

**UPR Submission
Ecuador
November 2011**

I. Summary

In a referendum held in May 2011, President Rafael Correa obtained a popular mandate to reform the Ecuadorian justice system, a recommendation accepted by Ecuador during the previous UPR cycle. However, the language of the approved reforms could significantly increase the government's powers to influence the appointment and dismissal of judges.

Other serious concerns not addressed by the UPR recommendations of 2008 include the fact that government authorities have undermined free expression by using criminal defamation laws, by arbitrarily forcing TV and radio stations to air presidential speeches, and by failing to adopt regulations to grant official advertisement. Those involved in protests in which there are outbreaks of violence may be prosecuted on inflated and inappropriate terrorism charges. Ecuador has also harassed human rights defenders, and failed to bring those responsible of police abuses to justice.

II. Human Rights Issues

Judicial independence

The Ecuadorian judiciary has been plagued by corruption, inefficiency and political influence for many years. President Correa's efforts to reform the system, however, could lead to a significant increase in the government's influence over the appointment and dismissal of judges. The Recommendation 9 accepted during the UPR in 2008, which would on the contrary have required greater independence of the judiciary, is therefore not implemented by the Government of Ecuador.

Voters in the May 2011 referendum approved a proposal to dissolve the Judicial Council, a body composed of independent jurists responsible for the selection, promotion and dismissal of judges, whose efficiency had been widely questioned. It was to be replaced for 18 months by a tripartite transitional council to be appointed by the president, the legislature (in which President Correa has majority support) and the "Transparency and Social Control Function," the citizen's branch established in the 2008 Constitution. This transitional council dismissed scores of judges in August and September 2011.

Also approved in the referendum was a constitutional reform giving the executive branch and its appointees a direct role in a new Judicial Council that would eventually replace the one dissolved. One of the new Judicial Council's five members would be chosen by the executive; its other members would include the attorney general and the public defender.

In September 2011, at the request of the transitional council, President Correa declared a "state of emergency in the judicial branch," to resolve the "critical situation" of the justice system. The decree declared a "national mobilization, especially of all the personnel of the judicial branch." Lack of clarity about the meaning of "mobilization" could threaten judges' independence by suggesting that they must line up behind government goals or risk dismissal.

Freedom of Expression

The Ecuadorean criminal code includes provisions criminalizing "desacato," under which anyone who "offends" the president or other government authorities may receive a prison sentence of up to three months (for offending officials), and up to two years (for offending the president). In addition, anyone

who commits libel against public officials may be subject to a prison sentence of up to three years. A new criminal code presented by the government to the National Assembly in October 2011 does not include the crime of *desacato*, but if approved would still mandate prison sentences of up to three years for those who defame public authorities.

Since President Correa filed a criminal defamation suit in 2007 against the director of the newspaper *La Hora*, several local and government authorities have initiated criminal proceedings against journalists and media owners accusing them of defamation. According to the Fundación Andina para la Observación y Estudio de Medios (Fundamedios), a nongovernmental organization that focuses on free expression in Ecuador, six journalists have been convicted for defamation since 2008, and at least 10 others are under criminal investigation.

In 2011, President Correa took Emilio Palacio, a journalist, and three members of the *El Universal* newspaper's board of directors to court for allegedly defaming him. In July, a judge in Guayas province sentenced the four men to three years in prison and ordered them to pay US\$ 40 million in damages to the president for an article the judge considered defamatory. In an opinion piece Palacios had referred to President Correa as a "dictator," and accused him of ordering his forces to fire on a hospital, which was "full of civilians and innocent people," during the police revolt mentioned above. In September 2011, a three-person appeals court confirmed the prison sentence and the fine by majority vote.

In order to rebut media criticism the government has also used a provision of the broadcasting legislation that obliges private broadcasters to interrupt scheduled programs to transmit government messages known as "*cadenas*." According to an independent group, between January 2007 and May 2011, there were 1,025 *cadenas* totaling 151 hours of broadcasting time, many of which included attacks on government critics and only interrupted the program of the journalist that the *cadena* was criticizing.

Legislation to regulate broadcasting and print media has been under congressional debate since 2009. In the May 2011 referendum, voters also supported by a small majority a proposal to create an official council to regulate the content of television, radio and print media. Proposals by six ruling party legislators under discussion in the National Assembly in July 2011 would grant broad powers to this council, allowing it to punish media that disseminate "information of public relevance that harms human rights, reputation, people's good name, and the public security of the state," terms so vague that they could lead to sanctions against critical outlets.

The national government of Ecuador is the main advertiser in Ecuadorian media. At this writing, there are no clear, public guidelines in place on how to distribute official advertisement. The absence of transparent criteria for allocating government advertising contracts creates a risk of political discrimination against media outlets that criticize government officials.

Misuse of Anti-Terror Laws in Dealing with Social Protests

Prosecutors have applied a "terrorism and sabotage" provision of the criminal code in cases involving protests against mining and oil projects and in other incidents that have ended in confrontations with police.

Involvement in acts of violence or obstructing roads during such protests should be ordinary criminal offenses. Yet Ecuador's criminal code includes, under the category of sabotage and terrorism, "crimes against the common security of people or human groups of whatever kind or against their property," by individuals or associations "whether armed or not." Such crimes carry a possible prison sentence of four to eight years.

