

US House of Representatives  
Subcommittee on Foreign Affairs - Western Hemisphere  
Hearing on Freedom of Expression in Latin America

Written Testimony

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## Introduction

Freedom of speech is one of the fundamental values of democracy and a key pillar of the open society. The price to pay for this fundamental right, however, is not small. Throughout the globe and across history, freedom of speech has faced formidable challenges and encountered daunting obstacles. Yet this is only to be expected, as those who are enemies of democratic ideals would prefer to silence those who oppose them. Freedom of the press, the natural consequence of freedom of speech, is particularly bothersome to the enemies of liberty and democracy. Indeed, it is only natural that those who will power rather than justice, hegemony rather than pluralism, and tyranny rather than liberty would rather hide their evil deeds in the darkness, away from the eyes of the people. Conversely, those who oppose them have an ally in the light that exposes those deeds to the public eye, and that light is precisely a free and independent press. It is not a surprise then that the greatest challenges to the freedom of the press usually arise in those societies where the enemies of the open society have grown powerful. In the past 8 years, the Ecuadorian press has been the target of constant threats and harassments by the government led by president Rafael Correa. This harassment and persecution has taken many shapes and been manifested in many ways, some more obvious than other. The purpose of this document is to summarize, as concisely as possible, the grave challenges faced by the press in Ecuador. In particular, we will focus our attention on the situation faced by newspaper “El Universo”, and the negative effects that the 2012 Communication Law is having not only on the newspaper but also on freedom of speech. Finally, we will present some recommendations that the United States Congress could adopt to help in the struggle for a free and independent press in our nation.

## I

### Correa and the press

1. Rafael Correa, the current president of Ecuador, won the national elections on 2006. His victory ended a long period of institutional instability where a series of violent uprisings ended prematurely the presidency number of Ecuadorian heads of state. Furthermore, the widespread belief that Ecuador's political actors used the power entrusted upon them to further the interests of small economic elites, both national and foreign, further alienated the people from its governing institutions. Ecuador was ripe for change and Rafael Correa, a complete newcomer unaffiliated with any of the current political parties, seemed to be the breath of fresh air our nation so direly needed<sup>1</sup>.
2. Correa's charismatic personality as well as its stated commitment to institutional and economic reform quickly made him an extremely popular figure<sup>2</sup>. Furthermore record high oil prices, Ecuador's principal source of revenue, made it possible for Correa to launch a very ambitious and generous array of social welfare programs aimed at reducing poverty and inequality. This combination of charisma, economic welfare and rejection of the instability of the past all worked together into giving Correa's presidency an unprecedented amount of popular support. This popular support, however, meant also that large segments of the population turned a blind eye to or even supported Correa's attacks on some very basic institutions necessary for the functioning of a true liberal democracy.

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<sup>1</sup> See in general VERDOSOTO Custode, Luis. Los actores y la producción de la democracia y la política en Ecuador Edit. Abya-Yala. Quito 2014 pp. 335 410.

<sup>2</sup> CONAGHAN, Catherine. "Correa's plebiscitary democracy" in Journal of Democracy Vol 10 No. 2. April 2008.

3. Indeed, enjoying this enormous amount of support, one of Rafael Correa's first moves was the summoning of a Constituent Assembly via popular referendum. With 82% of the electorate having voted in its favor, the Constituent Assembly was entrusted with the drafting of a new Constitution meant to radically change Ecuador's political structures. Given the infatuation that the Ecuadorian people felt for Correa at that moment, it is an unsurprising fact that Correa managed to secure most seats of the Assembly for members of a political party of his own creation, controlling 80 of the 130 seats available.
4. Correa's control over the Constituent Assembly, however, not only secured him a Constitution tailor-made for his ambitions as head of state, but also secured him control over the legislative branch as Correa sent the previous democratically elected congress into recess making the Constituent Assembly take-over all legislative functions, even months after the text of the new Constitution was completed. In one fell swoop Correa managed to create a tailor-made Constitution, control the legislative branch and effectively exclude all traditional parties from the political process. With control of both branches, Correa further proceeded to restructure the Supreme Court in 2009 and again in 2011 filling up the positions with people loyal to his persona and ideology<sup>3</sup>.
5. Correa's attack on Democratic Liberalism did not limit itself on repeated attempts to take control over civil society<sup>4</sup>. In particular, Correa's attack on privately owned media became a notorious yet

