

## **ECUADOR: MOVES UP IN THE INDEX WHILE LACKING STRUCTURAL REFORMS**

### **Executive Summary**

In spite of Ecuador moving up in the overall index, threats and violent speeches against journalists became evident in contentious episodes; hence the realm on Exercise of Journalism is the one showing the most unfavorable figures. The Judicial environment has been on the spotlight for sentencing a journalist to prison while holding little evidence and by means of a legal instrument that has been questioned for a long time. With presidential elections in between, the Executive Branch is also under the focus of this report, while the Legislative scenario maintains the same immobility of 2019.

### **Introduction**

Ecuador was amid a presidential election during the period covered by this report. Such event marks a turning point in the analysis of freedom of expression and the press. From August 2020 to May 2021, the country was still run by former President, Lenín Moreno. His image embodied a leader who tried to make substantial reforms to the conflictive legal frameworks for the press, but he fell halfway. He also epitomized the mismanagement of the global health crisis that was evident in the field of communication in the form of inaccurate information on infections and deaths, and at ministries during talks with journalists whose questions and requests were often ignored.

However, in May 2021, Guillermo Lasso became president and took office with a discourse in favor of freedom of expression and the press. He supported this with an immediate action: The submission of a new bill named the Freedom of Expression Law (Ley de Libertad de Expresión). Journalists and academics consulted for this report assure that President Lasso, although none of his proposals has materialized, generates positive expectations with regards to the relationship with the press. Thus, with a score of 56.07 out of 100, Ecuador has moved up from 17<sup>th</sup> to 14<sup>th</sup> place in this Chapultepec Index.

Conversely, the study also shows that Ecuador is a scenario holding unfavorable conditions, especially for the practice of journalism. The pandemic worsened the working conditions for many journalists and, in some cases, has led to layoffs. The use of lawsuits continues to be a form of intimidation against journalists and there are still tangible examples of how the Government directly influences over the control of the messages and information disseminated by the media.

### **Results Analysis**

During the period covered by this report, a non-governmental organization that watches over freedom of expression and carries out continuous monitoring exercises, Fundamedios, reported 254 alerts against the exercise of journalism and freedom of expression. Of these, 164

are directly related to the realms and environments under study by this report. The remaining 90, for the most part, belong to alerts related to the global COVID-19 pandemic. This data speaks of the impact that the pandemic has had over the exercise of journalism itself, which is further reflected by the obstructive actions by the government toward the free exercise of journalism.

The results of this Index, in its chapter on Ecuador, also allow inferring that the perception of freedom of the press and expression in the country has been slightly improving from August 2020 to July 2021. Until May 2021, Ecuador was still led by former president Lenín Moreno, who left office with barely 4.6% of approval, according to the pollster *Cedatos* (Ecuador Verifica, 2021). This reflects poor administration management (especially during times of pandemic) which also became obvious in terms of freedom of expression. For example, some ministries did not provide timely and accurate information in the midst of the health crisis, and at times, limited the participation of journalists at press conferences (Fundamedios, 2020). Moreover, Moreno's government ended its administration while leaving pending issues regarding promised, yet unfulfilled, meaningful reforms such as the Organic Law of Communication (Ley Orgánica de Comunicación, LOC). Public opinion is still discussing how his government did not take responsibility for the attacks against the media during the strike in October 2019, and for the case of three journalists from *El Comercio* newspaper murdered in 2018. However, in April 2021, Ecuador elected Guillermo Lasso as a new president who brought with him some optimism to freedom of expression matters. On May 25, one of Lasso's first actions was the submission of the draft Organic Law on Freedom of Expression and Communication (Ley Orgánica de Libre Expresión y Comunicación) which repealed the current statute known as the "gag law". In this regard, IAPA itself considered this action as a positive step for freedom of the press and democracy in the country (El Comercio, 2021). At different stages, President Lasso has also expressed that he believes more in media's self-regulation than in a law that regulates their labor.

### **Environments: The Exercise of Journalism, the realm most affected by the three environments**

The Index shows that the Legislative environment has some mild unfavorable influence of 1.87 points out of 10 on freedom of expression. This indicator means a positive improvement compared to the 4.7 points attained during the previous year's report. "There are no structural changes that could explain this improvement", said Jorge Cruz, journalist and coordinator of the communication area at the Pontificia Universidad Católica del Ecuador (Cruz, 2021), since the country still maintains the same laws and the same legislature.

