



International Press Institute

Press Freedom Report: Ecuador 2013

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Introduction

The present report by the International Press Institute (IPI) reviews the press freedom situation in Ecuador since IPI released its Press Freedom Mission Report in Oct. 2012.¹ The 2012 report included observations made by an IPI delegation that traveled to Ecuador in May of the same year. The report found that the country's private media were being targeted by various means, including verbal attacks by the government, the passage of unfavorable legislation, and acts of intimidation and physical violence.

Before President Rafael Correa assumed office, Ecuador had witnessed a decade of political unrest in which three presidents were overthrown. Correa, running on a platform of a "citizen revolution" and "21st century socialism," won the 2006 presidential election after defeating business magnate Álvaro Noboa. The new government sought to address the issues of Ecuador's past by tackling a status quo that was often seen as out of touch with the people.

In line with his campaign's rhetoric, President Correa has manifested outright hostility toward elements of the "establishment" since he took office. Correa has viewed the media as one such element and has devised his policies and attitudes accordingly. He found traction for his stance in the recent history between the media and the general population. During the late 1990s, Ecuador saw the eruption of a banking crisis that severely affected the country's citizens. At that time, media outlets—many of which were owned by bankers—were widely seen as serving business interests over those of most Ecuadorians.

With a strong agenda and considerable support, President Correa has successfully targeted the private media since winning the presidency in 2006 and re-election in 2013. The past several years have been characterized by a battle between the government and the press, one which has radicalized over time and taken a toll on press freedom.

IPI has closely monitored the press freedom situation in Ecuador since publishing the 2012 Mission Report. The present report explains why IPI believes the threat to press freedom in Ecuador has not abated. Indeed, strong evidence suggests that the media environment not only remains unimproved, but also that it may have even deteriorated.

Part I of the report analyzes several pieces of legislation that have a high potential of being detrimental to press freedom. The discussion includes an overview and in-depth analysis of the recently-passed Law on Communications. It also elaborates on other legislative proposals such as the draft Law on Telecommunications and a reform to the Penal Code. Part II explains how hostility against the media has continued over the past several months, with journalists being subjected to numerous incidents, which include verbal attacks and abuse by public officials as well as acts of violence and intimidation. It also elaborates on an effort by the Ecuadorian government to undermine the work of the Special Rapporteurship for Freedom of Expression of the Organization of American States (OAS), and international and domestic NGOs. Part III concludes the report by explaining

¹ <http://www.freemedia.at/home/singleview/article/ipi-releases-ecuador-mission-report.html>



why the aforementioned developments are so detrimental to press freedom. Part IV offers a set of recommendations to government officials.

Unfavorable Legislation

In spite of strong accusations that it already abuses the judicial system to target the press, the Correa government continued to support the passage of laws that observers believe could further erode press freedom. Members of the media and press freedom advocates are deeply concerned that such proposals—through their numerous problematic provisions—could grant government officials greater latitude to target journalists and control the flow of information.

“A whole legal system is coming. With the new laws, the constant attacks against the press will turn into state-sanctioned prosecutions,” one member of the National Assembly had warned IPI delegates during IPI’s 2012 Press Freedom Mission to Ecuador.

The Correa administration and its supporters have argued that the legal changes are needed to address the problem of corporate control of the media, which in their view constitutes a threat to democracy.

Within a press freedom context, the following sections examine the new Law on Communications (LOC)—including an analysis of its most troublesome provisions; the proposed Law on Telecommunications; and a current proposal to reform to the Ecuadorian Penal Code.

Law on Communications (LOC)

The LOC was first proposed in 2009. Due to the controversy it generated, the proposal went through several rounds of debates in the National Assembly and modifications until the Assembly finally approved it in 2013. The bill was passed on June 14, with 108 of the 137 Assembly members voting in favor.² On June 25, the new law came into effect after being ratified by President Correa the same day.³

According to the text, the LOC’s purpose is to “develop, protect and regulate, in the administrative arena, the exercise of constitutionally established communication rights.”⁴

IPI is skeptical about any such purpose and worries that the real motive behind the LOC is the creation of another set of tools to limit the rights of the press. Recent Ecuadorian history has shown a high degree of polarization between public officials and the media. President Correa and other Ecuadorian officials have repeatedly—often successfully—used any available legal means or venues to target journalists or outlets that criticize or scrutinize them.

² http://ifex.org/ecuador/2013/06/17/aprueba_ley/

³ http://www.plenglish.com/index.php?option=com_content&task=view&id=1547551&Itemid=1

⁴ <http://library.constantcontact.com/download/get/file/1107361599700-202/Ley+de+Com.pdf>



Legislators in Ecuador have been accused of disregarding the opinion of the media and the opposition in drafting the LOC. LOC supporters have responded by calling it one of the most debated bills in the history of the country.⁵ A number of members of the opposition questioned the negotiations' good faith, with Assemblyman Luis Fernando Torres stating that the LOC "was discussed, not democratically debated."⁶

IPI has repeatedly urged the Ecuadorian government to reconsider the bill altogether, noting that any major piece of legislation that could potentially be detrimental to press freedom needs to take the opinion of various sides into account, especially that of the media.

Problematic Provisions

Coupled with the lack of media and opposition input, the LOC's final text raises serious concerns. IPI finds numerous provisions that pose a threat to press freedom through means that include: the erosion of the right to freedom of expression, particularly in the form of journalism; the imposition of statutory regulation over areas that should be left to self-regulation; excessive regulation over content; and the creation of powerful statutory regulatory bodies whose independence is already being questioned.

The LOC appears to erode the right to freedom of expression through a number of ways. Several articles limit the *sources* of such a right to the national context, ignoring international instruments, such as the American Convention on Human Rights, which are binding upon Ecuador.

- Article 1 states that one of the purposes of the LOC is to "protect," the exercise of *constitutionally* protected communication rights. Article 42 states that all individuals have the right to freedom of communication as established by the *LOC* and the *constitution*. Article 46 states that one of the objectives of the regulatory council created by the LOC is to ensure the "full exercise of communication rights recognized by the *Constitution*, [*the LOC*] and other norms under the *Ecuadorian* legal order." [emphasis added]

The right to freedom of expression is also affected by the LOC's definition of it; a definition that ignores—and is noticeably narrower than—the one seen in international instruments, such as the American Convention.

