



International Press Institute

Final Report on the IPI Press Freedom Mission to Ecuador

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Mission Participants

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Introduction

A delegation from the International Press Institute (IPI) travelled to Ecuador on a press freedom mission from May 7 – 11, 2012. Visiting both Quito and Guayaquil, IPI delegates met with Ecuador's vice president, Lenín Moreno, the national secretary of communications, Fernando Alvarado, Justice Minister Johana Pesántez as well as a wide representation of editors, journalists, media owners, politicians, and representatives of industry associations and of civil society.

From these actors IPI sought to collect different viewpoints on the overall situation of journalism, the media industry, and press freedom in Ecuador. The meetings also explored the need to improve the media's ability to inform justly and accurately, as well as to foster better understanding between media representatives and the government.

Over the last several years, press freedom in Ecuador has become an increasingly visible topic in both national and international media. The controversy reached its peak at the beginning of 2012 with two million-US-dollar libel and "moral harm" convictions: one against the newspaper *El Universo* and the other against the authors of the book *Big Brother*. Those cases, in addition to legal changes proposed or recently approved by the government that affect the media, plus the attacks by the Ecuadorean government on the Organisation of American States (OAS) Special Rapporteurship for Freedom of Expression, prompted IPI to visit the country.

When IPI arrived in Ecuador, two-and-a-half months had passed since President Rafael Correa pardoned the defendants in the *El Universo* and *Big Brother* cases. However, the reality encountered by IPI delegates was a far cry from the "period of calm and reflection" that some media had expected after the pardons. The battle between the government and the press remained radicalised and present within both public discourse and the media itself.

After winning the 2006 presidential election, Correa took office in January 2007 following a decade of political unrest in which three presidents were overthrown. Correa, founder and leader of the leftist Alianza País party, promised a "citizen revolution" that would usher Ecuador into a "21st century socialism". That implied the government's intention to confront many realities of the country's past.

The president has constantly criticised the "establishment powers" in Latin American societies and has singled out the media as an example. Since the beginning of his tenure, Correa has maintained a hostile attitude toward the press. This attitude, however, has become increasingly radicalised over time, especially after the country experienced a political crisis in September 2010 that the government branded an attempted coup d'état.

In order to understand the current situation, it is necessary to refer to the banking crisis that erupted in Ecuador in the late 1990s with terrible consequences for the country's citizens. At that time, many media outlets were owned by bankers and, according to the government and confirmed by journalists with whom IPI met, in the midst of the crisis those media prioritised their business interests.



On July 8, 2008, the Ecuadorean state seized 195 businesses, including a number of media organisations that belonged to Grupo Isaiás, in order to repay creditors of Filanbanco bank who had lost their deposits during the financial crash. This action changed the picture of media ownership in Ecuador: four years later, due to the fact that it has not fulfilled its promise to sell the seized media outlets, the government administers a wide variety of media.

The National Radio of Ecuador (currently, Public Radio of Ecuador) was the sole media on which the state could count when Rafael Correa assumed the presidency. However, in the last five years 20 media outlets have been added to that figure. The president has promoted the creation of public and community media to combat the interests of media owners. Correa considers the private media to be political actors and has expressed pride in the fact that his government has not given in to the power of the press. Despite the fact that his words and actions evince a war on the media, Correa insists that there is freedom of the press in Ecuador and claims that that his government does not persecute journalists, but rather prosecutes crimes.

The Andean Foundation for Media Observation and Study (Fundamedios, according to its Spanish acronym) classifies the media in Ecuador into five groups: public, state, seized, private, and community. Fundamedios counts four public media (Radio Pública del Ecuador, Ecuador TV, *El Telégrafo*, and *El PP Verdadero*), four state media (*El Ciudadano*, ANDES news agency, Radio de la Asamblea Nacional, and Portal de Medios de Comunicación), in addition to 13 seized (TC Televisión, GamaTV, Cable Noticias, Cable Deportes, ArturOh, Radio Carrusel, Radio Súper K 800, Radio Universal, and the magazines *La Onda*, *El Agro*, *Samborondón*, *Valles*, and *La Otra*). Fundamedios also lists five private television channels and more than 35 private newspapers.

Public media are defined as those that, at least theoretically, were created to serve society but maintain editorial freedom. State media are those administered directly by the government to report from the government's point of view. Seized media previously belonged to the private sector but have been administered by the government since their seizure. Private media are those that are sustained through private capital.

The Correa administration has promoted a new legal framework to regulate the press. In IPI's view, the work of the media in a particular country is already subject to that country's laws, making specific legislation to regulate media content unnecessary except in specific cases. However, if a government holds that the development of specific legislation related to the press is needed, IPI believes that it is necessary to take into consideration the opinions of all those affected or involved. It appears that this process did not occur in Ecuador.

Undoubtedly, the exercise of journalism must be subjected to ethical principles, which should be agreed upon within the media industry. Press councils, ombudsmen, and internal statutes are examples of self-regulation mechanisms used successfully in some countries. IPI does not have a preference for any one of these options in particular, as it believes that the media in each country should establish their own mechanisms. What IPI does promote is the existence of a self-regulatory scheme that not only attempts to guarantee greater balance and accuracy in content, but also prevents state interference



in the media. In Ecuador, although many media organisations have already established their own code of ethics, there has not been agreement among editors, journalists, and media owners regarding an additional scheme that would include all of the country's media and allow affected parties to file complaints about media content without having to involve a court of law.

On the international stage, the Ecuadorean government has expressed in numerous forums its disagreement with the behaviour of traditional media. More concretely, in January of this year the country introduced a proposal to modify the function of the Inter-American Commission on Human Rights, which, if approved, would weaken the OAS Special Rapporteurship for Freedom of Expression.

In order to hear views from the greatest number of actors and from all sectors of society, IPI met with representatives of public, private, state-administered, and state media during its visit to Ecuador. However, due to the polarisation that the country is experiencing, and the fear expressed by many of those interviewed, many of the sources in this report will remain anonymous at their request.



