



Quito Office

United Nations
Educational, Scientific
and Cultural Organization

IPDC International Programme for the
Development of Communication

Assessment of Media Development in Ecuador - 2011



Based on UNESCO's Media
Development Indicators

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Foreword

The application of the Media Development Indicators (MDIs) in Ecuador has been a challenging and enriching experience. Designed with the support of experts and institutions from all regions of the world, the MDIs were approved by the Inter-Governmental Council of the International Programme for the Development of Communication (IPDC) of UNESCO in March 2008. This tool, grounded in international standards, provides a set of indicators that can analyze and assess the main aspects of communication within a given national context.

Since the approval of the MDIs by IPDC's Council, they have been applied in several pilot countries worldwide. UNESCO-Quito had the support of the International Centre for Higher Studies in Communication for Latin America (CIESPAL) and of a national Consultative Group to put this tool into practice in Ecuador, the first country in Latin America to apply this instrument.

For UNESCO, it was vital that the application process of this international instrument was participative and inclusive of all communication and media sensitivities. Hence our Office's permanent efforts to involve representatives of all sectors throughout the different phases of implementation of this initiative.

After extensive consultations, surveys and research, the present publication provides the country and the international community with an assessment of the status of media development in Ecuador, identifying good practices that are being applied, as well as problems and existing needs that require greater support.

We thank the Ecuadorian institutions and experts as well as international advisors who supported this initiative and generously devoted their time to this collective endeavor.

UNESCO, pursuant to its Constitution, aims to promote the free flow of ideas by word and image. Essential for any democratic society is the exercise of the right to freedom of expression, along with the corollary rights of press freedom and freedom of information, since they allow citizens to take part in public life and defend their rights as human beings. Moreover, freedom of expression is also fundamental to ensure government transparency and accountability, fight corruption and allow citizens to make informed decisions based on the widest possible choice of information sources.

For the full exercise of this right, it is crucial to have a pluralistic, independent environment that encourages the free flow of information. An informed society is not possible otherwise.

UNESCO hopes that this report will be useful as a reference for planning projects and public policies to benefit and promote a free, pluralistic, independent media environment, and to achieve sounder, more participatory democracies. At the same time, this framework for evaluation may contribute to improving efforts by international donors and organizations, helping to better identify the media sector's needs, and facilitating measurement of the impact of interventions in this field.

F. Edouard Matoko
Director, UNESCO-Quito and
Representative to Bolivia, Colombia, Ecuador and Venezuela



Introduction

The UNESCO-Quito Office is pleased to present the following Assessment of Media Development in Ecuador 2011, based on UNESCO's Media Development Indicators (MDI). This work was funded by the UNESCO International Programme for the Development of Communication (IPDC) and implemented with the support of numerous organizations at the national level, as well as the advisory assistance of international experts.

The International Centre of Higher Studies in Communication for Latin America (CIESPAL) proposed a methodology for the application of the MDIs in Ecuador in August 2009 and a first version of the study a year later. The first draft was edited by the UNESCO-Quito Office and enriched with contributions from specialists in international standards and from the consultative group comprised of representatives from the country's different communication sectors.

Two workshops popularized the report with the public in Quito and Guayaquil to elicit comments and suggestions on the proposed methodology for applying the MDIs. This consultation process was assisted by CIESPAL and the *El Universo* Foundation.

The MDIs were approved by the Intergovernmental Council of IPDC in March 2008 at its 26th session. Their implementation calls for a rigorous application of international standards, and they constitute as such a neutral evaluation tool that can yield an assessment of improvements or problems in media development.

This report is presented in the same format as the MDIs, divided into five thematic categories covering the main aspects of media development. **Category 1** of the MDIs reviews the country's legal framework regarding freedom of expression, the right to information, defamation laws, censorship and regulation of radio and television.

Category 2 of the MDIs analyzes media plurality and diversity, equal economic conditions, transparency in ownership and advertising. **Category 3** of the MDIs looks at such issues as the public service model, media self-regulation, public trust and confidence in the media and the safety of journalists.

Category 4 of the MDIs identifies the level of professional training, the presence of labour unions or professional organizations, and participation of civil-society organizations in support for freedom of expression. **Category 5** examines media infrastructure in regard to the availability and use of technical resources and ICT penetration in the press and broadcast media.

Each category lists the indicators and then proceeds to describe the Ecuadorian environment regarding each indicator.

Extensive consultations and research work were necessary to prepare this report that presents a comprehensive assessment of the state of media development in the country, but also a series

of recommendations to be taken into account by relevant sectors to improve current conditions and construct a more independent, plural and participatory media platform.

What follows is a brief explanation about the process of preparation that led to applying the MDIs in the Ecuadorian context.

Consultation process

This report required active participation from academia, public agencies, representatives of private, public and community media, professional unions and civil-society organizations. The first step was to form a consultative group comprising representatives of the different strategic sectors of communication. The methodology and the findings of this report were submitted to this group and its contributions incorporated into the study. The diverse approaches and backgrounds of the group's members enriched the research.



Meeting of Consultative Group, Quito

In addition to the crucial role played by the consultative group, the methodology for applying the MDIs proposed by CIESPAL was presented and discussed at two seminars open to the public in the cities of Quito and Guayaquil, held in collaboration with CIESPAL and the *El Universo* Foundation, respectively. Both events were attended by the UNESCO international consultant for the MDIs, Andrew Puddephatt, who came to Ecuador to take part and explain the aims and usefulness of these instruments.



Public Consultation Seminar, Guayaquil

The participants' highly valuable input elucidated the need to define certain concepts and adapt the language of the indicators to the national context and local language. Participants were quite meticulous in verifying the proposed data sources and contributed their suggestions to fortify the research.

UNESCO also invited an international group of experts to review and comment on the report. The contributions and suggestions received from this group have been incorporated to enrich the study.

Methodological procedure

CIESPAL designed the methodology to apply the Media Development Indicators (MDIs) in the context of Ecuador. This task began in September 2009 and was directed by Guillermo Navarro, a consultant who prepared a methodology based on direct and indirect research. The direct research was done through two mechanisms. The first was a representative survey nationwide involving 1065 persons with a total of 24 questions aiming to elicit public opinion about freedom

of expression, access to information and trust in the media. For this purpose, CIESPAL engaged the services of a polling firm, Market. The statistical information was designed and applied to a representative sample in the cities of Quito (300), Guayaquil (330), Cuenca (65), Ambato (45), Santo Domingo (45), Riobamba (35), Azogues (35), Machala (35), Portoviejo (35), Loja, (30), Manta (30), Durán (30), Ibarra (25) and Esmeraldas (25). Information of this sample was gathered in the field from 8 to 13 March 2010. Stratification was based on economic, population and geographical criteria. The confidence level for the total sample is 95%, with a +/- 3% margin of error.

The second mechanism used in the direct research was a series of interviews with 13 specific groups involved in the communication sector. Specialized questionnaires were used with a total of 137 persons, representing media organizations, journalism education and media training institutions, journalists unions, media associations, civil society organizations and public bodies, among others (see complete list in Table 1). The bank of questions included cross-questioning for different groups in order to check on the reliability of the information provided by each group.

The sample of media organizations with which interviews were carried out was selected on the basis of the background of each institution. In the case of media, factors considered included how long they have existed, their levels of circulation and their audience. The media organizations selected are located in the cities of Quito, Guayaquil and Cuenca. The media in smaller cities, in the rural sector or addressing indigenous populations are included in the sample of community media, also selected on the basis of their background and representativeness.

All three public media in Ecuador were also included: the newspaper, radio station and television channel. A fourth type of media, resulting from the country's political and economic circumstances, is a "confiscated medium", the Gama TV television channel, which was among the assets seized by the current Government from its former owners, who were bankers involved in the 1999 financial crisis, and also owned other media; this channel is now administered by the Ecuadorian State.

For each of the private and public media, an attempt was made to involve a range of persons with varying functions, including: administrative and editorial management, journalists, editorialists and leaders of any existing personnel associations. This yielded information on these media from diverse informants. For the community media, taking into account their limited number of staff, only the management levels were interviewed.

Regarding communication education and media training institutions, 13 universities were chosen, including two post-graduate communication departments in Quito. For journalists' unions, nine were selected, representing several provinces, and two national groupings: the Ecuadorian National Federation of Journalists (FENAPE) and the National Union of Journalists (UNP). For media associations, the most representative ones were also considered, for both private and community media. For civil-society organizations, those most experienced in issues of communication were considered, and for public agencies the Ministry of Telecommunications, the Superintendency of Telecommunications and the National Secretariat of Telecommunications were chosen.

The group of informants¹ selected covered a broad range of sectors involved in communication, distributed as follows:

¹ See complete List of informants in Annex 5.

Table 1

| Groups of Informants | Number sampled |
|-------------------------------|----------------|
| Media Associations | 5 |
| Federations and Labour Unions | 11 |
| Personnel Associations | 3 |
| Journalists | 40 |
| Editorialists | 14 |
| Palace Reporters ² | 16 |
| Schools of Communication | 13 |
| Community Media | 8 |
| Private Media | 14 |
| Public Media | 3 |
| Confiscated Media | 1 |
| Civil-Society Organizations | 6 |
| Public Agencies | 3 |
| Total | 137 |

The indirect research was based on media monitoring studies, surveys, analysis and reports. For Categories 1 and 2, the research groups studied national laws, international standards, reports on freedom of expression, analysis of media concentration, legal cases and annual reports. The international standards used as sources included instruments from the United Nations (UN), the Organization of American States (OAS), annual reports by the Inter-American Commission on Human Rights, the UN and OAS Freedom of Expression Rapporteurs, and the declarations and guidelines of UNESCO (see Annex 2).

Purpose of the study

This report makes no pretence of analyzing the individual situations of different institutions, media and organizations, but rather aims to view general trends in the different areas analyzed, to assess whether these trends are following international standards and moving toward improving communication or, on the contrary, if they are far from what are considered good practices internationally.

Throughout the process of application of the MDIs were applied (2009-2011), Ecuador was intensely debating different aspects of communication as a consequence of the drafting of a proposed Communications Law by the National Assembly (Ecuador's parliament). This study includes an analysis of the draft Law submitted to second debate.³ Although it is not a Law officially approved by Parliament, its analysis is included in order to contribute to the parliamentary debate on this draft. UNESCO considers that the Media Development Indicators can be a useful tool and reference in processes of preparing laws on communication, since they make it possible to analyze a priori whether the proposed legislation meets relevant international standards. For this purpose this study was formally submitted to the President of the Ecuadorian Parliament.

Characteristics of the country

Ecuador is located in north-western South America. It is bounded to the north by Colombia, to the south and east by Peru and to the west by the Pacific Ocean. Its land area is 256,370 km², including the Galapagos Islands and several islands along the coast. From a geographical standpoint, the country is divided into four natural regions: highlands, coast, the Amazon region and islands.

² Palace Reporters refers to those journalists who cover the Government's headquarters.

³ Specialized Ad Hoc Communications Commission of the National Assembly of Ecuador. (2010, July 1). Majority report for the second debate on the draft Communications Law. Found at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/e4a77283-f17a-4015-8b77-c5a6c1d37035/Ley%20Org%C3%A1nica%20Comunicaci%C3%B3n>.

Administratively, the country has 24 provinces; 221 cantons, 1,018 parishes, of which 797 are rural and 221 urban. The two main cities are Quito, the capital, and Guayaquil, the main harbour.

Economically, Ecuador exports petroleum and other agricultural and aquaculture products, such as banana, coffee, cacao, flowers, shrimp, tuna, all major items for the national economy, not counting remittances from emigrants, which currently (and since the turn of the 21st century), provide the nation's second-largest source of revenues.

The State is divided into five areas: the Executive is represented by the President of the Republic; the Legislature comprises the National Assembly, with 140 assembly members (103 national, 15 provincial and 6 representatives of migrants abroad); the Judiciary, headed by the National Court of Justice; the Electoral branch, represented by the National Electoral Council and the Electoral Contentions Tribunal; and the fifth branch, which is represented by the Social Participation and Accounting Council, the Ombudsman, the Comptrollership General of the Nation and the Superintendencies, whose duties include promoting citizen participation and establishing forms of accountability for public institutions, among others.

Table 2

| | |
|--|--|
| Official Name | Republic of Ecuador |
| Capital city | Quito |
| President of the Republic | Rafael Correa |
| Vice President of the Republic | Lenín Moreno |
| Boundaries | North: Colombia; South and East: Peru; West: Pacific Ocean |
| Official currency | US dollar |
| Religion | Freedom of Worship |
| Official language | Spanish |
| Official languages of intercultural relations | Spanish, Kichwa and Shuar |
| Indigenous nationalities | Achuar, Andoa, Awá, Cofán, Chachi, Épera, Huaorani, Amazon Kzichwa, Siapidar, Shiwiar, Shuar, Siona, Tsáchila, Zápara. |
| Population⁴ | 14,306,876 |
| GDP January 2009 | 24,119,453 million USD |
| Cost of the basic family staple basket | \$ 544.71 |
| Illiteracy urban rate⁵ | 4.13% |
| Illiteracy rural rate⁶ | 16.74% |

Source: National Statistics and Census Institute (INEC) 2010.

New Constitution of Ecuador (2008)

Since Ecuador became an independent country in 1830, it has been governed by twenty constitutions. The preceding constitution went into effect in 1998 under former President Jamil Mahuad, who was overthrown on 21 January 2000. In 2007, with the election of President Rafael Correa, the citizenry was invited to a national referendum, which called for a new Constitution.

One of the changes made was to include two new State branches (in addition to the Executive, Legislative and Judicial functions): the Electoral Function and the Function of Transparency and Societal Oversight.

⁴ National Statistics & Census Institute (INEC), 2010.

⁵ National Information System. Illiteracy rate as of June 2010 based on PNBV indicators.

⁶ *Idem*.

Under the Judicial Function, the so-called “indigenous justice”, which was already recognized in the 1998 Constitution, was reaffirmed as one of the collective rights of the indigenous peoples and nationalities. Article 171 of the 2008 Constitution establishes the institutional parameters for its application: “the authorities of indigenous communities, peoples and nationalities will exercise judicial functions, on the basis of their ancestral traditions and their own laws, within their territorial jurisdiction, with the guarantee that women will be involved and take part in decision-making. Authorities will apply their own norms and procedures for resolving their internal conflicts, as long as they do not contradict the Constitution and those human rights that are recognized by international instruments.”

The first Transitional Provision of the new Constitution established that the legislative body should enact 11 laws on priority issues, including the Communications Law, which has not yet been enacted at the time of writing.

In January 2011, the President of the Republic initiated a referendum, scheduled for 7 May 2011, with two questions directly related to the media: one about the Regulation Council and the other about ownership (owners or shareholders) of media companies (see indicators 1.3, 1.11 and 2.1).

The media in Ecuador

Ecuador’s media history harks back to the 18th century when, in 1750, the Jesuits brought the first printing press, which promoted the production of non-periodical printed materials, from Ambato (central Highlands) to the rest of the country. However, it was not until the late 19th century that the press consolidated, with the emergence of the first daily publications.

In 1860 *El Telégrafo* was founded, the first newspaper to circulate nationwide, and early in the 20th century the two newspapers with the greatest circulation at present were founded: *El Comercio* (1906) and *El Universo* (1922). There are currently some 35 daily newspapers at the national, local and regional levels, including: *Hoy*, *Expreso de Guayaquil* and *La Hora*.

In broadcasting, statistics from December 2010 by the Superintendency of Telecommunications show that there are 1,205 radio stations (short-wave, AM and FM) and 444 television channels, including the main stations and repeating stations for open-signal VHF and UHF, both privately owned as well as public and community media.⁷ According to the same source, 83% of the televisions channels are of a private nature, 17% are public and 0% are community media. Concerning radio stations, 89% are private, 10.8% public and 0.2% community.

Since 2007, when Rafael Correa Delgado became President of the Republic, the media panorama of Ecuador has changed. In that year, several public media outlets were created: *Ecuador TV* (ECTV), Public Radio of Ecuador (RPE) and the *El Telégrafo* newspaper. Regarding these last two media, RPE replaced the former *Radio Nacional* and *El Telégrafo* was confiscated by the Deposit Guarantee Agency (AGD) from its owner, a former banker, and since then has been administered by the State.⁸

The state-run newspaper, *El Ciudadano*, also appeared as the mouthpiece for the “Citizens’ Revolution”, and the Public News Agency of Ecuador and South America (ANDES) was created. Finally, “PP, El Verdadero”, a popular daily newspaper began circulating in September 2010, a tabloid edited and printed in the facilities of *El Telégrafo*.

⁷ Key broadcasting statistics. Superintendency of Telecommunications. Found at: <http://www.supertel.gob.ec/index.php/estadisticas.html>, [7 February 2011].

⁸ The Deposit Guarantee Agency was created in 1999, as a consequence of the financial and banking crisis, with the mission of “Paying the guaranteed deposits of clients of financial institutions.”

Another decision by the State that determined a new structure of media ownership was the seizure by AGD in 2008 of the assets of ex-bankers, a consequence of the bank crisis of 1999. These included *TC Televisión* and *Gamavisión* channels, which currently operate as *GamaTV* and *Cablenoticias* (closed-signal news), as well as two radio stations operating in Guayaquil and two magazines. These media are currently administered by the State. However, according to official announcements, they should be in the process of being sold to private individuals or companies.

Another change due to the new Constitution is the constitutional provision prohibiting bankers from owning stock in media; this measure forced some media, owned by a bank's largest shareholder, to sell their stocks.

According to the Radio and Television Frequency Audit Commission, the media landscape in Ecuador is largely dominated by eight main groups:

Eljuri Group, Isaías Group⁹, Vivanco Group, Egas Group, Alvarado Group, Mantilla Group, Pérez Group and Martínez Group¹⁰.

⁹ On 8 July 2008, their media and other assets were seized by the AGD, so their television and radio stations are currently managed by the State.

¹⁰ Radio and Television Frequency Audit Commission. (2009). *Informe Definitivo [Final Report and Recommendations]*. Ecuador. P. 256. And Vázquez, L. & Saltos, N. (Ed.). (2010-2011). *Ecuador: su realidad*. Fundación José Peralta. Ecuador. P. 330.



DEFINITIONS USED IN THE STUDY

Administration / Administrators

The staff of a media outlet, located according to different hierarchies, performing tasks unrelated to journalistic work in the media. For example, the functions of general manager, financial areas, human relations, and marketing, among others.

Audiovisual Media – Broadcasters / Broadcast / Broadcast Media

These are radio and television stations. The English term “*broadcasting*” has been translated into Spanish, for the *Media Development Indicators*, as “*medios audiovisuales*” and as “*medios difusivos*”.

Broadcasting Spectrum

This is the radio-frequency spectrum, which is subdivided into nine frequency bands, designated by whole numbers, in rising order. The broadcasting spectrum is in the public domain, inalienable and imprescriptible, considered as a strategic sector in Ecuador, to be managed, administered and controlled by the State.

Communities distant from urban centres

For the purposes of this study, this describes rural and/or indigenous communities living in rural sectors.

Community Media

In the specific context of Ecuador, media belonging to organized communities, societal organizations or specific human groups, although in most cases they have taken the form of commercial media. Pursuant to Article 8 of the Law on Radio and Television Broadcasting, community radio and television stations are those “*originating in an indigenous, Afro-Ecuadorian, rural community or organization or any other social organization, working toward strengthening their community, for intercultural and social consolidation, to defend human values, historical and artistic values, reinforce national identity and revive observance of human rights, raising their own funding to improve, maintain and operate their facilities, equipment and pay their staff, through donations, paid messages and advertising commercial products.*”

Confiscated Media

In Ecuador, these are the media that were taken over in 2008 by the Deposit Guarantee Agency (AGD) and which are up to the present time administered by the State. This involves three television channels (*Gama TV, TC and Cablenoticias*), two magazines (*El Agro* and *La Onda*) and two radio stations (*Carrusel* and *Súper K*).

Dial up

Internet connection via a modem by telephone.

Digital Convergence

Integration of radio, television, music, news, books, magazines and Internet.

Editorial Guidelines

A media outlet's policies regarding what is published, such as the choice of sources, coverage of certain topics, and treatment of companies that advertise with them, among other aspects. In general, these editorial guidelines may be set forth in codes of ethics or as separate documents.

Freedom of expression and opinion

This is a universal, collective and individual right held by all persons. The *Universal Declaration of Human Rights* (1948) defines this as the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Journalistic Management and/or Production

The persons working at different levels of journalistic production, such as editor-in-chief, editor, copy-editor, and photographer, among others.

Local Languages

Aside from Spanish, local languages include Kichwa and Shuar, recognized as official languages for intercultural relations, in the Constitution of Ecuador (2008), which also recognizes other local languages of an ancestral nature, spoken by 12 indigenous nationalities and peoples registered by the Council of Nationalities and Peoples of Ecuador (CODENPE) in the zones where they live. These languages are: Achuar a'ingae, Achuar Chicham, Andoa, Awapit, Chá palaa, Cofán, Épera, Paicoca, Siapede, Shiwiar, Tsa'fíqui, and Zápara.

Media Concentration

In this study, the term "media concentration" mainly refers to the concentration of media in one single sector, among the three existing sectors: private, public and community. Other dimensions of the "media concentration" concept refer to hoarding of private property by a limited number of individuals or entities (monopoly or oligopoly) and the market dominance of these groups.

Regarding the allocation of broadcasting frequencies, there is wide inter-American and international consensus about the efficiency of reserving a third of the broadcasting spectrum to promote community media in line with international recommendations and legislation in several Latin American countries.

Media Editor(s)

The persons who direct a private, public or community newspaper, radio station or TV channel editorially.

Media Management

The administrative leadership of a media outlet, such as the general manager.

Media Organizations

In the Spanish version of the *Media Development Indicators*, "media organizations" refers to the communications media in general.

Multi-Platform

All channels used to distribute or deliver information from a media outlet by digital means; aside from the website and e-mail: by SMS, WAPP, Podcast, videos in MP3, and social networks such as Facebook.

One-Way Instruments

The traditional media, radio, press and television, that do not enable immediate feedback.

Print Media

Newspapers and magazines, either private or public.

Private Media

Print, radio or television media of a commercial nature, belonging to private business individuals or groups.

Public Agencies / Bodies / Authorities

Public communication institutions: CONATEL, Superintendency of Telecommunications (SUPERTEL), Ministry of Telecommunications and Information Society (MINTEL), National Secretariat of Communication (SECOM), among others.

Public Media (in Ecuador)

Since 2007, in Ecuador four public media have been created: *Ecuador TV*, *Radio Pública*, *El Telégrafo* newspaper and the Public News Agency of Ecuador and South America (ANDES). Since 6 September 2010, "PP, El Verdadero", a grassroots tabloid, has been circulating.

Public Service Broadcasting (PSB)

Neither commercial nor State-controlled, public broadcasting's only *raison d'être* is public service. It is the public's broadcasting organization; it speaks to everyone as a citizen. Public broadcasters encourage access to and participation in public life. They develop knowledge, broaden horizons and enable people to better understand themselves by better understanding the world and others. Public broadcasting rests on certain basic principles: universality, diversity, independence and distinctiveness¹¹. In this study, the terms "public service broadcasting", "public broadcasting", and "public media" are used interchangeably.

Radio Waves

Electromagnetic waves, conventionally defined as under 300GHz in frequency, which are propagated through space without any artificial medium (National Plan of Frequencies, 2008).

Right to Information

Definitions used in this study are based on international and inter-American standards. A good definition of right to information can be found in the *Principles on the Right of Access to Information* by the Organization of American States (OAS), where the right to information is defined as a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access information through adopting appropriate legislation and putting in place the necessary implementation measures¹².

Nevertheless, there are several Latin American authors who advocate a broader approach to the right to information, which would include the private sector. There are also new concepts developed by Latin American authors who propose new dimensions of the right to information.

Specific and/or Vulnerable Groups

These are generally minority groups: for example, indigenous peoples, Afro-Ecuadorians, *montubios*¹³, children and adolescents, elderly adults, persons with disabilities, LGBT (lesbians, gay males, bisexuals and transgender), refugees and/or immigrants. These minorities also include

¹¹ UNESCO. (2008). *Public broadcasting: Why? How?*

¹² *Principles on the Right of Access to Information*. (2008). OAS, 73rd Regular Session. Brazil.

¹³ The *montubio* people are defined as the human groups organized and self-defined as *montubios*, with characteristics of the coastal region and subtropical areas, who naturally arise in rural areas as an organic social unit endowed of common spirit and ideas; holders of a cultural and political background that self-determines them as a result of a complex process of time and space fit out, which has its own world view and keeps its ancestral habitat (definition used by National Commission of Statistics for Indigenous and African-Descent People, CONEPA).

women, although women are not a numerical minority in the population of the country or the world. In general, these are groups with specific demands, and live under conditions of socio-economic vulnerability.

Style Manual

A media outlet's set of standards for news writing: correct language use, typography, visual and technical aspects, punctuation, etc.

Technological Convergence

Integration of technologies, such as television, computers, telephony, and data networks that, when combined, offer multimedia services.

Two-Way Instruments

Using Web 2.0 to interact among senders and receivers both synchronously and asynchronously, and on the same platform, for example on social networks (Facebook, Twitter, Hi5, and others).

ABBREVIATIONS AND ACRONYMS USED IN THE STUDY

| | |
|----------------|--|
| ACHPR | African Commission on Human and Peoples' Rights <i>Comisión Africana de Derechos Humanos de los Pueblos</i> |
| ACNNA | Agency of Children and Adolescents Communication <i>Agencia de Comunicación de Niños, Niñas y Adolescentes</i> |
| AECTV | Ecuadorian Association of Television Channels <i>Asociación Ecuatoriana de Canales de Televisión</i> |
| AEDEP | Ecuadorian Association of Newspaper Publishers <i>Asociación Ecuatoriana de Editores de Periódicos</i> |
| AER | Ecuadorian Radio Broadcasting Association <i>Asociación Ecuatoriana de Radiodifusión</i> |
| AGD | Deposit Guarantee Agency <i>Agencia de Garantía de Depósitos</i> |
| ALER | Latin-American Association for Radiophonic Education <i>Asociación Latinoamericana de Educación Radiofónica</i> |
| AMARC | World Association of Community Radio Broadcasters <i>Asociación Mundial de Radios Comunitarias</i> |
| ANDES | Public News Agency of Ecuador and South America <i>Agencia Pública de Noticias del Ecuador y Sudamérica</i> |
| APC | Association for Progressive Communications <i>Asociación para el Progreso de las Comunicaciones</i> |
| ASETEL | Association of Telecommunications Employees <i>Asociación de Empleados de Telecomunicaciones</i> |
| ASOCITV | Association of Cinema and Television <i>Asociación de Cine y Televisión</i> |
| CAE | Ecuadorian Customs Corporation <i>Corporación Aduanera Ecuatoriana</i> |
| CCREA | Associated Ecuadorian Regional Community Channels <i>Canales Comunitarios Regionales Ecuatorianos Asociados</i> |
| CIESPAL | International Centre for Higher Studies in Communication for Latin America <i>Centro Internacional de Estudios Superiores de Comunicación para América Latina</i> |
| CNNA | National Council for Children and Adolescents <i>Consejo Nacional de la Niñez y la Adolescencia</i> |
| CNT | National Telecommunications Corporation <i>Corporación Nacional de Telecomunicaciones</i> |
| CODENPE | Council of Nationalities and Peoples Development of Ecuador <i>Consejo de Desarrollo de las Nacionalidades y Pueblos del Ecuador</i> |

| | |
|--------------------|--|
| COEPCE | Emergency Professional Committee of Professional Communicators of Ecuador <i>Comité de Emergencia Profesional de Comunicadores del Ecuador</i> |
| CONARTEL | National Radio and Television Council <i>Consejo Nacional de Radio y Televisión</i> |
| CONATEL | National Telecommunications Council <i>Consejo Nacional de Telecomunicaciones</i> |
| CONEPA | National Commission of Statistics for Indigenous and African-Descent People <i>Comisión Nacional de Estadística para los Pueblos Indígena y Afroecuatoriano</i> |
| CONESUP | National Council on Higher Education <i>Consejo Nacional de Educación Superior</i> |
| CORAPE | Coordinating Office of Popular and Educational Radio Stations of Ecuador <i>Coordinadora de Radio Popular Educativa del Ecuador</i> |
| CSOs | Civil Society Organizations <i>Organizaciones de la sociedad civil</i> |
| DTT | Digital Terrestrial Television <i>Televisión Digital Terrestre</i> |
| ECTV | Ecuador TV (public television channel) <i>Ecuador TV (canal público)</i> |
| EMETEL | State's Telecommunications Company <i>Empresa Estatal de Telecomunicaciones</i> |
| ERPE | Grassroots Radio Schools of Ecuador <i>Escuelas Radiofónicas Populares del Ecuador</i> |
| FACSO | Social Communication Faculty of the Central University of Ecuador <i>Facultad de Comunicación Social de la Universidad Central del Ecuador</i> |
| FACSO - G | Social Communication Faculty of the Central University of Guayaquil <i>Facultad de Comunicación Social de la Universidad de Guayaquil</i> |
| FENAPE | Ecuadorian National Federation of Journalists <i>Federación Nacional de Periodistas del Ecuador</i> |
| FLACSO | Latin American Faculty of Social Sciences <i>Facultad Latinoamericana de Ciencias Sociales</i> |
| FODETEL | Fund for the Development of Telecommunications in Rural and Marginalized Urban Areas <i>Fondo para el Desarrollo de las Telecomunicaciones en Áreas Rurales y Urbano-marginales</i> |
| FUNDAMEDIOS | Andean Foundation for the Observation and Study of Media <i>Fundación Andina para la Observación y Estudio de Medios</i> |
| GAMMA | Support Group for Women Movement from Azuay <i>Grupo de Apoyo al Movimiento de Mujeres del Azuay</i> |
| IAPA | Inter-American Press Association <i>Sociedad Interamericana de Prensa</i> |
| ICTs | Information and Communication Technologies <i>Tecnologías de la Información y la Comunicación</i> |
| IECE | Ecuadorian Institute of Scholarships and Educational Loans <i>Instituto Ecuatoriano de Créditos Educativos y Becas</i> |
| INEC | National Statistics & Census Institute <i>Instituto Nacional de Estadísticas y Censos</i> |
| IPAL | Peruvian-German Technical Higher Institute <i>Instituto Tecnológico Superior Privado Peruano-alemán</i> |

| | |
|-------------------|---|
| IPDC | International Programme for the Development of Communication <i>Programa Internacional para el Desarrollo de la Comunicación</i> |
| ISDB-T | Integrated Services Digital Broadcasting <i>Transmisión Digital de Servicios Integrados.</i> |
| ITU | International Telecommunication Union <i>Unión Internacional de Telecomunicaciones</i> |
| LGBT | Lesbian, Gay, Bisexual and Transgender People <i>Gays, Lesbianas, Bisexuales y Transgénero</i> |
| LOTAIP | Organic Law on Transparency and Access to Public Information <i>Ley Orgánica de Transparencia y Acceso a la Información Pública</i> |
| MDI | Media Development Indicators <i>Indicadores de Desarrollo Mediático</i> |
| MICC | Peasant & Indigenous Movement of Cotopaxi <i>Movimiento Indígena y Campesino de Cotopaxi</i> |
| MINTEL | Ministry of Telecommunications and the Information Society <i>Ministerio de Telecomunicaciones y de la Sociedad de la Información</i> |
| OAS | Organization of American States <i>Organización de Estados Americanos</i> |
| OCLACC | Catholic Latin American and Caribbean Communication Organization <i>Organización Católica Latinoamericana y Caribeña de Comunicación</i> |
| OSCE | Organization for Security and Co-operation in Europe <i>Organización para la Seguridad y la Cooperación en Europa</i> |
| PSB | Public Service Broadcasting Media <i>Medios de servicio público (medios públicos)</i> |
| PUCE | Pontifical Catholic University of Ecuador <i>Pontificia Universidad Católica del Ecuador</i> |
| RGLRTV | General Regulations on the Law of Radio and Television Broadcasting <i>Reglamento General a la Ley de Radiodifusión y Televisión</i> |
| RPE | Public Radio of Ecuador <i>Radio Pública del Ecuador</i> |
| RTVECUADOR | Radio and Television of Ecuador, S.A. <i>Radio y Televisión del Ecuador, S.A.</i> |
| SAYCE | Society of Authors & Composers of Ecuador <i>Sociedad de Autores y Compositores del Ecuador</i> |
| SECOM | National Secretariat of Communication <i>Secretaría Nacional de Comunicación</i> |
| SENATEL | National Secretariat of Telecommunications <i>Secretaría Nacional de Telecomunicaciones</i> |
| SENPLADES | National Secretariat of Planning <i>Secretaría Nacional de Planificación y Desarrollo del Ecuador</i> |
| SPSS | Statistical Package for Social Science <i>Paquete de Estadísticas para las Ciencias Sociales</i> |
| SUPERTEL | Superintendency of Telecommunications <i>Superintendencia de Telecomunicaciones</i> |
| UASB | Andean University Simón Bolívar <i>Universidad Andina Simón Bolívar</i> |

| | |
|---------------|--|
| UDLA | Americas University <i>Universidad de las Américas</i> |
| UN | United Nations <i>Organización de las Naciones Unidas</i> |
| UNAM | Autonomous National University of Mexico <i>Universidad Nacional Autónoma de México</i> |
| UNESCO | United Nations Educational, Scientific and Cultural Organization <i>Organización de la Naciones Unidas para la Educación, la Ciencia y la Cultura</i> |
| UNIFEM | United Nations Development Fund for Women <i>Fondo de Desarrollo de las Naciones Unidas para la Mujer</i> |
| UNP | National Union of Journalists <i>Unión Nacional de Periodistas</i> |
| UPS | Salesian Polytechnic University <i>Universidad Politécnica Salesiana</i> |
| UTPL | Private Technical University of Loja <i>Universidad Técnica Particular de Loja</i> |
| VAT | Value-added tax <i>Impuesto al Valor Agregado</i> |

CATEGORY 1

A regulatory system conducive to freedom of expression, pluralism and diversity of the media

Executive Summary¹⁴

A. LEGAL AND POLITICAL FRAMEWORK

1.1. FREEDOM OF EXPRESSION IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

Freedom of expression is protected by the 2008 Constitution and the Radio and Television Broadcasting Law (1975). However, the prerequisites established in Article 18.1 of the Constitution imply that this right may be undermined. As for the citizenry's perception of freedom of expression, 68% of respondents nationwide consider that there is freedom of expression in this country and 32% state the opposite. Regarding the rate of enforcement of this right, only 4.04% of those queried had complained because their freedom of expression was limited; only 7.7% of those who complained had done so through the Ombudsman Function, while fewer than 3.8% had taken their complaints to court.

The draft Communications Law currently being studied by the National Assembly of Ecuador proposes a limited definition of the freedom of expression, constraining it to be truthful and timely, which could enable an interpretation that would not guarantee the principle of the right's universal enforcement.

1.2. THE RIGHT TO INFORMATION IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

The right to public information is guaranteed in the Constitution approved in 2008 and in the Organic Law on Transparency and Access to Public Information (LOTAIP) which has been in effect since 2004. This Law grants strong protection for the exercise of this right. However, it leaves the prior system of secrecy in place, which does not meet international standards for openness.

As for enforcement of this right, most people queried for this study (65.16%) did not know the procedures to demand information that was denied. Consequently, the remedy of appeal is hardly used by the citizenry. In addition, most public institutions fail to make their information transparent and the Ombudsman has not systematized the requests entering the public sector and how they are handled.

The new draft Communications Law establishes that the Ombudsman will have jurisdiction to protect communication rights.

¹⁴ The executive summaries for each of the five MDI categories outline the key findings for the different indicators and sub-indicators. Accordingly, they may also be considered as partial conclusions for each category.

1.3. EDITORIAL INDEPENDENCE IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

Journalists report that they receive pressure from multiple sources, such as advertisers and the media's own management or owners as well as from the government, according to a study done by Fundamedios.

Both the Law on Radio and Television currently in effect and the draft Communications Law make it mandatory for television and radio stations to disseminate governmental messages and devote space to official programmes.

1.4. JOURNALISTS' RIGHT TO PROTECT THEIR SOURCES IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

The right to reserve one's sources is legally protected, but a recent case showed that it is possible to undermine this right in practice.

The draft Communications Law establishes the right to reserve one's sources and professional secrecy, although only reserves it for social communicators. It also leaves room for ambiguity for not recognizing this right, by not providing clear, specific listings of the cases in which this might occur.

1.5 THE PUBLIC AND CIVIL-SOCIETY ORGANIZATIONS (CSOs) PARTICIPATE IN SHAPING PUBLIC POLICY TOWARDS THE MEDIA

The 2008 Constitution guarantees citizen participation in the field of communication. In the current process of preparing the Communications Law, being discussed by the National Assembly, over twenty CSOs have presented their inputs, but the text has not taken many of these inputs into account.

The draft Communications Law considers citizen participation as one of the guiding principles to regulate and define public policies regarding the media and the exercise of communication rights.

B. REGULATORY SYSTEM FOR BROADCASTING

1.6. INDEPENDENCE OF THE REGULATORY SYSTEM IS GUARANTEED BY LAW AND RESPECTED IN PRACTICE

The membership of the audiovisual media regulatory body (CONARTEL) is not independent from interference by political parties and commercial interests.

The norms being studied by the National Assembly do not establish any requirements to prevent political-party interference.

1.7. THE REGULATORY SYSTEM WORKS TO ENSURE MEDIA PLURALISM AND FREEDOM OF EXPRESSION AND INFORMATION

The regulatory body has not ensured media pluralism or freedom of expression and information. It has focused its work on allocating frequencies and led to the concentration of ownership in one single sector and other irregular processes, according to the Report by Frequency Auditors.

The Communication and Information Council that would be created, if the draft Communications Law is approved, would have the fundamental role as guardian for communication rights.

C. DEFAMATION LAWS AND OTHER LEGAL RESTRICTIONS ON JOURNALISTS

1.8. THE STATE DOES NOT PLACE UNWARRANTED LEGAL RESTRICTIONS ON THE MEDIA

The Law of Journalists' Professional Practice (1975) makes it mandatory to have an academic degree and belong to a professional association to engage in activities as a communicator or journalist, which implies a limitation on exercising the right to freedom of expression and information and other communication rights established in the Constitution of Ecuador.

The draft Communications Law similarly limits the right to occupy certain functions or positions in the broadcast media to those having a professional degree.

1.9. DEFAMATION LAWS IMPOSE THE NARROWEST RESTRICTIONS NECESSARY TO PROTECT THE REPUTATION OF INDIVIDUALS

Legal penalties for defamation concerning public authorities, and including public interest issues, are up to three years of prison.

1.10. OTHER RESTRICTIONS UPON THE FREEDOM OF EXPRESSION, WHETHER BASED ON NATIONAL SECURITY, HATE SPEECH, PRIVACY, CONTEMPT OF COURT LAWS AND OBSCENITY SHOULD BE CLEAR AND NARROWLY DEFINED IN LAW AND JUSTIFIABLE AS NECESSARY IN A DEMOCRATIC SOCIETY, IN ACCORDANCE WITH INTERNATIONAL LAW

Article 18-1 of the Constitution limits freedom of expression to truthful, verified, timely, contextualized and plural information about facts, occurrences and processes of general interest and with subsequent liability.

In addition, the media and media professionals would be legally obliged to offer their services and premises in case the President of the Republic declares a state of exception, and could even be submitted to specific regulations if located within a security area. Moreover, media could be forced to stop their activities or restrict their dissemination if Art. 165 of the Constitution was to be applied in a state of exception.

On the other hand, existing penal dispositions about libel, threats or insults which may offend the President of the Republic, or whoever exercises the Executive Function or any other public official court or authority, provoke indeed the risk of inhibiting the public debate on topics of general interest.

The draft Communications Law expands the jurisdiction of the Ombudsman to protect communication rights, in a complementary way to the supervisory function of the Communication and Information Council. Its powers include broad, vague jurisdictional competencies that could be transformed into illegitimate restrictions on exercise of the freedom of expression.

D. CENSORSHIP

1.11. THE MEDIA IS NOT SUBJECT TO PRIOR CENSORSHIP AS A MATTER OF BOTH LAW AND PRACTICE

Article 18 of the 2008 Constitution establishes that information must flow without prior censorship. However, in the case of radio and television, Article 80 of the General Regulations for the Law on Radio and Television Broadcasting (1975) has been used as grounds to close or suspend media.

The Constitution of Ecuador establishes that the exercise of freedom of expression is subject to subsequent imposition of liability, but neither the Constitution nor the law clearly establishes the limits as recommended by the Inter-American human rights standards.

The draft Communications Law establishes that communication rights shall not be subject to prior censorship, except in those cases established in the Constitution of the Republic, current international treaties and the law.

The Constitution of Ecuador recognizes that full exercise of freedom of expression will be subject to subsequent liability, but neither the Constitution nor the draft Communications Law clearly establishes the limits in the way set forth in the inter-American human rights standards.

The referendum regarding creation of a Regulation Council could lead to a regulatory body applying prior conditions to information for it to circulate freely, by subjecting it to later liability defined by this body, contradicting Article 13 of the American Human Rights Convention.

1.12. THE STATE DOES NOT SEEK TO BLOCK OR FILTER INTERNET CONTENT DEEMED SENSITIVE OR DETRIMENTAL

Access to contents of Internet is not blocked or filtered by the State. In general, persons can access and publish any contents on Internet, except for child pornography, which is against the law.

A regulatory system conducive to freedom of expression, pluralism and diversity of the media

A. LEGAL AND POLICY FRAMEWORK

1.1. FREEDOM OF EXPRESSION IS GUARANTEED BY LAW AND RESPECTED IN PRACTICE

1.1.1. National law or constitutional guarantee on freedom of expression

Ecuador's 2008 Constitution recognizes and guarantees (Article 66-6) "all persons the right to give their opinion and express their thinking freely and in all forms and manifestations." Further, Articles 39 and 45 reiterate this right for youth, girls, boys and adolescents, while Article 47 especially stresses access to media and alternatives forms of communication for persons with disabilities. In turn, Article 384 determines that "the social communication system will ensure exercise of the rights of communication, information and freedom of expression, and will strengthen citizen participation." That same Article establishes that the State will formulate public policy on communication, with unrestricted respect for freedom of expression and for the rights to communication enshrined in the Constitution and in international instruments on human rights.

Freedom of expression is defined in Article 13 of the American Convention on Human Rights by stating that "everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."¹⁵

Article 18-1 of the Constitution of Ecuador is incompatible with the right to freedom of expression recognized in international instruments because it establishes prerequisites for information. This Article states that "all persons, individually or collectively, have the right to seek, receive, exchange, produce and disseminate truthful, verified, timely, contextualized, plural, uncensored information about facts, occurrences and processes of general interest, and with subsequent responsibility."

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights in the annual report for 2009 stated that "member States must bear in mind that Article 13.2 of the American Convention explicitly says that the exercise of the freedom of expression cannot be subject to prior censorship. Therefore, the Special Rapporteur recommended for member States: to eliminate any wording that might imply censorship on freedom of expression, such as requirements that information be truthful, timely or impartial."¹⁶

¹⁵ *American Convention on Human Rights*. (1969). OAS. Costa Rica. Art. 13.2.

¹⁶ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2009). Inter-American Commission on Human Rights. P. 433.

In this regard, the Inter-American Court of Human Rights has stated that restrictions authorized (by the Convention) on freedom of expression must be those necessary to ensure that certain legitimate ends are achieved; i.e., it is not sufficient for the restriction to be useful for obtaining those ends, for them to be attainable thereby, but it must be necessary, that is, not reasonably attainable by any other means than by restricting a right protected by the Convention."¹⁷ The Court speaks of legitimate restrictions when three requirements are met: legality, necessity and proportionality.