- Article 13 of American Convention states that the right to freedom of expression includes the "freedom to *seek, receive, and impart information and ideas of all kinds, regardless of frontiers*, either orally in writing, in print, in the form of art, or through *any other* medium of one's choice."⁷ [emphasis added]

⁵ <http://tiempo.infonews.com/2013/06/15/mundo-103818-la-asamblea-ecuatoriana-aprobo-una-ley-integral-de-comunicacion.php>

⁶ <http://www.eluniverso.com/noticias/2013/06/06/nota/996106/nuevos-aportes-se-hacen-proyecto-ley-medios>

⁷ <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>



- LOC Article 17, on the other hand, defines the right to freedom of expression as “the right of individuals to express themselves and their opinions freely, through any form and medium.” Article 19—a press freedom NGO specialized in analyzing legal texts—believes the LOC definition is inconsistent with the American Convention, since it fails to expressly state that freedom of expression: applies regardless of frontiers; and includes the right to *seek and receive information and ideas of all kinds*.⁸

The LOC also sets real and troublesome obstacles to the *exercise* of the right to freedom of expression in the form of media *and* journalistic work.

- Article 33 recognizes that *all* individuals possess the right to form media outlets “through equal opportunities and conditions,” but paradoxically denies the full exercise of that right to certain citizens, such as: executives, shareholders, or legal representatives at banking or financial institutions.
- Article 111 states that those who were members of a radio or television frequency, which had previously been reverted to the state for reasons determined by the LOC, will not be able to request a license.
- Article 42 states that, with the exception of opinion or expert columns or programs, the exercise of journalistic activities can only be conducted by *professional* journalists.
- Article 77 unnecessarily expands the constitutionally granted power of the presidency to suspend media freedoms during a state of emergency. The presidency may now also suspend those freedoms under considerations related to the “Rule of Law,” an often broad and subjective notion.

With regard to provisions stating that only “professional journalists” are allowed to conduct “journalistic activities,” IPI is concerned that any authorities empowered to define who is a professional journalist may do so on the basis of principles and ideas that are not sufficiently grounded in the fundamental right to press freedom. Frank La Rue, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, expressed profound concern over this specific requirement after the LOC was passed. La Rue stated that “according to international human rights principles and Inter-American Court of Human Rights jurisprudence, journalism may be practiced without any certification, professional association membership, or registration with the state. That allows journalism to be developed in a truly independent and free manner.”⁹

IPI is also concerned with the LOC’s constant treatment of the right of communication as a *good* instead of a *right*.

⁸ <http://www.article19.org/data/files/medialibrary/3390/12-07-26-LA-ecuador.pdf>

⁹ <http://www.lahora.com.ec/frontEnd/images/objetos/relatoria.pdf>



- Article 1 states that the *purpose* of the LOC is to protect and *regulate* the exercise of constitutionally protected communication rights. Article 71 states that “*communication* conducted through the media is a public good.” [emphasis added]

The treatment of the right of communication as a state good is stressed as a major problem by several Ecuadorian media sectors. Marcelo Larrea, president of the Ecuadorian National Federation of Journalists (FENAPE, according to its Spanish Acronym), believes the LOC “not only makes no contribution to information and communication rights, but does the opposite, it reduces those rights to a public good.”¹⁰ He added: “The LOC is a historical regression.”¹¹

César Montúfar, an opposition member of the National Assembly who represents the province of Pichincha, believes the *motives* behind the transformation of the right of communication into a public good to be highly suspect.¹² Montúfar stated that the new law not only does not guarantee such a fundamental right, but is also really meant to protect the “honor” of authorities and promote certain public policies under the umbrella of regulating a public *service* or *good*. Montúfar believes the LOC will thus turn into a shield of protection for public officials and their agendas.

The LOC’s threat to press freedom also stems from the imposition of statutory regulation over areas that IPI believes are best left to self-regulation by the media profession, including those dealing with ethical norms.

- Article 9 states that “public, private, and community” media *must* all devise *codes of ethics* compatible with Article 10, which calls for subjective aims such as “protecting dignity,” “protecting reputation,” “preventing defamation,” and providing “accurate” information.” Thus, Articles 9 and 10 in essence pave the way for a *statutory* code of ethics, instead of a media devised one.
- Article 90 also delves into ethics, under the aim of “transparency,” and requires media outlets to “print, in every corresponding piece, the number of total copies placed in circulation.” Should the given number of circulated copies be inaccurate, the respective outlet must publish a correction. Individuals who consider they have been detrimentally affected by inaccurate reporting as to the number of copies in circulation may seek redress through the corresponding *legal means*.

IPI shares the concern of several international organizations and media outlets that deem the imposition of a code of ethics an intrusion of state power. The Andean Group for Freedom of Information (GALI, according to its Spanish acronym) referred to the LOC’s code of ethics as “a violation of the principle that a state cannot impose what it believes is

¹⁰http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=199230&umt=ley_comunicacion_isabel_ramos_defiende_avance_democratico_y_marcelo_larrea_critica_vulneracion_a_verdad_audio

¹¹<http://www.eldiario.ec/noticias-manabi-ecuador/270067-ley-no-democratiza-la-comunicacion-dice-presidente-de-la-fenape/>

¹²<http://www.aedep.org.ec/docs/cesarmontufarLOCILEGITIMIDAD.pdf>



ethical conduct.”¹³ The newspaper *Hoy* believes that one of the consequences of a statutory code of ethics will be that “authorities will even get involved in the making of headlines.” *Hoy* also stated that “metaphors and play on words are gone...mechanical and rapid journalism has now been decreed.”¹⁴

Aside professional ethics, the LOC also intrudes into areas of human resource operations, such as workforce composition and employee compensation, provisions that IPI believes should be left to overall employment legislation rather than being included in a law specifically regulating media outlets.

- Article 43 states that media outlets whose coverage reached 30% of the country must meet demographic quotas in employment, according to criteria that achieve: equity and parity between men and women, interculturalism, equal opportunities for the disabled and intergenerational participation. While IPI believes that diversity is of utmost importance, it also deems it important that the measures to achieve it be left to self-regulation.
- Article 44 states that media employees, aside from other benefits established by law, are to be compensated according to salary guidelines determined by the “competent” authority.

