

INCREASING MEDIA PLURALITY OR CONTROLLING THE DEBATE?

A REPORT ON PRESS FREEDOM IN ECUADOR
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WAN-IFRA, based in Paris, France, and Darmstadt, Germany, with subsidiaries in Singapore, India, Spain, France and Sweden, is the global organisation of the world's newspapers and news publishers. It represents more than 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries. Its core mission is to defend and promote press freedom, quality journalism and editorial integrity and the development of prosperous businesses.

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INTRODUCTION

The World Association of Newspapers and News Publishers (WAN-IFRA) carried out a six-day mission in Ecuador in November 2011. During the visit to the country, WAN-IFRA representatives met with government officials, journalists, newspaper publishers, diplomats, members of civil society and university professors. Concerned about what it views as a rapid deterioration in the state of press freedom in the Andean country, the organisation produced the following report, based on interviews carried out during the mission and the organisation's ongoing investigation throughout 2011. The delegation, composed of Christoph Riess, CEO of WAN-IFRA, and Rodrigo Bonilla, Press Freedom Missions manager, expressed concern about the increasingly polarised environment in the country and the hostility between media professionals and the Government. The report illustrates how the Government is in practice establishing a strict control over all arenas of public debate, while couching this in a debate centered around media plurality.

GOVERNMENT POLICY ON MEDIA DIVERSIFICATION

Ecuadorian authorities argue that the country's media landscape needs to become more diverse and democratic. According to them, private media are in the hands of an oligarchy made up of eight families with overlapping financial interests in various businesses and banks; this impacts on plurality and freedom of expression. "When financial institutions, businesses and media companies are concentrated in just a few hands, there is a silencing effect and lack of independence," a high-ranking member of the National Assembly for the governing party told WAN-IFRA.

Government representatives and directors of state-run newspapers told the WAN-IFRA delegation that the private media had played a very negative role during the banking crisis that affected the country in the late 1990s and which resulted in one of the most serious economic crises in the country's history. Some private media had hidden the imminent arrival of the crisis, focusing on their owners' interests, who were also bank executives, according to government officials. "The Gama-TV and TC Televisión channel answered to the Isaías financial group, which also owned Filanbanco; the TeleAmazonas station defended the interests of its owner, Fidel Egas, who also owned the Pichincha bank," contends Alberto Acosta, formerly linked to the Government. "The large economic groups were fighting over power via their media outlets, there was no real journalism," said Orlando Pérez, assistant manager of El Telégrafo, a newspaper that closely follows the government line.

Nevertheless, journalists working for media independent of the Government feel that these accusations against the press are misleading. One journalist who preferred to remain anonymous for fear of retribution, told WAN-IFRA that while certain media outlets, particularly television channels, did take the side of the bankers, it was definitely "thanks to the press that the whole complex system of corruption in the banks was revealed.

Members of the press followed with great attention how the financial system was falling and had to learn how to report on this complicated matter, which was definitely a new topic for Ecuadorian journalists. [The Government] does not have any real arguments against the press and is trying to draw on incidents that occurred ten years ago to stigmatise all of the private press and blame it for something that was created by the banks and the Government acting conspiratorially," the journalist said. It seems that the official rhetoric tends to blame the private media in general for the complicity of certain private television stations with some bankers.



Fernando Alvarado and Christoph Riess

DIVERSITY OR PROPAGANDA?

Member of the National Assembly Rolando Panchana said that when Rafael Correa came to power, Ecuador “was the only country in the Americas without public media.” Only the National Ecuadorian Radio (Radio Nacional del Ecuador) was in existence, and it was not operating at the time. According to Panchana, the friction between the state and the private media began when the Government started to create public media. Orlando Pérez says that there was little media diversity and that in Ecuador “there were no left-leaning media outlets, all alternative projects were displaced by the media establishment.” Patricio Barriga, advisor to National Communication Secretary (Secretario Nacional de Comunicación) Fernando Alvarado, told WAN-IFRA that the emergence of public media has been “a great achievement” and provides a “true alternative” to the private media.

In order to bring about this diversification, since Correa became president until today, the Government has been creating public and state-run media and has seized certain private media outlets that were facing bankruptcy.

