

Democratizing Media Policy: Community Radios in Mexico and Latin America

Ulrike Klinger
University of Zurich
IPMZ - Institute of Mass Communication and Media Research
u.klinger@ipmz.uzh.ch

Abstract

Despite Mexico's progress in terms of democratization, the country's Broadcasting Law and its practices of granting broadcasting licenses still have not adapted to the principles of democratic citizenship. Community radios remain extra-legal operations: their legal status is not regulated and there is no transparent way to obtain licenses and resources. At the same time, prominent actors in the domains of politics and media support the criminalization of these alternative media. Nonetheless, community radios have organized and mobilized for legal recognition. As a result, 19 stations have obtained licenses and operate legally. The paper offers an assessment of the situation of Mexican community radio stations and traces the process of legalization of community radio from 2002 to 2010. It connects the question of media regulation with theoretical assumptions about the concept of defective democracies and the quality of democracy. A comparative perspective of other Latin American countries, which have largely modernized their regulation of community media, further complements the analysis of the Mexican situation.

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In the past 30 years Latin America has witnessed major transformations of authoritarian regimes to modern mass democracies (what Samuel Huntington (1991) termed the "third wave of democratization"). Most of them have not consolidated, but have stabilized as lasting "defective" democracies (Merkel et al. 2003, Merkel 2004; Puhle 2005). The low steering capability of national governments and strong advocacy coalitions between legislators and dominant media industry have complicated and retarded reform processes aimed at more

pluralistic and democratic media regulation. In Mexico and other Latin American countries, community media have remained extra-legal operations and only recently has their striving for legal recognition blossomed into the first granting of permissions as well as progressive broadcasting reform initiatives. Mexico represents a prime case of an outlawed community media's struggle for legalization in a recently democratized polity. Because Mexico's transformation came by electoral reform and without exchange of political (party) elites, it is an incipient case of state renovation (*reforma del estado*) which has yet to consolidate a modern democratic system, ensure political efficacy and responsiveness, and generate legitimacy and trust among citizens. Legalizing community media and restructuring media legislation will be only one part of this endeavor. The negotiations over legal recognition of local and independent media illuminate the cleavages between elements of the *ancien regime* and progressive forces.

Community Radios in Mexico: *Il David electronic*

"Radios comunitarias" have been in existence in Mexico for more than 40 years. (For a detailed account: Calleja & Solís (2005)). Oftentimes these local mini-broadcasters, which are operated by committed, yet oftentimes uneducated activists in their own *barrio*, municipality or area, have evolved from radio stations started by Catholic missionaries and labor unions, which have existed since the 1950s in Latin America (one of the first being *La Voz de los Mineros* in Bolivia, 1952), and school radio stations, which were to bring literacy and education to far-off rural areas. The idea of free *radios populares*, non-profit and unsubsidized radio stations, broadcasting independently from state and market and emerging from social movements, regional ethnic groups or local communities, has been thriving since the 1980s in Latin America, just as in Europe and other regions. Today, community radios in Mexico reflect a broad variety of social actors and cannot be reduced to be servicing a rural, poor, indigenous and marginal population only. We also find urban stations, stations oriented toward young academics and those which also broadcast via Internet and reach global audiences, like the suburban station *La Voladora*, based in Amecameca near Mexico City or *Radio Bemba FM* in Hermosillo (Sonora).

Since the 1990's Mexico has undergone an accelerated liberalization process and a series of electoral reforms which were aimed at cleaning up its notoriously fraudulent elections and which opened the way for the first changes in government on local and regional level. The electoral victory of an opposition party (PAN) and its presidential candidate in 2000 marks the transition of the country from an authoritarian one-party system towards a three party (defective) democracy on its way to consolidation. Mexico's democratization process during the 1990s, but particularly the transition brought about by the government change in 2000, catalyzed the development of the community radio spectrum. Beside start-ups of new community stations in rural and more indigenous areas, urban stations thrived from student movements, universities, citizen-action groups, grassroots and other civil society activities.

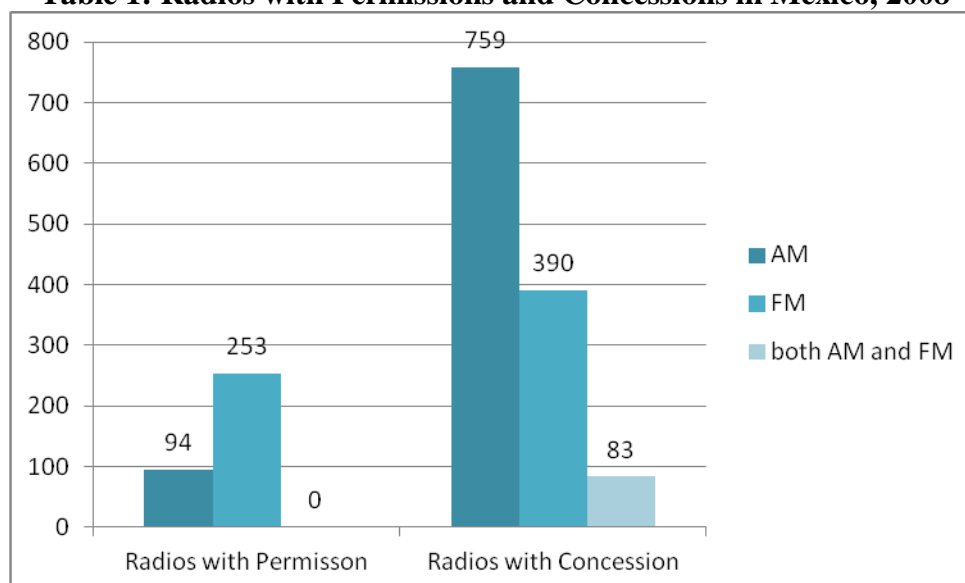
The total number of community radios in Mexico is unknown. The Mexican section of AMARC, the World Association of Community Radios, estimates the number to be in the thousands. Among these, however, are many religious stations, which AMARC does not recognize as true "*radios comunitarias*". AMARC Mexico encompasses 27 member stations, including indigenous and campesino stations, as *Radio Huayacocotla* from Veracruz and *Radio Calenda La Voz del Valle* from the state of Oaxaca, as well as urban stations like *Neza*

Radio from one of Mexico City's poorest and most crime-ridden neighborhoods, Nezahualcóyotl.