Perhaps the most troubling aspect of the LOC’s threat to press freedom comes in the form of regulation over the content that media outlets disseminate. The LOC’s control over content takes place in several forms, which include a requirement that media outlets publish certain information, when several often-subjective criteria—such as “accurate,” “verified,” “truthful”—are not met.

- Article 23 states that each individual has a “right of correction” when a media outlet disseminates information about him or her that is “inaccurate,” “unverified,” or “false.” In such instances the outlet must publish, at no cost, the appropriate rectification for the wrongful information. It is conceivable that the “corrections” may have to be published often, since the “inaccurate,” “unverified,” and “false” categories are vague enough to be broadly applied.
- Article 24 grants each individual the “right of reply” when content disseminated by a media outlet about him or her is “inaccurate” or “unbalanced,” again, all terms susceptible to broad interpretation.

The latter provisions reflect a theme present throughout the LOC: the diminution in the *breadth* of content about individuals that may now be disseminated. Perhaps even more troubling, the widely accepted notion that public officials and candidates running for office must tolerate a greater degree of scrutiny is missing.

- Article 26 prohibits the dissemination by the media of content that constitutes *linchamiento mediático*, or “character assassination,” which is defined as an attack

¹³ <http://library.constantcontact.com/download/get/file/1107361599700-208/Carta+GALI+Rafael+Correa.pdf>

¹⁴ <http://www.hoy.com.ec/noticias-ecuador/el-periodismo-secuestrado-por-el-poder-583679.html>



on the “prestige” or “credibility” of an individual. The article’s use of vague terms such as “prestige” and “credibility” raises concern; it has the potential of giving public officials and figures a powerful tool with which to target journalists who scrutinize or criticize their work or policies.

The LOC’s use of similarly vague—and/or highly subjective—terms to regulate content is repeated throughout the LOC’s text, often through measures that impose an apparently extensive set of liabilities, creating wider latitude to pursue legal actions against journalists.

- Article 20 establishes subsequent *civil, administrative and penal liability* for members of the media who, “*harm human rights or state security.*” [emphasis added] The terms “human rights” and “state security” are both problematic in that the former is broad and the latter is both broad and subjective, which coupled with the possibility of “civil, administrative, and penal liability” represents a form of intimidation for members of the press.
- Article 22 states that all individuals have the right that “publicly relevant information disseminated by the media” be: “verified,” “contrasted,” “contextualized” and “timely,” all of which are broadly stated conditions. The term “publicly relevant” is so broad that it is likely that such conditions could be triggered on a frequent basis. Thus, liability will hinge on whether or not information is “verified, contrasted, contextualized and timely,” a determination which is problematic in that it is being made by the state.
- An analysis by Article 19 elucidates how LOC liability further restricts content, noting that LOC Articles 30(2) and [31], as well as other provisions within the LOC intended to protect the right of privacy, restrict the publishing of private information that could be sufficiently important to a debate of public interest. Under the LOC, journalists do not appear to be subject to a public interest defense when such information is published.
- Article 30(1) further restricts the type of content that may disseminated, prohibiting—and imposing liability for—the publishing of information ambiguously defined as “protected by a reserve clause previously established by law.”

The use of broad terms such as “verified,” “accurate,” “timely,” and “contextualized,” is also present at a more basic and fundamental level; granting the LOC further room to govern content—to the detriment of the media’s independence.

- Article 80 establishes a set of *objectives* for “public” media, further predetermining the content to be disseminated. Included in the objectives are the following: producing and diffusing content that promotes the recognition of human rights; offering information of public relevance that is “accurate,” “verified,” “timely,” and “contextualized;” creating content that promotes activities that are “productive” for the country.



- Article 112, for example, allows for a radio outlet’s license to be *terminated* when the outlet has not abided by the objectives under which it was granted a license.

IPI believes the consequences of the aforementioned and other provisions are not limited to an erosion of the media’s ability to produce independent content and an increase in potential liability for journalists. Indeed, also now expanded is the arena under which the new statutory regulatory bodies can operate. Actions taken by those bodies could be easily—and arbitrarily—prompted by findings that content falls under a subjective set of categories.

Human Rights Watch (HRW) sees the broadly stated requirements that information be “accurate, timely, and verified” as paving a way for censorship. On June 17, it issued a press release stating that such requirements are “directly at odds with the Declaration of Principles on Freedom of Expression, which states that [p]rior conditioning of expressions, such a truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments. Giving the government the power to decide whether or not information is ‘truthful’ will open the door to unlawful censorship.” HRW’s statement added: “This is an especially alarming provision in a country where the president has a track record of using his powers to target critics in the press”.¹⁵

The LOC’s regulation—or control—of content often takes place in more overt ways, as it increases the types of information that media outlets are *required* to diffuse.

- Article 72 regulates media content in regard to election coverage by requiring the media to “ensure that coverage of political movements and individuals running for office will be done in an *equal* manner.” [emphasis added]
- Articles 74(1) states that open signal audiovisual media outlets are obligated to transmit *cadena*s, which allow the president to interrupt regular programming—including on private channels—to transmit official messages when he deems these to be in the “general interest,” a power President Correa has exercised frequently to verbally attack the media.
- Article 74(3) requires outlets to dedicate one hour of their daily programming to broadly defined “official programs in the areas of education, culture, health, or other areas according to the rights *developed by the ministries or departments of competence* in those areas.” [emphasis added]
- Article 75 regulates “subscription” audio and video content by stating that such media is obligated to transmit messages the president, or other authorities, deem as falling within their “state of emergency” constitutional powers.

Actual content is also controlled through an extensive—and seemingly intrusive—use of hard quotas, as to both *general* and *advertisement* content.