Moreover, the Radio and Television Broadcasting Law in effect since 1975 guarantees freedom of expression. Sub-section g of the Article about the *Powers of the National Radio and Television Broadcasting Council*¹⁸ charges this body with "overseeing full respect for the freedoms of information, of expressing thought and of programming."

Therefore, Ecuador has norms supporting freedom of expression, but prerequisites for information established in Article 18.1 of the 2008 Constitution could restrict the exercise of this right.

The draft Communications Law¹⁹ recognizes and guarantees the right to freedom of thought and expression, in the framework of what are called communication rights. However, just as in the constitutional definition, the scope of the right to freedom of expression is circumscribed solely to the right to information but not to the expression of ideas and opinions.

According to the draft Law, it is the right to "receive, seek, exchange, produce and disseminate information" when it would be more in line with international standards to also include ideas and opinions, as indicated in the American Convention on Human Rights (ACHR): "This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's chose."²⁰

Further, referring to the above constitutional definition, the right to information is defined as the freedom to "seek, receive, exchange, produce and disseminate truthful, verified, timely, contextualized, plural information, without prior censorship about facts, happenings and processes of general interest, and with subsequent liability." This definition, constrained to truthfulness, timeliness and other qualifiers, is incompatible with the inter-American human rights standards that Ecuador has recognized.

Moreover, in all international treaties the rights-holders of this right are "all persons," which is understood to be sufficient to entail the principle of universal enforcement of the right, without any discrimination whatsoever. The wording set forth in the draft Communications Law could enable a restrictive interpretation of this aspect, by establishing a specific list of the types of rights-holders (without including journalists, but only "social communicators") mentioning that they "are part of the Social Communication System" (Article 2). The problem lies in the fact that, pursuant to the Constitution, this System is formed voluntarily, and therefore it would be sufficient for some people not to agree to be in this System to be outside the scope of the rights and obligations established in this draft Law.

¹⁷ *Advisory Opinion OC-5/85*. (1985). Inter-American Court of Human Rights. Paragraph 79.

¹⁸ The National Radio and Television Broadcasting Council (CONARTEL) was merged with the National Telecommunications Council (CONATEL) by Executive Decree # 8 on 13 August 2009. Article 14 states that the competence, powers, functions, representations and delegations in laws, regulations and other normative instruments that were under CONARTEL will be performed, carried out and exercised by CONATEL, in the same terms appearing in the Law on Radio and Television and other secondary norms. Exclusively the administrative functions that the President of CONARTEL had will be handled by the National Secretary of Telecommunications, in the same terms as set forth in the Law on Radio and Television and other secondary norms.

¹⁹ Specialized Ad Hoc Communications Commission of the National Assembly of Ecuador. (2010, July 1). Majority report for the second debate on the draft Communications Law. Found at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/e4a77283-f17a-4015-8b77-c5a6c1d37035/Ley%20Org%C3%A1nica%20Comunicaci%C3%B3n>

²⁰ *American Convention on Human Rights*, (1969). OAS Costa Rica. Art. 13.1.

1.1.2. The country has signed and ratified relevant treaty obligations, with no significant exemptions

Ecuador has voted for the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948. Moreover, it has signed the American Declaration of Human Rights and Duties, adopted at the Ninth American Conference held in Bogotá on 2 May 1948. Both instruments recognize the right to freedom of expression.

Ecuador has signed and ratified the two binding instruments of general scope in the field of human rights containing specific provisions regarding freedom of expression.

Table 3

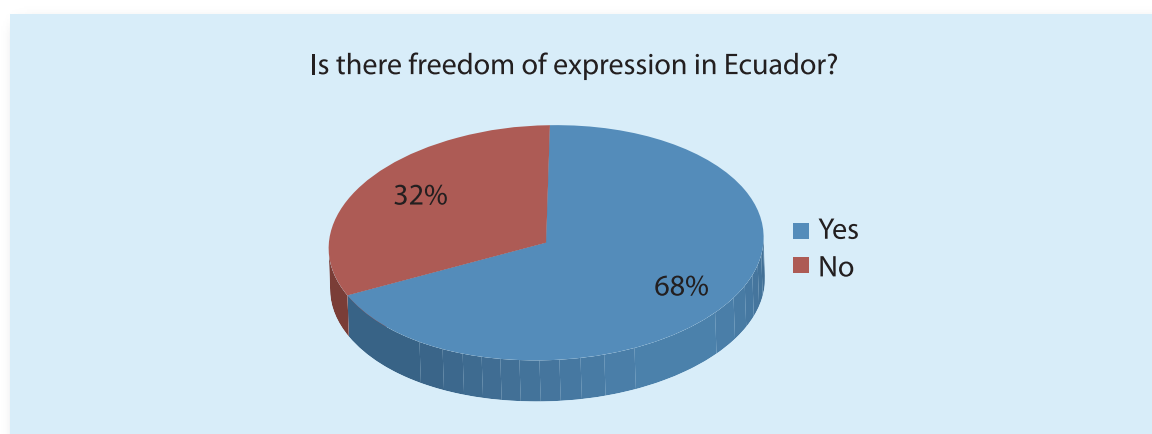
| International Instrument | Date of ratification | Significant exemptions |
|--|----------------------|------------------------|
| American Convention on Human Rights | 12 August 1977 | None |
| International Covenant on Civil and Political Rights | 6 March 1969 | None |

1.1.3. The public is aware of and exercises its right to free expression; and there are tools and bodies which guarantee the concrete application of this right

According to the national survey conducted for this study²¹, 95% of respondents consider freedom of expression as a personal and universal right, and 79.52% consider it as a collective right, which reflects a high awareness about this right. However, not everyone considers that there is freedom of expression in Ecuador: 32% state that there is not.

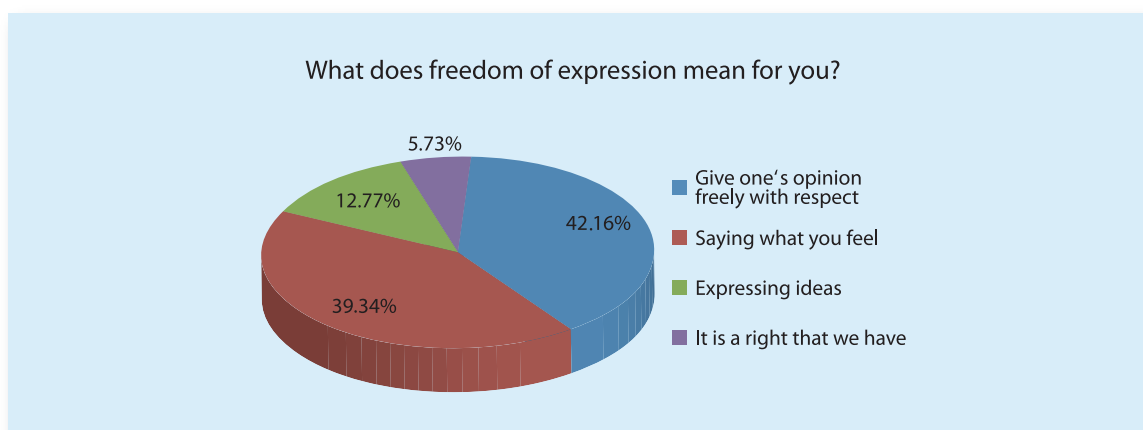
Regarding the meaning of this right, 42.16% of respondents say that this right consists of giving opinions freely and with respect, while 39.34% consider it is saying what one feels.

Graph 1



²¹ See "Methodological Procedure", P. 10.

Graph 2



As for legal tools guaranteeing enforcement of freedom of expression, since this is a fundamental right, freedom of expression is protected by the Constitutional Action of Protection established in Article 88 of the Constitution, to directly and effectively enforce rights recognized in the Constitution, to be used whenever constitutional rights are threatened by actions or omissions by any public, non-judicial authority.

The action of fulfilment, established in Article 93 of the Constitution, also supports freedom of expression to prevent any public authority from refusing to fulfil a clear, express, enforceable obligation regarding this right, contained in legal norms and in rulings or reports by international human rights agencies.

Finally, the Extraordinary Constitutional Action of Protection in Art. 94 in which freedom of expression (or any other fundamental right) is violated may submit final rulings for consideration by the Constitutional Court, which may potentially overturn those rulings, in order to protect the fundamental rights that were violated or endangered by court judgments.

The institution with the mission of protecting fundamental rights by promoting their enforcement and preventing their breach is the Ombudsman; and concurrently the Constitutional Court when a constitutional action or guarantee suit is brought.

The results of the survey show that only 4.04% of respondents had brought complaints about limitations on their freedom of expression, and of that 4% only 7.7% had appealed to the Ombudsman Function, while fewer than 3.8% had appealed to judicial authorities. Therefore, enforcement of this right is clearly very low, taking into account that 32% of respondents stated that in Ecuador there is no freedom of expression.

1.2. THE RIGHT TO INFORMATION IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

1.2.1. National law or constitutional guarantee on the right to information

The right to public information²² is guaranteed in the 2008 Constitution and in the Organic Law on Transparency and Access to Public Information (LOTAIP) in effect since 2004.

The Constitution's Article 18-2 establishes that all persons, individually or collectively, have the right to "freely access information generated in public entities, or in private entities that handle State funds or perform public functions. There will be no reservation of information except in

²² Definitions used in this study are based on international and inter-American standards or reflect current Ecuadorian legislation. However, there are new concepts developed by Latin American authors that propose new dimensions to the right to information (see Definitions used in the Study).

those cases expressly established by Law. In the event that human rights are violated, no public entity may refuse to provide information.” Article 91 even extends legal action to protect the right to public information when it has been denied, completely or partially, explicitly or informally.

Further, Article 295 stresses that “all information on the process of formulation, approval and implementation of the budget will be public and will be continually popularized among the public by suitable means.” The Constitution also ensures the right to information in Article 384 through the communication system and charges the Ombudsman Function, in Article 215, with sponsoring – ex officio or at the parties’ request – actions to access information.

In regard to the LOTAIP, Article 1 establishes that the State must guarantee persons the right to access information held by public entities, a right reaffirmed in Article 4 which determines the interpretive principle that those who are responsible for interpreting the law must do so in the manner “most favourable” for exercising the rights thereby guaranteed.

According to the study on *The Right to Information in Latin America (2009)*²³, the Law grants strong protection to this right, but instead of describing exceptions in detail, the Law makes reference to other laws, leaving the prior system of secrecy in place, which does not meet international standards for openness.

1.2.2. The country has signed and ratified relevant treaty obligations, with no significant exemptions

Ecuador has voted for the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948. Moreover, it has signed the American Declaration of Human Rights and Duties, adopted at the Ninth American Conference held in Bogotá on 2 May 1948. Both instruments recognize the right to information.

Ecuador has also signed and ratified the two binding instruments of general scope in the field of human rights containing specific provisions regarding the right to information.

Table 3

| International Instrument | Date of ratification | Significant exemptions |
|--|----------------------|------------------------|
| American Convention on Human Rights | 12 August 1977 | None |
| International Covenant on Civil and Political Rights | 6 March 1969 | None |

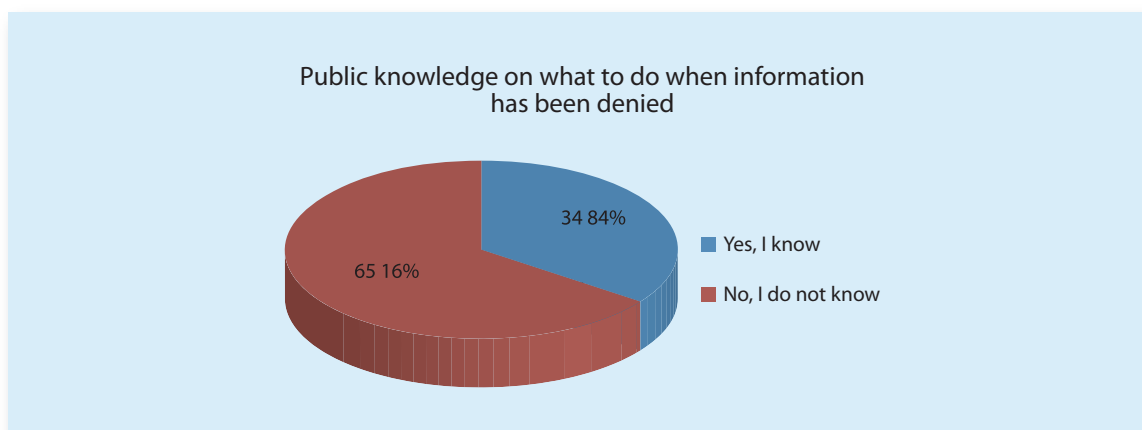
1.2.3. The public is aware of and exercises right to access official information

According to the survey conducted for this report, most people (65.16%) do not know the procedure to pursue when a public institution refuses to provide information. In fact, the study by the FARO Group, regarding mechanisms of transparency used in local governments, *Mechanisms of Good Governance in Ecuador (2010)*, found that “in provincial branches of the Ombudsman Function there have been no recorded requests for sponsorship to present an appeal for access to information or other appeals, which indicates that the citizenry does not know the procedures to request information or the tools to exercise their right.”²⁴

²³ Mendel, T. (2009). *The Right to Information in Latin America, A Comparative Survey*. UNESCO.

²⁴ Grupo Faro. (2010). *Mecanismo de Buen Gobierno [Mechanisms of Good Governance]*. Ecuador. P. 9.

Graph 3



1.2.4. Public bodies release information both pro-actively and on demand

Article 7 of the LOTAIP establishes, for public sector entities and their officials, the legal obligation to publicize information on their websites on major features of their membership and operation, such as organizational structure, legal foundation, procedures for management, planning and institutional budget, board membership, staff remunerations, contracts performed, audits conducted, loans borrowed, listings of suppliers, reports and other accountability mechanisms, among the most important issues.

Concurrently, Article 12 of that Law establishes the legal obligation for public and private entities that generate public information to present an annual report to the Ombudsman Function regarding compliance with the right to access public information, containing:

- a) Information from the previous period regarding fulfilment of obligations under this Law;
- b) Detailed listing of solicitudes for access to information and how each was handled; and
- c) An up-to-date six-monthly report on the list / index of reserved information.

However, in practice few institutions comply with LOTAIP's provisions. In 2010, out of the 4,901 public institutions (according to data from the inventory by the Ministry of Labour Relations)²⁵ that should have presented their Annual Reports to the Ombudsman Function, only 470 (near 10%) of them delivered their reports. The Ombudsman's Office published this information on its website, but without any analysis of the type of information delivered, to determine whether these institutions actually fulfilled their legal obligations.

Regarding publication of information on websites, the Ombudsman's Office has not made the national evaluation report, pursuant to Article 11 of LOTAIP. The information obtained in this regard is provided by CSOs. In an article published by *El Universo* daily newspaper on 15 June 2010²⁶, the organization *Participación Ciudadana* reported that only seven public institutions, out of 28 entities monitored, had complied with the provisions of LOTAIP. The study on *Mechanisms for Good Governance in Ecuador (2010)* reported that many municipalities did comply with their mandate to publish the information on their websites, but only partially, providing outdated and incomplete data.²⁷

²⁵ Data from the inventory by the Ministry of Labour Relations. Found at: http://www.mrl.gov.ec/index.php?option=com_content&view=article&id=191:catastro&catid=47, [24 January 2011].

²⁶ El Universo. "Difusión de información de entidades públicas en la web se cumple poco" (15 June 2010). Found at: <http://www.eluniverso.com/2010/06/15/1/1355/difusion-informacion-entidades-publicas-web-cumple-poco.html?p=1354&m=1775>, [24 January 2011].

²⁷ Grupo Faro. (2010). *Mecanismo de Buen Gobierno [Mechanisms of Good Governance]*. Ecuador. P. 9.

Fundamedios also found flaws in the application of LOTAIP, when monitoring 69 petitions sent to public entities, of which 45 went un-answered and 17 elicited only partial information.²⁸ The study entitled *La Palabra Rota [The Broken Word] (2010)* says that LOTAIP application is still limited, due to a continuing “culture of secrecy and ‘officials who feel they own the information.’”²⁹

Although Ecuador has a law requiring public entities to make their information transparent, very few institutions perform this duty; moreover, there is no official record of the number of requests made to the public sector or how they are handled.

1.2.5. Effective and efficient appeals mechanism via independent administrative body e.g. information commissioner or ombudsman

The right to access public information is judicially guaranteed by Article 91 of the 2008 Constitution. This guarantee is formulated as a quick judicial action presented to any judge, whose ruling may be appealed to the Provincial Court.

Potentially, the Constitutional Court might select a ruling on access to public information to issue a judgment on some dispute and set a general precedent on how to resolve similar cases.

Regarding the right to information, there are the same mechanisms of constitutional and regular protection as outlined above for freedom of expression.

Further, the LOTAIP (2004) provides the following mechanisms for appeals:

Article 11(f) of LOTAIP provides generally that the Ombudsman’s has the responsibility for promoting or sponsoring any individual or corporate request, or on his/her own initiative any judicial action regarding access to public information, when this access has been denied.

Article 13 complements the above, decreeing that, when a citizen shows that there are problems with information provided on websites or information disseminated within the institution itself, he or she may personally demand for it to be corrected and, if this is not done, request the Ombudsman’s intervention to get it corrected and to provide greater clarity and systematization of this information within the organization.

Article 22 guarantees the right to information judicially through the appeal regarding access to information, stipulated in this Law. That is, anyone who has been denied access to information, explicitly or not, or who has been given incomplete, altered or false information, can appeal to any civil court.

However, an appeal through the courts can take a long time and prove costly for plaintiffs, warns the study on *The Right to Information in Latin America (2009)*.³⁰ This analysis mentions that LOTAIP does not provide for an internal appeal to a higher authority within the public entity when a request for information has been denied, and clarifies that the law does not provide either for an appeal to an independent administrative entity. Experience in other countries, the study argues, has shown that the right to appeal to an independent administrative supervisory entity is essential to implement the right to information.

In Ecuador people have an appeal mechanism to achieve enforcement of their right to information, but the procedure is impractical. The study on *Mechanisms of Good Governance in Ecuador (2010)* states that “no cases were found in which citizens made use of this legal remedy to demand

²⁸ Fundamedios. (2010). *La Palabra Rota [The Broken Word]*. Ecuador. P. 79.

²⁹ *Ibid.* P. 81.

³⁰ Mendel, T. (2009). *The Right to Information in Latin America, A Comparative Survey*. UNESCO.

access to information (out of the 24 local municipalities analyzed). When their requests are denied, users seek other sources or other channels.”³¹

Fundamedios identified that, out of 15 cases involving appeals, five appeals for access to information were granted and 10 were denied. The rulings of the Constitutional Court denying the appeals by different stakeholders were grounded in the norm, given as an example, that the appeal was out of order because the information had already been turned over, or because the stakeholder, when making the request, did not fulfil the formal requirements established in the LOTAIP law. This analysis was performed by Fundamedios in January 2009 y June 2010.

Moreover, Article 91 of the Constitution and Article 22 of the LOTAIP could collide since they propose very similar actions but with different nominations and procedures.

The draft Communications Law establishes that the Ombudsman would have jurisdiction to protect and exercise tutelage over communication rights (Article 51), especially regarding individuals and diverse collective bodies regarding the media, whether private, community or public media.

1.2.6. Any restriction on grounds of protection of personal privacy is narrowly defined so as to exclude information in which there is no justifiable public interest

Article 66-11 of the 2008 Constitution establishes “the right to maintain confidentiality about one’s convictions. No one may be obliged to declare them. In no event can personal or third-party information about their religious beliefs, affiliation or political thinking be required or used without authorization by the person or his/her legitimate representatives; this also applies to data regarding their sex life and health, except for reasons of medical care.”

Sub-section 19 of that Article establishes “the right to protect data of a personal nature, which includes access to and decision-making about information and data of this nature, as well as the corresponding protection therefore. Gathering, archiving, processing, distributing or broadcasting such data or information will require authorization by the person or a legal order.”

Regarding LOTAIP (2004), Article 6 determines that it will be considered as confidential information that personal public information which is not subject to the principle of openness including that which is derived from one’s totally personal, fundamental rights. Illegal use made of personal information or its dissemination will give rise to the relevant legal actions. No confidentiality may be applied in investigations by competent public authorities regarding violations of persons’ rights that are established in the National Constitution of the Republic, in the declarations, conventions, agreements, international instruments and domestic legal systems. The exception is the procedure established in prior investigations. In this regard, the study on *The Right to Information in Latin America*³² warns that it could be problematic to exclude all personal information from coverage by the Law. Only that information must be exempt that would harm a privacy interest if disclosed.

1.3. EDITORIAL INDEPENDENCE IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

1.3.1. Broadcasters are not required to allocate broadcasting time to, or carry specific broadcasts on behalf of the government (aside from obligatory direct access political broadcasts during elections)

Television and radio media have the obligation to broadcast government messages and even show official programmes for up to one hour a day.

³¹ Grupo Faro. (2010). *Mecanismo de Buen Gobierno [Mechanisms of Good Governance]*. Ecuador. P. 8.

³² Mendel, T. (2009). *The Right to Information in Latin America, A Comparative Survey*. UNESCO.

Article 59 of the 1975 Law on Radio and Television Broadcasting and its 1995 Reformed Law, establish:

Every [radio and television] station is obliged to provide the following social services free of charge:

- a) Simultaneously broadcasting messages or reports by the President of the Republic, the President of the National Congress, the President of the Supreme Court of Justice, the President of the Supreme Electoral Tribunal and Ministers of State or governmental officials with that rank. The General Regulations for this Law will regulate the use of these spaces, their duration, the frequency of each and their broadcast in schedules compatible with regular programming on radio and television stations, except in the case of constitutionally declared emergencies. These spaces will be used exclusively to report on the activities of the respective functions, ministries or public agencies. Officials who fail to abide by this provision will be penalized according to the Law.
- b) Simultaneous broadcast of emergency news, reports or messages from the President of the Republic, National Security Council, Cabinet Members, Provincial Governors, Commanders of Military Zones and Health Authorities;
- c) Individual broadcasting by the Station of messages, reports or news by those same officials and in the cases listed in the preceding sub-sections, when it is the only media outlet available;
- d) Assigning up to one hour a day, Monday through Saturday, non-cumulative, for official programmes on tele-education and health, prepared by the Ministry of Education and Public Health;
- e) Calling citizens to comply with mandatory military service or any other issue related to civic obligations.

Ethos Foundation reports through several mass media that, from January 2007 to June 2010, there were a total of 782 nationwide State TV and/or Radio broadcasts. 672 of them were by the Executive Branch, and the rest by different State departments, supervisory agencies, or other autonomous central public-sector agencies. These figures do not include the President's Saturday programmes.

Regarding public opinion, a survey conducted in January 2010 by the CEDATOS GALLUP firm, *The policy on official communication and advertising*, stated that 57% disapprove of nationwide State broadcasts.³³

With a scope similar to the provisions of the Radio and Television Broadcasting Law mentioned above, the draft Communications Law includes provisions that enable indiscriminate, abusive use of governmental messages and from other State agencies (Article 72a). All broadcast media are obliged to open spaces for broadcasting free of charge of official messages, with no limits on timing and in a very vague manner, with the sole condition that they be topics relevant to the parties making them and related to general interest.

Further, it remains mandatory to broadcast at least one hour a day, Monday through Saturday, "official free-of-charge programs of an educational nature and significant to the citizenry" that will "reinforce democratic values and the promotion of human rights; contribute to preventing the consumption of narcotic and psychotropic substances, of alcohol, of tobacco and other health-related issues; favouring pluri-nationality, inter-culturality and gender equity; and promoting the rights of groups requiring top-priority attention (Article 72c).

The draft Law also makes it mandatory for all broadcast media to "broadcast, in a national or local 'chain' network, in cases state of exception provided for in the Constitution of the Republic, any messages ordered by the President of the Republic or the authorities he/she designates for that purpose" (Article 72b).

³³ CEDATOS. Evaluación de la política de comunicación y publicidad oficial entre enero y junio 2010 [Assessment on communication and official advertisement policy between January and June 2010].

1.3.2. Government, regulatory bodies or commercial interests do not influence, or seek to influence, editorial content of broadcasters or press

Journalists report that they receive pressure from multiple sources, such as advertisers and by the media's own management or owners as well as by the Government, according to the study *La Palabra Rota*³⁴ [The Broken Word].

A survey of 372 journalists from various media in the cities of Quito, Guayaquil, Manta, Nueva Loja and Machala, published in the report above-mentioned *La palabra rota (2010)*, identified that 28.76% of respondents said that at some time, some public interest news item was not published due to some sort of pressure. The report also said that "pressures come in equal parts from government officials (15.46%) and media management (15.46%) and to a lesser extent from advertisers (13.69%)."³⁵

Regarding specific cases, on 5 April 2010 the editorialists of the public daily newspaper *El Telégrafo* published an open letter³⁶ announcing their decision to stop writing in that paper because of censorship and violation of their rights to freedom of expression and the press. Prior to that, on 25 March the Director had been dismissed from that position by the Board, and a few days later the assistant Editor resigned from her position. Moreover, the Editor-in-Chief resigned and stated that he was "dismissed from his position for publishing the reaction by a member of the opposition about the report by the Commission of Truth."³⁷

Other cases of governmental influence on editorial content of broadcasters have been denounced by Fundamedios.³⁸

Moreover, in the question to be asked of voters in the referendum on May 7:

Do you agree that the National Assembly, without delay, within the time period established in the General Law on the Legislative Branch, should issue a Communication Law creating a Regulation Council to regulate contents publicized on television, radio and written press publications containing messages of violence, explicitly sexual or discriminatory, and which establishes criteria of subsequent responsibility for the communicators or media issuing them?³⁹

If the answer is affirmative, this could enable the Regulation Council to influence media contents.

1.3.3. Law does not allow state actors to seize control of broadcasters in an emergency

No law expressly establishes the possibility for government stakeholders to take control of the media under emergency situations, but this possibility is implicit in view of Article 37 of the Law of Public and State Security, which states that, once a State of Exception is declared, the President may order national mobilization: "this will entail the forcible order to provide individual or collective services, regarding national and foreign citizens, or individuals or corporate bodies."

Complementarily, Article 37 of that Law establishes that: "pursuant to mobilization under states of exception, the President of the Republic may issue a decree ordering, in all or part of the nation's territory, requisition of property belonging to corporate bodies or individuals, whether Ecuadorian or foreign."

³⁴ Fundamedios. (2010). *La Palabra Rota [The Broken Word]*. Ecuador. P. 118-119.

³⁵ *Ibid.* P. 126.

³⁶ Fundamedios. Alert # 58. Found at: http://www.facebook.com/note.php?note_id=381280737026&comments&ref=mf, [24 January 2011].

³⁷ El Comercio. "Silence at El Telégrafo after Newsroom Chief Leaves", 18 June 2010. Found at: <http://www4.elcomercio.com/2010-06-18/Noticias/Politica/Noticias-Secundarias/EC100618P5INDIGENAS.aspx>, [24 January 2010].

³⁸ Fundamedios. (2010). "The Hour of Jorge Ortiz Case". Alert # 190. And "Jorge Ortiz Case". Alert # 187. Press release by Fundamedios on the increasing levels of self-censorship and indirect censorship, 27 August 2010.

³⁹ National Electoral Council. Found at: http://www.cne.gob.ec/images/articulos/Convocatoria_Consulta_Popular.pdf

Finally, Article 38 of this Law says all goods, geographical spaces, services and activities located in the security zone are subject to special regulations, meaning:

The Ecuadorian territorial space with strategic importance, characteristics and elements comprising it, require spatial regulation for the purpose of ensuring protection of this zone from any serious harm or threats to security under this Law.

In addition to all this, Article 165 of the Constitution grants the President of the Republic authorization to suspend the exercise of the freedom of information, among other fundamental rights, during States of Exception.

In conclusion, the media and communicators working in them are legally obliged to provide their services and facilities if the President of the Republic orders national mobilization, and could even be subject to special regulation if they are located in a security zone. Finally the media could have to stop publishing information or restrict their flow pursuant to Article 165 of the Constitution on States of Exception. An example of this was the “mandatory and indefinite programme” that was broadcast on 30 September 2010 (date on which a State of Emergency was declared in Ecuador), which implied that all private media had to connect to one single broadcasting source.⁴⁰

As mentioned above, the draft Communications Law provides for all broadcast media to be obliged to “broadcast, in a national or local ‘chain’ network, in cases state of exception provided for in the Constitution of the Republic, any messages ordered by the President of the Republic or the authorities he/she designates for that purpose” (Article 72b).

1.4. JOURNALISTS’ RIGHT TO PROTECT THEIR SOURCES IS GUARANTEED IN LAW AND RESPECTED IN PRACTICE

1.4.1. Journalists can protect the confidentiality of their sources without fear of prosecution or harassment

Explicitly, the right to maintain source confidentiality is protected under Article 20 of the 2008 Constitution, which states: “The State will guarantee all persons’ right to their conscience, to professional secrecy and to reserve the source of those who give information or issue their opinions through the media or other forms of communication, or work in any communication activity.”

Consequently journalists, management or owners of media cannot be sued when they defend the confidentiality of their sources.

However, it is not clear that the media or journalists are safe from any sort of harassment or intimidation for defending the confidentiality of their sources, as shown by the case of the item published in June 2010 by *El Universo* daily newspaper regarding alleged telephone espionage.

In this case, the *El Universo* defended confidentiality regarding its sources; however, the Attorney-General made a declaration to the media that, because this was a matter of internal and external security, protection of the source was relegated to a secondary level. Later, the Attorney-General changed his opinion and also declared to the media that the newspaper was entitled to keep the information confidential; finally, the paper announced that it would collaborate with investigations by the Attorney-General but without revealing its sources to that public authority.

⁴⁰ Fundamedios. (2010). Alert of 30 September 2010 on “Private Media can only broadcast indefinite and uninterrupted national programme ordered by Government”.

The draft Communications Law establishes, in a detailed, correct scope, the “right to reserve sources and professional secrecy” for “notes, files, personal mail and recordings” and for “everything that directly or indirectly could lead to identifying their sources, with the exceptions deriving from the Constitution of the Republic and international instruments” (Article 16). However, this right is recognized only for “social communicators” instead of the constitutional scope including “those informing, issuing their opinions through the media or other forms of communication, or work in any communication activity” and without expressly naming professional journalists (which, although it would seem to be a simple error, since they are mentioned in other parts of the law as different from communicators, if this remains unchanged it could be interpreted to mean that they are not included).

Let it go on the record that non-recognition of this right is left open, without clear, specific mention, because it reads “with the exceptions deriving from the Constitution of the Republic and international instruments”. In this latter case, mentioning “international instruments” is too vague and could include a diverse collection of treaties or agreements, whether related to human rights or not, and even those without universal scope.

1.5. THE PUBLIC AND CIVIL-SOCIETY ORGANIZATIONS (CSOs) PARTICIPATE IN SHAPING PUBLIC POLICY TOWARDS THE MEDIA

1.5.1. State creates genuine opportunities for consultation with non-state actors about legislation and public policy towards the media

The Constitution establishes (paragraph two, sub-section 3, Article 85) that: “in formulating, implementing, evaluating and control of public policies and public services, the participation of persons, communities, peoples and nationalities is ensured.”

With even greater precision, Article 16-5 of the Constitution establishes the right to: “be involved in participation mechanisms provided under the Constitution in the field of communication.”

However, in practical fact, the institutions currently responsible for public planning regarding Telecommunications and Radio and Television Broadcasting remain centralized, dependent on the Executive Branch, with no formal mechanism institutionalized to make them accountable for their actions, nor any mechanism for citizen participation. These agencies, under current law, have been the National Telecommunications Council (CONATEL) and the National Radio and Television Council (CONARTEL). (see indicator 1.6.1)

As for genuine opportunities to take part in preparing or amending legislation on communication, in the process of preparing the Communications Law in the National Assembly since September 2009, about 20 CSOs have contributed proposals and inputs formally. However, many of these proposals have not been taken into account in the current draft.

The draft Communications Law provides for citizen participation as one of the guiding principles to regulate and define public policies regarding the media and exercising communication rights (Article 5). Further, in what it calls “rights to participation,” it recognizes the right that “the citizenry may organize in public hearings, oversight commissions, assemblies, grassroots *cabildos*, consultative councils, observatories or others to protect communication rights.” (Article 26).

It also requires the State to formulate “public communication policies in a participatory manner to promote full, integrated development of the communication rights consecrated by the Constitution of the Republic, international instruments and the law.” (Article 31)

Accordingly, it establishes that the Communication and Information Council will have the power to “promote public deliberation and debate, through public hearings, oversight commissions,

assemblies, grassroots *cabildos*, consultative councils, observatories or other mechanisms for citizen participation.” (Article 35e)

B. REGULATORY SYSTEM FOR BROADCASTING

1.6. INDEPENDENCE OF THE REGULATORY SYSTEM IS GUARANTEED BY LAW AND RESPECTED IN PRACTICE

1.6.1. Explicit legal guarantees of autonomy and independence from partisan or commercial interference

Regulating the broadcast media, from 1995 to 2008 was the responsibility of the National Radio and Television Broadcasting Council (CONARTEL) and the Superintendency of Telecommunications (SUPERTEL). The Radio and Television Broadcasting Law gave CONARTEL the function of granting frequencies or channels for radio or television broadcasting, and regulating and authorizing these services throughout the national territory, and granted SUPERTEL the functions of technical oversight. In 2009, by an Executive Decree,⁴¹ it was established that the telecommunications sector would be regulated by three State agencies, according to Article 86 of the Regulations for the Special Telecommunications Law, the National Telecommunications Council (CONATEL), the National Telecommunications Secretariat (SENATEL) and the Superintendency of Telecommunications (SUPERTEL). The Executive Decree ordered “merger of CONATEL with CONARTEL, with CONATEL assuming the competencies y powers of CONARTEL, and the rights and obligations of CONARTEL will be assumed by SENATEL.”

CONATEL is currently the body responsible for making policies and norms to regulate and grant frequencies. SENATEL enforces policies and decisions issued by CONATEL and SUPERTEL is responsible for controlling and monitoring the broadcast spectrum.

Regarding autonomy and independence, although the second un-numbered article after Article 5 of the Law on Radio and Television formally establishes the autonomy of the CONARTEL, immediately afterwards the constitution of the Council’s membership distorts any possibility for it to act with autonomy or independence in actual practice.

In fact, four of the six members of the CONARTEL answer directly to the President of the Republic: the President’s delegate, the Minister of Education (or a delegate), the Chief of the Armed Forces Joint Command, and the Superintendent of Telecommunications. The other two members directly represent the business interests of the sector’s stakeholders: the President of the Ecuadorian Association of Radio and Television (AER); and the President of the Association of Television Channels of Ecuador (ACTVE). (see indicator 1.6.4)

From this perspective, the Law itself makes sure that the Government and private interests (often situational and one-sided, and not of public interest) will be driving their work of overseeing the sector’s activities. This made the CONARTEL highly permeable to illegitimate transactions with radio and television frequencies, as shown in the report presented by the Radio and Television Frequency Audit Commission in May 2009.

Since the elimination of CONARTEL by Presidential Decree, the dependence of the new body (CONATEL) on the Government has been increased. (see indicators 1.6.4. and 1.7.2)

The draft Communications Law establishes the creation of a Communication and Information Council as a public agency with functional, administrative and financial autonomy for the

⁴¹ Executive Decree 8 (R.O. 10, 24-VIII-2009).

purpose of “supervising the exercise of communication rights” (Article 34), complementing other agencies that regulate the broadcast media sector.

To ensure autonomy and independence from commercial interference, the members of this council have limitations on being elected, if they have been or are still related (or have family or employment relationships) with media, not only the broadcast media. In fact, these requirements include: “not having any family relationship up to the fourth degree of consanguinity and second degree of affinity with the President of the Republic, ministers and secretaries of State (Article 37b) and “not exercising functions of administration or management of the media or working in an employment relationship with the media, or having done so during two years prior to the date on which the competitive selection process is announced.” (Article 37d)

The norm being studied by the National Assembly establishes no requirements preventing political-party interference.

1.6.2. Legal guarantees of the independence of the regulatory body

Ecuador’s legal framework provides for a situation of special uncertainty and normative gaps regarding the institutions regulating the sector. The Law on Radio and Television states in the second un-numbered article after Article 5 that the CONARTEL is an autonomous public-law entity, which implies, at least formally, that it should be able to act with freedom from interference by public and private interests.

However, on 13 August 2009, an Executive Decree created the Ministry of Telecommunications and Information Society merged the CONARTEL with the CONATEL⁴², and also placed the jurisdictions established by laws and regulations for the CONARTEL under the authority of the CONATEL⁴³, which is under the newly-created Ministry of Telecommunications. The Ministry is headed by a direct, discretionary appointee of the President of the Republic. This means that the autonomy declared by law for these bodies has in practice been dissolved.

The provisions establishing restrictions on conflicts of interest are found in the General Regulations for the Special Telecommunications Law as amended.

Article 120 establishes that the members of CONATEL and the Secretariat and Superintendency of Telecommunications shall have no direct or indirect employment relationship with anyone holding an authorization to provide telecommunications services. Article 122 establishes that no one may be an official who participate – in their own right or through some other person – as directors, managers, advisors, shareholders or receiving income from companies providing telecommunications services, except for the representatives on CONATEL for the Chambers of Production and CONATEL.

Article 123 establishes the reasons why the President of CONATEL and the Secretary of Telecommunications may be removed from their positions:

- a) By decision of the Authority that appointed them;
- b) For manifest inability to perform their functions;
- c) Repeated non-compliance with the directives and resolutions issued by CONATEL;
- d) Judicial judgment;

⁴² Executive Decree # 8. (13 August 2009). Article 13. The National Radio and Television Council (CONARTEL) merges with the National Telecommunications Council (CONATEL).

⁴³ Executive Decree # 8. (13 August 2009). Article 14. The competence, powers, functions, representations and delegations appearing in laws, regulations and other normative instruments under CONARTEL will be performed, handled and exercised by CONATEL, in the same terms appearing in the Law on Radio and Television and other secondary norms.

Exclusively the administrative functions that the President of CONARTEL had will be handled by the National Secretary of Telecommunications, in the same terms as set forth in the Law on Radio and Television and other secondary norms.

- e) Judicial interdiction, while in effect, except in the case of insolvency or bankruptcy, which has not been declared fraudulent; and
- f) Overriding incompatibilities.

Regarding the sessions of CONATEL, Article 92 establishes that “if one of the members has any conflict of interests in a matter to be discussed at any of the sessions, he/she must state this and abstain from participating in the discussion and subsequent decision. If they fail to do so, any other person can request their abstention”.

The agency that will be guardian for communication rights, if the draft communications Law under study is approved, is the Communication and Information Council, which would have a certain degree of functional, administrative and financial autonomy and its membership would have a minority of representatives or members designated by the Government. Out of the seven members, only two would be proposed by the President of the Republic (Article 36) and then appointed by the Council for Citizen Participation and Societal Oversight, which will only make sure that the requirements established in the Law have been met.

In turn, the members of the Council cannot have “family relationships up to the fourth degree of consanguinity and second of affinity with the President of the Republic, ministers or secretaries of State.” (Article 37b)

The draft Law also provides that, to ensure their autonomy and independence, “the members of the Communication and Information Council will serve four-year terms and may not be freely removed” (Article 39), although the Council itself (with a special majority vote of five members) may remove any of its members.

The reasons for removal from office are expressly established:

Article 42. Reasons for dismissal from office. Reasons for removal, without precluding any relevant criminal- or civil-law actions and penalties, are:

- a) Taking action that harms the respectability of their functions or seriously compromises the dignity of the position.
- b) Receiving gifts or accepting the promise of gifts.
- c) Carrying out political activities of a public nature, or accepting or participating in the promotion or postulation of candidacies for offices by popular election.
- d) Engaging in abuse of authority or using the powers granted by this Law abusively.
- e) Being involved in any of the causes for incompatibility, not noticed at the time of their appointment, pursuant to the General Law on Communication.
- f) Unjustified non-attendance at more than three consecutive calls to meeting.
- g) Having been convicted for a crime, misdemeanor or felony involving the use of any narcotic or psychotropic substance or alcohol, during the performance of their duties.” (Article 42).

1.6.3. Powers and responsibilities of the regulator clearly set out in law

In fact, the fifth un-numbered article after Article 5 of the Law on Radio and Television specifies the powers of the CONARTEL, currently handled (by presidential decree, as explained above) by the CONATEL, namely:

- a) Formulate, for approval by the President of the Republic, the General Regulations, or amendments thereto, to apply this Law;
- b) Issue complementary administrative or technical regulations for that body and the other regulations of that nature that may be required;

- c) Approve the National Plan for Distribution of Frequencies for radio and television, or amendments thereto;
- d) Authorize, after verifying compliance with technical, economic and legal requirements, the concession of radio or television channels or frequencies, their transfer to other concessionaires, rental of stations and cancelation of concessions;
- e) Settle claims and appeals brought by radio and television station concessionaires;
- f) Enforce the requirement of nationality for individuals or corporate bodies that are radio and television channel concessionaires, adopting for this purpose relevant measures pursuant to Ecuadorian legislation;
- g) Oversee full respect for the freedoms of information, of expression of thought and of programming; as well as the right to ownership of production, broadcasts or programmes, pursuant hereto;
- h) Regulate and control, throughout Ecuadorian territory, the artistic, cultural and moral quality of the actions or programmes of radio and television stations;
- i) Approve the draft budget for this body or amendments thereto;
- j) Approve rates for radio spectrum frequencies for radio and television service that radio and television concessionaires must pay the Council.
- k) For this purpose, the Council will take into account the costs of public and social services that these media are hereby obliged to provide free of charge. Consequently, these rates will be considered as a contribution to funding the Council's activities;
- l) Determine the policies to be observed by the Superintendency in its relations with other national or international bodies concerning radio and television;
- m) Oversee compliance with this Law by the Superintendency and adopt the necessary measures for this purpose; and
- n) Those others assigned by this Law and the regulations.

The Communication and Information Council to be created by the draft Communications Law has its powers expressly established in the draft Law (Article 35):

- a) Protect and promote the enforcement of the communication rights established in the Constitution, international instruments and the Law.
- b) Ensure that public policies promote and guarantee communication rights.
- c) Hear and rule, at its administrative headquarters, on injuries to communication rights, in the cases provided for in this Law.
- d) Technical monitoring of radio and television programming to verify compliance with the classification of contents and scheduling times.
- e) Promote public deliberation and debate, by public hearings, oversight mechanisms, assemblies, grassroots cabildos, consultative councils, observatories or other mechanisms of citizen participation.
- f) Protect, promote, and disseminate the forms of communication that originating in the different social, ethnic and cultural groups.
- g) Encourage and motivate the creation of spaces to publicize national productions and independent national productions and ensure the screen quotas established in this Law.
- h) Encourage and facilitate development of capacities for critical reading of media and messages, and digital literacy.
- i) Prepare, examine and approve the Council's pro forma budget, submitted by the Technical Secretariat.
- j) Appoint and remove the President and the Technical Secretary.
- k) Approve and modify the administrative structure of the Technical Secretariat.
- l) Appoint territorial delegates to the Communication and Information Council, and determine their functions and powers according to this Law.
- m) Keep and update the register of the media.
- n) Ensure that the use of public resources in allocation of spending on advertising and publicity of the State is subject to the provisions of the Law.
- o) Promote intercultural values in social communication.
- p) Encourage and promote creation and strengthening of public, private and community media.
- q) Be accountable to the citizenry for its actions.