Legally, none of these radio stations exist – except for 19 transmitters, which were granted a broadcasting license between 2004 and 2010 - an intermediate victory in the struggle to legalize community radios in Mexico. The Broadcasting Law, dating from 1960, distinguishes only between state and private commercial media, providing no access, no regulation and no resources for independent broadcasters. While community radios were tolerated (or ignored) under the hegemonic rule of the PRI, the Christian-Conservative government of Vicente Fox started to close down stations after 2002. At the same time a reform initiative in the Senate, seeking to democratize Mexico's media system, intended to grant them full recognition as media actors by making a distinction between state and public broadcasters. This initiative, however, was never implemented. Until 2010, *radios comunitarias* did not represent a formally acknowledged legal entity, which prevents them from acquiring financial resources and being allotted space in the new digital broadcasting menus. Community radios in Mexico are versatile and pluralistic, but operate under clandestine and illegal conditions. However, the closing down of stations and the debates about reforming media legislation have stipulated the endeavor of community radios to bring their legal status onto the political agenda.

Dominant Mexican media outlets, supported by political majorities, have opposed legal community radios, notwithstanding the extremely asymmetrical competition structure. Media concentration in Mexico is (along with Italy) the highest among OECD member states (www.sgi-network.org). **While the TV market is dominated by two outlets, Televisa and TV Azteca, who together control and reach more than 95 per cent of available channels, audiences and resources, the radio market is more diverse. There are private commercial concessionaires and stations that have a “permiso” to broadcast – the latter consist mostly of state owned radios. *Permisionarios* are not allowed to obtain financial resources from advertising.**

Table 1: Radios with Permissions and Concessions in Mexico, 2008



Source: The Mexican National Chamber of the Radio and TV Industry CIRT
(<http://www.cirt.com.mx/cirt/estadisticas.html>; Rev. 30.04.2010)

About 70 per cent of all privately operated radio stations are owned by one of ten media conglomerates: *Radiatorama*, *Grupo ACIR*, *Radiocima*, *Organización Impulsora de Radio (OIR)*, *Sociedad Mexicana de Radio (SOMER)*, *Promosat de México*, *Radiodifusoras Asociadas (RASA)*, *MVS Radio*, *Organización Radio Fórmula* and *Multimedias Estrellas de Oro* (Gómez García & Sosa Plata 2009: 1062). Media concentration is one of the issues community radios seek to address, since state-operated broadcasters and commercial conglomerates leave hardly any space for independent outlets, as Radio Voladora exemplifies in their mission statement:

“La Voladora Radio is a collective born in the year 2000, whose principal objective is to disturb the great conglomerates of communication, which centralize, commercialize and cannibalize the two most important common goods: information and speech (palabra).”¹

This paper deals with the legislative conflict of legalizing community radios. With what strategies do Mexican community radios mobilize support, place their issue on the political agenda and campaign for legal recognition? Why is legal recognition important to them, with online broadcasting as an alternative point of access to the public sphere? And what are the arguments of political parties and politicians against legalization? Why do dominant media outlets oppose community radio? The objective here is to describe and analyze the situation of community media in Mexico and trace the legislative processes leading toward a more democratic regime of media regulation. The analysis is built on legal documents, press reports, reports from agents who actively participated in the negotiation processes, resources provided by AMARC (for both Mexico and the larger Latin America and Caribbean region), as well as semi-structured interviews from field research in Mexico. It largely builds on existing material, which is only accessible in Mexico and in Spanish language, thus intending to provide interpretation and a basis for academic debate on an issue that has so far been confined to Mexican stakeholders.

The Quality of Democracy and the Impact of Community Media

Negotiations about community media's legal status, its entitlement to public funding and the free use of radio frequencies characteristically center around its vital role for democratic societies, the human right to communication, and its potential to foster cultural and linguistic pluralism. However, community radios are mostly operated on a non-professional basis; their reach rarely exceeds a few hundred or thousand households and covers primarily issues of

¹ **“La Voladora Radio** es un colectivo nacido en el año 2000, cuyo principal objetivo es hacerle la mala sangre a los grandes consorcios de la comunicación que centralizan, comercializan y canibalizan dos bienes comunes de gran importancia: la información y la palabra.”

http://lavoladora.net/index.php?option=com_content&task=view&id=165&Itemid=90, Rev. 30.04.2010

low political salience for a national audience, because they are relevant for a local area or municipality only. Next to the dominant commercial operators and public/state radios, their impact may be no more than a ‘footnote’ for national media systems. Why should states bother to draw up media regulation for these heterogeneous but marginal actors? This article argues that the legal status and the attitude of state institutions and government authorities with regard to community media serves as an indicator of the general openness of media regulators towards pluralism, the diversity of actors in the media system and democratic control of public communication.

There is no hard-and-fast definition for what community media is, and what it is not. The most inclusive, but un-analytical definition includes every body that self-identifies as a “community medium”. A variety of texts, such as media laws, scholarly literature and activists’ manifestoes, provide structural, functional and content-related criteria. According to these versions, community media is independent of state and market, non-profit, non-professional, and local; it reflects local culture and traditions, is rooted within and represents ethnic, linguistic or social groups, serves as mouthpiece for new social movements, grassroots mobilizations or neighborhood initiatives; it airs non-mainstream music and alternative news and provides information that is relevant for a local area or community (Atton & Hamilton 2008; Bailey et al. 2008; Couldry & Curran 2003a; Hamilton 2000). With some variation in emphasis, these are the criteria that are usually touted as core elements of community media. As such, today’s understanding of community media transcends the classic “poor, marginal, rural” scheme and applies to urban subcultures and academic milieus.