¹⁵ <http://www.hrw.org/news/2013/06/17/ecuador-end-assault-free-speech>



- Article 96 delves into advertisement, requiring national *private* media outlets to invest *at least 10%* of their advertisement budget to target local or regional audiences.
- Article 98 further regulates advertisement and requires that such content “be produced by Ecuadorian entities, whose shares belong to a majority of Ecuadorian nationals or legal residents, and whose pay roster is composed of *at least 80%* Ecuadorians or legal residents.”
- Article 92 regulates advertisement content at a more basic level. It states that the “commercial interrelations between sponsors, advertisement agencies, social media and other actors” shall be governed under the LOC, with the *purpose* of achieving the often-subjective goals of: establishing parameters of “equity,” “respect,” and “social responsibility,” as well as “preventing” forms of “monopoly” or “oligarchy” in the area of advertisement.
- Article 97 controls *overall* content and states that Ecuadorian audiovisual outlets must dedicate *at least 60%* of their regular programming to content of national origin. Article 99 regulates content on the production end and states that one producer *cannot* obtain more than 25% of a television channel’s daily or acquisitions quota. Article 102 requires television broadcasters to annually *purchase and transmit* feature films of *national* and *accredited* origin.
- Article 103 regulates radio content by requiring stations that transmit musical content to dedicate *at least 50%* of their programming to works produced, composed, or executed in Ecuador.

Ecuadorian press freedom is threatened by more than the aforementioned problems of erosion of the right to freedom of expression, statutory regulation and control over content. One of IPI’s greatest concerns with the LOC is the creation of the Council for the Regulation and the Development of Information and Communication, which will oversee and implement the LOC.

From the outset of its establishment under the LOC, the Council is endowed with fundamental and extensive powers. Several of those powers are particularly problematic, considering the *non-judicial* and *non-elected* nature of the Council, whose membership also appears to exclude representatives from the private media.

- Article 45 establishes the “social media system,” whose institutions possess *policy* and regulatory powers. In his analysis of the LOC, opposition National Assemblyman César Montúfar described such stipulation as one that “grants the Council quasi-ministerial powers.”

As previously discussed, the LOC heavily regulates content, which the Council—as the LOC’s main regulatory body—enjoys by extension. Yet the LOC also explicitly grants the Council its own regulatory control over content, for example:



- Article 49(3-4) grants the Council the powers to: *determine* mechanisms that allow for “variety” in programming; and regulate *content* classification and time slots.

An additional threat to press freedom comes in the form of the Council’s extensive power—the execution of which does not appear to be subject to judicial review—to regulate access to the exercise of the right to communication.

- Article 49(1-2) grants the Council an extensive set of responsibilities, which includes: *establishing* mechanisms for the *exercise* of *rights* of communication and information by users; and regulating *universal access* to communication and information.
- Article 49(8) states that the Council has the power to prepare *binding* reports for the *adjudication* or *authorization* of licenses to “open” television and radio stations, and subscription audio and video systems.
- Article 49(10) states that the Council also has the power to prepare reports for the authorities to proceed with the *termination* of radio concessions in cases of “non-compliance” with LOC objectives. The latter power raises serious concern given the breadth and vagueness of the objectives—which for public media include: producing and diffusing content that promotes the recognition of “human rights;” offering information of public relevance that is “accurate,” “verified,” “timely,” and “contextualized;” and creating content that promotes activities that are “productive” for the country.
- The power to find a cause for *termination* of licenses is not limited to “non-compliance with LOC objectives.” Under Article 112, for example, *valid* radio licenses may be terminated on the basis of vaguely defined infractions, such as: “monopolistic practices, not being eligible for renewal, and “other reasons under the law.” While Article 112 makes reference to “due process” as to terminations, it fails to mention any form of judicial review.
- A determination by the Council that a license ought to be terminated has the potential to *permanently* restrict access to the exercise of the right to communication. According to Article 111, individuals are ineligible to obtain a television or radio license if they have previously lost a license as a result of LOC violations. Again, the finding that an applicant is ineligible for the license does not appear to be subject to judicial review.

The LOC’s creation of statutory regulatory bodies with broad and intrusive powers is not limited to the Council. It also creates the Department of Information and Communication.

- Article 55 describes the Department as an organism—with *monitoring, auditing, intervention, control, and sanction powers*—with ample ability “to see that the rules in the regulation of information and communication are complied with.” [emphasis added]



- Article 56 enumerates the Department's powers, which include: *monitoring*, *supervising*, and *ordering* compliance as to legal and regulatory provisions in the area of communication; *responding* to, *investigating*, and *resolving* complaints regarding breaches of communication *rights*; *requiring* citizens, institutions and actors involved in the field of communications to disclose *information about themselves* when necessary to carry out the Department's numerous responsibilities; *enforcing* sanctions established within the framework of the LOC and other laws.
- The Department is also endowed with the ability to control content, for example, under Article 69 it has the power to "suspend advertisement of a *deceitful* nature," "deceitful" being yet another term subject to arbitrary interpretation. [emphasis added]
- Unlike in the case of the Council, the LOC makes reference to what appears to be a form of judicial review after enumerating the Department's responsibilities—just not in a very reassuring manner. Article 59 states that the "Department's resolutions are *binding* and their content *must* be complied with within a resolution's established timeframe." It adds: "When the resolution is judicially challenged, it *remains* in force until a judge *permanently* suspends or revokes it." [emphasis added]

The LOC's text raises additional concerns in regard to both the Council and the Department of Information and Communication, apart from the excessive powers of the two bodies. The potential for abuse and/or arbitrary action by the two bodies appears to be enhanced by serious questions as to their independence.

- Article 48 states that a representative of the *President* of Ecuador will be part of the five-member Council, and that he or she will *preside* over it. The other members will be representatives from a set of civil society organizations whose commitment to media freedom has already raised concern. Diego Cornejo, Executive Director of AEDP, stated that "the other organizations represented in the Council are part, and under the influence, of the presidency, who often has a say to how their members are selected."
- Rather than through independent means, Article 53 states that the Council's funding will be provided for by the *state's* general budget.
- Article 55 states that the Head of the Department of Information and Communication will be appointed from a list of candidates submitted by the *President*.

The Council's excessive powers and possible lack of independence from government are exacerbated by an apparent lack of oversight. As previously illustrated, there are numerous instances in which actions by the Council do not appear to be subject to judicial review. The Council in essence also regulates its own operation, a situation that adds to the concern that it will be susceptible to acting arbitrarily.



