

Subjects, objects, decisions and escapes – The approval process for Communication Act in Ecuador

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Abstract

The new regulatory processes in Communication in several Latin American countries are linked to a political reform process called “Latin American progressive left.” The latest country to join this reformist trend is Ecuador, where after four years of debate has reached an agreement about this topic. This paper tries to understand the policymaking process. Moreover, aims to know how the debate developed on the new Communication regulation in Ecuador. Through documentary analysis and following the study methodology of policy net works (SCHARPE, 1993, PARSONS, 2007) the paper aims to know how advanced the policymaking discussion regarding the interests of the different policynetworks, showing the evolution of main issues between the different projects and the final document, and the main themes of interest and discussion during this process, finally establishing what issues were modified and which were more complex to reverse.

Keywords: Communication Act. Ecuador. Policynetworks. Public policies. Progressive governments.

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Introduction

There are places and time that require any certainty. People, regions and countries, need the historical catharsis of certain processes that were systematically denied for an indefinite period of time because of their tradition, life or struggle. And those forced, terrible, vain denials carry with them the spectre of the unrealizable, which, waiting for the inevitable, has relentlessly pursued who spuriously tried by all means to keep the forms and substance of a concrete social time, the history of a domination.

Something similar happened in Ecuador, the meeting place of some of the most important institutions of political-communicational thinking in the region. There were forums for discussion about the balance of the social sectors that masked the commercial processes of the Communication. They were denied by the rule, the political and economic powers or actions against the *laissez faire*.

Takes a look at the past decade to find the enormous discretion with which the successive governments of Ecuador granted licenses, fostered monopolies and developed barriers to the entry of citizens, of community members and of marginal agents of the voiceless people, in short, of any group out of the area of political influence. Between 2003 and 2008, the year of adoption of the new Constitution of the state, and despite violating in every way the international agreements signed-OAS, Unesco, *Pacto de San José de Costa Rica* – and even more, the national ones – '98 Constitution – about the promotion of plurality and diversity by strengthening Communication media of all sectors (public, private, community), as far as frequency allocation is concerned,

Essentially nine groups of private economic and political power – that operate one in ten (11%) broadcasting frequencies in the country-recorded presumed irregularities in the administration of the grant of frequencies by the competent authorities:Nussbaum, Canessa, Gamboa, Andrade, Moreno, Farah, Montero, Yunda y Almeida (AMARC, 2009, p.288).

Since the arrival of Rafael Correa to the government, accusations changed and returned to the discretion of the government. In the opposite direction, when it comes to revoke licenses, private operators understood that this political criteria was closer than purely technical-regulatory criteria, receiving protests of masking punitive actions, specifically related to three main points: a) the cancellation of frequencies with resources at the Dispute Tribunal being unresolved; b) the cancellation for alleged breach of the law, applied discretionary to just some media; and c) the errors in the determination of default in the payment of rent concession:

In 2012 a significant reversal process or closing of radio stations occurred in Ecuador, in which at least 20 radio stations were taken off the air [...] So some former owners of the closed stations, such as Ecuadorian and international organizations dedicated to protecting the right to freedom of expression, expressed their concern about many of the closed frequencies corresponding to critical radio stations with the government of President Correa (ALIANZA ..., 2013, p.98).

Given such impenetrable circumstances, there was a need of a break, a consensus verbalized by the necessary change in an awkward, disintegrated and worn regulation, which went through several phases in its chronological evolution –from a control rationality with the 1975 Act, during the dictatorship, to a market rationality, during the neoliberal boom in 1995-, but never attended to the values of the warranty of public service. And it is now, at this precise moment, where the subject of this research breaks onto: Communication Act.

From late 2009 until its final approval and registration on July 25, 2013, the pursuit of Communication Act was instrumental in the establishment of a new – or very old- way to make policies. During these four years of twists, consensus, silences and extended periods of friction, the government tried to establish the basis for developing the rights established in the Constitution of 2008, which subscribes a complete section-Title II, Chapter II, Section III – to the rights of Communication and Information, by which the State imposes three obligations on the matter:1) the State is

bound to respect the rights established in the Constitution in all its measures; 2) it must start to monitor the compliance by all stakeholders; 3) it must promote the exercise of these rights, which involves creating economic, legal, social, materials and political conditions, so that they can be exercised (JURADO, 2010, p.30). Around these measures, the idea of a national Communication system is generated, composed of public sector institutions as well as of those attached private and community institutions, which will be required, among many others, to agree on a Communication Act.

Despite of initial provisions that established a limit of 360 days from the adoption of the Constitution, the elongated period of legislative debate showed how intricate and difficult the period of redaction of the Act was – after endless debates, proposals and bills that exposed the apparent differences between the interests of different groups represented in its writing.

