

Communications Law one year later: journalists still under pressure

On 14 June 2013, Ecuador's National Assembly passed a sweeping Organic Law on Communication. One year later, Reporters Without Borders (RWB) is deeply concerned about the state of information freedom in the country.

Initially, the law was seen as a means of democratizing the Ecuadorean media space. The law establishes a new regulatory framework. In addition, the statute attempts to define the craft of providing news. Our organization opposes that effort.

The law does include several provisions that favour information freedom. But the government has not provided specific ways to implement them. Some aspects of the law had aroused the concern of RWB from the beginning; these concerns have been validated since the 25 January enactment of regulations to enforce the law. The regulations, approved by the Assembly, spell out measures to be taken by the Superintendency of Information and Communications (Supercom), the media regulatory agency created by the law.

RWB has registered at least 67 press freedom threats aimed at journalists and media organizations in the period June 2013-June 2014. These include 18 cases of forced corrections, and 16 smear campaigns against journalists. Most of these campaigns have taken the form of televised declarations by President Rafael Correa in official messages carried by all broadcasters (*cadena*s). In addition, RWB has registered 9 cases of direct censorship.

Amid deepening polarization between the Correa administration and some privately owned media – which have, RWB recognises, committed their own excesses – abusive recourse to the Communication Law has created a harmful climate for information freedom.

Reporters Without Borders still waiting for answers

After the law was enacted, Reporters Without Borders welcomed some of its provisions. These included prohibition of prior censorship by the government, respect for journalistic confidentiality, and equitable distribution of radio and television broadcasting frequencies. 33 per-cent of the frequencies, on average, would have to be assigned to public media; 33 per-cent to private stations, and 34 per-cent to community media.

Unfortunately, this formula has not been applied. Frequency assignment remains largely inequitable, with an average of approximately 78 per-cent in private hands; 20 per-cent in the public sector, and only 1 per-cent for community media, according to official figures from the Secretariat of Communication (Secom). What are the government's plans for correcting this inequity?

The lack of balance and the disproportionate share of private frequencies in the Ecuadorean media spectrum carry consequences for freedom of information. The law was designed to provide for redistribution of frequency assignments and, as a result, the closing of some private channels and stations for the benefit of public and community media. How many frequencies should the government regain? Who will make the decision? And on the basis of what criteria?

Reporters Without Borders has also expressed concern about Article 22 of the law. The provision states, “*It is everyone’s right that information of public interest received through the media should be verified, balanced, contextualized and opportune.*” This raises the question about what standards are used to determine the value of a piece of information. The principles that the law spells out are worthwhile on their own. But as legal requirements they threaten to put journalists at the mercy of subjective assessments by a judge or the Supercom.

This provision has already served as the basis for two complaints filed to the Supercom on June 4 and 5. The complaints alleged failure to cover events deemed of public interest. *La Hora*, *El Universo*, *El Comercio* and *Hoy*, all dailies, were accused of not having covered in sufficient depth the visit of President Correa to Chile in May. Hence, the papers were said to have violated Article 22 and Article 18. The latter stipulates that “*a deliberate and recurrent failure to report issues in the public interest constitutes an act of prior censorship.*” However, the presidential visit received widespread media coverage. And the government has at its disposal public and official media, official advertising, the *cadena*s, as well as the *sabatinas*, the president’s official weekly messages.

The communication law includes a prohibition on “*media lynching*,” punishable by a prison term of 1-3 years (Article 26). This article, as well as the creation of the Superintendence of Communication, are last-minute measures. Neither was dealt with in the Assembly’s first obligatory debate. They were proposed and approved during the second debate, which followed the parliamentary elections of February 2013.

Article 26 prohibits “*the dissemination of information that directly or through third parties is produced in a concerted fashion, and stated repeatedly by one or more communications media for the purpose of destroying the prestige of a natural or juridical person, or reducing their public credibility.*” How to prove that media work in concerted fashion? How to distinguish between “lynching” and the standard treatment of information? The provision approved in January 2014 does not specify.

The charge of lynching has already been made a few times since the regulations to enforce the law were enacted. On 30 January, the Pichincha banque filed a complaint against the national official daily, *El Telégrafo*, accusing them of media lynching. Ex-Education Minister Sandra Correa also filed a complaint to the Supercom in April 2014 against **Diego Oquendo**, journalist and director of *Radio Visión*. The Supercom finally decided that these complaints did not meet the criteria set out in the law for media lynching.

The right to correction, a form of censorship

The law grants the executive branch the right to order “*suspension of the right to freedom of information*” in cases in which the president declares a “*state of exception*” (Article 77), and provides for control of information by way of requiring correction of any content that is challenged, or that is clarified by a third party (Article 23). This anti-freedom clause was put into effect for the first time in February 2014 with the conviction of cartoonist **Xavier Bonilla**

(**Bonil**) for defamation, with a demand for correction of a cartoon published in December 2013 in *El Universo*, a daily newspaper. The paper was required to pay a fine equivalent to 2 per-cent of its last-quarter revenues for having published the cartoon, which depicted a violent search of the home of journalist and political figure **Fernando Villavicencio** in December 2013.

