

**Alternative report by the Platform for the Defense of  
Democracy & Human Rights in Ecuador  
on the implementation of the Covenant on Civil & Political  
Rights**

---

**Responses to the List of Issues CCPR/C/ECU/QPR/6**

**By:**

Asociación Ecuatoriana de Editores de Periódicos –  
AEDEP-,  
Asociación Red de ONG de Guayaquil –AROG-,  
Centro de Apoyo y Protección de los Derechos Humanos SURKUNA,  
Colectivo Antropólogos del Ecuador  
Colectivo YASUNIDOS,  
Confederación Mujeres por el Cambio  
Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador –  
ECUARUNARI-  
Confederación Unitaria de Comerciantes Minoristas y Trabajadores  
Autónomos del Ecuador –CUCOMITAE-,  
FBQ,  
Federación de Médicos del Ecuador,  
Federación Nacional de Periodistas –FENAPE-FIP,  
Frente Ecuatoriano de Defensa de los Derechos Sexuales y Reproductivos,  
Fundación Desafío,  
Fundación Mil Hojas,  
Fundación Andina para la Observación y Estudio de Medios –  
FUNDAMEDIOS-,  
Internacional de Servicios Públicos –ISP-,  
Junta Cívica de Guayaquil  
Observatorio Electoral Ciudadano,  
Plan V,  
Red de Mujeres Políticas del Ecuador –REMPE-,  
Red Internacional de Derechos Humanos –RIDH-,  
Unión Nacional de Educadores –UNE-,  
Unión Nacional de Periodistas –UNP-

**Ecuador Sixth Session  
27-28 June 2016**

## **Executive Summary**

The Platform for the Defense of Democracy & Human Rights in Ecuador is an association of civil society organizations and individuals that seeks to contribute to the democratic construction of Ecuadorian society and State. Its specific niche is the collection of materials for the development of systematic reports; the consensual drafting of suggestions on democratic and institutional development; and the provision of updates to international instruments.

From 2007, Ecuador saw significant public spending on infrastructure, education and health. Meanwhile, in 2008, the twenty-third Constitution came into effect, which systematized the major advances on rights and, at the same time, established an organic regressive institutional design in terms of popular sovereignty. Since then, there have been numerous attempts to clamp down on civil society organizations, alongside the approval of the most repressive legislation in Latin America in terms of the media. At present, the country is heading towards a crisis of profound dimensions, exacerbated by the persistence of a development-based management model and institutionalization, which has led to a political hardening and authoritarian law enforcement, in addition to the manipulation of institutions.

Regarding the right to information, in summary, the repeal of the Organic Communications Law (LOC for its Spanish acronym) is recommended and, with it, the concept of media lynching. Public and seized media outlets should no longer be used to disparage, discredit and endanger those who think differently from the Government. In this regard, there should be a review of the disproportionality with which public servants use the media against ordinary citizens. Regarding the right of association, the State must ensure that civil society is organized freely, as established in the Covenant and the Constitution, and that NGOs are not closed without respect for due process. This is concomitant with freedom of association. Regarding the rights of women, it is recommended to end the judicialization of abortion using informers in the medical profession. With regard to minority rights, the State must ensure that this sector benefits from all the guarantees established by the Constitution and the Covenant. It is imperative to evaluate the disproportionate use of the state of exception. To fulfil the right of participation, it is recommended to depoliticize appointments for public office, bringing transparency to the process and returning the appointment of key authorities to the Assembly. Regarding justice, the independence of operators is essential.

The sequence of the topics presented shows how the Ecuadorian model has become more complex since the destruction of freedom of thought, expression, opinion and association. Through various forms of segregation and oppression, the lack of these freedoms prevents the development of ethical and political questioning by citizens, specifically violating the rights of women and ethnic groups. The oppressive circle is completed in substantive democratic forms, such as a justice which is dependent on the Executive; citizen participation in elections without competitive safeguards; discretionary recognition of political organizations; and the curtailment of popular sovereignty in the nomination of authorities.

**Alternative report**  
**Platform for the Defense of Democracy & Human Rights in Ecuador**  
**on the implementation of the Covenant on Civil & Political Rights**

**Overview**

1. The Platform for the Defense of Democracy & Human Rights in Ecuador (PDDHE for the Spanish acronym) is an association of civil society organizations and individuals that seeks to contribute to the democratic construction of Ecuadorian society and State, strategically oriented towards change, based on the principles of equitable development for all citizens and the autonomy of individuals and social & political organizations.
2. The Platform's mission is the collection of materials for the development of systematic reports on the situation of democracy and human rights in Ecuador. Its development involves the major national and international organizations. The PDDHE provides suggestions on democratic and institutional development and drafts proposals based on the exchange of views between stakeholders and institutions. Finally, PDDHE proposals contribute towards keeping international instruments informed on the preservation and development of democracy.

**The current situation in Ecuador**

3. At the end of the last century, Ecuador was at the height of a profound national crisis, from which it began to recover economically and socially in 2002. From 2007, based on the growth in oil prices (the principal export product), there was significant public spending on infrastructure, such as electricity production and roads. Investment was made in education and health to lower deficits and recorded poverty levels. Simultaneously, in 2008, the regime convened a Constituent Assembly, which established a new institutional order. This was the twenty-third Constitution since the founding of the Republic. This Charter systematized the major national and international advances on rights and, at the same time, established an organic regressive institutional design in terms of popular sovereignty. The constitutional design was based on the attainment of public resources; the expansion of presidential functions and powers; a reduction in the autonomy of state functions and sub-national governments; and the dismantling of social mechanisms to control public administration. In the 8 years following the adoption of the Charter, abundant public investment (albeit lacking transparency in contracting, execution and quality of spending) was an important stimulus for demand, decreased levels of extreme poverty, growth in middle-income sectors and the consolidation of the largest economic groups.
4. In Ecuador during this this period, there have been numerous attempts to clamp down on civil society, including actions aimed at ending its legal existence. The context is the adoption of the most repressive legislation in Latin America in terms of the media, which published the results of its own investigations and society's criticisms against the State and the ruling party for wastefulness, inefficiency and dishonesty. However, many social initiatives have successfully resisted and created channels for independent public opinion.

