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Freedom of Expression in Ecuador

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The debate regarding freedom of expression has polarized Ecuadoran society. Supporters of President Rafael Correa insist on the need to control the communications media and to defend personal honor, whereas journalists, political-party leaders, and social movements are worried about the controls that would be implemented by a new communications law being debated in the Asamblea Nacional (AN) and about the criminal trials that have been brought against journalists and political leaders accused of damaging the reputation of the president and other government officials.

Communications media questioned

Generally, Ecuadoran media have traditionally been monopolies tied to the financial system, with a clear commitment to its interests. This tight relationship even prompted the media to hide, or not inform the public about, the real situation of the banking system in 1999, when the worst financial collapse in the country's history occurred (NotiSur, Jan. 22, 1999), provoking the ouster of then President Jamil Mahuad (1998-2000).

Until 1999, ties between the large media companies and the financial system allowed the banks to attract deposits from the public by offering high interest rates; these deposits ended up in the coffers of businesses also linked to the principal shareholders of the banks or in phantom companies, under the guise of loans but without adequate guarantees to ensure their repayment.

Days before the banking collapse, various newspaper editorial writers and television economic analysts lied to the public by presenting the banking system as solid and encouraging continued investment in banks already beyond salvaging.

The financial collapse and the media's silence led to public distrust in the information they received; this lack of confidence grew during the protests by the "forajidos" (outlaws), which brought down the government of President Lucío Gutiérrez in 2005 (NotiSur, April 22, 2005); none of the popular protests were covered by the major media, even when Gutiérrez's downfall was imminent.

In contrast, space in the mass media was permanently filled by spokespersons for the same economic groups to which the media belonged, leaving out opinions of spokespersons tied to the social sectors, especially the indigenous sector.

The 2008 Constitution regulated the media and prohibited it from having ties to the financial system. Later, the May 2011 referendum also prohibited media owners from being majority shareholders in businesses not linked to communications.

Finally, the banking collapse allowed the state to confiscate various media outlets in payment for state loans given to bail out the banks; this facilitated a change in editorial line by the confiscated media outlets in favor of President Rafael Correa's administration.
Correa invested in modernizing the confiscated media outlets and creating new public media, which adopted a pro-government stance, some losing their independence and others losing their public-media character, instead becoming government mouthpieces.

The major media are now divided in two large groups: those that, despite the regulations, are still tied to economic groups and those that are part of the government's publicity apparatus.

Apart from the two large groups are small and community media that struggle to survive and maintain their independence, despite the economic suffocation they suffer by not accepting government advertising or being part of the power groups.

A law that regulates more than necessary

The appalling history of Ecuador's large media companies made it necessary to debate a new communications law to regulate the media's property and activities; Ecuadoran society has validated this need on several occasions, most recently in the May referendum in which voters supported creating a media-regulating council, an issue that had been an obstacle in advancing legislative debate on the new law.

The "yes" victory in the referendum has led the legislative committee that deals with the bill, on which the administration has a majority, to propose regulatory systems that sin by being excessive, as, for example, the zeal to control comments and messages that circulate on Internet social-networking sites or the comments that the public posts on media Web sites.

The bill has two other worrisome components. One is the creation of the Consejo de Regulación de los Medios de Comunicación, in which the government will have a majority and thus be able to harass media outlets that do not support it. The other has to do with "further liability," that is, the media's and journalists' liability for what they publish. This can even have criminal repercussions, as the government is making clear.

The proposed communications law has drawn observations from the UN Special Rapporteur on the promotion and protection of the right to freedom of expression, who said that certain articles in the bill contradict human rights principles regarding freedom of expression. Other institutions have also made observations on the bill, but the government has rejected them precisely because the institutions are linked to Ecuador's communications history, as is the case with the Sociedad Interamericana de Prensa (SIP), which includes Latin American media owners and which said nothing about the role of the media during the 1999 financial crisis.

Lawsuits as mechanism of intimidation

Fears regarding the controls contemplated in the new communications law are based on the proclivity of some government officials, headed by the president, to sue journalists and media companies that, they say, have damaged their reputations.

Former Gov. Camilo Samán sued of Guayaquil because of an editorial by the paper's opinion editor Emilio Palacio. Samán declined to continue the legal action because of a request from his father.

Secretario de la Administración Vinicio Alvarado has brought at least five criminal actions against persons who have supposedly defamed him. One is against the indigenous former deputy and former communications secretary in the Correa administration Mónica Chuji. Alvarado accuses her
of defamation for commenting in a newspaper in the capital that he is one of "this government's new rich."

But the president took the lead in this tendency by filing a new suit against Diario El Universo for US$80 million, also based on an opinion piece by Emilio Palacio, in which he accuses the president of having "ordered to fire at will and without prior authorization at a hospital," referring to the events of Nov. 30, 2010, when sectors of the Policía Nacional staged an uprising (NotiSur, Dec. 3, 2010).

After four months of legal proceedings, the judge found Palacio guilty and ordered three El Universo directors to pay a US$40 million fine and spend three years in prison. Both sides have appealed the judge's ruling: the president insists on US$80 million in damages, and the defendants are appealing for the verdict to be overturned.

Although in this instance, Palacio went beyond the limits for an opinion piece and alleged that the president was responsible for a crime against humanity, Diario El Universo editors have shown a willingness to correct this error, first with Palacio's departure from the paper and second with a last-minute offer to print a retraction. This could lead to a resolution that would show a president willing to dialogue, but Correa has been implacable in his desire to set a legal precedent for cases of defamation by the media, with a disproportionate sentence for such cases.

If the sentence is upheld, it is likely that the suits Alvarado has filed will also prosper in the same way, converting justice into an instrument of political persecution and a way to frighten those who, belonging to the social movements, still have independent voices and criticisms of the actions of a government that is moving to the right economically and showing signs of intolerance.

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