Manuel Castells (2009) has recently argued that power in the network state – a similar concept of what John Keane (2009) refers to as “monitory democracy” - means control over communication:

“Power is more than communication, and communication is more than power. But power relies on the control of communication, as counterpower depends on breaking through such control. And mass communication, the communication that potentially reaches society at large, is shaped and managed by power relationships, rooted in the business of media and the politics of the state. Communication power is at the heart of the structure and dynamics of society.”²

With regard to broadcasting, states have no choice but to control mass communication by regulation, because states own the radio electric spectrum and must set rules and conditions for granting access (licenses). Nation-states create, form and revise their media systems, which result from political decisions more than from technological development. Media legislation is the expression of state control over communication – and the emphasis which is given to state-operated, public, commercial and community media within the relevant laws reflect the priorities of those exerting power by controlling communication. Thus the role that is conceded to the weakest actor with the most limited bargaining potential can serve as an indicator of openness and democratic affiliation within these power structures: Who can, according to the provisions of media legislation, control communication – (1) the state; (2) the state and a commercial media industry; (3) the state, a commercial industry and civil society?

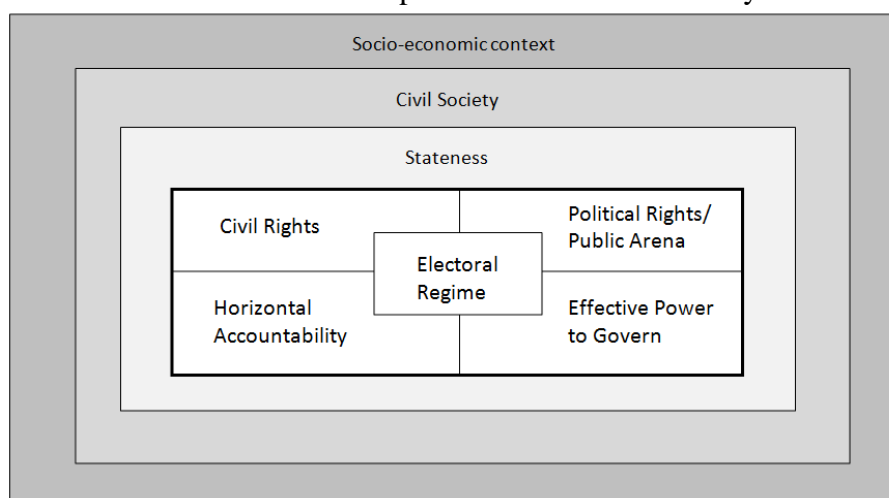
Not surprisingly, control over communication is likely to be highly concentrated in authoritarian regimes, where the media is either state-operated, or, as in pre-transformation

² Castells 2009: 3

Mexico, the state transferred media operation to a co-opted and collusive private monopoly. In democratization processes, the decentralization of communicative power has to be re-negotiated, as more actors seek to participate and information demands increase. Theories of democracy from Robert A. Dahl's *Poliarchy* (1971) to recent discussions about the quality of democracy (Diamond & Morlino 2006) have underlined the importance of access to alternative information and a diversity of opinions in modern mass democracies. Transitions to democracy therefore inevitably lead to reform pressure on media legislation.

Aside from normative demands of public communication for the consolidation and - later - an assessment of the quality of democracy, the concept of “defective democracies”, that is derived from an ideal type of “embedded democracy” allows to trace the consequences of a public arena with limited access. The concept, developed by Wolfgang Merkel, Hans-Juergen Puhle and others (Merkel et al. 2003, Merkel 2004, Puhle 2005), builds on the idea that democracy consists of five both independent and interdependent partial regimes, which are externally embedded in specific social-economic contexts, civil society and stateness.

Table 2: The concept of Embedded Democracy



(Source: Merkel et al. 2003: 50; Merkel 2004)

This model goes well beyond a minimal understanding of democracy as “electoral democracy” that has its focus solely set on the functioning of a frequent, open and fair exchange of incumbent ruling elites by elections. It also addresses the problem that a large number of third-wave democracies have not yet consolidated, but have become rather stable “diminished subtypes” of democracy (Collier & Levitsky 1997). Thus, the model distinguishes a variety of defects according to the related partial regime and centers on the idea of lasting, not transitional, defective democracies.

For our purpose it is the partial regime of political rights/public arena that is important. With regard to its operationalization, indicators addressing associational rights and freedom of expression/freedom of the press are suggested (Merkel et al. 2003: 84), including the legal framework of the public arena, economic independence (no monopolization of information flows) and operational freedom (no selective repression of actors or organizations). Thus, if access to the public arena is limited by politically motivated arbitrary and prohibitive policies (as a post-autocratic legacy), if public or private monopolies prevail and selective repression occurs without prosecution, the partial regime of political rights and public arena features

severe defects. This consequently leads to the illiberal type³ of a defective democracy, in which basic political and human rights of citizens are challenged, civil society is weakened and democratic consolidation protracted.

Whether small and local media actors like community radios become legally acknowledged and are entitled to apply for broadcasting licenses in transparent, non-arbitrary and diversity-enabling procedures is not a matter of “nice-to-have”, but a prerequisite for democratic media legislation and a central element of democratic quality. The treatment of community radios – enabling participatory communication on a local level or blocking whatever competition from entering the media markets – thus indicates the openness of media systems and the inclusiveness of public communication.

Legalizing community radio in Mexico

From the beginnings of the radio era until 2005, only one Mexican community radio station had been granted a legal license (Radio Teocelo in the state of Veracruz). The Broadcasting Law of 1960, which is still in force today, distinguished between “concessions” for commercial stations and “permisos” for official (state), cultural and experimental stations as well as radio schools intended to bring literacy to the country’s rural population. Practically, however, permissions were only granted to state ventures or radios associated with state institutions. Although the “eternal” autocratic regime of Mexico’s hegemonic *Party of the Institutionalized Revolution*, PRI, which governed from 1929 to 2000, had opted for a commercial broadcasting model instead of governmental ownership, the regime sought to control mediated communication and keep actors that were not co-opted by the PRI out of the media system. The pact between the PRI and the national media, which granted considerable economic latitude and low levels of formal state intervention in exchange for affirmative media coverage and political allegiance, could hardly be controlled, if extended to civil society or community media. Unlike its predecessors, the 1960 Broadcasting Law did not contain open censorship provisions, but informal pressures remained, since the government could withdraw concessions and threatened to nationalize the media system: “*Do not criticize the President of the republic, do not question the belief of the Mexican people in the Virgin of Guadalupe, and do not speak ill of the military.*”⁴ (Mejía Barquera 1999: 25) It comes as no surprise that community media remained largely invisible during the PRI’s “perfect dictatorship” (Mario Vargas Llosa).