5. Currently, the country is heading towards a crisis of profound dimensions, stimulated by the persistence of a development-centered management model and manifestly inadequate institutions, which prevent the exercise of fundamental rights. The insistence on this approach to institutional organization has led the State to a relentless pursuit of resources at any cost, accompanied by a political hardening and authoritarian law enforcement, in addition to the manipulation of institutions. This situation of open and underhanded attacks against society has deepened with the humanitarian tragedy arising from the earthquake on 16 April 2016 and in the run up to the presidential and parliamentary elections, scheduled for February 2017.

6. The document is organized as follows. Headings refer to the relevant article of the Covenant (the right). The first box below the heading details the legislative interdependency to be analyzed; the second box lists previous questions; and the last box outlines the State's response in summary form. The point of concern is then outlined, taking into account its context, followed by questions for the State and recommendations. General conclusions are presented at the end of the document.

### **Right to freedom of expression**

**Legislative interdependency:** Arts. 18, No. 1 on freedom of thought and Article 19, No. 2 on freedom of expression in the Covenant; also Art. 18, No. 1 of the Constitution of the Republic and Arts. 10 (No. 3 Subpara. f), 17, 18 and 22 of the Organic Law of Communication (LOC).

#### **Paragraph 24 of the list of issues CCPR/C/ECU/QPR/6**

The Organic Law of Communication (LOC) and the alleged crimes of media outlets and journalists

#### **State response paragraphs (244 to 250) CCPR/C/ECU/6**

State vision of the basis, objectives and goals of the LOC. Especially how regulations and the public apparatus guarantee the control and monitoring of freedom of expression. It also establishes communication as a public service. The State response includes the condemnation of journalists, trade unionists and opponents, invoking similar offenses (defamation, libel or contempt).

### **System of censorship**

**7. Overview.** Between 2008 and April 30, 2016, 46 cases of censorship were recorded in Ecuador, of which 37 were direct censorship, i.e., public and State-seized media outlets did not publish or broadcast stories of public interest that were critical of the Government; or, similarly, did not disclose the entirety of information submitted by political or social actors or opinion leaders critical of the regime.

The censorship system consists of several lines of governmental public communication policy. On one hand, an administrative apparatus, reporting to the Executive, is responsible for examining communicational content originating in society. On the other hand, threats and chastisements are used to foster self-limitation in the communicational

actions of civil society. Thus, it is impossible for various actors to express their thoughts.

This is supplemented by the State's opinion concerning those developments it considers of public relevance. If a media outlet fails to publish or include this content in its agenda, it may be sanctioned through a process initiated and undertaken (sentenced) by the Superintendency of Communication (SUPERCOM), under the Presidential operator of the Organic Law of Communication (LOC).

In the same way, prior to May 2016, 263 legal proceedings were recorded against journalists and media outlets on various criminal and administrative grounds. Before the adoption of the LOC, criminal and economic sanctions were used against the newspapers El Universo and La Hora, and journalists Emilio Palacio, Juan Carlos Calderón and Christian Zurita. Since the LOC came into effect, it has been used to sanction 204 media outlets and journalists. Another exercise of censorship is the determination of the news presented by a media outlet which, in the opinion of the State, merits a reply according to the terms and conditions set forth by the complainant, generally the State. These terms include obligatory publication of the reply by the media outlet. Failure to comply results in economic and criminal penalties. The range of cases for criminal prosecution even includes cartoonists, for drawings considered unacceptable by the regime.

**8. Questions.** Why does the State restrict the dissemination and publication of information that does not come from government sources? Why does the State claim for itself the ability to determine the public relevance of information and to penalize failure to observe its views, even those which are not public? Why does the State media discriminate against the right to freedom of expression for political & social actors and opinion leaders critical of the regime regarding public officials and government news? Why does the State require information to be censored and self-censored for the exercise of governance? Why does the right of reply only apply to Government officials?

**9. Recommendation.** To avoid violating the rights of freedom of thought, expression and opinion, a recommendation is made, in the short term, to appoint defenders of independent hearings, with the capacity to prevent, in the first instance, State intervention against media and journalists, based on the Covenant. So that the public and seized media do not prioritize government directives, a recommendation is made for these outlets to be restructured at board level, integrating members of civil society, invoking the broadest possible plurality and recognition of diversity. Their strategic programming should be subject to public scrutiny and consultation with specialized agencies. In addition, independent citizen oversight committees should be established so that these media outlets act as public spaces and not mere transmitters of government interests. In the medium term, the repeal of the LOC is recommended, alongside a new constitutional amendment clarifying the role of communication and media to avoid any harmful ambiguity.

### **Media lynching as a government strategy**

<p><b>Legislative interdependency:</b> Arts. 18, No. 1, 2 and 3 (Subpara. a) and Article 20, No. 2 of the Covenant; as well as Art. 66, No. 6 and 18 of the Constitution of the Republic and Arts. 10 (No. 1 Subpara. a; and No. 4 Subpara. j) and Section 17 of the LOC.</p>
---

**Paragraph 24 of the list of issues CCPR/C/ECU/QPR/6**

The Organic Law of Communication (LOC) and the alleged crimes of media outlets and journalists

**State response paragraphs (244 to 250) CCPR/C/ECU/6**

State vision of the basis, objectives and goals of the LOC. Especially how the regulations and public apparatus guarantee the control and monitoring of freedom of expression. It also establishes communication as a public service. The State response includes the condemnation of journalists, trade unionists and opponents, invoking similar offenses (defamation, libel or contempt).

**10. Overview.** Between 2008 and 2016, 1538 attacks against freedom of expression were recorded. The LOC introduced the concept of media lynching to legislation. However, in practice, it is the State that calls for actions that can be defined in this way. Public and seized media discredit and disparage persons and institutions that express different ways of thinking about politics, economics and society. A case of media lynching, which was blocked by the State from being pursued legally, occurred against former presidential candidate Martha Roldós, who was discredited in several media campaigns by State-controlled outlets. The contents of Roldós' telephone calls and emails were illegally obtained without consent, violating her right to privacy, and then published in order to denigrate her.

Another key example recurs weekly during the so-called Citizens' Link, broadcast, in which the President of the Republic systematically attacks politicians, academics, journalists and selected institutions. The subjects of this aggression, which is replicated in the public media, cannot count on the right to reply or to defend themselves against the crime of media lynching committed by the State.

