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Ecuador's New Communications Law: Media Democratization or Gag Law?

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Ecuador's new communications law, passed on June 14, purports to democratize the media, redistribute frequencies, and expand access to the radio spectrum (NotiSur, Sept. 10, 2010). However, the creation of control agencies and new legal instruments that could undermine freedom of speech has called into question the government's affirmations that the law promotes communications rights in the country.

Although a transitional provision of the Constitution, approved Oct. 14, 2008, set a period of one year for creating a communications law, and the May 7, 2011, referendum ratified the president's proposal to create the law, including an entity (Consejo de Comunicación) to regulate content (NotiSur, Feb. 4, 2011), lawmakers were unable to reach a consensus and suspended debate in April 2012 when it was clear that they lacked the votes to pass a law in line with the government's proposal.

The new Asamblea Nacional, dominated by the executive, approved the law in record time. The vote lasted only 35 minutes; no debate was allowed nor were the law's 109 articles and 22 transitional provisions read. Although the final version of the law was not unveiled until the night before the vote and only the titles of the six general sections were read, four sections (Preliminary Provisions and Definitions, Principles and Rights, Media Systems, and Content Regulation) were approved by 108 of the 135 deputies present and the other two (Communications Media and the Radio Spectrum) were approved by 110 deputies.

A law that could affect freedom of speech

The creation of two supervisory bodies to control content disseminated by the media—the Consejo de Regulación y Desarrollo de la Información y Comunicación and the Superintendencia de la Información y Comunicación—as well as the imposition of a watchdog (Defensor de Audiencias) in press rooms, has elicited harsh criticism of the law, both nationally, where its constitutionality has been challenged, and internationally, including from the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR).

Professor Farith Simons of the Universidad San Francisco in Quito says that, while rights like the rights to communication must be regulated, "the discretion of the control agencies is worrisome in that they are made up of only government representatives."

The Consejo de Comunicación was supposed to include the participation of Ecuadoran civil society organizations and university communications departments as well as government representatives, but in the end it was reduced to five representatives, three named directly by government agencies, one by the Defensoría del Pueblo, and one by the Consejo de Participación Ciudadana. These last two bodies have shown total loyalty to the national government to the point that the Defensoría del Pueblo even backed a protection motion against the Quito newspaper Diario Hoy, joining the
government's demand that the newspaper apologize for a published article, while the Consejo de Participación is made up of governing-party activists.

The head of the Superintendencia de Comunicación will be chosen from a short list submitted directly by the president and will have authority to control, supervise, and organize compliance with communications rights, address citizen complaints, and sanction media that violate any regulations established by the law (NotiSur, Aug. 12, 2011).

The sanctions will apply both to the journalists who produce the information and to the media owners; they will have joint responsibility for what is published. Deputy Bolívar Castillo, who wrote the article creating the superintendency, said, "This agency with the power to sanction is necessary so that the law is not just something on paper and journalists and media owners are equally liable for any damage that they might cause to persons."

The law also requires that national media have on their payroll a media watchdog (Defensor de Audiencias) to gather complaints and denunciations from listeners and readers and make corrections as needed.

Diego Cornejo, president of the Asociación Ecuatoriana de Editores de Periódicos (AEDEP), says that the defensor de audiencias will become the "grand censor" within every media outlet who will "dictate what can or cannot be published."

The potential limitations to freedom of expression in the law have already resulted in the first court case challenging its constitutionality, brought by Deputy Luis Fernando Torres, who based his complaint on various articles in the final version that were never debated in the Asamblea and were incorporated at the personal discretion of whoever wrote the bill.

Creating the Superintendencia de Comunicación and codifying the infraction of "media lynching," which would prevent denouncing corruption until a judge finds a person guilty, were not discussed in the first debate of the law in April 2012 and therefore should not be part of the final text, according to the legislative procedure set forth in the Código Orgánico de la Función Legislativa.

Reactions to passage of the communications law spilled over into the international arena when Catalina Botero, the IACHR special rapporteur for freedom of expression, sent a letter to the Ecuadoran Foreign Ministry with 10 concerns about the law, including the infraction of media lynching and the series of regulations and costly obligations imposed on media that interfere with their functioning and survival.

**Community media see opportunity to become stronger**

At the same time, the law establishes a series of benefits for developing community media, which will be awarded 34% of frequencies, as mandated by the 2008 Constitution.

The law provides these community media with state financing, access to advertising, and technical and administrative training, among other benefits, to help them compete on an equal playing field with private media and maintain a well-paid staff, overcoming deficiencies that, because of a lack of funding, prevented them from modernizing and meant having a poorly paid staff or relying on volunteers who believe in the community project.
Another of the law's articles requires that 60% of programming in any media outlet be national and, of that percentage, 10% be independently produced; also, 50% of the music on musical radio programs must be Ecuadoran.

Financing national production also involves the regulations imposed on private audiovisual media, which will have to contribute at least 2% of their income and 5% if their average audience is larger than 500,000.

The law also requires that advertising be produced in Ecuador, in national production companies that have at least 80% Ecuadoran staff, and 10% of advertising must be given to local and regional media.

These provisions for community media caused many social organizations, among them the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), as well as artists, filmmakers, and other intellectuals, to support the law, without taking into account the limitations and sanctions that could be applied to all types of media, including community media, when they want to complain or diverge from official discourse.

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