

Ecuador: October 2019, a decisive month to examine freedom of expression in the country

Executive Summary

In the case of Ecuador, the study period might be reviewed based on a turning point: The social protests that took place from October 3 to 14, 2019. Before and after these developments, there were events showing a system that still does not have appropriate mechanisms to protect the media and a State that is incapable of taking responsibility for crimes against journalists. In those days of October, however, a particularly violent environment against journalists was evident, and stigmatizing and hostile discourse towards the press resurfaced. The country ranked 17th in the Chapultepec Index of Freedom of Expression and the Press, with 42.50 points.

Introduction

2019 seemed to be a year in which the status of freedom of expression, freedom of the press, and access to information in Ecuador would continue to improve. This improvement has been tangible since Lenín Moreno took office in May 2017. For example, he ruled out nationwide *cadena* “*sabatinas*” (mandatory simulcasts of government addresses on Saturdays) in which, on numerous occasions, there were unfavorable statements towards the members of the press. Additionally, he eliminated the Superintendence of Information and Communication (Superintendencia de la Información y Comunicación, Supercom), an entity commissioned with sanctioning and fining the media since 2013.

However, 2019 was marked by the days of social protests in October. These were especially complicated times for the country in which the press fell victim to violent acts perpetrated by both the civil society and law enforcement: Abductions, insults, physical assault, intimidation, censorship, etc. As a result, Ecuador achieved a score of 42.5 out of 100 in the overall Index, reaching the 17th place out of 22 countries part of the study.

In addition to the October events, during the study period, the Inter-American Commission on Human Rights (IACHR) report on the kidnapping and murder of *El Comercio* (The Commerce) newspaper journalists was published. The report shows that the entities in charge of the investigation are making little effective progress. It points out that Ecuador, although it has a regulatory framework that protects journalists’ work in principle, in practice it does not have an efficient system for guaranteeing the rights of the press.

Analysis of results

Between May 1, 2019 and April 30, 2020, journalism was exercised under concerning conditions in Ecuador, especially in October. Of the 194 alerts for violations of fundamental freedoms during 2019, 60% of these occurred in the months of October and December, during and after the national strike. In the midst of demonstrations, 116 attacks on the press and 138 on journalists went on record (Fundamedios, 2019, p. 5); but equally relevant were the instances of violence by law enforcement against the press.

Another key element to consider in the analysis is that the government has not taken responsibility for attacks on the media. It failed to do so in the aftermath of October and, above all, it has failed to do so in the case of the three *El Comercio* newspaper journalists murdered. Although this unfortunate incident occurred in 2018, in December 2019 the IACHR published its report where it clearly stated that the Ecuadorian State did not take the necessary measures to protect the news team and further suggested that there were both non-existent coordination and omissions that proved decisive in the course of events (Jorge R. Imbaquingo, 2019).

Finally, in 2019, matters were also left unfinished regarding reforms and laws required to improve the status of the fundamental right of free speech. It must be acknowledged that, earlier that year, major amendments to the Organic Law of Communication (Ley Orgánica de Comunicación, LOC) were approved. Nevertheless, other key aspects have not even been debated by the Legislative, such as reforming the role of public media, which have been so far the communication arm muscles flexed by sitting governments.

Legislative Environment

Of the three environments, the Legislative shows the least influence in situations discouraging free speech in Ecuador, at a moderate level, with 4.47 out of a maximum of 10.

This perception stems mainly from the amendments made to the LOC by the National Assembly [Legislative]. This law, which was enacted during the government of former president Rafael Correa, drew a great deal of criticism from the media because it provided the government with a legal framework whereby several of the abuses against freedom of expression and the press could be left unpunished. The law was substantially reformed in several key points. We could highlight two: Oversight entity Supercom was eliminated; and the legal figure of media lynching was struck out.

