

HEARING ON THE SITUATION OF FREEDOM OF EXPRESSION IN ECUADOR

CÉSAR RICAURTE

Madam President, Commissioners, Mr. Rapporteur, Mr. Executive Secretary:

We thank you for holding this hearing. We regret the third consecutive absence of the State's representatives in this session, which reveals the attitude of neglect and open disrespect of both the Honorable Commission and of those who suffer violations of our fundamental rights.

Since the last hearing on this matter, attacks and threats against journalists, media, and ordinary citizens have increased dramatically: 46% compared to 2013. During 2014, 254 were reported. The trend has not stopped: 46 in January and February 2015 alone, which without a doubt has been the period with the most direct attacks against freedom of expression in Ecuador. The main type of aggression is "arbitrary judicial and administrative decisions," followed by "verbal aggression," the "abuse of state power" and "attacks by censorship."

This increase is explained largely by the restrictive application of the Communications Law, legislation which, according to the Honorable Commission and its Special Rapporteur, contradicts international standards. Without regard for the pronouncements of human rights organizations, the Constitutional Court ruled in September 2014 that the Law is in full accordance with the Constitution and international human rights instruments. In the opinion of the judges, whose President Patricio Pazmiño aspires to occupy a place in the Inter-American Court, the Law does not affect fundamental rights.

The Superintendency of Information and Communication has arbitrarily applied the legislation. "We have legislation and we will use it," said the President of the Republic, and he has done just that. As of last Friday there have been 265 cases that have resulted in 82 sanctions against media and journalists. Media outlets are punished for their headlines, for their "sensationalist" editorials, for not rectifying the views of their writers. Humor is also punished, as well as cartoonists because their drawings "discriminate," and comedy programs for playing with double meanings.

Official actions of the Superintendency, government officials, politicians, ex-candidates, and groups related to the administration in power have extensively used the Law, which hasn't served to democratize speech or defend citizens, but as an instrument of control of independent opinion and information. In fact, at this time the ownership of state and private media outlets has become more concentrated in the hands of large conglomerates with continental reach, and the community sector remains absolutely marginal.

In contrast, it is small media that have suffered the most consequences with the implementation of the Law. TV stations, print media, and local radio stations have

been sanctioned with substantial financial fines, which in many cases even exceed their assets, risking their very existence.

These cases are in the hands of a Superintendent, who acknowledged that a magazine like Charlie Hebdo could not be published in Ecuador, and that, as there are certain media that resist compliance with the Law, it will be applied until they disappear. Ochoa has also stated that in order to improve the legislation and avoid giving only "simple reprimands," he will propose amendments to the Law to make the sanctions harsher.

In addition to the general climate of censorship previously described, in the past months the pressure has been increased on those who express themselves on the Internet. Some of the main threats to freedom of expression on the Internet are: increased censorship of accounts and content, approval of restrictive legislation, abuse of United States copyright laws, application of vague or broad statutes in order to silence critical voices, and the initiation of official operations to reveal the identities of users who invoke their right to anonymity.

Finally, it is necessary to mention that the National Assembly continues to encourage a constitutional amendment in order to make communication a public service. Various organizations and international agencies have warned of the repercussions of this categorization, even noting that "it is a mistaken view," as "a public service is a service that the State somehow owns," which "is good for water, electricity, healthcare, and education, but we are talking about freedom of expression, not something else."

VICENTE ORDÓÑEZ

I bring to you the voice of Ecuadorian journalists who are concerned about the state of freedom of expression and of the press in my country, whose restrictions and difficulties in practicing their profession are ever increasing. I represent the National Union of Journalists of Ecuador, the largest and most prestigious union in the country with 75 years as an institution.

Since eight years ago, Ecuadorian journalism has received systematic attacks from the highest echelons of power. Journalists and media outlets have been harshly criticized for not reproducing the official truth. The Ecuadorian government has branded journalism as a political actor and has cast it as its main opponent, because it does not understand, or does not want to understand, that we journalists seek not to contest its truths, but to put the facts in perspective.

With this argument various journalists have been pressured and attacked by the administration until it achieves their departure from the media. But many others of us continue to resist the daily onslaught of the government, its political attacks, the national networks, and the government-ordered spaces in the same radio and television stations to dispel our claims.