With economic deregulation policies and increasing political liberalization from the mid-1980s on, alternative radio stations gained attention and grew in number. The devastating earthquake of 1985 in the Mexico City region brought legitimacy and recognition to public and alternative radio transmitters, after Televisa’s antennae collapsed and more than 20 million citizens found themselves reliant on non-commercial radio broadcasts for information in a desperate situation. Community radios – no numbers are available – remained clandestine and illegal operations. To cater to the communication needs of Mexico’s rural and indigenous citizens, the Mexican government launched state-run “radios comunitarias” associated with

³ The term „illiberal democracy“ does not refer to a paradox of a „democracy“ without political liberties and civil rights (as there is no democracy without these), but is used within the concept of embedded democracy to point at deficits in the partial regime of political liberties. Other types of democratic defects are exclusive democracies, delegative democracies and domain/tutelary democracies.

⁴ No criticar al presidente de la Republica, no cuestionar la fe del pueblo mexicano en la Virgen de Guadalupe y no hablar mal del Ejercito.

the federal *Instituto Nacional Indigenista* (INI)⁵. Starting in 1979 with “La Voz de la Montana” in the state of Guerrero, today this decentralized institute runs 27 stations, transmitting programs in many of Mexico’s 31 indigenous languages and focusing on issues related to community and tradition.

Vicentes Fox’s historic victory and the end of the PRI’s hegemonic rule increased the number of community radio start-ups and started a legal debate about democratization, the demand for communication in a democratic polity. This development then exerted reform pressure on the new Christian-Conservative government. Permissions, however, were still not granted to community radios, as application procedures remained untransparent and arbitrary. In 2000, the relevant authority, the Ministry of Communication and Transport (*Secretaría de Comunicaciones y Transportes*, SCT), requested one million pesos in trusteeship (*fideicomiso*) and a 52,000 peso security deposit as a guarantee that the applicant, Radio Habla Palabra from Sonora state, would not broadcast commercials or accept sponsors. Not only were these sums financially unattainable for small alternative stations, but the demand itself points to deficits in the rule of law in Mexico, as no law, decree or directive existed that justified the requested monetary deposits to obtain broadcasting permissions (more details and cases: (Calleja & Solís 2005: 82).

Today, the rationale of community media legislation goes beyond democratization and a normative discussion of recognition. The convergence from analogue to digital broadcasting is exerting additional reform pressure on those transmitting without license: Once the analogue spectrum will no longer be used for broadcasting, clandestine radios will lose receivability. Their only option to continue broadcasting would be the internet:

“Many social alternative groups keep on thinking in the old patterns of broadcasting. Community radios continue to think that they should be given a license to transmit analogue radio (...) and do not want to think of other forms of distribution. (...) Many people in rural areas have been carrying around portable radios for years, since more recently their CD Players and I am sure it is now their iPods. Why they are not thinking about these new forms of broadcasting – as of ignorance or because it is less romantic or less politically correct – I don’t know.”⁶

This critique does apply to a number of community radios, although some do offer Podcasts and online transmissions (livestream). However, internet usage is still not common in a majority of Mexican households, but mostly confined to urban, educated audiences with higher incomes.⁷ It is still unlikely that Mexican community radios can reach their audiences via the internet. In combination with the demise of analogue broadcasting the pressure to gain legal access to the digital broadcasting spectrum and sufficient resources to master technological convergence increases.

⁵ In 2003 INI has been renamed *Comisión Nacional para el Desarrollo de los Pueblos Indígenas*, CDI, www.cdi.gob.mx <Rev. 30.04.2010>

⁶ Interview with Mexican media expert and scholar, 11 August 2006, transl. by author.

⁷ According to data from Asociación Mexicana de Internet, 29.7 per cent of Mexicans use the internet; 22.7 per cent of them live in urban regions (zonas urbanas). See <http://estudios.amipci.org.mx:8080/mashboard/main.jsp>, Rev. 20 April 2011.

Foreclosures and Non-Reform 2000-2006

After 2002, the situation of Mexico's community radios changed dramatically. Having previously existed in a legal grey area between *clandestinidad* and acquiescence, their struggle for legalization and broadcasting permissions began with the forceful closing-down of stations on the one hand, and the advent of a reform project, which aimed at democratizing obsolete media regulations, on the other. In October 2003, more than 30 radio stations were shut down by SCT, and three more in December 2003. Police and military units were deployed in this operation, which included the confiscation of equipment. Other stations were threatened and bullied, both by state actors and anonymously.⁸ Commercial radio and TV enterprises took a hostile stance against community radios and pressured the government to end state toleration of extra-legal broadcasting activities. At the same time, a group of Senators around Christian-Conservative Javier Corral (PAN) reactivated the project to reform media legislation, which had come to a halt in 2002, when round table discussions between the Ministry of Communications and Transport, parliamentarians and actors from civil society and media organizations broke apart. Corral's initiative attempted (among other pressing issues) a legal acknowledgement of community media as "public media", which the bill distinguished from "state media".⁹

The conflict around legalizing community radios peaked in the second semester of 2002 and 2003 between

- representatives of community radios, mainly AMARC,
- state actors, mainly the Secretaria de Comunicacion y Transportes, SCT and the Secretaria de Gobernacion SEGOB, and
- the pressure group of the commercial broadcasting industry, the Cámara Nacional de la Industria de Radio y Television, CIRT.

