

///////// INVESTIGATION LED BY BENOÎT HERVIEU WITH ERIC SAMSON





Carondelet presidential palace

One day a president orders a journalist to shut up, calling him "fatty". On another, the private press cries "dictatorship". Next a top television station fakes news to bolster its claim of election fraud. In return there came bans against broadcasters, rancorous presidential messages and prison sentences slapped on editorialists whose style is belligerent not to say offensive. Ecuador's media climate has turned explosive since Rafael Correa took up quarters at Carondelet Palace in January 2007. Treated with scant respect by a privately-owned press in a near-monopoly position, the progressive young president of robust disposition has turned the news into a political and personal challenge. Personal, because the head of state knows how to exploit, sometimes to the point of abuse, the legal framework of "cadenas" (official messages) to hit back at journalists whom he sees as "corrupt and second-rate". Political, because it is he who is behind a draft communications law, hammered out amidst serious controversy, that will have a second and final reading before the national assembly on 7 June.

ome people predict "Venezuelanstyle" developments on the press freedom front. The often extreme polarisation of the media landscape would support this view. However, the need for its regulation is widely accepted, as much on the part of the private and mostly "tendentious", not to say "opposition" press, as that of the fledgling public press more favourable to the government line. The draft law even produced balanced and serious criticism on both sides and often for similar reasons. Typically in the Latin-American context, where the challenges of communications, pluralism, radio frequency distribution, development of different kinds of media all have resonance with the historic challenge of land reform, Ecuador does perhaps have a real chance to grab hold of in this debate on the future communications law.

MILITARY VESTIGES

As things stand now, the Ecuadoran media in the broadcast sector – are still regulated by the 1974 radio and television law, that goes back to the time of the military dictatorship when General Guillermo Rodríguez Lara imposed strict control over programmes. It is forbidden for example to broadcast news about the competence of the governmental communications authorities, except in the case of a natural disaster or huge accident •

Any message that could compromise state security falls under the censor's axe. Official signed permission is required to broadcast any content that could be deemed too offensive. The law also lays down that all media must broadcast one hour of official programmes, as well as the results of announcements, statements or actions of the head of state and his cabinet. This was the start of the compulsory "cadenas". Offenders against these measures risk bans of up to one week before loss of their frequency. Some journalists even go to prison.

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and even then only under certain conditions.

As in Argentina, where an Audiovisual Service Communication Law (SCA) fortunately replaced in October 2009 the broadcast law inherited from the military regime, the restoration of democracy in Ecuador meant an initial easing of the rules. But this tidying up under the presidency of Sixto Durán Ballén, in 1995, had unforeseen pernicious effects that explain the current problems. "In fact, it was a partial reform affecting radio frequencies", notes César Ricaurte, director of press freedom observatory Fundamedios. "The National Council for Radio and Telecommunications (Conartel) has become the enforcer for politicians who are also media owners, sharing the frequencies between them. Reform therefore fostered a huge press concentration. All this seriously contributed to discrediting the profession as a whole."



Rafael Correa

gest TV stations *GamaTV* and *TC Televisión*, seized in July 2008 after legal proceedings were taken against their owners, the banking family Isaías, for "embezzlement", "fraudulent bankruptcy" and "tax evasion". This episode came just before the vote on the new Constitution, one clause of which provides for a ban from media ownership of any banking group.

"There is therefore massive state investment in the communications field and in particular in television", said a Fundamedios source. "While it is true that there is a private media concentration, Ecuador does not have the humongous groups such as *Televisa* in Mexico and *Clarín* in Argentina. And in fact, since the takeover of *Gama* and *TC*, the state controls three of the major national television channels. "But should one consider public service and state media to be the same thing? This shortcut is used in the private press, but does

PUBLIC SERVICE OR STATE MEDIA?

It was therefore time to usher in a new era,

based on a law appropriate to the times, even if more than 65% of the population still gets its news from television. This fact explains why the Correa administration initially went for a reworking of the media landscape rather than regula-

tion. Things quickly got contentious between the Carondelet and the privately owned press following his investiture in 2007. The need for Rafael Correa, to respond to this challenge provided a pressing argument for launching a public press which had not existed previously. The young president lost no time in pressing ahead, adding Ecuador TV to the broadcast sector and re-launching Radio Nacional, which had been dormant through lack of funds. The news agency Andes, online newspaper El Ciudadano and the daily El Telégrafo - taken over by the state in 1999 to wipe out the debts of the bankrupt publishing group - completed the stable. But along with public media are the "confiscated" (incautados) - up to 12 of them of all kinds. Among them were the Quito's two big-

