-go-shopping-rsfs-latest-report>

¹⁰ A law, composed of 23 articles including its general provisions and concerning the responsibilities relative to defamation through the printed press or by electronic means, was unanimously approved by the Haitian Senate on Wednesday, 15 mars 2017. The bill dated back to January 2014, when it was tabled by Edwin Zenny, a senator from Southeast Haiti, during the 49th legislature. Read more on:

http://www.alterpresse.org/spip.php?article21408#.WNLiS1vjd_s;

http://www.alterpresse.org/spip.php?article21432#.WNLyKlvjd_s and

<http://www.lenouvelliste.com/article/169207/la-loi-sur-la-diffamation-votee-a-lunanimite-par-le-senat>.

question de la traductrice (et comme il s'agit d'une note bas de page, je ne peux pas la mettre sous forme de

Freedom of expression is guaranteed by the Constitution in its articles 28 and following. Nevertheless, rules are needed, safeguards to prevent freedom of expression in its purest form from drifting towards unprofessional behaviour. This is what the code of ethics for Haitian media and journalists attempts to establish. According to the website of Unesco's National Office to Haiti, "this code was drawn up in a participatory and consensual manner in the course of a series of working meetings organised by Unesco with the leaders of journalist and media associations, media owners and respected journalists". The press release announcing it, stipulates that: "*The code includes 22 items in a set of ethical guidelines for the media and journalists. It includes respect for human dignity and privacy, rejection of discrimination, and the presumption of innocence for defendants. The guidelines also state that the media and journalists should refuse to report hatred and confrontation, and encourage instead balanced treatment of information, especially at election time.*"¹¹

However, this code will only play its full part once the media and the journalists themselves have individually adhered to the concept of professional deontology. Indeed, many journalists are not even aware of this code's content. The media, as well as the associations representing them, need to strive to find the common thread of their existence: the public interest, as opposed to petty private interests.

"This profession is in crisis from an economic, ethical, deontological and security point of view," said in 2005 the then directress of Radio Signal FM, Anne-Marie Issa, during a round table on the media. And it is far from sure that this has changed in the meantime. Ms Issa had expressed the wish that, in order to do their job properly, journalists should have "*free access to all sources of information on the facts that condition public life, in order to reveal the injustices that our society hides and allow them to be able to contribute to making the system more humane and fair et also allow them to bring up to date the flaws in all democracies.*"¹² Here, too, in 2017 we are far off the mark.

On the pluralism and independence of the media

Similarly to the 18th century, Haiti continues to have a media landscape that is very rich, with the difference that most of today's media are radios. Another modern revolution is that every radio station wants to have its own television channel. Radio frequencies have been liberalised. Despite a low-key campaign about impending digital television in early 2015, the population is still waiting for the arrival of digital terrestrial television in Haiti, already present in the region for over a decade. In the meantime, 697 radio and television stations (DAGMAR 2012), including some thirty community radios, two daily newspapers, one monthly, various weeklies and several online news agencies exist. Of

commentaire): faudrait-il ajouter une source anglophone, auquel cas p.ex. Read also:

<http://omegaworldnews.com/?p=30248>

¹¹ http://www.unesco.org/new/en/no_cache/unesco/themes/pcpd/dynamic-content-single-view/news/haitis-media-adopt-code-of-ethics-with-unescos-support/.

¹² <http://lenouvelliste.com/article/17595/la-liberte-de-la-presse-et-la-responsabilite-des-medias-en-haiti>

these, 347 operate behind the back of Conatel, the regulatory body. There is a lot of jostling on the radio frequencies compared to the 1980s: + 158% in the metropolitan area (district of the West), + 108% in the district of Artibonite, + 122% in the North and Northeast and +122% in the South and frequencies cost a small fortune.

If, for the vast majority, radio continues to be the medium of choice and while television is a medium with a promising future, the Internet is becoming increasingly present in the traditional audience's information habits, thanks to the arrival of smartphones and the offer of competitive deals at very affordable prices: with a minimum of 5 or 9 gourdes a day (according to the operator) or approximately 10 US cents, everybody can have access to the Internet and social media networks from their mobile phone.