In this situation, both commercial broadcasters and governmental actors criminalized community media and claimed that the World Association of Community Radios aimed at establishing "clandestine, pirate and guerilla radios"¹⁰ in Mexico:

"We are fighting against stations that have neither concession nor permission, and we will not stop before every station that operates has a concession or permission, or else it won't operate." Jorge Alvares Huth, Subsecretario SCT¹¹

Alvares Huth, responsible for the closing down of community radios, had previously been employed by several Televisa enterprises and CIRT – the same institution which launched a campaign against community radios, sending open letters to the president requesting not a regulatory overhaul, but the foreclosure of all stations without license:

⁸ See the Mexican daily newspaper El Universal, October 10, 2003, p. B7. Although the confiscation of technical equipment may seem inappropriate, the law covers the action: "*El que sin concesion o permiso del Ejecutivo Federal opere o explote estaciones de radiodifusión, perderá en beneficio de la nación todos los bienes muebles o inmuebles dedicados a la operación o explotación de la estacion de que se trate.*", Art. 104 of the Radio and TV Law

⁹ Art. 78-105, Dictamen de la Iniciativa de nueva Ley Federal de Radio y TV, January 3, 2005

¹⁰ See the daily newspaper La Jornada, March 29, 2003, p. 50

¹¹ "Estamos combatiendo a las estaciones que no tienen concesión o permiso, y si no, que no opere." El Universal, October 9, 2003, p. B7

The moment has come to raise a firm denunciation of the illegality and impunity, with which the self-denominated “community stations” – which they are not, but an expression of piracy that puts at risk Mexicans’ rights and certitude.. Jorge Mendoza Garza, CIRT¹²

Governmental authorities shared this assessment and opted for a criminalization of community radios, instead of opening regulation towards obtaining broadcasting permissions for stations that were neither state-operated, commercial nor indigenous:

“I am sorry, but we will not talk to or defend criminals; as the authority in charge, we have the obligation to pursue offenses; asking for a solution to the issue of community radios would be as if someone committed a murder and asked the authorities to do nothing about it.” (SCT official, 2000)¹³

The incentives of CIRT remain unclear. After all, the asymmetric competition between community media and the commercial media oligopoly could hardly have conjured a scenario of rivalry over audiences, resources or market shares. However, it seems plausible that CIRT anticipated that a legalization of community media combined with the beginnings of reform to media legislation could lead to a major caesura, opening the market for new competitors and lead to state subsidies for non-commercial media outlets. AMARC also localized the root of the antagonism from commercial broadcasters in the absence of regulations in the realm of economic competition:

“The Mexican media system used to be so closed. (...) The issue is that if you let one more player enter, many more will follow. The central issue is how to preserve a number of players without anyone else entering – and the specific reason is (dividing the) cake of publicity revenues. The problem is that 100 per cent of publicity revenues go to the (two) television broadcasters. The central problem is that there are no rules of competition.”¹⁴

The strategy of Mexican community radios in their struggle for legalization built on support from national and international civil society actors¹⁵ and international organizations¹⁶ and focused on communication as a human right, instead of arguing over the details of national regulation. Support also came from press journalists and actors from state broadcasting institutions, such as the Mexican Institute of Radio (IMER), a network of seven state-owned radio stations in Mexico-City. IMER opened a channel (that was previously reserved for the speaking clock service) for the *Radio de las Ciudadanos*. This station was founded to broadcast from the *Festival of Community Radio*, a rally for legalization in August 2002, in which 300 stations and more than 2,000 citizens participated, and later remained on air.

¹² “*Es el momento de plantear una denuncia firme, sobre la ilegalidad e impunidad con la que actúan las autodenominadas “estaciones comunitarias”, que no son sino una expresión mas de la piratería que pone en riesgo los derechos y la certidumbre de los Mexicanos.*”; From a speech given at the annual banquet of the broadcasting industry with the Mexican President Vicente Fox; See the daily newspaper La Reforma, October 10, 2003 (Reclaman empresarios sancionar la „piratería“)

¹³ “*Lo siento pero nosotros no podemos hablar ni defender a delincuentes, como autoridad tenemos la obligación de perseguir los ilícitos, pedir una solución al tema de las radios comunitarias seria tanto como que alguien cometiera un asesinato y se le pidiera a las autoridades no hacer nada.*” Quoted in Calleja & Soliz 2005: 70

¹⁴ Interview with AMARC leading staff, 24 August 2006, transl. by the author.

¹⁵ Such as Asociación Mexicana por el Derecho a la Información (AMEDI) or Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)

¹⁶ Such as Inter-American Commission on Human Rights IACHR

Stakeholders and civil society actors embarked on a strategy with legal, political and mediated dimensions. Most important was the decision of how to frame their demand, not only in public communication but also with regard to addressing political decision-makers. They opted for the human rights frame:

“We moved the topic from being only about access of media to being a problem of exercising human rights. (...) We moved it out of the realm of cultural policy. (...) You can disregard cultural problems, but if human rights are at stake, you cannot disregard that.”¹⁷

Another strand of argument pointed to experiences from other Latin American countries, in which community radios have been legally acknowledged and regulation of community broadcasting has been reformed in the course of democratic transformation processes. The cases of Bolivia, Colombia, Chile and Argentina, where a variety of regulation models have been implemented that transcend the narrow approach of Mexican legislators and administration, illustrate the lack of regulatory creativity that predominates media policy in Mexico.

The pressure from the commercial broadcasting industry on the one hand and international organizations on the other, led to a growing conflict within governmental institutions, which became obvious in the mediation meeting between SCT, AMARC, parliamentarians and media actors.¹⁸ While SCT joined an advocacy coalition with CIRT and demanded the closure of all community radios operating without permission, SEGOB was troubled by the prominence of the issue in the press. As the powerful ministry in charge of Mexico's internal affairs, SEGOB anticipated conflicts and high political costs from further closures.