**11. Questions.** Why does the State not guarantee the good name and honor of natural and legal persons, irrespective of political and ideological position? Why does the State violate the presumed innocence of political & social actors, opinion leaders and private media figures, through practices such as media lynching? Why does the State use media lynching as a retaliatory strategy against political & social actors, opinion leaders and opposition media outlets?

**12. Recommendation.** In the short term, given the vagueness of its definition and the discretionary use of media lynching by the State, constitutional suppression of this concept is recommended for contravening fundamental rights.

**Hate Speech**

**Discrimination in Citizens' Link**

**Legislative interdependency:** Art. 19 No. 1 of the Covenant ("no one shall be harassed because of their opinions"), No. 3 Subpara. c of the same Article (the State must "ensure

respect for the rights or reputations of others"). Art. 20 No. 2. Art. 66 No. 3 Subparas. a and b of the Constitution of Ecuador. "The right to personal well-being: a) bodily, psychological, moral and sexual safety. b) A life without violence in the public and private sectors." Art. 66 No. 7 of the Constitution.

**Paragraph 24 of the list of issues CCPR/C/EC/QPR/6**

In light of General Comment No. 34 (2011) from the Committee on Freedom of Opinion & Freedom of Expression, please comment on how freedom of expression in Ecuador is guaranteed, particularly after the adoption of the Organic Communication Law on 14 June 2013.

**State response paragraphs (244 to 250) CCPR/C/ECU/6**

"The legislative measure adopted regarding defamation and slander is the classification as criminal libel; meanwhile contempt is classified as a failure to comply with decisions of competent authority, in Articles 182 "crimes against the right to honor and good name" and Art. 282 "crimes against the efficiency of public administration" of COIP."

**13. Overview.** The State has created a scenario in which it monopolizes public opinion, undermining all kinds of alternative thinking other than approval. This phenomenon endangers democracy, as ideological diversity is one of its most important assets. This situation is evident in the 308 verbal attacks carried out by the State against various social actors since 2008; the creation of a communications system with 28 media outlets oriented towards government propaganda and devoid of spaces with ideological and information diversity; the reluctance to sell seized media outlets; and the constant disruption of privately owned opinion programs through broadcasts which chastise the participating journalists and media outlet. In this context, public opinion has been shaped and anchored to the State perspective in a context of growing fear and apprehension in the face of State threat. During the Citizens' Link broadcasts, the President has even encouraged his supporters to harass his opponents, going so far as to publicly show the names and photos of people who oppose his opinion as objects of political elimination, jeopardizing their safety.

**14. Questions.** How can the State fully guarantee freedom of expression and opinion if the Government rejects any alternative expression of thought? How does the Government envisage a public media system and a political system with the exclusive participation of allies? How can one safeguard the physical, psychological and emotional integrity of citizens who are publicly exposed to discreditation by the Government through its propaganda channels? Is the Government aware of the impact of promoting national hatred? Is it a political action, a deliberate communications strategy?

**15. Recommendation.** The State should stop using the public and seized media as apparatuses of government propaganda, exercising the Covenant and inter-American jurisprudence to undermine the integrity of citizens and promote hatred. This requires a

redesign of the President of the Republic's communicational approach and the introduction of legislation that respects society. The board structure of public media outlets should be reviewed to ensure the pluralistic participation of society, including criteria of gender and other diversities, as well as their regulation and audience criteria. The State should also sell the media it has seized, formally announcing the sale to the broadest social segments.

### **Verbal and psychological aggression as a control mechanism for freedom of thought, expression and opinion**

**Legislative interdependency:** Arts. 18, No. 1 on freedom of thought; Article 19, No. 1, 2 and 3 (Subpara. a) on freedom of expression; Article 20, No. 2 on advocacy of hatred; and Art. 26 of the Covenant. Art 66, No. 3, (Subpara. a and b) and No. 6 and 7 of the Constitution of the Republic; as well as Art. 24 of the LOC.

### **Paragraph 24 of the list of issues CCPR/C/ECU/QPR/6**

The Organic Law of Communication (LOC) and the alleged crimes of media outlets and journalists

### **Paragraph 249 of State response CCPR/C/ECU/6**

"The legislative measure adopted regarding defamation and slander is the classification as criminal libel; meanwhile contempt is classified as a failure to comply with decisions of competent authority, in Articles 182 "crimes against the right to honor and good name" and Art. 282 "crimes against the efficiency of public administration" of COIP."

**16. Overview.** Between 2007 and May 7, 2016, 475 Citizens' Link broadcasts were made, surpassing over 1500 hours of media space on national channels, including all public and seized media outlets and some private channels. Moreover, in his discourse the President incites the emergence of conflicts, then deepens them, before suggesting a violent resolution by issuing instructions to his followers and officials. During the Citizens' Link broadcasts, the President has used over 170 insults and verbal attacks against different actors of civil society, broadcast via 10 State-controlled media channels, which transmit to a further 200 outlets on a national level. In addition, the Citizens' Link includes innuendos bordering on lewd, which are offensive to, and discriminate against, women and minorities. In this context, the President has continued to prosecute journalists for defamation, libel and contempt. The outcomes of these trials have been favorable to the plaintiff, the President, who later waived the sentences, in an evident demonstration of the disproportionate use of power.

**17. Questions.** Why does the State not guarantee the right of reply to groups and citizens who feel affected by the President of the Republic's expressions during the Citizens' Link broadcasts? Why does SUPERCOM not process and sanction State and seized media for their role in the dissemination of the statements made by the President during the Citizens' Link broadcasts? What is the public function of creating fear and alarm among citizens as a form of government? What is the basis for the presidential



prerogative to attack citizens and publicly discriminate against social actors and situations?

**18. Recommendation.** Citizens' Link broadcasts are not a participatory form of accountability, nor informative, educational or entertaining in nature, but solely an aggressive form of proselytizing and a quasi-permanent electoral campaign. Therefore, immediate cancellation is recommended to substantively alter the right to free information, unpressurized communication and freedom of opinion, as a means to create a State based on the free, shared and represented opinion of its citizens. Given the content offered, the Citizens' Links do not represent a means of participation.

### **Right to freedom of association curtailed by persecution of civil society organizations**

#### **Repressive regulations on rights of association for civil society**

**Legislative interdependency:** Article 22 of the Covenant, as well as Article 66, No. 13 of the Constitution of the Republic, Decree 016 and Decree 739.

