



United Nations  
Educational, Scientific and  
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IPDC THE INTERNATIONAL PROGRAMME  
FOR THE DEVELOPMENT OF COMMUNICATION

A silhouette of a group of people, including photographers and videographers, standing on a hill or cliff. They are holding cameras and tripods, looking out over a landscape. The background is a bright, warm sunset or sunrise, creating a golden glow. The scene is overlaid with a blue grid and circular patterns, suggesting a digital or media theme.

Assessment  
of Media  
Development in

**CURACAO**  
3

*Based on UNESCO's  
Media Development  
Indicators*



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**Dates of research:** September 2013 - August 2014

**Authors:** Renske Pin, Susan van Velzen, Irwin Korstjens

**Research Team:** Renske Pin (lead researcher), Susan van Velzen, Irwin Korstjens, Lisette Rosini, Oscar van Dam, Margo Groenewoud

**Assistant Researchers:** Chesron Cordrington, Vianny Henriquez, Danda Welvaart

**Review Team:** Nelly Schotborgh-van de Ven, Ingrid de Maaijer, Yves Cooper

**Project Managers:** Marva Browne, National Commission of Curaçao to UNESCO; Saorla McCabe, Coordinator of the Media Development Indicators initiative, UNESCO; Hara Padhy, former Regional Advisor in Communication and Information for the Caribbean, UNESCO

**Advisory Committee:** Leonardo de Abreu Ladeira, Bureau Telecommunication & Post (BTPU); Richenel Ansano, National Archaeological - Anthropological Memory Management (NAAM); Marva Browne, Curaçao NatCom; Peter Eikelenboom, TeleCuraçao; Marguerite Heyliger, Communications & Information (C&V); Francis de Lannoy, University of Curaçao (UoC); Jacqueline Martis, AMNESTY Curaçao, Raynel Martis, United Nations Development Programme (UNDP)

**Organization and coordination of consultation workshops:** Sislyn Stroop

**Fieldwork:** Jonathan Dorothea, Shardelys Job, Yonna Nieuwenhuis, Shunairis Serberie

**Data entry:** Claire Parker, Mary Provence (Coordination: Maria Duyndam, Central Bureau of Statistics)

**Contribution to finalization of report:** Isabel Viera Bermúdez, Erika Walker, UNESCO Kingston Office

**English editing:** American Journal Experts, Saorla McCabe

**Editorial assistance:** Sarah Donkersley, Andoni Santamaria Kampfner

**Papiamentu Translator:** Verna Lake

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The full PDF version of this book can be downloaded on the UNESCO website at [www.unesco.org](http://www.unesco.org).

## Foreword

**C**uraçao is the first country in the Caribbean to utilize UNESCO's Media Development Indicators (MDIs) to assess its media landscape. The purpose of the study is to analyze the situation of the media in Curaçao, and the progress that has been achieved as the country moves towards more intercultural dialogue through the use of the media.

The MDI reports allow for the pursuit of peacebuilding and dialogue through freedom of expression and a free, independent and pluralistic media landscape. This detailed analysis of the media landscape is in keeping with the mandate of UNESCO.

The MDIs, which serve as the foundation of this study, were approved by the intergovernmental Council of the International Programme for the Development of Communication (IPDC) of UNESCO in 2008. This framework is a significant development in the communication field as it provides tools that can help analyze and assess the main aspects of communication within a given context, with reference to international standards.

The main part of this study was conducted in 2013 and 2014, and provides a broad view of the country's media landscape. Its findings can positively contribute to future discussions on legal reform and media self-regulation. It also provides the base for ongoing detailed study by local stakeholders in the MDI categories such as through more in-depth research on media self-regulation; plurality and diversity of media; media as a platform for democratic discourse; professional capacity building; and infrastructural capacity.

The UNESCO MDI assessment of Curaçao not only maps the gaps in the media landscape but also makes recommendations as to the way forward. As UNESCO looks ahead to delivering service to our Member States based on the Sustainable Development Goals, we will look to countries like Curaçao to take the lead in showing the value of an MDI to media reform in a given country. It is our hope that this MDI study will make a significant difference to the media landscape in the country and will enhance the contribution of media to achieving the Sustainable Development Goals in Curaçao.

**Katherine Grigsby**

Director and Representative  
UNESCO Office in Kingston

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# Acronyms

- 10-10-10** (10 October 2010): Dissolution of the Netherlands Antilles, Curaçao became a country within the Kingdom of the Netherlands
- ABVO** Algemene Bond van Overheidspersoneel (General Federation of Government Employees)
- ACHPR** African Commission on Human and Peoples' Rights
- BA** Bachelor of Arts
- BTP** Bureau Telecommunicatie en Post (Bureau Telecommunications and Post)
- CBS** Central Bureau of Statistics
- CFATF** Caribbean Financial Action Task Force
- CFT** College Financieel Toezicht (Board of Financial Supervision)
- CIFA** Curaçao International Financial Services Association
- CMO** Curaçao Media Organisation
- CSO** Civil Society Organisation
- ECHR** European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECtHR** European Court of Human Rights
- FATF** Financial Action Task Force
- FOKO** Fundashon Orguyo Kòrsou (Curaçao Gay Advocacy Association)
- FTAC** Fair Trade Authority Curaçao
- HAVO** Hoger Algemeen Voortgezet Onderwijs (Higher General Continued Education)
- HBO** Hoger Beroepsonderwijs (Higher Professional Education)
- IAPA** Inter American Press Association
- ICCPR** International Covenant on Civil and Political Rights
- ICHR** Independent Commission for Human Rights
- ICT** Information and Communication Technology
- ICUC** Intercontinental University of the Caribbean
- IFJ** International Federation of Journalists
- IPDC** International Programme for the Development of Communication
- IPI** International Press Institute
- ITU** International Telecommunication Union
- LGBT** Lesbian, gay, bisexual, and transgender
- LOB** Landsverordening openbaarheid van bestuur (National Ordinance on Open Government)
- MA** Master of Arts
- MDI** Media Development Indicators

<b>MOOC</b>	Massive Open Online Course
<b>NAPB</b>	Nederlands Antilliaanse Politie Bond (Dutch Antillean Police Association)
<b>NatCom</b>	National Commission for UNESCO
<b>NGO</b>	Non-Governmental Organisation
<b>NJV</b>	Nederlandse Vereniging van Journalisten (Dutch Association of Journalists)
<b>OAS</b>	Organization of American States
<b>OCAN</b>	Overlegorgaan Caribische Nederlanders (Consultative Body for Caribbean Dutchmen)
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PR</b>	Public Relations
<b>PSB</b>	Public Service Broadcasting
<b>RVD</b>	Regeringsvoorlichtingsdienst (Government Information Service)
<b>RNW</b>	Radio Netherlands Worldwide
<b>RvA</b>	Raad van Advies (Council of State)
<b>RvdR</b>	Rijkswet Raad voor de Rechtshandhaving (Law Enforcement Council)
<b>SAP</b>	Sindikato Ambtenarnan di Polis (Syndicate for Police Officials)
<b>SBTNO</b>	Stichting Bureau Toezicht en Normering Overheidsentiteiten (Foundation of Supervision and Standards for Government Entities)
<b>SER</b>	Sociaal Economische Raad Curaçao (Economic and Social Council of Curaçao)
<b>TBS</b>	T.V. Distribution Systems
<b>TI</b>	Transparency International
<b>UDC</b>	University of the Dutch Caribbean
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UoC</b>	University of Curaçao Dr. Moises da Costa Gomez
<b>UTS</b>	United Telecommunications Services
<b>UWI</b>	University of the West Indies
<b>VCLT</b>	Vienna Convention on the Law of Treaties
<b>VWO</b>	Vorbereidend Wetenschappelijk Onderwijs (Pre-university Secondary Education)

## Executive summary

**T**he contribution of the media to creating and sustaining functioning democracies and the potential of the media to serve as a catalyst for human development are crucial. Free, independent and pluralistic media empower citizens with information that enables them to make informed choices and to actively participate in democratic processes. The media can enhance transparency and accountability by facilitating dialogue between decision makers and the rest of society and by exposing abuses of power. The media also play a vital role in improving the public's understanding of current or emerging issues, events and Government priorities as well as policy decisions and political choices.

This assessment focuses on all aspects of the media landscape of Curaçao using UNESCO's Media Development Indicators (MDIs). The assessment is divided into five principal media development categories and considers the roles of media workers, media managers and media owners as well as other relevant stakeholders, including media users, Government, regulators, advertisers, politicians, educational institutions and civil society organisations. The assessment aims to provide all of the involved stakeholders with a set of evidence-based recommendations that will help address identified shortcomings and strengthen the development of free, independent and pluralistic media in Curaçao.

Curaçao's media landscape is characterised by a substantial number of media outlets. There are no fewer than 28 licensed radio stations, eight newspapers and at least three television stations for the island's population of just over 150,000 inhabitants. Together, these outlets facilitate a culture of lively debate. However, the media are unable to adequately fulfil their role as a watchdog over the authorities and the other powerful stakeholders in society. Because of a number of significant weaknesses, identified in all categories and across all of the involved stakeholders, Curaçao's media do not take full advantage of their democratic potential.

### **Category 1: A system of regulation conducive to freedom of expression, pluralism and diversity of the media**

#### **A. Legal policy and framework**

Freedom of expression is anchored in Curaçao's Constitution, and the main international human rights treaties are in force in the country. The best guarantee for the protection of freedom of expression is provided in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in combination with the right to file a complaint to the European Court of Human Rights (ECtHR). International court rulings are important in the review of local legislation and lawsuits related to freedom of expression or the misuse of this freedom.

Access to government information is regulated in the Ordinance on Open Government. The Ordinance on Open Government is limited to information requests to the ministries and excludes the right to request information from public companies and public foundations. The Ordinance on Open Government also appears to lack effectiveness because government information proves difficult to obtain, its access is easily denied, and when it is made available, this is often done too late. The Government does not fulfill its requirement to register and report on the use of the Ordinance on Open Government.

By not consolidating the text of legislation after modification of a law the Government of Curaçao creates uncertainty in regard to the legislation that is in force.

The Parliament of Curaçao discontinued the full availability of Parliamentary Documents to libraries and the general public. Parliamentary Documents are only available on specific request.

Editorial independence is not explicitly guaranteed in law, and in practice, editorial independence is under pressure because commercial, political and other actors attempt to influence media content. These actors often pursue this aim in a concerted effort with media owners seeking to protect their own commercial interests, and with media workers seeking to protect their jobs. Because of intense competition due to the large number of media outlets, the media's nearly total dependence on advertisers and private financing and the small size of the economy, the market allows for little independent news production.

Curaçao does not have specific legal provisions that include a clear guarantee of the right of journalists to protect their sources. However, journalists can invoke their rights as established in ratified human rights treaties.

There are insufficient formal procedures for civil society organisations to contribute to the public policy towards the media.

### **B. Regulatory system for broadcasting**

The independence of the regulatory system for broadcasting is not guaranteed by law. The regulator Bureau Telecommunicatie en Post (BTP), which was established in 2001, has little to no formal decision-making power of its own and was never explicitly mandated to exercise any of the regulatory and supervisory powers attributed to Government on the basis of the Television National Ordinance from 1971. Most of the regulator's duties are of an advisory or preparatory nature, with Government (i.e., the Minister of Transport, Transportation and Urban Planning and the Minister of Education) retaining the ultimate authority over broadcasting licensing and broadcasting regulation in general. Moreover, until August 2011, BTP functioned without a supervisory board and operated under the direct supervision of the Minister of Traffic, Transportation and Urban Planning. In 2011 and 2012, the members of the supervisory board were appointed to their seats. However, the way the board operates is insufficiently transparent. In addition, the regulatory system incorporates a

conflict of interest because the licensing minister is also Curaçao's representative as a major shareholder of United Telecommunications Services (UTS), which is the parent company of one of Curaçao's major television (and radio) license holders, TeleCuraçao. More generally, the regulatory system for broadcasting is outdated and incomplete, and it insufficiently distinguishes between media and telecommunications policy and regulations. Therefore, to date, the system is not established in a manner that ensures that BTP or any other regulatory body has sufficient scope to promote media pluralism, diversity and freedom of expression.

## C. Defamation law and other legal restrictions of journalists

There are no legal restrictions that define who may practice journalism, and a media accreditation procedure for journalists who wish to cover the weekly press conference of the Council of Ministers, which was introduced in 2013, did not cause much debate. However, in May 2014, and without prior consultation of the press, Government introduced additional restrictions in a "Code of Conduct". Despite an ongoing dialogue between the press and Government that aims to establish new, mutually agreed-upon working relations, these recent developments suggest an increasingly restrictive press policy.

In Curaçao, contrary to international best practices, defamation can be addressed not only under civil law but also under criminal law. Defamation remains a criminal offence, and the defamation of public officials, public authorities or the King may result in more severe prison sentences and fines. However, freedom of expression is protected by ratified international and regional treaties, and Curaçao possesses a rich tradition of civil law practice. Additionally, the courts and the public prosecutor base their rulings and acts on international practice. However, because Curaçao's criminal defamation law prioritises the reputations of authority figures and institutions, this law may have a chilling effect on freedom of expression and may result in self-censorship. Other restrictions on freedom of expression, notably the Penal Code's blasphemy restrictions and vague and overbroad restrictions on programmes in the television and radio broadcasting regulations, may have a similar effect. Several media workers interviewed for this assessment have indicated that they fear being taken to court, and a culture of mud-slinging, political pressure, closed doors and personal attacks has been reported.

## D. Censorship

At the constitutional level, there is a clear ban on prior censorship, as stated in Article 9 of the Constitution. However, at the level of specific broadcasting and press regulations, the Curaçao regulatory framework contains several provisions which suggest censorship and constitute clear violations of the Constitution and ratified international and regional treaties. Several media managers, professionals and experts have indicated that these provisions are outdated and obsolete, and prior censorship does not appear to be of prime concern in Curaçao. In reply to questions regarding censorship, media workers chiefly underscored the prevalence of more subtle methods of influence, such as political and other pressure.

## **Category 2: Plurality and diversity of media, a level economic playing field and transparency of ownership**

### **A. Media concentration**

Curaçao does not follow accepted international good practice regarding the promotion of structural pluralism of the media and regulation of the concentration of media ownership. However, draft anti-trust legislation has entered the legislative process, and in practice, there does not appear to be a substantial degree of concentration of media ownership. In addition, Curaçao does not promote media transparency. Media entities are not required to provide public information on their ownership and annual accounts, and there is no systematic monitoring of company structure, ownership breakdown and revenue sources.

### **B. A diverse mix of public, private and community media**

Legislation does not distinguish between public, private and community media, and Curaçao does not have any public service media that is produced, financed and controlled by the public, and for the public. All of Curaçao's media are private law bodies pursuing a commercial purpose. This includes state-owned TeleCuraçao, which is subject to the same broadcasting rules and regulations as other broadcasters and is expected to operate on a commercial basis. A possible exception is Caribisch Netwerk, which receives its funding from the independent Dutch public service broadcaster NTR and operates on a non-commercial basis.

Other than a commitment to license a substantial number of private broadcasters, the Curaçao Government does not actively promote the development of a diverse mix of media, which would include public and community media outlets in addition to private ones. Civil society organisations also do not actively promote the development of community media. The regulatory framework itself offers only few provisions to promote media pluralism. The State plan for allocating frequencies prescribes a frequency assignment procedure to prevent selling to the highest bidder (i.e., a competitive tender procedure). However, the framework does not include specific references to pluralism or specific targets for community broadcasters. Additionally, the Curaçao system allows for political interference in decision-making regarding the assignment of radio and television broadcasting frequencies and in practice individual ministers are also reported to interfere in individual license assignments. Moreover, an important part of the decision-making processes for the assignment of FM-radio frequencies occurs in the market. That is, since 2005, all available frequencies in the FM-radio frequency band have been fully assigned, and a significant number of applicants are on a waiting list. Nevertheless, new entrants can enter the market if they purchase a company that holds a license or if the existing license-holders lease their frequency.

## C. Licensing and spectrum allocation

A State plan exists for the allocation of radio frequencies, channels and bandwidth. However, the plan has not been formally adopted. The plan and the frequency register of the actually assigned and available frequencies are not published online or otherwise widely disseminated. However, the plan and the register are available from the regulator BTP upon request. The plan allocates blocks of frequencies for broadcasting use. However, it does not sub-allocate frequencies to different types of broadcasters within those blocks, such as community or public broadcasters. Curaçao commenced digital transmissions in 2006, and since 2008, TeleCuraçao broadcasts in a digital format. Further digital developments have been delayed in part because there is no agreement regarding the best common course of action with respect to a full transition. No date has been established for a complete switch-over from analogue broadcasting.

Cable broadcasting companies operate under a so-called must-carry obligation to broadcast all programmes of the free-to-air television broadcasters without extra charge for their customers. The television regulatory framework also contains a "must-carry-like" provision that requires TV broadcasters to allow access to "bona fide non-commercial social organisations" if they request airtime, although in practice these provisions appear to be a dead letter. BTP is authorised to supervise compliance with technical broadcasting requirements and is said to perform well in "the technical area". However, an adequate regulatory framework and satisfactory monitoring of frequency use to ensure that actual usage conforms to all license conditions, including those related to content, is lacking.

## D. Taxation and business regulations

There appear to be no specific preferential taxes for media companies and for the purchase of media equipment, such as cameras and printers, or for receiving equipment, such as radios, televisions or computers. Broadcasting and print media are also not burdened with prohibitive taxes on media-related equipment and material, such as printing presses or paper. The situation regarding import tariffs is more diverse. Generally, most media-related equipment, such as broadcasting equipment, falls within the regular 10.5% tariff group. However, most media receiving equipment, such as radios, televisions and computers, falls within the 0% tariff group. There are no indications that media managers consider taxes, levies or other fees to be unreasonably high. However, not all media organisations are reported to equally fulfil their taxation and social premium obligations. The state-owned broadcaster TeleCuraçao is not directly financed or subsidised by the Government. Nevertheless, TeleCuraçao's position as a subsidiary of the public company UTS and the lack of financial transparency raises the legitimate question whether that position does not compromise fair competition.

## E. Advertising

Government and commercial advertising are important sources of income for Curaçao media. However, neither type of advertising is effectively regulated. There are no explicit norms, guidelines or codes of conduct to safeguard a fair, transparent and non-discriminatory allocation of government advertising. In addition, government advertising is not systematically registered or systematically monitored, and it cannot be determined whether fair access by all media is ensured. Most interviewed media managers and experts did not judge the Government's advertising policy or that of public entities to be fair and transparent. There is also no clear policy to ensure a level playing field between broadcasters in the competition for specific broadcasting rights for commercially attractive events, such as the Carnival and national events. Regarding the regulation of commercial advertising, important regulatory provisions are missing. Most notably, there are no specific rules that govern the separation and transparency of advertising or rules regarding sponsorship. Thus, the distinction between editorial content and advertising is frequently blurry.

## Category 3: Media as a platform for democratic discourse

### A. Media reflect diversity of society

Media content in Curaçao appears to be characterised by an overemphasis on police (i.e., crime and traffic accidents) and political issues to the detriment of programmes that address education, health, economics or social issues. The results of the Research Team's analysis indicate that female journalists are under-represented among the personnel of media institutions, in particular in decision-making positions. Reflection of the diversity of Curaçao's society is undermined in part because there are no other media than commercially-oriented media to rely upon to serve the needs of all social groups. Catering to a variety of social groups, including marginalised communities, may not be seen as profitable for commercial media and is therefore often left aside by media in Curaçao.

### B. Public service broadcasting model

Currently, Curaçao lacks a public service broadcaster (PSB). The goals of public service broadcasting are not legally defined, and there is no specific legislation on public service broadcasting. Because the must-carry rule applies for all free-to-air television broadcasters, satellite and cable carriers would not be allowed to refuse to carry PSB stations or content.

### C. Media self-regulation

The Curaçao media do not have an established self-regulation system or code of conduct developed by the media industry. The Curaçao Media Organisation (CMO), which is the only media association in Curaçao, has to date not initiated any self-regulatory mechanisms. Questions of adherence to professional ethics principles are handled at the level of the

individual media outlets, which overall do not demonstrate a strong culture of self-regulation. There are few examples of ethical codes, codes of conduct or editorial statutes in place in media organisations, and few complaint systems have been established. According to the Public Survey organised for this study, the public is generally dissatisfied with the way in which media outlets address complaints.

## D. Requirements for fairness and impartiality

A proposed Media Ordinance was drafted in 2007. However, the Ordinance did not find sufficient support from the stakeholders or the members of Parliament. Therefore, there is currently no law or regulation that requires fair and balanced news coverage, even during election periods. The broadcasting code that was launched by the Government in 2007 is unknown to media workers and does not focus on fairness, balance and impartiality. Thus, in Curaçao, there is no effective statutory or self-regulatory code, nor any regulatory body to supervise broadcast media content. In addition, there is no proper system to address public complaints, no press council and no media ombudsman. When someone wishes to make a complaint, the only options available to them are to file a report with the police or initiate a civil proceeding.

## E. Levels of public trust and confidence in the media

The results of the Public Survey and the focus groups suggest that the level of trust in the media in Curaçao is limited. The belief that the media report on issues of genuine public concern is moderate, and confidence that the information provided by the media is accurate and independent is low. The idea that journalists and media organisations have integrity and are not corrupt is not widely held in Curaçao, and larger parts of the public perceive news reporting overall as partial and of poor quality. Only a few media organisations endeavour to learn more about their audience and the perceptions of the quality and the cultural diversity of their programmes and news. Public satisfaction with the manner in which the media receives criticism and feedback on their performance is limited. However, media organisations offer channels for audience engagement, including popular talk-back radio programmes or social media platforms such as Facebook.

## F. Safety of journalists

In Curaçao, journalists can practice their profession relatively safely. Journalists and associated media personnel are not physically attacked, unlawfully detained or killed as a result of pursuing their legitimate activities. However, several recent cases of harassment of journalists have caused public debate on the issue of safety and are reason for concern. Few media organisations have policies in place to protect the health and safety of their staff. Self-censorship caused by a fear of punishment, harassment or attack does not seem to occur frequently. However, self-censorship caused by factors related to the small scale of the community, such as a dependence on good relationships with information sources or the protection of relatives, is very much a threat.

## **Category 4: Professional capacity building and support for institutions that underpin freedom of expression, pluralism and diversity**

### **A. Availability of professional media training**

The low educational level and lack of journalism training among media workers in Curaçao is a widely shared concern. In Curaçao, professional media training opportunities for media workers and managers of media companies are limited. There is no programmatic approach to media training, and no courses or training programmes are available in this area on a regular basis. Only short one-off workshops and training sessions are provided, which primarily focus on the basics, such as language skills and interviewing and presentation techniques. No courses or training aimed at building awareness of media's contribution to democracy and development are available.

### **B. Availability of academic courses in media practice**

Currently, there are no academic courses for journalism available in Curaçao. In 2010-2011, the University of Curaçao attempted to launch an academic course at the BA level in media practice, titled "Media, communications and journalism". However, this course did not materialise. Students who wish to study journalism are obliged to study abroad, which may result in brain drain.

### **C. Presence of trade unions and professional organizations**

Currently, Curaçao does not have a trade union for the journalism sector that could be, e.g., recognised as a negotiating partner by employer groups in discussing labour and professional issues or that could disseminate codes of ethics, actively defend freedom of expression or defend the interests of media professionals, including female professionals. In Curaçao, the right to form unions is legally recognised. However, in practice, few of the media workers who participated in the media survey are members of a trade union. The Curaçao Media Organisation (CMO) is the only professional journalism association in Curaçao. This organisation reportedly currently serves primarily a social function, organising social events for its members, in addition to a small number of training activities. According to the results of the interviews and Media Workers Focus Groups, the CMO does not strategically debate media ethics and standards, disseminate codes of ethics or actively defend the freedom of expression of its members.

### **D. Presence of civil society organizations**

No systematic monitoring of the performance of Curaçao media is performed by CSOs regarding media content and ownership in the interest of promoting pluralism and diversity or providing a critical analysis of the media. There have been several initiatives to promote

media literacy. However, these initiatives could be better supported. Based on the information collected for this report, there appears to be no CSO at work specifically in the media field on issues such as providing support to media professionals, monitoring press freedom violations and promoting freedom of expression, the right to information or journalism safety. Additionally, no CSO is known to engage with policy makers on the issue of media-related public policy.

## **Category 5: Infrastructural capacity is sufficient to support independent and pluralistic media**

### **A. Availability and use of technical resources by the media**

Media organisations in Curaçao tend to have good access to modern technical facilities for newsgathering, production and distribution. However, media experts indicate that the skills that are required to use the facilities to their full potential are lacking among journalists, and training in this area is scarcely available.

### **B. Press, broadcasting and ICT penetration**

All of the local broadcast media, both television and radio, are obligated by BTP to cover the entire nation with the appropriate signal levels. However, in certain cases, for technical reasons, full (100%) coverage is not attained. Seventy per cent of the households in Curaçao have access to the Internet, with options for high speed broadband (ranked #2 in the Caribbean region based on Internet average download speed). Free Internet is increasingly available, particularly in touristic areas. However, there is room for improvement, in particular with respect to guaranteeing Internet connections in schools.

## Key Recommendations

1. The free flow of information is a prerequisite for the development of independent journalism. Being the key provider of public information, the Government of Curaçao should consider institutionalising its responsibility to respond to information requests and ensure the proactive disclosure of important governmental information including the complete parliamentary documents, governmental advisory reports and consolidated versions of all current legislation.
2. Editorial independence from commercial, political and other interests should be guaranteed by law and respected in practice. Media organisations should be free to determine the shape and content of broadcasting programmes and publications.
3. For the purposes of promoting media pluralism and freedom of expression, the legislative framework for broadcasting should be strengthened, modernised and amended to include radio broadcasting in addition to television. Media policy and regulation should be clearly distinguished from telecommunications policy and regulation. The Government should take the lead in this process and prioritise the necessary amendments in consultation with all stakeholders, including the media sector, civil society organisations and the Bureau Telecommunicatie en Post (BTP).
4. The establishment of an independent regulatory body that follows international standards on independence, membership, accountability and transparency should be considered. The regulatory body, not a Government minister, should have the exclusive responsibility for issuing individual broadcast licenses and supervising compliance, without prejudice to the responsibilities of the telecommunications regulator on the basis of the National Ordinance on Telecommunications Facilities.
5. Government could consider different options to ensure media pluralism in Curaçao. This could include the establishment of a (non-state-owned) public service broadcaster with a system of governance that ensures its editorial independence, accountability to the public, transparent funding arrangements that protect it from undue interference, and a sufficient level of funding to enable it to perform its mandate. In addition, legal requirements on private broadcasters to safeguard diversity could be strengthened. This option is dependent on the establishment of an independent regulator that could be authorised to assign a limited amount of airtime at a reasonable fee to not-for-profit (non-political) organisations on request. The regulator could also be authorised to require all broadcasters to provide a certain amount of programming of public interest – such as news, educational content, content that responds to the needs of marginalised communities, or political candidates' messages - provided that it does not interfere directly in the definition of programme content.
6. Broadcasters should be required to ensure transparency with regard to all

of the commercial arrangements that affect their programming, that is, material broadcast in return for payments, whether by commercial or non-commercial organisations, including government entities. They should also be required to provide clear information within their programming to inform listeners or viewers of any such commercial arrangement. A requirement for broadcasters to report on such commercial arrangements annually could be considered.

7. The Curaçao Media Organisation and any other future association and/or union of journalists should actively promote a code of professional ethics that focuses on accepted principles based on international best practice. These would include provisions for the respect of the truth and verifiability, the public's right to know, the right to fair comment and criticism, factual and balanced reporting, the use of fair methods to obtain information, the willingness to correct mistakes, and the confidentiality of sources.
8. Publishers should seek to strengthen the trust of their public by ensuring transparency on the mechanisms in place to guarantee a clear separation between editorial work on the one hand and media ownership and affiliations with prominent advertisers on the other. To further enhance transparency and accountability publishers could also agree on the joint publication of data on circulation, advertising, media audiences and revenues, as is common in other countries.
9. Special attention should be given to addressing the problem of self-censorship, in particular given the small size of the Curaçao society, which tends to increase the influence of economic or political interests on editorial content. This can be done among others by facilitating training on professional ethics and adopting strong editorial guidelines that protect the independence of the editorial board and/or media worker.
10. The media should increase their efforts to ensure that appropriate training opportunities are offered for their journalists and individuals in management positions in all areas, particularly regarding language skills, ethics, and investigative journalism. The Curacao Media Organisation and CSOs should support and facilitate these efforts. Attention should also be given to training on reporting from the perspective of specific or vulnerable groups.
11. The State or a CSO could establish an international scholarship to help students who wish to study journalism/media abroad. Such an initiative should be accompanied by measures to encourage these students to return to Curaçao, e.g., by promoting repatriation through financial incentives or the facilitation of internships.
12. Government should focus on empowering the population and educating citizens to be critical media users, in cooperation with libraries, schools and other organisations. Media education programmes should be developed to provide citizens with the competencies, attitudes and skills necessary to comprehend how the media function, following international good practices in this area.

# Resúmen ehekutivo

## (Executive Summary – In Papiamentu)

E kontribushon di media na kreashon i sosten di demokrasianan bibu i nan potensial pa sirbi komo kataklismo pa desaroyo humano ta krusial. Un media liber, independiente i pluralista ta poderá suidadanonan ku informashon ku ta duna nan e abilidad pa tuma eskoho informativo i pa partisipá aktivamente den proseso demokrátiko. Media por yuda oumentá transparensa i responsabilidad, dor di fasilidat diálogo entre esnan ku ta tuma desishon i sobra komunidad i di eksponé abusu di poder. Media tambe ta hunga un ròl krusial den mehorashon di e konosementu públiko di tópikonan, akontesimentunan, prioridatnan presente i di futuro, i pronunsiamentunan i opshonnan di maneho.

E evaluashon aki ta konsentrá riba tur aspekto di e paisahe di media di Kòrsou usando e Media Development Indicators (MDIs) di UNESCO. E ta strukturá rònt di sinku kategoria di desaroyo di media i ta pone atenshon na a ròl di trahadó di media, manager di media i doño di media pero tambe otro stakeholder importante inkluyendo usadó di media, gobièrnu, reguladó, anunsiadó, polítiko, instituto edukashonal, i organisashon di suidadano. E meta ta pa duna tur stakeholder involví un set di rekomendashonnan basá riba prueba, ku lo trata e gapnan identifiká pa mehorá desaroyo di media liber, independiente i pluralistiko na Kòrsou.

E paisahe di media na Kòrsou ta karakterisá dor di un kantidat grandi di eskape di media, no ménos ku 28 stashon di radio ku pèrmit, ocho korant i (mas ku) tres kanal di televishon pa un poblashon di un algu mas ku 150.000 habitante. Huntu nan ta fasilidat un kultura animá di debate. Pero media no por kumpli adekuá ku un ròl komo watchdog di outoridatnan i otro stakeholder poderoso den komunidad. Pa medio di un kantidat di debilidadnan importante, identifiká den tur kategoria i stakeholder involví, media na Kòrsou no por usa nan potensial demokrátiko optimalmente.

## **Kategoria 1: Un sistema di regulashon ku ta kondusí na libertat di ekspreshon, pluralismo i diversidat di media**

### **A. Maneho di lei i Kuadro**

Libertat di ekspreshon ta ankrá den Konstitushon di Kòrsou i e tratadonan internashonal di derecho humano mas prinsipal ta implementá. E mihó garantia pa e protekshon di e derechinan aki den kuadro di norma internashonal ta indiká den Artíkulo 19 di e International Covenant on Civil and Political Rights (ICCPR) i Artíkulo 10 di e European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) en kombinashon ku e derechi pa duna keho na the European Court of Human Rights (ECtHR). Verediktonan di korte International ta proba di ta importante pa revisá di legislashon lokal i kasonan di korte relatá ku libertat di ekspreshon versus abusu di e libertat aki.

Akseso na Informashon di Gobièrnu ta regulá den e Ordenansa di Gobièrnu Habri. E Ordenansa di Gobièrnu Habri ta limitá na petishon pa informashon na e ministerionan i ta ekskluí e derechi di pidi informashon for di kompanianan i fundashonnan públiko. Ademas, ta parse ku e Ordenansa di Gobièrnu Habri no ta efektivu pasobra a resultá ku ta difisil pa optené informashon di Gobièrnu, ta ninga akseso na e informashon fásil, i ora e ta optenibel hopi biaha e ta muchu lat. Gobièrnu no ta kumpli ku su deber di registrá i reportá riba uso di e Ordenansa di Gobièrnu Habri.

Dor di no konsolidá e teksto di legislashon despues di modifikashon di un lei Gobièrnu di Kòrsou ta krea insertidumbre pa loke ta trata e legislashon vigente. Parlamentu di Kòrsou a terminá disponibilitat total di Dokumentonan Parlamentario pa bibliotekanan i públiko. Por haña nan solamente riba petishon spesifiko.

Independensia editorial no ta garantisá eksplisitamente den lei, i den práktika independensia editorial ta bou di preshon pasobra interesnan komersial, polítiko i otro interesnan ta purba di influensha kontenido di media. Hopi biaha nan ta hasi esei den un esfuerso ku doño di media, ku ta purba di protehá nan mes interes komersial, i ku trahadónan di prensa, ku ta purba di protehá nan trabou. Pa motibu di e kantidat largu di eskape di media, e independensia kasi total di media riba anunsiaadónan i ~ finansiamentu privá i e ekonomia chikí, merkado ta permití poko produkshon di notisia independiente.

Kòrsou no tin legislashon ku ta inkluí garantia kla di derechinan di periodistanan pa protehá nan fuentenan, pero periodistanan por invoká nan derechinan manera ankrá den tratadonan di derechi humano.

No tin suficiente prosedimentu legal pa organisashonnan di suidadanonan por kontribuí na e maneho públiko di medio di komunikashon.

### B. Sistema regular di transmishon

Independensia di e sistema regular pa transmishon no ta garantisá dor di lei. E reguladó Bureau Telecommunicatie en Post (BTP), establese na 2001, tin masha tiki poder formal pa tuma desishon i no a dun'é e mandato spesifiko pa ehekutá podernan regular i di supervishon ku a duna gobièrnu a base di e Ordenansa Nashonal di Televishon di 1971. Mayoría di su trabou ta pa rekomendá òf prepará i gobièrnu - Minister di Transporte, Planifikashon Urbano i Minister di Edukashon - ta keda enkargá ku pèmit pa transmishon i regulashon en general. Ademas, te na Ougùstùs 2011, BTP tabata funshoná sin un gerensia di supervishon i tabata operá bou di supervishon direkto di Minister di Tráfiko, Transporte i Planifikashon Urbano.

Na 2011 i 2012 a nombra miembronan di e Gerensia di Supervishon; pero e modalidatnan di su funshonamentu ta insuficiente transparente. E sistema regular tambe ta inkorporá un konflikto di interes, pasobra e minister ku ta duna pèmit ta representante di Kòrsou tambe komo un shareholder mayor di United Telecommunications Services (UTS), ku ta mama kompania di un di e doñonan di pèmit di televishon i radio prinsipal, ku ta TeleCuraçao.

Mas general, e sistema regular pa transmishon ta antikuá i inkompleto i e ta distinguí insufisientemente entre medio di komunikashon i maneho/leinan di telekomunikashon. Pues awe e sistema no ta establese na un manera pa sigurá ku BTP òf kualke otro órgano regular tin suficiente abilidad pa promové pluralismo di media i libertat di ekspreshon i informashon.

### C. Difamashon di lei i otro restriksjon hurídiko di periodistanan

No tin restriksjon hurídiko ku ta dikta ken por praktiká periodismo i un prosedimentu di akreditashon di media pa transmishon di e konferensha semanal di Konseho di Minister tur siman, introdusí na 2013, no a entamá muchu debate. Sin embargo, na Mei 2014 i sin konsulta di antemano ku media, gobiernu a introdusí restriksjon adishonal den un kódigo di kondukta. Apesar di e diálago presente entre media i gobièrnu pa yega na un akuerdo tokante di relashon di trabou nobo, e desaroyonan aki ta sugerí un maneho di media ku ta mas severo.

Na Kòrsou, kontrali na e mihó práktikanan internashonal, por trata difamashon bou di lei sivil i kriminal. Difamashon ainda ta un akto kriminal i difamashon di ámtenarnan, outoridatnan públiko òf di e rei por resultá den kastigo di prison haltu i butnan. Na otro banda, libertat di ekspreshon ta protehá dor di lei internashonal i regional ratifiká i Kòrsou ta poseé un tradishon riku di e práktika di lei sivil. Ademas, sentensia i akshon di Korte i Ministerio Públiko ta basá riba práktika internashonal. Sin embargo, pasobra lei di difamashon kriminal di Kòrsou ta pone prioridat riba e reputashon di figuranan di outoridat i institutonan, esaki por tin un efekto profundo riba e libertat di ekspreshon i por resultá den outo sensura. Otro restriksjonnan riba libertat di ekspreshon, notablemente restriksjon riba blasfemia den Kódigo Penal i restriksjon vago, ambisioso i fanátiko riba programa transmití na televishon i regulashonnan riba transmishon na radio, por tin efekto similar. Den nos evaluashon diferente trahadó di media a indiká ku nan tin miedo ku lo hiba nan korte, i tambe di e kultura konosí di tira lodo, preshon polítiko, porta será i atake personal.

### D. Sensura

Riba nivel di konstitushon, tin un prohibishon kla riba sensura anterior manera stipulá den Artíkulo 9 di e Konstitushon. Sin embargo, na nivel di transmishon spesífiko i regulashon di media, e kuadro regular di Kòrsou ta kontené diferente provishon ku ta sugerí sensura i ta forma un violashon kla di e Konstitushon i tratadonan internashonal i regional ratifiká. Diferente manager di media, profeshonalnan i ekspertonan ta indiká ku nan te antikuá i opsoleto, i sensura anterior not ta parse di tin atenshon speshal na Kòrsou. Pa kontestá pregunta riba sensura, mayoria biaha trahadónan di media ta enfatisá e dominio di maneranan mas sutil di influensia, manera preshon polítiko i un miedo general pa trapa sierto pia.

## **Kategoria 2: Pluralidat i diversidat di media, un “level economic playing field” i transparensa di propiedat**

### **A. Konsentrashon di media**

Kòrsou no ta kumpli ku normanan internashonal pa promové pluralismo struktural di media i regulá e konsentrashon di propiedat di media. Sin embargo, konsepto di legislashon antitrust ta den proseso legislativo i no ta parse ku tin konsentrashon grandi di propiedat di media den práktika. Kòrsou no ta promové transparensa di media tampoko. Entidat di media no ta rekerí pa duna informashon públiko tokante nan propiedat i kuantanan anual, ningun hende ta monitor struktura di kompania, breakdown di propiedat i fuentenan di entrada sistemátikamente.

### **B. Un meskla diverso di media públiko, privá i di komunidad**

Legislashon no ta distingui entre media públiko, privá i di komunidad, i Kòrsou no tin media di servisio públiko ku ta produsí, finansiá i kontrolá dor di públiko, i pa públiko. Tur media na Kòrsou ta organisashonnan hurídiko privá ku tin un meta komersial. Esakí ta inklui TeleCuraçao ku ta propiedat di gobièrnu, ku mester kumpli ku mesun regla di transmishon ku e otro emisoranan i mester operá riba base komersial. Posibel eksepsion ta Caribisch Netwerk, ku ta risibí su fondo for di e emisora Hulandes independiente públiko NTR i ku ta funshoná riba base no komersial.

Aparte di e obligashon pa duna pèrmit na basta emisora privá, Gobièrnu di Kòrsou no ta promové aktivamente e desaroyo di un meskla di media, ku lo inklui eskape di media públiko, privá i di komunidad. Organisashonnan di sosiedat sivil tambe no ta promové aktivamente e desaroyo di media di komunidad. E kuadro legislativo mes ta ofresé algun provishon pa promové pluralismo di media. E plan di gobièrnu pa aloká frekuensia ta preskribí un prosedimentu pa aloká frekuensia pa prevení un benta na e kumpradó mas haltu (un prosedimentu di oferta kompetitivo). Sin embargo, e no ta inklui referensia spesífiko na pluralismo, ni meta spesífiko pa transmishon na públiko. Ademas, e sistema di Kòrsou ta permití intervenshon polítiko den toma di desishon tokante alokashon di frekuensia di transmishon pa radio i televishon. Den práktika, ta reportá ku ministernan individual tambe ta intervení den tarea di duna pèrmit individual. Ademas, un parti importante di e prosesonan di toma di desishon tokante di e alokashon di FM radio frekuensia ta tuma lugá awor riba merkado. For di 2005 a aloká tur frekuensia disponibel na radio FM i un kantidat grandi di interesadonan ta riba lista di espera. No opstante, interesadonan nobo ta drenta merkado, pasobra nan ta kompra e kompania ku tin a pèrmit óf pasobra doñonan di pèrmit ta húr nan frekuensia.

### **C. Alokashon di pèrmit i spectrum**

Tin un plan di gobièrnu pa aloká frekuensia di radio, kanalnan i bandbreedte, maske nunka no a adapt'é formalmente. E registro di plan di frekuensia ku frekuensia disponibel i aloká

no ta publiká online ni ekspandé. Pero nan ta optenibel riba petishon na e reguladó BTP. E plan ta aloká blòki di frekuensia pa transmishon pero no ta sub-aloká frekuensia na diferente tipo di emisora den e blòknan ei, manera emisora di komunidad òf públiko. Kòrsou a kuminsá ku transmishon digital na 2006, i for di 2008 TeleCuraçao ta transmití den format digital. A posponé mas desaroyo digital parti pasobra no tin garantia ainda riba e mihó método di akshon pa implementá e transishon. No tin fecha ainda pa terminashon di transmishon análogo.

Kompania di kabel tin e obligashon pa transmití tur programa liber di televishon sin kobra nan klientenan. E kuadro regular di televishon ta kontené tambe un provishon 'must-carry-like' i ta rekerí pa kanal di televishon permití kliente aksesu na 'organisashonnan sosial bona fide i no komersial' si nan pidi ora di transmishon, maske den práktika e provishon ta parse di ta un karta morto.

BTP ta outorisá pa supervisá kumplimentu ku regla di transmishon tékniko i aparentemente ta funshoná bon den e aria tékniko. Sin embargo, no tin un kuadro di regla adekuá i kontròl satisfactorio di uso di frekuensia pa sigurá ku uso aktual ta kumpli ku tur kondishonnan pa pèmit, inkluyendo esnan relatá ku kontenido.

## D. Regulashon di taksashon i kompania

Aparentemente no tin taksashon spesífiko preferensha pa kompania di media i pa kompra di aparato di media manera kámara i printer, ni pa risibí aparato manera radio, televishon i kòmputer. No a taksa media di transmishon i di print ku taksashon di prohibishon riba aparato relatá na media, manera papel di print òf media di print. E situashon di impuesto riba importashon ta mas diverso. En general, kasi tur aparato di media manera aparato pa transmishon ta kai bou di e grupo di tarifa di 10.5%, pero mayoria aparato manera radio, televishon, kòmputer ta kai bou di e 0% tarifa. No tin indikashon ku media managernan ta konsiderá impuesto òf otro tarifa hopi haltu. Pero no tur organisashon di media ta kumpli ku nan obligashon di taksashon i premio sosial. TeleCuraçao ku ta di gobièrnu no ta haña subsidio òf sèn direkto for di gobièrnu. Sin embargo, e posishon di TeleCuraçao komo un filial di e kompania públiko UTS i ousensia di transparensa finansiero ta trese dilanti e pregunta legítimo si e posishon ei no ta trese kompetensha hustu den peliger.

## E. Anunsio

Anunsio di gobièrnu i komersial ta fuente importante pa entrada pa media di Kòrsou, pero ningun tipo di anunsiu ta regulá efektivamente. No tin norma, instrukshon, i kódigo di kondukta spesífiko pa gobièrnu pone anunsiu den korant pa salbaguardiá publikashon hustu, transparente i no diskriminatorio. Anunsio di gobièrnu no ta registrá òf guiá sistemátikamente, i no por determiná si aksesu hustu pa tur media ta garantisá. Mayoria manager di media i ekspertonan entrevista no a konsiderá e maneho di anunsiu di gobièrnu i di entidatnan públiko di ta hustu i transparente.

Non tin maneho fiho pa garantisá level playing field entre transmissionnan den e kompetensia pa sierto derecho di transmishon pa eventonan komersialmente atraktivo, manera Karnaval i eventonan nashonal. Pa loke ta trata e regulashon di anunsio komersial, no tin legislashon. Por remarka ku no tin regla spesifiko ku ta goberná e separashon i transparensia di anunsio, i no tin regla pa spònsenan. E resultado ta ku e distinkshon entre kontenido editorial i anunsio ta frekuentemente difuso.

### **Kategoria 3: Media como un plataforma pa diskurso demokráτικο**

#### **A. Media ta reflehá diversidat den komunidad**

Kontenido di media na Kòrsou ta karakterisá dor di mucho énfasis riba polis (krímen i aksidente den tráfiiko) i asuntu polítiko, ku ta un desbentaha pa programa ku ta trata edukashon, salu, ekonomia i asuntu sosial. Resultadonan di análisis di e tim di estudio ta muestra ku periodista femenino no ta mucho representá den personal di institushonnan di media, in partikular den posishon di toma di desishon. Un reflekshon di e diversidat di komunidad di Kòrsou ta perhudiká, pasobra ta dependé riba media komersial pa proveé esei i pa sirbi e nesidat di tur grupo den komunidad, manera mucha. Media komersial na Kòrsou semper ta operá pa haña ganashi i kisas no ta mira satisfakshon di un variedat di grupo sosial, inkluyendo esun marginalisá komo lukrativo.

#### **B. Modelo pa transmishon di servisio públiko**

Na e momento aki, Kòrsou no tin un stashon pa transmití servisio públiko. E metanan di transmishon di servisio públiko no ta definí hurídikamente, i no tin legislashon spesifiko pa transmishon di servisio públiko. No ta konosí si den práktika PSB (Public Service Broadcasting) lo eksperensia diskriminashon den ningun aria. E regla lo ta bálido pa tur kanal di televishon públiko i stashon satélite i di kabel lo no por nenga pa karga PSB stashon òf kontenido.

#### **C. Auto-regulashon di media**

Media na Kòrsou no tin un kódigo di kondukta establese òf un sistema di auto-regulashon. Curaçao Media Organisation (CMO), e úniko asosiasion di media na Kòrsou, a konsentrá riba inisiá un mekanismo di auto regulashon. Pregunta tokante di kumplimentu ku prinsipio étiko i profesional ta kontestá riba nivel di eskape di media individual, ku generalmente no ta demonstrá un kultura fuerte di auto regulashon. Nos tin tiki ehèmpel di kódigo étiko, kódigo di kondukta òf statutonnan editorial den organisashonnan di media i tiki sistema di reklamo ta establese. Un enkuesta públiko pa e estudio aki ta muestra ku públiko en general no ta hopi kontentu ku e manera kon media ta trata reklamo.

## D. Kondishonnan pa honestidat i imparzialidat

A proponé un ordenansa di media na 2007 pero e no haña suficiente sosten for di e stakeholdernan ni miembronan di parlamento. P'e motibu ei no tin lei ku ta eksigí notisia honesto i balansá, asta durante di elekshon. E kódigo di transmishon ku gobièrnu a lansa na 2007 no ta konosí bou di tratado di media i no ta konsentrá riba honestidat, balanse i imparzialidat. Na Kòrsou no tin un kódigo di outo regulashon ni di statuto i no tin un órgano regular ku ta supervisá kontenido di transmishon. No tin un sistema propio pa trata reklamo di públiko, no tin Raad van Journalistiek ni un media Ombudsman. Si un hende tin reklamo e por hasi denuncia na polis òf kuminsá un kaso den korte.

## E. Nivel di konfiansa públiko den media

Resultadonan di Grupo di Enfoke i Enkuesta públiko ta sugerí ku e nivel di konfiansa ta limitá na Kòrsou. E opinion ku media ta reportá riba tópikonan hopi serio pa públiko ta moderá; konfiansa den informashon korekto i independiente for di media ta abou. E noshon ku periodista i organisashon di media tin integridat i no ta korupto no ta reina mashá na Kòrsou, i partinan grandi di públiko ta konsiderá notisia komo parsial i di kalidat pober. Un par di organisashon di media so ta hasi esfuerso pa sa mas tokante di nan públiko i e persepsion di e kalidat i e diversidat kultural di nan programanan i notisia. Satisfakshon públiko ku e manera ku media ta trata krítika i feedback riba nan trabou ta limitá. Pero organisashonnan di media ta ofresé kanalnan pa públiko partisipá aden, manera radio programa pa duna bo opinion i plataforma di media sosial manera Facebook.

## F. Seguridat di periodistanan

Na Kòrsou periodistanan por praktiká nan profeshon relativamente ku seguridat. Periodistanan i personal di media no ta sufri atake fisko di otro hende, no ta detené ilegalmente, òf asesiná pasobra nan ta hasi nan trabou. Sin embargo, algun kaso resien di atake kontra periodistanan a kousa diskushon públiko riba e tópiko di seguridat i nan ta kousa pa preokupashon. Masha tiki organisashon di media tin un maneho pa protehá salu i seguridat di nan personal. Outo sensura dor di miedu di kastigu, intimidashon òf atake no ta parse di ta sosodé hopi. Sin embargo, outo sensura kousá dor di otro faktor relatá ku e eskala chikí di e komunidad manera dependensia riba bon relashon ku fuentenan di informashon òf e protekshon di famia, ta un menasa grandi.

## **Kategoria 4: Edifikashon di kapasidat profesional i sosten na institutonan ku ta promové libertat di ekspreshon, pluralismo i diversidat**

### **A. Disponibilidat de media training profesional**

E nivel di edukashon abou i e ousensia di training pa periodismo bou di trahadónan di media na Kòrsou ta preokupante. Na Kòrsou oportunidat pa trahadó di media i manager di kompania di media pa sigui training profesional ta masha limitá. No tin ningun kurso òf programa disponibel riba base struktural: solamente ta duna workshop i training kòrtiku, ku énfasis mas riba kosnan básiko manera idioma i tékniko pa hasi entrevista i presentashon. No tin ningun kurso òf training dediká na demokrasia i desaroyo.

### **B. Disponibilidat di kurso akadémiko pa práktika media**

Kurso akadémiko pa media no ta eksistí na Kòrsou. Na 2010-2011 Universidat di Kòrsou a trata di lansa un kurso akadémiko riba BA nivel pa media: 'Media, communications and journalism.' Sin embargo, e no a materialisá. E studentenan ku ke studia periodismo mester studia pafó, ku lo enserá un brain drain.

### **C. Presensia di sindikato i organisashonnan profesional**

Kòrsou no tin un sindikato pa sektor di periodismo ku grupo di dunadó di trabou por rekonosé komo un partner di negoshashon riba asuntunan di labor i profeshon, kódigo di étika, defendé libertat di ekspreshon òf defendé interes di periodista femenino. Na Kòrsou e kuadro legal pa e derechi di forma sindikatonan ta rekonosé. Sin embargo, den práktika algun trahadó di media ku ta partisipá den e enkuesta di media so ta miembro di un sindikato. The Curaçao Media Organisation (CMO) ta e úniko asosashon di periodista profesional riba Kòrsou, pero ta parse ku e ta sirbi komo un funshon sosial so, ku ta organisá evento sosial pa su miembronan (i tambe algun workshop). Segun e resultadonan di e enkuesta i di e 'Media Workers Focus Groups', e no ta diskutí étika di media i normanan, kódigo di étika òf defendé aktivamente libertat di ekspreshon di su miembronan.

### **D. Presensia di organisashonnan di sosiedat sivil**

CSO no ta kontrolá e prestashon di media na Kòrsou lokual ta trata kontenido i propiedat na interes di promoshon di pluralismo, diversidat i análisis krítiko di media. Diferente iniciativa ta promové alfabetismo di media pero esenan por ta mas sostené. A base di informashon kolektá pa e estudio aki, CSO no ta traha den aria di media spesifikamente riba asuntunan manera duna sosten na profeshonalnan di media, monitor violashon di libertat di media, i promové libertat di ekspreshon, e derechi di seguridat di informashon i periodismo. CSO no ta parse di ta involví ku trahadónan di maneho riba asuntunan di media.

## **Kategoria 5: Kapasidat ta sufisiente pa sostené media independiente i pluralístiko**

### **A. Disponibilidat i uso di media di fuente tékniko**

Organisashon di media na Kòrsou parse tin bon aksesu na fasilidat tékniko moderno pa kolektá, produsí i distribuí notisia. Sin embargo, ekspertonan di media ta indiká ku e abilidad pa usa e fasilidatnan bon no ta presente den periodistanan, i kasi no tin training den e aria aki.

### **B. Media, transmishon i ICT penetrashon**

BTP ta obligá tur media, radio i televishon pa kubri henter isla ku e siñalnan apropiá. Sin embargo, den sierto kaso, pa motibu tékniko, no por kubri e isla 100%. Sesenta porshento di e kasnan na Kòrsou tin Internet, ku high speed broadband (klasifiká e di dos lugá den region Karibe basá riba e velosidat averahe di download for di Internet). Mas i mas tin aksesu liber na Internet specialmente den aria turístiko. Sin embargo, tin espasio pa mehorashon, en partikular dor di garantisá konekshon di Internet na skolnan i e biblioteka públiko.

## Rekomendashonnan prinsipal

### (Key recommendations – In Papiamentu)

1. Fluho liber di informashon ta esensial pa desaroyo independiente di periodismo. Pasobra Gobièrnu di Kòrsou ta e proveedor prinsipal di informashon públiko, e mester konsiderá pa institucionalisá su responsabilidadat pa respondé na petishon pa informashon i garantisá e desvelo proaktivo di informashon di gobièrnu importante ku ta inklui dokumentonan kompleto di parlamento, rapòrtnan di konseho di gobièrnu i vershonnan konsolidá di tur legislashon vigente.
2. Independensia editorial for di interes komersial, polítiko i otro interes mester ta garantisá pa lei i respetá den práktika. Organisashonnan di media mester ta liber pa determiná e forma i kontenido di transmishon di programanan i publikashonnan.
3. Pa promové media purismo i libertat di ekspreshon, mester fortifiká, modernisá i adaptá e kuadro legislativo pa transmishon pa inklui transmishon di radio banda di televishon. Debidamente mester distingui regulashon i maneho di media for di maneho i regulashon di telekomunikashon. Gobièrnu mester guia e proseso aki i duna prioridat na e adaptashonnan nesario den konsulta ku tur stakeholder, inkluyendo e sektor di media, organisashonnan sivil i Bureau Telecommunicatie en Post (BTP).
4. Mester konsiderá establesementu di un órgano regular independiente ku ta kumpli ku normanan internashonal di independensia, miembresia, responsabilidadat i transparensia. E órgano regular, no un minister, mester tin e responsabilidadat eksklusivo pa suministrá pèrnitnan di transmishon individual i pa supervisá kumplimentu, sin prehuio pa e responsabilidadatnan di e reguladó di telekomunikashon a base di e Ordenansa Nashonal di Fasilidat di Telekomunikashon.
5. Gobièrnu por konsiderá diferente opshon pa garantisá pluralismo di medianan di komunikashon na Curaçao. Esaki por inklui establesementu di un stashon di transmishon pa komunidad ku un sistema di gobernashon ku ta garantisá su independensia editorial, responsabilidadat na públiko, areglo di finansiamentu transparente ku ta protehé for di muchu intervension, i un nivel di fondo sufisiente pa e por ehekutá su mandato. Ademas, mester fortifiká eksigensia legal riba stashonnan di transmishon privá pa salvaguardiá diversidat. E opshon aki ta dependé di establesementu di un reguladó independiente ku ta outorisá pa duna transmishon limitá pa un preis rasonabel na organisashonnan non-profit (no polítiko) riba petishon. E reguladó aki por ta outorisá tambe pa eksigí tur stashonnan di transmishon proveé sierto kantidat di programa di interes públiko, manera notisia, programa edukashonal, programa ku ta kumpli ku nesidat di e grupo marginalisá, òf mensahe di kandidatonan polítikonan— si e no ta intervení direktamente ku e definishon di kontenido di programa.

6. Stashonnan mester garantisá transpar- ensha en konekshon ku tur areglo komer- sial ku ta afektá nan programanan, es desir, transmishon material pa pago, dor di organisashonnan komersial òf no komer- sial, inkluyendo entidatnan di Gobièrnu. Nan mester duna informashon kla tokante di nan programanan pa informá oyen- tenan televidentenan tokante di kada areglo komersial. Mester konsiderá un eksigensia pa transmiciónan reportá riba e areglonan komersial aki tu aña.
7. Curaçao Media Organisation i otro asosashon futuro i/òf organisashon di periodista mester promové aktivamente un kódigo di étika profeshonal ku ta konsentrá riba prinsipionan akseptá basá riba mihó práktika internashonal. Esaki lo inkluí provishon pa respetá e bèrdat, opor- tunidat pa verifiká, e derechi di públiko pa haña informashon, e derechi pa duna komentario i krítika konstruktivo, repor- tahe balansá i efektivu, uso di métodonan honesto pa haña informashon, e disponi- bilidat pa korigí eror, i proteha fuentenan konfidensial.
8. Editornan mester fortifiká e konfiansa di nan públiko dor di garantisá transparensia riba e mekanismo establese i separa- shon entre trabou editorial na un banda, i propiedat di medionan di komunikashon i afiliashon ku trahadó di anunsio promi- nente na e otro. Pa mehorá transparensia i responsabilidat, editornan por yega na un akuerdo tambe riba publikashon komun di dato di sirkulashon, publisidat, públiko di medionan di komunikashon i entrada manera ta kustumber den otro pais.
9. Mester duna atenshon speshal na e problema di outo sensura, spesialmente konsiderando e komunidad chikí na Kòrsou, ku tin e tendensia di oumentá e influensha di interes ekonómiko òf polítiko riba konte- nido editorial. Por duna atenshon dor di fasilidat training riba étika profeshonal i adaptá guia editorial fuerte ku ta protehá e independensia di redakshon i/òf trahadó di medionan di komunikashon.
10. Medionan di komunikashon mester hasi mas su esfuerso pa garantisá ku training apropiá ta optenibel pa nan periodista i manager den tur aria, spesialmente idioma, étika i periodismo di investi- gashon. Curacao Media Organisation i CSO mester sostené i fasilidat e esfuers- onan aki. Mester duna atenshon na un training pa reportá for di e perspektiva di grupo spesífiko òf vulnerabel.
11. Gobièrnu òf un CSO por establese un beka internashonal pa yuda estudiante ku ta deseá di studia periodismo den ekste- rior. Mester kompañá e iniciativa aki ku medida pa enkurashá e studiantenan aki pa bolbe Kòrsou, por ehèmpel, dor di insentivo finansiero òf oportunitat pa kore stage.
12. Gobièrnu mester konsentrá riba meho- rashon di e poblashon i instrukshon di suidananan pa nan usa medionan di komunikashon mas krítiko, en koperashon ku biblioteca, skol i otro organisashon. Programa di edukashon di medionan di komunikashon mester siña suidananan e abilidad i aktitut nesesario pa komprondé kon medionan di komunikashon ta funshoná, siguiendo práktikanan inter- nashonal den e aria aki.

# Management samenvatting

## (Executive Summary – In Dutch)

De bijdrage van de media aan het creëren en ondersteunen van functionerende democratieën en het potentieel van de media om te dienen als een katalysator voor de ontwikkeling van de mens, zijn van cruciaal belang. Vrije, onafhankelijke en pluralistische media zorgen ervoor dat burgers gesterkt worden met informatie die hen in staat stelt om geïnformeerde keuzes te maken en om actief deel te nemen aan democratische processen. De media kunnen transparantie en verantwoording verbeteren door het faciliteren van de dialoog tussen beleidsmakers en de rest van de samenleving en door het blootleggen van machtsmisbruik. De media spelen ook een belangrijke rol in het verbeteren van het inzicht van het publiek in lopende of nieuwe zaken, evenementen en prioriteiten van de regering, evenals beleidsbeslissingen en politieke keuzes.

Deze evaluatie richt zich op alle aspecten van het medialandschap van Curaçao, gebruikmakend van UNESCO's Media Development Indicators (MDIs). De evaluatie is onderverdeeld in vijf hoofdcategoryën van mediaontwikkeling en neemt daarin de rol van de medewerkers, managers en eigenaren in de media mee, maar ook van andere relevante belanghebbenden, waaronder de mediagebruikers, overheid, toezichthouders, adverteerders, politici, onderwijsinstellingen en maatschappelijke organisaties. De evaluatie heeft tot doel alle betrokken belanghebbenden te voorzien van een aantal evidence-based aanbevelingen die zullen helpen de gesignaleerde tekortkomingen aan te pakken en de ontwikkeling van vrije, onafhankelijke en pluralistische media in Curaçao te versterken.

Het Curaçaose medialandschap wordt gekenmerkt door een aanzienlijk aantal mediakanalen. Er zijn niet minder dan 28 gelicentieerde radiostations, acht kranten en ten minste drie tv-stations voor de bevolking van het eiland met iets meer dan 150.000 inwoners. Samen faciliteren deze mediakanalen een levendige debatcultuur. Echter, de media zijn niet in staat hun rol als waakhond ten opzichte van de overheid en de andere machtige actoren in de samenleving adequaat te vervullen. Door een aantal belangrijke tekortkomingen in alle categoryën en bij alle betrokken stakeholders, benutten de Curaçaose media niet ten volle hun democratisch potentieel.

## **Categorie 1: Een systeem van regelgeving dat bevorderlijk is voor de vrijheid van meningsuiting, pluralisme en diversiteit van de media**

### **A. Juridisch beleid en raamwerk**

Vrijheid van meningsuiting is verankerd in de Curaçaose grondwet en de belangrijkste internationale mensenrechtenverdragen zijn van kracht in het land. De beste garantie voor

de bescherming van de vrijheid van meningsuiting wordt geboden door Artikel 19 van het Internationaal Verdrag inzake burgerrechten en politieke rechten (IVBPR) en Artikel 10 van het Europees Verdrag tot bescherming van de Rechten van de Mens en de fundamentele vrijheden (EVRM) in combinatie met de recht om een klachtenprocedure bij het Europees Hof voor de Rechten van de Mens (EHRM) te starten. Internationale rechterlijke uitspraken zijn belangrijk bij de beoordeling van de lokale wetgeving en rechtszaken met betrekking tot de vrijheid van meningsuiting of het misbruik van deze vrijheid.

De toegang tot overheidsinformatie is geregeld in de Landsverordening openbaarheid van bestuur (LOB). De LOB is gelimiteerd tot informatieverzoeken aan de ministeries en is niet van toepassing op overheidsvennootschappen en overheidsstichtingen. Daarnaast blijkt de uitvoering van de LOB onvoldoende effectief; overheidsinformatie blijkt moeilijk verkrijgbaar omdat afgifte vaak geweigerd wordt en als informatie beschikbaar wordt gemaakt dan komt het vaak te laat. De overheid voldoet niet aan de, in de LOB vastgelegde, eisen rondom registratie van en rapportage over het gebruik van de verordening.

Omdat de overheid de geldende wetsartikelen voor de verschillende wetten niet standaard consolideert tot de geldende tekst ontstaat onzekerheid over het geldend recht.

Het parlement van Curaçao heeft de algemene beschikbaarstelling van de parlementaire stukken via bibliotheken en voor het algemeen publiek beëindigd. Individuele parlementaire stukken zijn alleen op specifiek verzoek beschikbaar.

Redactionele onafhankelijkheid wordt niet expliciet bij wet gewaarborgd en in de praktijk staat de redactionele onafhankelijkheid onder druk doordat commerciële, politieke en andere actoren proberen de inhoud van de media te beïnvloeden. Deze actoren streven dit doel vaak na in een gezamenlijke inspanning met media-eigenaren, die hun eigen commerciële belangen proberen te beschermen, en met media-werknemers, die hun baan proberen te beschermen. Vanwege de hevige concurrentie als gevolg van de grote hoeveelheid media, het feit dat de media bijna volledig afhankelijk zijn van adverteerders en private financiering, en de kleine omvang van de economie is er op de markt weinig ruimte voor onafhankelijke nieuwsproductie.

Curaçao heeft geen specifieke wettelijke bepalingen met daarin een duidelijke garantie voor het recht van journalisten om hun bronnen te beschermen. Wel kunnen journalisten zich op hun rechten beroepen, zoals vastgesteld in de geldende mensenrechtenverdragen.

De formele inspraakmogelijkheden die aan maatschappelijke organisaties geboden wordt zijn te beperkt om een wezenlijke bijdrage te kunnen leveren aan de vorming van beleid en wetgeving.

## B. Regelgevend systeem voor de omroep

Onafhankelijke regulering van de omroep is niet bij wet gewaarborgd. De toezichthouder Bureau Telecommunicatie en Post (BTP), opgericht in 2001, heeft weinig tot geen eigen formele beslissingsbevoegdheid en kreeg nooit expliciet het mandaat om de regelgevende en toezichthoudende bevoegdheden die de regering heeft op basis van de Televisielandverordening uit 1971, uit te oefenen. De meeste taken van de toezichthouder zijn van adviserende of voorbereidende aard, en de regering (dat wil zeggen, de Minister van Verkeer, Vervoer en Ruimtelijke Ordening en de minister van Onderwijs) behoudt de uiteindelijke bevoegdheid tot het verlenen van vergunningen en de regulering van de omroep in het algemeen. Daar komt bij dat BTP tot augustus 2011 zonder een Raad van Toezicht functioneerde en onder direct toezicht van de Minister van Verkeer, Vervoer en Ruimtelijke Ordening opereerde. In 2011 en 2012 werden de leden van de raad van commissarissen benoemd. De wijze waarop de raad van bestuur opereert is echter onvoldoende transparant. Het regelgevend systeem bevat ook een belangenconflict, omdat de vergunningverlenende Minister ook Curaçao vertegenwoordigt als belangrijke aandeelhouder van United Telecommunications Services (UTS), de moedermaatschappij van één van Curaçaos grote tv- en radiolicentiehouders, TeleCuraçao. Meer in het algemeen is het regelgevend systeem voor de omroep verouderd en onvolledig en maakt het onvoldoende onderscheid tussen beleid en regelgeving voor media en telecommunicatie. Het systeem is daarom dan ook tot op heden niet op een manier opgezet die ervoor zorgt dat BTP of enige andere regelgevende instantie voldoende ruimte heeft om media pluriformiteit, diversiteit en vrijheid van meningsuiting te bevorderen.

## C. Smaadwetgeving en andere juridische beperkingen voor journalisten

Er zijn geen wettelijke beperkingen die bepalen wie journalistiek mogen uitoefenen, en een in 2013 geïntroduceerde media-accreditatieprocedure voor journalisten die de wekelijkse persconferentie van de Raad van Ministers willen bijwonen, heeft niet tot veel discussie geleid. Maar in mei 2014, en zonder voorafgaande raadpleging van de pers, introduceerde het kabinet aanvullende beperkingen in een “gedragscode”. Ondanks een voortdurende dialoog tussen de pers en de overheid gericht op het vaststellen van nieuwe, gezamenlijk overeengekomen werkrelaties, wijzen deze recente ontwikkelingen op een steeds restrictiever persbeleid.