A hearing of Mexican AMARC representatives in front of the Inter-American Commission on Human Rights in Washington, DC in March 2004 amplified the international pressure on the recently democratized Mexican government and helped to recruit international NGOs, such as the Open Society Institute, to the cause. After SEGOB's chief negotiator had been switched, both SCT and SEGOB agreed to an individual, case-by-case assessment. Despite this, in May 2004, President Vicente Fox could still be heard to announce the closure of all “clandestine” radios at a meeting with the Broadcasting Industry's Union (STIRT). An open letter by Mexican artists and writers Francisco Toledo, Carlos Fuentes, Carlos Monsivais and Juan Goytisolo addressed to President Fox supporting the legalization of community radios demonstrated the intensity with which the public debate had taken up among the cultural and political elites.

Eleven stations of the AMARC network applied for a broadcasting permission after SCT (under pressure from SEGOB) explained, specified and modified the previously very untransparent application process.. Between December 6, 2004 and August 9, 2005 all of these applications were granted. By 2006 SCT had allotted a total of 13 *permisos*, but until 2010 no other permission was granted.¹⁹ Nonetheless, the process of negotiations about legalization has opened the position of the Mexican government towards community media.

¹⁷ Interview with AMARC Mexico leading staff, 24 August 2006; transl. by the author.

¹⁸ See Zocalo, January 2004; 2SCT comienza guerra de baja intensidad contra radios comunitarias; cierra tres.

¹⁹ The details of a complicated application process and delays during the handling and allocation are adventurous and are described in full in Calleja & Solis 2005: 117-233. Calleja and Solis were actively involved in the process (Calleja as representative of AMARC Mexico) and delivered a protocol and detailed account of the operation in their book.

At the annual meeting of CIRT in 2004, Santiago Creel, then head of SEGOB and anticipated future presidential candidate of PAN, underlined the fundamental right of all societal groups and communities – and not indigenous groups only – to their own means of communication:

“ (T)he execution of the new rules will have to consider that societal groups and communities have, without doubt, the right to use – always within the law – the technologies and the radioelectric spectrum to communicate; and has to decide on their specific needs of subsistence and development when granting the same opportunities to all Mexicans. When such solicitations [permisos for community radios] cater to real social needs and confirm the will and capacity to place oneself within the legal framework, they cannot be seen as threats to the broadcasting industry, but as expressions that are part of our new reality.”²⁰

The more lenient position of the government has, from 2006 to 2009, neither been transferred into granting any more permissions, nor has the Broadcasting Law been altered accordingly. In 2009 the Constitutional Court declared the Federal Telecommunications Commission COFETEL, and not the Ministry SCT, the competent authority to grant and withdraw concessions. COFETEL approved six permission applications from community radios in January 2010. According to AMARC, the 19 legalized community stations with broadcasting permissions represent less than one per cent of the frequencies that commercial and state media operate.²¹ The granting of permissions case by case, however, cannot remedy the non-existence of community radios in the Broadcasting Law. It is an administrative act, an interpretation of a deficient regulation, which still leaves community radios without formal legal entitlement. Accordingly, AMARC formulated *Principles on Democratic Regulation of Community Broadcasting* in 2008, stressing legal recognition and promotion, the reservation of frequencies for community media use, and open, transparent and public licensing procedures with non-discriminatory requirements and conditions.²² Between 2000 and 2010, two diametrically opposed reform initiatives have addressed the issue of community media: the so-called Televisa Law of 2006, which was declared unconstitutional in many of its sections and invalidated in 2007, and an integral reform of broadcasting regulation, under discussion since 2008.

Televisa Law 2006

The term “Televisa Law” refers to a reform of selected articles of both the Broadcasting Law and the Telecommunications Law, which did not address any of the regulatory deficits prevalent in the Mexican legal framework, but unilaterally privileged the dominant players of both industries in the convergence and digitalization process. Among other modifications, the reform granted commercial broadcasting concessions to the incumbent concessionaires for 20 years, distributed digital concessions at no cost to established commercial media outlets and provided for a distribution of new concessions according to the principle of the highest bidder. The ‘reform’ process scandalized many groups: non-commercial media outlets (TV, radio and print), civil society groups and media activists. The Chamber of Deputies passed the bill

²⁰ Calleja & Solís 2005: 126

²¹ AMARC Press release February 3, 2010; <http://www.amarcMexico.org/comunicados/3086.html>

²² World Association of Community Radio Broadcasters: *Principles on Democratic Regulation of Community Broadcasting*; May 3, 2008
[http://legislaciones.amarc.org/Principios/Principles%20on%20Democratic%20Regulation%20of%20Community%20Broadcasting%20\(eng\).pdf](http://legislaciones.amarc.org/Principios/Principles%20on%20Democratic%20Regulation%20of%20Community%20Broadcasting%20(eng).pdf)

unanimously ten days after its introduction, after seven minutes of discussion and without any changes to its first draft. Despite the protests, the bill also passed the Senate with large majorities. The success of the reform, however, cannot be attributed to a large and overarching policy consensus among the parties, but to the presidential and general elections of 2006, in which all parties perceived the need to secure support from the dominant media outlets, who had intensely pressed for this reform.²³ By prioritizing vote-seeking interests over their policy preferences, legislators and parties enabled a reform that became most notorious of what it did *not* contain:

- Community media was not included and acknowledged as a legal entity;
- The process of acquiring permissions and resources for community media was not mentioned in the Broadcasting Law and remained discretionary and arbitrary;
- Allotting the digital spectrum to incumbent commercial concessionaires left state-, public and community media out of digitalization processes;
- Non-commercial media would be effectively hindered in their development, without assigned resources and cut off from technological developments.

Because 47 Senators filed a complaint of unconstitutionality (some of these Senators had previously voted in favor under pressure from their parties), the Constitutional Court revised and eventually invalidated central parts of the reform. Nevertheless, the Televisa Law posed a great challenge to the legalization process of community radios and represents a massive step backwards on Mexico's way towards a more open, inclusive and democratic media legislation.