- r) Implement mechanisms for transparency in information about circulation, listenership and audience levels of the media.
- s) Any others set forth in the Constitution of the Republic, international treaties and the Law.

1.6.4. Members of the regulatory body chosen through a transparent and democratic process designed to minimize the risk of partisan or commercial interference (for example, setting up rules on incompatibility and eligibility)

By legal mandate, the members of the CONARTEL are:

- a) The delegate of the President of the Republic, who chairs the Council;
- b) The Minister of Education and Culture or a delegate;
- c) A delegate of the Joint Chiefs of Staff of the Armed Forces, who will be an officer on active duty with a rank of general or higher;
- d) The Superintendent of Telecommunications;
- e) The President of Ecuadorian Radio Broadcasting Association (AER); and
- f) The President of Ecuadorian Association of Television Channels (AECTV).

This membership of the regulatory body was maintained from 12 July 1995 through 5 November 2008; at which point the representatives of AER and AECTV left the Council pursuant to the ruling by the Attorney-General, based on Article 232 of the Constitution which prohibits belonging to or leading entities with the powers of governmental control and regulation for anyone with interests in the area to be overseen or regulated.

From 5 November 2008 through 13 August 2009, the CONARTEL continued operating with its other members, but then the Executive Decree (as explained above) merged the CONARTEL with the CONATEL, which now handles all these powers and authority.

The membership of the CONATEL has been defined in the second un-numbered article after Article 33 of the Special Telecommunications Law, which states:

CONATEL will have the following membership:

- a) A representative of the President of the Republic, who will chair the Council;
- b) The Head of the Joint Chiefs of Staff of the Armed Forces;
- c) The Secretary-General of the National Development Council;
- d) The National Telecommunications Secretary;
- e) The Superintendent of Telecommunications;
- f) A representative designated by the chambers of production;
- g) The Legal Representative of the General Workers' Committee of EMETEL (CONAUTEL).

Therefore, the members of the regulatory body are not selected by a democratic process designed to minimize the risk of interference by political parties or commercial interests and are not representative of media actors.

The draft Communications Law creates a regulatory body that will be guardian over communication rights and will comprise (Article 36):

- a) Two members proposed by the President of the Republic;
- b) One member proposed by the Council on Equality;
- c) One member proposed by the departments or schools of social communication social at the public and private institutions of higher education;
- d) Three representatives of the citizenry.

The two members proposed by the Government will automatically be on the body as long as the Council for Citizen Participation and Societal Oversight judges that they meet the requirements established in the Law and there are no objections by the citizenry within a period of fifteen days from their proposal (Article 38).

The same procedure will be used in the case of the representatives of the Council on Equality and the university entities.

The members of the Communication and Information Council on behalf of the citizenry will be appointed by public competitive selection on the basis of their merits, as judged by the Council for Citizen Participation and Societal Oversight, which will establish a list of ranking with members and alternates (Article 38).

1.7. REGULATORY SYSTEM WORKS TO ENSURE MEDIA PLURALISM AND FREEDOM OF EXPRESSION AND INFORMATION

1.7.1. Regulatory body formally accountable to the public

The only institutions that have the power to carry out a review of administrative actions taken by the CONATEL are the Comptrollership General del Estado, which can order special examinations; or the Secretariat of Transparency in Public Governance, entities which are part of the Ecuadorian Government. The latter reports to the national Government. The Constitutional also establishes, in Articles 208.2, 297 and 355 that it is mandatory to be accountable, for public institutions and for those that receive public funds.

Although it is not mentioned as a requirement but as a "power," if the draft Communications Law is approved, the Communication and Information Council should "be accountable to the citizenry for its actions." (Article 35q)

1.7.2. Regulator has the scope to ensure that the broadcasting sector runs in a fair, pluralistic, efficient manner and is empowered by law to promote fairness, freedom of expression, of views and ownership, public service programming and accessibility of broadcasting services to the general public

The regulator, CONATEL, has the scope to ensure the fair, pluralistic and efficient functioning of the broadcasting sector. (see scope in indicator 1.6.3)

However, the radio and television sector has not been regulated in a fair or pluralistic manner for the following reasons: the concentration of media ownership in one single sector, the private (see tables and graphs below)⁴⁴; amendments to the Law on Radio and Television in 1995 allowed an increase in the number of radio and television frequencies under the control of an individual or corporate entity; all the mechanisms approved by the CONARTEL that allowed greater concentration; the de facto elimination of the CONARTEL and transfer of its powers and authority to the CONATEL; the subordination of the CONATEL to the Ministry of Telecommunications (as explained in Category 2); and the discrimination against community media (as explained in the following lines).

⁴⁴ Radio and Television Frequency Audit Commission. (2009). *Informe definitivo [Final Report and Recommendations]*. Ecuador. P. 259. And <http://www.supertel.gob.ec/pdf/estadisticas/sma.pdf>

Table 5

Statistical summary of types of television channels in Ecuador

| Station category | # of stations | % |
|--------------------|---------------|-------------|
| Private/commercial | 368 | 83% |
| Public service | 76 | 17% |
| Community | 0 | 0% |
| TOTAL | 444 | 100% |

(Source: Superintendency of Telecommunications, December 2010)

Graph 4

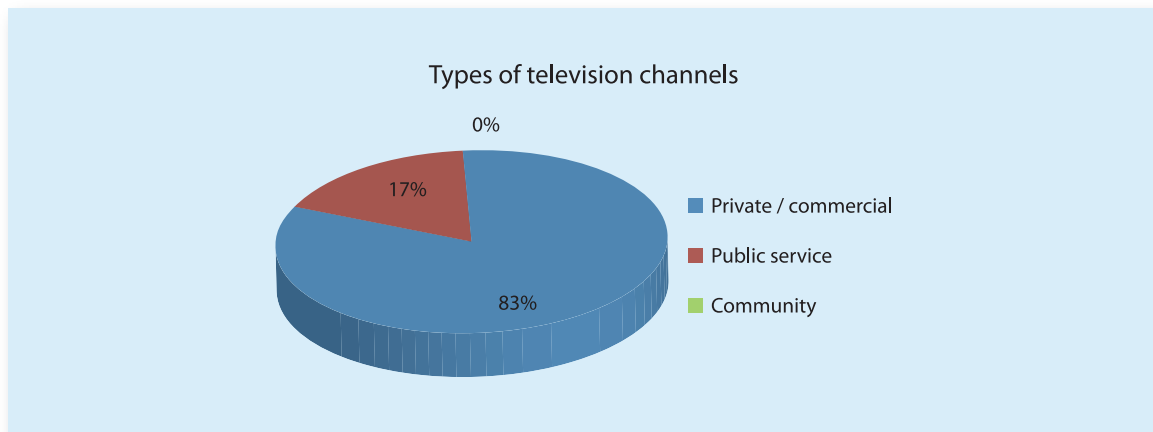


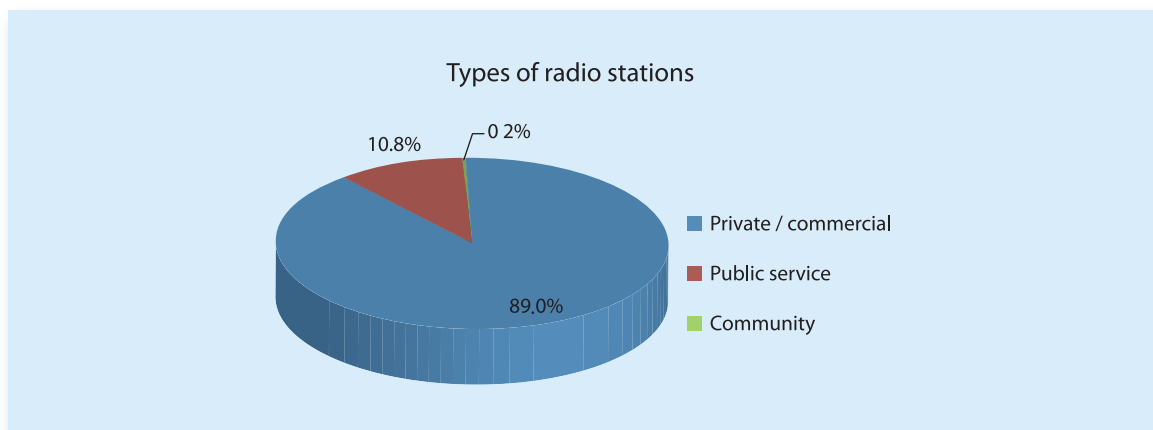
Table 6

Statistical summary of types of radio stations in Ecuador

| Station category | # of stations | % |
|--------------------|---------------|-------------|
| Private/commercial | 1,073 | 89.0% |
| Public service | 130 | 10.8% |
| Community | 2 | 0.2% |
| TOTAL | 1,205 | 100% |

(Source: Superintendency of Telecommunications, December 2010)

Graph 5



This situation also limits the circulation of ideas and opinions since many sectors are excluded from accessing the media or setting up their own media to express themselves freely.

The discrimination that community radio stations have historically experienced can be tracked mainly to the legal rules contained in Title Six of the General Regulations for the Law on Radio and Television (RGLRTV) enacted in 1996, which have not yet been expressly repealed, as well as to the administrative practices that the CONARTEL had to process frequency applications for radios of this type, as documented in the Frequency Audit Commission Report.

In fact, the first hurdle was identifying community radio stations with community service radio stations (see Article 6 of RGLRTV) and linking them to legally constituted communities under the Law on the Organization and System of Communities. Communities, according to Article 1 of that Law, are:

All populated centres that do not have the category of a parish, existing at present or to be established in the future, which is known by the name of hamlet, village, neighbourhood, partiality, community, or any other designation, shall bear the name of community, in addition to its own name with which it has existed or is to be founded.

Consequently, no frequencies could be granted for the operation of community radio stations but rather frequencies for community service in these small rural population centres.

The second limitation has been that the frequency could be granted to community radio stations only "after a favourable report by the Joint Chiefs of Staff of the Armed Forces," to make sure that these radio stations do not encourage or lead actions against the country's internal or external national security (see Article 6 of RGLRTV) because they were considered potentially subversive.⁴⁵ The third discriminatory limitation is that community stations are considered to be for public service and consequently "may not have advertising of any sort and must be devoted exclusively to social, educational and cultural purposes. Social purposes refer solely to activities related to helping the community" (see Article 6 of RGLRTV); however, they have no public allocation to at least cover operating costs.

The fourth discriminatory limitation is that "Concessions for community service radio stations shall be granted only for medium-wave and frequency modulation stations in places where there are no concessions for national, regional or local medium-wave stations or concessions for frequency modulation; and in any event providing they do not interfere with frequencies assigned to other stations" (see Article 7 of RGLRTV), which guaranteed absolute geographical domination by commercial stations except in places so insignificant that they show no interest in reaching them with their signal.

In addition to these limitations, community stations are required to present a series of additional requirements beyond those established for a commercial station (see Article 8 of RGLRTV) and they are the only ones that have to submit a "plan of the programming that the station will broadcast."⁴⁶ These requirements could actually be the same for all radio stations, be it private or community.

Finally, Law 89-2002, enacted in November 2002, amended Article 8 of the Law on Radio and Television by incorporating the notion of "public service stations for community service," which is closer to the concept of community stations, to correct the discrimination these radio stations have been subjected to.

⁴⁵ The effects of the phrase "upon prior favorable report by the Joint Chiefs of Staff of the Armed Forces, that the station's operation will not disturb the country's internal or external national security", from the first subsection de Article 6, were suspended because they were fundamentally unconstitutional, by Resolution No. 177-69-CP of the Constitutional Guarantees Tribunal, published in Official Gazette 55, 28-X-96.

⁴⁶ The effects of this requirement were suspended because of unconstitutional grounds, by Resolution No. 177-69-CP of the Constitutional Guarantees Tribunal, published in Official Gazette 55, 28-X-96.

This Article 8 lists the characteristics of community service stations:

- a) They should arise in an indigenous, Afro-Ecuadorian or rural community or organization, or any other societal organization.
- b) Such communities or organizations must necessarily orient their work toward strengthening their community, intercultural and social consolidation, defence of human, historical and artistic values, bolstering national identity and enhancing the enjoyment of human rights.
- c) And only if they meet the above conditions, community may do fund-raising for improvement, maintenance and operation of their facilities, equipment and personnel payment through donations, paid messages, and advertising for commercial products.
- d) Further, profits received from managing these stations must be reinvested in expanding their services, systems or equipment, or in activities by the community they represent.

The Communication and Information Council that would be created if the draft Communications Law is approved has the fundamental purpose of serving as guardian for communication rights (Article 34), which include the rights mentioned in this indicator, with specific powers to carry out this mandate (Article 35).

C. DEFAMATION LAWS AND OTHER LEGAL RESTRICTIONS ON JOURNALISTS

1.8. THE STATE DOES NOT PLACE UNWARRANTED LEGAL RESTRICTIONS ON THE MEDIA

1.8.1. No legal provisions dictating who may practice journalism or requiring the licensing or registration of journalists

Article 1 of the Law on Professional Journalist Practice establishes that professional journalists are exclusively those who have a university degree accrediting them as such, and who obtain a certificate of professionalization granted by the Ministry of Education, by having practiced their profession prior to the enactment of this Law, prior to 30 September 1975. Further, Article 25 prohibits practicing the profession of journalist or the performance of positions by persons who do not meet the provisions of this Law.

Concurrently, Article 15 establishes that only professional journalists may occupy the following positions:

Chiefs, assistant chiefs, newsroom or information secretaries, reporters or item writers, headline writers or style proofreaders, graph reporters, correspondents, layout specialists and information handlers; and, directors, chiefs and reporters on radio, televised and cinematograph information programmes.

Finally, Article 27 establishes that:

For a professional journalist to enjoy the benefits of this Law, he /she must be affiliated to one of the professional guilds.

In conclusion, the Law makes it mandatory to have an academic degree and belong to a professional association to engage in activities as a communicator or journalist, which implies a limitation on exercising the right to freedom of expression and information and other communication rights established in the Constitution of Ecuador.

Similarly, the draft Communications Law recognizes the right to participate in certain functions or positions within the broadcast media for those who have a professional degree, whether they be “communicators or journalists.”

“Professionals in communication and journalism” will be the only ones who can occupy the following positions (Article 18):

- a) In print media: general editor and information director, newsroom director, writer, editor and correspondent, or those who perform equivalent functions.
- b) In audiovisual broadcast media: director and assistant director of news, news producer, writers or those who perform equivalent functions.
- c) In radio: news director and writers, or those who perform equivalent functions.

The requirement of a degree for those who work as journalists contradicts the right to freedom of expression and information that is recognized by the draft Law itself, and by the American Convention on Human Rights that Ecuador has signed. Therefore, we feel that these Articles should be removed or heavily modified to bring the draft Law under the inter-American standards.

The above, although grounded in the objective of “building conditions to ensure the quality and responsibility of the handling of information” according to the Inter-American Court would be imposing “an un-justified restriction” according to Article 13.2 of the Convention, “on the freedom of opinion and expression as rights that all human beings hold; and also because it unduly restricts the right of the public at large to receive information from any source without any impediments.”⁴⁷

As mentioned before, the draft Law itself incorporates, in several places, concepts similar to those established in the American Convention on Human Rights⁴⁸ which states that: “Everyone has the right to freedom of opinion and expression. This right includes the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of borders, whether orally, in writing or in print or artistic form, or by any other procedure of their choice.”

Similarly, the Organization of American States (OAS) has also expressed that “all people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, colour, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition,”⁴⁹ which collides with the articles aforementioned.

More precisely, concerning the mandatory diploma or the requirement to belong to professional associations (or colegios), it establishes that: “Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirement of a university degree for the practice of journalism constitutes unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”⁵⁰

As additional background information on this issue, we add some paragraphs from the quoted Advisory Opinion: “Within this context, journalism is the primary and principal manifestation of freedom of expression or thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or though those who are enrolled in a certain professional *colegio*.”⁵¹

⁴⁷ *Advisory Opinion OC-5/85*. (1985). Inter-American Court of Human Rights Paragraph 81 (on the compatibility between federations for journalists and the American Convention on Human Rights).

⁴⁸ We insist that it would be preferable to textually include the wording just as it is written in the Pact of San José, Costa Rica in order to be more precise and incorporate the wording that has been accepted by all countries of the Americas.

⁴⁹ *Declaration of Principles on Freedom of Expression*. (2000). Inter-American Commission on Human Rights. Principle 2.

⁵⁰ *Declaration of Principles on Freedom of Expression*. (2000). Inter-American Commission on Human Rights. Principle 6.

⁵¹ *Advisory Opinion OC-5/85*. (1985). Inter-American Court of Human Rights. Paragraph 71.

The argument by which a law requiring mandatory membership in a professional association would not differ from similar legislation applied to other professions does not take into account the fundamental problem of incompatibility between such a requirement and the American Convention on Human Rights. The problem arises from the fact that Article 13 of the Convention explicitly protects the freedom to "seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." The profession of journalism -what journalists do- implies precisely seeking, receiving and disseminating information. Thus the exercise of journalism requires that one person becomes involved in activities as defined in the freedom of expression guaranteed by the Convention.⁵²

This is not true of the practice of law or medicine, for example. Unlike journalism, the practice of law and medicine –that is to say, the things that lawyers or physicians do- is not an activity specifically guaranteed by the Convention. It is true that the imposition of certain restrictions on the practice of law would be incompatible with the enjoyment of various rights that the Convention guarantees. For example, a law that prohibited all lawyers from acting as defence counsel in cases involving anti-state activities might be deemed to violate the accused right to counsel under Article 8 of the Convention and, hence, be incompatible with it. But no one right guaranteed in the Convention exhaustively embraces or defines the practice of law as does Article 13 when it refers to the exercise of a freedom that encompasses the activity of journalism. The same is true of medicine.⁵³

1.8.2. Fair and transparently implemented accreditation procedures for coverage of official functions and bodies

The Process of Accreditation of Press for the Presidency of the Republic⁵⁴ is as follows. First, one must fill out a form on-line⁵⁵ specifying the data on the media outlet (name, country, media type), personal data on the journalist or technician, attaching electronic copies of various documents (among others, passport, media application, media credential) and accepting the terms and conditions of the accreditation:

- The accreditation credential is the property of the Presidency of the Republic.
- The accreditation credential must be used exclusively for purposes of press coverage within the Palace of Carondelet. Its use outside the Palace of Carondelet or for purposes other than those herein set forth is absolutely prohibited.
- Accredited parties must accept the instructions of the Press Coordinators who are responsible for the Area of External Press.
- The accreditation credential shall be delivered to the media outlet, which will share responsibility for any improper use of that document.
- If the accredited party no longer works at those functions, the corresponding media outlet must notify the Presidency of the Republic and return the credential.
- The Presidency of the Republic may cancel the accreditation and withdraw the credential in any cases of irregularities or misuse thereof.
- Once the effective period of the accreditation credential expires, it must be returned to the Presidency, through the Coordination of External Press of the National Secretariat of Communication.
- In the event of abuse of the accreditation credential, or non-compliance with the terms and conditions herein established, duly proven, the Presidency shall take any applicable legal actions.

A dossier must also be sent to the Under-Secretary of Information at the Presidency of the Republic with the following documents (for the year 2011):

⁵² *Ibid.* Paragraph 72.

⁵³ *Ibid.* Paragraph 73.

⁵⁴ Found at: <http://www.presidencia.gov.ec/sala-de-prensa/acreditaciones>

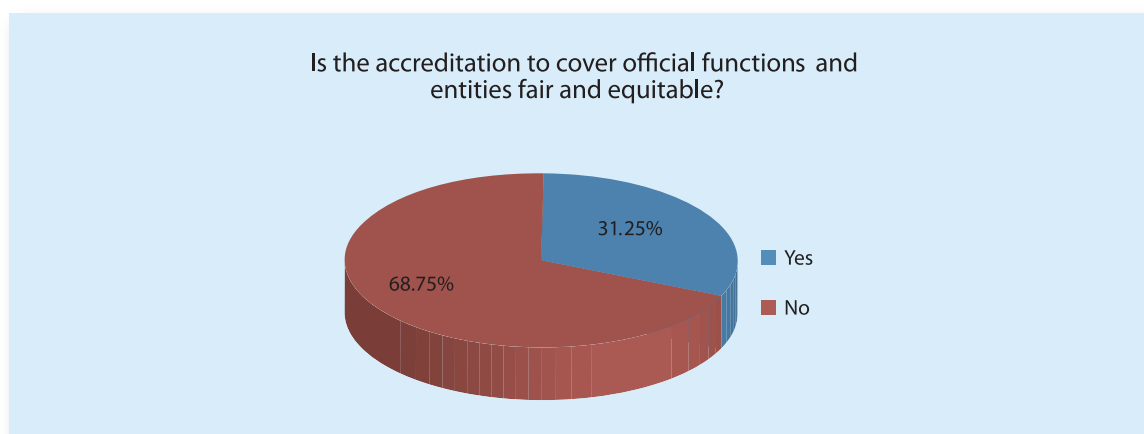
⁵⁵ Found at: <http://www.presidencia.gov.ec/component/content/article/560>

- ID-sized photo;
- Application from the media outlet, signed by its Legal Representative;
- Color copy of the identification card;
- Color copy of the passport;
- Color copy of the credential from the media outlet where the person works;
- Color copy of the voting receipt.

According to the Presidency, once these formalities have been met, “the Press Coordinators will notify you to confirm the accreditation and deliver the press accreditation credentials.”

The survey conducted for this study found that 68.75% of journalists queried do not feel that accreditation to cover official functions and entities is fair or equitable; only 31.25% feel it is.

Graph 6



An illustrative article published on 11 June 2009 in *Hoy* newspaper entitled “Little access to official information,” discussed a survey conducted among journalists who cover the main official sources, several of whom argue that they are not satisfied and feel mistreated by restrictions imposed on their work by the different communication, image advice or public relations departments of State institutions.⁵⁶

1.9. DEFAMATION LAWS IMPOSE THE NARROWEST RESTRICTIONS NECESSARY TO PROTECT THE REPUTATION OF INDIVIDUALS

1.9.1. Defamation laws do not inhibit public debate about the conduct of officials or official entities

In Ecuador the forms of defamation are established in the Criminal Code, and depending on their seriousness may include very severe penalties. The following chart shows the types of infractions established and their corresponding penalties:

⁵⁶ Found at: <http://www.hoy.com.ec/noticias-ecuador/poco-acceso-a-informacion-oficial-352778.html>

Table 7

| Infraction | Penalty |
|---|--|
| <p>Slander: falsely accusing someone of a crime (Article 489)</p> | <p>Six months to two years in prison and a fine of six to twenty-five US dollars if the slander is uttered in public meetings or places; in the presence of ten or more individuals; in writing, whether printed or not, with images or fixed emblems, distributed or sold, put on sale or displayed publicly; or through unpublished writing, addressed or conveyed to other persons, including by letters (Article 491). One to six months in prison and a fine of six to twelve US dollars when the slander is private or with fewer than ten persons present (Article 492). One to three years in prison and a fine of six to twenty-five US dollars for those who have addressed assertions to an Authority that constitutes slander (Article 493).</p> |
| Infraction | Penalty |
| <p>Serious non-slander defamation: Attributing a vice or lack of morality, with consequences that could considerably harm the person's fame, credit, or interests;</p> <p>Claims that by their nature, occasion or circumstances were taken publicly as affronts;</p> <p>Claims can reasonably be judged as serious, affecting the status, dignity and circumstances of the offended party and the offender (Article 489).</p> | <p>Three to six months in prison and a fine of six to twelve US dollars; and in the circumstances of Article 492, two weeks to three months in prison and a fine of six US dollars (Article 495).</p> <p>If the claims on the Authority are not slanderous but are serious, the penalties will be six months to two year in prison and a fine of six nineteen US dollars (Art. 493).</p> |
| Infraction | Penalty |
| <p>Slight non-slanderous defamation: attributing to others actions, nicknames or physical or moral defects that do not compromise the honour of the offended party.</p> | <p>Those who commit any sort of defamation that are not among the cases determined in the above articles, when communicating with several persons, even in single acts, regarding each of them, offending the other's reputation, will be punished as defamers with three months to one year in prison and a fine of six to nineteen US dollars; a single item of proof may be admitted for each action, if there are more than three actions (Article 501).</p> |
| Infraction | Penalty |
| <p>Actions defined in Article 606: 13. Mongers of false news or rumours affecting public order, State security or national honour; 14. Those circulating false news or rumours against the honour and dignity of persons or</p> | <p>A fine of seven to fourteen US dollars and two to four days in prison, or one only one of these two penalties.</p> |

| | |
|---|---|
| families, or busy themselves with their intimate lives, without precluding processing for slander as well; 15. Those who address a slight non-slanderous defamation to others. | |
| Infraction | Penalty |
| Threats, intimidation or insults to the authorities Article 230 Anyone who with threats, intimidation or insults should offend the President of the Republic or whomever is exercising the Executive Branch function will be punished by a fine and imprisonment. | Six months to two years in prison and a fine of sixteen to seventy-seven US dollars. |
| Infraction | Penalty |
| Threats, intimidation or insults to the authorities Article 231 Anyone who with threats, intimidation or insults should offend any of the public officials listed in Article 225, while they are performing their duties, or because of their performing them, shall be punished with a fine and imprisonment. | Fifteen days to three months in prison and a fine of eight to forty-seven US dollars. |
| Infraction | Penalty |
| Threats, intimidation or insults to the authorities Article 232 Anyone who is disrespectful to any court, agency or public official, when performing their duties, with words, gestures or actions of disrespect, or disturbs or interrupts the proceedings that the person is in, shall be punished by imprisonment. | Eight days to one month in prison. |
| Infraction | Penalty |
| Contempt of Court / of Authorities Article 234 of the Criminal-Law Code establishes that “those who, aside from the cases expressed in this Code, disobey the authorities when ordered to do something for public service, in matters of their respective responsibility and according to their legal powers, shall be punished by imprisonment.” | Eight days to one month in prison. |

The public debate about the performance of functionaries or public entities is affected by the existence of the above-mentioned penal sanctions (the well known “chilling effect”) and by their application which may be influenced by political pressures, as illustrated by several cases denounced by Fundamedios⁵⁷ and reported to the Inter-American Commission on Human Rights.⁵⁸

⁵⁷ Fundamedios. (2010). “Emilio Palacios Case”. Alerts # 154 and # 271.

⁵⁸ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2009). Inter-American Commission on Human Rights. P. 77-87.

These serious penalties are contrary to current international standards and current democratic trends which tend to progressively decriminalize “opinion crimes”.

1.9.2. Defamation laws provide for sufficient legal defences; e.g. that the disputed statement was an opinion, not an allegation of fact; that publication or broadcasting of the disputed fact was reasonable or in the public interest, or that it occurred during a live transmission and/or before a court or elected body

In formal terms, the legal framework and judicial administration system guarantee all persons the sufficient tools for adequate defence as well as the impartiality of judges and courts, pursuant to Article 76 of the 2008 Constitution.

However, it is not clear that applicable laws provide sufficient elements to distinguish, in all cases, between opinions and information. For example, in the case of non-slanderous serious defamation pursuant to Article 489 of the Criminal Code, it is not clear whether a person is exempt of legal liability when they provide information proving the statement made, or remains guilty of the crime anyway.

Nor is it clear whether the opinions a person has and disseminates about other persons are excluded from “claims that can reasonably be judged as serious, affecting the status, dignity and circumstances of the offended party and the offender.” So, it is not certain, for example, whether a citizen’s publicly uttered opinion that the local governor or owner of a media outlet is inept or authoritarian can be considered as serious non-slanderous defamation or not.

No reference was found in the Criminal Code that would provide a defence for the good faith or reasonable publication of statements on matters of public interest, even if they happen to be inaccurate. This lack of exceptions allows an abusive use of these articles.

1.9.3. Defamation laws provide for a regime of remedies that allow for proportionate responses to the publication or broadcasting of defamatory statements

Legal penalties for defamation, the legal responses for defaming another person, are determined in the Criminal Code, Title VII *On crimes against honour*, establishing penalties going up to three years in prison for those who commit this type of crime. This cannot be justified according to international standards. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has criticized this type of measure. The Rapporteur’s last report in 2009 recommended amending laws on criminal defamation to eliminate the use of criminal procedures to protect honour and reputation when disseminating information about matters of interest public, about public officials and candidates for public office.⁵⁹

1.9.4. The scope of defamation laws is defined as narrowly as possible, including as to who may sue

In fact, Articles 489 to 504 of the Criminal Code exhaustively typify defamation, which is considered by the Criminal Procedure Code as a crime of private action (Article 36.c) the judging of which begins by a complaint brought by the person offended and follows the procedure established in Articles 371 to 375 of that body of law.

⁵⁹ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2009). Inter-American Commission on Human Rights. P. 432.

1.9.5. Defamation suits cannot be brought by public bodies whether legislative, executive or judicial

Defamation suits cannot be brought by public bodies whether legislative, executive or judicial. Criminal suits for defamation can be brought only by individuals; private-law corporate persons (such as, for example, a bank) can claim indemnity through civil-law suits because the broadcast of certain information has caused them certain financial damage.

1.9.6. The burden of proof falls upon the plaintiff in cases involving the conduct of public officials and other matters of public interest

Judicial processing of defamation places the burden of proof on the plaintiff, because it is a private action crime, i.e., not involving the Attorney-General.

When crimes committed by public officials are denounced, the Attorney-General must investigate and gather proof to confirm or reject the denouncement; however, the plaintiffs have the obligation to provide their own version regarding the facts denounced and provide all possible data and proof.

1.9.7. There is a reasonable cut-off date after which plaintiffs can no longer sue for an alleged defamation

The possibility of complaining that defamation has been committed, a private-action crime, expires after 180 days from when the infraction was committed. Once the complaint is brought and the party offended has been summoned within that period, the case will expire after two years from the date of summons.

1.10. OTHER RESTRICTIONS UPON THE FREEDOM OF EXPRESSION, WHETHER BASED ON NATIONAL SECURITY, HATE SPEECH, PRIVACY, CONTEMPT OF COURT LAWS AND OBSCENITY SHOULD BE CLEAR AND NARROWLY DEFINED IN LAW AND JUSTIFIABLE AS NECESSARY IN A DEMOCRATIC SOCIETY, IN ACCORDANCE WITH INTERNATIONAL LAW

1.10.1. National security and other restrictive laws do not inhibit public debate about issues of public concern

The 2008 Constitution and the Law of Public and State Security enacted in 2009 restrict public debate only when a State of Exception is declared. However, norms established in the Criminal Code allow serious restrictions on public debate and full exercise of the freedom of expression due to norms criminalizing those who offend authorities.

The 2008 Constitution (Article 165) determines that, during a State of Exception, the President of the Republic may suspend or limit the right to not have one's home arbitrarily searched, not to have one's correspondence arbitrarily searched, freedom of movement, freedom of association and meeting, and freedom of information, only pursuant to the Constitution. And sub-section 4 enables prior censorship of information in the media strictly in regard to the reasons for the State of Exception and State security.

Similarly, the Law of Public and State Security, in Article 4(e), establishes that only in cases of States of Exception may the exercise of freedom of information be temporarily limited.

Moreover, the Criminal Code establishes, in Chapter 1 *On Rebellion and Attacks against Officials* in Articles 230, 231, 232, 493 that threats, intimidation or defamation offending the President of the Republic or whoever exercises the Executive Function or any public official, court or authority may be punished under criminal law by up to two years of imprisonment.

The concept of contempt of court / of authorities appears in Article 234 of the Criminal-Law Code, establishing that “those who, aside from the cases expressed in this Code, disobey the authorities when ordered to do something for public service, in matters of their respective responsibility and according to their legal powers, shall be punished by imprisonment for eight days to one month.”

In this regard, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has expressed the need to “repeal laws providing punishment for contempt, in whatever form, since these norms are contrary to the American Convention and restrict public debate, an essential element of democratic governance.”⁶⁰ Also, the Rapporteur makes reference to the Declaration of Principles about freedom of expression by the Inter-American Commission on Human Rights, which states that “public officials are subject to greater scrutiny by society. Laws penalizing offensive expressions targeting public officials, generally known as “laws of contempt” undermine the freedom of expression and the right to information.”⁶¹

The draft Communications Law expands the jurisdiction of the Ombudsman to protecting and overseeing communication rights, to complement the guardian function of the Communication and Information Council.

Its powers include broad, vague competencies that could be turned into illegitimate restrictions on the exercise of the freedom of expression. The Ombudsman could even suspend advertising, publicity and programs on media before the “final resolution of the administrative process” in such diverse areas as “child pornography, religious or political intolerance, direct instigation of violence, propaganda for war and justification of hatred, genocide and ethnocide, or advertising for cigarettes, alcohol and narcotic substances.” (Article 51)

Although some of these expressions, such as child pornography, are not within the kinds of speech protected by inter-American standards, it is much more complex and should be made more explicit about other such sensitive matters in public debate as “religious or political intolerance,” which could be transformed into an illegitimate limitation on the freedom of expression if not interpreted according to the inter-American standards and jurisprudence on human rights.

1.10.2. Any restrictions are narrowly defined in law, rather than be subject to executive discretion

Article 18-1 of the **Constitution** limits freedom of expression to truthful, verified, timely, contextualized and plural information about facts, occurrences and processes of general interest and with subsequent liability, which is contrary to international standards in this area.

In addition to the restrictions mentioned above, Article 58 of the Law on Radio and Television defines the following prohibitions for radio and television stations:

- a) Broadcast messages of a particular nature that are under the jurisdiction of the government telecommunications service, except those serving rural areas where such service does not reach. This type of communications, urban or inter-urban, is also allowed in cases of emergency, illness, catastrophe, accidents or social disturbance and in all cases when instructed by Civil Defence;
- b) Broadcast directly, under their own responsibility, ceremonies or programmes contrary to internal or external State security, pursuant to the Criminal Code and Criminal Procedure Code, without precluding the freedoms of information and speech guaranteed and regulated by the National Constitution and by law;

⁶⁰ *Ibid.* P. 432.

⁶¹ *Ibid.* P. 440.

- c) Promote physical or psychological violence, using children, women, youth or the elderly, encourage, perpetrate or promote racism, sex trade, pornography, consumption of drugs, religious or political intolerance and other analogous actions affecting the dignity of human beings;
- d) Broadcast articles, letters, news items or comments that are not duly supported by the signature or identification of their authors, except in the case of journalistic comments under a pseudonym corresponding to a person with a determinable identity;
- e) Broadcast news based on suppositions, that could produce harm or social or public disturbances;
- f) Justify crimes or bad habits, or disclose facts and documents not allowed by the law, in information or comments on criminal actions;
- g) Omit the origin of the news or commentary, when not the direct responsibility of the station, or mentioning the fictitious or fantasy nature of the actions or programmes of this nature. Stations are free to read the news or commentaries by the print media.
- h) Advertise articles or activities prohibited by law or regulations;
- i) Receive financial subsidies from foreign governments, governmental or private entities and persons for purposes of political proselytism or jeopardizing national security.

Article 139 of the General Law on Elections establishes that:

It is prohibited to disseminate, by the press, radio, television or any other collective media outlet, public opinion surveys related to electoral forecasts or preferences during twenty days prior to election day. Violating this norm will be penalized under the General Law to Control Electoral Spending and Propaganda.

Article 46 of the Code for Children and Adolescents stipulates:

Prohibitions regarding the right to information. It is prohibited:

1. The circulation of publications, videos and recordings targeting and intended for children and adolescents containing images, texts or messages unsuitable for their development; and any form of access for boy and girl children and adolescents to these media;
2. Broadcasting information unsuitable for boys, girls and adolescents in family-programming schedules, or in publications targeting families, children and adolescents; and
3. Circulating any product for children and adolescents with wrapping containing images, texts or messages unsuitable for their development.

These prohibitions are applicable to the media, communication systems, advertising companies and programmes.

And sub-section e) of Article 47 of that same Code states that to guarantee the right to suitable information for children and adolescents the State must:

Prevent the broadcasting of information unsuitable for boys, girls and adolescents in family-programming schedules, or in publications targeting families, children and adolescents.

Article 54 also establishes the prohibition of making public the criminal or judicial backgrounds of adolescents who have broken the law.

As it will be explained in the following indicator, the formulation of these restrictions is not precise enough to avoid a certain level of interpretation by the Regulator.

1.10.3. Such laws should be subject to a public interest override where appropriate

In fact, the limitations established in the Code on Children and the Law on Elections have reasonable justifications. However, the grounds for the prohibitions established in sub-sections b), e) and f) of Article 58 of the Law on Radio and Television are questionable, above all because

this is an open description of prohibited behaviours, which implies that the public agency responsible for oversight has plenty of room for interpretation in order to decide about each concrete case that may be construed as:

- events or programmes contrary to internal or external State security;
- news based on suppositions, that could produce harm or social or public disturbances;
- justifying bad customs; and
- receiving financial subsidies from foreign governments, governmental or private entities and persons for purposes of political proselytism or jeopardizing national security.

D. CENSORSHIP

1.11. THE MEDIA IS NOT SUBJECT TO PRIOR CENSORSHIP AS A MATTER OF BOTH LAW AND PRACTICE

1.11.1. Broadcasting or print content is not subject to prior censorship, either by government or by regulatory bodies

In fact, Article 18 of the current Constitution establishes that information must flow without prior censorship. And there is no provision in the legal framework that legally authorizes prior supervision of contents of information, except for classification of shows and contents to define whether they will be accessible to children and adolescents, established in Articles 43 and 46 of the Code on Children.

The draft Communications Law clearly establishes that the freedom of opinion and expression must be exercised “without any type of prior censorship, either direct or indirect.” Article 9 establishes that:

The right to la freedom of opinion and expression is recognized and guaranteed. This right includes seeking, receiving, exchanging, producing and disseminating truthful, verified, timely, contextualized, plural information in any form, signs and symbols; by any communication tool or medium, in one’s own language and without any sort of prior censorship, direct or indirect, public or private, with subsequent liability.

However, the draft Law itself establishes further along something quite different: communication rights (which include the freedom of expression) “shall not be subject to prior censorship, except in those cases established in the Constitution of the Republic, current international treaties and the Law.” (Article 29)

The only admissible exception regarding prior censorship involve the rights of children and adolescents and is expressly set forth in the American Convention on Human Rights ratified by Ecuador: “Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”⁶²

Further, as mentioned above and established no less in the Constitution of the Republic, this right involves only expression and dissemination of information of “facts, happenings and processes of general interest” (Article 18.1 of the Constitution), but not opinions and ideas that arise in public debate and go beyond this definition. That is, liberally construed, the expression of ideas and opinions could be subject to prior censorship, which would be incompatible with international standards regarding freedom of expression.

⁶² *American Convention on Human Rights*. (1969). OAS. Costa Rica. Art. 13.4.

In January 2011, the President of the Republic proposed a referendum containing the following question:

Do you agree that the National Assembly, without delay, within the time period established in the General Law on the Legislative Branch, should issue a Communication Law creating a Regulation Council to regulate contents publicized on television, radio and written press publications containing messages of violence, explicitly sexual or discriminatory, and which establishes criteria of subsequent responsibility for the communicators or media issuing them?⁶³

Several organizations have presented objections questioning the constitutionality of this question⁶⁴, since an affirmative answer would enable the Regulation Council to set prior conditions limiting free circulation of information. This Council would establish criteria of subsequent liability, which is contradictory to Article 13 of the American Convention on Human Rights, which provides that subsequent liability must be expressly set forth in the Law, preventing any possibility for an administrative body to define them.

1.11.2. Sanctions for breaches of regulatory rules relating to content are applied only after the material has been broadcast or published

In fact, all possible penalties for actions that are prohibited regarding the flow of information, ideas and opinions are based on those behaviours that have actually taken place, except for exceptional cases of false accusations of forbidden acts which may be sanctioned because of legal shortcomings.

The Constitution of Ecuador recognizes (Art. 18.1) that the full exercise of freedom of expression is subject to “subsequent imposition of liability,” referring to possible abuse that may take place when exercising that right.

Freedom of expression is not an absolute right and therefore it is subject to restrictions aiming at respecting the rights of others, but only after subsequent examination and determination of responsibilities and not through previous censorship or, in other words, only after the abuse has been committed and not beforehand. However, these restrictions, even if applied subsequently, must be legitimate and clearly defined so that, with the pretext of defending certain rights, they do not become an excessive limitation that translates into censorship.

The American Convention on Human Rights recognizes the subsequent imposition of liability but it is very clear concerning the limits of the limitations, stating that these must be explicitly formulated in a formal law and be “necessary,” in the following terms: “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, or public health or morals.”⁶⁵

Along these same lines, the draft Communications Law establishes that “the democratic limits on this right are determined by the Constitution and international instruments on human rights to protect the higher interest of children and adolescents, national defense, public order and public health; and to ensure persons’ reputation and rights.” (Article 9)

However, this is not sufficient to ensure that these limits are legitimate in the sense expressed in inter-American standards on human rights.

⁶³ National Electoral Council. Found at: http://www.cne.gob.ec/images/articulos/Convocatoria_Consulta_Popular.pdf

⁶⁴ Statements by AEDEP and Fundamedios. March 2011.

⁶⁵ *American Convention on Human Rights*. (1969). OAS. Costa Rica. Art.13.2.

In order to ensure this, the establishment of subsequent imposition of liability must be guided by three principles: legality, necessity and the legitimacy of the ends sought to be achieved. According to the Inter-American Court of Human Rights, the requirements that must be met before limiting fundamental rights must be:

- a) The existence of previously established grounds for liability;
- b) The express and precise definition of these grounds by law;
- c) The legitimacy of the ends sought to be achieved; and
- d) A showing that these grounds of liability are “necessary to ensure” the aforementioned ends.⁶⁶

Concerning “the previously established, precise grounds by law,” “the restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.”⁶⁷

For the Inter-American Court “(...) the word “laws,” used in Article 30, can have no other meaning than that of formal law, that is, a legal norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State.”⁶⁸ In other words, the rights recognized by the Convention should not be restricted through executive decrees, rules or administrative regulations of any other kind.

It is therefore clear that for the subsequent imposition of liability the principle of previous legality has to be respected, as well as the need to comply with a formal law, as requested by the Inter-American Court of Human Rights. Furthermore, the law must be precise; otherwise it would be incompatible with the respect of freedom of expression.⁶⁹ In other words, restrictions must be established by law, in a previous, express and precise manner.

The subsequent imposition of liability must also seek a legitimate goal, as it is clearly and specifically established in the Convention as quoted above, and its interpretation cannot be extended. Thus, restrictions must only be allowed if they aim at preserving “respect for the rights or reputations of others; or the protection of national security, public order, or public health or morals.”⁷⁰

Concerning necessity, the American Convention suggests that the “necessity” “and, hence, the legality of restrictions imposed under Article 13 (2) on freedom of expression, depend upon a showing that the restrictions are required by a compelling governmental interest.”⁷¹ Furthermore, “the restrictions authorized on freedom of expression must be “necessary to ensure” certain legitimate goals, that is to say, it is not enough that the restriction be useful (supra 46) to achieve a goal, that is, that it can be achieved through it. Rather, it must be necessary, which means that it must be shown that it cannot reasonably be achieved through a means less restrictive of a right protected by the Convention.”⁷²

The Court has already stated its understanding of the phrase “necessary in a democratic society,” the nature of its functions in the examination of issues turning on the phrase and the manner in which it will perform those functions. The Court has noted that, whilst the adjective “necessary” is not synonymous with “indispensable” neither has it the flexibility of such expression as “admissible,” “ordinary,” “useful,” “reasonable” or “desirable” and that it implies the existence

⁶⁶ *Advisory Opinion OC-5/85*. (1985). Inter-American Court of Human Rights. Paragraph 39.