Thus, this is the history of a change or of a great multitude of them indeed. Given the extended discussion and disagreement about the objects and subjects of current regulations that forced to delay the adoption of the law for more than four years, the initial assumptions of democratization and partial loss in the mentioned discussion, the tensions over control, concentration and equal access, it is essential to identify the different actors involved in that discussion, the goals espoused by each and the political networks established around the process of legislative debate, in order to identify which interests were regulated, what groups corresponded their claim and how the ultimate sanction corresponds to a complex process of comings and goings, which contains in itself the essence of his own action: the multiplication of voices in demand for their interests.

The real achievement of this plurality is given on the success of the meeting in the final representation of all sectors. The presence or absence of regulated issues, and if so, how they are established, will lead the way to understand what subjects were most benefited and how the state, this time assuming the position of regulation as the basis for diversity and equality-for others, for

the establishment of a new form of domination – does aim or not to ensure, once and for all, to fade the ghosts of inequality and control.

Theoretical framework

The new Communication Act of Ecuador must be present in one of the most current debates in Latin America, should the media be regulated? And if it should, what is the proper way to carry it out so that “all voices” becomes successful? The above questions are not trivial in the region. Contrary to this, they represent one of the greatest concerns of research nowadays. In fact, for example, the previous cases of Argentina and Venezuela have not left anyone indifferent; all the representatives of private media, public media, NGOs, government agencies, supranational agencies, think tanks, among others, have their own opinions in that regard.

However, this paper is not supposed to debate this. Actually, its purpose is to know what the process of Communication Act has consisted of, who were the ‘winner’ actors and what was the final result of the process, monitoring it since it was raised to its final outcome.

In order to answer those questions we must make an approach to the policy actors (read by actors of politics groups involved in the formation of the Act). This way, this article will review the theory of public policy concerning the networks of actors or policy networks, as the more suitable approach to the seminal question of this work.

Once it is decided to regulate, it is important to evaluate the actors and their interactions. In the network approach or policy networks, Sabatier and Jenkins-Smith (1993) offer an explanation focused on the relationship “state actors - interest groups” and its connection with changes in public policy. The authors describe the notion of public policy networks as a concept that deals with explaining behaviour within specific sections of the State or specific policy areas (PARSONS, 2007). Ultimately, as noted Scharpf

(1993), for authors who use this kind of analysis, public policies are the result of an interaction of separated actors with different interests and strategies. This interaction is strategic, rational and oriented to specific purposes.

From the 90s the networks of actors begin to be conceived as a model to investigate how the relationship between public and private actors is structured in a model of interest intermediation. Rhodes (1988), from an organizational sociological perspective, identifies them as a complex group of organizations connected with each other by resource dependencies and distinguished from other clusters or complexes by breaks in the dependency structures. According to Zubriggen (2004), points out that the policies are the result of the interaction of governmental organizations and a network of economic and professional interest.

The interaction between actors produces exchanges of the resources they possess. These exchanges are not only material, but also, in some cases, the network members share a set of values and ideology that makes trading easier, creating a bias towards certain types of policies (SABATIER & JENKINS-SMITH, 1993). Since these networks move into institutionalized contexts, this approach proposes a study of the policy making considering their behaviour inside the institutions.

The networks of actors approach has also become a way of analyzing governance (ZUBRIGGEN, 2004). Thus, the actors that have been used to analyze changes in the governance are often organized actors: agencies, organizations, associations etc. These networks of actors also explain the way in which modern societies solve complex problems. Brözel (1997) states that the governance is progressively more possible with policy networks, in a dynamic and growing system where hierarchical coordination is getting more difficult to carry out, therefore a system of exchanges in a horizontal coordination structure is more efficient for the interests of public and private corporate actors.

Having exposed some of the main features of this approach, it is necessary to know how the theory can be methodologically integrated into this paper about the Ecuadorian Communication

Act. Thus, as Zubriggen (2004) affirmed, to analyze a network, the first thing to do is identifying stakeholders, clarifying what their goals are and how they use their political influence within the network. It is also important to identify how the processes of resources and information exchange among actors take place.

One of the first items that can be identified in the formation of the Communication Act is the involved network of actors (this issue will be resumed in the methodology section). In this case we can identify groups of actors (1) of a private nature: business associations, social associations, NGOs etc. and (2) of a public nature: civic associations, ministries and other public agencies representatives. These groups comprise the network of actors who are interested in influencing decisions with different actions.

