

Reporters Without Borders

<http://www.rsf.org/ecuador-new-media-law-mix-of-good-14-06-2013,44795.html>

Americas - Ecuador

Big change?

New media law – mix of good principles and bad provisions

14 June 2013

After several years of controversy and delays, Ecuador's [Organic Law on Communication](#) begins the final stage of approval by the National Assembly today.

An international NGO that defends freedom of information, Reporters Without Borders contributed to the [debate](#) when the law's first draft was being discussed in 2010 and it would like to update its comments now.

Reporters Without Borders has never questioned the principle of a new media law, one that matches the changes in the national media landscape and catches up with the new laws being adopted by [other countries in the region](#).

One of this law's main flaws is the creation of a new mechanism for regulating the traditional media and their websites. Another is its attempt to influence how the profession of journalism is defined and practiced.

We also deplore the complete lack of any provision for decriminalizing defamation, contrary to the general trend in the rest of the continent. We hope that this omission can be addressed in the near future by means of an amendment to the criminal code.

On the other hand, we think that other provisions conform to international legal standards. They include restrictions on broadcasting hours for the protection of minors, the prohibition of racist and discriminatory content and the prohibition of deliberate calls for violence.

Finally, the provisions governing nationally-produced broadcasting content are broadly similar to those in force in most other countries.

Main principles

The Organic Law on Communication affirms three overarching principles with which, as such, we concur:

- The first (article 18) prohibits any form of censorship by government officials or civil servants.
- The second (formulated in articles 37, 38 and 39) guarantees the right of journalists not to go against their beliefs, the protection of their sources, and their right to professional confidentiality.
- The third (article 112) is the fair distribution of broadcast frequencies. It reserves 34 per cent of frequencies for state broadcasters, 33 per cent for privately-owned broadcasters, and 33 per cent for community broadcasters. Such an allocation constitutes a powerful lever for media pluralism.

Questionable or dangerous provisions

Will these praiseworthy goals be adhered to? Other clauses in the law unfortunately open the way to possible violations of the fundamental rights it is supposed to guarantee.

We think that freedom of information is threatened by article 23, which says: "It is everyone's

right that information of public interest received through the media should be verified, balanced, contextualized and opportune.”

What criteria will be used to determine whether a news report satisfies this provision? Who will have this job? It is not part of the duties that article 46 assigns to the new Council for Media Regulation and Development, of which critics say its five members will be too subservient to the government.

This council will have the power to exact a public apology (and impose fines on repeat offenders) when media fail to accord someone the right to a correction (article 24) or the right of reply (article 25).

Public apologies must not be confused with corrections. And will a person’s insistence that he or she has been defamed be a criteria for determining the truth of the offending report? And will the council function as a court, in parallel to the regular courts? The law does not answer these crucial questions.

Media lynching

By retaining the system of “cadenas” – official messages that all over-the-air TV and radio stations have to broadcast – the law gives the government a powerful [media weapon](#), offensive and defensive, with no provision for an opposing view.

It limits use of this provision to a maximum of five minutes of air-time a week for all public office holders except the president and the National Assembly speaker, who are allowed to use it “when they consider it necessary” (article 77-1).

This clause will not help to resolve the polarization between President Correa and his supporters on the one hand, and certain privately-owned media, whose excesses Reporters Without Borders does not try to minimize. Similarly, Reporters Without Borders regards as highly dangerous an addition to the law proposed by the parliamentarian Maria Augusta Calle that would prohibit media lynching, defined as “a concerted effort, coordinated by several media or carried out by just one, to destroy a person honour or prestige.”

Such an addition would pose a serious obstacle to any revelation of sensitive information and would just encourage the government in its frequent use of the label of “destabilization” against its detractors.

Delicate regulation

Democratization of the broadcast frequencies continues to be a crucial challenge for the law. The frequencies already available or about to be created should be enough for implementation of the rule of a third each of the frequencies for state, private and community media.

Article 121’s ban on any one person or entity from being allocated more than one AM radio frequency, one FM radio frequency and one over-the-air TV frequency could help to guarantee pluralism.

The obligation to relinquish frequencies that will affect some media owners should also affect the state sector, which consists of no fewer than 20 media. The outcome will depend in part on the extent of the prerogatives of the future Media Supervisory Authority, which will hopefully be a regulatory body and not a tool for controlling content.