About the International Press Institute (IPI)

The International Press Institute (IPI) is the world's oldest organisation dedicated to promoting the right to information. We are a global network of journalists and editors working to safeguard freedom of the press and to promote the free circulation of news and information as well as ethics and professionalism in the practice of journalism.

The Institute was created in 1950 by 34 editors from 15 countries who believed that an independent and professional press contributes to a society that is freer, more just, and governed by the rule of law. Today, IPI is a global organisation with members in more than 120 countries. It is a politically neutral body and holds consultative status at the United Nations and the Council of Europe.

IPI investigates and publishes studies about government pressures exercised upon the media. With the authority conferred by its global network, IPI stimulates a climate of close scrutiny of media environments.

IPI covers the entire globe and is constituted by more than 700 leading journalists, editors, publishers, and media owners. IPI strives to work beyond national boundaries and is committed to fostering a better understanding among peoples.

IPI, whose headquarters are in Vienna, is led by an executive director, answerable to an executive board. Local IPI committees working to defend press freedom are present in a number of countries around the world.

Full IPI members consist of editors-in-chief, news editors, journalists, or other professionals working in newspapers, magazines, online news site, news agencies, or broadcast media. Associated membership is open to anyone whose work is related to journalistic work, including journalism schools.

Each year, IPI celebrates a World Congress in a different country, underscoring its global perspective. It also periodically organises conferences and seminars on themes related to press freedom and professional journalism. IPI regularly offers journalistic training, particularly in developing countries.

IPI's annual World Press Freedom Review provides reports and detailed analysis on issues facing journalists. This publication is one of the principal studies on the state of the media in the world today.

According to IPI's Death Watch, Latin America was the most dangerous region in the world for the media in 2011, with 35 journalists losing their lives due to their work. Concerned at the deterioration of press freedom in the region, IPI included among its press freedom missions in 2012 visits to Ecuador, the Dominican Republic, Barbados, Jamaica, and Trinidad and Tobago.



Issues of concern in Ecuador

Although the Ecuadorean government denies that press freedom is under threat within its borders, IPI witnessed clear acts of intimidation and harassment of journalists and media outlets during its week-long visit to the Andean country. The following section will describe some examples from the experience of IPI delegates, in addition to delving deeply into specific points that were of concern to IPI prior to the visit and became more evident after meetings with the involved parties.

In the second week of May reports circulated in public and state media that Wikileaks cables had included statistics on press freedom violations in Ecuador from Fundamedios. The cables were used to accuse the organisation of being an “informant” for the U.S. Embassy in Quito. This issue received coverage in both print and broadcast media, which released photographs of the organisation’s director, César Ricaurte. IPI believes that the insinuations are an attempt to discredit Fundamedios and could put the safety of Ricaurte and other Fundamedios employees at risk.

Similar campaigns to discredit individuals or institutions that publish information viewed unfavourably by the government are becoming increasingly common. IPI was surprised to see that, in Ecuador, journalists and media outlets have themselves become objects of news coverage: state-run media in particular often run the name, photograph, or video of a journalist upon questioning a report by that journalist. This strategy weakens the exercise of journalism, could lead to violence against reporters, and demonstrates that the fight is not only between the government and the media, but also between public and private media, who view each other with mutual hostility.

Throughout the streets of Quito there is graffiti questioning the credibility of critical media. “The walls will stop talking the day that the press tells the truth,” “Vote No, freedom of expression is only for bankers,” or “Weapons of mass destruction: El Comercio, El Universo, and Teleamazonas,” among others, constitute messages that put the credibility of these institutions and the journalists who work there at risk. At the same time, they contribute to the climate of fear that already exists among independent media.

What is seen on the city’s walls is repeated in state-run media and reflects the language of confrontation employed by the president, who has accused the press of lying, corruption, and mediocrity, among other offences.

But beyond what can be seen, what can be heard on the part of media workers and owners is troubling. “We are at a crossroads of change in terms of our business model. I have never seen such a systematic attempt to weaken the media socially and financially. Correa is not going to stop this. The media [for Correa] is the last stronghold of an ideology that has to be eliminated. This rhetoric sells a lot. It aims to take the media off the radar, neutralise them, and craft laws sharp as a sword to control them,” one editor of a well-known national media outlet said pessimistically.

“The situation is very serious because the current government, which was born with a revolutionary drive for change, has adopted a position that has spread across the world, [which is] that journalists and media are political actors. This is the basic approach of



the 21st-century socialism that is being applied here with great success. Its position is to attack the establishment powers in order to start a new democracy,” added one prominent journalist.

1. An unfavourable legal climate

During the presidency of Rafael Correa both the Civil Code and the Penal Code have been used in legal actions against the press. Moreover, the government has proposed—and, in some cases, already approved—several laws that directly or indirectly affect the news media.

The crafting of new legal measures to regulate the press was a topic of discussion in nearly all the meetings that IPI held during its mission to Ecuador. The media is concerned about both several recently approved laws, and a number currently being discussed.

It appears that the opinion of the media has not been taken into account in drafting these laws, the purpose of which is to place increasing limits upon the media and upon private media in particular. Taken as a whole, the new legal framework has the effect of intimidating the press and granting the government the power to restrict the publication of information not to its liking.

Additionally, private media journalists expressed concern about a justice system that they described as politicised, one in which judges work slowly and favour the government’s position. While there is a general agreement about the need for self-regulation, the media have insisted upon establishing consensus with the government on the specific nature of such regulation, which has manifestly not been achieved.

“A whole legal system is coming. With the new laws, the constant attacks against the press will turn into state-sanctioned prosecutions,” warned one congressman.

Following is a list of laws that could be used against press freedom:

a) Organic Law on Citizen Participation (2010)

The bill as initially approved by the National Assembly required that public officials and private companies that made use of public funds render their accounting public. However, through the use of the presidential veto, which allows for the alteration of bills after they have been approved by the National Assembly, President Correa inserted a provision that requires news media to make their accounting public based on the argument that the media provide a public service.

Media groups and press freedom organisations have expressed concern with respect to the implications of the law. They insist that by defining the media as a public good, the president “has opened up a path for state intervention” in the industry.