In Curaçao kan smaad niet alleen langs de civielrechtelijke weg, maar, in strijd met internationale *best practices*, ook strafrechtelijk worden aangepakt. Smaad is nog steeds een strafbaar feit en belasting van ambtenaren, de autoriteiten of de koning kan resulteren in nog zwaardere gevangenisstraffen en hogere boetes. Maar vrijheid van meningsuiting wordt beschermd door geratificeerde internationale en regionale verdragen en Curaçao beschikt over een rijke civielrechtelijke traditie. Bovendien baseren de rechtbanken en het Openbaar Ministerie hun uitspraken en handelen op de internationale praktijk. Niettemin, omdat de

Curaçaose smaadwetgeving reputaties van gezagsdragers en instellingen prioriteert, kan deze wetgeving een “chilling effect” hebben op de vrijheid van meningsuiting en leiden tot zelfcensuur. Andere beperkingen van de vrijheid van meningsuiting kunnen een vergelijkbaar effect hebben. Dit is met name het geval bij de strafrechtelijke bepalingen over godslastering en vage, ambitieuze en al te ruim geformuleerde beperkingen op programma’s in de televisie- en radio-omroepregelgeving. Verschillende media-werknemers die zijn geïnterviewd voor deze evaluatie hebben aangegeven dat ze bang zijn om voor de rechter gedaagd te worden en er is melding gemaakt van een cultuur van moddergooien, politieke druk, gesloten deuren en persoonlijke aanvallen.

Op constitutioneel niveau bevat Artikel 9 van de Staatsregeling een duidelijk verbod op preventieve censuur. Op het niveau van specifieke omroep- en persregelgeving bevat het Curaçaose reguleringskader evenwel diverse bepalingen die censuur suggereren en die een duidelijke schending vormen van de grondwet en van geratificeerde internationale en regionale verdragen. Verschillende mediamanagers, professionals en deskundigen hebben aangegeven dat deze regels verouderd en achterhaald zijn, en preventieve censuur lijkt niet de voornaamste zorg te zijn in Curaçao. In reactie op vragen over censuur onderstreepten media werknemers vooral het veelvuldig voorkomen van subtielere methoden van invloed, zoals politieke en andere druk.

## **Categorie 2: Pluraliteit en diversiteit van de media, een gelijk economisch speelveld en de transparantie van eigenaarschap**

### **A. Mediaconcentratie**

Curaçao volgt niet de internationaal aanvaarde werkwijze met betrekking tot het bevorderen van structurele pluriformiteit van de media en het reguleren van de concentratie van media-eigendom. Een ontwerp van anti-trustwetgeving bevindt zich echter wel in het wetgevingsproces, en in de praktijk lijkt er geen sprake te zijn van een aanzienlijke mate van concentratie van media-eigendom. Curaçao maakt zich ook niet sterk voor mediatransparantie. Media-entiteiten zijn niet verplicht om openbare informatie over hun eigenaarschap en jaarrekeningen te verstrekken en er is geen systematische monitoring van de structuur van de onderneming, de verdeling van eigendomsrechten en inkomstenbronnen.

### **B. Een gevarieerde mix van publieke, private en community media**

De wetgeving maakt geen onderscheid tussen publieke, private of community media en Curaçao kent geen publieke media: media geproduceerd, gefinancierd en bestuurd door het publiek en voor het publiek. Alle Curaçaose media zijn privaatrechtelijke instellingen met een commercieel doel. Daaronder valt ook het overheidsbedrijf TeleCuraçao, dat onderworpen is aan dezelfde omroepregels en voorschriften als andere omroepen en geacht wordt te opereren op commerciële basis. Een mogelijke uitzondering is Caribisch Netwerk, dat zijn

fondsen ontvangt van de onafhankelijke Nederlandse publieke omroep NTR en werkt op een niet-commerciële basis.

Anders dan de bereidheid om een groot aantal vergunningen voor commerciële omroep af te geven, bevordert de Curaçaose regering niet actief de ontwikkeling van een gevarieerde mix van media, die naast private ook publieke en community media zou omvatten. Ook maatschappelijke organisaties bevorderen de ontwikkeling van community media niet actief. Het regelgevend kader zelf biedt slechts enkele bepalingen om pluralisme in de media te bevorderen. Het nationale plan voor de indeling van frequenties schrijft een procedure voor de toewijzing van frequenties voor, om verkoop aan de hoogste bidder te voorkomen (dat is, een openbare aanbestedingsprocedure). Maar het raamwerk bevat geen specifieke verwijzingen naar pluralisme of specifieke doelstellingen voor community omroepen. Bovendien laat het Curaçaose systeem ruimte voor politieke bemoeienis met de besluitvorming over de toewijzing van radio- en televisieomroep frequenties, en naar verluidt bemoeien individuele ministers zich in de praktijk ook met individuele vergunningsaanvragen. Daarnaast vindt een belangrijk gedeelte van het besluitvormingsproces voor de toewijzing van de FM-radiofrequenties plaats in de markt. Dit komt omdat alle beschikbare frequenties in de FM-radiofrequentieband sinds 2005 volledig zijn toegewezen, en er een aanzienlijk aantal aanvragers op een wachtlijst staat. Toch kunnen nieuwkomers de markt betreden, als ze een bedrijf aankopen dat een vergunning heeft of als de bestaande vergunninghouders hun frequentie leasen.

### C. Vergunningen en de indeling van het spectrum

Er is een nationaal plan voor de indeling van radiofrequenties, kanalen en bandbreedte, hoewel dat plan niet formeel is aangenomen. Het plan en het frequentieregister van de daadwerkelijk toegewezen en beschikbare frequenties worden niet online gepubliceerd of op andere wijze op grote schaal verspreid. Ze zijn wel op aanvraag verkrijgbaar bij de regulator BTP. Het plan kent blokken van frequenties toe voor omroepgebruik, maar het wijst geen subfrequenties toe aan verschillende soorten omroepen binnen die blokken, zoals aan community omroep of publieke omroep. Curaçao is in 2006 begonnen met digitale uitzendingen en sinds 2008 zendt TeleCuraçao uit in een digitaal formaat. Verdere digitale ontwikkelingen zijn vertraagd, deels omdat er geen overeenstemming is over de beste gezamenlijke manier van handelen met betrekking tot een volledige transitie. Er is nog geen datum vastgesteld voor een volledige omschakeling van analoge uitzendingen.

Kabelomroepen opereren onder een zogenaamde *must-carry*-verplichting om alle programma's van de *free-to-air* televisie-omroepen uit te zenden, zonder extra kosten voor hun klanten. Het regulerend kader bevat voor televisie ook een "*must-carry*-achtige" bepaling die vereist dat tv-omroepen "bona fide niet-commerciële maatschappelijke organisaties" toegang verlenen als zij om uitzendtijd vragen, maar in de praktijk lijkt dit een dode letter te zijn. BTP is bevoegd om toe te zien op de naleving van de technische eisen aan de omroepen en wordt gezien als goed presterend op "technisch gebied". Maar een adequaat regelgevend

kader en een toereikende monitoring van het frequentiegebruik om ervoor te zorgen dat het daadwerkelijke gebruik voldoet aan alle licentievoorwaarden, waaronder voorwaarden aan de inhoud, ontbreekt.

## D. Belastingen en regelgeving voor bedrijven

Er lijken geen specifieke preferentiële belastingen voor mediabedrijven en voor de aankoop van media-apparatuur, zoals camera's en printers te zijn, noch voor de aankoop van ontvangstapparatuur, zoals radio's, televisies of computers. Omroepen en gedrukte media worden ook niet belast met prohibatieve belastingen op mediagerelateerde apparatuur en mediagerelateerd materiaal, zoals drukpersen of papier. De situatie met betrekking tot importtarieven is meer divers. Over het algemeen valt de meeste mediagerelateerde apparatuur, zoals omroepapparatuur, binnen de reguliere 10,5% tariefgroep. De meeste media-ontvangstapparatuur, zoals radio's, televisies en computers, valt echter binnen de 0% tariefgroep. Er zijn geen aanwijzingen dat mediamanagers belastingen, heffingen of andere kosten onredelijk hoog vinden. Maar naar verluidt zijn niet alle media-organisaties even goed in het voldoen aan hun belasting- en sociale premies plichten. TeleCuraçao, het omroepbedrijf dat eigendom is van de staat, wordt niet rechtstreeks gefinancierd of gesubsidieerd door de overheid. Toch roept de positie van TeleCuraçao als dochteronderneming van overheidsvennootschap UTS en het gebrek aan financiële transparantie de legitieme vraag op of die positie eerlijke concurrentie niet ondermijnt.

## E. Advertenties

Advertenties van de overheid en commerciële reclame zijn belangrijke bronnen van inkomsten voor de Curaçaose media. Geen van beide is echter effectief gereguleerd. Er zijn geen expliciete normen, richtlijnen of gedragscodes om een eerlijke, transparante en niet-discriminerende verdeling van overheidsadvertenties te waarborgen. Daarnaast worden advertenties van de overheid niet systematisch geregistreerd noch systematisch gecontroleerd en kan niet worden vastgesteld of eerlijke toegang voor alle media wordt gewaarborgd. De meeste geïnterviewde mediamanagers en deskundigen beoordeelden het advertentiebeleid van de overheid of van overheidsentiteiten niet als eerlijk en transparant. Er is bovendien geen duidelijk beleid om een gelijk speelveld voor alle omroepen te garanderen in de strijd om specifieke uitzendrechten voor commercieel aantrekkelijke evenementen, zoals het *Karnaval* en nationale evenementen. Waar het gaat om de regulering van commerciële reclame ontbreken belangrijke regulerende bepalingen. Het meest opvallend is dat er geen specifieke regels zijn die de scheiding en de transparantie van reclame reguleren en er zijn geen regels met betrekking tot sponsoring. Het onderscheid tussen redactionele inhoud en reclame is dan ook vaak vaag.

## **Categorie 3: Media als een platform voor democratische discours**

### **A. Media zijn een afspiegeling van de diversiteit van de maatschappij**

Media-inhoud op Curaçao lijkt te worden gekenmerkt door een te grote nadruk op politienieuws (zoals criminaliteit en verkeersongevallen) en politieke kwesties. Dit gaat ten koste van de programma's die aandacht besteden aan onderwijs, gezondheid, economie of sociale problemen. De resultaten van de analyse van het onderzoeksteam geven aan dat vrouwelijke journalisten ondervertegenwoordigd zijn onder het personeel van de media-instellingen, in het bijzonder in besluitvormende posities. Afspiegeling van de diversiteit van de Curaçaose samenleving wordt ondermijnd, deels omdat er geen andere media dan commercieel gerichte media zijn om de behoefte van alle sociale groepen te dienen. Het bedienen van een verscheidenheid van sociale groepen, waaronder gemarginaliseerde gemeenschappen, worden mogelijk als niet zo winstgevend gezien voor commerciële media en daarom vaak buiten beschouwing gelaten door de media op Curaçao.

### **B. Model voor publieke omroep**

Momenteel mist Curaçao een publieke omroep. De doelstellingen van een publieke omroep zijn niet wettelijk vastgelegd en er is geen specifieke wetgeving voor een publieke omroep. Omdat de must-carry regel geldt voor alle free-to-air televisie-omroepen, zou het satelliet- en kabel distributeurs niet worden toegestaan om de uitzending van publieke omroepen of inhoud te weigeren.

### **C. Media zelfregulering**

De Curaçaose media beschikken niet over een gevestigd zelfreguleringsstelsel of een door de media-industrie ontwikkelde gedragscode. Door de Curaçao Media Organisation (CMO), de enige mediavereniging op Curaçao, zijn tot op heden geen zelfregulerende mechanismen geïnitieerd. Vraagstukken over de naleving van beroepsethische principes worden behandeld op het niveau van de individuele media, die over het algemeen geen sterke cultuur van zelfregulering laten zien. Er zijn weinig voorbeelden van media-organisaties waar ethische codes, gedragscodes of redactiestatuten gebruikt worden, en er zijn slechts weinig klachtsystemen opgezet. Volgens het publieksonderzoek, uitgevoerd voor deze studie, is het publiek over het algemeen ontevreden over de wijze waarop de media klachten afhandelen.

### **D. Voorwaarden voor redelijkheid en onpartijdigheid**

In 2007 werd een ontwerp Media Landsverordening geschreven. Echter, de landsverordening kon niet op voldoende steun rekenen van belanghebbenden en de leden van het parlement. Er is daarom tot op heden geen wet- of regelgeving die eerlijke en evenwichtige berichtgeving vereist, zelfs niet in verkiezingstijd. De uitzendingscode die werd gelanceerd door de regering in 2007 is onbekend onder mediawerknemers en richt zich niet op eerlijkheid, evenwicht en

onpartijdigheid. Daardoor is er in Curaçao geen effectieve wettelijke of zelfregulerende code, en is er op dit moment geen regelgevend orgaan aanwezig om de inhoud van uitzendingen van media te monitoren. Bovendien is er geen goed systeem voor de afhandeling van klachten van het publiek, geen Raad voor de Journalistiek en geen media-ombudsman. Als iemand een klacht wil indienen, is de enige beschikbare optie het doen van aangifte bij de politie of het starten van een civiele procedure.

## E. Mate van vertrouwen van het publiek in de media

Uit de resultaten van de publieksenquête en de focusgroepen blijkt dat de mate van vertrouwen in de media op Curaçao beperkt is. De overtuiging dat de media verslag doen van zaken waarover echte publieke bezorgdheid bestaat is matig en het vertrouwen dat de informatie die de media geven nauwkeurig en onafhankelijk is, is laag. Het idee dat journalisten en media-organisaties integer en niet corrupt zijn, wordt niet breed gedragen in Curaçao en grotere delen van het publiek bestempelen de berichtgeving over het algemeen als van slechte kwaliteit. Slechts een paar media-organisaties spannen zich in om meer over hun publiek, de perceptie van de kwaliteit en de culturele diversiteit van hun programma's en nieuws te weten te komen. De tevredenheid van burgers over de wijze waarop de media omgaat met kritiek en feedback op hun prestaties is beperkt. Echter, media-organisaties bieden wel kanalen voor het betrekken van het publiek, zoals de populaire talk-back radioprogramma's of social media platforms zoals Facebook.

## F. Veiligheid van journalisten

Op Curaçao kunnen journalisten hun beroep relatief veilig uitoefenen. Journalisten en ander mediapersoneel worden niet fysiek aangevallen, onwettig vastgehouden of gedood als gevolg van het uitvoeren van hun legitieme activiteiten. Er is echter een aantal recente gevallen van intimidatie van journalisten, die zorgelijk zijn en die reden zijn voor publiek debat. Weinig media-organisaties hebben richtlijnen om de veiligheid en gezondheid van hun personeel te beschermen. Zelfcensuur, veroorzaakt door een angst voor straf, pesterijen of aanvallen, lijkt niet vaak voor te komen. Echter, zelfcensuur veroorzaakt door factoren die verband houden met de kleinschaligheid van de gemeenschap, zoals afhankelijkheid van een goede relatie met informatiebronnen of de bescherming van familieleden, is zeer zeker een bedreiging.

## **Categorie 4: Professionele capaciteitsopbouw en ondersteuning van instellingen die zich inzetten voor de vrijheid van meningsuiting, pluralisme en diversiteit**

### A. Beschikbaarheid van professionele media training

Het lage opleidingsniveau en het gebrek aan journalistieke opleiding onder medewerkers van de media in Curaçao is een breed gedeelde zorg. In Curaçao zijn professionele media-opleidingsmogelijkheden voor werknemers en managers van mediabedrijven beperkt.

Er is geen programma-aanpak van mediatraining en er zijn in dit gebied geen cursussen of opleidingen die op regelmatige basis worden aangeboden. Er worden slechts korte, eenmalige workshops en trainingen aangeboden, die zich vooral richten op de basis, zoals taalvaardigheid, interview- en presentatietechnieken. Er zijn geen cursussen of trainingen beschikbaar die gericht zijn op het opbouwen van het bewustzijn van de bijdrage van de media aan de democratie en ontwikkeling.

## **B. Beschikbaarheid van academische opleidingen op het gebied van media**

Momenteel zijn er geen academische opleidingen voor journalistiek in Curaçao. In 2010-2011, heeft de Universiteit van Curaçao geprobeerd een academische opleiding te starten op BA-niveau op het gebied van de media, met als titel "Media, communicatie en journalistiek". Echter, deze opleiding is niet van de grond gekomen. Studenten die journalistiek willen studeren zijn verplicht om in het buitenland een opleiding te volgen, wat kan leiden tot braindrain.

## **C. Aanwezigheid van vakbonden en beroepsorganisaties**

Momenteel heeft Curaçao geen vakbond voor de journalistiek sector, die zou kunnen worden erkend als, bijvoorbeeld, onderhandelingspartner voor werkgeversgroepen bij het bespreken van de arbeids- en professionele zaken, of die ethische codes zou kunnen verspreiden, de vrijheid van meningsuiting actief zou kunnen verdedigen of de belangen zou kunnen verdedigen van media professionals, waaronder vrouwelijke professionals. Op Curaçao is het recht om vakbonden te vormen wettelijk erkend. Echter, in de praktijk blijken weinig van de mediawerknemers, die deelnamen aan de media-enquête, lid van een vakbond. De Curaçao Media Organisation (CMO) is de enige professionele journalistieke organisatie op Curaçao. Deze organisatie heeft momenteel vooral een sociale functie, met het organiseren van sociale evenementen voor haar leden, in aanvulling op een klein aantal opleidingsactiviteiten. Volgens de resultaten van de interviews en focusgroepen voor mediawerknemers focusgroepen, bediscussieert CMO niet strategisch media-ethiek en normen, verspreidt ze geen ethische codes of verdedigt ze niet actief de vrijheid van meningsuiting van haar leden.

## **D. Aanwezigheid van de maatschappelijke organisaties**

Er wordt geen systematische monitoring van de prestaties van Curaçaose media uitgevoerd door maatschappelijke organisaties, ten aanzien van media-inhoud en eigenaarschap. Terwijl dit wel in het belang zou zijn van het bevorderen van pluralisme en diversiteit, of het verstrekken van een kritische analyse van de media. Er zijn verschillende initiatieven ter bevordering van mediageletterdheid geweest. Echter, deze initiatieven zouden beter ondersteund moeten worden. Op basis van de voor dit rapport verzamelde informatie, lijkt er geen maatschappelijke organisatie te zijn die zich specifiek inzet op het gebied van media, betreffende kwesties zoals de ondersteuning van mediaprofessionals, monitoring van schendingen van de persvrijheid,

het bevorderen van de vrijheid van meningsuiting, het recht op informatie of journalistieke veiligheid. Bovendien is er geen maatschappelijke organisatie bekend die met beleidsmakers werkt aan het vraagstuk van mediagerelateerd openbaar beleid.

## **Categorie 5: Infrastructurele capaciteit is voldoende om onafhankelijke en pluralistische media te ondersteunen**

### **A. Beschikbaarheid en gebruik van technische middelen door de media**

Mediaorganisaties in Curaçao hebben over het algemeen goede toegang tot de moderne technische faciliteiten voor nieuwsgaring, productie en distributie. Echter, media-experts geven aan dat de vaardigheden die nodig zijn om de faciliteiten naar hun volle potentieel te gebruiken bij journalisten ontbreken en opleiding op dit gebied is nauwelijks beschikbaar.

### **B. Pers, omroepen en ICT-penetratie**

Alle lokale omroepmedia die televisie en radio maken, worden door BTP verplicht om de hele natie te voorzien van de juiste signaalniveaus. Echter, in sommige gevallen wordt, om technische redenen, volledige dekking (100%) niet bereikt. Zeventig procent van de huishoudens op Curaçao heeft toegang tot het Internet, met opties voor hoge snelheid breedband (gerangschikt op # 2 in de Caribische regio op basis van de gemiddelde Internet downloadsnelheid). Gratis Internet is in toenemende mate beschikbaar, met name in toeristische gebieden. Er is echter ruimte voor verbetering, in het bijzonder met betrekking tot het garanderen van internetverbindingen op scholen.

## Belangrijkste aanbevelingen

### (Key recommendations – In Dutch)

1. De vrije stroom van informatie is een essentiële voorwaarde voor de ontwikkeling van onafhankelijke journalistiek. Als belangrijkste producent van openbare informatie, moet de overheid van Curaçao overwegen om haar verantwoordelijkheid om deze informatie vrij beschikbaar te maken zodanig in het overheidsapparaat te institutionaliseren, dat informatieverzoeken adequaat worden afgehandeld en er consequent proactieve openbaarmaking plaatsvindt van belangrijke overheidsinformatie. Hieronder vallen overheidsadviezen en rapporten, de volledige parlementaire geschiedenis van wetgeving (Statenstukken) en de geconsolideerde versies (geldende teksten) van de huidige wetgeving.
2. Redactionele onafhankelijkheid van commerciële, politieke en andere invloeden moet worden gewaarborgd in de wet en gerespecteerd in de praktijk. Mediaorganisaties moeten vrij zijn om de vorm en inhoud van uitzendingen en publicaties te bepalen.
3. Om mediapluralisme en de vrijheid van meningsuiting te bevorderen, moet het wetgevend kader voor uitzendingen worden versterkt, gemoderniseerd en aangepast, en in aanvulling op televisie- ook radio-omroep omvatten. Mediabeleid en regelgeving moet duidelijk worden onderscheiden van telecommunicatiebeleid en -regelgeving. De regering moet het voortouw nemen in dit proces en de noodzakelijke wijzigingen prioriteren in overleg met alle belanghebbenden, waaronder de mediasector, maatschappelijke organisaties en Bureau Telecommunicatie en Post (BTP).
4. De oprichting van een onafhankelijke regelgevende instantie die de internationale normen volgt inzake de onafhankelijkheid, lidmaatschap, verantwoording en transparantie, moet worden overwogen. Niet een minister maar een toezichthoudende instantie moet de exclusieve verantwoordelijkheid hebben voor de afgifte van individuele omroepvergunningen en toezicht houden op de naleving zonder afbreuk te doen aan de verantwoordelijkheden van de toezichthouder voor telecommunicatie op basis van de Landsverordening Telecommunicatie.
5. De overheid moet verschillende opties overwegen om pluralisme in de media op Curaçao te garanderen. Dit kan onder meer door het oprichten van een publieke omroep (niet-staatsbedrijf) met een bestuurlijk systeem dat de redactionele onafhankelijkheid garandeert, verantwoording aflegt aan het publiek, transparante financiële fondsen die het beschermen tegen ongeoorloofde inmenging en voldoende financiering om haar mandaat uit te voeren. Daarnaast kunnen wettelijke vereisten om diversiteit te waarborgen voor private omroepen worden versterkt. Deze optie is afhankelijk van de oprichting van een onafhankelijke toezichthouder die bevoegd is om op aanvraag een beperkte hoeveelheid zendtijd toe te wijzen tegen

een redelijke vergoeding aan not-for-profit (niet-politieke) organisaties. De toezichthouder kan ook worden gemachtigd om van alle omroepen het aanbieden van een bepaalde hoeveelheid programmering in het algemeen belang te vereisen - zoals nieuws, educatieve inhoud, inhoud die beantwoordt aan de behoeften van gemarginaliseerde gemeenschappen, of boodschappen van politieke partijen - op voorwaarde dat het niet direct interfereert bij het bepalen van programma-inhoud

6. Omroepen moeten worden verplicht om transparantie te garanderen met betrekking tot alle commerciële afspraken die hun programmering beïnvloeden, dat wil zeggen materiaal uitzenden in ruil voor betalingen, voor zowel de commerciële als niet-commerciële organisaties, waaronder overheidsentiteiten. Zij moeten ook worden verplicht om duidelijke informatie in hun programmering op te nemen om luisteraars of kijkers op de hoogte te stellen van dergelijke commerciële regelingen. Een eis voor de omroepen om jaarlijks te rapporteren over dergelijke commerciële regelingen kan worden overwogen.
7. De Curaçao Media Organisation en alle andere toekomstige verenigingen en/of vakbonden voor journalisten moeten actief een code van de beroepsethiek promoten, die zich richt op geaccepteerde principes gebaseerd op internationale 'best practices'. Deze gaat in op respect voor de waarheid en controleerbaarheid, het recht van het publiek om te weten, het recht op eerlijke commentaar en kritiek, feitelijke en evenwichtige verslaggeving, het gebruik van eerlijke methodes om informatie te verkrijgen, de bereidheid om fouten te corrigeren, en de vertrouwelijkheid van bronnen.
8. Uitgevers moeten proberen om het vertrouwen van hun publiek te versterken door te zorgen voor transparantie over de mechanismen binnen mediaorganisaties die een duidelijke scheiding waarborgen tussen het redactionele werk aan de ene kant en de eigenaren van de media en de banden met prominente adverteerders aan de andere kant. Om de transparantie en verantwoording verder te verbeteren zouden uitgevers ook overeen kunnen komen om gegevens over oplagen, advertenties, lezersaantallen en inkomsten gezamenlijk te publiceren, zoals gebruikelijk is in andere landen.
9. Bijzondere aandacht moet worden besteed aan het aanpakken van het probleem van zelfcensuur, met name gezien de geringe omvang van de Curaçaose samenleving, die de neiging heeft om de invloed van de economische en politieke belangen op redactionele inhoud te verhogen. Dit kan onder andere worden gedaan door het faciliteren van opleidingen over beroepsethiek en het opstellen van sterke redactiestatuten die de onafhankelijkheid van de redactie en/of mediawerknemer beschermt.
10. De media moeten hun inspanningen verhogen om ervoor te zorgen dat er passende opleidingsmogelijkheden voor hun journalisten en mensen in management posities worden aangeboden, op alle gebieden maar met name met betrekking tot talenkennis, ethiek en onderzoeksjour-

nalistiek. De Curaçao Media Organisation en maatschappelijke organisaties moeten hierbij ondersteunen en faciliteren. Ook moet aandacht worden besteed aan trainingen over hoe te rapporteren vanuit het perspectief van specifieke of kwetsbare groepen.

11. De staat of een maatschappelijke organisatie zou een internationale beurs kunnen opzetten voor studenten die journalistiek/media in het buitenland willen gaan studeren. Een dergelijk initiatief moet gepaard gaan met maatregelen om deze studenten te stimuleren om terug te keren naar Curaçao, bijvoorbeeld door het bevorderen van de repatriëring door middel van financiële prikkels of het faciliteren van stageplaatsen.
12. De overheid moet zich richten op empowerment van de bevolking en het opleiden van burgers tot kritische mediagebruikers in samenwerking met bibliotheken, scholen en andere organisaties. Media-educatieprogramma's moeten worden ontwikkeld om burgers te voorzien van de competenties, attitudes en vaardigheden die nodig zijn om te begrijpen hoe de media functioneren, volgens internationale 'best practices' op dit gebied.

# Introduction

## Aim and scope of the MDI assessment

### Aim

The media's contribution to creating and sustaining functioning democracies and the potential of the media to serve as a catalyst for human development justify UNESCO's media development efforts. Free, independent and pluralistic media empower citizens with information that enables them to make informed choices and to participate actively in democratic processes. The media can enhance transparency and accountability by facilitating dialogue between decision makers and the rest of society and by exposing abuses of power. The media also play a crucial role in improving the public's understanding of current or emerging issues, events, Government priorities and policy choices.

However, what are the conditions that are required to take full advantage of the democratic potential of the media and to enhance their contribution to development? What policies should be elaborated in this respect? Toward which goals should media development assistance be directed?

With these questions in mind, UNESCO's International Programme for the Development of Communication (IPDC) launched an initiative to develop a set of indicators for evaluating national media landscapes. Following a two-year consultation process that involved a variety of experts and organisations from around the world, a set of Media Development Indicators (MDIs) was finalised and unanimously endorsed by the IPDC Intergovernmental Council in 2008.

Convinced that media development requires a holistic approach, UNESCO ensured that the indicators reflect all aspects of the media sector. While fostering an enabling environment in which free and independent media can flourish is vital, it is also important to ensure the plurality and diversity of information sources, the participation of all sectors of society in the media, a high level of professional standards among journalists, and adequate infrastructure and technical resources. Thus, the UNESCO MDIs analyse all aspects of the media environment, namely:

1. Regulatory system;
2. Plurality and diversity;
3. Media as a platform for democratic discourse;
4. Professional capacity-building;
5. Infrastructural capacity.

Each of these aspects is addressed in detail in the five chapters of this publication. Together, they provide an indication of the media ecology needed for freedom of expression and pluralism and diversity of the media to be ensured. This publication can thus help state and non-state actors in the area of media development focus their interventions and guide the formulation of media-related policies.<sup>1</sup> The MDIs are also designed to contribute to the elaboration of a common approach within the United Nations in the fields of communications development and good governance.

Since 2008, the MDIs have gained widespread recognition among United Nations agencies, development partners, intergovernmental bodies, media professionals and civil society groups. The number of countries in which the MDIs have been applied is steadily increasing, with studies having been completed in Benin, Bhutan, Croatia, Ecuador, Egypt, Gabon, Jordan, Libya, the Maldives, Mozambique, Nepal, Palestine, South Sudan, Timor-Leste and Tunisia.

### Piloting the MDIs in a small island developing state in the Caribbean region

This country report assesses the national media landscape of Curaçao and is the result of UNESCO's first application of the MDIs in the Caribbean region.

The MDI assessment was performed in an inclusive and participatory manner, and examined all five previously described aspects of Curaçao's media landscape. The process included a training workshop for the Research Team in charge of the assessment, which was organised in partnership with the Curaçao National Commission for UNESCO and held on 12-13 September 2013 in Willemstad. The training, which was provided by MDI Coordinator Saorla McCabe, was attended by members of the Research Team from the University of Curaçao and the Secretary-General of the Curaçao National Commission for UNESCO, Marva Browne. The Review Team and the Advisory Committee, which consisted of a variety of stakeholders from the media sector, were also involved in the training, and provided guidance and feedback to the Research Team throughout the study's implementation.<sup>2</sup> In August 2014, the preliminary findings of the assessment were presented to stakeholders and discussed and validated at the National Conference on Media Development in Curaçao.

The assessment also includes a set of evidence-based recommendations to strengthen the development of free, independent and pluralistic media in Curaçao. Therefore, to ensure the implementation of the assessment's recommendations, follow-up will be important.

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1 UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 10-11.

2 Both the Advisory Committee and the Review Team provided guidance throughout the research process. The Review Team was consulted on a more frequent basis to verify factual issues and to provide critical comments and feedback.

## The national context of media development in Curaçao

### 1. General context

Curaçao is located in the Caribbean Sea, approximately 60 kilometres (35 miles) off the northwest coast of Venezuela. The population is approximately 150,000, with a land area of 444 square km. In 2011, the Gross National Income per capita was calculated at US\$15,409.<sup>3</sup> The UNDP Human Development Index rating for 2012 was 0.801, which was between that of the Netherlands (0.921) and the average for Latin America and the Caribbean (0.741).<sup>4</sup>

#### Language and literacy

The official languages of Curaçao are Dutch, English and Papiamentu, a Spanish and Portuguese-based Creole with significant lexical contributions from Dutch, French, English, and Amerindian and African languages. Papiamentu is the most widely spoken language on the island, and Curaçao has a long and vivid oral literary tradition in Papiamentu. The written literary tradition started to slowly develop in the late 19th century and became more popular after the Second World War as part of a general emancipatory movement.<sup>5</sup> Nevertheless, and although Papiamentu has been the language spoken in Parliament since 1958, Dutch has remained the sole formal language for administration and legal matters.<sup>6</sup> The 2011 census data reveal that Papiamentu is the primary language spoken in most households, with 78% speaking Papiamentu, compared with 9.5% speaking Dutch, 6% Spanish and 3.5% English.<sup>7</sup> There is a high rate of bilingualism in the population of Curaçao. Most citizens can converse in at least two of these four languages. Illiteracy in 2011 was estimated at 2%.<sup>8</sup>

3 Central Bureau of Statistics, Curaçao, *Korte Notitie inzake de berekening van de voorlopige Human Development Index (HDI) voor Curaçao* (Short Note on calculating the preliminary Human Development Index (HDI) for Curaçao) (Curaçao: CBA, 2013). [http://www.cbs.cw/cbs/themes/Labour and Social Security/Data/Labour & Social Security-20140511112021.pdf](http://www.cbs.cw/cbs/themes/Labour%20and%20Social%20Security/Data/Labour%20&%20Social%20Security-20140511112021.pdf) (accessed April 10, 2014).

4 Central Bureau of Statistics, Curaçao, *Korte Notitie inzake de berekening van de voorlopige Human Development Index (HDI) voor Curaçao* (Short note on calculating the preliminary Human Development Index (HDI) for Curaçao) (Curaçao: CBA, 2013). [http://www.cbs.cw/cbs/themes/Labour and Social Security/Data/Labour & Social Security-20140511112021.pdf](http://www.cbs.cw/cbs/themes/Labour%20and%20Social%20Security/Data/Labour%20&%20Social%20Security-20140511112021.pdf) (accessed April 10, 2014).

5 Aart G. Broek, *De kleur van mijn eiland* (The color of my Island) (Leiden: KITLV Uitgeverij, 2006), 2. [http://www.kitlv.nl/pdf\\_documents/carib-dekleur.pdf](http://www.kitlv.nl/pdf_documents/carib-dekleur.pdf) (accessed September 13, 2014).

6 This practice was initiated on February 8, 1958, by Chano Margaretha of the Democratic Party.

7 Central Bureau of Statistics, Curaçao, *Eerste resultaten census 2011 Curaçao* (First results census 2011 Curaçao) (Curaçao: CBS, 2012), 14. [http://www.banboneirubek.com/sites/default/files/20120731\\_Publicatie\\_Eerste\\_resultaten\\_Census\\_2011.pdf](http://www.banboneirubek.com/sites/default/files/20120731_Publicatie_Eerste_resultaten_Census_2011.pdf) (accessed September 13, 2014).

8 UNDP, *First Millennium Development Goals Report, Curaçao & St. Maarten 2011* (Port of Spain, Trinidad and Tobago: UNDP, 2011), 66. <http://www.undp.org.tt/na/mdgreportcurandsxm.pdf> (accessed September 13, 2014).

## Media landscape

The Curaçao media landscape is characterised by a substantial number of media outlets. No fewer than 28 licensed radio stations, three well-established television stations,<sup>9</sup> eight newspapers and several online news sites provide a variety of news perspectives to a population of less than 150,000 inhabitants. All of the media entities are private companies, that is, legal entities established under private law, and nearly all are privately owned. Only TeleCuraçao's television and radio stations are part of a 'public company'<sup>10</sup> owned by the State. Curaçao does not have a public broadcaster or community media.

### OVERVIEW OF LOCAL MEDIA

- There are six daily **newspapers** in the Papiamentu language (i.e., *Extra*, *Bala*, *La Prensa*, *Nobo*, *Ultimo Noticia* and *Vigilante*) and two daily newspapers in the Dutch language (i.e., *Amigoe* and *Antilliaans Dagblad*).
- There are 28 licensed **radio stations** in Curaçao, of which approximately 13 have their own editorial office.<sup>11</sup> Most of the radio stations broadcast in Papiamentu (e.g., Z-86 Radio, Direct 107.1, Kòrsou FM, Radio Hoyer 1, Radio Krioyo and Radio Mas) and a small number broadcast in Dutch (e.g., Dolfijn FM, Paradise FM and Radio Hoyer 2).
- Curaçao has six companies that are licensed for **television broadcasting**. However, three of these companies have not commenced broadcasting or are broadcasting only a limited programme as part of an initial testing phase. TeleCuraçao, CBA Television and HIT TV Channel 24 offer full programming slate. Please see the discussion under indicator 2.1.
- In addition to the traditional media, Internet and **social media** sites have become increasingly prevalent in Curaçao society as a growing number of individuals are using online news sites and Facebook to keep informed. Local journalists have also started to use Facebook to share news and comments on the news.

### USE OF MEDIA IN CURAÇAO

The media play a significant role in the daily lives of Curaçao citizens (see also the viewer, listener and reader ratings discussed under indicator 3.11). Every weekday at 7:00 a.m.,

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<sup>9</sup> Six companies are licensed for television broadcasting. However, three of these companies have not commenced broadcasting or are broadcasting a highly limited programme in a testing phase. See also the discussion under indicator 2.1.

<sup>10</sup> See: SBTNO "Stichting Bureau Toezicht en Normering Overheidsentiteiten Adviseur Corporate Governance" [www.sbtno.org](http://www.sbtno.org) (accessed September 13, 2014). Public companies are limited liability companies or private limited liability companies with a statutory seat in Curaçao and the shares of which are partly or fully, directly or through a third party, owned by the country of Curaçao.

<sup>11</sup> The number of unlicensed radio stations is unknown.

two television shows offer news and infotainment. Over 10 radio stations broadcast morning shows with news and live interviews, and Curaçao citizens have five morning papers to choose from. Social media sites, such as Facebook, have also become popular news providers in recent years, particularly for 'breaking news'.

The major Papiamentu morning papers (i.e., *Extra*, *Vigilante* and *Ultimo Notisia*) are sold on the streets at major intersections or in shops. These newspapers do not use a subscription system and follow a tabloid format using large headlines and attention-grabbing images, often portraying victims of traffic accidents or crimes or arrested offenders, to attract the potential newspaper buyer. There are some newspapers that provide a subscription service such as *Antilliaans Dagblad*, *Amigoe*, *La Prensa* and *Nobo*. These newspapers, which are also sold in shops, have in common that they claim a higher standard of journalism and do not strive to present a sensational front-page article every day. The newspapers written in Dutch (i.e., *Antilliaans Dagblad* and *Amigoe*) tend to offer more text and fewer graphic photographs on their front pages.

#### RELATIONSHIP WITH DUTCH MEDIA

For many years, Dutch-based Radio Netherlands Worldwide (RNW) has provided locally produced content for its media partners in Curaçao. In 2010, this practice culminated in Aworaki, a Curaçao-based Internet news site in Papiamentu and Dutch. This news site had to be downsized and was eventually acquired by the Dutch broadcast organisation NTR in 2012. A number of journalists work as foreign correspondents for Dutch media from Curaçao. In addition to the Dutch journalists who travel to Curaçao to cover specific stories, the foreign correspondents provide a constant and direct link with Dutch media.<sup>12</sup>

## 2. Constitutional framework and political institutions

### Constitutional framework

This assessment of Curaçao's media landscape was performed three years after the dissolution of the Netherlands Antilles on 10 October 2010 ('10-10-10').<sup>13</sup> Since 10-10-10, the former 'Island territory' of Curaçao enjoys the status of an autonomous country within the Kingdom of the Netherlands.

<sup>12</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 173.

<sup>13</sup> From 1954 to 2010 the Netherlands Antilles was an autonomous country within the Kingdom of the Netherlands. This new country was formed out of the six Dutch colonial islands in the Caribbean: Aruba, Bonaire and Curaçao in the south and Sint Maarten, Saba, and Sint Eustatius in the northeast side of the Caribbean. After Aruba left the Netherlands Antilles in 1986 the Kingdom of the Netherlands consisted of Aruba, the Netherlands Antilles and the Netherlands until the dissolution of the Netherlands Antilles in 2010.

The Kingdom of the Netherlands is a sovereign State and constitutional monarchy that consists of four countries: Aruba, Curaçao, the Netherlands,<sup>14</sup> and Sint Maarten. All citizens of the Kingdom have the Dutch nationality. The King is the official head of State, and the Kingdom is governed by the Charter for the Kingdom of the Netherlands. The Kingdom controls a limited number of core competences, including defence, foreign relations and issues related to the Dutch nationality.<sup>15</sup> As a former colonising country, the Kingdom of the Netherlands – as stipulated by the United Nations – retains responsibility for the former colonial territories with respect to the general well-being of citizens, good governance, economic health and the correct and fair functioning of the legal and educational systems. Curaçao has a high degree of autonomy in internal matters, including the implementation of fundamental human rights and freedoms, legal certainty and good governance.

### CONSTITUTION OF CURAÇAO

By becoming a new country, Curaçao was provided with the opportunity to conceive a new constitution. This constitution is not based on the Constitution of the (former) Netherlands Antilles but on the more modern Constitution of the Kingdom of the Netherlands and that of Aruba. In addition to the provisions of its own constitution, the constitutional legislation of Curaçao is complemented with provisions of the Charter for the Kingdom of the Netherlands and also with provisions of the Constitution of the Kingdom of the Netherlands.<sup>16</sup>

### CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS

The Constitution of the Kingdom of the Netherlands is relevant to the constitutional legislation of Curaçao because all modifications to the Constitution of the Kingdom in relation to (a) articles and provisions regarding fundamental human rights and freedoms, (b) the powers of the Government or (c) representative bodies, and (d) the administration of justice also affect Aruba, Sint Maarten and Curaçao.<sup>17</sup>

### THE CHARTER FOR THE KINGDOM OF THE NETHERLANDS

The Charter for the Kingdom of the Netherlands states that each country within the Kingdom has the responsibility for implementation of the fundamental human rights and freedoms, legal certainty and good governance within their country.<sup>18</sup> Ensuring that the individual

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14 Including Bonaire, Sint Eustatius and Saba - now also referred to as the BES islands - that became special municipalities within the Netherlands following the dissolution of the Netherlands Antilles on October 10, 2010.

15 Statuut voor het Koninkrijk der Nederlanden, art. 3 (Charter for the Kingdom of the Netherlands, Article 3)

16 Grondwet voor het Koninkrijk der Nederlanden (Constitution of the Kingdom of the Netherlands). <http://wetten.overheid.nl/BWBR0001840> (accessed September 13, 2014).

17 Statuut voor het Koninkrijk der Nederlanden, artikel 45 in overeenstemming met artikel 10 en onverminderd de bepalingen van artikel 5. (Charter for the Kingdom of the Netherlands, Article 45 in accordance with Article 10 and notwithstanding the provisions of Article 5).

18 Statuut voor het Koninkrijk der Nederlanden, art. 43 lid 1 (Charter for the Kingdom of the Netherlands, Article 43 paragraph 1).

countries do so is a Kingdom affair.<sup>19</sup> This “safeguard function of the Kingdom” also applies in case a country within the Kingdom does not comply with the provisions of an international treaty to which it is committed.<sup>20</sup>

International relations on a state level are defined as a Kingdom affair.<sup>21</sup> As the signing party, the Kingdom of the Netherlands has the responsibility to take measures to ensure compliance with the provisions of a treaty. The Charter for the Kingdom of the Netherlands provides clauses that enable the Kingdom of the Netherlands to assume this responsibility. If a country within the Kingdom issues legislation that violates the Charter for the Kingdom of the Netherlands or a treaty that the country is party to, the Kingdom of the Netherlands can issue a decree to suspend and declare the legislation void.<sup>22</sup> If a national government is reluctant or unable to comply with the provisions of a treaty, the Kingdom of the Netherlands can impose a general order of control and take all measures that are necessary to implement the treaty’s provisions.<sup>23</sup>

Another important connection between Curaçao’s Constitution and the Constitution of the Kingdom of the Netherlands is the link that the latter provides for the immediate effect of certain international treaty provisions. Article 5, paragraph 1, of the Charter for the Kingdom of the Netherlands<sup>24</sup> states that the regime of Articles 93 and 94 of the Constitution of the Kingdom of the Netherlands applies to all of the countries of the Kingdom. Article 93 provides for the direct application of treaty provisions, which may be binding on all persons after publication of the treaty without the need for separate national legislation to enable these treaty rights to enter into force.<sup>25</sup> Article 94 states that statutory regulations in force within the Kingdom shall not be applicable if such application conflicts with provisions of treaties that are binding on all persons or with resolutions by international institutions.<sup>26</sup>

19 Statuut voor het Koninkrijk der Nederlanden, art. 43 lid 2 (Charter for the Kingdom of the Netherlands, Article 43 paragraph 2).

20 In the case of international economic and financial agreements, Curaçao can choose not to participate. If one or more of the countries within the Kingdom decides not to participate or makes exemptions to the provisions or conditions of a treaty, this determination is specified in the treaty. Statuut voor het Koninkrijk der Nederlanden, art. 25 lid 1 (Charter for the Kingdom of the Netherlands, Article 25 paragraph 1).

21 Statuut voor het Koninkrijk der Nederlanden, art. 3 lid 1 sub b (Charter for the Kingdom of the Netherlands, Article 3 paragraph 1 sub-paragraph b).

22 Statuut voor het Koninkrijk der Nederlanden, art. 50 (Charter for the Kingdom of the Netherlands, Article 50).

23 Statuut voor het Koninkrijk der Nederlanden, art. 51 (Charter for the Kingdom of the Netherlands, Article 51).

24 Statuut voor het Koninkrijk der Nederlanden, art. 5 lid. 1 (Charter for the Kingdom of the Netherlands, Article 5 paragraph 1).

25 Statuut voor het Koninkrijk der Nederlanden, art. 93 (Charter for the Kingdom of the Netherlands, Article 93). “Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.”

26 Grondwet voor het Koninkrijk der Nederlanden, art. 94 (Constitution of the Kingdom of the Netherlands, Article 94).

## EXECUTIVE AND LEGISLATIVE POWERS

In Curaçao, legislative power is shared by the Government and Parliament. The Parliament of Curaçao (Staten van Curaçao) consists of 21 members, each of whom is elected for a four-year term in a general election. To fulfill their duties, the members of Parliament are entrusted with the Right of Initiative, the Right of Amendment, the Right to Question a Member of the Government, the Right of Interpellation, the Right to Assess the Budget and the Right of Inquiry. Curaçao's first Parliament was established on 10 October 2010, which is the day on which the Netherlands Antilles was dissolved and the Constitution of Curaçao entered into force.

Curaçao's Government consists of the King and ministers. The King is head of the Government and as such is represented by the Governor. Curaçao's Governor (as of 2013, Lucille George-Wout) is appointed for a six-year term by the monarch (as of 2013, King Willem-Alexander). In the process of government formation, the Governor appoints a *formateur* to form a coalition government that is supported by Parliament.<sup>27</sup> Together, the ministers constitute the Council of Ministers, which is chaired by the Prime Minister as *primus inter pares*. Regarding the Governor, at the country level, apart from his or her role in the process of government formation, he or she does not have a political responsibility of his or her own.<sup>28</sup>

## JUDICIAL POWER

The core of Curaçao's current judicial system has been derived from the Dutch civil law system. Judicial power is established according to the 'Trias Politica' doctrine to enable the judicial power to operate independently of the legislative and executive powers. The Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba<sup>29</sup> is a legal entity that is constituted and governed by public law. The status and position of the Court is anchored in the Constitution. Its tasks and authority are established in the Kingdom Act Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The Court of Justice is responsible for the administration of justice in first instance and in appeal on the islands, and consists of a president, members and their substitutes. The members of the Court of Justice address civil cases, criminal cases, and cases of administrative law, such as tax law, in first instance and in appeal. The Joint Court is obliged to consider the jurisprudence of the Supreme Court of the Netherlands (Hoge Raad der Nederlanden). The

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27 The *formateur*'s work may be preceded by that of an *informateur*, who is also appointed by the head of State. The *informateur* is not expected to finalise a coalition but attempts to find enough points of agreement to identify a likely coalition, from which a *formateur* is then selected.

28 However, in his or her capacity as an organ of the Kingdom, the Governor may find reason to bring matters to the attention of the Kingdom Council of Ministers. If a problem cannot be redressed at the country level, as an "ultimum remedium", the Kingdom's Government may act.

29 See also: Joint Court of Justice. "Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba." <http://www.gemhofvanjustitie.org/?lang=en> (accessed September 13, 2014).

Supreme Court of the Netherlands is the court of cassation for the Caribbean parts of the Kingdom and is located in The Hague, the Netherlands.

Because Curaçao's legislative and court systems are largely the same as in the Netherlands and are even partly incorporated into the Dutch legal system, it is possible to look at the Netherlands to assess the potential of Curaçao's legal provisions regarding press freedom. Based on an international ranking, the potential seems to be high: the Netherlands ranked first in the 2014 Freedom of the Press index produced by NGO Freedom House<sup>30</sup> and second in the 2014 World Press Freedom Index published by NGO Reporters Without Borders.<sup>31</sup>

## THE KINGDOM OF THE NETHERLANDS AND INTERNATIONAL LAW

The Kingdom of the Netherlands as a whole is party to the main international treaties regarding human rights, without any significant exemptions to the provisions or conditions of these treaties. The main international and regional agreements that are relevant to freedom of expression in Curaçao are as follows:

- The Universal Declaration of Human Rights<sup>32</sup>
- The International Covenant on Civil and Political Rights<sup>33</sup>
- The International Covenant on Economic, Social and Cultural Rights<sup>34</sup>
- The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>35</sup>
- Declaration of Chapultepec<sup>36</sup>

As a founding member of the United Nations, the Kingdom of the Netherlands has signed the Universal Declaration of Human Rights (UDHR).

The International Covenant on Civil and Political Rights (ICCPR) binds the State parties to respect freedom of expression. The Committee for Human Rights is responsible for monitoring

30 Freedom House. "Press Freedom Rankings." <http://freedomhouse.org/report/freedom-press-2014/press-freedom-rankings> (accessed May 1, 2014).

31 Reporters without Borders. "Biggest rises and falls in the 2014 World Press Freedom Index." World press freedom index 2014. <https://rsf.org/index2014/en-index2014.php#> (accessed May 1, 2014).

32 Overheid.nl. "Universele Verklaring van de Rechten van de Mens." (The Universal Declaration of Human Rights.) <https://verdragenbank.overheid.nl/nl/Verdrag/Details/008294> (accessed August 16, 2014).

33 Overheid.nl. "Internationaal Verdrag inzake burgerrechten en politieke rechten." (The International Covenant on Civil and Political Rights.) <https://verdragenbank.overheid.nl/nl/Verdrag/Details/003721> (accessed August 16, 2014).

34 Overheid.nl. "Internationaal Verdrag inzake economische, sociale en culturele rechten." (The International Covenant on Economic, Social and Cultural Rights.) <https://verdragenbank.overheid.nl/nl/Verdrag/Details/003723> (accessed August 16, 2014).

35 Overheid.nl. "Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden." (The Convention for the Protection of Human Rights and Fundamental Freedoms.) <https://verdragenbank.overheid.nl/nl/Verdrag/Details/005132> (accessed August 16, 2014).

36 The Inter American Press Association. "Heads of State." <http://www.sipiapa.org/en/chapultepec/heads-of-state> (accessed August 16, 2014).

compliance with the provisions of the ICCPR. In cases of individual complaints, the judgment of the ICCPR Committee for Human Rights is limited to non-binding recommendations.

As a member of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), all residents of the Kingdom of the Netherlands have the right to file a complaint to the European Court of Human Rights (ECtHR)<sup>37</sup> if they have exhausted all legal remedies within the Kingdom in the case of an alleged violation of provisions of the of ECHR.<sup>38</sup> Under Article 32 of the ECHR, the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols. The jurisprudence of the European Court for Human Rights increasingly defines the interpretation regarding the right to obtain information from the Government that must be applied in relation to the provisions of the ECHR. Rulings by the European Court of Human Rights do not only affect the parties who are directly involved in a trial. Regardless of whether a ruling is addressed to the Kingdom of the Netherlands or another treaty State, the ruling provides mandatory guidance for all courts within the Kingdom of the Netherlands and for legislators.<sup>39</sup> There are many cases in which the local courts and the High Court of the Netherlands refer to the rulings of the European Court of Human Rights in the judicial clarification of their own judgments and rulings.

When confronted with legislation that breaches a treaty to which Curaçao is party or in the event that the legislator is reluctant to establish new legislation in line with a treaty, a civil tort action may be initiated against the Government by individuals or interest groups that can demonstrate that they have suffered or will suffer damage as a result of this breach in legislation.<sup>40</sup> Although the court cannot force the legislator to modify the existing legislation or create new legislation, the plaintiff can request a declaratory judgment stating that the Government sustains an unlawful situation. The court can also sentence the Government to take certain actions that will repair the breach in legislation or, in case of damage, pay a financial compensation to the plaintiff. In cases that concern the classic human rights, the local courts are qualified to verify the compatibility of all local legislation with these rights.<sup>41</sup>

The Declaration of Chapultepec is a regional initiative to proclaim and support the freedom of expression and a free press. It is a project of the Inter American Press Association that was adopted at the Hemisphere Conference on Free Speech in Mexico City on 11 March 1994.<sup>42</sup> The ten principles of the Declaration are based on the idea that “no law or act of government may limit freedom of speech or press, regardless of the medium in question”. As

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37 Article 34 ECHR.

38 Article 35 ECHR and Article 2 Optional Protocol IVBPR.

39 Article 46, first paragraph of the ECHR provides that all states parties are obliged to abide by the final judgments of the ECtHR in cases in which they are parties.

40 Artikel 6:162 BW (Civil Code Book 6 Article 162).

41 Staatsregeling van Curaçao, art. 101 (Constitution of Curaçao, Article 101).

42 The Inter American Press Association. “About the Declaration.” <http://www.sipiapa.org/en/chapultepec/about-the-declaration/> (accessed April 1, 2014).

the Declaration of Chapultepec celebrates its twentieth anniversary, 32 heads of state in the Americas have signed the Declaration. The Prime Minister of the Netherlands Antilles signed the Declaration of Chapultepec in 2002.<sup>43</sup> Currently, the newspaper *Amigoe* is the only press organisation from Curaçao that is a member of the Inter American Press Association.<sup>44</sup>

## OTHER CHECKS AND BALANCES

Other important checks and balances within the Curaçao institutional framework include the Council of State (*Raad van Advies - RvA*), the General Audit Chamber of Curaçao (the *Algemene Rekenkamer*) and the Ombudsman. All three are High Councils of State and explicitly mentioned in the Constitution. Their powers and responsibilities are further detailed in national ordinances. Additionally, Curaçao has a Social Economic Council (*Sociaal-Economische Raad - SER*), which is an advisory body for the Government and Parliament.<sup>45</sup>

The Central Bank of Curaçao and Sint Maarten (*Centrale Bank van Curaçao en St. Maarten*) is responsible for maintaining the external stability of the currency and the promotion of the efficient functioning of the financial system in Curaçao (and Sint Maarten). The bank is a legal entity that is constituted and governed by public law and governed on the basis of parity between the two countries. In addition, the Executive is required to indicate to what extent it has taken into account advice or reports of the Board of Financial Supervision (*College Financieel Toezicht - CFT*) and the Law Enforcement Council (*Rijkswet Raad voor de Rechtshandhaving - RvdR*). Both the Board of Financial Supervision and the Law Enforcement Council exercise monitoring and advisory duties on behalf of the Council of Ministers of Curaçao and when relevant the Council of Ministers of the Kingdom of the Netherlands. The *Centrale Bank van Curaçao en St. Maarten* functions independently of government.

## Curaçao society: plurality, civil society and the media

### THE MEDIA IN CURAÇAO: A BRIEF HISTORIC OVERVIEW

In the early 20th century, Curaçao was a plural and segmented society with a large Afro-Caribbean population, mostly Roman Catholic (85-95%),<sup>46</sup> and with a social elite that consisted mainly of Protestants, including (former) military and Government officials, and Sephardic Jews, who were primarily active in business. The colonial elite lost a certain amount of power in 1936, when the first Constitution of Curaçao was enacted. However,

43 Prime Minister Miguel Pourier in 2002: The Inter American Press Association. "Heads of State." <http://www.sipiapa.org/en/chapultepec/heads-of-state> (accessed April 1, 2014).

44 The Inter American Press Association. "Members." <http://www.sipiapa.org/miembros-sip?pais=CUR> (accessed April 1, 2014).

45 For more on national advisory councils see Indicator 1.5.

46 Jeroen J. H. Dekker, *Curaçao zonder/met Shell: een bijdrage tot bestudering van demografische, economische en sociale processen in de periode 1900-1929* (Curaçao without / with Shell: a contribution to study demographic, economic and social processes in the period 1900-1929) (Zutphen: Walburg Pers, 1982), 96, 208.

general suffrage was not introduced until 1948. A further step toward political emancipation was taken in 1954 with the establishment of the Netherlands Antilles as an autonomous country within the Kingdom of the Netherlands.

Culturally, Curaçao played a regional function of limited importance in the media landscape of the late 19th century, primarily through small printing firms, among which the firm of Augustin Bethencourt was the most famous. The development of the local press commenced in the second part of the 19th century. In the early days of the printed press, censorship did not exist. However, the context in which the press operated was not neutral. First, the press often stood in the front line of disputes and clashes, and was viewed as an actor as much as a platform. Second, the press played a key role in the 'civilisation mission' of the Roman Catholic Church and its missionaries.<sup>47</sup> However, it is considered not to have exhibited substantial diversity. There was low representation of voices from people disadvantaged because of race, class, gender or age.<sup>48</sup>

The Curaçao press witnessed a short period of formal censorship in the early years of the Second World War, from 4 June 1940 until 1 September 1942. In 1943, the Curaçao Press Association (Curaçaoese Persvereniging) was founded in an apparent general appeal for well-informed opinions and actions. This association was supported by the Government, which determined to have the local press establish a connection with the Aneta and Reuters press release services. Simultaneously with the establishment of the Curaçao Press Association, the chapters of the Dutch Journalists-Circle (Nederlandse Journalisten-Kring) and the Dutch Roman Catholic Journalists Association (Nederlandse Rooms-Katholieke Journalisten-Vereniging) were – at least for the period of the war – established in Curaçao, which was an act of political symbolism.

The media landscape of Curaçao throughout the 20th century can be characterised on the one hand by a high level of affiliation – whether religious, political, or both – and on the other hand by a low level of resources. Until the 1960s, even the Government Information Service (*Regeringsvoorlichtingsdienst, RVD*) was supposedly affiliated with the Democratic Party,<sup>49</sup> as were a majority of newspapers. Three newspapers of major influence - *La Cruz*, *La Union* and *Amigoe* - were owned and operated by the Catholic Church. The media have been criticised until today not only because of these affiliations and the resulting lack of independent journalism but also for their shallowness and their lack of a critical and analytic approach.<sup>50</sup>

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47 Joh. Hartog, *Journalistiek leven in Curaçao* (Journalism life in Curaçao) (Willemstad: Paulus-drukkerij, 1944). [http://www.dbnl.org/tekst/hart062jour01\\_01/downloads.php](http://www.dbnl.org/tekst/hart062jour01_01/downloads.php) (accessed September 15, 2014).

48 Written Communication, August 3, 2014.

49 James R. M. Schrijs, *Een democratie in gevaar, een verslag van de situatie op Curaçao tot 1987* (A democracy at risk, a report on the situation on Curaçao to 1987) (Assen: Van Gorcum, 1990), 172.

50 James R. M. Schrijs, *Een democratie in gevaar, een verslag van de situatie op Curaçao tot 1987* (A democracy at risk, a report on the situation on Curaçao to 1987) (Assen: Van Gorcum, 1990), 172-174.

Thus, it has been claimed that there has never been a ‘fourth estate’ in Curaçao.<sup>51</sup> However, others have noted the important role of the press, e.g., prior to the 1969 Curaçao uprising. Known as *Trinta di mei* (30th of May), this uprising was a series of riots by employees of the Shell oil refinery in Curaçao on 30 May 1969 and a major turning point in the political, cultural and socio-economic conditions in Curaçao.<sup>52</sup> In the years prior to *Trinta di mei*, several magazines were established in which the unequal socio-economic conditions in the West Indies were condemned. Magazines such as *Observador* and *Kambio* attempted to create awareness among Antilleans of their social conditions and cultural identity. In addition, young intellectuals reacted against the cultural attitudes of the older generation of authors. This aversion was only stronger after the rebellion. However, the views of a magazine such as *Kambio* were unable to reach society’s working class not so much because the magazine was published in the Netherlands but because it was published in Dutch. The magazine *Vitô* (1964) was more successful. *Vitô* was a magazine at the centre of a movement that aimed to end the economic and political exploitation of the masses, which was considered to be a result of neo-colonialism. When *Vitô* (1964) began publishing in Papiamentu rather than in Dutch in 1967, it gained a mass following. Stanley Brown became editor of *Vitô* in 1966 and was later convicted for publishing the seditious texts that enabled *Trinta di mei* to occur.<sup>53</sup>

## CURAÇAO AS A CIVIL SOCIETY: FRAMEWORK AND FEATURES

Small as it may be, Curaçao possesses a highly plural society with a relatively large level of ethnic heterogeneity and a complex and much studied and debated social stratification. Historically, the key elements of inter-class dynamics are race and religion. However, in recent decades, the importance in society of these elements has faded somewhat. Possibly of greater importance, and more visible in today’s society, are the tendencies towards either Latin/Caribbean culture or Dutch/European culture, in addition to the inequalities between the ‘haves’ and the ‘have nots’. In this context, the wounds of colonialism have left scars, as can easily be observed today in both politics and society. Firstly, as historian James Schrijs notes, societal fragmentation, combined with an underdeveloped political culture, has resulted in an underdeveloped sense of community spirit and social cohesion.<sup>54</sup> Secondly, Marcha and Verweel note the emergence of a ‘culture of fear’ as a result of class fragmentation and the dynamics of oppression within the class structure. A well-known characteristic – or

51 James R. M. Schrijs, *Een democratie in gevaar, een verslag van de situatie op Curaçao tot 1987* (A democracy at risk, a report on the situation on Curaçao to 1987) (Assen: Van Gorcum, 1990), 70.

52 See e.g.: William Averette Anderson and Russell Rowe Dynes, *Social movements, violence, and change: the May Movement in Curaçao* (Ohio: State University Press, 1975).

53 See e.g.: William Averette Anderson and Russell Rowe Dynes, *Social movements, violence, and change: the May Movement in Curaçao* (Ohio: State University Press, 1975), 62-65. Additionally, see: Wikipedia. “Trinta di mei.” (Thirtieth of May.) [http://nl.wikipedia.org/wiki/Trinta\\_di\\_mei](http://nl.wikipedia.org/wiki/Trinta_di_mei) (accessed August 24, 2014). And: Wikipedia. “Curaçao uprising.” [http://en.wikipedia.org/wiki/1969\\_Curaçao\\_uprising](http://en.wikipedia.org/wiki/1969_Curaçao_uprising) (accessed August 24, 2014).

54 Joh. Hartog, *Journalistiek leven in Curaçao* (Journalism life in Curaçao) (Willemstad: Paulus-drukkerij, 1944), 158.

symptom – of this culture of fear is the ‘two faces’ phenomenon, or the ‘wall of friendliness’. That is, public behaviour and public statements may contradict private behaviour and private statements.<sup>55</sup> Others refer to the “culture of power, intimidation and control of resources”, which offers a different perspective on the role of the media.<sup>56</sup> In this context of fragmentation and a history of oppression, a tendency toward particularism in politics and society is also evident.<sup>57</sup> These social dynamics of Curaçao affect not only the level of ambition regarding civil society development but also the interplay of civil society organisations (CSOs) with the media.<sup>58</sup>

## Methodology

Based on the UNESCO Media Development Indicators,<sup>59</sup> a matrix was prepared that describes for all 50 indicators and 190 sub-indicators the methods to be used, the individuals to be interviewed, the questions to be asked and the documents to be analysed. The matrix was reviewed and validated by the Review Team and the chair of the National Commission for UNESCO Curaçao.

### Identification of the media outlets included in the analysis

The media landscape in Curaçao consists of a large number of media outlets, as described in the first chapter. A selection was made based on the following criteria. The media outlets that are included are those that:

- provide daily local news
- target audiences living in Curaçao
- have an editorial board

Therefore, included in this selection were all eight local newspapers, three television broadcasters, 13 of the 28 licensed radio stations (i.e., those stations with their own newsroom) and eight significant Internet news sites that provide local news that targets audiences living in Curaçao. A number of popular magazines (e.g., *Coaching*, which is aimed at professionals, and *Go-Weekly*, which offers entertainment and information on events for local residents and tourists), weeklies that primarily focus on tourist information, (personal) Facebook pages and SMS news services were omitted.

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55 Valdemar Marcha and Paul Verweel, *The Culture of Fear in Curaçao. Shackles of fear and silence; a cultural paradox* (Victoria BC: Trafford Publishing, 2008).

56 Richenel Ansano (review advisory board), written communication, August 3, 2014.

57 Valdemar Marcha and Paul Verweel, *The Truth about Curaçao* (Victoria BC: Trafford Publishing, 2008).

58 See Category D4.

59 UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008).

## Methods

The following methods were used to collect the data required to assess the UNESCO MDI indicators:

### DESK RESEARCH

Desk research was performed to identify and analyse the relevant documents and reports published by credible agencies on the different aspects of the media environment in Curaçao. Although such sources are limited, a few key publications and documents were identified and used. Specifically, a number of studies by renowned research institutes, such as Transparency International's (TI) 2013 report on the National Integrity System Assessment of Curaçao<sup>60</sup> and the International Press Institute's (IPI) Final Report on the 2013 IPI Advocacy Mission to the Caribbean: Focus on Criminal Defamation.<sup>61</sup> In addition, laws and regulations related to media were analysed.

### CODING ANALYSIS

Curaçao's small size makes the media field and the media workers relatively easy to map. Most individuals in the field are well acquainted with one another. Thus, the media landscape is ideally suited for a coding analysis.

Two local media experts were requested to list all of the media workers who are employed on the editorial boards of the selected media outlets. Next, both experts were requested to describe for each media worker (if known) the relevant media outlet(s), the relevant sector(s), gender, the educational background in journalism and ethnicity. This data was subjected to a frequency distribution analysis by variable.

### CONTENT ANALYSIS

Based on the identified media outlets included in this study, an analysis of the online activity of the 31 media outlets was performed in addition to a language analysis. All 31 media outlets (i.e., radio, TV, newspapers and news sites) were listed and categorised according to primary language(s) and the availability of a website (including the time since the last update), a Facebook page (including the number of 'likes'), full content online (e.g., full newspaper articles, live streaming radio and live streaming TV). As above, this data was subject to a frequency distribution analysis by variable.

60 Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013).

61 International Press Institute, *Final Report on the 2013 IPI Advocacy Mission to the Caribbean: Focus on Criminal Defamation* (Vienna, Austria: International Press Institute, 2013). [http://www.freemedia.at/fileadmin/resources/application/Caribbean\\_Mission\\_Report\\_2013.pdf](http://www.freemedia.at/fileadmin/resources/application/Caribbean_Mission_Report_2013.pdf) (accessed September 15, 2014).

## FOCUS GROUPS

As part of the qualitative segment of the research, four focus group interviews (two for the public and two for media workers) were performed, in which a group of respondents was asked about their perceptions, opinions, beliefs and attitudes toward the media (1.5 hour duration). Questions that assessed a selection of relevant indicators were asked in an interactive group setting in which the participants were free to talk with other group members to reveal different perspectives.

Based on the indicator matrix, two interview protocols were developed to measure the indicators and sub-indicators most relevant for the public and media workers.

**Public Focus Groups:** Two focus groups were organised for the public. Participants were recruited using an announcement that appeared on Facebook, in newspaper articles and on the radio. Despite these efforts, of the 12 individuals who committed to participate, only seven appeared at the consultation (four women and three men). However, the information gained during this consultation was highly valuable.

**Media Workers Focus Groups:** In addition to the above, two focus groups were organised for media workers from newspapers, radio, TV and news sites. The media outlets received personal letters that invited them to participate in the focus group and were telephoned three days after the letters were sent to ask if they would participate. Despite these efforts, only 10 media representatives agreed to participate, of which only six showed up: two newspaper reporters, one radio reporter and three online news site reporters/owners (two women and four men). Although the groups were small, the discussion provided highly valuable information.

All of the focus group interviews were recorded with the permission of the participants. To encourage the respondents to provide their views fully and to talk openly, anonymity was ensured. A number of participants indicated specifically that they valued this anonymity. Therefore, respondent feedback is presented anonymously in the report.

## INTERVIEWS

In the second part of the qualitative research, individual interviews with stakeholders were conducted. A list of the interviewed respondents is provided in the Appendix. Based on the UNESCO MDIs indicator matrix, tailor-made interview protocols were developed to measure the relevant indicators and sub-indicators for the stakeholders. All of the interviews were recorded (with permission), reported and analysed. The interviewees granted their permission to be quoted. As with the focus groups, to encourage the respondents to present their views fully and talk openly, and because Curaçao's small scale means that one's professional and personal lives are closely linked, the interviewees were offered various levels of anonymity. A number of participants specifically indicated that they preferred to remain partially (i.e. quoted only by function, not by name) or fully anonymous.