The perception of this change would be then due to the fact that within the term of this report, there have been no new episodes that would be subject of extensive media coverage as attention has focused on the pandemic and presidential elections. In addition, citizens and public opinion are still debating cases that may be perceived as old, but still valid and showing that the Legislative does not give priority to improving the conditions of freedom of expression and the press. We are talking about, for example, the amendments to LOC. Although some key points of this law were amended during the administration of Lenín Moreno, the new general regulations required by the instrument were not issued until May 2021. Moreover, no progress was made on the amendment of Article 5 declaring communication as a public service (Fundamedios, 2020, p. 6). Furthermore, the announced reforms to the Criminal Code (Código Penal) to fully decriminalize opinion have not been implemented, and, according to the alerts recorded by NGO, Fundamedios, "these criminal maneuvers are still being used to persecute

and take journalists, some citizens, and activists to court for exercising freedom of expression" (Fundamedios, 2020, p. 7). Hence, within the judicial environment of this Index, the realm on the exercise of journalism is the one with the highest unfavorable score with 3.57 points.

Another fact explaining said progress at the legislative environment, compared to last year, is that the new administration of Guillermo Lasso has placed the new Law of Freedom of Expression and Communication in the hands of the Legislative. The law seeks to establish mechanisms for self-regulation of public and private media in the country and to fully remove LOC. Although this is an initiative by the Executive, several voices in the legislative body have expressed their willingness to bring this draft bill to a successful conclusion. (El Universo, 2021).

With regards to the judicial environment, Ecuador scores 1.71 points. Like in the previous environment, in this one too, the country shows improvement compared to last year's 4.89 score. Although the index has improved, Cruz argues, once again, that there have been no structural changes in the national system of justice, but adds that, in recent times, the country has gone through a "discharge phenomenon" (Cruz, 2021). In other words, the administration of Moreno ended, and with it, also ended a series of events by the system of justice that had a negative influence over freedom of expression and the press.

One must acknowledge that there have been no episodes like the social protests of October 2019 during the current administration. Though, among other abuses, the Attorney General's Office raided Radio Pichincha Universal, a station critical of the government then. This action, in addition to others, ended with the radio off the air for 15 days. From that moment until now, no similar events have been reported. Although this is part of the reasons for the improvement within the current Index, during this period, the country still experienced legal actions that particularly affect the exercise of journalism.

One of the most representative events was the conviction of journalist Juan Sarmiento for moral injury confirmed on November 12, 2020. The journalist was sentenced to ten days in prison, to pay 25% of a basic compensation (USD 100), and to offer a public apology to former governor of Napo Province, Patricio Espíndola (Committee to Protect Journalists, -CPJ-) (CPJ, 202). In the program *Tendencia Digital*, Sarmiento criticized the incompetence of the province official during the health crisis caused by the pandemic, both for not disclosing the real number of infections and for the lack of responsiveness by Napo's health system. This resulted in former governor, Espíndola, filing a lawsuit for damages to his reputation, his character, and for emotional abuse.

Sarmiento resorted to protection by an international program for journalists at risk, and traveled to Peru on November 28, 2020. As he was returning to the country, he was arrested by the National Police, despite the fact that the arrest warrant had expired. Finally, that same day, the arrest warrant was revoked during a court hearing (Fundamedios, 2021).

The executive environment also shows improvement. It went from a score of 5.88 to 1.91. These figures respond to a specific event: the election of a new government and the scores can be interpreted at two levels: a practical, and a symbolic one. The first was already mentioned above: the so-called Law of Freedom of Expression and Communication presented by the Executive to the National Assembly, a movement can be interpreted as a moment of "clear understanding and empathy between the Government, journalism, and the citizens", said Yolanda Aguilar, director of the journalism program at the Universidad de las Américas (Aguilar, 2021). Nevertheless, Aguilar also points out that this relationship may change over time if there are no concrete changes with respect to the state of freedom of the press by the government of Guillermo Lasso.