#### **Paragraph 25 of the list of issues CCPR/C/ECU/QPR/6**

Decree 016 and Decree 739. Please provide information on the content and application of Executive Decree No. 16, issued on June 4, 2013, and on the process of implementing the new Unified System of Information on Social Organizations (...). Please include information on the closure of the NGO Pachamama Foundation, ordered by the Ministry of Environment on December 4, 2013 (Agreement No. 125 of the Ministry of Environment).

#### **State response paragraphs (255 and 256) CCPR/C/ECU/6**

255. Regarding the content and application of Executive Decree No. 16, issued on June 4, 2013, and the process of implementing the new Unified System of Information on Social Organizations, the Decree considers in Article 3 that social organizations are "the set of structural forms of society, through which people, local councils, communities, peoples, nationalities and groups are entitled to come together and become an organized human group, coordinated and stable, in order to interact with each other and undertake legitimate goals and objectives."

256. This means that the creation of social organizations with a lawful purpose will not lead to undue restriction of the right of association.

"It deviates from the purpose of its constitution and engages in activities of a political nature that undermine the internal or external security of the State or affect public peace. It is emphasized that these grounds are in accordance with Art. 22, paragraph 2 of the Covenant."

**19. Overview.** There is serious concern among civil society organizations regarding the right to freedom of association, as enshrined in Art. 22 of the Covenant and the Constitution of the Republic. Executive Decree 016, enacted in 2013, establishes parameters for civil society organizations and imposes grounds for their closure,

determined unilaterally by the State. Furthermore, the Decree requires the activities and projects of civil society organizations to be aligned with the National Plan for Good Living.

Facing pressure from social organizations, the State decided to issue Decree 739 to reform Decree 016. However, this only brought cosmetic changes, without modifying the registration requirements or grounds for dissolution. Three cases concerning freedom of association are emblematic.

In the first of these, in 2009, the State ordered the closure of the social organization Acción Ecológica, arguing that it had interfered in politics, apparently by rejecting and opposing the adoption of a new mining law allowing large scale projects.

The second case occurred in 2013, after the issuance of Decree 016. During the XI Oil Round, groups of protesters allegedly assaulted the Ambassador of Chile and a representative of the state-owned Belarusian company, Biolrusnet. According to State reports, the protagonists were members of the Pachamama NGO. Under the aforementioned Decree, the State dissolved the NGO according to paragraphs 2 and 7. In doing so, no file was opened and nothing was communicated to the NGO, which was denied the right to defend itself. No investigation was undertaken to check the evidence in a factual manner.

The third case occurred in 2015, when the State, via the Ministry of Communication of the Presidency of the Republic (SECOM), threatened the NGO Fundamedios with dissolution on grounds of political intervention, similar to those leveled against Accion Ecologica. However, in the face of international pressure, the threat could not be implemented. On September 21, 2015 several UN rapporteurs and the Inter-American Commission on Human Rights (IACHR) expressed concern over the Government's attempts to dissolve Fundamedios.

**20. Questions.** Is the freedom of association intended in the Covenant in accordance with the grounds invoked to remove the legal status of civil society organizations, especially the undertaking of activities that are considered political by the sanctioning body without relying on objective criteria? Does the maintenance of subjectivity and restriction qualify civil society organizations as partisanly aligned? Can the State force the orientation and direction of the activities of civil society to align with the plans of the Executive, without affecting autonomy? How does the State guarantee due process and, consequently, the right to appeal of civil society organizations in cases where it unilaterally decides on closure? How does the State guarantee that organizations defending human rights can fulfill their function of oversight and reporting, considering the existence of concepts such unilateral closure as a sanction and alignment with Executive planning?

**21. Recommendation.** Repeal Decrees 016 and 739 and develop, in consultation with civil society and judicial bodies, corresponding regulations which ensure the autonomy of civil society and respect due process. The legal status of Pachamama and Acción Ecológica should be restored immediately, with the subsequent recognition of all operational capabilities under the Covenant. The State is recommended to terminate its unwarranted surveillance measures and institutional siege against Fundamedios. Moreover, the State must bring transparency to the approval procedure for legal status, as requested by civil society organizations. The State should also ensure opportunity for

national and international, public and private organizations to channel their cooperation towards democratic development and the common good.

### **Violation of freedom of association**

**Legislative interdependency:** Article 22 No. 3 of the Covenant.

#### **Paragraph 24 of the list of issues CCPR/C/ECU/QPR/6**

Measures taken by the State party to guarantee the right of free association.

#### **State response paragraphs (244 to 250) CCPR/C/ECU/6**

"It deviates from the purpose of its constitution and engages in activities of a political nature that undermine the internal or external security of the State or affect public peace. It is emphasized that these grounds are in accordance with Art. 22, paragraph 2 of the Covenant."

**22. Overview.** During 2014, various organizations, in particular the National Union of Educators (UNE for the Spanish acronym) and the Ecuadorian Medical Federation (FME), denounced Ecuador before the International Labor Organization (ILO) for violation of freedom of association, mass layoffs and violation of the right to the strike. In response, in January 2015 the ILO sent a delegation of experts to analyze compliance with conventions 87 and 98. The delegation issued a report urging the State to take the following measures: in relation to the points made in Decree 016 and the elections of union leaders, the State is required to register the new leadership of the UNE and to report on the events of this particular. The State is urged: to amend Article 326 No. 9 in order to be consistent with Article 2 of the Convention; to revise some articles of the Labor Code concerning the criteria for the formation of associations, as well as ensure the principle of trade union autonomy; to revise Art 346 of the Organic Integral Penal Code (COIP for the Spanish acronym) which stipulates prison sentences for participation in strikes; to revise the Organic Law on Public Service (LOSEP) to recognize the right to collective bargaining of public servants who do not work in the State administration; to initiate a process of consultation with public sector workers' organizations over amendments relating to the application of Article 4 of the Convention; to take necessary steps to restore the right to collective bargaining for public sector workers.

**23. Questions.** Why did the State not immediately comply with the OIT's recommendations, which are based on fully accepted standards and consistent with the Covenant? Why does the State systematically fail to comply with the hierarchy established by international law and human rights with respect to the internal regulations it provides?