There are serious doubts about the independence of the public media and those that were taken over by the state. Orlando Pérez, of the state-run newspaper *El Telégrafo*, which was seized in 1999 by the state to recuperate monies owed by a bankrupt financial group, feels that “even though we are not independent, we are autonomous. More and more we are able to investigate matters in greater depth and we have even reported on cases of corruption within the Government.” Nevertheless, some of those interviewed argued that these media outlets are “not at all independent” and they serve as a “propaganda tool” for the Government. “These are not public media, they are not media that serve the society,” says Alberto Acosta; “they are in the hands of the Government.” While some of them have been openly created to be propaganda tools to promote the Government’s actions, those which claim to be public and those seized by the Government very rarely produce critical reporting of the authorities.

In 2008, the Government took over a number of assets belonging to the Isaías group, which allegedly owed US \$661 million to the state after its banking institution, Filanbanco, collapsed in 1998. The government takeover encompassed the TC Televisión and Gama TV channels, which at the time drew 40% of the country’s audience. The president promised that the two stations would be sold within six months but never fulfilled this promise.

In order for the Government's expressed goal of diversifying the media landscape to become a reality it would have to go hand in hand with financial transparency and media independence. However, the management of the seized, public and state-run media is carried out in such a complex fashion that makes it very difficult to determine with any certainty how these media outlets are administered and financed, raising doubts about their editorial independence. For example, the media outlets that were taken over by the Government are run by a trusteeship, the AGD CFN No Más Impunidad (No more impunity), a private legal institution which is managed by the state. As a result, the balance of its accounts is not subjected to the same scrutiny as other companies or institutions.

As a result, the Government effectively controls 20 media outlets, and has gradually become the most important media owner in the country. The acquisition of such a large number of media entities in just four years, many of which are managed through complex and obscure legal structures, leads one to suspect that rather than trying to diversify the media landscape, the Government has created a powerful and sophisticated communications apparatus via which it can promote its agenda and respond to any criticisms.

Media outlets taken over by the state:

Television:

TC Televisión, Gama TV, and cable stations Cable Noticias 3 and Cable Deportes 7, ArturOh

Radio:

Carrousel, , Radio Super K 800, Radio Universal

Magazines:

La Onda, El Agro, Valles and Samborondón

Public media:

Television: Ecuador TV

Radio: Radio Pública de Ecuador

Newspapers: El Telégrafo, PP El Verdadero

State-run media:

Newspapers: El Ciudadano

Radio: Radio de la Asamblea Nacional

News agencies: Agencia Pública de Noticias del Ecuador y Suramérica

DIVERSIFY OR DISQUALIFY?

The Government's willingness to diversify and democratise the media landscape is further put into question when one considers the confrontational tone that President Rafael Correa uses against any individual or organisation that questions or criticises his administration.

This confrontational approach is visible during the President's Saturday "cadenas", presidential addresses which are broadcasted on public media. During these weekly TV and radio broadcasts which last several hours, the President provides an extensive account of the Government's activities. He also takes some time to respond to criticisms in a particularly aggressive fashion, by discrediting, abusing and insulting his critics. The President has referred to journalists variously as "imbecile", "stupid", "ink-stained hitmen" or "mafiosos". These speeches are uttered during events held each Saturday in different parts of the country, during which hundreds and even thousands of people are gathered. Otto Sonnengolzner Sper, president of the Ecuadorian Radio Broadcasting Association (Asociación Ecuatoriana de Radiodifusión), said "about 400 or 500 radio stations throughout the country transmit these Saturday broadcasts, many of them out of fear that otherwise they would not be granted government advertising contracts."

Mauricio Rodas, executive director of the Ethos Foundation (Fundación Ethos), a Mexico City-based research center focusing on public policies, told WAN-IFRA that in 2009, his organisation identified 171 different types of insults or offensive terminology used by the President during these Saturday broadcasts. Searching online provides videos that contain a wide collection of insults specifically directed at the press.

WAN-IFRA expressed its concern over the President's aggressive stance against the media and those who are critical of his administration. The Government's response was to show WAN-IFRA's delegates a video containing images of TV journalists insulting the President and scenes of private media journalists refusing to comment when questioned by media outlets linked to the Government. The video tries to demonstrate how the private media and non-governmental organisations are trying to manipulate the information to carry out a campaign against the Executive.



Rafael Correa's weekly "sabatina"

In WAN-IFRA's opinion, the Government is attempting to deflect attention from the core issue - that personal attacks by the president have a chilling effect on the independent press. It is the legitimate role of the press to criticise public figures and journalists are not obligated to respond to questions from government-controlled media.