## SURVEYS

As part of the research, three surveys were performed: one Public Survey and two targeted surveys. The latter were used with media workers and media managers and owners.

Three questionnaires were developed based on the Media Development Indicators, previous MDI studies (e.g., MDI Palestine<sup>62</sup>), comparable local and international research and validated questionnaires.<sup>63</sup> All three questionnaires were reviewed by members of the Review Team and pre-tested. Then, the questionnaires were translated into Papiamentu and were therefore available in two languages (Papiamentu and Dutch).

### 1. PUBLIC SURVEY

A Public Survey was conducted in order to gather the data needed to quantitatively assess indicators on the public perception of the media, trust, participation and other related matters. A fieldwork team, which consisted of four students from the University of Curaçao, was trained to conduct the Public Survey. The data collection was performed by surveying visitors to the Civil Registry of Curaçao “Kranshi”, which cooperated in the information gathering process. Previous research has demonstrated that when conducting a survey, a sample of the visitors in the waiting area of the Civil Registry could provide a highly reliable and representative sample of the Curaçao population.<sup>64</sup> In addition, the site offers several practical advantages, such as quiet surroundings, a waiting time of 20 minutes on average (which provided a strong incentive to participate), and the presence of security guards, which created a reassuring working environment for the students.

During the period from 25 November 2013 to 13 December 2013, the trained fieldwork team approached potential respondents in Papiamentu and Dutch in the waiting area of the civil registry. On the days of data collection, at least two research assistants were present. Participation was anonymous, and the quantitative questionnaire required on average 10 to 20 minutes to complete.

62 UNESCO, *Assessment of media development in Palestine - Based on UNESCO's Media Development Indicators* (Paris: UNESCO, 2014). <http://unesdoc.unesco.org/images/0022/002277/227784E.pdf> (accessed September 15, 2014).

63 See e.g.: Jorge Luis Sierra, *Digital and Mobile Security for Mexican Journalists and Bloggers* (Freedom House and the International Center for Journalists, 2013). [http://www.freedomhouse.org/sites/default/files/Digital and Mobile Security for Mexican Journalists and Bloggers.pdf](http://www.freedomhouse.org/sites/default/files/Digital%20and%20Mobile%20Security%20for%20Mexican%20Journalists%20and%20Bloggers.pdf) (accessed August 13, 2014). See also: Jeroen de Keyser *De pers onder druk? Het aanvoelen van onafhankelijkheid onder Vlaamse journalisten* (The press under pressure? The sense of independence among Flemish journalists) (Nieuwsmonitor 12 - Nieuwsbrief steunpunt Media December 2012, 2012). <https://biblio.ugent.be/input/download?func=downloadFile&recordId=4125761&fileId=4125763> (accessed August 13, 2014).

64 For example, research by Van Wijk: Nikil Phoebe Licorice van Wijk, *Domestic violence by and against men and women in Curaçao: A Caribbean study* (Amsterdam: Reprografie Vrije Universiteit, 2012). Or by Groot, Griffith-Lendering and Pin: Maartje Groot, Merel Griffith-Lendering and Renske Pin, *19 oktober 2012: Kiko a pasa? Een onderzoek naar de factoren die van invloed zijn geweest op kiesgedrag op Curaçao bij de verkiezingen in 2012* (October 19, 2012: What happened? An investigation into the factors that impacted on electoral behavior in Curaçao at the elections in 2012.” (Curaçao: 2013).

The questionnaire was programmed using the online software SurveyMonkey. A total of 708 questionnaires were completed and entered into the software programme by experienced data-entry team members of the Curaçao Central Bureau of Statistics (CBS).

Demographic differences in the ratio between the target population, which was the adult population of Curaçao, and the respondents may decrease the representativeness of the results. For the MDI Public Survey, weighting was used to correct the representation and avoid inaccurate results. By assigning a weight to each respondent, the unequal distribution in the MDI Public Survey was decreased and representativeness increased.

**Table 1. Gender, age and country of birth: sample and population**

		Sample MDI	Population
		%	%
Gender*	Male	37.3	45.7
	Female	62.7	54.3
Age*	< 17	1.0	
	18 – 34	43.7	24.5
	35 – 50	33.2	27.1
	51 – 65	18.2	28.9
	66 +	3.8	19.5
Country of birth*	Curaçao	63.4	75.8
	Other former Netherlands Antilles (incl. Aruba)	2.7	2.9
	The Netherlands	20.4	6.0
	Dominican Republic	2.7	3.6
	Colombia	2.4	3.0
	Other	8.4	8.7

\* Compared with data from Senso 2011 (CBS, 2011)

Post-stratification was used to determine the weights.<sup>65</sup> The strata consist of three variables: gender (male or female), country of birth (i.e., Curaçao, the Netherlands and other) and age (which was divided into three categories: 15-34, 35-59 and 60+ years). The data for these variables in the Curaçao population are based on the 2011 Census (table 1).

<sup>65</sup> Post-stratification is a well-known and frequently used weighting method. According to this method, the population is divided into a number of classes (or strata). Within a stratum, all elements observed in the sample are assigned the same weight. That weight is obtained by dividing the fraction of sample units in that stratum by the fraction of the population elements in that particular stratum. The weighting of the results is used to overcome the over-representation of Dutch, young and female respondents in the MDI Public Survey. Therefore, the elderly, whose representation in the MDI Public Survey was proportionally less compared with the population figures for 2011, were awarded a higher weight than the younger respondents. This approach relies on the assumption that the results for the young respondents in the MDI Public Survey would not differ significantly from those of the young respondents who did not participate. In contrast, women and respondents born in the Netherlands were awarded a lower weight than men and those respondents born elsewhere because in relative terms they were over-represented in the MDI Public Survey.

## 2. MEDIA WORKERS' SURVEY

To assess the indicators that address media workers, the questionnaire was programmed using the online software SurveyMonkey to collect the data online. To distribute the online survey via email, efforts were made to identify the individual email addresses of media workers. Although the community and the country are both small, the assessment of a small-scale country involves several challenges. One challenge is that Curaçao does not appear to have an official press list. Therefore, media outlets are difficult to contact. A substantial effort was made to construct a list of all of the media outlets and a second list of all media workers. This effort was based on unofficial press lists gathered from individuals/stakeholders who have contacts with the press (e.g., a press list acquired from the lead researcher from the Transparency International research, a press list from the spokesperson of the public prosecutor's office and a press list used by the Government on the occasion of the Dutch royal couple's visit to Curaçao in January 2014). In addition, based on the public information retrieved from the chambers of commerce,<sup>66</sup> all of the officials named in the database as management or managing directors were identified. Many efforts were made to approach all media outlets by telephone to request their participation in the MDI assessment and the contact details of their editorial board members, editors-in-chief and management. Additionally, they were asked if they could provide the Research Team with their annual reports, advertising policies and editorial guidelines or ethical codes, if available.

In total, 208 media workers were included in the sample and received a link to the online survey by email. Reminder emails were sent five times in a response period of four weeks. Additionally, a link to the survey was posted online on Facebook in both Papiamentu and Dutch.

In total, 54 media workers completed the questionnaire (i.e., 21 fully completed the questionnaire; 33 completed it partially), 52% female and 48% male. The response rate to the Media Workers' Survey was 26%. Seventeen other respondents only answered the first language selection question. These responses were excluded from the analysis and the calculation of the response rate.

Because of the low number of respondents and because these respondents are not representative of all of the media outlets in Curaçao (i.e., there was strong representation of the Dutch press: 43.50% indicated working only in the Dutch language), the results of the Media Workers' Survey will be discussed and reported as qualitative data. The responses to the (partly open-ended) questions offer insight into the background of the assessed issues.

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66 See: Curaçao Chamber of Commerce and Industry. "Search Registry." <http://www.curacao-chamber.cw/> (accessed January 10, 2014).

### 3. MEDIA MANAGERS' SURVEY

To distribute the online Media Managers' Survey using email, efforts were made to identify the individual email addresses of media managers using public information retrieved from the chambers of commerce<sup>67</sup> and to ascertain that all of the officials named in the database were managers or managing directors. In total, 32 management members (i.e., managing directors and owners) of 26 media companies were included in the sample (distributed according to type: seven newspapers, three television broadcasters, one new online TV broadcaster, 10 radio stations, five news sites). The respondents received the invitation to complete the online survey by email, and three reminders were sent during the two-week response time.

In total, 11 respondents participated in the survey (five fully completed the survey, three completed the largest section, and three answered only the first question: language selection). The response rate of the Media Managers' Survey was calculated based on eight respondents out of 32 invited individuals, i.e. 25% (33% female and 67% male). These respondents represented seven of the 26 media companies contacted (27%), and included three newspapers, two radio stations and two news sites.

It was remarkable that only two of the eight respondents chose the Papiamentu version, and both only partially completed the survey. Similar to the Media Workers' Survey, the Dutch press was strongly represented in the Media Managers' Survey: five out of eight respondents.

As in the previous case, because of the low number of respondents and because the respondents are not representative of all of the media outlets in Curaçao, the responses to the (partly open-ended) questions of the media management survey will be discussed and reported as qualitative data. These responses offer valuable insight into the background of the issues assessed in this study.

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<sup>67</sup> See: Curaçao Chamber of Commerce and Industry. "Search Registry." <http://www.curacao-chamber.cw/> (accessed January 10, 2014).

## Category 1

A system of regulation conducive to freedom of expression, pluralism and diversity of the media



## Key Indicators

### A. LEGAL AND POLICY FRAMEWORK

- 1.1 Freedom of expression is guaranteed in law and respected in practice
- 1.2 The right to information is guaranteed in law and respected in practice
- 1.3 Editorial independence is guaranteed in law and respected in practice
- 1.4 Journalists' right to protect their sources is guaranteed in law and respected in practice
- 1.5 The public and civil society organizations (CSOs) participate in shaping public policy towards the media

### B. REGULATORY SYSTEM FOR BROADCASTING

- 1.6 Independence of the regulatory system is guaranteed by law and respected in practice
- 1.7 Regulatory system works to ensure media pluralism and freedom of expression and information

### C. DEFAMATION LAWS AND OTHER LEGAL RESTRICTIONS ON JOURNALISTS

- 1.8 The state does not place unwarranted legal restrictions on the media
- 1.9 Defamation laws impose the narrowest restrictions necessary to protect the reputation of individuals
- 1.10 Other restrictions to freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law, and justifiable as necessary in a democratic society, in accordance with international law

### D. CENSORSHIP

- 1.11 The media is not subject to prior censorship as a matter of both law and practice
- 1.12 The state does not seek to block or filter Internet content deemed sensitive or detrimental

## Category 1

# A system of regulation conducive to freedom of expression, pluralism and diversity of the media

## A. Legal and Policy Framework

### 1.1 Freedom of expression is guaranteed by law and respected in practice

The focus of this indicator is the guarantees that are provided in Curaçao for the protection of freedom of expression and press freedom. These guarantees can be found in the Constitution, the human rights treaties that are applicable to Curaçao and the legal mechanisms that are in place to ensure these rights. The standards as defined in international treaties and jurisprudence of international courts serve as a reference to evaluate local legislation on the scope of the restrictions and the legal protection mechanisms in place related to freedom of expression and freedom of the media in general.

In the Constitution of Curaçao, the guarantee to freedom of expression is defined in Article 9:

1. No one shall require prior permission to publish thoughts or opinions in print without prejudice to the responsibility of every person under the law.
2. Rules concerning radio and television will be established by ordinance. There shall be no prior supervision of the content of a radio or television broadcast.
3. No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than 16 years of age may be regulated by ordinance to protect good morals.

The preceding paragraphs do not apply to commercial advertising.<sup>68</sup>

In the first paragraph of Article 9, the freedom to publish thoughts or opinions in print is acknowledged, whereas in the third paragraph, this right is extended to other media. The addition “without prejudice to the responsibility of every person under the law” in both paragraphs makes it clear that restrictions are possible. Paragraph 2 of Article 9 guarantees the freedom of radio and television broadcasting without prior supervision of content. Broadcasting activity is however regulated by law.

To maintain internal or external security, Article 96 of the Constitution of Curaçao provides for the possibility to declare a state of emergency, during which the basic rights of freedom of the press, freedom of association and assembly, inviolability of the home and privacy of correspondence can be restricted.<sup>69</sup>

A preventive measure provided by the national Constitution against limiting freedom of expression without direct or indirect parliamentary approval is the requisite that provisions that restrict fundamental human rights can only be made by national ordinance, or through administrative legislation that is directly based on a national ordinance.<sup>70</sup> A national ordinance is an “act” that is established through legislative cooperation between Government and Parliament to enhance democratic representation.<sup>71</sup> It is the highest legislation that can be issued within the country.<sup>72</sup> This in contrast to administrative legislation, i.e. orders, decrees and regulations, which are issued exclusively by the Government.<sup>73</sup> The restriction of fundamental rights by administrative legislation is therefore only possible if this legislation is based on a national ordinance that, by delegation, entitles the Government to implement these restrictions.<sup>74</sup>

The Constitution of Curacao also provides the possibility of an independent judicial review of laws that restrict freedom of expression to verify that they are compatible with the provisions of the Constitution. Although Article 101 of the Constitution of Curacao does not allow for national ordinances to be subjected to such a judicial review, it makes an exception for legislation that restricts the fundamental human rights that are guaranteed in Articles 3 to 21 of the Constitution.<sup>75</sup> A national ordinance that is not compatible with one or more of the

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68 Staatsregeling van Curaçao, art. 9 (Constitution of Curaçao, Article 9).

69 Staatsregeling van Curaçao, art. 96 (Constitution of Curaçao, Article 96).

70 Lodewijk J.J. Rogier, *Beginselen van Caribisch Staatsrecht* (Den Haag: Boom, 2012), 93.

71 Staatsregeling van Curaçao, art. 74 (Constitution of Curaçao, Article 74). See also in the Introduction “Constitutional framework and political institutions”.

72 Arjen B. van Rijn, *Staatsrecht van de Nederlandse Antillen* (Constitutional Law of the Netherlands Antilles) (Deventer: Tjeenk Willink, 1999), 296.

73 Staatsregeling van Curaçao, art. 83 (Constitution of Curaçao, Article 83).

74 Memorie van toelichting Staatsregeling van Curaçao, 2 (Explanatory Memorandum on the Constitution of Curaçao, 2).

75 Staatsregeling van Curaçao, art. 101 (Constitution of Curaçao, Article 101).

human rights enshrined in Articles 3 to 21 of the Constitution of Curaçao may be declared inapplicable by a judge in court.<sup>76</sup>

Other guarantees of freedom of expression in Curaçao are provided by the commitment of Curaçao to international and regional human rights treaties that protect freedom of expression. Besides Curaçao's own responsibility there is the so-called "safeguard function of the Kingdom of the Netherlands", which implies that the Kingdom of the Netherlands also has the responsibility to ensure respect for freedom of expression in Curaçao and the proper implementation of the provisions of the international human rights treaties that Curaçao is bound to.<sup>77</sup>

The main international and regional human right treaties that relate to freedom of expression and a free press that Curaçao is bound to are the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Declaration of Chapultepec.<sup>78</sup>

In the International Covenant on Civil and Political Rights (ICCPR), the right to freedom of expression is defined in Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>79</sup>

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states the following in Article 10:

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<sup>76</sup> Memorie van toelichting Staatsregeling van Curaçao, 42 (Explanatory Memorandum on the Constitution of Curaçao, 42).

<sup>77</sup> For an elaboration on the safeguard function of the Kingdom of the Netherlands, see in the Introduction, "Constitutional framework and political institutions", "The Charter for the Kingdom of the Netherlands".

<sup>78</sup> See also in the Introduction, "Constitutional framework and political institutions", "The Kingdom of the Netherlands and international law".

<sup>79</sup> Article 19 ICCPR.

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>80</sup>

Regarding freedom of expression, Article 9 of the Constitution of Curaçao resembles both Article 19 of the ICCPR and Article 10 of the ECHR in many ways. All three articles describe a diverse range of freedom rights, from freedom of opinion to freedom of expression by any medium. Additionally, the treaties allow for the regulation of broadcasting as defined in Article 9 paragraph 2 of the Constitution of Curaçao.<sup>81</sup> The Constitution of Curaçao also complies with the conditions set out in the ICCPR and the ECHR by which any restriction of these rights must be necessary and defined by law.<sup>82</sup> The prohibition of war propaganda and of expressions of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence as stated in Article 20 of the ICCPR<sup>83</sup> are not addressed in the Constitution of Curaçao or in the Charter for the Kingdom of the Netherlands, but are regulated under criminal law. The Penal Code of Curacao prohibits deliberately insulting a group of people or inciting discrimination, hatred or violence against a group of people or their goods because of their religion, belief, political opinion, race, colour, language, national or social origin, physical, psychological or mental disability, gender, sexual orientation, or belonging to a national minority.<sup>84</sup>

Article 19 of the ICCPR and Article 10 of the ECHR allow the Government to restrict freedom of expression for reasons of national security or public order or to protect public health or morals. A state of emergency can only be declared under specific conditions.<sup>85</sup> A valuable

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<sup>80</sup> Article 10 ECHR.

<sup>81</sup> See also Category 1B. Regulatory system for broadcasting.

<sup>82</sup> See in regard to defamation, Indicator 1.9.

<sup>83</sup> International Covenant on Civil and Political Rights (ICCPR), Article 20. Regarding the prohibition on war propaganda, the Kingdom of the Netherlands has made a reservation to indicate that not all wars must be condemned. Reservation to ICCPR Article 20 paragraph 1 "Any propaganda for war shall be prohibited by law".

<sup>84</sup> Wetboek van Strafrecht, art. 2:60 en, 2:61 (Curaçao Penal Code, Article 2:60 and 2:61).

<sup>85</sup> Article 4 ECHR, Article 15 ECHR.

protective mechanism to discourage the misuse of a state of emergency is the obligation on States to immediately report such situations to the Secretary-General of the United Nations in order to comply with the provisions of the ICCPR, as well as to the Secretary General of the Council of Europe in order to comply with the provisions of the ECHR.<sup>86</sup>

In case of a violation of freedom of expression as protected under the ICCPR, the ICCPR offers citizens the possibility to send complaints about a State to the UN Human Rights Committee, which can result in non-binding recommendations to the State. The ECHR offers the citizens of Curaçao the right to file a complaint to the European Court of Human Rights (ECtHR) in cases concerning the violation of freedom of expression - as protected under the ECHR - after all legal remedies within the Kingdom have been exhausted.<sup>87</sup>

By acknowledging the signing of the Declaration of Chapultepec by the former Netherlands Antilles, the Government of Curaçao takes a clear position regarding the importance of freedom of speech and free press.<sup>88</sup> Although the principles of the Declaration are not legally enforceable this still creates the moral obligation to actively support and promote the principles. Among the 10 principles of the Declaration of Chapultepec, the following are most relevant to freedom of expression:

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant; it is an inalienable right of the people.
2. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
3. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.<sup>89</sup>

In the Public Survey conducted for this study, Curaçao residents were asked whether they found that they can make sufficient use of their right of freedom of expression. A majority

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<sup>86</sup> Article 4 paragraph 3 ICCPR, Article 15 paragraph 3 ECHR.

<sup>87</sup> For an elaboration on this see in the Introduction "Constitutional framework and political institutions", "The Kingdom of the Netherlands and international law".

<sup>88</sup> See also in the Introduction, "Constitutional framework and political institutions", "The Kingdom of the Netherlands and international law".

<sup>89</sup> Chapultepec Project. "Chapultepec Declaration." [http://www.declaraciondechapultepec.org/english/declaration\\_chapultepec.htm](http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm) (accessed August 7, 2014).

of 62% of respondents stated that they agree or strongly agree, whereas a minority of 12% declared that they disagree or strongly disagree with this statement. When asked if they had ever filed a complaint in relation to restrictions of freedom of expression, 3% of respondents claimed to have done so.<sup>90</sup>

A modest 17.5% of the respondents answered positively to the question “*do you know where to turn to if your right of freedom of expression is obstructed?*”.<sup>91</sup> Among these, nearly half (47.5%) mentioned the Ombudsman<sup>92</sup> as the body to turn to, while approximately one quarter (26%) answered the Court of Justice.<sup>93</sup>

Local professionals that were interviewed were generally of the opinion that the people of Curaçao do not fully make use of their right to freedom of expression. As possible explanations for this, interviewees mentioned citizens’ strong financial and social dependence and perceived dependency relations, either financially or socially, combined with the small scale of the community in Curaçao and the legacy of a strong patronage system.<sup>94</sup>

## 1.2 The right to information is guaranteed in law and respected in practice

This indicator assesses the right of individuals to access information held by public bodies. The focus is on whether the country has adopted a law that grants individuals the right to request and receive information held by public institutions. The indicator assesses the nature of the rules established by this law and the legitimacy of possible restrictions on the right to information, whether based on privacy, national security or commercial confidentiality.

The Constitution of Curaçao does not include a specific guarantee of access to information. In the years preceding the constitutional changes of 2010, Curaçao had a unique opportunity to elaborate a progressive constitution for the new country in which an explicit guarantee of the right to information could have been provided. However, unlike in Sint Maarten, which simultaneously with Curaçao became an autonomous country within the Kingdom of Netherlands, no explicit mention of this right was included in Curacao’s 2010 Constitution.<sup>95</sup>

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90 Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

91 Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

92 The task of the Ombudsman is to investigate the conduct of administrative bodies on its own initiative or when there is a complaint by a citizen. Also in regard to the limitation of freedom of expression by a Government administrative body the Ombudsman can be contacted. For more information on the Ombudsman, see in the Introduction, “Constitutional framework and political institutions”, “Other checks and balances”.

93 Response to Public Survey, conducted for the MDI Assessment Curaçao, 2014.

94 Interviews February 14, March 11, April 4, 2014.

95 Paragraph 1 to 4 of the human rights Article 10 of the Constitution of Sint Maarten are identical to Article 9 of the Constitution of Curaçao. However, the Constitution of Sint Maarten was complemented with the following paragraph 5: “No one requires prior permission to gather and to receive information, subject to all persons’ responsibilities as laid down by national ordinance. The right to gather information may be restricted by national ordinance.”

Although the Constitution of Curaçao grants the right to submit a written request to a public body,<sup>96</sup> this “right of petition” is not the same as a general right to information. The explanatory memorandum on the Constitution of Curaçao states that the “right of petition” guarantees the right to contact public bodies directly and that the submission of a written request can therefore not be a reason for criminal prosecution. It additionally states that although public bodies are not obliged to take notice of public speech in general, they are obligated to process written requests and to respond substantively within a reasonable time period.<sup>97</sup>

Government advisory reports from the three high councils of state, (1) the Council of State,<sup>98</sup> (2) the General Audit Chamber<sup>99</sup> and (3) the Ombudsman,<sup>100</sup> and other “regular advisory bodies” (*vaste colleges van advies*), such as the Social Economic Council of Curaçao,<sup>101</sup> must be made public in accordance with the provisions established in the national ordinance regarding the council.<sup>102</sup>

The Constitution of Curaçao also states that the Government must perform its duties regarding open government in accordance to the national ordinance that is applicable.<sup>103</sup> Which ordinance is relevant for regulating the access to government information depends on whether the information is more or less than 20 years old. The National Ordinance on Open Government is applicable to information featured in documents that are less than 20 years old. For document that are older than 20 years the Archives Ordinance applies.

## National Ordinance on Open Government

The main legislation that addresses the right to public information is the National Ordinance on Open Government, which has been in force since 1995.<sup>104</sup> The National Ordinance on Open Government regulates and defines the rights of citizens to obtain topical information on government policies, advisory reports and administrative matters. The National Ordinance on Open Government is an elaboration of the responsibility of Curaçao to ensure the implementation of the safeguards of “good and democratic governance” as required by

<sup>96</sup> Staatsregeling van Curaçao, art. 7 (Constitution of Curaçao, Article 7).

<sup>97</sup> Memorie van toelichting Staatsregeling van Curaçao, art. 7 (Explanatory Memorandum on the Constitution of Curaçao, Article 7).

<sup>98</sup> The Council of State advises the Government on matters of legislation and administration; with regard to initiative-draft legislation the Council advises Parliament.

<sup>99</sup> “The General Audit Chamber (Algemene Rekenkamer) is responsible for examining the revenue and expenditure of the country.” Staatsregeling van Curaçao, art. 68 lid 2 (Constitution of Curaçao, Article 68 paragraph 2).

<sup>100</sup> The Ombudsman has the task to investigate the conduct of administrative bodies on request or on its own initiative. Landsverordening Ombudsman, art. 2 lid 2 (National Ordinance Ombudsman, Article 2 paragraph 2).

<sup>101</sup> The Social Economic Council of Curaçao (Sociaal Economische Raad) advises the Government regarding legislation and policy on socio-economic issues.

<sup>102</sup> Staatsregeling van Curaçao, art. 73 (Constitution of Curaçao, Article 73).

<sup>103</sup> Staatsregeling van Curaçao, art. 73 (Constitution of Curaçao, Article 91).

<sup>104</sup> Landsverordening openbaarheid van bestuur Curaçao, PB 1995, 211 (National Ordinance on Open Government, PB 1995, 211).

Article 43 of the Charter for the Kingdom of the Netherlands<sup>105</sup> as well as the implementation of legislation promoting openness and transparency of government policy as defined in Article 91 of the Constitution of Curaçao.<sup>106</sup>

A request for information based on the National Ordinance on Open Government can be addressed only to an administrative authority (i.e., a ministry),<sup>107</sup> thereby excluding government-owned companies and foundations. In response to questions raised during the parliamentary debate in 1994 on the National Ordinance on Open Government proposal regarding the limitations on access to public information that this exception imposes, the Government justified these limitations using the following arguments:

- (1) the administrative authorities are also in possession of the documents on government policy toward government-owned companies and foundations, and the stronger the contact between the Government and a government-owned company or foundation, the more information will be available to the public;
- (2) this exclusion will prevent complicated issues, such as the distinction between operations and policies of the government-owned companies and foundations and the policies of the administrative authorities;
- (3) the Government considers it appropriate that the government-owned companies and foundations act within the spirit of the Ordinance and, if necessary, have proper consumer complaint and dispute procedures.<sup>108</sup>

Since the 1980s, a growing number of government activities are being placed under government-owned companies and foundations. According to the Foundation of Supervision and Standards for Government Entities (SBTNO), there are currently 19 government-owned companies and 40 government-owned foundations in Curaçao.<sup>109</sup> For access to documentation regarding these government-owned entities that the administrative authorities are not in possession of, the public is fully dependent on the willingness of these entities to provide information. Transferring government activities to government-owned companies and government-owned foundations is thus likely to create obstacles in the enforcement of the right to access to public information. In response to the Government's first argument, it can be argued that those government entities that do not have substantial contact with

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<sup>105</sup> Memorie van toelichting Landsverordening openbaarheid van bestuur, Algemeen deel (Explanatory Memorandum on the National Ordinance on Open Government, General section).

<sup>106</sup> Staatsregeling van Curaçao, art. 91 (Constitution of Curaçao, Article 91).

<sup>107</sup> Landsverordening openbaarheid van bestuur, art. 1 (National Ordinance on Open Government, Article 1).

<sup>108</sup> Nota naar aanleiding van het eindverslag No. 8, Ad artikel 1, 2, Staten van de Nederlandse Antillen zitting 1995-1996-1701, Landsverordening openbaarheid van bestuur, (Parliamentary debate document No. 8, Ad. Article 1, 2, National Ordinance on Open Government).

<sup>109</sup> Stichting Bureau Toezicht en Normering Overheidsentiteiten (SBTNO). <http://www.sbtno.org/Overheidsentiteiten.html> (accessed August 14, 2014).

the administrative authorities in particular need to be accessible to members of the public who seek information regarding their policy and activities. Regarding the second and third arguments provided, it should be noted that it is a general good governance practice that every organisation that deals with customers must have proper complaint and dispute procedures in place and an information policy that consists of clear and sufficiently detailed guidelines and information on which documents can be made public. The fact that “the Government finds it appropriate that the government-owned companies and foundations will act within the spirit of the ordinance”<sup>110</sup> raises the question of why the government-owned companies and foundations are then excluded from the National Ordinance on Open Government.

The Explanatory Memorandum on the National Ordinance on Open Government states that “because there are interests that go beyond the public interest of access to information, the Ordinance makes certain restrictions regarding the information that will be made public”.<sup>111</sup> There are a total of 11 possible restrictions, of which the first 10 are divided into two groups. The first group, mentioned in Article 11, contains ‘absolute’ reservations in cases concerning:

- (a) the disclosure of information that could harm the unity of the Government;
- (b) information that is regarded to pose a risk to the security of the country;
- (c) business or manufacturing data provided to the authorities under condition of confidentiality.<sup>112</sup>

The second group of restrictions deals with ‘relative’ grounds for exclusion. In these cases the government body must make a balanced decision on whether the interest of the applicant outweighs the interests in relation to the following:

- (a) the economic or financial interests of the country;
- (b) the investigation and prosecution of criminal offenses;
- (c) the inspection, control or supervision by or on behalf of governing bodies;
- (d) the respect for privacy;
- (e) the interest that the intended recipient of the information has in being the first to take knowledge of it;

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<sup>110</sup> Nota naar aanleiding van het eindverslag No. 8, Ad artikel 1, 2, Staten van de Nederlandse Antillen zitting 1995-1996 1701, Landsverordening openbaarheid van bestuur, (Parliamentary debate document No. 8, Ad. Article 1, 2, National Ordinance on Open Government).

<sup>111</sup> Memorie van toelichting Landsverordening openbaarheid van bestuur, art. 11 (Explanatory Memorandum on the National Ordinance on Open Government, Article 11).

<sup>112</sup> Landsverordening openbaarheid van bestuur, art. 11 lid 1 (National Ordinance on Open Government, Article 11 paragraph 1).

- (f) the prevention of disproportionate advantage or disadvantage to natural or legal persons involved or third parties;
- (g) the relations of Curaçao and the Kingdom of the Netherlands with other States or international organisations.<sup>113</sup>

The eleventh and final ground on which information may be denied to the public is mentioned in Article 12. This restriction is aimed to protect individual ministers and government officials by ensuring the confidentiality of the opinions expressed and the comments made during the preparation and implementation of government policy. This restriction enables individual ministers and government officials to discuss government matters freely without the fear of possible consequences for their private lives.<sup>114</sup>

The decision to deny an information request must always be adequately justified.<sup>115</sup>

All requests for information regarding administrative matters must be considered as applications under the National Ordinance on Open Government to which the Government must respond to within three weeks.<sup>116</sup> This response can take the form of the provision of the information requested, an adequately justified refusal to grant the requested information, or an adequately justified statement to extend the response period by an additional three weeks.<sup>117</sup> The Ordinance makes no provisions for cases where (i) the three- or six-week response period is exceeded, (ii) there is no response, or (iii) the information request is denied.

A decision regarding an information request, under the National Ordinance on Open Government, has the status of an administrative decision.<sup>118</sup> In cases where the administrative decision is considered unsatisfactory, the public may object to it or appeal against it at an administrative court. Another possible means to respond to an unsatisfactory response to an information request is to file a complaint at the Ombudsman office.<sup>119</sup>

When analysing the extent to which the right to information is guaranteed in Curaçao, it is important to also look at the manner in which the Government applies the provisions of the law. For example, if the Government does not abide by the three- or six-week response period to respond to an information request, the applicant is obliged to initiate an administrative proceeding, which involves costs. Moreover, some of the 11 possible restrictions allowed for

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113 Landsverordening openbaarheid van bestuur, art. 11 lid 2 (National Ordinance on Open Government, Article 11 paragraph 2).

114 Memorie van toelichting Landsverordening openbaarheid van bestuur, art. 12 (Explanatory Memorandum on the National Ordinance on Open Government, Article 12).

115 Memorie van toelichting Landsverordening openbaarheid van bestuur, art. 11 (Explanatory Memorandum on the National Ordinance on Open Government, Article 11).

116 Memorie van toelichting Landsverordening openbaarheid van bestuur, art. 3 (Explanatory Memorandum on the National Ordinance on Open Government, Article 3).

117 Landsverordening openbaarheid van bestuur, art. 6 (National Ordinance on Open Government, Article 6).

118 If the response period expires, the result is a negative decision on the request, i.e., "passive rejection".

119 See also in the Introduction, "Constitutional framework and political institutions", "Other checks and balances".

by the National Ordinance on Open Government to deny information requests are too broadly defined.<sup>120</sup> A restriction that can easily be misinterpreted and thereby result in the rejection of a large range of requests for information is the protection of the privacy of government officials (Article 12, National Ordinance on Open Government). Article 12 of the Ordinance makes it possible to restrict access to information if the information can be traced back to individual ministers and government officials. In a small-scale public administration such as the one in Curaçao, virtually all information can be traced back to its source and therefore be deemed confidential on the basis of Article 12. Thus, if caution is not exercised in the application of this restriction, the right to public information could be *de facto* jeopardised.

The Minister of General Affairs is required to send an annual report to Parliament on how the National Ordinance on Open Government has been applied in the previous year.<sup>121</sup> No reports for the years 2010 through 2013 could be obtained through the Department of General Affairs.<sup>122</sup> It is not clear if the Department of General Affairs maintains any records on information requests since Curaçao became an autonomous country in 2010.<sup>123</sup>

The National Ordinance on Open Government not only requires the Government to provide information upon request but also demands that information is provided in a proactive manner.<sup>124</sup> Under the responsibility of the appropriate Minister and by its own initiative, the governing body is obliged to provide information on its public policies, including on their preparation and implementation.<sup>125</sup> Advisory reports on new policy matters must be made public as soon as possible and no later than six weeks after the governing body receives the report.<sup>126</sup> To avoid overloading public service workers, older reports on existing policy do not require proactive publishing.<sup>127</sup> A separate chapter in the National Ordinance on Open Government addresses the publication of the advisory reports that are prepared by the Council of State and the Social Economic Council of Curaçao.<sup>128</sup> Because of ministry-transcending issues that are advised on by these two councils, the publication of the reports from the Council of State and the Social Economic Council of Curaçao is the responsibility of

<sup>120</sup> Landsverordening openbaarheid van bestuur, art. 11 en 12 (National Ordinance on Open Government, Article 11 and 12).

<sup>121</sup> Landsverordening openbaarheid van bestuur, art. 15 (National Ordinance on Open Government, Article 15).

<sup>122</sup> The absence of information regarding the availability of data on the National Ordinance on Open Government is also mentioned in the 2013 Transparency International report: Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013).

<sup>123</sup> Interview, March 18, 2014.

<sup>124</sup> Landsverordening openbaarheid van bestuur, art. 8, 9 en 10 (National Ordinance on Open Government, Article 8, 9 and 10).

<sup>125</sup> Landsverordening openbaarheid van bestuur, art. 8 en 9 (National Ordinance on Open Government, Article 8 and 9).

<sup>126</sup> Landsverordening openbaarheid van bestuur, art. 9 lid 3 (National Ordinance on Open Government, Article 9 paragraph 3).

<sup>127</sup> Landsverordening openbaarheid van bestuur, art. 9 (National Ordinance on Open Government, Article 9).

<sup>128</sup> See also in the Introduction, "Constitutional framework and political institutions", "Other checks and balances".

the Minister of General Affairs.<sup>129</sup> Regarding the Internet sites of the government-established advisory bodies that were visited in the course of this assessment, it can be stated that in addition to the good level of general information that is provided, the sites fulfilled their obligation to make the concerned body's advisory reports available.<sup>130</sup>

## Archives Ordinance

The Archives Ordinance requires that the documents of Government and government-related bodies that are over 20 years old be transferred to the National Archives.<sup>131</sup> By this stage, most of the documents are already open to the public.<sup>132</sup> Only three of the previous 11 restrictions on access to information mentioned in Articles 11 and 12 of the National Ordinance on Open Government are applicable to documents that are more than 20 years old:

1. protection of privacy;
2. prevention of disproportionate benefit or disadvantage to natural or legal persons involved or third parties;<sup>133</sup>
3. security of the country.<sup>134</sup>

These three exceptions expire after 70 years unless the Minister of General Affairs determines otherwise.<sup>135</sup>

## Access to legal documents

In addition to its obligation to inform the public in a proactive manner regarding government policy as stipulated in the National Ordinance on Open Government, the Government is also required to set out the conditions for public access to certain legal documents. The most important categories of legal documents are the Acts of Parliament, the legislative history of the legislation, the legislation in force, and court rulings.

The Constitution of Curaçao states that no Act of Parliament shall enter into force prior to its publication.<sup>136</sup> All new legislation is published in the "Official Publications" ("Publicatie Blad"), which is available on request. A PDF version of the "Official Publications" is regularly published

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<sup>129</sup> Raad van Advies. "Adviezen" <http://www.raadvanadvies.an/adviezen>; Sociaal Economische Raad. "SER." <http://www.ser.an/> (both accessed April 3, 2014).

<sup>130</sup> For example: Raad van Advies. "Adviezen" <http://www.raadvanadvies.an/adviezen>; Sociaal Economische Raad. "SER." <http://www.ser.an/> (both accessed April 3, 2014). Stichting Bureau Toezicht en Normering Overheidsentiteiten ("SBTNO") <http://www.sbtno.org/> (accessed August 14, 2014).

<sup>131</sup> Archieflandsverordening 2007 art. 28 PB 2008, no. 7 en Archiefbesluit art. 18 PB 2008, no. 26 (Archives Ordinance 2007 Articles 17 and 18, Archives Decree Article 18 PB 2008, no. 26).

<sup>132</sup> Archieflandsverordening 2007, art. 19 (Archives Ordinance 2007, Article 19).

<sup>133</sup> Archieflandsverordening 2007, art. 20 (Archives Ordinance 2007, Article 20 paragraph 1).

<sup>134</sup> Staatsregeling Curaçao, art. 96 (Constitution of Curaçao, Article 96).

<sup>135</sup> Archieflandsverordening 2007, art. 20 lid 4 (Archives Ordinance 2007 Article 20 paragraph 4).

<sup>136</sup> Staatsregeling van Curaçao, art. 81 (Constitution of Curaçao, Article 81).

on the website of the Parliament of Curaçao and occasionally, selected parliamentary documents are also made available.<sup>137</sup> Contrary to the parliamentary documents of the Parliament of the Netherlands Antilles the parliamentary documents of the Parliament of Curaçao are not generally made available to the public. The documents are usually available only upon specific request. As a result of this policy, the important parliamentary history collection of the library of the University of Curaçao is no longer up to date.

Only when a new or a completely revised law is adopted is the full text of the law published in the “Official Publications”. In most cases however, only the amendments to the law are published and the consolidated text of the law is not provided. Only a selection of the laws currently in force can be purchased as a book or in a binder, and because new editions or updates appear irregularly, the exact content of the legislation in force is often unclear to the general public, businesses and government bodies.

There is a private initiative that intends to address this issue. The Curaçao International Financial Services Association (CIFA)<sup>138</sup> is sponsoring the Dutch Caribbean Legal Portal to create an online database to provide free access to legislation that is currently in force for Curaçao.<sup>139</sup>

As a general rule, court sessions are open to the public, and rulings are read out in public.<sup>140</sup> Third parties may file requests to consult a court ruling at the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. In cooperation with the Netherlands, a small selection of court rulings by the civil, criminal and administrative courts are placed on the Dutch Government website dedicated to court legislation.<sup>141</sup>

In accordance with the Constitution of Curaçao and international treaties, the current Government has formulated a policy to provide information to the public and perform its duties regarding open government. The Government program ‘Hope and Confidence (2013-2016)’ states the following:

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137 Parlamento di Kòrsou. “Dokumentonan.” (Documents.) <http://www.parlamento.cw/documents/> (accessed April 4, 2014). A few of the “Official Publications” of 2010 and 2012 have also been made accessible through the official website of the Government of Curaçao: <http://www.gobiernu.cw/web/site.nsf/web/1F4502204C038E070425797C004DC984?opendocument> (accessed April 4, 2014).

138 CIFA (Curaçao International Financial Services Association) is the representative association of professionals in the international financial services sector of Curaçao and functions as a sounding board for government, regulatory agencies, and monetary authorities on issues concerning the international financial services sector in Curaçao: CIFA. “Curaçao International Financial Services Association.” <http://www.cifa-curacao.com/en/> (accessed August 9, 2014).

139 Dutch Caribbean Legal Portal. “Online database wetgeving.” (Online Database Legislation.) <http://www.dutchcaribbeanlegalportal.com/news/latest-news/3864-online-database-wetgeving> accessed April 12, 2014); Dutch Caribbean Legal Portal. “Laws Ordinances.” <http://www.dutchcaribbeanlegalportal.com/legal-documents/laws-ordinances/viewcategory/11-laws-ordinances> (accessed April 12 2014).

140 Staatsregeling van Curaçao, art. 104 en EVRM, art. 6 (Constitution of Curaçao, Article 104 and EVRM, Article 6).

141 De Rechtspraak. “Zoeken in uitspraken.” (Search rulings.) <http://uitspraken.rechtspraak.nl/> (accessed April 12 2014).

The Government also wants to work on transparency and promotion of citizens' participation, for instance by making all information available to the public on the Internet and by creating interactive possibilities, which facilitate direct contact with the citizen, and at the same time strengthen transparency.<sup>142</sup>

## The right to information in practice

Despite the implementation of legislation concerning the right to information and the formal commitment of the Government to make information available and to ensure transparency of public policy making, there have been complaints regarding the implementation of this right. Interviewed professionals who regularly submit information requests through the official government channels state that the outcome is often disappointing.<sup>143</sup> The information provided is often incomplete, provided too late, or the request is refused altogether. Instances of the applicants not receiving any response to their request have also been reported. As a result, applicants are at times dependent on their personal contacts for acquiring the required information. A number of interviewed professionals were of the view that public officials often act in a restrictive manner regarding the provision of information and in some cases seem unaware that government information is indeed public property.<sup>144</sup> It was also suggested that public officials require clearer guidelines to speed up processing and to prevent the arbitrary and/or unjustified refusal of information requests.<sup>145</sup>

Research conducted for this study indicates that the National Ordinance on Open Government does not function as intended. In particular, respondents conveyed a negative view of its effectiveness. The Government's failure to fulfil its obligation to report to Parliament on the processing of information requests<sup>146</sup> contributes to a general impression that the responsibility of the Government to make information available and to make policy-based decisions transparent has not been internalised by public bodies. One interviewee voiced the opinion that "there are quite a few 'public relation laws' in place aimed primarily at pleasing the outside world" but with limited impact in practice.<sup>147</sup>

When asked about their opinion on access to official information, 43% of the Public Survey respondents agreed or strongly agreed with the notion that access is sufficient, whereas 22% either disagreed or strongly disagreed.<sup>148</sup> A total of 17% of the respondents claimed that they had been denied access to information to which they were entitled. Just over 11%

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142 *Gobiernu*. "The Government Programme: 2013 – 2016 'HOPE and CONFIDENCE', A Summary.", 6. [http://www.gobiernu.cw/web/site.nsf/resources/A380A9A1AC44287904257C8C00566641\\$FILE/RESUMEN ENG 20.pdf](http://www.gobiernu.cw/web/site.nsf/resources/A380A9A1AC44287904257C8C00566641$FILE/RESUMEN ENG 20.pdf) (accessed September 15, 2014).

143 Interview March 11, 2014 and Interview April 4, 2014.

144 Interview March 11, 2014 and Interview April 4, 2014.

145 Interview April 4, 2014.

146 *Memorie van toelichting Landsverordening openbaarheid van bestuur*, art. 11 en 12 (Explanatory Memorandum on the National Ordinance on Open Government, Article 11 and 12).

147 Interview March 11, 2014.

148 Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

of respondents claimed being aware of where to turn to if denied information to which they are entitled, with 27% of these mentioning the Ombudsman and 9% mentioning the Court.<sup>149</sup>

### 1.3 Editorial independence is guaranteed in law and respected in practice

The legal protection of editorial independence is a key pillar of the right to free expression. Editorial decisions should be made by media organisations on the basis of professional criteria and the public's right to know, without interference from Government, regulatory bodies or commercial entities.<sup>150</sup> This indicator addresses the question of whether broadcasters are required to allocate broadcasting time to the Government. It also questions whether pressures from others undermine editorial independence, such as informal and extra-legal harassment that does not amount to physical attacks or violence.<sup>151</sup> The reaction of the media to these activities in terms of self-censorship are addressed under Indicator 3.14.

In Curaçao, broadcasters are currently legally required to allocate broadcasting time to carry specific broadcasts on behalf of the Government, albeit for a limited amount of time per day. Article 10 of the Television National Ordinance requires broadcasters to provide "institutions" designated by the Government with free air time for at most 30 minutes a day for announcements in the public interest. The Government is to determine the specific time of day of such broadcasts.<sup>152</sup> Non-compliance with this requirement is considered to be a crime and can be sanctioned with a prison sentence of up to six months or a financial penalty of up to NAf 10,000 (ca. US\$ 5,650).<sup>153</sup> Similar provisions can be found in the individual television and radio licenses. The television broadcasting license provisions include an additional clause allowing the Governor to also claim broadcasting time.<sup>154</sup>

It remains undetermined how this arrangement operates in practice, but occasionally the Government does have a noticeable presence on television and on radio, and several Ministers run their own programmes on television or radio. This could suggest that the Government does indeed make use of the mentioned provisions. A civil servant who was interviewed indicated, however, that the Government purchases airtime, and does not make use of its right to the free use of airtime.<sup>155</sup> In contrast, several media experts stated that the Government did occasionally receive free airtime of between 30 minutes and one hour per week to be used, for example, for 'addresses to the nation' or press conferences for a

<sup>149</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>150</sup> See, e.g., ARTICLE 19 (March 2002), Principles 2 and 4.

<sup>151</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 47. The issue of physical attacks or violence is assessed under Indicator 3.13.

<sup>152</sup> Television National Ordinance, Article 10.

<sup>153</sup> *Idem*, Article 15.

<sup>154</sup> TV-license, Article 13, and radio license, Article 15. Note, however, that a radio license does not require broadcasters to allocate time for government broadcasts free of charge.

<sup>155</sup> Interview, March 18, 2014.

government department. A media manager who was interviewed stated that the Government does not always make use of this airtime but that if the Government decides that the following day “a TV station has to go live, it goes live, and does so free of charge”.<sup>156</sup> Another media manager indicated that at least in the recent past, “[the ruling parties] came on air whenever they wanted to”.<sup>157</sup>

External influence on media content is in practice a far greater threat to editorial independence than that posed by the somewhat antiquated media legislation. Indeed, the pressure that media outlets find themselves under from external actors wishing to influence media content for commercial, political or other interests was singled out by all but a few interviewees during the research process for this assessment. Media owners themselves often play an important role in the lack of editorial independence in practice, if only because many of them combine ownership with the job of editor-in-chief.<sup>158</sup>

Overt practices described in the interviews<sup>159</sup> and in responses to the surveys<sup>160</sup> include the following:

- Media owners telling their editors not to discuss a particular issue. For example, to refrain from addressing subjects such as homosexuality or from publishing negative information regarding friends or business partners of the owners. Reportedly, media owners also occasionally steer their journalists into publishing articles to further their own personal interests.
- Major advertisers suspending their commercials as a means of inflicting pressure. After the broadcasting of an apparently disagreeable report concerning a particular company, there have been cases of advertisers suspending their commercials for a number of days or for a month ‘for administrative reasons’ or simply withdrawing their advertising altogether from the outlet without explicitly communicating their reasons.
- Companies sponsoring the media, including public companies, or politicians, including ministers, calling to enquire ‘whether something can be done’ about negative reports about them or in an attempt to obtain more media exposure. The Research Team was also told that a Minister requested a media company to take extra care when reporting about neighbouring Venezuela, which is considered an important business partner in connection with Curaçao’s refinery activities. Just recently, a

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<sup>156</sup> Interview, March 19, 2014.

<sup>157</sup> Ibid.

<sup>158</sup> See also the network analysis conducted and further discussed in Category 3.

<sup>159</sup> E.g., Interviews January 24, March 18, March 19, March 20, March 21, 2014.

<sup>160</sup> Response to the Public Survey, Media Workers’ Survey, and Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

company in financial trouble requested the media not to publish anything on the company without its prior written approval.<sup>161</sup> Banks were also repeatedly mentioned as influential entities that the media must handle cautiously.

- In some cases, it has been reported that money explicitly changes hands, for example, when a company pays for an advertisement to replace a scheduled news item, which it does not wish to see published. Another media manager informed the Research Team that major advertisers also recently tried to have their commercials broadcast as if they were part of the network's newscast. "Some partners thought their financial support gave them the right to also decide what could and could not be said about their product in the news".<sup>162</sup> In addition, several individuals who were interviewed indicated that money can purchase unobstructed podium time, during which those individuals who are 'interviewed' can present their message without criticism.

Although most of the individuals who were interviewed in the assessment suggested that such overt practices occur, they also added that these do not occur often. More commonly, it would appear, editorial independence is at stake due to commercial and political interests exerting influence in substantially more subtle ways. The media are businesses, and in Curaçao, with its large number of media outlets, the near total dependence of these outlets on advertisers and other private financing, paired with the island's small economy, allows for little independent news production. Maintaining good relations is essential for the outlet's viability. Thus, in the words of an interviewed media expert, to survive and keep employees on the payroll, "you have to pamper the financiers you have and court the ones you want".<sup>163</sup> In addition, because of the dependence of broadcasters on the Government for their license renewal, pampering politicians, to the extent that they are part of the Government, is essential for business.

There appears to be little professional distance between the media, journalists and the advertisers or the business community in general. In Curaçao, it is not uncommon for companies to distribute gifts, sponsor trips abroad, organise a car lottery and throw parties for the press corps.<sup>164</sup> On one recent occasion, two companies that were celebrating their jubilees organised a buffet that included a raffle with prizes of NAF 400 to 600 (US\$ 226 to \$ 339) as a means of "thanking the local media for their support".<sup>165</sup>

<sup>161</sup> "Mediastilte rondom Ctex verzocht" (Media silence around Ctex requested), *Amigoe*, August 18, 2014.

<sup>162</sup> Interview March 19, 2014.

<sup>163</sup> Interviews February 19, February 26 and March 19, 2014.

<sup>164</sup> See also Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 181-182.

<sup>165</sup> "Bedankje voor de Pers" (Thanks to the press), *Knipselkrant Curaçao*, June 12, 2013, <https://www.kkcuracao.net/?p=29365> (accessed May 5, 2014).

Politicians also strive to foster good relations with the media or certain media entities and regularly purchase airtime. Occasionally, their political party ensures the appointment of a journalist or media manager as a member of the supervisory board of a public company, which has become a popular 'side-job' for media professionals.<sup>166</sup> In particular, several radio stations appear in practice to have been taken under the wing of specific politicians, and several of those who were interviewed specifically noted that Curaçao radio stations, at least the major ones, cannot be considered to be independent broadcasting media. The independence of TV broadcasters from politics is also occasionally questioned. The interview questions for TeleCuraçao's televised debate between parliamentary election candidates in October 2012 were reportedly leaked to one of the participating political parties.<sup>167</sup> Specifically with respect to state-owned TeleCuraçao, a media manager noted that "[p]oliticians are under the impression that because the Government is a shareholder of UTS, which is the parent company of TeleCuraçao, they are entitled to have the final say, including in what is broadcast".<sup>168</sup>

Another way in which individuals at times attempt to influence the media is through the use of public opinion. For example, in one widely publicised case in 2011, the late political leader of one of the then ruling parties publicly called for a boycott of a radio station and its advertisers for "waging a war against the Government".<sup>169</sup> The radio station's owner responded stating that the politician had "tr[ie]d to destroy a company with twenty employees" and that this attempt represented "a dangerous trend".<sup>170</sup>

The general view that emerges from the interviews and the results of the surveys carried out for this study is a media landscape in which media owners, media managers and media workers are influenced by the interests of the media's main sources of financing. As a result, news presentation suffers modifications, in some cases information is toned down or omitted and in other cases given special emphasis, not on the basis of professional criteria but according to commercial and personal interests. The media managers who were interviewed for this report appeared to be well aware of the importance of 'neutrality'<sup>171</sup> and indicated that they think twice before publishing 'watchdog' type news reports because they fear that such reports will be perceived as exhibiting partiality. One media professional explained, "for

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<sup>166</sup> This practice was mentioned in the Interviews on March 19 and 21, 2014. See also Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 181-182.

<sup>167</sup> See also "TeleCuraçao en TCFM moeten weg bij UTS" (TeleCuraçao and TCFM have to leave UTS), *Amigoe*, May 2 2014.

<sup>168</sup> Interview, March 19, 2014.

<sup>169</sup> "Bedrijfsleven niet gevoelig voor chantage Wiels" (Business sector not sensitive to blackmail Wiels), *Radio Nederland Wereld Omroep*, August 1, 2011, <http://archieff.nrw.nl/caribiana/article/bedrijfsleven-niet-gevoelig-voor-chantage-wiels> (accessed February 11, 2014).

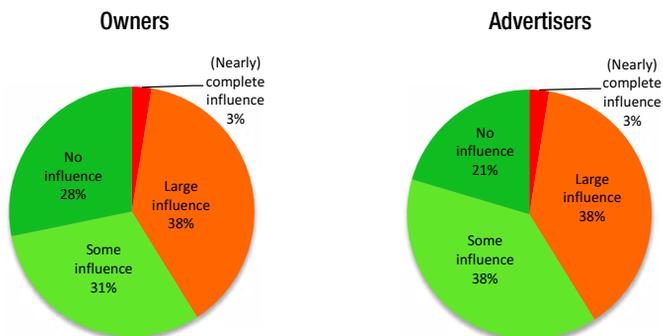
<sup>170</sup> *Ibid.*

<sup>171</sup> Interview, March 19, 2014.

those writing critical reports, many things can go wrong; business, on the other hand, is doing well".<sup>172</sup>

A total of 41% of the media workers who completed the Media Workers' Survey reported that advertisers and owners exert a large or nearly complete influence on their editorial content. 38% of those surveyed reported 'some influence' from advertisers and another 31% noted 'some influence' from owners. Finally, 21% of those surveyed reported noticing 'no influence' in their media organisation's editorial content from advertisers and 28% answered similarly as regards the influence of owners (figure 1).<sup>173</sup>

**Figure 1. Editorial independence. How satisfied are you in general about the independence of the editorial board(s) where you work? To what extent is there improper influence on the editorial board from owners? And from advertisers? (Media Workers' Survey (n=39))**



Apart from the constitutional provisions on freedom of expression noted under Indicator 1.1, there is no specific guarantee of editorial independence in law. The media-specific regulations that exist contain several provisions that impose restrictions on programme content and allow the Government to carry out prior censorship, as discussed below.<sup>174</sup> The Constitution also allows for the departure from the right to freedom of the press in cases when a state of emergency (*uitzonderingstoestand*) is declared with the aim of safeguarding internal or external security (see also the discussion under Indicator 1.1).<sup>175</sup>

<sup>172</sup> Interview, March 21, 2014. Also March 18, 2014.

<sup>173</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>174</sup> See the assessment under Indicators 1.10 and 1.11.

<sup>175</sup> Constitution, Article 96. However, the declaration of such a state of emergency is only possible in specified cases, to be determined by national ordinance, which requires involvement of Parliament and Government. As far as could be established, the ordinance specifying the cases in which a state of emergency may be declared and the consequences of such a declaration has not yet been adopted.

In 2007, the Government presented to Parliament draft legislation, the draft Media National Ordinance, to replace the present Television National Ordinance. This now dormant draft legislation, which appears to have been indefinitely postponed,<sup>176</sup> contains a provision that provides a degree of legal protection for editorial independence. The draft legislation explicitly states that every broadcasting organisation is responsible for the “form and content of its broadcasting programme”<sup>177</sup> and aims to protect broadcasters against undue interference, whether from the Government or from advertisers. A further provision is included that requires broadcasting organisations to have a programme statute detailing journalists’ rights and obligations and editorial independence vis-à-vis advertisers.<sup>178</sup> In combination with these provisions, the draft Media National Ordinance also features “programming regulations”, that would allow Government to require broadcasting media to allocate a specific amount of broadcasting time to certain types of programmes, such as informative, cultural or educational.<sup>179</sup> However, the draft law retains some restrictions on content already included in the Television National Ordinance. This is further discussed under Indicator 1.10.<sup>180</sup>

#### 1.4 Journalists’ right to protect their sources is guaranteed in law and respected in practice

This indicator’s focus is on the right of journalists to protect their sources. This right must be guaranteed in law and respected in practice so journalists can protect the confidentiality of their sources without fear of prosecution or harassment.

During this assessment, no reports were identified or heard of about journalists being harassed or prosecuted with the aim of forcing them to compromise the confidentiality of their sources. There appear to be no laws or government policies dealing with the issue of protection of journalists’ sources.

Regarding possible evidentiary privileges,<sup>181</sup> the citizens of Curaçao have the duty to testify when called to civil<sup>182</sup> and criminal proceedings.<sup>183</sup> If a witness in a civil case refuses to

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<sup>176</sup> Draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007. The draft is deposited in the Government’s archives. The current formal status of the draft legislation is unclear.

<sup>177</sup> Idem, Articles 13 and 17.

<sup>178</sup> Idem, Article 17.

<sup>179</sup> Explanatory Memorandum on Articles 13, 14 and 17 of the draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-200. Cf. also Article 10 of the TV-license.

<sup>180</sup> In ways similar to the Television National Ordinance, the draft Media National Ordinance does not allow the broadcasting of programmes whose content or nature conflicts with the safety of the country or public order or morals. It adds a restriction on the broadcasting of programmes which instigate hatred or discrimination. However, the more general reference to ‘general interest’ is no longer included. Compare Media law BES (*Mediawet BES*), Article 5, which abolishes all such content restrictions. The Dutch legislator argued the interests involved are sufficiently protected by the relevant criminal law provisions.

<sup>181</sup> Wetboek van Strafvordering art. 251, 252 en 253 (Code of Criminal Procedure Article 251, 252 and 253).

<sup>182</sup> Wetboek van Burgerlijke Rechtsvordering art. 144 lid 1 (Code of Civil Procedure Article 144 paragraph 1).

<sup>183</sup> Wetboek van Strafvordering art. 247 (Code of Criminal Procedure Article 247).

testify, interested parties can request the judge to apply civil imprisonment.<sup>184</sup> The public prosecutor is in a position to apply coercive measures on individuals who refuse to cooperate with a criminal investigation.<sup>185</sup> Within a criminal investigation information can be collected by methods such as surveillance, the interception of communications and judicial search and seizure of documents.

Because there are no local laws or government policies regarding the protection of journalistic sources or the special treatment of journalists by the public prosecutor and police, precedents for what is considered lawfully acceptable in Curaçao must be found in the protection that is provided by treaty provisions and their clarification in authoritative court rulings.

The European Court of Human Rights has explicitly granted journalists a special position under Article 10 of the European Convention on Human Rights.<sup>186</sup> According to the European Court of Human Rights:

Protection of journalistic sources is one of the basic conditions for press freedom. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest (chilling effect). As a result the vital public-watchdog role of the press may be undermined, and the ability of the press to provide accurate and reliable information may be adversely affected. Therefore an order of source disclosure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.<sup>187</sup>

To be in accordance with the provisions and the case law of the European Convention on Human Rights regarding the right of journalists to protect their informants, the Committee of Ministers of the Council of Europe recommends the implementation of the following (minimal) principles in the domestic law of EU Member States:<sup>188</sup>

1. The right of non-disclosure of journalists.
2. The right of non-disclosure of other persons who by their professional activity are involved with this information.
3. The limits to the right of non-disclosure must be within the restrictions mentioned in Article 10, paragraph 2 of the Convention (i.e., be directed at one of the following goals: ensuring respect of the rights or reputations of others or protecting national security, public order, public health or public morals).

<sup>184</sup> Wetboek van Burgerlijke Rechtsvordering art. 152 (Code of Civil Procedure Article 152).

<sup>185</sup> Wetboek van Strafvordering art. 255 en 256 (Code of Criminal Procedure Article 255 and 256).

<sup>186</sup> ECHR March 27 1996, Goodwin v. the United Kingdom. NJ 1996, 577, LJM AD2519.

<sup>187</sup> Ibid.

<sup>188</sup> Council of Europe. "Recommendation No. R (2000) 7 of the Committee of Ministers. March 8, 2000." [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(2000\)007&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(2000)007&expmem_EN.asp) (accessed April 20, 2014).

4. In legal proceedings against a journalist on grounds of an alleged infringement of the honour or reputation of a person, authorities should first consider all other alternative evidence to identify the journalist's sources.
5. For disclosures, there must be a direct legitimate interest. The journalists must be informed of their right not to disclose their sources and regarding that right's possible limitations in accordance with Article 10 of the convention. Sanctions for not disclosing a source shall only be imposed by judicial authorities when a review of these sanctions by another judicial authority is possible. The extent of a disclosure must be limited as much as possible.
6. Interception of communications, surveillance and judicial search and seizure measures should not be applied if their purpose is to circumvent the right of journalists not to disclose information and identify a source in a direct or indirect way.
7. The principles shall not in any way limit national laws on the protection against self-incrimination in criminal proceedings, and journalists should, as far as such laws apply, enjoy such protection with respect to the disclosure of information that would identify a source, for example, in a situation in which journalists would be obliged to disclose a source under Article 10, paragraph 2 but retain the protection against self-incrimination in case of criminal charges against them.

Regarding the decision to conduct a search for or a seizure of a journalist's research material, the European Court of Human Rights demands that there be procedural safeguards in place that provide "the guarantee of a review by a judge or another independent and impartial decision-making body". The ECtHR further states that:

The requisite review should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources exists prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources' identity if it does not.<sup>189</sup>

In Curaçao, there is no such procedural safeguard in place. The role of an independent body would be to apply the three-step test that the European Court of Human Rights uses

to determine whether an infringement on a journalist's right to freedom of expression is acceptable.<sup>190</sup>

## 1.5 The public and civil society organizations (CSOs) participate in shaping public policy towards the media

This indicator focuses on whether opportunities exist for CSOs and the public to contribute in the formulation and shaping of the policy, legal and regulatory framework of the media, and the extent to which they have an impact.

There is no separate advisory council dedicated to media policy and legislation in place in Curaçao. When necessary, media-related policy and legislation are thus discussed within existing, more general, advisory councils.

The Government advisory structure of Curaçao is embedded in the Constitution. All proposed legislation concerning a national ordinance or national decree that contains general binding provisions must be submitted to the Council of State for consultation before being debated in Parliament.<sup>191</sup> If this procedure has not been followed, the proposed legislation cannot result in a valid law.<sup>192</sup> In addition to the three high councils of state that are explicitly mentioned in the Constitution of Curaçao<sup>193</sup> – namely the Council of State, the General Audit Chamber (Algemene Rekenkamer) and the Ombudsman -, other “permanent advisory councils” can be established.<sup>194</sup> The Government can also appoint temporary<sup>195</sup> and single assignment<sup>196</sup> councils by national or ministerial decree<sup>197</sup> that can include CSO or NGO representatives.

To regulate the creation of advisory councils, the National Ordinance on Advisory Councils was introduced in 2010.<sup>198</sup> This Ordinance established a new Government advisory structure that simplified and harmonised the process of creation of Government advisory councils, and makes a clear distinction between advisory councils and less formal consultation bodies. This distinction is significant because the activities carried out by consultation bodies are not

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<sup>190</sup> At international level, a similar three-part test can be found in General Comment n°34 concerning Article 19 of the ICCPR. For an elaboration on this procedural safeguard see Section C – Defamation and other legal restrictions on FoE.

<sup>191</sup> Staatsregeling van Curaçao, art. 69 lid 2 (Constitution of Curaçao, Article 69 paragraph 2).

<sup>192</sup> Lodewijk J.J. Rogier, *Beginnelsen van Caribisch Staatsrecht* (Den Haag: Boom, 2012), 166.

<sup>193</sup> Viz.: (1) the Council of State (Raad van Advies), (2) the General Audit Chamber (Algemene Rekenkamer) and (3) the Ombudsman. See also in the Introduction, “Constitutional framework and political institutions”, “Other checks and balances” and 1.2. The right to information is guaranteed in law and respected in practice.

<sup>194</sup> Staatsregeling van Curaçao, art. 72 (Constitution of Curaçao, Article 72).

<sup>195</sup> Landsverordening adviescolleges, art. 5 (National Ordinance on Advisory Councils, Article 5).

<sup>196</sup> Landsverordening adviescolleges, art. 6 (National Ordinance on Advisory Councils, Article 6).

<sup>197</sup> In contrast to permanent advisory councils, that must be established in a national ordinance by Government and Parliament. Landsverordening adviescolleges, art. 4 (National Ordinance on Advisory Councils, article 4).

<sup>198</sup> Memorie van toelichting Landsverordening adviescolleges, 1-3 (Explanatory Memorandum on the National Ordinance on Advisory Councils, 1-3).

considered to result in official recommendations to the administrative authority on the policy or draft legislation that is being developed.

According to the Explanatory Memorandum on the National Ordinance on Advisory Councils, this structure allows existing forms of dialogue, advocacy and consultation to continue while leaving ample room for the development of new forms of citizen participation in the drafting of legislation and policy.<sup>199</sup>

Although informal consultation during the administrative preparation of draft legislation does take place, there is no legislation or regulation specifying when such consultation should be considered necessary or the manner in which it should be organised.<sup>200</sup> CSOs are therefore largely dependent on the Government's willingness to involve them in shaping public policy.

## B. Regulatory system for broadcasting

### 1.6 Independence of the regulatory system is guaranteed by law and respected in practice

Since 2001, Bureau Telecommunicatie en Post (BTP<sup>201</sup>) has been Curaçao's regulatory body for the telecommunications industry, including broadcasting.<sup>202</sup> To serve the public interest, the independence of the regulatory system should be guaranteed by law and respected in practice. This indicator assesses the legal and other formal protections in place to ensure the independence of BTP based on a number of guiding principles, including membership, accountability, remit and funding.<sup>203</sup> BTP's role in addressing issues such as pluralism, fairness and freedom of expression is covered under Indicators 1.7 and 2.4. Actual evidence of BTP's independence in practice, or the lack thereof, is also addressed under Indicator 2.4. There is no regulatory body for print or online media and there are only a small number of specific provisions that regulate print media. These provisions are discussed under Indicator 1.11.

BTP is a legal entity that is constituted and governed by public law. The National Ordinance Bureau Telecommunication and Post, which establishes BTP, explicitly states that BTP is "independent with regard to its internal organisation, its financial management and the

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199 Memorie van toelichting Landsverordening adviescolleges, 1-3 (Explanatory Memorandum on the National Ordinance on Advisory Councils, 1-3).

200 Lodewijk J.J. Rogier, *Beginnelsen van Caribisch Staatsrecht* (Den Haag: Boom, 2012), 166.

201 Bureau Telecommunications and Post.

202 Note that this assessment only focuses on BTP's duties as related to broadcasting. BTP has many other duties that are not discussed in this assessment. For more information, see <http://www.btpu.org>.