Furthermore, they note that, despite the absence of clear guidelines regarding the mandated financial reports, the president has used his weekly television program to ask the Council of Citizen Participation to demand the reports from media companies. This has been interpreted as a new mechanism to pressure the media.



b) Popular Referendum (2011)

On May 7, 2011, Ecuador held a referendum to decide whether to amend the Constitution and establish changes to the Penal Code and judicial system. A total of 10 questions were submitted to the Ecuadorean electorate, two of which were related to the news media. The first dealt with media ownership, while the second concerned a new communications law. The proposals were approved by a slim margin.

By means of question three, whether to modify the first paragraph of Article 312 of the Ecuadorean Constitution, voters approved the following:

“Stocks and shares owned by the institutions of the private financial sector, as well as of the national private news media, the directors and main shareholders thereof, in outside enterprises will be disposed of within one year counting from the approval of this referendum.”

Question nine, for its part, sought the enactment of a law mandated by the 2008 Constitution but that had been subject to continuous delays:

“Are you in favour of the National Assembly, with no delays and within the term provided for in the Organic Law on Legislative Function, to expedite a communications law that creates a Council of Regulation that regulates the dissemination of television, radio, and printed media content that contain violently, racist, or explicitly sexual messages; and that establishes criteria for further responsibility on the part of the media?”

“The first question approved restrictions on investing in newspapers. This turns media owners into second-class Ecuadoreans because they are not allowed to make investments in other sectors,” asserted Diego Cornejo, executive director of the Ecuadorean Association of Newspaper Editors (AEDEP, according to its Spanish acronym).

Press freedom defenders have said that this measure seeks to undermine the financial position of media that are critical of the government. “Media shareholders are now unable to have any other economic activity. They are forced to sell their other businesses as a consequence. We believe there is a nefarious motive behind this since we are not going to find people interested in investing in this business – making it difficult to raise capital,” one media owner told IPI.

AEDEP challenged the proposal before the Constitutional Court, alleging that “the proposals to replace the laws currently in force entail not only the restriction but also the abrogation itself of fundamental constitutional rights and guarantees for both private media companies as well as their directors and principle shareholders.”

Those who support the changes in investment rules contend that the latter will democratise the media and promote diversity. Their fundamental argument is that the news media are controlled by the Ecuadorean elite and that media owners abuse their



power.

“While the popular referendum was part of a democratic process, it generated significant rejection among not only media owners, but also national and international press freedom organisations. One has to ask whether the amendment to Article 312 of the Constitution, as approved in the referendum, is the best way to regulate the distribution of news media ownership in Ecuador. The legitimacy of undertaking legal reforms without taking into account the opinion of those directly affected must also be questioned,” commented IPI Deputy Director Anthony Mills, who led the press freedom mission to Ecuador.

Regarding the proposal to create a communications law, Mills questioned the focus on the regulatory council, which hints at the risk that the bill will be based on punishments for the press.

c) Organic Law on the Regulation and Control of Market Power (2011)

Popularly known as the anti-trust or anti-monopoly law, this measure includes media regulations derived from the May 2011 popular referendum. It stems from the initiative to split the banking and media industries and stipulates that individuals or entities with businesses unrelated to the media may maintain a maximum of 6% of shares in a national media company.

The Ecuadorean government and its allies have sold the measure as an attempt to change the country’s power structure and avoid conflicts of interest. For the news media and defenders of free expression, however, the law seeks to financially weaken the press while also chipping away at the media’s independence. “Who can afford to buy a media outlet now? That’s where the trap lies. No one is going to want to invest in the media,” sources told IPI.

By the time of IPI’s visit, media organisations that had investments in other economic sectors were preparing to dispose of their stocks in accordance with the law’s deadline of July 2012. Some media had already been sold, while others argued that the requirement was difficult to fulfil in the absence of a definition of “national media”. IPI also believes that the law weakens the private press sector and contends that other mechanisms could be used to ensure balance in the distribution of media ownership.

d) Organic Law on Elections and Political Organisations (2012)

In February of this year, the Ecuadorean National Assembly approved controversial reforms to the country’s electoral law, which is better known as the “Democracy Code”.

Two of the clauses in particular, Articles 203 and 207, have been heavily criticised by media rights groups. Article 203 provides that in the months preceding an election “the media shall refrain from promoting, directly or indirectly, whether through special reporting or any other form, messages that indicate support or opposition to a particular candidate, nominee, ballot option, voting preference, or political theory”. In turn, Article 207 prohibits the media from publishing “any kind of information prepared by public institutions” and from disseminating “electoral advertising, opinion, or images 48 hours prior to the day of the vote and before 17:00 on election day”.



Journalists and press freedom organisations in the country have criticised the fact that the new restrictions were not debated by the National Assembly, but rather were introduced by means of a presidential veto. They assert that the changes to the Democracy Code seek to censor the work of journalists during the electoral campaign.

While the amendments had not yet directly affected the media by the time of IPI's press freedom mission, there were concerns about the law's effects starting in November, when the race for February's presidential contest begins.

During meetings with IPI, the government denied that the reforms were intended to censor the media. In public statements, authorities have explained that the changes are intended only to encourage equality and fairness during electoral campaigns, preventing public and state media from promoting only ruling-party candidates while at the same time compelling private media to cover all candidates.

"Although I understand the sentiment behind the reforms to the Democracy Code in terms of promoting an environment that allows for fair elections, the changes ask the media to refrain from covering candidates in the months leading up to the election. The media have a duty to cover campaigns and offer as much truthful and accurate information as they can to help the public make an informed decision," IPI Executive Director Alison Bethel McKenzie said. "Additionally, the reforms ask the media to abstain from making any kind of direct or indirect promotion in favour or against a particular candidate. In a heated election, anything could be construed as being 'in favour' or 'against'. Therein lies the problem," she pointed out.

e) Law on Communications (under discussion)

An early version of a bill to create a communications law was submitted in 2009, but debate was suspended due to the negative reaction it generated. The current version has been before the National Assembly for more than two years and has undergone numerous modifications; a lack of consensus has thus far prevented its approval. Critics of the bill believe that it is designed to penalise the media, and fear in particular the consequences of the creation of a regulatory council. Additionally, they question whether the measure establishes sufficient oversight of public media and executive communication.

