

THE REPUBLIC OF ECUADOR

ARTICLE 19's Submission to the UN Universal Periodic Review of the Republic of Ecuador

Thirteenth Session of the Working Group of the Human Rights Council, May-June 2012

Executive summary

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information, including by making submissions to the UN on the performance of countries in implementing established freedom of expression standards. ARTICLE 19 has observer status with ECOSOC. The organization has been working on various issues related to freedom of expression in the Republic of Ecuador (Ecuador), including protection of journalists and improvement of legal framework on media.
2. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the UPR for Ecuador. Given our expertise, this submission focuses on Ecuador's compliance with its international human rights obligations in respect of freedom of expression. In particular, it addresses **restrictive legislation** on the media and freedom of expression in general, government **control of media**, incidents of **harassment and attacks on journalists and human rights defenders**, misuse of **defamation and anti-terrorism laws** to suppress freedom of speech, and inadequate legal framework on **freedom of information**.

Legislation restricting freedom of expression

3. Since 2007, the Ecuador Government has introduced a number of constitutional and legislative initiatives with problematic implications for freedom of expression. The **new Constitution**, approved on 28 September 2008, introduced in Article 19 the concept of government intervention in news media, permitting the law to "regulate the prevalence of informational, educational, and cultural content in the media's programming." Article 312 of the Constitution, meanwhile, barred bankers from owning stock in media; this measure forced some media, owned by a bank's largest shareholder, to sell their stock.
4. ARTICLE 19 is also concerned about the following legislation of Ecuador that fails to meet international freedom of expression standards:
 - The 1975 **Law on the Professional Practice of Journalism** contains strict preconditions for journalist licenses, making it mandatory to have an academic degree in journalism and to register with the Federación Nacional de Periodistas, before commencing journalist activities. While this requirement is not always enforced, its existence is incompatible with principles of media freedom; the Inter-American Court of Human Rights, for example, has found this type of requirement to violate the right to freedom of expression.
 - Broadcast media are regulated by the 1975 **Radio and Television Broadcasting Law**. This Law contains broad provisions that allow for incarceration and other sanctions for "performances, programmes or expressions" subject to "criminal infractions." These provisions have been used to suppress critical voices. On 06 September 2011, for example, the Telecommunications Superintendent (SUPERTEL) announced that it would seek to punish seven radio broadcasters for simultaneously broadcasting a debate on freedom of expression without prior notification. The Law also provides a number of grounds for shutting down media outlets and revoking licenses, conferring unacceptably broad powers on the authorities. In April 2011, the radio station *La Voz de la Selva Esmeralda* was shut

down after local police, acting on an executing order issued by the National Telecommunications Council, confiscated media equipment and cut operating cables. The grounds given for this closure was that *Voz de la Selva* had been “operating as a relay station... without the necessary authorisation.” However, nowhere in the Law is such a stipulation made, prompting station owner Wilson Cabrera and others to express their concerns that the measure was made in retaliation for the station’s criticism of local authorities. Further, the Law contains no provisions that would guard against concentration of ownership or extensive cross-ownership. It also discriminates against community radio in many ways, making it extremely difficult to operate such a station.

- Media operators face multiple controls on programming content from laws and constitutional provisions. The **Code of Penal Procedure** of 1983, for example, prohibits the distribution of writing that is “immoral” or which deals with “obscene or dishonourable subjects”. Article 200 of the **Code of Minors**, meanwhile, forbids media to publish any information that harms the “privacy” or “good reputation” of children. The imprecision and vagueness of the wording used is deeply problematic in light of concerns over the independence of Ecuador’s regulatory bodies (see below). These and other laws give the authorities multiple opportunities to intervene in the operation of the independent media.
 - ARTICLE 19 is also extremely concerned about the compendium of media regulations that make up the Organic Law of Communication, Freedom of Expression, and Access to Public Information, **the Communications Bill**; the draft of which is currently being debated in the congress. The draft proposes a limited definition of freedom of expression, constraining it to be truthful and timely, which could allow for an interpretation that would not guarantee the principle of the right’s universal enforcement. ARTICLE 19 strongly opposes this draft Bill since it would create a media regulatory council with powers to punish “unethical” conduct and regulate media content in vaguely defined areas such as violence, sex, and discrimination. The ambiguous language of these provisions appears to open the way for prior restraint on speech to be exercised. Worryingly, the council’s independence also appears questionable, since five of its seven members would either be appointed by the executive branch or chosen from groups with close ties to the executive.
5. By executive order in August 2009, administrative oversight of the broadcast media in Ecuador was restructured with a view to giving the Government more control over the regulatory process. Telecommunications are controlled by three state agencies. Despite legal guarantees of their independence, the members of these regulatory bodies are not free from interference by the Government. For example, one of these bodies, the National Telecommunications Council (CONATEL), is under direct control of the Ministry of Telecommunications; its chief is appointed directly by the president and four of six members also answering directly to the president. The regulatory bodies are also entirely unaccountable: there is no clear and fair procedure for the allocation of radio and television frequencies, no provision for the participation of citizens and civil society groups. While CONATEL has a mechanism that regulates complaints, only complaints about the telephone operator or about media content are allowed for.
 6. The broad discretionary powers that the current legislation gives Ecuador’s regulatory bodies can be demonstrated by the victimisation of the television station *Teleamazonas*, one of the media outlets most critical of the Government. The broadcaster has been fined multiple times for breaking broadcasting law, including a 2009 fine for \$40 million – the maximum allowed under the law – for broadcasting news based on hearsay. In June 2009, *Teleamazonas* was investigated for a report on the installation of oil exploration machinery. On 22 December 2009, the station was temporarily suspended on the basis of allegedly unsubstantiated news reports.