24. **Recommendation.** The legal restitution of the UNE and its presence in the spaces and processes related to union matters, alongside the necessary guarantees for union leaders to freely exercise their activities.

### **Women's rights**

**Legislative interdependency:** Art 2. (Subparas. a, b, c, d, e, f and g) of CEDAW. Similarly Art. 6, 7, 8, 9 (No. 1, 2, 3, 4 and 5), Art. 10 (no. 1, 2 and 3) and Art. 14 (no. 1, 2, 3, 4, 5, 6 and 7) and 17 of the Inter-American Covenant on Civil and Political Rights. Also, Article 20, Article 66 Subparas. 19, 20 and 21, Article 76, No. 4 of the Constitution of the Republic; as well as Art. 149; Article 503 (No. 2); and Art. 527 of the Organic Integral Penal Code.

### **Paragraphs 10 and 11 of the list of issues CCPR/C/ECU/QPR/6**

Has the State has considered amending its legislation on abortion to include the legal abortion of pregnancies resulting from rape?

### **Paragraph 132 of the State response CCPR/C/ECU/6**

"The exceptions to the criminalization of abortion in Article 150 of the COIP (Organic Integral Penal Code) state that it will not be punishable if practiced to avoid danger to the life or health of the pregnant woman and if the pregnancy is the result of the rape of a mentally disabled woman."

25. **Overview.** In 2014, 1243 single spontaneous births, 707 cesarean deliveries and 5 multiple births were recorded in girls between 10 and 14 years, according to the National Institute of Statistics & Census. In addition, each year, many women are forced to undergo clandestine and unsafe processes to terminate a pregnancy resulting from rape, due to a legal penalty that violates their rights and even puts them at risk of imprisonment.

During the years 2014 and 2015 there were 106 recorded cases of women judicialized for abortion. Complaints against these women were made by health professionals from the National Health System who had violated medical secrecy. In most cases, these professionals were pressured into betraying women to the police, violating one of the legal guarantees of their profession by being forced to transgress medical secrecy and the right to privacy and intimacy.

In the analyzed cases of judicialized abortion, the women were questioned without the presence of their lawyers, therefore without the right to defense, and processed as in flagrante even if the legal time limits for this had already elapsed. The women were forced to plead guilty to avoid jail, violating the guarantee against self-incrimination, and processed without evidence, violating the right to the presumption of innocence.

In the majority of cases, testimonies were taken under pressure, using cruel, inhuman and degrading treatment; given by women; and testimonies of health personnel to

criminalize them. Those most likely to be subjected to these two violations of the Covenant are citizens of low-income and level of education, indigenous peoples and nationalities and Afro-Ecuadorians.

**26. Questions.** Why do the public authorities criminalize women so deeply and insistently for exercising freedom over their own bodies? Why does the State discriminate against women and violate their right to equality under the law? Why does the State promote practices such as illegal abortion by not decriminalizing it? How can the State guarantee the professional confidentiality of doctors on issues of abortion and the right of women to privacy? Why does the State force women to continue pregnancies resulting from rape, subjecting them to torture, cruel, inhuman and degrading treatment and forced labor?

**27. Recommendation.** The legal limit for abortion is inappropriate, especially when a pregnancy is the result of rape, as it dictates the decisions of women and their ability to plan their lives. Furthermore, it constitutes reproduction as a burden with a disproportionate impact on women's lives. For these reasons, a recommendation is made to decriminalize abortion. In the short term, any coercion of women who request this procedure should be eliminated and doctors should not be forced to violate professional secrecy by requests or pressure from the State. In parallel to decriminalization, a recommendation is made for the implementation of a public policy on sexual and reproductive health, consistent with the rights of women.

### **Rights of ethnic minorities**

#### **Racial discrimination**

**Legislative interdependency:** Article 27 of the Covenant.

#### **Paragraph 28 of the list of issues CCPR/C/ECU/QPR/6**

Please provide updated information on the existence and proportions of ethnic, religious and linguistic minorities in Ecuador, specifying how their rights under article 27 of the Covenant are guaranteed.

#### **Paragraph 267 of State response 267CCPR/C/ECU/6**

"The Draft Organic Law on the Consultation of Local Councils, Communities, Peoples and Nationalities of Ecuador is in process at the National Assembly."

**28. Overview.** The Ecuadorian State is plurinational, intercultural and multiethnic as a result of its historical configuration. The constitutions adopted in 1998 and 2008 (the latter still in force) recognize the diversity and differences as elements of the country's identity and its social, economic, legal and cultural organization. In this regard, the legislative propensity of the State should be towards the creation of an inclusive society free from discrimination. A range of censuses and surveys show the formation of the nation with at least five ethnic-cultural strands of different weights and qualitatively of

similar importance. However, the State ignores the requirements of indigenous people: their freedom to decide on issues such as the protection of natural resources; the demand for genuine bilingual intercultural education; respect for the application of indigenous justice consistent with human rights; the right to territory and, in particular, community with respect for the rights of nature; the constitutional use of prior consultation on issues affecting their lives; and respect for the off-limit territories of uncontacted peoples. Attempts by the Assembly to pass the Water Act, the Land Act and the Mining Act without sufficient dialogue with indigenous peoples provoked national mobilizations and an onslaught of State propaganda. On numerous occasions indigenous peoples were publicly insulted and coerced, provoking widespread reaction in society.

**29. Questions.** Is the State's lack of respect for plurinationality in fact a veiled denial of an intercultural State? Do the Executive's onslaughts against indigenous people not imply the formation of a racist State and social & political culture? How can the growth in ethnic, social and political unrest be avoided if the State is the main promoter of ignorance regarding the various identities?

**30. Recommendation.** The State must ratify the full effect of collective rights for indigenous peoples and those of African descent through efficient intercultural public policies to achieve unrestricted respect for others. In addition, the institution of the consultation should be developed to effectively contribute to plural local and national development, without a trace of racism or ethnic exclusion. Also, intercultural education should be restored and effective proposals developed for the observance of indigenous justice and the recognition of communities provided for in the constitution.

### **Independent justice**

**Legislative interdependency:** Art. 25, Subpara. c. "c) have access, in general terms of equality, to public services in their country," and Art. 61, No. 7 of the Constitution. "Perform jobs and public functions based on merit and ability, and in a selection and appointment system that is transparent, inclusive, equitable, pluralistic and democratic."