Although this reform was performed in February 2019, in June it returned to public debate because of a procedural error. Additionally, the amendment of an article had been left incomplete "seeking that communication be regarded as a human right instead of a utility, taking into consideration the jurisprudence of the Inter-American Court of Human Rights" (Observacom, 2019). The changes to the LOC allowed for one thing not very common in the Ecuadorian legislative outlook: the alignment of different political forces. Similarly, the journalists' union assessed these actions favorably, as reflected in an

interview with Guadalupe Fierro, president of the National Union of Journalists (Unión Nacional de Periodistas), in which she highlighted positive changes and the improvement of the legal framework for exercising journalism (Consejo de Regulación, Desarrollo y Promoción de la Información y Comunicación, 2019).

Fundamedios, a free-speech watchdog NGO that constantly conducts monitoring activities, estimated that there was legislative backlog at the National Assembly in 2019, among pending matters, little progress in reforming statutes that currently prevent the exercise of free speech stemming from professional degree constraints. She also criticized the non-existent regulation on nationwide *cadena*s and government advertising, as well as the need for a clear role of the public media (Fundamedios, 2019).

Judicial environment

This environment, with a moderate score of 4.89 in the study, is the second to influence situations discouraging free speech in Ecuador.

One of the most concerning incidents, perhaps, was the one that occurred again amidst the October 2019 social protests. On the third day of that month, the Prosecutor's Office (Fiscalía) and the National Police (Policía Nacional) raided the facilities of *Radio Pichincha Universal*, which is critical of the government. On a tweet, the Prosecutor's Office informed that the process sought to "gather information on the alleged crime of inciting discord among citizens". The radio station, in a press release, assured that these actions from the authorities were in response to opinions aired on the show *En la Oreja* (In Your Ear) a day before social protests erupted. This program was conducted by journalist Washington Yépez and, on that occasion, he was interviewing a political leader, Luisa Maldonado, a *Correísta* movement loyalist – political adversary of the current government of Ecuador – as she, according to the Prosecutor's Office, had called on people to join the protests. (El Comercio, 2019).

In May 2019, however, the Agency for Health Regulation, Control, and Surveillance (Agencia de Regulación, Control y Vigilancia Sanitaria, Arcsa) filed a lawsuit for libel against *La Posta* (The Post) website, after the latter blew the whistle on alleged serious negligence in conducting HIV tests. The news again raised concerns about the status of freedom of expression and the press that undoubtedly affected the perception on this environment. However, a few days later, the President of the Republic, Lenín Moreno, asked Arcsa's director to resign and the lawsuit was withdrawn (La República, 2019).

On the other hand, it has become evident that, in order to retaliate against journalists, various members of civil society have threatened to file or actually filed lawsuits on three counts: slander, defamation, and discredit or crimes against honor. One of the cases was that of Jaime Vargas, president of the Confederation of Indigenous Nationalities (Confederación de Nacionalidades Indígenas, CONAIE), who accused *Expreso* daily of slandering him after the publication of a piece about his assets. The aborigine leader warned that he would take legal action, but this did not come to fruition.

Executive Environment

The study indicates that this environment is the one that most unfavorably influenced the state of free speech in Ecuador with a score of 5.88, placing it in the strong influence range.

For a better understanding of this perception, it is worth mentioning two significant events involving the Telecommunications Regulation and Control Agency (Agencia de Regulación y Control de las Telecomunicaciones, Arcotel). In July 2019, the agency issued an order to withdraw the temporary frequencies granted to the media group owned by Mexican businessman Ángel González. These frequencies were granted in an irregular manner, according to various groups and members of the communications industry. However, the order was put on hold after a judge in Guayaquil granted a constitutional injunction. Subsequently, no new tenders for frequencies have been called, which, in the words of Fundamedios, "keeps the industry under significant legal uncertainty" (Fundamedios, 2019, p. 4).

The second episode once again involves *Radio Pichincha Universal*, a media outlet critical of the government, as discussed above. In October 2019, the station was off the air for 16 days on an order from Arcotel; but an injunction determined that the right to freedom of expression had been breached, and the station could return to its regular programming. However, in January 2020, the agency again terminated the broadcast license, and finally a new appeal prevented it from going off the air (Punto Noticias, 2020).