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<sup>3</sup> An extensive research of the lack of independence of the judiciary under Correa government is found in PASARA, Luis Judicial independence in Ecuador's judicial reform process. DPLF Washington 2014. [http://www.dplf.org/sites/default/files/indjud\\_ecuador\\_executivereport\\_eng.pdf](http://www.dplf.org/sites/default/files/indjud_ecuador_executivereport_eng.pdf)

<sup>4</sup> See CONAGHAN, Catherine. "Surveil and Sanction: the Return of the State and Societal Regulation in Ecuador" European Review of Latin American and Caribbean Studies N. 98 (2015), April, pp. 7-27.

routine aspect of his regime. Indeed, according to Fundamedios<sup>5</sup>, an NGO that monitors freedom of the press in the Andean region, there have been at least 597 government attacks on the media since 2008. These attacks have taken a myriad of forms but there are some distinguishable ways in which these attacks have been carried out<sup>6</sup>:

- (i) Seizure of media property by the hand of the State. Because of the 1999 banking crisis the government took control of several financial institutions. As a result, the government became the creditor of many media outlets that had been heavily indebted. President Correa decided to seize these outlets promising that they will put on sale after few months so that the government could recover the public funds channeled to assist these distressed companies.<sup>7</sup> However, to this date the government hasn't sold these media companies. On the contrary, it has funded them with public funds and is running their operations in competition with the private media. Thus, now the government own a media conglomerate that includes the two most watched TV stations as well as several radio stations. Not only has the seizure of property constituted an attack on freedom of speech in and of itself, but the lack of a public media tradition as well as Correa's particular vision of government means that in practice these media outlets are put directly into the service of Correa's administration and in the advancement of his own political agenda as a propaganda machine.

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<sup>5</sup> <http://www.fundamedios.org/>

<sup>6</sup> This section draws from DE LA TORRE, Carlos. "Populist Playbook: The Slow Death of Democracy in Correa's Ecuador", in *World Politics Review*. March 19, 2015. <http://www.worldpoliticsreview.com/articles/15335/populist-playbook-the-slow-death-of-democracy-in-correa-s-ecuador> (Last updated July 28, 2015 9:48 EST)

<sup>7</sup> [http://www.lahora.com.ec/index.php/noticias/show/1043746/-1/Arranc%C3%B3\\_venta\\_de\\_bienes\\_de\\_los\\_Isa%C3%ADas.html#.VbfTIRs5DF4](http://www.lahora.com.ec/index.php/noticias/show/1043746/-1/Arranc%C3%B3_venta_de_bienes_de_los_Isa%C3%ADas.html#.VbfTIRs5DF4)

- (ii) The establishment of a constant and direct communication with the ordinary citizen, often attacking the press.<sup>8</sup> President Correa created a weekly and national broadcast where he personally publicizes the accomplishments done by his government that week. This broadcast is transmitted every Saturday and receives the name “Enlace Ciudadano” (Citizen’s Link”). This platform, however, is very often used to attack the opposition and the media. Often enough the president will “unmask” the “lies” that the independent media tell about his administration and will publicly insult and shame the reporters and journalists. Common epithets used to attack his critics, journalists included, are “corrupts” “idiots”, “mediocre”, “liars”, and “traitors”. Correa will also actively discourage the purchase of newspapers critical of him, often tearing them apart in front of the camera.
- (iii) The widespread use of *cadena nacionales* (national broadcasts) as propaganda. As in many countries, in Ecuador the government has the right to address the nation through TV and radio stations in cases of an emergency. Under previous governments, this right was exceptionally exercised. However, under the administration of President Correa, the number of *cadena nacionales* has increased exponentially. In 2010, the BBC reported that Correa had surpassed President Chavez in the number of *cadena nacionales*. By 2009 the Correa’s government had produced 233 of such type of program.<sup>9</sup> The number of this type of broadcast has continued to grow. TV and radio stations have to accommodate their programmed schedules to allow the government to broadcast the official view about a wide array of issues in the form of propaganda. A worrisome feature of these broadcasts is the fact that the government uses

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<sup>8</sup> See supra DE LA TORRE

<sup>9</sup>[http://www.bbc.com/mundo/america\\_latina/2010/01/100115\\_0115\\_ecuador\\_cadenas\\_jaw.shtml](http://www.bbc.com/mundo/america_latina/2010/01/100115_0115_ecuador_cadenas_jaw.shtml)

them to attack independent journalists and media outlets that are critical of its policies. The government routinely interrupts news programs or talk shows to attack the journalists who are the host of those programs.

