



**Human Rights Watch  
UPR Submission  
Ecuador  
October 2016**

**I. Summary**

The administration of President Rafael Correa has expanded state control over media and civil society and abused its power to harass, intimidate, and punish critics. Other concerns include limited judicial independence, poor prison conditions, and women's and girls' limited access to reproductive health care due to fear of prosecution. The government has failed to implement recommendations it had accepted during the 2012 UPR of Ecuador on all these issues.

**II. Human Rights Issues**

**Excessive use of force against protesters**

During the 2012 UPR of Ecuador, the government accepted recommendations to "guarantee the respect of all human rights by members of the National Police" and "ensure prompt, impartial and timely investigation of all police abuses." Nonetheless, Ecuadorian security forces have committed abuses against protesters and bystanders, which have typically gone unpunished.

In September 2014, security forces committed serious physical abuses—including severe beatings, kicks, and electric shocks, during arrest and detention—against dozens of protesters and bystanders in response to largely peaceful demonstrations in Quito. A minority of protesters engaged in violence, clashing with police and leaving more than 30 officers injured. Within 24 hours of being detained, more than 100 detainees were brought before judges and charged with offenses such as attacking or resisting authority and damaging public or private property. Detainees were not informed of the charges against them before the hearings and had no contact with family members or lawyers until immediately before the hearings.

The government responded to reports and allegations of abuse by publicly congratulating the National Police on their role during the protests, threatening to prosecute lawyers who reported human rights violations, and challenging media outlets that published information on the abuses.

**Disproportionate Criminal Charges against Protesters**

During the 2012 UPR of Ecuador, the government accepted a recommendation to ensure that Ecuadorians could "exercise their right to peaceful assembly and protest and that anti-terrorist legislation is not misused to inappropriately censure such activities."

Nonetheless, sweeping provisions of the "sabotage and terrorism" chapter in the criminal code have been repeatedly applied by prosecutors against protesters. The provisions have been used to convict more than 100 people for participating in

allegedly violent protest activity during a police mutiny, which the government called an attempted coup, in September 2010.

Prosecutors have filed other serious charges against participants in public protests that are disproportionate to alleged acts. In February 2013, for example, 12 students were charged for rebellion, a crime that carries a prison sentence of up to six years, for their alleged participation in violent incidents during a protest in Quito against the decision to change the name of their university. A judge later dismissed the charges after the prosecutor was unable to substantiate them. After President Correa criticized the judge's decision in his weekly TV broadcast, another prosecutor reopened the case. In a second trial in July, the 12 were convicted and sentenced to 21 days in prison.

Hundreds of Ecuadorians took to the streets in December 2015 to protest the National Assembly's approval of constitutional amendments granting the Armed Forces powers to assist police in security operations, allowing the president and other elected officials to run for office indefinitely after 2017, and declaring communications a public service—thus granting the government broad powers to restrict the media. The day after the protests, a court convicted 21 people and sentenced them to 15 days in prison for “issuing expressions of discredit and dishonor against policemen.”

### **Freedom of Expression**

During the 2012 UPR of Ecuador, the government accepted recommendations to “repeal all legal provisions that contravene” free speech, “guarantee in all circumstances the independence of the media,” “eliminate criminal defamation provisions,” and “protect the right to freedom of expression of journalists.”

In 2013, President Correa signed a communications law that gives the government broad powers to limit free speech. The law requires all information disseminated by media to be “verified” and “precise,” opening the door to censorship by allowing the government to decide what information meets these vague criteria. It also prohibits “media lynching,” defined as “repeatedly disseminating information with the purpose of discrediting or harming the reputation of a person or entity.” In addition, it prohibits what it terms “censorship,” which, under the law's definition, includes the failure of private media outlets to cover issues that the government considers to be of “public interest.”

The Superintendency of Information and Communication (SUPERCOM), a government regulatory body created by the 2013 Communications Law, has in dozens of cases ordered media outlets and journalists to “correct” or retract reports, including opinion pieces and cartoons, or publicly apologize for their content. SUPERCOM has also accused outlets of engaging in “censorship” by not publishing information officials deemed important.

The Correa administration repeatedly used the Communications Law to order media outlets to publish information favorable to the government and to transmit official broadcasts responding to unfavorable news coverage. In July 2016, for example, the Communications Ministry ordered the TV channel *Ecuavisa* to transmit a thirty-minute official broadcast at the time when an investigative program was scheduled to air a report criticizing the government's use of public funds to create audiovisual

materials in support of government policies. *Ecuavisa* was able to air part of the investigative program in the time that was left; it published the rest only online.