- Article 49 grants the Council powers that include: *creating* the norms under which it operates; *ensuring* that those norms are followed; and *ensuring* that its responsibilities are carried out. Article 49 makes no reference to third-party oversight or input when the Council acts under those powers.
- Perhaps the only attempt to hold the Council accountable comes in the form of removal of its members. Article 51 states that it is the Council *itself* that determines when members should be removed, through a vote of *at least three other* members. Article 52 lists the causes for removal, none of which includes a breach of, or disregard for, the rights of communication of individuals.

Overall Threat to Press Freedom

The LOC's threat to press freedom comes in several ways, each occurring to a major and alarming degree, which taken together raise major concern.

First, it erodes the right to freedom of expression by disregarding the right as it exists in international instruments, such as the American Convention. It defines the right in a narrow and constricted way. Several provisions undermine freedom of expression as exercised in the form of journalism and other media output. The LOC also appears to treat the right of communication as a good or service, instead of a right.

Second, the LOC gives the state control over areas that should be left to self-regulation. The LOC in essence devises a code of ethics and other ethical norms. It also intrudes into areas such as employee compensation, and devises demographic quotas for hiring criteria.

Third, the LOC regulates media content to an alarming degree. Media outlets are required to publish "corrections" and "replies" in the event that the information they publish falls within a set of broadly stated criteria. The LOC also *prohibits* the diffusion of information falling into numerous categories—which are often defined vaguely and prone to subjective interpretations. Numerous provisions regulate content through required quotas affecting: the type of programming outlets can air; the origin of the content's production; and the percentage of advertising budget that must be spent on local or regional audiences.

Fourth, the LOC creates *statutory* regulatory bodies with excessive powers. The Council is established with what appear to be quasi-ministerial and policy making powers. It has the potential to heavily control content; for example, it is able to classify content, and regulate "variety" and time slots as to programming. The Council also serves as the gateway that grants or denies access to the exercise of the right of communication. Alarming, a large number—if not the great majority—of the Council's actions or determinations do not appear to be subject to judicial review.

The Department of Information is yet another strong regulatory body created by the LOC. Its extensive powers include ensuring compliance with the LOC is complied as well as in essence *adjudicating* on complaints relating to the breach of communication rights. Its



determinations are binding and difficult to overturn. Similarly to the Council, the Department also has strong regulatory power over content.

The LOC leaves major questions as to how *independent* the Department and the Council will be, which is problematic given the government's willingness to use legislation to target critics in the press. The Council's and Department's membership selection process appears to be highly susceptible to political influence or tampering. The Council's source of funding also raises similar concerns.

The combination of excessive powers and lack of guarantees as to their independence make the two new regulatory bodies prone to undertaking abusive and/or arbitrary actions against media outlets or journalists. Safeguards to prevent such abuse are alarmingly absent from the LOC. Numerous actions and determinations by the Council do not appear to be subject to judicial review. The lack of oversight may even be explicitly recognized by the LOC, which states that the Council is responsible for creating its own norms of operation and monitoring that those norms are being followed.

The LOC's erosion of the right of communication, the heavy regulation over content, the loss of media self-regulation it, and the creation of questionable regulatory bodies with excessive powers raise particular concern in the Ecuadorian context. Those problems exacerbate the polarization between the media and government officials, since the latter often use any legal means at their disposal to punish members of the press who criticize or scrutinize them. The consequence of all the above appears to be a potentially severe toll on press freedom.

Law on Telecommunications (under discussion)

In its 2012 Mission Report, IPI commented on the Law on Telecommunications proposal, which has several problematic provisions in regard to press freedom. The bill includes penalties of up to \$2.5 million and proposes that television and radio frequency licenses have a term of validity of 15 years, renewable up to a total of 30 year by means of direct allocation, after which time frequencies would be put to tender for a new allocation.

As of June of this year, the bill's final text is still awaiting debate. Members of the media continue to show concern; it is feared that the law would grant the government even greater powers to target the media. On June 11, Diego Cornejo, executive director at AEDP, told IPI: "the last-known version of the Law on Telecommunications text seeks maximum sanctions. It is expected to increase causes of action by which to punish the media and journalists. Additionally, it grants subjective responsibilities to the regulatory council."

IPI shares the concern of media outlets and press freedom advocates that the Law on Telecommunications—coupled with an already broad, intrusive, and highly regulatory LOC—could severely hamper the practice of open journalism. Its excessive penalties and questionable methods of granting and renewing licenses, and the additional powers it grants the already-excessive powers of the regulatory council could increase the possibility that Ecuadorian officials will seek to exploit the law, and target media outlets and journalists whose work criticize or scrutinize their actions or policies.



Reform of the Penal Code (under discussion)

In its 2012 Report, IPI also discussed a bill presented by President Correa to reform the country's penal code, which allegedly would decriminalize defamation and *desacato* or "insulting authority." As of June of this year, the bill continues to await final debate.

The crime of "insulting authority" has already been used by President Correa to target the press. In 2011, Correa filed a criminal complaint against three executives and one journalist at the newspaper *El Universo*, after the latter published an opinion column alleging that the president had ordered "discretionary" gunfire at a hospital during a police revolt in September 2010. The article implied that the president's actions in the case could fall into the category of 'crimes against humanity.'

The defendants were sentenced to three years in prison each and the newspaper was ordered to pay a fine of \$40 million. After the ensuing outcry and international condemnation, Correa pardoned the defendants and remitted their sentences, but said he hoped the "corrupt press" had learned its lesson and added that what the newspaper had done to him was "forgiven, but not forgotten."

While IPI supports the removal of criminal defamation laws, it remains concerned about several of provisions within the proposal to reform the penal code. The proposal maintains prison penalties for persons who commit slanderous insult (Article 117).

Last year, IPI was presented with an analysis of the bill by the Office of Analysis and Political Focus of the Communications Secretariat, which pointed out that there are no individuals under prosecution or serving sentences for *desacato* in Ecuador, while highlighting that the government has proposed eliminating *desacato* from the penal code. "What will be maintained in the new code is what is referred to as 'insult law' in general, an offense directed at any person, not necessarily the president or public officials. All persons who feel insulted for any reason will have recourse to the judicial process." The Secretariat's analysis also argues that maintaining criminal penalties for libel and insult against public authorities is necessary so that "legal measures exist to punish violations against public officials' right to honor."