- (iv) Correa has extensively used libel laws to attack and silence critical journalists. While we will explore the El Universo case later, ---the most salient example of this policy--- it is worth noting here that that case is far from isolated. Indeed Correa and his associates have advanced the idea that despite being notorious public figures they are entitled to the same protection against libel and slander than a regular citizen. As such, Correa has personally sued newspapers, journalists and opinion columnists that have criticized his administration. In the El Universo case, the courts granted Correa an award of \$40,000,000.00 in reparations for economic and moral damages that he had allegedly suffered because an Op-ed piece. Similarly he demanded \$2,000,000 in reparation when two journalists uncovered allegations of corruption and nepotism concerning Correa and his brother. It is a testimony to Ecuador's lack of judicial independence that in each occasion he has obtained a favorable ruling by the courts. In fact, the case law of Ecuador does not record rulings like the ones won by Correa.
  
- (v) Correa's administration has advanced the thesis that freedom of the press should not be seen as a corollary to freedom of speech and as such an inherent individual human right but rather as the provision of a public service such as electricity or water. This ontological categorization meant that the press ought to be regulated and controlled in the same way that any public utility should. As a result, the 2013 Communication Law, which will be discussed later, contains a considerable amount of restrictive regulation and penalties. The administration is entrusted in

making sure that the media provides information in an “objective manner” and is equipped with many coercive mechanisms to enforce it. The constant imposition of fines, inflicted every time a journal fails to deliver news “objectively”, has become a real financial burden that threatens to bankrupt the already fragile media business. Furthermore, the constant vigilance and threat of coercion has resulted in “self-censorship”, a situation where even formally independent media outlets self-refrain from reporting news that could be inconvenient for the government in fear of fines.

(vi) Besides the severe fines mentioned in the previous paragraph Correa’s government has also adopted other policies and measures designed to strangle financially the media. For instance, the law forbids media owners to hold any stock in any other enterprise that is not their particular media company. In the case of El Universo its owners were forced to sell a cruise operation in the Galapagos Islands that they controlled long before the law was enacted. The government also abstains from buying ads in any critical newspaper or other media outlet and encourages other business to do so, depriving them from an important source of income. The state has also increased the price of paper hurting newspaper production. These strategies have resulted in financial distress to many media companies.

6. However, the most perverse element of the Correa’s war against the free press of Ecuador is that his war is legal. While in the past, governments’ abuses against journalists were incontestable breaches of the constitution and laws of the nation, today such abuses occur within the framework of the legal system. In today’s Ecuador, violations of the right of freedom of expression are legal. The National Assembly and the Executive Branch to that purpose have established a complex web of laws, regulations, and institutions. A key component of this



process is the lack of independence of the judiciary, which has permitted these abuses to take place.<sup>10</sup>

## II

### El Universo Case

1. Being one of the most prominent and most widely circulating newspapers in Ecuador, it is of little surprise that “El Universo” quickly became one of the most prominent targets of Correa’s anti-media campaign. The newspaper, alongside its owners and staff, has been routinely subjected to harassment, public insult, and legal action in attempts to censor the paper or outright bankrupt it. The most serious of these attacks was a libel lawsuit enacted against the paper, where after the publication of an unflattering opinion column, Correa sued the paper seeking the exorbitant amount of \$80.000.000 dollars in personal reparations.
2. The case is relevant not only because it shows the level of confrontation that Correa has developed against the paper. The case is also crucial because most of the arguments advanced by the government during the trial as well were later incorporated into the 2012 Communication Law.

### Lawsuit and Court Decision

3. On March 21, 2011 Rafael Correa filed a criminal lawsuit against Emilio Palacio, the directors of newspaper El Universo --Carlos Pérez, Cesar Pérez and Nicolás Pérez--, and El Universo itself. In his complaint, President Correa asked the judge to condemn Mr. Palacio and El Universo’s directors to 3 years in prison and payment of US\$

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<sup>10</sup> See supra the PASARA’s report.

