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Brief on the Guatemalan government's soft censorship of el Periódico

Media Development Investment Fund

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Summary

Publicly available data shows that a gradual slowdown in government advertising in el Periódico under President Otto Perez Molina's administration became a virtual boycott in November 2012. The boycott has been facilitated by a major government advertising hub—Secretaria de Comunicacion Social de la Presidencia de la Republica (SCSPR). In the period between November 2012 and March 2013, SCSPR arbitrarily distributed over Q4.1 million (approximately \$520,000) in advertising to newspapers, including those with circulation lower than that of el Periódico. Furthermore, it has been alleged that the government has engaged in pressuring private advertisers to withdraw from el Periódico.

Government abuse of its custody over public finances in order to punish critical voices violates freedom of the media, as guaranteed by international legal instruments applicable to Guatemala as demonstrated below.

Statement of Facts

Advertising campaigns carrying messages of public interest (health promotion campaigns, educational campaigns, etc.) must be allocated according to clear and transparent criteria, such as market indices (e.g. circulation) or target audience, in order to ensure the fair allocation of public funds and the implementation of public campaigns in a cost-effective manner. In Guatemala, evidence exists of an arbitrary allocation of public advertising which distorts the local print market and discriminates against el Periódico—the country's single most independent media outlet.

In 2013, out of 174 pages of public advertising, el Periódico was contracted to carry only four. None of the four advertising service requests came to el Periódico from the SCSPR. In contrast, Siglo21, which has a lower daily circulation, carried 42 pages. In 2012, el Periódico carried a total of 39 pages while Siglo21 carried more than twice as many—83 pages. It is instrumental to note that during two previous administrations (2004–2011) el Periódico regularly published a comparable amount of government campaigns to dailies with greater readership, such as Prensa Libre and Nuestro Diario (see Addendum 1), and that this situation continued under the current administration until November 2012.

Over the course of 2012, the government slowly centralized its public advertising services in the hands of SCSPR. The agency's 2013 strategic plan (available [here](#)) published in June 2012 sets out its aim to establish SCSPR as a major link between the media and the government, with its main goal being to inform the population about "government plans and its advances" – a political campaign strategy that is a far cry from promoting public interest information:

"The Secretariat of Social Communication of the Presidency is established as the link between the Social Communication media and the Government of the Republic of Guatemala, having the main goal to inform the Population about Plans of the Government and its advances."

While in the period between January – April 2012 the agency allocated as little as \$3,945.33 in government advertising spending, between November 2012 and March 2013 it distributed over \$520,000. The increase in SCSPR responsibilities in the public advertising domain coincided with an abrupt withdrawal of government advertising from el Periódico and a slowdown in advertising by ministries and other executive branch institutions. The last direct service request el Periódico received was in early October 2012, with the agency not granting el Periódico a single campaign since then (see [here](#) for more information, also see Addendum 2).

In contrast, during the same period, Prensa Libre received a total of Q1,751,449.05 (\$220,308.06). Siglo21 and Al Dia have been jointly engaged via direct sale to carry government campaigns worth Q546,716.25 (\$71,033.49), Nuestro Diario – Q919,228.50 (\$115,626.23), and Publinews – Q458,220.57 (\$57,637.81). Even dailies with significantly lower circulation than that of el Periódico, Diario de Centroamerica and La Hora, were awarded contracts worth Q157,617.80 (\$19,826.14) and Q100,000.00 (\$12,578.62) (see Addendum 2 for more information).

The unlawful practices did not end with the discriminatory allocation of public funds. It has been alleged that the authorities have been pressuring private companies to withdraw their advertising in el Periódico, with the head of SCSPR categorically denying the allegations and calling on el Periódico to back up its claims with proof ([Knight Center, April 8, 2013](#)).