"The government is trying to form a council that can initiate legal actions against the media. It is not that we do not want a law, it's that this bill came from the president's office," one media owner told IPI. "The first bill was horrible: the government was to have presided over the regulatory council and the punishments included the closure of media outlets," he added. The owner fears that, once the bill is approved, the president will likely use his veto right to incorporate as many changes as he wishes, presumably including more restrictions on the independent press. He explained that after any modifications, the National Assembly needs a two-thirds majority to override the veto, which is impossible given the Assembly's current political makeup.

"The communications law is a monument to intolerance and to Correa's prejudices against the independent press," declared Diego Cornejo, executive director of AEDEP.



“The great danger is that lawmakers will approve an acceptable bill, but then the presidential veto, which is unlimited, will be used to completely change the law,” another journalist warned.

In June of this year, the press freedom organisation Article 19, which specialises in legal issues and which shares IPI’s core principles, presented a detailed report on the communications bill. Although the report acknowledges that the original bill has been improved upon, it indicates that international standards of free expression still have not been achieved and that modifications should continue.

Among positive aspects of the bill, Article 19 lists a commitment to media pluralism, the promotion of local and domestic content, and provisions dedicated to the right of media access for all sectors of society. Likewise, the organisation highlights guarantees for the protection of sources and a proposed progressive mandate for public media. It also points out that the bill prohibits prior censorship, though it notes that this prohibition would be strengthened if it included the option to request, via expeditious legal means, the lifting of censorship orders.

IPI believes that the bill’s biggest threat to press freedom comes in the form of the proposed regulatory council, which would have excessive authority and whose independence would be questionable given the high level of polarisation in the country and the government’s overt interest in punishing the news media. In order to guarantee the council’s ideal functioning, Article 19 recommends that members be named by an elected body, preferably by a qualified majority of the National Assembly or by an inter-party committee of legislators; that nominations for membership be accepted from a wide range of civil society organisations or the general public; and that council terms be non-renewable or renewable once only.

In general, IPI finds that there are provisions in the bill that, due to their vagueness, could lend themselves to subjective interpretations, such as the requirement that media be held responsible for content that harms human rights or state security. IPI and Article 19 agree that the bill should be modified so that news media are held responsible only when violating a specific law.

IPI also agrees with Article 19’s statement that the bill allows for “an alarming degree of government control over content”. The London-based organisation lists specifically the ability of the president to suspend media freedoms during a state of exception (an authority already granted by the Constitution); and a provision that permits the president and other government officials to break into broadcasting at any time on all frequencies, both public and private, in a type of address known in the Spanish-speaking world as a *cadena*.

Similarly to Article 19, IPI believes that the proposed council would allow the state to intervene in areas that should be self-regulated on the part of the press, such as the content of printed publications and the development of a code of ethics. Likewise, it would be sufficient for media employment regulations to be subject to general labour law.



f) Reform of the Penal Code (under discussion)

In October 2011 the president presented to the National Assembly a bill to reform the country's penal code that authorities have said will decriminalise defamation and *desacato* or "contempt of authority" laws. The national secretary of communication, Fernando Alvarado, highlighted the measure during a meeting with IPI's delegation.

If the bill were to fully decriminalise defamation, IPI would consider it an important step towards a greater respect for press freedom in Ecuador. However, significant concerns remain, as the bill maintains prison penalties for persons who commit slanderous insult (Article 117) with increased punishments when the offended party is a public official (Article 119).

An analysis of the bill presented to IPI by the Office of Analysis and Political Focus of the National Communications Secretariat points out that in Ecuador there are no individuals under prosecution or serving sentences for *desacato*, while highlighting that the government has proposed eliminating *desacato* from the criminal code. "What will be maintained in the new code is what is referred to as 'insult laws' in general, offences 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 document says.

The Secretariat's analysis argues that maintaining criminal penalties for libel and insult against public authorities is necessary so that there "exist legal measures that punish violations against public officials' right to honour".

Press freedom organisations in Ecuador explained to IPI that while the bill eliminates the majority of criminal penalties for insult and *desacato*, specific provisions for crimes committed by the press remain. "The proposal related to the Penal Code changes the section on *desacato*, but adds three or four criminal penalties that make the work of journalists or opinion groups more dangerous. The proposal is going to establish harsher penalties against free expression," explained one congressman. He added that the Penal Code is excessively long and that any legislative process to change it would last at least several years. "Even if they wanted to eliminate defamation, it would take too much time. They sent the proposal knowing that it would take a long time but that it would give them the opportunity to claim they are working to decriminalise defamation," he added.

Journalists and editors expressed scepticism with regard to Alvarado's promise. The charge of insulting authority, which was invoked in the case against *El Universo*, is maintained in the bill.

IPI has worked globally for the decriminalisation of defamation. Specifically, it has led a campaign to abolish criminal defamation in the Caribbean, encouraging countries in the region to deal with libel allegations in civil rather than criminal courts, in line with international best practices. While urging governments, legislators, and civil society organisations to promote such changes, IPI also works to foster responsible and ethical journalism.

"While many countries in Latin America, such as Mexico, Brazil, Uruguay, Argentina and



Costa Rica, have undertaken efforts to eliminate *desacato* laws, Ecuador has instead applied these statutes with increasing frequency in order to punish the critical press. If the intention is to modify the criminal code in terms of insult laws, it is especially necessary to remove the penalty of imprisonment when the offended party is a public official, who should be subject to greater scrutiny,” IPI’s Anthony Mills said.

“If the government says there is freedom of expression, it is critical that this intent be demonstrated both in the bill as well as in official discourse and practice. It is unacceptable for the president to be the main wielder of the current law and to be pleased when a journalist is arrested or when a media company is hit with an excessive financial penalty,” Mills added.

International treaties on human rights, including the Inter-American Declaration of Principles on Freedom of Expression, stipulate that cases in which a public official claims damage to his reputation only civil penalties should apply and it must be proven that the journalist intended to cause damage. Laws that penalise speech critical of public officials, such as those currently in place in Ecuador and which have been recently applied, violate the right to free expression.