IPI believes that *desacato*, even if decriminalized in name, may still be prosecutable in practice under "insult" laws. "Ecuadorian officials have proved willing to use these statutes to punish journalists who criticize them. Any genuine effort to decriminalize *desacato* necessarily involves removing the penalty of imprisonment altogether when the offended parties are public officials, who are individuals who should be subject to greater scrutiny," IPI Deputy Director Anthony Mills said.

The use of *desacato* or "insult" laws to target journalists also runs afoul of international instruments. International treaties on human rights, including the Declaration on Principles of Freedom of Expression of the Organization of American States, stipulate that cases in which a public official claims damage to his reputation only civil penalties should apply and must be proved that the journalist intended to cause damage. Laws that penalize speech critical of public officials, such as the ones that currently operate—still



present in the proposal—in Ecuador, appear to run afoul with the right to free expression, and freedom of press.

A Continuing Environment of Hostility

During IPI's visit to Ecuador in May 2012, various government officials assured delegates that press freedom was not under threat in the country. Despite such claims, IPI witnessed rampant acts of harassment and intimidation that, coupled with other events that have occurred since President Correa came to power, raised serious concern. IPI believed it important to follow events closely and track any progress.

A year after its 2012 visit, IPI concludes that freedom of press remains in peril. Ecuadorian journalists continue to be subjected to a number of verbal attacks and abuse of power by government officials, acts of intimidation and violence, and the undermining of entities that promote press freedom. The following elaborates on some of those instances, aiming to underscore the precarious nature of the situation journalists face throughout Ecuador.

Verbal Attacks and Abuse of Discretion by Public Officials

An alarming aspect of the attacks on journalists seems to be their source. As head of the Ecuadorian government, President Correa has continued his tirade against sectors of society that allegedly criticize or “threaten” him. His verbal attacks and abuse of discretion have proved to be relentless over the past year, including the period since he won re-election in February of this year. The methods used by Correa include both public statements and legal tactics against individuals and media outlets critical of his regime.

IPI Deputy Director Anthony Mills said: “The continuing vitriol directed at the media by government officials is deeply disturbing. Such attacks promote the type of self-censorship that is so detrimental to democratic debate.”

On May 28, Correa requested that the Public Prosecutor charge Twitter user Danny Ayala with “inciting an attack” on Correa after the latter allegedly posted “RT if you now want Correa to die.”¹⁶ The president described Ayala's message as “a call to make an attempt on my life, a fact that in view of my current position would obviously be an assassination.”¹⁷ The legal basis for the charges can be found in Article 386 of the Ecuadorian Criminal Code, which broadly states that an individual shall be held liable if the person “publicly *incites* people to commit a specific crime.” [emphasis added]

The use of a wide array of legal methods to stifle dissent or opposition has also been used at the provincial level. On May 10, after months of legal battles, Yaco Martínez, journalist and chief executive of the newspaper *La Nación*, was able to have his March 8 conviction

¹⁶ <http://www.telegrafo.com.ec/english-bulletin/item/president-rafael-correa-presses-charges-against-twitter-user-for.html>

¹⁷ http://ifex.org/ecuador/2013/06/04/ayala_denunciacion/



for libel overturned.¹⁸ Martinez had been convicted of libelous injury and sentenced to one month in prison and a fine of \$30,000, after his newspaper published an article in which he criticized the government of the now-former governor of the Carchi province, María Villareal. Villareal claimed the article aimed to “attack, discredit and scorn [her] good name, morality, dignity, honor, fame and prestige.”¹⁹

The use of legal tactics to target journalists has shown no sign of diminution or disappearance. On May 5, Correa called accusations by media outlets that he was involved in questionable government contracts “false testimony” and “criminal.” He stated that he will continue to seek that such “crimes” be punished, and that he will continue to defend his honor “with the law in hand.”²⁰

Furthermore, Correa has not limited himself to legal methods in attacking his detractors through state resources; he has also done so through the use of official messages or transmissions to Ecuador’s citizens. His weekly *Enlace Ciudadano*—a state television program through which the president communicates with the public—has been a forum by which journalists and media outlets are repeatedly abused. On June 15, Correa continued to use his *Enlace Ciudadano* to threaten critical media outlets with legal action. Correa referred to a recent article on the LOC by the newspaper *Hoy* as the type of “lies” and “insults” that were to be ended when the new law enters into force and that “[*Hoy*’s] party had ended.” He also used the *Enlace Ciudadano* to threaten the newspaper, stating, “We have already started the pertinent legal action against the news paper and we will beat them through justice.”²¹

On April 20, Correa called members of various privately-owned media outlets “clowns,” “eyesores,” and “corrupt” journalists.²² Two weeks earlier, Correa had also commented on the work of private newspapers *El Comercio* and *La Hora* asking: “How can they lie so shamelessly? That is the press that informs us. The solution is in our hands: Not to buy those [political] wall posters called newspapers.”²³ Such vitriol by Correa against journalists is often accompanied by similar requests asking authorities to prosecute those who “insult” him.

Hostility Against Press Freedom Advocates

IPI is also concerned about the Ecuadorian government’s continued hostility against freedom of expression advocates. Ecuadorian officials have continued to attack international and domestic organizations through rhetoric, and questionable legal and state means. The Organization of American State’s (OAS) Special Rapporteurship for Freedom of Expression has remained a constant target of attacks by members of the

¹⁸ <http://www.lahora.com.ec/index.php/noticias/show/1101504423/-/Carchi%3A+Jueza+declara+nula+sentencia+contra+periodista+Yaco+Mart%C3%ADnez.html#.UbW2pfn-FnN>

¹⁹ http://ifex.org/ecuador/2013/05/21/nulidad_proceso/

²⁰ http://www.elcomerciodeecuador.es/politica/Resumen-cadena-sabatina-Rafael-Correa_0_694730571.html

²¹ http://ifex.org/ecuador/2013/06/17/aprueba_ley/es/

²² http://www.elcomercio.com/politica/enlace_ciudadano-Rafael_Correa-politica_0_904709699.html

²³ http://www.elcomercio.com/quito/Rafael_Correa-enlace-ciudadano-Ecuador-Colimes-Guayas_0_896910433.html



Ecuadorian government, raising questions as to the Correa's administration commitment to freedom of expression and press freedom.