⁶⁷ *American Convention on Human Rights*. (1969). OAS. Costa Rica. Art. 30.

⁶⁸ *Advisory Opinion OC-6/86*. (1986). Inter-American Court of Human Rights. Paragraphs 26, 27, 35, 36, 38.

⁶⁹ Eliades, A. (2009). *Responsabilidades ulteriores por el ejercicio del derecho a informar y opinar en cuestiones de interés público. [Subsequent liability for exercising the right to inform and express opinions on issues of public interest]*.

⁷⁰ *American Convention on Human Rights*. (1969). OAS. Costa Rica. Art. 13.2.

⁷¹ *Advisory Opinion OC-5/85*. (1985). Inter-American Court of Human Rights. Paragraph 46.

⁷² *Ibid.* Paragraph 79.

of a pressing social need.”⁷³ If a restriction is applied based on one of these non-accepted interpretations, it is considered as illegitimate.⁷⁴

1.11.3. Broadcasters and print publications are not required to register with or obtain permission from a public body

(This sub-indicator refers to censorship; therefore reference is made to any registration process that may be mandatory, other than the usual procedure to obtain a radio frequency or TV license) In the framework of current legislation, the print media have no obligation whatsoever to register or obtain prior permits from any public entities, as prerequisite conditions to pursue their activities.

In the case of radio and television media, the condition for operation is to obtain the concession for the use of a frequency, which is granted by the CONARTEL pursuant to Article 2 of the Law on Radio and Television, but which is currently done by the CONATEL pursuant to the Executive Decree creating the Ministry of Telecommunications.

If they have no frequency concession and operate without previous authorization, the Law on Radio and Television, in Article 3, Title VIII, GENERAL PROVISIONS, states:

Radio and television stations that operate clandestinely; that is, without authorization granted under the present Law, will be closed down and their equipment seized, immediately, by the Superintendent of Telecommunications, who will also denounce this situation to one of the criminal courts in the respective jurisdiction. When the infraction has been proven, those responsible shall be penalized with two to four years in prison, pursuant to the Criminal Code and the Criminal Procedure Code.

There are no other additional requirements.

Article 65 of the draft Communications Law makes it mandatory to register, which is understood to be reasonable in terms of the principle of transparency and the necessary information for supervision, for example, to prevent excessive concentration of media ownership, as long as it does not become a prerequisite required for operation: “Public registration is a measure to make transparent and enable access to information on the media and must contain: general data, editorial and news policies, organizational structure, ownership breakdown of its corporate stock or ownership, and code of ethics. The Communication and Information Council will be responsible for keeping this public register of the media. This registration does not constitute authorization to operate the media outlet.”

1.11.4. Broadcasters or print publications are not closed or threatened with closure because of their content (see also indicator 2.9)

There is no legal provision authorizing the closure of print media because of the contents or information they have published.

In the case of radio and television, sub-section e) of Article 67 of the Law on Radio and Television establishes that the concession contract will be terminated for repeated technical problems that have been penalized by two fines and a suspension.

That Article, in combination with the classification of technical and administrative problems established in Article 80 of the General Regulations of the Law on Radio and Television, as well as penalties established in Article 81, have been used by several administrations to close or attempt to close radio and television stations.

⁷³ *The Sunday Times Case*. (1979). European Court of Human Rights. Paragraph 59.

⁷⁴ *Annual Report of the Inter-American Commission on Human Rights*. (1994). Chapter V: “Report on the Compatibility of ‘Desacato’ Laws with the American Convention on Human Rights”. Inter-American Commission on Human Rights. P. 197-212.

The draft Communications Law does not establish penalties entailing closure or suspension of a media outlet for reasons of contents, although it does for programs on those media (Article 101).

1.11.5. There are no explicit or concealed restrictions upon access to newsprint, to distribution networks or printing houses

In Ecuador, imports of newsprint – until the Tax Reform Law was enacted by the National Assembly on 3 December 2009 – paid no value-added tax (VAT), unlike other imported items.

Since that date, the 12% VAT has been levied on imports of newsprint and magazines. Both print media management and the graph industry have spoken out against this measure, arguing that newsprint is not manufactured in Ecuador, so this decision would cause increased prices for printed communicational products.

The media businesses stated that the Government is attempting to muzzle the print media and that this measure was dedicated to the press. The Ecuadorian Association of Newspaper Publishers (AEDEP) has repeatedly called this measure an “attack against the independent press,” while the government defended the measure arguing it was an act of tax justice aimed at preventing beneficiaries from reselling tax-free paper.

1.11.6. Fines for breaches of rules are not excessive or disproportionate so as to function as a form of censorship

In fact, the fine established in Article 71 of the Law on Radio and Television goes no higher than the equivalent of ten minimum monthly wages, i.e., USD \$ 40.00 (x 10) because the concept of “minimum monthly wages” was used by labour legislation before the economy was dollarized. At present the equivalent of this concept would be the basic unified salary of private-sector workers, which is USD \$ 240.00. However, fines applied by the CONARTEL are still calculated using “minimum monthly wages.”

Obviously, such a light fine is insignificant for the party committing infractions subject to this penalty.

The draft Communications Law establishes fines based on several reasons that are not excessive but are not made duly explicit as to how they would be progressively levied in terms of the infractions committed. (Article 101 and 103)

1.12. THE STATE DOES NOT SEEK TO BLOCK OR FILTER INTERNET CONTENT DEEMED SENSITIVE OR DETRIMENTAL

1.12.1. Internet content is not blocked or filtered by the state because of its content or source (see also indicator 5.3)

Access to contents of Internet is not blocked or filtered by the Government. However, there are at least three major real limitations that prevent the majority of Ecuadorians from accessing such contents, which include the following: lack of Internet access availability in geographical sectors considered unprofitable by Internet service providers; lack of purchasing capacity to pay for Internet services provided by private and public suppliers (38.3% of the population is under the poverty line⁷⁵); and digital illiteracy.

Nonetheless, in Ecuador there are 3,021,370 Internet users (21.1% of the population).⁷⁶

⁷⁵ PNUD. (2010). *Human Development Report*. P. 181.

⁷⁶ Found at: http://www.supertel.gob.ec/pdf/estadisticas/acceso_internet.pdf

1.12.2. Internet users are not subject to sanctions for accessing or publishing content on the Internet deemed sensitive or detrimental

In general terms, persons can access and publish any contents on Internet. The exception is production, publication and marketing of child pornography by computerized or electronic means, which may be punished by up to 16 years of prison, according to the seventh un-numbered article below Article 528 of the Criminal Code.

1.12.3. Internet service providers, websites, blogs or Internet broadcasters are not required to register with or obtain permission from a public body

Internet service providers have the obligation to obtain a “permit to enable them to operate,” pursuant to Article 12 of the Regulations for the Special Telecommunications Law. This permit, according to Article 4 of Regulations for Providing Value Added Services “is a permit granted by the National Secretariat of Telecommunications, upon prior authorization by the CONATEL.”

Websites, blogs, and Internet broadcasters need no permit at all to carry out these activities.

Recommendations

1. The Ecuadorian **legislative framework** should be brought in line with international and inter-American standards for freedom of expression, including rights of equality and participation regarding communication, which are granted in Ecuador's Constitution:
 - 1.1. Article 18 sub-section 1 of the **Constitution** limiting freedom of expression to truthful, verified, timely, contextualized and plural information about facts, occurrences and processes of general interest and with subsequent liability, should be amended when the appropriate time comes so that these limitations to freedom of expression can be removed. Until then, in practice, new laws should ensure that they do not reproduce this constitutional limitation.
 - 1.2. The **Radio and Television Broadcasting Law (1975) and its Reformed Law (1995)** should be replaced with the **new law that is currently being debated by the National Assembly**. However, the current draft law should be further improved so that it considers the following:
 - 1.2.1. The setting up of an **independent regulatory body**, with financial and administrative autonomy, inspired by international best practices as well as by progress in various countries of the region, to oversee communication rights, providing accountability to the public and ensuring media pluralism and diversity (private, public and community) and freedom of expression and information. The independence of the regulatory body should be guaranteed, ensuring that its membership prevents all partisan and commercial interference. Moreover, the new law should also be explicit in the competencies and powers of the new regulatory body and the Ombudsman in order to keep them from applying indirect censorship mechanisms on the exercise of the freedom of expression.
 - 1.2.2. **The right to withhold one's sources** is legally protected by the Constitution, but a recent case shows that this right can be undermined. The future Communications Law should specify in clear, precise terms the exceptional cases in which this right will not be recognized. The judicial actors should be trained in inter-American jurisprudence and doctrine in this area.
 - 1.2.3. **Editorial independence** from political and commercial interests must be guaranteed through the new Law, which shall foster media freedom and plurality, ensure the equitable distribution of radio and television frequencies among private, public and community sectors, avoiding indiscriminate, abusive use of governmental messages, as well as editorial interference by advertisers, government, media owners, or any other commercial or political interests, that may slip into the media contents.
 - 1.2.4. The law should avoid illegitimate limitations to the exercise of the right to freedom of expression, such as **mandatory professional degrees for journalists**, which are considered an unjustified restraint on freedom of thought and expression, a right held by all human beings.

1.3. The **Criminal Code** should be amended in order to:

1.3.1. The provisions on **defamation and contempt** (or “crimes of opinion”) established in the Criminal Code penalizing offensive expression targeting public officials must be amended to be handled under civil law, since otherwise this imposes serious restrictions on public debate and the full exercise of the freedom of expression, since it would punish under criminal law anyone who offends the authorities. Exercise of the **right to honour, dignity and reputation** must be harmonized with that of freedom of expression, since it does not occupy any higher rank or level. In cases of conflict between the right to honour of public officials and the right to freedom of expression, the weighting should start from the principle that the freedom of expression should be overriding, given the interest in debate regarding public affairs, so the freedom of expression should have greater weight than the right to honour.⁷⁷

1.3.2. **If legal liability is applied**, the measures must be considered that will be least costly for the freedom of expression. It is recommended for example to appeal to the **right to rectification** or response, which is expressly set forth in Article 14 of the American Convention; appealing to the mechanisms of **civil liability** and applying proportional penalties, designed to establish the harm to reputation and not to indemnify the plaintiff or punish the defendant; take into account the application of the standard of “**real malice**”, that is, demonstrate that the person who expressed it did so with the full intention of doing damage and knowing that false information was being disseminated, or with evident negligence for the true facts; **distinguish between information and opinion**, excluding the latter from penalties, especially in value judgments about the actions of an official in the performance of his/her duties.⁷⁸

1.4. The **Organic Law on Transparency and Access to Public Information (LOTAIP)** should:

1.4.1. Be applied effectively and transparently. Public institutions should be obliged to comply with their **obligations regarding transparency** and the Ombudsman should provide human and financial resources to be able to monitor application of the Law effectively.

1.4.2. Incorporate an **exclusive list of exceptions** to the right of access to information rather than relying on other laws.

1.4.3. **The citizenry should be better informed** about their rights regarding access to information.

2. **Citizens must continue to be encouraged to participate** in the field of communication, involving the public and CSOs in the formulation of public policies governing communication. The current process of drafting the Communications Law should gather input from CSOs, as long as it is compatible with freedom of expression standards.

3. Any restriction to freedom of expression that makes this freedom subject to **subsequent liability**, whether it is found in criminal law, civil law or administrative systems, must

⁷⁷ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2009). Inter-American Commission on Human Rights.

⁷⁸ *Idem*.

clearly establish the limits of such liability, so that they can be in line with the inter-American human rights standards, and to keep them from developing into excessive limitation resulting in censorship and/or self-censorship. If the citizenry gives a positive answer in the referendum regarding a Regulation Council to regulate contents that are publicized, and to establish criteria of subsequent liability, the Government must ensure respect for constitutional rights and for Article 13 of the American Human Rights Convention. For this purpose, subsequent liability must be considered only that which is established by a new law, which must be in accordance with what the above Convention has determined.

Plurality and diversity of media, a level economic playing field and transparency of ownership

Executive summary

A. MEDIA CONCENTRATION

2.1. STATE TAKES POSITIVE MEASURES TO PROMOTE PLURALIST MEDIA

Regarding concentration of media ownership, the 2008 Constitution encourages plurality and diversity in communication and states that oligopoly and monopoly of media ownership will not be allowed. The Law on Radio and Television Broadcasting (1975) limits ownership per geographical coverage and transmission technical characteristics.

The draft Communications Law establishes democratic limits to prevent concentration of media ownership.

2.2. STATE ENSURES COMPLIANCE WITH MEASURES TO PROMOTE PLURALIST MEDIA

There are no resolutions by the CONATEL or the CONARTEL denying any concession or renewal of radio and television frequencies arguing that the constitutional provisions prohibit oligopoly and monopoly in the sector. Nor are there any public policy measures issued or announced by the CONATEL to discourage or fight the concentration of media ownership or media control, nor to limit cross-ownership of media in different technological platforms (press, open TV, pay TV, etc.).

B. A DIVERSE MIX OF PUBLIC, PRIVATE AND COMMUNITY MEDIA

2.3. STATE ACTIVELY PROMOTES A DIVERSE MIX OF PUBLIC, PRIVATE AND COMMUNITY MEDIA

The 2008 Constitution guarantees the existence of public, private and community media in equal conditions.

2.4. INDEPENDENT AND TRANSPARENT REGULATORY SYSTEM

There is no regulatory body free of interference from political or commercial control, since the CONARTEL proved to be permeable to both types of interference during the analyzed period (1995-2008).

The draft Communications Law does not establish concrete procedures to grant permits but does state that this must be done through competitive administrative procedures that guarantee transparency and equal opportunities. A telecommunications authority would grant the permits on the basis of a binding report by the Communication and Information Council.

2.5. STATE AND CSOs ACTIVELY PROMOTE DEVELOPMENT OF COMMUNITY MEDIA

Current legislation does not foster community media development.

However, it is worth mentioning that, In November 2010, the government allocated 14 radio frequencies to indigenous organizations and developed a project aiming at providing equipment, advisory services and training to these radio stations.

There are no discounts for community media in the fees to pay for frequency use, or any mechanisms to reserve space for them on the radio spectrum. CSOs have actively supported this sector, especially the Coordinating Office of Grassroots and Educational Radio Stations of Ecuador (CORAPE) since 1988.

C. LICENSING AND SPECTRUM ALLOCATION

2.6. STATE PLAN FOR SPECTRUM ALLOCATION ENSURES OPTIMAL USE FOR THE PUBLIC INTEREST

International Telecommunications Union standards and UNESCO recommendations are formally included in the National Plan of Frequencies, but in practice such norms are often ignored, as shown by the irregularities in allocation of frequencies recorded by the Radio and Television Frequency Audit Commission.

2.7. STATE PLAN FOR SPECTRUM ALLOCATION PROMOTES DIVERSITY OF OWNERSHIP AND CONTENT

The National Plan of Frequencies does not contain any norms regarding equal or equitable distribution of frequencies among the private, public and community sectors. As indicator 1.7.2. reveals, only 0.2% of radios stations and 0% of television channels belong to the community sector as such in Ecuador. Despite the community vocation of many of them, and due to the restrictions foreseen by the law for community media, the vast majority of these radios functions as private entities in Ecuador (see Definitions used in the Study).

The draft Communications Law provides that 33% of the broadcast spectrum available for radio and television is reserved for community media in the available frequencies, according to relevant international recommendations. However, mentioning the “available spectrum” could make this provision unworkable.

2.8. INDEPENDENT AND TRANSPARENT REGULATORY SYSTEM

As seen in the indicator 2.4., the CONARTEL proved to be neither transparent nor independent during the analyzed period (1995-2008).

The Report by the Radio and Television Frequency Audit Commission detected at least nine illegal, arbitrary, discretionary ways in which the CONARTEL allocates radio and television frequencies: return-concession; non-application of the preference criterion; extension of deadlines; failure to meet requirements; concessions to clandestine stations; more than one frequency of the same type per province; self-allocation of frequencies; change from base to repeating station; and vice versa and discrimination against community media.

Currently, the National Plan of Frequencies is posted on the CONATEL’s website. Users can download it free of charge and find out about the availability of frequencies for the different telecommunications services.

The draft Communication Law states that a telecommunications authority will grant the permits, on the basis of a binding report from the Communication and Information Council. The Council is a public agency with functional, administrative and financial autonomy and several provisions are made to guarantee its independence from commercial interference.

D. TAXATION AND BUSINESS REGULATION

2.9. STATE USES TAXATION AND BUSINESS REGULATION TO ENCOURAGE MEDIA DEVELOPMENT IN A NON-DISCRIMINATORY MANNER

No tax policies or practices are known to discriminate against the media.

E. ADVERTISING

2.10. STATE DOES NOT DISCRIMINATE THROUGH ADVERTISING POLICY

Ecuador has no government agency to monitor public investment in advertising, nor norms, guidelines or codes to regulate it. And there are no public institutions or CSOs monitoring advertisement expenditure on a regular basis. However, the NGO *Participación Ciudadana* conducted one research study on the aired advertising and concluded that public advertising is equitably distributed between private and public television.

Current debates on a new Communications Law stress the need for public entities hiring advertising services to submit an annual public report where they account for the advertising expenses spent in each medium, which is included in the current draft Law.

2.11. EFFECTIVE REGULATION GOVERNING ADVERTISING IN THE MEDIA

The audiovisual and print media in general respect limits on advertising contents under the Constitution, the Law on Radio and Television Broadcasting and the General Consumer Defence Law.

The draft Communications Law establishes that the audiovisual media must comply with a series of obligations regarding the use of advertising: regarding misleading or abusive advertising, the duration of advertisements and a balance between contents and commercial publicity.

Plurality and diversity of media, a level economic playing field and transparency of ownership

A. MEDIA CONCENTRATION

2.1. STATE TAKES POSITIVE MEASURES TO PROMOTE PLURALIST MEDIA

2.1.1. Effective regulations to prevent undue ownership concentration and promote plurality

Regarding concentration of ownership of the media, the Constitution approved in 2008, sub-section 3 of Article 17, states that the State:

Will not allow oligopoly or monopoly, direct or indirect, of media ownership or use of frequencies.

The Law on Radio and Television of 1975 allows, under Article 10, that a single individual or corporate body can obtain up to 24 medium-wave channels (one per province), 24 FM channels (one per province), 24 channels in each of any new bands created in the future (one per province), one channel for the tropical zone and one national television system.

Moreover, the first un-numbered article after Article 10 authorizes anyone to obtain the concession of channels or frequencies to install commercial television stations in the 24 capital cities of each province or in any city with a population of about one hundred thousand inhabitants.

This means that a handful of individuals or companies could corner all existing radio and television frequencies, without breaking the Law.

Furthermore the second un-numbered article after Article 10 of the Law on Radio and Television states:

Totally or partially, continually or occasionally, radio and/or television stations owned by a single concessionaire or more than one, may form local, regional or national systems, using any modalities of association, to produce and/or broadcast a single or variable programming.

As for promoting plurality in the media through the Law, sub-sections 1 and 2 of Article 17 of the Constitution provide for transparent allocation of frequencies, under equal conditions, to serve the collective interest; and the State is responsible for facilitating creation and strengthening of public, private and community media as well as access to new technologies in order to diversify and multiply the media, voices and orientations or directions that they broadcast.

However, given the lack of concrete norms to promote plurality in the Law on Radio and Television or any body of law, it is evident that the possibilities of plurality in media, voices and orientations set forth in the Constitution could be achieved only by reforming existing legislation, to reorganize the structure of access to and ownership of the media in this direction.

The draft Communications Law establishes “democratic limits to prevent concentration of media ownership,” providing limits on the number of licenses or “enabling permits” according to national, zonal or local coverage for private and community media.

Regardless of the considerations on the limits to be established, which may vary depending on the national context, international experience shows that the mechanism foreseen in the draft law is insufficient to prevent media concentration.

2.1.2. Specific legislation on cross-ownership within broadcasting and between broadcasting and other media sectors to prevent market dominance

There is no legal norm limiting cross-ownership of media. The Report by the Radio and Television Frequency Audit Commission⁷⁹ established that there are eight main media groups, namely: Eljuri Group, Isaías Group⁸⁰, Vivanco Group, Egas Group, Alvarado Group, Mantilla Group, Pérez Group and Martínez Group.

The draft Communications Law has no provisions in this regard.

2.1.3. Regulations recognise the distinction between small and large players in the media market

There is no legal norm expressly establishing any distinction between small and large stakeholders in the media market.

However, the Law on Radio and Television (1975) maintains provisions by which public service stations and those private stations devoted to social, educational, cultural or religious purposes, cannot sell advertising, according to the first two paragraphs in Article 8 of that Law.

This prohibition does not affect community radio stations meeting the requirements established in Article 8. (see indicator 1.7.2)

From this perspective, such conditions in the Law for public service and private stations with social missions, practically rules them out as commercial competitors for private, for-profit stations, which are, by definition, granted the right to run advertising in Article 7 of the Law on Radio and Television: “Private commercial stations are those with their own capital, financed by paid advertising and pursuing a profit.”

The draft Communications Law has no provisions in this regard.

2.1.4. Transparency and disclosure provisions for media companies with regard to ownership, investment and revenue sources

Article 88 of the Law on Citizen Participation establishes that citizens, individually or collectively, communities, indigenous peoples and nationalities, Afro-Ecuadorian and montubio peoples, and other legal forms of organization, may call upon public or private institutions providing public services, and the media, once a year, to render accounts, providing that such accountability is not covered by some other procedure in the Constitution and laws.”

However, that norm does not establish the procedure or procedures for the media to render accounts to all those who are legally authorized to call for this, nor those aspects about which accounts must be rendered.

⁷⁹ Radio and Television Frequency Audit Commission. (2009). *Informe definitivo [Final Report and Recommendations]*. Ecuador. P. 256.

⁸⁰ On 8 July 2008, their media and other assets were seized by the AGD, so their television and radio stations are currently managed by the State.

This imprecision has concerned media businesspersons, who are not sure about the scope of their legal obligations regarding accountability. They are also concerned that such obligations might be established by simple regulations issued by the Council on Participation and Societal Oversight, through a norm of a lower hierarchy than a Law, not discussed in the National Assembly, but decided simply by the members of that Council, even if this might affect fundamental communication rights.

The draft Communications Law requires all media to register with the Information and Communication Council, which is not an authorization, to “make transparent and grant access to information on the media.” The public register must contain “general data, editorial and news policies, organizational structure, ownership breakdown of its corporate stock or ownership, and code of ethics.” (Articles 65 and 66)

2.1.5. Licensing process for the allocation of specific frequencies to individual broadcasters promotes diversity of media ownership programming content

The administrative and technical procedures needed to request a broadcast license are specified in Article 16 of the General Regulations on the Law of Radio and Television Broadcasting (RGLRTV) and in Article 20 of the Law of Radio and Television Broadcasting. As for the criteria, the only one mentioned in the Law is specified in Article 10 concerning the limitation of allowed frequencies to one per province. (see indicators 2.1.1. and 2.7.1)

None of the procedures established legally to sign concession contracts for frequencies require or promote diversity in media ownership or programming contents. This is evident from the wording of Article 20 of the Law on Radio and Television:

Article 20. The concession contract must contain the following mandatory requirements:

- a) Nationality of the concessionaire, legally accredited;
- b) Public deed of the concessionaire company and certificate of ownership of the equipment; and when an individual rather than a company, only the ownership certificate is required;
- c) A judicially recognized purchase and sale commitment will be allowed provisionally, instead of an ownership certificate;
- d) The location where the station will be set up, indicating the precise address and work sites, and the location of the transmitters on a map;
- e) Name of the radio or television station, operating power, assigned frequency, working schedule and the way it will be identified;
- f) A guarantee, subject to the Regulations, that the concessionaire posts with the Superintendency of Telecommunications, to guarantee that the facilities will be installed;
- g) The amount to be paid monthly for use of the frequency.

The draft Communications Law does not establish concrete procedures to grant permits but does state that this must be done “through competitive administrative procedures that guarantee transparency and equal opportunities” (Article 84) and, more precisely, mentions public competitive selection for private and community media. (Article 85)

Similarly, one cause for disqualification from obtaining a permit is to prevent relationships between the authorized party and entities, persons or groups belonging to or related with the private financial system. This would disqualify the individual or corporate body “when the applicant him/her/itself or through corporate entities or third parties, or any other direct or indirect manner, has a corporate or family relationship up to the fourth degree of consanguinity or second of affinity with persons related to entities or groups belonging to the private financial system, its owners, legal representatives, members of their boards, partners or shareholders with decision-making power.” (Article 88a)

2.1.6. Compliance with international standards

Articles 16 and 17 of the 2008 Constitution incorporate the principles and obligations established in international instruments, such as, for example, not allowing oligopolies or monopolies or guaranteeing equitable, transparent allocation of frequencies.

Some of the international principles on plurality that are relevant to the Constitution of Ecuador in the articles mentioned above are cited below.

The *Declaration of Principles on Freedom of expression*, by the Inter-American Commission on Human Rights, states in point 12: “monopolies or oligopolies in ownership and control of media must be subject to anti-monopoly laws, because they undermine democracy by restricting plurality and diversity that would ensure full exercise of citizens’ right to information (...) radio and television allocations must consider democratic criteria guaranteeing equal opportunities for all individuals in accessing them.”

The *Principles on norms regarding freedom of expression and regulation of radio and television broadcasting*⁸¹ promoted by international non-governmental organization Article 19 also refers to this respect. Their Principle 3 states that “effective measures must be established to prevent excessive concentration of ownership and to promote diversity thereof in the broadcasting sector and between it and other media sectors.”

In turn, the *Principles to guarantee diversity and pluralism in broadcasting and audiovisual communication services by the World Association of Community Radio Stations (AMARC)* in their point 3 call for promoting diversity and pluralism as the main aim of regulating broadcasting and other audiovisual communication services. This entails gender equality and equal opportunities for all sectors of society to have access and take part in owning and managing broadcasting and audiovisual communication services, without adopting direct or indirect restrictions on exercise of the right to freedom of expression.

The draft Communications Law considers the democratization of communication and information as a principle for regulating communications, including within this “strengthening of public, private and community media”; “transparent access under equal conditions to use of frequencies on the broadcasting spectrum” and “prohibition of monopolies, oligopolies and the concentration of media ownership.” (Article 3)

Also, under what is called rights to equality, it recognizes the “right to create media,” which the State must promote and guarantee. This right is complemented by the “right to access under equal conditions the use of frequencies on the broadcast spectrum to operate public, private and community audiovisual media.”

2.1.7. Authorities responsible for implementing anti-monopoly laws have sufficient powers, for example the power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached

Apart from constitutional dispositions and the limitations of one frequency per province (see indicator 2.1.1) in the law there is no other specific anti-monopoly legislation. The CONATEL is the current authority with jurisdiction to deny, for example, applications for frequency concessions or to demand divestiture from current media operations, when plurality is compromised or unacceptable levels are reached in ownership concentration.

⁸¹ Organization Article 19. (2002). *Access to the Airwaves: Principles on norms regarding freedom of expression and regulation of radio and television broadcasting*. London.

Neither the Government nor the Regulator has implemented anti-monopoly rules as a follow up to the conclusions of the Frequency Audit Commission on the concentration practices and frequency concession irregularities. However, no examples could be found of any recent cases where anti-monopoly rules were applied by this authority.

The draft Communications Law “prohibits participation in selection processes for the granting and renewal of permits to provide sound and television broadcasting services, including subscription audio and video services, for individuals and corporate bodies (...) when the applicant or the companies related to him/her directly or indirectly fail to comply with the provisions or prohibitions regarding media concentration, oligopoly and monopoly.”

2.1.8. Government actively monitors and evaluates the consequences of media concentration

Transitional Provision 24 of the Constitution states:

Within no longer than thirty days after approval of this Constitution, the Executive will form a commission to audit radio and television frequency concessions, and to submit their report within no longer than 180 days.

Pursuant to this provision, the President of the Republic, by Executive Decree N° 1445, of 20 November 2008, created the Radio and Television Frequency Audit Commission, with the following objectives:

The audit of radio and television frequency concessions will be oriented toward determining the constitutionality, legitimacy and transparency of the concessions, considering the legal, financial, social and communicational approach.

This process will seek to determine, especially, the existence of direct or indirect monopolies or oligopolies in the use of frequencies; and financial entities or groups, their legal representatives, members of their boards and shareholders who hold control over the capital, investment or assets of the media.

The Definitive Report was presented on 18 May 2009, revealing serious illegal actions in frequency concession, concentration of ownership and cross-ownership of media, and the harmful effects this has for exercising communication rights.

The Comptrollership General of the Nation conducted a special examination in late 2009, in which a draft recommended to the regulatory body to revert to the State 354 frequencies obtained illegitimately. However, in the final report of the Comptrollership the word “revert” was changed for “review.” The regulatory body accepted to review them, but so far it has not had any consequence.

So far, neither the Government nor the Regulator has followed up on the recommendation of this report.

2.2. STATE ENSURES COMPLIANCE WITH MEASURES TO PROMOTE PLURALIST MEDIA

2.2.1. Anti-monopoly laws used by regulators to refuse license requests or force divestment of existing media operations in order to avoid excessive concentrations of media ownership

Some bank owners who were also media owners announced publicly that they had transferred the property of their media, following the application of Art. 312 of the 2008 Constitution, which states:

Financial groups or entities will not be able to own permanent, total or partial shares in enterprises of other nature than financial.

Participation in the media's capital assets, investments or other resources is forbidden to financial groups, their legal representatives, members of their directorate and share holders.

There are no other resolutions by the CONATEL or the CONARTEL denying any concession or renewal of radio and television frequencies arguing that the constitutional provisions prohibit oligopoly and monopoly in the sector. Nor is there a single public policy measure issued or announced by the CONATEL to discourage or fight the concentration of media ownership.

2.2.2. Civil society groups and the citizens at large actively participate in the promotion and enforcement of measures to foster media pluralism

Since the constitutional process began in November 2007 and with growing intensity since the new Constitution was approved in 2008, numerous organizations of society have become very active not only regarding media plurality but also regarding communication rights, problems and the public institutions that will regulate this sector.

This has happened because the first Transitional Provision of the Constitution establishes a 360-day deadline for the National Assembly to pass the Communications Law and other laws considered of essential importance for the country.

In this context, three draft versions of the Law have been presented, reflecting the interests and visions of different sectors of civil society, sponsored, respectively, by several Assembly Members; and a fourth project prepared by the Citizens' Collective for Communication Rights was presented extra-officially to the Occasional Commission of the National Assembly charged with preparing the draft proposal for the Law to be discussed in plenary by Parliament.

The following listing shows some of the organizations and institutions that have most dynamically taken part or generated debate about this Law and its possible contents:

Citizens' Collective for Communication Rights; International Centre for Higher Studies in Communication for Latin America (CIESPAL); Association for Progressive Communications (APC); *Radialistas Apasionadas y Apasionados*; Catholic Communication Association (SIGNIS); Catholic Latin American and Caribbean Communication Organization (OCLACC); Salesian Polytechnic University (UPS); Latin-American Association for Radiophonic Education (ALER); CORAPE; Forum of Communication; Social Communication Faculty of the Central University of Ecuador (FACSO); AER; Associated Regional Ecuadorian Community Channels (CCREA); National Council for Children and Adolescents (CNNA); Ethos Foundation; Ecuadorian Association of Television Channels (AECTV); National Council for Cinema (CNCINE); National Union of Journalists (UNP); Ex members of the Radio and Television Frequency Audit Commission; National Secretariat of Telecommunications (SENATEL); Society of Authors & Composers of Ecuador (SAYCE); Ecuadorian Association of Advertising Agencies; Circle of Journalists of the province of Zamora; *Radio Alegría* of Ambato; Fundamedios; Association of Cinema and Television (ASOCITV); Emergency Professional Committee of Professional Communicators of Ecuador (COEPCE); Superintendency of Telecommunications; Association of Telecommunications Employees (ASETEL); Association of Bull-fighting Journalists; Ecuadorian Respiratory Health Foundation; Organized Television Viewers; Riobamba public media concessionaire.

2.2.3. Regulators allocate digital licenses to a diverse range of commercial and non commercial operators

The process of converting analogue television to digital in Ecuador has not gone beyond choosing a technical transmission standard. On 26 March 2010, Ecuador chose the Brazilian digital television standard, Integrated Services Digital Broadcasting (ISDB-T/SBTVD), as did Argentina, Brazil, Chile, Peru and Venezuela. The way to allocate digital licenses in this sector has not yet been decided. The process of digitizing radio has not yet begun.

B. A DIVERSE MIX OF PUBLIC, PRIVATE AND COMMUNITY MEDIA

2.3. STATE ACTIVELY PROMOTES A DIVERSE MIX OF PUBLIC, PRIVATE AND COMMUNITY MEDIA

2.3.1. State does not discriminate between public, private and community media in the granting of access to information

There is no norm authorizing the Government or officials to make any sort of differentiation among public, private or community media when granting access to information. Nor has there been evidence in practice of any discriminatory treatment depending on the type of media outlet involved.

2.3.2. Where broadcasting regulation covers digital broadcasting, public service stations are automatically granted licenses for digital broadcasting

As already mentioned, digitization is a process that has barely made any headway, only choosing the standard to use, so legislation has not yet decided how digital signals will be allocated for the operation of public, private or community stations.

2.3.3. State does not impose start-up fees or other restrictions on new print titles aside from standard business registration requirements

There is no knowledge of any prior payments or other types of restrictions for new printed titles.

2.4. INDEPENDENT AND TRANSPARENT REGULATORY SYSTEM

2.4.1. Regulatory system ensures equitable access to the frequency spectrum to a plurality of media, including community broadcasters

On the basis of the information presented in indicators 2.1.1., 2.1.2. and 2.1.3., the regulatory body cannot be said to ensure equity in radio and television frequency concession.

The Report by the Radio and Television Frequency Audit Commission states that “in current legislation there are no norms setting forth clear, fair procedures or criteria for access to radio and television”⁸² frequencies. The report also concludes that “CONARTEL has granted concessions to use frequencies through discretionary procedures that have ignored the principles of transparency, non-discrimination and equal opportunities mandated by the Constitution.”⁸³

Accordingly, the Radio and Television Frequency Audit Commission has said:

⁸² Radio and Television Frequency Audit Commission. (2009). *Informe definitivo [Final Report and Recommendations]*. Ecuador. P. 58.

⁸³ *Idem*.

Who lost out because the principle of equitable preference was violated? Medium and small businesses, communicators, many of them radio professionals for many years, who applied for a frequency and watched the years go by without ever seeing their dossier on the CONARTEL agenda.

Universities and other educational institutions also lost out, especially schools of communication, which were deprived of a radio or television station where they could have offered educational programming while their communication students got practical training.

Societal organizations and movements lost out, peoples and nationalities, labour unions, neighbourhoods, youth, women, all sectors of civil society that could have operated a community media outlet and, by so doing, constructed citizen values and consolidated participatory democracy.

Finally, the cantons, municipalities, provinces, and cultural institutions lost out, that might have developed a public communication system – the best citizen comptrollership – at the service of the entire population. Democracy and freedom of expression in Ecuadorian society lost far too much.”⁸⁴

The draft Communications Law expressly recognizes the coexistence of three sectors of media: public, private and community media, and as part of its administrative principles to strengthen them all as well as “access under equal conditions to use of the frequencies of the broadcast spectrum.” (Article 3)

The explicit recognition of the three broadcasting sectors in legislation is a recommendation being constantly made by organizations defending and promoting freedom of expression, as it is considered to be an essential measure to achieve more media diversity and pluralism: “Different types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms.”⁸⁵

Further, organizations representing the owners of communications media have expressed their concern about the question on the referendum scheduled for 7 May 2011:

Do you agree with prohibiting institutions of the private financial system, as well as private communication companies of a national nature, their directors and main shareholders, from owning or holding stock outside the financial or communicational field, respectively, AMENDING THE CONSTITUTION PURSUANT TO ATTACHMENT 3?⁸⁶

According to the Ecuadorian Association of Newspaper Publishers (AEDEP) and Fundamedios, “if the citizenry gives a positive answer to this question, the limitation already established in the Constitution about financial entities owning communications media would be expanded to the private communications media, which would mean that it would encourage greater concentration of capital in the media, by limiting its stock structure, and would also violate the constitutional right of all individuals to create media”⁸⁷.

2.4.2. Decision-making processes about the allocation of frequencies between public, private and community media are open and participatory

Participation during the concession process involves no more than the possibility of objecting to an application for a concession, pursuant to Article 13 of the Law on Radio and Television:

⁸⁴ *Ibid.* P. 54.

⁸⁵ *Joint Declaration on Diversity in Broadcasting.* (2007). UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. Netherlands.

⁸⁶ National Electoral Council. Found at: http://www.cne.gob.ec/images/articulos/Convocatoria_Consulta_Popular.pdf

⁸⁷ Statements by AEDEP and Fundamedios. March 2011.

Objections by private parties to the applicant's right to be a frequency concessionaire must refer only to technical and legal impediments determined in the Law on Radio and Television, indicating in detail the alleged infractions committed that are contained in the Law on Radio and Television and these Regulations.

However, since the information is public, anyone can request and obtain that information by applying the provisions of the Organic Law on Transparency and Access to Public Information (LOTAIP).

That same Law establishes the obligation of public institutions to publish, on their websites, the contracts they sign with individuals or corporate bodies; however, none of the radio and television frequency concession contracts is published.

The draft Communications Law does not establish concrete procedures to grant permits but does state that this must be done "through competitive administrative procedures that guarantee transparency and equal opportunities." (Article 84)

In the case of private and community media, the procedure will be public competitive selection but in the case of public media the permit is granted by direct award. (Article 85)

The Freedom of Expression Rapporteurs have said that "transparency should be a hallmark of public policy efforts in the area of broadcasting. This should apply to regulation, ownership, public subsidy schemes and other policy initiatives."⁸⁸

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has stated that it is necessary to use "open, independent and transparent procedures"⁸⁹ when granting licenses as well as to adopt legislation that ensures transparent, public and equitable criteria for the granting of radio and new digital frequencies.⁹⁰

In this sense, the Inter-American Declaration of Principles on Freedom of Expression adds to these principles that "the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."⁹¹

2.4.3. Decision-making processes about the allocation of frequencies between public, private and community broadcasters are overseen by a body that is free from political or commercial interference or control by any vested interest

As seen before, the CONARTEL has not been an independent body free from political or commercial interference.

If the draft Communications Law being studied by the National Assembly is approved, permits to provide sound and television broadcasting services and audio and video by subscription are granted by a telecommunications authority (Article 84), on the basis of a binding report by the Communication and Information Council. The Council is a public agency with functional, administrative and financial autonomy and several provisions are made to guarantee its independence from commercial interference. (Article 34)

⁸⁸ *Idem.*

⁸⁹ Press Release # 29/07. (2007). *IACHR concerned about freedom of expression in Venezuela* (25 May 2007). Inter-American Commission on Human Rights.

⁹⁰ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* (2008). Inter-American Commission on Human Rights. Volume III, Chapter V, Paragraph 10 (I).

⁹¹ *Declaration of Principles on Freedom of Expression.* (2000). Inter-American Commission on Human Rights. Principle 12.

2.5. STATE AND CSOs ACTIVELY PROMOTE DEVELOPMENT OF COMMUNITY MEDIA

2.5.1. Pricing structure for broadcasting licenses not prohibitive for community media

The amounts to pay for using the frequencies granted are shown in rate schedules: authorization and monthly fees are not high, although they are not different for community or private media, the coefficients adopted by the calculation systems approved by the CONARTEL in Resolution 4760-CONARTEL-2008 of 8 May 2008, determine amounts that are not so considerable, generally about five hundred dollars a year per station, whether private or community media.

2.5.2. Specific quotas or targets for the reservation of parts of the radio-frequency spectrum to community broadcasters

There are no mechanisms to reserve broadcasting spectrum space for community media.

The draft Communications Law provides that “33% of the broadcast spectrum available for radio and television is reserved for community media in the available frequencies,” pursuant to international recommendations and the legislation of several Latin American countries.⁹² However, the current wording ought to mention the 33% of the “available spectrum” instead of the “available frequencies,” since the latter wording makes this allowance practically unworkable.

There is wide Inter-American and international consensus about the efficiency of reserving an equitable part of the broadcasting spectrum to promote community media. For many years, the World Association of Community Radio Broadcasters (AMARC) has been advocating for the reservation of the third of the spectrum for community radio stations, and two countries in the region have recently adopted legislation in this direction.⁹³

The Freedom of Expression Rapporteurs from the Americas, Europe, Africa and the United Nations have recommended that there is enough space on the broadcasting spectrum to ensure the existence of the three sectors (private, public and community): enough space must be assigned for the transmission of different communication platforms in order to ensure that the public, as a whole, can receive a diverse spectrum of mass media services.

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has been even more specific by stating that part of the spectrum should be reserved for the existence of community and other non-profit media, recommending “to legislate in the area of community media so that part of the spectrum is reserved for community radio” (2007 Report)⁹⁴ and “to legislate in the area of community radio so that an equitable part of the digital spectrum is reserved for community media” (2008 Report).⁹⁵

2.5.3. Mechanisms such as public hearings for communities to give their mandate to a community broadcaster and to renew that mandate at regular intervals

This type of mechanisms has not been implemented, partly because of the discrimination that community media suffered from 1975 to 2002. Most of them have taken on the “form” of private, commercial media. Therefore there are no such practices as public hearings to give a mandate to a community broadcaster.

⁹² Uruguay (2007) reserves at least one third of the frequencies available in each locality and in each radio and TV band for community media; and Argentina (2009) reserves 33% of the spectrum for these media.

⁹³ Uruguay (2007) reserves at least than one third of the available frequencies for community radio; and Argentina (2009) which reserves 33% of the spectrum for these media.

⁹⁴ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2007). Inter-American Commission on Human Rights. Volume III, Chapter III, Paragraph 6.

⁹⁵ *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. (2008). Inter-American Commission on Human Rights. Volume III, Chapter V, Paragraph 10 (n).

Discrimination against community media has been explained as part of Indicator 1.7.2. (see more in this indicator)

The draft Communications Law has no provisions in this regard.

2.5.4. A proportion of revenues raised from the sale of spectrum and cable and telecommunication licenses is reinvested in community media

There is no provision to make it possible for part of government revenues from payment of fees for radio and television or telecommunications concessions to be reinvested in creating or consolidating community media, and there are not any direct State subsidies either.

Telecommunications operator companies pay 1% of their billing to the Fund for the Development of Telecommunication in Rural and Marginalized Urban Areas (FODETEL), and part of such resources have been invested in public centres for access to Information and Communication Technologies (ICTs), also called community telecentres.

The draft Communications Law has no provisions in this regard.

2.5.5. Positive state measures to support community print and broadcast media, for example preferential pricing, discounted tariffs

No governmental measures in favour of community media are known. The only exemptions from paying rates are for content aired by the Government and by the Ministry of National Defence.⁹⁶

In November 2010, the government allocated 14 radio frequencies to indigenous organizations and developed a project aiming at providing equipment, advisory services and training to these radio stations. According to the government, in the following months there will be more community radio allocations that will increase the number of community radio stations in the country.

The draft Communications Law has no provisions in this regard.

2.5.6. CSOs assist community print and broadcast media through, for example, capacity building, seed funding, emergency bridging finance, advocacy⁹⁷

Ecuador has several organizations that support community development. The main one is CORAPE which has worked since 1988.

Additionally, other institutions mentioned in the survey conducted for this study provide support for the community sector, among which: Support Group for Women Movement from Azuay (GAMMA), Agency of Children and Adolescents Communication (ACNNA), Association for Progressive Communications (APC), and *Participación Ciudadana*. Their support includes technical advisory assistance, training, and a critical reading of information.