50,000,000 for damages. In the same lawsuit, he also asked the judge to condemn El Universo to pay him US\$ 30,000,000 for damages. Thus his total request for damages summed up to US\$ 80,000,000.<sup>11</sup> It is important to note that although the plaintiff held the position of President of Ecuador, he made clear in his complaint and during the trial that he was suing the defendants as a “private citizen”. In fact, the charges were filed under special provisions of Ecuadorean Criminal Procedure Code that allows for “private actions” for very few situations<sup>12</sup>. Yet, contradictorily, even though President Correa supposedly acted as a private citizen, in his brief’s final request, he asked the judge to consider him an authority. Because the Ecuadorean Criminal Code increases the punishment for defamation when the victim is a public official, President Correa said that “*consequently, the penalty for the defendants [has to be] the maximum sentence of 3 years in prison*”.<sup>13</sup> Although President Correa did not explain in his

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<sup>11</sup> See the criminal “private accusation” filed by President Correa at <https://www.dropbox.com/s/eij3b710xuptdf/Querella%20y%20Sorteo%20Caso%20el%20Universo.pdf>

<sup>12</sup> This was an unusual step under Ecuadorian Law. The alleged offenses of Palacio against President Correa dealt with actions adopted by him as a public official not as private citizen. Therefore he should have filed a denunciation with the General Prosecutor office rather than commencing a private action.

<sup>13</sup> See criminal complaint, p. 145. According to Art. 491 of the Criminal Code of Ecuador when the victim of defamation is a private citizen the penalty goes from six months to two years but if the victim is a public authority the penalty goes from six months to three years. (Art. 491. - Those who are found guilty of calumnious defamation will be sentenced to a term from six months up to two years in prison...” Art. 493. - A term from six months up to three years in prison will be imposed to those who have addressed to the authorities imputations that constitutes a calumnious defamation”). The crime of calumnious defamation against an authority is also known in Latin America legal tradition as the crime of “desacato” (contempt). As Prof. Richard Fallon said in an expert, opinion filed with the National Court, Art. 493 is a rather surprising provision since it grants less, rather than more protection to free speech. See his opinion at the end of this document. In some countries of the region defamation is not longer a crime and therefore the victim’s only cause of action is a civil one. This legislative trend has been in part the result of the Inter American Commission of Human Rights efforts to increase the protection of free speech in the Americas. A key instrument has been the Declaration of Principles of Freedom of Expression of the Inter American Convention of Human Rights. (<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>) issued by the Commission on December 16, 2000. However, many Latin American countries, including Ecuador, still maintain the crime of “desacato” in their laws. President Correa once said in an interview: “*thanks God*” Ecuador still considers defamation as crime. See at [http://www.lahora.com.ec/index.php/noticias/show/1101301152/-1/Video%3A\\_Presidente\\_Correa\\_cuestiona\\_a\\_Human\\_Rights\\_Watch.html](http://www.lahora.com.ec/index.php/noticias/show/1101301152/-1/Video%3A_Presidente_Correa_cuestiona_a_Human_Rights_Watch.html)

complaint how he has reached the figure of US\$ 80 million as compensation for his damaged honor and prestige, one of his attorneys explained during a television interview, that one of the elements he had considered in assessing the damages was the newspaper's circulation and the reach of his internet site. Issues that –according to him– were going to be discussed during the trial<sup>14</sup>.

4. Article 489 of the Ecuadorian Criminal Code defines *defamation* as “*false imputation of a crime*”.<sup>15</sup> Thus, according to Correa, Palacio's comments amounted to accusing him of undertaking a criminal conduct. Furthermore, according to Correa, Palacio's conduct was contrary to both Article 11 and 13 of the Inter American Convention of Human Rights, since, although the Convention protects freedom of expression, it doesn't suppress other rights, such as the right to protect one's honor, dignity and prestige<sup>16</sup>.
5. The sentence of first level accepted all the charges filed against the defendants. The only difference between what President Correa asked in his complaint and what the ruling conceded to him is with respect to the monetary compensation. Instead of ordering the defendants to pay President Correa \$80.000.000, the sentence directed the defendants to pay him “only” \$40.000.000. With respect to the monetary damage the judge said that: *“To a person with the characteristic of the plaintiff being insulted in the way that the column ‘No to the Lies’ does, which has had received national and international attention, which offends*