Towards an Integral Reform: 2007-2010

Installed after the Constitutional Court's rejection of the Televisa Law reform in 2007, a Senate commission drafted a new integral media reform. In the following months, the commission consulted different groups of stakeholders, including CIRT.²⁴ The final initiative, which is still being discussed in the Mexican parliament (as of June 2010), combined the Radio and Television Law of 1960 and the Telecommunications Law of 1995, as the previous reform had already attempted. The contents of the reform project, the prospective "Federal Law of Telecommunications and Audiovisual Contents" promises a thorough overhaul of the deficient media regulation, introducing consumer and citizen's communication rights, opening the market for new actors and competition, setting concentration limits and allowing foreign investment in the media and telecommunication market. With regard to community media, the reform proposed to finally provide a legal standard:

- Abolition of the previous distinction between commercial "concessions" and "permissions":
- Concessions to be granted for commercial use, social use, public use and private use
- Community media may apply for a concession of social use; indigenous communities enjoy a separate and easier application procedure

²³ For a detailed analysis of the reform process see Klinger (2011).

²⁴ See Alonso, Roberto (2010). Respuesta a CIRT y llamado al Congreso, In La Jornada del Oriente, April 21, 2010 www.lajornadadeoriente.com.mx/2010/04/21/puebla/medieros14.php

- Community media as social media will not receive direct public financial transfers; financial resources may come from sponsoring, donations and/or limited advertisement

The conflict between the dominant broadcasters represented in CIRT and other media actors from state, public and alternative broadcasters continues in the new legislative process. CIRT strongly opposes the reform initiative:

“The proposed initiative stands in every aspect in contrast to our Constitutional Article 6, which protects the freedom of expression, because it proposes a new legal framework that is characteristic of authoritarian regimes, that contravenes the rule of law and abolishes the legal certainty of an industry, which has guaranteed the freedom of expression and diversity of ideas. (...) We (commercial) broadcasters manifest our discontent with the possibility, that the back may be turned on an industry and its communicators and workers, who have been a key factor in the democratic development in Mexico for decades.” (CIRT Statement of April 19, 2010)²⁵

The reform does indeed go against the business interests of the broadcasting industries' oligopoly, since it abolishes traditional privileges and intends to stimulate competition. The representatives of community media, like AMARC, urge the prompt implementation of the reform, which still has to pass both parliamentary chambers.²⁶ The PAN and the PRD – the two former opposition parties located at opposite ends of the ideological spectrum, have teamed up on behalf of the project. In the mid-term elections of 2009, the PAN lost its majority in the Chamber of Deputies, where PAN and PRD together hold 43 per cent of the mandates; in the Senate PAN holds 50, and the PRD 26 seats out of 128. Thus, the prospects are not bad for Mexican community radios to become legal media actors, more than 40 years after their first transmissions.

Comparative Focus: Community Radio and its legal Frameworks in Latin America

In addition to the human rights frame that AMARC applied to the debate about legalizing community media in Mexico, they also pointed to legislative improvements in other Latin American countries, demonstrating the belatedness of Mexican democratization in media regulation and the international as well as regional isolation of the Mexican government on this issue. In fact, the struggle for legalization has not been limited to Mexico, but has been negotiated in several Latin American countries in the wake of the wave of democratization, which the continent has experienced from the 1990s on. However, many of the new broadcasting or community media regulations have been passed since 2000, as states revised their media laws in response to the advent of convergence and digitalization.

Bolivia

²⁵ CIRT: http://www.cirt.com.mx/cirt/index.php?option=com_docman&task=doc_download&gid=792, <Rev. 20.05.2010>

²⁶ See AMARC Press Statements, as „AMARC-Mexico urge a la Aprobacion de una reforma integral de los medios“ of April 22, 2010 <http://www.amarcMexico.org/comunicados/3099.html?print>, <Rev. 20.05.2010>

In 2005 the Bolivian government under President Carlos Mesa Gisbert introduced a Regulation of Community Broadcasting, which in 2007 was replaced by the Regulation of Telecommunication Services in Rural Areas (Decreto Supremo 29174). As indicated in its title, the law defines community media as broadcasters, which are directed at and operated by organized communities (*campesino*, indigenous, municipalities or private initiatives representative of those communities) and are located in rural areas, i.e. locations with a population under 10,000. It excludes certain groups and individuals from obtaining broadcasting licenses for community radios, such as functionaries of political parties or political institutions, individuals linked to commercial broadcasters, groups or individuals operating other community radios, priests and other functionaries of the church. The access to licenses, and the conditions to enter the application process are listed in detail and are transparent. Community radios have to transmit at least five hours per day and follow content guidelines: educational and cultural programs, programs dealing with local public problems and reserved airtime for direct participation of community members are among the criteria listed in the decree (Art. 36 a-g).

Colombia

Community radios in Colombia are regulated by Decree number 1981, implemented in 2003. Here, community media may be rural or urban, but have to be operated by legal persons or organizations that reside in the area of transmission. The law gives a detailed account of normative objectives and program guidelines and provides an authoritative list of conditions and procedures to obtain a broadcasting license. Colombian community stations may receive financial resources from governmental institutions, but also from sponsors, donors or international organizations (those which are legally recognized in Colombia). Commercial advertisement as income source is allowed up to 15 minutes per hour. However, AMARC and Reporters Without Borders reported in May 2010 that the local and regional economy is so affected by the Colombian conflict that it cannot provide an effective source of income, so that community radios operate at the verge of depletion.²⁷ Besides economic consequences, the ongoing violent conflict between paramilitaries, guerillas and the Colombian armed forces drastically limit the possibilities of coverage of local issues and incidents, as well as the cultural objectives stated in the law: indigenous languages cannot be spoken, fostered and preserved on air, as both guerilla and military insist on exclusively Spanish transmissions.²⁸ The election campaign of 2010 has raised discussions about Article 6 of the Community Radio Law, which prohibits political advertisement and propaganda to be aired in this type of media.