Their actions can be identified in two ways. First, by exposing their objectives with research papers or with the direct representation of the groups during the discussion of the Act in question. The characteristics of this network, especially its diversity, have generated that the Act is the product of a long debate that was accompanied by an extensive intellectual production of think-tank linked to the network. Second, a variety of exchanges are observed along these debates that generate pooling and the approach of groups initially far apart.

However, one of the most interesting aspects, linked to one of the greatest features of the policies collected by the negotiation of networked actors, is the strong moderation that the policy suffered. From the initial positions – much more radical in terms of the democratization of media –, compared to a result characterized by the encounter between private actors and public actors, the final achieve was a kind of new establishment which favours the public organizations, but it does not carry on a control as initially proposed about the private organizations.

Methodological framework

Therefore, in its eminently qualitative and critical aspect, by the application of the model for the analysis of policy networks

spelled out above and in accordance with the legislative analysis and the study of Communication public policies, this paper proposes the following priority objectives:

1. To identify the networks of actors – and their internal conformations – involved in the process of elaboration and discussion of the Communications Act in Ecuador.
2. To establish what interests defends each network in the application or disapplication of the regulation.
3. To analyze the legislative drafting process.
4. To conclude which goals and interests were finally included and to which network of actors it constitutes their defence, in order to connect which of those networks were the most benefited at the end of the legal debate.

In pursuit of the described above, there will be two major issues to consider: the selection of representative actors and of documents to be analyzed. As far as the first question is concerned, actors will include all those political subjects that appeared in the two law debates of the National Assembly, in addition to networks and organizations that, despite having been run out of legal debate, made public pronouncements about their interest in the objects of regulation. After the selection, these players will be grouped for this work on five networks, each of which binds the vast majority of interests, proposals and demands of all of its members. So, there will be political networks of citizens, unions, private companies, NGOs and international organizations and public institutions.

Besides, each of the different network will group a number of interests in the inclusion (or exclusion) in the regulation of a series of topics selected from a first approximation analysis, in which four macro axes, subdivided in a series of eight items, were identified:

1. Government intervention:
 - Independence of the Board of Communication

2. Citizen participation:
 - Community media
 - Citizen control

3. Democratization:
 - Equitable sharing of frequencies
 - Monopoly control

4. Media reporting duties:
 - Rights and obligations of journalists
 - Joint responsibility
 - Promoting national, independent and indigenous production

Table 1. Networks of actors and political interests represented

NETWORKS OF ACTORS	ACTORS MEMBERS - LEGISLATIVE DEBATE	ACTORS INVOLVED- SOCIAL DEBATE	REGULATION EXPLICIT INTERESTS	NO-REGULATION EXPLICIT INTERESTS
Citizens	Colectivo Ciudadano por los derechos de la comunicación, Televidentes Organizados del Ecuador, Colectivo Ciudadano "Con mi propia voz"	Foro Ecuatoriano de la Comunicación (FEC), Coordinadora de Radio Popular Educativa (Corape)	<ul style="list-style-type: none"> - Community Media - Monopoly Control - Citizen Control - Equitable sharing of frequencies - Rights and obligations of journalists - Independence of the Board of Communication 	
Unions	Unidad Nacional de Periodistas (UNP), Sociedad de Autores del Ecuador (Sayce), Circulo de Periodistas de la provincia de Zamora, Comité de Emergencia Profesional de Comunicadores Profesionales del Ecuador (COEPCE), Asociación de periodistas taurinos		<ul style="list-style-type: none"> - Monopoly Control - Citizen Control - Rights and obligations of journalists - Independence of the Board of Communication - Promoting national, independent and indigenous production (Sayce) 	
Private companies	Asociación de canales de TV*, Asociación ecuatoriana de radiodifusión*, Canales regionales del Ecuador ¹ , Asociación de Productores de Cine y TV Cólago de Etea Grupo El Comercio, Código de ética de ACTVE, Asociación Ecuatoriana de Agencias de Publicidad, Radio Alegría de Ambato, Concesionario Robamba, Asociación de Empresas de Telecomunicaciones (Aserec)	Comité Empresarial Ecuatoriano, Asociación Ecuatoriana de Editores de Periódicos	<ul style="list-style-type: none"> - Independence of the Board of Communication 	<ul style="list-style-type: none"> - Community Media - Monopoly Control - Citizen Control - Equitable sharing of frequencies - Rights and obligations of journalists - Joint responsibility - Promoting national, independent and indigenous production (AEEP)
NGOs and International Organizations	Unesco, Inter-American Press Association (Iapa), OAS, Fundamedios, Fundación Ecuatoriana de Salud Respiratoria	Participación Ciudadana (PC), Andina TIC, Ciespal	<ul style="list-style-type: none"> - Independence of the Board of Communication - Community Media (Ciespal and Unesco) - Monopoly Control (Ciespal and Unesco) - Promoting national, independent and indigenous production (Ciespal) - Equitable sharing of frequencies (Ciespal and Unesco) 	<ul style="list-style-type: none"> - Monopoly Control (Iapa, OAS) - Citizen Control (Iapa) - Joint responsibility (Iapa, OAS) - Rights and obligations of journalists (Iapa, OAS)² - Promoting national, independent and indigenous production (Unesco)
Publics	Consejo Nacional de Cine (CNCine), Secretaría Nacional de Telecomunicaciones (Senatel), Consejo Nacional de la Niñez y la Adolescencia, Superintendencia de Telecomunicaciones, Guillermo Navarro (ex presidente de la Comisión de Auditoría de Frecuencias)		<ul style="list-style-type: none"> - Promoting national, independent and indigenous production (CNCine) 	