The second level, the symbolic one, involves the election of a new president and the expectations of change that this implies; and also, the narrative that Guillermo Lasso seeks to build on his relationship with the press and liberties. In September 2021, the newspaper *El Universo* - one of the most important and oldest in the country - turned 100 years old. President Lasso attended the celebration ceremony and said: "Nobody can stop power if you (the press) are not here" (El Universo, 2021). Beyond the president's words, the context in which these occur is significant: *El Universo* is a newspaper former President Rafael Correa filed a lawsuit against in 2012 for alleged slander to later claim USD 80 million and three years of imprisonment for the newspaper's board and the editor of the magazine *Opinión*. The lawsuit ended with a ruling favorable to the former president, although it was never enforced because Correa, finally, resorted to the legal figure of pardon for those named in the case. It was a judicial process with remarkable media impact that has even reached the offices of IACHR and has internationally positioned Ecuador as a country with unfavorable conditions for the exercise of journalism. Today, for a change, *El Universo* is the stage where a new president awards the exercise of the press.

### **Realm A: The same problems of access to timely information and plurality of voices continue.**

Some of the journalists and academics consulted agree that the arrival of a new government in Ecuador will improve, *a priori*, the conditions of freedom of expression and access to information. They look forward to both, the definitive reforms to LOC, and the tension-free relationship with the press and the general public that Guillermo Lasso proposes. Ecuador scored 13 points out of a maximum of 23 in the present Index.

However, there are still limitations to full access of information, especially due to the difficult processes to undergo when requesting for public information (Guerrero, 2022). The country's government institutions do not put into practice the transparency rules they demand, for example, that all public information be available from the institutions' websites. In practice, according to those consulted, not all information is posted and when something additional is required, the request for information falls into a cumbersome bureaucratic process.

One of the events that have directly affected the plurality of voices is the dismantling of public media. Although many have criticized the fact that public media have often served as a channel for the dissemination of information of government's interest, it is also true that these have also been spaces featuring more diverse contents than the private media. However, on July 29, 500 workers were reported to have been dismissed from the public media in the country (GK, 2021). This event, for the experts, is not only due to the deep fiscal crisis accelerated by the COVID-19 pandemic, but also denotes the ideological position of the new government: a smaller government.

Regarding access to information, the declaration of all information regarding the sale or securitization process of state-owned bank *Banco del Pacífico* as classified by the National Financial Corporation, became one of the most representative instances that occurred in 2019 (Fundamedios, 2020). However, the floor of the National Assembly resolved to declassify the information related to this matter.

### **Realm B: A realm that worsened**

There is no express provision that protects the press from the possible misuse of its content, but a university degree is mandatory to practice journalism. Bearing this in mind, most consulted journalists estimate that the government has been unable to structurally improve the conditions for the exercise of journalism, while also asserting that the newly proposed law can correct these issues (Guerrero, 2022). In this realm, the rating obtained was 4 out of a maximum of 10 points; the rate of the previous Index was 4.3, which means a decline on this category.

Another way the exercise of journalism suffered restrictions by government institutions occurred in the context of the COVID-19 pandemic. The government was not able to devise effective means to incorporate a plurality of voices during online press conferences. This way, many of the questions asked during those sessions reached the authorities passing through some filters. This was particularly evident in April and May 2020, but continued - with some adjustments - until about November.

The pandemic emphasized the real problem the country has when accessing timely and accurate information. Many times the figures on the deaths by COVID-19 reported by the government turned out to be "unreliable and limited [...] there has been a continuous underreporting on the number of deaths" (Fundamedios, 2020, p. 5). This issue was reported by the press and remedied when the media published the figures on the excess deaths on record from the National Institute of Statistics and Census (Instituto Nacional de Estadísticas y Censos). This problem continued until January 2021, when the vaccination process began in Ecuador.

### **Realm C: The realm that recorded most progress**

In terms of violence and impunity, Ecuador scored 21.15 out of a maximum of 42, a substantial improvement compared to the 9 points recorded in the previous Index. Fundamentally, this can be explained since during this period there was no incident similar to the social protests of October 2019 when the violence recorded then "obstructed the work the press, given the series of attacks against journalists and the media committed both by law enforcement officials and demonstrators" (IACHR, 2020)

However, the country continued to experience - between August 2020 and July 2021 - some episodes that can be considered as violent. One of the most illustrative examples was the case of journalist Dayanna Monroy, who was threatened and intimidated several times. The first one took place in July 2020, when the lawyer of Daniel Salcedo, a man accused of being involved in a corruption scheme in hospitals in the country, accused the journalist of lying in some reports while assuring that she would have to "answer for everything" (Vaca-Villarreal, 2021). In October, for a change, alleged threats from the former president, Abdalá Bucaram, to Monroy were made public. The alleged threats were due to a series of reports by the journalist who pointed out that the Bucaram family was involved in irregular sales of medical supplies (Vaca-Villarreal, 2021).