Many of these corrections may go beyond a simple request for clarification or precision of information to an abuse of power that deforms the original text and imposes a censored version. In the province of Esmeraldas, where drug trafficking is rampant, two reports on the “Vision 360” program on *Ecuavisa*, a television channel, about the killing of a mayor in the region and a climate of violence risk Supercom sanctions for having depicted a negative image of the area. The Communication Secretariat interrupted the “Vision 360” program on 25 May with a *cadena*. In that broadcast, Esmeraldas governor Paula Cabezas demanded a correction and public apology. In letter of 22 May to “Vision 360” director Tania Tinoco, the governor cited Articles 19, 23 and 24 of the communication law in demanding an immediate correction.

In addition to the information control provided for by Article 23, the right of the Supercom to verify information is included in provisions of Article 28 that concern copies of broadcast scripts and the written press. The article grants the agency a right to examine media content by requiring that media organizations furnish program scripts upon the request of “*any person who feels affected by information of a communications medium.*”

On 4 April, Veronica Zurita Castro, mayor of Santo Domingo las Tsáchilas, filed to the Supercom a charge that *Súper W* radio had refused to provide recordings of one of its programs. The Supercom levied a fine of 1,360 U.S. dollars on the station.

One month later, the same mayor filed a new charge with the Supercom against another local radio station, *Megaestación*, on the grounds that it had not furnished copies of many broadcasts. Attorney General Juan Carlos Mariño Bustamante joined the mayor in her complaint. The Supercom responded by imposing the same fine on *Megaestación*.

These successive findings against the stations illustrate executive branch influence on media content. *Súper W* and *Megaestación* were not sanctioned for having disseminated false information, but for having not held themselves accountable to the Supercom as the two officials demanded.

Some media organizations and news professionals are experiencing pronounced official harassment. *Diario Extra*, a newspaper, has repeatedly been sanctioned by Information and Communications Superintendent Carlos Ochoa. On 17 December 2013, the Supercom demanded a correction of two of the newspaper’s headlines that dealt with a topic in a manner deemed “morbid.” The newspaper appealed the sanction, arguing that the Supercom had not provided prior notification. Characterizing this response as a repeat offence, Ochoa announced on 10 February that he was charging *Diario Extra* with “disobedience to authorities.” The following month, the paper was fined 10 per-cent of its past-quarter revenues.

Diario Extra was also hit by a complaint filed with the Supercom by former parliamentarian Soledad Buendía. She argued that the front page of the 26 August 2013 edition that displayed the photo of an actress for the weekly “Sexy Monday” feature amounted to “sexist and

stereotyped treatment of women.” The complainant demanded a public apology from the newspaper. The Supercom imposed that sanction, with which *Diario Extra* complied.

Reporters Without Borders recognizes that this paper has its sensationalist side. But the Supercom action raises the question of why this media organization was targeted, given that similar images are frequently depicted in Ecuadorean media. Reporters Without Borders is concerned that similar charges against one aspect or one regular feature of a news medium could result in extremely heavy financial penalties. These could affect a newspaper’s entire news operation.

Selfcensorship: journalists’ last resort

In this climate of overall hostility, self-censorship has become an alarming reality in the Ecuadorean press. Newspapers’ editorial policies, even in politically independent papers, yield to legal actions which constitute a threat to even the mildest criticism. This is how self-censorship begins. Reporters Without Borders does not consider silence as a lull in the conflict between media and the government.

A crackdown in the form of censorship threats by way of required corrections gives Ecuadorean journalists little choice. They are forced to bend to the demands of the government, of media and of local officials. The news program of the *Ecuavisa* channel demonstrated the pressure for self-censorship in a broadcast on 20 May. Showing exaggerated caution, the presenter took up the issue of reported civil rights violations by local officials and the mining state-owned mining company in the Intag region. “In view of the fact that no evidence for the complaint was presented, and that we did not have access to the site, and were not able to obtain a response from the national mining company, we refrain from reporting on these complaints, in accordance with the Organic Law of Communication.”

Journalist **Marlon Puertas**, director of *La República*, a news site, was the target of a campaign conducted over the Twitter social network. A pseudonymous user, @Lapazecual” created the hashtag, #UnTiroAMarlon (A Shot at Marlon) before posting it on the journalist’s profile. Puertas took the message as a genuine threat, especially because it was taken up by other users.