¹ Todos los asignados con * forman parte del Comité Empresarial Ecuatoriano.

² OAS and Iapa pronounced against the constitution of ethical codes.

Regarding the second question, the documentary selection, totalizing application criteria were used in search of a deeper epistemological approach for the arguments provided, as well as achieving a multiplicity of voices that have not been assigned in the selection of other methods of study.

To systematize the results all draft legislation was analyzed, plus the attached Communication Act published in the Official Gazette, taking into account the contributions of the National Legislative Assembly of the respective debates about the law itself.

Subsequently, in order to incorporate more stakeholders in the final draft of the regulation, a selection of important documents was made, since 2008 until the adoption of the law (July 25, 2013), based on criteria involving variables of temporal, thematic and regional character, in which were incorporated into the analysis matrix public pronouncements of institutions, organizations, unions and social groups, as well as articles and discussion papers on the same process of legal development, all of which became the base for the process of understanding and interpretation of the data collected.

Thematic analysis of actors' networks

Government intervention

- Subtopic: Independence of the Board of Communication

The independence of the Board of Communication, responsible for regulating most of the powers in this Act, and established as a firewall against the power of executive-legislative decision, could be defined as a process of back and forth of the conspicuous interest of all groups participating in the development of the Act. Since the first draft law, the establishment of this authority is set in the middle of the legislative debate.

Initially, in the first shortlist of drafts submitted to the Assembly, the firstly called National Council of Communication and

Information, establishes a conformation around eight members, whose president – with casting vote –, will be directly appointed by the President of the Republic.

However, the first debate in the Assembly received several proposals for Council reform. Hence, Deputy María Cristina Krohnle complaint that this conformation does not take into account gender equity; besides, its setting causes overlaps between its functions and those of the Ombudsman. Most of the complaints seem to be focused on fiscal and action independence and autonomy of the Board itself. While Assembly Member Susana Gonzales thinks that there is an excessive presence of the executive power in the Council and proposes that the Ministry of Education becomes part of just an advisory body, the deputy Fernando Velez goes a step further and proposes that any Assembly Member can be part of the New Communication Council.

Meanwhile, in the first debate private companies (ACTVE – Association of television channels-, AER, CCREA) point out that the Council should not be able to change the content, or blame media because of the advertising contents, but the advertisers. Furthermore, they propose that the Board has another configuration that cannot accuse, prosecute or punish.

From another perspective, the organization for the citizen Communication rights, *Colectivo Ciudadano por los derechos de la Comunicación*, presents an initiative for the inclusion in the institutional regulation of the Ombudsman that focuses its attention on content regulation. From the private sector, organizations of media owners disagree about the punitive powers of the Council, suggesting a loss of functions. Finally, from the international agencies, Unesco submits a critical analysis of the new legislation in which, on the conformation of the Communication Council, it is considered that there are not enough mechanisms for its independence, although it recognizes the remarkable autonomy and the inclusion of mechanisms for citizen participation.

After this first debate in the Assembly, the composition of the Board is reduced to six members without direct representation of the President – but of two delegates from other ministries—from whom its representative shall be elected.

Subsequently the presidential decision on the Council resumes and, during the second legislative debate, the issue of the Council independence becomes again a central part of the debate. After the official victory in the referendum on May 7, 2011, many of the representatives of the Assembly considered that the debate on the need and relevance of the Communication Council was already out of place. This is the case of Assembly men Paco Moncayo or Ruth Hidalgo, representative of *Participación Ciudadana*, who, despite the indisputable recognition of the council, considers necessary a greater independence. For this reason, groups such as the Media Observatory (*Observatorio de Medios de Comunicación*) propose their own inclusion as a permanent member of the Board. And the citizen collective *Con mi Propia Voz*, as a measure of the increased independence, suggests that citizens themselves are who must report to the Council about the contents they consider that violate their rights. In order to get this, the deputy Maruja Jaramillo thinks that it is necessary to make a series of measures establishing that: a) under any circumstances the candidate for counsellor can be resubmitted once he has been disqualified; b) members cannot be re-elected; c) Technical Secretariat of the Council must be occupied by an external agent, never a member of the Board.