In another event that occurred in August 2021, the same Bucaram family threatened -via Twitter- cartoonist Xavier Bonilla 'Bonil', who had published a cartoon in the newspaper *El Universo* called "El Huyecaminos" (The Roadrunner), in reference to Jacobo Bucaram who is a fugitive from justice for the case of irregular sales of medical supplies (Vaca-Villarreal, 2021).

Other remarkable cases of violence occurred on August 29, 2020 when journalist Gonzalo Rubén Piña reported being a victim of verbal and physical attacks at the Reina del

Cisne stadium in Loja, by the public relations officer of the Provincial Sports Federation. By the end of November 2020, journalist Wilson Cabrera, correspondent of Teleamazonas in Morona Santiago, reported having been threatened by the National Police Commissioner, in Morona Santiago. Finally, on December 13, 2020, two sticks of dynamite were found in the balcony of the residence of journalist Mario Pinto, director of the digital media MPNoticias, in Machala city. Fortunately, the device did not explode. (Vaca-Villarreal, 2021).

## **Realm D: Former President Moreno favored allocation of frequencies to Mexican businessman.**

In the realm related to control over the media, Ecuador's rating reaches 17.71 points out of 25, a slight drop from 18.3 points on record in the previous Index. According to the experts consulted, in Ecuador, the most common way to control the type of information and opinion that media outlets publish is through the allocation of advertising funds.

Nevertheless, in this area, the allocation of frequencies to Ángel González, alias "El Fantasma" (The Ghost), is the most relevant issue that occurred within the period surveyed. According to a research by the digital media outlets *4Pelagatos* and *Fundamedios*, on the last days of his government, Lenín Moreno "awarded the media czar, of Mexican nationality and owner of the newspaper *El Comercio*, the frequencies of four other radio stations that had been disqualified for not complying with requirements during their contest for award" (Fundamedios and 4P, 2021). These four frequencies had been excluded because they did not comply with the rules of the Telecommunications Regulation and Control Agency (Agencia de Regulación y Control de las Telecomunicaciones, ARCOTEL). However, on May 27, 2021, the agency published a resolution allowing the stations to continue operating.

According to the research, former President Moreno pushed the Ministry of Foreign Affairs and ARCOTEL so that the order would favor Gonzalez in exchange for "protection against possible lawsuits" Moreno might face in the future.

## **Conclusions**

The election of Guillermo Lasso as the new president of Ecuador raises expectations among the people with regards to freedom of expression and the press. In principle, this represents a renewal of public policy ideas that encourage a scenario of media self-regulation. This would represent a radical change after almost 15 years the country has gone from having a very restrictive law for the exercise of journalism under former President Rafael Correa, to a less restrictive but insufficiently reformed law under former President Lenín Moreno.

Also, Lasso's presence in the public arena changes the narrative on the relationship between the press with the government and with citizens. The current president has promoted a much less heated rhetoric and has once again placed value on the exercise of the press and the full freedom of expression by citizens as a counterweight to his own power. This is something that his predecessor, Lenín Moreno, also promoted in his speech, but was very often contradicted in practice.

Either way, as Yolanda Aguilar warns, the government is just starting and "we are living a dangerous honeymoon" (Aguilar, 2021). She argues that, if these expectations are not

matched by actions, the relationship of those in power with the press will change little in Ecuador.

Although a new government lightens the atmosphere among society, it is essential to mention that on judicial or legislative matters, for example, there have been no structural changes in the country: Access to free and plural information continues to be an enormous challenge; there is still a regulatory framework in place to persecute journalists as in the case of Juan Sarmiento, and there is still concrete evidence that those in power actively seek to control the information that circulates among society; as an example of this is in the case of "El Fantasma" González.

