



INVESTIGATION ON ECUADOR

MEDIA VOLATILITY AND THE RISKY REGULATION

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**REPORTERS
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FOR PRESS FREEDOM

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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



Fundamedios



César Montúfar

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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

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 ➤

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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