Advice or training provided during the last two years has totaled 16 training workshops and seminars. Moreover, the *Radialistas Apasionadas y Apasionados* organization, continually offers training and services for the community sector.

⁹⁶ See Resolution 4760-CONARTEL-2008, of 8 May 2008.

⁹⁷ For an example see the Association of Independent Publishers in South Africa, www.independentpublisher.org

CIESPAL has supported community media during the last thirty years. At the moment, this institution is training the 14 indigenous radio stations aforementioned, and aims at fostering and strengthening community media in collaboration with local governments.

C. LICENSING AND SPECTRUM ALLOCATION

2.6. STATE PLAN FOR SPECTRUM ALLOCATION ENSURES OPTIMAL USE FOR THE PUBLIC INTEREST

2.6.1. Regulatory authority has a plan for spectrum allocation that meets International Telecommunication Union rules and UNESCO recommendations on provisions for public service broadcasting

Ecuador has the so-called "National Plan of Frequencies," approved by the CONATEL in Resolution 165-04- CONATEL-2008 of 6 March 2008. Sub-section d) of number 2.4 in that Plan states:

The Ecuadorian Administration will not allocate any frequency to a station that does not fit into the National Chart for allocation of frequency bands included in the provisions of this Plan, except in the event that the station, when using that allocated frequency, does not produce harmful interference with a station operating according to the provisions of the Constitution, the Agreement of the International Telecommunication Union, ITU Radio Communications Regulations and the present Plan, and does not claim protection against harmful interference caused by that station.

However, beyond being formally subject under the National Plan of Frequencies to the rules of the International Telecommunication Union (ITU) and the recommendations of UNESCO, the irregularities historically registered in the allocation of frequencies and reported by the Radio and Television Frequency Audit Commission (whose mechanism is documented in indicators 1.7.2. and 2.8.2. of this document) would indicate the ITU standards, UNESCO recommendations and many aspects of the National Plan of Frequencies are not observed in the practices of allocating the spectrum by the regulatory authority.

2.6.2. Plan is drawn up in consultation with CSOs and the media sector

The National Plan of Frequencies was prepared by the CONATEL, without any participation by CSOs.

2.6.3. Plan is published and widely disseminated

The National Plan of Frequencies is posted on the CONATEL's website. Users can download it free of charge and find out about the availability of frequencies for the different telecommunications services.

2.7. STATE PLAN FOR SPECTRUM ALLOCATION PROMOTES DIVERSITY OF OWNERSHIP AND CONTENT

2.7.1. Plan ensures that broadcasting frequencies are shared equitably among public, private and community broadcasters and among national, regional and local broadcasters

As indicator 1.7.2. reveals, only 0.2% of radios stations and 0% of television channels belong to the community sector as such in Ecuador. Despite the community vocation of many of them, and due to the restrictions foreseen by the law for community media, the vast majority of these radios functions as private entities in Ecuador (see Definitions used in the Study).

The National Plan of Frequencies includes no norms regarding equitable distribution of frequencies among the private, public and community sectors, only establishing potential use of frequencies from a purely technical perspective, without considering regional or local distribution.

However, as explained under indicator 2.1.1., Article 10 of the Law on Radio and Television allows a single individual or corporate body to obtain up to 24 medium-wave channels (one per province), 24 FM channels (one per province), 24 channels in each of any new bands created in the future (one per province), one channel for the tropical zone and one national television system.

Moreover, the first un-numbered article after Article 10 authorizes anyone to obtain the concession of channels or frequencies to install commercial television stations in the 24 capital cities of each province or in any city with a population of about one hundred thousand inhabitants.

The draft Communications Law provides that “33% of the broadcast spectrum available for radio and television is reserved for community media in the available frequencies”. However, the current wording ought to mention the 33% of the “available spectrum” instead of the “available frequencies”, since the latter wording makes this allowance practically unworkable.

2.7.2. Frequencies are not required to be auctioned off to the highest bidder if the public interest is better served by other bidders

Ecuador has no norms establishing bidding or auction as the procedure to allocate radio and television frequencies as is done in other countries. Nor are there norms providing for preferences in allocations of frequencies on the basis of programming proposals or the station’s communication project.

The draft Communications Law does not establish concrete procedures to grant permits but does state that this must be done “through competitive administrative procedures that guarantee transparency and equal opportunities” (Article 84) and, more precisely, mentions public competitive selection for private and community media. (Article 85)

2.7.3. Part of any digital dividend should be allocated back into broadcasting (that is, not all freed up frequencies are sold to the highest bidder)

Although Ecuador has decided on the digital standard to use, the conversion of analogue channels to digital has not yet begun, so there is no information about how many new signals will be available due to digitization, nor their quality, nor who will be granted concessions to use them, or under what conditions.

2.7.4. There should be some ‘must-carry’ obligations on satellite and cable carriers, at a minimum, to carry Public Service Broadcasting channels among the choices they offer as well as the possibility of must-carry obligations to promote diversity (for example in favour of minority channels)

Ecuador has no norms obliging cable operators to include public service channels among their options, or to promote diversity in favour of minority channels.

2.8. INDEPENDENT AND TRANSPARENT REGULATORY SYSTEM

2.8.1. Broadcasting licensing processes and decisions are overseen by an independent regulatory authority, which meets international standards (see Section 1.B Regulatory system)

As seen before, the CONARTEL has not been an independent regulatory body which has ensured the compliance with national regulations or international standards in this area.

If the draft Communications Law being studied by the National Assembly is approved, permits to provide sound and television broadcasting services and audio and video by subscription are granted by a telecommunications authority (Article 84), on the basis of a binding report by the Communication and Information Council. The Council is a public agency with functional, administrative and financial autonomy and several provisions are made to guarantee its independence from commercial interference.

2.8.2. Broadcast license applications are assessed according to transparent and objective criteria set out in law

The administrative and technical procedures needed to request a broadcast license are specified in Article 16 of the General Regulations on the Law of Radio and Television Broadcasting (RGLRTV) and in Article 20 of the Law of Radio and Television Broadcasting. As for the criteria, the only one mentioned in the Law is specified in Article 10 concerning the limitation of allowed frequencies to one per province. (see indicators 2.1.1. and 2.7.1)

At least nine illegal ways were detected by the Radio and Television Frequency Audit Commission⁹⁸, which were arbitrary and discretionary, to allocate radio and television frequencies under the CONARTEL, namely:

I) **Return-Concession.** This mechanism appears to be legal, to get around the legal prohibition⁹⁹ of selling or transferring to third parties the radio and television concessions received from the Government. Under this mechanism the "Seller" returned the frequency to CONARTEL and it ignored other applications, allocating it directly to the "Buyer," pursuant to an agreement the "contract parties" had previously arranged.

With this mechanism, some radio stations have been sold for over a million dollars, although the equipment included in the transaction was not worth even one hundred thousand dollars. Therefore, what was being paid for was really the frequency concession, negotiated between private parties as if that concession were part of their assets.¹⁰⁰

II) **Non-application of the preference criterion.** CONARTEL has not respected the order in which frequency applications have been submitted, assigning frequencies in a discretionary manner and ignoring the order-of-arrival criterion for preference that is relevant for any procedure or application to a public authority.¹⁰¹

III) **Extension of deadlines.** In some cases, expiration of periods to meet obligations or apply for concession renewal would have meant concession contract termination and reversion of the frequency. However, many concessionaires failed to meet these deadlines and CONARTEL did not apply any consequence or legal penalty to the infringers, and therefore their "rights" to the concession.¹⁰²

IV) **Failure to meet requirements.** Allocation of frequencies by CONARTEL even when applicants had not presented the legal requirements, and even without the technical reports by the Superintendency of Telecommunications (SUPERTEL), or even though the technical reports recommended not to grant the frequency.¹⁰³

⁹⁸ Radio and Television Frequency Audit Commission. (2009). *Informe Definitivo [Final Report and Recommendations]*. Ecuador.

⁹⁹ The second clause of Art. 247 of the Constitution in force between 1998 and 2008 said: "The State will have the exclusive authority to allocate electromagnetic frequencies for the broadcasting of radio, television and other media signals. The equality of conditions will be guaranteed in the allocation of frequencies. The transfer of licenses or any other way of direct or indirect mass media concentration by the State or by individuals is forbidden."

¹⁰⁰ Radio and Television Frequency Audit Commission. (2009). *Informe Definitivo [Final Report and Recommendations]*. Ecuador. P. 59-84.

¹⁰¹ *Ibid.* P. 43-52.

¹⁰² *Ibid.* P. 85-101.

¹⁰³ *Ibid.* P. 30-32.

V) **Concessions to clandestine stations.** The Law prohibits clandestine operation of radio and television stations, but CONARTEL, instead of punishing this behaviour as the Law provides, validated this illegal practice by granting frequencies to some who were doing this.¹⁰⁴

VI) **More than one frequency of the same type per province.** The current Law allows CONARTEL to allocate one radio frequency in AM, one in FM, one in short wave and one for television to a single individual or company in each of the 24 provinces of Ecuador.

However, there are provinces in which concessions are more attractive than in others, not only because of the profitability of operating there, but because of the profit if the concession is then sold. This has led several concessionaires to apply for and obtain more than one radio concession, mainly for FM in a single province, violating an express prohibition of the Law.¹⁰⁵

VII) **Self-allocation of frequencies.** The members of the CONARTEL board applied and obtained from themselves new concessions for radio and television frequencies, most of which were granted to them personally or to companies that they had already formed.

This problem originates in the way the current Law set CONARTEL up as the body responsible for regulating the sector and allocating frequencies, because some of its members were institutionally and personally both regulatory authorities and operators subject to regulation, because they enjoyed at least one radio or television frequency concession. One member of this board is the concessionaire of 52 radio frequencies.¹⁰⁶

VIII) **Change from base to repeating station and vice versa.** The current Law establishes that the concession of frequencies for a radio or television repeating station to operate cannot be used to operate a base station, or vice versa. Anyone who does this un-authorized practice could lose the concession granted by the Government.

However, changes from base to repeater and from repeater to base were literally decided by the concessionaires themselves, often validated by CONARTEL without applying any sort of penalty.¹⁰⁷

IX) **Discrimination against community media.** The current Law, which has been amended several times, originally allowed concession of frequencies to operate community radio stations.

However, these radio stations had a series of limitations that, in practice, made it not viable to set them up and operate them. For instance: they had limitations on their power and geographical coverage, could not sell advertising to support themselves, were under the surveillance of the Joint Chiefs of the Armed Forces, were subject to the Law on National Security, could have only cultural and educational programming, etc.¹⁰⁸

The draft Communications Law does not expressly include the criteria to be used to grant permits but does state that this must be done “through competitive administrative procedures that guarantee transparency and equal opportunities.” (Article 84) It also expressly mentions public competitive selection for private and community media. (Article 85)

The text does mention that regulations and the instructions for the competitive selection process will define the requirements on the basis of which the Communication and Information Council will prepare its binding report.

¹⁰⁴ *Ibid.* P. 115-119.

¹⁰⁵ *Ibid.* P. 120-127.

¹⁰⁶ *Ibid.* P. 128-140.

¹⁰⁷ *Ibid.* P. 156-169.

¹⁰⁸ *Ibid.* P. 175-185. And Jurado, R. (2010). “Derecho a la comunicación en Ecuador: avances, dificultades y expectativas” [Right to communication in Ecuador: progress, difficulties and expectations]. In *Informe de Derechos Humanos: 2009* [Human Rights Report: 2009]. Universidad Andina Simón Bolívar (UASB). Ecuador. And <http://www.ciespal.net/mediaciones/index.php/ensayos/237-derecho-a-la-comunicacion-en-ecuador-avances-dificultades-y-expectativas.html>

2.8.3. Fees for different types of licenses are transparent and set out in advance

The amounts to pay according to the rate schedules are known, based on Public Resolutions issued by the CONATEL, which is currently acting as the agency responsible for granting frequencies.

2.8.4. Regulators actively monitor frequency use to ensure that actual usage conforms to license conditions

The Superintendency of Telecommunications is responsible for overseeing the frequencies granted, according to Article 2 and to sub-section d) of the sixth un-numbered article after Article 3 of the Law on Radio and Television: this oversight includes monitoring the use made of frequencies by concessionaires to make sure that they abide by the Law and the conditions established in concession contracts.

On the basis of the seriously illegal actions reported by the Radio and Television Frequency Audit Commission, affecting a third of all concessions, and ratified by the report by the Comptrollership General of the Nation in 354 cases, it might be said that, if there was an oversight by the Superintendency, this has been significantly ineffective.

D. TAXATION AND BUSINESS REGULATION

2.9. STATE USES TAXATION AND BUSINESS REGULATION TO ENCOURAGE MEDIA DEVELOPMENT IN A NON-DISCRIMINATORY MANNER

2.9.1. Preferential tax, import duty and tariff regimes to encourage the development of broadcasting and print media

The State authorizes radio and television frequency concessionaires tax exemption to import broadcasting transmitters of 20 or more kilowatts in AM, over 1 kilowatt in FM, and television systems of any capacity, pursuant to Article 60 of the Law on Radio and Television.

The Domestic Tax System Law used to exempt the payment of VAT on imports of newsprint. This benefit was eliminated by the National Assembly on 4 December 2009. According to data from the Ecuadorian Customs Corporation (CAE), out of the 12 companies that import this type of paper, eight are newspapers, which use 85.4% of the newsprint.

2.9.2. State does not impose prohibitive taxes or charges on media organizations

Media companies are subject to the same tax treatment as any other productive or commercial activity, and taxes are calculated directly on their billing and net profits.

2.9.3. State tax policy and practice does not discriminate against the media nor favour specific private media outlets over others

No tax policies or practices are known to discriminate against the media or to have been issued to favour any specific media.

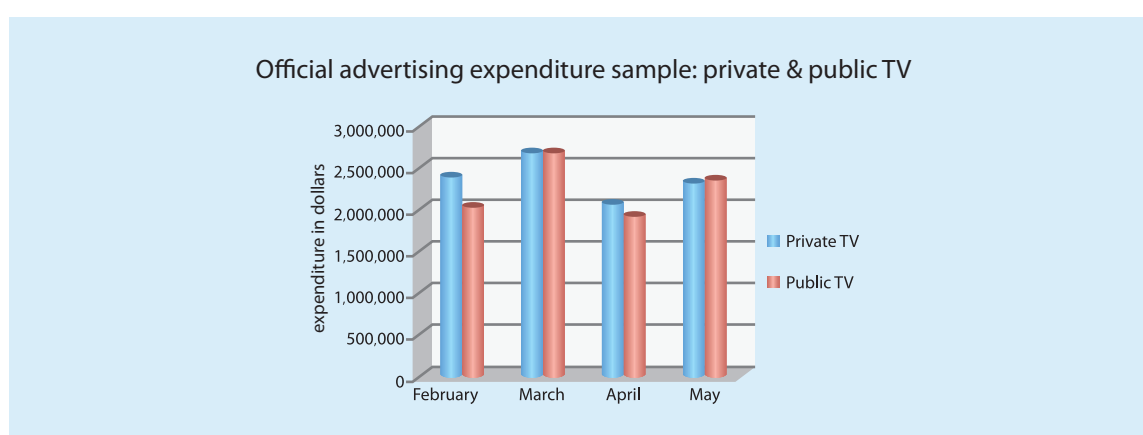
E. ADVERTISING

2.10. STATE DOES NOT DISCRIMINATE THROUGH ADVERTISING POLICY

2.10.1. State places advertising in a fair, transparent and non-discriminatory manner, for example through a code of conduct

Ecuador has no explicit norms, guidelines or code of conduct for this area, and there are no public or civil society institutions monitoring advertising expenses on a regular basis. Nevertheless, there is one monitoring report on the airing of official advertising on television which shows that official advertising is quite equitably divided between private and public television, according to monitoring by the *Participación Ciudadana* organization from February to May 2010. Only February had more advertising on private television.¹⁰⁹

Graph 7



Source: *Participación Ciudadana*.

The draft Communication Law establishes that “public sector entities that engage publicity and advertising services in the media will be guided by criteria of equal opportunities regarding the purpose of the communication, the target audience, the territorial jurisdiction of the entity and the levels of viewership and listenership. Media with lesser coverage or circulation, and those located in rural areas, will be assured of participation in governmental publicity and advertising.” (Article 73)

Such entities must prepare an annual public report on the distribution of their spending on publicity with each media outlet.

2.10.2. Allocation of government advertising is strictly monitored to ensure fair access by all media

There is no government body monitoring public investment in advertising. Moreover, this information is practically impossible to access. This means that the National Secretariat of Communication does not fulfil its obligation to make information transparent on its webpage¹¹⁰, which is its responsibility under the Organic Law on Access to and Transparency of Public Information (LOTAIP), which includes, among other things, information on budgets, suppliers and contracts signed.

¹⁰⁹ Participación Ciudadana. (2010). *Monitoreo de la pauta publicitaria en la televisión entre febrero y mayo de 2010* [Monitoring of Government TV advertisement dissemination between February and May 2010]. Ecuador.

¹¹⁰ Verified on 8 December 2010 in the webpage: <http://www.secom.gov.ec>.

The *Participación Ciudadana* NGO monitors the presence of public advertisement in Ecuadorian media on an occasional basis.

2.10.3. Public service broadcasters are subject to fair competition rules in respect of advertising they carry

The Law on Radio and Television maintains provisions by which public service stations and those private stations devoted to social, educational, cultural or religious purposes, cannot sell advertising, according to the first two paragraphs in Article 8 of that Law.

There are no other norms for fair competition regarding advertising. This debate began in order to prepare the future Communications Law and at the request of public television and radio media management, so they can broadcast private advertising under equal conditions with commercial channels.

The last version of the draft Communications Law incorporated a provision by which public media could receive commercial and public advertising to finance their operations, providing this does not involve over “30% of their budget.” (Article 60)

2.10.4. Codes of conduct or other guidelines for the allocation of state-funded advertising implementation

There are no codes of conduct, norms of guidelines to award public sector advertising. Its distribution depends mainly on decisions made by the Secretary of Public Administration and the Secretary of Communication.

2.11. EFFECTIVE REGULATION GOVERNING ADVERTISING IN THE MEDIA

2.11.1. Broadcasters and print media adhere to nationally -or regionally- agreed limits on advertising content, where applicable

In fact, audiovisual and print media do, as a general rule, respect limits on advertising contents, established mainly in Article 19 of the Constitution¹¹¹; in sub-section c) of Article 58 of the Law on Radio and Television¹¹²; and in Article 6 of the General Law for Consumer Defence.¹¹³ Though there is still a certain trend in advertising to magnify the advantages of certain goods, services and ideas and conceal the risks of using or adopting them, which in some cases could be misleading advertising or ideological propaganda.

If the draft Communications Law is approved, the audiovisual media will also have to comply with a series of obligations regarding the use of advertising: regarding the duration of advertisements and on the basis of “technical parameters in terms of a reasonable balance between contents and commercial advertising” (Article 68), regarding “misleading or abusive advertising, or that which would lead to mistaken choices of goods or services” (Article 69) and production of Ecuadorian advertising in “Ecuadorian companies whose personnel comprises least 80% persons of Ecuadorian nationality.” (Article 70)

There are also provisions regarding obligations to respect communication rights and “socially and environmentally sustainable consumption”: “Propaganda for war is prohibited, as is justification

¹¹¹ “It is prohibited to broadcast advertising inducing to violence, discrimination, racism, substance abuse, sexism, religious or political intolerance and all that will jeopardize rights.”

¹¹² It is prohibited for radio and television stations: “To promote physical or psychological violence, using children, women, youth or the elderly, encourage, perpetrate or promote racism, sex trade, pornography, consumption of drugs, religious or political intolerance and other analogous actions affecting the dignity of human beings.”

¹¹³ “All forms of misleading or abusive advertising are prohibited, or those leading to error in choosing the good or service that might affect consumers’ interests and rights.”

for national, racial or religious hatred that constituted instigation to violence or any other similar illegal action against any person or group of persons, for any reason, including those of ethnic group, color, religion, sexual preference, language or national origin, direct, public instigation to genocide, child pornography, advertising for alcoholic beverages, cigarettes and tobacco derivatives, for narcotic and psychotropic substances. Beverages of moderation and energy drinks may advertise on the audiovisual media only outside the schedule that is protected for children and adolescents.” (Article 71)

2.11.2. Broadcasters and print media adhere to nationally- or regionally-agreed guidelines for the separation of advertising and programming, where applicable

There are no legal rules or conventional norms adopted by the media regarding separation of advertising from programming. However, it is noted that some private media make clear this distinction in their codes of ethics.

However, if the draft Communications Law is approved, it will be the duty of the media to “clearly differentiate, avoiding any confusion between news and opinions.” (Article 28)

2.11.3. Existence of a code of advertising, established by an independent professional body, to prevent misleading advertising

Ecuador has no specific advertising code. Norms regarding misleading advertising are contained in the Consumer Defence Law. Sub-section 8 of Article 2 of this Law defines misleading advertising as:

Any modality of information or communication of a commercial nature, with contents totally or partially contrary to actual conditions for acquiring the goods and services offered or using texts, dialogues, sounds, images or descriptions that directly or indirectly, and even by omitting essential data on the product, lead to confusing or misleading consumers or to their making mistakes.

Article 6 prohibits misleading advertising and Article 7 establishes advertising infractions, stating:

Suppliers commit an infraction under this law when, through any type of message, they lead to mistakes or deceit, especially referring to:

1. Country of origin, commercial or other feature of the goods offered or the place where the service engaged or technology used will be provided;
2. Benefits and consequences of using the goods or engaging the service, as well as price, rate, payment terms, financing and costs of credit;
3. Basic characteristics of the goods or service offered, such as components, ingredients, dimension, amount, quality, usefulness, durability, guarantees, counter-indications, efficiency, suitability of the good or service for the purposes for which they are intended, and others; and
4. Official or private, national or foreign recognition, approvals or distinctions, such as medals, prizes trophies or diplomas.

Additionally, the Code of Ethics of the Ecuadorian Association of Radio and Television and the Code of Ethics of Television in Ecuador both include provisions against misleading advertising.

The entity responsible for processing complaints and claims about infractions against consumer rights is the Ombudsman, without precluding activating administrative mechanisms or judicial actions through regular channels, pursuant to Article 81 of the Consumer Defence Law.

Recommendations

1. The new Communications Law being currently debated should establish democratic limits to prevent undue media concentration in one single sector, and promote media pluralism in the three communication sectors (private, public and community), **with equitable distribution** of space for all three sectors, avoiding oligopoly or monopoly of media ownership as well as frequency hoarding.
2. The new Communications Law should **clearly distinguish the three broadcasting sectors** and avoid confusing terms and concepts by homogenizing the definitions of “private,” “public” and “community” media with international standards:

Private media: These are private companies with a private purpose. They are for profit. Their private nature does not exempt them from social responsibility because they use a public good (frequencies) and because information is a service and not a commodity.

Public media: These are public institutions with a public purpose. They are not for profit. “Public” does not mean State- or much less government-owned. Although funded with State monies, these media belong to and owe themselves to the citizenry. They must be independent, universal (accessible to all) and with high-quality production.

Community media: These are societal organizations with a public purpose. They are not for profit. This means that they reinvest their profits from advertising, sale of services and donations, in the media outlet itself and in its development projects. The community shares in the ownership, programming, administration and evaluation of these media.

3. The new regulatory body (see Recommendations Category 1) shall establish criteria and clear and explicit mechanisms to grant the use of frequencies, ensuring editorial and financial independence, through **democratic administrative procedures guarantying transparency and equitable access to the spectrum and other technological platforms** for the three sectors, private, public and community. It will value the medium’s programmatic proposal and its contribution to diversity, and not its financial value (auctions off to the highest bidder).
4. The new legal framework and public policies on communication must promote the **emergence, development and consolidation of community media** in Ecuador, with favourable fees for frequency use, favourable administrative-fiscal treatment, financial support, removal of any discriminatory limitations (such as the prohibition to sell advertising space) and effective mechanisms reserving them part of the broadcasting spectrum. From this perspective, it is recommended to consider the rules for license allocation established in the inter-American standards, as well as the progress that a number of countries in the region have made in reserving at least one third of the broadcasting spectrum for community or non-profit media.
5. Public sector bodies that engage advertising services must prepare an annual public report showing the distribution of spending on **advertising**, itemizing among the media. The media should be recognized as a key stakeholder in this process, along with representatives of consumers and other collectives. It is also proposed for the private media to consider undertaking **exercises of information transparency**, such as annual reports on their advertising income, sponsors, programming, shareholders, etc. so the citizenry can know more about the reality of these media.

The media as a platform for democratic discourse

Executive summary

A. MEDIA REFLECTS DIVERSITY OF SOCIETY

3.1. THE MEDIA – PUBLIC, PRIVATE AND COMMUNITY-BASED – SERVE THE NEEDS OF ALL GROUPS IN SOCIETY

There are marked differences among the three types of media regarding the space they grant to language diversity and specific and/or vulnerable groups. First of all, the work of community and public media stands out, followed by the press, but only regarding space devoted to vulnerable groups. However, private radio and television are deficient in both aspects of their programming. Nor is there any evidence of special treatment in the media for people who are illiterate, and only public television broadcasts news simultaneously in sign language.

Women are generally invisible in the news and when they are portrayed this is done in a stereotypical way, that is to say, playing the role that is traditionally assigned to them, be it at home or with their families.

As for representing the entire political spectrum in the public media, they have been criticized for lack of openness toward political parties of the opposition.

3.2. MEDIA ORGANIZATIONS REFLECT SOCIAL DIVERSITY THROUGH THEIR EMPLOYMENT PRACTICES

According to the research done for this study, women's participation in the media sector varies according to the type of media outlet. However, the trend is toward gender equality in the media and women do have high positions. By contrast, the participation in the media of communicators from ethnic or language groups, religious minorities, or with disabilities is minimal.

B. PUBLIC SERVICE BROADCASTING MODEL

3.3. THE GOALS OF PUBLIC SERVICE BROADCASTING ARE LEGALLY DEFINED AND GUARANTEED

In Ecuador there is no specific legislation on public media. At present, so-called public broadcasters have been operating under the Public Enterprise of National Television of Ecuador (ECTV) since October 2007. Consequently, there is no law establishing specific guarantees of editorial independence, or appropriate, secure funding of public media.

The draft Communications Law defines the goals of public service broadcasting and how the State must guarantee its editorial independence. It also states that its budgetary sources will be diverse (including advertisement, donations and sponsorship, among others).

3.4. THE OPERATIONS OF THE PUBLIC SERVICE BROADCASTERS DO NOT EXPERIENCE DISCRIMINATION IN ANY FIELD

No cases have been proven of discrimination for operating public service media.

3.5. INDEPENDENT AND TRANSPARENT SYSTEM OF GOVERNANCE

The Radio and Television of Ecuador, S.A. (RTVECUADOR) is governed by the Assembly of Shareholders and administered by a Directorate, an Executive President and an Executive Vice-President. Since the Assembly of shareholders is made up of the Ministry of Culture and Andinatel (now called National Telecommunications Corporation, CNT), the appointments made by the Assembly cannot be independent from the Government.

3.6. PSBs ENGAGE WITH THE PUBLIC AND CSOs

Public media mainly use, as mechanisms for interaction, the following: phone calls, e-mail and chatting. However, there is no system for complaints in public media to set forth the way that complaints will be handled, or showing the changes, penalties or claims that have happened as a result of submitting a complaint.

There is no involvement of the public in the appointments to the governing body.

C. MEDIA SELF-REGULATION

3.7. PRINT AND BROADCAST MEDIA HAVE EFFECTIVE MECHANISMS OF SELF-REGULATION

Although there is a greater tendency to create spaces to receive complaints and suggestions from the public, codes of ethics or editorial guidelines continue to be the main method used by the media as a mechanism for self-regulation. However, some deficiencies in this regard are evident. To illustrate this assertion, only one print medium (*Hoy* newspaper) and one television channel (Ecuavisa) have a Reader's / Viewer's Ombudsman.

According to the interviews conducted for this study, 72.5% of the communicators queried say that their media had a Code of Ethics and 60% said there are explicit editorial guidelines. However, several journalists in a single company provided differing answers about this, which shows that familiarity with and use of codes of ethics and editorial guidelines is not guaranteed in practice. This is evident when only 33.33% of media management say they give out copies of their codes as a method of dissemination.

In Ecuador there is not an industry-wide complaints body, like for example a Press Complaints Commission for all print media.

3.8. MEDIA DISPLAY CULTURE OF SELF-REGULATION

The media state that one of their policies to encourage self-regulation is to participate in training workshops and fora on journalistic ethics. And over 80% of journalists' federations say they disseminate good practices to improve media quality. However, as mentioned under the preceding indicator, dissemination and implementation of the codes are not fully guaranteed.

D. REQUIREMENTS FOR FAIRNESS AND IMPARTIALITY

3.9. EFFECTIVE BROADCASTING CODE SETTING OUT REQUIREMENTS FOR FAIRNESS AND IMPARTIALITY

There is not a specific Broadcasting Code in Ecuador. Broadcasters are under no other legal obligation as part of their licenses to report in a fair and impartial manner on matters of public interest.

The draft Communications Law incorporates the definitions from the Constitution of the Republic regarding the right to freedom of opinion and expression in a manner that is incompatible with the standards and international treaties that Ecuador has signed. Although it does not expressly name "impartiality," other similar concepts are included: information that is contextualized, verified, etc. Insofar as the media must actually comply with these conditions, it could be considered that a media outlet is not complying with the necessary conditions to keep its license if it is considered that such rights have not been observed because they have not been "impartial."

3.10. EFFECTIVE ENFORCEMENT OF BROADCASTING CODE

As seen above, there is no specific Broadcasting Code in Ecuador.

Concerning CONARTEL's regulations, and as shown in the Report by the Radio and Television Frequency Audit Commission (2009), the attitude of authorities during the reported period (1995-2008) regarding breaches by broadcasting frequency concessionaires was indifference or extreme permissiveness. Such breaches are neither investigated nor penalized. Complaints submitted by citizens to the supervisory body have had no effect either. The Report has not led to any prosecution, penalty or reversion affecting those involved. Consequently, it cannot be said that there is an appropriate system to deal with complaints.

The public will have various mechanisms to demand compliance with the Communication Law if it is approved.

E. LEVELS OF PUBLIC TRUST AND CONFIDENCE IN THE MEDIA

3.11. THE PUBLIC DISPLAYS HIGH LEVELS OF TRUST AND CONFIDENCE IN THE MEDIA

According to the nationwide survey, there are differing opinions about the honesty of journalists and the media. For 49.95% of those surveyed, journalists are honest, while 46.85% feel they are corrupt. The perception of corruption is significantly higher in Quito (58.67%) and quite a bit lower in Guayaquil (35.35%). As for citizens' perception of media integrity, 51.74% consider the media to be corrupt, while 45.35% feel they are honest. This reveals a marked division among the citizenry between those who have a negative perception of the media and of journalists and those who have a positive opinion. The survey also suggests that despite the negative opinion that some citizens may have about media, some of these same citizens still trust media content.

3.12. MEDIA ORGANIZATIONS ARE RESPONSIVE TO PUBLIC PERCEPTIONS OF THEIR WORK

An analysis of the information gathered from private print and broadcasting media shows that they all say they have established mechanisms to receive observations from their audiences about the quality and cultural diversity of their programmes and news. So, 67.70% of those interviewed nationwide stated that the media report on topics that are genuinely interesting to them.

F. SAFETY OF JOURNALISTS

3.13. JOURNALISTS, ASSOCIATED MEDIA PERSONNEL AND MEDIA ORGANIZATIONS CAN PRACTICE THEIR PROFESSION IN SAFETY

Media managers say that their journalists have been threatened and harassed. These threats and harassment take the form of phone calls, criminal-law or administrative lawsuits, persecutions, physical aggressions, restrictions on entry to cover events, and insults. According to the monitoring of Fundamedios (2010), the main aggressors are policemen, unknown individuals, militants from civil associations and political parties, demonstrators and administrative/judicial authorities, among others.

Regarding the safety of journalists in situations of risk, 32.5% of journalists who were interviewed for this study assure that the media have no policies to protect the lives of their personnel while performing risky tasks.

In 2010, Fundamedios detected 151 aggressions against journalists and media, among which 4 cases of murder or forced disappearance, 1 case of kidnapping and 51 cases of physical aggressions.

3.14. MEDIA PRACTICE IS NOT HARMED BY A CLIMATE OF INSECURITY

As for self-censorship and confidentiality of sources, according to Fundamedios, self-censorship has become one of the most common obstructions to freedom of the press in Ecuador. Regarding confidentiality of sources, journalists are protected by Article 20 of the 2008 Constitution. However, a recent case showed that it is possible to undermine this right in practice. (see indicator 1.4.1)

The draft Communications Law expressly includes the right to “reserve the source and professional secrecy.” (Article 16) It is also noteworthy that the wording leaves it open to not recognize this right to “exceptions derived from the Constitution of the Republic and international instruments,” instead of clear, specific listed exceptions.

The media as a platform for democratic discourse

The following analysis cross-references the opinion from citizens with that from journalists and media management. This makes it possible to pinpoint the citizens' perception of journalists' work and the media, and avoid any bias that might result if only those who manage or work in the media were consulted.

A. MEDIA REFLECTS THE DIVERSITY OF SOCIETY

3.1. THE MEDIA – PUBLIC, PRIVATE AND COMMUNITY-BASED – SERVE THE NEEDS OF ALL GROUPS IN SOCIETY

3.1.1. The media promote social debate and democracy

Most journalists who were interviewed (92.50%) stated that the news agenda is designed to contribute to social debate and democracy. Journalists said that, in addition to journalistic products with this approach, there are workshops and fora on specific issues to elicit social debate. In this regard, 69.3% of the citizens surveyed nationwide for this study consider that the media do perform this function. However, a considerable percentage (42%) of those interviewed in the city of Quito do not feel that the media play this role.

3.1.2. Media use language/s which reflect the linguistic diversity of the target area

Ecuador has Spanish as an official language, and recognizes another 14 languages, of which Kichwa and Shuar are considered official languages for intercultural relations. However, languages other than Spanish are hardly used in the media with national coverage.

According to the survey conducted for this study, only 22% of the private broadcast media queried said that they include any editions or include in their programming grids any products in local languages. Moreover, when they do, these transmissions are generally not on a daily basis. The media queried do not translate their programming into these languages, nor do the television channels that were confiscated by the State have any programmes in local languages aside from Spanish.

In the case of the written press, only one community newspaper is published in Kichwa, *Wiñay Kausay*, which has circulated monthly since 2007. The newspapers with the largest circulations in Ecuador do not have sections in the recognized indigenous languages, nor does the public newspaper, *El Telégrafo*, or the tabloid "PP, El Verdadero".

Unlike public newspapers, public radio and television have included in their programming grid, products in Kichwa that are broadcast daily: newscasts, interview programmes conducted by indigenous persons and classes in the Kichwa language on the public radio station.

Table 8

Programming in Kichwa in Public Media

| MEDIA | PROGRAMME | LANGUAGE | FREQUENCY |
|-------|---------------------|-----------------|-----------|
| RPE | Ecuador in movement | Spanish /Kichwa | Daily |
| | Kichwa classes | Kichwa | Daily |
| | Programme | Kichwa | Weekly |
| ECTV | Newscast | Kichwa | Daily |
| | Our Dreams | Kichwa | Weekly |

In the community media, there are a number of outstanding examples of products made by indigenous people and in the Kichwa language. On TV-MICC, Channel 47 community television, directed and managed by the Indigenous and Rural Movement of Cotopaxi (MICC), there is an opinion programme at 06h00, *Ñukanchik Yuyay* (Our Thinking), which places an emphasis on interviews with community leaders about current events. There is also a newscast broadcast in Spanish and Kichwa. There is also a programme called "Voices and Identity", with stories about indigenous struggles and peoples' demands, and another programme to teach Kichwa, broadcast at 5:00 p.m., to mention just three of the most important programmes.

Grassroots Radio Schools of Ecuador (ERPE), since they began in 1962, have done much of their programming in Kichwa, as have *Radio Latacunga*, *Intipacha*, *Zugta-Urcu* and *Radio Ilumán*, based in the city of Otavalo. The CORAPE, which groups a number of indigenous and community stations, encourages broadcasting in Kichwa, and for this purpose it has the Kichwa Network, which links to Ecuadorian, Peruvian and Bolivian indigenous stations that broadcast in Kichwa (the Ecuadorian variety) and Quechua.

In the Amazon Region, at first almost exclusively the radio station of the Shuar Federation, and subsequently *La Voz de Arutam*, are the stations that have helped bond and disseminate the Shuar culture and language among their communities, which are scattered among several Amazon-region provinces. Small initiatives such as *Jatarishum*, in the province of Sucumbíos, contribute to broadcasting indigenous-language programming for the Kichwa people of this region. Radio Sucumbíos and *La Voz del Upano* have also broadcast programming in indigenous languages.

To conclude, the State has granted radio frequencies to each of the country's 14 indigenous nationalities and begun a process of outfitting and training these radio stations to help them develop.

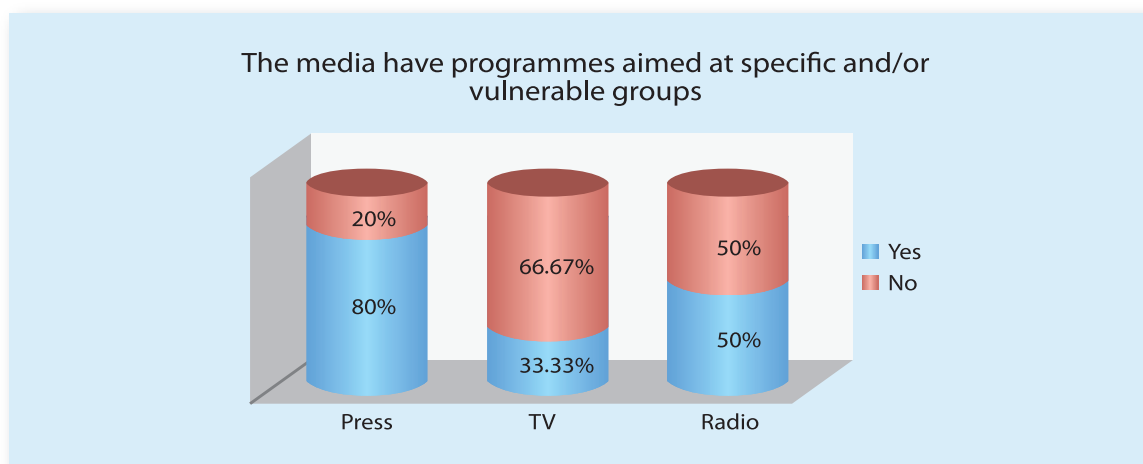
3.1.3. Media use language/s relied upon by marginalised groups

For the present analysis, marginalized (specific and/or vulnerable) groups are considered to include indigenous peoples, afro-descendants and *montubios*; LGBT persons (lesbians, gay men, bisexuals and transgender persons), refugees, displaced persons and immigrants, as well as children and adolescents, persons with disabilities and senior citizens, as well as women. These groups are constitutionally mentioned as priorities, with the exception of LGBT persons.

The results obtained from the surveys show that the print media devote more space to specific and/or vulnerable groups than do television and radio. While 80% of the press queried assured us that they devote special sections for these types of groups, only 50% of radios and only 33.33% of television channels do.

The public television channel translates its newscasts simultaneously into sign language, thereby covering the needs of people with hearing disabilities. However, none of the other media queried does this.

Graph 8



As for media willingness to use materials produced by specific and/or vulnerable groups, radio and television grant the greatest access, although not all of them – 50% of those surveyed said that they do. The situation is different for newspapers. No print media that were queried publish any products that have not been prepared by their own staff.

Finally, according to the study, Ecuador: Global Media Monitoring Project¹¹⁴, women's situation of being kept invisible in the news is very significant, and when women do appear, it is as stereotypes, performing socially assigned roles, in domestic settings and in family roles (daughter, sister, mother, etc.) In “serious” news contexts - politics, government, economics, science – men remain the majority present. The areas in which women most often appear as newsmakers is in crime and violence, health, community development, education, and human rights.

3.1.4. Community media (print or broadcast) is produced for specific groups, for example indigenous and tribal peoples, refugees

The community media queried, with no exceptions, produce programmes targeting specific and/or vulnerable groups and broadcast them daily. All community radio and television stations prepare programmes oriented toward indigenous peoples, afro-descendant minorities, *montubio* peoples, migrants and refugees, women, children and adolescents. There is less production of programmes for the elderly and disabled than the others listed above. Regarding LGBT groups, only Catholic community media produce programmes for these groups.

3.1.5. Public media in practice represent the views of the entire political spectrum and a wide spectrum of social interests, including the weakest sections of society

As for representing the entire political spectrum in the public media, the public media have been criticized for lack of openness toward political parties from the opposition. In the public newspaper, two cases illustrated the dissatisfaction of a number of journalists: two management staff were dismissed in March and April 2010 and 20 editorialists resigned to protest against “acts of censorship and violation of the rights of freedom of expression”¹¹⁵ that they denounced in an open letter on 5 April 2010.

The report on Ecuador by Reporters without Borders, *The media volcano and its delicate regulation* (2010), states that “reading or watching media such as Ecuador TV or El Telégrafo

¹¹⁴ Global Media Monitoring Project (GMMP). (2010). *¿Quién figura en las noticias? Ecuador: Informe Nacional [Who makes the news? Ecuador: National Report]*. Found at: <http://www.whomakesthenews.org/images/stories/restricted/national/Ecuador.pdf>

¹¹⁵ Found at: <http://www.telegrafoexiliado.blogspot.com/>, [24 January 2011].

shows that, in fact, there is no frank criticism of the Government.” Another case illustrates the lack of representation for the entire political spectrum: the Editor of the public newspaper said he was fired for publishing the reaction of a politician of the opposition¹¹⁶ in June 2010.

Monitoring by CIESPAL from April to September 2010 of four television news programmes on two private channels and those administered by the State showed that the media run by the State gave minimal space to opposition stakeholders. For example, in May, on the public channel only 5.3% of interviewees were from the opposition to the Government, and this was the highest figure for the six months monitored. The seized channel also showed a bias in favour of Government, while one of the two private channels (#2) had a bias towards the opposition and against the government. Private channel (#1) was the most balanced. The following chart presents this monitoring:

Table 9

Is the person interviewed, pro-governmental, neutral or with the opposition?

| CHANNEL | The person interviewed is: | April | May | June | July | August | September |
|---------------------|----------------------------|-------|------|------|------|--------|-----------|
| Private channel (1) | Pro-government | 34.6 | 30.2 | 23.1 | 29.5 | 27.1 | 29.4 |
| | Neutral | 35.8 | 34.2 | 39.7 | 21.6 | 18.8 | 35.3 |
| | Opposition | 29.6 | 35.6 | 37.2 | 48.9 | 54.1 | 35.3 |
| Private channel (2) | Pro-government | 21.9 | 12.2 | 10 | 11.1 | 28 | 8.6 |
| | Neutral | 45.3 | 48.6 | 35.6 | 24.4 | 29.4 | 36.2 |
| | Opposition | 32.8 | 39.2 | 54.4 | 64.5 | 42.6 | 55.2 |
| Seized channel | Pro-government | 37.2 | 43.3 | 36 | 52.6 | 66.7 | 62.2 |
| | Neutral | 51.2 | 53.3 | 64 | 42.1 | 27.8 | 35.1 |
| | Opposition | 11.6 | 3.4 | 0 | 5.3 | 5.5 | 2.7 |
| Public channel | Pro-government | 25 | 21.1 | 22.7 | 36.4 | 43.3 | 31.4 |
| | Neutral | 72.7 | 73.7 | 75 | 59.1 | 53.3 | 65.7 |
| | Opposition | 2.3 | 5.3 | 2.3 | 4.5 | 3.4 | 2.9 |

3.1.6. Information presented by the media is accessible to women and marginalised groups (for example, takes account of how these groups access information, including levels of literacy)

The illiteracy rate in Ecuador, according to the National Statistics and Census Institute (INEC) data as of October 2010, is 16.74% of rural population and 4.13% of urban population. Therefore, there is still a segment of society that cannot access written media. Broadcast media have greater penetration for illiterates, but no special treatment is observed for persons who cannot read.