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not really describe the situation. Giovanna Tassi formerly of the privately owned daily Hoy and the presidential press service at the start of Correa's term, now heads the Radio Nacional. "We do not get any calls from listeners complaining about progovernment propaganda. It is true that we want to work with the radical changes promoted by the Correa government, but we are justifiably ready to break with the political agenda imposed by the privately owned press", she said. Radio Nacional operates with 'blocks' of programmes relating to civil society. We talk about social programmes, we give air time to women's groups, peasant and indigenous communities." In the written press, El Telégrafo works in a similar way "with special supplements on themes such as citizenship, health

The technical arm of Conartel relating to frequencies, the Superintendence of Telecommunications, which is today coming in for a lot of blame, has as its statutory members, a presidential delegate, the education minister, a representative of the armed forces and the big bosses of TV and radio proprietors' organisations.

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• and community life, centred on the citizen and not well known people", said Patricio González, one of the daily's editors.

Far from being absent, says Giovanna Tassi, "criticism of the government is envisaged through counter-proposals and not through condemnation". The implication of these remarks is aimed at the privately owned media.

Highly cautious about the planned law in which he identifies "a possible censorship tool", Rubén Darío Buitrón, head of op-ed pages of the privately owned El Comercio, also has a clear overview about the functioning of the press of which he is a member. "Yes, Rafael Correa can easily vilify a corrupt and mediocre press when we in the private press give ourselves over entirely to competing for news entirely focussed on the president, his facts, gestures and remarks. We have to shoulder our responsibility when our situation should lead us to more independence and sense of perspective." An option not available to the public press? When you watch or read state media such as Ecuador TV and El Telégrafo, it is clear that there is no overt

criticism of the government. However to call them "organs of propaganda" is a groundless accusation because this press does stick to its job description putting out educational programmes and does not show any undue militancy.

Some independence then, but which does not necessarily stave off pressure from above as Patricio González of El Telégrafo recognises. "We managed to follow our own line until last April. But this independence did not suit everyone and in particular top officials and politicians close to Rafael Correa. The president himself has dubbed us "opponents". And this has led to people leaving the paper." Some 20 quit during April 2010. The daily's editor rightly describes himself as "still hanging on".

Inclined to fear the forthcoming law and its consequences, the privately owned press sometimes has a very odd way of showing its distress. Some of its representatives said during our visit that they regretted the "bad taste" photos of Betty Carrillo, president of the commission responsible for drawing up the new communications law. These summery photos, first published in the daily Hoy then picked up by the privately owned Teleamazonas – already suspended several times in 2009 after arousing the presidential ire – have thrown fuel on the fire of the "media war" at the worst possible time. This "war" also stems from the levers of the official media, known in the region as "cadenas" (see box).

"Cadenas" and "links"

Presidential announcements, government advertising or messages to the nation, the "cadenas" have been enshrined in most Latin-American legal systems for a long time and are not generally exploited for personal and unlimited use as practised by Venezuelan President Hugo Chávez. However this example is used as an argument by those opposed to the system in Ecuador, where there are in fact two different kinds. First there are the correctly named "cadenas" which are compulsory for all broadcast media apart from cable. They are broadcast during the week and can be put out by any ministry, administration or public service. Come Saturday are the "enlaces" (links) this time from President Rafael Correa himself. Unlike the "cadenas", airing them is optional. "In theory, because refusing to show them can risk losing the benefit of official advertising. It is an excellent means of applying pressure", they point out at Fundamedios where they are alarmed by their number: 255 "cadenas" and 171 "enlaces" during 2009 alone. Beyond the number of them, the content of the "cadenas" can be strident. "A few crafty and retrograde indigenous chiefs are opposing the revolutionary process". This slogan and the video with it were aired up to five times across the airwaves on 7 May, while the adoption of a water bill (Ley de Aguas) gave rise to controversy. The nationalisation of water, sought by the government against the wishes of the indigenous minority which believes it owns the resource on its own territory, gave rise to a propaganda onslaught against "enemies" and raising the spectre of a rising against the state. While popular discontent - including on the part of the indigenous community - led to the overthrow of three presidents (Abdalá Bucaram, Jamil Mahuad and Lúcio Gutiérrez) in less than ten years, the role of television is, yet again, unlikely to ease tensions on the eve of the vote on the communications law. Worse it feeds the fear that the state may definitively act as judge and jury on the media landscape. Both actor and regulator "with 17 media to hand, transformed into an oligopoly, when the intention on the contrary was to democratise the press", notes one observer. And on top of it all, there is widespread self-censorship against a background of increasing physical assaults on journalists, depending on the media they work for.