[g\) Law on Telecommunications \(under discussion\)](#)

A bill to regulate the telecommunications industry was sent to the National Assembly by the president in late 2011, but has not yet been debated. 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 for up to a total of 30 years by means of direct allocation. Thereafter, frequencies would be put out to tender for new allocation.

With this measure, the government claims to “democratise access to frequencies”, though media organisations interpret it as another legal tool to weaken the press. For a shareholder, investing in a business that is at risk after a particular point in time and that prohibits the shareholder from investing in another type of business is not profitable.

[h\) Organic Law on Transparency and Access to Public Information \(2004\)](#)

IPI is concerned that although Ecuador has had since 2004 a law guaranteeing access to information, the policy of the current government seems to seek the exact opposite. Every country needs laws facilitating access to truthful and timely information as well as guaranteeing that information is proactively disseminated by institutions and representatives of the state.

During meetings with media and journalists from private media, IPI heard on repeated occasions that obtaining access to official information was more difficult for private than for public media. “We try to interview everybody and publish everything, but we don’t have the opportunity to interview people from the government. Many times we have to prepare reports without the official version of events because our cameras can’t get inside jails or hospitals,” remarked one editor. Identifying oneself as a reporter working for a media outlet that has been critical of the government closes doors to official institutions or makes access to representatives thereof difficult.

IPI considers it necessary to recall Principle 4 of the Inter-American Declaration of



Principles on Freedom of Expression, which states: "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

i) Emblematic cases (2011-2012)

The Ecuadorean president's use of the law to punish criticism has made international news this year. The president initiated two million-US-dollar legal actions, one civil and one criminal, winning both, though ultimately pardoning those involved. Although a number of media have been faced with legal action, the most high-profile incidents are discussed here.

***El Universo* trial.** In March 2011, President Correa brought a criminal case against the three owners of the newspaper *El Universo*: Carlos, César, and Nicolás Pérez as well as the paper's opinion editor, Emilio Palacio. The impetus for the charges of insulting authority was the article "No to the lies", published on Feb. 6 of that year and in which Palacio referred to the president as a "dictator" and accused him of "ordering indiscriminate fire without prior notice on a hospital filled with civilians and innocent people" on Sep. 30, 2010 during a police uprising. The article ended with the sentence, "Crimes against humanity—let him [Correa] not forget—are not subject to statutory limitations."

The four defendants were sentenced to three years in prison, and the newspaper was ordered to pay \$40 million in damages. The defendants appealed the verdict, as did the president, who sought \$80 million in damages. In February 2012, the National Court of Justice confirmed the lower court's sentence. On that occasion, IPI expressed disappointment over the decision and warned: "Yesterday's ruling is a severe blow to freedom of expression and freedom of the press in Ecuador. While many nations are moving to decriminalise defamation offences, governments in Latin America are increasingly making use of legal mechanisms to silence a critical press. This can only lead to self-censorship and the weakening of democracy."

The Inter-American Human Rights Commission (IACHR) requested an injunction in the ruling against the Pérez brothers and Palacio. It also ordered the Ecuadorean government to suspend the sentences until a hearing on the issue could be held in Washington, on March 28. Nonetheless, in late February Correa pardoned the defendants and remitted the sentence against them, expressing satisfaction that the "corrupt press" had learned it was not above justice. Likewise, he insisted that the paper's actions were "forgiven, not forgotten".

IPI expressed satisfaction at the lifting of the sentences, but reaffirmed that there should not have been a criminal case in the first place. It also pointed out that the very notion of a pardon implies guilt. IPI believes that laws criminalising defamation and insult serve only to obstruct scrutiny of the actions of those in power while simultaneously depriving people of the information they need to make decisions.



The *Big Brother* lawsuit. On Feb. 28, 2011, President Rafael Correa brought a civil suit for moral harm against Juan Carlos Calderón and Christian Zurita, authors of the book *Big Brother (El Gran Hermano)*. In the book, the journalists reported in depth on the alleged link between Fabricio Correa, the President's elder brother, with firms that signed state contracts worth millions of dollars.

From the day reports from the book were first published in the newspaper *Expreso*, in June 2009, the president has denied having known about the contracts. A verdict issued in February 2012 ordered each journalist to pay \$1 million to the president, as well as \$100,000 to the president's lawyers. Correa, however, had asked for \$10 million in damages.

When the sentenced was announced, IPI declared, "Although the trial was conducted in a civil court, the fine is utterly disproportionate. There are also doubts about the fairness of the verdict. The book constitutes a journalistic investigation into a case of alleged corruption, and in a true democracy authorities must be willing to face public scrutiny."

As the trial against *El Universo* was in its final stage, and when the sentence against Calderón and Zurita was announced, IPI added: "It would seem that government authorities have become accustomed to carrying out both verbal and legal attacks against journalists and media organisations. We urge the Ecuadorean justice system to act independently when considering the appeals in the *Big Brother* and *El Universo* cases. These cases appear to be about punishing critical journalists and promoting complacent journalism, actions that ultimately affect the Ecuadorean people."

On Feb. 27, President Correa also announced a pardon of Calderón and Zurita together with his decision to forgive the defendants in the *El Universo* case. The case was shelved in April, after having negatively affected the authors financially.

Journalists consulted during the press freedom mission to Ecuador maintained that the government had spearheaded a political debate concerning Zurita and Calderón instead of ensuring that the discussion and investigation focused on the contracts reported on by the journalists. "They used government resources and the power of the state, *cadena* broadcasts, and propaganda in order to subject them [Zurita and Calderón] to public naming and shaming in an assault against their credibility and good name," asserted the journalists.

The authors of *Big Brother* were also sued in March 2011 by the Secretary of Public Works and Transport, María de los Ángeles Duarte, then secretary of urban development and housing, who felt offended by a footnote included in the book. Duarte filed a civil lawsuit against them, alleging that her honour had been affected and requested \$500,000 in damages.

Zurita and Calderón have dedicated the past two years to defending themselves from lawsuits and public stigmatisation. The judiciary's apparent lack of independence has been restrictive, journalists and editors in Ecuador said. They asserted that there exists a high level of judicial instability and that, due to the fact that 70% of judges don't have tenured positions, "in controversial cases, judges choose to take the government's side."