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<sup>14</sup> The interview can be found on the following website: [http://www.ecuadorenvivo.com/2011040769975/politica/demanda\\_en\\_contra\\_de\\_newspaper\\_el\\_universo\\_no\\_es\\_con\\_el\\_objetivo\\_de\\_obtener\\_ningun\\_a\\_ganancia.html](http://www.ecuadorenvivo.com/2011040769975/politica/demanda_en_contra_de_newspaper_el_universo_no_es_con_el_objetivo_de_obtener_ningun_a_ganancia.html)

<sup>15</sup> Criminal Code. Art. 489. – A defamation is: Calumnious, when it consist in the false imputation of a crime; and, No Calumnious, when it consists in any other expression uttered in discredit, dishonor or scorn of another person., or in through any other action performed with the same object”.

<sup>16</sup> Criminal complaint, p. 52

*him in connection with the events of September 30, 2010, which has received local and international negative responses, this does produce serious damages, both in the way of actual losses because it undermines the trust that the persons have on him, and in the way of future earnings, which is related with the future projection of a statesman in his activities, both public and private, because in front of his students, possible voters, etc., the column 'Not to lies' does produce a deterioration and underestimation of his personality; for which the request of monetary compensation that has been filed **does not carry the intention of enrichment but rather the just assessment of actual losses and future profits** suffered by his honor and good name."<sup>17</sup>*

6. The court of appeal confirmed summarily the ruling of the judge of the first level. As expected, the decision caused dismay among the legal community and human right organizations. Several leading law professors issued their opinion as the case was moving to the National Court. Harvard professor on constitutional law, Mr. Richard Fallon whose opinion we attached to this document. (See Annex No. 1)

### **Political Asylums**

7. During the proceedings before the judge of first instance, a group of followers of President Correa attacked Mr. Palacio on the street. Fearing from his personal safety and the wellbeing of his family, Palacio abandoned Ecuador on August of 2011. While

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<sup>17</sup> Sentence of first instance, p. 153.

in the United States, he filed for political asylum, which was granted on August of 2012.<sup>18</sup>

8. After the National Court announced its verdict, the Publisher of El Universo, Mr. Carlos Perez, took refuge in the Panamanian Embassy in Ecuador. The government of Panama granted Mr. Pérez diplomatic protection and requested Quito to provide him with the necessary protection to leave the country.<sup>19</sup> Once President Correa issue a pardon Mr. Pérez left the Panamanian Embassy.

### **International Actions**

9. The reaction of the international community against the decision of the National Court to confirm the ruling of Judge Paredes was overwhelming. A number of NGOs condemned the decision including Human Rights Watch, Amnesty International, Inter-American Commission of Human Rights, Article 19, and the international group named The Friends of Inter-American Charter for Democracy, which included former president Jimmy Carter.

10. One of the key pieces of the international community reaction against the decision of the National Court was a decision adopted by the Inter American Commission of Human Rights at the request of the defendants. On February 21, 2012, the Commission issued a precautionary measure requesting

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<sup>18</sup> <http://www.reuters.com/article/2012/08/30/us-usa-ecuador-journalist-idUSBRE87T1MF20120830>

<sup>19</sup> [http://www.lahora.com.ec/index.php/noticias/show/1101285040/-1/Carlos\\_P%C3%A9rez,\\_de\\_El\\_Universo,\\_est%C3%A1\\_asilado\\_en\\_la\\_Embajada\\_paname%C3%B1a\\_en\\_Quito.html#.VbfrQUJViko](http://www.lahora.com.ec/index.php/noticias/show/1101285040/-1/Carlos_P%C3%A9rez,_de_El_Universo,_est%C3%A1_asilado_en_la_Embajada_paname%C3%B1a_en_Quito.html#.VbfrQUJViko)

Ecuador to suspend the enforcement of the verdict that the National Court had announced few days before<sup>20</sup>.

11. It is important to note that on October 3, 2010, Mr. Emilio Palacio and the three editors of El Universo filed a complaint against the Republic of Ecuador with the IACHR<sup>21</sup>. In essence the complaint claims that the Republic of Ecuador have breached the Inter American Convention of Human Rights by allowing President Correa to pursue his criminal case. It also claims that the Convention have been breached because of the serious violations of due process of law, including the independence of judiciary. It is in the context of this proceeding that the IACHR issued its precautionary measure.