As for independence, can one really be independent when the advertising base is constantly shrinking and it has to be shared among an ever greater number? To be dependent on these advertisers is not the most comfortable of situations for observing and reporting impartially when interests diverge. *“Were it necessary to draw a provisional conclusion, it would be that the path leading to a plural, competent, conscientious, non-partisan, objective and moral press is a difficult one, and even more so when, collectively, reaching it doesn't seem to be the priority. It is wrapped up in these shortcomings that these information workers are presently entering their digital transition.”*¹³

Regarding the law on free access to information

The need for a law on the access to information is not universally shared among the press corps with, on the one hand, some journalists and media owners who believe that the constitutional provisions suffice in guaranteeing the right to information and, on the other hand, others, including legal experts, who consider that the legal framework in Haiti is inadequate to guarantee the free access to information. This bill was handed to the chairman of the Assembly's Communication Committee¹⁴ during the celebration of World Press Freedom Day on 3 May 2016. The law was never passed. We reproduce here, in its entirety, the chapter devoted to this law in a Panos Caribbean press file¹⁵.

The law on access to information is a law required by the United Nations Convention against Corruption (UNCAC), which Haiti ratified in May 2007. However, the law has been pending in the Haitian Parliament since May 2012, while the law on defamation proposed by a senator in office was unanimously ratified only three years after being drafted. According to UNCAC requirements, when a State is party to the convention, the country must have a law guaranteeing access to information. According to Marilyn Allien, directress of the Fondation Héritage (the Haiti chapter of Transparency International),

¹³ <http://ayibopost.com/linternet-est-elle-en-train-de-tuer-la-presse-haitienne/>

¹⁴ <http://lenouvelliste.com/lenouvelliste/article/158466/Reguler-la-profession-de-journalisme-en-Haiti-une-necessite>

¹⁵ Dossier de presse # 21, April 2017, accessible via <http://panoscaribbean.org/accueil/31-francais/nouvelles-annonces/nouvelles-haiti/90-un-dossier-sur-les-derives-et-les-defis-de-la-presse-haitienne>

who has argued in favour of this law being passed by the Haitian Parliament for many years, "Haiti is completely at odds with this convention it has signed."

How important is a law on access to information? For Marilyn Allien, this law is a very useful instrument in the fight against corruption. Corruption, she says, works better when there is opacity. Passing this legislation would make the work of journalists much easier, while access to information would ensure a greater degree of transparency. "If the requirement of such a law features in the United Nations Convention against Corruption that Haiti ratified, the nit is a statutory enactment that should figure in the country's anti-corruption arsenal," argues the directress of the Fondation Héritage.

A senior journalist, Gotson Pierre, responsible for running the online agency Alterpresse, expressed his reservations about the law on access to information. In his opinion, «it is not for Transparency International to propose such a law via the Fondation Héritage, its subsidiary in Haiti, but rather to the sector's professionals on the basis of other models that would be well adapted to the country's reality. This initiative must primarily involve the Haitian journalists," recommends Gotson Pierre.

The directress of the Fondation Héritage explains: "Knowing that our Parliament is very slow in drafting laws, we [the Fondation Héritage] have therefore proposed legislation with a view to making things move ahead and help the country to speed up the approval of this law that we need."

Gotson Pierre believes that a law on the press in Haiti is not "our greatest necessity and a universal practice". He cites the example of the United States, a large democracy, where the media operate without any specific law. «However, this law would be useful for, despite the fact that the Constitution establishes the right to information, access to it remains fragmented depending on the good will of those in power," comments the head of Alterpresse.

For her part, the former Minister of Culture and Communication, Marie-Laurence Jocelyn Lassègue, doesn't think that a law on the access to information is required. This is also the opinion of the editor-in-chief of Le Nouvelliste or yet of Marvel Dandin at Radio Kiskeya. "The constitutions and international conventions already guarantee access to information, so I do not think that we need a law," says the news editor of Radio Kiskeya.