However, beyond its conformation, some critical voices keep arguing about the obligation and duties of the Board. For example, Lourdes Tibán considers that the Council should not be necessary, at least not as a punitive institution. Meanwhile, the results of the referendum, the deputies of the opposition bench maintain that the Council still exercises too much control over the media and Communications in Ecuador, becoming, in their own words,

a “media police station”. In order to avoid such a situation, their proposal focuses on: a) establishing legal mechanisms of control of the Board; b) getting a more advisory and less punitive council; c) increasing its monitoring of public agencies and institutions. Another aspect that should be reviewed, according to them, is the method of election of citizens’ representatives in the Council, since they consider that it will become an executive choice due to their obscure way of electing these representatives._

Therefore, they extend their own proposal in which all members from public agencies would disappear and would remain only as part of the Council: two representatives of Social Communication teachers, a representative of civil society organizations involved in the protection of the rights of children and adolescent, a representative of the indigenous people and communities and a representative of the citizens._

Finally, the outgoing proposal includes two representatives, elected by the government, although the entry criteria are more stringent, especially those dealing with kinship or affinity with the administration and the media.

After several minor changes, the final law states that a representative of the Executive Function and four other representatives from other institutions and organizations will be leading the Council of Regulation and Development of Information and Communication (*Consejo de Regulación y Desarrollo de la Información y la Comunicación*). In order to avoid the government intrusion a non-binding advisory body is constituted. At first the agency has representatives from the media, but later it evolves into a board composed of workers, unions, teachers and citizens._

For State control of the media issue, the law proposes the creation of three new institutions. The first one is the Editorial Board of the Public Media; this institution provides editorial guidance of the media as the “Good Life”¹. Also monitors the editorials and the messages to promote good quality and civic identity.

¹ Buen Vivir

Other functions of this institution are to develop a code of ethics for media; to search, review and prioritize the information, to include special coverage and relevant topics; to decide not to publish content that violates the code of ethics; to decide not to publish biased content, to assess the implementation of annually editorial plans. Subsequently, the power to decide not to publish certain content disappears._

The second institution is the Superintendent of Communication for Information, SIC. Functions of this institution are to supervise, monitor and manage the fulfillment of the legal provisions on the rights of Communication; to consider, investigate and resolve complaints or grievances of people on Communication rights; to collect information from citizens, institutions and actors involved in the Communication; to collect information about stakeholders related to the Communication with the aim of fulfill their responsibilities and to apply the penalties provided by law._

This institution is presented as an instrument of social control; however, one of the criticisms from the opposition is that officials can only be chosen by the president of the republic.

Obligations of the media

- Subtopic: “Rights and obligations of journalists”

The work of the journalists was one of the aspects that expanded the debate. The professionalization is an aspect that has changed during the debates. The stakeholders who attended to these debates were the citizen groups, trade unions and the public sector.

The definition of the profession was one of the most discussed aspects. The first draft law established that only people with a degree in Communication could work in media. Besides, the law requires companies to help their employees by training them, giving them the tools to complete their studies.

Henceforth, it was determined which jobs can be done exclusively by professional communicators. In print media: general editor, news editor, managing editor, editor, correspondent or equivalent. Audiovisual media: principal, principal assistant, news producer or equivalent. In radio: Director, Editor or equivalent. And only in the case of community media, the State must promote the training of people working in this type of media. Later, the law dictated new exceptions: the only media workers who do not have to be professional are editorialists, columnists and opinion writers or columnists specialized in sciences, arts, literature and religion. Plus, all indigenous communicators are not required to have professional training.

About the rights and duties of journalists, the right to conscientious objection, to source protection and confidentiality are fundamental issues in the legislative process that are present in the final law. The first project clearly said that those who make up to three objections will be sanctioned, but later this element of punishment disappeared.

- Subtopic: Joint responsibility

At the beginning of the discussions there was an intention of punishing the media and their owners for injuries to the people they spread information about. But this intention disappears in advancing discussions and bills.

In the case of payment of compensation to any possible affected, there is a significant change from the first bills: for the first project the joint liability lies with the media, its owners, shareholders, directors and legal representatives. The assembly members Betty Carrillo, María Augusta Calle, Angel Vilema, Rolando Pachana and Mauro Andino formulated it that way.