Chile

Chilean regulations were early in the recognition of community radios, in the General Telecommunications Law of 1982 (with modifications in 1994 and 1999), but imposed

²⁷ Informe Asociación Mundial de Radios Comunitarias, América Latina y Caribe, AMARC ALC; Misión Libertad de Expresión Colombia 10-16 de mayo 2010; <http://legislaciones.item.org.uy/files/REPORTE%20FINAL%20COLOMBIA%20AMARC%20ALC-28052010.pdf>

²⁸ <http://legislaciones.item.org.uy/files/REPORTE%20FINAL%20COLOMBIA%20AMARC%20ALC-28052010.pdf>, p.5

various limitations to the operations of community radios. Similar to Brazil, where community radios may air only within one a one-kilometer radius, Chilean rules restricted transmission power to one watt. After more than two years of negotiations and intensive conflict between the National Association of Community Radios (ANARCICH) and the Association of Radiobroadcasters (ARCHI), Chilean legislators passed a new Law of Community Citizens Radio Services in April 2010. ANARCICH embraced the new regulation, underlining that it “brings better legal and technical conditions for the development of our stations, who have awaited this moment for many years.”²⁹ Instead of only one watt, radios are entitled to 25 watt transmissions; indigenous communities to 30 watts and stations in remote areas to 40 watts; transmission antennas may rise 18 instead of 6 meters; concessions have to be renewed every 10 instead of 3 years and community radios are allowed to broadcast commercials. Concessions are granted within a reserved segment of analogue frequencies (RM 105.9 to 107.9; FM 107.1 to 107.9). Critics of the reform have pointed to the small size of this segment, to the preferential renewal of concessions for previous operators at the cost of future applicants and the high fines for illegal radio stations.

Argentina

Argentine legislators passed a new media law, the so-called *Ley de Servicios de Comunicación Audiovisual*, in October 2009. It replaced the Broadcasting Law of 1980, which had been decreed by Jorge Videla and represented a centralist, discriminatory and authoritarian regulation. The new law recognized community media and introduced reserved frequencies for local broadcasters and non-profit organizations: each of the 23 provinces and the City of Buenos Aires reserve one AM, one FM and one open TV frequency; and every municipality one FM frequency. In addition, 33 per cent of planned radioelectric frequencies for radio and TV are to be distributed among civil society actors, defined as non-profit organizations. Indigenous communities are granted the right to install and operate radio and free TV. In municipalities with a university, one free TV and one radio frequency are reserved for educational, scientific or cultural broadcasting. However, the implementation of the law has been suspended, after three federal courts suspended some articles of the law. One verdict came in favor of Grupo Clarín, Argentina’s largest commercial media group, and another in favor of a consumer protection interest group, which had filed lawsuits against the law. Meanwhile legislators and experts are debating questions about the jurisdiction of lower courts and their constitutional competence to suspend laws.³⁰

Conclusion

The Mexican case and other Latin American media reform processes illustrate the difficulties community media encounter on their way to legal recognition, and the delay of democratizing media regulations, while defective democracies are on their way to consolidation. In Argentina it took 26 years to replace the authoritarian media law of its military junta. The slow reform processes are embedded in the context of low reform capacity and an incapacity of Latin American states to formulate, implement and enforce rules and regulations. The Bertelsmann Transformation Index 2008 placed Mexico 36 out of 128 transformation

²⁹ Cited in Mella (2010)

³⁰ <http://legislaciones.item.org.uy/index?q=node/1207>

countries in its Management Index, and criticized the comparatively low steering capability of legislators and executive:

“What Mexico lacks at the present time is (...) reforms that might advance the consolidation of democracy or modify the structural deficits of the economic model in place since the 1980s. (...) In this respect things are advancing too slowly.”³¹

Reform processes of outdated media legislation are further complicated by legislators, who form advocacy coalitions with dominant commercial media organizations and the broadcasting industry, in order to block regulation that aims at more pluralistic and open media systems – because these reform projects inevitably conflict with the highly concentrated commercial media industries` interests.

However, in the past five years community media have scored first successes. In many Latin American countries the path towards legalization and entitlement to frequencies and resources has been opened. In Mexico, legislators and authorities are trapped in their ambiguous approaches between criminalization of community media and granting case-by-case permissions without a transparent legal basis. The future of community broadcasters and their capacity to perform crucial functions within local public spheres will hinge largely on the capacity of political actors to democratize the regulatory framework for broadcasting in Mexico.

With regard to democratic consolidation it can be underlined that the partial regime of political liberties and public arena is negatively affected by the politically and economically motivated exclusion of community broadcasters. As Lichtenberg (1987) has pointed out, freedom of the press does not entail a “right to publish”. However, as Merkel has argued, political communication rights are the institutional backbone of political liberties and the distribution and reception of public communication must not be restricted for political or economic motivations. Thus, the argument is not that a higher number of community broadcasters increases democratic quality, but that the broadcasting spectrum must be equally accessible to all actors, and access regulation therefore must be transparent, fair and enabling diversity.

As has been pointed out above, the five partial regimes in the concept of embedded democracy are both independent of each other and interdependent on each other. This refers to different logics, actors and structures being at work in the different partial regimes. However, defects in one partial regime may trigger defects in other partial regimes. Political liberties depend on effective civil rights and the rule of law. The electoral regime and accountability mechanisms depend on a functioning public arena, in which interests are formulated, opinions discussed and where government responsiveness is evaluated. Thus, a defective political arena caused by politically motivated restricted political communication rights, negatively impacts election processes and electoral legitimacy. This in turn does not help the efforts of democratic consolidation.

The future of Mexican democracy will certainly not entirely depend on the question of how and when community radios gain access to broadcasting licenses. Mexico is riddled with many severe democratic defects from deficient rule of law, low steering capability to the violent conflict between the state and non-state actors of violence involved in drug and human

³¹ http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI2010/LAC/Mexico.pdf

trafficking. Democracy indices, Freedom House and such looking beyond electoral democracy (as Bertelsmann Transformation Index or Sustainable Government Indicators³²), give record of the many problems that Mexican governments need to address. However, the interdependence of partial regimes in democratic political systems illustrates that guaranteeing political communication rights is not a footnote of transformation processes, but a key issue that democratic reform needs to master. Community broadcasters may be small organizational units – the conditions under which they operate can serve as a litmus test of democratization progress.

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³² See <http://www.bertelsmann-transformation-index.de/en/> and <http://www.sgi-network.org/>.

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