This is also the opinion of Jean Monard Métellus from Radio Caraïbes, who considers that the lack of access to certain sources of information "is not a problem that is inherent to Haiti." "Even in the United States, there are files that are classified as top secret, which at a certain point in time it is decided to declassify," remarks the political commentator. He believes that the journalist's personal skills count for a lot in the quest for information.

“In Haiti, the authorities are quite forthcoming with information, unless this could prove their involvement in an affair of corruption or embezzlement. It is much easier to access sources elsewhere. Except when the person clearly wants to hide something,” adds Jean Monard Métellus.

The CEO of Radio Center Inter (RCI) does not share these views. According to him, «a law is indeed needed, insofar as certain authorities that enjoy refusing to share information without any thought whatever to sanctions feel comfortable and continue to act in the same way.” Such a law, believes Fred Philémy, would allow journalists to do their job better and by the same token restore the profession’s tarnished image.

This is also the opinion of Claudy Bélizaire of Radio Repère des Villes in Jacmel, who believes “that a law on the access to information would facilitate journalists’ work, in particular for those living outside of Port-au-Prince.” Joram Moncher in Hinche also argues in favour of “legally binding forces”. It’s necessary to have a law, he says, that forces the authorities to be held accountable for their actions.

For Professor Ary Régis, “were we truly in a State subject to the rule of law, we would not even need a law to have access to information.” “But the withholding of information is a fact in Haiti and it must be circumvented,” states the professor, who points out that a law was recently proposed to the parliamentarians of the 50th legislature by journalists’ associations. “So far, the members of parliament have not seen fit to enact it. This law is important, as it will force officials to make information available to the public,” deplures Ary Régis.

For the Honourable Samuel Madistin, lawyer and former senator of the Republic, in Haiti a legal framework guaranteeing free access to information does exist. However, “this framework is not enough,” he acknowledges, noting that the Constitution of 1987, the American Convention on Human Rights and the press decree of 1987 are part of it. “This framework also doesn’t take into account certain channels of communication, such as the Internet and image rights.”

“The legal vacuum concerning the right to information becomes an obstacle to journalists’ work,” regrets, for his part, journalist-lawyer Joinet Merzius, holder of two master's degrees, one in Human Rights and the other in Information Sciences. “The press just becomes a sounding board,” points out Joinet Merzius, who for many years worked for a private radio station in Port-au-Prince.

“Access to Information is a fundamental freedom and part of the basic human right to freedom of expression,” declared Ms Irina Bokova, Director-General of Unesco, in a message delivered on the occasion of World Press Freedom Day, on 3 May 2016. “Receiving and imparting information, both offline and online, is a cornerstone of democracy, good governance, and rule of law.”

At the same time, the freshly approved law on defamation only makes matters worse. All it takes is for one elected official, for a politician or for any other person to accuse a journalist or a medium of defamation in order to take them before the courts, or even to be jailed. *“Will be considered guilty of the crime anyone who, in either public spaces or meetings, either in an authentic act or in a public document, either in printed material, or by press announcement or through a transmission by audiovisual or electronic means has attributed to a natural or legal person actions that are damaging to their honour and reputation.”* The law also states: *“The defamer shall be subject to the following penalties: if the offense is of a nature deserving the penalty of forced labour, the perpetrator shall be punished by a prison term of one to three years. The act of defamation also gives rise to a monetary compensation inasmuch as it can be proved that the statements caused damage to the victim [...]”*¹⁶.

Is the Internet killing the Haitian press?

Is the Internet in the process of killing the Haitian press? This is how the Ayibo Post titled one of its articles¹⁷: *“According to the latest Conatel figures, mobile phones cover 95% of the national territory, while of the 10 million inhabitants of Haiti, 1.7 are connected to the Internet. With the ‘democratization’ of smartphones and the gradual improvement in the quality of connections, the ‘web’ will become, in particular through the social networks, the preferred source of information for a significant percentage of the working and the politicised population.”*

Nevertheless, if indeed it can be accepted that more and more people have access to the Internet, it must also be accepted that, for the majority of the population, the connection charges remain high. It should be mentioned, too, that illiteracy is as much a handicap on the Internet as it is for the written press, albeit with a subtle difference, for the messages via the social media are mainly in Creole and more people can understand them, more or less, which is not the case with the printed media and a part of the radio broadcasts.