2. Self-censorship and fear

During its visit, IPI found that a great number of journalists and media outlets have recently faced legal challenges. Although the cases of *El Universo* and *Big Brother* are the most well known, additional media have had to invest resources in defending themselves against legal and administrative actions initiated by the government. Those cases, together with other elements that will be described below, have led many journalists and editors to self-censor to avoid being the target of future lawsuits, fines, or verbal harassment.

“Reporters feel threatened and vulnerable because the government has succeeded in discrediting the press and has passed that on to the people. This affects us because we are losing respect. It wouldn’t be surprising if a journalist were to be killed,” lamented one media worker, based on his experience and that of his colleagues.

“There are public interest issues that are not being dealt with as strongly as they should. There are investigations that have been set aside because of a decision to self-censor,” one journalist told IPI. Editors-in-chief, section editors, and reporters all agreed that there is less investigation, both in written press and on television.

Anything that the media broadcasts is made by the government to appear intended to cause instability,” explained one editor-in-chief. He said that, at his paper, journalists had been fired for “being too political”. Although he insisted that self-censorship was not accepted institutionally, “the truth is that people are scared, there are a lot of trials and the feeling is that justice is in the hands of Correa. Journalists don’t feel at ease.”

IPI heard frequently that reporters had grown more rigorous in order to avoid being subject to lawsuits or public accusations. “In order to report anything we need to be extremely careful. Every time we put out a story, we have to think about what Correa is going to say, whether a lawsuit might be coming or at least intimidation,” a journalist revealed. The journalist added: “The press may have many flaws and weaknesses, but with this level of repression there won’t be any improvements because the government has silenced the debate with the controls it has imposed. There is a war and we see each other as enemies.”

Another journalist consulted by IPI believes that all of the legal actions have the same objective: “They are aimed at prosecuting journalists so as to intimidate and provoke self-censorship. The president calls on citizens to attack and pass judgment upon the press. The government has sought a legal foundation in the communications law, but the situation is already aggravated because the cases pursued by the government are processed at a frightening speed and the decisions always favour the regime.”

IPI is concerned that the number of critical investigations is dwindling and that pessimism has filled newsrooms. An essential role of journalism is to question power for the well-being of the public, but when fear or the safety of reporters is in play, as is the case now in Ecuador, silence becomes the preferred option. The resulting lack of critical investigations can only affect society and democracy.

As was well described by an individual interviewed during the mission, “The watchdog



of democracy in Ecuador is a frightened dog.”

3. Distribution of government advertising

Private media that have adopted a critical posture toward the government assert that they have suffered financially over the past several years due to diminished public advertising. They indicate that the government not only discriminates by determining public advertising on a punishment/reward basis, but also influences advertisers by recommending to agencies that they not publish ads in critical media. The most affected by this situation are regional media, for whom the withdrawal of public advertising could result in bankruptcy.

The government has become the principal advertiser in the media and, according to Fundamedios, invests four times as much as private advertisers. This strategy allows the government to increase its media power and avoid criticism.

In this section it is necessary to recall, once again, the Inter-American Declaration of Principles on Freedom of Expression, promulgated in October 2000. Principle 13 of the Declaration states, "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

4. Verbal attacks and media abuse

In the first four months of 2012, 53 attacks against news media, journalists, and citizens demanding their right to freedom of speech were recorded, according to a special Fundamedios report published on Apr. 5 of this year. Upon comparing this figure with those of the same term in previous years (21 in 2009, 34 in 2010, and 42 in 2011), it is evident that the number of attacks appears to have increased annually.

More than half of the attacks (56.6%), Fundamedios reported, were carried out by public officials, chiefly through verbal pronouncements (16.98%), followed by the obstruction of coverage (15.09%).

While these figures alone are cause for concern, the hostile environment facing the press is evidenced not just by statistics. President Correa utilises a discourse of vitriol toward the media that is adopted by his supporters. Phrases such as the “mediocre and corrupt press,” “enemies of the revolution,” and “ink assassins” are repeated in presidential addresses. These verbal attacks, together with the fact that the government does not investigate acts of aggression against the media, create a climate of tension and impunity that leaves the messenger in a vulnerable state.

IPI believes that attacks against journalists are more serious when they come from the



government. It is contradictory to think that press freedom is respected when journalists are being publicly harassed and bullied. Verbal violence generates physical violence and it is unacceptable that the president is the chief promoter of this type of aggression.

Often the entire country is witness to verbal attacks against the press in Ecuador. This occurs during presidential broadcasts known as *cadena*s, which allow the president to interrupt normal programming—including on private channels—to transmit official messages. According to the Mexico-based Fundación Ethos, between January 2007 and May 2011 1,025 *cadena*s were broadcasted over an accumulated 150 hours.

“In Ecuador, the function of the *cadena* has been distorted. Instead of providing information about ministries or public organisations, as indicated by the law, they are abused to spread political propaganda and to discredit those who think differently,” Anthony Mills observed. He added that the fact that the *cadena*s are used to attack the media, journalists, and Fundamedios is of particular concern.

Sources consulted by IPI explained that one of the methods used by the government is to interrupt a special report to question the content as well as the presenters themselves. This has happened, for example, to the radio news program Exa Democracia, presented by Gonzalo Rosero; to the interview show Buenos Días, broadcast by Radio Visión and led by Diego Oquendo; to Contacto Director, broadcast by Ecuavisa and led by Carlos Vera; and to La Hora de Jorge Ortiz, broadcast by Teleamazonas and led by Jorge Ortiz. The latter two journalists no longer work for the respective television stations.

“Many broadcasters encounter problems if they discuss a delicate issue, often the next day the government airs a *cadena* during the program’s regular hour to refute the broadcaster’s report. The government is violating the law because the *cadena* is supposed to be announced 24 hours in advance, but notice is no longer given,” explained one journalist who leads a radio show.