It is surprising to see how the Government's diversification policy seems to necessitate the ongoing discrediting of the established media. "The president found in the private media his punching bag," comments an analyst who wished to remain anonymous. An academic and a columnist for the newspaper *El Universo*, Simón Pachano, told WAN-IFRA that in Ecuador "there is no opposition because there is a crisis of political actors and political parties; as such, the President has to create his enemies." Felipe Burbano, a professor in the Latin American Faculty of Social Sciences in Quito, feels that "the style of this Government is confrontational, it needs an adversary around which it can construct its own platform, plans and identity. It has found an excellent 'war horse' in the media."

The Ecuadorian Government makes excessive use of the national "cadenas", official statements spontaneously broadcast on television and radio. It resorts to using these special announcements, normally reserved for use in cases of emergency to warn or inform the public, in order to promote its agenda. According to Fundación Ethos, between January 2007 and May 2011, there were 1,025 television and/or radio "cadenas". "During this same time period, in a country like Mexico - which had an H1N1 flu outbreak, is ravaged by natural catastrophes every year, and is engaged in a bitter fight against drug trafficking - there were only 47 national cadenas," said Mauricio Rodas. These broadcasts are also used to discredit the Government's opponents. A reporter who preferred to remain anonymous, said that journalists fear they may be targeted in the President's speeches: "The Government names certain individuals, providing their full name, during these radio programmes that are broadcast in the cities where these journalists live." Of even greater concern is the fact that these national "cadenas" and the Saturday "cadenas" are financed by Ecuadorians' tax money but are systematically being used as propaganda and for political gains by the Government.

A SYSTEMATIC CRIMINALISATION OF CRITICISM

Member of Parliament Mauro Andino, president of the National Assembly's Communication and Justice committees contends that "freedom to express an opinion and access information cannot be mistaken for the freedom to insult". Nevertheless, WAN-IFRA reiterated its condemnation of the systematic use of certain forms of "desacato" laws - aggravated libel or slander - in cases launched against critical journalists by the President or governmental officials. WAN-IFRA also condemned the number of civil lawsuits seeking utterly disproportionate damages. The National Communication Secretary, Fernando Alvarado, told the Association that "the Government greatly values honour" and that these legal cases are "milestones that one marks while trying to change a society. It is one thing to express an opinion, and quite another to speak with certainty, make allegations and defame someone." These "milestones" are the cases involving the book *El Gran Hermano* and the *El Universo* newspaper.

Both cases are noteworthy because of the harshness of the sentences the President requested. Members of the Government and those close to them believe that the media are free to act with impunity and some of their journalistic practices are reprehensible. Orlando Pérez explained that "the Government is using the state media to demand that the press shed light on matters and set things straight when it makes a mistake – and the press does not like this, that's why there is so much aggression." This supposed impunity that the independent press benefits from and an overestimation of the concept of honour seem to be the two elements that, according to the Government, justify the severity of the legal actions.

WAN-IFRA condemns this approach. There are dozens of examples from around the world of efficient and autonomous systems of media regulation. To address any shortcomings of Ecuadorian journalism via multi-million dollar lawsuits and criminal charges can only have negative implications, since these trials do not have a regulatory effect. They only serve to intimidate the country's journalistic community and encourage self-censorship. "These actions have sown fear," said one of the people who was interviewed on condition of anonymity. "We hesitate, we're thinking about things three times, we are on our way to becoming a frightened society."

The Government did not respond to expressed concerns about self-censorship being a direct consequence of these trials. It simply stated that the main reason for self-censorship in Ecuador is the alleged pressure that certain media owners exert on their editorial offices.

WAN-IFRA believes that a newspaper's editorial line should not be mistaken for censorship. Moreover, the organisation feels that the President's use of the charge of "coadjuvant authorship" against a newspaper (refer to the insert on the *El Universo* case) will do even more to encourage prior censorship in editorial offices. This is "a dangerous and harmful concept, unprecedented in Ecuador's legal and constitutional framework," Alberto Acosta told WAN-IFRA. "It will lead to prior censorship by media owners and will have a gagging effect on freedom of expression."

Moreover, these methods of criminalising criticism in the media have also been used against other members of civil society who are opposed to the Government. Members of peasant movements, student groups, labour and indigenous organisations, who were initially supportive of Correa's Government, seem to be distancing themselves from his administration. As the former mayor of Quito and a member of the National Assembly for the Opposition, General Paco Moncayo, said "this Government has abandoned its own Constitution and its own political goals. It can no longer count on its social base and their most vocal proponents." At each turn, the Government seems to be becoming more authoritarian. Interestingly enough, after assuming power the Executive introduced the right to peaceful resistance (Article 98) under the new Constitution and granted amnesty to more than 600 people who had been persecuted by former regimes for opposing large mining and development projects by private companies. This same Executive is now in the process of prosecuting more than 200 members of peasant movements, student groups, labour and indigenous organisations, accused of sabotage and terrorism for voicing their opposition to some of the Government's projects and reforms.