203 UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 21. Also, e.g., Eve Salomon, *Guidelines for Broadcasting Regulation* (Paris: UNESCO and CBA, 2006); ARTICLE 19, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (London: March 2002).

representation of its own interests”.<sup>204</sup> BTP has a Director and a Supervisory Board (*Raad van Toezicht*). The Director and the members of the Supervisory Board are to be appointed, suspended and dismissed by national decree on the recommendation of the Minister of Traffic, Transportation and Urban Planning in accordance with the views of the Council of Ministers.<sup>205</sup> BTP’s Supervisory Board is charged with supervising the conduct of affairs of the Bureau, the management of its financial resources and property, and may advise the Director and the Minister on matters that concern the Bureau.<sup>206</sup> The Board is to perform its duties on its own behalf and to act independently from outside influence (“*zonder last of ruggespraak*”).<sup>207</sup>

Importantly, however, most of BTP’s formal duties are of an advisory or preparatory nature only. BTP’s Director and Supervisory Board are accountable to the Minister of Traffic, Transportation and Urban Planning<sup>208</sup> and, as detailed in the boxed text ‘Legal duties of the BTP’, have little to no formal decision-making power of their own. According to the National Ordinance on Telecommunications Facilities, the Minister of Traffic, Transportation and Urban Planning remains responsible for the regulation of the broadcasting sector, including radio and television licensing and administrative enforcement.<sup>209</sup> In the case of television licensing, the Television National Ordinance stipulates that the Minister of Education shares this responsibility with the Minister of Traffic, Transportation and Urban Planning. The Minister of Education is also responsible for the preparation and coordination of media policy.<sup>210</sup>

### The licensing process – a note on terminology

Television broadcasting requires two ‘licenses’, one of which is issued in the form of a national decree<sup>211</sup> by the Minister of Education and the Minister of Traffic, Transportation and Urban Planning.<sup>212</sup> This decree represents the actual ‘television broadcasting license’ or ‘TV-license’ (*vergunning*). The second license is issued only as a ministerial decree by or on behalf of the Minister of Traffic, Transportation and Urban Planning and is a technical ‘authorisation’ (*machtiging*), which is referred to in the main text as the ‘technical television broadcasting license’ or ‘technical TV-license’. Radio broadcasting only requires one authorisation (*machtiging*), which is issued as a ministerial decree by or on behalf of the Minister of Traffic, Transportation and Urban Planning. It includes both provisions on content and on more technical aspects of radio broadcasting. In the main text, this authorisation is referred to as the ‘radio licence’.

<sup>204</sup> National Ordinance Bureau Telecommunication and Post (Landsverordening Bureau Telecommunicatie en Post), *Country Gazette*, No. 69, Article 2.

<sup>205</sup> *Idem*, Articles 3 and 8.

<sup>206</sup> *Idem*, Article 14.

<sup>207</sup> *Idem*, Article 8.

<sup>208</sup> *Idem*, Articles 14 and 16.

<sup>209</sup> See Landsverordening op de telecommunicatievoorzieningen (National Ordinance on Telecommunications Facilities), *Country Gazette* 2011, No.37.

<sup>210</sup> Landsverordening ambtelijk bestuurlijke organisatie (National Ordinance Administrative Government Organization), Article 8.

<sup>211</sup> A national decree is a decree enacted by the Government. It does not require Parliament’s involvement but does require the Governor’s signature.

<sup>212</sup> Information received from BTP by mail on 16 May 2014. The legal basis for the signatures of both Ministers is unclear because the Research Team has been unable to determine the relevant provisions in the Television National Ordinance that formally authorise those Ministers to sign the licenses.

In practice, the Director of BTP is mandated to exercise many of the powers of the Minister of Traffic, Transportation and Urban Planning on behalf of the Minister. These powers include significant duties, such as the issuing, withdrawal or refusal of licenses, the management and assignment of radio frequencies, inspections and testing of broadcast equipment, quality measurements and monitoring, administrative enforcement and the management of license fees.<sup>213</sup> However, the Minister remains authorised to use the above-mentioned mandated powers and may withdraw the mandate at any time at his or her own discretion.<sup>214</sup> Most notably, although BTP prepares all of the individual license decisions, these are always sent to the Minister for approval before being issued, including those decrees that the BTP is mandated to sign on the Minister's behalf.<sup>215</sup>

Consequently, the independence of the regulatory system is not guaranteed, and all of Curaçao's broadcasting organisations are fully dependent on the Government's cooperation for their required periodical license renewal. Because the Minister of Traffic, Transportation and Urban Planning also represents Curaçao as the major shareholder of TeleCuraçao's parent company, United Telecommunication Services (UTS), the current institutional framework also includes a potential conflict of interest.<sup>216</sup>

In addition, neither BTP nor any other regulator has ever been explicitly mandated to exercise any of the TV-broadcasting regulatory and supervisory powers attributed to the Government in the Television National Ordinance.<sup>217</sup> Although BTP assists the Minister of Education and the Minister of Traffic, Transportation and Urban Planning in drafting the (non-technical) television broadcasting license, it has no formal duties or responsibilities in this respect or in monitoring compliance with licensing conditions. BTP also has no formal duties or responsibilities related to the regulation and supervision of radio broadcasting content. In practice, those individuals who were interviewed in the course of this assessment indicated that compliance with most provisions that relate to TV and radio content such as restrictions on programme content, programme time slots and the use of delay equipment,<sup>218</sup> are not actively monitored.<sup>219</sup> More generally, as further discussed under Indicators 1.7 and 2.4, BTP has no explicit duty to promote media pluralism and freedom of expression.

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<sup>213</sup> Mandate regulation BT&P 2005 (*Mandaatregeling BT&P 2005*), No. 6876/RNA.

<sup>214</sup> Interviews BTP, January 27 and February 4, 2014. Also: Interview, March 11, 2014.

<sup>215</sup> Interview BTP, January 27, 2014.

<sup>216</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 176, 241. See also: Interview, March 11, 2014.

<sup>217</sup> See *Televisielandsverordening* (Television National Ordinance), *Country Gazette* 1971, No. 33, Article 16. The Ordinance required the appointment of supervisory personnel by national decree, but as far as the research team could establish such a decree was never put into force.

<sup>218</sup> Note, however, that the *possession* of delay equipment is monitored by BTP. Interviews, January 27, February 4, March 12, 2014.

<sup>219</sup> E.g., Interviews, January 27, February 4, March 12, March 18, March 19, 2014.

**Legal duties of the Bureau Telecommunicatie en Post (BTP)<sup>153</sup>**

- (a) the development of policy frameworks concerning telecommunications and the post
- (b) the implementation and execution of policy frameworks concerning telecommunications and the post as determined by the Minister of Traffic, Transportation and Urban Planning
- (c) the preparation of national legislation and regulations concerning telecommunications and the post
- (d) the performance of operational duties concerning telecommunications and the post as laid down by or pursuant to national ordinance
- (e) insofar as necessary, on the instruction of the Council of Ministers, the safeguarding of Curaçao's<sup>154</sup> interests concerning telecommunications and the post in the Kingdom whether at regional or international level.
- (f) the advising of the Minister of Traffic, Transportation and Urban Planning and of other members of the Council of Ministers on request regarding matters mentioned under points a) to e)
- (g) the advising or performing of services for Government departments and third parties on request on matters concerning telecommunications and the post
- (h) the performance of other duties assigned by the Minister of Traffic, Transportation and Urban Planning
- (i) the performance of other duties laid down by or pursuant to national ordinance.

The terms of appointment of members of the Supervisory Board contain guarantees of autonomy and independence from partisan and commercial influence.

- Relevant qualifications are required: “the Board is to be composed in order to incorporate knowledge of and experience in telecommunications, the post, economics, law and accountancy as well as Dutch Antillean society”.<sup>222</sup>
- There are several rules on incompatibility: a Board member may not combine his or her membership with membership in Parliament, the function of Minister or membership to the Council of State, the Court of Audit or the Social Economic Council. Neither can Members be employed in the civil service or in the telecommunications industry. Presumably, these rules also apply to broadcasting. Member conduct must be “beyond reproach”.<sup>223</sup>
- Term of appointment: Board members are appointed for three years. The appointment is renewable once. To ensure continuity in the Board's

<sup>220</sup> National Ordinance Bureau Telecommunicatie en Post, Article 5.

<sup>221</sup> BTP's legal duties also include activities for the Caribbean Netherlands, i.e., the public entities (openbare lichamen) of Bonaire, Sint Eustatius and Saba.

<sup>222</sup> Idem, Article 9.

<sup>223</sup> Idem, Article 10. The Ordinance further stipulates that whether a member's conduct is or is not “beyond reproach” is to be assessed on the basis of judicial information.

activities, termination of appointments should be such as to prevent all members being replaced simultaneously.<sup>224</sup>

- Terms for suspension and termination are mostly clearly stated. For example, Board members may only be dismissed on their own request, by request of the Board, in case of physical or mental incapacity, or if they have been convicted of a crime, are placed under supervision or are faced with suspension of payment. However, the Ordinance also mentions “incapability, incompetence or other serious grounds” as reasons for dismissal.<sup>225</sup>

Several other relevant guiding principles are not incorporated in the legislative framework.

- A number of important rules on incompatibility are missing. There are no provisions to prevent political party officials, such as a party chairperson, from sitting on the Board. Additionally, there are no provisions to prevent the appointment of individuals with a significant financial interest in telecommunications or broadcasting. There are also no requirements related to family ties with government members.
- There are no eligibility or incompatibility rules that apply to the Director. The Ordinance does not set out any terms and conditions for the appointment, suspension and dismissal of the Director.
- There are no legal guarantees of an open and democratic appointment process. Most importantly, the Director and the members of the Supervisory Board are appointed by the Government only.<sup>226</sup> Public participation and consultation are not legally provided for. Other actors, such as civil society organisations, the media or Parliament, are not involved in the appointment processes.

In addition, the practical relevance of the safeguards that have been included in the legislative framework remains to be determined since consecutive governments have failed to implement these safeguards. Since its establishment in 2001 until 31 August 2011, BTP operated without a Supervisory Board and under the Minister's direct supervision. Since August 2011, the Board consists of three members, who were formally appointed by national decree on 3 September 2012.<sup>227</sup> On 4 January 2012, a fourth member was appointed.<sup>228</sup>

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224 Idem, Article 8.

225 Idem, Article 11.

226 Idem, Articles 3 and 8.

227 National Decree of 3 September 2012, No. 12/4111. The dates are confusing. The Research Team made inquiries to determine whether the dates are correct. They appear to be correct, members were appointed with retroactive effect for a period of three years. It is unclear why the Board members were formally appointed only one year later.

228 National Decree of 4 January 2012, No. 12/0032.

The appointment of Board members has not received wide publicity, and the composition of the Supervisory Board was unknown to most of the individuals interviewed for this study. However, the Board's composition is cause for concern. For instance, one Board member is also active as Chairman of one of the ruling political parties, and another is next of kin to Curaçao's current Prime Minister (see also to the discussion under Indicator 1.7).<sup>229</sup>

Financially, the independence of the regulator appears to be well safeguarded, and adequate and consistent funding is guaranteed by law. Each year, the Minister enters into a performance contract with the BTP's Director. BTP's annual budget is to be such as to enable the Bureau to perform the contracted deliverables. If the Bureau is requested to perform additional tasks, the budget may be amended if deemed necessary.<sup>230</sup> The Bureau is to draft its own budget, to be submitted for review to the Board. Once the budget is adopted, it requires the Minister's approval. Until the Minister approves the budget, the previous year's budget is used as a reference.<sup>231</sup> The Bureau receives its financial means from fees for services rendered. According to the BTP, in practice, the budget proceedings have not been used to exert coercive budgetary pressure on it. Budgets submitted for approval have reportedly never been amended or reduced by the Minister.<sup>232</sup> However, an independent assessment of BTP's financial condition could not be performed. This issue is further addressed under Indicator 1.7.

## **1.7 Regulatory system works to ensure media pluralism and freedom of expression and information**

This indicator deals with public accountability and the role of the regulator in addressing issues such as fairness and freedom of expression. Pluralism and the role of the regulator in licensing broadcasters is further addressed under Indicator 2.4.

Regarding accountability, as previously mentioned, BTP's Director and Supervisory Board are accountable to the Minister. However, the law provides for public accountability through Parliament and through the Minister. Before the first day of July each year, the Board is required to report on its activities to the Minister, who is to submit this report to Parliament.<sup>233</sup> The Director is required to provide the Minister with BTP's audited financial statements and the annual report on BTP policy and activities within six months after the reporting year. The Ordinance declares these documents, including the auditor's report, public "unless the Minister decides otherwise".<sup>234</sup> To date, no activity reports on the Supervisory Board's

<sup>229</sup> Based on information processed up to August 2014.

<sup>230</sup> National Ordinance Bureau Telecommunication and Post, Article 17.

<sup>231</sup> *Idem*, Article 18.

<sup>232</sup> Interview BTP, February 4, 2014.

<sup>233</sup> National Ordinance Bureau Telecommunication and Post, Article 14.

<sup>234</sup> *Idem*, Article 19.

activities since August 2011 have been presented to Parliament,<sup>235</sup> and neither have BTP's financial statements or its annual reports been published or made available to the public on its website.<sup>236</sup> The Research Team submitted a request for information for access to the Bureau's most recent financial statement and annual report but did not receive the requested information.<sup>237</sup>

Regarding the role of the regulator in addressing issues such as fairness and freedom of expression, it should be noted that BTP possesses broad powers to provide advice on telecommunications matters, including on broadcasting. As mentioned, BTP also has the authority to develop "telecommunications policy frameworks".<sup>238</sup> However, these powers are insufficient to safeguard a regulatory system that endeavours to ensure media pluralism and freedom of expression.

Two issues deserve mentioning here: the outdated and incomplete nature of the legislative framework, both of which will be discussed here. These are issues that were noted already many years ago.<sup>239</sup>

The legislative framework is indeed outdated. The Television National Ordinance dates from 1971, and the National Ordinance on Telecommunications Facilities dates from 1996. Both ordinances have not been significantly altered since 2001. The former Ordinance concerns content-related issues, such as the limits on freedom of expression and prior supervision ("*preventief*" or "*voorafgaand toezicht*"), whereas the latter primarily addresses technical aspects of the regulation of the broadcasting sector.<sup>240</sup> The Television National Ordinance also contains several specific regulations related to advertising. The Television National Ordinance was introduced at a time when there was only one Curaçao television broadcaster, TeleCuraçao, and, as discussed in Sections 1C and 1D, includes several provisions that must be considered as being unnecessary and unjustifiably broad restrictions on freedom of expression and information. The Ordinance does not include formal obligations to promote pluralism and freedom of expression through broadcasting regulation. For more than a decade, a revision of the National Ordinance on Telecommunications Facilities has

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<sup>235</sup> BTP informed the Research Team that the Supervisory Board plans to send Parliament its first report in June 2014. At the time of writing, August 7, 2014, no mention of such a report was to be found on the Parliament's website.

<sup>236</sup> See <http://www.btpu.org>.

<sup>237</sup> The request was submitted February 7, 2014. A reminder was sent on March 20, 2014. On BTP's initiative, the Research Team further clarified the request in a telephone conversation on April 1, 2014. The request was reported to have been forwarded to the Minister of Traffic, Transportation and Urban Planning. The Research Team has yet to receive the requested information.

<sup>238</sup> National Ordinance Bureau Telecommunication and Post, Article 5.

<sup>239</sup> See, for example, the Council of State's (*Raad van Advies*) advice on the draft Media Ordinance, RvA no. RA/027-06'07, in which the Council refers to the conclusions of the Commission Media Policy (*Commissie mediabeleid*) presented in 1995.

<sup>240</sup> This topic is further discussed in Sections 1C and 1D.

been underway, taking the form of the draft National Ordinance on Telecommunications.<sup>241</sup> However, the various versions that have been drafted have also not included such formal obligations. Additionally, a draft Media Ordinance to replace the Television National Ordinance and place more emphasis on the importance of freedom of expression and information has not been enacted. Moreover, this draft piece of legislation does not remove the authority to issue licenses from the Government, but assigns all non-technical<sup>242</sup> television and radio broadcasting licensing decisions to the Minister of Education.<sup>243</sup>

In addition to being outdated, the legislative framework is also incomplete. There is no clear legislative foundation for the regulation of the radio sector other than the technical aspects that are addressed in the National Ordinance on Telecommunications Facilities. There is no equivalent of the 1971 Television National Ordinance for the radio sector. According to the National Ordinance on Telecommunications Facilities, only restrictions related to technical, traffic and safety requirements are allowed for.<sup>244</sup> Thus, already in 1999, constitutional law expert Van Rijn stated that restrictions related to radio broadcasting content are not possible. Although radio licenses contain several 'content-related' provisions that resemble the provisions included in television licenses, these must be considered non-binding.<sup>245</sup> In addition, as with television broadcasts, the legislative framework does not include formal obligations to promote pluralism and freedom of expression through radio broadcasting regulation.<sup>246</sup> Finally, there is no clear statement in law of Curaçao's overall media policy nor are the powers and responsibilities of the various ministers, the regulator and other stakeholders clearly defined.<sup>247</sup>

In conclusion, the current legislative framework is not established in a manner to ensure that BTP or any other regulatory body has sufficient scope to effectively promote media pluralism and freedom of expression. It also fails to include any requirement for BTP to pursue this objective.

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<sup>241</sup> Government submitted a draft ordinance to Parliament in 2001, which discussed the draft in the same year. However, Government failed to formulate a reply to the Parliament's preliminary report and ultimately withdrew its 2001 draft when submitting a new draft to Parliament in 2008-2009. This draft was also not adopted, and a new draft is reportedly in the making. When the assessment refers to the draft legislation, it refers to the text submitted in 2008-2009 because later versions have not yet been made public.

<sup>242</sup> That is, without prejudice to the responsibilities of the Minister of Traffic, Transportation and Urban Planning on the basis of the National Ordinance on Telecommunications Facilities.

<sup>243</sup> See Article 9 of the Draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007, No. 2.

<sup>244</sup> Landsverordening op de telecommunicatievoorzieningen (National Ordinance on Telecommunications Facilities), Article 15.

<sup>245</sup> See: Arjen B. van Rijn, *Staatsrecht van de Nederlandse Antillen* (Constitutional Law of the Netherlands Antilles) (Deventer: Tjeenk Willink, 1999), 163. Also, Tweede Aanpassingswet openbare lichamen Bonaire, Sint Eustatius en Saba (Second Adaptation Law public entities Bonaire, Sint Eustatius and Saba) (Dutch House of Representatives, Session 2009-2010, No.32419, No.3), Interview, February 4, 2014.

<sup>246</sup> Compare Article I.12 of the Constitution of Aruba. This article safeguards freedom of expression and includes a reference to the importance of a plurality.

<sup>247</sup> See also the Interviews of February 10, March 18, and March 19, 2014. Cf. Interview, February 4, 2014.

## C. Defamation laws and other legal restrictions on journalists

### 1.8 The State does not place unwarranted legal restrictions on the media

This indicator's focus is on legal restrictions on journalists, i.e., licensing or registration practices. It also looks at accreditation procedures, and the extent to which these apply only to limited access venues, are protected against political interference and do not impose an undue burden on journalists.

In Curaçao, there are no legal restrictions that define who may practice journalism and no legal restrictions that impose general licensing requirements or the registration of journalists. Additionally, there are no specific regulations that restrict access to the journalistic profession, such as requiring journalists to hold an academic or professional degree or belong to a particular professional organisation.

In October 2013, the Government introduced a media accreditation procedure for journalists wishing to cover the weekly press conference of the Council of Ministers. To be recognised by the Government, journalists are required to register and to submit a statement that names their employer. Self-proclaimed journalists who cannot provide a statement from an employer do not receive the accreditation badge required for attending press conferences. This system did not receive significant criticism from the individuals who were interviewed for this assessment. The media experts who mentioned the system supported its introduction as a 'practical' and adequate measure for regulating access to the Government's press conferences.<sup>248</sup>

Shortly after the introduction of the mentioned accreditation procedure in October 2013, however, the Government introduced in May 2014 additional restrictions on journalists for attending the Government press conferences in the form of a 'Code of Conduct'. The introduction of this new 'Code of Conduct' rose concerns among media professionals and the wider public on the possible unwarranted restrictions on the media that this could result in. The Code was introduced without prior consultation with the press. It includes clothing restrictions, disallows "inappropriate language" and requires journalists to address Ministers in a "decent" manner.<sup>249</sup> It also limits the number of persons allowed to attend to *one* journalist ("*periodista*") and *one* photographer or cameraman "per media outlet". Questions may be preceded by a short introduction, but only if the introduction is presented in a "respectful and objective manner". All of those present are required to sign an attendance list. According to

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<sup>248</sup> E.g., Interviews March 18, March 20, March 21, 2014.

<sup>249</sup> Ministerie van Algemene Zaken, Kódigo di kondukta pa medionan di komunikashon na Konferensha di Prensa Konseho di Minister (Code of Conduct for Communication Media at Press Conferences of the Council of Ministers).

the Code of Conduct, those who do not abide by the Code will be asked to leave the room and will be accompanied by a security guard.<sup>250</sup> Reportedly, since the introduction of this new Code of Conduct, the press has at times also been restricted to a limited number of questions.<sup>251</sup>

These recent developments suggest an increasingly restrictive press policy in general. Additionally, the several vague or overly restrictive criteria embedded in the Code, such as those mentioned in the above, increase the risk of selective treatment of members of the press by the Government. However, following the commotion that occurred after the Code's introduction, the Government and representatives of the press entered into dialogue and in June 2014 agreed to establish a commission that will work on developing new working arrangements between journalists and the Government which will be included in a 'journalists' code', to replace the Code of Conduct.<sup>252</sup> At the time of writing,<sup>253</sup> this code had not been adopted, and it remains too early to predict whether the new working arrangements will facilitate an effective use of the right of freedom of the press.

## 1.9 Defamation laws place the narrowest restrictions necessary to protect the reputation of individuals

The Curaçao Constitution protects freedom of expression and prohibits prior censorship of media content, whether in the print press, television or radio. However, this is "without prejudice to the responsibility of every person under national ordinance"<sup>254</sup> This means that although prior censorship is prohibited, one cannot say, write or broadcast anything one wants. The Constitution does allow for restrictions on freedom of expression *after* publication, such as restrictions that serve to protect the reputation of others, privacy or national security. Prior censorship is further discussed under Indicator 1.11. Indicators 1.9 and 1.10 assess restrictions placed on freedom of expression post-publication. Indicator 1.9 discusses legal rules that relate to defamation and their enforcement in practice, whereas Indicator 1.10 discusses other types of restrictions.

Defamation laws exist to protect individuals from false allegations, which may damage their reputation. To safeguard freedom of expression, defamation laws should use the narrowest restrictions necessary to protect the reputation of individuals.<sup>255</sup> Criminal defamation is not

<sup>250</sup> Ibid.

<sup>251</sup> In one recent case, members of the press were allowed to jointly ask only two questions. In protest, the press decided to boycott the press conference and did not ask any questions. "Nieuwsmedia en regering maken samen werkafspraken" (Newsmedia and Government to discuss working arrangements), *Amigoe*, June 9, 2014.

<sup>252</sup> Ibid.

<sup>253</sup> August 2014.

<sup>254</sup> Constitution, Article 9. For a more extensive discussion of prior censorship, see Indicator 1.11.

<sup>255</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 23-25.

a legitimate way to protect reputations since these can be adequately protected by civil defamation laws, which do not allow for the imposition of harsh criminal sanctions, such as imprisonment, or the stigma of a criminal record. The Special Rapporteurs of the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR) in a 2005 Joint Declaration stated that “[c]riminal defamation laws intimidate individuals from exposing wrongdoing by public officials and such laws are therefore incompatible with freedom of expression”.<sup>256</sup>

However, in Curaçao, as in other Caribbean countries and in the Netherlands,<sup>257</sup> defamation remains a criminal offence and is included in the new Penal Code of Curaçao, which entered into force in November 2011. Defamation is defined therein as including the following:

- Defamation (*smaad*), including libel (*smaadschrift*): intentionally harming someone's honor or reputation through an accusation, with the obvious intent to give publicity thereto;<sup>258</sup>
- Calumny (*laster*): defamation or libel known to be false;<sup>259</sup>
- Simple insult (*eenvoudige belediging*): any intentional insult not consisting of defamation or libel;<sup>260</sup>
- False complaints to government bodies and calumnious accusations.<sup>261</sup>

Generally, prosecution is only possible on the basis of a complaint by a plaintiff (see below for exceptions). Only if a complaint has been filed by the person allegedly defamed<sup>262</sup> can the accused be prosecuted and, depending on the individual case, punished with a prison sentence, a fine, and/or the loss of the right to hold public office or to practice specific professions. Maximum prison sentences range from three months to three years, according to type of offence. For example, simple defamation may result in a maximum prison sentence of three months, whereas calumny may result in a prison sentence of three years. Once three months have passed since an alleged defamation, plaintiffs may no longer sue.<sup>263</sup> Additionally, the law explicitly allows for legal defences for those accused of defamation, libel or calumny, such as acting in the public interest or in self-defence.<sup>264</sup>

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<sup>256</sup> As stated in: International Press Institute, *Final Report on the 2013 IPI Advocacy Mission to the Caribbean: Focus on Criminal Defamation* (Vienna, Austria: International Press Institute, 2013), 4.

<sup>257</sup> See: International Press Institute, *Final Report on the 2013 IPI Advocacy Mission to the Caribbean: Focus on Criminal Defamation* (Vienna, Austria: International Press Institute, 2013).

<sup>258</sup> Curaçao Penal Code, Article 2:223.

<sup>259</sup> Idem, Article 2:224.

<sup>260</sup> Idem, Article 2:226.

<sup>261</sup> Idem, Article 2:228.

<sup>262</sup> Idem, Article 2:231.

<sup>263</sup> Idem, Article 1:141.

<sup>264</sup> Idem, Article 2:223.

However, there are no explicit legal defences for simple insults.<sup>265</sup> In addition, defamation, libel, calumny or insults of public officials in relation to public duties and of “public authority, public corporations and public institutions” may result in increased prison sentences and fines.<sup>266</sup> Prosecution in cases of defamation of public authorities and public officials need not be complaint-based and may thus occur regardless of whether a formal complaint has been filed.<sup>267</sup> In these special cases, the three-month time limit for filing a complaint does not apply.

The same is true for “intentional insult” (*opzettelijke belediging*) of the King, the King's spouse, the heir of the King or the Governor<sup>268</sup> and the distribution of materials believed to be insulting of the King, his spouse, the heir or the Governor.<sup>269</sup> In addition, contrary to international best practice in this area, such alleged insults can be prosecuted without a complaint and may result in relatively high prison sentences. As an illustration of this, in the case of an intentional insult of the King, as much as a six years' prison sentence, high fines and the loss of the right to hold public office or to practice specific professions may ensue. In these cases, prosecution may additionally result in the loss of the right to elect the members of general representative bodies such as Parliament, the inability to be elected as a member of such a body, or both. These provisions do not allow for specific legal defences.

Civil action is possible in the context of an “unlawful act” (*onrechtmatige daad*).<sup>270</sup> If a specific statement (*uiting*) is judged to be unlawful, for example, because under the specific circumstances of a case the right to protect the reputation of an individual is judged to outweigh the right to freedom of expression, the plaintiff can demand a rectification and a publication ban.<sup>271</sup>

A successful appeal to either the penal or civil defamation provisions described above must satisfy the criteria incorporated in ratified international and regional treaties, notably Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>272</sup> According to those two texts, freedom of expression can only be restricted if prescribed by law and necessary in a democratic society, for example, in the interest of the protection of the reputation or rights of others. Although the European Court for Human Rights (ECtHR) does not rule out criminal sanctions for defamation as disproportional *per se*, it only considers

<sup>265</sup> *Idem*, Article 2:226. Compare Article 266 of the Dutch Penal Code, which includes a legal defence.

<sup>266</sup> Curaçao Penal Code, Article 2:227.

<sup>267</sup> *Idem*, Article 2:231.

<sup>268</sup> *Idem*, Articles 2:27 and 2:28.

<sup>269</sup> *Idem*, Article 2:29.

<sup>270</sup> An unlawful act is defined as “a violation of someone else's right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behaviour”. See Curaçao Civil Code, Book 6, Article 162.

<sup>271</sup> Curaçao Civil Code, Book 6, Title 3.

<sup>272</sup> See: the Treaty Database on <https://verdragenbank.overheid.nl/>. For more on these treaties, please see Indicator 1.1.

these to be proportional in exceptional cases,<sup>273</sup> notably where other fundamental rights have been impaired, such as in the case of hate speech or incitement to violence. The same is true for high damage compensation claims. In its rulings on freedom of the press and defamation, the ECtHR takes due account of the important role of the press as a public watchdog. For example, members of the press are allowed a degree of exaggeration and provocation, and freedom of expression includes the freedom to express information and ideas that “offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.<sup>274</sup>

Legal practice in Curaçao is primarily a civil law practice. No one interviewed in the course of this assessment could recall criminal defamation sanctions being levied on the press.<sup>275</sup> In addition, the Research Team did not find any reference to a criminal court case that involved defamation and the press.<sup>276</sup> However, there is reportedly a ‘rich tradition’ of individuals, often public figures, requesting the civil court of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba to rule on publications or other expressions by members of the opposition, journalists or other stakeholders that they consider offensive.<sup>277</sup> In its judgements, the Joint Court devotes considerable attention to the degree to which the statements made are supported by available evidence and have a sufficient factual basis.<sup>278</sup> The press has a duty to verify the facts it publishes, and the Court’s practice

273 On this, see for example ECHR, 12 October 2010, 184/06, Saaristo and others/Finland. Also, Aernout Nieuwenhuis, “Laveren tussen persvrijheid en respect voor het privé-leven. De jurisprudentie van het EHRM” (Navigating between freedom of the press and respect of private life. The jurisprudence of the ECHR), *Mediaforum* 1, (Otto Cramwinckel Uitgever 2012), 2-13.

274 Lodewijk J.J. Rogier, *Beginnselen van Caribisch staatsrecht* (Principles of Caribbean Constitutional Law) (Den Haag: BJu, 2012), 98. He refers to ERHM 7 December 1976, NJ 1978, 326 (Handyside). See also: GHVJ February 13, 2007, TAR-Justicia 2008/1, 52-5.

275 The public prosecutor also stated that it will “show extreme restraint in the prosecution of politically sensitive reports or reports of a more political nature”. Public Prosecution Office in First Instance Curaçao, Annual Report 2012, 15. See also: Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 111.

276 See: the website of the Judiciary, [www.rechtspraak.nl](http://www.rechtspraak.nl). The Research Team also benefitted from a search in the legal database (civil and criminal) of the Public Prosecutor’s Office and the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. This database contains references to (mostly appeal) court rulings from 2007 to the present. No reference to a criminal court case related to defamation was found.

277 For example, see: Arjen B. van Rijn, *Belediging en public speech in de Nederlandse Caribbean* (Insult and public speech in the Dutch Caribbean). In: *Privaatrecht op de Nederlandse Antillen en Aruba* (Private Law on the Netherlands Antilles and Aruba) (Koninklijke Vermande, 1999); Steven Hillebrink, *Europese bescherming van de rechten van gedetineerden in de Nederlandse Antillen en Aruba* (European protection of the rights of prisoners in the Netherlands Antilles and Aruba). In: T.Barkhuysen, M.L. van Emmerik, and J.P. Loof (red), *Geschakeld recht. Verdere studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. mr. E.A. Alkema* (Linked Legislation. Further studies on European fundamental rights in honour of the 70th birthday of Prof.Mr. E.A. Alkema) (Deventer: Kluwer, 2009), 245.

278 Van Rijn (1999), 333. Other circumstances to consider include the seriousness of the accusations, the seriousness of the damage to the reputation, the seriousness of the wrong the expression aimed to disclose (as perceived from the viewpoint of the public interest) and the degree to which the adversarial principle (*hoor- en wederhoor*) was applied.

is described by some legal experts as setting “a certain threshold” to prevent unfounded accusations of corruption and nepotism.<sup>279</sup> If statements are made without verification of their truthfulness, if they are unverifiable, or if the accusations are not convincing, the Court may order a rectification. In a recent ruling in a case brought by a member of Parliament against a newspaper, the Court stressed that the newspaper is not allowed to publish “incorrect facts” and underscored the verification duty of the press. The Court ordered a rectification and added that “the press is not free to damage politicians in their human dignity”.<sup>280</sup>

In the same case mentioned above, however, the Court did not order the payment of the claimed damages, judging that “it must be ensured that the press is not muzzled. The task of the press is too important [for society]”.<sup>281</sup> In line with rulings of the ECtHR, politicians, public officials and other public figures<sup>282</sup> in Curaçao are expected to accept wide limits of acceptable criticism and to display a greater degree of tolerance towards criticism than private individuals.<sup>283</sup> Jurisprudence also distinguishes between factual statements and value judgments, i.e., subjective assessments of certain facts. Those making factual statements can be required to prove the accuracy of those statements, whereas those making value judgments cannot.<sup>284</sup>

In addition, the burden of proof may shift to the plaintiff if, for example, at least a portion of what is stated is correct and it can be shown that other parts of the statement, although perhaps not verifiable, are not “groundless”.<sup>285</sup> This was the case in a recent court case initiated following a complaint of the President of the Central Bank of Curaçao and Sint Maarten regarding a foundation, the Fundashon Korsou Fuerte i Outonomo. The Foundation had issued a press statement that accused the President of corruption and abuse of power. The Court ruled that “because the explanation of the alleged perpetrator was, on the face of

<sup>279</sup> Ibid. See also: Interview, March 11, 2014.

<sup>280</sup> Ruling Court in First Instance of Curaçao, 24 January 2014, case AR number 66256/2013 KG.

<sup>281</sup> Ibid. Also refer to Ruling Court in First Instance of Curaçao, 28 November 2011, case AR2011/46714KG (ECLI:NL:OGEAC:2011:BQ0620).

<sup>282</sup> Such as those who ‘seek publicity themselves and have an important presence in an economic sector of great social importance’, as expressed in Ruling Court in First Instance of the Netherlands Antilles, 15 June 2009, case KG 2009/148, 152 (ECLI:NL:OGEANA:2009:BI8221).

<sup>283</sup> Ruling Court in First Instance of the Netherlands Antilles, February 1, 2008, case KG 2008/13 (ECLI:NL:OGEANA:2008:BD9078).

<sup>284</sup> For example, see: Ruling Court in First Instance of the Netherlands Antilles, February 1, 2008, case KG 2008/13 (ECLI:NL:OGEANA:2008:BD9078), Ruling Court in First Instance of the Netherlands Antilles, 2 February 2009, case AR 2009/5 KG (ECLI:NL:OGEANA:2009:BH1997); Ruling Court in First Instance of the Netherlands Antilles, 15 June 2009, case KG 2009/148, 152 (ECLI:NL:OGEANA:2009:BI8221). Note, however, that there must be a sufficient factual basis for such value judgments. Without such a factual basis the value judgement may be judged excessive.

<sup>285</sup> Aernout Nieuwenhuis, “Laveren tussen persvrijheid en respect voor het privé-leven. De jurisprudentie van het EHRM” (Navigating between freedom of the press and respect of private live. The jurisprudence of the ECHR), *Mediaforum* 1, (Otto Cramwinckel Uitgever 2012): 6. See, e.g., ruling Court in First Instance, 15 June 2009, case number KG 148 and 152/2009 (ECLI:NL:OGEANA:2009:BI8221). See also ruling Court in First Instance, 20 January 2014, case AR 66053/2013 (ECLI:NL:OGEAC:2014:1).

it, not absurd or without any justification”, it expected the President, who “has all information and documents at his disposal”, to clarify the situation and prove his defamation claim.”<sup>286</sup>

Overall, it appears that courts and the public prosecutor base their actions on international good practice. Most of the journalists who were interviewed in the course of this assessment indicated that they did not fear defamation lawsuits. They suggested that the judicial system performed in a relatively competent manner and did not result in excesses.<sup>287</sup>

Nevertheless, there are indications that the current legislative framework, in combination with the relative ease with which politicians and others in Curaçao take issues to court, influences the media’s use of their right to freedom to expression. Although the courts have repeatedly stressed the need for a greater degree of tolerance to criticism among public figures, the fact remains that Curaçao’s Penal Code prioritises the reputations of authority figures or institutions, which may have a chilling effect on freedom of expression. According to the International Press Institute (IPI), laws such as these “can result in self-censorship among journalists or other private citizens. This self-censorship, in turn, may preclude the type of vigorous criticism necessary for a transparent democracy”.<sup>288</sup> The degree to which this situation appears to be the case in Curaçao is further discussed under Indicator 3.14. Here, it suffices to note that although media workers in Curaçao place a relatively high level of trust in the judgements of the courts, the results from our surveys and interviews indicate that some media workers fear mud-slinging, political pressure and personal attacks that can occur when publishing critical pieces about certain political figures. For example, when asked whether in the past they had decided against publishing information out of fear of being taken to court, one media worker replied that he did not so much fear persecution as “political and governmental pressure”, while another mentioned the risk of “personal attacks”.<sup>289</sup>

### **1.10 Other restrictions upon freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law**

This indicator covers other legal restrictions on the content of what may be published or broadcast and the extent to which these restrictions are to be considered necessary in a democratic society. According to international law, legal restrictions should be a response to a pressing social need, be defined as narrowly as possible to reflect the public interest,

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<sup>286</sup> Ruling in First Instance of Curaçao, 20 January 2014, case AR/66053/2013 (ECLI:NL:OGEAC:2014:1).

<sup>287</sup> E.g., Interviews March 11, March 14, March 19, March 20, March 21, and March 26.

<sup>288</sup> See: International Press Institute. “A kingdom rich in criminal defamation laws.” <http://www.freemedia.at/home/singleview/article/a-kingdom-rich-in-criminal-defamation-laws.html> (accessed April 27, 2014).

<sup>289</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

impair freedom of expression as little as possible and be proportionate to the legitimate aims that are pursued.<sup>290</sup>

In Curaçao, other restrictions on freedom of expression than those in the interest of the protection of the reputation of others (discussed under Indicator 1.9) must similarly satisfy the criteria incorporated in the ratified international and regional treaties. Thus, in line with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the restrictions must be prescribed by law and be necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Three questions must be answered to determine the legitimacy of any interference with the right to freedom of expression, as defined in Article 10 of the ECHR:<sup>291</sup>

1. First, it is necessary that the interference be prescribed by law in sufficiently clear terms to make it foreseeable.<sup>292</sup>
2. The next requirement is to determine whether the interference pursues a legitimate aim: does the infringement or restriction serve a goal that justifies Government interference that fits within the boundaries of Article 10 paragraph 2 of the ECHR?
3. The last, crucial question is whether the infringement is necessary in a democratic society. To answer this question, it is necessary to assess whether the proposed infringement is proportionate in the sense that the benefits outweigh the harm to freedom of expression. It must also be verified that no suitable alternative measure exists that would be less harmful to freedom of expression.

However, the Curaçao television and radio broadcasting regulations are only partly in line with the ratified treaties. The Television National Ordinance allows Government to attach conditions to individual TV licenses,<sup>293</sup> and it specifically requires that:

- TV programmes not be in conflict with or detrimental to the population's "healthy mental development".<sup>294</sup>

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<sup>290</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 25.

<sup>291</sup> E.g., ECHR March 27 1996, *Goodwin v. the United Kingdom*. NJ 1996, 577, L.JN AD2519.

<sup>292</sup> *Sanoma Uitgevers B.V. v. the Netherlands* 14 September 2010 (Grand Chamber).

<sup>293</sup> Television National Ordinance, Article 2.

<sup>294</sup> *Idem*, Article 4.

- Broadcasters not air programmes whose content or nature conflicts with “the public interest” or safety of the country, “public order” or “morals”. They may also not broadcast programmes that contain “content that is such that it conflicts with the duties and responsibilities of the person that uses his [or her] right to freedom of speech”.<sup>295</sup>

The TV license also requires that broadcasters not broadcast programmes which “go against the lawful authorities, or any religion or political conviction”.<sup>296</sup>

Similar provisions are included in the individual radio licenses.<sup>297</sup>

The maximum prison sentence for violating the TV broadcasting provisions is six months or a financial penalty of at most Naf 10,000 (ca. US\$ 5,650).<sup>298</sup> For radio, no similar sanctions were found. In addition, TV and radio licenses mention that if broadcasters “persist” in contravening license conditions they can be banned from broadcasting (*zendverbod*).<sup>299</sup> If broadcasters do not or do not sufficiently comply with license conditions, licenses can also be withdrawn, either temporarily or permanently, albeit only after proper notice.<sup>300</sup>

None of these restrictions are narrowly defined, and at least several of them are not mentioned as legitimate grounds for restrictions on the freedom of expression in the international and regional treaties ratified by Curaçao. Van Rijn notes for example that a broadly defined “public interest” is not included in the European Convention for the Protection of Human Rights and Fundamental Freedoms as a legitimate ground for restricting freedom of expression and must therefore be considered non-binding.<sup>301</sup> The same is likely to be true for restrictions to prevent the broadcasting of programmes that “go against the lawful authorities, any religion or political conviction” in so far as they surpass the legitimate goals mentioned in the Convention.

As previously noted, the restrictions that relate to broadcasting content included in radio licenses are also not likely to meet the criterion “prescribed by law”. This is because there is no specific ‘Radio Broadcasting Ordinance’, and the National Ordinance on Telecommunication Facilities, which mostly covers more technical aspects of broadcasting regulation, does not appear to offer a good basis for these restrictions (see Indicator 1.7).<sup>302</sup>

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295 *Idem*, Article 5.

296 TV-license as provided by BTP, Article 3.

297 Radio license as provided by BTP, Article 16. This article also includes, in wordings identical to those included in the TV-license, the ban on broadcasting programmes that go against the lawful authorities, any religion or political conviction.

298 Television National Ordinance, Article 15.

299 TV-license, Article 15; technical TV-license, Article 22 and radio broadcasting license, Article 31. The technical TV-license and the radio license also include the possibility of levying administrative fines of at most Naf 1,000 (ca. US\$ 565) per violation.

300 TV-license, Article 16, radio broadcasting license, Article 27.

301 See Arjen B. van Rijn, *Staatsrecht van de Nederlandse Antillen* (Constitutional Law of the Netherlands Antilles) (Deventer: Tjeenk Willink, 1999), 162.

302 See also Application for interim measures, Court in First Instance of the Netherlands Antilles, August 31, 1997.

In addition to the more general defamation provisions discussed under Indicator 1.9, the Penal Code includes specific provisions for the prosecution of blasphemy. Article 2 states that an individual who publicly expresses him- or herself through “contemptuous blasphemy” (*smalende godslastering*) that is offensive to religious feelings may be punished with a prison sentence of up to a year or a fine.<sup>303</sup> Prosecution on the basis of these blasphemy provisions is not complaints-based only, and the Penal Code does not make the provisions subject to a public interest override where appropriate. Expanded in the new Penal Code of 2011, the blasphemy provisions now not only include penalisation of the expression of blasphemy, but penalisation of the dissemination of blasphemous writings, pictures and data as well. The blasphemy provisions are now in accordance with the *former* Dutch provisions on blasphemy, which were completely removed from the Dutch Penal Code on 1 February 2014.

The current assessment did not find any examples of the above-mentioned provisions and other legal restrictions on broadcast or published content being applied in practice to restrict freedom of expression. The blasphemy restrictions appear to be defunct. However, a chilling effect, as previously described, cannot be ruled out.

On 1 October 2013, new privacy legislation, in the form of a National Ordinance on the Protection of Personal Data (*Landsverordening bescherming persoonsgegevens*), came into force.<sup>304</sup> Although this legislation places a number of restrictions on the use of personal data in general, it distinguishes between the use of personal data for “journalistic, artistic and literary purposes” and their use for other purposes.<sup>305</sup> It establishes an exemption for journalism, which makes the majority of the provisions included in the law not applicable to journalists. This exemption covers also the provision that forbids the use of personal data without the permission of the concerned individual. As long as the data use conforms to general principles, such as “proportional” and “careful” use, journalists do not require prior permission.<sup>306</sup> It is too early to ascertain the effect of the restrictions included in the new privacy legislation and how the planned, but not yet established, supervisory authority will monitor compliance.<sup>307</sup> However, the law has not been met with significant skepticism in the media sector. Those individuals who, in the course of our assessment, volunteered an opinion regarding the new law did not expect it to inhibit public debate on issues of public concern.

<sup>303</sup> Penal Code, Articles 2:89 and 2:90.

<sup>304</sup> National Decree of 25 September 2013, No. 13/2306, *Country Gazette*, 2013, No. 92.

<sup>305</sup> National Ordinance on the Protection of Personal Data, Article 3, *Official Curaçao Gazette*, 2010, No. 84.

<sup>306</sup> They are then free to use personal information necessary for the protection of legitimate interests, unless the interest and fundamental rights and freedoms of the concerned person prevail. *Idem*, Articles 6 and 8 and the Explanatory Memorandum to those articles.

<sup>307</sup> Also see: “Op- en inrichting college bescherming persoonsgegevens” (Establishment and organisation of data protection authority), *Amigoe*, May 20, 2014.

## D. Censorship

### 1.11 The media is not subject to prior censorship as a matter of both law and practice

The focus of this indicator is the legal framework in place for preventing the publication and dissemination of material, as opposed to rules that impose liability after publication. Prior censorship refers to a system whereby the authorities have the formal power to preview and prevent the release of media content before it is published.<sup>308</sup> “International law permits prior censorship only in exceptional circumstances such as an imminent and specific threat to a key national interest. Any restriction on freedom of expression must be the least restrictive means possible to protect a justifiable public interest, and must be narrowly defined and proportionate to that interest.”<sup>309</sup>

In Curaçao, at the constitutional level, particularly since the constitutional changes in 2010, the legal framework to prevent prior censorship is strong.

- No prior censorship of thoughts or opinions published through the press is allowed. Article 9.1 of the Constitution stipulates that “no one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under national ordinance”.<sup>310</sup> This means that while an individual can be prosecuted post-publication if the content published is prohibited by a legal provision, prior censorship is not allowed (cf. Indicators 1.9 and 1.10). The prohibition on prior censorship was already included in the Constitution of the Netherlands Antilles before 10-10-10.
- No prior screening of radio or television content is allowed. Specifically with regards to broadcasting and in line with the Dutch Constitution, as of 10-10-10 the new Curaçao Constitution explicitly forbids “prior supervision of the content of a radio or television broadcast”.<sup>311</sup> The Explanatory Memorandum explains that, while licensing is permitted, radio and television broadcasters may not be required to submit their “programme texts” for prior approval.

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<sup>308</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 14.

<sup>309</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 26. See also Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights.

<sup>310</sup> Constitution, Article 9.1.

<sup>311</sup> Idem, Article 9.2 and the Explanatory Memorandum to that article.

- Prior approval for the publication of thoughts or opinions “through other means” than the press and broadcasting “because of [their] content”<sup>312</sup> shall also not be required. This provision was also added in the new Curaçao Constitution. The Explanatory Memorandum specifies that this provision includes publication through the Internet.<sup>313</sup>

Departure from these fundamental rights is allowed if a state of emergency is declared to maintain internal or external security.<sup>314</sup> However, the declaration of such a state of emergency is only possible under exceptional circumstances, and is to be determined by national ordinance.<sup>315</sup>

At the level of specific broadcasting and press regulations, however, the Curaçao legal framework contains provisions that conflict with the constitutional ban on prior censorship. The Television National Ordinance was drafted in the 1960s after a court ruling that established that the Government lacked the legal basis for demanding prior review of information to be broadcast. The legislator noted that supervision should generally be aimed at investigating possible offences *after* broadcasting. It noted, however, that “in some cases, prior supervision is required, [and] must be made possible”.<sup>316</sup> Specifically with respect to the prior censorship of TV broadcasting, from 1973 until the present, the following has applied:

- Films or part of films may not be broadcast before they have been judged to be appropriate for audiences of all ages by a board of film censors (*filmkeuringscommissie*). Films judged to be appropriate for individuals older than 18 years of age must be broadcast after 10:00 pm. The Governor may grant permission to do otherwise.<sup>317</sup>
- At least a week before airing, television broadcasters are required to notify another commission<sup>318</sup> in writing on their broadcasting schedule. This notification must include the subjects to be discussed and, where relevant, the name of the organisation by or for which the broadcasting is produced.<sup>319</sup> If the commission finds or suspects the broadcast to be

<sup>312</sup> As an example, the prior censorship of a performance because of its content is ruled out. However, a performance may be prohibited, for example, for reasons of public order.

<sup>313</sup> Constitution, Article 9.3 and the Explanatory Memorandum to that article.

<sup>314</sup> *Idem*, Article 96.

<sup>315</sup> See also the assessment under Indicator 1.3

<sup>316</sup> Explanatory Memorandum attached to the Television National Ordinance, 2. (Parliament of the Netherlands Antilles, Session 1966-1967, No.59).

<sup>317</sup> Television National Ordinance, Article 5.

<sup>318</sup> A commission of three, comprising of the minister responsible for television broadcasting or someone appointed by that minister, and two other members appointed jointly by that minister and the Minister of Justice.

<sup>319</sup> Television National Ordinance, Article 6. Similar but more lenient requirements are included in the individual national decree required for broadcasters; see the TV-licensing National Decree as provided by BTP, Article 9.

in conflict with the broadcaster's obligations, it must immediately inform the relevant ministers.<sup>320</sup>

The Explanatory Memorandum attached to the Ordinance explains that the requirement to notify the commission regarding television programmes in advance must be understood in connection with another article in the Ordinance, Article 13. This article allows for Government (namely the Minister of Justice) to demand the discontinuation of a television programme if it conflicts with the interests stated in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, such as national security or the protection of health and morals.<sup>321</sup> Radio broadcasters, on the other hand, are not required to notify a specific commission regarding their programming in advance.<sup>322</sup>

As for sanctions, the failure to submit television programming schedules in advance is considered to be a violation of the Television National Ordinance, with a maximum prison sentence of three months or a financial penalty of at most NAf 1,000 (ca. US\$ 565).<sup>323</sup> In addition, as already mentioned in the discussion under Indicator 1.10, TV and radio broadcasters who persistently contravene license conditions can be banned from broadcasting, and licenses can also be withdrawn.

Curaçao's regulatory framework for printed matter, including print media, is less extensive. However, the existing legislation contains antiquated provisions that conflict with the constitutional ban on prior censorship.<sup>324</sup> Most notably, since 1933, in cases in which it is deemed necessary to ensure public order, the National Ordinance on Printed Matter authorises the Government to impose limits on the freedom of expression by national decree, and prevent the "printing, publishing and dissemination" of specific printed matter.<sup>325</sup> Preventing the printing of content surpasses the status of an ex-post measure and represents a clear violation of the Constitution.<sup>326</sup>

Another provision included in the 1933 National Ordinance on Printed Matter requires printers or publishers to send a signed copy of each piece printed to the local chief of police

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<sup>320</sup> Television National Ordinance, Article 7.

<sup>321</sup> Idem, Article 13. The Explanatory Memorandum explicitly mentions Article 10.2 of the Convention.

<sup>322</sup> Note that as mentioned in the discussion under Indicator 1.7, there is no equivalent of the 1971 Television National Ordinance for the radio sector. Compare the radio license as provided by BTP, Article 12. Radio broadcasters are required, *where possible*, to make their programme over a period of at least one month known to the public.

<sup>323</sup> Television National Ordinance, Article 15.

<sup>324</sup> Since 2010, Curaçao Constitution offers the possibility to review the compatibility of national ordinances with the Constitution in terms of respect of fundamental human rights and freedoms. Therefore, since a few years ago, the legitimacy of the provisions included in this press ordinance may be reviewed by the courts. See the discussion under Indicator 1.1.

<sup>325</sup> Verordening van den 22 juni 1933, houdende bepalingen omtrent drukwerken (National Ordinance of 22 June 1933 on Printed Matter), Country Gazette 1933, No. 56, Articles 3 and 4.

<sup>326</sup> See also the explanatory memorandum of the Invoeringwet openbare lichamen BES (Introductory Act Public Entities BES), Dutch House of Representatives, Session 2008-2009, No.31957, No.3, 3.

“within 24 hours of its publication”, who is to send it to the public prosecutor “as soon as possible”.<sup>327</sup> Anonymous publications are not allowed,<sup>328</sup> and the import of printed matter may be restricted.<sup>329</sup> Non-compliance with a ban on the printing, publishing or dissemination of specified printed material is a criminal offence, carrying a maximum prison sentence of one year or a financial penalty of up to Naf 300 (ca. US\$ 170).<sup>330</sup>

To assess the application of the regulations concerning prior censorship in practice, several media managers, professionals and experts were asked whether they were aware of these requirements and provisions. The respondents indicated that the requirements and provisions were obsolete or admitted to being unaware of their existence. Respondents also indicated that there is no commission in place to screen television programmes in advance, and that TV broadcasters do not submit broadcasting programmes to any organisation entrusted with prior screening.<sup>331</sup> Also, with one exception (see boxed text), there are no known cases of broadcasters or print publications being forced to close down or threatened with closure because of content.<sup>332</sup> Similarly, in practice no outlet sends signed copies of printed materials to the chief of police, and none of the interviewees could recall recent<sup>333</sup> instances of prior censorship of the press. Thus, there appears to be some variation between the text of the regulations concerning self-censorship and their implementation in practice.

In addition, the media workers who completed the Media Workers' Survey did not suggest that censorship is of prime concern among media professionals in Curaçao today.<sup>334</sup> In response to questions regarding censorship, media workers in Curaçao primarily emphasised the prevalence of more subtle ways of influencing the media. These include refusing to provide information to ‘hostile’ media or providing information only after stretching procedural limits, requesting media owners to temporarily avoid specific issues, and the use of other types of pressure including threats. These issues are addressed elsewhere in this report (see Indicators 1.3, 2.3, 3.13 and 3.14).

<sup>327</sup> Verordening van den 22 juni 1933, houdende bepalingen omtrent drukwerken (National Ordinance of 22 June 1933 on Printed Matters), *Country Gazette* 1933, No. 56, Article 2.

<sup>328</sup> Idem, Article 1.

<sup>329</sup> Idem, Article 7.

<sup>330</sup> Idem, Article 6.

<sup>331</sup> See also Explanatory Memorandum to Mediawet BES (Media Law BES), Dutch House of Representatives, Session 2009-2010, 32 419, No. 3, 19.

<sup>332</sup> Also Arjen B. van Rijn, *Staatsrecht van de Nederlandse Antillen* (Constitutional Law of the Netherlands Antilles) (Deventer: Tjeenk Willink, 1999), 160.

<sup>333</sup> In a 1992 case, Government attempted to prevent further publication of a witness statement in a Curaçao newspaper. Government referred to its duty to protect the privacy of persons mentioned in the statement. The court ruled against the plaintiff and added that Government was not obliged to address the failure of another to comply with privacy rights in a civil court. See Court in First Instance of the Netherlands Antilles, 23 October 1992, Case number 430/92 (ECLI:NL:OGEAC:1992:AH5013). The court case which ‘inspired’ the Television National Ordinance, also dealt with a case of prior censorship (in 1964).

<sup>334</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

### Foul language, freedom of expression and delay equipment

In 1997, the Government attempted to prevent a radio station from broadcasting because of its use of indecent language.<sup>335</sup> After a number of instances of use of indecent language on air, the Government banned the radio station involved from broadcasting live. Around this time, radio stations agreed with the Government to introduce delay equipment. Broadcast delay equipment intentionally delays the broadcasting of live content, and allows radio stations to intervene in order to prevent material from making it to air when necessary. While waiting for the introduction of delay equipment, the radio station decided to ignore the Government's ban and continued to broadcast live. The Government intervened and ordered the station to refrain from broadcasting for six hours.

The radio station went to court. The judge ruled that a full six-hour ban on broadcasting because of indecent language - in the given circumstances - was to be considered too drastic a sanction and that as a breach of freedom of expression this was inadmissible. Since then, however, radio license holders are only allowed to broadcast live talk shows if they use time-delay technology that delays the broadcast by at least six seconds. Those individuals who were interviewed for this study informed the Research Team that although most stations – but not all – have delay equipment available, it is rarely used to prevent the broadcasting of specific material. Its use is also not actively monitored.

## 1.12 The State does not seek to block or filter internet content deemed sensitive or detrimental

The focus of this indicator is on existing limitations on Internet content and on providing Internet services as well as how the State defines and implements such limitations.<sup>336</sup>

Article 9 of the Constitution of Curaçao on the protection of freedom of expression covers also Internet content:

No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs [on press, radio and television broadcasts], without prejudice to the responsibility of every person under the law.

The Explanatory Memorandum to this article explicitly notes that this provision includes the Internet. There are no reports of Internet content being blocked or filtered by the State in Curaçao nor is this issue a topic of much discussion.

Internet users are not subject to sanctions for accessing or publishing content on the Internet other than that which is also sanctioned for traditional media, such as hate speech. With

<sup>335</sup> Application for interim measures, Court in First Instance of the Netherlands Antilles, 31 August 1997, TAR-Justicia, 184/1998

<sup>336</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 28.

the introduction of the new Penal Code in 2011, prohibited material also explicitly includes accessing, publishing and disseminating child pornography via the Internet.<sup>337</sup>

Internet service providers are required to obtain a license from BTP for operating in Curaçao. However, websites, blogs or Internet broadcasters are not required to register with or obtain permission from a public body.

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<sup>337</sup> Penal Code, Article 2:196.

## Recommendations

### Legal and policy framework

1. The State should consider the adoption of a specific constitutional guarantee of the right to information that is broad in scope and in line with international standards which provide for a narrow definition of exclusions and a presumption of transparency.
2. The free flow of information is a prerequisite for the development of proactive and independent journalism. Being the key provider of public information, the Government of Curaçao should consider institutionalising its responsibility to respond to information requests and ensure the proactive disclosure of important governmental information including the complete parliamentary documents, governmental advisory reports and consolidated versions of all current legislation.
3. The National Ordinance on Open Government should apply to all Government bodies and not exclude Government-owned companies and foundations.
4. The Government could consider starting to register and monitor the information requests for public information to enable the Minister of General Affairs to fulfill the requirement to send an annual report to Parliament on how the National Ordinance on Open Government was applied in the previous year.
5. The Government of Curaçao should consider consolidating all legislation in current legislative texts and making this available online.
6. All Parliamentary Documents should be made online available to the public.
7. To safeguard the journalist's right to protect their sources, legislation and policy should be established in accordance with international standards.
8. Civil society organizations and other actors such as in the media should be provided clear opportunities in shaping public policy towards the media
9. Editorial independence from commercial, political and other interests should be guaranteed by law and respected in practice. Media organisations should be free to determine the shape and content of broadcasting programmes and publications.
10. The Government should be allowed to apply to an independent broadcasting regulatory body for a limited amount of airtime against a reasonable fee for the purpose of broadcasting Government information (*overheidsvoorlichting*). Such an independent broadcasting regulatory body needs yet to be established.

## Regulatory system for broadcasting

11. For the purposes of promoting media pluralism and freedom of expression, the legislative framework for broadcasting should be strengthened, modernised and amended to include radio broadcasting in addition to television. Media policy and regulation should be clearly distinguished from telecommunications policy and regulation. The Government should take the lead in this process and prioritise the necessary amendments in consultation with all stakeholders, including the media sector, civil society organisations and the Bureau Telecommunicatie en Post (BTP).
12. The establishment of an independent regulatory body that follows international standards on independence, membership, accountability and transparency should be considered. The regulatory body, not a Government minister, should have the exclusive responsibility for issuing individual broadcast licenses and supervising compliance, without prejudice to the responsibilities of the telecommunications regulator on the basis of the National Ordinance on Telecommunications Facilities.
13. Until the establishment of an independent regulatory body, the Government and BTP should respect freedom of expression, media independence and the need to promote media pluralism when undertaking regulatory acts.

14. Provisions to ensure that BTP is accountable to the public should be strengthened, and provisions already included in the legislation should be fully respected. BTP's Supervisory Board should increase the transparency of its activities by producing an activity report accessible to the public, and by informing the Parliament on its activities as legally required - through the Minister of Traffic, Transportation and Urban Planning. BTP's annual report and financial statement should be made available on its website.
15. Rules on incompatibility and the eligibility of members of BTP's supervisory board should be strengthened, and BTP's operational independence should be increased.

## Defamation laws and other legal restrictions on journalists

16. Curaçao's defamation law should be revised to decriminalize defamation and ensure adequate protection by civil defamation laws, in line with international standards. The law should not award greater protection to the reputations of authority figures or institutions. Blasphemy provisions should be eliminated.

17. Although the majority of the numerous antiquated broadcasting rules and regulations appear to be defunct, they should be formally removed in order to comply with international standards and ratified international and regional treaty provisions on freedom of expression. All undue restrictions on broadcasting content should be removed. Any remaining restriction on content, for example, regarding the protection of minors or related to advertising, should have a legal basis and be clearly and narrowly defined. Vague, and overly broad provisions should be removed.

## Censorship

18. Although not currently applied, all rules and regulations that allow for prior censorship in the broadcast media should be removed from the Television National Ordinance and the individual television and radio licenses. The National Ordinance on Printed Matter, which contains antiquated provisions that conflict with the constitutional ban on prior censorship, should be extensively revised or completely withdrawn.

## Category 2

Plurality and diversity of media, a level economic playing field and transparency of ownership



## Key Indicators

### A. MEDIA CONCENTRATION

- 2.1 State takes positive measures to promote pluralist media
- 2.2 State ensures compliance with measures to promote pluralist media\*

### B. A DIVERSE MIX OF PUBLIC, PRIVATE AND COMMUNITY MEDIA

- 2.3 State actively promotes a diverse mix of public, private and community media
- 2.4 Independent and transparent regulatory system
- 2.5 State and CSOs actively promote development of community media

### C. LICENSING AND SPECTRUM ALLOCATION

- 2.6 State plan for spectrum allocation ensures optimal use for the public interest
- 2.7 State plan for spectrum allocation promotes diversity of ownership and content\*\*
- 2.8 Independent and transparent regulatory system

### D. TAXATION AND BUSINESS REGULATION

- 2.9 State uses taxation and business regulation to encourage media development in a non-discriminatory manner

### E. ADVERTISING

- 2.10 State does not discriminate through advertising policy
- 2.11 Effective regulation governing advertising in the media

## Category 2

# Plurality and diversity of media, a level economic playing field and transparency of ownership

## A. Media concentration

### 2.1 State takes positive measures to promote pluralist media

Media pluralism is essential for the functioning of a democratic society and is a corollary of the fundamental right to freedom of expression and information, as discussed in Category 1. In this respect, international and regional good practice has involved States promoting “structural pluralism”, that is, a plurality of independent and autonomous media, and adopting “rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets”.<sup>338</sup> To increase public knowledge regarding who owns and controls specific media and to hold those persons or bodies accountable, it is important for States to also ensure transparency of media ownership. This includes disclosing and making available to the public information on the persons or bodies that participate in the media, on the nature and extent of the interests held in the media, and on support measures granted to the media.<sup>339</sup> This indicator focuses on the measures taken by the State to ensure pluralism in the media with regards to ownership. Indicator 2.2 focuses on the effective implementation of the measures under examination here.<sup>340</sup>

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<sup>338</sup> Council of Europe, Recommendation CM/Rec (2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, I ‘Measures promoting structural pluralism of the media’, 2.1 (adopted 31 January 2007).

<sup>339</sup> Idem, III ‘Media transparency’ and ARTICLE 19, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (London, March 2002), Principle 3. Also refer to, e.g., Access Info Europe, *Transparency of media ownership in Europe. A report for the High-Level Group on Media Freedom and Pluralism* (Madrid: Access Info Europe, 2012). [http://www.opensocietyfoundations.org/sites/default/files/Transparency\\_Media\\_Ownership\\_Europe\\_20121217\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/Transparency_Media_Ownership_Europe_20121217_0.pdf) (accessed September 15, 2014).

<sup>340</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 34-35.

## Concentration of ownership

In Curaçao, the State does not promote structural pluralism of the media and does not regulate the concentration of media ownership. As part of the Kingdom of the Netherlands, Curaçao is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and as such must abide by its Article 10, which requires Curaçao to make efforts to safeguard the plurality of the media.<sup>341</sup> However, at the country level, there are no specific rules aimed at limiting the influence of a person, company or group or to ensure a sufficient number of diverse media outlets. Curaçao lacks an overall competition framework to regulate mergers and the market behaviour of companies with a dominant market position. There are no specific regulations to address these issues within the media sector. No regulations exist on cross-ownership within broadcasting and between broadcasting and other media sectors to prevent market dominance.<sup>342</sup> Thus, neither ministers nor the regulator BTP have the authority to refuse broadcast license requests or to divest any existing media operations if unacceptable levels of ownership concentration are reached.<sup>343</sup>

In 2013, the Curaçao Government announced the introduction of anti-trust legislation and the establishment of a Fair Trade Authority Curaçao (FTAC) to “encourage fair competition and improve the island’s competitiveness”.<sup>344</sup> The draft National Ordinance on Competition requires companies to notify the FTAC of prospective mergers, prohibits the abuse of dominance, and includes provisions to regulate companies with a dominant market position. The draft Competition Ordinance does not allow the FTAC to block mergers.<sup>345</sup> However, at the time of writing, the relevant draft legislation was still undergoing discussion, and neither its specifics nor the structure of the anti-trust authority had yet been made public. Therefore, whether the pending legislation will result in an effective framework to prevent the undue concentration of ownership cannot for the time being be assessed (see also the discussion under Indicator 2.2).

Similarly, specifically related to TV and radio broadcasting, new regulations to replace the current legislative telecommunications framework have been in the making for years now, with drafts going back as far as 2001 (see Indicator 1.7). The current National Ordinance on Telecommunications Facilities does not include any provisions concerning concentration.

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<sup>341</sup> Also refer to Aernout Nieuwenhuis, “Vrijheid van meningsuiting” (Freedom of expression), in: *Grondrechten. De nationale, Europese en internationale dimensie* (Fundamental Rights. The National, European and International Dimension), ed. M.L. van Emmerik, B. Barentsen, J.H. Crijns, T. Barkhuysen, A.J. Nieuwenhuis, K.M. de Vries, F.C. van der Jagt, J.P. Loof, and J.H. Gerards (Nijmegen: ArsAequi, 2013), 85-86.

<sup>342</sup> Cf. Council of Europe as referred to in note 1, point 2.4.

<sup>343</sup> Idem, point 2.6.

<sup>344</sup> Regeerprogramma Curaçao 2013-2016, ‘Speransa i Konfiansa’, hoop en vertrouwen (Government program Curaçao 2013-2016 ‘Hope and confidence’) (no date), 54.

<sup>345</sup> According to the Ministry of Economic Development, the notification regime is to be introduced for a period of five years, after which it may be determined whether to introduce a merger control regime; see Landsverordening inzake concurrentie. Algemene informatie (National Ordinance on Competition. General information), Ministerie van Economische Ontwikkeling (no date).

Its' replacement, the draft National Ordinance on Telecommunications, would authorise the Licensing Minister to deny a license for the use of spectrum if issuing such a license would create an "inadmissible dominant position in the relevant market".<sup>346</sup> It also includes several provisions to regulate undertakings with "significant market power".<sup>347</sup> When the draft National Ordinance on Telecommunications is to be presented to Parliament and what its implications for the powers of the telecommunications regulator BTP and the proposed general anti-trust authority FTAC will be, is unknown. For now, Curaçao remains without an enforceable law to prevent undue ownership concentration.

In practice, there does not appear to be a substantial degree of concentration of media ownership in Curaçao. However, a lack of transparency in media ownership (further discussed below) does not allow for a detailed analysis in this regard. Neither BTP nor any other agency is required to monitor and evaluate media ownership concentration or to report on media concentration issues to the Government or Parliament.<sup>348</sup>

Broadcasting stations and print media outlets operate in a relatively competitive environment, in particular with increased competition from Internet-based media. With only two major players,<sup>349</sup> however, the local TV market remains vulnerable to anti-competitive behaviour. Although six media organisations are licensed for television broadcasting,<sup>350</sup> three of the four smaller competitors are yet not broadcasting or only broadcast a limited programme in a testing phase.<sup>351</sup> Additionally, several cross-ownership structures are beginning to emerge. Five of the six television broadcasting licensees are also licensed to operate radio stations.<sup>352</sup> Another weakness is the concentrated market for printing, in combination with some 'vertical integration'<sup>353</sup> in the newspaper publishing market. The publishing, printing and dissemination of the largest Dutch-language newspaper are controlled by one company, whereas a second

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<sup>346</sup> Ontwerplandsverordening telecommunicatie (Draft National Ordinance on Telecommunications), Parliament of the Netherlands Antilles, Session 2008-2009, No.3, Article 3.8.