Criminal defamation remains a concern, despite a 2014 legal reform narrowing the crime's definition. In June 2016, President Correa brought a defamation complaint against the vice mayor of Quito, for saying, in a radio interview, that President Correa manipulated the justice system to send money abroad without paying taxes. In September, the vice mayor was sentenced to 15 days in prison.

Efforts to exploit U.S. copyright law to secure the immediate removal of content critical of the government from Youtube and other major content providers are recurrent—and most often successful. The president, his political party and its members, state media outlets, and state agencies all have filed requests to remove images and documents from the Internet. Users sometimes manage to restore content, but only after a legal process that can take weeks.

### **Freedom of Association, Civil Society Organizations, and Human Rights Defenders**

During the 2012 UPR of Ecuador, the government accepted recommendations to “create an enabling legal environment for civil society organizations to contribute to democratic governance,” and to “protect human rights defenders... against harassment and attacks and fully ensure their freedom of assembly.”

In 2015, President Correa issued a decree confirming broad government powers, existing since 2013, to intervene in the operations of NGOs, including the power to dissolve groups on the grounds that they have “compromise[d] public peace” or have engaged in activities that are different from those they identified when registering with the government.

In December 2013, the government dissolved the Pachamama Foundation, an NGO that had engaged in environmental and human rights advocacy for more than 16 years, on the grounds that several of its members had allegedly participated in a violent demonstration against oil drilling in the Amazon region. Pachamama was not given advanced notice of the dissolution, and its legal challenges to the order were all rejected.

In August 2015, the education minister dissolved the largest and oldest teachers' union for allegedly violating a legal obligation to register board members. The dissolution came after the union's president met with the International Labor Organization (ILO) and the United Nations Human Rights Committee to report on violations of educators' rights, including labor stability and free association.

### **Judicial Independence**

Corruption, inefficiency, and political interference have plagued Ecuador's judiciary for years. President Correa received a popular mandate, in a 2011 referendum, to fix the problems. During the 2012 UPR of Ecuador, the government accepted several recommendations to ensure that the justice reform it was undertaking respected judicial independence. Nonetheless, as part of his sweeping judicial reforms, the Council of the Judiciary appointed and removed hundreds of judges, including all magistrates of the National Court of Justice, through highly questionable mechanisms that have undermined judicial independence.

### **Prison Conditions**

Prison overcrowding and poor prison conditions are long-standing problems in

Ecuador. During the 2012 UPR of Ecuador, the government accepted several recommendations to reform its penitentiary system. Since then, the government has spent millions of dollars to construct new detention centers, but their remote locations and strict and limited visitation rules impede prisoners' contact with family members.

In August 2016, after the Public Defender's Office filed a habeas corpus request on behalf of detainees at the Turi detention center in Azuay Province, a series of videos were leaked to the public, showing prison guards beating inmates, some of them naked, and subjecting them to electric shocks. At time of writing, the habeas corpus request remained pending.

### **Migrants and Refugees**

According to official statistics from 2013, Ecuador had nearly 55,000 registered refugees, the largest number of any Latin American country. Most are Colombians fleeing armed conflict.

In September 2014, the Constitutional Court ruled that several provisions of a 2012 presidential decree regulating asylum procedures were unconstitutional. The court ruled that the decree's definition of "refugee" was too narrow and was inconsistent with the definition set forth in the 1984 Cartagena Declaration on Refugees. It also extended the deadline to file an asylum request to three months after the petitioner's entry, and provided additional protections for appeal of asylum decisions, stating that refugees cannot be returned until a judge has made a final decision on the case.

The ruling, however, upheld other problematic provisions of the decree, including unfair procedures for determining which asylum claims should be deemed "manifestly unfounded," and overly broad powers to revoke refugee status. A comprehensive law to regulate the rights of migrants and asylum seekers is currently pending before the National Assembly.

In July 2016, approximately 150 Cubans were detained during a raid in a park where they were sleeping in tents to protest their inability to obtain a special humanitarian visa from Mexico that would allow them to travel to the US border, and from there, seek asylum in the United States. Judges conducted deportation hearings that did not comply with basic due process guarantees, and ordered the deportation of most of the detainees, including some who had sought asylum in Ecuador. The Cubans were deported before they had an opportunity to appeal the orders and, in some cases, despite judicial orders in their favor.