Governments that engage in the selective allocation of state funds to silence independent media are often found to exert pressure on private advertisers as well (see OSIJ/ADC "Price of Silence" report [here](#) and CIMA "Soft-Censorship" report [here](#) for further information). This type of political pressure is clandestine in nature, and it is "at the most delinquent end of the spectrum where powerful officials and politicians use raw power and clearly illegal means to buy influence or silence dissent" (Price of Silence, p.22). Media outlets are not able to investigate these forms of sophisticated censure, which necessitate the coordinated efforts of the judiciary and enforcement agencies. For example, in 1987, the Inter-American Commission on Human Rights found that Paraguayan authorities had violated freedom of expression as they allegedly pressured private advertisers not to advertise on a local radio station, which bankrupted the outlet. Based only on allegations of political pressure, the Commission recommended that the government conduct effective and exhaustive investigations of the violations denounced and rigorously apply the most severe sanctions available under the penal code on those responsible, and to

equitably indemnify the company and employees for the losses that may have occurred as a result of bankruptcy owing to the illegal interference (Humberto Rubin v. Paraguay).

International Standards

The selective allocation of public funds to punish critical voices clearly amounts to a violation of freedom of the media, as guaranteed by international legal instruments applicable to Guatemala (ICCPR, article 19, and the American Convention on Human Rights, article 13). The United Nations Committee on Civil and Political Rights in its General Comment no 34, while providing for the official interpretation of article 19 of the ICCPR, held that:

“Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression.” (UN CCPR, General Comment no. 34, item 41).

Discriminatory government advertising practices can have a chilling effect on freedom of expression, and thus have been closely monitored by many international and regional human rights mechanisms. For example, in 2010, the UN, OSCE and OAS Special Rapporteurs on freedom of expression identified the abuse of state advertising among the primary challenges to freedom of expression. Earlier, in 2002, the Rapporteurs warned that:

“governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting” (2002 Joint Declaration).

States have a duty to adopt specific rules on public advertising at each level of government, which must rest on the principles of public interest, transparency, accountability, non-discrimination, efficiency and the good use of public funds (Principles of Freedom of Expression and Advertising, hereinafter PFEA, tem 36 and 39). Guatemala has no sector-specific legislation that is required to reduce the discriminatory or arbitrary earmarking of public funds. However, a lack of national laws is not an excuse but is evidence of partial and ineffective state compliance with international obligations:

“Insufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. [When] laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials (...) there exists a legal framework contrary to freedom of expression” (PFEA, item 33)

Court precedents prohibiting and declaring unlawful selective government advertising practices serve as a secondary source of international law, in accordance with article 38 of the Statute of ICJ. Notable cases include Argentina, whose Supreme Court ruled that withdrawal of advertising in retaliation for critical media coverage constitutes a violation of freedom of expression (see here, page 9, for more information).

In the absence of sector-specific regulation, public announcements in Guatemala are governed by procurement legislation which falls short of ensuring that the international standards applicable to media advertising are met. For example, it allows for the direct purchase (*compra directa*) of advertising

services whose estimated value does not exceed Q.30,000, leaving only high-worth advertising campaigns to more stringent public tender procedures (*cotizaciones / licitaciones publicas*). In the course of 2013, SCSPR awarded only one such media service contract—to Prensa Libre in the amount of Q898,614 (\$113,000) to carry 30 pages of public advertising. Since November 2012, as much as Q3,2 million (\$400,000) has been fragmented to over 150 individual direct purchases, each of a value falling below the public tender threshold. Prensa Libre, for example, has carried Q800,000 (\$100,000) worth of advertising campaigns in as many as 30 individual, single to two-page campaign requests. The same pattern was followed in the case of Siglo21 and Al Dia, Nuestro Diario and Publinews. Such direct purchases run contrary to Guatemala’s international obligations. As a general rule, states must seek to comply with the principle of competitive bidding inherent in government contracting, direct hiring of sole suppliers must only be used in cases of emergency or extreme urgency, and those situations must be defined in order to prevent abuse (PFEA item 61-2).