In July 2011 the Center for Economic and Social Rights, an Ecuadorian human rights group, reported that 189 indigenous people were facing terrorism and sabotage charges. Most of them were in hiding and only eight had been convicted.

Human Rights Defenders

The Correa administration has proposed to tighten regulations regarding the operation of both domestic and international NGOs in the country, including those working for human rights and the environment. In a draft decree announced in December 2010, domestic NGOs, including those working for human rights, would have to re-register and submit to continuous government monitoring. The decree would give the government broad powers to dissolve groups for “political activism,” and “compromising national security or the interests of the state,” vague terms that could seriously compromise NGOs’ legitimate activities. At this writing, the proposed decree has not been adopted.

Another presidential decree adopted in July 2011 regulating international NGOs with an office in Ecuador allows the government to monitor all their activities and rescind their authorization if they engage in activities different from those described in their application, or “attack public security and peace.” In August, the government announced that it was planning to halt the operations of 16 foreign NGOs because they had failed to provide information about their activities.

In a radio broadcast in June 2011, President Correa accused two nongovernmental organizations, Fundamedios and Participación Ciudadana of trying to destabilize his government, and questioned their alleged receipt of funds from foreign donors. In response to a statement by Fundamedios pointing out that its receipt of foreign funding complied with the law, the communications secretary accused NGOs of implementing “political strategies and military tactics aimed at creating confusion or promoting currents of public opinion favorable to the interests of some of their funders.”

Accountability

Impunity for police abuses is widespread and those responsible for murders often attributed to a “settling of accounts” between criminal gangs are rarely brought to justice. In June 2010, a truth commission created by the Correa administration published a report documenting 68 extrajudicial executions and 17 “disappearances” between 1984 and 2008, and named 458 alleged perpetrators of abuses. According to the commission, few of those responsible for the abuses had been held accountable, due to statutes of limitations, jurisdictional disputes, and procedural delays. In October 2010 the attorney general appointed a team of prosecutors to reopen investigations into cases reported by the commission. As of September 2011, the prosecutors were reported to have renewed investigations into several key cases, but no suspects had been charged.

III. Recommendations to be made to the government of Ecuador

Regarding Judicial Independence:

- The Correa administration should ensure that the transitional Judicial Council appointed to overhaul the justice system operates with complete independence from the government.
- The National Assembly, for its part, should adopt rules to ensure that the transitional Judicial Council, and the new one to be established after the transitional one ends its mandate, carry out their functions without interference from other branches of government. Specifically, the appointment, removal, and “mobilization” of judges should be the consequence of transparent, pre-established mechanisms to avoid decisions based on undue political motivations.

Regarding Freedom of Expression

- The National Assembly should repeal all legal provisions that contravene international norms on freedom of expression. Specifically, it should:
 - repeal all insult laws (*desacato*) and all norms that criminalize defamation of public officials and institutions; and
 - ensure that civil damages for defamation are limited so as to avoid a chilling effect on free expression.

- The National Assembly should also adopt a legal framework to regulate the media that complies with Ecuador's international human rights obligations, including but not limited to the prohibition of prior censorship.
- The government of Ecuador should limit the use of mandatory presidential speeches to extraordinary situations in which the broadcast is pursuant to a legitimate purpose, and is necessary and proportionate to meet such an aim.
- The government of Ecuador should also adopt clear guidelines to allocate government advertising contracts to ensure that they are granted in a transparent manner and without discrimination.

Regarding the Misuse of Terrorism Charges

- The Attorney General's Office should not file unsubstantiated or grossly exaggerated terrorism charges against demonstrators.
- The Attorney General's Office should also drop terrorism charges in cases in which suspects should be investigated for committing ordinary criminal offenses, such as when they are accused of participating in acts of violence or obstructing roads during protests.

Regarding the Protection of Human Rights Defenders

- The government of Ecuador should abandon its adversarial posture toward critical civil society organizations. Specifically, officials should refrain from—and publicly retract —unfounded public statements against rights advocates and organizations, and engage constructively with human rights defenders in seeking solutions to address Ecuador's human rights problems.

Regarding the Lack of Accountability for Police Abuses

- The Attorney General's Office should prioritize the investigation of alleged police abuses to ensure that perpetrators are brought to justice. Specifically, it should ensure that prosecutors conduct a thorough, impartial, and timely investigation into all allegations of police abuses, starting by (but not limited to) those documented by the truth commission.

Annexes:

1. Amicus Brief submitted by Human Rights Watch and the Center for Freedom of Expression and Access to Information at the University of Palermo before the Constitutional Court of Ecuador, November 2011.
2. "Ecuador: A Blow to Free Speech," *Human Rights Watch press release*, July 21, 2011.
3. "Ecuador: Don't Prosecute President's Critics," *Human Rights Watch press release*, March 31, 2011.
4. Ecuador chapter, *Human Rights Watch World Report 2011*.
5. "Ecuador: Drop Plan to Control Civil Society," *Human Rights Watch press release*, December 17, 2011.
6. "Ecuador: Letter to President of the National Assembly," *Human Rights Watch letter*, August 9, 2010.
7. "Ecuador: Amend Draft Communications Law," *Human Rights Watch press release*, December 2009.