In the following draft these responsibilities fall entirely on the media. Thus, the owners or shareholders of compensation or civil fines get rid of this concern, they had been proposed by the assembly members (belonging to the opposition) Montúfar Caesar,

Jimmy Pinoargote and Fausto Cobo. They got to introduce this aspect in the final law.

- Subtopic: promotion of the indigenous national production

The promotion of national production (especially explicit in independent domestic production and indigenous and intercultural production) is another element present throughout the whole legislative debate.

Despite the opposing interests of the citizen groups and the public groups (supporters of the protection by setting quotas) on the one hand, and the representative sector of the private companies (supporter of a free market and against its inclusion in the Act) on the other, every part related to this point just underwent small rearrangements in the definition of shares or obligations of the Ecuadorian media with such productions.

Nevertheless, some clarifications must be made. At first, the promotion of national production is regulated by setting emission quotas of 40% of daily programming on national television, for this type of media production. That quota will reserve 10% for productions of independent character, which are established under the criteria of absence of kinship, affiliation, business or property (6% of share capital) with the media which receive this work._

Since the course of the first legislative debate, the National Film Board, CNCine, with the explicit support of various assembly members, seeks the inclusion of quotas protection measures. By these measures, the TV channels are intended to acquire 100 hours per year (primer-time programmable) of independent national production, financed with 2% of TVs net sales._

On this topic, Unesco points out, in its report on the first bill, the need to analyze carefully the most appropriate and sufficient minimum should be for the promotion of the production; also, the need to be segregated by issues of supporting of the medium possibilities, media type (public, private or community), provided

service (television, radio, press) and scope (national or local). By contrast, Ciespal aims to promote diversity and identities with at least 50% of their own production in radio and broadcast TV, and at least 30% of the national music broadcast and reserve spaces for independent national production.

Finally, CNCine proposes the creation of a Fund for Promoting Independent Media and the Cultural and Educational Television. This fund would be financed with contributions from 10% of the price of movie tickets, 10% of turnover from Audiovisual downloads on mobile phones and 2% of the turnover of subscription television. Although this measure is not incorporated to the final draft, it will help include new forms of protection during the second legislative debate.

Moreover, the Society of Authors in Ecuador, SAYCE, proposes to include the music production within the legal protection and promotion by a new share: at least 50% of the broadcasted music must be produced, made or executed in Ecuador. However, this requirement will ultimately be ascribed only to musical radios.

Afterwards, in the second debate of the project, a new form of protection for this type of production is added: broadcasters must acquire the rights to two local feature films, allocating 2% (5% for media with an audience of 500,000 people) of their annual gross revenue. The process of establishing concrete measures to promote indigenous production has been stormy.

From the beginning, there are items that support and seek to promote human rights and cultural values of all groups, communities and people. But after the draft presented in April 2012 support becomes concrete: this project establishes a fee of up to 5% of the programming content produced and distributed by indigenous peoples and nationalities, Afro-Ecuadorian and Montubian. The Council for the Regulation and Development of Communication will establish mechanisms and regulations for the compliance of this measure.

Citizen Participation

- Subtopic: Community Media

The collective group of citizens is composed by several civic associations (Ecuador Forum Communications Coordinator FEC Radio and Popular Education, PERC) and Ciespal. These groups are interested in including the topic of community media in the discussion. Every project takes a comprehensive definition of community media; this definition has little variation in the following discussions.

During the early stages of the project, community media are focused on the cultural diversity and the identity of communities, especially to promote the “Good Life”. Community media should work as prevalent spaces accommodating national independent productions and local productions.

Later, there is a special interest in redefining ways of funding community media. Thus, to ensure freedom of community media, private actors cannot finance them in more than 25%. Apart from this, the government will provide loans, technical assistance and training, among other tools. This aspect will be better defined in recent projects and the registered text. Tax exemptions for imported equipment in community media are included in the latest draft. The project suggests that state agencies hire them for community media content creation and production to ensure the productivity in that sector.

- Subtopic: Citizen Control

Another objective of the civic associations and Ciespal is to be able to carry out a control of the media by platforms, bodies or observatories dedicated to establish citizen assessments. Thus, during the whole law process, it is allowed the right to organize oversight committees and citizen media observatories. The new law also proposes the creation of a Council of Communication and Information, composed of representatives from various ministries

and three citizen representatives. They also create an advisory committee in which representatives of community media can emit their criteria, which are not binding.

During the second debate in the assembly, some of the most active groups in this item are civic associations. Groups like “My Own Voice Citizen Collective” proposed that citizens have the right to establish the topics of private, public, and community media. Therefore, the construction of a city council is established. This council must have the necessary mechanisms for participation and spaces must be open to the discussion of issues given by the citizens.