In addition to administrative actions, the Executive also played an unfavorable role in the state of freedom of expression and the press during the social protests of October, especially between that month's 3rd to 5th days, when law enforcement forcibly repressed the media. Several journalists' testimonies report actions ranging from intimidation to hours-long arbitrary detention. This is a topic further elaborated on in Realm C regarding violence and impunity.

REALM A: Informed citizens free to express themselves

Several of the journalists and academics surveyed agree that freedom of expression and plurality of content disseminated in the country have improved in Ecuador. They also concur that 2019 was specifically a year when progress was made owing to the amendments on the LOC mentioned above.

In any case, there are still restrictions on full access to information, especially because of the cumbersome procedures for requesting public information. The score in this realm, according to the Chapultepec Index, reached 11 points out of a maximum of 23.

The country's government institutions do not abide by their own disclosure standards, which require, for example, that all public information be accessible on their websites. In

practice, commentators say, not all information is posted and when something additional is required, the request for information falls into a cumbersome bureaucratic process. Similarly, there is a consensus that the public media, albeit encouraging plural contents, still tend to be used as the political arm of the sitting government.

The overdue debt in this realm once again revolves around what happened to *Radio Pichincha Universal* in October 2019, when its license was withdrawn for 16 days during that month's protests (Fundamedios, 2019). In January 2020, it further received another request for license termination (Punto Noticias, 2020). The grounds for the penalty – with the support of the Ministry of Defense (Ministerio de Defensa) and the Council for Regulation, Development, and Promotion of Information and Communication (Consejo de Regulación, Desarrollo y Promoción de la Información y Comunicación) – stated that the contents of the media outlet incited protest and posed a threat to national security.

REALM B: Exercise of journalism

The LOC is the legal basis for all communication and advertising activities in the country, including journalists' work. Under this legal framework, articles 40 to 42 thereof set forth the rights of source protection, professional secret, and free exercise of communication.

There is no provision that expressly protects press contents from possible misuse and there is a restriction on the exercise of journalism consisting in the requirement of a professional degree. With this in mind, the journalists inquired consider, in general, that the government has been able to improve the conditions for journalistic work in comparison to the previous administration. However, the rating for this realm was 4.3 out of a maximum of 10 points.

This perception is reinforced, once again, by the reforms to the LOC and by specific cases such as the removal of Juan Carlos Galarza, Executive Director of Arcsa, by President Moreno. Galarza was dismissed in May 2019, after he filed a lawsuit against the digital media outlet *La Posta* for reporting alleged negligence in conducting HIV tests. The president and several ministers of the cabinet stated on Twitter that the removal was intended to preserve freedom of expression and the press in the country. (Romero, 2019)

There are also other ways, perhaps new and therefore insufficiently regulated or debated yet, whereby the government restricts the exercise of journalism. One of these examples is what happened at the Quito Book Fair in December 2019. This event was organized by the National Book and Reading Plan (Plan Nacional del Libro y la Lectura), an initiative of the Ministry of Culture (Ministerio de Cultura) of Ecuador, headed by María Fernanda Ampuero. This official received some criticism from journalists; one of them was that the logistics was poor and that several writers were not included. In response, Ampuero blocked some of these critical voices from her Twitter account, which begs the question: Can a public official, who currently uses social media to provide information on public interest matters, block journalists? (Minga, 2020).

Another way in which the exercise of journalism was restricted by government agencies occurred during the COVID-19 pandemic. Especially in March and April 2020, the government could not devise an effective means to include some members of the press in online conferences with the media. Consequently, many of the questions in those early press conferences came from virtual private rooms, where the questions reaching officials went through various filters.

REALM C: Violence and impunity

Regarding violence, journalism in Ecuador during 2019 was undoubtedly marked by the social protests of October. National and international organizations reported on this. In its January 2020 report, the IACHR stated that violence in the midst of the national strike "led to the obstruction of the work of the press, in the form of a series of attacks against journalists and the media, both by law enforcement and demonstrators" (IACHR, 2020). The number of media outlets attacked was at least 20, located in the provinces of Pichincha, Guayas, Tungurahua, Chimborazo, Morona Santiago, Manabí, Azuay, Pastaza, and Sucumbíos.