The Internet is admittedly a game changer, but it is far from attaining uniform receptivity throughout the Haitian territory. This, though, is the case with the radio which, thanks to its mobility and autonomy (it doesn't necessarily require electricity supply) reaches a large part of the population, whether rural or urban.

Conclusion and recommendations

A set of measures needs to be taken. But this will not come about through mere good will. It would be worthwhile for the press corps to engage in a serious introspection and open up the suggestion box to other sectors of national life so as to help it evolve. Also,

¹⁶ <http://www.lenouvelliste.com/article/169207/la-loi-sur-la-diffamation-votee-a-lunanimite-par-le-senat#sthash.TcJtyLp4.dpuf>

¹⁷ <http://ayibopost.com/linternet-est-elle-en-train-de-tuer-la-presse-haitienne/>

a consensus is needed between the public authorities, the media and civil society. Consultations, exchanges of opinion and discussions are needed so as to arrive at a collective awareness and national ownership of the practice of journalism in its role as a vehicle for promoting democracy, social development, good governance and the rule of law.

- 1- It becomes urgent to have the access of information law passed to allow journalists and the average citizen to have access to information. The retention of information by public servant is contrary to good governance.
- 2- Civil society, the body of the media and the government must initiate exchanges of opinion leading to the creation of a commission that regulates media activities that would only deal with content, deontology and freedom of expression management aspects. Conatel focuses too much on strictly technical aspects.
- 3- These same actors need to undertake joint efforts and spending and reflect on an initial training programme of at least two years (licence level) and on a continuing training programme for journalists. This dimension has until now been entrusted to the Faculty of Human Sciences, but which has only one department of social communication and no journalism course as such, and to a host of “journalism schools” with a four-month training course.
- 4- During these exchanges, they need to agree on a systematic identification: a journalist or press “card”. An identification that neither depends nor relies on the media where the journalist works, but which, on the contrary, will be issued and authorized by the regulating body. This should not preclude each medium from giving its journalists a business card with the medium’s particulars.
- 5- They must agree on clear and imperative criteria that need to be taken into account by anyone wishing to be granted a national press card, which need to take into consideration the person’s level of education, good character, and training in journalism. No conflict of interest should exist between journalism as the person’s main activity and any other form of gainful employment.
- 6- The journalists' charter adopted in 2012 must be the core document for each media house, which is responsible for sensitising its journalists to the charter’s rules.
- 7- The law on defamation should be repealed and a differentiation should be made between the information found and given by the media and the political statements among political opponents, which shall not be attributable to the media in which they were made.
- 8- The press corps should agree on a minimum salary for journalists based on a pay scale that reflects the average standard of living, their experience, their

- capacities and their quality as journalists; this measure would limit the risks of conflicts of interest, extortion and collusion within the profession.
- 9- The Haitian State must commit itself to protecting the media, journalists, their families and their property, from censorship, threats, persecutions and attacks regardless of their origins. It must also commit itself to conducting expeditious investigations leading to judgments and sanctions for those found guilty.
 - 10- The Haitian State, in collaboration with civil society and the media, must take out a special life insurance for journalists and the media, often the victims of political or other events. This measure will help reduce the vulnerability of journalists and the media and the risk of corruption.
 - 11- The press corps must work at strengthening its members, regardless of their economic and political focus, for the good of the profession and establish, why not, a single association to defend the rights of the media and of journalists, on a non-discriminatory basis.
 - 12- Lastly, the press corps should institute a permanent “Annual Conference on Journalism in Haiti” and propose an in-depth discussion of how the profession’s practices evolve. This would be a way of exercising self-criticism – and also of opening up to the public, and to the media world in general.

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