As indicated in sub-indicator 3.1.3, sign language is used on the public television channel, directly on news or other information broadcasts, but this practice is not replicated on any other visual medium.

¹¹⁶ El Comercio. “Silencio en El Telégrafo tras la salida del Jefe de Redacción” [Silence in El Telégrafo following the departure of the Managing Editor]. Found at: <http://www4.elcomercio.com/2010-06-18/Noticias/Politica/Noticias-Secundarias/EC100618P5INDIGE.NAS.aspx>, [24 January 2011].

3.2. MEDIA ORGANIZATIONS REFLECT SOCIAL DIVERSITY THROUGH THEIR EMPLOYMENT PRACTICES

3.2.1. Female journalists are fairly represented across the media industry or sector, including at senior levels

According to the research done for this study, women's participation in the media sector varies according to the type of media outlet. 60% of the written press, both public and private, states that the percentage of women on the payroll is between 41-50%. This percentage is higher in the remaining 40% of print media, who claim they have over 50% women on the payroll.

In the case of the television media, as with the print media, no minimum participation percentages were recorded but the media consulted say they have over 50% women on their payrolls. For radio media, the trend is different, because they do have cases (16.67% of the radios surveyed) in which less than 30% of their staff are women, and 50% of radio media have no more than 31-40% women on their payroll, with only 33.33% that report having over 50%.

Women's participation in high management positions is satisfactory. Media management who were queried listed the following positions occupied by women: president, news editor, general producer, news manager, news coordinator, administrative manager, marketing manager.

To conclude, it may be said that women are involved in both private and public media, both in management and in journalistic production, in administrative and financial management.

3.2.2. Journalists from minority ethnic, linguistic or religious groups are fairly represented across the media industry or sector, including at senior levels

There is little participation by journalists from ethnic, minority or disabled groups in Ecuador's media. 77.78% of the broadcast media and 80% of print media who were interviewed have only 1-10% of their staff in such categories, and most of them are not in senior positions. They occupy such positions only in one print medium and in the public channel (two jobs). However, there are none in radio or television stations. This low participation hits zero for management positions in the administrative area, both in print and broadcast media.

Regarding disabled persons, Ecuadorian law (Labour Code, Article 42, sub-section 33) says that, in companies with more than 25 workers, there must be at least 4% of permanent staff with some disability. The only requirement for this is to be registered with the National Council on Disability and have the registration card. Under that norm, the media are obliged to meet that percentage.

B. PUBLIC SERVICE BROADCASTING MODEL

3.3. THE GOALS OF PUBLIC SERVICE BROADCASTING ARE LEGALLY DEFINED AND GUARANTEED

3.3.1. The public service remit of the PSB is clearly defined in law

In Ecuador there is no specific legislation on public service broadcasting. At present, the so-called public media have operated under the ECTV since October 2007.

This company's corporate constitution states its purpose as: "installation, operation and maintenance of the public service of television, in any of its modalities, and the creation, production, post-production of television programmes and in general all activities related to this corporate purpose."

Article 1 of its Internal Regulations say that the company “is a public service television and radio station, to provide the citizenry with entertaining and educational programming, informing impartially and with professional ethics.”

This regulatory gap and placing public media under Executive control have led to one of the hottest continuous debates about what the future Communications Law must contain about public media.

The draft Communications Law establishes that the public media are “public-law corporate persons, owned by the State.” (Article 52) The draft law includes expressly what the purpose and objectives of public media should be. (Article 53)

The purpose is defined generically as “social benefit and not for profit”. The objectives are described more precisely and include their own and those of “all media”: “information, education and entertainment.” They must also have the following specific objectives as public media: “they must mainly produce and broadcast educational contents that encourage Ecuadorian production, inclusion, inter-cultural relations, citizen participation; diversity, values, national identity, respect and care for Nature and promotion of human rights. They must also promote exchange of information and knowledge, science and technology, cultural and artistic expressions.”

3.3.2. The PSB has specific guarantees on editorial independence and appropriate and secure funding arrangements to protect it from arbitrary interference

There is no law establishing specific guarantees of editorial independence and appropriate, secure funding for public media. The Executive President is chosen by the company’s Meeting of Shareholders, who are State representatives, directors of public institutions and one presidential delegate, which shows the political dependence of these media on the Executive Branch.

This dependence is also financial. The corporate constitution of National Television of Ecuador TVECUADOR S.A. of 1 October 2007 created the corporation with a majority investment (98%) by the Ministry of Culture, and the rest (2%) from the National Telecommunications Corporation (CNT). At present, after creation of the Ministry of Telecommunications and Information Society (MINTEL), on 13 August 2009 (Executive Decree No. 8), TEVECUADOR became RTV Ecuador Public Enterprise, and is now part of this new Ministry. The delegate from this State body chairs the Board, which also includes the delegate of the National Secretariat of Planning (SENPLADES) and the National Secretariat of Communication, on behalf of the President of the Republic.

In the structure of the MINTEL, RTV Ecuador appears as part of the “related attached institutions,”¹¹⁷ and although nothing is specified about budget allocation, the annual budget to operate this public enterprise is part of the Ministry’s budget. Consequently, funding is allocated by the central government through the MINTEL.

The draft Communication Law expressly defines that the State must “guarantee” the “editorial autonomy” and “independence from political power” of the public media. (Article 52) Also, if it is approved, it provides that they “may not invest any resources from their budget for the benefit of any candidate, movement or political party.” (Article 53)

Their financing is of mixed origin, which enables a diversity of economic sources which, in principle, reduce the vulnerability of their operational autonomy. (Article 60)

¹¹⁷ Found at: <http://www.mintel.gob.ec/>, [24 January 2011].

The public media can receive income from the government budget, as well as commercial and official advertising, but providing that this is not over 30% of their total budget, and pursuant to the norms regulating competition.

They can also receive resources from sales of their productions and products, receive donations and sponsorship and through “other self-support mechanisms.”

3.3.3. The PSB has adequate technical resources

Public television has equipment purchased in 2010, which enables nationwide coverage; however, it is not covering the whole country yet, only the urban zones such as the capital cities of all 24 provinces, including the island region. The radio’s situation is different, because it covers only four cities in as many provinces, although its equipment was purchased in 2009. At any rate, the public media have sufficient technical resources, considering their recent creation and considerable coverage (see Category 5).

One of the attributes of PSB, however, is that it should cover the whole national territory, in other words it should provide universal access to all citizens.¹¹⁸

3.3.4. The PSB is publicly accountable, through its governing body

The public media, like private and community media, are obliged to be accountable pursuant to Article 88 of the Law on Citizen Participation, which states:

Citizens’ right to accountability. Citizens, individually or collectively, communities, indigenous peoples and nationalities, Afro-Ecuadorian and *montubio* peoples, and other legal forms of organization, may call upon public or private institutions providing public services, and the media, once a year, to render accounts, providing that such accountability is not covered by some other procedure in the Constitution and laws.

However, that norm does not establish the procedure or procedures for the media to render accounts to all those who are legally authorized to call for this, nor those aspects about which accounts must be rendered. Therefore, in practice, such processes have not happened yet.

Public radio and television also meet the obligation to publish on their websites, although with certain deficiencies, the information required by LOTAIP for public institutions or others that receive public funds.

No specific provisions are included to demand public accountability from public media in the draft Communications Law.

However, as with the other media and if the draft Law is approved, the public media will have to observe proper practices and ethical principles in producing and broadcasting their contents. They must have a code of ethics, which will be public, and they must make known their general data, their editorial and news policies, among others. (Article 8)

3.4. THE OPERATIONS OF PUBLIC SERVICE BROADCASTERS DO NOT EXPERIENCE DISCRIMINATION IN ANY FIELD

3.4.1. Satellite and cable carriers do not refuse to carry PSB stations or content

Satellite and cable carriers do carry public channel signals.

¹¹⁸ UNESCO. (2001). *Public broadcasting: Why? How?*

3.4.2. Public print media reach the whole country

As with public radio and television, the public press has existed for almost three years. Nevertheless, the *El Telégrafo* newspaper is not distributed nationwide, but reaches only the country's three main cities (Quito, Guayaquil and Cuenca) which concentrate about 40% of Ecuador's population.

3.5. INDEPENDENT AND TRANSPARENT SYSTEM OF GOVERNANCE

3.5.1. The PSB is overseen by an independent governing body whose autonomy is legally guaranteed

The Radio and Television of Ecuador, S.A. (RTVECUADOR) is governed by the Assembly of Shareholders and administered by a Directorate, an Executive President and an Executive Vice-President.¹¹⁹ The Assembly is made up of two members: the Ministry of Culture and Andinatel (now called National Telecommunications Corporation, CNT). At the moment of the creation of RTVECUADOR, the main holder was the Ministry of Culture which held 9,800 shares out of a total of 10,000. Andinatel held 200.

The 5 members of the Directorate are appointed by the Assembly for a period of 2 years. The Directorate appoints the Executive President and the Executive Vice-President as well as the Directorate's President. The Executive President has a 2-year, renewable mandate. There is no protection of tenure for the Directorate or its appointees.

3.5.2. Appointments to the governing body are open, transparent and free from direct government interference or control by any political or economic vested interests

Since the Assembly of shareholders (which is the governing body) is made up of the Ministry of Culture and Andinatel (now called National Telecommunications Corporation, CNT), the appointments made by the Assembly cannot be independent from the Government.

3.5.3. The governing body ensures that the PSB fulfils its public service remit and protects its independence

The governing body is mandated to ensure that the PSB fulfils its public service remit. As for protecting the PSB independence, the governing body cannot go beyond its own nature, which is not independent from Government, as explained in the indicators above.

3.6. PSBs ENGAGE WITH THE PUBLIC AND CSOs

3.6.1. The PSB has a proven commitment to consultation and engagement with the public and CSOs, including a complaints system

Based on the survey made for this study, public media use the following mechanisms of interaction with the public: letters, phone calls, e-mail, chat, live interaction in radio and TV programmes, and personal visits.

According to interviews with the leadership of the public radio and television, their programming emphasizes inclusion of the groups considered to be priorities under the Constitution, as well as cultural and gender diversity. So their programming is partly made with the inputs they have gathered from workshops and other events held with the public at large, with societal organizations, with staff of public media from other countries and with groups from various universities in Ecuador.

¹¹⁹ Constitution of Incorporation, Televisión Nacional del Ecuador (TEVECUADOR, S.A.), 11 October 2007.

Beyond the traditional “letters to the editor” that citizens send to media editors and journalists, there is no system of complaints in the public media neither to define how to process such complaints nor how to show the changes, penalties or other results that have happened on the basis of the complaint.

3.6.2. Public involvement in appointments to the governing body

There is no involvement of the public in the appointments to the governing body.

C. MEDIA SELF-REGULATION

3.7. PRINT AND BROADCAST MEDIA HAVE EFFECTIVE MECHANISMS OF SELF-REGULATION

3.7.1. Media organizations have clear codes of ethics, and sound editorial guidelines

According to the interviews conducted for this study, 72.5% of the communicators queried say that their media had a Code of Ethics and 60% said there are explicit editorial guidelines. However, several journalists in a single company provided differing answers about this, which shows that familiarity with and use of codes of ethics and editorial guidelines is not guaranteed in practice. This is clear when only 20% of print media managers state that preparatory courses are given to new personnel on ethical standards and the use of codes and guidelines. And in the case of broadcast media, only 33.33% give staff copies, as a way of dissemination. Further, when media management was asked for a copy, only one was able to provide it.

The direct research to examine information on websites about codes or self-regulation instruments revealed that only three media organizations have published them. Therefore, the media are doing little to publicize their self-regulation mechanisms publicly or within their companies. Further, the great majority of the journalist federations queried (72.7%) stated that codes of ethics are not applied in the media.

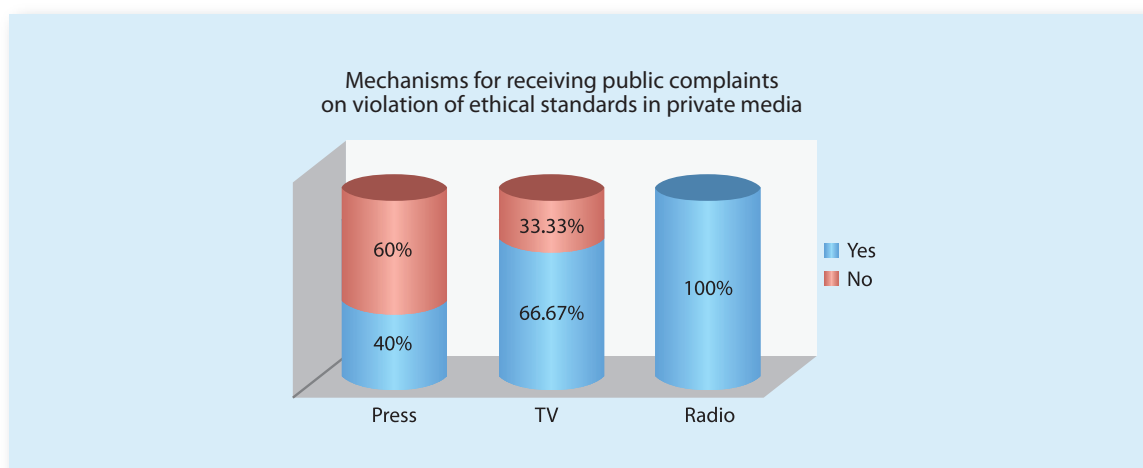
This research also showed that the broadcast media claim they have more codes of ethics (88.8%) than in the print media (66.6%), whereas it is exactly the other way round with style manuals. Editorial guidelines are also used more by radio and television (66.6%) than by the written press (16.67%).

3.7.2. At the industry level, systems exist for hearing public complaints about alleged violations of ethical standards

In Ecuador there is not an industry-wide complaints body, like for example a Press Complaints Commission for all print media.

The private media feature major differences regarding the availability of mechanisms to receive public complaints about ethical standard violations. While all radio stations say they have such mechanisms, the percentage drops to 66.67% for TV stations, and to 40% for the print media.

Graph 9



Only one print medium (*Hoy* newspaper) and one television channel (Ecuavisa) have a Reader's / Viewer's Ombudsman.

Further, only journalists' federations have courts of honour to hear complaints about their members' ethical violations. It is not known if any such courts exist in media business federations.

3.7.3. Self-regulatory bodies and news ombudsmen are independent of government and commercial interests

According to the research findings, all management of public and private media who were queried stated that their self-regulation mechanisms and news ombudsman's functions are independent of the State and of commercial interests. The great majority (97.5%) of journalists who were interviewed agree with this opinion, but there is a minority (2.5%) who feel that self-regulation mechanisms and ombudsmen are not independent of the government and 12.5% say they are not independent of commercial interests.

3.8. MEDIA DISPLAY CULTURE OF SELF-REGULATION

3.8.1. Independent journalist associations exist and disseminate good practice

In Ecuador there is a National Union of Journalists (UNP), and the Ecuadorian National Federation of Journalists (FENAPE). There are also several *colegios*, in the different provinces.

81.80% of the journalist federations that were queried stated that they do take measures to disseminate good practices, according to international standards. However, the other 18.20% take no such actions. Most federations organize fora and debates with journalists to encourage improvement of journalistic quality and they say they disseminate this type of contents on the web, radio programmes and that they are seeking alliances with organizations to promote good practices in journalists through training.

3.8.2. Media organizations are responsive to their audience, for example channels for public complaints, right of reply

The right of reply is to be found in the 2008 Constitution, Article 7, which states that:

The right of any person slandered by unproven or inaccurate information broadcast by media, to the corresponding rectification, reply or response, immediately, mandatorily and free of charge, in the same space or schedule.

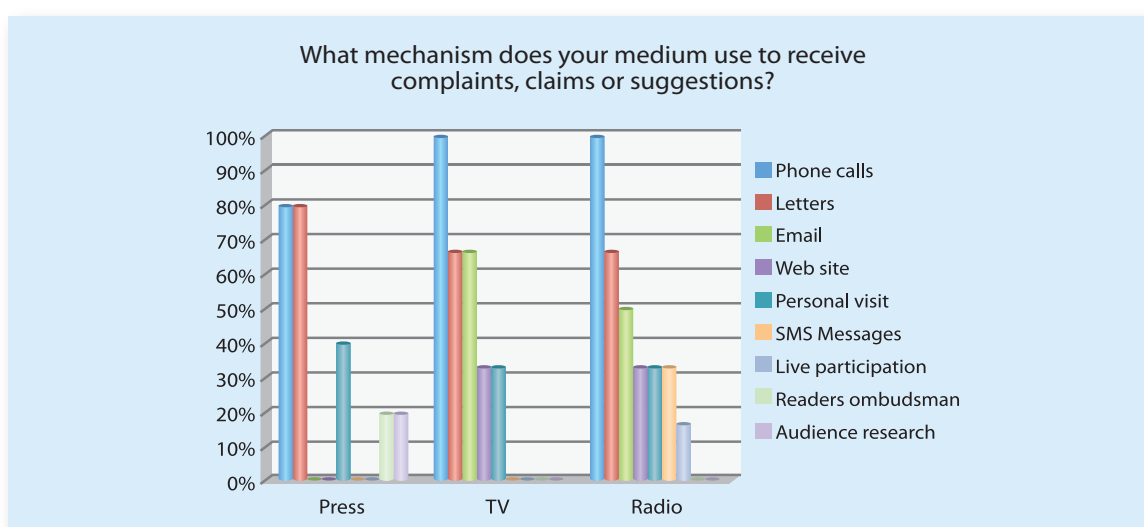
The mechanisms used by private media are: letters, phone calls, e-mails, live participation in radio and TV, personal visits, SMS messages, web sites, audience research and ombudsman (this last mechanism is used only in one newspaper, *Hoy* newspaper, and in one TV channel, Ecuavisa).

In the print media, there is a tendency to increase the number of mechanisms to receive and process complaints by readers (although not always published), including at present an error correction column, a mechanism recently adopted.

In the public media, aside from the mechanisms mentioned above (3.6.1) there is no evidence of readers' / listeners' / or viewers' ombudsmen, nor in the channels that were confiscated.

The mechanisms used by the media are outlined below. The method most used is telephone calls, followed by letters and e-mails. Live complaints happen only on the radio, and in a very small percentage (16.67%).

Graph 10



3.8.3. Self-regulatory bodies engage with CSOs and wider public and have socially diverse membership

The media that do have self-regulation mechanisms, such as the *Hoy* newspaper that has a Reader's Ombudsman, necessarily interact with the public, as shown by the publication of letters from readers and the media items referring to those contents. The error correction column that some media now have is another mechanism allowing interaction, since in some cases the mistakes are detected by readers or by the media.

Further, the media say that one of their policies to encourage self-regulation is to participate in training workshops and fora on journalistic ethics, which are mostly organized by federations or by universities, where students, organizations and public interact.

3.8.4. Journalists or media organizations do not routinely practice self-censorship

According to the study *La Palabra Rota* (2010) by Fundamedios, 15.5% of the journalists surveyed in the city of Quito and 15.25% of the journalists in Guayaquil say that self-censorship is one of the most common obstructions to freedom of the press in Ecuador.¹²⁰ Guayaquil and Quito are the cities where Ecuador's main media are located.

¹²⁰ Fundamedios. (2010). *La Palabra Rota [The Broken Word]*. Ecuador. P. 119.

D. REQUIREMENTS FOR FAIRNESS AND IMPARTIALITY

3.9. EFFECTIVE BROADCASTING CODE SETTING OUT REQUIREMENTS FOR FAIRNESS AND IMPARTIALITY

3.9.1. Broadcasting code sets out requirements of both public broadcasters and private broadcasters (for example, as a condition of retaining private broadcasting license)

Regulations on radio and television media in Ecuador are found in the Law on Radio and Television Broadcasting of 1975, amended in 1995, as indicated under Category 2. This Law defines the requirements to obtain a license, which must be respected throughout the concession period, and are listed in Chapter III "On the requirements for the Concession." Chapter IV "On prohibitions," Art. 58e, states that it will be forbidden to broadcast news based on assumptions that can cause harm or social shock. Penalties for which an operating license may be lost are listed in Title VII "On penalties."

Broadcasters are under no other legal obligation as part of their licenses to report in a fair and impartial manner on matters of public interest.

The draft Communications Law defines what the public, private and community media are, and what their purposes are (Sections I, II and III, respectively, of Title IV of the draft Law).

Although the media are not required to be impartial, as noted above (1.1) the draft Law takes up the definitions from the Constitution of the Republic regarding the right to freedom of opinion and expression in terms that are incompatible with the standards and international treaties that Ecuador has signed. Although it does not expressly name "impartiality," other similar concepts are included: information that is contextualized, verified, etc.

Insofar as the media must actually comply with these conditions, it could be considered that a media outlet is not complying with the necessary conditions to keep its license if it is considered that such rights have not been observed because they have not been "impartial."

In ethical values, nevertheless, the draft Law takes other directions. All media (public, community and private) must "observe proper practices and ethical principles in producing and broadcasting their contents," and must have a code of ethics and make public their general data, editorial and news policies, among others. (Article 8) Having this code of ethics and making it public for the citizenry to examine it is an obligation for the media to keep their license but the code is not imposed by the State. It is a condition to keep one's license to have a code, but not whether it is fulfilled or not.

3.9.2. Regulation to ensure respect for the principles of fairness, balance and impartiality during elections, for example, allocation of air time to candidates, reporting of opinion polls, quotas for political advertising, party election broadcasts, prevention of undue coverage of public authorities as prescribed in the national electoral code

The Law on Radio and Television has nothing specific on this topic, but the General Electoral Law does, in the last paragraphs of Article 202, stating that during election periods "The State, using the budget of the National Electoral Council, will equitably and equally guarantee electoral promotion to foster debate and dissemination of programmatic proposals by all candidacies. Financing will cover exclusively the advertising campaign in the written press, radio, television and billboards (...)."

The draft Communications Law has no provisions in this regard.

3.9.3. Code does not compromise the editorial independence of the media, for example imposing prior system of censorship

There is not a specific broadcasting code.

Article 18 of the current Constitution establishes that information can flow without prior censorship, and the legal system has no provision whatsoever to authorize prior review of the contents of information, except for classification of shows and contents as to whether they should be accessible to children and adolescents, pursuant to Articles 43 and 46 of the Children's Code, following Article 13 of the American Convention on Human Rights. Nor does the Law on Radio and Television establish prior censorship.

Regarding the draft of the new Communications Law, this indicator has already been analyzed under indicators 1.1.1., 1.11.1. and 1.11.2.

3.9.4. Compliance with international standards on fairness and impartiality

Compliance with international standards regarding impartiality to promote democratic speech and practices through the media is established in Articles 2, 4, 12 and 13 of the *Declaration of Principles on Freedom of Expression* of the OAS; in Articles 4, 5 and 6 of the *Declaration of Santiago on Development of the Media and Democracy in Latin America and the Caribbean*, as well as in other international instruments.

In this regard, Ecuador has serious deficiencies. The Frequency Audit Commission Report (2009) shows, as mentioned in Category 2, that the Law governing radio and television media since 1975 has not provided a parameter to promote media pluralism in the three sectors (private, public and community), and there have been irregular procedures during the reported period of 1995-2008 that fail to follow standards of impartiality and fairness.

Regarding the draft of the new Communications Law, this indicator has already been analyzed under indicators 1.1. and 1.11.

3.10. EFFECTIVE ENFORCEMENT OF BROADCASTING CODE

3.10.1. Breaches of code investigated and proportionate sanctions applied

As already mentioned, there is not a specific broadcasting code.

Concerning the CONARTEL regulations, as shown in the Report by the Radio and Television Frequency Audit Commission, the behaviour of the former CONARTEL and the SUPERTEL during the 1995-2008 period regarding breaches by private broadcasting frequency concessionaires, was indifference or extreme permissiveness. In general, such breaches were neither investigated nor penalized.

Further, the attempt to close down one radio station¹²¹ and one television channel¹²² in December 2009 reflected the high discretionary margin that this former supervisory body had when applying penalties that could affect fundamental rights, and on the basis of simple regulations featuring serious technical deficiencies, ambiguities and disproportionate measures. In other

¹²¹ Fundamedios. Alert "Radio Indígena con orden de clausura". [Indigenous Radio Station Ordered Closed] Found at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=807>

¹²² Annual Report of the Special Rapporteur for Freedom of Expression. (2009). Inter-American Commission on Human Rights. P. 86, 87. And Fundamedios. Alert "Se abre tercer proceso en contra de Teleamazonas". [Third process opens against Teleamazonas]. Found at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=657>. And Reporters Without Borders. (2009). "Teleamazonas corre el riesgo de un cierre administrativo". [Teleamazonas runs the risk of administrative closure]. Found at: <http://es.rsf.org/ecuador-teleamazonas-corre-el-riesgo-de-un-26-06-2009,33390>

words, serious breaches could receive minimal penalties and relative minor flaws could be interpreted as justification for closing down media.

Regarding the draft of the new Communications Law, this indicator cannot be analyzed because the Law has not been officially enacted and consequently there are no cases of applying its provisions in practice.

3.10.2. Proper system for dealing with public complaints

Complaints brought by citizens to the supervisory body (CONARTEL) were treated with indifference, permissiveness and discretion during the 1995-2008 period according to the Report of the Radio and Television Frequency Audit Commission.

The new regulatory body, CONATEL, has a link on its Website for comments and complaints from the public, but the two options there are first for complaints about the telephone operator and second for complaints about media contents. No other type of complaint is allowed, and the links for entering these options are disabled.¹²³

The public will have various mechanisms to demand compliance with the Communication Law if it is approved.

First, there is the right to rectification, reply or response, to which an offended person is entitled. They have 30 days from when the information comes out to present their complaint to the media outlet (Article 98). In the case of non-compliance or omission by the media outlet, the draft Law establishes that one may sue for non-compliance, pursuant to the General Law on Judicial Guarantees and Constitutional Control, without precluding other legal actions (Article 99).

As a general procedure, if the public considers that the Communications Law has been breached, they may submit complaints directly to any territorial delegation of the Communication and Information Council.

Finally, the draft Communications Law establishes that the public may appeal to the Ombudsman, who will have competencies to protect and act as guardian of communication rights (Article 51) defending individual persons and various collective bodies from the media, whether they are private, community or public media.

3.10.3. Regulation enforced with due regard to editorial freedom and independence

As already discussed in indicator 3.10.1., the attempt to close down one radio station and one television channel in December 2009, the former accused of fostering social unrest and the latter of disseminating forbidden bullfighting images and hypothetical information, reflected how the enforcement of regulation may have an influence on editorial freedom and independence, since the penalty to be applied in both cases was the closing down of the medium. However it should also be noted that neither the radio station nor the TV channel were finally closed down.

Regarding the draft of the new Communications Law, this indicator cannot be analyzed because the Law has not been officially enacted and consequently there are no cases of applying its provisions in practice.

¹²³ Found at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_chronocontact&Itemid=27

E. LEVELS OF PUBLIC TRUST AND CONFIDENCE IN THE MEDIA

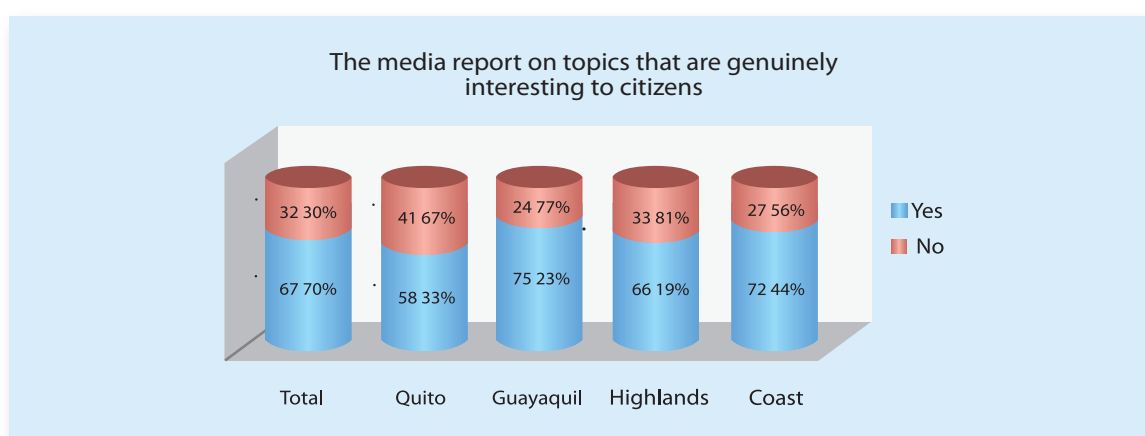
3.11. THE PUBLIC DISPLAYS HIGH LEVELS OF TRUST AND CONFIDENCE IN THE MEDIA

3.11.1. Perception that the media reports on issues of real concern to the people

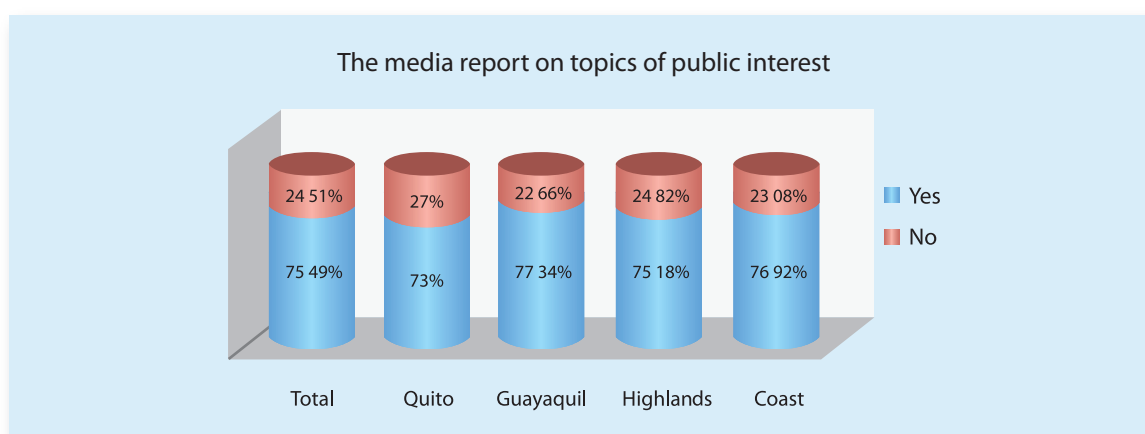
According to the survey conducted nationwide for this study, 67.70% of those surveyed stated that the media report on topics that are genuinely interesting to them. And 75.49% said that the media publish contents of public interest. No difference is evident regarding the gender perspective or socio-economic levels.

At the regional level, the coastal region identifies more with media contents (72.44%) than the Highlands (66.19%) in the case of subjects of interest, and regarding public interest there are no differences between the Highlands and the Coast; the two regions have similar percentages.

Graph 11



Graph 12



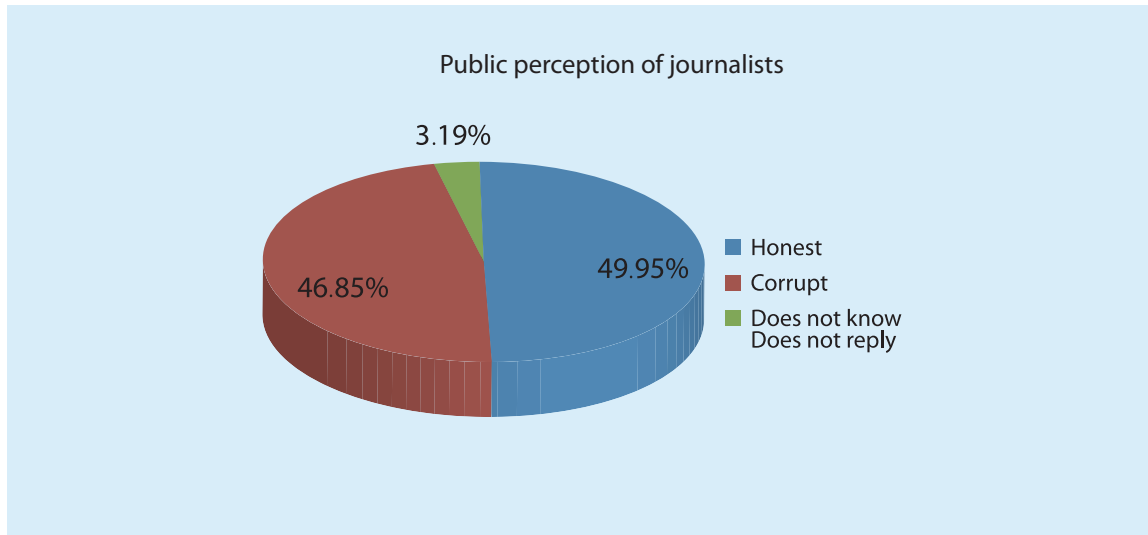
3.11.2. Satisfaction with the balance of local and national news and information

According to the survey conducted nationwide, 67.32% of the citizenry feels that the national media maintain a balance among national, regional and local information. A similar percentage (66.76%) of the citizenry feels that local media hold a balance between local and national information. No significant differences were found among socio-economic groups or according to the gender perspective.

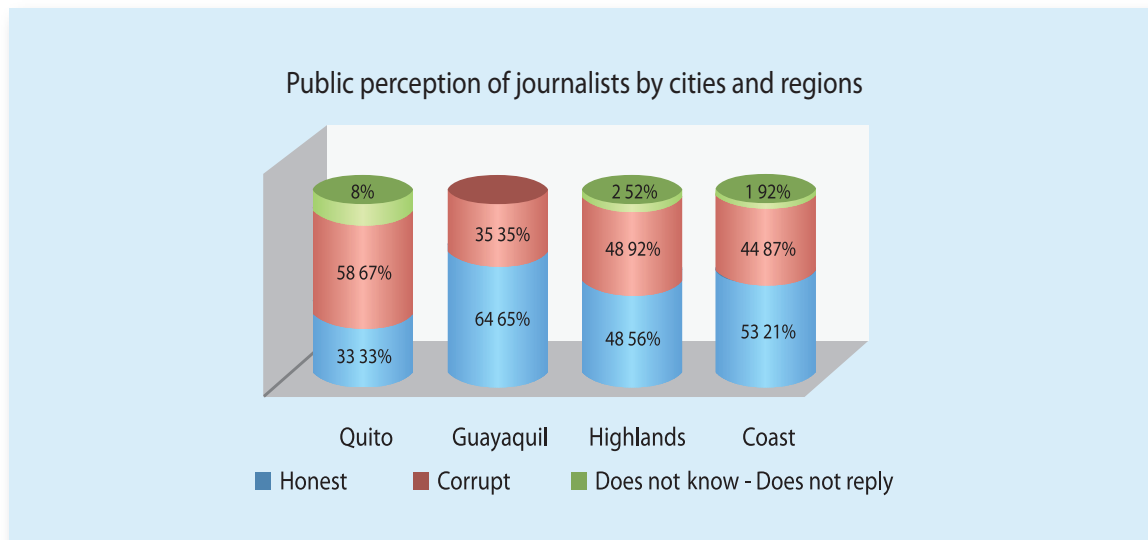
3.11.3. Perception that journalists and media organizations have integrity and are not corrupt

According to the nationwide survey, there are differing opinions about the honesty of journalists. For 49.95% of the citizenry, journalists are honest, while 46.85% feel they are corrupt. The perception of corruption is significantly higher in Quito (58.67%) and quite a bit lower in Guayaquil (35.35%). Socio-economic levels and gender make no significant differences in these perceptions.

Graph 13

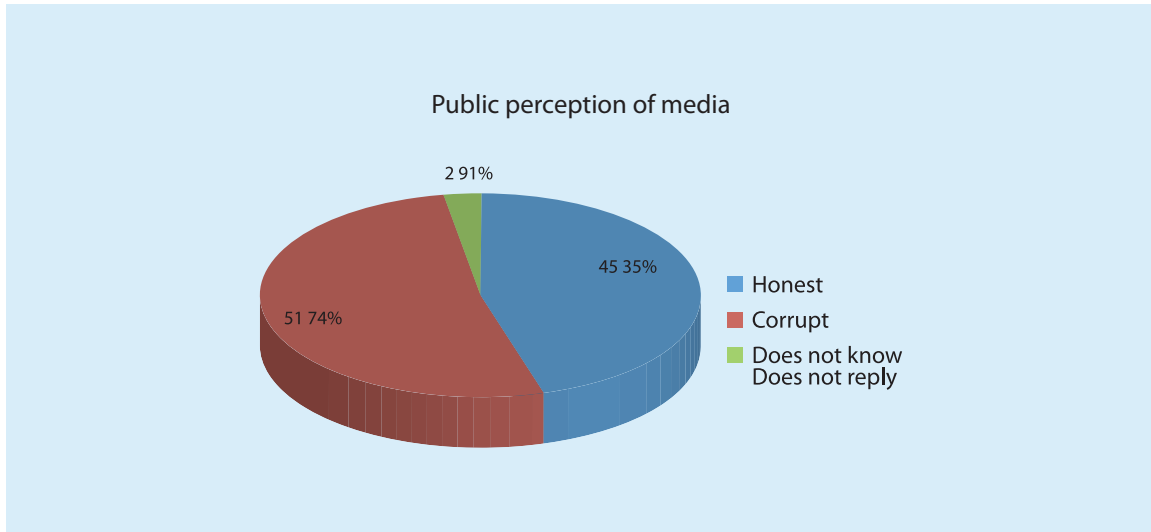


Graph 14

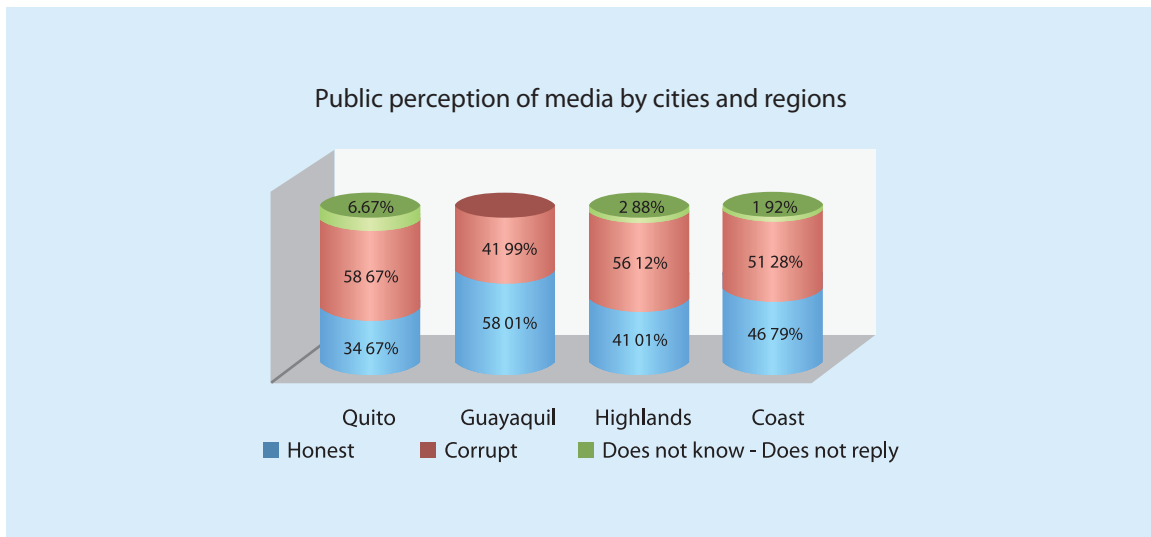


As for citizens' perception of media integrity, 51.74% consider the media are corrupt, while 45.35% feel they are honest. This reveals a marked division among the citizenry between those who have a negative perception of the media and of journalists and those who have a positive opinion.

Graph 15



Graph 16

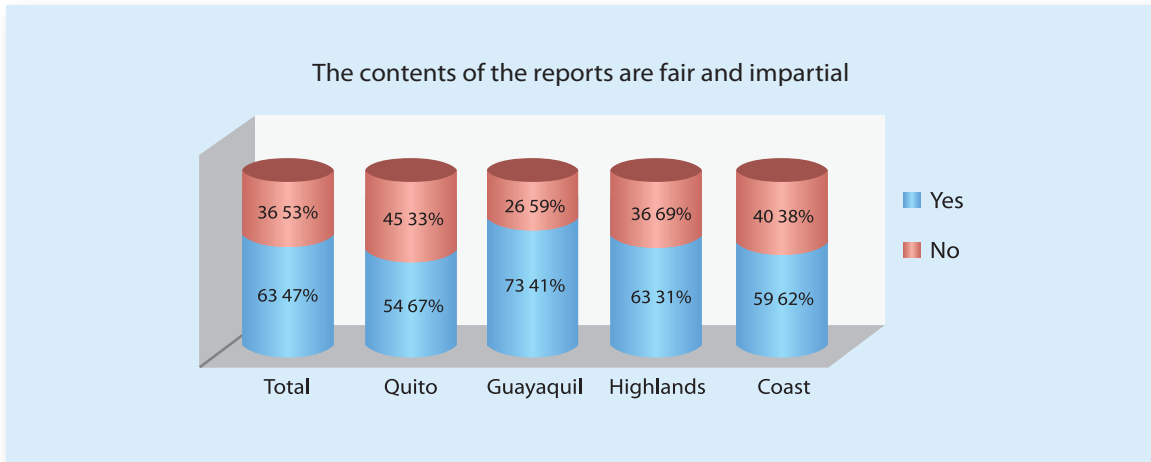


3.11.4. Perception that news reporting is fair and impartial

Despite the results of the two preceding questions, in which survey respondents nationwide said that a high percentage of journalists and media are corrupt, 63.47% of those surveyed considers that the contents of reporting and news are reliable and impartial. A higher percentage of those who believe this are in Guayaquil (73.41%), than in Quito (54.67%). As the following figure shows, in the Highlands region this belief was held by 63.31%, higher than on the Coast (59.62%). This may suggest that despite the negative opinion that some citizens may have about media, some of these same citizens still trust media content.

Among socio-economic levels, the positive perception does not vary much, from 60% to 66.13%, from the middle-class which believes the least, to the lower class, which believes the most; upper and upper-middle classes were at 65.12% and 63.72%, respectively.

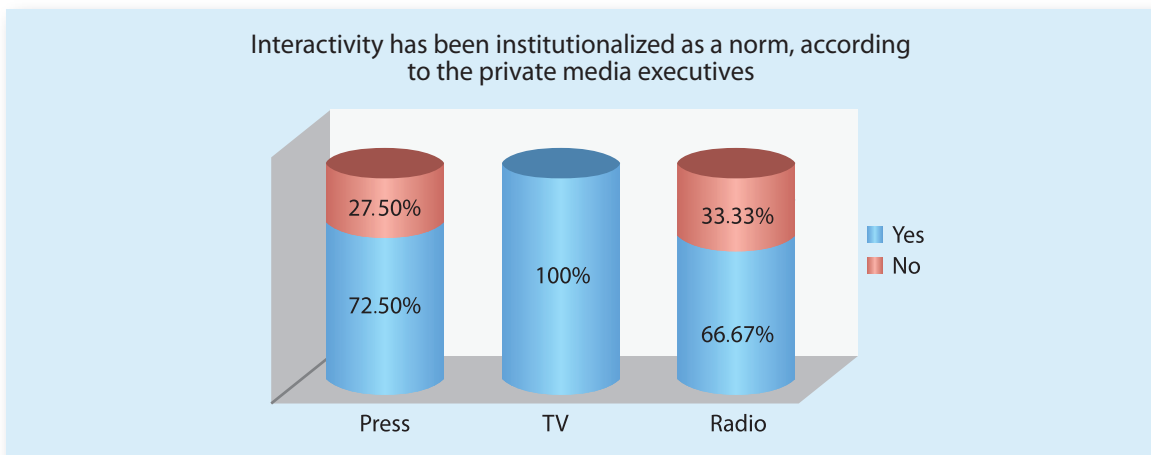
Graph 17



3.11.5. A high level of citizen participation in media as shown by: the level of audience participation in talk-back programmes, space devoted to readers' comments in newspapers, etc.