In addition to the length and frequency of the *cadena*s, which can be seen or heard on all television and radio channels, it is important to bear in mind that the government administers 21 media channels. “They are a media government, it is a government based on propaganda and sustained by the economy,” explained one journalist. As examples, he added: “Every Monday there are 13 minutes worth of *cadena*s, at the beginning and end of news programs. On May 3, World Press Freedom Day, the government broadcast a message before regular programming that said something to the effect of ‘you are listening to this before there is freedom of expression’.”

The *cadena*s have been used as part of campaigns to discredit journalists and media-related organisations. Examples include the accusations that the press, especially the newspaper *El Comercio*, were behind the assassination of ex-president Eloy Alfaro, a theory promoted by President Correa. The calling into question of Fundamedios and its director, César Ricaurte, after the organisation delivered a presentation on press freedom in Ecuador before the Inter-American Human Rights Commission in October 2011, was also broadcast via *cadena*.

“Public exposure is not part of our nature as journalists. Public media take advantage of



every opportunity to film us, pursue us with cameras, place us in the political camp of the opposition,” one reporter commented. “Nowadays the work of journalists is not understood. Our job has been criminalised and it appears that this situation will continue. The government believes that it is politically profitable,” added another.

5. Other means of intimidation

During its visit to Ecuador, IPI identified additional means of intimidation that indirectly affect the press.

Media representatives interviewed by IPI reported that after the publication of controversial pieces, labour ministry commissioners pay visits to the media house to verify that all regulations are being met. The same occurs with tax officials.

“Every month there is a visit by some authority; they come in and check everything. There is no respect for privacy,” complained one media owner. In some newspapers offices, beginning a few months ago, there are reportedly even spaces reserved for public officials checking in on the paper’s management.

Another action that financially affected the media, and which was interpreted by certain groups as a measure to punish the industry, was the elimination of a tax exemption on newsprint. Since 2009, printed media have had to pay a 12% tax on the paper.

Media have also denounced what they view as government attempts to organise newspaper vendors and turn them against the private press. On this point, however, it is important to note that the editor-in-chief of *El Telégrafo*, Orlando Pérez, told IPI the opposite: that private media have threatened newspaper vendors to prevent them from selling *El Telégrafo*.

“IPI is concerned about the wide variety of intimidation methods being applied in Ecuador. The government makes use not only of public and overt criticism, as well as legal actions, but also more silent and discreet techniques that have the same effect of sowing fear,” declared IPI’s Anthony Mills.

6. Lack of dialogue

IPI’s Constitution, ratified in 1950, proclaims: “World peace depends on understanding between peoples and peoples. If peoples are to understand one another, it is essential that they have good information. Therefore, a fundamental step towards understanding among peoples is to bring about understanding among the journalists of the world.”

In compliance with its Constitution, IPI has throughout its history encouraged dialogue among journalists. Additionally, the organisation has promoted a better understanding between journalists and public officials, playing a particularly important role in Eastern Europe after the fall of the Iron Curtain.

In the case of Ecuador, there is no dialogue between the government and the media. In fact, communication between private media journalists and those of media administered by the state is almost non-existent. The polarisation and radicalisation of the conflict prevent the necessary healthy debate from occurring.



Many media workers expressed pessimism. “There is no possibility for a fair discussion. We haven’t been able to sit down and talk. I’ve tried to talk with the government, but Fernando Alvarado is very complicated,” one editor said.

“We are at a point of no return because the aggressiveness is such that it is impossible to sit the players down and start a dialogue. In the government’s view, the fact that private media exists is a big problem for mankind. The government’s behaviour is quite coherent: the goal is eliminating them,” added another journalist. “You just can’t talk to someone who is insulting you every day.”

IPI has promoted dialogue throughout its history and regrets that at this time there exists no communication between the Ecuadorean government and the media. “The situation is critical as both sides are simply insulting one another without looking for a way to stop the conflict. The situation is complex, but dialogue is needed for the benefit of society,” said IPI’s Anthony Mills.



Government Meetings

On May 9, IPI met Fernando Alvarado Espinel, Ecuador's national secretary of communication. During the meeting, IPI Director Anthony Mills noted IPI's concern about the hostile climate facing Ecuadorean journalism. Mills indicated that, after the *El Universo* and *Big Brother* verdicts, there is a sense of fear among journalists and the media, a situation that has led to self-censorship.

Alvarado responded by insisting that there is freedom of expression in his country, and that journalists are free to exercise their profession. In his view, this is proved by the fact that the media in Ecuador criticise the government on a daily basis, often from a political standpoint. He believes that the private media have initiated a battle against the government.

Mills advocated for the decriminalisation of defamation and for the use of civil courts to address libel complaints – an issue that is a focus of IPI campaigns in various parts of the world. Likewise, he indicated that civil damages should not be disproportionately high, as this would have the same adverse effect on press freedom as criminal charges. Specifically, he mentioned the \$40 million fine against *El Universo* and the \$2 million fine against the authors of *Big Brother*. In response, Alvarado pointed to a government proposal to reform the Penal Code and decriminalise libel and slander.

IPI's deputy director shared the concern expressed by the local media regarding fears that the new Democracy Code could restrict news coverage of the electoral campaign. The secretary of communication, however, defended the new law and rejected the media's argument.

When asked about the future of the media seized from Grupo Isaiás, Alvarado responded that the media were for sale but that no purchase offer had been received.

The secretary of communication also mentioned the government's intention to promote a salary increase for media professionals, and its interest in carrying out a methodological, scientific study to ascertain the press freedom situation in the country.

Mills offered to have IPI serve as a mediator in the conflict between the government and the press. The same proposal was presented later to the country's vice president, Lenín Moreno, who also assured that press freedom was guaranteed, although he recognised that there was a lack of dialogue among players in the conflict. Moreno agreed to be the government's mediator in discussions with the media. In both meetings, Mills emphasised that IPI promotes both press freedom and, at the same time, ethical and committed journalism.

During a meeting with Ecuador's justice minister, Johana Pesántez, IPI Deputy Director Anthony Mills raised the topic of criminal defamation suits filed against critical journalists. He noted that although the journalists were subsequently pardoned, they initially received jail sentences of up to three years and exorbitant fines of up to \$40 million. This, he noted, had a grave, chilling effect on investigative reporting and on the democratic image of Ecuador.