In this realm, Ecuador scored only 9 points out of 42 possible.

One of the most notable assaults was that sustained by Juan Carlos González, a reporter with the digital media *Wambra*, who, according to the IACHR, was allegedly hit in the face with a tear gas canister in Quito. Another, that of journalist Ronald Cedeño, who was run over by a policeman on a motorcycle in Guayaquil.

In terms of impunity, on the other hand, the State has also been indebted. Not only because of the aforementioned case regarding its joint responsibility in the deaths of *El Comercio* journalists, but also because there have been no measures against members of the civil society who attacked the media in October 2019. Such events as the fire at *Telemazonas* facilities in Quito, or an attack against transmission antennas on Pilisurco Hill, in the province of Tungurahua, which left 65 radio and television stations off the air, remain completely unpunished.

REALM D: Control over the media

In the realm of control over the media, Ecuador appears better rated by the experts surveyed, with 18.3 points of 25 possible. Even so, according to the journalists and academics inquired, the most usual way to control the news and opinion content that media outlets publish in Ecuador is through the allocation of resources for advertising purposes.

In this regard, the regulatory framework only sets forth that government agencies purchasing advertising and publicity services on the media shall be governed by equal opportunity criteria taking into consideration purpose of communication, target audience,

agency territorial jurisdiction, and ratings and viewership levels. However, these guidelines prove ineffective at regulating which outlet is allocated advertising money and which outlet is not.

The only control mechanism provided for is the publication of annual reports by government entities reflecting their expenditures on media advertising categories.

Conclusions

October was the month that reversed a positive trend in the status of freedom of expression and the press in Ecuador. During the social protests that month, 116 of the 194 alerts for violations of fundamental freedoms in 2019 went on record: An increase of 133% compared to 2018 (Fundamedios, 2019, p. 5).

The protests also brought Ecuador back into the spotlight in the region. Commissions formed by the IACHR visited the country and, in their reports, they corroborated this setback, expressed in the case, for example, of *Radio Pichincha Universal*, where it was evident that the State, by means of administrative and judicial actions, briefly took this media outlet off the air and tried to terminate its operations definitively.

The same month of October, the Executive branch, through the National Police, used violent mechanisms resulting in attacks on media and journalists. Similarly, the government has not initiated the necessary judicial action in the numerous cases where media and journalists were attacked during the national strike.

On the other hand, 2019 also showed that Ecuador still does not have a comprehensive system to protect the activity of the media and journalists. This is especially true after the government's inability to take action and/or responsibility for the death of three *El Comercio* journalists. According to the report by the Special Monitoring Team (Equipo de Seguimiento Especial, ESE) to probe into the kidnapping and murder of Javier Ortega, Paúl Rivas, and Efraín Segarra, government institutions showed a lack of coordination and omissions in handling the case. They also indicated that Ecuador and Colombia should take steps to systematically collect information and declassify documents. That would be the only way to get the full picture of the facts (Jorge R. Imbaquingo, 2019).

The legislative environment is the one that displays the best behavior in Ecuador according to the study's Index. This is largely because the National Assembly substantially reformed the LOC. In any case, although the statutory framework shows some good progress with respect to the exercise of freedom of the press, there are several voices critical of the fact that no progress has been made in enacting a clear regulation for the operation of public media. Similarly, there has not been much progress in regulating national broadcast media or government advertising.

Attention should be directed to a new dynamic, at least for the current government, in which high officials respond in a particular and accusatory manner to information

published by the press. The reason for this is what has happened between *La Posta* online newspaper and a high-ranking government official: Minister of the Interior (Ministra de Gobierno) María Paula Romo. In August 2020, the media published a report linking the minister to an alleged scandal involving allocations of public hospital contracts destined to certain congressional districts in exchange for votes for some national assemblypersons. Not only did Romo deny the allegations, but also responded to the media outlet in a particular way, by accusing them, in a video uploaded on her personal social media, of committing a crime. This has not been a common practice in this government and we will have to look closely how this case unfolds.

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