The private media queried said that their audience participation and interaction are high:

Graph 18



As shown by the preceding graph, 72.5% of the press, 100% of TV channels and 66.67% of radio stations say they have institutionalized interactivity as a norm, as mentioned in indicator 3.8.2. This high percentage, according to private media management, suggests that they have made significant headway in establishing interactive practices.

Regarding public media, they have used the mechanisms mentioned in indicator 3.6.1. The confiscated medium channel considered in the sample for this study states that it has not institutionalized interaction as a norm.

3.12. MEDIA ORGANIZATIONS ARE RESPONSIVE TO PUBLIC PERCEPTIONS OF THEIR WORK

3.12.1. Media organizations make efforts to know more about their audience and the perceptions of quality and the cultural diversity of their programmes and their news

An analysis of the information gathered from private print and broadcasting media shows that they all say they have established mechanisms to receive observations from their audiences about the quality and cultural diversity of their programmes and news. The mechanisms

implemented include predominantly letters and telephone calls, followed by websites. Only the press receives personal visits for these purposes. The variety of mechanisms used by the broadcast media to learn their audience's opinions is shown in graph 10. (see indicator 3.8.2)

3.12.2. Media organizations offer channels for audience engagement – phone-ins, debates, citizen reporting

According to the surveys conducted for this study, audiences participate in the different media through various mechanisms, as mentioned in indicators 3.6.1. and 3.8.2. It is worth mentioning public participation in opinion programmes where phone calls come in live to interact with the public. Besides, private media use social networks such as Facebook or Twitter to interact with the public and to receive information from citizenry.

3.12.3. Media organizations establish internal audit mechanisms to guarantee transparency and accountability

According to this study's findings, 80% of journalists interviewed said that the media have established internal audit mechanisms to guarantee transparency in their activity. 75% say that mechanisms have been established for accountability.

3.12.4. Community-based mechanisms for evaluating community media

In this area, no community mechanisms could be identified that are used to evaluate community media. Nor does CORAPE know of any such mechanisms.

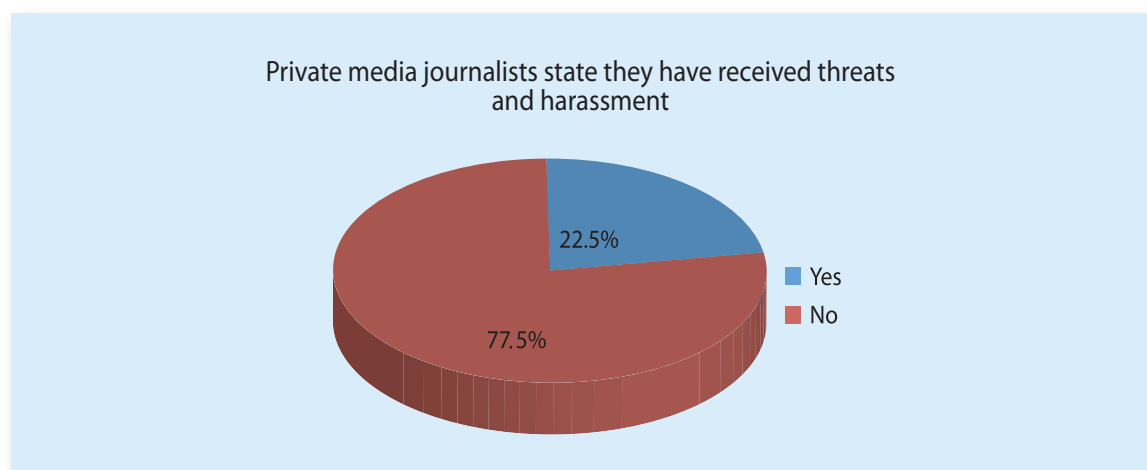
F. SAFETY OF JOURNALISTS

3.13. JOURNALISTS, ASSOCIATED MEDIA PERSONNEL AND MEDIA ORGANIZATIONS CAN PRACTICE THEIR PROFESSION IN SAFETY

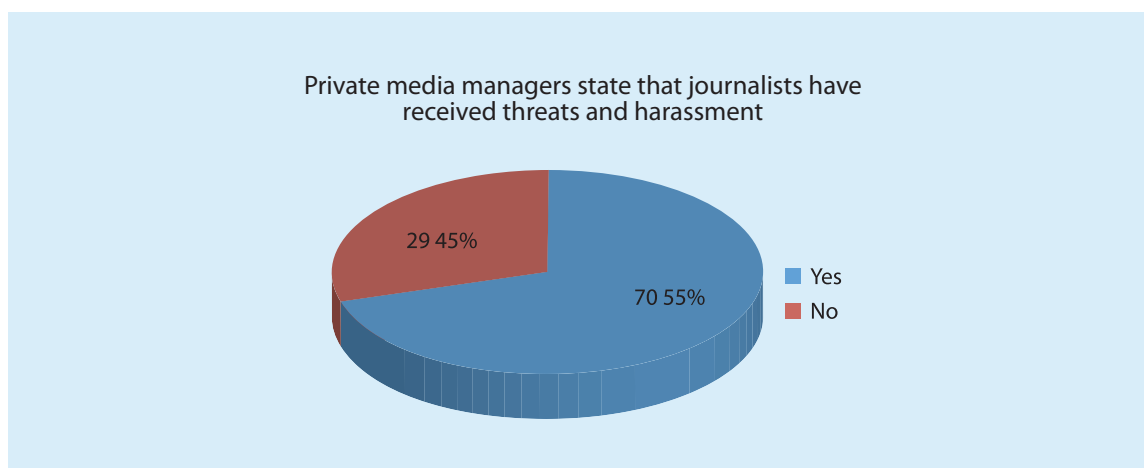
3.13.1. Journalists and associated media personnel are not subject to threats, harassment or surveillance

Although most journalists interviewed for this study (77.50%) say they have not been threatened or harassed, over half the private media management (70.55%) state that the journalists working in their media have been subject to threats and harassment, as you can see in the following graphs.

Graph 19



Graph 20



The discrepancy between the answers obtained from journalists and from media management may be explained by the fact that media management may be more aware of any cases of threats and harassments reported in the medium, while journalists were answering on an individual basis.

Threats and harassment take the form of phone calls, criminal-law or administrative lawsuits, persecutions, physical aggressions, restrictions on entry to provide coverage, threatening letters and insults, as indicated on the following chart:

Table 10

Forms of threats and/or harassments

| | Press | TV | Radio |
|-----------------------------------|-------|----|-------|
| Law suits | X | | X |
| Threatening calls | X | X | X |
| Physical aggression | X | | |
| Restrictions on news coverage | X | | |
| Insults | X | | |
| Threatening letters | | | X |
| Persecutions | | X | |
| Threats to the physical integrity | | X | |
| Threats by authorities | | | X |

According to the monitoring of Fundamedios (2010), the main aggressors are policemen, unknown individuals, militants from civil associations and political parties, demonstrators and administrative/judicial authorities, among others.¹²⁴

As for the public channel and public newspaper management they also say that their media have featured cases of journalist harassment.

3.13.2. Journalists and associated media personnel are not physically attacked, unlawfully detained or killed as a result of pursuing their legitimate activities

According to the survey for this study, most journalists have not been physically attacked or unlawfully detained as a result of pursuing their legitimate activities, but there have been some

¹²⁴ Fundamedios. (2010). *Red de monitoreo de amenazas a la libertad de prensa. Ecuador 2010. Periodistas encarcelados y amenazas de muerte*. [Network to monitor threats to freedom of the press. Ecuador 2010. Journalists jailed and death threats]. Ecuador. P. 15.

cases: 12.50% say they have been physically attacked and 2.50% say they have been unlawfully detained. In these cases the aggression has been mostly (60%) beating and 20% aggression by the National Police during overthrows of a President of the Republic and at an indigenous demonstration.

In 2010, Fundamedios detected 151 aggressions against journalists and media, among which 4 cases of murder or forced disappearance, 1 case of kidnapping and 51 cases of physical aggressions.¹²⁵

The IPDC Report on “The safety of journalists and the danger of impunity” of 2010¹²⁶ registers only two killings of journalists in 2006 condemned by UNESCO’s Director-General.

3.13.3. Media organizations are not forced to close down as a result of pursuing their legitimate activities, or threatened with closure

According to the interviews done for this study, one medium says they were closed temporarily without proof of any infractions to substantiate this. Also, 22.22% of the media management surveyed said they have received threats of closure for pursuing their legitimate activities. Furthermore, a radio station and a television channel were threatened with closure in December 2009. (see indicator 3.10.1)

3.13.4. Crimes against journalists are prosecuted and there is no climate of impunity

Journalists say a prosecution is under way regarding the death of a photographer due to police repression under Lucio Gutiérrez, in April 2005. This process is being tracked both by journalists’ federations and by human rights organizations.

The judicial inquiry concerning the killings of two journalists in 2006 is still ongoing according to the IPDC Report on “The safety of journalists and the danger of impunity” of 2010,¹²⁷ which also acknowledges the cooperation of Ecuadorian authorities in providing information regarding these two cases.

3.13.5. Media organizations have policies for protecting the health and safety of their staff

32.5% of journalists who were interviewed for this study assure that the media have no policies to protect the lives of their personnel while performing risky tasks. So, a significant percentage receives no support from their media when they provide coverage in risky situations.

According to the media management surveyed, certain measures are taken, as outlined below. The results show that the print media take the most measures, adopting some that the other media do not, such as legal assistance and life insurance.

¹²⁵ *Ibid.* P. 14.

¹²⁶ UNESCO. (2010). *The safety of journalists and the danger of impunity*. IPDC. Found at:http://portal.unesco.org/pv_obj_cache/pv_obj_id_367F5A6E906A39FC9A953704D4637B4B2E450200/filename/safety_of_journalists_27_session.pdf

¹²⁷ *Idem.*

Table 11

Policies to protect the lives and health of staff

| | Press | TV | Radio |
|------------------------------|-------|----|-------|
| Conferences are held | | X | X |
| Police backup | X | X | X |
| Giving special gear | | X | X |
| Insurance | | | X |
| Personal safety | | | X |
| Legal Assistance | X | | |
| Unconditional support | X | | |
| Protection at demonstrations | X | | |
| Private security | X | | |

Therefore, not all the media provide assistance for their journalists, leaving many unprotected.

In the public media, there is no policy of backing or assistance for journalists in risky situations. Only radio provides training for their journalists in this regard, but offers no access to special clothing or life insurance.

3.13.6. Measures of social protection are available to all staff, including temporary and freelance employees

Management of the public and private media, both print and broadcast, say that all their employees are affiliated to social security. However, communicators show a slight discrepancy of 10% who are not affiliated. Freelance journalists were not surveyed, so no information was gathered on their degree of social protection. There are also cases, especially in radio, in which journalists have to sell advertising to cover their salary.

3.14. MEDIA PRACTICE IS NOT HARMED BY A CLIMATE OF INSECURITY

3.14.1. Journalists do not routinely self-censor because of fear of punishment, harassment or attack

Fundamedios has detected, between January and December 2010, 151 aggressions against journalists and media.¹²⁸ Fundamedios feels that self-censorship has become one of the most common obstructions to freedom of the press in Ecuador. (see more in indicator 3.8.4)

3.14.2. Confidentiality of sources is protected in law and respected in practice

Article 20 of the current Constitution ensures confidentiality of sources. See more under Indicator 1.4.1.

The draft Communications Law expressly includes the right to “reserve the source and professional secrecy” (Article 16) including in its scope notes, files, personal mail and recordings, as well as “all that” which might lead to identifying their sources “directly or indirectly.”

As mentioned in the other indicator (1.4.1) above, this right has been recognized solely for “social communicators,” rather than the constitutional scope including “those who inform, issue their opinions through the media or other forms of communication, or work in any communication

¹²⁸ Fundamedios. (2010). *Red de monitoreo de amenazas a la libertad de prensa. Ecuador 2010. Periodistas encarcelados y amenazas de muerte*. [Network to monitor threats to freedom of the press. Ecuador 2010. Journalists jailed and death threats]. Ecuador. P.13.

activity” and does not expressly name professional journalists, who are referred to as different from “communicators” in another part of the draft Law.

It is also noteworthy that the wording leaves it open to not recognize this right to “exceptions derived from the Constitution of the Republic and international instruments,” instead of clear, specific listed exceptions.

Recommendations

1. The media, particularly private radio and television stations, should offer more spaces to foster cultural and language diversity and gender equality, and to address issues of interest to **specific and/or vulnerable groups**. Women should be portrayed avoiding stereotypes. For this purpose, more women journalists should be involved in the news production processes. Public media should equitably represent the opinions of the entire political spectrum.
2. The media should adopt policies to recruit journalists from **minority ethnic and language groups, women** and persons with disabilities.
3. Media should be regulated by a **modern legislative framework** (see Recommendations of Category 1 and Appendix 1) and **supervised by a body** made up of independent people who represent the public interest, independent of political and commercial interest, establishing and ensuring that specific guarantees of editorial independence, as well as appropriate, secure financing for public media, are fulfilled.
4. This body should develop a **broadcasting code** which sets out fairness and impartiality rules and ensures, for example, that each political party can obtain equitable coverage in election periods. The broadcasting code, however, should not compromise the editorial independence of the media by becoming a cloak for censorship or interference. The broadcasters should actively participate in the preparation of this code.
5. **Public Service Broadcasting** must be independent from government in its governing structures and have editorial autonomy. Its public funding must be secure, long term and stable to protect it from arbitrary interference.
6. The associations and unions of journalists should actively promote the profession's **code of ethics (or code of conduct)** focusing on accepted principles, such as the respect for truth and for the right of the public to truth, the right to fair comment and criticism, factual and objective reporting, the use of fair methods to obtain information, the willingness to correct mistakes, and respecting the confidentiality of sources.
7. The associations of journalists and the media owner representatives should develop **agreements on the rights and duties of the editors**, as an effective mechanism to ensure editorial independence without any State intervention.
8. The media should ensure they have **codes of ethics and editorial guidelines** and publicize them widely so that there is more transparency and they are used in actual practice. All journalists should get a copy or know where to consult such materials readily. Journalists' associations and unions should more actively promote such practices.
9. The private, public and community media should put into practice **implementing mechanisms** for the journalists own codes of ethics, provisions to ensure editorial independence, and media editorial guidelines, such as a **system of receiving complaints from the public (or public's Ombudsman)**, clearly establishing how such complaints will be processed and showing the changes, punishments or claims that have happened as a result of complaint submission. Private, public and community media should create and guarantee diverse mechanisms for citizen participation, beyond just inter-activity, ensuring that citizens can influence the programming and working toward educational

processes. Another implementing mechanism which has been successful in many countries is the establishment of a **press or media council**, representing the media industry and aiming at both defending their interests and improving professional standards.

10. The media must enforce the highest professional standards to improve the citizenry's **perception** of their work.
11. The media should establish **security** policies to protect the lives of their personnel while performing risky tasks and contribute to a climate of security and **independence** of economic interests and/or particular political leanings, favouring journalistic work and avoiding **self-censorship**.
12. The State, particularly the judiciary Function, should ensure that **crimes against journalists do not go unpunished**

CATEGORY 4

Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity

Executive Summary

A. AVAILABILITY OF PROFESSIONAL MEDIA TRAINING

4.1. MEDIA PROFESSIONALS CAN ACCESS TRAINING APPROPRIATE TO THEIR NEEDS

In Ecuador there is a varied range of options at the undergraduate and post-graduate university level to study communication and journalism: over 80 institutions (undergraduate, post-graduate university programmes and institutes) offer degree programmes in this area. Further, there is the training offered by the media to their journalists, 75% of the communicators interviewed confirm that they have participated in training workshops.

However, individual support by media for their journalists is meager. 60% of the journalists queried affirm that they have not received any such support, and this figure is even lower for distance studies, in which only 7.5% have received any backing. There is another shortcoming: not all journalists are aware of the specialty studies available or opportunities for exchange experience, much less any possibilities of scholarships (5%) or student loans (19.05%).

Regarding cooperation between universities and private media, 38.46% of communication departments interviewed say they have provided training courses to journalists in collaboration with private media.

4.2. MEDIA MANAGERS, INCLUDING BUSINESS MANAGERS, CAN ACCESS TRAINING APPROPRIATE TO THEIR NEEDS

Training for managers of media companies tends to be less than training provided for journalists. 75% of media directors acknowledge that such training must be reinforced.

4.3. TRAINING EQUIPS MEDIA PROFESSIONALS TO UNDERSTAND DEMOCRACY AND DEVELOPMENT

Training, at least potentially, contributes to consciousness-raising about the need to reinforce democracy and human rights. However, training for social communicators to report from the perspective of specific and/or vulnerable groups is precarious, since only 40% of the print media mentions any, while none of the broadcast media has said they have participated in such efforts.

B. AVAILABILITY OF ACADEMIC COURSES IN MEDIA PRACTICE

4.4. ACADEMIC COURSES ACCESSIBLE TO WIDE RANGE OF STUDENTS

According to data from the National Council on Higher Education (CONESUP) of Ecuador, 72 universities are accredited and have suitable parameters to operate. Of these, 40 offer 204

undergraduate degree programmes in the area of communication and nationwide, in on-campus, distance education and combined classroom / distance modalities, and grant Bachelor's ("four-year") degrees.

As for institutes offering communication studies, 23 options are registered with CONESUP, including on-campus, distance and classroom/distance modalities, for associate ("two-year") degrees ("university technician" or "technologist").

Regarding post-graduate degrees, Ecuador has 19 universities offering diploma programmes, post-graduate specializations and Master's degrees in communication and related fields.

4.5. ACADEMIC COURSES EQUIP STUDENTS WITH SKILLS AND KNOWLEDGE RELATED TO DEMOCRATIC DEVELOPMENT

Schools and departments of communication that were queried say that they do teach subjects related to the democratic development of communication, at both the undergraduate and post-graduate level, as well as providing courses on legislation, ethics, regulations, public policy and human rights, among other topics.

C. PRESENCE OF TRADE UNIONS AND PROFESSIONAL ORGANIZATIONS

4.6. MEDIA WORKERS HAVE THE RIGHT TO JOIN INDEPENDENT TRADE UNIONS AND EXERCISE THIS RIGHT

The right to form unions has been recognized in Article 326(7) of the Constitution and in Article 440 of the Labour Code, where it is elaborated amply. However, 75% of the journalists surveyed stated that, in the media where they work, no type of journalists' grouping or organization is allowed. Only 15% stated that they belong to any professional federation.

As for the right to assemble to defend their interests, owners of communication companies do exercise this right quite vigorously. Print media owners are organized in the Ecuadorian Association of Newspaper Publishers (AEDEP), owners of radio stations in the Ecuadorian Radio Broadcasting Association (AER), owners of television channels in the Ecuadorian Association of Television Channels (AECTV) and owners of local television stations in Associated Ecuadorian Regional Community Channels (CCREA).

4.7. TRADE UNIONS AND PROFESSIONAL ASSOCIATIONS PROVIDE ADVOCACY ON BEHALF OF THE PROFESSION

Only 36.36% of the journalists' federations and associations queried say that the media recognize unions, company committees, federations and associations of professionals as valid representatives. As indicated under Indicator 4.6, journalists are not actively involved in this type of associations, which means that associations of this type are not strong in advocacy for defence of the profession.

D. PRESENCE OF CIVIL SOCIETY ORGANIZATIONS

4.8. CSOs MONITOR THE MEDIA SYSTEMATICALLY

100% of the CSOs queried (6) said that they monitor the print media, 83.33% monitor television media, 66.67% monitor radio media and only 33.33% monitor digital media. 83.33% of them do monitoring on their own initiative.

4.9. CSOs PROVIDE DIRECT ADVOCACY ON ISSUES OF FREEDOM OF EXPRESSION

Three of the organizations queried do advocacy for freedom of expression. Fundamedios participates actively in defending freedom of expression and access to public information, maintains contacts with international agencies and organizes regular meetings with public officials to debate about the situation of freedom of expression in the country. *Participación Ciudadana* also conducts studies on transparency. The other organizations that were queried conduct studies focusing on the ethical behaviour of the media. The Agency of Children and Adolescents Communication (ACNNA) focuses its actions on defending freedom of expression and information for their target group.

4.10. CSOs HELP COMMUNITIES ACCESS INFORMATION AND GET THEIR VOICES HEARD

The CSOs queried report that their activities include advisory assistance for communities to improve their access to the media, providing: lectures, pamphlets and support groups. All the CSOs surveyed say that they have held training seminars for journalists or to reinforce and update journalists' knowledge over the last two years.

CATEGORY 4

Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity

A. AVAILABILITY OF PROFESSIONAL MEDIA TRAINING

4.1. MEDIA PROFESSIONALS CAN ACCESS TRAINING APPROPRIATE TO THEIR NEEDS

4.1.1. Qualification programmes for journalists exist

In Ecuador there is a varied range of options at the undergraduate and post-graduate university level to study communication and journalism: over 80 institutions (undergraduate, post-graduate university programmes and institutes) offer degree programmes in this area. (see more under indicator 4.4.1)

According to the survey made for this study, 38.46% of communication departments interviewed say they have provided training courses to journalists in collaboration with private media. These courses are listed below by type of media:

Table 12

Training courses for journalists by universities

| UNIVERSITY | COURSE | PRESS | TELEVISION | RADIO |
|------------------|---|-------|------------|-------|
| UASB | Media management | X | | |
| FLACSO | Journalism, freedom and social responsibility | X | | |
| NATIONAL IN LOJA | Print media | X | X | X |
| | Electronic garbage | X | X | X |
| UDLA | Journalistic Ethics | X | | |
| | Investigative Journalism | X | | |
| UTPL | Digital radio | X | X | X |
| | Journalistic Ethics | X | X | X |
| | Corporate Communication | X | X | X |

In addition to these courses, other agreements with institutions to reinforce training in the media have enabled 83.33% of radio stations to give training courses, 66.7% of television channels and all the print media that were queried. In this regard, 75% of journalists confirm that they have taken part in training programmes organized by their media.

4.1.2. Training programmes offered by a spectrum of providers – domestic and external

Regarding training programmes offered by local and foreign providers, all the print media say they have received offers of such programmes, and 66.67% of radio and television have received such offers. However, this percentage is lower for journalists, only 52.50% of whom have learned of available programmes. This would indicate that not all programmes offered to the media are

conveyed to their journalists. This may also be due to the fact that only half the federations (55%) know of programmes and, consequently, many of them do not publicize them.

The domestic and foreign institutions offering training programmes and listed by the media are given below. Seven of the listed institutions are Ecuadorian, and nine foreign.

Table 13

Institutions offering training programmes listed by the media

| MEDIA | Institution | National or Foreign |
|------------|---|---------------------|
| PRESS | Universities from Argentina | Foreign |
| | CIESPAL | National |
| | <i>El Universo</i> Foundation | National |
| | Simón Bolívar Andean University | National |
| | <i>Grupo de Diarios América</i> | Foreign |
| | Carolina Foundation | Foreign |
| | Stanford University | Foreign |
| | Iberoamerican Press Society | Foreign |
| | Inter-American Press Association (IAPA) | Foreign |
| TELEVISION | CIESPAL | National |
| RADIO | IPAL of Peru | Foreign |
| | Embassy of Israel | Foreign |
| | UNAM / Mexico | Foreign |
| | Radio Netherlands | Foreign |
| | Chamber of Commerce of Guayaquil | National |
| | National Police | National |
| | CIESPAL | National |
| | BBC | Foreign |

Scholarships and student loans granted by the Ecuadorian Institute of Scholarships and Educational Loans (IECE) for studies in the country and abroad, were mentioned by only 19.05% of the journalists.

4.1.3. Opportunities for qualified journalists at all levels to upgrade their skills and essential disciplinary knowledge

Only 50% of the journalists surveyed were familiar with specialized training programmes available. Print media management knew even less, only 40%, and 55.56% of broadcast media management, so the probability for journalists to upgrade their skills in specific disciplines is not high.

As for scholarships, very few journalists know of any institutions providing scholarships for specialty studies (only 5%). Although 63.64% of the federations say they know about specialty courses, only one mentioned scholarships provided by the Latin American Association of Journalists.

The institutions and universities mentioned by the federations and journalists surveyed who offer training programmes are listed below. The institutions appearing on both charts are: CIESPAL, the Simón Bolívar Andean University and the University of Loja.

Table 14

| Institutions or universities mentioned by federations | Institutions mentioned by journalists |
|---|--|
| <ul style="list-style-type: none"> Latin American Association of Journalists CIESPAL Catholic Latin American and Caribbean Communication Organization (OCLACC) University of Havana Simón Bolívar Andean University University of Loja José Martí University | <ul style="list-style-type: none"> Private Technical University of Loja (UTPL) CIESPAL FLACSO <i>Diario La Nación</i> of Argentina Simón Bolívar Andeanm University University of Loja |

4.1.4. Opportunities for regional and international exchanges and programmes

60% of the print media queried said they have exchange agreements with other media. Exchanges are between Ecuadorian media and media abroad, plus one case between local and national media. Only 33.33% of radios have exchanges, exclusively with media abroad. Television does not make this type of agreements.

Table 15

| Media abroad that have agreements with the print media of Ecuador | Media abroad that have agreements with the radio media of Ecuador |
|--|---|
| <ul style="list-style-type: none"> <i>El Comercio</i> of Lima <i>El Clarín</i> of Argentina <i>El Mercurio</i> of Chile | <ul style="list-style-type: none"> CNN <i>Radio Caracas</i> of Venezuela <i>Radio Conquistador</i> of Chile <i>Radio Sucre</i> of Bolivia |

As for other types of exchanges, only 22.50% of the journalists interviewed said they knew about available national and international exchanges and only 36.36% of the federations surveyed were aware of them. The institutions or countries offering exchanges that were listed by federations and journalists were:

Table 16

| Institutions offering exchanges mentioned by federations | Institutions or countries offering exchanges mentioned by journalists |
|--|--|
| <ul style="list-style-type: none"> Knight Centre <i>Diario El País</i> of Spain New Journalism Foundation IECE Santa Lucía University | <ul style="list-style-type: none"> United States Cuba Japan Inter-American Press Association Latin American Journalism Association José Martí University |

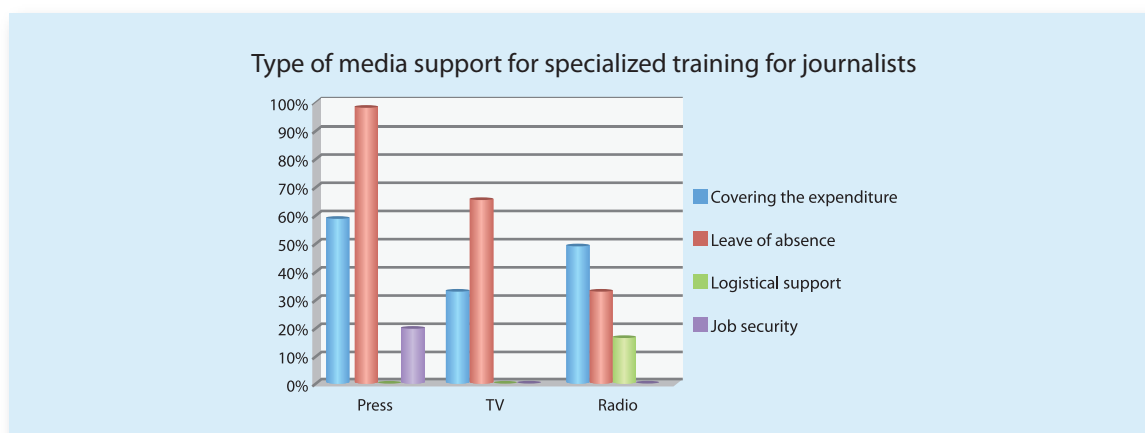
This chart shows that there is no synergy between federations and journalists, since no institutions are in both lists, which could indicate that the dissemination of information about these programmes by federations is ineffective.

4.1.5. Support for journalists who need to specialise in specific subject areas

89.89% of the broadcast media and 100% of the print media queried state that they provide support for journalists to take part in specialty course, but only 40% of journalists queried say they have received such support.

Journalists say that the type of support they have received for specialized training includes: leave of absence from work, economic support, and to a lesser degree job stability and logistical support or mobilization assistance.

Graph 21



The criteria used by media management to select staff for support involve journalists' capacities and abilities, such as their dedication and performance with tasks assigned, and also considering the position they occupy – the higher, the more flexibility.

The communicators who have received support from the media where they work have taken part in the following specialty courses:

Table 17

| Subjects of courses mentioned by journalists |
|--|
| Investigative Journalism |
| Television Production |
| Story writing |
| Ethics |
| Media management |
| Jurisprudence |
| Legislation |
| Announcer Training |
| Magazine techniques |
| Financial Journalism |
| Judicial Processes |
| Radio Production |
| History: Latin American Reality |
| Reporting techniques |
| Journalists' Safety and Risks |
| Editing techniques |

4.1.6. Training in IT skills

Only 22.50% of the journalists interviewed said they had received support from their media for IT training, although 80% of print media and 33.33% of radio media management said they had provided this type of training. Television channels do not provide this type of training.

The areas of training that have been listed by the media are as follows: software use, digital editing and ICTs in general, layout and multimedia, Internet navigation.

4.1.7. Opportunities for journalists to access distance learning

40% of print media and 66.67% of broadcast media say they support their staff to participate in distance courses, but only 7.50% of the journalists queried said they had received such support. This could be explained by the fact that media executives are aware of all the training opportunities being offered by their medium, while journalists reply on an individual basis. This may also suggest that journalists are quite misinformed about distance learning opportunities by their employers.

4.1.8. Training physically accessible to all journalists (for example, not solely concentrated in urban centres)

44% of broadcast media and 40% of print media provide training for reporters in provinces.

4.1.9. Training courses that combine production and training

67.5% of journalists say the media where they work organize theoretical and practical training courses, which matches what the media management say. The courses they mention are mostly journalism techniques (22.2%), writing (14.8%) and market research (21%); in lower proportions, under 10% each, they mentioned courses in journalistic genres such as stories and news, grammar and language, and ethics. Finally, among another 15 topics mentioned, only two have to do with ICTs: handling websites and Internet security.

4.1.10. Training uses local languages and appropriate technology

Only the public newspaper gives training in Kichwa. Training in local or native languages is quite limited, both in the media and in the federations of journalists. Further, there is a lack of training in these languages in schools and departments of communication, according to the survey conducted for this study. Students are also uninterested in learning local languages, preferring foreign languages such as English.

4.1.11. Training material is accessible and available in local languages

None of the media queried has training materials in any local languages, only in Spanish.

4.1.12. Training accessible to women and marginalised groups

Training specifically targeting women and specific and/or vulnerable groups is not significant. Only 25% of the CSOs interviewed provide training for women and 25% for specific and/or vulnerable groups. As for the media queried, most do nothing in this area. Only 16.67% of the radio stations queried say they have provided such training.

4.1.13. Training covers building awareness of the need for good systems of management, transparency and dialogue between management and staff

Television media have not provided training on management systems or transparency, and only one third (33.33%) of the radios queried had done so. In the print media, the percentage goes up to 80% in training on management systems, and to 40% in management transparency.

In training on dialogue between management and staff, the outlook is more encouraging: 80% of print media and 55.56% of broadcast media do this, but more in radio than in television, 66.67% vs. 33.33%, respectively.

4.2. MEDIA MANAGERS, INCLUDING BUSINESS MANAGERS, CAN ACCESS TRAINING APPROPRIATE TO THEIR NEEDS

4.2.1. Training for managers of media companies

Training for managers of media companies is tending to decrease. 60% of the print media say they give training to their managers, but this percentage is lower in radio media, where only 33.33% provide training for managers and none of the television media queried do. Over 75% of media management feel that this type of training should be reinforced.

4.2.2. Training in appropriate business skills including marketing, financial management

Most media queried organize no training in these areas. Only 20% of the press holds training in marketing and 20% in financial management. In radio media, only 16.67% in marketing, in financial there is no training and the television media provide no activities of this nature.

4.2.3. Training programmes accessible to women and marginalised groups

As explained under Indicator 4.2.2, training in management areas is minimal for all staff. Consequently, no courses specifically targeting women or specific and/or vulnerable groups have been given, either.

4.3. TRAINING EQUIPS MEDIA PROFESSIONALS TO UNDERSTAND DEMOCRACY AND DEVELOPMENT

4.3.1. Training helps build awareness of media's potential in fostering democracy and human rights

Considering that:

- 81.82% of communication faculties and schools include subjects in their undergraduate programmes on democracy and freedom of expression, and 50% of communication faculties that teach post-graduate studies;
- 80% of print media, 100% of radios and 66.67% of television stations organize events on democracy and freedom of expression;
- All schools and departments of communication include subjects in their undergraduate programmes on human rights;
- 50% of schools and departments of communication teach subjects involving human rights in their post-graduate courses;
- 55% of journalists report having received training on human rights.

It may be concluded that training, at least potentially, contributes to consciousness-raising about the need to reinforce democracy and human rights.

If we add the active participation by the different stakeholders and drivers of communication in the current debate on the proposed Communications Law being discussed by the National Assembly, regardless of the ideological or political positions they take, it is true that the training, whether academic, informal or in the media, has contributed effectively to encouraging positions regarding democracy and human rights. This conclusion is reinforced by the large number of new publications currently circulating in this country, along with countless articles and editorials, by a wide range of authors, appearing in the media or on different Internet sites.

4.3.2. Training equips journalists to report the perspectives of marginalised groups

However, training for social communicators to report from the perspective of specific and/or vulnerable groups is precarious, since only 40% of the print media mentions any, while none of the broadcast media has said they have participated in such efforts.

This precarious situation is corroborated by the journalists working in these media, since only 32.50% of them have received training to report from the perspective of specific and/or vulnerable groups. Journalists report that they have attended courses organized by the following institutions: CNNA, AEDEP, CORAPE and UNIFEM.

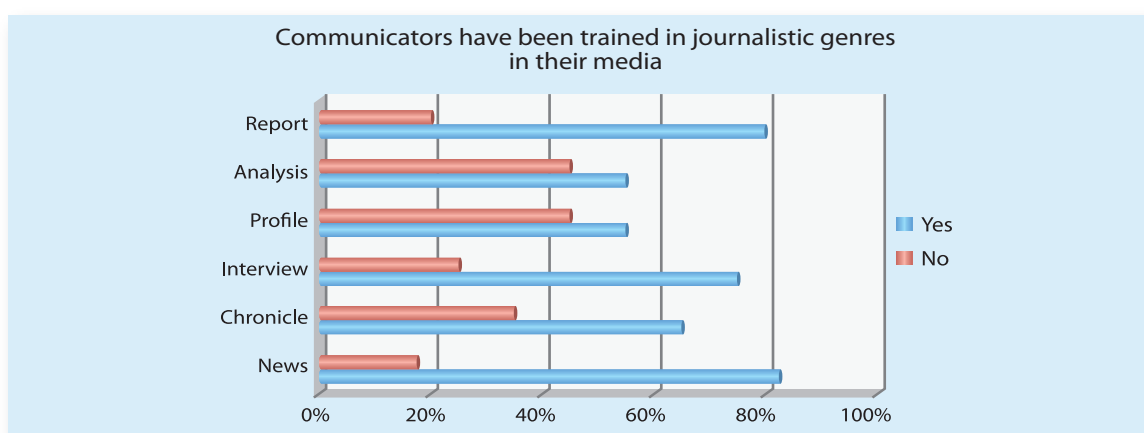
As for academic training, all schools interviewed say that their programmes include subjects in the Social Sciences, such as Anthropology and Sociology, Development and Human Rights, to provide integrated education in awareness of societal realities.

4.3.3. Training equips journalists with investigative reporting skills and related disciplinary knowledge

100% of television stations, 80% of print media, and 83.3% of radios queried have organized training courses on investigative journalism. These high percentages certainly result from the media's need to train their staff to perform one of their fundamental tasks, providing truthful, contextualized and, above all, objective information.

A similar situation to training in investigative journalism arises when the media are asked whether they train their communicators in the different journalistic genres, as confirmed by the information in the following graph.

Graph 22



Finally, the media not only provide training in investigative journalism and journalistic genres, but also on writing techniques and style, a field in which 72.4% of the media have held training events.

4.3.4. Training includes journalism ethics¹²⁹, risk awareness and first aid

Although training in journalism ethics is a priority in the media, especially in the print media, courses on dealing with emergencies and first aid are much less common than ethics courses, even though journalists may run risks as indicated under Category 3.

Whereas 100% of print media and 77.78% of broadcast media devote training courses to journalism ethics, only 40% of the print media give courses on the risks of journalism work, 50% of radio stations and 33.33% of television channels.

As for courses on coping with emergencies, the percentage is much lower: press 20%, radios 50% and higher in television media, 66.67%.

B. AVAILABILITY OF ACADEMIC COURSES IN MEDIA PRACTICE

4.4. ACADEMIC COURSES ACCESSIBLE TO WIDE RANGE OF STUDENTS

4.4.1. Universities and colleges offer undergraduate and post-graduate courses in journalism and other aspects of media

According to data from the CONESUP of Ecuador, 72 universities are accredited and have suitable parameters to operate. Of these, 40 offer 204 undergraduate degree programmes in the area of communication and nationwide, in on-campus and combined classroom/distance modalities, and grant associate (“two-year”) and bachelor’s (“four-year”) degrees.

Twenty-three institutes offering studies in communication are registered with the CONESUP, including on-campus, distance education and combined classroom/distance modalities, offering university technician or technologist’s degrees.

Regarding post-graduate degrees, Ecuador has 19 universities offering diploma programmes, post-graduate specializations and master’s degrees in communication and related fields.

4.4.2. Training materials and textbooks available in local languages

Academics queried on this subject felt that Ecuador does not have textbooks or other materials available to help educate students in local languages other than Spanish, such as Kichwa or Shuar, just to mention two of the 14 languages of the nations living together in Ecuador. Such materials are evidently also absent in Ecuador’s faculties of communication – none reported having any textbooks in the indigenous languages.

4.4.3. Necessary training equipment / technical facilities, including access to ICTs, available in media training institutions

All schools and departments of communication in Ecuador state that they have appropriate equipment and technical facilities for training events for courses given at both undergraduate and post-graduate level.

¹²⁹The concept generally used in Ecuador has been applied, although strictly speaking ethics is the philosophy of morality, containing the values of a national overall, while deontology sets the standards for sectoral activities such as journalism. Consequently, strictly speaking, we should be asking about journalism deontology.

4.5. ACADEMIC COURSES EQUIP STUDENTS WITH SKILLS AND KNOWLEDGE RELATED TO DEMOCRATIC DEVELOPMENT

4.5.1. Courses cover issues of democratic development

The schools and departments of communication queried state that they teach subjects involving democratic development of communication, at both undergraduate and post-graduate levels. These subjects include: communication for development, models of development in Latin America, social research, Latin American and contemporary thinking, sociology, development and socio-economics.

4.5.2. Courses cover issues of media law, ethics, regulation and public policy

All faculties and schools of communication report that they offer courses on legislation, ethics, regulation and public policy. These courses are available in the second, third and fourth years of undergraduate studies and at the post-graduate level, but only in half of the faculties of communication queried.

4.5.3. Courses help build awareness of the potential of media in promoting democracy and human rights

81.82% of communication schools and departments include subjects in their undergraduate programmes on democracy and freedom of expression. 50% include this sort of subjects in their post-graduate studies. All schools and departments include subjects involving human rights for undergraduates, but only 50% at the post-graduate level.

One of the rights comprising part of the freedom of expression is obviously free access to information. Consequently, knowing about laws, and about the regulations and standards governing that access, is especially important for training students in communication. Therefore, 91.91% of the communication schools queried reported that their undergraduate programmes include that type of subjects, though only 50% for post-graduate programmes.

Consequently, communication schools seem to feel that their curricula provide the knowledge that communicators should have regarding the right to access information.

4.5.4. Courses equip students with the skills needed for independent thought and analysis

All schools and departments of communication queried in Ecuador state that they teach subjects involving philosophy of science, at both undergraduate and post-graduate levels, and include subjects involving sociology in their undergraduate and post-graduate programmes, with related subjects such as anthropology, modernity, and others.

In turn, 100% of these schools include, in both their undergraduate and post-graduate curricula, analysis of history and current events. The following chart gives the subjects related to this approach.

Table 18

Subjects related to national and international affairs

| SUBJECT | UNIVERSITY | YEARS | | | | |
|--|------------------|-------|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| Current national and international reality | UDLA | | X | | | |
| Situational analysis | UPS | | X | | | |
| Communication, culture and politics | FLACSO | X | | | | |
| Intercultural Communication | FLACSO | X | | | | |
| Contemporary international conflicts | UASB | | X | | | |
| | U. OF AZUAY | X | | | | |
| | PUCE | | X | | | |
| Contemporary studies | CASA GRANDE U. | | | | | X |
| | PUCE | | X | | | |
| | UDLA | | X | | | |
| | FACSO Guayaquil | | X | | | |
| Geopolitics | UDLA | | X | | | |
| | UPTL | X | | | | |
| History of social communication | FACSO Quito | X | | | | |
| History of civilizations | FACSO Quito | X | | | | |
| History of Ecuador | PUCE | | X | | | |
| World history | PUCE | | X | | | |
| International agencies | FACSO Guayaquil | X | | | | |
| Contemporary thought | U. OF AZUAY | X | | | | |
| Cultural policy in Latin America | UASB | | | X | | |
| National Reality | FLACSO | X | | | | |
| | NATIONAL U. LOJA | X | | | | |
| | UPS | X | | | | |
| | FACSO Quito | X | | | | |
| | FACSO Guayaquil | | X | | | |
| Political theory | UPS | X | | | | |
| Public Relations | NATIONAL U. LOJA | X | | | | |
| | UTPL | | X | X | | |
| Theory of International Affairs | UASB | | X | | | |
| Contemporary studies | FACSO Guayaquil | | X | | | |

Investigation is one of the fundamental mechanisms of journalism work, so it is especially important to see whether faculties and schools of communication include, among their undergraduate and post-graduate subjects, the methodology of research. It is encouraging, in this respect, to find that all schools and departments of communication do include research, at both undergraduate and post-graduate levels, as shown in the following chart.