Betty Carrillo (foto: El Comercio)

COMPENSATION EXPECTED

This worry has also been expressed within the political class and not necessarily in the ranks of those most hostile to the Correa administration. Several of those we spoke to referred to divisions within the Alianza País coalition. On one side, the hardliners "for whom the press is an obstacle •

● to the process of change", embodied at the presidency by communications secretary Fernando Alvarado and legal adviser Alexis Mera of the Carondelet. Confronting them is a "genuinely reformist tendency that wants to democratise the media landscape", represented by the speaker of the national assembly, Fernando Cordero, according to César Ricaurte, at Fundamedios.

César Montúfar, moderate opposition parliamentarian, head of the democratic national consultation, hopes that "the law will provide the occasion for a wide agreement and a compromise ruling out any direct media censorship by the future communications council responsible for applying the law is going in this direction". He however fears that the debate will be diluted "in a law that is too broad and risks inconsistency, confusing media regulation with supervision of the profession". "It is no longer a question of a law on radio and television but a global communications law that wants to regulate everything. A number of points are problematic and the guarantee of a fair law will involve significant compensations". The parliamentarian cites, among others, the distribution of official advertising "that should not be discretionary as it is now", regulation including that of the "cadenas" and "enlaces", and finally decriminalisation of press offences, of which he is less hopeful.

At Fundamedios, César Ricaurte adds to the grievances to be put right "fair redistribution of frequencies which should already have been done. Because the government has not taken into account international experts' reports handed to President Correa". This document, dated 18 May 2009, of which we have received a copy, revealed favouritism and corruption within Conartel and its Superintendence. Fundamedios, on 22 February this year, put in a request to the telecommunications ministry as the Law of Transparency and Access

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to Public Information (LOTAIP) entitles it to do, for documents relating to the apparently irregular awarding of frequencies. This request has received no reply, despite a judicial injunction.

HOW FAR SHOULD REGULATION GO?

Even though she considers the draft law "perfectible" and is in favour of its goal of breaking up media concentration, Giovanna Tassi, of Radio







Cácar Mantúfar

Nacional, sees two major stumbling blocks. "The obligation included in the law requiring a university degree to work as a journalist is in complete contradiction with the plan to democratise the media landscape and the spirit of the citizen. Representatives and contributors to community media do not have access to degrees. This professionalisation could lead to exclusion, obstructing a genuinely pluralist press and thus press freedom itself'. An opinion that combines with other arguments for Vicente Ordoñez, president of the National Union of Journalists (UNP) for whom "compulsory professionalisation of journalism will not address the issue of their responsibility, training and fundamental principles they should espouse. There is confusion here between professionalisation and compulsory affiliation, which is an administrative question." Within the privately owned press, one fears that this could be used to exert "control over the profession".

Criticisms are also being made in the same terms about the communications council that will have responsibility for applying the law once it has been promulgated. "Its power has yet to be determined and its composition a priori, including politicians and academics, does not sufficiently take into account the voice of journalists and representatives of different media", regrets Giovanna Tassi.

The crucial point is one of regulation. Inter-American jurisprudence to which Ecuador is subject as a member of the Organisation of American States (OAS), lays down that a state or an authority cannot directly interfere with media content. The Inter-American Convention on Human Rights for its part says that restrictions on freedom of expression should remain an exception.

In fact the law bans very little content. Nothing but the very usual sanctioning of shocking, racist or discriminatory remarks towards the traditionally vulnerable and oppressed (children, the elderly, women, handicapped, indigenous people, Afro-Ecuadorians...) However, the law rings alarm bells when it seeks to prevent "transmission of news based on suppositions that could provoke social upheaval and disorder". "This measure is vague and would allow any number of abuses. What

the law rings alarm bells when it seeks to prevent "transmission of news based on suppositions that could provoke social upheaval and disorder »

• is likely to provoke panic or upheaval?" wonders César Ricaurte, de Fundamedios. Detractors of the new law are already concerned it will lead to further self-censorship, all the more so since a media can be banned in the event of offence.

Financial penalties, which can be heavy, can be imposed in cases such as publication or dissemination through the press of letters, notes or comments that are not signed by their author. Journalists can use pseudonyms but only if they "correspond to someone whose identity can be determined". This point clearly worries those working for the privately owned press who are at loggerheads with the Carondelet. But as parliamentarian César Montúfar notes, "The emergence of the online press makes its application even more complicated". A battle of amendments is in the offing.