### **Accountability for Past Abuses**

A truth commission set up by the Correa administration to investigate abuses that occurred during all presidencies from the beginning of the repressive one of León Febres Cordero in 1984 until Correa took office in 2008 documented 136 cases of abuse involving 456 victims, including 68 victims of extrajudicial execution and 17 of enforced disappearance. Progress by a special prosecutorial unit created in 2010 to investigate these cases has been slow. As of December 2015, judicial procedures had only been initiated in 8 cases.

### **Reproductive Rights**

During the 2012 UPR of Ecuador, the government accepted a recommendation to

“strengthen measures to address teenage pregnancy, promoting access to reproductive health services.”

The right to seek an abortion is limited to instances in which a woman's health or life is at risk, or when a pregnancy results from the rape of a “woman with a mental disability.” Fear of prosecution drives some women and girls to have illegal and unsafe abortions and impedes health care and services for victims of sexual violence. Fear of prosecution also hinders detection and prevention of sexual and gender-based violence. Government statistics released in 2010, the latest available, indicate that one in four women over 15 years old in Ecuador has been a victim of sexual violence.

### **III. Recommendations**

To address the human rights problems described in this submission:

*The government of Ecuador should:*

- Ensure that all security forces to abide by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials when dispersing public demonstrations, and that prison guards respect the rights of detainees;
- Stop using the Communications Law to order media outlets to publish and transmit political propaganda, including material intended to combat negative news coverage of the government and its policies;
- End its practice of censoring critics online through U.S. copyright law procedures;
- Repeal the presidential decree that grants the government broad powers to intervene in the operations of civil society organizations, and ensure that those organizations that have been dissolved by its application are able to reestablish themselves and operate freely; and
- Ensure that its justice reform efforts protect judicial independence, and take steps to reverse actions that have hurt the independence and integrity of the judiciary.

*The National Assembly should:*

- Amend provisions in the criminal code that undermine free speech, including the revised versions of terrorism, sabotage, and defamation provisions;
- Repeal the 2013 Communications Law;
- Adopt a comprehensive law on rights of migrants and asylum seekers that upholds their rights under international law; and
- Decriminalize abortion at least in cases of rape, incest, and severe foetal impairment, as recommended by the UN Committee on the Elimination of Discrimination Against Women in February 2015.

*The Attorney General's Office should:*

- Conduct prompt, thorough, and impartial investigations of all police abuses, abuses by prison guards, and human rights violations documented by the Truth Commission;
- Stop bringing disproportionate criminal charges against protesters, including but not limited to “terrorism” and “sabotage” charges; and

## **Annexes:**

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- "Jailed for Discrediting the Police," *HRW Dispatch*, December 15, 2015, <https://www.hrw.org/news/2015/12/15/dispatches-jailed-discrediting-police>.
- "Crackdown on Protesters," *HRW press release*, November 10, 2015, <https://www.hrw.org/news/2015/11/10/ecuador-crackdown-protesters>.
- "Environmentalists Under Siege in Ecuador," *Foreign Affairs*, August 27, 2015, <https://www.hrw.org/news/2015/08/27/environmentalists-under-siege-ecuador>.
- "Courts Stalling on Protester Appeals," *HRW press release*, July 21, 2015, <https://www.hrw.org/news/2015/07/21/ecuador-courts-stalling-protester-appeals>.
- "Adopt UN Recommendations on Abortion Law," *HRW press release*, April 22, 2015, <https://www.hrw.org/news/2015/04/22/ecuador-adopt-un-recommendations-abortion-law>.
- "Censorship in Ecuador has made it to the Internet," *El País*, December 15, 2014, <https://www.hrw.org/news/2014/12/15/censorship-ecuador-has-made-it-internet>.
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- "Rights Group Shut Down," *HRW press release*, December 6, 2013, <https://www.hrw.org/news/2013/12/06/ecuador-rights-group-shut-down>.
- "Rape Victims as Criminals," *HRW report*, August 23, 2013, <https://www.hrw.org/report/2013/08/23/rape-victims-criminals/illegal-abortion-after-rape-ecuador>.
- "Clampdown on Civil Society," *HRW press release*, August 12, 2013, <https://www.hrw.org/news/2013/08/12/ecuador-clampdown-civil-society>.
- HRW letter to President Correa on Refugee Rights, June 20, 2013, <https://www.hrw.org/news/2013/06/20/letter-president-correa-refugee-rights>.
- "End Assault on Free Speech," *HRW press release*, June 17, 2013, <https://www.hrw.org/news/2013/06/17/ecuador-end-assault-free-speech>.