### **Paragraph 22 of the list of issues CCPR/C/ECU/QPR/6**

Report on existing mechanisms to ensure the independence of the judiciary.

### **State response paragraphs (232 to 233) CCPR/C/ECU/6**

232. With respect to existing mechanisms to ensure the independence of the judiciary, Art. 168 No. 1 of the Constitution establishes that organs of the Judicial Function shall enjoy internal and external independence. One of the mechanisms to guarantee this independence is the selection of judges and prosecutors through a merit-based selection process.

233. Under this regulatory framework, 16 merit-based selection processes have been conducted for the selection of judges and prosecutors. Six of these were undertaken in 2009; one in 2010; one in 2011; four in 2012; one in 2013; and three in 2014.

31. The independence of the judiciary is not guaranteed due to a politically biased conformation at the highest levels, with those at the top openly favorable to governmental purposes and interests.

The formation of two of the most important institutions of the Judicial Function, the Constitutional Court (CC) and the Judicial Council (CJ for the Spanish acronym), shows that most members developed their careers in public offices under the Executive during the years of President Correa. Although the election of offices is undertaken through a merit-based selection process, organized by the Council of Citizen Participation & Social Control (CPCCS) in a context of citizen oversight and objections, the affinity is evident. This criterion does not appear in the regulations but in fact limits participation in these processes for those professionals without official affiliation. There is also a substantive institutional distortion of the State regarding the hierarchy of the CJ above the CNJ. The latter, in keeping with its substantive work, should prevail over the administrative forms of justice. However, in the structure currently operated by the State, it is subordinate to the CJ. Another distortion affecting the independence of judicial officers is the Transitional Judicial Council's unjustified and excessive use of the concept of 'inexcusable error' to sanction judges. It is noteworthy that of 244 judges, 132 were removed from office by the Transitional CJ in this way, while in the current CJ, 88 judges out of 136 were dismissed. The International Oversight Committee for justice reform in Ecuador recommended revising this procedure because of the ambiguity of the concept. Finally, the substantive law regarding the organization of the democratic State cannot be overruled by executing the principle of majority, achieved via direct consultation. In this respect, it is not conceivable that, through a referendum held in 2013, the people are asked for an 'authorization,' endorsed by the electoral majority, to transgress the separation of State powers/functions. The President summed up the formula with the phrase, "I would put my hand in justice." The intention was to subordinate the rule of law to the principle of electoral majority.

32. **Questions.** How can the State ensure that access to office within the judicial system is not conditional upon affinity with the Government? How can the performance of the judicial system be assessed if the Judicial Council processes and punishes judges whose decisions are not consistent with governmental opinion or criteria? How can there be independence and judicial technical solvency if the judiciary is subordinated to the hegemony of the administrative apparatus?

33. **Recommendation.** Return to the National Assembly the ability to appoint CNJ judges. Restructure the judicial system, limiting and defining the powers of the CJ over the CNJ. Substantively modify the selection process for the nomination of judges, giving prevalence to objective measures over subjective. Establish mechanisms for citizen participation that allow a balanced presence of State and society in all functions of the public system.

#### **Excess use of the state of exception**

**Legislative interdependency:** Art 4 of the Covenant.

**Paragraph 12 of the list of issues CCPR/C/ECU/QPR/6**

"Please provide information on measures taken by the State party to ensure that the provisions of the Covenant and the constitutional precepts governing states of exception are fully respected in practice. Please also explain how the State party ensures that respect for rights cannot be restricted or suspended under any circumstances."

**Paragraph 148 of the State response CCPR/C/ECU/6**

148. According to Article 165 of the Constitution of the Republic of Ecuador, during states of exception, the only rights that may be suspended or limited are: the right to inviolability of the home; inviolability of correspondence; freedom of movement; freedom of association and assembly; and freedom of information.

34. **Overview.** Since 2007, the State has over-used the declaration of a state of exception, exaggerating the sensitivity of the constitutional provisions in situations of natural phenomena (El Niño, risk of eruption of Cotopaxi volcano) or social conflict (Dayuma). The exaggerated use of the state of exception corresponds to both the suspension of a number of constitutional guarantees; and to its territorial scope.

The most visible cases occurred on November 27, 2007, when the State announced civil unrest in the town of Dayuma. The population had requested the Government's attention on civil works and its role as mediator after a Chinese oil company failed to comply with the provision of certain benefits for the people of the area. Dayuma was militarized with the rigor of an internal war. Subsequently, the State declared a five-day state of emergency on September 30, 2010 (Decree 488), citing civil unrest. This followed a police riot due to dissatisfaction in the ranks over the Public Service Act (LOSEP)

On August 15, 2015, the State signed Decree 755, declaring a state of exception due to the eruption risk of the Cotopaxi volcano. In November 18 of the same year, Decree 833 was signed to declare a nationwide state of exception for El Niño, despite the territorial limitations of this phenomenon. The context, however, was pervasive social protest in other spaces, motivated by another agenda. On all these occasions, the State applied prior censorship to the media in accordance with Art. 165 No. 4 of the Constitution, without making explicit the criteria of necessity, proportionality, legality, temporariness, territoriality and reasonableness. Furthermore, there was no debate in the National Assembly regarding the scope and limits of these declarations, as established in Art. 166 of the Constitution. Although the Covenant recognizes the possibility for States to declare a state of exception in specific situations, this instrument is clear when it states that certain rights may not be suspended, among them Art. 18 on freedom of thought and conscience. In this regard, this declaration of exception came into conflict with the Covenant.

35. **Questions.** For what reasons is the Ecuadorian State unable to take action in extraordinary situations without resorting to a state of exception? How does the State review and evaluate the need for a state of exception? Why has Parliament failed to comply with its constitutional obligation to assess the relevance and need for the various declarations of a state of exception?



**36. Recommendation.** The State should review the compatibility of the Covenant with the Articles of the Constitution of Ecuador that limit the exercise of freedom of expression, information and thought in exceptional situations. A further recommendation is made to review the procedure and regulations that allow the National Assembly to evade its obligation to assess the state of exception.