The “El Universo” case



El Universo's black band in protest to July 2011's sentence

Accused of aggravated libel against an official, the former opinion editor of El Universo newspaper, Emilio Palacio, the El Universo corporation, and company executives Carlos Pérez, César Pérez and Nicolás Pérez, were sentenced in July 2011 to three years in prison and US\$40 million in fines payable to the President of Ecuador, who initially sought US\$80 million.

The complaint stemmed from an article by Palacio entitled “No to lies”. The piece called into question the President’s handling of a 30 September 2010 police uprising, which the Government had characterised as an attempted coup d’état. The sentence was upheld in September 2011 by a second instance court and in December the Supreme Court of Justice ratified Palacio’s prison sentence after rejecting his appeal for a review of the case. An earlier appeal questioning the legality of the process had previously been rejected. In an unprecedented case, the complaint is also directed against the media owners and the media outlet itself under the concept of “coadjuvant authorship”, rendering them responsible for the alleged crime.

The first instance process was marked by disconcerting irregularities, as the presiding judge read the 5,000 page file and drafted a 156-page sentence in less than 24 hours. On 21 December 2011, the Guayas Prosecutor’s Office launched an investigation of this judge. There are strong suspicions that the sentence had already been prepared by individuals close to the President, which would indicate serious interference into the workings of the Judiciary by the Executive.

The “El Gran Hermano” case



Juan Carlos Calderón and Christian Zurita

Journalists Juan Carlos Calderón and Christian Zurita are facing a case filed against them by the President claiming US\$10 million in moral damages in connection with their book *El Gran Hermano*. In the book they detail allegations of official corruption and claim that Rafael Correa was aware of it, which he categorically denies. The case is still pending.

LEGISLATIVE TOOLS OF CONTROL

Via the National Assembly, the Government has passed new laws and has drafted a number of bills that are of great concern, as they grant the Executive excessive control and regulatory powers over the media. It is also disconcerting that the Ecuadorian criminal code still contains provisions that criminalize defamation against public officials, known as “desacato” laws, which are contrary to inter-american and international freedom of expression standards.

A CRIMINAL CODE THAT UPHOLDS THE CONCEPT OF “DESACATO”

The President has put forth a criminal code bill, which according to Member of Assembly Mauro Andino, will “unify more than 200 laws stipulating penalties for various crimes into one unified criminal code”. When he was told of the concerns about the fact that this new code still contains provisions criminalising expressions offensive to authorities, Andino responded that there was still room for improvement. At the same time, the legislator argued that “a person’s dignity and reputation is a basic human right and therefore the crime of defamatory insult should be punishable by law under the Ecuadorian legal system. And if the person who was targeted is an official, the crime is aggravated insult.” As such, the concept of desacato will remain on the books, via Article 121 of the Criminal Code, which stipulates:

Article 121 of the Integrated Criminal Code Bill:

Anyone deemed to have insulted or defamed a government authority will face a prison sentence of one to three years and a fine equivalent to one to ten basic salary units.”

At the same time, Andino stressed that the bill sets penalties for those who attack freedom of expression under Article 91, which stipulates: “Anyone, public or private, who restricts the free expression of thought in an arbitrary or violent way, will face a prison sentence of three to five years”. Nevertheless, WAN-IFRA expressed concern over the use of the wording “arbitrary or violent”, as these terms are open to interpretations that could limit the potential application of the regulation.

CURBING PRIVATE INVESTMENT IN THE MEDIA

Based on the assumption that increasing the diversity of the media landscape implies a reduction in the number of private media outlets, the Government has approved a law which will have a negative impact on private investment in the media. Individuals who own 6% or more of shares in media outlets will not be permitted to own shares in other companies and will be forced to transfer those assets by 13 July 2012. The Law for Regulation and Control of Market Power (Anti-monopoly Law), which has been approved, is a clear indication of the Government’s wish to do away with media that are financially independent of the state.



Ecuador’s National Assembly

Law for Regulation and Control of Market Power (Anti-monopoly Law)

Status: Approved, awaiting regulation document by the Executive.

Stipulation: Individuals who own 6% or more of shares in media outlets should transfer their assets to other companies by 13 July 2012.