Mills reiterated IPI's view that journalists should never be subjected to criminal defamation charges because of their work. Instead, aggrieved parties should turn, where possible, to independent media entities and self-regulatory bodies for redress. Where it is felt that this offers insufficient redress, plaintiffs can take up the matter in civil court – though any fines levied should be proportionate.

The justice minister noted IPI's concern, but defended criminal defamation charges as a legitimate means of defending reputations in a country in which reputations were taken very seriously. She further suggested that there were perhaps "cultural" differences that led to this difference of opinions. She added, though, that the government would be seeking to abolish the specific charge of criminal defamation of the president.



Meetings with public and seized media

IPI held meetings in Quito and Guayaquil with editors and journalists of public and seized media in order to become acquainted with their point of view regarding the press freedom situation in Ecuador.

Representatives of the newspaper *El Telégrafo* and television station Ecuador TV (ECTV) recalled that when Correa assumed the presidency, the state possessed only one media outlet. They explained that Ecuador was at that time the only country in Latin America that lacked public media, a result, in their view, of the lack of will on the part of previous governments. They described as a success the steps taken since 2007 to develop a media landscape that includes private, public, and community media.

Public media spokespersons agreed with one another that public media had given unprejudiced coverage to topics related to minorities. ECTV representatives explained that the difference between them and commercial television is the fact that 70% of their production is independent and that their content is value-based and seeks to include groups previously ignored by the media. They have received advice and training from the German broadcaster Deutsche Welle.

The editorial independence of Ecuador's public media has been questioned. However, government interference is denied by those who work there. Ecuador TV representatives assured IPI delegates that representatives of opposition media are welcome to appear on the station, on the condition that they refrain from using insulting language: "Sometimes they say that we don't give them space, but they don't accept when we invite them. We continue to look for a balance. We try to present the two sides and let the public decide." At *El Telégrafo*, journalists affirmed that the paper sometimes publishes opinion articles critical of the government.

"We work honestly and are offended by those who say that we are biased because of government patronage. We are here with the purpose of fighting for responsible journalism, we don't have corporate interests. They've lumped us together to delegitimise us as journalists and to fight against the government," Orlando Pérez, editor of *El Telégrafo*, said. He added: "We may agree with the government on many issues, but we have our own investigations unit and we have reported on cases of corruption. Unlike other media, we always publish replies and we don't publish lies."

El Telégrafo's editor noted that many of his reporters began their careers in private media. When consulted about the issue of salaries—a source of frequent criticism by the private media—Pérez denied that public media paid journalists higher salaries simply because they are government-funded. "In Ecuador, the minimum wage is \$300 per month, and there are private media where journalists earn minimum wage. Here, they are paid according to the law, at least \$483 for journalists." Pérez assured IPI delegates that *El Telégrafo* is financially independent from the government since the paper is supported by revenue from a publishing business.

Pérez indicated that he would like to guarantee the financial and editorial independence of public media through a clause in the communications law, which was proposed last



year in the National Assembly. He wants the new law to establish “clear rules for all” and to cover issues such as labour rights, professional associations, and the financing of public media.

ECTV employees explained that the government provides part of the funds for the station’s functioning, but that they must secure the rest, although they are legally restricted to receiving funds only from public institutions and non-profit groups. The Venezuelan government donated \$5 million for equipment to help get the station started. Asked about the impact of state funding on its editorial line, ECTV insisted that it tries to maintain balanced news broadcasts. However, employees confessed to having difficulties with the management of government advertising.

In terms of guaranteeing balanced news reports, ECTV highlighted its advisory council, which includes academics and representation from different regions of the country, as well as an editorial council that meets weekly to evaluate the coverage.

ECTV broadcasts *Enlace Ciudadano*, the weekly Saturday program through which the president communicates with the public and which is used to attack the political opposition and the media. Station representatives stated that the address is shown live in its totality, but that later in news programming certain phrases that could be offensive are not reshown. “Distinguishing our coverage from the official information is difficult. We have had to work to explain what is different,” they said. “When there are *cadena*s, we don’t agree to having them during news broadcasts. Always at other times, in order to avoid confusion.”

ECTV representatives complained that, during the *El Universo* trial, they were denied access to the defendants for interviews. However, they said that private media are able to go to public television when there are interviews with the president or when international broadcasts are aired there.

IPI met with representatives of the seized media outlets, who indicated that there were restrictions on covering certain topics when the media belonged to the Isaías family, as coverage was handled based on the family’s interests. Nevertheless, they also pointed out that President Correa has attempted to influence their editorial line since he took over their management in 2008. The promise was to sell them so that those affected by the banking crisis could be paid back. Four years later, however, the seized media have been used to defend the government’s positions, taking advantage of the ratings those channels enjoyed.



Recommendations

To the media

- Work to develop a code of ethics, if one does not already exist
- Develop an accountability system by which the media can take responsibility for published information that is inexact or inaccurate or which violates the code of ethics.
- Start a debate in the industry on defining the best practices of self-regulation. Although it is true that media ethics should not be regulated by the government, the media must demonstrate to the country that there exist mechanisms for guaranteeing ethical journalism.

To the authorities

- Halt the confrontation with the media. This includes putting an end to both attacks against individuals and organisations as well as speech that promotes the discrediting of journalism. The fact that the offensive discourse originates from the president leads other officials to replicate the model, which can lead to physical violence.
- Eliminate laws that criminalise defamation, libel, and slander, especially laws that criminalise defamation of and contempt toward public officials, better known as *desacato* laws. Changing the name of the offence or article is not enough; what counts is guaranteeing that no journalist will go to prison for doing his or her job and ensuring that the public is informed about the actions of the authorities.
- Handle crimes against reputation and honour in civil rather than criminal courts, but ensure that any damages awarded are not excessive.
- Prepare mechanisms that guarantee the independence of the public media.
- Guarantee the participation of all stakeholders, including private media, in the drafting and debating of laws that affect press freedom.
- End the abuse of the national broadcasts known as *cadena*s and of state-run media as propaganda tools.

Translation from the Spanish: Jorge Rodríguez