### **Disproportional use of the classification of sabotage and terrorism**

**Legislative interdependency:** Articles 21 and 22 of the Covenant.

#### **Paragraph 12 of the list of issues CCPR/C/ECU/QPR/6**

Please indicate the legislative measures taken to combat terrorism and explain how they could affect the rights protected by the Covenant. Please comment on reports that denounce the broad definition of the offenses included in Chapter IV ("Crimes of sabotage and terrorism") of Title I of the second book of the COIP and the allocation of these crimes to people who organize and/or participate in public demonstrations.

#### **Paragraph 154 of the State response CCPR/C/ECU/6**

Regarding the classification of sabotage (Article 345 of the COIP) and terrorism and its financing (Articles 366 to 370 of the same Act), it should be noted that the definition respects the provisions of the Covenant. These crimes are classified as behaviors or legal acts exercised by a person or group of armed people who can create legal, economic, social and political destabilization in the Ecuadorian State. In condemning terrorism and sabotage, the State prioritizes collective interest on the matter, thereby protecting peace and security.

**37. Overview.** Since 2012 there have been several recommendations from national and international agencies regarding a reform of the administration of justice. Among these, the State is recommended to review the classifications of terrorism (Art, 366) and sabotage (Art. 345) in the COIP, which are incompatible with international treaties, of which Ecuador is a signatory in terms of human rights. The content of these articles exceeds the Ecuadorian reality and is outdated in national legislation. One case involved the arrest of 10 people (Operation Red Sun) in Luluncoto-Quito on March 3, 2012, for alleged acts of terrorism. The accusation was based on the detonation of three pamphleteering bombs, which were associated with the ideological study material of the accused. Among the pieces of evidence presented were political clothing and literature, similar to that used by the Government to proselytize in its favor. The defendants were imprisoned for one year, except for one woman, who was sentenced to house arrest due to pregnancy.

In another area, in 2011, there are records of 189 indigenous people being detained for crimes against State security under the classification of terrorism or sabotage. The iconic cases in the public eye are those involving Delfín Tenesaca, former President of the Confederation of Peoples of Kichwa Nationality of Ecuador (Ecuadorunari), Marlon

Santi and José Acacho, former President and former Vice President of the Confederation of Indigenous Nationalities of Ecuador (CONAIE), respectively.

38. **Questions.** Why does the State require the curtailment of freedom of thought, expression and opinion, peaceful assembly and association of people, as stated in the Covenant? Are the concepts of terrorism and sabotage used as a warning against social protest and political action?

39. **Recommendation.** The recommendation of the International Oversight Committee (op. cit) is assumed: "highlight the need to amend the law regulating the so-called crime of sabotage, in order to adapt to the reality of a democratic and plural Ecuador, respecting the principle of proportionality of penalties and the application of alternative measures to custody."

### **Right of Participation**

<b>Legislative interdependency:</b> Article 25 Subpara. b of the Covenant.
--

### **Electoral system**

40. **Overview.** In 1997 a referendum approved the formation of a mixed proportional and majoritarian electoral system. The design applied to this general rule consisted of fully open lists combinable with each other. From that year, in every election a different electoral system has been used. The last 9 years have seen the adoption of the D'Hondt method. This method is a boost to the majority in the proportional system. However, it was adopted in the full knowledge of its dysfunctionality in the proportional system, given the number of authorities elected in each constituency (mostly between 2 and 5); the presence of a majority party and, simultaneously, dispersed electoral minorities; and a fractional voting system.

Combined, these circumstances transform the proportional system defined by the Constitution into a majoritarian system without defining or declaring it as such. And basically cause extreme dysfunction and distortion in terms of translating votes into seats. Also, the electoral system does not guarantee, and in fact discourages, the principle of one voter equals one vote.

41. **Questions.** Why does the State use methods that mean the votes of citizens do not have equal value? Why does the State assume a method that, in the composition of the Ecuadorian electoral scenario, violates the principle of equality of votes?

42. **Recommendation.** Design a new electoral system which guarantees the permanence of the proportional system with a limited and viable number of preferences that do not affect it. Or failing that, to reform the Code of Democracy to provide a clear combination between a majority slant and a proportional slant, assuming the size of constituencies is maintained. Whichever option is adopted, it should be proven that one of the two systems invoked in Ecuadorian legislation (D'Hondt and Webster) reinforces the proportionality assumed as the constitutional definition of the electoral system.

### **Right to participation**

**Legislative interdependency:** Art. 25 Subparas. a and c of the Covenant, Article 61 No. 1 of the Constitution "elect and be elected."

43. The Council of Citizen Participation & Social Control (CPCCS), an institution designed for the appointment of the principal authorities of control, and the fight against corruption, has created a consistent and systematic distortion and alienation of the popular will. This has occurred to the extent that the authorities which manage selection processes and establish requirements do not arise from the direct representation of citizens, but are the expression of the popular sovereignty of delegates originating mainly in the Executive.

According to Art. 207 of the Constitution, "The selection of directors and advisers will be made from among the applicants proposed by social organizations and citizens. The National Electoral Council will lead the public merit-based selection process with nomination, oversight and law open to citizen challenge in accordance with the law." However, the participating qualified social organizations were those close to the government and the result has been the selection of allied directors.

Also, according to Art. 208, No. 10 to 12 of the Constitution, the CPCCS has the power to appoint the Public Prosecutor, Comptroller General, Ombudsman, Public Defender, Attorney General of the Republic, Superintendents (5), members of the Electoral Tribunal (TCE), members of the National Electoral Council (CNE) and members of the Council of the Judiciary (CJ). There are many cases of high turnover among members of the Executive appointed to office by the CPCCS.

**43. Questions.** How does the CPCCS comply with the Covenant Art. 25, Subparas. a and c? How does the CPCCS guarantee that any citizen can attain a public office, regardless of political affiliation? How does the State comply with the principle of equality?

**44. Recommendation.** In the short term, reform the Constitution to respect popular sovereignty, so that delegates originating in the popular vote are appointers of the main State authorities established by the Constitution. In the medium term, completely remove the CPCCS and restore an institution that fights corruption; a role the CPCCS currently does not fulfill.

## **Conclusions**

45. This report, limited to certain civil and political rights of the Covenant, was made with the plural concurrence of many institutions and individuals. It aims to show how the democratic mechanisms in Ecuador can transgress human rights, stimulated by inadequate institutional design.