Ruth Hidalgo, director of Citizen Participation, observes that it is necessary a broad debate on the Council Regulation establishing traits of independence and subsequent responsibility criteria, and the specific functions of the body. She considers it essential to be independent and to not be co-opted by governments. The representative notes that the proposal discussed on the Council of Communication and Information becomes it a heavy bureaucratic machine, present in all the land, provided with a wide punitive margin, under the command of the executive. The problems of this Council, as are proposed in this ways: first, its doubtful independence; second, their field of competition, which are problematic since the establishment of provincial delegations that generates an unnecessary bureaucratic expansion; and finally, the possibility that establishing constant administrative penalties can turn into a self-censorship system carried out by the same means.

Democratization

- Subtopic: Equitable Distribution of frequency

Regarding equal access, as required by the Ecuadorian Constitution of 2008, the use of a frequency spectrum has been one of the latest features to appear in the legal process. The tough encounter of opinions among citizen groups, trade unions and

the public sector about the defense of a free flow (interest of the entrepreneurs) caused that the inclusion of that point was delayed in time.

During the first three years of the legislative debate, the issue of frequencies distribution was not listed as a feature to regulate the radio spectrum. After the first debates and during the law construction, the Assembly members recognized the public ownership and the usufruct of spectrum. Although during both debates, the assembly members María Paula Romo and Marco Murillo made an explicit mention of the need to regulate the frequent acquisition mechanisms and to clarify the scope of the concentration of it based on the equal rights of public access, they were unable to establish concrete measures and proposals.

However, in the bill submitted on February 4, 2012, the equitable distribution of frequencies appears and it will not change until the final approval and registration of the law. Radio Frequencies and broadcast television, therefore, are equally distributed as follows:

- 33% reserved for the operation of public media, conferred by direct grant
- 33% for the operation of private means, by public tender, open and transparent
- 34% for the operation of community media, with priority granted by the public, open and transparent competition.
- Subtopic: monopoly control

In the bills evaluated, references to monopoly control are constant and this is an issue that does not vary much throughout the formation of the project; from the beginning, the formation of media monopolies are prohibited, a widely shared position by agencies assembly members, Ciespal and Unesco. If anyone incurred in this type of activity it is possible that the media that depends

on these monopolies could be closed. It is established that the barrier is maximum one title per capita.

In addition, the bill prohibits banks from owning media. During the second debate there is a large development of this, proposed by the opposition assembly men. For them, banning people linked to financial institutions to work in the field of Communication affects the principles of constitutional guarantees, as these individuals could not exercise their right, like all citizens. They also point out that there is kinship discrimination since being familiar in fourth grade with someone linked to a financial institution means that this person cannot exercise any job linked to the management of media work. The requests of this group are supported by the OAS and the SIP, that claim a liberal media, by its public statements.

Facing them are Rolando Pachana, Maria Augusta Calle, Betty Carrillo, Maruja and Angel Jaramillo Vilema, defenders of the same debate and with various proposals articulated in prohibitions for shareholders of a private company Communication and their families to be associated with financial institutions.

Recent projects that present an antitrust action it is established that if media concentration fall into, it shall be penalized with the termination of their concession of frequency. Concerning the restrictions on the financial sector, the final measures are simply referred to the Article 312 of the Constitution, by which financial institutions are prohibited from engaging in companies outside their industry.

Conclusions

This article has made a review of the formation of the Ecuadorian Communication Law, emphasizing the identification of the movements of the actors involved in the debate in relation to a number of key issues that determine the final aspect of the law. In this sense, not only information was gathered from the discus-

sions but also a review of intellectual production that took place during this period. This research can outline a series of conclusions as the result of the intervention of the different actors in the evolution of policy.

Although the initiative of the Ecuadorian government about the media law generated many expectations for groups requesting more control over the private entities involved in the media, as the debate advanced, much of the initial intentions became diluted, due to the length of the negotiation in which the positions of the actors of the public policy approached, principally in the following aspects.

First, in the initial development of the law there was a proposal of making a fundamental measure: that the financial institutions and their participants (and their families) could not handle the media. However, the way this prerogative was embodied in the law is far from exercising control in this type of organizations. It is focused on a looser regulation, appealing to the Article 32 of the Constitution, which lightly defines the control mechanisms for these cases. In this sense, we can say that, indeed, more control on financial groups and their participation in media was achieved, but in the process of negotiating the stakeholders had a rapprochement of positions (characteristic of a Network of Actors) in which the initial constraints became less restrictive for the financial sector.