12. Given the enormous amount of international pressure, Rafael Correa decided to grant a pardon to Palacio and the Directors and El Universo, and to renounce the economic compensation of the sentence. Under Ecuadorean law a private criminal proceeding as the one commenced by President Correa, allows the victim to pardon the defendants. It is important to note, however, that the pardon itself *does not* revoke the judicial ruling. Rather, the pardon just means the ruling will not cause any effects, but it remains valid in the sense that all of the accused are still considered guilty of the crime and the sentence can be invoked as a valid precedent.

13. As such, despite the pardon given, the case against the Ecuador is still active in the IHRC, with several amicus briefs submitted by academics all over the world condemning the grotesque nature of the case and the clear human rights violations that had

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<sup>20</sup> <http://www.fundamedios.org/alertas/cidh-otorga-medidas-cautelares-en-caso-el-universo/>

<sup>21</sup> The case is identified as “Emilio Palacio Urrutia y otros. P 1436-11

been perpetrated by Correa's administration. A number of these amicus briefs have been annexed to this document, including one drafted by Yale Law School.

### III

#### The Communication Law

1. The Communication Law of 2013 is the latest and most dangerous weapon the regime has in its war against the independent media. In many ways this law represents a graver threat than the misuse of libel and slander laws, or even the verbal harassment suffered by journalists. This is so because the law gives the abuse an *institutional sanction* that other forms of abuse lack, it makes the attacks a part of the system itself rather than an anomaly.
2. The law itself was approved with an overwhelming majority, something unsurprising given that Correa's party controlled 108 of the 137 available seats in Congress. The size of this majority also meant that the debate on the merits of this law was also short. The law was widely seen from its outset as a serious threat to the free press, earning the nickname "Ley Mordaza" ("Gag Law") for fear that this law would be used for censorship purposes.
3. While in paper the law professes to adhere to the principles of freedom of expression and freedom of the press, its actual content lies in contradiction with these ideals. This is so because many of the provisions of the law effectively create a system that greatly increases the power of the administration for regulating the media. While it is undeniable that having some regulation is not necessarily against the democratic many of these regulations effectively create a system of censorship. The problem lies in what essentially constitutes a deliberate *ontological mistake*: freedom of the press, rather than being considered a natural consequence of the natural right of free speech, is

considered a *public service* and the media outlets *public utilities* that distribute that good (Art. 71). The press is no different than the providers of public water or the electric grid. As such, rather than exercising an inherent right to free speech, the journalist is in the same position than a manufacturer or producer, *which in turn means that regulation is necessary to protect the consumer*. Indeed, it is no longer the right of the journalists to express themselves, but rather it is the “consumer” of information that has a *right* to “objective, contextualized and contrasted” information just in the same way that the consumers of running water have a right to a proper service. It becomes then the job of the State to “protect” the consumer against biased information.

4. The Communication Law misguided ontological characterization of what freedom of the press is thus opens the door for bureaucrats, not journalists or readers themselves, to establish what constitutes unbiased or objective information. To do so, the law created an independent agency named “SUPERCOM” whose sole purpose is to monitor the content presented by the media and evaluate its objectivity, as well as hearing the complaints of citizens who also question the objectivity of these. The power of the SUPERCOM is not an abstraction, as those found “guilty” of presenting skewed information are subjected to progressively higher fines.
5. According to Ecuadorian Law, being an administrative body (not a judicial one), the SUPERCOM’s decisions are immediately executable although they can be appealed later in a court of law. The process of appeal can be long and given the amount of the fines, a media outlet finance can be severely crippled by one of them.
6. There are other worrying provisions. One of them is the one referring to “media lynching”, a term used to designate a situation when there is “a concerted effort, coordinated by several media or carried out by just



one, to destroy a person honor or prestige”. The danger of this proviso becomes evident when we realize than in practice this is meant not to protect the average citizen on the street, but rather public officials. This proviso, in essence, is a way to make political scandals illegal to report, as the repetition of the original story and its follows-up could be deemed a “media lynching” punishable under the law. This limitation is aberrant and goes against the universal principle that public officials, by their very career choice, have tacitly relinquished their right to stay away from public scrutiny, even “unfair” ones (in U.S. Case Law that was the operating principle in *Sullivan vs. New York Times*).