The underlying concern of Ecuadorian journalists is the state of defenselessness in which we find ourselves. We are subject to a special tribunal established by law to judge us, which in addition to imposing fines, has the task of referring the cases to the Attorney General for alleged commission of crimes. This has happened in cases such as that of cartoonist Xavier Bonilla, or “Bonil,” recently sanctioned for alleged socioeconomic discrimination against Assemblyman Agustín Delgado, who belongs to the government’s political movement.

The President always justified the need for a Communications Law in order to supposedly improve the quality of journalism in the country, but what he wanted was to control content and intimidate journalists. After almost two years under this law, fines have weakened media organizations and the sanctions generate self-censorship among journalists. That has been the true outcome of putting the Communications Law into effect in Ecuador. The government itself, through its chief spokesman of media control, recognized that if the law were strictly one hundred percent applied, many media outlets in the country would not be able to work.

The government boasts that there are no journalists imprisoned in the country. Of course, that was never its objective, because that would cause international embarrassment. It seeks to subdue the press. The strategy is simple. There are dozens of fellow journalists currently facing civil, criminal, and administrative cases because of their professional practice, which has become a latent threat and a main cause of self-censorship. The biggest consequences are suffered by the citizens. For example, they have been denied access to certain information, such as journalistic investigations that reveal acts of corruption, with the imminent lack of guarantees for the full exercise of journalism.

Various media outlets have closed their doors, claiming that one of the causes was the economic asphyxiation caused by the government’s arbitrary handling of the official standards of publicity. As a result of this, there are dozens of fellow journalists who have lost their jobs, and others who are still awaiting payment of their outstanding salaries, like the contributors of the newspaper “Hoy,” whose settlement is in the hands of the State.

With this background I invite the Commissioners to reflect: What journalism can thrive when media outlets are persecuted, closed, or in the process of bankruptcy? What journalists can work freely with pending cases against them and sensors in their newsrooms? What citizen dares to give their opinion on social networks when he is forced to reveal his identity?

SANTIAGO GUARDERAS

As has been noted, since the Law was passed the right to freedom of expression in Ecuador has been seriously undermined. The concern that the IACHR noted in the 2008 Report has become a reality, as the Government of Ecuador has assumed sweeping powers in order to control and regulate communication.

In administrative processes, the guarantees of due process are openly violated, and international standards of freedom of expression are not applied. With regards to the former, it is worth mentioning the lack of reasoning in the rulings. As the distinguished Commissioners know, the duty of statement of reasoning has been established by the Court as a fundamental guarantee in order to obtain effective protection and due process, noting further that this obligation must be understood as "the reasoned justification that allows arrival at a conclusion."

Together with the failure to observe this duty, the disproportionality of the sanctions imposed is a constant in the actions of the Superintendency, even though the Inter-American Court has clearly stated what constitutes the principle of proportionality. This can be seen, for example, in a Resolution of September 2014, in which the newspaper "La Prensa" of the city of Riobamba was sanctioned with a fine of several thousand dollars for not publishing the total number of copies printed for circulation on the cover. The Law does not provide for any penalty for noncompliance with this obligation; however, interpreting it extensively and analogously as "unlawful restriction of freedom of information," a penalty prescribed for a completely different infraction was applied to the judgment.

The fact that such an excessive fine was imposed upon a small media outlet clearly violates this principle. The fine, therefore, does not seek to protect a determined legal right, nor is it configured as an adequate means to amend the alleged severity of the offense. Rather, these types of rulings could result in local media outlets without wide circulation ceasing their operations, becoming an indirect measure to limit freedom of the press.

In addition to this, the Superintendency as a judgmental entity disrespects the standards of the Inter-American System. The power of judging demands a correct and profound interpretive analysis of the standards with a clear rationale that observes these standards, especially if it is considered that they are open and ambiguous provisions that threaten not only freedom of expression, but also other rights established by the American Convention. The rulings reflect subjective judgment, political rather than legal, and seek to silence the citizens and media outlets that have a different approach than that of the government.

In a number of the rulings, the authority sanctions both the person and the media outlet that diffused their opinions or comments. We can cite one such case. Faced with a complaint from a member of the Ecuadorian soccer directorate, both the presenters of a comedic sports opinion show, as well as a television channel, were condemned, attributing "joint responsibility" to them for the alleged commission of media lynching, concerted by the presenters and a group of puppets.

It is wrong to hold the media outlet responsible for the opinions or comments of third parties, whether or not they be puppets, even less so if the opinions are broadcast live and especially if one takes into account that, according to Inter-American jurisprudence, no opinion may be subject to prior censorship. The

Honorable Court, along with the Human Rights Committee in the General Observation No. 34, have confirmed the importance of allowing the media to exercise their activities without constraints.