As for the government mechanisms of control and independence, many of the complaints about its bias and dependence on the executive, did not crystallize in creating organisms without the participation of government actors. For this reason it can be inferred that the group of interest linked to the current government was the more favored, at the expense of the citizen groups that advocated for a greater independence at this point. The fact that there is a link between the incumbent government and the control mechanisms affects adversely their autonomy from the political future, whose alternation could disrupt the enlargement

of the public sector, the promotion of the plurality of voices and the support of citizen participation.

Moreover, certain aspects, often central in monitoring the debate, remained intact until the final record, despite the opposition of some of the participating political networks (private companies and international organizations such as the OAS and SIP). Thus, issues such as the equitable distribution of frequencies, the promotion of indigenous, national and independent production, mechanisms of citizen control or the formation of the Council of Communication still remained.

Finally, there is one aspect introduced by this new law is the Statute of Journalists, which corresponds to a specific rule for this career field: with this legislation is not only the duties are set but also the rights of the journalists are claimed. The introduction of this change means an advance of unions, compared to the private sector. This final rule is opposite to the thesis defended by the private sector networks, but on some issues this disagreement does not arise: for example the issue of the conscience clause that begins by proposing a direct sanction against entrepreneur, but ends without being the punitive measure that was initially suggested.

As seen throughout this work, the formation of the Ecuadorian policy had a lengthy development partly due to the multiplicity (and diversity) of actors involved in its formation. After four years of negotiations, stakeholders, who had huge differences, reached a rapprochement of positions. This not only meant the loss of those features involving more control on private companies and improved access mechanisms and citizen Communication control. These issues also generated controversy in both domestically and externally negotiation, and generated the initial stagnation of the democratization project media.

The policy, which was developed in the country by the negotiation of the different networks of actors, ended being reduced to two types of measures: on the one hand, the extension of the

public and the community sector (in an attempt to contain the prerogatives of collective citizens) and, on the other hand, the tendency to a (voluntarily vague) regulation of the most “controversial” issues, specifically related to the lack of regulation around the further responsibilities of the private sector. This means that the private sector will maintain a privileged position.

Another issue that got lost along the process was the independence of the supervisory bodies of the media, which in its final version, includes broad powers assumed by members of the national executive. Moreover, the creation of mechanisms of social control did not develop into a higher level of political counterweight, due to its non-binding characteristics in their pronouncements.

Though it is true that the development of this law made (un)certain progresses in improving the conditions of an equal access to the media, the commitment of the government of Correa reflects the tendency of “Latin American Progressive Governments” with recent reforms in the Communication sector. Those are, on the one hand, the idea of expansion and promotion of the public and the community sectors, with a broad government control, which Bisbal (2006) defined as the Communicator State (*Estado Comunicador*) and, on the other hand, a tendency toward superficial regulations of the private sector, avoiding to go into the most important aspects to change and to democratize the media in Latin America.

References

ALIANZA REGIONAL POR LA LIBRE EXPRESIÓN E INFORMACIÓN (coord.). **Artículo XIII. Informe sobre Regulación de Medios en Latinoamérica.** Montevideo: Alianza Regional por la Libre Expresión e Información, 2013.

AMARC. **Las mordazas invisibles.** Buenos Aires: AMARC-ALC, 2009.

BISBAL, M. El Estado-Comunicador y su especificidad. Diagnóstico inacabado y estrategias. **Comunicación: Estudios Venezolanos de Comunicación**, Caracas, n. 134, p. 60-73, 2006.

BÖRZEL, T. A. What's so special about policy networks? An exploration of the concept and its usefulness in studying European Governance. **European Integration Online Papers**, Vienna, v. 1, n. 16, 1997.

JURADO, R. La constitución política del Ecuador da lineamientos para la ley de medios. In: ERBOL (Coord.) **Comunicación: una ley humana**, La Paz: ERBOL, 2010.

PARSONS, W. **Políticas públicas: una introducción a la teoría y la práctica del análisis de políticas pública**. México: FLACSO, 2007.

RHODES, R. A. W. **Beyond Westminster and Whitehall**. London: Unwin Hyman, 1988.

SABATIER, P.; JENKINS-SMITH, H. (Eds.). **Policy change and learning: an advocacy coalition approach (Theoretical lenses on public policy)**. Boulder: Westview Press, 1993.

SCHARPF, F. Positive and negative koordination. In: HÉRITIER, A. (Ed.). **Policy-analyse: kritikundneuoorientierung**. Opladen: Westdeutscher Verlag, 1993.

ZURBRIGGEN, C. La utilidad del análisis de redes de políticas públicas. **Argumentos**, v. 24, n. 66, p. 181-208, jan/jun 2011.

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