Table 19

Subjects on research / investigation included in schools and departments of communication

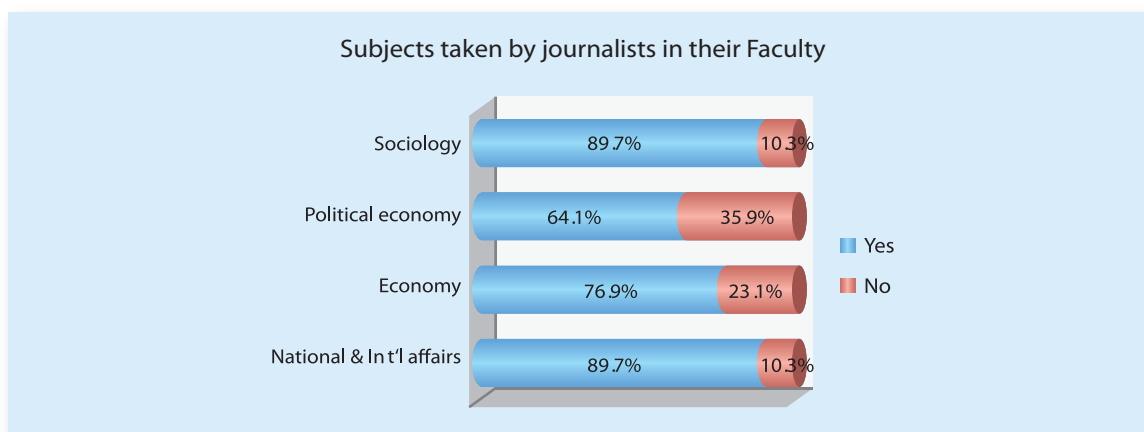
| SUBJECT | UNIVERSITY | YEARS | | | | |
|--|------------------|-------|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| Analysis of audience and contents | AZUAY | | X | | | |
| | UTPL | | | X | | |
| Interpersonal and social communication | NATIONAL U. LOJA | | X | | | |
| Urban studies | PUCE | X | | | | |
| Globalization and neoliberalism | NATIONAL U. LOJA | X | | | | |
| Scientific research | UPS | X | | | | |
| | FACSO Q. | | X | | | |
| Research in communication | NATIONAL U. LOJA | X | | | | |
| | U. OF CUENCA | | | X | | |
| | PUCE | | X | | | |
| Social research | UPS | X | | | | |
| | PUCE | X | | | | |
| | FACSO Q. | | X | | | |
| | FACSO G. | X | | | | |
| Research methodology | UPS | | | | X | |
| | CASA GRANDE U. | X | | | | |
| Methodology for degree project | UDLA | | | | X | |
| Quantitative and qualitative methods | AZUAY | X | X | | | |
| | FLACSO | X | | | | |
| | CASA GRANDE U. | | X | | | |
| Research papers | UASB | | | | | X |
| Media observatory | PUCE | | X | | | |
| Investigative journalism | PUCE | | X | | | |
| | UTPL | | | X | | |
| Thesis | UASB | | | | | X |
| | UPTL | | | | X | |

All of this would indicate that most communication schools include the subjects in their programmes that are necessary to train social communicators.

4.5.5. Courses contain essential disciplinary knowledge in the subject areas journalists are expected to cover

When professional communicators are asked whether their schooling has decisively contributed to their professional practice, 90% say it has. Most journalists say they have taken subjects that are essential for their profession, such as: national and international politics, economics, political economics and sociology. The percentages of the journalists who have taken these subjects are the following:

Graph 23



However, the percentage of journalists who have studied research / investigation is somewhat lower, 58.97%. This may result in the fact that only 64.1% say that they received adequate training to competently use oral and written language.

4.5.6. Courses on media literacy geared to the modern communications environment are provided

The overwhelming presence of new technologies has been taken adequately into account by communication schools. 90.9% give undergraduate courses in Internet and navigation and 50% do so at the post-graduate level. They also give a series of related courses, as listed below:

Table 20

| Courses on media literacy geared to communication |
|---|
| Computing applied to communication |
| Internet |
| New technologies |
| Basic Computing |
| Printing |
| Audiovisual Technology |
| SPSS (Statistical Package for Social Science) |
| 3D animation |
| Classic animation |
| Layout |
| Editing |
| Excel |
| Introduction to video |
| Multi-media on-line journalism |
| Photoshop Illustrator |
| Workshops on newspaper design |
| Networking |
| Workshops on newspaper design |

Further, over 90% of these schools state that their curricular contents cover one-way and two-way instruments and technological convergence. Importantly, contents on the uses and potential of mobile telephony in the field of information and communication appear in only 36.36% of undergraduate schools' programmes, and 50% for post-graduate studies.

C. PRESENCE OF TRADE UNIONS AND PROFESSIONAL ORGANIZATIONS

4.6. MEDIA WORKERS HAVE THE RIGHT TO JOIN INDEPENDENT TRADE UNIONS AND EXERCISE THIS RIGHT

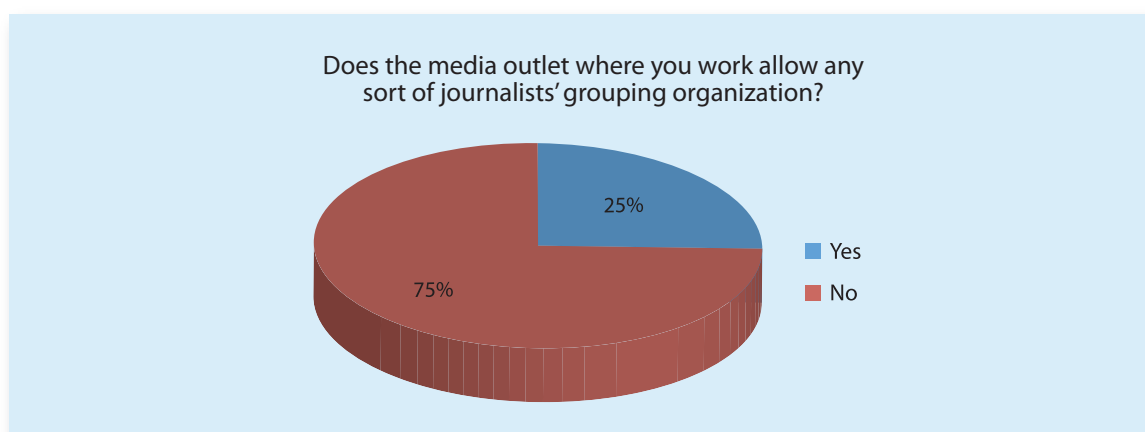
4.6.1. Right to form unions is respected in law and in practice

The right to belong to unions has been recognized in Article 326 (7) of the Constitution and in Article 440 of the Labour Code and developed thoroughly in labour legislation.

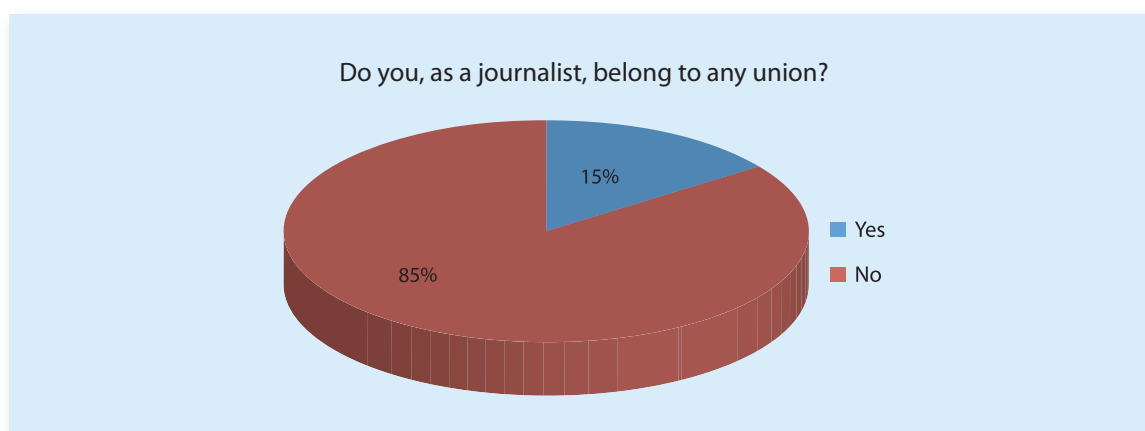
In practical terms, out of the three large public media, only *El Telégrafo* newspaper has an employees' association. In the private media, only two newspapers and one television channel have workers' associations, although the percentage of journalists who belong to them is minimal. Only 2.6% of the television channel's union members are journalists – in one of the newspapers this figure is 7.14% but in the other there are no journalists at all.

According to the survey conducted for this study, 75% of the journalists queried say that the media where they work does not allow any sort of grouping or organization of journalists. Only 15% of journalists say they belong to some union.

Graph 24



Graph 25



An analysis of the exercise of the right to join unions presents two clearly polarized positions between the information provided by media management and by communicators. Whereas journalists say that only 25% of the media respect the right to form unions, media management say they do allow the association of journalists: 100% of print media claim this, 83.33% of radios and 66.67% of television stations.

Finally, the right to associate to defend their interests has historically been exercised by owners of communication companies quite vigorously. This has contributed greatly to their high level of influence and participation in political power, and in supervisory bodies and their public policies.

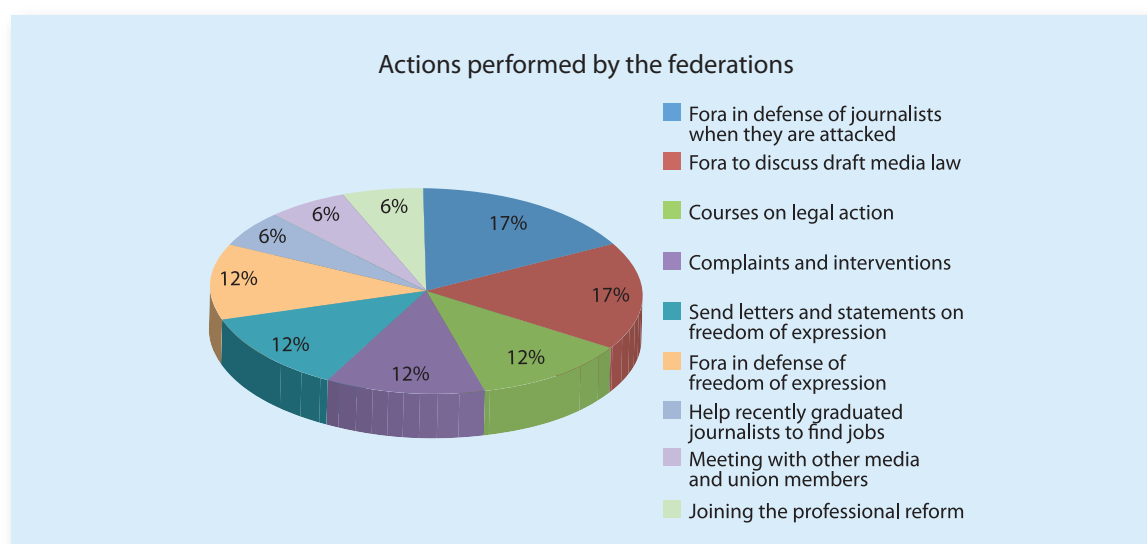
Print media owners are organized in the AEDEP, owners of radio stations in the AER, owners of television channels in the AECTV and owners of local television stations in the CCREA.

4.6.2. Right to take industrial action is respected in law and in practice

The Constitution, in Article 98, states that: "individuals and collectives may exercise their right to resistance against actions or omissions by public authorities or non-governmental individuals or corporate parties that violate or might violate their constitutional rights, and demand the recognition of new rights". Consequently, union organizations or federations have the absolute right to take collective actions in defence of their interests.

Under this premise, all those interviewed say that the union can take collective actions without interference or reprisals. And despite the weakness in association observed in the media surveyed, 90% of members say that their federations have taken actions in favour of their membership, including: contributions to the future Communications Law, organizing debates about freedom of expression, ethics, and journalists' responsibility, and protesting against abuse affecting journalists, as shown in the following chart:

Graph 26



4.6.3. National journalism associations can exercise the right to affiliate with appropriate Global Union Federations and international professional associations

54.55% of the federations interviewed (11) say that they belong to a global union federation and 27.27% of the federations say they belong to some international professional association. So, there is little involvement with world associations, which would reinforce action by these federations.

There are no references to this chapter in the draft Communications Law. References to the rights and duties of communicators and journalists are included in several articles but without mentioning their relationship to associations or as belonging to or forming them.

4.7. TRADE UNIONS AND PROFESSIONAL ASSOCIATIONS PROVIDE ADVOCACY ON BEHALF OF THE PROFESSION

4.7.1. Trade unions recognized as negotiating partners by employers' groups, both on labour and professional issues

According to the media queried, they all recognize unions, company committees, federations and associations of professionals as valid negotiating partners. However, only 36.36% of journalists' federations and associations queried say that the media accept their recommendations openly.

4.7.2. Professional journalism associations (specialist networks, press clubs, etc.) actively debate media ethics and standards

90% of journalists' federations and associations say that they actively debate ethical standards in meetings, fora and workshops organized by the federations. In this regard, only 27.27% feel that codes of ethics are applied in practice in the media.

4.7.3. Employers' associations set standards and actively defend freedom of expression

The representatives of CCREA, AER, AECTV and AEDEP, media associations and consequently employers' associations, were asked whether they take action to defend freedom of expression. 80% said that they do, for example that they stay in constant contact with the OAS and the IAPA, in order to denounce attacks against freedom of the press and obtain their backing.

4.7.4. Trade unions and professional associations disseminate codes of ethics and actively defend freedom of expression

81.8% of journalists' federations and associations report that they have disseminated codes of ethics. For this purpose, they have held meetings, workshops and fora. However, only 27.27% consider that the codes of ethics are applied in practice in the media.

4.7.5. Trade unions defend the interests of women media professionals

54.55% of the federations interviewed say that they do defend the interests of the professional women working in media, although they did not mention any actions taken in this regard.

D. PRESENCE OF CIVIL-SOCIETY ORGANIZATIONS

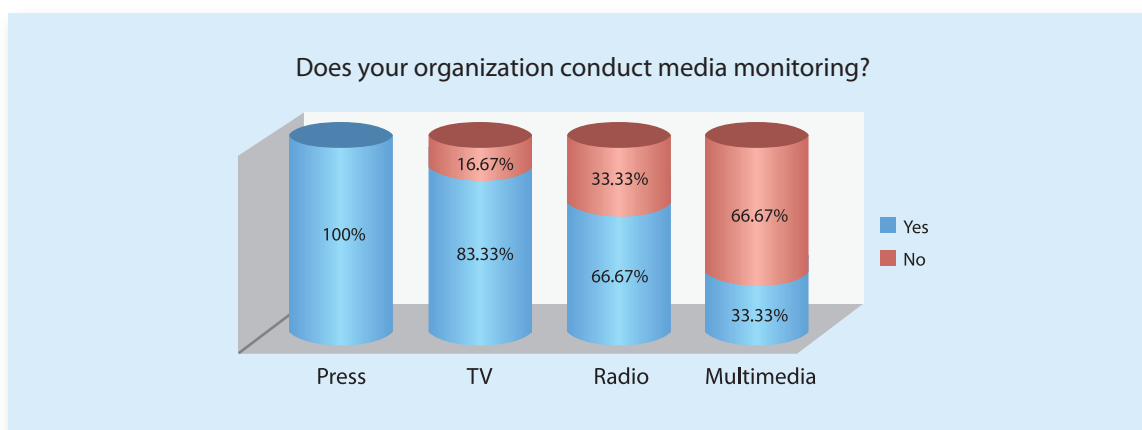
4.8. CSOs MONITOR THE MEDIA SYSTEMATICALLY

Six organizations were queried for this chapter: GAMMA, *Esperanza* Foundation, Fundamedios, *Participación Ciudadana*, ACNNA and APC.

4.8.1. CSOs monitor media content and ownership in the interests of promoting pluralism and diversity

100% of the CSOs queried monitor the print media, 83.33% monitor television media, 66.67% monitor radio media and only 33.33% monitor digital media. 83.33% of them do monitoring on their own initiative. However, no organization said it was monitoring media ownership.

Graph 27



The CSOs' goals for monitoring the media are as follows:

- Contribute to building a democratic culture;
- Determine the language used and the use of pictures of minors (children and adolescents);
- Influence informational quality;
- Detect threats to freedom of expression;
- Define the degree of media transparency; and
- Determine the issues that the media cover.

This indicates that they are monitoring to promote pluralism, diversity and informational quality. Five of these CSOs monitor daily and only one does its monitoring every three months.

4.8.2. CSO provide critical analysis of media, especially in relation to representation of marginalised groups

Only half the organizations surveyed say they have measured the levels of representation of specific and/or vulnerable groups in the media.

4.8.3. CSOs play a role in promoting media literacy

Media literacy is defined as the capacity to consult, understand, appreciate critically and create contents in the media. In this regard, GAMMA and *Esperanza* Foundation say they have held events for this purpose. The first CSO says they have organized a citizens' observatory for communication, targeting university students; the other has held a workshop for communicators on analyzing how the media cover migration issues. In addition to the different events held by these organizations, they have advised communities in how to access the media in the following fields: technical advisory support, lectures, workshops and seminars, and critical reading of information.

4.9. CSOs PROVIDE DIRECT ADVOCACY ON ISSUES OF FREEDOM OF EXPRESSION

4.9.1. CSOs actively promote freedom of expression, right to information, journalism safety

Three of the organizations queried do advocacy for freedom of expression. Fundamedios participates actively in defending freedom of expression and access to public information, maintaining contact with international agencies and ongoing meetings with public officials to debate about the situation of freedom of expression in the country. *Participación Ciudadana* also conducts studies on transparency. The Agency of Children and Adolescents Communication (ACNNA) focuses its actions on defending freedom of expression and information for their target

group. The other organizations that were queried do conduct studies focusing on the ethical behaviour of the media.

4.9.2. CSOs engage with policy makers on the issue of public policy towards the media

All these organizations have policy advocacy among their aims, for both the public sector and the media, and even among makers of communicational products such as advertising agencies.

4.10. CSOs HELP COMMUNITIES ACCESS INFORMATION AND GET THEIR VOICES HEARD

4.10.1. CSOs provide advice and assistance to people wishing to access the media

The CSOs queried report that their activities include advisory assistance for communities to improve their access to the media, providing: lectures, pamphlets and support groups.

4.10.2. CSOs involved in training journalists and capacity building

All the CSOs surveyed say that they have held training seminars for journalists or to reinforce and update journalists' knowledge over the last two years. The areas covered by the workshops are listed in the following chart.

Table 21

| Type of workshops and seminars given by CSOs |
|--|
| Critical reading of media messages |
| Human rights and migration |
| Theory and practice of journalism |
| Technical training |
| Leadership, public opinion, civil society and government |
| Communication and journalism strategies |

Recommendations

1. The media should increase their **efforts to train** their management and journalists in all areas, particularly regarding how to report from the perspective of specific or vulnerable groups and courses on handling emergencies and first aid. Journalists should be better informed about possibilities for training that are available to them and federations of journalists should publicize these opportunities in a timely, effective manner.
2. Universities and the media should more actively promote **alliances** to facilitate the development of capacities and skills of media professionals. An effective method would be the organization of internships in the media newsrooms.
3. Universities could add specific courses on journalism to their curricula in line with **NESCO's Model Curricula on Journalism Education** (see Annex 8).
4. Media management must be sure to honour **the right to form unions**.
5. CSOs should increase their **critical analysis of the media** regarding representation of specific and/or vulnerable groups, as well as promotion of media "literacy".

CATEGORY 5

Infrastructural capacity is sufficient
to support independent and pluralistic media

Executive Summary

A. AVAILABILITY AND USE OF TECHNICAL RESOURCES BY THE MEDIA

5.1. MEDIA ORGANIZATIONS HAVE ACCESS TO MODERN TECHNICAL FACILITIES FOR NEWS GATHERING, PRODUCTION AND DISTRIBUTION

The public and private media have modern technical facilities to gather, produce and distribute news, and even their own printing plants. They use ICTs as key tools to disseminate their contents and participate interactively with users. The community sector, by contrast, shows some deficiencies in optimal use of ICTs. For most community media, the cost of ICTs is too high and consequently their access is limited. However, they lead coverage in rural zones, since their transmission equipment can cover their entire community.

B. PRESS, BROADCAST AND ICT PENETRATION

5.2. MARGINALISED GROUPS HAVE ACCESS TO FORMS OF COMMUNICATION THEY CAN USE

According to the survey conducted for this study, the media have significant penetration nationwide. The private media interviewed cover the entire national territory. Public media do not cover the entire national territory, but do reach the capital cities of all 24 provinces in Ecuador, while the community media interviewed assure that their signal reaches all their communities. However, access to ICTs is not guaranteed in rural zones. There are technical and economic problems making it difficult to use ICTs.

5.3. THE COUNTRY HAS A COHERENT ICT POLICY WHICH AIMS TO MEET THE INFORMATION NEEDS OF MARGINALISED COMMUNITIES

The Government is pursuing several national plans to promote access to ICTs and guarantee Internet connection in areas that are far from urban centres. These policies are being implemented (since 2007) and the development of telecommunications is considered a strategic area for Ecuador. For this purpose, the FODETEL funds projects exclusively to provide basic telecommunications services to rural areas and urban marginal areas of Ecuador.

It should be noted that Ecuador has 14,962,850 subscribers to mobile telephone services, that is to say there are more active mobile lines than inhabitants, according to the latest statistics by SUPATEL.

CATEGORY 5

Infrastructural capacity is sufficient to support independent and pluralistic media

A. AVAILABILITY AND USE OF TECHNICAL RESOURCES BY THE MEDIA

5.1. MEDIA ORGANIZATIONS HAVE ACCESS TO MODERN TECHNICAL FACILITIES FOR NEWS GATHERING, PRODUCTION AND DISTRIBUTION

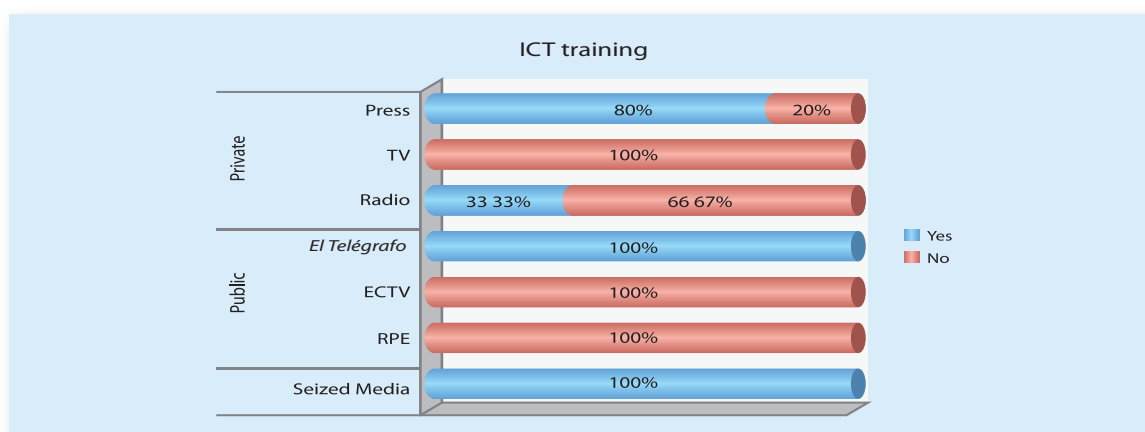
5.1.1. Journalists have secure, reliable and affordable access to ICTs, and are trained to use them effectively

According to the survey conducted for this study, 100% of the public and private media that were queried say that their access to ICTs is secure, technically reliable and economically accessible, whereas for most community media (71.43%) the cost is too high and consequently their access is limited. This means that many of these media (57.14%) do not have their own website.

All public media and the confiscated medium considered in the sample for this study have their own Internet address. Among private media, only a few radio stations do not have their own website (16.67% of those queried). In community media, this percentage of availability is 42.86%. Having their own Intranet is less common, especially among private and community media (72.22% and 28.57%, respectively), in contrast with public media, because the public radio, television and newspaper all have intranet.

As for training in ICTs, only 22.5% of the journalists interviewed for this study have received such training. Media management corroborates that not all media provide training in ICTs, only the written press contributes significantly in this area, with 80% having given this type of courses. There are two specific public media that have provided ICT training, *El Telégrafo* newspaper and the confiscated medium considered in the sample for this study. Only 33.33% of the private radio channels have provided such training, and none of the television channels has done so. Below is a chart with the figures:

Graph 28



As for access to equipment, journalists in private and public media say they have access to: digital recorders, cell phones, digital cameras, digital recording and editing equipment, websites with support for audio and video.

5.1.2. Journalists have access to a wide range of reference and archival material

75% of the journalists queried for this report say they have no restrictions on the use of print, digital or audiovisual archives. Archives are generally available to staff without constraints. Both private and public media also have print archives (including periodicals archives), audiovisual and sound archives, according to the type of media; so, for example, only radios have sound archives, although print archives are kept in press, radio and TV media.

5.1.3. Community media are equipped with appropriate technical facilities to reach marginalised communities

100% of the community media queried for this study say that the transmitters they use enable them to get their signal out to their whole coverage area, which is generally the community they serve, above all indigenous communities.

Table 22

| Coverage by province | | | | | | |
|----------------------|--|------------------------|--|--|-------------------------------|---------------------------------|
| Radio El Buen Pastor | ERPE | Radio Latacunga | TVMICC-Community Channel | Radio Ilumán and Prensa | Radio Sucumbíos | Manabí Catholic Community Radio |
| Azuay Loja | Chimborazo (Colta, Guamote) Cañar Bolívar Tungurahua Cotopaxi Pastaza | Cotopaxi Tungurahua | Cotopaxi (Latacunga, Pujilí, Saquisilí, Salcedo) Tungurahua- Chimborazo (San Andrés, Alausí) | Imbabura (Otavalo Cotacachi Antonio Ante Urcuquí) | Sucumbíos Orellana Napo | Manabí (18 out of 22 cantons) |

5.1.4. Adequate printing and distribution facilities are available to print media

The private and public press with national coverage that were interviewed for this study have their own printing facilities and distribution channels. In the community sector, the written media are as yet only incipient. There is only the monthly *Wiñay Kausay* newspaper in the province of Imbabura, and its distribution and printing are outsourced. The only newspaper in the Galapagos is monthly and is printed in Guayaquil, due to the lack of equipment in the Islands.¹³⁰

5.1.5. Media organizations make use of multi-platform delivery systems

According to the survey conducted for this study, the public and private media queried use multiple platforms to disseminate their information. The mechanisms most used are: website with audio and video support, e-mail, and social networks, such as Facebook and SMS (cell-phone) messages. Some broadcasting media disseminate some of their programmes

¹³⁰ Data gathered on-site by a UNESCO mission, March 2010.

through their websites. Community media use these tools less. 57.14% say they use Internet to disseminate information. These media use their traditional platforms (sound and/or images).

Further, in Ecuador there are 326,012 subscribers to paid television (9.8% of the population) and there are 3,021,370 Internet users (21.1% of the population).¹³¹

5.1.6. Public, private and community media use ICTs to generate citizens' engagement with the media

The public and private media that were queried use the following to interact with and receive comments from the citizenry: e-mail, chat, fora and social networks, as well as mobile telephony and SMS messages. For the community media queried, mobile telephony is the mechanism most used (71.43%) for community participation or interaction. They use Internet to a lesser degree (57.14%) and other resources not mentioned by public and private media, such as: mobile microwave unit, walkie talkie, and landline telephony. Traditional participation channels remain, such as community visits or collective meetings and landline phone calls.

B. PRESS, BROADCAST AND ICT PENETRATION

5.2. MARGINALISED GROUPS HAVE ACCESS TO FORMS OF COMMUNICATION THEY CAN USE

5.2.1. The public broadcaster is technically accessible nationwide

ECTV, the public television channel, and the RPE do not cover the entire national territory, but there are projects to achieve total coverage. As of 2010 all capital cities are covered by ECTV, including the capital of the province of Galapagos. RPE covers four cities (Quito, Guayaquil, Cuenca and Manta) and other nearby localities, in the provinces of Pichincha, Guayas, Azuay and Manabí. Projects are in place to expand this coverage.¹³²

5.2.2. The State takes positive steps to ensure maximum geographical reach of all broadcasters

According to the interviews held with the MINTEL and the National Secretariat of Communication, both agencies say they have taken steps to ensure geographical reach. However, expectations focus on adoption of digital technology, which implies that long-term measures will be taken for this new system. Nevertheless, public broadcast media (television and radio) have projects to increase their equipment's power enough to cover Ecuador's entire territory.

5.2.3. Non-print media is accessible in communities with high levels of illiteracy

Private television channels queried for this report cover the whole national territory and consequently they also reach communities with high illiteracy rates, although this may depend as well on the number of television sets in these communities and electrical supply in rural communities far away from urban centres, where most illiterate people live.

According to the 2005-2006 Living Conditions Survey, by the INEC¹³³, out of 29 different items in Ecuadorian households (some as basic as a fridge, an iron or a washing machine) the television

¹³¹ Found at: http://www.supertel.gob.ec/pdf/estadisticas/acceso_internet.pdf

¹³² Information provided by IMAGINAR.

¹³³ INEC. *Encuesta condiciones de vida 2005-2006. [Living Conditions Survey 2005-2006]*. Found at: http://www.supertel.gob.ec/pdf/publicaciones/informe_tdt_mar26_2010.pdf

set is the most frequently found. It is estimated that Ecuador has 3.3 million television sets, for an average of 1.1 sets per household.

As for public broadcasting media, as explained under sub-Indicator 5.2.1, they do not cover the entire national territory. Therefore, they have not yet reached all of the country's rural zones.

Community media remain the leaders in rural zone coverage and have even become drivers of training and literacy in communities. One example of this work is the Grassroots Radio Schools of Ecuador (ERPE), founded in 1962, which has been informing and training people, especially indigenous people, for 48 years now.

5.2.4. Community-based broadcasters or publications have high or growing levels of penetration in their target area

Community media have a high penetration rate in their area of coverage. According to the survey conducted for this study, and as indicated under sub-Indicator 5.1.3, the community media queried reach the communities almost entirely. As for producing written media, as already explained, communities have not developed this option. Radio remains the medium most used in zones remote from cities. There is one single print production, newspaper *Wiñay Kausay* in the province of Imbabura, which is bilingual (Kichwa-Spanish), and has a monthly circulation of 2000 copies. It has been distributed among the rural population of the Province since January 2007.

5.3. THE COUNTRY HAS A COHERENT ICT POLICY WHICH AIMS TO MEET THE INFORMATION NEEDS OF MARGINALISED COMMUNITIES

5.3.1. CSOs, media, government and commercial entities work together to make ICTs accessible

The Government is pursuing several national plans to promote access to ICTs and guarantee Internet connection in areas that are far from urban centres. Developing telecommunications is considered a strategic plan within the National Plan for Living Well, 2009-2013. Some of these plans are: the National Telecommunications Development Plan 2007-2012, National Plan of Connectivity 2008-2011, and the FODETEL created to fund projects exclusively to provide basic telecommunications services to rural areas and urban marginal areas of Ecuador.

From September 2000 to May 2008 this fund has collected nearly two million dollars. There are other projects promoted by the CNT and the MINTEL to narrow the digital divide and democratize access to ICTs. However, the Research Centre for the Information society (IMAGINAR) maintains that planning for ICT policies should also be reinforced by local governments.

Civil society organizations are trying to influence public policies to develop and apply ICTs. This work is being done, according to the survey conducted for this study, by the Association for Progressive Communications (APC) and the Agency of Children and Adolescents Communication (ACNNA). There is also the Infodesarrollo Network Corporation, grouping 35 organizations to promote ICTs for development. No community media involvement is visible in this area, although the community channel, TV MICC, has carried out projects to promote ICTs in rural zones.

5.3.2. Pricing policy does not exclude marginalised communities

Fixed telephony has differentiated categories to benefit the most vulnerable sectors and although mobile telephony has no special benefits for marginalized sectors, the companies providing mobile service have established rate ceilings in their contracts, so end consumer prices do not go up.

It should be noted that Ecuador has 14,962,850 subscribers to mobile telephone services, that is to say there are more active mobile lines than inhabitants, according to the latest statistics by SUPATEL.¹³⁴

In the city of Cuenca there are “zero rates” for specific and/or vulnerable groups to include them in access to ICTs.

5.3.3. Existence of a digital migration policy and strategy

The process of converting analogue television to digital in Ecuador has not gone beyond choosing a standard. On 26 March 2010, the Brazilian standard (ISDB-T/SBTVD) was chosen. No dates have yet been set for migration from the analogue to the digital system, so the allocation of digital licenses has not yet begun, nor has the current Law on Radio and Television been amended or a new one enacted.

¹³⁴ Found at: <http://www.supertel.gob.ec/pdf/estadisticas/sma.pdf>

Recommendations

1. The **community sector** should be supported to provide greater **access to Information and Communication Technologies (ICTs)**. For this purpose, policies should offer favourable conditions of access for these media, particularly in rural zones.
2. The Government should continue promoting access to ICTs and **guarantee affordable connection to Internet in areas remote from urban centres**, to foster media, particularly community media, to have a presence on the web.
3. It is indispensable, in the digital era, for the media to expand **training in ICTs**, to ensure these are used and fully exploited, particularly when searching for information. Full adoption of new information technologies is also necessary to increase citizen participation.
4. Taking into account that ITU advises 2015 as the analog switch-off date and that Ecuador has set 2020 as the switch-off deadline, public authorities should develop a **precise plan for digital migration**, which will ensure equitable presence of all three tiers of broadcasters in the new digital system.
5. Relevant public institutions should promote, starting immediately, **the training required to migrate from analogue to digital television both for media as for citizenry**. Training must be oriented not only toward spreading knowledge on using the new system but also particularly about the possibilities offered by digital terrestrial television (DTT) for citizen participation.
6. Current laws do not legislate the **sharing of the digital dividend** which will result from the analogical transition to digital systems, particularly among the three sectors (private, public and community). New legislation in this area should use the new digital opportunities to promote the democratization of frequency allocation and give more access to sectors that have been underrepresented so far in the Ecuadorian audiovisual landscape.

APPENDIX

Guidelines for broadcast regulation Outline law

| A. Definitions | B. Objects of the Law | C. The Broadcasting Commission | | | |
|--|---|---|---|---|--|
| Definitions of the terms used in the Law, such as: | <ol style="list-style-type: none"> 1. The specific public policy objectives that the law is intended to cover 2. Freedom of expression should be guaranteed 3. The editorial independence of broadcasters should be guaranteed | 1. Appointment of Members | 2. Commission processes | 3. Accountability | 4. Funding |
| <ol style="list-style-type: none"> 1. "Broadcasting" 2. "Television broadcasting" 3. "Radio broadcasting" 4. "Broadcaster" 5. "Advertising" 6. "Sponsorship" | | <ol style="list-style-type: none"> a. Qualifications and disqualifications for appointment b. Process of Appointment c. Appointment of Chairman and Deputy Chairman d. Term of Office, and whether it is renewable e. Conflicts of interest f. Members' remuneration g. Termination of appointment | <ol style="list-style-type: none"> a. Arrangements for meetings b. Quorum c. Minutes | <ol style="list-style-type: none"> a. Annual report and accounts b. Public hearings | <ol style="list-style-type: none"> a. Sources of funding b. Agreeing annual budget c. Power to set fees for applications, licence awards, and annual licence fees |

| H. Licensing | | | |
|--------------------------------------|--|--|---|
| 1. Unlicensed operators - illegality | 2. Advertisement Process | 3. Application Process | 4. Award Process |
| | Terms to be included in the advertisement (type of licence, coverage area, term of licence, major format obligations, deadline for applications) | Applications to be in prescribed form, submitted by due date, with application fee | <ol style="list-style-type: none"> a. Basic criteria for licence awards will be in compliance with the ownership rules, and ability to fund the service for the licence term. Additional criteria will vary according to the class of licence, and whether an auction or competitive tender is involved. b. National terrestrial television services c. Local/regional terrestrial television services d. Community television services e. National radio services f. Local/regional radio services g. Community radio services h. Satellite services i. Cable services j. Digital services |

| J. Content standards | | | | |
|--|---|--|--|---|
| Applied to programmes | Applied to programmes and advertising | | Applied to advertising and sponsorship | Applied to advertising |
| <ol style="list-style-type: none"> 1. Accuracy and impartiality in news 2. Religious programmes 3. Privacy and the right of reply 4. Party political and party election broadcasts 5. Election coverage | <ol style="list-style-type: none"> 1. Protection of minors Obligations regarding scheduling, warnings or ratings 2. Offence to human dignity 3. Incitement to crime and disorder Any proposal to apply a significant sanction will be considered at a public hearing 4. Incitement to hatred or contempt on grounds of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability | <ol style="list-style-type: none"> 5. Protection against harm <ol style="list-style-type: none"> a. Actual harm, such as on-air hypnosis, or flashing lights b. No encouragement of behaviour which is harmful to health or safety | <ol style="list-style-type: none"> 1. Separation of advertising and programming 2. Surreptitious advertising/product placement | <ol style="list-style-type: none"> 1. Prohibited advertisers 2. Restricted advertisers 3. Advertising must not be misleading 4. Power to direct the removal or rescheduling of advertising 5. Amount and scheduling of advertising |

| | | | | |
|---|---|---|---|--|
| | D. Jurisdiction | E. Ownership rules | F. Production quotas | G. Copyright |
| 5. Information powers | <p>1. The basis upon which the Broadcasting Commission has jurisdiction: use of nationally assigned radio-spectrum, cable and satellite</p> <p>2. Power for the Broadcasting Commission to recommend that government proscribes illegal/unacceptable services originating from outside the jurisdiction</p> | <p>1. Legal Person</p> <p>2. Fit and Proper</p> <p>3. Prohibited and restricted owners</p> <p>4. Definition of Control</p> <p>5. Changes of Control</p> <p>6. Limits on ownership: within media, within localities, cross-media</p> | <p>1. National production quotas</p> <p>2. Indigenous language quotas</p> <p>3. Independent production quotas</p> | <p>Broadcasters shall not broadcast any works outside of the terms agreed with the right holders</p> |
| <p>a. Power to demand information pursuant to regulatory functions</p> <p>b. Power to demand copies of recordings of broadcast output</p> | | | | |

| | | | |
|--|--|--|--|
| | | | I. Emergency Broadcasts |
| 5. Renewal Process | 6. Licence Conditions | 7. Amendments to Licence Conditions | <p>Reserve the right for the government or relevant Ministry to direct the broadcast of announcements and information in the event of an emergency</p> |
| <p>a. Date at which a licence will be considered for renewal</p> <p>b. Whether there is a presumption of renewal, or full re-advertisement</p> | <p>a. Requirement that licensees will meet conditions set out in their licences reflecting the terms under which the licence was advertised, and as reflected in their applications</p> <p>b. Obligation that they will meet the ownership requirements at all times</p> <p>c. Obligation to comply with all legal requirements, including any Codes issued by the Broadcasting Commission under this Law or any secondary legislation</p> | <p>a. Amendments made by the Broadcasting Commission</p> <p>b. Amendments proposed by the licensee</p> | |

| | | | |
|---|---|--|--|
| | | K. Retention of recordings | L. Sanctions |
| Applied to sponsorship | Applied to programmes, advertising and sponsorship | <p>The obligation of broadcasters to retain recordings for a set period, and to provide recordings to the Broadcasting Commission for the exercise of their regulatory functions</p> | <p>1. List of sanctions</p> <p>2. Requirement for the Broadcasting Commission to publish its policy on the application of sanctions, and its sanctions procedure</p> <p>3. Right of appeal (with implementation of sanction, notwithstanding an appeal is pending)</p> |
| <p>1. Identification of sponsor, and the fact the programme is sponsored</p> <p>2. Prohibited and restricted sponsorship</p> <p>3. Prohibited and restricted sponsors</p> | <p>1. The power to write and apply Codes</p> | | |

(Source: "Guidelines for broadcast regulation," CBA/UNESCO, 2008, See full text in CD-ROM attached)

APPENDIX

Guidelines for Broadcast Regulation, CBA and UNESCO

ANNEX (in attached CD-Rom)

1. Media Development Indicators, UNESCO, 2008
2. International Instruments and Standards for the application of Categories 1 & 2 of UNESCO's Media Development Indicators:

United Nations

- Universal Declaration of Human Rights, (1948), United Nations.
- Convention on the Rights of the Child, (1959), United Nations.
- International Convention on the Elimination of All Forms of Racial Discrimination, (1965), United Nations.
- International Covenant on Civil and Political Rights, (1966), United Nations.
- International Covenant on Economic, Social and Cultural Rights, (1966), United Nations.
- Convention on the Elimination of All Forms of Discrimination Against Women, (1979), United Nations.
- Declaration on the Rights of Indigenous Peoples, (2007), United Nations.
- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (2010), United Nations.

Organization of American States

- American Declaration of the Rights and Duties of Man, (1948), OAS.
- American Convention on Human Rights, (1969), OAS. Costa Rica.
- Advisory Opinion OC-5/85, (1985), Inter-American Court of Human Rights.
- Advisory Opinion OC-6/86, (1986), Inter-American Court of Human Rights.
- Annual Report of the Inter-American Commission on Human Rights, (1994), Chapter V: "Report on the Compatibility of 'Desacato' Laws with the American Convention on Human Rights". Inter-American Commission on Human Rights.
- Declaration of Principles on Freedom of Expression, (2000), Inter-American Commission on Human Rights.
- Annual Report of the Office of the Special Rapporteur for Freedom of Expression, (2000), Inter-American Commission on Human Rights.
- Case of The Last Temptation of Christ (Olmedo Bustos et al. Vs. Chile), (2001), Inter-American Court of Human Rights.
- Case of Claude-Reyes et al. vs. Chile, (2006), Inter-American Commission on Human Rights.

- Annual Report of the Office of the Special Rapporteur for Freedom of Expression, (2007), Inter-American Commission on Human Rights.
- Annual Report of the Office of the Special Rapporteur for Freedom of Expression, (2008), Inter-American Commission on Human Rights.
- Principles on the Right of Access to Information, (2008), Inter-American Judiciary Committee, OAS. Brazil.
- Annual Report of the Office of the Special Rapporteur for Freedom of Expression, (2009), Inter-American Commission on Human Rights.
- The Inter-American Legal Framework regarding the Right to Access to Information, (2010), Inter-American Commission on Human Rights.
- Model Inter-American Law on Access to Public information, (2010), Committee on Juridical and Political Affairs, OAS.
- Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information, (2010), Committee on Juridical and Political Affairs, OAS.
- Freedom of Expression Standards for Free and Inclusive Broadcasting, (2010), Inter-American Commission on Human Rights.

UNESCO

- Declaration of Santiago, (1994), UNESCO.
- Outline Model Public Service Broadcasting Law and Aspects of Regulating Commercial Broadcasting, (1999), UNESCO.
- Model Public Service Broadcasting Law and Aspects of Regulating Commercial Broadcasting, (1999), UNESCO.
- Mendel Toby, (2000), Public Service Broadcasting. A comparative Legal Survey.
- Public Broadcasting: Why? How?, (2001), UNESCO.
- Universal Declaration on Cultural Diversity, (2001), UNESCO.
- Eve Salomon, (2008), Guidelines for Broadcasting Regulation.
- Mendel Toby, (2009), The Right to Information in Latin America, A comparative legal survey.
- The safety of journalists and the danger of impunity, (2010), UNESCO.

Other relevant documents

- Organization Article 19, (2002), Access to the Airwaves, Principles on Freedom of Expression and Broadcast Regulation. London.
 - Organization Article 19, (2006), Defamation ABC, A simple introduction to key concepts of defamation law. London.
 - Joint Declaration on Diversity in Broadcasting, (2007), UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. Netherlands.
3. Matrix of Categories 3, 4 and 5 (indicators, questions and target groups) (Only Spanish version)
 4. Question bank (Only Spanish version)
 5. List of informants
 6. List of members of Consultative Group (Only Spanish version)
 7. List of participants of Quito and Guayaquil workshops (validation of methodology) (Only Spanish version)
 8. Model Curricula for Journalism Education