The interior ministry demanded a correction of certain terms used in an article in March in the daily *El Comercio* concerning the Cotopaxi penitentiary in Quito. Gratuitous insults in the ministry’s letter were out of all proportion to the issue. The newspaper’s use of the term “prisoners” instead of “persons deprived of their freedom,” and “prison” instead of “centre for social rehabilitation,” led to the article being characterized as “cynical and manipulative,” the product of “an obscene editorial policy with the poisonous aim of taking down the country by destroying its institutions and values.”

On 12 May 2014, **Gonzalo Rosero**, a journalist who anchors the political debate program, “Radio Revista Democracia,” broadcast by *EXA FM* and *Democracia FM*, experienced three interruptions of the program by *cadena*s in one week. The Supercom, responding to the journalist’s criticism of the interruptions by demanding that he correct an opinion he had expressed concerning petroleum development in part of the Yasuni national park. The journalist stated that he felt psychologically harassed by the Communication Secretariat, which is responsible for the broadcast of *cadena*s.

On 19 May 2014, the broadcast “El poder de la palabra,” produced on the online platform www.ecuadorinmediato.com, had its regular transmissions on the two public radio stations in Quito, *Distrito FM* and *Radio Municipal*, halted. The stations were ordered to halt the broadcast by the city’s new public media director, Francisco Herrera Arauz. The site director challenged the action as a violation of freedom of information, and as a breach of a contract with the municipal communication secretariat. On 20 May, Quito Mayor Mauricio Rodas apologized to *Ecuadorinmediato*, who blamed an administrative error. The media director accepted the apology but announced that the contract with the two radio stations was terminated.

The climate of hostility toward press freedom is not a monopoly of the Supercom. A constant threat of sanctions against media and journalists from other officials and judicial agencies as well. On 4 October 2013, lawyer and former judge Ivonne Boada Órtiz filed a complaint in the Esmeraldas criminal court against the newspaper *El Universo* and its editorial staff. The paper had published on 19 April 2013 an article in which reported accusations by Interior Minister José Serrano that Boada Órtiz had received a bribe from a drug trafficker. The former judge, claiming that the article seriously harmed her reputation and image, demanded 20 million pesos in damages from *El Universo*.

In a meeting with Camille Soulier, head of the RWB Americas Desk, cartoonist Xavier Bonilla (Bonil) and **Monica Almeida**, editor of the daily *El Universal*, reported concern the situation in Ecuador has reached a critical stage. Freedom of information is being stifled to growing extent by the government, and by media organizations that are bending to pressure. The hardening of measures against news professionals is seen in the form of extra-judicial complaints which cannot be appealed.

An unconstitutional law?

Three appeals arguing that the communication law is unconstitutional have been filed with the Constitutional Court. The court has consolidated them into one case, but the pace of consideration is extremely slow. The appeal contends that the law violates the doctrine of “*proportionality between violations and sanctions of a criminal, administrative or other nature*,” laid out in Article 79 of the constitution. Supercom sanctions are frequently disproportionate and weaken journalists’ security.

Reporters Without Borders acknowledges that limits on freedom of expression can be set. Calls to hate and discrimination, for example, may be limited, as the law does in explicit terms. But limits must be reasonable and proportionate in order to meet constitutional requirements. Some of the law’s provisions may be considered necessary, but have taken on an exaggerated form that proves problematic.

The constitution also guarantees the right to be tried by an “*independent, impartial and competent judge*”. Supercom sanctions are not imposed by a judge but by Superintendent Ochoa, whose decisions and public statements call his impartiality into question.

Of equal concern are the communication law’s enforcement regulations. Prof. Farith Simon of the San Francisco de Quito University concludes that instead of clarifying the law, the regulations change some provisions, which is illegal. According to the regulations, official government messages – including *cadenas* and *sabatinas* – are outside the scope of the law. But Article 3 of the law states explicitly that a *cadena* is a form of information content. Yet,

under the regulations, information that public officials disseminate in *cadena*s is no longer defined as information for purposes of the law.

Similarly, the law was designed to regulate television radio and the written press, as well as the online retransmission of their content. Yet the regulations grant jurisdiction over media that are exclusively online.

Reporters Without Borders condemns the government's clear determination to control information and to stifle critical opinion. The sound principles that our organization supported in June 2013 have been outweighed by the abuses registered since then. We urge the Constitutional Court to speed up its consideration of the appeals that challenge the constitutionality of the law. And we recommend amendment of the problematic provisions. We also deplore the fact that the offenses of "defamation" and "insult" have not yet been decriminalized.

Ecuador currently ranks 95th in the World Press Freedom Index. Its advancement by 25 places since 2013, attributed by some to enactment of the communication law, is due above all to the fact that no journalist has been murdered because of his profession in 2013. In addition, the rankings descent of many countries automatically raised Ecuador's ranking. We note that the 2014 ranking, published last February, is retroactive, covering the October 2012-November 2013 period. The abuses reported in these pages will be taken into account in the 2015 edition of the rankings.

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