<sup>347</sup> These draft provisions now include broadcasting. Compare Explanatory Memorandum to Ontwerplandsverordening telecommunicatie (Draft National Ordinance on Telecommunications), Parliament of the Netherlands Antilles, Session 2000-2001, No.3, Version 05-07-2001, Section 5.3.1 with that of Session 2008-2009, Article 6.5.

<sup>348</sup> A complete understanding of media concentration would require transparency of shares and participations in different undertakings.

<sup>349</sup> Results from the Public Survey, 'Naar welke TV zenders kijkt u voornamelijk?' (meerdere antwoorden mogelijk) ('Which TV-stations do you mostly watch?' (multiple answers possible)). Also: Curconsult, *Mediaonderzoek Curaçao 2013* (Media Research Curaçao 2013) (Willemstad: Curconsult, 2013).

<sup>350</sup> Reply to 'Questionnaire on broadcast statistics UNESCO MDI Assessment Curaçao', January 28, 2014, received by mail of March 18, 2014, and reply to Information Request, February 7, 2014, as received by mail of April 1, 2014.

<sup>351</sup> Information received from BTP, by mail of May 16, 2014.

<sup>352</sup> Reply to 'Questionnaire on broadcast statistics UNESCO MDI Assessment Curaçao', January 28, 2014, received by mail of March 18, 2014; telephone conversation with BTP on June 26, 2014.

<sup>353</sup> Vertical integration refers to a situation in which a company operates at different but complementary levels in the chain of production and/or distribution of the same final product, for example, as a result of a merger between a publishing company and a printing company.

printing company, whose owner also owns the largest Papiamentu newspaper, prints all of the other newspapers. The Research Team was also informed that the market for the distribution of newspapers along the streets – an important distribution channel for newspapers, particularly those in Papiamentu - is also a concentrated one, with one main supplier and relatively large entry costs (for more on this topic, please see Indicator 5.1).

## Transparency of ownership

The Government of Curaçao does not promote transparency of media ownership. Although it was often suggested over the course of this assessment that knowledge regarding who owns which media outlet is relatively widespread because of the country's small size, in fact, the Curaçao public does not have access to reliable information as recommended by the Council of Europe. The Council of Europe recommends that the public should have access to:

- “Information concerning the persons or bodies participating in the structure of the media and on the nature and the extent of the respective participation of these persons and bodies in the structure concerned, and the ultimate beneficiaries of this participation;
- Information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;
- Information on other persons or bodies likely to exercise a significant influence on the programming policy or editorial policy [...]”<sup>354</sup>

Curaçao has no transparency provisions that require private media entities to make public information on ownership, including key information on beneficial ownership, although by definition ownership of sole proprietorship (*eenmanszaak*) companies is registered at the Chamber of Commerce.<sup>355,356</sup> No privately owned media company is required to make public information on investments and revenue sources. With few exceptions, most media companies in Curaçao are structured as limited liability companies (*naamloze vennootschap*). A number are structured as private limited liability companies (*besloten vennootschap*), and a few involve foundations. None of the media companies are required to make their annual reports and financial statements available to the general public or to deposit them at the Chamber of Commerce, and only larger companies are required to make these reports

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<sup>354</sup> Council of Europe, III ‘Media transparency’ as referred to in note 1.

<sup>355</sup> See also: Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013).

<sup>356</sup> However, contact information and information on management (statutory director/managing director) is available from the Chamber of Commerce and can be accessed free of charge at [www.curacao-chamber.cw](http://www.curacao-chamber.cw). Constitutional documents, such as a company's charter, are also freely available at the Chamber of Commerce, albeit not online. Copies are available at a charge of NAF 1 (US\$ 0.56) per page.

available to “interested parties” (*belanghebbenden*).<sup>357</sup> Only public companies, such as United Telecommunication Services, which is owned by the countries of Curaçao and Sint Maarten and is the holding company of TeleCuraçao, must abide by stricter ‘corporate governance’ rules.<sup>358</sup> However, in practice, this regulation has not resulted in publicly available UTS corporate reports and financial statements or in more detailed information on its subsidiary TeleCuraçao.<sup>359</sup>

For TV and radio companies, there are nevertheless a number of provisions that require disclosure of information to authorised bodies. A company that applies for a broadcasting license is required to provide the telecommunications regulator BTP with ownership information, including, where relevant, information on holding companies and subsidiaries. If applicable, the applicant must also submit the company’s register of shareholders.<sup>360</sup> In the case of a change of ownership, licenses are automatically withdrawn unless the Minister issuing the license has provided prior approval.<sup>361</sup> However, information on beneficial ownership is not required to be disclosed. Additionally, an applicant is also required to submit the company’s two most recent financial statements (if applicable), a business plan that includes a financial plan and a description of the investments planned and financial guarantees. The purpose of this information is to establish the identity of the prospective licensee and to facilitate the performance of background checks before the requested license is issued. The financial information is used to assess the viability of the applicant’s business plan.<sup>362</sup> Media companies do not need to provide information on revenue sources and other key financial information on a regular basis to the regulator.

Neither BTP nor the Government is required to actively publish any information on radio or television licensees or systematically monitor company structure, ownership breakdown or revenue sources. BTP does not publish any information about broadcasting licensees. According to freedom of information regulations, anyone can submit a written request for

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<sup>357</sup> Civil Code, Book 2, particularly Articles 119 and 122. A company is considered to be large if it has more than 20 employees in Curaçao, an asset value of more than NAf 5 million (US\$ 2.8 million) and net assets that exceed NAf 10 million (US\$ 5.6 million).

<sup>358</sup> See Eilandsbesluit Code Corporate Governance Curaçao (Island Decree Code Corporate Governance Curaçao), *Official Curaçao Gazette* 2009, No.96.

<sup>359</sup> UTS does not publish its annual reports on its website, and the Chamber of Commerce did not receive any annual reports to deposit (reply from the Chamber of Commerce received on January 3, 2014 to mail Verzoek inzage jaarverslagen (Request inspection annual reports) sent on December 24, 2013. On May 5, 2014, the Research Team sent UTS a request for copies of its most recent annual report and financial statement; a reminder was sent on June 22, 2014. Note that the Minister of Finance reports aggregate information on UTS in Financiële Management Rapportages (Financial Management Reports), which are published at [www.gobiernu.cw](http://www.gobiernu.cw) (accessed February 8, 2014).

<sup>360</sup> Aanvraagformulier voor een vergunning voor een omroepnetwerk (Application form for a license for a broadcasting network), available at <http://www.btnp.org> (accessed February 8, 2014).

<sup>361</sup> For limited liability companies, prior approval is only required in case of a change of ownership of the majority of shares to individuals other than those who were shareowners when the license was issued. See Television license, Article 4; Technical television license, Article 26 and Radio license, Article 34.

<sup>362</sup> Interview, February 4, 2014.

information regarding licenses issued, as long as it does not pertain to confidential business information or may harm the privacy of concerned individuals.<sup>363</sup> As a test, the Research Team asked BTP to provide information on the ownership and structure of all licensed media companies. The Team was provided with information regarding the number of assigned licenses, the registered license holder and its trade name, and for each licensee the name of the person or bodies referred to as ‘owner’.<sup>364</sup> The information did not include an overview of all of the persons or bodies that participate in the structure or beneficial ownership or information regarding the nature and extent of the interests held by the persons or bodies that were included on the provided list.

Media managers were directly asked by the Research Team about their companies’ ownership structure and finances, and whether it was possible to obtain their most recent annual report. The response was mostly negative. Thus, for example, two of the 11 media managers declined to send the Research Team their annual report, stating that that information was not public information. The other nine media managers either answered that their company did not have an annual report, or omitted the question altogether. That said, several media managers – either in interviews or in the Media Managers’ Survey<sup>365</sup> – did provide some information on ownership, and a smaller number provided very general information regarding finances. A couple of managers also provided an indication of the company’s turnover. The Research Team did not, however, receive any written formal documentation, such as annual reports or financial statements.

## **2.2 State ensures compliance with measures to promote pluralist media**

There are no general anti-monopoly laws on the basis of which a license request can be refused or that can force divestment of existing media operations to prevent excessive concentrations of media ownership (see also Indicator 2.1). The promotion and enforcement of measures to foster media pluralism is also not a matter forcefully advocated by civil society actors. At the time of writing, it was unknown whether the anti-trust legislation that is currently being prepared will include sufficient guarantees for the necessary operational independence of the FTAC. It was also unclear whether the FTAC will have sufficient authority and capability to successfully accomplish its duties. The same is true for specific telecommunications regulations in the forthcoming National Ordinance on Telecommunications that is still being drafted.

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<sup>363</sup> On this legislation and its practice, please refer to the discussion under Indicator 1.2.

<sup>364</sup> BTP’s reply to Informatieverzoek (Information Request), February 7, 2014, as received by mail of April 1, 2014.

<sup>365</sup> Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

## B. Diverse mix of public, private and community media

### 2.3 State actively promotes a diverse mix of public, private and community media

This indicator assesses whether there are state measures to ensure a diverse mix of public, private and community media and ensure maximum diversity.<sup>366</sup> It assesses whether the State grants equal access to information to all media, whether they are public, private or community media. It also assesses whether digital broadcasting licenses are granted to public broadcasters and whether there is, for example, a media subsidy system in place.<sup>367</sup>

No measures appear to be in place in Curaçao for the promotion of a diverse mix of media, other than a commitment by the Government to allocate licenses to a large number of media outlets. Thus, for example, there is no formal media subsidy system. On the other hand, there are no start-up fees or other restrictions on new print titles except standard business registration requirements.

Legislation also does not distinguish between public, private and community media, and the State does not actively promote a three-tiers model of broadcasting. Several years ago, the Government endeavoured to provide a counterbalance to the “completely commercial radio and television sector” and established a foundation, Stichting TelAntil, to provide a national public broadcasting service.<sup>368</sup> However, these plans and the accompanying legislation are currently dormant, and all of Curaçao’s broadcasting, print and online media are private media with a commercial purpose. As mentioned, TeleCuraçao is state-owned. However, there are no specific regulations that govern its broadcasting activities. It is subject to the same rules as other broadcasters, does not receive any direct subsidies from the State and is to operate on a commercial basis (see however Indicator 2.9; see also the discussion under Indicator 3.3). Thus, Curaçao does not have any public service media that is produced, financed and controlled by the public, and for the public.<sup>369</sup> A possible exception is Caribisch Network, which is a production of the independent Dutch public service broadcaster NTR and Journalistes Expérimentés, which is a Curaçao-based private production unit for news on Latin America and the Caribbean (see the boxed text ‘Caribisch Network’). In addition,

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<sup>366</sup> Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation, March 2002, Principle 3.

<sup>367</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 39.

<sup>368</sup> Explanatory Memorandum to the draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007, No.3, 14, also 1-2, 18.

<sup>369</sup> Public service media are public institutions with a public purpose. They are not for profit. Public does not mean state-owned. Although funded with state monies, these media belong to and dedicate themselves to the citizenry. They must be editorially independent, universal (accessible to all) and with high quality production. For a more detailed description of the concept of public service media, see <http://www.unesco.org/new/en/communication-and-information/media-development/public-service-broadcasting/> (accessed February 24, 2014).

while there are a number of commercial radio stations that focus their programming on, for example, religious or educational broadcasts, Curaçao does not have any community media, i.e., independent, community-owned and -run media.<sup>370</sup>

#### Caribisch Netwerk<sup>371</sup>

Caribisch Netwerk provides news and information regarding the Caribbean part of the Dutch Kingdom and the Caribbean community in the Netherlands. The network, although it reports *about* Curaçao, cannot be considered *part of* the Curaçao media framework. Caribisch Netwerk is funded by the Dutch public service broadcaster NTR, which receives a subsidy for this purpose from the Dutch Minister of Education, Culture and Science. The Curaçao-based Journalistes Expérimentés works with NTR on a contract basis. NTR requires the production company to 1) produce its content under the conditions of the Dutch public broadcasting organisation (Nederlandse Publieke Omroep, NPO), 2) use NTR's editorial charter as a guideline and 3) serve no commercial purpose. The website is not used for commercial purposes, and the Research Team was informed that the positive operational return from the previous year had been used to introduce a Papiamentu version of the website.

Official partners of Caribisch Netwerk from the local press, television and radio news broadcasters in the Caribbean part of the Kingdom of the Netherlands may use the content published on the network's website free of charge provided that they satisfy certain conditions stipulated in their contract, such as acknowledgment of the source, publication of the content in its entirety (i.e., no adaptations), and its use for non-commercial purposes.

As a consequence of all media in Curaçao being private (with the possible exception of the above-mentioned Caribisch Netwerk), the State makes no formal distinction between public, private and community media in granting access to information. However, in practice, within the group of private media, not all media outlets are always treated equally by individual ministers in power. Moreover, although public access to Government information is legally

<sup>370</sup> Community media are societal organisations with a public purpose. They are not for profit, which means that they reinvest their profits from advertising, sale of services and donations in the media outlet itself and in its development projects. The community shares in the ownership, programming, administration and evaluation of these media. For a more detailed description of the concept of community media, see: <http://www.unesco.org/new/en/communication-and-information/media-development/community-media/> (accessed February 24, 2014). According to the experts who were interviewed, that certain radio broadcasters also involve foundations does not imply that Curaçao has community media. When probed, the experts agreed that there are no radio broadcasters that operate in accordance with media defined as 'community media'.

<sup>371</sup> Information received from Journalistes Expérimentés by e-mail on August 31, 2014. See also: [www.caribischnetwerk.ntr.nl](http://www.caribischnetwerk.ntr.nl) (accessed September 3, 2014).

provided for,<sup>372</sup> there have been several reports of individual ministers and Government representatives discriminating between media outlets when granting access to information.

For example, in 2004, the then Prime Minister of the Netherlands Antilles denied a journalist from one of Curaçao's newspapers access to the Prime Minister's press conferences. The journalist and newspaper went to court to regain access. The Court ruled in their favour, citing Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Articles 19 and 26<sup>373</sup> of the International Covenant on Civil and Political Rights. The Court stated that the provision of information cannot depend on "the whim of authorities". The Court also stated that the Government must safeguard plurality in the provision of information and opinions, and referred to the Declaration of Chapultepec by which "[t]he media and journalists should neither be discriminated against nor favored because of what they write and say".<sup>374</sup>

More recently, in May 2014, the current Prime Minister declined to answer the question of a journalist, indicating that he did not appreciate his line of questioning. The Prime Minister asked the journalist to leave, and denied him access to the press conference for a period of two weeks.<sup>375</sup> Many of the media workers and media officials who were interviewed for this assessment provided additional examples of 'selective treatment' in the provision of information and commented on the behaviour of ministers or Government representatives:

- granting a 'scoop' to a 'friendly' media outlet and delaying the provision of information to 'hostile' outlets through drawn-out formal administrative procedures;
- providing better access to information such as interviews to media organisations that broadcast their political party's advertisements while refusing access to other media organisations whose managers are known to associate with rival political parties;
- not answering critical questions, not answering a reporter's telephone calls, or refusing contact and interviews for a period to certain journalists;<sup>376</sup>

As regards digital broadcasting, state-owned TeleCuraçao holds a digital license. However, it is the only broadcaster with such a license. From 2008 to the present, TeleCuraçao is the

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<sup>372</sup> See also the assessment under Indicator 1.2.

<sup>373</sup> Article 26 of the International Covenant on Civil and Political Rights requires the law to prohibit any discrimination.

<sup>374</sup> Court ruling, January 26, 2004, KG no.13/04. See also Principle 6 of the Declaration of Chapultepec, as discussed under Indicator 1.1.

<sup>375</sup> "Pa 2 siman Cooper no por dreña konseho di minister" (Cooper not allowed to enter press conference of Council of Ministers for two weeks), *Extra*, May 9, 2014; "Journalist start kort geding" (Journalist applies for interim measures), *Amigoe*, May 9, 2014. In practice, the journalist was able to enter the press conference in the following weeks although he did not receive the usual invitation to the press conferences.

<sup>376</sup> E.g., Interviews January 24, March 18, March 19, March 20, 2014, responses to Media Managers' Survey. Also: "Opinie. Twee onvoldoendes for Curaçao" (Opinion. Two fails for Curaçao), *RNW*, September 1, 2011.

only television station that broadcasts using both analogue and digital signals. It uses its digital channel to broadcast three different programmes. All of the other television stations only broadcast using analogue transmission (for additional discussion of the digital transition of Curaçao, see Indicator 2.7).

## 2.4 Independent and transparent regulatory system

A plural media requires equitable access to frequencies by diverse sources of media. This indicator assesses whether the regulatory system is designed to ensure a balanced media environment and how this system is applied. A balanced media environment requires, for example, decision making regarding the allocation of frequencies to be open and participatory and the regulator's practice to be independent and free from political and commercial interference. Other issues concerned with the regulatory system are discussed under Indicators 1.6 and 2.8.<sup>377</sup>

As mentioned, international and regional best practice is for States to commit themselves to protecting the plurality of the media and to prevent political or commercial interests from dominating the media sector.<sup>378</sup> However, in Curaçao, the regulatory framework in place currently offers minimal concrete provisions to promote media pluralism. Furthermore, for several years, the regulator BTP has only to a limited extent been involved in decision making regarding the assignment of FM-radio broadcasting frequencies.

Access to the frequency spectrum is regulated by the National Ordinance on Telecommunications Facilities. The Government may require license applicants to satisfy certain conditions and requirements, most of which are technical. The Ordinance only allows for the refusal of a license on grounds such as the safeguarding of efficient use of frequency spectrum or the "efficient provision of telecommunications in the general social and economic interest".<sup>379</sup> Contribution to media pluralism is not stipulated in the Television National Ordinance as constituting basis for approval.

The State plan for allocating frequencies<sup>380</sup> does not include specific references to pluralism or specific targets or quotas for community broadcasters. It does, however, prescribe a procedure to prevent licenses from being sold to the highest bidder if frequency shortage

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<sup>377</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 39.

<sup>378</sup> Cf. the discussion under Indicator 2.1.

<sup>379</sup> Landsverordening op de telecommunicatievoorzieningen (National Ordinance on Telecommunication Facilities), *Country Gazette* 2011, No.37, Article 15. Also refer to: Arjen B. van Rijn, *Staatsrecht van de Nederlandse Antillen* (Constitutional Law of the Netherlands Antilles) (Deventer: Tjeenk Willink, 1999), 163.

<sup>380</sup> The information on the State plan for allocating frequencies provided in this report is based on information received from BTP and a draft version of the frequency plan provided by BTP, *Frequentiebeleidsplan Nederlandse Antillen*. Datum: april 2004 (Frequency Policy Plan Netherlands Antilles. Date: April 2004), version December 17, 2003. The State plan has never been formally adopted but is being applied in practice for the allocation of frequencies.

is to be expected. That is, depending on the specific circumstances, broadcasting licenses are to be issued on a 'first come, first served basis', through a competitive tender procedure (*vergelijkende toets*),<sup>381</sup> a lottery in combination with a competitive tender procedure preceding the lottery, or an auction.<sup>382</sup> According to the plan, if a shortage is to be expected, emphasis is to be placed on competitive tender procedures.<sup>383</sup>

The plan does not specify the selection criteria for awarding licenses. The regulator is not explicitly required to consider diversity when choosing between competing license applications. Diversity is also not provided for in the draft telecommunications legislation referred to in the assessment under Indicator 2.1.<sup>384</sup> According to BTP,<sup>385</sup> the Curaçao license awarding practice is to focus primarily on selecting 'the best' applicants on the basis of criteria such as the financial soundness of the business plan and a number of technical criteria.

The Curaçao system allows for political interference in decision-making regarding the assignment of radio and television broadcasting frequencies. As mentioned under Indicator 1.6, prior to their finalisation, all license decisions are submitted to the Minister, who makes the final decision.<sup>386</sup> Curaçao's institutional framework leaves little room for independent regulation. This does not necessarily result in political interference in practice if ministers follow the regulator's advice. However, according to several of the individuals who were interviewed for this assessment, individual ministers do interfere in this process.<sup>387</sup> As one media manager indicated, in practice, rules are often ignored and much is privately arranged.<sup>388</sup> When probed for specific examples, several individuals referred to the extension of licenses in cases where the license conditions do not permit this. Successful television and radio license applicants are required to be operational within a year. Licenses can be withdrawn if they fail to meet this condition, unless the Minister judges the withdrawal unreasonable.<sup>389</sup> In the past, the Minister has initiated procedures to withdraw licenses in

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<sup>381</sup> In these competitive tender procedures, candidate offers are to be evaluated against pre-defined criteria, possibly with different weightings.

<sup>382</sup> Frequency Policy Plan Netherlands Antilles (2004). See, e.g., 14 and Annex 1. BTP informed us that in practice BTP does not use lotteries as an assignment mechanism for broadcasting licenses. See also the draft Explanatory Memorandum of the draft National Ordinance on Telecommunications (version to Parliament 2008-2009), section 4.4.3.

<sup>383</sup> Frequency Policy Plan Netherlands Antilles (2004), 6.

<sup>384</sup> That is, the draft National Ordinance on Telecommunications. See the assessment under Indicator 2.1 for more information.

<sup>385</sup> Interview February 4, 2014.

<sup>386</sup> Interviews January 27 and February 4, 2014. For the television license, two ministers are involved. However, individual license decisions do not require the involvement of the Council of Ministers or the Governor.

<sup>387</sup> Interview March 19, March 21, 2014; see also Interview February 4, 2014.

<sup>388</sup> Interview March 19, 2014.

<sup>389</sup> Landsbesluit radio-elektrische inrichtingen (National Decree Radio Electric Facilities), *Country Gazette* 1995, No. 196, Article 13. See also the explanatory memorandum to that article.

some cases<sup>390</sup> but not in others. At least one broadcasting company reported that it had been in possession of a television broadcasting license for approximately 10 years but that it had yet to begin broadcasting.<sup>391</sup>

More importantly, with respect to FM radio frequencies, a significant part of the process of assignment of frequencies occurs in the market. Since 2005, there have been no frequencies available for FM radio in Curaçao and those whose license has expired<sup>392</sup> since that year have been granted license renewals. As a result, a significant number of applicants are on a waiting list to obtain licenses.<sup>393</sup> A number of new entities have entered the FM-radio broadcasting market, however. This has resulted either from changes in ownership at companies holding FM radio licenses or from license-holders leasing out their frequencies.<sup>394</sup> In both cases BTP must be notified, and in the event of a change in ownership, the Minister must formally approve the transfer of license rights. Frequency trading or selling in the market without the Minister's consent is illegal. However, the price at which frequencies are traded or sold is unregulated, and does not require the Minister's approval. According to interviews conducted, the price at which these frequencies are traded for or sold is high, owing to high demand.<sup>395</sup> Therefore, although the official fees for obtaining an FM-radio license are indeed charged, in practice the larger part of the actual cost is determined by the market given the context mentioned. Interviewees mentioned that "[t]here is supervision, in the sense that a change of ownership is allowed only with the Minister's approval, but neither the Minister nor BTP is involved in the negotiations regarding the price".<sup>396</sup> The Minister and BTP are not required to be informed about the transaction price, and according to several experts interviewed, the transactions are likely to involve substantial sums of money that are significantly above the official government FM radio license fees.<sup>397</sup>

<sup>390</sup> See, for example, *Gemeenschappelijk Hof van Justitie van de Nederlandse Antillen en Aruba, Uitspraak in hoger beroep*, Case number 103 HJAR 24/05, 21 November 2005 (ECLI:NL:OGHNA:2005:BG1000).

<sup>391</sup> Interviews 27 January 2014; 19 March 2014. Note, however, that the law does allow for third parties to request withdrawal of licenses if licensees violate license conditions. As far as could be established, no such formal requests have been made. Cf. *Landsbesluit radio-elektrische inrichtingen* (National Decree Radio Electric Facilities), *Country Gazette* 1995, No. 196, Article 11.

<sup>392</sup> Radio licenses are valid for five years – barring earlier withdrawal - and can be renewed on request. See *Radio license*, Article 1. Also: Interview January 27, 2014.

<sup>393</sup> Interview January 27, 2014; Information received from BTP, email May 16, 2014.

<sup>394</sup> In the course of this study, the Research Team encountered 'lease' constructions, i.e., companies leasing (all or part of the) airtime of a licensee. This practice appears to be incompatible with the explicit rule that states that licensees are forbidden to make the television or radio facilities available to third parties for operation (Technical TV-license, Article 5 and radio license, Article 28. This latter Article allows making airtime available to third parties with the Minister's approval). Further research is required to establish the legality of this practice. Cf. Interview February 4, 2014.

<sup>395</sup> Interview February 4, 2014.

<sup>396</sup> *Ibid.*

<sup>397</sup> *Ibid.*; also Interviews March 19, March 21, 2014.

## 2.5 State and CSOs actively promote development of community media

Another way to ensure media pluralism and, in particular, access to information by marginalised groups is to actively promote the development of community media. In countries in which community radio enjoys its own legal status, the State may encourage the allocation of frequencies to community broadcasters that are controlled by and serve the needs of marginalised groups, e.g., a specific minority community. This aim may be achieved by establishing quotas or targets that reserve part of the frequency spectrum for community media.<sup>398</sup>

In Curaçao, neither the Government nor civil society organisations actively promote the development of community media. As previously mentioned, although a number of radio stations cater for, for example, a religious audience, Curaçao does not have any community media, i.e., not-for-profit media organisations owned and run by a community and catering to the information needs of that community. Community media do not enjoy a separate legal status and the concept is not used in policy making. There are no specific quotas or targets regarding the reservation of parts of the radio frequency spectrum for community broadcasters (see also the assessment under Indicator 2.3).

State policies and measures to support community media, such as targeted subsidies or preferential pricing, are absent. CSOs also do not engage in advocacy or funding to support the development of community media. However, the legislative framework includes several provisions that ensure that “bona fide non-commercial social organisations”<sup>399</sup> can receive television airtime. This point is further addressed under Indicator 2.7.

## C. Licensing and spectrum allocation

### 2.6 State plan for spectrum allocation ensures optimal use for the public interest

Because licensing is a means to achieve diversity, the awarding of licenses and frequencies is a major determinant of the overall media ecology. The International Telecommunication Union (ITU) establishes a global framework for the optimal use of the radio-frequency spectrum. It sets standards for the management of spectrum allocation and manages the global system of allocation. This indicator assesses whether the State plan for spectrum allocation follows ITU rules, is established in consultation with civil society organisations and the media sector, and is published and widely disseminated.<sup>400</sup>

<sup>398</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 40.

<sup>399</sup> Television National Ordinance, Article 11.

<sup>400</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 42-43.

In Curaçao, all of the television stations disseminate their broadcast signals using both terrestrial transmission and cable. All but one broadcast using analogue signals. Only state-owned TeleCuraçao also transmits using digital signals.<sup>401</sup> A total of 22 of the 28 radio stations transmit their broadcasting signals using both terrestrial transmission and cable, and 6 transmit only terrestrially. None of the radio channels broadcast digitally. No television or radio broadcaster is licensed for satellite transmission.<sup>402</sup>

There is a State plan for the allocation of radio frequencies, channels and bandwidth.<sup>403</sup> The plan, which is known as the Frequency Policy Plan Netherlands Antilles (2004), is the same as previously established for the Netherlands Antilles. The plan was drawn up by BTP, which is delegated the role of managing, assigning and withdrawing frequencies on behalf of the Minister of Traffic, Transportation and Urban Planning.<sup>404</sup> Although the 2004 plan has never been formally adopted, in practice it serves as the basis for spectrum allocation in Curaçao within the general framework agreed upon within the ITU.<sup>405</sup> The plan and the frequency register, which includes the assigned and available frequencies, are not published online or widely disseminated in other media. However, they are available on request from the regulator BTP.

There was no public consultation carried out during the drafting of the general plan, but the plan emphasises the importance of engaging with frequency users, including broadcasters and telecom companies. The Research Team was informed that in practice stakeholders are involved when specific frequency bands are being developed, for example, in the case of the digital migration project (see Indicator 2.7).<sup>406</sup> However, up to now, there has been no involvement of civil society organisations.

The plan consists of two parts: a general part that describes the Frequency Policy Plan and a frequency table. The Frequency Policy Plan dates from 2004 and was drafted in parallel with one of the first drafts of the new telecommunications regulations (which remain in draft form). The policy plan is to be revised every two to four years,<sup>407</sup> but in practice the plan has not been updated. The frequency table, however, regularly is. Its most recent version is dated February 2012.

The goal of the frequency plan is to administer the use of the frequency spectrum for it to “adequately contribute to social, economic and cultural interests in [the] country

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401 Information received from BTP, reply to ‘Questionnaire on broadcast statistics UNESCO MDI Assessment Curaçao’, 28 January 2014, received by mail of March 18, 2014.

402 Ibid.

403 As mentioned, the information provided on the State plan is based on information received from BTP and a draft version of the frequency plan provided by BTP, the Frequency Policy Plan Netherlands Antilles. Date: April 2004, version December 17, 2003.

404 Mandaatregeling BT&P 2005 (Mandate regulation BT&P 2005), Article 2, sub-paragraph a, 2.

405 Information received from BTP and Frequency Policy Plan Netherlands Antilles, 8.

406 Information received from BTP, Interview January 27, 2014.

407 Frequency Policy Plan Netherlands Antilles, 7.

while protecting the safety of the State, in accordance with [the country's] international obligations".<sup>408</sup> The plan contains an overview of allocations of the frequency spectrum, most of which are based on international ITU agreements. The plan distinguishes four uses of the frequency spectrum:

- commercial use
- vital public duties, such as duties related to defence, public order and safety
- broadcasting, i.e., frequency use for radio and television
- other uses, such as remote controls and radio amateurs.<sup>409</sup>

Particularly related to broadcasting, the plan allocates blocks of frequencies for broadcasting use, such as short- and medium-wave AM, FM and digital radio as well as analogue and digital TV. The policy developments considered in the frequency plan relate to several technical issues, such as increased efficiency as a result of the introduction of digital audio and video and the introduction of high-definition television (HDTV).<sup>410</sup> Because these developments are expected to contribute to an increased supply of programmes broadcast and an improved (technical) quality of that supply, they indirectly promote the plurality and quality of the broadcasting media. Additionally, the plan differentiates between free-to-air television and pay TV.<sup>411</sup> However, the plan does not sub-allocate frequencies to different types of broadcasters within those blocks such as to community broadcasters, nor do they directly promote diversity in broadcasting.

At the legislative level, the National Ordinance on Telecommunications Facilities does not contain explicit references to the frequency plan. The draft National Ordinance on Telecommunications referred to earlier includes specific provisions related to the plan's adoption by the Minister of Traffic, Transportation and Urban Planning, publication requirements and the possible involvement of stakeholders.<sup>412</sup>

## 2.7 State plan for spectrum allocation promotes diversity of ownership and content

A State plan for spectrum allocation can promote diversity of ownership and content in at least three ways. Such a plan may ensure that frequencies are shared equitably among different types of broadcasters, and it may require that part of any digital dividend be allocated back into broadcasting. There may also be 'must carry' obligations, that is, specific regulations that require cable carriers to carry free-to-air broadcasts to promote diversity. (It may also state

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<sup>408</sup> Idem, 4.

<sup>409</sup> Idem, 13-14.

<sup>410</sup> Idem, 21-22.

<sup>411</sup> The frequency bands between 2500 and 2700 MHz are allocated for pay TV.

<sup>412</sup> Draft Explanatory Memorandum of the draft National Ordinance on Telecommunications (version to Parliament, 2008-2009), Article 3.2.

that frequencies should not be auctioned off to the highest bidder. This issue is discussed under Indicator 2.4.)<sup>413</sup>

The State plan for spectrum allocation does not distinguish between public, private and community broadcasters in view of ensuring that the frequency spectrum is shared equitably among those categories. The state-owned broadcaster TeleCuraçao does not receive any special mention that distinguishes it from other private broadcasting entities.

Regarding digital migration, Curaçao was one of the first countries in the Caribbean and Latin America to begin digital terrestrial television broadcasting. Curaçao selected the Digital Video Broadcasting-Terrestrial (DVB-T) standard in 2004 and began digital transmissions in 2006.<sup>414</sup> Over the years, BTP has made substantial efforts to engage in dialogue with the relevant stakeholders to ensure a smooth switchover from analogue to digital. Thus, for example, BTP provided information to suppliers, retailers and broadcasting organisations and consulted stakeholders on measures to limit the disruption caused by the digital transition as well as its financial impact on users.<sup>415</sup> In addition, BTP recently launched a consumer website to inform consumers about the digital transition and answer consumers' queries.<sup>416</sup> Since 2008, state-owned TeleCuraçao broadcasts in a digital format and uses its digital channel to stream multiple programmes. The other two TV broadcasters do not yet broadcast in digital format. BTP originally planned a partial analogue switch-off of the UHF-band for 2013, but was forced to alter its plans. Factors that have delayed digital developments include a lack of an effective national broadcasting platform on which parties can stream their content and a lack of trust between the various broadcasting organisations, which prevent them from agreeing on a common course of action for carrying out the transition. Consequently, the media managers who were interviewed appear to be awaiting further action from BTP and the Government. In addition to the difficulties that this presents, for a complete switch-off of analogue broadcasting, including of VHF, the regulator decided to await developments in neighbouring Venezuela, which plans to continue its analogue broadcasting until 2020. The regulator currently envisions a 'parallel transition', with analogue and digital transmissions over UHF and VHF. As yet, no date has been established for the switch-off.<sup>417</sup> The frequency spectrum required to facilitate this parallel transition is a spectrum that was previously reserved for pay TV.

Since December 1998, cable television companies have been required to carry all programmes of local free-to-air television broadcasters without charging their customers

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413 UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 42-43.

414 DVB-T Milestone in the Caribbean, October 11, 2011, as can be found at <http://www.botelevisihondigital.cw/> (accessed April 11, 2014).

415 Interview January 27, 2014.

416 [www.botelevisihondigital.cw](http://www.botelevisihondigital.cw). Related policy and technical DVB-T information can be found on the BTP website.

417 Interview January 27, 2014; Information received from BTP, by mail of May 16, 2014.

any additional costs.<sup>418</sup> Local free-to-air television broadcasters may be charged by the cable television company but only if the must-carry obligation entails additional costs to the cable operators. Their fees must strictly be for the purpose of covering this additional cost, be non-discriminatory and be approved by the Minister of Traffic, Transportation and Urban Planning.<sup>419</sup> At present, the must-carry rule implies that all of the programmes of TeleCuraçao, CBA Television and HIT Channel 24 must be included in the 'basic packages' offered by cable companies. There are no other must-carry obligations. The draft National Ordinance on Telecommunications does, however, require for a minimum of television programmes to be included in the basic package, to be determined by the Minister of Traffic, Transportation and Urban Planning.<sup>420</sup>

In addition, the legislative framework includes a provision that resembles a must-carry obligation for free-to-air TV broadcasters. Article 11 of the Television National Ordinance requires free-to-air broadcasters to provide access to "bona fide non-commercial social organisations" when these request airtime and to "provide them with the opportunity to direct themselves to the public through the TV-medium".<sup>421</sup> Broadcasters are not required to provide airtime free of charge, but fees charged must be approved by the Minister. There is no limit to the amount of airtime to be made available to such non-commercial organisations.<sup>422</sup> However, this provision is not included as such in the television license,<sup>423</sup> and in practice appears to be defunct. More generally, although not included in the Television Ordinance, individual licenses require TV broadcasting organisations to broadcast "for at least one hour a day locally produced social, informative, cultural and educational television programmes".<sup>424</sup> Radio licenses contain a provision that requires radio broadcasting organisations to produce locally at least 30% of the daily broadcast programmes.<sup>425</sup>

## 2.8 Independent and transparent regulatory system

To achieve diversity in licensing and spectrum allocation, an independent and transparent regulatory system is required. The question of whether broadcasting licenses are allocated by an independent body is discussed in the assessment under Indicators 1.6 and 2.4. In this section, the assessment focuses on the licensing processes and whether they are fair

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<sup>418</sup> Cable TV-license (vergunning), Article 4, sub-paragraph 1. However, the 'must-carry' rule is not firmly rooted in formal legislation, such as the National Ordinance on telecommunications or the Television National Ordinance. It is included in the draft legislation on telecommunications, Article 8.2.

<sup>419</sup> Technical cable TV-license (machtiging), Article 21 (access for third parties).

<sup>420</sup> Ontwerp landsverordening telecommunicatie (Draft National Ordinance on Telecommunications), Parliament of the Netherlands Antilles 2000-2001, No. 2, Version 05-07-2001, Article 8.2.

<sup>421</sup> Television National Ordinance, Article 11 and the Explanatory Memorandum on Article 11 of the Television National Ordinance.

<sup>422</sup> Ibid.

<sup>423</sup> Compare TV-license, Article 7, which only requires TV broadcasters to assign time to bona fide non-commercial organisations *that wish to speak out against the use of liquor or tobacco*. Cf. also radio license, Article 20.

<sup>424</sup> TV-license as received from BTP, Article 10.

<sup>425</sup> Radio license, Article 11. The director of BTP may grant relief from this requirement.

and transparent in practice, particularly in the sense of ensuring a level playing field for applicants.<sup>426</sup>

In general terms, the legislative framework contains a clear and precise description of the process for obtaining a broadcast license although there is room for improvement:

- The National Decree Radio Electric Facilities states clear time limits within which decisions on the allocation of licenses must be made.<sup>427</sup> Any refusal to issue a license or any withdrawal thereof is to be duly justified, and appeals to such decisions are possible.<sup>428</sup>
- The National Decree does not allow for public input in the licensing phase but allows for interested parties to request a license withdrawal. If an interested party does so, the license holder has the opportunity to be heard.<sup>429</sup>
- License applicants are not required to pay in advance for a license that they have not yet been granted. However, once a license is granted, fees are to be paid in advance.<sup>430</sup>
- The current legislative framework does not include provisions on the selection process. However, as previously mentioned, the State frequency plan includes such provisions and states that “if a shortage is to be expected, emphasis is to be placed on competitive tender procedures”<sup>431</sup> (see Indicator 2.4). The draft National Ordinance on Telecommunications includes similar provisions.
- The procedure for processing waiting list candidates is not clearly described in law. BTP informed the Research Team that it follows a strict procedure in practice, and if frequencies are made available, it verifies which applicants are still interested. However, information concerning this procedure is not published on its website or in newspapers.<sup>432</sup>

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<sup>426</sup> UNESCO, *Media Development Indicators: A framework for assessing media development*, Paris: UNESCO, 2008, 44.

<sup>427</sup> See Landsbesluit radio-elektrische inrichtingen (National Decree Radio Electric Facilities), *Country Gazette* 1995, No. 196, Chapter 2.

<sup>428</sup> Idem, Article 12. See also the Landsverordening administratieve rechtspraak (National Ordinance Administrative Law), as adapted, *Country Gazette* 2006, No. 71, Articles 3, 7 and 55.

<sup>429</sup> National Decree Radio Electric Facilities, Article 11.

<sup>430</sup> Idem, Article 14.

<sup>431</sup> Frequency policy plan, 6.

<sup>432</sup> Interview February 4, 2014.

Fees are regulated by the Ministerial Decree Fees Telecommunication Facilities,<sup>433</sup> and BTP provides information on the required fees on its website.<sup>434</sup> However, interviews conducted for this assessment indicated that at least several media managers do not agree with the following statement: “the fees for the different types of radio and television license are transparent and established in advance”.<sup>435</sup> This may partially be due to the fact that the total fee consists of a number of different charges, such as one-time fees, annual fees for the license of the frequency, fees to cover BTP’s supervision costs and fees to cover costs involved with equipment inspections. An overview of all of the fees that are charged is lacking. Another concern is that certain fees that are listed on BTP’s website differ from the fees listed in the Ministerial Decree. These differences may be explained by the fact that license applicants can complain about the amount of the fees, which may subsequently result in a lowering of fees or a discount being agreed to. More generally, it is not clear to all what determines the amount of the individual fees. BTP informed the Research Team that it sets the fees based on its knowledge regarding the value of the spectrum.<sup>436</sup> However, it does not publicly account for its calculations. Overall, although the system allows for flexibility, this flexibility is achieved at the cost of a lack of transparency. In the case of the FM-radio frequency market, the official fee structure does not provide an adequate overview of the costs that are involved because frequencies that changed hands<sup>437</sup> since 2007 have done so at unknown market prices. For more information on this topic, please see Indicator 2.4.

Frequency use is not adequately monitored to ensure that license holders conform to license conditions. Several media managers indicated that they have regular contact with BTP. When questioned on their experience with the licensing body, several managers and experts stated that in their experience BTP performs well in the “technical area” and that it employs able, professional individuals for the task.<sup>438</sup> They mentioned, however, that the root of the problem is the incomplete legislative framework, which by mandate of the Minister of Traffic, Transportation and Urban Planning authorises BTP to supervise compliance with technical broadcasting requirements but does not clearly authorise BTP or any other supervisory body to monitor compliance with license conditions regarding content.<sup>439</sup> Occasionally, BTP receives complaints on non-compliance with license terms. These can be, for example, complaints related to the language used on call-in radio programmes or the appropriateness (and the timing of the broadcast) of specific commercials. When it receives complaints, BTP forwards the information to the Minister of Education and reminds the Minister of the need for an adequate regulatory framework for broadcasting content, which is currently lacking.

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433 Beschikking vergoedingen telecommunicatievoorzieningen (Ministerial Decree Fees Telecommunication Facilities), *Country Gazette* 2008, No.58.

434 See [www.btpu.org](http://www.btpu.org), under telecommunication, fees (accessed May 5, 2014).

435 Responses to Media Managers’ Survey, Interview March 12, 2014.

436 Interview January 27, 2014.

437 Because the companies that were licensed were sold or because of lease arrangements.

438 Interviews March 11, March 12, March 19, 2014.

439 See also the assessment under Indicators 1.6 and 1.7.

Occasionally, BTP directly contacts the broadcasting organisation that is the object of the complaint to address the issue.<sup>440</sup>

Other concerns related to the safeguarding of compliance with license conditions include the following:

- Lack of transparency in licenses issued. As discussed under Indicator 2.6, there is no publicly available register of the frequencies that have been assigned and those that are available, which makes it difficult for third parties to request a change or a withdrawal of issued licenses. The lack of a publicly available frequency register makes it difficult to allow for public scrutiny on the assigning of licenses in accordance with the rules.<sup>441</sup>
- Extension of deadlines. As discussed under Indicator 2.4, in certain cases, the expiration of the period within which obligations must be satisfied should theoretically lead to the termination of the license. However, although several licensees have been known to fail to meet these deadlines, their licenses have not been withdrawn. In part, this outcome may be the result of the lengthy hearing procedures as well as the continued efforts by the regulator to help the license holder remedy the situation.
- Failure to meet requirements. License conditions are not always met in practice, and non-compliance is not always sanctioned. An example is the widespread ignoring by radio broadcasters of the rule that forbids the interruption of radio news broadcasts with commercial messages.<sup>442</sup> Failure to pay fees is another example. In certain cases, however, this failure to meet requirements also concerns license conditions which are generally considered to be outdated and void of practical meaning. For example, no television broadcaster provides BTP or a commission with a monthly or weekly report on its scheduled programme as required.<sup>443</sup> Similarly, no broadcaster requests prior approval for the fees that is charges for commercials and the use of airtime.<sup>444</sup> In other cases, the regulator may take action, but, as previously mentioned, lengthy hearing procedures may decrease the regulator's effectiveness.

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<sup>440</sup> Interviews January 27, 2014 and February 4, 2014.

<sup>441</sup> Also, response to Media Managers' Survey.

<sup>442</sup> See the assessment under Indicator 2.11.

<sup>443</sup> *Telesielandsverordening* (Television National Ordinance), *Country Gazette* 1971, No.33, Article 6; TV-license, Article 9. See also the assessment under Indicator 1.11.

<sup>444</sup> *Telesielandsverordening* (Television National Ordinance), *Country Gazette* 1971, No.33, Article 12; TV-license, Article 14.

## D. Taxation and business regulation

### 2.9 State uses taxation and business regulation to encourage media development in a non-discriminatory manner

This indicator assesses whether the State uses taxation and business regulation to encourage media companies' development in a non-discriminatory manner. Media companies should be treated equally and equitably under all national business laws and regulations, including rules and practices that affect taxation, import duties and legal registration fees and procedures. Certain tax regimes may inhibit the overall growth of the media, whereas selectively imposed taxes and duties can distort the media market and favour sympathetic or state-controlled media outlets. The State may also help the media flourish by establishing preferential taxation and business regulation regimes.<sup>445</sup>

In Curaçao, there appear to be no preferential taxes for media companies, for the purchase of equipment and material necessary for the production of media (such as cameras or newsprint), or for receiving media (such as radios, televisions, computers or portable devices). With one exception, the regular 6% sales tax (*omzetbelasting*) applies to all media products, media equipment and media-receiving equipment, as it does to the majority of goods in the market. For example, computers and tablets are included in the 6% tax group, as are newspapers. Only mobile telephones, including smart phones, are included in the high 9% tax group reserved for luxury goods.<sup>446,447</sup>

The picture for import tariffs is more diverse. Most media production equipment such as cameras, radio broadcasting equipment and printing presses, is included in the regular 10.5% tariff group, whereas most equipment for receiving media content, such as radios and televisions, is included in the 0% tariff group. Computers are also included in the 0% tariff group. There are exceptions. For example, newsprint paper (*courantenpapier*) is in a lower, 5% tariff group, and telephones, including smartphones, fall under the regular 10.5% tariff group.<sup>448</sup>

The State does not specifically target the broadcasting and print media with prohibitive taxes on media-related equipment. The assessment did not find clear indications of media managers considering the taxes, levies or fees to be unreasonably high. As far as could be

<sup>445</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 47.

<sup>446</sup> In 2013, the sales tax regime was adapted to allow for more differentiation and now includes a 0% tax group for 'basic necessities of life' and a 9% tax group for 'luxury products'. No specifically media-related equipment is included in the 'special' 0% tax group.

<sup>447</sup> Tabel behorende bij de Landsbesluit van de 24<sup>ste</sup> april 2013, No. 13/0989, houdende vaststelling van de tekst van de Landsverordening omzetbelasting 1999 (Table belonging to National Decree 24 April 2013, No. 13/0989, on the Enactment of the Text of the National Ordinance Turnover Tax 1999).

<sup>448</sup> See: Landsverordening tarief van invoerrechten (National Ordinance Import Tariffs), *Country Gazette* 2007, No. 11 and the Annex to that National Ordinance.

established, media companies are subject to the same tax treatment as other commercial companies, and in general all media outlets are treated equally. However, information gathered from interviews indicated that not all media organisations are financially able to meet their taxation and social insurance premiums obligations. One media manager noted that this failure is tolerated but works to the disadvantage of those media companies that do meet their obligations.<sup>449</sup>

The State does not directly finance or subsidise any media (see also the discussion under Indicator 2.3). This includes state-owned TeleCuraçao, which does not receive any direct subsidies from the Government. However, whether TeleCuraçao's position as 'public company' means that it receives preferential treatment compared to other broadcasters is unclear. In May 2013, several members of Parliament asked whether an 'investment' of 4.2 million guilders carried out by parent company UTS in TeleCuraçao was market-oriented and competitive or a way to "protect its subsidiary against other competitors".<sup>450</sup> Several of those who were interviewed for this report asked similar questions. While one interviewee commented that "TeleCuraçao does not receive a single dime from UTS", another interviewee noted that "either UTS is a very good client of TeleCuraçao, or UTS' and TeleCuraçao's finances are closely intertwined". A third interviewee stated that "TeleCuraçao is 100% paid for by UTS because UTS pays its employees and its fees, and invests in new equipment when necessary. Income derived from commercials is merely extra pocket money".<sup>451</sup> In fact, whether UTS and the Government subsidise TeleCuraçao and, if so, the extent to which this occurs, is difficult to establish. UTS's financial statements are not made public, and the results of an ongoing audit into possible cross-subsidies between UTS and its media companies have not been published. The Research Team asked UTS to provide it with more information but did not receive UTS's annual report or financial statement (see also Indicator 2.10).

In 2013, the debate intensified when UTS's financial position deteriorated. In an effort to refocus the company on its core duties, the Minister of Traffic, Transportation and Urban Planning suggested the need to consider ways to divest TeleCuraçao or even to sell the company if necessary.<sup>452</sup> In March 2014, UTS's shareholders, the Governments of Curaçao and Sint Maarten decided to separate TeleCuraçao and TeleCuraçaoFM from UTS. It remains unclear how the new organisation or organisations are to be structured and whether the divestment process will result in further privatisation, TeleCuraçao positioning itself as public

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449 Response to Media Managers' Survey.

450 "PAIS wil onderzoek investering in TeleCuraçao" (PAIS wants investigation investment in TeleCuraçao), *Knipselkrant Curaçao*, May 28, 2013, [www.kkcuracao.com](http://www.kkcuracao.com) (accessed February 11, 2014). Also: Interviews March 18 and March 9, 2014.

451 Interviews March 18, March 19, and March 21, 2014.

452 "Nog steeds vragen over TeleCuraçao" (Still questions about TeleCuraçao), *Knipselkrant Curaçao*, May 29, 2013, [www.kkcuracao.com](http://www.kkcuracao.com) (accessed February 11, 2014). See also "UTS wil miljoenen besparen" (UTS wants to save millions), *Amigoe*, November 28, 2013.

company similar to but separate from UTS, or something else.<sup>453</sup> Thus, it is also too early to state whether TeleCuraçao's repositioning will be conducted in a non-discriminatory manner and enhance fair competition between Curaçao's broadcasters or not.

## E. Advertising

All of Curaçao's media companies operate on a commercial basis and are responsible for their own funding, including the state-owned TeleCuraçao (with some nuances; see Indicator 2.9). Although there is no publicly available information on the funding of media companies, a considerable part of media revenues is thought to be obtained from advertising from individual companies and organisations, corporate or branding partners as well as, in the case of broadcasters, the sale of airtime and in the case of newspapers, subscriptions and individual newspaper sales. Several experts and media managers who were interviewed suggested that government and commercial advertising are important sources of income for Curaçao's media and constitute a large part or at least half of such revenue, although few were able or willing to provide specific information.<sup>454</sup> A small number of media managers who answered the Media Managers' Survey provided information on their own companies and indicated that between 70% and 100% of their income derives from advertisements and sponsoring.<sup>455</sup> Another indication of the importance of advertising is provided by Transparency International, which reports that "the large advertising market [in Curaçao] is a major factor preventing media organisations from going bankrupt".<sup>456</sup> Just how much of the advertising originates from the Government or the private sector is unknown, as is the distribution of advertising among the different media outlets.

### 2.10 State does not discriminate through advertising policy

This indicator assesses the placement of government advertising. Government advertising can inhibit or encourage media pluralism and development. To play a positive role in promoting pluralism, the State should apply the principle of non-discrimination. It should not "use advertising as a tool to favour certain media outlets over others, for either political or commercial gain. Nor should public broadcasters gain an unfair advantage over their commercial rivals by offering advertising at below market rates".<sup>457</sup> Links, such as those

<sup>453</sup> See: "TeleCuraçao en TCFM moeten weg bij UTS" (TeleCuraçao and TCFM must leave UTS), *Amigoe*, May 2, 2014.

<sup>454</sup> Interviews March 18, March 19 and March 20, 2014.

<sup>455</sup> Responses to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014. Note, however, that one respondent also indicated that 100% of the company's income was derived from 'other sources'.

<sup>456</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013) 175.

<sup>457</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 47.

between public companies and the Government, should not be used to pressure the media, for example, to ensure a publication refrains from criticising Government.<sup>458</sup>

Curaçao has no explicit norms, guidelines or code of conduct regarding the fair, transparent and non-discriminatory placement of government advertisements. There are no regulations to ensure that media outlets with lesser coverage or circulation are assured the benefits of government advertising. In addition, the budget is not managed centrally, leaving individual departments responsible for their own communications budgets.<sup>459</sup>

Official notifications and other official information that state entities (*Landsorganen*) wish to publicise are legally required to be published in the weekly *Curaçao Gazette (De Curaçaosche Courant)*.<sup>460</sup> In certain cases, official information must also be published in “one or more newspapers”.<sup>461</sup> There are no guidelines that further regulate which newspapers to use for this purpose. Open tendering notifications for public procurement are to be placed in “at least three local newspapers”.<sup>462</sup> However, the criteria for choosing which newspaper to place these in are not detailed in the tendering regulations.

A civil servant who was interviewed for this study informed the Research Team that the placement of government advertisements is primarily governed by a “standard practice” that is followed by the various individual government departments, rather than by written rules.<sup>463</sup> There are different practices for the publication of information on government policies, general information for the public, and public relations (PR). Notifications of a general nature, such as information on changes in the tax system are sent to all media to ensure the broadest possible coverage. Other advertisements are published in a selection of media depending on the intended audience to be reached and the type of message to be communicated. In the case of PR activities on television or radio, the choice of a specific media outlet depends on “political strategic considerations”. According to the interviewee, this standard practice is “conscientiously applied” to ensure a fair allocation among all media outlets.<sup>464</sup>

However, several media managers and experts who were interviewed expressed a different opinion. Most disagreed with the statement “the Government’s advertising policy is fair and transparent”, and most also disagreed with the statement “the advertising policy of public

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458 Toby Mendel, *Applying UNESCO’s Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 18.

459 Interview March 18, 2014.

460 Bekendmakingsverordening (National Decree Notifications) (*Official Curaçao Gazette* 2010, No.87), Article 3. The Curaçao Gazette is a periodically published newspaper, which can be found in the public library.

461 National Ordinance Supervision Insurance Sector (*Country Gazette* 2003, No. 114), Article 31. Also, Article 67. See also, for example, a National Decree on healthcare insurance premiums (*Official Curaçao Gazette* 2013, No.4).

462 AO-procedure voor het aangaan van interne verplichtingen (Administrative organisation procedure for making financial commitments), point 12.

463 Interview March 18, 2014.

464 *Ibid.*

companies, public foundations and other public entities is fair and transparent”.<sup>465</sup> One respondent to our Media Managers’ Survey added:

It is not always clear why the Government (ministries and public services) selects some media when advertising while rejecting or neglecting others. Especially in the recent past, between 10-10-10 and October 2012, public companies in particular [...] have purposefully skipped a number of critical media when placing advertisements or favoured ‘friendly’ media over others.<sup>466</sup>

Other media managers provided similar answers stating, for instance, that “[d]epending on which coalition is in place and the degree of micromanagement involved, some media do or do not receive advertisements”.<sup>467</sup> Another manager added that “Dutch-language radio” was typically somewhat sidelined.<sup>468</sup>

In any event, government advertising is not systematically registered or monitored, and therefore it cannot be determined whether fair access is ensured to all media. Public sector entities are not required to publish the distribution of their advertising spending at each media outlet, and there are no civil society organisations that monitor public advertising expenses on a regular basis. Additionally, there are no available individual studies or surveys that have measured the way in which government advertisements have been allocated.

Regarding state-owned TeleCuraçao, commercially attractive events such as Festival di Tumba, Karnaval, Seú and Dia di Bandera are a recurrent topic of discussion. Traditionally, TeleCuraçao has broadcast these events. For a long time, TeleCuraçao was Curaçao’s only TV station, and it considered broadcasting these events part of its ‘national obligations’ as Curaçao’s ‘*Planta Nashonal*’, to use TeleCuraçao’s own words.<sup>469</sup> In certain cases, such broadcasts have been carried out at the specific request of the Government.<sup>470</sup> However, with other competing broadcasters on the market and more planning to enter, there is now a need for a fair and transparent policy regarding the allocation of specific broadcasting rights to ensure a level playing field. Issues that require being addressed include the potential conflicts of interest that may arise in cases of sponsorship by UTS or the Government of specific commercially attractive events, such as Festival di Tumba, Karnaval and Seú, or the assignment of special broadcasting rights.

At least several of the individuals who were interviewed in the course of our assessment suggested that the relationship between TeleCuraçao, UTS and its owner (i.e., the Government)

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<sup>465</sup> “Government’s advertising policy is fair and transparent”: five respondents (somewhat) disagreed, two agreed one ticked “don’t know”. “The advertising policy of public companies, public foundations and other public entities is fair and transparent”: Six respondents (somewhat) disagreed, one agreed, one ticked “don’t know”.

<sup>466</sup> Response to the Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>467</sup> Interview January 24, 2014. Also Interviews March 12 and March 19, 2014.

<sup>468</sup> Response to the Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>469</sup> TeleCuraçao positions itself as ‘Planta Nashonal’ (The national broadcaster) in its broadcasts.

<sup>470</sup> Interviews March 19, 2014.

reaps disproportionate benefits to TeleCuraçao. Thus, for example, reference was made to special conditions attached to government subsidies for the above-mentioned events, such as providing both subsidiaries of UTS (i.e., TeleCuraçao and cable service provider T.V. Distribution Systems (TDS)) with special broadcasting rights and therefore the opportunity to gain additional revenue from advertisements.<sup>471</sup> Although competitors have also occasionally been able to reach satisfactory agreements to broadcast such events, a fair and transparent system is not in place.<sup>472</sup> It was also suggested that because TeleCuraçao's potential losses may ultimately be covered by Curaçao's tax payers, TeleCuraçao is in a position to outbid its competitors when purchasing content, such as football championship broadcasting rights. Other media outlets would run the risk of bankruptcy.<sup>473</sup> These circumstances also undermine fair competition in the advertising market.

## 2.11 Effective regulation governing advertising in the media

International standards for advertising regulation prescribe that advertising should be legal, honest, decent and true, and it is a cardinal principle of regulation that viewers, listeners and readers should be able to identify when they are being targeted by advertising.<sup>474</sup> In addition, a State may restrict the overall amount of advertising in the interest of programme quality. However, limits should not be so strict as to stifle the growth of the media sector.<sup>475</sup>

Article 9 of the Constitution of Curaçao explicitly allows for restrictions on freedom of speech with respect to commercial advertising, for example on the grounds of prior supervision (*voorafgaand toezicht*), as long as these restrictions satisfy certain general criteria, such as necessity and proportionality.<sup>476</sup>

Curaçao civil law regulations within this framework are designed to prevent misleading commercials. If commercials are judged to be misleading, they constitute a wrongful act (*onrechtmatige daad*), and those entities that broadcast or publish these commercials can be sued for damages.<sup>477</sup> However, Curaçao does not have extensive rules comparable to rules on 'comparative advertising' in European and Dutch law, which explicitly or by implication address referring to a competitor or competing goods or services.<sup>478</sup> In addition, Curaçao

<sup>471</sup> Interview January 24, 2014.

<sup>472</sup> Cf. for example: "CBA zendt carnavalsparades ook uit" (CBA also broadcast carnival parades), *Amigoe*, February 8, 2014.

<sup>473</sup> *Idem*, Interview March 19, 2014.

<sup>474</sup> Cf. Eve Salomon, *Guidelines for Broadcasting Regulation* (Paris: UNESCO and CBA, 2006), 54-58.

<sup>475</sup> UNESCO, *Media Development Indicators: A framework for assessing media development* (Paris: UNESCO, 2008), 47.

<sup>476</sup> Constitution of Curaçao, Article 9.4. See also the assessment under Indicator 1.11.

<sup>477</sup> Civil Code, Book 6, Title 3, Part 4.

<sup>478</sup> Cf. Dutch Civil Code, Book 6, Title 3, Part 4, Article 194a. Article 194 of the Curaçao Civil Code includes a short reference to comparative advertising.

does not have legislation that addresses unfair commercial practices or that explicitly defines so-called advertorials as 'misleading'.<sup>479</sup>

Curaçao media regulations within this framework only address *television* commercials and find their basis in the 1971 Television National Ordinance.<sup>480</sup> TV commercials for pharmaceuticals and liquor must satisfy the following specific rules:<sup>481</sup>

- To ensure that TV commercials for pharmaceuticals are not misleading, they may, for example, not involve recommendations by well-known individuals, depict medical professionals or refer to 'special offers' or use similar language.<sup>482</sup>
- The rules on liquor advertising are strict, and include a provision that such advertising may only be broadcast between 22.00 and 01.00 hours unless the relevant Minister determines otherwise. Furthermore, liquor commercials may not last longer than one minute.<sup>483</sup>
- Individual TV licenses also contain specific conditions. These conditions are mostly in accordance with the requirements based on the Television National Ordinance but may in certain cases detail additional restrictions or requirements. For example, the individual TV license requires commercials for liquor to last no longer than 30 seconds and extends this limit to tobacco commercials.<sup>484</sup>

An individual TV license holder is required to produce "most commercial messages locally, and broadcast these from its studio".<sup>485</sup> Furthermore, the fees charged for television broadcasting of commercials require ministerial approval.<sup>486</sup>

There are no specific legal rules that address advertising on radio, newspapers or online media. Nevertheless, individual licenses for radio broadcasters – although not firmly rooted in legislation<sup>487</sup> – contain several conditions that are comparable with the conditions that apply

<sup>479</sup> Cf. Dutch Civil Code, Book 6, Title 3, Part 3a, Article 193g, lid k.

<sup>480</sup> Televisielandsverordening (Television National Ordinance), *Official Country Gazette* 1971, No.33. Commercials for pharmaceuticals must comply with additional rules which find their basis in the Landsverordening op de geneesmiddelenvoorziening (National Decree Provision of Medicines), *Official Country Gazette* 1960, No. 59. See also Landsbesluit verpakte geneesmiddelen (National Decree Pharmaceutical packaging), *Official Country Gazette* 1961, No.169.

<sup>481</sup> *Idem*, Article 5, lid, sub-paragraph e and sub-paragraph f.

<sup>482</sup> These rules are further detailed in the Landsbesluit televisiereclame voor geneesmiddelen 2000 (National Decree Television Commercials on Pharmaceuticals 2000), *Official Country Gazette* 2000, No. 59, Article 4.

<sup>483</sup> National Decree for the Implementation of Article 5.1, sub-paragraph f, of the Televisielandsverordening (Television National Ordinance), *Official Country Gazette* 1972, No. 237, as amended, Articles 2 and 3.

<sup>484</sup> TV-license, Article 5.

<sup>485</sup> *Idem*, Article 8.

<sup>486</sup> *Idem*, Article 12.

<sup>487</sup> See the assessment under Indicator 1.7.

for television broadcasters.<sup>488</sup> Although radio licenses do not require ministerial approval for the fees charged for broadcasting commercials, radio broadcasters are required to maintain a log of all broadcast commercials, including their date, time, length and sponsor's name, and to provide the log to BTP on request for inspection.<sup>489</sup> Notably, the radio licenses forbid the interruption of news broadcasts by commercials and stipulate that commercial messages must not be misleading.<sup>490</sup>

However, overall, Curaçao lacks an effective framework for the regulation of advertising in the media. As previously noted,<sup>491</sup> with the exception of advertisements for pharmaceuticals,<sup>492</sup> no government body or regulator is explicitly entrusted with the task of monitoring compliance with license conditions regarding content, including license conditions for advertisements. Several provisions that are included in the licenses are considered to be outdated, and a legal basis for radio regulations comparable to the legal basis of the Television National Ordinance is currently lacking. Furthermore, several important aspects are not regulated. There is no regulation limiting the maximum duration of a commercial, and there is no formal limit on the amount of advertising that may be carried by the media. More importantly, there are no specific rules that govern the separation of media and advertising content.<sup>493</sup> For example, there is no requirement to separate editorial content and news from advertising or product placement. There are also no rules on sponsorship, such as a requirement to clearly identify sponsored programmes or a ban on the sponsoring of news and current affairs programming.<sup>494</sup> More generally, broadcasters are not required to inform listeners or viewers of any commercial arrangement that affects their programming (see also the discussion under Indicator 1.3).

Several media managers who were interviewed questioned the amount of airtime that their outlets allocate to advertisements. For example, a manager estimated that in some cases more than 90% of the advertising time that is available during election periods during the news hour is sold to individuals who wish to broadcast political messages. Additionally, outside election periods, long advertising slots exceeding 30 minutes are no exception. A few of the interviewed media managers indicated that they actively attempt to establish certain limits to advertising, for instance, by restricting the amount of advertising in the news programmes

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<sup>488</sup> Radio license, for example, Article 16, 17, 18, 19, 20 and 21.

<sup>489</sup> *Idem*, Article 15.

<sup>490</sup> *Ibid.*

<sup>491</sup> See also the assessment under Indicators 1.6, 1.7 and 2.8.

<sup>492</sup> The Inspectie voor de Volksgezondheid (Inspectorate of Public Health) is tasked with the supervision of compliance with regulations of the provision of pharmaceuticals, including the National Decree for Television Commercials on Pharmaceuticals 2000. See *Landsverordening Inspectie voor de Volksgezondheid* (National Ordinance Inspectorate of Public Health), *Country Gazette* 2003, No.8, Articles 2 and 11.

<sup>493</sup> But see the note in the above on Article 15 in the radio license. However, as mentioned in the main text, a clear legal basis is lacking.

<sup>494</sup> Cf. Eve Salomon, *Guidelines for Broadcasting Regulation* (Paris: UNESCO and CBA, 2006), 58.

to 12-15 minutes in the case of broadcast media or by restricting the number of newspaper column centimetres dedicated to advertising in the case of print media.<sup>495</sup>

In Curaçao, the distinction between editorial content and advertising is frequently blurry. Newspapers tend to welcome commercial press releases, announcements and messages as an almost ready-to-print substitute for editorial content. News readers or other well-known journalists record commercials, programme presenters read commercials and sponsors' messages between broadcasts, and commercials are blended into regular programmes. There appear to be few internal rules on commercial references, with presenters frequently referring to hair products or supermarkets during programmes, for example. Sponsorship of news broadcasts is allowed, and the Central Bank of Curaçao and Sint Maarten is among those entities that carry out such sponsorships. Occasionally, media owners request their journalists to interview advertisers for particular events. This practice was described by one respondent to the Media Workers' Survey as being "purely commercial and ha[ving] nothing to do with journalism".<sup>496</sup> There are however some positive exceptions. For example, in August 2014, the management of one of the larger newspapers publicly announced in its newspaper that it would begin a practice of "forward[ing] to [its] advertising department all press releases related to announcements of events, introduction of new products, communications of organisations/companies with members and/or customers, company promotion through charity [and all other commercial messages]".<sup>497</sup>

To remedy this situation, in 2007, the Government submitted a draft media law to Parliament, which included several rules to regulate advertising. For broadcast media, these rules included a requirement for commercials to be recognisable as such and clearly distinguished from other content, a maximum number of commercials permitted and a maximum length of commercial blocks allowed. The draft media law also included a prohibition of subliminal techniques and surreptitious advertising (*sluikreclame*).<sup>498</sup> In addition, the draft law was to establish a Media Council responsible for the promotion of responsible advertising and journalism in media.<sup>499</sup> The Council was to be in charge of drafting an advertising code and a code of conduct as well as of processing and addressing complaints on advertising and journalism practices. However, as mentioned under Indicator 1.3, this draft piece of legislation

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<sup>495</sup> Interviews March 19, March 20, 2014.

<sup>496</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>497</sup> "Mededeling t.a.v. persberichten" (Announcement i.r.t. press releases), *Amigoe*, August 14, 2014.

<sup>498</sup> Draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007, No. 2, Articles 15 and 16. 'Subliminal techniques' means the insertion of pictures or sounds of a very short duration with the intention to influence viewers or listeners who possibly do not consciously perceive those messages. 'Surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional, in particular if it occurs in return for payment or similar consideration'.