Government control of media

7. Prior to 2007, the state media consisted of a single radio network, *Radio Nacional de Ecuador*. Since then, the Government has built one of the region's most pervasive state media operations, with 20 media companies, 5 television stations, and several widely-read newspapers. By law, the government was required to divest itself of 12 companies that were nationalised to settle debts following the 2008 financial crisis - two of which, TC Television and Gama TV, draw nearly 40% of the country's news audience - but it has yet to do so. As well as the obvious problems this causes for pluralism, this media control has had corrosive effects on media independence and press freedom. The Government has taken full advantage of this new media apparatus to discredit political opponents and critical journalists.
8. The Government has also used a variety of means to exert influence over private media providers. On hundreds of occasions, the Government has pre-empted programming on all stations nationwide via presidential addresses known as *cadenas*. While Article 59 of the Broadcast Law (mentioned above) authorises their use "exclusively for information regarding the activities of the respective offices," these have become a political instrument to confront opposition and promote government policy. On 25 January 2011, for example, the morning programme "Desayunos 24 Horas" was interrupted by an official announcement accusing the host, Maria Coronel, of being an "opposition political actor." In April 2011, after anchorwoman Jeanette Hinojosa accused the President of abusing his authority, the Government pre-empted 10 minutes of her programme with a harsh and personal rebuttal from a government spokesman. According to Fundación Ethos, a nonpartisan research organization, Ecuadoran television was pre-empted 1,025 times between January 2007 and May 2011 for *cadenas* totalling more than 150 hours.
9. The most notorious example of government control over private media took place on 30 September 2010, when revolting police officers barricaded the President into a hospital and five people died in the subsequent shootout. In response to the nationwide protests that this provoked, Communication Secretary Alvarado ordered broadcasters to halt their own news reports and carry only state news programming for six hours.
10. More insidious control is manifested in the form of editorial pressure. For example, in August 2009, the popular programme *Laura de Todos* was abruptly cancelled after the President Correa demanded it to be removed from the airwaves. On 25 March 2010, meanwhile, the Editor-in-Chief of *El Telegrafo* resigned – alongside the assistant Editor and Director – claiming he was "dismissed from his position for publishing the reaction by a member of the opposition about the report by the Commission of Truth."

Harassment and attacks on journalists and human rights defenders

11. In 2010, local press freedom groups recorded an unprecedented number of cases of harassment, intimidation and physical attacks on journalists, human rights defenders and persons associated with them. According to the press freedom group Fundamedios, incidents of abuse spiralled from 22 documented cases in 2008 to 151 in 2010, and are on pace to far exceed that level this year. These include the incident in January 2010, when the home of Alfredo Negrete, executive director of the Ecuadorean Association of Journalists, was broken in to. Despite being meticulously searched, only two objects of low value were taken. In March 2010, Jorge Santana Carbonell, editor-in-chief of *Tribuna* magazine, was killed after being run over by a car while travelling on his motorcycle. In October 2010, Germán Antonio Ramírez Herrera, a forensic expert for the anti-torture group PRIVA, was forced from his car and shot by unidentified

assailants. Most recently, on 17 October 2011, the investigative journalist Juan Carlos Calderon received a threatening telephone call, warning him that he “will be next.”

12. Such incidents are attributable in part to verbal attacks on the press from the President. ARTICLE 19 finds it greatly worrying that in his numerous speech, the President has described the press as “ignorant,” “trash-talking,” “liars,” “unethical,” “ink-stained hit men” and “political actors who are trying to oppose the revolutionary government.” The President’s August 2010 State of the Union speech included 42 minutes of attacks on the press, prompting major Ecuadorean newspapers to run the same cover, “For Freedom of Expression,” in protest.
13. The newspaper *El Universo* and the television channel *Teleamazonas* have suffered most from these attacks. On 11 July 2009 President Correa referred to *El Universo* as “the most pernicious political mafias in the history of Ecuador”, and its publisher has now been subject to a seemingly endless tax audit for two years. In August 2010, Jorge Ortiz, anchor of two political shows on *Teleamazonas*, resigned as a result of persistent attacks against him from the Government. Other journalists working for the channel also suffered similar attacks.
14. Environmental activists and NGOs, such as Fundamedios, have reported a number of death threats being sent to its staff. Instead of these attacks being investigated, their recipients have been accused by the Government of interfering in politics, promoting violence, and receiving funds from abroad to destabilise the country. In October 2010, the President stated that he would review all 50,000 NGOs registered in Ecuador on suspicion of tax evasion and prejudicing the state.