The choice of a medium for advertising must include and evaluate various factors, including the profile of the campaign’s target population, the cost, and the circulation or audience of the respective medium. Such factors must be clearly set forth in the relevant regulations, together with a balancing mechanism that specifies how the different allocation variables are to be weighted, thus reducing the discretion of the participating government employee or body (PFEA, item 52). Audience and circulation measurements must be performed by credible, impartial institutions (PFEA, item 54). There are no such clearly set criteria for media selection and no independent mechanisms that measure circulation of newspapers in Guatemala on a regular basis.

While SCSPR appears to be transparent as it meticulously publishes data on public advertising spending to comply with access to information legislation requirements, the agency falls short of full compliance with international obligations specific to the media sector and public advertising. The procedures that are in place, such as Manual de Proedimientos de Unidad de Medios de Comunicacion, are frivolous, focusing on the division of labor rather than on setting up clear rules to prevent arbitrariness. The agency’s strategic plan (Plan Operativo Anual) is a general policy document setting no comprehensive media selection criteria. Partial compliance with access to information standards is perhaps good for the agency image, but its legal effect is empty rhetoric and international standards are rigorous in this respect. They call for pre-established procedures governing the purchase of advertising spots in the media in order to prevent arbitrary decisions, and require that every stage of the contracting process must be made public (PFEA, item 60).

Furthermore, centralizing advertising services in the hands of one agency without setting up an effective and independent oversight mechanism run further risks of arbitrariness. When there is no oversight, no clear set of rules to follow, and no recourse for complaints, the arbitrary allocation of public advertising could go unpunished and the state must provide for an oversight mechanism and appropriate remedies for identifying and disputing illegal allocations of government advertising (PFEA, item 38 and 72).

Even if there is no intention to use public funds to silence opposition media, in countries where public funding constitutes an important part of national advertising revenues, its selective allocation runs a risk of distorting the media market. SCSPR estimated its total public campaign advertising budget for 2013 at

Q35 million (\$4.4 million). While a majority of the funds is expected to be allocated to radio and television campaigns, it is possible to project that the government is likely to allocate a further Q10 million (\$1.2 million) to the print sector this year given that it allocated Q2.28 million just in the first quarter of 2013. This sum represents a significant portion of the total print advertising spending in the country, with the discriminatory and arbitrary allocation of such funds potentially amounting to undue government interference in the media market. The situation is of particular concern given that Guatemala has no anti-trust regulation in place, it is not party to the WTO Agreement on Government Procurement, and the fact that low-value advertising contracts fly below the radar of independent anti-competition mechanisms otherwise available to bidders on government procurement contracts (for example those under the CAFTA-DR agreement).

Recommendations

As a mission-driven fund, MDIF has a vested interest in protecting the long-term sustainability and independence of the media companies with which it works. While MDIF continues to closely monitor media and market conditions in Guatemala, we call on its government to take concrete and immediate steps to ensure the fair and non-discriminatory allocation of state funding to the media sector, in particular:

1. To immediately cease the advertising boycott of el Periódico.
2. To investigate the discriminatory allocation of advertising funds, including allegations of undue political pressure on private advertisers not to publish in el Periódico, and to ensure that those responsible are punished.
3. To provide for full compliance with international obligations pertaining to access to information and public advertising, in particular to promptly adopt clear, transparent, fair and non-discriminatory criteria and sector-specific legislation aligned with international standards, such as IACHR Principles of Freedom of Expression and Advertising.
4. To ensure that independent procedures and mechanisms are in place to guide the full implementation and enforcement of such sector-specific legislation.
5. To ensure that strategy and regulations governing public procurement duly take into account the impact of government advertising on media markets and freedom of the media.

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Addendum no. 1.