In short, the bodies that control the exercise of this right must not exercise abusive or extremely open powers, which markedly impair the exercise of this right, which is fundamental in a free, pluralistic, and democratic society.

ALFREDO VELAZCO

Ecuador passed a new Telecommunications Law in February 2015 that establishes three elements that threaten the exercise of freedom of expression: the creation of a Control Agency that is dependent on the administration in power, implementation of subjectivity that limits rights, and an effect on net neutrality.

For control of telecommunications, the International Telecommunication Union of the United Nations warns that "when a regulatory body bows to external pressure from operators and other government entities, it often lacks independence and its decisions are neither objective nor transparent." This is confirmed by Ecuador's Constitution, the supreme legislation that creates the Superintendencies as independent technical bodies for monitoring, auditing, intervention, and control of economic, social, and environmental activities, and services.

However, the Law eliminated a Superintendency and gave way to a Control Agency whose board is formed by the delegate of the President of the Republic, the Minister of Telecommunications, who also heads the State operating company, and the Secretary of Planning, leaving doubts about the independence of its decision-making, be it due to political or commercial motives. The telecommunications control entity's lack of independence would also affect Ecuador's adherence to the Agreement maintained by the European Union with Colombia and Peru.

Additionally, this Control Agency would have greater powers during states of emergency, whether resulting from internal unrest, public calamity, or natural disaster, when that is the exclusive power of the President of the Republic according to the current constitutional law.

The Agency, by law, "will regulate scope and rights" within the sector, and furthermore, the "providers that operate public telecommunications networks are required to allow direct and immediate control by the governing body of national defense."

It should be emphasized that during important events of legitimate social mobilization, the Internet has been the only medium for the free flow of information about what happened, in contrast to the government regulations that mandate that mass media outlets broadcast only official information.

The principle of net neutrality has also been affected by the Telecommunications Act. This principle guarantees the unrestricted use of platforms in order to access any content or legal service on the network. The legislation allows for Internet providers to take technical actions for network management in order to ensure service, but at the same time restricts certain services and content, which affects the free circulation of opinions and ideas through the Internet.

This elimination of net neutrality adds to an entire ecosystem of legislation that impacts users' free exercise of their rights, such as the elimination by the Communications Act of anonymity in comments on websites, and the adaptation of the Constitution via amendments to make communication a public service, in addition to actions by the administration such as the criminalization of anonymity, public ridicule in informational announcements managed by authorities, disclosure of personal data, attacks and threats to critics from accounts organized for those purposes, and the use of copyright in order to censor uncomfortable content, among others.

All of these actions threaten the free exercise of rights on digital platforms, which several United Nations resolutions state must be protected both offline and online.

MAURICIO ALARCÓN SALVADOR

In early 2015, President Rafael Correa officially declared "the battle for dignity and truth on social networks." He insisted that the supposed critical citizens on the networks were but a systematic campaign of attacks against the government whose objective was to "discredit and generate hatred," and threatened to disclose the names of those who slandered him, as well as their photos and accounts, "to see if they like what they do to others."

Since then, the names and photographs of several citizens who exercised their criticism on social networks were released through the website called "Somos Más" ("We Are More"), run with public funds. Additionally, the personal data of these citizens was released by the President through the national government's propaganda apparatus, clearly violating their right to anonymity and to protection of personal data. These people have also suffered the consequences of this action, receiving insults and threats, both from supporters of the regime and fake accounts. This has caused many of them to close their personal accounts.

The reason for this "declaration of war" was the publication of a photograph of the President of the Republic supposedly shopping in a mall in Amsterdam. The person responsible for disseminating the image, along with a humorous comment, was the manager of a satirical Facebook page called "Crudo Ecuador" ("Raw Ecuador"). Correa promised that he would reveal his identity, warning, "we will find this person to see if he is so funny (...) if he keeps being so brave (...) he is a simple coward who hides in anonymity in order to make insults and vent his hatred." This person was threatened through social networks, but also received a bouquet of flowers with an anonymous note, sent to the house of a family member

where he was taking refuge because of the threats he had received. In the note, he, his wife, and his young children were identified by their first and last names. No one outside of the family circle knew his whereabouts.