#### IV

#### El Universo under the Communication Law

1. Using the resources provided by the 2013 Communication Law, the Superintendence of Communication (SUPERCOM) has been able to repeatedly either impose or threaten to impose substantial fines for very questionable reasons. While the following cases do not represent an exhaustive list, they are perhaps the most outrageous and will serve as a good example on how the system is used arbitrarily to attack El Universo:
  - (i) On December 2013, a group of policemen entered into the house of congressman Fernando Villavicencio, a political opponent of the regime. The police operative, conducted around 5AM, was justified on grounds that it was suspected that the congressman illegally possessed “highly sensitive” information that jeopardized “homeland security”. A few days later, El Universo published a political cartoon by Xavier “Bonil” Bonilla satirizing the event. In January 2014 the SUPERCOM initiated an administrative procedure against El

Universo claiming that the cartoon was based on “misleading and biased” information. As a result, the SUPERCOM imposed a fine equivalent to 2% of the paper’s revenue for the past 3 months, as well as forcing Bonil to publish a public rectification.

- (ii) On July 2014, congressman Agustin Delgado, an ex-professional soccer player now turned into a member of Correa’s political party, made a speech in front the National Assembly. Unfortunately for Mr. Delgado, he stuttered a great deal as he was reading through the written speech in front of him. Many took the incident humorously and a number of parodies quickly emerged in the social media. Bonil, being a political cartoonist himself, drew a cartoon parodying the event. As a result, congressman Agustin Delgado and members of some afro-Ecuadorian organizations started a procedure in the SUPERCOM accusing the cartoonist of disseminating “racist propaganda” (Mr. Delgado is afro-Ecuadorian). As a result of this, the SUPERCOM ordered the newspaper to issue a formal apology signed by its Publisher in 72 hours.
  
- (iii) On April 2015 as the president was traveling in his motorized escort in the city of Riobamba while simultaneously a number of demonstrations against his regime were occurring. There was a clash in which angry protesters jeered against the president and there were reports that some of them acted violently. Once placed under arrest, the accused demonstrators defended themselves arguing that “the president provoked us”, a fact that was reported by El Universo. The President’s Press Secretary, Mr. Fernando Alvarado Espinel, unsatisfied with the way in which the report seemed to “skew the facts” in favor of the protestors

version of the events, initiated an administrative process against El Universo. The SUPERCOM decided the case in his favor and forced El Universo to publish a formal rectification and a formal apology signed by its Publisher.

- (iv) On April 2015, the newspaper published a story explaining the effects of a \$1.700.000.000 debt owed by the central government to social security on the functioning of the social security system itself. Unsatisfied with the story, once again, the President's Press Secretary, Mr. Fernando Alvarado Espinel, initiated an administrative process in the SUPERCOM claiming that the story represented an "arbitrary manipulation" of the facts. The SUPERCOM decided the case in his favor, giving a 72-hour period for a rectifying as well as imposing a fine equivalent to 10% of the last 3 months total revenue and also a formal apology signed by its Publisher

- 2. The Communication Law imposes increasing penalties for repeated "offenders" meaning that next infraction could cost up to millions of dollars. This heavy burden not only represents an unfair financial burden, but could potentially bankrupt the company.

## V

### Recommendations

The purpose of this document is not to attack the administration of president Correa nor the nation of Ecuador. Rather, this document is born out of a deep and sincere concern for the state of the Ecuadorian free press. We believe that freedom of expression is a fundamental right that transcends national borders, an affirmation that is so enshrined in the modern international law system. As such it is with a humble heart but firm conviction that we ask for the United States House of Representatives not to remain a silent witness of the slow death of

freedom of expression in Ecuador. We therefore advance the following recommendations:

1. **Articulate** your concern for the current state of Freedom of Expression in Ecuador and condemn the policies and practices that seek to silence the free press.
2. **Stand by** the Inter-American Commission of Human Rights through this challenging time when its being the target of attacks by the Ecuadorian government.
3. **Support and Strengthen** the office of the Special Rapporteur for Freedom of Expression which is the last line of defense for dissenting voices in the region.
4. **Place** Freedom of Expression as a top priority of the United States foreign policy agenda towards Ecuador and other countries facing the same challenges.
5. **Initiate** a direct dialogue on these crucial issues of Freedom of Expression with Ecuador's legislative branch