<sup>499</sup> *Idem*, Article 2. Also refer to Article 7.

is currently dormant. Additionally, although only a limited number of the regulations that were drafted were incorporated into the 'professional code of conduct' introduced in 2007,<sup>500</sup> the announced amendments in the broadcasting licenses did not take place, and in practice, the code does not appear to be in use.<sup>501</sup> At present, no code of advertising established and regulated by an independent body with the aim of preventing misleading advertising exists.

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<sup>500</sup> 'Professional code of conduct', information received Interview February 10, 2014.

<sup>501</sup> See also the assessment under Indicators 3.9 and 3.10.

## Recommendations

### Media concentration

1. To allow for the active monitoring and evaluation of media ownership structures, investment and sources of revenue, media companies should be required to disclose information, such as their annual reports and financial statements, to regulatory authorities. Key information, such as media companies' ownership structure, should be made publicly available.
2. To prevent an undue concentration of ownership and encourage fair competition, the Government and Parliament should continue efforts to introduce effective anti-trust legislation. They should ensure that the Fair Trade Authority Curaçao is established as an independent anti-trust authority with adequate supervisory and sanctioning powers.
4. To better address the information needs of marginalised communities, the Government and CSOs should endeavour to promote the establishment of community broadcasting outlets in the country. State measures in this area could include the legal recognition of community media, the allocation of subsidies, preferential taxes as well as the prioritisation of community media when allocating TV and radio licenses. In addition, in the meantime, private media broadcasters should increase their efforts to dedicate part of their programming to adequately address the needs of marginalised communities.

### A diverse mix of public, private and community media

3. Government and State officials should grant equal access to information to all media to promote a diverse mix of media and should abstain from discriminatory practices that favour particular media outlets over others. The Government should also increase its efforts to make Government information freely available on its website.
5. To avoid potential conflicts of interest, consideration should be given to completely separating TeleCuraçao from its parent company United Telecommunication Services, and to the Government ending its shareholdership in TeleCuraçao. In the meantime, TeleCuraçao, UTS and the Government should provide full transparency regarding TeleCuraçao's finances and should publish TeleCuraçao's financial statements.

6. Government could consider different options to ensure media pluralism in Curaçao. This could include the establishment of a (non-state-owned) public service broadcaster with a system of governance that ensures its editorial independence, accountability to the public, transparent funding arrangements that protect it from undue interference, and a sufficient level of funding to enable it to perform its mandate. In addition, legal requirements on private broadcasters to safeguard diversity could be strengthened. This option is dependent on the establishment of an independent regulator that is authorised to assign a limited amount of airtime at a reasonable fee to not-for-profit (non-political) organisations on request. The regulator could also be authorised to require all broadcasters to provide a certain amount of programming of public interest – such as news, educational content, content that responds to the needs of marginalised communities, or political candidates' messages - provided that it does not interfere directly in the definition of programme content. (On the need for the establishment of an independent regulatory body, please also refer to Category 1, Recommendations).
7. To encourage the establishment of new FM radio broadcasting outlets to enter the market and in the interest of fairness, new frequencies must be made available for BTP to assign. The policy of automatic license renewal should be adapted or discarded.

## Licensing and spectrum allocation

8. The State plan for spectrum allocation should be made publicly available on BTP's website.
9. The frequency register that indicates which frequencies have been assigned, to whom and under what conditions, should be made publicly available on BTP's website.
10. Broadcasting licenses should be allocated on the basis of clear and transparent criteria, set out in advance, and licensing processes should be open and allow for public participation.
11. BTP and the television broadcasters should increase their efforts to establish a national (digital) broadcasting platform based on access for all on fair and non-discriminatory terms.
12. Transparency of fees for the different types of radio and television licenses should be improved, and BTP should publicly account for their calculations.

## Taxation and business regulation

13. All media companies should be required to meet their taxation and social premium obligations. This requires a strengthening of compliance monitoring and enforcement.

## Advertising

- 14.** The Government should adopt clear, fair and transparent rules for the allocation of public advertising and install a monitoring system to ensure fair access. The Government should consider preparing an annual report on the distribution of its spending on advertising. This report should be made public and freely available on the Government's website.
- 15.** Public companies, public foundations and other public entities should be required to account for their advertising policies in their annual reports.
- 16.** The Government should adopt a fair and transparent policy to regulate the broadcasting of national events and ensure a level playing field with respect to the acquisition of special broadcasting rights.
- 17.** The legislative framework in the Civil Code to prevent misleading advertising should be strengthened.
- 18.** The legislative framework for broadcasting should be amended to include provisions governing advertising and sponsoring on television and radio in view of ensuring editorial independence and a clear separation of advertising and programming.
- 19.** Broadcasters should be required to ensure transparency with regard to all of the commercial arrangements that affect their programming, that is, material broadcast in return for payments, whether by commercial or non-commercial organisations, including government entities. They should also be required to provide clear information within their programming to inform listeners or viewers of any such commercial arrangement. A requirement for broadcasters to report on such commercial arrangements annually could be considered.

## Category 3

# The media as a platform for democratic discourse



## Key Indicators

### A. MEDIA REFLECTS DIVERSITY OF SOCIETY

- 3.1 The media – public, private and community-based – serve the needs of all groups in society
- 3.2 Media organisations reflect social diversity through their employment practices

### B. PUBLIC SERVICE BROADCASTING MODEL

- 3.3 The goals of public service broadcasting are legally defined and guaranteed
- 3.4 The operations of public service broadcasters do not experience discrimination in any field
- 3.5 Independent and transparent system of governance
- 3.6 PSBs engage with the public and CSOs

### C. MEDIA SELF-REGULATION

- 3.7 Print and broadcast media have effective mechanisms of self-regulation
- 3.8 Media displays culture of self-regulation

### D. REQUIREMENTS FOR FAIRNESS AND IMPARTIALITY

- 3.9 Effective broadcasting code setting out requirements for fairness and impartiality
- 3.10 Effective enforcement of broadcasting code

### E. LEVELS OF PUBLIC TRUST AND CONFIDENCE IN THE MEDIA

- 3.11. The public displays high levels of trust and confidence in the media
- 3.12. Media organizations are responsive to public perceptions of their work

### F. SAFETY OF JOURNALISTS

- 3.13 Journalists, associated media personnel and media organizations can practice their profession in safety
- 3.14 Media practice is not harmed by a climate of insecurity

## Category 3

# Media as a platform for democratic discourse

To provide an accurate and unbiased analysis of the perception of journalistic practice and the media, the following analysis cross-references the opinions gathered from the public with the opinions received from journalists and media management through the three surveys conducted for this study.<sup>502</sup>

## A. Media reflects diversity of society

### 3.1 The media – public, private and community-based – serve the needs of all groups in society

This indicator addresses the media's role in promoting social debate and democracy and in serving the needs of all groups in society, including women, marginalised groups and children.<sup>503</sup>

Currently, Curaçao does not have public or community media, which in many countries play a special role in providing programming for the marginalised sections of society. Consequently, commercial media are relied on to reflect the diversity of Curaçao's society and serve the needs of all social groups. Because commercial media are essentially profit-driven, they are dependent on and responsive to the forces of the media market and, specifically, demand. Since minorities often represent a smaller market to cater for, private media tend to see their targeting as less profitable than focusing on mainstream audiences.

As previously indicated (see Indicator 2.7), the licenses of free-to-air TV broadcasters contain a must-carry obligation, which aims to promote diversity. The legislative framework, i.e., Article 11 of the Television National Ordinance, includes a provision that ensures that “bona fide non-commercial social organisations” receive television airtime, as license-holders are required to grant such organisations access to airtime when requested. However, based on the available information, few organisations actually make such requests.<sup>504</sup>

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<sup>502</sup> The Public Survey, the Media Workers' Survey, and the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>503</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 19.

<sup>504</sup> Written communication, media expert, August 25, 2014.

As part of the policy area “Education of the community and creating a critical and well-informed public”,<sup>505</sup> the Government intends to broadcast a weekly educational programme on a new government channel (Channel 84) via cable company TV Distribution Systems (TDS).<sup>506</sup> The Research Team was informed that the channel is technically available for government broadcasting. However, the policy framework necessary to develop the channel’s programming has not been decided on at the political level. The interviewees indicated that a policy was developed but that following changes of cabinets, new ideas had been introduced.<sup>507</sup> As a result, the exact nature of this channel remains to be determined, although it is clear that it does not intend to position itself as an independent public service broadcasting channel. The channel will most likely broadcast educational programmes and government information (*overheidsvoorlichting*). A number of interviewees expressed a concern that the channel could also be used for the dissemination of “government propaganda”, with politicians using the channel for political purposes.<sup>508</sup>

Because no previous studies on media content have been carried out in Curaçao, there is no available data regarding the percentage of airtime and print space granted to specific groups. However, media content in Curaçao appears to be characterised by an overemphasis on crime, traffic accidents and political issues to the detriment of programmes that address educational, health, economic or social issues. It should be noted that the small scale of Curaçao, which has only 150,000 inhabitants, of which 42% are first- or second-generation migrants,<sup>509</sup> and in which no less than 160 different nationalities are represented,<sup>510</sup> implies that the number of individuals in each minority group is particularly small and that society in Curaçao is fragmented. In practice, these demographic characteristics could result in complications with respect to having the voices of minority groups heard.

Currently, there are no educational TV shows for children, nor is there any programming directed at specific ethnic communities. The interviewees consulted for this study underlined that certain groups in society are not well catered for by the media, such as the Chinese

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505 Regeerprogramma Curaçao 2013-2016, “Speransa i Konfiansa”, hoop en vertrouwen (Government program Curaçao 2013-2016 “Hope and confidence”) (no date), 6. [http://www.gobiernu.cw/web/site.nsf/resources/6F1BDFBC2506F11304257C8C0055E030/\\$FILE/REGEERPROGRAMMA\\_DEF.pdf](http://www.gobiernu.cw/web/site.nsf/resources/6F1BDFBC2506F11304257C8C0055E030/$FILE/REGEERPROGRAMMA_DEF.pdf).

506 TV Distribution Systems (TDS) is the cable company of the public company United Telecommunication Services (UTS). TDS and TeleCuraçao are daughter companies of UTS.

507 Interviews February 10, March 18, 2014.

508 Interviews March 18, February 10, 2014.

509 Four in every ten persons in Curaçao is either an immigrant or a native-born descendant of at least one immigrant parent. Two out of every three second-generation migrants have a mixed background, while the other third have a foreign background. See also: Central Bureau of Statistics Curaçao, *Demography of Curaçao - Census 2011*, (Curaçao: CBS, 2014), 22. <http://www.cbs.cw/cbs/themes/Census%202001/Publications/Census%202001-2014121625641.pdf> (accessed July 21, 2015).

510 Jeanne de Bruijn and Maartje Groot, *Regionale Migratie en Integratie op Curaçao* (Regional Migration and Integration on Curaçao) (Curaçao: Ministry of Social Development, Labour and Welfare, 2014), 25. [http://www.gobiernu.cw/web/site.nsf/resources/78B90090AEC497DD04257D42006433E0/\\$FILE/Onderzoek%20Migranten%20en%20Integratie%20op%20Cura%20C3%A7ao\\_digitaal.pdf](http://www.gobiernu.cw/web/site.nsf/resources/78B90090AEC497DD04257D42006433E0/$FILE/Onderzoek%20Migranten%20en%20Integratie%20op%20Cura%20C3%A7ao_digitaal.pdf) (accessed July 21, 2015).

and LGBT<sup>511</sup> communities.<sup>512</sup> However, the interviewees provided some examples of radio broadcasters and print media outlets that do allocate space to specific social groups. One such example is Radio New Song, which allocates airtime for broadcasting religious content.

Regarding newspapers, the interviewees indicated that due to the need for newspapers to fill their pages, in practice, most of the press releases that are received tend to be published. As one interviewee explained, this is “not because the print media are aware of the importance of the representation of [marginalised] groups but because there is a need, a vacuum, for text and photos to fill the newspaper”.<sup>513</sup> Therefore, many social groups can have their voices heard, including civil society organisations. To reach the different linguistic groups that coexist in Curaçao, an interviewee noted the importance of multilingual press releases since media outlets generally have little time to translate. “The biggest problem of, for example, the environmental movements is that they do not translate their articles into Papiamentu, and newspapers do not have the time to translate them.”<sup>514</sup>

Regarding television, managers of two of the main television broadcasters stated that currently no space is allocated to specific groups. As one manager commented, “We still do not have any youth programme in the afternoon, although it is our intention to introduce one in the near future. Nor do we have any programmes aimed at the many immigrants on the island. While we used to have a morning programme specifically aimed at women, it turned out to also be popular among men, and so we decided to rebroadcast the show in the afternoon so more people could watch it.”<sup>515</sup>

The results of the Public Survey conducted for this assessment reveal that 31% of respondents agree or strongly agree that the media meets the needs of all groups of the Curaçao society, including its more vulnerable members.<sup>516</sup> However, a slightly higher number (36%) disagree or strongly disagree (figure 2).

<sup>511</sup> Lesbian, gay, bisexual, and transgender.

<sup>512</sup> Interview March 21, 2014.

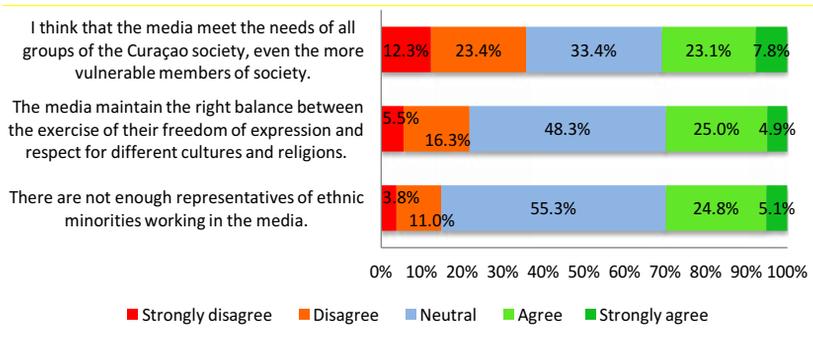
<sup>513</sup> Interviews February 19, February 26, 2014.

<sup>514</sup> Interviews February 19, February 26, March 21, 2014.

<sup>515</sup> Interview March 19, 2014.

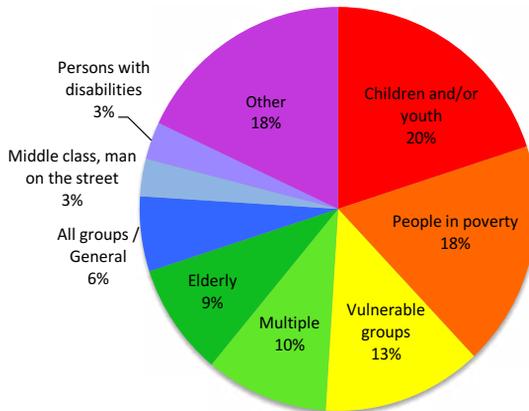
<sup>516</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

**Figure 2. Diversity in Curaçao Media, Public Survey (n=595)**



When asked which groups should receive more attention, 20% responded children and/or youth, followed by individuals who live in poverty (18%), vulnerable groups in general (13%), the elderly (9%), and persons with disabilities (3%).<sup>517</sup> Ten per cent mentioned multiple groups (figure 3).<sup>518</sup> There is a perceived need for quality news coverage, particularly for children and youth. As one Public Survey respondent advocated, “[More attention to] children, to stimulate them to keep track of current affairs. Important international news instead of burglaries, accidents and iguanas with two tails!”<sup>519</sup>

**Figure 3. Which groups in society should receive more attention in the media? (open-ended question), Public Survey (n=231)**



<sup>517</sup> Respondents of the Public Survey were asked to provide a single answer.

<sup>518</sup> Other groups that were mentioned include the middle class/man on the street, immigrants, foreigners, and criminals and their families.

<sup>519</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

When asked whether the media in Curaçao provide a forum in which the public can express its opinions, 43% agreed or strongly agreed, 31% neither agreed nor disagreed, and 26.1% disagreed or strongly disagreed. Regarding a similar statement on “the possibilities that the media offer their audience to join in discussion”, 43% declared that they felt satisfied or very satisfied, whereas 11.5% answered that they were dissatisfied or very dissatisfied.<sup>520</sup> The remaining 46% provided a “neutral” response.

Generally, the media in Curaçao do not reflect the linguistic diversity of the country. While Dutch and Papiamentu are the official languages,<sup>521</sup> English and Spanish are also widely spoken.<sup>522</sup> There is a high rate of bilingualism among the population: most citizens can converse in at least two of these four languages. Currently, however, languages other than Papiamentu and Dutch are rarely used in the media. The results of the content analysis performed for this study reveal that of the 31 media outlets examined, a large majority (20) use Papiamentu as their main language for their local news and current affairs programming (table 2). The outlets using Papiamentu as their main language include all of the television broadcasters, six of the eight newspapers and 10 of the 13 radio stations.<sup>523</sup> Seven media outlets provide news in Dutch. CBA Television offers the only daily local news in Dutch on Curaçao television and also broadcasts news from the Netherlands (*NOS Journaal*) in Dutch.<sup>524</sup> A weekly newspaper in Spanish, *El Periódico*, was last published in November 2012.<sup>525</sup> It ceased to publish due to a lack of profitability linked to its low circulation.<sup>526</sup> A media expert interviewed indicated that the Spanish community tends not to be very wealthy in Curaçao and, as such, is regarded as a less profitable market for commercial media.<sup>527</sup> One news website, *Curaçao Chronicle* (at [www.curacaochronicle.com](http://www.curacaochronicle.com)), offers news in English and one Dutch newspaper, Amigoe, offers a selection of content in English on its website [www.amigoe.com](http://www.amigoe.com). The following table reflects the distribution of media outlets by language, based on the content analysis carried out for this study.

520 Response to the Public Survey conducted for the MDI Assessment Curaçao, 2014.

521 Landsverordening officiële talen, PB 2007, 39 (National Ordinance on official languages, PB 2007, 39).

522 Central Bureau of Statistics Curaçao, *Eerste resultaten census 2011 Curaçao* (First results census 2011 Curaçao) (Curaçao: CBS, 2012). [http://www.banboneirubek.com/sites/default/files/20120731\\_Publicatie\\_Eerste\\_resultaten\\_Census\\_2011.pdf](http://www.banboneirubek.com/sites/default/files/20120731_Publicatie_Eerste_resultaten_Census_2011.pdf) (accessed September 13, 2014).

523 Of the 28 licensed radio stations in Curaçao, the 13 radio stations with their own newsrooms were included in the selection for the content analysis; see also the section on methodology.

524 “Nederlandstalig nieuws op CBA” (News in Dutch on CBA), *DolfijnFM*, August 3, 2011. <http://www.dolfijnfm.com/nieuws/nieuws-van-de-eilanden/7976-nederlandstalig-nieuws-op-cba>, (accessed June 25, 2014).

525 “Spaanstalige krant El Periódico stopt” (Spanish Newspaper El Periódico stops), *Knipselkrant Curaçao*, December 1, 2012. <http://www.kkcuracao.com/?p=18952> (accessed June 25, 2014).

526 Interview August 12, 2013.

527 Ibid.

**Table 2. Main language used by media outlets per type of media**

Media outlets	Papiamentu	Dutch	English	Spanish	Multilingual (Papiamentu, Dutch, English)	Total
Television	2	0	0	0	0	2*
Newspaper	6	2	0	0	0	8
Radio	10	3	0	0	0	13
News sites	2	2	1	0	3	8
Total	20	7	1	0	3	31

\* The third television broadcaster, Hit TV on channel 24, integrally broadcasts the radio programming of music channel Radio Hit (FM 100.3) and is therefore excluded from this analysis.

These results suggest that the media in Curaçao do not reflect the linguistic diversity of the nation, which risks impeding certain groups' access to information. In contrast, however, in a Public Survey carried out for the purpose of this paper, a vast majority of respondents (79.5%) stated that they do not feel a need for additional media sources in their language.<sup>528</sup> A minority of 15% indicated that they would like to have more media in their languages, primarily in Dutch (5%) and in Papiamentu (3%). A very small minority of those surveyed responded that they would like to see additional media outlets in Spanish (2%), English (2%) or French (1%).<sup>529</sup>

In response to the announcement of the launch of three new TV channels in Curaçao in 2014,<sup>530</sup> one of the current television stations has announced its intention to launch new programmes in Spanish and English to strengthen its market position.<sup>531</sup> One TV broadcaster indicated that it was exploring the possibility of news broadcasts in Chinese.<sup>532</sup>

Interviews conducted with civil society organisations that represent marginalised groups in Curaçao revealed that the media tend to be responsive when these organisations seek

<sup>528</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>529</sup> The possibility of bias should be noted here because, although many people in Curaçao are multilingual, the survey was conducted in Papiamentu and Dutch.

<sup>530</sup> Energia Vision, Nos Pais and Notisia360, see also: "Multimedia station 360 IRTV op komst" (Multimedia station 360 IRTV coming up), *Notisia360*, February 6, 2014, <http://www.nieuws360.com/lokaal/multimedia-station-360-ritv-op-komst/>, "Eerste liveshow Nos Pais Television" (First liveshow Nos Pais Television), *Vergeperst*, December 31, 2013, <http://www.versgeperst.com/nieuws/240894/eerste-liveshow-nos-pais-television.html>, "Ontwikkelingen in Curaçaose televisiewereld in volle gang" (Developments in the world of television in Curaçao up and running), *Caribisch Netwerk*, February 6, 2014, <http://caribischnetwerk.ntr.nl/2014/02/06/ontwikkelingen-in-curacao-se-televisiewereld-in-volle-gang/>.

<sup>531</sup> "Ontwikkelingen in Curaçaose televisiewereld in volle gang" (Developments in the world of television in Curaçao up and running), *Caribisch Netwerk*, February 6, 2014, <http://caribischnetwerk.ntr.nl/2014/02/06/ontwikkelingen-in-curacao-se-televisiewereld-in-volle-gang/>.

<sup>532</sup> Interview March 19, 2014.

media coverage of certain events related to the communities with which they work.<sup>533</sup> Recent examples include the media attention that was given to the killing and stealing of animals from the care farm of an organisation<sup>534</sup> that supports persons with disabilities<sup>535</sup> or to a group of 40 undocumented Cuban immigrants who had requested residence permits.<sup>536</sup>

The interviewees noted that press releases from civil society organisations or foundations that advocate on behalf of specific or vulnerable groups are normally published without amendments.<sup>537</sup> There are many such organisations in Curaçao and their activities tend to be well covered. However, there does not seem to be an established custom in the media for journalists to actively search for stories on less represented groups. As one respondent from the Media Workers' Focus Group indicated, "Curaçao, as an island, is very small. The media are easily accessible and approachable, but people are often not aware of that. It is rare for a small and marginalised group to know how to approach the media and make its voice heard."<sup>538</sup>

It is not common for the media to devote substantial space or special sections to specific and/or vulnerable groups. One exception is the Caribbean Kids News TV program, broadcast on TeleCuraçao, which was launched in 2009 with a 300,000-euro start-up grant from the Dutch Ministry of the Interior and Kingdom Relations. It focused on news directed at children in Curaçao five days a week.<sup>539</sup> During its initial period, it brought news from all the Dutch Caribbean islands. However after experiencing financial difficulties, it began focusing on Curaçao and Bonaire only, in addition to general international news. Because no sponsors could be found, Caribbean Kids News ultimately stopped broadcasting on 13 April 2012.<sup>540</sup> One of the producers stated that "although the TV programme filled a gap in the market and

533 Interview May 14, 2014.

534 *Stichting voor Gehandicapten- en Revalidatiezorg* (SGR-Groep)

535 "Re-apertura "zorgboerderij" di Fundashon Verriet" (Re-opening care farm of Verriet Foundation), *Extra*, January 1, 2014, [https://extra.our-hometown.com/news/2014-01-28/Lokal/REAPERTURA\\_ZORGBOERDERIJ\\_DI\\_FUNDASHON\\_VERRIET.html](https://extra.our-hometown.com/news/2014-01-28/Lokal/REAPERTURA_ZORGBOERDERIJ_DI_FUNDASHON_VERRIET.html); "New animals for the care farm", *Amigoe.com*, February 2, 2014, <http://www.amigoe.com/english/175604--new-animals-for-the-care-farm>.

536 "Ongedocumenteerde Cubanen plannen hongerprotest" (Undocumented Cubans plan hunger protest), *Amigoe*, February 25, 2014. See also several articles on the undocumented Cubans from *Persbureau Curaçao* (Curaçao News Agency): <http://www.qracao.com/index.php/component/search/?searchword=cubanen&search=>.

537 E.g. "Investigashon di Korsou presenta na konferensha na Atlanta" (Curaçao research on autism presented at conference in Atlanta), *Extra*, May 26, 2014, [http://extra.cw/news/2014-05-26/Lokal/INVESTIGASHON\\_DI\\_KORSOU\\_PRESENTA\\_NA\\_KONFERENSHA\\_DI.html](http://extra.cw/news/2014-05-26/Lokal/INVESTIGASHON_DI_KORSOU_PRESENTA_NA_KONFERENSHA_DI.html); "Curaçaoas onderzoek gepresenteerd op autisme conferentie Atlanta" (Curaçao research on autism presented at conference in Atlanta), *Dutch Caribbean Legal Portal*, May 23, 2014, <http://www.dutchcaribbeanlegalportal.com/news/latest-news/3942-curacaos-onderzoek-gepresenteerd-op-autisme-conferentie-atlanta>; "Diagnose autisme duurt te lang op Curaçao" (Autism diagnosis takes too long in Curaçao), *Amigoe*, May 31, 2014.

538 Focus Group Interview Media Workers, November 30, 2013.

539 "Eerste uitzending Caribbean Kidsnews" (First broadcast Caribbean Kids News), *Versgeperst*, September 9, 2009, <http://www.versgeperst.com/nieuws/2577/eerste-uitzending-caribbean-kidsnews.html>.

540 "Caribbean Kids News van de buis" (Caribbean Kids News stops broadcasting), *Versgeperst*, April, 3, 2012, <http://www.versgeperst.com/lifestyle/149193/caribbean-kids-news-van-de-buis.html>.

received positive responses, it appears there is not enough interest within the community to financially support this initiative.”<sup>541</sup>

Another exception is a magazine aimed at the LGBT community of Curaçao, *The Pride Villager*. Its first edition was launched online in February 2014<sup>542</sup> and in print form in March 2014,<sup>543</sup> in the context of the South Caribbean Pride organised in Curaçao in May 2014.<sup>544</sup> The magazine deals with issues that are largely ignored by the mainstream media, in a context where homosexuality remains a taboo subject for a significant part of the community. It contains interviews with various members of Curaçao’s LGBT community and provides tourism information for those who attend the South Caribbean Pride event. The magazine was downloaded 22,000 times, primarily by Colombian and Venezuelan readers.<sup>545</sup> The second edition was issued in August 2014.

Information published and broadcast by the media is equally accessible to men and women. There are no barriers for women with respect to obtaining information. That said, there are no media sources that are specifically directed at women, and there are no NGOs working in defense of women’s rights that produce publications on gender equality topics on a regular basis. Regarding the representation of women in the media, the representative of Amnesty International in Curaçao mentioned noticing a positive change in media coverage in recent years, whereby journalists have adopted a tone that is “less macho and more women-friendly”. She stated that the media in Curaçao now more openly and commonly denounce cases of abuse of women.<sup>546</sup>

In Curaçao, none of the TV broadcasters provide special programming for the deaf and hearing impaired (e.g., news with a sign language interpreter or subtitles).

Few of the news sites included in this study offer options for visitors with visual disabilities (e.g., a “large font” button to adjust the font size or a “read aloud” option). One exception is the website of the newspaper *Amigoe*, [www.amigoe.com](http://www.amigoe.com), which offers a “large font” option. No braille newspaper is available in Curaçao.

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541 “Caribbean Kids News van de buis” (Caribbean Kids News stops broadcasting), *Versgeperst*, April, 3, 2012, <http://www.versgeperst.com/lifestyle/149193/caribbean-kids-news-van-de-buis.html>.

542 *The Pride Villager*, First Edition, Curaçao, spring 2014, (accessed September 26, 2014), [www.southcaribbeanpride.com](http://www.southcaribbeanpride.com).

543 “The Pride Villager nu ook gedrukt” (The Pride Villager now also in print), *Amigoe*, March 27, 2014.

544 “Grote gay parade nog niet aan de orde” (Big gay parade is not yet on the agenda), *Versgeperst*, May 5, 2014, <http://www.versgeperst.com/nieuws/252084/grote-gay-parade-nog-niet-aan-de-orde.html>.

545 “The Pride Villager goed gelezen” (The Pride Villager well read), *Amigoe*, February 22, 2014.

546 Interview February 10, 2014.

## 3.2 Media organizations reflect social diversity through their employment practices

Social diversity in media organisations is assessed by the fair representation across the media sector (including senior levels) of male and female journalists and journalists from minority ethnic, linguistic or religious groups.<sup>547</sup>

While the respondents in the Media Workers' Focus Groups were of the view that men and women are represented equally in the media outlets of Curaçao, the coding analysis<sup>548</sup> performed for this study indicated that women are under-represented. In total, 232 individuals were identified through the coding analysis as possible members of the press, based on a number of press lists.<sup>549</sup> Of these 232, 117 media workers<sup>550</sup> and 37 media senior staff members were identified by two media experts as currently employed in the media sector in Curaçao.<sup>551</sup> Of these 117, 80 are men (68%), and 37 are women (32%).

Women also appear to be under-represented at the managerial level, where the gender imbalance is even greater. The analysis revealed that of the 37 media senior staff identified (i.e., owners, managers and editors-in-chief), 29 are men (78%), and only 8 are women (22%).

Despite these low numbers, the under-representation of women in the media, who represent 54% of the population of Curaçao,<sup>552</sup> was not highlighted as an issue of concern during the Media Workers' Focus Groups. However, one of the interviewed media experts indicated that, in his opinion, black women specifically are discriminated against in the media industry, especially with regards to the position of news anchor. He explained:

Many television broadcasters believe that it is better that black women do not read the news on TV. This attitude is a subtle form of racism. I know of an example in the eighties where a black anchor with a short Afro hairstyle was told that she read the news well but that she had to change her hairdo. "That hair does not go well on TV", she was told. Nowadays, when you see a black female anchor, she often has a hair

547 Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 19.

548 See also Introduction chapter, section Methodology - Methods - Coding Analysis.

549 This census was performed based on unofficial press lists gathered from individuals/stakeholders who have contact with the press (e.g., the press list from the lead researcher from the Transparency International research, the spokesperson of the prosecutor's office and the press list used by the Government for the royal couple's visit to Curaçao in January 2014). See also the section of methodology.

550 Active in the journalistic profession *per se*, including journalists, cameramen and women, photographers and sports reporters.

551 The others were either no longer employed in the Curaçao media sector, were unknown to the two experts, or were administrative staff in media outlets as opposed to media professionals *per se*.

552 Central Bureau of Statistics Curaçao, *Eerste resultaten census 2011* (First results of 2011 census) (Curaçao: CBS, 2012), 2, [http://www.banboneirubek.com/sites/default/files/20120731\\_Publicatie\\_Eerste\\_resultaten\\_Census\\_2011.pdf](http://www.banboneirubek.com/sites/default/files/20120731_Publicatie_Eerste_resultaten_Census_2011.pdf) (accessed September 13, 2014).

weave<sup>553</sup> or straight hairstyle. We witnessed a similar example more recently with the new Minister of Education, who was publicly mocked for her Afro hairstyle. These women are criticised for their hair, instead of being judged on their professional abilities.<sup>554</sup>

Regarding the country of origin of those working in the media sector, the results of the coding analysis reveal that 88 of the 117 media workers (75%) are of Curaçao origin (*Yu di Korsou*: “Child of Curaçao”), 20 are of Dutch origin (17%), four are Venezuelan (3%) and five are of other origin (4%). As noted in the introduction, based on the 2011 census, the demographics of the Curaçao population indicate that 76% of citizens were born in Curaçao, 6% in the Netherlands, 4% in the Dominican Republic, 3% in Colombia, 2% in Venezuela and 9% in other countries. Although media workers with a Curaçao background are well represented, available data suggests that few to no media workers of Colombian, Dominican or other backgrounds are employed in the media. According to the media experts consulted for this study, there are few media workers with disabilities.

## B. Public service broadcasting model

### 3.3 The goals of public service broadcasting are legally defined and guaranteed

Public Service Broadcasters (PSBs) are public bodies, which in many cases are supported by significant public funding and must be accountable to the public. Providing such broadcasters a clear mandate is one mechanism for ensuring accountability, which does not undermine their independence. This indicator addresses the responsibilities and the mandate of PSBs. Examples of PSBs are the BBC in the United Kingdom or Nederlandse Omroep Stichting (NOS) in the Netherlands.<sup>555</sup>

PSBs are defined as public institutions with a public purpose, and are not for profit. They are neither commercial nor state-controlled, and their primary purpose is public service. They should be free from interference, whether political or commercial. Although partly or fully funded by the State, PSBs should not be “state-owned”. They should belong to and work in the interest of the citizenry. They must be independent, accessible to all and offer high-quality content.<sup>556</sup>

Currently, Curaçao does not have a public service broadcaster.

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<sup>553</sup> A form of hair extensions, often used by black women, woven, or glued, into the hair from the track.

<sup>554</sup> Interviews February 19, February 26, 2014.

<sup>555</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 19.

<sup>556</sup> For a more detailed description of the concept of public media, see: UNESCO. “Public Service Broadcasting.” [www.unesco.org](http://www.unesco.org/new/en/communication-and-information/media-development/public-service-broadcasting/). <http://www.unesco.org/new/en/communication-and-information/media-development/public-service-broadcasting/> (accessed February 24, 2014).

It should be emphasised that TeleCuraçao, which positions itself as “Planta Nashonal” (the national broadcaster), is not a public service broadcaster. TeleCuraçao has been broadcasting since 1960. It was founded by an American broadcaster with the help of the Government of the Netherlands Antilles.<sup>557</sup> A number of years later, the Government took over the company, which continued its activities as *Antilliaanse Televisie Maatschappij N.V.*, officially established in 1969.<sup>558</sup> Today, the company remains registered under this name and is a subsidiary of United Telecommunication Services N.V., which is also state-owned. Since 10-10-10, both Curaçao and Sint Maarten are shareholders of UTS. Therefore, UTS and its subsidiaries are considered to be public companies, i.e., legal entities established under private law over which the Government can exercise its influence through its shareholdership. The shareholders appoint, suspend and dismiss the members of the company’s supervisory board.

Although state-owned and for several years subject to corporate governance rules, there is no specific legislation that governs the broadcasts of TeleCuraçao. The statutes of the company are very broad and describe the “setting up and exploiting in the Netherlands Antilles of television broadcasting stations, in the broadest sense” as the company’s goal.<sup>559</sup> Thus, TeleCuraçao broadcasting activities are subject to the same rules and regulations that apply to other broadcasters. In addition, TeleCuraçao does not receive any direct subsidies from the Government and is expected to raise funds through sponsorships (however, see the discussion under Indicator 2.9). Since its foundation in 1960, “the station was allowed to begin commercial broadcasting so it could obtain income from sponsors to pay for programming”.<sup>560</sup>

To date, no steps have been taken to establish a PSB, although several years ago (before 2006), the Government made efforts to provide a counterbalance to the private broadcasting sector and established a foundation, *Stichting TelAntil*, to create national, public broadcasting facilities.<sup>561</sup> The Memorandum Media National Ordinance<sup>562</sup> assigned to *Stichting TelAntil* the tasks of “establishing a public broadcasting facility, ensuring the necessary preparations for the establishment of a Media Council and implementing the agreements made within the framework of cultural cooperation with the Netherlands on media cooperation and the

557 See: “About TeleCuraçao”, [www.telecuracao.com](http://www.telecuracao.com). <http://www.telecuracao.com/web/About.aspx> (accessed September 26, 2014); Telearuba, “Company Info”, <http://www.telearuba.aw/companyinfo> (accessed September 26, 2014).

558 Information received from the Chamber of Commerce. The statutes of the LLC mention Lucius Alvin Halley as co-founder. Halley owned one share (of 500) at the time of establishment of the *Antilliaanse Televisie Maatschappij*. The Netherlands Antilles owned the remaining shares.

559 Statutes *Antilliaanse Televisie Maatschappij N.V.*, Article 2.

560 See: “About TeleCuraçao”, [www.telecuracao.com](http://www.telecuracao.com). <http://www.telecuracao.com/web/About.aspx> (accessed September 26, 2014); Telearuba, “Company Info”, <http://www.telearuba.aw/companyinfo> (accessed September 26, 2014).

561 Explanatory Memorandum to the draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007, No.3, 1-2, 18.

562 *Memorie van Toelichting ontwerp Medialandsverordening*, Staten 2006-2007 no. 3 en RvA no. RA/027-06’07, 1. (Memorandum Media National Ordinance, Staten 2006-2007 no. 3 and RvA no. RA/027-06’07, 1).

exchange of radio and television programs”. However, those plans and the accompanying legislation are dormant, as the draft Media Ordinance promoting the role of *Stichting TelAntil* was unable to obtain sufficient support in Parliament to be approved (see also 3.7). Therefore, currently there is no specific legislation on public service broadcasting in Curaçao detailing their public service remit and mandate.

Should a PSB be established, it would be required to broadcast nationally, as are all other broadcasters in Curaçao.<sup>563</sup> This requirement is in accordance with the notion that a PSB should cover the entire national territory to provide universal access to all citizens.<sup>564</sup>

### 3.4 The operations of the public service broadcasters do not experience discrimination in any field

This indicator addresses possible discrimination that may exist against public service broadcasters’ (PSBs) operations.

Currently, Curaçao does not have a PSB. Therefore, it is unknown whether a PSB would experience discrimination in any field in practice.

The Curaçao State plan for spectrum allocation does not distinguish between public, private and community broadcasters. Since December 1998, cable television companies have been required to carry all programmes of local free-to-air television broadcasters without charging extra costs.<sup>565</sup> This same rule would apply for PSB programmes should a PSB be established, unless the State plan for spectrum allocation is modified.

### 3.5 Independent and transparent system of governance

This indicator’s reference to an independent system of governance relates to the governance system of the country’s PSB, not the overall broadcast regulator (whose independence is addressed under Indicators 1.6 and 2.4).

In the absence of a PSB in Curaçao, there is no independent governing body. No regulations regarding who would appoint the members of the board or other rules that relate to this process are in place. In addition, no board is assigned the role of consulting and engaging with the public and CSOs, managing a complaints system, or involving the public and CSOs in the process of appointing members of a PSB board.

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<sup>563</sup> Interview January 27, 2014.

<sup>564</sup> UNESCO & Conseil mondial de la radiotélévision, *Public broadcasting: why? how?* (Canada, 2001).

<sup>565</sup> Cable TV-license (*vergunning*), Article 4, sub-paragraph 1. However, the “must-carry” rule is not firmly rooted in formal legislation, such as the National Ordinance on telecommunications or the National Ordinance television. The rule is included in the draft legislation on telecommunications, Article 8.2.

### 3.6 PSBs engage with the public and CSOs

The question of civil society involvement in the process of appointing members to the PSB board is addressed here. In many countries, PSBs engage with the public directly, for example, through surveys and other opportunities for the audience to provide feedback. This issue is also addressed here.

In the absence of a PBS in Curaçao, however, this section is not applicable to this study.

## C. Media self-regulation

### 3.7 Print and broadcast media have effective mechanisms of self-regulation

The best guarantee for ensuring high ethical and professional standards in journalism is voluntary self-regulation within and among news organisations. This indicator refers to the need for industry-level complaint systems. Addressed here are any self-regulatory systems that apply to entire sectors, such as the print media, the broadcast media or all media.

In Curaçao, no complaint systems or other self-regulatory systems that apply to entire media sectors are in place. The only professional media association that exists in Curaçao, the Curaçao Media Organisation (CMO), has to date not made any move towards the establishment of such a system. Despite the CMO's independence from the Government and the regulator, no examples are known of the CMO disseminating good practice in the area of self-regulation. One of its board members explained that the CMO is a relatively young organisation, having been founded only in 2012. At present it remains focused on its social role, namely that of organising social events and basic workshops (four in total since its creation until day of writing; see Indicator 4.7). When asked whether the CMO perceives its role as being the initiator of a code of ethics or a broadcasting code, the board member interviewed answered that this was a goal "to be pursued in the future".<sup>566</sup>

In many countries, codes of ethics (or of conduct) for the profession are in place that spell out a set of accepted principles, such as the public's right to truth, the right to fair comment and criticism, the need for factual and objective reporting, the use of fair methods to obtain information, the willingness to correct mistakes, and the confidentiality of sources. No such codes exist in Curaçao however, nor do any agreements appear to have been reached regarding the rights and duties of the editors in view of protecting editorial independence.

At the industry level, no systems are in place for hearing public complaints on alleged violations of ethical standards. In addition, no self-regulatory bodies such as a news ombudsman independent from government and commercial interference exist.

<sup>566</sup> Interview March 20, 2014.

In 1995, a commission for media policy was formed that drew up a report with outlines for the implementation of a media policy. The main conclusion of the commission was that the existing legislation was too limited, too fragmented and outdated and that there was a lack of transparency in regulation. To overcome these problems, the commission advised formulating a media policy and establishing statutory regulations to organise and supervise the media sector. The legislative process began in 1997, with legal assistance from the Dutch Ministry of Education, Culture and Science.<sup>567</sup>

In 2007, a draft Media Ordinance was presented to the Parliament. The draft Media Ordinance focused on “all printed and electronic forms of mass communication”.<sup>568</sup> The stated aim of the draft legislation was to create a media policy and media regulations based on the following principles and goals:<sup>569</sup>

- Creating a base for self-regulation of the media sector by the establishment of a Media Council.
- Developing an advertising code and a code of journalistic conduct with the possibility of the administrative enforcement of the obligations contained therein.
- Development of a national radio and television facility and a must-carry obligation (cable carriers would be obliged to transmit all programs of broadcasters in possession of a license) for the purpose of “supporting nation-building”.
- Separation of the regulations on the content of the media from those relating to the technical aspects of radio and television broadcasting.
- Create a basis for the development of separate policies for the media and for telecommunications.
- Simple and flexible regulations.

According to the draft legislation, the Media Council would consist of representatives from non-government organisations and would play a key role in the development of media policy. The Media Council would be comprised by a representative of each of the following organisations: radio broadcasters, press agencies, television broadcasters, and consumer organisations. The duties of the Media Council would include advising the Government on its media policy, advising the media, liaising with local and foreign media advisory bodies, monitoring international developments in the field of media and information services, drafting

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<sup>567</sup> Memorie van Toelichting ontwerp Medialandsverordening, Staten 2006-2007 no. 3, 1-2. (Memorandum Media National Ordinance, Staten 2006-2007 no. 3, 1-2).

<sup>568</sup> Ontwerp Medialandsverordening, Staten 2006-2007 no. 2. (Draft National Ordinance, Staten 2006-2007 no. 2).

<sup>569</sup> Memorie van Toelichting ontwerp Medialandsverordening, Staten 2006-2007 no. 3 en RvA no. RA/027-06'07, 1. (Memorandum Media National Ordinance, Staten 2006-2007 no. 3 and RvA no. RA/027-06'07, 1).

an advertising code and drafting a journalistic code of conduct. It would also be responsible for the managing of complaints concerning advertising and the behaviour of journalists, as well as for the undertaking of any other tasks considered to be necessary in the fulfillment of its mandate.

During its discussion in Parliament, the draft Media Ordinance received substantial criticism and was unable to obtain sufficient support to be approved. The major points of criticism were related to the powerful position of the Minister of Education in the draft legislation, concerns regarding the degree of independence of the Media Council, the numerous possibilities it provided for including additional regulations, the highly broad range of tasks for which the Media Council would be responsible, and the technical difficulties expected in the application of a permit system. The draft Ordinance was also perceived as being too extensive and too detailed for it to enable the creation of a simple and flexible system of regulation. The draft Media Ordinance was never approved (see also Indicator 3.3) and no other initiatives for the development of a new media law have since been undertaken in Curaçao.

### 3.8 Media displays culture of self-regulation

This indicator addresses self-regulation within news organisations, such as channels for public complaints and complaints systems that are established by individual media outlets, in addition to the guarantees that may exist across the media sector, discussed under 3.7, for ensuring high ethical and professional standards in journalism.<sup>570</sup>

The importance of press freedom in a democratic society justifies the special provisions granted to the media with respect to infringement of privacy and the right to non-disclosure of sources. However, with the role of informing the public also comes the responsibility to carry out this role professionally and ethically, for example by adhering to international best practice and standards reflected, among others, in the “Code of Bordeaux”<sup>571</sup> and the recommendations of the Committee of Ministers of the Council of Europe.<sup>572</sup>

<sup>570</sup> Toby Mendel, *Applying UNESCO’s Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 20.

<sup>571</sup> Ethical Journalism Initiative. “IFJ Code of Principles on the Conduct of Journalism”. (Adopted by 1954 World Congress of the International Federation of Journalists), <http://ethicaljournalisminitiative.org/en/contents/ifj-code-of-principles-on-the-conduct-of-journalism> (accessed July 10, 2014).

<sup>572</sup> The Council of Europe Committee of Ministers has issued recommendations to Member States on the provision of information through the media in relation to criminal proceedings. The recommendations were issued in acknowledgment of the fact that the media have the right to inform the public because of the public’s right to receive information (including information on matters of public concern) under Article 10 of the Convention and that the media have a professional duty to inform the public. The recommendations are addressed to the Member States but also contain principles on the manner in which journalists should conduct themselves and report in relation to criminal proceedings. See also: The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Recommendation Rec (2003), 13. <https://wcd.coe.int/ViewDoc.jsp?id=51365> (accessed July 10, 2014).

Among the different media outlets in Curaçao, few systems of self-regulation such as codes of ethics or editorial statutes are in place, and few complaints systems have been established. Of the six media managers who answered the question concerning the self-regulation practices within their organisations in the survey conducted for this study, only one indicated that his/her organisation had a code of ethics.<sup>573</sup> A further two indicated having editorial guidelines (*redactie statuut*) and two indicated having advertising guidelines.

Based on the responses received in the Public Survey<sup>574</sup> and the Public Focus Groups, the public is generally not very satisfied with the way in which media outlets manage complaints.

According to Transparency International's 2013 National Integrity Assessment, broadcasters and newspapers do not seem to have integrity provisions in practice. The Research Team of Transparency International found no integrity provisions on broadcasters' or newspapers' websites.<sup>575</sup> However, exceptions do exist such as the news site *Versgeperst* based in Curaçao, which is an initiative of journalism students from the Netherlands and which has a code of conduct for its journalists. This code centres on the essential role of journalists in presenting news independently, fairly and honestly. The news site *Versgeperst* publishes its editorial statutes<sup>576</sup> and code of conduct<sup>577</sup> on its website [www.versgeperst.com](http://www.versgeperst.com).

*Caribisch Netwerk*, which is funded by the independent Dutch public service broadcaster NTR, follows the editorial guidelines of NTR, which are published online.<sup>578</sup> The manager of *Caribisch Netwerk* explained that these provide guidance for the news site and journalists who work for *Caribisch Netwerk* and that a hard copy of these editorial statutes is formally signed by the journalists who work for the site.<sup>579</sup>

An example of the editorial statutes of one newspaper, Antilliaans Dagblad, was provided upon request to the Research Team. The editor in chief of CBA Television, one of Curaçao's two major television broadcasters, and the editor in chief of Extra, the most widely circulated newspaper, both stated that they do not have written self-regulation systems in place.<sup>580</sup> The new editor-in-chief of the other major television broadcaster, TeleCuraçao, stated that there used to be editorial statutes in place but that these statutes were not actually referred to in practice. He added that a new ethical code was being introduced that was based on the code

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<sup>573</sup> Response to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>574</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>575</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 183.

<sup>576</sup> Versgeperst. "Redactiestatuut." <http://www.versgeperst.com/redactiestatuut/> (accessed July 10, 2014).

<sup>577</sup> Versgeperst. "Gedragsregels." <http://www.versgeperst.com/gedragsregels/> (accessed July 10, 2014).

<sup>578</sup> NTR. "Redactiestatuut" (Editorial Guidelines), [http://www.ntr.nl/static/docs/NTR\\_Redactiestatuut\\_2011.pdf](http://www.ntr.nl/static/docs/NTR_Redactiestatuut_2011.pdf) (accessed August 31, 2014).

<sup>579</sup> Personal communication from Caribisch Netwerk, August 31, 2014.

<sup>580</sup> Interviews March 19, March 20, 2014.

of ethics of the Society of Professional Journalists (SPJ), an American broad-based journalism organisation.<sup>581</sup>

The results of the Media Workers' Focus Groups confirm that only a few newsrooms in Curaçao work according to clear professional guidelines and published codes of ethics. All of the participants stated not having seen such codes at the editorial boards on which they work (many work or have worked for more than one media outlet). One participant was of the view the absence of a code of ethics in the outlet she works for had contributed to a lack of impartiality in reporting among her peers.<sup>582</sup>

Media outlet directors and editors-in-chief interviewed often pointed out that despite editorial boards not having written codes of ethics or editorial statutes, a number of “unwritten rules” did apply. One director noted that “everybody who works here knows what our code, rules and style are”.<sup>583</sup>

Despite the above, the results from the Media Workers' Survey reveal a slightly more positive picture (table 3).<sup>584</sup> Respondents were asked whether self-regulation tools are available (48%-55%), used in practice (41%-59%), regularly debated (38%-62%) and regularly reviewed (28%-38%). According to the Media Workers' Survey results, the code of ethics is most commonly used, compared to other self-regulation tools.

**Table 3. Use of self-regulation tools, Media Workers' Survey (n=29)**

Self-regulation tool	Available	Used in practice	Regularly debated	Regularly reviewed
	%	%	%	%
Editorial statute	48.3	41.4	37.9	27.6
Code of ethics and/or conduct	55.2	58.6	62.1	37.9
Advertising guidelines	55.2	51.7	34.5	31.0

When asked in the Media Workers' Survey whether their organisations work under any other guidelines other than those mentioned in the above table, of the 16 media workers who responded only three stated that they did not. All the other 13 media workers named one or more rules that were established by their editorial boards but that were not written rules *per se*. Most frequently mentioned were the principles of balance, fairness and impartiality (mentioned by 12 respondents), rules for scoops and breaking news (mentioned by one respondent), respect for the audience and refraining from offensive language and discrimination towards certain groups in society (mentioned by one respondent), using trustworthy sources and

<sup>581</sup> Interview March 19, 2014; See also: Society of Professional Journalists. “About.” <http://www.spj.org/aboutspj.asp> (accessed July 10, 2014).

<sup>582</sup> Focus group Interview Media Workers, November 30, 2013.

<sup>583</sup> Interviews March 19, March 12, 2014.

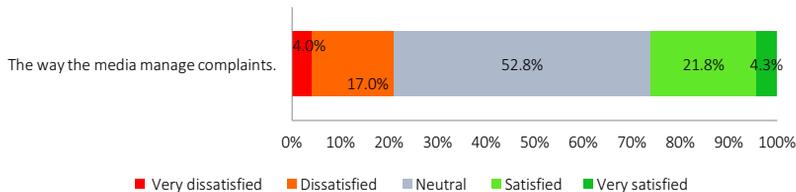
<sup>584</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

refraining from defamation, accepting bribes and plagiarism (mentioned by one respondent). One respondent stated that “everyone works based on his or her conscience”.<sup>585</sup> None of the media workers mentioned following national or international frameworks of standards in their work such as the “Code of Bordeaux”.<sup>586</sup>

Based on the information available, it seems that the few existing codes tend not to be actively disseminated to journalists and are not regularly debated or reviewed.

When assessing whether media organisations are responsive to their audiences, e.g., whether avenues are available for public complaints and the right of reply, results from the Public Survey suggest that in practice the public perception of media mechanisms of self-regulation is moderate.<sup>587</sup> Only 26% of respondents are satisfied or very satisfied with the way in which the media manage complaints, and 21% are dissatisfied or very dissatisfied (figure 4). The large percentage of respondents who were neither satisfied nor dissatisfied (53%) may be interpreted as an indication of a low level of awareness among the general public of the complaints systems in place.

**Figure 4. Public perception of complaint management. How satisfied are you with... Public Survey (n=595)**



The Public Focus Group results reveal that respondents perceive the management of complaints to be an important issue, specifically with respect to the numerous cases in which individuals have been “named and shamed” by the media. Respondents mentioned that mistakes are occasionally rectified. However, they feel that complaints are generally resolved only under the pressure of the complainant, and that the procedure for filing a complaint is not always transparent. One respondent noted, “There are no official means to file complaints. You just have to go to the newspaper in person. If you are well known, then they will listen to you”. As one respondent summarised, “It depends on who is filing the complaint: Asjes [the Prime Minister] or Junny [your ‘average Joe’]”.<sup>588</sup>

<sup>585</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.  
<sup>586</sup> Ethical Journalism Initiative. “IFJ Code of Principles on the Conduct of Journalism. (Adopted by 1954 World Congress of the International Federation of Journalists.)” <http://ethicaljournalisminitiative.org/en/contents/ifj-code-of-principles-on-the-conduct-of-journalism> (accessed July 10, 2014).  
<sup>587</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.  
<sup>588</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

Few media outlets seem to have official and independent complaint systems. One of the interviewed editors-in-chief explained that the newspaper at which this editor-in-chief was employed did not have an ombudsman or a complaints officer, but that it was nevertheless responsive to the public. “We are open to comments from the public: readers can come directly to me, and they do. They call me and they come here [to the office]”.<sup>589</sup> The editor-in-chief explained that most complaints are made on an individual level and primarily focus on issues related to privacy, balance and fairness (*hoor en wederhoor*): “When people are angry about a picture in the newspaper, they call me up and ask: “Why did you include my name?” or “Why did you not call me to warn me?”<sup>590</sup> When asked how complaints are handled, the editor-in-chief explained that typically an individual with a complaint is met with personally. According to the editor, rectification is often unnecessary because the individual can be adequately reassured or because the paper publishes a “follow-up” that presents the views of the complainant.

## D. Requirements for fairness and impartiality

### 3.9 Effective broadcasting code setting out requirements for fairness and impartiality

This indicator addresses the specific issue of whether a broadcasting code is in place that includes obligations of fairness, balance and impartiality. It refers to codes that are applicable at all times and special regimes that apply during elections. A broadcasting code may be established on a self-regulatory basis, included in the general rules for broadcasters, or expressed in the form of special rules that are adopted during election periods by the broadcast regulator or the election oversight body.<sup>591</sup>

According to the information collected during the interviews with Curaçao media workers, there is no sector-wide broadcasting code that imposes requirements of impartiality and balance on broadcasters, whether self-regulatory or statutory. However, one interviewee mentioned the publication by the Ministry of Traffic of a 2.5-page leaflet for the broadcast media entitled “professional code of conduct” that policy advisers had worked on in 2006. This interviewee provided the Research Team with a copy of the leaflet.<sup>592</sup>

The leaflet that outlines the code of conduct to be adopted by broadcasters was printed in three languages (Papiamentu, Dutch and English) and distributed among the media and to

<sup>589</sup> Interview March 19, 2014.

<sup>590</sup> Interview March 19, 2014.

<sup>591</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 20.

<sup>592</sup> Interview February 10, 2014.

the public by the Ministry of Traffic<sup>593</sup> in 2006-2007.<sup>594</sup> At the time of the assessment, the code was not available online, and the Research Team was unable to obtain a hard copy at the Ministry.

The leaflet was primarily aimed at communicating to license holders the rules by which they are obliged to comply, as stipulated in the license. In the introduction, the leaflet states the following:

The code of conduct for radio and television must be seen as a directive and reference frame for licensees. The code of conduct also aims to make known the mission, values and principles of the [broadcasting] organisation and to link these to the standardisation of professional behaviour. The code of conduct provides explicit ethical guidelines for media workers. In the future, the code of conduct must contribute to the development of a code of ethics for reporters, journalists and presenters (the written press can use this code as a guideline).<sup>595</sup>

The code of conduct consists of guidelines on the following topics:<sup>596</sup>

1. Violence
2. Violence against humanity
3. Violence against women
4. Violence against specific groups
5. The child
6. Determined broadcasting hours
7. Language use
8. Pornographic material
9. Advertisement messages

The code of conduct prescribes that license holders will not broadcast programmes that contain violence (whether against humanity, women or specific groups), use insulting or grammatically incorrect language or broadcast pornographic material. It states that programmes unsuitable for children should not be broadcast before 8:00 p.m. Furthermore, the code establishes specific rules for commercials for alcoholic beverages, eg., that these not be followed by public service announcements. (see also the assessment under Indicator 2.11).

Although one of the individuals who was involved in developing the code of conduct assured that it was established in accordance with international standards, a number of

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<sup>593</sup> The Minister of Traffic, Transportation and Urban Planning is also responsible for the regulator BTP. The Ministry of Education also contributed to the code.

<sup>594</sup> Interview February 10, 2014.

<sup>595</sup> "Professional code of conduct", no date, 1.

<sup>596</sup> "Professional code of conduct", no date, 2-3.

important elements are missing.<sup>597</sup> For example, there is no regulation to ensure respect for the principles of fairness, balance and impartiality during elections. As an illustration of the above, there are no provisions for the allocation of airtime to candidates, reporting on opinion polls, quotas for political advertising, party election broadcasts and the prevention of undue coverage of public authorities, as prescribed in the national electoral code.<sup>598</sup> Other important elements that are missing are questions on professional ethics, including the use of subterfuge to obtain information, the conduct of interviews and payment for information.<sup>599</sup> On a positive note, this code does not compromise the editorial independence of the media, e.g., by imposing a system of prior censorship (see also Indicator 1.11).

Given that only one interviewee indicated knowing about the code of conduct, it would appear that the code is not being applied. The Media Workers' Survey results also reveal that only 14% (4 of 29) of those surveyed are aware of the existence of the pamphlet or a code of professional conduct.<sup>600</sup>

A majority of the media workers who were surveyed, i.e., 76% (22 out of 29), consider a broadcasting code to be either important or very important. Opinions vary regarding what should be included in such a broadcasting code. When asked, respondents suggested a large diversity of topics, which ranged from independence and fairness to dress codes, and from source protection to educational requirements (table 4).

The proposal for a draft Media Ordinance presented to Parliament in 2007 refers to guidelines for responsible journalism. For example, Article 2 of the draft Media Ordinance states that the Minister of Education must establish a Media Council for Curaçao.<sup>601</sup> One of the proposed tasks of the Media Council is to encourage media outlets to act in a responsible way when determining the "form and content of [their] broadcasting programmes" and to protect them against undue interference from Government and advertisers. However, the draft Media Ordinance contains several restrictions on content (see the discussion under Indicator 1.3). The draft Ordinance also states that the Media Council is responsible for drafting a code of conduct. Article 6 further describes the procedure for the Media Council's enforcement of the code of conduct.<sup>602</sup> However, as stated under Indicator 1.5, this proposal for a new

<sup>597</sup> Interview February 10, 2014.

<sup>598</sup> Such regulations once existed for television broadcasting, based on Article 11 of the Television National Ordinance. However, the regulations were withdrawn in 2002 (National Decree 7 January 2002, Country Gazette 2002, No.19).

<sup>599</sup> ARTICLE 19. "International standards: Regulation of broadcasting media. 5 April 2012." <http://www.article19.org/resources.php/resource/3022/en/international-standards:-regulation-of-broadcasting-media#sthash.IFEd0EZJ.dpuf> (accessed June 27, 2014).

<sup>600</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>601</sup> The article also applies to the other island territories of the Netherlands Antilles and states that the Minister of Education must establish a media council for the Lesser Antilles (Saba, Sint Eustatius and Sint Maarten) and one for the Leeward Antilles, Bonaire and Curaçao.

<sup>602</sup> Draft Media National Ordinance, Parliament of the Netherlands Antilles, Session 2006-2007. The draft is deposited in the Government's archives. The current formal status of the draft legislation is unclear.

Media Ordinance could not find sufficient support from media stakeholders or members of Parliament, and since then, no other initiatives to develop a new media law have been undertaken.

**Table 4. In your opinion, what topics should certainly be included in a code of conduct? (Open-ended question), *Media Workers' Survey (n=29)***

Topics to be included in a <i>code of conduct for Curaçao</i> :	Times mentioned
Balance and fairness principles ( <i>hoor en wederhoor</i> )	3
No personal attacks on individuals, parties or institutions by journalists; defamation	3
Honest collection and publication of news	3
Protection of anonymous sources	3
Transparency and neutrality of reporters or clarity on political position	3
Educational requirements for journalists (e.g., required educational level to be allowed to work as a journalist; regular training)	3
Editorial independence (from political and commercial parties)	3
Language proficiency	2
Fact checking	2
Ethics	2
Respect for privacy (e.g., with victims of crime or traffic accidents)	1
Clearly separating news from opinion	1
Checks on conflict of interest	1
Codes for graphic material	1
Prohibit censorship	1
Provide journalists leeway to choose themes of importance	1
Protection by the employer	1
Protection from certain levels of stress	1
The need for the media to cater to the needs of all	1
Bribes: transparency on the issue of accepting money given the influence this can have on the impartiality of reporting	1
Minimum standards on quality	1
Transparency of media ownership and financing	1
Separation of advertisement department and editorial board	1
The right of fair comment and criticism	1
Responsibility for what one writes	1
Offensive language	1
Dress code	1

### 3.10 Effective enforcement of broadcasting code

With this Indicator, the focus is on the enforcement of a broadcasting code, including the nature of the restrictions in the code (i.e., whether they are reasonable and in agreement with accepted professional rules). The manner in which complaints are made and investigated (i.e., whether the media are accessible to individuals who wish to file a complaint and whether the system is fair for broadcasters), and the nature of the sanctions that may be applied, which should not be excessively harsh or onerous, are also dealt with under this indicator.<sup>603</sup>

Because neither a statutory nor a self-regulatory code is in place in Curaçao, no breaches of professional or ethical standards have been investigated or sanctions applied. There is no proper system to address public complaints, and no press council or media ombudsman.<sup>604</sup> To formally file a complaint, the public has often no other option but to file a report with the police or take judicial action.<sup>605</sup> Only few cases of a media outlet being taken to court are known,<sup>606</sup> possibly due to the high costs involved. As one interviewee explained:

If somebody has a complaint and a media outlet was in the wrong, it should be expected that the media outlet take corrective action. However, there are media outlets that simply do not cooperate and wish to stick to their story. In these situations, what is the average citizen meant to do? Either you just accept it or you are forced into a lawsuit, which can be very expensive. There should be some sort of disciplinary board or a press council. The Curaçao media landscape would greatly profit from such a system. Today concerns about the press are not being addressed.<sup>607</sup>

The regulator Bureau Telecommunicatie en Post (BTP) does not in practice regulate media content, nor does any other body, whether governmental or non-governmental (see also the discussion under Indicator 1.7). However, a representative of BTP stated that when BTP becomes aware of excesses in media content when performing its statutory supervisory tasks regarding the technical aspects of broadcasting, it may raise the issue with the involved media outlets or inform the Minister of Education, as has occurred in the past.<sup>608</sup> In 2012, BTP wrote an official letter to the Ministry of Education, which is responsible for media policy,<sup>609</sup>

<sup>603</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 21.

<sup>604</sup> Interviews February 19, February 26, March 21, 2014.

<sup>605</sup> Interviews February 19, February 26, March 11, March 21, 2014.

<sup>606</sup> See, for example, Ruling Court in First Instance of Curaçao, April 15, 2013, case AR 2012/58131 (ECLI:NL:OGEAC:2013:BZ7339); Ruling Court in First Instance of the Netherlands Antilles, February 13, 2008, case KG 2008/17 (ECLI:NL:OGEANA:2008:BD9190); Ruling Court in First Instance of Curaçao, February 28, 2011, case AR 2011/46714KG (ECLI:NL:OGEAC:2011:BQ0620).

<sup>607</sup> Interviews February 19, February 26, 2014

<sup>608</sup> Interview January 27, 2014.

<sup>609</sup> As indicated in the Landsverordening ambtelijk bestuurlijke organisatie, Artikel 8. (National Ordinance Administrative Government Organisation, Article 8). (See also Indicator 1.6.)

recommending that a code of conduct be initiated.<sup>610</sup> BTP informed the Research Team that it received a reply stating that the Ministry of Education was developing a code but that it was not yet complete.<sup>611</sup> A representative of the Ministry of Education, which is responsible for media policy,<sup>612</sup> expressed the view that even if a legal framework were in place to enable the Minister of Education to supervise the broadcasting media on the content level, the Ministry is currently not equipped to monitor media content.<sup>613</sup>

## E. Levels of public trust and confidence in the media

### 3.11 The public displays high levels of trust and confidence in the media

This indicator focuses on the public's view of the media and whether citizens take interest in participating in the media.

Curaçao does not have an independent body that systematically monitors developments in the media and media concentration, although such bodies are common in other countries.<sup>614</sup> As a result, it is difficult to obtain a precise understanding of the market shares and use of the media in Curaçao. That said, the media research conducted by the economic and management consultancy company Curconsult provides some data in this regard.

Generally, the media in Curaçao enjoy high viewer, listener and reader ratings among the population. According to media research conducted by Curconsult,<sup>615</sup> which has monitored the market shares of the Curaçao media every two years over the last decade (six times in total) with the purpose of enabling certain stakeholders in the private sector to gain insight into the changes in use and popularity of the media in Curaçao, local television is and remains highly popular. A total of 80% of Curaçao's population (age 15+) watches local television, with a mean of 1.4 hours per day for TeleCuraçao and a mean of 1.0 hour per day for CBA. Curconsult's latest report (2013) concludes that local television owes its popularity to the local news broadcasts TeleNotisia on TeleCuraçao and É Notisia on CBA Television.<sup>616</sup> However, TeleCuraçao's viewer ratings (including the news ratings) have somewhat declined over the last decade. CBA's market share continued to increase in 2013, and it appears that nearly all CBA viewers also watch TeleCuraçao (the inverse phenomenon is not as common).

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610 Interview February 4, 2014.

611 Interview February 4, 2014.

612 As indicated in the Landsverordening ambtelijk bestuurlijke organisatie, Artikel 8. (National Ordinance Administrative Government Organisation, Article 8). (See also Indicator 1.6.)

613 Interview 10 February 2014.

614 See, e.g., the Dutch Media Monitor by the *Commissariaat voor de Media* (Commissioner for media). *Commissariaat voor de Media*. "Media Monitor" <http://www.mediamonitor.nl/> (accessed September 10, 2014).

615 Curconsult, *Mediaonderzoek Curaçao 2013* (Media research Curaçao 2013) (Willemstad: Curconsult, 2013). See also: Curconsult. "CurconsultProjecten" (Curconsult Projects). [http://www.curconsult.nl/welkom/?language=NL&page=Curconsult projecten 2013&menuid=1511 - 13-02](http://www.curconsult.nl/welkom/?language=NL&page=Curconsult%20projecten%202013&menuid=1511-13-02) (accessed September 10, 2014).

616 Curconsult, *Mediaonderzoek Curaçao 2013* (Media research Curaçao 2013) (Willemstad: Curconsult, 2013).

Compared to 2011, in 2013, television viewers watched fewer hours of local television: on average, 10-15 minutes less per day. Despite this, TeleCuraçao's morning news broadcasts are slowly increasing in popularity. The vast majority of viewers of the local television stations primarily watch local news programmes: Telenotisia on TeleCuraçao (92% of all TeleCuraçao viewers) and É Notisia at CBA (91% of all CBA viewers). The audience for other programmes is substantially smaller. Other programmes that are regularly viewed include the lottery show "Wega di Number", the morning show "MoruBondia" and the afternoon show "Bo tra'i Mérida". The popularity of these last two programmes is gradually increasing.