Table 1 – government advertising figures 2004-2013

Allocation of public campaigns - Otto Perez Molina administration	SIGLO XXI	PRENSA LIBRE	EL PERIÓDICO	AL DIA	NUUESTRO DIARIO	PUBLINEWS	TOTAL
2013	42 / 24%	50 / 29%	4 / 2%	27 / 15%	38 / 22%	14 / 8%	174 / 100%
2012	83 / 22%	102 / 28%	39 / 11%	55 / 15%	66 / 18%	25 / 7%	371 / 100%
Total (Pages / %)	124 / 23%	152 / 28%	43 / 8%	82 / 15%	103 / 19%	40 / 7%	545 / 100%
Allocation of public campaigns – Alvaro Colom administration	SIGLO XXI	PRENSA LIBRE	EL PERIÓDICO	AL DIA	NUUESTRO DIARIO	PUBLINEWS	TOTAL
2011	39 / 22%	59 / 33%	54 / 30%	14 / 8%	11 / 6%	3 / 1%	180 / 100%
2010	73 / 23%	64 / 20%	77 / 24%	38 / 12%	66 / 21%	0 / 0%	320 / 100%
2009	115 / 22%	128 / 25%	121 / 23%	62 / 12%	95 / 18%	0 / 0%	521 / 100%
2008	90 / 19%	119 / 25%	112 / 23%	81 / 17%	82 / 17%	0 / 0%	483 / 100%
Total (Pages / %)	317 / 21%	370 / 25%	365 / 24%	195 / 13%	254 / 17%	3 / 0%	1,504 / 100%
Allocation of public campaigns – Oscar Berger administration	SIGLO XXI	PRENSA LIBRE	EL PERIÓDICO	AL DIA	NUUESTRO DIARIO	PUBLINEWS (established in 2011)	TOTAL
2007	181 / 21%	198 / 23%	178 / 21%	117 / 14%	177 / 21%	0%	851 / 100%
2006	173 / 18%	214 / 22%	262 / 27%	133 / 14%	183 / 19%	0%	965 / 100%
2005	252 / 20%	199 / 16%	348 / 28%	182 / 15%	254 / 21%	0%	1,236 / 100%
2004	307 / 33%	149 / 16%	347 / 38%	45 / 5%	75 / 8%	0%	924 / 100%
Total (Pages / %)	914 / 23%	759 / 19%	1,135 / 29%	478 / 12%	690 / 17%	0%	3,975 / 100%

Source: El Periódico, calculations are done on the basis of government advertising page count, on file with MDIF

Addendum no. 2.

Table 2 – SCSPR advertising

Nov 2012 to March 2013 SCSPR advertising spending (direct sale and tender)	Quetzales	USD	Circulation estimates
Prensa Libre	1,751,449.05	220,308.06	cca <u>110,000</u>
Nuestro Diario	919,228.50	115,626.23	cca <u>240,000</u>
Siglo21 & Al Dia	564,716.25	71,033.49	<u>60,000, 27,000</u>
Publinews	458,220.57	57,637.81	<u>80,000</u>
Diario de Centro America	157,617.80	19,826.14	<u>7,600</u>
La Hora	100,000.00	12,578.62	<u>18,000</u>
Carretera, Majadas & Kayala News	67,500.00	8,490.57	no data
Semanario La Palabra	42,000.00	5,283.02	no data
Revista Contacto Deportivo	25,000.00	3,144.65	no data
La Voz	20,000.00	2,515.72	no data
Revista Mas de mi Guate	12,000.00	1,509.43	no data
Revista Area Deportiva	10,000.00	1,257.86	no data
Revista Zona Deportiva	10,000.00	1,257.86	no data
AGP - Asociacion de Periodistas	8,000.00	1,006.29	no data
el Periódico	0.00	0.00	cca <u>30,229</u>
Total 2012	4,145,732.17	521,475.74	

Source: MDIF, calculations are done on the basis of publically available data, see: Government of Guatemala, Secretaria de Comunicacion Social de la Presidencia de la Republica (SCSPR) - Compra Directa Enero a Marzo 2013, Eventos de Cotizacion Ano 2013, Compra Directa November to December 2012 (<http://www.guatemala.gob.gt>)