A few days later, “Crudo Ecuador” publicly announced that he would withdraw from the social network due to “the government’s pressure and harassment,” stating that nothing was assured if he were to continue, that the investigations of the authorities were carried out with little seriousness, and that it had been the President of the Republic himself who had put the lives of he and his family at risk, because of the insults and attacks in his weekly Saturday address.

It is also worth mentioning cases like that of Martha Roldós, an activist and opposition politician, whose email accounts were hacked and their content disseminated through government media, or that of Mery Zamora, the former leader of the National Union of Educators sentenced for alleged terrorism, who was a victim of stalking and diffusion of intimate photos through false Twitter accounts.

Cyberattacks on websites, such as that of newspaper “La Hora” or that of Fundamedios, have also become recurrent. In denial of services attacks, which are typically carried out from various points, a saturation of the server is caused, blocking the IP. Without this the page no longer operational, both for the user, who cannot view the content, and for the affected organization, which cannot manage the site.

This type of attack on Internet freedom is added to the others which have already been reported to you: “Tweeters” and bloggers investigated and detained for expressing themselves; removal of content on platforms like Youtube, Vimeo, or Twitter; public contracts to monitor social networks; and threats to media outlets because of the comments contained on their websites, among others.

XAVIER BONILLA

In Ecuador there is so much freedom of expression that the censors now freely publish their verdicts.

During 2014, far from decreasing hostility against the media, the accusations and punishments increased. Even the government media outlets have staged attacks. For example, El Ciudadano (“The Citizen”), the newspaper of the Presidency of the Republic, accused newspapers El Universo and El Comercio of covering up and justifying a massacre of workers that occurred ... on November 15th, 1922!

There are those who, captivated by government propaganda, have come, however, to think that this is only a problem among journalists, media owners, and the government. No. It is not so. Or rather, it is, but not that alone. We must remember that beginning some years ago, ordinary citizens, who at the passing of the presidential motorcade have expressed a cry of rejection or dissatisfaction, have seen how its principal occupant, President Correa, stopping the swift

motorized march, has personally descended to search for and confront a citizen face to face. Many have been imprisoned. And not on one, two, or three occasions. There are at least twenty registered cases.

Thus the harassment of freedom of expression has long been a problem, not only for the media but fundamentally for the citizens. But if that is nothing new in Ecuador, the accentuation of intransigence in 2014 was, as it has climbed to levels that would be laughable were it not for the risk involved. Humor is now a reason for persecution, for inquisitorial control, for interrogation. The Communications Regulation Council has semiologists who decipher the humorists' intentions. And when these are lacking, President Correa, with no need for semiotic support, discovers that a Facebook memes page intends to destabilize a government.

How things have changed when before the legitimate ambition of a "Tweeter" was for many people to follow him. Now the hope is ... that they don't pursue him! Memes bother President Correa. He calls those who make jokes at his expense haters. A curious understanding of a phenomenon where the idea is to make jokes and not war. But he decided to make war on memes and offered to recruit volunteers to attack cybersurfers.

This absurd war has gone so far that English comedian John Oliver dedicated one of his bits to it, and trying to deny the persecution of humor, the president said: "My jokes are world famous," but the Englishman replied: "Actually it's not that your jokes are known around the world. It's that every time you make yourself a joke to the world."

Laughter ("risa") and anger ("iras") contain the same letters in Spanish. Those who choose the former do so to defend themselves; those who choose the latter ... want to end term limits.

By virtue of what has been presented, we want to make the following requests to the Honorable Commission and its Special Rapporteur:

-First, given that it has been several years without having realized a site visit, and considering that the situation of freedom of expression is deteriorating rapidly, we request the formation of a special working group to visit Ecuador, in order to verify the situation presented and prepare a report.

-Second: We ask that a study on the situation of digital rights in the region is carried out, and that standards be developed on the subject.

-Third: We ask that a request is made to the Inter-American Court for a consultative opinion on the scope of the right enshrined in Article 13 of the American Convention in relation to cyberspace.

-Fourth: We require that the process of constitutional amendments that is encouraged in Ecuador be monitored and that a ruling be made on whether the categorization of communication as a public service is compatible with international standards in this area.

-Fifth: We ask that it be recommended to the Ecuadorian government that it adopt the measures necessary in order to ensure respect for international standards of freedom of expression, and in order for its administrative authorities to carry forward compliance with conventions in the processes that it directs.

Commissioners, Mr. Rapporteur, Mr. Executive Secretary, thank you very much.