According to the Curconsult report, local radio remains popular. Although many listen to local radio in Curaçao (94%), because of the large number of radio stations (i.e., 28 in total), the audiences of individual stations are typically small. There are six stations with a share of more than 10% of Curaçao radio listeners: Mas 99.7FM (47%), Direct 107.1FM (23%), Radio Krioyo (20%), Z86 (15%), Radio Hoyer 1 (14%) and 88 Rock Korsou (10%). Radio is particularly popular during the early morning (until 8:00 a.m., with 42% of the population listening in) and during the lunch break period (from 12:00 p.m. to 2:00 p.m.; with 52% of the population listening in). Listening after work has become somewhat more popular in recent years. In terms of radio programming, news programmes are the most popular, followed by music. The majority of listeners listen to news (90%) and music (85%). Talk shows are currently more popular than they were two years ago, with a total audience rising from 45% in 2009 to 69% in 2011 to 77% in 2013. In contrast, the percentage of the population that tune in to call-in programmes has slightly decreased, from 69% in 2011 to 65% in 2013.<sup>617</sup>

Of the Curaçao population in the age group 16 years and older, 89% read a local newspaper. The results of Curconsult's survey reveal that in Curaçao, *Extra* remains by far the most widely read newspaper, with 76% of all newspaper readers, followed by *Vigilante* (44%). Ranking third, *Amigoe* (24%) appears to be most popular among the highly educated, the wealthy and the elderly. *Ultimo Noticia* is read by 17% of all newspaper readers. The research carried out by Curconsult also reveals that the other newspapers (*Antilliaans Dagblad*, *Nobo*, *La Prensa*) have smaller audiences, with market shares of approximately 5%.<sup>618</sup>

Regarding online media, Curconsult reports that local news sites have slightly increased in popularity with 14% of the Curaçao population visiting online news sites. In recent years, the use of social media has greatly increased. Among them, Facebook appears to attract the most users.<sup>619</sup> The period of 2011-2013 saw an increase in the use of Facebook from 39% to 51% among individuals aged 16 or over. Half of all Curconsult survey respondents indicated leaving their Facebook pages open throughout the day or visiting the site several times per day. The "standard" Curaçao Facebook user is relatively young, is mid- to highly skilled and

<sup>617</sup> Curconsult, *MediaonderzoekCuraçao 2013* (Media research Curaçao 2013) (Willemstad: Curconsult, 2013).

<sup>618</sup> Ibid.

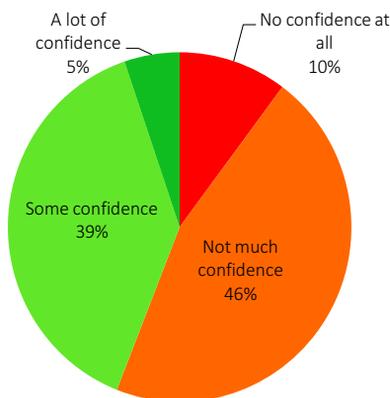
<sup>619</sup> Ibid.

does not have a family income of below NAf 1500 (US\$ 830) per month. In Curaçao, the minimum wage is NAf 1331,20 (US\$ 738,73) per month.<sup>620</sup>

Based on the feedback received during the Public Focus Groups, the public’s perception of the media appears to be negative. Respondents expressed the view that the media are sensationalist, and lack quality and professionalism as well as fairness and balance (*hoor en wederhoor*). Additionally, respondents pointed out a perceived lack of critical analysis and impartiality in the media’s reporting.

The Public Survey conducted for this study included a number of questions related to the public’s trust in the media.<sup>621</sup> The mixed results indicated that 56% of respondents have little or no confidence that the media operate in the interest of society. Only 5% of respondents responded having “a lot of confidence” in the media operating in the interest of society with the rest, 39%, answering that they placed “some confidence” in the media (figure 5).

**Figure 5. How confident are you that the media in Curaçao operate in the interests of your society? Public Survey (n=595)**



With respect to the levels of trust placed in the different media sources, survey results indicated that international television broadcasters are most trusted by Curaçao citizens for news and information on current affairs.<sup>622</sup> Local TV came second, closely followed by international newspapers (figure 6). When asked about the news sources most commonly used, 37% of citizens of Curaçao indicated consulting multiple types of media sources. The preferred news source among those that indicated a single source was newspapers (18%) (figure 7). In the case of local breaking news, e.g., news on a natural disaster, the public primarily

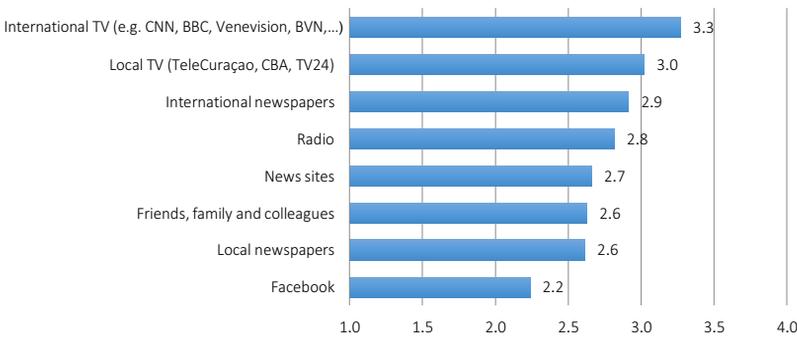
<sup>620</sup> “Minimumloonverhoogd” (Minimum wage increased), *Versgeperst*, January 5, 2012, <http://www.versgeperst.com/nieuws/135628/minimumloon-verhoogd.html>.

<sup>621</sup> Public Survey conducted for the Curaçao MDI Assessment, 2014.

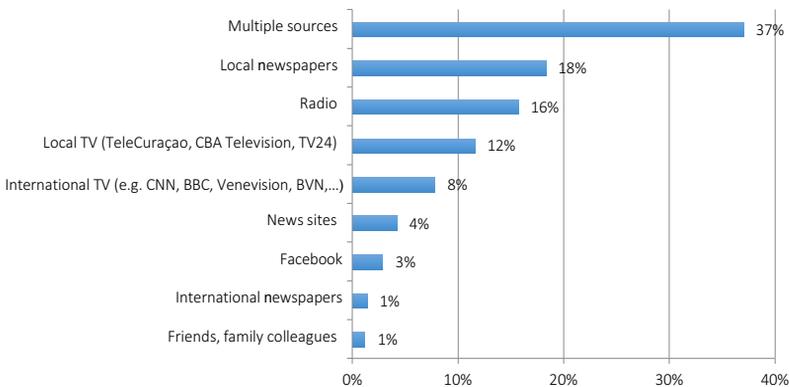
<sup>622</sup> *Ibid.*

relies on local radio stations (45%). Local TV channels came second as news source in these situations, with 15% of the population relying on them for their information. Twenty-two percent of respondents relied on a multiplicity of sources of news in these situations as opposed to a single one (figure 8). The clear preference for radio in this case can be explained by the fact that radio stations are best equipped to quickly react during emergency situations and to provide listeners with breaking news. Moreover, radio can be listened to when driving, which can be important in the case of a natural disaster.

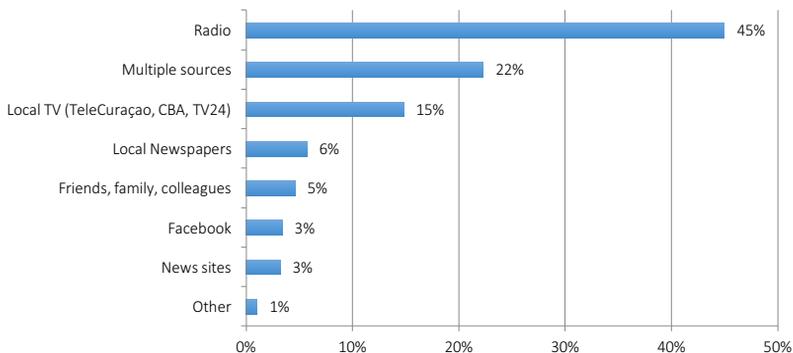
**Figure 6. How much do you trust the following sources to provide you with news and information on current affairs? (mean scores: 1 = no trust at all, 4 = a lot of trust), Public Survey (n=595)**



**Figure 7. What is your most important news source during an average week? (Select one answer), Public Survey (n=575)**

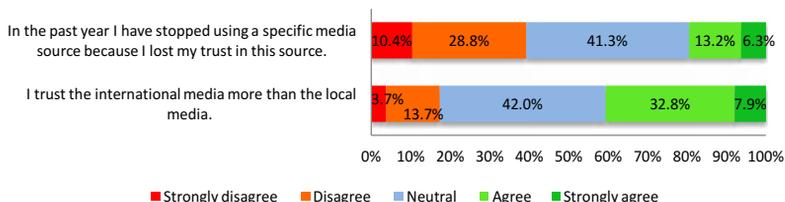


**Figure 8. Suppose a disaster occurred in Curaçao: which news source would you consult first? (Select one answer), Public Survey (n=577)**



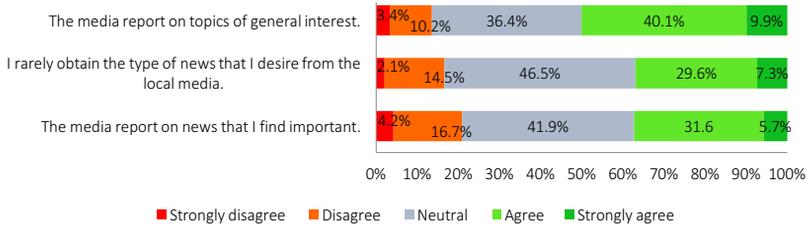
The low confidence in the local press is apparent in the responses provided to the statement “I trust the international media more than the local media”, with which 41% agreed or totally agreed and only 17% disagreed or totally disagreed. Despite this, citizens appear relatively loyal to the local media sources that they use, with only 19.5% of respondents agreeing or strongly agreeing with the statement “In the past year I have stopped using a specific media source because I lost trust in this source” (figure 9).

**Figure 9. Public trust in the Local Media, Public Survey (n=577)**



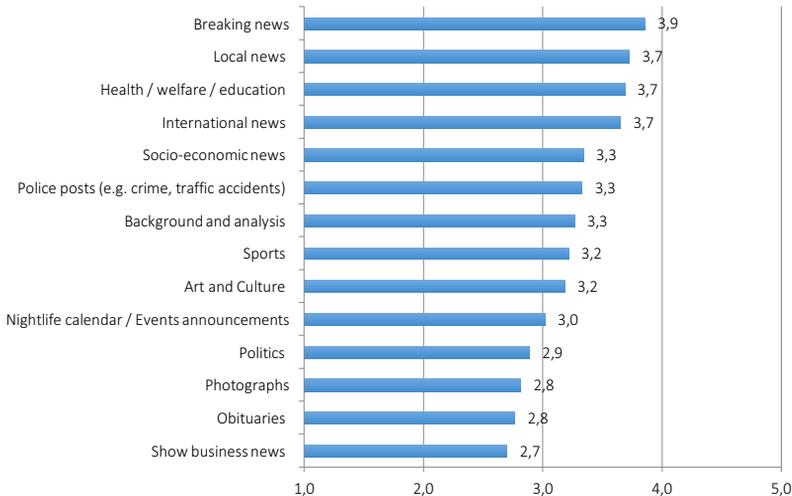
The results of the survey concerning perceptions about whether the media report on issues of genuine concern are mixed.<sup>623</sup> Fifty percent of respondents were of the view that the media report on topics of general interest, and 37% agreed or strongly agreed with the statement that the media report on news that they find important. However, 37% were of the view that they rarely obtain the type of news they seek from the local media (figure 10).

**Figure 10. Public perception that local media report on issues of genuine concern, Public Survey (n=577)**



Regarding the type of information that individuals would prefer to receive through the media, the results of the Public Survey indicate that breaking news is of most interest to the public (mean score of 3.9 on a 5-point scale), followed by local news, health/welfare/education and international news (all with mean scores of 3.7 on a 5-point scale).<sup>624</sup> Interestingly, although many interviewees suggested that the obituaries and photographs featured in newspapers were the sections most consulted by many readers, in the Public Survey results, these featured at the bottom of the ranking, rating 2.8 on a 5-scale (figure 11).

**Figure 11. How much are you interested in the following? (mean scores: 1 = no interest at all, 5 = a lot of interest), Public Survey (n=595)**

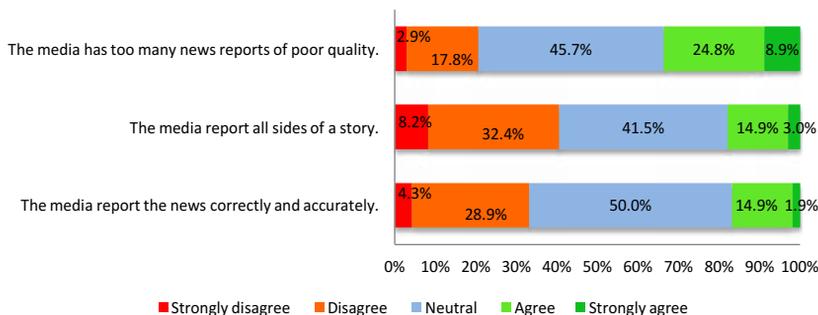


624 Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

Because of the small size of the island of Curaçao, no distinction is made by the media between local and national news. Instead the media categorises news and information along the lines of local, regional (which is defined as the former Netherlands Antilles or the Caribbean region, depending on the media outlet) and international. The results of the Public Survey reveal that 36% agree or strongly agree with the statement “The media strikes an adequate balance between local and international news”, whereas 27% disagree or strongly disagree.<sup>625</sup>

Confidence in the accuracy and independence of the information that is provided by the media is low. A total of 34% of the public indicated that the media contain too many news reports of poor quality. Only 17% of the respondents find that the media report news correctly and accurately, and only 18% share the opinion that the media report all sides of a story (figure 12). Nevertheless, 25% of respondents find information provided by the media to be trustworthy (figure 14). This discrepancy seems difficult to explain.

**Figure 12. What do you think generally of the reports in the Curaçao media?**  
*Public Survey (n=595)*

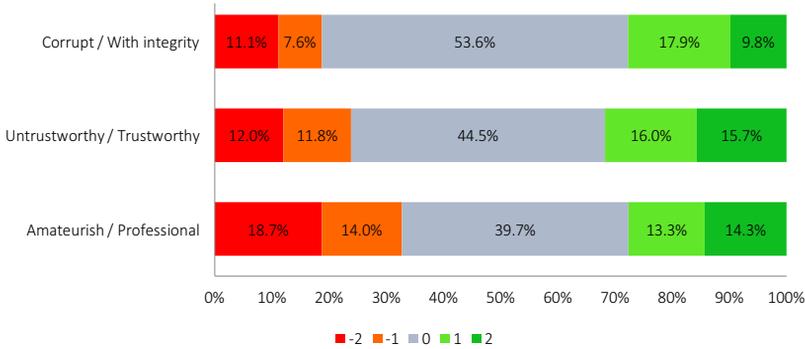


Regarding public perception on whether media organisations have integrity, are trustworthy and professional, the results of the Public Survey are unclear.<sup>626</sup> Many respondents provided scores in the middle of the rating scale. As concerns integrity and trustworthiness, slightly more respondents rated the average journalist positively than negatively. However, for professionalism, the result is the opposite. Almost one-third of the public perceives the average journalist in Curaçao as having integrity (28%) and being trustworthy (32%), but one third also perceives the average journalist as being amateurish (33%) (figure 13).

<sup>625</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

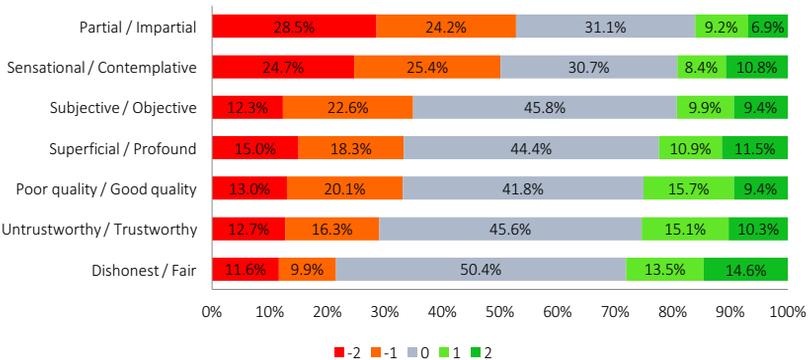
<sup>626</sup> Ibid.

**Figure 13. What is your perception of the average journalist Curaçao?**  
Public Survey (n=595)



Public opinion is low with regard to fair and impartial news reporting. Only 16% of respondents believe news reporting in Curaçao to be impartial and only 28% feel that it is fair. Larger parts of the public perceive media reports in Curaçao to be in general partial (53%), sensational (50%), subjective (35%), superficial (33%) or of poor quality (33%) (figure 14).

**Figure 14. What do you think generally of the reports in the Curaçao media?**  
Public Survey (n=595)

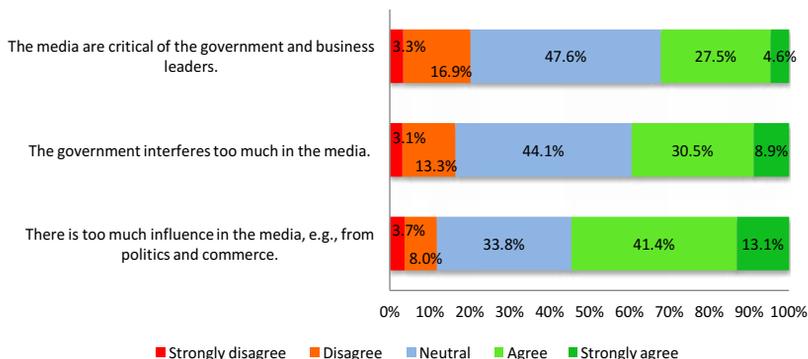


These results are supported by the 2013 findings of Transparency International in its National Integrity Assessment for Curaçao, which had warned that unsubstantiated information was being broadcast on radio and television as well as printed in newspapers without proper fact checking due to time constraints and low pay.<sup>627</sup>

<sup>627</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 176.

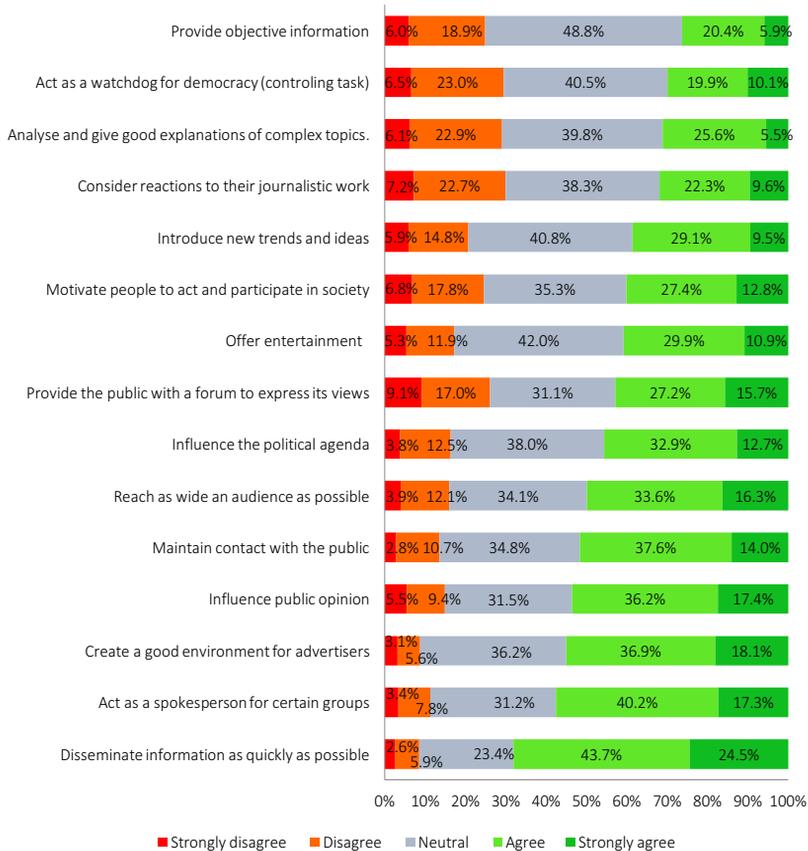
The apparent distrust in local media among the Curaçao public is concurrent with more than half (54.5%) of respondents in the Public Survey believing that there is “too much external influence from e.g., politics and commerce, on the media in Curaçao”.<sup>628</sup> Only 12% of respondents either disagreed or strongly disagreed with this statement. Moreover, only 16% disagreed or strongly disagreed with the statement “The Government interferes too much in the media”. Despite the above, 32% believe that the media are critical of the Government, something that 20% of respondents either disagree or strongly disagree with (figure 15).

**Figure 15. Public perception of influences on local media, Public Survey (n=595)**



Finally, the public’s perception of how the media generally perform their tasks was measured. The results reveal that a relatively high percentage of those who were interviewed believe that the media perform the following tasks well: dissemination of information as quickly as possible (68%), acting as a spokesperson for certain groups (57.5%) and creating a good environment for advertisers (55%). However, individuals are less positive with regard to the media’s general performance on certain crucial journalism tasks. For example, considerably fewer respondents believed that the media generally provide objective information (26%), act as a watchdog for democracy (i.e., play a monitoring role) (30%) or provide analysis and good explanations of complex topics (31%) (figure 16).

**Figure 16. Do you think that the media perform the following tasks well? Generally, I find that the media ... Public Survey (n=595)**



The Public Survey indicates that 55% of respondents feel a need for public media in Curaçao, as opposed to 18% of respondents who do not feel that need.<sup>629</sup> Twenty-seven percent answered that they did not know. Regarding community media, 42% indicated that there is a need for this type of media in Curaçao, compared to 32% of respondents who did not feel the need for community media. Twenty-six percent of respondents answered that they did not know. When asked why they feel this need, respondents pointed out the need for independent, impartial and more diverse media in Curaçao. They were of the opinion that community media would counterbalance the influence of Government and commercial

<sup>629</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

parties, enable the public to be better informed and ensure that media coverage would be of higher quality and more trustworthy. However, several respondents expressed doubts about whether this goal could be achieved in a small community such as Curaçao and insisted on the importance of ensuring the independence of such initiatives.

### 3.12 Media organizations are responsive to public perceptions of their work

This indicator focuses on how the media engage with the public, including whether the media are interested to learn about their audiences, whether they offer the public opportunities to engage and participate, and whether they establish oversight systems that are accessible to the public.<sup>630</sup>

To date, no studies have assessed the responsiveness of media outlets to feedback received from their audiences. Based on the interviews with media workers and experts that were conducted for this assessment, few media organisations seem to be actively involved in seeking information on their audiences and how these perceive their programming in terms of quality and diversity.

A small number of media outlets perform reader or consumer surveys. The telephone survey performed by the newspaper *Amigoe* in May 2014 among its readers<sup>631</sup> or the one carried out online in December 2013 by the newspaper *Antilliaans Dagblad* are examples of the above.<sup>632</sup> In an interview, the editor-in-chief of the newspaper *Extra* stated that readers received a questionnaire every four years, which primarily focuses on which pages are most read. She added that every time it has been conducted, results have indicated that the obituaries page is the most read.<sup>633</sup> The TeleCuraçao manager, who was interviewed for the purpose of this study, stated that a consumer survey is carried out every 2-3 years by the station.<sup>634</sup>

Two examples of responsiveness to public perceptions of media organisations, which were extensively discussed in the public arena, should be mentioned. One of these was the print media's agreement in 2004 to cease publishing graphic photographs of accidents and shootings on the front pages of newspapers in response to requests received from the public and the Curacao Tourism Board on this issue. Media experts who were interviewed explained, however, that after several months a number of newspapers violated this agreement due to a decrease in sales. The second example involves the public criticism of the quality of TeleCuraçao, which sees itself as the national television broadcaster (*Planta Nashona*) of Curaçao. The quality of TeleCuraçao programming is frequently discussed by the followers of

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630 "Heeft u een ogenblik voor ons?" (Do you have a moment for us?), *Amigoe*, May 17, 2014.

631 Ibid.

632 Antilliaansdagblad's Facebook page, post December 19, 2013, <https://www.facebook.com/antilliaansdagblad/posts/777997342217261>.

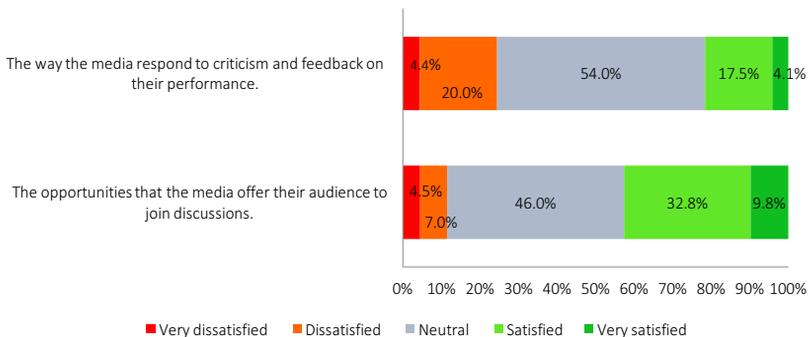
633 Interview March 20, 2014.

634 Interview March 19, 2014.

the Facebook pages *KorantVeridiko II*<sup>635</sup> and Media Watchdog,<sup>636</sup> both of which are initiatives of an independent journalist. The editor-in-chief of TeleCuraçao explained in an interview that when TeleCuraçao considers a criticism to be justified, the broadcaster responds to the criticism, issues a correction or tries to prevent future errors.<sup>637</sup>

Public satisfaction with the way in which the media respond to criticism and feedback on their performance is limited, with a minority of only 22% of the Public Survey respondents stating that they were satisfied or very satisfied in this regard.<sup>638</sup>

**Figure 17. How satisfied are you with ... Public Survey (n=595)**



In contrast, 43% of respondents are satisfied or very satisfied with the opportunities provided by the media to join discussions. Media organisations do offer channels for audience engagement. Phone-ins are particularly popular in Curaçao, and several popular radio and television shows offer call-in debates, which last on average one hour, or occasionally two. One such example is the daily TV show “Pro-Info” on CBA Television, which primarily discusses politics, sports and show business. Another such example is TeleCuraçao’s “Moru Bon Dia”, which addresses current affairs. Daily call-in radio shows, which primarily discuss current affairs, include “Korsou ta papia” on Radio Deltha, “Mas Lat Mainta” on Radio Z86 and “Enfoke” on Radio Mas. Each Sunday evening, call-in radio show “Konfeshon di Kurason”, which discusses love and relationships, is broadcast by Radio Krioyo. As a result, there are numerous opportunities for public participation in broadcast media in Curaçao. One media

<sup>635</sup> See: E KorantVeridiko II’s Facebook page, <https://www.facebook.com/ekorant.veridikoi>, 14,405 followers (accessed August 20, 2014).

<sup>636</sup> See: Media Watchdog’s Facebook page, <https://www.facebook.com/pages/Media-Watchdog/2160428144095924?ref=ts>, 361 followers (accessed August 20, 2014).

<sup>637</sup> Interview March 19, 2014.

<sup>638</sup> Response to the Public Survey conducted for the Curaçao MDI Assessment, 2014.

expert pointed out, however, that “the people that call-in go from show to show: they are mostly the same individuals who participate time and again”.<sup>639</sup>

As regards the print press, the Dutch language newspapers (*Amigoe* and *Antilliaans Dagblad*) publish reader letters on a daily basis. *Amigoe* recently announced a new initiative, “Citizens have their say”, and placed a call for panel members to discuss the local news on a weekly basis.<sup>640</sup> Online news media and media outlets’ Facebook pages often offer opportunities for visitors to leave comments and join discussions. As an indication of the public’s participation in the media, respondents were asked in the Public Survey whether in the past year they had sent a letter to the editor of a newspaper (8% of respondents), whether they had called into a radio programme (18% of respondents) and whether they had at least once left a comment on an Internet news site (15%).<sup>641</sup> One interviewee stated the following:

The public can easily respond to publications. We live in a society in which letters to the editor are often more important than many news items. You can see that on both Dutch- and Papiamentu-language news sites, new messages immediately receive a lot of responses. There seems to be a real need for the public to participate in different types of media. This is a positive development.<sup>642</sup>

Citizen reporting, however, is not common.

## F. Safety of journalists

### 3.13 Journalists, associated media personnel and media organizations can practice their profession in safety

This indicator addresses the cross-cutting issue of harassment of the media. Here, the focus is on harassment that transcends simple pressure and involves actual threats or instances of violence or other physical measures (such as illegal detentions) that target media workers and outlets. Less intrusive forms of harassment or pressure are addressed under Indicator 1.3.

In Curaçao, journalists can practice their profession in relative safety. However, several recent cases of harassment of journalists have caused public debate on the issue of safety and have been the cause for concern. The results of the media management survey reveal that few media organisations have policies to protect the health and safety of their staff.<sup>643</sup>

The results of the interviews and the Media Workers’ Focus Groups regarding safety are mixed. Respondents did not consider journalists in Curaçao to be under particular threat of

<sup>639</sup> Interview March 21, 2014.

<sup>640</sup> “Burger aan het woord.Meningengezocht” (Citizens speaking. Wanted: opinions), *Amigoe*, August 19, 2014.

<sup>641</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>642</sup> Interview March 11, 2014.

<sup>643</sup> Response to the Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

harassment or violence. Indeed, there have been no documented cases of journalists and associated media personnel suffering physical attacks, being unlawfully detained or being killed as a result of pursuing their profession in Curaçao. Equally, there are no examples of media organisations being forced to close down as a result of pursuing their activities, nor have there been known cases of media organisations being threatened with closure. There is no climate of impunity on the island.

However, journalists and associated media personnel are occasionally subjected to threats or harassment by the wider public or individuals with political or personal interests. As several interviewees noted, cameramen and photographers in particular have faced harassment and verbal threats when carrying out their work. This can be the case at crime scenes and car accident sites, particularly when individuals feel that their privacy is being violated.<sup>644</sup> A number of cases of politically motivated threats were described during the interviews conducted for this study. One of the journalists interviewed had for example been warned “to watch his or her back” when carrying out his or her duties.<sup>645</sup>

The Media Workers’ Survey results indicated that 46% of respondents do not believe that journalists in Curaçao can perform their work safely.<sup>646</sup> Of the 28 respondents, 75% have already experienced some form of threat or intimidation (see figure 18). The types of threat most frequently experienced by the 28 respondents were threats by telephone, SMS, email or in person.

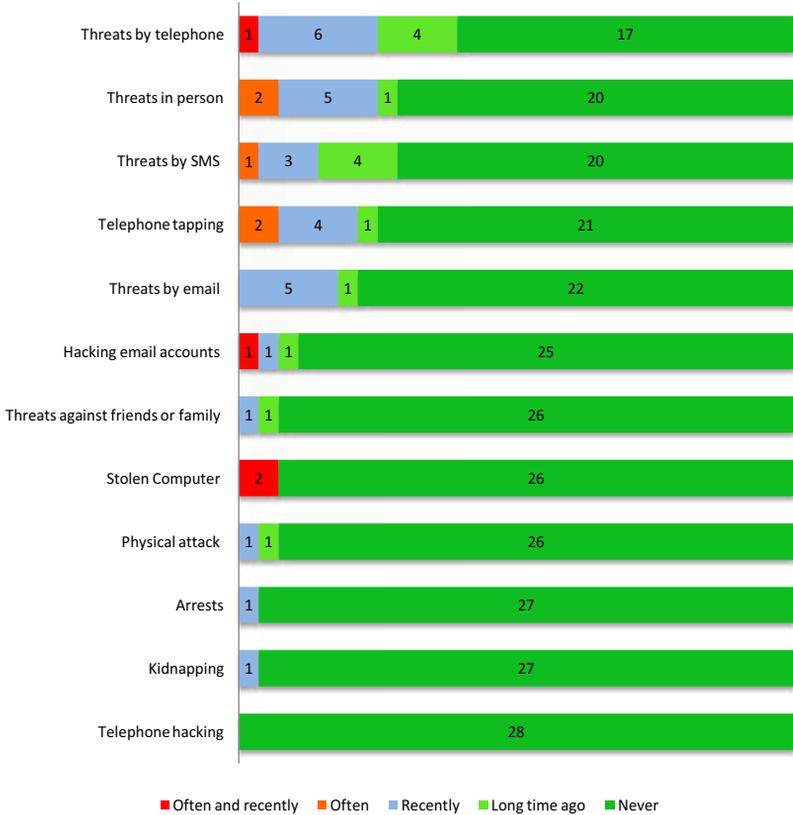
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<sup>644</sup> Interview March 21, January 13, 2014.

<sup>645</sup> Interview February 6, 2014.

<sup>646</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

**Figure 18. Suffered threats and attacks by type and frequency, *Media Workers' Survey (n=28)*<sup>647</sup>**



It must be mentioned that at the time the Media Workers' Survey and the Media Workers' Focus Groups were being conducted in 2014, a number of incidents occurred that resembled journalist harassment, including arson of journalists' vehicles, and telephone threats involving members of the press who were covering news stories on a number of politicians.

Two recent cases that caused substantial resentment, indignation and debate in the public arena are worth highlighting here. The first of these is the harassment complaint filed by a

<sup>647</sup> In the anonymous survey, one media worker indicated having recently been kidnapped, and another stated having recently been arrested. The Research Team attempted to verify these reports with news coverage on such events. Additionally, several experts were asked about whether they were aware of such incidents. However, the Research Team was unable to find any evidence that could substantiate the statements.

journalist against the Minister Plenipotentiary (*gevolmachtigd minister*) in February 2014. The journalist who filed the complaint had disclosed irregularities in the CV of the politician, which became the topic of discussion at a meeting in Parliament in December 2013. In this meeting, the opposition's motion of disapproval was rejected. According to a local newspaper, the journalist was "publically pilloried" in Parliament.<sup>648</sup> This event resulted in a confrontation in February 2014 between the Minister Plenipotentiary, her bodyguards and the journalist during a visit to a local school. According to the journalist, one of the Minister's bodyguards punched him, although the Minister categorically denied this. Following this incident, both parties filed reports. The journalist stated in a local newspaper: "For me, it is clear that the Minister's message, as well as that of the Government of Curaçao, is: 'journalist, don't meddle in our affairs, because we will kick back'."<sup>649</sup> The issue was also raised during discussions (*kamervragen*) in the Dutch Lower Chamber.<sup>650</sup> On 5 March 2014, a Member of Parliament wrote an official letter to the Chairman of the National Council of Ministers (i.e., the Dutch Prime Minister) asking for clarification about the incident and requesting that action be taken against the Minister involved.<sup>651</sup>

The second case concerns an act of arson that was directed at a radio reporter in May 2014 and that was perceived as suspicious by the journalist. On 28 May 2014, the car of the reporter was deliberately set on fire. Together with his employer, he filed a complaint with the Public Prosecution Service. At the time of writing, the case continued to be under investigation. The radio reporter explained in the newspaper *Amigoe* that he considers the act of arson to be an attack on himself and his family but refuses to blame anyone for it. This incident was not the first attack against staff members of this radio station. In 2013, three other cars were set on fire. These incidents led several local media and stakeholders to publicly express their concern about press freedom and the safety of journalists,<sup>652</sup> among which a member of the Dutch Parliament who explicitly stated that he was worried about the way in which certain individuals attempt to influence the press in Curaçao.<sup>653</sup>

648 "Hoezo persvrijheid?" (What do you mean freedom of the press?), *Antilliaans Dagblad*, December 19, 2014, <http://www.antilliaansdagblad.com/Curaçao/commentaar-93/8075-hoezo-persvrijheid>.

649 "Drayer makes audio tape public", *Amigoe*, March 15, 2014, <http://www.amigoe.com/english/178000-drayer-makes-audio-tape-public->.

650 "Asjes: "Wiels was on a working visit", *Amigoe*, April 3, 2014, <http://www.amigoe.com/english/180236-asjes-wiels-was-on-a-working-visit->.

651 Tweede kamer der Staten Generaal, *Kamerstuk: De agressie van de gevlmachtigde minister van Curaçao tegenover een journalist* (Parliamentary Paper: The aggression of the Minister Plenipotentiary of Curaçao towards a journalist), March 5, 2014, <http://www.tweedekamer.nl/kamerstukken/kamervragen/detail.jsp?id=2014Z04031&did=2014D07949>.

652 "Attack on reporter a sad day for free press", *Curaçao Chronicle*, May 28, 2014, <http://curacaochronicle.com/local/attack-on-reporter-a-sad-day-for-free-press>.

653 "Radiojournalist RicheronBalentiendoetaangifte" (Radio Journalist Richeron Balentien files a report), *Amigoe*, May 28, 2014, <http://www.amigoe.com/curacao/184181-radiojournalist-richeron-balentien-doet-aangifte>.

Similarly, Business Association Curaçao stated:

It cannot be emphasised enough that these practices are detrimental to the democratic functioning of society in general and create an unattractive investment climate. Trust is in fact severely compromised. Bona fide investors are unwilling to invest as a result. In such a situation and atmosphere, economic growth, employment, income, wealth will lag behind, with grave consequences including increased poverty. The judiciary, in particular the prosecution, is asked to prioritise the resolution of such illicit acts. Freedom of expression and press freedom are important foundations of a democratic country.<sup>654</sup>

The Media Workers' Survey results indicate that five of the 28 (18%) respondents believed that their media organisations have policies to protect the health and safety of their staff. One respondent mentioned receiving training and participating in experience-sharing activities as part of their media organisation's in-house policy. Another cited the security cameras and lighting in and around the building in which they work. Overall, however, media workers explained that safety is an issue that is not adequately addressed by most media organisations and that when the issue is addressed, it is primarily through informal arrangements. They argued that concrete journalists safety and protection measures should be established.

The Media Managers' Survey results indicate that three out of eight media managers believed that journalists at their company face a substantial risk of harassment, threats or attacks because of their professional activities.<sup>655</sup> It appears that most of the attacks are not physical attacks but verbal ones, and are usually dealt with internally.

The media managers themselves have also suffered a number of attacks and threats, which seem to be more severe than those faced by the average media worker.<sup>656</sup> Of the eight managers surveyed, two indicated that they had recently been physically attacked, four had recently been threatened in person and two stated being "often and recently" threatened by telephone. An additional two had recently had threats addressed at their family and/or friends.

Three of the eight managers stated that there are policies in place at their organisations to protect the health and safety of staff. However, only one manager mentioned measures specifically aimed at journalism safety: peer consultation, sharing experiences and training on this subject within the company. The other two managers made reference to locking the building and banning entry to non-employees, particularly at night, and mentioned that they provided employees with health insurance. A fourth manager was of the view that, in practice, a safety policy is unnecessary. Two of the eight managers stated that measures of social protection are available also to temporary and freelance employees.

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<sup>654</sup> See, e.g., Vereniging Bedrijfsleven Curaçao (Business Association Curaçao), *Newsletter*, May 2014.

<sup>655</sup> Response to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>656</sup> Response to the Media Managers' Survey and the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

These results from the Media Managers' Survey confirm the general notion conveyed during the interviews with media managers, which was a lack of specific measures to protect journalists and media workers. From the interviews, it was inferred that the general feeling was that although there is no severe threat to the safety of journalists and media professionals in Curaçao, increased attention to how to address threats and harassment is necessary.<sup>657</sup>

### 3.14 Media practice is not harmed by a climate of insecurity

This indicator addresses the reaction of the media to the threats of punishment, harassment of violence, and focuses particularly on whether this reaction leads to self-censorship. Self-censorship as a result of social norms, prejudices and so-called redlines (i.e., issues that are considered unacceptable to address in public for whatever reason) are also addressed in this section. In addition, the section focuses on the role of bloggers, in particular: whether bloggers can provide a platform for the discussion of issues that are not openly discussed in the traditional media.<sup>658</sup>

One media expert noted in the Transparency International (TI) National Integrity Assessment that the low level of education of most journalists in Curaçao results in a low level of critical reporting and that the small scale of Curaçao society makes it even more difficult for journalists to take on a critical stance for fear of possible repercussions. According to TI, this problem undermines the accountability of the media overall, and in particular the media's role as a watchdog.<sup>659</sup>

A number of media workers who were interviewed for this study indicated that journalists do not routinely self-censor for fear of punishment, harassment or attack. In contrast, several others indicated that self-censorship is becoming a cause for concern because some journalists appear to have started practicing self-censorship as a result of recent incidents of threats and harassment against journalists, as mentioned under Indicator 3.13.

Because of the community's small scale, journalists depend on personal relationships to gather information and on not being denied certain "privileges", even minor ones, for example, being allowed to park near the government building for the weekly press conference.<sup>660</sup>

Several journalists cited various examples of media outlets that have practiced self-censorship when reporting about cases that involved major advertisers. According to one interviewee, the repercussions of not exercising such restraint can result in the withdrawal of advertisements by the company concerned or in banks or investors refusing to lend money or demanding the

<sup>657</sup> Interviews February 19, February 26, March 21, 2014.

<sup>658</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 22.

<sup>659</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 179.

<sup>660</sup> Interview February 6, 2014.

early repayment of loans by media outlets or individuals. One interviewee discussed the issue of financial dependence and how it can induce self-censorship:

If I criticise a bank on the radio and the bank's management finds out, then there comes a moment when they call me and tell me to pay off my credit card debts. This happens more often than you think. It is a small community. If you cross the interests of a bank or investor, you need to take into account what may be the consequences. It is like having a sword of Damocles hanging over your head. [...] As the owner of a media organisation, you are extra careful. Consequently, as a journalist in Curaçao, you have to know what your limits are: this is as far as I can go when reporting news related to certain stakeholders. But there are times when journalism requires you to dig further. Why would I do so in one case and not dig further in other cases?<sup>661</sup>

In sum, although self-censorship as a result of the fear of punishment, harassment or attack does not seem to occur frequently, self-censorship due to other factors related to the small scale of the community, such as the dependence on good relationships with information sources or sources of financial income and the desire to protect relatives, do indeed affect media practice on the island.

## Recommendations

### Media reflects diversity of society

1. The media should consider offering more space and programmes addressing issues of interest to specific and/or vulnerable groups, such as children, the youth, individuals living in poverty, the elderly and people with disabilities so as to promote greater diversity in the media. Linguistic diversity of media content should also be further promoted.
2. Particular attention should be devoted to ensuring gender balance at all the levels of the media industry, including at the senior level.
3. The media should adopt clear policies to recruit individuals from diverse ethnic and linguistic groups, at all levels, so as to truly reflect the plurality of the Curaçao population. Persons with disabilities should be proactively included in recruitment processes.

### Public service broadcasting model

4. The development of public service broadcasting (PSB) that is independent of Government and is editorially independent should be explored and promoted in line with international good practice. The UNESCO publication “Public Service Broadcasting: A best practices sourcebook” can serve as a guideline for initiating this process.<sup>662</sup> The public funding of such broadcasting must be secure, long term and stable to protect it from arbitrary interference.

5. A key step in the development of a public service broadcaster should be the setting up of an independent governing body to oversee its activities. The autonomy of this body should be legally guaranteed, and the process of appointment of its members open, transparent and free from direct Government interference or control by any political or economic vested interests.

### Media self-regulation

6. The Curaçao Media Organisation and any other future association and/or union of journalists should actively promote a code of professional ethics that focuses on accepted principles based on international best practice. These would include provisions for the respect of the truth and verifiability, the public's right to know, the right to fair comment and criticism, factual and balanced reporting, the use of fair methods to obtain information, the willingness to correct mistakes, and the confidentiality of sources.
7. The Curaçao Media Organisation and any other future association and/or union of journalists should reach agreements with the media owner representatives on the rights and duties of the editors as an effective mechanism to ensure editorial independence without State intervention.

<sup>662</sup> UNESCO, *Public Service Broadcasting: A best practices sourcebook* (2005). <http://unesdoc.unesco.org/images/0014/001415/141584e.pdf>.

8. Media outlets should ensure that they have codes of professional ethics and editorial guidelines. These codes and guidelines should be widely publicised; all journalists should receive a copy or know where such materials can be consulted, and the public should also be regularly alerted to the standards to which media seeks to subscribe.
9. Self-regulation of the media should be strengthened by establishing an independent media ombudsman or independent media council for managing complaints from the public. Furthermore, efforts should be made to launch an independent journalists' union to represent and defend the interests of the media industry's employees and work towards the improvement of professional standards.
10. Publishers and media owners can contribute to improving the status of journalists in Curaçao by encouraging the adoption of normative instruments (e.g., newsroom statutes, collective agreements and decisions) and by establishing mechanisms that ensure the fair treatment of all employees in the newsroom.

## Requirements for fairness and impartiality

11. An independent regulatory body should be established to ensure the regulation of Curaçao's broadcasting sector. This body should develop a broadcasting code, which sets out rules for fairness and impartiality and ensures, for example, that each political party can obtain equitable coverage during election periods. However, the broadcasting code should not compromise the editorial independence of media organisations. Broadcasters and CSOs should actively participate in the preparation of this code.<sup>663</sup>

## Levels of public trust and confidence in the media

12. The media should develop further mechanisms for citizen participation and engagement and ensure that citizens can influence the content or programming.
13. Publishers should seek to strengthen the trust of their public by ensuring transparency on the mechanisms in place to guarantee a clear separation between editorial work on the one hand and media ownership and affiliations with prominent advertisers on the other. To further enhance transparency and accountability of publishers could also agree on the joint publication of data on circulation, advertising, media audiences and revenues, as is common in other countries.

## Safety of journalists

14. Media outlets should put in place efficient security policies to protect the safety of their personnel when performing their assignments.
15. Special attention should be given to addressing the problem of self-censorship, in particular given the small size of the Curaçao society, which tends to increase the influence of economic or political interests on editorial content. This can be done among others by facilitating training on professional ethics and adopting strong editorial guidelines that protect the independence of the editorial board and/or media worker.

## Category 4

Professional capacity  
building and supporting  
institutions that underpin  
freedom of expression,  
pluralism and diversity



## Key Indicators

### A. AVAILABILITY OF PROFESSIONAL MEDIA TRAINING

- 4.1 Media professionals can access training appropriate to their needs
- 4.2 Media managers, including business managers, can access training appropriate to their needs
- 4.3 Training equips media professionals to understand democracy and development

### B. AVAILABILITY OF ACADEMIC COURSES IN MEDIA PRACTICE

- 4.4 Academic courses accessible to wide range of students
- 4.5 Academic courses equip students with skills and knowledge related to democratic development

### C. PRESENCE OF TRADE UNIONS AND PROFESSIONAL ORGANIZATIONS

- 4.6 Media workers have the right to join independent trade unions and exercise this right
- 4.7 Trade unions and professional associations provide advocacy on behalf of the profession

### D. PRESENCE OF CIVIL SOCIETY ORGANIZATIONS

- 4.8 CSOs monitor the media systematically
- 4.9 CSOs provide direct advocacy on issues of freedom of expression
- 4.10 CSOs help communities access information and get their voices heard

## Category 4

# Professional capacity building and supporting institutions that underpin freedom of expression, pluralism and diversity

## A. Availability of professional media training

### 4.1 Media professionals can access training appropriate to their needs

This indicator focuses on the availability of training programmes for media workers other than formal academic programmes (which are addressed under Issue 4B).<sup>665</sup>

In Curaçao, professional media training opportunities are limited. No courses or training programmes are available on a regular basis. Only short, one-time workshops and training courses are provided.

A common concern expressed by several interviewees and media experts is the low educational level and lack of qualifications and training of current media workers in Curaçao. By way of illustration, the most widely read newspaper in Curaçao, *Extra*, indicated that none of its editorial board members holds a degree in journalism.<sup>666</sup>

Several interviewees stated that the minimum educational level required for journalistic work is a Bachelor of Arts degree or its equivalent.<sup>667</sup> The results of the coding analysis performed for this study indicated that, of the 117 media workers identified as active journalists (including cameramen, photographers and sports reporters but excluding owners and administrative workers), an estimated 38% have a Bachelor of Arts-level education. An estimated 26% of media workers who perform journalistic work have only a lower educational level (i.e., vocational training, high school, elementary school), while the educational level of 35% of media workers is unknown to the media experts who performed the coding analysis. However,

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<sup>665</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 22.

<sup>666</sup> Interview March 20, 2014.

<sup>667</sup> Interview March 21, 2014.

in the experts' view it is likely to be low, insofar as good education is highly valued in Curaçao and a matter to emphasise in public.<sup>668</sup>

The need for local training opportunities was strongly emphasised by all stakeholders. Nearly every individual interviewed for this assessment highlighted that providing such opportunities was key to strengthening the media sector in Curaçao.

Because of the country's small scale, training opportunities are generally limited. For certain disciplines, including journalism, no local training possibilities are provided in a programmatic manner.

Currently, no educational institution in Curaçao offers qualifications in journalism. At all levels, the opportunities available to media workers to upgrade their skills and essential disciplinary knowledge are limited. No regional or international exchanges are organised, and there is no support available to journalists who wish to specialise in specific subject areas such as broadcast journalism, data journalism or political journalism. No regular training in IT skills targeting journalists is available. In addition, there are no training courses in media production that offer on-the-job or work-based training. Finally, no training material is accessible in the Papiamentu language, which is an important limiting factor for media workers.

Despite the above, a number of short, one-time workshops and training sessions specifically aimed at local journalists have been organised. The Curaçao Media Organisation (CMO), which has been active since 2012, offered to its members five training sessions and one conference between January 2013 and April 2014. The CMO training activities organised during this period were as follows:

- May 2013: With the support of UNESCO, the CMO organised a conference open to local and international journalists from 3 to 5 May 2013 on the occasion of World Press Freedom Day. The conference involved workshops whose primary goal was to improve the quality of news coverage. The workshops were free for CMO-members. Speakers from countries such as Brazil, Canada and Jamaica gave lectures and facilitated workshops around themes such as reporting during disasters and elections. A plenary session on "gender-sensitive indicators for media" was also organised.<sup>669</sup> Attendance by the local press was low with under 20 members present. CMO chairman Stanley Ignacio stated in *Amigoe* that the attendance rate was indicative of a low level of interest among journalists in broadening their knowledge of the profession. Marva Browne, Secretary-General of Curaçao's National Commission for UNESCO National Commission, stated

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<sup>668</sup> A list of all media workers was compiled, and its characteristics coded by two media experts (see Methodology).

<sup>669</sup> "Curaçao host country for journalists conference", *Amigoe*, <http://www.amigoe.com/english/150832-Curaçao-host-country-for-journalists-conference> (assessed April 12, 2014).

in the same newspaper that the language barrier could have played a role in the low turnout as the conference was carried out in English.<sup>670</sup>

June 2013: An ad hoc course on business etiquette was offered by a local consultant, and was attended by 23 members of the press and a number of young adults interested in studying journalism.<sup>671</sup>

August 2013: Two half-day training sessions were held on basic communication and presentation skills for radio and TV professionals. The training was provided by a local media worker, and the course was free of charge for members of the press.<sup>672</sup>

- September 2013: A one-time workshop was held on TV and radio presentation skills. The workshop was facilitated by two local media workers and attended by 24 media workers, members of the CMO.<sup>673</sup>
- October 2013: A three-day stand-alone course on Papiamentu (e.g., spelling and variations that are characteristic of the spoken language) was provided by the foundation Pro Alfa, the local illiteracy institute. A total of 24 media workers attended the course.<sup>674</sup>
- January 2014: A three-day training workshop titled “Organizashon Hudisial” (judicial organisation) offered a broad overview of the juridical system, specifically targeting media professionals. The training was provided by a judge and involved approximately 20 participants.<sup>675</sup>

In September 2013, it was announced that, from October, monthly workshops would be organised by the CMO.<sup>676</sup> Later announcements in November mentioned a restart in January 2014.<sup>677</sup> However, by April 2014 only one training session had been organised.<sup>678</sup>

In addition to the CMO, a number of other stakeholders have provided occasional media-related training. The public prosecutor offered training free of charge on the topic of judicial procedures for media workers in 2012. This initiative was attended by 15 journalists (primarily

670 “Journalist in de 21e eeuw moet all-round zijn” (Journalist in the 21st century should be all-round), *Amigoe*, May 6, 2013.

671 “Eerste cursus CMO afgerond” (First course CMO completed), *Amigoe*, June 26, 2013.

672 “Cursus spreken in de media” (Course on speaking in the media), *Amigoe*, August 3, 2013.

673 “Presentatiecursus voor CMO leden” (Presentation Course for CMO members), *Amigoe*, September 24, 2013.

674 “Certificaat Papiaments voor mediawerkers” (Certificate Papiamentu for media workers), *Amigoe*, November 4, 2013.

675 “Prome dia di kurso organisashon hudisial” (First day of judicial organisation training), *Extra*, January 29, 2014. “Periodistanan a terminá kurso organisashon hudisial” (Journalists finalise judicial organisation training), *Extra*, February 17, 2014.

676 “Presentatiecursus voor CMO leden” (Presentation Course for CMO members), *Amigoe*, September 24, 2013.

677 “Certificaat Papiaments voor mediawerkers” (Certificate Papiamentu for media workers), *Amigoe*, November 4, 2013.

678 Information received from CMO by email, April 16, 2014. CMO was planning to hold another training session in May/June. However, to the Research Team’s knowledge, this session has not been held.

reporters who focus on police-related news) and was very well received by the participants.<sup>679</sup> It was repeated in 2014.

The United Nations Development Programme (UNDP) organised a workshop for the media during its conference on nation- and capacity-building on 22 October 2013.<sup>680</sup> Although the workshop was well attended, only three of the 35 participants were local journalists.

Media School Curaçao, an initiative launched in 2013 aimed at improving the quality of the media in Curaçao, organised two media boot camps in 2013 and 2014, each consisting of a one-week seminar imparted by one international and five local trainers. They offered participants skills and know-how on filmmaking and other media-oriented topics. The seminars were aimed at a wide range of media stakeholders, from hobbyists and newcomers to the profession to established media professionals.<sup>681</sup>

Most of the previously mentioned training courses were held in Papiamentu and to a lesser extent in Dutch and English. Little information is available on how participants evaluated the training. Because of the island's small scale, training sessions are physically accessible to all journalists. Therefore, the concentration of training in urban centers is not an issue of concern. No courses specifically directed at women or vulnerable groups have been offered, although the previously mentioned courses were accessible to women and individuals from marginalised groups.

Media workers who were interviewed in the Media Workers' Focus Groups indicated that the field has a need for further educational and on-the-job training opportunities. All of the media workers expressed an interest in being personally involved in the training and/or courses.

The results of the Media Managers' Survey seem to indicate that media managers recognise the importance of training for their employees.<sup>682</sup> All seven media managers surveyed on this question completely disagreed with the statement "Training opportunities for journalists in Curaçao are varied and sufficiently available". Six of the seven strongly disagreed with the statement "In Curaçao, there are sufficient competent and skilled journalists".

The Media Workers' Survey indicates that 24 of the 27 media workers surveyed strongly disagreed with the statement: "Training opportunities for journalists in Curaçao are varied and sufficiently available."<sup>683</sup> Possibilities in Curaçao for journalists to improve their skills, to keep up to date with expert knowledge and to participate in regional and international exchange programmes are considered by nearly all of the media workers questioned to be insufficient (figure 19).

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<sup>679</sup> Interview August 22, 2013.

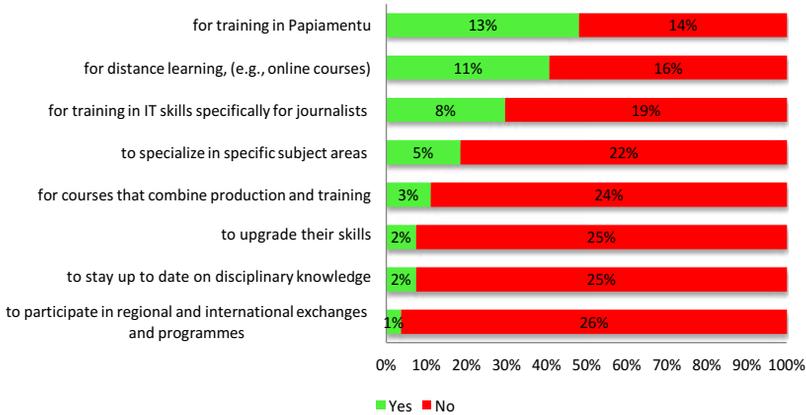
<sup>680</sup> "Een bekwaam Curaçao" (A capable Curaçao), *Amigoe*, October 22, 2013.

<sup>681</sup> See e.g. Mediabootcamp 2014 ([www.mediabootcamp2014.com](http://www.mediabootcamp2014.com)) organised by Media School Curaçao (<http://mediaschoolcuracao.com/>).

<sup>682</sup> Response to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>683</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

**Figure 19. Are there enough opportunities for journalists in Curaçao ... ,  
Media Workers' Survey (n=27)**

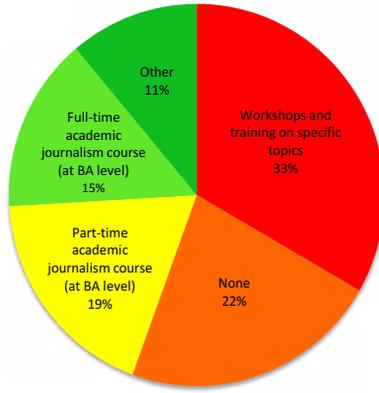


The most essential needs with regards to media training that were conferred by media workers during the survey included:

- an academic course in journalism at the Bachelor of Arts (BA) level;
- funding for training sessions and courses because individuals lack financial resources and media outlets are often reluctant to invest in education;
- training to improve the journalism skills of current media workers, prioritising certified journalists;
- teachers from abroad to provide training;
- cooperation between UoC (University of Curaçao) and the CMO (Curaçao Media Organisation) to offer courses, including refresher courses, in the following areas: new technologies in journalism, investigative journalism, visual direction, storytelling, professional ethics and use of statistical data.

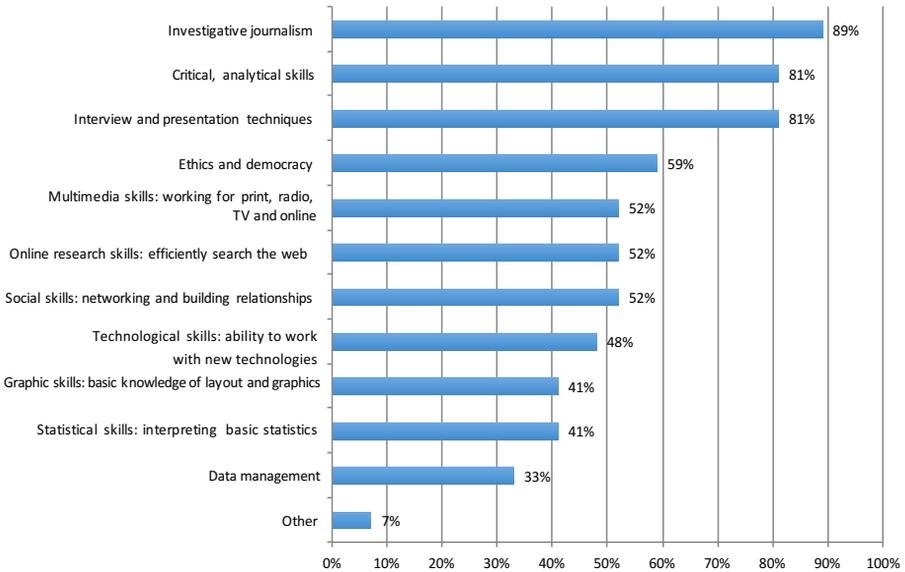
When the media workers were asked what their own needs were, 33% cited workshops and training, 34% stated an academic course on journalism and 22% stated not requiring training opportunities (figure 20).

Figure 20. What are your training needs? *Media Workers' Survey (n=27)*



The surveyed media workers stated that the priority areas for short-term training should be investigative journalism, critical and analytical skills, and interview and presentation techniques (figure 21).<sup>684</sup>

Figure 21. If workshops and training courses were offered, on what topics should they focus? (multiple answers possible), *Media Workers' Survey (n=27)*

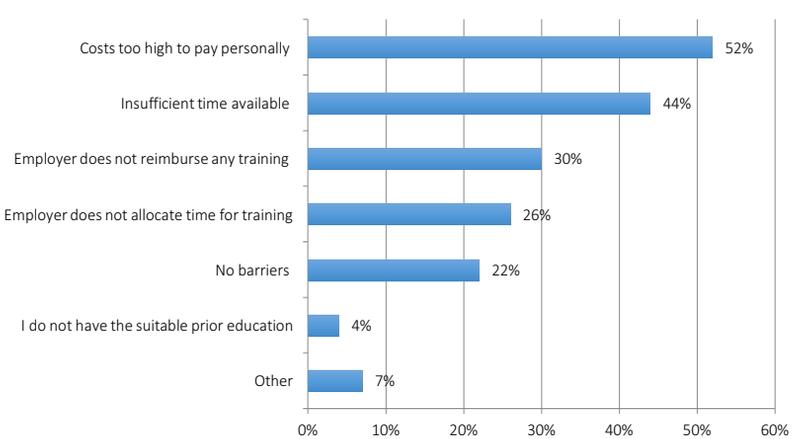


Many respondents also emphasised the need for language courses in all languages, including Papiamentu since this is a spoken language<sup>685</sup> and many native speakers have difficulties with their writing skills. Interviewees stated that language training is crucial not only to ensure well-written news articles and a clear presentation of the news in broadcast media but also to enable journalists to have a proper understanding of events during which other languages are spoken, such as international press conferences (during which English is predominantly used) or when verdicts are read out in court (this is usually done in Dutch).

Opportunities for journalists to access distance learning courses exist. These opportunities have emerged recently with the rise of Massive Open Online Courses (MOOCs) and online universities.<sup>686</sup> However, based on the results of the focus groups with media workers, in practice, such opportunities are generally not used by media workers in Curaçao. One of the journalists in the focus group noted that courses tailored to the local situation are preferred.

When media workers were asked what the largest barriers are to participating in training opportunities, workshops or academic courses, a majority mentioned high costs as one of their main concerns, closely followed by a lack of time (figure 22).

**Figure 22. What could be a barrier for you with respect to participating in training, workshops or academic courses? (multiple answers possible), *Media Workers' Survey (n=27)***



<sup>685</sup> Attila Narin. "Papiamentu", <http://www.papiamentu.com/> (accessed April 12, 2014).

<sup>686</sup> MOOCs, Massive Open Online Courses, e.g., from the Knight Center for Journalism in the Americas (<http://open.journalismcourses.org/>). Anyone can follow these MOOCs free of charge.

## 4.2 Media managers, including business managers, can access training appropriate to their needs

This indicator addresses the possibilities for media managers, including business managers, to access training appropriate to their needs.

In Curaçao, opportunities for training specifically directed at managers of media companies are limited, and no training courses are offered on a regular basis.

Despite a number of general training courses offered in management, leadership or professional attitude, there are no training courses in these areas tailored to the specific needs of the media sector. Educational opportunities in business skills, including in marketing and financial management, are offered by local universities. These include the BAsc and MSc-level degrees offered by the University of Curaçao (UoC), the University of the Dutch Caribbean (UDC), and the Intercontinental University of the Caribbean (ICUC).<sup>687</sup> It must be mentioned, however, that these courses are not specifically aimed at the media sector and, as such, might present certain shortcomings.

All seven media managers who participated in the Media Managers' Survey strongly disagreed with the statement: "Training opportunities for media managers in Curaçao are varied and readily available".<sup>688</sup> None of the media organisations that were queried organise any training for their management staff in relevant business skills, including marketing and financial management. However, when asked, none of the managers personally felt a need for further training in management skills.

## 4.3 Training equips media professionals to understand democracy and development

This indicator addresses training that equips media professionals to understand democracy and development.

Training opportunities for media professionals in Curaçao are limited and often consist of short, stand-alone workshops and training sessions that are not part of a wider strategic approach. As such, no local opportunities are available that help increase awareness of the potential of the media in fostering democracy and human rights, that equip journalists to report on the perspectives of marginalised groups or that equip journalists with investigative reporting skills and related disciplinary knowledge. In addition, no significant opportunities are available for training in journalism ethics and risk awareness. At present, no NGOs provide or plan to provide training on these topic

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<sup>687</sup> Nuffic, *Landenmodule Curaçao, St. Maarten en de BES-eilanden* (Country Module Curaçao, St. Maarten and the BES islands), (The Hague: Nuffic, 2013), 13. [www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf](http://www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf) (accessed April 12, 2014).

<sup>688</sup> Response to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

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## B. Availability of academic courses in media practice

### 4.4 Academic courses accessible to a wide range of students

This indicator focuses on the availability of formal academic programmes for media workers other than training programmes (which are addressed under Issue 4A).<sup>689</sup>

Based on the coding analysis,<sup>690</sup> it is estimated that approximately 22% of media workers (or 26 media workers) in Curaçao hold a degree in journalism (obtained upon completion of a three- to four-year long programme).<sup>691</sup> An additional 16% of media professionals are estimated to have a Bachelor's (or higher) degree in a field other than journalism and media.

No academic courses in journalism are available in Curaçao. It should be noted that, in Curaçao, more emphasis is generally given to vocational education, and higher professional education (i.e., *HBO niveau*<sup>692</sup>) and university level education (i.e., *WO niveau*<sup>693</sup>) opportunities are limited.<sup>694</sup> There are three universities that are recognised by the Government: the University of Curaçao Dr. Moises da Costa Gomez (UoC), the University of the Dutch Caribbean (UDC) and Intercontinental University of the Caribbean (ICUC).<sup>695</sup> These institutions offer a number of social, technical, medical and economic (mostly four-year) programmes at the higher educational level (*HBO niveau*).<sup>696</sup> There is just a single research-oriented university

689 Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 23.

690 A coding analysis was carried out for this study to map the Curaçao media field and the media. Two local media experts were requested to list all of the media workers who are employed on the editorial boards of the selected media outlets and to describe for each media worker (if known) the relevant media outlet(s), the relevant sector(s), gender, the educational background in journalism and ethnicity. This data was subjected to a frequency analysis by variable.

691 As there is no university in Curaçao offering a degree in journalism, all of them obtained this degree abroad. Furthermore, 13 of the 26 were not born in Curaçao, but are migrants - mostly from the Netherlands.

692 HBO is practically-oriented education in an applied sciences setting offering a Bachelor's degree, Master's degree and MBA (Master of Business Administration).

693 WO is research-oriented education in an academic or professional setting offering a Science degree (BSc), Arts degree (BA), Laws degree (LLB), Science degree (MSc), Arts degree (MA), Laws degree (LLM) and PhD.

694 The Curaçao educational levels (such as HBO and WO) are based on a Dutch model. The Dutch higher educational system includes two types of university: research universities (in Dutch: universiteiten, WO level) and universities of applied sciences (in Dutch: hogescholen, HBO level). Research universities offer research-oriented education in an academic or professional setting, whereas universities of applied sciences are more practically oriented and provide professional higher education. See also: <http://www.uu.nl/university/international-students/EN/whyutrechtuniversity/education/dutcheducationalsystem/Pages/default.aspx>

695 Nuffic, *Landenmodule Curaçao, St. Maarten en de BES-eilanden* (Country Module Curaçao, St. Maarten and the BES islands), (The Hague: Nuffic, 2013), 13. [www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf](http://www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf) (accessed April 12, 2014).

696 Nuffic, *Landenmodule Curaçao, St. Maarten en de BES-eilanden* (Country Module Curaçao, St. Maarten and the BES islands), (The Hague: Nuffic, 2013), 13. [www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf](http://www.nuffic.nl/bibliotheek/landenmodule-curaçao-st-maarten-en-bes-eilanden.pdf) (accessed April 12, 2014).

degree course (*WO niveau*) available on the island: the Laws degree (LLM) offered by the UoC.<sup>697</sup> There are a few courses in journalism offered in Curaçao as part of degrees in other fields, such as the module “Journalism” offered at the Faculty of Economic and Social Studies and the module “Journalism, Newsletter Production and Communication” offered at the Faculty of Arts of the University of Curaçao.