Draft law: the principle measuress

Presented to the (single chamber) National Assembly on 21 November 2009, the communications law sought by President Rafael Correa will go before it from 7 June 2010. Its final reading has been postponed several times by the closely-fought battle over its wording. It was the subject in December 2009, of an evaluation by the Inter-American Commission on Human Rights (IACHR), at the request of the government. Members of parliament reached a consensus over the same month to rule out any direct media censorship by the communications council that will be created by the new law. The principal provisions – in its preliminary version - are the following:

- "The exercise of rights to communication will not be subjected to preventive censorship, except in cases laid down by the Constitution, international treaties in force and the law, along with subsequent responsibility for violation of these rights (Article 11)
- "Editorship and preparation of news should be solely the responsibility of professional journalists or social communicators with university degrees. These requirements apply to private, public and community media." (Article 47)
- Types of penalties (Article 97)
- a) Written warning for print media, published in the editorial section of their own media on the biggest circulation day. For broadcast media, diffusion at a time dictated by the authority imposing the sanction.
- b) Fine to a maximum threshold equal to 50 times the average salary or the equivalent of 20% of bills paid by the media in the three previous months.
- c) Suspension of the media for up to 30 days.
- d) Closure of the media.
- Fines will be applied for (Article 101)
- * Refusing the right to reply or correction
- * Diffusion or publication of letters, notes and comments that do not bear the signature or identification of their authors, except for comments by journalists using a pseudonym that corresponds to a person whose identity can be determined.
- * Refusal by radio stations to broadcast musical content in the Spanish language in their programmes and spaces.

CONCLUSIONS AND RECOMMENDA-TIONS

The controversy and anxieties apparent on the eve of the adoption of the communications law are linked as much to the strained relations between a section of the press and the executive as to the actual content of the law. This was evident in other countries in the region like Argentina, where a major campaign was mounted by civil society during the adoption on the law on broadcast services. Another even more flagrant example was in Bolivia, where hostility from one quarter of a dominant private press towards President Evo Morales partly justified the development of public and community media and where a similar communications law may soon be passed.

Reporters Without Borders approves the principle of legislation ensuring a better balance between different kinds of media and giving a higher profile to certain sectors of society. This requirement however should not lead to confusion between media regulation and coercive control of the activity of journalist and publications. For this reason we make the following recommendations:

- The compromise secured in the National Assembly in December 2009 ruling out censorship or seizure of a media by the proposed communications council should remain a precondition of the adoption of the law. We also hope that financial penalties alone will be retained in the definitive version of the law.
- The demands of pluralism and fairness between the media will require an overhaul of the system for awarding frequencies. The draft law represents real progress in this regard by reserving a priori 33% for public media, 33% for privately owned media and 33% for community media. Its applicability also implies a fair share of the benefit of advertising, without ideological assumptions, distributed in line with the resources of each media.
- In relation to the regulation of content, we consider as too imprecise the reference to "news based on suppositions that could provoke social upheaval and disorder", which could moreover entail the suspension or even closure of a media. This measure is likely to produce self-censorship. "Accurate news" cannot be governed by law.
- The "cadenas" and "enlaces" should not escape regulation limiting their number and placing strict conditions on the compulsory airing of the former.
- Only genuinely dangerous content, paedophile or explicitly inciting violence, racism or discrimination of any kind should enter the criminal domain. That is why we appeal for decriminalisation of offences of opinion defamation and insult while hoping that civil fines, imposed

on individual journalists, should take into account their solvency.

- Finally, we express a last reservation on professionalisation as presented in the draft law. While the training of journalists represents a real and legitimate challenge, the lack of a university degree among journalists working on news should not ban them from doing their job. Journalism is not a matter of qualifications, but of competence.

Draft law (continued)

- Punishment by suspension (or even closure) (Article 102)

Carrying out or encouraging acts attacking the constitutional order (including content offensive towards vulnerable people) to internal and external state security. "*Transmission of news likely to provoke social upheaval and disorder*" relate to the two areas. .

- The National Communication and Information Council "and its territorial delegates are alone competent to take cognizance of and respond to requests linked to the violation of the current law (Article 95) is made up of (Article 73): a delegate from the education ministry, a delegate from the culture ministry [the presence of two representative from the executive is the main stumbling block between members of parliament – editor's note]; a representative of the faculties or schools of communication recognised by the competent body and elected by the National Electoral Council: three representatives of civil society elected by the council of citizenship participation and social control."



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