Concerns: 1-. The regulation would be carried out via a committee made up of three members of the Executive and its powers defined by the Presidency. The implementation of the law will be overseen by an individual who is designated by the Executive; 2-. The law will discourage private investment in the media and will result in the closure of some media outlets. In many cases, media that are often in a difficult financial situation, are not the main source of income for a business person who is also involved in other ventures. Many business people would prefer to abandon their media investments rather than jeopardise other interests.

Analysis: In addition to the concerning influence the Executive will have in the regulation and implementation processes of the law, the spirit of the law is based on the erroneous assumption that a business person should not have financial interests in the media and other commercial ventures. There are other types of autonomous and efficient mechanisms that would prevent conflicts of interest between editorial offices and media owners. In addition, it should not be up to the Government to regulate the relationship between editorial offices and these business people.

RESTRICTIONS ON PRESS CONTENT

While this report was being prepared, the President's wish to control the debate in the public sphere became even more apparent. On Thursday 12 January, the Ecuadorian National Assembly approved five proposals presented by the president of the Democracy Code. The proposals entail a number of legal changes reforming the electoral system.

Law for the Reform of the Organic Electoral Law and for Political Organizations of the Republic of Ecuador, Democracy Code:

Status: Approved, takes effect on 4 February 2012

Stipulation: "The communication media shall refrain from any direct or indirect promotion that may influence the public in favour of, or against, any candidate, assertion, electoral option or preference or political theory. This applies to all such information, whether transmitted via special reports or any other types of messages".

Government goal: According to the President, the proposals are aimed at preventing the private media from carrying out their own "electoral propaganda and imposing their own agendas".

Context: Presidential elections will be held in Ecuador in early 2013 and President Rafael Correa will most likely seek reelection.

Concerns: 1-. This will be a blatant restriction on the content of the media;
2-. There will be limits imposed on the type of information citizens may receive about electoral candidates, thus seriously impacting on the public debate prior to an election. 3-. The National Electoral Council (Consejo Nacional Electoral, CNE) will determine what content the media may publish. Its nine members are known to be close to the Government. 4-. Even though the legislation prohibits political advertising and propaganda, it does not impose these restrictions on "matters of national importance". Given the Government's current use of the public media for its own propaganda, it seems likely that the state will not hesitate to use these exceptions to promote its own electoral platform.

Analysis: as the election day approaches, the president of Ecuador will be able to strengthen his control over the debate in the public sphere.

CONCLUSION AND RECOMMENDATIONS

According to the Government's discourse, Ecuador is in urgent need of greater media plurality. The state also maintains that the private media are not reliable sources of information since they are in the service of an oligarchy that only acts to serve its own interests.

WAN-IFRA rejects this view, which is aimed at creating a political enemy and controlling the debate in the public sphere. Journalism in Ecuador, as in many countries, is facing immense challenges and has to overcome great shortcomings. The Government of Ecuador seems to be taking note of these problems, not to resolve them, but in order to carry out a sophisticated strategy of marginalising all voices independent of state power. In response, WAN-IFRA presents the following recommendations:

- All provisions criminalising defamation of public officials, known as “desacato” laws, should be effectively and definitively repealed from Ecuadorian legislation.
- Civil laws with reasonable damage awards provide adequate relief for all proven cases of defamation. Government officials should be expected to have a high degree of tolerance for legitimate criticism of their actions and should not resort to criminal law to punish the press.
- The use of aggravated criminal defamation and demands for disproportionate damages have an intimidating effect on society and are evidence of a regime's anti-democratic character.
- The President should withdraw the defamation complaints and civil lawsuits demanding disproportionate damages filed against the authors of the book *El Gran Hermano*, Emilio Palacio, the brothers Pérez and the *El Universo* corporation.
- Establish institutions that are autonomous from the Government and are tasked with overseeing the public media. Instead of diversifying and pluralising the media landscape in the country, the Government has created a powerful platform via which it can publicise its own agenda.
- Promote more professional, diverse and independent journalism by engaging in a dialogue involving all actors: members of the Government, media, national and international civil society, citizens. The use of the Saturday “cadenas” to deliver combative speeches that stigmatise and intimidate the journalistic community and media owners has done little more than foment animosity and divisions in Ecuadorian society.
- Work towards the creation of efficient and autonomous mechanisms of media regulation in order to prevent abuses by the press. The systematic criminalisation of critical voices via excessively harsh lawsuits that do not conform to international standards or those of the inter-American human rights system, sows fear and encourages self-censorship. It does not guarantee a more professional and responsible journalism. Any media regulation mechanism should be autonomous from the Government.



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