"We urge the Ecuadorian government to cease attempting to undermine efforts by the Office of the Special Rapporteur to strengthen freedom of expression in Ecuador." IPI Deputy Director Anthony Mills said. "The Special Rapporteur plays a vital role in the Inter-American Human Rights System, which states should recognize by cooperating with the rapporteurship instead of hindering its efforts."

On June 6, Minister of Foreign Affairs Ricardo Patiño condemned the 2012 Annual OAS Special Rapporteur's Freedom of Expression Report, calling it "slanted" and "arbitrary."²⁴ The OAS report contained an extensive section on Ecuador, which included a description of assassinations of members of the press, legal measures taken against the media, verbal attacks by the government, and the use of government resources to target journalists.²⁵ Patiño also went on to suggest that the Special Rapporteurship's work was the result of the "financial interests" of those that control the office. On April 20, President Correa called the same report a "freak," "ridiculous," and "shameful."²⁶

Furthermore, the Ecuadorian government has sought to attack the work of the Special Rapporteurship through legal and policy maneuvers. On March 22, following weeks of lobbying by IPI and other press-freedom organizations, the OAS General Assembly voted to exclude a set of recommendations made by Ecuador to alter the Inter-American Human Rights System. Included in Ecuador's proposal was the idea to "assign balanced financial resources among all [OAS] rapporteurships." The Ecuadorian government had justified its recommendation arguing that all human rights issues deserved equal treatment. On March 5, IPI labeled the proposal's basis as "misleading" and as an attempt to weaken the Office of the Special Rapporteur by stripping it of "almost 90% of its budget." IPI also described the measures as gravely threatening, as they compromised the Special Rapporteurship for Freedom of Expression's financial independence, which is critical to the labor of monitoring the actions of governments.²⁷

The Correa government has also continued to attack international and domestic NGOs that advocate freedom of expression and freedom of press. On May 10, President Correa interrupted a television broadcast by the privately-owned station Ecuavisa through the use of a *cadena*—which allow the president to interrupt programming to transmit official messages—to attack the Andean Foundation for Media Observation and Study (Fundamedios, according to its Spanish acronym). Correa accused the Ecuadorian NGO of receiving its funding through questionable sources, which included far-right organizations. He also questioned the fact that Fundamedios did not report aggressions against the presidency, because to them it "seems normal that a journalist should insult the President of the Republic."²⁸

²⁴ <http://cancilleria.gob.ec/ecuador-denuncia-informe-de-la-relatoria-para-la-libertad-de-expresion/>

²⁵ <http://www.oas.org/en/iachr/expression/docs/reports/annual/Annual%20Report%202012.pdf>

²⁶ http://www.elcomercio.com/politica/enlace_ciudadano-Rafael_Correa-politica_0_904709699.html

²⁷ <http://www.freemedia.at/home/singleview/article/oas-special-rapporteurship-under-threat-at-ecuador-meeting.html>

²⁸ http://ifex.org/ecuador/2013/05/15/funding_accusation/



In a separate incident, on May 5, Correa continued the vitriol against freedom of expression advocates. On that occasion, however, Correa attacked the United States-based NGO Freedom House, calling it “an American ultra-right wing government organization.” Correa also claimed that Freedom House was an organization that “had supported the ARENA party of El Salvador, which was linked to death squads.” He further accused Freedom House of “congratulating itself for the coup d’état that took place in Chavez’s Venezuela.” Finally, Correa stated that nothing else could be expected from organizations that shared the views of Fundamedios.²⁹

Acts of Violence and Intimidation

In addition to facing verbal attacks and abuse of discretion by government officials, Ecuadorian journalists continued to be victims of several acts of violence and intimidation. The past year has seen a number of incidents where physical violence and harassment were often present.

In public statements, IPI has urged the administration of President Rafael Correa to tackle the danger that Ecuadorian journalists continue to face. IPI pointed out that the climate of violence that journalists currently face constitutes a serious obstacle to free journalism in Ecuador.

On June 6, four journalists were detained while covering a security operation in a prison in the city of Portoviejo, province of Manabí. Dayse Pico, correspondent at Gama; Roberto Reyes, cameraman at Gama TV; and Ivan Maestre, correspondent at television channel Ecuavisa, claimed to have all been invited to attend the event, when suddenly, the prison’s director accused them of “acting against the security of the state,” and then held them in a police room for about eleven hours. The four journalists were released after the local prosecutor abstained from pressing charges and the Head Office of the Manabí police determined there was no cause for detention.

On May 19, Diego Orellana, a cameraman at the television channel Megavisión, was detained and physically attacked while covering disturbances at a local sporting event in the city of Quinindé. Orellana claimed to have been pepper sprayed, physically assaulted and held in custody for more than five hours by the police.³⁰ He also stated that he was not given a reason for his detention and that his footage of the event he had been covering disappeared without explanation.

In a separate incident, on May 5, Trajano Andrade, anchor at the radio station ‘Radio Marejada,’ had his program, Hablemos Claro (Let’s Talk Openly), suspended by the station. Andrade stated that he believed the suspension to be a response to a complaint made by city of Manta’s mayor, Jaime Estrada, to the station’s executives—a claim denied by the latter. Additionally, Guido Quijije, the program’s producer, alleged that he had

²⁹ http://www.elcomercio.com/politica/Resumen-Enlace-Ciudadano-Esmeraldas_0_913708759.html

³⁰ http://ifex.org/ecuador/2013/05/30/orellana_detenido/es/



received death threats against his family and himself through messages left on his mobile phone.³¹

On April 18, Christian Zurita, a reporter for the newspaper *El Universo* was approached by the provincial prosecutor after taking a picture of an individual that was being criminally processed. The prosecutor, Simón Lara, then snatched away Zurita's mobile phone (the device that the picture had been taken with) and had his bodyguards "push" the reporter out of the building. Zurita also alleged that Lara accused him of being part of a narcotic-trafficking group.³²

Alarming, the past year has seen even more brutal acts perpetrated against members of the press. On April 12, Fausto Valdivieso—a journalist who had previously worked for privately-owned television stations Ecuavisa, Teleamazonas and TC Televisión—was shot to death by masked gunmen.³³ Valdivieso had already been the target of an earlier murder attempt and a stream of death threats.³⁴ Later investigations linked the murder to a criminal organization engaged in money laundering and drug trafficking, with the Minister of Interior of Ecuador claiming that "Valdivieso was going through rough economic times and maintained an unusual relationship with the criminal organization."³⁵ The journalist's family denied any connection between Valdivieso and the criminal organization and accused the ministry of "sully" his reputation.