Finally, the effects of the pandemic also bore a significant impact over national press. It is widely known that journalists were some of the most vulnerable professionals to the infection; this resulted in 23 media workers dying in 2020 (Fundamedios, 2020). But the impact of COVID-19 also reached the workplace itself: several news industries were forced to lay off employees; the most remarkable case was the dismissal of 500 people from the public media sector.

Having said that, and following the results of this Index, we can state that Ecuador has gone through a two-track period. On the one hand, structures that often clash with freedom of the press and freedom of opinion were maintained as society seems to have become somehow accustomed to said structures; and on the other, a new administration is taking shape in the Executive seeking to, in principle, re-enhance the image of the press, and remove from its way those historical obstacles. This would explain why Ecuador climbed three positions in this Chapultepec Index.

## References

- Aguilar, Y. (2021, septiembre 21). Directora de la carrera de Periodismo en UDLA. (R. Moreano, Interviewer)
- CIDH (2014 de enero de 2020). *CIDH presenta observaciones de su visita a Ecuador*. Obtenido de OEA: <http://www.oas.org/es/cidh/prensa/comunicados/2020/008.asp>
- CPJ (23 de noviembre de 202). *Sentencian a pena de cárcel al periodista ecuatoriano Juan Sarmiento por 'desacreditar' a funcionario local*. Obtenido de CPJ: <https://cpj.org/es/2020/11/sentencian-a-pena-de-carcel-al-periodista-ecuatoriano-juan-sarmiento-por-desacreditar-a-funcionario-local/>
- Cruz, J. (21 de septiembre de 2021). Periodista y coordinador de la carrera de comunicación - PUCE. (R. Moreano, Entrevistador)
- Ecuador Verifica (12 de mayo de 2021). *criteriosdigital.com*. Obtenido de <https://criteriosdigital.com/contexto/everifica/lenin-moreno-aprobacion-crisis-politica-ecuador/>
- El Comercio (27 de mayo de 2021). *La SIP considera como un paso 'positivo' la iniciativa de Guillermo Lasso para derogar la Ley de Comunicación*. Obtenido de El Comercio: <https://www.elcomercio.com/actualidad/politica/sip-positivo-derogatoria-ley-comunicacion-lasso.html>
- El Universo (12 de julio de 2021). *Gobierno insistirá en la autorregulación de los medios en la nueva Ley de Libertad de Expresión*. Obtenido de El Universo: <https://www.eluniverso.com/noticias/politica/ley-de-libertad-de-expresion-y-comunicacion-inicia-tramite-en-asamblea-nacional-nota/>
- El Universo (17 de septiembre de 2021). *Guillermo Lasso: Si ustedes (la prensa) no están, al poder no lo frena nadie*. Obtenido de El Universo: <https://www.eluniverso.com/noticias/politica/guillermo-lasso-entrego-condecoracion-a-diario-el-universo-por-sus-100-anos-de-vida-institucional-nota/>
- Fundamedios y 4P (11 de septiembre de 2021). *Moreno dio frecuencias al Fantasma a última hora*. Obtenido de Fundamedios: <https://www.fundamedios.org.ec/moreno-dio-frecuencias-al-fantasma-a-ultima-hora/>
- Fundamedios (7 de febrero de 2021). *Periodista Juan Sarmiento quedó libre tras prescripción de sentencia*. Obtenido de Fundamedios: <https://www.fundamedios.org.ec/alertas/periodista-libertad-prescripcion-sentencia/>
- Fundamedios (NA de NA de 2020). *Fundamedios Ecuador 2020: la pandemia marcó el trabajo periodístico*. Obtenido de Fundamedios: <https://www.fundamedios.org.ec/wp-content/uploads/2020/12/Informe-2020-EC2-2.pdf>
- GK (24 de julio de 2021). *Medios Públicos terminará los contratos de 500 funcionarios*. Obtenido de GK.city: <https://gk.city/2020/07/24/despidos-medios-publicos/>
- Guerrero. (20 de septiembre de 2022). Periodista de Primicias. (R. Moreano, Entrevistador)

Vaca-Villarreal, P. (30 de marzo de 2021). *Informe anual de la relatoría especial para la libertad de expresión*. Obtenido de OEA:  
<http://www.oas.org/es/cidh/docs/anual/2020/capitulos/rele.PDF>