Regarding the right to information, in summary, the repeal of the Organic Communications Law (LOC for its Spanish acronym) is recommended and, with it, the concept of media lynching. Public and seized media outlets should no longer be used to disparage, discredit and endanger those who think differently from the Government. In this regard, there should be a review of the disproportionality with which public servants use the media against ordinary citizens. Regarding the right of association, the State must ensure that civil society is organized freely, as established in the Covenant and the Constitution, and that NGOs are not closed without respect for due process. This is concomitant with freedom of association. Regarding the rights of women it is recommended to end the judicialization of abortion using informers in the medical profession. With regard to minority rights, the State must ensure that this sector benefits

from all the guarantees established by the Constitution and the Covenant. It is imperative to evaluate the disproportionate use of the state of exception.

To fulfil the right of participation, it is recommended to depoliticize appointments for public office, bringing transparency to the process and returning the designation of key authorities to the Assembly. Regarding justice, the independence of operators is essential.

47. The sequence of the topics presented shows how the Ecuadorian model has become more complex since the destruction of freedom of thought, expression, opinion and association. Through various forms of segregation and oppression, the lack of these freedoms prevents the development of ethical and political questioning by citizens, specifically violating the rights of women and ethnic groups. The oppressive circle is completed in substantive democratic forms, such as a justice which is dependent on the Executive; citizen participation in elections without competitive safeguards; discretionary recognition of political organizations; and the curtailment of popular sovereignty in the nomination of authorities.

48. Ecuador presents numerous social deficits that have been used by the State to generate patronage systems, especially an exchange between, on one hand, accepting the violation of civil and political rights and, on the other hand, economic and social benefits arising from State spending. The conceptual foundation of this model is the prevalence of economic and social rights over civil and political rights, in a way that is openly propagated by the State and used against society. The consequence is the progressive deterioration of democracy and the destruction of institutions, which operate despite their demonstrably inadequate design. In particular, the State uses institutions, supported by the parliamentary majority, to oppress social and political minorities; and unscrupulous forms of personalism and authoritarian manipulation of the law, contrary to the rule of law and of deliberation and consultation.

49. This model of transgressing civil and political rights in Ecuador is based on the expansion of State control over civil society and political society. These dimensions which operate blatantly in Ecuador require international attention to achieve the exercise of the fundamental rights of humanity, overcoming the narrow circles of domestic manipulation of institutions.

50. The reality and system of the Ecuadorian State, contrary to the International Covenant on Civil & Political Rights, needs to be recognized by the international oversight.

## References

National Coalition of Women for the Preparation of CEDAW Shadow Report. 2014 Shadow Report to CEDAW 2014 Ecuador.

Comprehensive Organic Penal Code (COIP). 2014. Justice and Human Rights Series, Ministry of Justice, Human Rights and Religious Affairs. Consultation.

IACHR. 2015. Criminalization of defenders of human rights. OAS.

Human Rights Committee, List of issues prior to the submission of the sixth periodic report of Ecuador, CCPR/C/ECU/QPR/6, 24 April 2014.

Convention 87 (ILO) Convention on Freedom of Association and Protection of the Right to Organize, 1948.

Convention 89 (ILO) Convention (Revised) Night Work (Women), 1948 (no. 89).

Constitution of the Republic of Ecuador. 2008. See: [http://www.asambleanacional.gov.ec/documentos/constitucion\\_de\\_bolsillo.pdf](http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf)

Executive Decree 016, June 4, 2013.

Executive Decree 488, September 30, 2010.

Executive Decree 739, August 3, 2015.

Executive Decree 755, August 14, 2015.

Executive Decree 833, November 18, 2015.

Duke, Caesar and Charles Duverger. 2009. Shadow Report to the Committee on Human Rights, periods analyzed 2000-2008. June 2009. Ecumenical Commission on Human Rights and Center for Civil and Political Rights.

Time, July 19, 2011, "NGOs: 189 Indigenous people accused of terrorism and sabotage" See: <http://www.eltiempo.com.ec/noticias-cuenca/73360-ong-189-inda-genas-esta-n-acusados-de-terrorismo-y-sabotaje/>

Regional Foundation for Human Rights Advisory, INREDH, Consultation. See: [https://www.inredh.org/index.php?option=com\\_content&view=article&id=761:la-falta-de-una-ley-de-consulta-a-pueblos-y-nacionalidades-indigenas-llevo-a-la-conaie-y-al-estado-a-la-corte-constitucional-&catid=1:actualidad&Itemid=143](https://www.inredh.org/index.php?option=com_content&view=article&id=761:la-falta-de-una-ley-de-consulta-a-pueblos-y-nacionalidades-indigenas-llevo-a-la-conaie-y-al-estado-a-la-corte-constitucional-&catid=1:actualidad&Itemid=143)

Fundamedios. 2016. Types of attacks on freedom of expression. See: <http://www.fundamedios.org/>

Fundamedios. 2016 newspaper archive of authoritarianism in Ecuador

Government of Ecuador, Consideration of reports submitted by State parties under article 40 of the Covenant under the optional reporting procedure with CCPR/C/ECU/6, November 3, 2015.

Human Rights Watch. Letter to Gustavo Jalk, chairman of the Judiciary on 29 January 2014. See: <https://www.hrw.org/es/news/2014/01/29/carta-sobre-independencia-judicial-en-Ecuador>

Communications Law. 2013. Official Gazette No. 22, Third Supplement. Consultation at: <http://www.presidencia.gob.ec/wp-content/uploads/downloads/2013/08/LeyDeComunicacion-espaniol.pdf>

International Covenant on Civil & Political Rights. 1966.

Citizen participation. . Report of social participation: Council of Citizen Participation and Social Control: Middle Period - Renewal of authorities.

Pásara, Luis. 2014. Judicial Independence in the reform of the Ecuadorian justice. Foundation for Due Process; Center for Law, Justice and Society; Legal Defense Institute

Steiner, Christina and Patricia Uribe (ed). 2014 American Convention on Human Rights. La Paz: Konrad Adenauer Stiftung.

### **Consulted and interviewed people**

Loty Andrade

Gloria Ardaya

Diego Cornejo

Elizabeth García

César Montúfar

Mariana Neira

Luis Pásara

César Ricaurte

Ana Cristina Vera