IPI urges the Ecuadorian government to undertake a complete and independent investigation into Valdivieso's murder. The past year has seen how journalists continue to face a precarious and dangerous situation, one in which they have often been targeted in their professional capacity. As such, IPI calls for authorities not to hastily exclude the possibility that Valdivieso's murder was related to his journalistic work.

In a separate incident, Juan Alcívar, correspondent for the newspaper *La Hora*, had his home raided by authorities in the city of La Concordia on March 12. Seven officials, including armed police officers, entered the home by claiming that Alcívar was occupying public property without municipal permission. Although Alcívar admitted to occupying public space due to several repairs he was making, he stated that the raid was just the latest in a series of attempts to intimidate him on the part of public officials, which has included threats, verbal attacks and physical attacks.³⁶

³¹ <http://www.eldiario.ec/noticias-manabi-ecuador/262666-trajano-andrade-denuncia-suspension-de-su-programa-de-radio/>

³² http://ifex.org/ecuador/2013/04/29/zurita_agredido/es/

³³ <http://noticias.univision.com/america-latina/ecuador/article/2013-04-12/periodista-fausto-valdiviezo-fue-acribillado#axzz2VW7V21sx>

³⁴ <http://ifex.org/ecuador/2013/04/12/moscoso/>

³⁵ <http://www.ecuavisa.com/articulo/noticias/costa/31259-banda-delincuencial-implicada-en-el-crimen-de-fausto-valdiviezo>

³⁶ http://ifex.org/ecuador/2013/03/26/alcivar_raid/



Conclusion

IPI's 2012 Press Freedom Report examined in detail several of the grave challenges to press freedom in Ecuador. Since then, IPI has continued to closely monitor the situation over the past several months. Regrettably, IPI concludes that press freedom remains of grave concern in Ecuador and that the developments of the past several months suggest that the situation has further deteriorated.

The legislative front has taken a toll on press freedom over the past several months. The recent passage and entry into force of the Law on Communications (LOC) was a particularly alarming event. The law threatens press freedom throughout its text. It erodes freedom of expression, especially in the form of media and journalistic work. The LOC also intrudes into areas that should be left to self-regulation by the media.

The new law also hampers the practice of open journalism through heavy regulation of content. It also creates two strong regulatory bodies with excessive powers, whose independence remains highly questionable. Exacerbating the situation is the lack of safeguards aimed to ensure the new statutory regulatory bodies do not act arbitrarily and abusively against the media.

Another piece of legislation, the Law on Telecommunications proposal, has the potential to be highly detrimental to press freedom. Its provisions on the allotment and renewal of broadcasting licenses are also vulnerable to arbitrary determinations; thereby increasing the likelihood that access to practice journalism will suffer. The proposal could also have a chilling effect in the form of self-censorship, since it allows for the media to be held for up to \$2.5 million in penalties.

Furthermore, legislation that would generally be seen as positive to press freedom appears to be lacking. The proposal to reform the penal code would decriminalize defamation and *desacato*, but does not remove "insult" as a criminal offense. Given the history of Ecuadorian officials invoking "insult" to target journalists, the continued criminalization of this offence is highly problematic and inconsistent with core principles of press freedom. As with the criminalization of other forms of defamation, the crime of "insult" has a chilling effect, as it increases the possibility that journalists will select the content of their work with the fear of criminal penalties looming in the background. Consequently, a society's access to information will be limited and compromised.

The hostility toward the media continues to manifest itself on other fronts, which adds to a possible increase of a chilling effect. President Correa continues to abuse his powers of official communications and transmissions to attack the media with vitriol. Correa and other Ecuadorian officials have also continued to use the judicial system to target journalists, claiming that their "honor," "dignity," "fame," or "prestige" was attacked.

Ecuadorian journalists have continued to be subjected to violence and intimidation. The past several months have witnessed acts against members of the press that include arbitrary detention, confiscation of equipment, death threats, physical abuse, home raids, and murder.



Press freedom and freedom of expression advocates have also continued to be exposed to attacks. Ecuadorian officials have repeatedly insulted and questioned the motives behind the work of international entities such as the OAS Office of the Special Rapporteur for Freedom of Expression and Freedom House. Ecuadorian NGOs have taken the brunt of attacks by public officials, notably from President Correa, whose attacks on entities such as Fundamedios are now commonplace in his *Enlace Ciudadano* or *cadenas*.

Recommendations to Public Officials

- Reconsider the Law on Communications in its entirety. Numerous provisions are too vague, intrusive, restrictive and punitive. They place press freedom in a precarious situation. In the alternative, the law should be reformed. The content of media work cannot be predetermined and restricted in the way the current text allows. The establishment of a code of ethics is best left to the media. Provisions that restrict access to the practice of journalism and broadcasting licenses should also be eliminated. The powers of the newly created regulatory bodies need to be severely curtailed. Their membership selection and source of funding need to be altered to better guarantee independence.
- Amend the Law on Telecommunications proposal. The allotment of licenses cannot be so restrictive. Penalties for media violations cannot be as excessive as the proposal allows.
- Make a more genuine effort to abolish criminalization for defamation. The proposal to reform the penal code needs to decriminalize not only defamation and *desacato*, but also “insult,” especially when the speech is directed at public officials.
- Halt the verbal attacks and other abuses against the media. Abstain from attacking the media through official and other forms of communication. The use of courts and other venues to target the press needs to also need to cease.
- Cease the verbal abuse and hostility against international and domestic press freedom and freedom of expression advocates.
- Prevent and punish acts of intimidation and violence against the media in an effective, consistent, and swift manner.