Advertising Boycotts

15. Another tactic used to subdue critical media in Ecuador is advertising boycotts. The government has been able to use its power as the country’s largest advertiser to pressurise editors into adopting less critical positions. For example, in August 2010 Julio Ayala Sierra, anchor of the political talk show *Punto de Vista*, ended the show after 17 years, claiming he had been “blacklisted” by the government, depriving the station of essential advertising revenue.

Misuse of criminal defamation and anti-terrorism laws

16. ARTICLE 19 continues to be profoundly concerned by the exercise of *desacato* laws, a class of legislation that criminalizes expression which offends, insults, or threatens a public functionary in the performance of his or her official duties. *Desacato* provisions protect officials from public scrutiny and criticism and run counter to democratic values of transparency and accountability. They are, furthermore, easily abused by Ecuador authorities. In March 2010, for example, the journalist Emilio Palacio received a three-year prison sentence for calling the president of a government-run financial institution, Camilo Semán, a “thug” and a “bully”. The severity of the sentence was justified on the basis that “the plaintiff is a public official.” Palacio only escaped the lengthy jail sentence after Semán decided to withdraw the case.
17. Several criminal defamation cases were brought directly by President Correa. On 05 March 2011, for example, President Correa filed a criminal complaint for *desacato* against Marcos Luis Sovenis, who shouted “fascist” at him during a visit to the city of Babahoyo in February 2011. Two months later, protester Irma Parra was arrested after making a gesture toward Correa’s motorcade intended to express opposition to the Communications Bill. In March 2011, the President brought a criminal complaint against three executives and an editor of *El Universo* for an article entitled “No a las Mentiras” (“No to Lies”) where the author, Emilio Palacio, alleged that “the dictator” had ordered troops to fire in the hospital he had been barricaded in. Although

the newspaper later offered a printed correction, the executives and the editor were sentenced to three years in prison and were ordered to pay a total of \$40 million in damages. The case is currently pending in appeal.

18. A number of defamation trials over the last few years have been instigated by public officials other than the President. For instance, in 2008 Milton Chacaguasay Flores, the editor of *La Verdad*, was jailed several times for allegedly libelling a judge. In May 2011, meanwhile, radio journalist Walter Vite Benitez was sentenced to a year in prison on criminal defamation charges related to his critical comments about a local mayor's performance.
19. Ecuador's anti-terrorism laws are also frequently employed by public officials to suppress peaceful protest. The criminal code includes, under the category of sabotage and terrorism, "crimes against the common security of people or human groups of whatever kind, or against their property," by individuals or associations "whether armed or not". This is easily amenable to marches which end in confrontations with police; hence 192 members of social and indigenous groups are currently being prosecuted for "terrorism" and "sabotage" for protesting against a law that seeks to privatise water supplies.

Freedom of Information

20. Article 187 of the Ecuador's Constitution states that all individuals shall have the right to "find, receive, exchange, produce, and release truthful, verified, timely, contextualized, and plural information." However, the text's emphasis on "truthful, verified" information leaves room for official restrictions on information whose verity is disputed by the government. Paradoxically, this constitutionally-protected right has also been used at times to restrict press freedom. SUPERTEL, for example, justified the suspension *Teleamazonas* in September 2009 on the basis of Article 18. Although the Organic Law on Transparency and Access to Public Information has been in effect since 2004, its implementation is problematic and several studies have documented that most people (65.16%) do not know the procedures to pursue to request information or to contest refusals by public institutions.

Recommendations

21. In light of foregoing, ARTICLE 19 calls on the Human Rights Council to urge the Government of Ecuador to:
 - Undertake a comprehensive review of legislation relating to freedom of expression and media freedom and bring it in line with international free expression standards;
 - Create an enabling environment for media and civil society and refrain from restricting their freedom to operate independently and freely.
 - Ensure editorial and financial independence of broadcast media;
 - Restrict the use of *cadenas* to providing information at times of emergency, and amend broadcasting laws to restrict opportunities for interference in media programming.
 - Establish independent regulatory bodies for broadcasting, free from political and commercial interference;
 - Refrain from vilifying media operators, journalists and activists for expressing critical opinion, and from influencing media content through advertising boycotts;
 - Abolish criminal defamation provisions and *desacato* laws;
 - Cease using anti-terrorism laws to infringe the right to protest;
 - Introduce a freedom of information framework that meets international standards and ensure its thorough implementation.