The media workers interviewed in the Media Workers’ Focus Groups indicated the need for an academic course in media studies, which they suggested should be flexible and tailored to media workers, e.g. in short modules that could be followed stand-alone or combined to a full Bachelor program.

Given the lack of media and journalism-specific degrees in Curaçao, high school graduates wishing to specialise in these fields depend on academic programmes abroad. The most common choice for high school graduates is the Netherlands since, Curaçao being part of the Kingdom of the Netherlands, students are entitled to a Dutch scholarship for higher education. A number of students also decide to join programmes in the Caribbean, or in North or South America. Although many graduates wish to return to their homeland after completing their studies, many experience difficulties and work-related barriers including a low rate of employment, low wages and difficulty finding suitable job. As a result, Curaçao tends to suffer from brain drain.<sup>698</sup>

Although no exact figures are available, the media experts interviewed asserted that in recent years, few graduates have been choosing to study journalism abroad. They indicated that the profession does not have a positive image on the island because of the perceived low level of wages and low quality of the media there.<sup>699</sup> Interviewees mentioned the existence of a trend by which journalism graduates from universities abroad return to Curaçao to begin a career in the media sector but, over time, tend to switch to related professions such as public relations, marketing or consultancy. Often, this is because these professions offer better conditions with regards to salaries and professional requirements and/or standards.

As mentioned under Indicator 4.1, the international distance learning courses in journalism that are available online are also reported to not be widely used by those working or interested in pursuing a career in the media sector in Curaçao.

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697 Remigratie.an. “Beroepsopleidingen.” (Vocational training.) Remigratie.an. <http://www.remigratie.an/scholing/opleidingsmogelijkheden> (accessed April 12, 2014).

698 Maatje Groot, Renske Pin & Diego Vasques Vilaseca, *Remigratie Onderzoek “Ayo Of Te Awero?”* (Remigration Research “Good bye or see you soon?”) (Curaçao: SOAW, 2014). [http://www.gobiernu.cw/web/site.nsf/resources/DEFECA83B84B195504257D42006444BA/\\$FILE/Eindrapport Remigratieonderzoek \(kleur\).pdf](http://www.gobiernu.cw/web/site.nsf/resources/DEFECA83B84B195504257D42006444BA/$FILE/Eindrapport%20Remigratieonderzoek%20(kleur).pdf) (accessed September 12, 2014).

699 Interviews March 21, January 13, February 26, 2014.

In 2010, the University of Curaçao (UoC) investigated the possibility of offering an academic course at Bachelor's level (HBO niveau) in media practice.<sup>700</sup> In September of that year, students were able to enrol in the four-year programme "Media, communications and journalism".<sup>701</sup> However, the necessary number of students (30) was not reached. Only 17 students enrolled in the programme and as a result the UoC decided that there was not enough demand for the course to be viable.<sup>702</sup>

The following year, the UoC made a second attempt to launch the course but was unsuccessful, again due to an insufficient number of candidates.<sup>703</sup> Interviews with the former Dean and the former Programme Manager revealed that reasons for the lack of success included targeted candidates currently working in the press not meeting the entry requirements (i.e., insufficient HAVO/VWO educational levels<sup>704</sup>), UoC experiencing a turbulent period, a lack of confidence in the quality of the new course and a lack of political support for a journalism course.<sup>705</sup>

After the visit of a professor in 2012 from the University of the West Indies (UWI), UoC announced it was looking into the possibility of creating a journalism programme with a specific local/Caribbean orientation. It would additionally explore collaboration opportunities with UWI as well as the possibility of offering a flexible curriculum whereby media workers would be able to select the modules of their choice. However, to date no such academic programme has been launched.

Many interviewees stated that local academic courses in journalism would greatly benefit the media environment of Curaçao.<sup>706</sup> However, interviewees also warned that the owners of media outlets should support such initiatives. As one journalist explained, a shift is needed in the attitude of media managers who currently prefer to hire less qualified journalists and media workers, who cost less, rather than to invest in those who have university degrees and updated professional skills. In addition, it is the media managers who will decide whether to give time off to an employee who decides to pursue his or her studies and whether to contribute to the costs of such an effort.<sup>707</sup>

700 "Journalistieke studie aan de UNA" (Journalism courses at the UNA), *Versgeperst*, May 25, 2010, <http://www.versgeperst.com/nieuws/32533/journalistieke-studie-aan-de-una.html>.

701 "Hoge verwachtingen journalistieke opleiding" (High expectations journalism training), *Versgeperst*, September 2, 2010. <http://www.versgeperst.com/lifestyle/57945/hoge-verwachtingen-journalistieke-opleiding.html>.

702 "Voorlopig toch geen mediastudie UNA" (For now, no media training at UNA), *Versgeperst*, October 20, 2010. <http://www.versgeperst.com/nieuws/65070/voorlopig-toch-geen-mediastudie-una.html>.

703 "Inschrijven voor mediastudie weer mogelijk" (Enrolling media training possible again), *Versgeperst*, August 1, 2011. <http://www.versgeperst.com/nieuws/112738/inschrijven-voor-mediastudie-weer-mogelijk.html>.

704 HAVO (senior general secondary school) and VWO (pre-university education) are levels of Dutch secondary education.

705 Interviews February 19, March 18, 2014.

706 Interviews August 12, 2013, February 6, February 19, February 26, March 18, and March 21, 2014.

707 Interview March 12, 2014.

#### 4.5 Academic courses equip students with skills and knowledge related to democratic development

This indicator assesses the ability of academic courses to equip students with skills and knowledge related to democratic development, including fostering media literacy among students.

Because no academic courses in the field of journalism are available in Curaçao, there are no courses addressing the topics of media law, ethics, regulation and public policy or helping to build awareness of the potential of the media in promoting democracy and human rights. As such, there is a lack of courses that equip students with the skills required for independent thought and analysis, provide essential disciplinary knowledge in the subject areas that journalists are expected to cover or teach media literacy in a manner that is adapted to the modern communications environment.

### C. Presence of trade unions and professional organizations

#### 4.6 Media workers have the right to join independent trade unions and exercise this right

This indicator addresses the right to join independent trade unions and how the right is exercised in practice. Reference is made to wider issues that affect the working conditions of journalists, including wages and job security. This section also includes commentary on measures of social protection for journalists, such as unemployment benefits and sick leave.<sup>708</sup>

Curaçao's legal framework recognises the right to form unions. However, in practice, only a small number of the media workers who participated in the media survey are union members.<sup>709</sup>

In Curaçao, a constitutional guarantee protecting the right to join a union is in place. Article 8 of the Constitution stipulates that:

The right of association is recognised. This right may be restricted in the interest of the public order by means of a national ordinance.<sup>710</sup>

The right to industrial action is guaranteed by law and expressed in Article 9.1 of the Constitution as follows:

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<sup>708</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 23.

<sup>709</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>710</sup> Staatsregeling van Curaçao, art. 8 (Constitution of Curaçao, Article 8), <http://www.Curaçao-gov.an/images/strukturafilas/Eindconcept%20Staatsregeling.pdf>

The right of assembly and demonstration is acknowledged, without prejudice to the responsibility of every person under national ordinance<sup>711</sup>

However, in Curaçao, no trade union exists specifically for the media sector. In practice, there has been no known initiative by media workers to form an independent trade union. The results of the Media Workers' Survey reveal that of the 27 media workers who responded to the question, only two indicated being affiliated with one or more trade unions: the union for government personnel *Algemene Bond van Overheidspersoneel (ABVO)* and the two unions for police personnel *Nederlands Antilliaanse Politie Bond (NAPB)* and *Sindikato Ambtenaman di Polis (SAP)*.<sup>712</sup> Because they are employed by United Telecommunication Services (UTS), which is a state-owned company, the majority of TeleCuraçao employees join the trade unions for government workers.

In the Media Workers' Survey, most respondents indicated that in practice they are free to become trade union members (25 out of 27), members of a professional organisation (26 out of 27), or to initiate their own trade union (20 out of 25). Survey respondents expressed their unwillingness to join a trade union as being linked to their desire to remain fully independent and objective as journalists.

The Curaçao Media Organisation (CMO) is the only professional journalism association in Curaçao. It was founded on 20 December 2011 as a foundation with 7 board members, including the owner of the newspaper *Vigilante* and the editor-in-chief of *Extra*.<sup>713</sup> Based on its statutes, the CMO aims to “represent the interests of, promote cooperation between and represent media outlets and their employees who are active in Curaçao in the broadest sense of the word”.<sup>714</sup> Currently, the CMO has approximately 45 members, of whom 15 are employed by the newspaper *Extra*. Members pay a monthly membership fee of NAf 10 (US\$ 5.55).<sup>715</sup> Although the CMO can exercise the right to affiliate with the relevant global union federations and international professional associations, such as the International Federation of Journalists, according to the CMO, no such affiliation has been established.<sup>716</sup>

In Curaçao, working conditions for journalists, including wages and job security, were reported by several interviewees as not being good.<sup>717</sup> In its 2013 report, Transparency International noted the low salaries as a key weakness of the media in Curaçao, which results in many

<sup>711</sup> Staatsregeling van Curaçao, art. 9.1 (Constitution of Curaçao, Article 9.1), <http://www.Curaçao-gov.an/images/strukturafiles/Eindconcept%20Staatsregeling.pdf>.

<sup>712</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>713</sup> Chamber of Commerce Curaçao, online registry information, <http://www.Curaçao-chamber.cw/>

<sup>714</sup> CMO, Articles of Association of Curaçao Media Organisation.

<sup>715</sup> Interview March 20, 2014.

<sup>716</sup> Ibid.

<sup>717</sup> Interviews August 12, 2013, February 6, February 19, February 26, March 21, 2014.

media professionals being obliged to have several jobs to generate sufficient income for living.<sup>718</sup>

According to the Media Workers' Survey, the net wages of the 16 media workers who responded to the question concerning their income vary from NAf. 1,500 to NAf. 10,000, with an average wage<sup>719</sup> of NAf. 3,704 and a most common wage<sup>720</sup> of NAf. 2,500.<sup>721</sup> These results seem to confirm the figures provided by several interviewees regarding the newcomer-level net wage, said to be at NAf. 2,250, and the average net wage for a media worker, said to be at 3,500.<sup>722</sup>

The Media Workers' Survey results indicate that most media professionals work for more than one employer and for several types of media (58%),<sup>723</sup> which is in line with Transparency International's observation on the trend among Curaçao journalists to hold a number of work positions simultaneously. Of the journalists with more than one employer, 38.5% are estimated to additionally work for an employer outside the journalism field. Media professionals that work for more than one media outlet indicated working for an average of 2.7 outlets. The 26 media workers who completed this survey question reported having worked on average 6.5 years for their current employer and having been employed in the media sector in Curaçao on average for 11 years.<sup>724</sup>

Only half of the 16 media workers questioned indicated having a pension as a secondary benefit. Thirteen of the 16 have medical insurance, and half indicated that their expenses are reimbursed (table 5).

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718 Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 235.

719 The mean, calculated by adding up the values in the data set and then dividing the total by the number of values that were added.

720 The mode, identified by finding the value that appears most often in the set of results.

721 Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

722 Interview February 6, 2014.

723 Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

724 Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

**Table 5. Secondary benefits, Media Workers' Survey (n=16)**

Secondary Benefits	
Pension	8
Medical Insurance	13
Employer-supplied cellular telephone	6
Computer, laptop, tablet for home use	5
Employer-supplied car	1
Expenses reimbursement	8
Gifts or gift vouchers	1
Participation in profit / equity	2

The lack of measures for social protection, such as unemployment benefits and sick leave, indicate that there is room for improvement

#### **4.7 Trade unions and professional associations provide advocacy on behalf of the profession**

This indicator assesses the activities of media trade unions and professional associations and how effectively they defend the interests of the profession.

Currently, Curaçao does not have a trade union for the journalism sector. Additionally, no trade union is recognised as a negotiating partner by employer groups on labour and professional issues. Journalists also receive no trade union support with respect to the dissemination of codes of ethics and the active defence of freedom of expression or, in particular, the interests of female media professionals.

Although the CMO aspires to grow into a professional organisation, one of its board members indicated that currently the CMO primarily has a social function, organising social events for its members.<sup>725</sup> The CMO does not currently actively support the rights of media workers. While it has organised a number of training events, the CMO does not actively debate media ethics and standards or advocate for them. The Research Team has found no evidence of the CMO disseminating codes of ethics among its members or carrying out specific activities to defend freedom of expression.

In addition to the training activities, which are described under Indicator 4.1, the activities of the CMO include the following:

<sup>725</sup> Interview March 20, 2014.

- Fundraising for the relatives of the victims of a major explosion at a fireworks storage magazine in December 2012.<sup>726</sup>
- A raffle in July 2013 among members of the press.<sup>727</sup>
- Celebration of the Day of the Press in September 2013, with a social event and two raffles,<sup>728</sup> both of which were won by local journalists. The event was organised in collaboration with a number of sponsors, including a large local bank. According to *Amigoe*, the event was attended by a large number of journalists and other employees of the Curaçao media.<sup>729</sup>

Five of the eight managers queried in the Media Managers' Survey either disagreed or strongly disagreed with the statement that the CMO defends the interests and represents the Curaçao media organisations and all of their employees well. The three other managers indicated that they did not know. Thus, none of the media managers surveyed agreed with this statement.<sup>730</sup>

According to the Media Workers' Survey, of the 27 respondents, 20 are not members of a professional association.<sup>731</sup> Seven respondents are members of the CMO. None of the respondents are members of a regional or international professional association. When asked to comment in the survey on why they were CMO members, one interviewee expressed that it was important to support the CMO initiative. Another stated that it was important to foster a sense of community among the media sector in Curaçao and that this was the CMO's goal. In contrast, seven non-members indicated that they were not CMO members because they viewed the CMO unfavourably. This included doubting the added value of joining the CMO, a negative impression of the board members and a lack of confidence that the CMO genuinely supports journalists of Curaçao. The six others indicated that they did not feel the need or did not have the time to become a member of a professional association.

The results of the Media Workers' Survey also reveal that 13 of the 27 respondents believe that the CMO does not represent their interests and promote cooperation, and 12 of the 27 respondents believe that the CMO does not represent the media outlets and their employees. Six respondents stated that they do not know (figure 23).

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<sup>726</sup> "CMO zamelt geld in voor nabestaanden" (CMO collects money for survivors), *Versgeperst*, December 17, 2012, <http://www.versgeperst.com/nieuws/187384/cmo-zamelt-geld-in-voor-nabestaanden.html>.

<sup>727</sup> "CMO geeft kaarten Electric Festival Aruba weg" (CMO gives away entrance tickets for Electric Festival Aruba), *Amigoe*, July 29, 2013; "Curaçao Media Organization a opseka dos pasashi i entrada pa Electric Festival Aruba" (Curaçao Media Organization donates two tickets and entrance for Electric Festival Aruba), *Notisia360*, July 29, 2013, <http://www.notisia360.com/curacao-media-organization-a-opseka-dos-pasashi-i-entrada-pa-electric-festival-aruba/>.

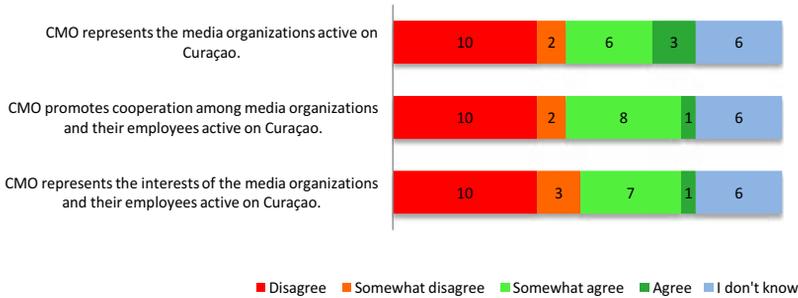
<sup>728</sup> "Amigoe won a press bike", *Amigoe*, September 21, 2013, <http://www.amigoe.com/amigoe-express/84-amigoe-express/164111-amigoe-won-a-press-bike>.

<sup>729</sup> "Warda wint wagen" (Warda wins car), *Amigoe*, September 9, 2013, <http://www.amigoe.com/Curaçao/162854-warda-wint-wagen>.

<sup>730</sup> Response to the Media Managers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>731</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

**Figure 23. Perception of CMO by Media Workers Based on Stated Aims: Frequency distribution, *Media Workers' Survey* (n= 27)**



As one media expert noted, the current structure and role of the CMO affects its credibility among journalists.<sup>732</sup> Firstly, the presence of media outlet owners as CMO board members and affiliates could be perceived as posing a conflict of interest insofar as one of the CMO's main purposes is to advocate on behalf of journalists on issues including wages, work conditions, training and safety. Secondly, the strong presence of corporate partners and sponsors in CMO events and activities further discredits the CMO as a credible advocate for the interests of media professionals. Indeed, it could be difficult for a journalist to report critically about a bank or other sponsors of CMO social activities after winning a car in a raffle organised by sponsors or drinking and eating at their expense.<sup>733</sup> Although not everyone who was interviewed considered raffles to be obstacles to independent, critical or objective reporting,<sup>734</sup> several journalists who took part in the interviews and the Media Workers' Focus Groups stated that they are consciously not members of the CMO because of the perceived conflict of interest, the CMO's predominant focus on social activities and the lack of a focus on professional issues (see also the discussion under Indicator 1.3).

Currently, the media sector in Curaçao does not have an employers' association.

Several interviewees emphasised the importance of professional organisations in the development of the Curaçao media landscape.<sup>735</sup> One interviewee referred to the Dutch Journalism Association, *Nederlandse Vereniging van Journalisten* (NVJ), as a good practice to follow:<sup>736</sup>

<sup>732</sup> Interview March 21, 2014.

<sup>733</sup> Interview March 21, 2014.

<sup>734</sup> Interview March 20, 2014.

<sup>735</sup> E.g. Interviews February 6, February 19, February 26 and March 21, 2014.

<sup>736</sup> Nederlandse Vereniging van Journalisten (Dutch Association of Journalists), <http://www.nvj.nl/> (accessed September 12, 2014).

We should have a professional association in Curaçao, similar to the Dutch NVJ, with professional criteria, which you must meet to become a member. Currently, a journalist is a “low earner”. If you are professional and you invest in yourself [through training], in Curaçao, you will not be refunded for your investment. So, what I believe should be done within the context of a Curaçao “NVJ”, is the establishing of a collective agreement for journalists. This collective agreement would advocate for the standardisation and increase of fees of journalists. And while I should perhaps not say this out loud, this would trigger cuts in the workforce as half of the journalists will be made redundant. Let me give an example. A radio station has six reporters; currently, that is possible because of the low fees: each staff member costs the owner a monthly fee of Naf 2,250 (US\$ 1,250). I think we must separate the wheat from the chaff in order for the good, well-trained, professional workers to remain in the media industry, earning a competitive salary with which they can manage to live. Such initiatives should come from the media field itself; the editors-in-chief should take the lead.<sup>737</sup>

As a result of the debate between the press and the Government in May 2014 on the introduction of a code of conduct without prior consultation of the press (see Indicator 1.8), several members of the press announced their intention to examine the possibilities for establishing a new professional association for journalists.

## D. Presence of civil society organizations

Four representatives of key civil society organisations (CSOs) in Curaçao were queried for this chapter: Amnesty International Curaçao (protection of human rights), Fundashon Akshon Sivil<sup>738</sup> (a civil society organisation that advocates for good governance in Curaçao), Fundashon Bos di Hubentut (committed to the welfare of Curaçao Youth) and Fundashon Verriet - SGR-groep (a foundation responsible for eight residential centres and six day-care centres, at which individuals with mental and/or physical disabilities can live or work).

### 4.8 CSOs monitor the media systematically

This indicator addresses the existence of CSOs that systematically monitor the media.

A recent Transparency International (TI) report on Curaçao highlighted the difficulties of defining and assessing CSOs and their activities in Curaçao. Transparency International has chosen to define civil society as “the arena outside of the family, the State and the business sector, that is created by individual and collective action, organisations and institutions to advance shared interests”. The TI report explicitly mentions “fragmentation and polarisation”

<sup>737</sup> Interview February 6, 2014.

<sup>738</sup> Funashon Akshon Sivil (Civil Action Foundation), <http://akshonsivil.com/> (accessed September 12, 2014).

as characteristics of Curaçao society and of the local CSOs.<sup>739</sup> In the TI study, the major CSOs identified in Curaçao are trade or workers' unions – of which Curaçao has over 20 –, faith-based organisations, clubs such as Rotary International and Lions Clubs International, and an increasing number of watchdog organisations.

In Curaçao, no CSO monitors media content and ownership in the interest of promoting pluralism and diversity or carries out critical analysis of the media. The representatives of the CSOs Amnesty Curaçao, Akshon Sivil and Bos di Hubentut who were interviewed for this assessment confirmed that they do not monitor media content and were unaware of any CSO that does.

However, media content and ownership were a topic of debate and research in 2013 and 2014, e.g. by Transparency International and local associations. Transparency International investigated the media as one of the 13 pillars of the national integrity system, which is a framework to analyse the vulnerability to corruption of any given country and the effectiveness of national anti-corruption efforts. One of the features assessed was the efforts of the media to prevent corruption and promote integrity.<sup>740</sup> Several debates were also held including a debate on Media and Law, organised by the Antillean Lawyers' Association,<sup>741</sup> and a debate on Independent Press by a local political movement.<sup>742</sup> Additionally, many media outlets organised discussions on the state of the media in Curaçao and dedicated debates, commentary or newspaper columns<sup>743</sup> to the theme. For example, the Z86 radio programme 2121 dedicated a daily two-hour show to the topic "Functioning of the Media in Curaçao" during the period 2-6 June 2014.

The representatives of the CSOs who were interviewed for this assessment indicated that they do not provide critical analysis of the representation of marginalised groups in media content. However, the representative of Amnesty Curaçao indicated that she personally follows the media with respect to women's rights (see also Indicator 3.1).<sup>744</sup>

There are several initiatives to promote media and information literacy in Curaçao. However, these initiatives could be better supported. UNESCO defines media and information literacy as "a set of competencies that empowers citizens to access, retrieve, understand, evaluate and use, create, as well as share information and media content in all formats, using various tools,

<sup>739</sup> Transparency International, *National Integrity System Assessment: Curaçao 2013* (Berlin: Transparency International, 2013), 185.

<sup>740</sup> Ibid, 173-84.

<sup>741</sup> Debate "Media en Wetgeving" (Media and Law), Antilliaanse Juristen Vereniging (Antillean Lawyers' Association), March 14, 2014.

<sup>742</sup> Debate "Onafhankelijke pers" (Independent Press), Hustisia Social (Social Court), March 13, 2014.

<sup>743</sup> "Hoezo persvrijheid?" (What do you mean freedom of the press?), *Antilliaans Dagblad*, December 19, 2014, <http://www.antilliaansdagblad.com/Curaçao/commentaar-93/8075-hoezo-persvrijheid>.

<sup>744</sup> Interview February 10, 2014.

in a critical, ethical and effective way”.<sup>745</sup> In Curaçao, several initiatives have been introduced to promote media and information literacy:

- In 2011, 18 national media coaches were trained by the Dutch National Academy for Media and Society (*Nationale Academie voor Media en Maatschappij*), in cooperation with a local media expert to promote media awareness in Curaçao. In 2013, a second group was provided with training. In total, between the years 2011 and 2013, 37 national media coaches comprised by individuals from a variety of sectors - including education, libraries, youth, police and Government - were trained.<sup>746</sup> One national media coach is available online<sup>747</sup> as part of the Dutch National Training for Media Coaches platform.<sup>748</sup> However, this website is available only in the Dutch language. During an ICT conference in September 2013 held in Curaçao, this national media coach facilitated a workshop that was attended by only two participants.<sup>749</sup>
- Stimul-IT Curaçao Innovation & Technology Institute (an institute that encourages innovation and the use of technology to foster a competitive information society) provides training sessions on ICT use such as workshops for small businesses, summer camps for youth and projects for schools.<sup>750</sup>
- Media Lab Curaçao offers 3-hour long journalism-related workshops on a regular basis at the Curaçao Public Library. Past workshops have included “Making a News Show” and “TV, Films, Games and Green Screen”. These workshops are open to everyone between the ages of 10 and 80 years and particularly target school groups and teachers.<sup>751</sup>
- There are also government initiatives, such as a website on using the Internet known as THINKCLICKSURF – Keeping Caribbean Kids Safe

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745 UNESCO, *Global Media and Information Literacy Assessment Framework: Country Readiness and Competencies* (Paris: UNESCO, 2013), 29.

746 NOMC. “Nationale Opleiding MediaCoach Antillen en St. Maarten” (National Training Media Coach Antilles and St. Maarten), [www.nomc.nl](http://www.nomc.nl), <http://www.nomc.nl/index.php/209-homepage/694-nationale-opleiding-mediacoach-antillen> (accessed September 12, 2014).

747 Nationale MediaCoach Curaçao (National Media Coach Curaçao), <http://nationalemediacoachcuracao.yurils.net/nl/page/> (accessed September 12, 2014).

748 NOMC. “Nationale Opleiding MediaCoach” (National Training MediaCoach), <http://www.nomc.nl/> (accessed September 12, 2014).

749 ICT and Education Curaçao’s Facebook page, post September 18, 2013, <https://www.facebook.com/media/set/?set=a.162304880640817.1073741841.131961267008512&type=1>.

750 Stimul.IT’s Facebook page, <https://www.facebook.com/Stimul.IT>

751 Media Lab Curaçao. “Workshop Journaal Maken” (Workshop News Reporting), <http://www.medialabcuracao.com/events/2026/> (accessed September 12, 2014).

Online, which is designed for parents and their children.<sup>752</sup> Available in Papiamentu, Dutch and English, this initiative is led by the regulator *Bureau Telecommunicatie en Post* (BTP) to ensure the protection of the nation's youth from online criminals and predators as a national priority. Activities include school presentations, teacher and parent training and TV and radio campaigns for the protection of children online.<sup>753</sup>

The representatives of the CSOs who were interviewed for this assessment indicated that they do not play a role in promoting media literacy and were unaware of any initiatives in this area.

#### 4.9 CSOs provide direct advocacy on issues of freedom of expression

This indicator focuses on the direct advocacy of CSOs on issues of freedom of expression.

The representatives of the civil society organisations who were interviewed for this assessment stated that they do not advocate on issues of freedom of expression, the right to information or journalism safety, and they were unaware of any CSO that advocates on these issues. In addition, no CSO is known to engage with policy makers in the development of public policy regarding the media.

#### 4.10 CSOs help communities access information and get their voices heard

This indicator addresses the question of whether CSOs help communities access information and make their voices heard.

The representatives of CSOs interviewed for this assessment indicated that they do not help communities access information and get their voices heard, provide advice and assistance to individuals who wish to access the media or become involved in the training of journalists and capacity-building. Additionally, they were unaware of any civil society organisation that pursues these goals.

Although Curaçao has no CSO that specifically deals with the media and issues that concern the media, the country has numerous CSOs and foundations that advocate for the interests of their stakeholder groups including with regards to their media coverage. There are many CSOs that pay attention to what is being said or written about their area of concern and who respond if they do not agree with what has been expressed. They usually do this by establishing a spokesperson to voice their concerns. These spokespersons often become well-known locally, as illustrated by the cases of Mario Kleinmoedig of the Curaçao Gay

<sup>752</sup> Think, click, surf. "Keeping Caribbean Kids Safe Online." <http://www.thinkclicksurf.com/#!papiamentu/c1731> (accessed September 12, 2014).

<sup>753</sup> Think, click, surf. "Curaçao." <http://www.thinkclicksurf.com/#!Curaçao/c1rja> (accessed September 12, 2014).

Advocacy Association's (*Fundashon Orguyo Kòrsou – FOKO*) or Glenn Helberg of the Consultative Body for the Caribbean Dutchmen (*Overlegorgaan Caribische Nederlanders – OCAN*), which advocates on behalf of Antilleans and Arubans in the Netherlands and the Kingdom.<sup>754</sup>

## Recommendations

### Availability of professional media training

1. The media should increase their efforts to ensure that appropriate training opportunities are offered for their journalists and individuals in management positions in all areas, particularly regarding language skills, ethics, and investigative journalism. The Curaçao Media Organisation and CSOs should support and facilitate these efforts. Attention should also be given to training on reporting from the perspective of specific or vulnerable groups.
2. Media organisations should take full advantage of the new possibilities opened up by advancements in technology including promoting free distance learning courses among their workers and networking with other journalists from around the world.
3. The media should actively promote alliances with educational institutes and media outlets in the region to facilitate the development of the capacities and skills of media professionals. An effective method would be the organisation of internships or exchange programmes in the media newsrooms.
4. The establishment of a training centre for journalists and managers should be considered. Special attention should

be given to equipping this journalism training institution with access to ICTs and technical facilities such as laboratories and studios that facilitate practical, hands-on learning. To enhance the relevance of the curricula and links with the media industry, the establishment of an effective mechanism for regular consultations between such a training institution and the media sector should be considered.

5. Up-to-date training curricula should be used, such as those promoted by UNESCO's specialised syllabi covering specialist journalism courses.

### Availability of academic courses in media practice

6. Universities should re-investigate the possibilities for an academic programme at the Bachelor of Arts level (*HBO niveau*) in journalism to be created. Universities should consider including courses in the curriculum based on UNESCO's Model Curricula on Journalism Education and specialised syllabi.<sup>755</sup>
7. Academic courses should specifically focus on equipping students with skills and knowledge related to democratic development, writing and language skills (a minimum of Papiamentu, Dutch, English and Spanish), investigative journalism and media ethics.

<sup>755</sup> UNESCO, *Model Curricula for Journalism Education* (Paris: UNESCO, 2007). <http://unesdoc.unesco.org/images/0015/001512/151209e.pdf>.

8. Local universities wishing to establish a programme in journalism studies should seek cooperation with universities and media outlets in the region to become viable and benefit from the economies of scale achieved through collaboration and the sharing of common services.
9. The State or a CSO could establish an international scholarship to help students who wish to study journalism/media abroad. Such an initiative should be accompanied by measures to encourage these students to return to Curaçao, e.g., by promoting repatriation through financial incentives or the facilitation of internships.
  - debate media ethics and standards and advocate for them,
  - disseminate codes of ethics, and
  - actively defend freedom of expression.

### Presence of trade unions and professional organizations

10. A trade union for media workers should be established to advocate on behalf of the media sector, in particular as concerns improving the working conditions of journalists and the legal framework within which they operate. Systematic research should be performed to expose the precarious wages and contractual conditions endured by media workers.
11. The CMO and any other initiative aimed at the establishment of a professional association for journalists should seek to pursue the following activities:
  12. develop training and courses for journalists and editors of all profiles, as well as media managers,
    - actively support the rights of media workers,

### Presence of civil society organizations

13. In Curaçao, there is room for a civil society organisation (CSO) that focuses specifically on media issues. Media stakeholders could initiate the foundation of such a CSO.
14. The media-related activities of CSOs should focus on helping communities access information and make their voices heard; training journalists and capacity-building; critical analysis of the media with respect to the representation of specific and/or vulnerable groups; and promotion of media and information literacy.
15. Government should focus on empowering the population and educating citizens to be critical media users, in cooperation with libraries, schools and other organisations. Media education programmes should be developed to provide citizens with the competencies, attitudes and skills necessary to comprehend how the media function, following international good practices in this area.

## Category 5

**Infrastructural capacity  
is sufficient to support  
independent and  
pluralistic media**



## Key Indicators

### **A. AVAILABILITY AND USE OF TECHNICAL RESOURCES BY THE MEDIA**

- 5.1 Media organizations have access to modern technical facilities for news gathering, production and distribution

### **B. PRESS, BROADCAST AND ICT PENETRATION**

- 5.2 Marginalized groups have access to forms of communication they can use
- 5.3 The country has a coherent ICT policy which aims to meet the information needs of marginalized communities

## Category 5

# Infrastructural capacity is sufficient to support independent and pluralistic media

## A. Availability and use of technical resources by the media

### 5.1 Media organizations have access to modern technical facilities for news gathering, production and distribution

This indicator assesses the degree to which media workers have effective access to ICTs, including the Internet. Is the access affordable, continuous, reliable and fast enough to ensure that the Internet can be used as a useful tool for media work? Do media workers have the required skills to make use of ICTs? The use of multi-platform delivery systems by the media is also assessed in this section.<sup>756</sup>

In Curaçao, media organisations tend to have good access to modern technical facilities for newsgathering, production and distribution. All seven of the media managers who were surveyed strongly agreed with the statement “In my organisation, we have good access to modern technical facilities to collect, produce and distribute news.”<sup>757</sup> According to the Media Workers’ Survey, of the 27 journalists who responded, 19 agreed or strongly agreed with the statement that when performing their job they have sufficient access to modern technical facilities for newsgathering, production and distribution.<sup>758</sup> The media workers focus groups interviewees also indicated that their media organisations have access to modern technical facilities. The results of the Media Workers’ Survey indicate that ICTs are generally affordable,<sup>759</sup> which concurs with the results of the interviews and focus groups.

However, the media experts interviewed and the respondents to the Media Workers’ Survey indicated that although all facilities are available, adequate use is not always made of them. According to those consulted, this underuse results from a lack of skills required to use the

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<sup>756</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 24.

<sup>757</sup> Response to the Media Managers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>758</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>759</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

facilities to their full potential, low educational levels, and/or a lack of interest.<sup>760</sup> It was also reported that training in the use of ICTs is rarely available, as discussed under Indicator 4.1. The media experts stated that the underuse of modern technical tools influences the quality of productions.

With regard to access to the Internet, all seven media managers strongly agreed with the statement “Employees in my organisation have safe, affordable, fast and reliable Internet access.” One exception was mentioned in the Media Workers’ Focus Group. A satellite connection with the Netherlands that would enable live-stream broadcasting is lacking. When working for Dutch media organisations, Curaçao journalists must take upload time into account.

Compared with the rest of the Caribbean region, broadband adoption rates and Internet speed are high in Curaçao (see also the assessment under Indicator 5.3). In the Media Workers’ Survey, a large majority of the journalists mentioned having secure (24 out of 25 journalists), reliable (21 out of 26 journalists) and affordable (21 out of 25 journalists) Internet access. Twenty-one out of 26 journalists stated that their Internet connection is fast enough to be a useful tool for media work. Only 10 of the 27 journalists who participated in the survey had received training in ICTs. Several others indicated a need for ICT training. Based on the conducted interviews, several positive initiatives have been undertaken. For example, the manager of Curaçao’s largest newspaper stated that the newspaper provides annual ICT training for all employees.<sup>761</sup>

When asked what equipment journalists have available when conducting their journalistic work, most surveyed journalists mentioned a mobile telephone and digital sound-recording equipment. Eleven out of 26 journalists indicated that they lack equipment, in particular scanners, editing programmes and high-quality (permanent) video cameras. In addition, several journalists mentioned that transmission signals are not always stable. It was also mentioned that journalists often work using their private mobile telephones or laptop computers because the media outlet by which they are employed does not provide this equipment.<sup>762</sup>

Generally, digital access to reference and archival material, such as governmental and business information, is limited. Journalists who participated in the survey indicated having moderate access to a wide range of reference and archival material. The results of the Media Workers’ Survey reveal that 11 out of the 27 surveyed journalists do not have sufficient access to a wide range of reference and archival material. When asked which archival material they do have access to, out of the 15 journalists who responded to this question, 12 cited the archival material of the media outlet by which they are employed, that of other local media outlets

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<sup>760</sup> Interviews March 21, April 4, 2014.

<sup>761</sup> Interview March 20, 2014.

<sup>762</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

(e.g., newspapers) or personal archives (of their own work). Internet and personal networks were also named as sources of reference and archival material. The national archives, public institutional archives and the local library were each cited once. Interestingly, none of the media workers mentioned the use of international sources, such as foreign news agencies, which confirms that in Curaçao the media focus primarily on local news coverage.<sup>763</sup>

For the print media, printing facilities are available. However, all but one newspaper is printed by the same printing house, *Drukkerij de Stad*, whose owner also owns the largest Papiamentu newspaper, *Extra*.<sup>764</sup> Only the largest Dutch-language newspaper, *Amigoe*, has its own publisher and printing facilities.<sup>765</sup> As mentioned in the discussion under Indicator 2.1, this concentrated printing market represents a weakness because it reflects vertical integration that involves two influential actors in the newspaper market.<sup>766</sup> Thus, for example, in the course of this research, it was suggested that printing prices are not likely to be competitive and that the concentrated market may facilitate collusion. The dominant position of *Drukkerij de Stad* may also affect competition in the newspaper market if it enables the misuse the company's influence to strengthen its position in that market.<sup>767</sup>

Regarding the distribution of the print media, generally, adequate distribution facilities are available. Of the eight newspapers, four are home-delivered based on a subscription system (one Dutch newspaper in the morning; one Dutch and two Papiamentu newspapers in the late afternoon). The distribution of the three afternoon home-delivered newspapers is provided by the expedition company *Districo N.V.* The Dutch morning newspaper organises its own distribution using publisher *ABCourant NV*. The other four newspapers are based on single-copy sales of newspapers sold by street vendors at central intersections during rush hour in the morning and late afternoon. All of the newspapers are also widely available at small local shops, e.g., groceries, *tokos* (small convenience stores) and *snèks* (local pubs), and in large supermarkets and bookstores. The distribution of the single-copy sales newspapers to the various outlets and street vendors is organised by the printing house *De Stad*. According to one media expert, new newspapers experience difficulties with the street-vendor system: while they pay for the distribution service, these newspapers reportedly do not reach the points of sale or the customers as well as mainstream newspapers do. Therefore, they have difficulty surviving because it is relatively expensive to establish a network of street vendors in-house, as was the case with *Boletin*, a morning newspaper that entered the market five years ago. At the time that the newspaper was launched, its management team perceived a 'practice of exclusion' in the distribution system. The newspaper's management later

<sup>763</sup> Response to the Media Workers' Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>764</sup> *Drukkerij De Stad*. "Newspapers." [www.drukkerijdestad.com](http://www.drukkerijdestad.com). <http://www.drukkerijdestad.com/03.html#cc> (accessed September 12, 2014).

<sup>765</sup> The company formerly printed additional newspapers, such as *Nobo* and the former Spanish newspaper *El Periodico*. However, it ceased this practice.

<sup>766</sup> Interviews March 20, March 21, 2014.

<sup>767</sup> Interview March 21, 2014.

indicated having problems with sales, and approximately one year after its establishment, the newspaper ceased publication.<sup>768</sup>

Most media organisations use multi-platform delivery systems and have additional platforms that complement their main forms of distribution. Nearly all of Curaçao's media outlets have a website (27 of the 31 outlets included in our online activity analysis). All of the radio and TV stations provide live-stream broadcasting online using their websites or umbrella websites, such as [www.basilachill.com](http://www.basilachill.com) or the international radio platform site [www.tunein.com](http://www.tunein.com). Of the eight newspapers, seven offer excerpts or condensed versions of their content online using their websites. The two Dutch newspapers offer their subscribers access to full content online, and part of the content is publicly available ([www.amigoe.com](http://www.amigoe.com) and [www.antilliaansdagblad.com](http://www.antilliaansdagblad.com)). *Amigoe* offers large parts of its English content without subscription via [www.amigoe.com](http://www.amigoe.com). The Papiamentu newspaper *Extra* has no hardcopy subscription system but offers a paid online subscription at [www.extra.cw](http://www.extra.cw).

Media outlets in Curaçao appear to use ICTs fairly well to generate citizen engagement. The results of the Public Survey organised for this study in November 2013 indicate that 53% of the citizens who were surveyed agreed or strongly agreed with the statement that they appreciate the increasing opportunities to follow the news using the Internet or mobile Internet.<sup>769</sup>

According to the 2011 census by the Central Bureau of Statistics (CBS), the percentage of households with mobile telephones increased from 61% in 2001 to 94% in 2011. In 2011, 63% of households had a PC or laptop computer. In 2001, this figure was 33%. In 2011, more than half (53%) of homes in Curaçao had an Internet connection, which represents a significant increase compared with 21% in 2001. In addition, the inhabitants of Curaçao made use of new forms of Internet reception in 2011: 28% of households had one Internet host using a mobile telephone, and 19% of households had mobile Internet (3G).<sup>770</sup>

The results of the Public Survey conducted for this study show that today 94% of respondents have a mobile telephone and 72% have a PC or laptop computer.<sup>771</sup> The results further reveal that 64% of those surveyed have an Internet connection at home, Internet on their mobile telephone (52%) or mobile Internet on a laptop computer (22%).

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<sup>768</sup> Interview January 13, 2014.

<sup>769</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>770</sup> Central Bureau of Statistics Curaçao, *Eerste resultaten census 2011 Curaçao* (First results census 2011 Curaçao) (Curaçao: CBS, 2012), 17. [http://www.banboneirubek.com/sites/default/files/20120731\\_Publicatie\\_Eerste\\_resultaten\\_Census\\_2011.pdf](http://www.banboneirubek.com/sites/default/files/20120731_Publicatie_Eerste_resultaten_Census_2011.pdf) (accessed September 13, 2014).

<sup>771</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

Of the 31 media outlets included in our online activity analysis, 26 have a Facebook page with numbers of “likes” that range from 46 to 14.820.<sup>772</sup> In slightly more than half of the cases, these pages are actively maintained and frequently updated with posts. An analysis of online activity indicated that 15 of the 26 outlets with Facebook pages had posted within the previous 24 hours.<sup>773</sup> In certain cases, other social tools to foster citizen engagement are used, such as a YouTube channel or a Twitter account.

## B. Press, broadcast and ICT penetration

### 5.2 Marginalized groups have access to forms of communication they can use

This indicator refers to the use by marginalised groups and other citizens of so-called new media and traditional media (e.g., newspaper, radio and television). This section assesses the extent to which use is made of these communication tools and the role that they play in the overall social communication space.<sup>774</sup>

Because Curaçao has neither a public broadcaster nor community media that could specifically serve the informational needs of marginalised groups, the technical nationwide accessibility of media for these groups is an issue of importance. All local broadcasting media, both television and radio, are obliged by the regulator *Bureau Telecommunicatie en Post* (BTP) to cover the entire island with appropriate signal levels. However, in certain cases, for technical reasons, full (100%) island coverage is not reached.

BTP reports that in a few cases the broadcast media have failed to erect additional transmission-support towers. Most broadcasters have their primary transmission towers in Bandariba, which is the eastern part of the island. This practice results in poor reception in Bandabou, which is the western, more remote part of the island, particularly behind the Christoffelberg, the island’s highest point and nature reserve. The fee to be paid to BTP to deploy an additional transmission tower equals the fee for the use of the main transmission tower, i.e. NAf 5,000 (US\$ 2,775.50) for the TV repeater and NAf 3000 (US\$ 1,664.29) for the radio repeater.<sup>775</sup> However, accessibility also depends on other technical factors such as the quality of radio receivers and the antennas used by the public.

<sup>772</sup> E.g., TeleCuraçao’s Facebook page [www.facebook.com/telecuracao](http://www.facebook.com/telecuracao) (21.776 “likes”), Notisia360’s Facebook page [www.facebook.com/Notisia360](http://www.facebook.com/Notisia360) (16.798 “likes”), MAS99.7’s Facebook page [www.facebook.com/MAS99.7](http://www.facebook.com/MAS99.7) (13.477 “likes”) and DolfijnFM’s Facebook page, [www.facebook.com/dolfijnfm](http://www.facebook.com/dolfijnfm) (10.792 “likes”); all accessed 22 August 2014.

<sup>773</sup> Content Analysis, carried out for this study, see also methodology section.

<sup>774</sup> Toby Mendel, *Applying UNESCO’s Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 24-25.

<sup>775</sup> BTP notes that these fees were lower in the past.

The State has taken several positive steps to ensure the maximum geographical reach of all broadcasters. BTP has indicated that if, when performing technical checks, they note that broadcasters fail to apply for the extra transmitter, the regulator insists on the installation of the additional repeater to satisfy the regulations. If adaptations are not made, it is BTP's task to regulate the matter and to pressure the broadcaster to satisfy the criteria within 3-6 months. Since 2004, BTP has added this obligation to all new licenses (*ministeriele beschikking*) to ensure maximum geographical reach. If the coverage is not improved by the media outlet, BTP can withdraw its license. However, BTP states that this process is long and sufficient opportunities are provided to broadcast media organisations to make the stipulated improvements. According to the BTP, licenses have been withdrawn only a small number of times. The last time that a license was withdrawn in Curaçao was nine years ago.<sup>776</sup>

To achieve national coverage for television, the relay-station mechanism (i.e., repeater) can be used. For example, TeleCuraçao can be received on channel 8 but also on channel 6 in the remote areas of Bandabou (i.e., the western part of the island). CBA and TV 24 do not have such a system in place. The BTP initiatives to promote the digitalisation of television broadcasting represent positive steps to ensure maximum geographical reach for television broadcasters. For example, Digital Video Broadcasting Terrestrial (DVB-T) uses a network of transmitters collocated at several sites on the island and provides viewers with high-quality reception using small in-house or rooftop antennas. However, BTP notes that although it can provide knowledge and support, initiatives to adopt broadcasting digitalisation are lacking.<sup>777</sup>

Access also depends on the number of televisions sets and the electrical supply available. According to the National Census 2011 by the CBS, most Curaçao households have a television (93%),<sup>778</sup> and 23% have access to international broadcasters via satellite.<sup>779</sup> According to BTP statistics for 2012, 55% of the households have a cable TV (TDS, Flow or TRES) subscription.<sup>780</sup> A slight decrease in the percentage of households with televisions between 2001 (96%) and 2011 (93%) can be noted.<sup>781</sup> This decrease could be the result of a well-established broadband infrastructure through which clients can access all types of services, including online television.<sup>782</sup>

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<sup>776</sup> BTP notes that on the former Netherlands Antilles islands there were several cases in the last few years prior to 10-10-10.

<sup>777</sup> Interview January 27, 2014.

<sup>778</sup> Central Bureau of Statistics Curaçao, *Eerste resultaten census 2011 Curaçao* (First results census 2011 Curaçao) (Curaçao: CBS, 2012), 18. [http://www.banboneirubek.com/sites/default/files/20120731\\_Publicatie\\_Eerste\\_resultaten\\_Census\\_2011.pdf](http://www.banboneirubek.com/sites/default/files/20120731_Publicatie_Eerste_resultaten_Census_2011.pdf) (accessed September 13, 2014).

<sup>779</sup> Idem, 18.

<sup>780</sup> Written communication BTP, July 7, 2014.

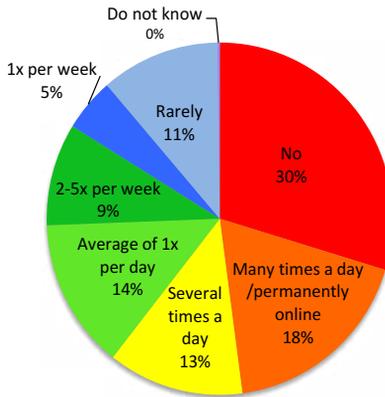
<sup>781</sup> Idem, 17.

<sup>782</sup> Written communication BTP, July 7, 2014.

The illiteracy rate in Curaçao was estimated at 2% in 2011,<sup>783</sup> and thanks to the obligation imposed on broadcasters to provide national coverage, communities with higher levels of illiteracy can access all of the island’s broadcasting media.

Based on BTP statistics, in Curaçao, Internet penetration is 70% of all households. Facebook penetration is fairly high. According to the Public Survey carried out for this report, 70% of all inhabitants with Internet access have Facebook accounts, and 45% use Facebook daily (figure 24).<sup>784</sup>

**Figure 24. Are you active on Facebook? Public Survey (n=582)**



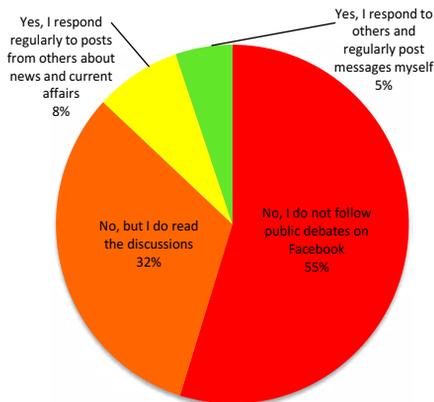
The public seems to use Facebook to follow news and public debates. The results of the Public Survey indicate that 32% read posts on news and social issues on Facebook, 8% respond regularly to posts from others regarding news and current affairs, and 5% regularly respond to posts from others *and* post messages themselves regarding news and current affairs (figure 25).<sup>785</sup>

<sup>783</sup> UNDP, *First Millennium Development Goals Report, Curaçao & St. Maarten 2011* (Port of Spain: UNDP, 2011), 66. <http://www.undp.org.tt/NA/MDGReportCURandSXM.pdf> (accessed September 13, 2014).

<sup>784</sup> Response to the Public Survey, conducted for the MDI Assessment Curaçao, 2014.

<sup>785</sup> *Ibid.*

**Figure 25. Do you discuss news and social issues on Facebook?**  
*Public Survey (n=539)*



The results of the Media Workers’ Survey reveal that of the 27 journalists who completed the relevant questions, 18 use Facebook professionally.<sup>786</sup> This outcome confirms the trend that was noted by several interviewed journalists who signalled Facebook as a forum to reach their audiences. A number of these Facebook pages seem popular, as demonstrated by the level of activity, such as discussions, comments and responses, for example on the pages of Korant Verídiko II,<sup>787</sup> Strea Luz<sup>788</sup> and Redashi Korsou<sup>789</sup> (with 14.408, 6.808 and 4.133 “likes”, respectively, at time of this assessment).<sup>790</sup> In addition, the survey indicated that media workers use LinkedIn (12 out of 27), YouTube (10 out of 27) and Twitter (eight out of 27) for professional purposes.<sup>791</sup> Blogging to generate citizen engagement seems to be less popular in Curaçao. Only two of the respondents in the Media Workers’ Survey indicated that they blog about news and current affairs. A total of 21 respondents indicated that they are not active as bloggers, six followed the blogs of others and three indicated that they react to posts by others.

<sup>786</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.  
<sup>787</sup> E Korant Verídiko II’s Facebook page, <https://www.facebook.com/ekorant.veridikoi>.  
<sup>788</sup> Strealuz News’s Facebook page, <https://www.facebook.com/pages/Strealuz-News/133438513533118?fref=ts>.  
<sup>789</sup> Redashi Korsou’s Facebook page, <https://www.facebook.com/pages/Redashi-Korsou/426143600834334?ref=ts&fref=ts>.  
<sup>790</sup> Accessed August 23, 2014.  
<sup>791</sup> Response to the Media Workers’ Survey, conducted for the MDI Assessment Curaçao, 2014.

### 5.3 The country has a coherent ICT policy which aims to meet the information needs of marginalized communities

This indicator assesses whether an information society policy framework is in place in Curaçao that addresses all aspects of national ICT coherence, broadband (i.e., high-speed) Internet access and online services, including e-government. There are three key issues: the technical aspects of access (i.e., availability and accessibility), the cost of such access (i.e., affordability) and the speed and reliability (i.e., quality) of this access.<sup>792</sup>

Based on available information, there is currently no national ICT plan or policy in Curaçao. In 2013, a “Masterplan Curaçao Information Society” was established by the Knowledge Platform, a multi-stakeholder foundation in Curaçao and part of the international partnership “Internet Society” (ISOC), in cooperation with *Bureau Telecommunicatie en Post* (BTP) to encourage ICT development.<sup>793</sup> However, no government department has assumed leadership in this area, and there is no national institute responsible for ICT development. An interviewee noted that this absence of leadership is one reason why a policy is lacking.<sup>794</sup>

Curaçao is among the top countries (#2) in the region in terms of average Internet download speed,<sup>795</sup> and according to Akamai,<sup>796</sup> Curaçao ranked fourth worldwide in broadband Internet adoption.<sup>797</sup> In many public locations in Curaçao, free Wi-Fi is available, particularly in tourist areas, such as the entire downtown zone of the capital, Willemstad, and in hotels, bars and restaurants. Wi-Fi enables individuals to connect to the Internet using a laptop computer or a mobile communications device. This service is also offered by several supermarkets, at beaches and at the airport.<sup>798</sup> On 23 December 2013, free Internet in the city centre was introduced in a project conceived and funded by the Curaçao Tourist Board. Free Wi-Fi Internet is available from the Mega Pier Otrobanda past the Rif Fort, Brionplein, the pontoon

<sup>792</sup> Toby Mendel, *Applying UNESCO's Media Development Indicators: A Practical Guidebook to Assist Researchers* (Paris: UNESCO, 2012), 25.

<sup>793</sup> Knowledge Platform Curaçao, *Masterplan Curaçao Information Society* (Curaçao: BTP, 2013). <http://www.bantraha.com/Events/masterplan-curacao-information-society> (accessed September 13, 2014).

<sup>794</sup> Written Communication, July 7, 2014.

<sup>795</sup> Leonardo Ladeira, “Drivers for Broadband Internet Access” (paper presented at the Caribbean ICT Roadshow, Curaçao, September 9-11, 2013), 28-32.

<sup>796</sup> Akamai’s network is one of the world’s largest distributed-computing platforms, handling the distribution of web-content. Akamai is responsible for serving around 20 percent of all web traffic. Akamai therefore has a broad range of measurement data available on internet statistics. In Curacao, Akamai placed a local cache server at the AMS-IX Caribbean.

<sup>797</sup> BTP. “Curaçao on 4th position in worldwide broadband internet adoption ranking.” [www.btnp.org](http://www.btnp.org/index.php?option=com_content&view=article&id=173:curacao-on-4th-position-in-worldwide-broadband-internet-adoption-ranking&catid=92:latest-news&Itemid=435&lang=en). [http://www.btnp.org/index.php?option=com\\_content&view=article&id=173:curacao-on-4th-position-in-worldwide-broadband-internet-adoption-ranking&catid=92:latest-news&Itemid=435&lang=en](http://www.btnp.org/index.php?option=com_content&view=article&id=173:curacao-on-4th-position-in-worldwide-broadband-internet-adoption-ranking&catid=92:latest-news&Itemid=435&lang=en) (accessed September 13, 2014).

<sup>798</sup> Curaçao Connected. “Find Free Wi-Fi On Curaçao.” [www.curacaoconnected.com](http://curacaoconnected.com/internet/free-wifi/). <http://curacaoconnected.com/internet/free-wifi/> (accessed April 10, 2014).

bridge in Punda and to the bus station and Wilhelmina Square.<sup>799</sup> However, CSOs, media, Government and commercial entities do not collaborate in a strategic approach to make ICTs accessible and to guarantee Internet connection in locations that are distant from the city centre, for example, in all schools. New plans are nevertheless in development regarding free Wi-Fi.<sup>800</sup>

In addition, a number of small initiatives can be noted, such as the school project “Two PCs per classroom”. In this 2013 project, a school collected donations from private sponsors, including individuals, institutes and organisations, to purchase PCs and a network server for educational purposes.<sup>801</sup> With the help of donations, the project “Pure Gives Back” of an ICT consultancy company that collects used computers and repairs them for donation to boarding houses, has also contributed to making ICTs more widely available.<sup>802</sup>

A number of useful initiatives have been introduced to promote awareness of the importance of ICTs, primarily focusing on ICT in education for the general public. In the first three weeks of September 2013, a major conference was held on ICT in education. Twenty-two workshops with on average 15 teachers per workshop, a special session for policy makers, a project in which 11 students and five teachers participated, and a final conference aimed to encourage the use of ICT in education. This conference combined three events. The Curaçao National Commission for UNESCO, which is part of the Ministry of Education, organised a seminar for educators entitled “(Free) Software for Education Best Practices”. The funds were provided by UNESCO. In the same month, Fundashon Inovashon di Enseñansa (FIDE) organised a number of workshops on ICT Blended Learning. Finally, BTP provided lectures on ICT and education at the Caribbean ICT Roadshow,<sup>803</sup> which was held in Curaçao on 9-11 September 2013. The event’s theme was “Harnessing the Power of Innovation: The Engine For ICT-Enabled Development”. The conference focused on opportunities in the use of ICTs to develop the educational, healthcare and public sectors while paying attention to cyber security. The target groups for this event were Caribbean governments, telecommunications operators, ISPs and ISP regulators, professionals from the healthcare, educational and (semi-) public sector, cyber-security professionals and e-commerce businesspeople who were interested in ICTs for Caribbean development.<sup>804</sup>

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799 Land Curaçao / Pais Kòrsou (Country Curaçao), “Gratis internet in de binnenstad Willemstad” (Free internet in downtown Willemstad) [www.land-curaçao.hu](http://www.land-curaçao.hu) <http://www.land-curaçao.hu/free-internet-in-downtown-willemstad/?lang=nl> (accessed April 10, 2014).

800 Interview January 27, 2014.

801 “Twee computers per klas stimulans voor leerlingen” (Two computers per classroom incentive for students), *Versgeperst*, November 9, 2013, <http://www.versgeperst.com/nieuws/235389/twee-computers-per-klas-stimulans-voor-leerlingen.html>.

802 “Donate Pure ICT aan interenaten” (Donation Pure ICT to boarding facilities), *Amigoe*, June 14, 2014.

803 Caribbean ICT Roadshow Curaçao’s Facebook page, <https://www.facebook.com/events/213708582086708>.

804 “Local ICT roadshow in Curaçao”, *Curaçao Chronicle*, July 23, 2013, <http://curacaochronicle.com/local/ict-roadshow-in-Curaçao/>; “Groot ICT-seminar onderwijsveld” (Large ICT education seminar), *Antilliaans Dagblad*, August 22, 2013. <http://www.ict-and-education.com/foto/2013-08-22-AD-middenpagina.jpg>;

Examples of best practices in Curaçao can be found on the website ICT-and-education.com,<sup>805</sup> such as OLPC (One Laptop Per Child), the “100-dollar laptop” initiative of the Massachusetts Institute of Technology (MIT) in Papiamentu<sup>806</sup> and “Girls in ICT Curaçao”, which is a movement started by Curaçao residents to inspire more women to consider ICT as a career choice and to improve the quality of ICT studies on the island. The movement organised an “Intro to computer science for girls”, which involved six half-day training sessions that commenced in May 2014.<sup>807</sup> Additionally, the information and technology institute Stimul-It<sup>808</sup> contributes to promoting the awareness of the importance of ICTs.

Several Internet providers offer a variety of Internet connections, including fixed high-speed / broadband Internet and 4G+ mobile Internet.<sup>809</sup> Prices vary based on type and speed. The most economical entry-level package costs NAf 40 (US\$ 22.20) per 2 Mbps, and the most expensive package costs NAf 270 (US\$ 150) per 100 Mbps.<sup>810</sup> In certain cases, reduced rates are available for students, interns or individuals aged 60 years or older.<sup>811</sup> Several options are available for prepaid mobile Internet or Wi-Fi Internet access (ET-Wi-Fi).<sup>812</sup> Although several price packages are available and, compared with regional and worldwide benchmarks, the prices are reasonable (an entry-level broadband package costs 2% of the average monthly income in Curaçao),<sup>813</sup> BTP supports lowering prices. This view is shared by the Minister of Economy, who noted that the telecommunications industry is a focal point in the establishment of a Competition Authority for Curaçao.<sup>814</sup>

ICTPULSE. “ICT Roadshow Curaçao.” <http://www.ict-pulse.com/event/ict-roadshow-Curacao/> (accessed September 12, 2014).

**805** ICT and Education. “ICT & Education Track 6: Best practices.” [http://www.ict-and-education.com/index.php?topic=track6&style\\_id=0](http://www.ict-and-education.com/index.php?topic=track6&style_id=0) (accessed September 12, 2014).

**806** ICT & Education Curaçao’s Facebook page, <https://www.facebook.com/ICT.and.Education?fref=ts> (accessed September 12, 2014).

**807** Girls in ICT Curaçao’s Facebook page, <https://www.facebook.com/GirlsinICTCUR?fref=ts> (accessed September 12, 2014).

**808** Stimul-It’s Facebook page, <http://www.facebook.com/Stimul.IT.Events> (accessed April 14, 2015).

**809** See, e.g.: UTS. “Internet.” <https://www.uts.cw/personal/internet> (accessed September 12, 2014); FLOW. “Internet Rates and Packages.” <http://discoverflow.co/Curaçao/internet/rates-and-packages> (accessed September 12, 2014).

**810** Interview January 27, 2014.

**811** Scarlet. “Scarlet WiMAX Desktop Modem.” [www.scarlet.an](http://www.scarlet.an). [http://www.scarlet.an/en/allinone\\_post.php](http://www.scarlet.an/en/allinone_post.php) accessed April 13, 2014.

**812** See, e.g.: Digicel: <http://www.digicelcuracao.com/>, UTS: <https://www.uts.cw/chippie>, Curaçao WiFi: <http://www.curacaowifi.com/> (all accessed April 10, 2014).

**813** See, e.g.: BTP. “Infographic Broadband and the economy of Curaçao IV v1.2.” [www.btnp.org](http://www.btnp.org). [http://www.btnp.org/index.php?option=com\\_content&view=article&id=172:infographic-broadband-and-the-economy-of-curacao-iv-v12&catid=92:latest-news&Itemid=435&lang=en](http://www.btnp.org/index.php?option=com_content&view=article&id=172:infographic-broadband-and-the-economy-of-curacao-iv-v12&catid=92:latest-news&Itemid=435&lang=en) (accessed April 10, 2014).

**814** See, e.g., “Curaçao krijgt mededingingsautoriteit” (Curaçao obtains competition authority), *Notisia360*, November 14, 2013, <http://www.nieuws360.com/uncategorized/Curaçao-krijgt-mededingingsautoriteit/>.

## Recommendations

### Availability and use of technical resources by the media

1. In the digital era, it is indispensable for the media to expand training in ICTs to ensure that these are fully utilised by media workers, particularly when searching for information. Full adoption of new information technologies can also greatly contribute to increasing citizen participation.
2. Journalists should be able to access a wider range of reference and archival materials and be trained to use more international sources of information.
3. Printing and distribution facilities should be open for new newspapers. Fair competition in printing and distribution should be encouraged.
6. The Government should serve as an example of an ICT-driven community by launching effective e-Government services.
7. Governments should consider establishing a National ICT Institute or allocating this responsibility to a particular government department. A long-term national ICT policy and plan should be developed and adopted. Additionally, Government should consider including a citizen-centred approach to defining national ICT priorities, including prioritisation of ICT in education and e-Government.

### Press, broadcast and ICT penetration

4. The educational sector should be supported to provide greater access to information and communication technologies (ICTs). For this purpose, policies should offer favourable conditions for implementing ICT infrastructure and provide access to these technologies, particularly for primary and secondary schools. E-Learning should be implemented.
5. The Government should continue to promote access to ICTs and guarantee affordable Internet connection in public spaces.

## Appendix: List of individuals and institutions contacted during the drafting phase

Name	Position/Institution	Stakeholder
<b>Tineke Alberts</b>	Manager Fundashon Verriet – SGR-groep	CSO
<b>Douwe Boersma</b>	Attorney at Law and Legal Adviser – Boersema Advocaten Curaçao	Law
<b>Marva Browne</b>	Secretary General – Curaçao National Commission for UNESCO, Former Media Policy Officer – Ministry of Education and Culture, Directorate Education, Sport and Culture, Former Broadcast Journalist – Curom Broadcasting N.V.	National UNESCO Commission Curaçao / Government / Media
<b>Yves Cooper</b>	Independent News Reporter, Blogger – E Korant Verídiko II	Media
<b>Oriando Cuales</b>	General Manager – Curom Broadcasting N.V.	Media
<b>Oscar van Dam</b>	Editor-in-Chief – CBA Television, Journalist – Radio Paradise	Media
<b>Roxanne van Dam-Martha</b>	Former Spokesperson – Bos di Hubentut	CSO
<b>Valesca Dias</b>	Editor-in-Chief – Extra, Secretary – Curaçao Media Organisation (CMO)	Media / Professional Organisation
<b>Dick Drayer</b>	Editor-in-Chief – Persbureau Curaçao, Correspondent Antilles – NRC Media, Omroep Max, Novum Nieuws, NOS	Media
<b>Michael Grunning</b>	Technical Director – CBA Television	Media
<b>Germaine Hart</b>	General Manager – CBA Television	Media
<b>Mariano Heyden</b>	Editor-in-Chief – La Prensa, Journalist, Broadcaster, News Anchor	Media
<b>Carine Jänsch</b>	IP/ICT Lawyer and Trademark Attorney – Van Eps en van Doorne	Law
<b>Elisa Koek</b>	Freelance (Copy)writer and Journalist, Correspondent – NTR	Media
<b>Leonardo Ladeira</b>	Policy Advisor – Bureau Telecommunicatie en Post (BTP)	Regulator
<b>Jermain Lo</b>	Video Journalist, TV Producer – 2020P	Media
<b>Ingrid de Maaijer</b>	Former General Manager – Amigoe	Media
<b>Alba Martijn</b>	Ombudsman Curaçao	Ombudsman
<b>Carel Martinus</b>	Independent Legal Consultant	Law
<b>Jacqueline Martis</b>	Chair – Amnesty International Curaçao	CSO
<b>Renny Oehlers</b>	Manager – TeleCuraçao	Media
<b>Sihuhe Oomen</b>	Former Programme Manager – Bachelor's Degree Programme in Media Communication and Journalism, University of Curaçao	Education

Name	Position/Institution	Stakeholder
<b>Stella van Rijn</b>	Secretary-General – Department of General Affairs of Government of Curaçao, Former Dean – Faculty of Social and Behavioural Sciences, University of Curaçao, Former Editor-in-Chief – Algemeen Dagblad Caribische Editie, Former Correspondent – NOS Journaal, Volkskrant, GPD, RNW	Government / Education / Media
<b>Lodewijk Rogier</b>	Professor of Constitutional and Administrative Law Erasmus University Rotterdam, School of Law and University of the Netherlands Antilles	Law
<b>Charluce Sandries</b>	Deputy Director – Bureau Telecommunicatie en Post (BTP)	Regulator
<b>Norman Serphos</b>	Spokesperson – Public Prosecutor’s Office	Public Prosecutor’s Office
<b>Miriam Sluis</b>	Director – Seru Pretu Productions, Publicist, Former Correspondent for Netherlands Antilles & Aruba – NRC Handelsblad, NOS	Media
<b>Ruben Suriel</b>	Chairman – Fundashon Akshon Sivil, Talk-show Host 2121 programme – Curom Broadcasting N.V.	CSO / Media

# Assessment of Media Development

The UNESCO/IPDC Media Development Indicators are a useful diagnostic tool for all stakeholders to assess the level of media development in a given country. The MDI studies serve to map the strengths and weaknesses of the national media environment and propose evidence-based recommendations on how to address the identified media development priorities. The MDIs have been endorsed by the Intergovernmental Council of UNESCO's International Programme for the Development of Communication (IPDC). They have proved invaluable in contributing to an improved environment for free, pluralistic and independent media in many countries, thereby supporting national democracy and development.

**List of countries in which MDI-based assessments have been completed to date:** Bhutan, Croatia, Ecuador, Egypt, Gabon, Jordan, Libya, Maldives, Mozambique, Nepal, Palestine, South Sudan, Timor-Leste, Tunisia.

**For more information, see**

[www.unesco.org/new/en/communication-and-information/intergovernmental-programmes/ipdc/initiatives/media-development-indicators-mdis/](http://www.unesco.org/new/en/communication-and-information/intergovernmental-programmes/ipdc/initiatives/media-development-indicators-mdis/)



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