

SPECIAL REPORT

Ecuador defaults on freedom of expression recommendations received during II Universal Periodic Review

Friday 31 May 2013

On the first anniversary since Ecuador submitted to the Universal Periodic Review (UPR) at the headquarters of the UN in Switzerland, we can conclude that the country has defaulted on the recommendations made then and there is little interest in improving the situation of freedom of thought and expression and the rights of association and peaceful protest. The facts speak for themselves. The problems in the country in this area have not improved; on the contrary, they have got worse over the past year. This follows from an objective assessment of the events of this past year as established in this report.

After the Review, on 21 May last year Ecuador received 24 recommendations on freedom of expression and a package of 134 observations on human rights. During the UPR, 18 of the 193 States that constitute the United Nations system showed their concern about the situation of this fundamental right in Ecuador.

In September last year, during the session of adoption of the report, Ecuador rejected three of the recommendations received stating they were already being implemented. *However, Ecuador is defaulting on the 24 recommendations. This conclusion was reached after assessing the information provided by the Ministry of Justice and Human Rights on the "advance" in the implementation of the recommendations received.*

To evaluate the information provided by the Ministry, the 24 recommendations were grouped into five major themes that deal with the work of international organizations that protect the right to free expression, general guarantees to ensure the exercise of this right, the adaptation of regulations on matters of freedom of expression, and finally protection for the press and human rights defenders.

The following is a brief description of the acts by which Ecuador has defaulted on these commitments over the last year and a comparative table of the recommendations that were accepted by the State, arranged by themes, including the State's response with regard to compliance with them, where appropriate.

1. Recommendations on the work of international bodies to protect the right to free expression.

Recommendation:

“Accept the request of the Special Rapporteur on freedom of expression to visit the country which had been requested in 2004 (Belgium); Accept the request made by the Special Rapporteur on freedom of opinion and expression, which has been awaiting a response since 2004 (Latvia)”.

Information received from the State:None

Acts of default:

- Since 2012 Ecuador has carried out a campaign to weaken the Inter-American System of Human Rights, in particular the Inter-American Commission on Human Rights (IACHR) and its Special Rapporteur on Freedom of Expression (SRFE).
- Although the reform process promoted by Ecuador in the Permanent Council of the Organization of American States (OAS) did not eventually impair the authority of these institutions, Ecuador persists in conducting diplomatic efforts aimed at reducing the funding of the IACHR and the SRFE, delegitimizing the IACHR's authority to issue injunctions and turn these mechanisms for protection into a long and complicated process.
- The government's efforts seek undermine the institutional and financial independence of the SRFE and minimize its capacity to operate in the hemisphere through preventing the visibility of this office's acts of promotion and protection.
- Within the framework of these discussions, Ecuador has threatened to "leave" the Inter-American Human Rights System. We understand it concerns a formal complaint to the American Convention on Human Rights (ACHR).
- Ecuador is the only country in the region that in 2013 has disputed the SRFE Annual Report despite the fact that the sources used to support the information presented in it are mainly official and governmental.
- The visit of the Inter-American Commission on Human Rights to Ecuador, which was originally planned for June 2013, has not yet been approved by the State.

2. Recommendations that establish general guarantees for the exercise of free expression:

Recommendation: *Continue making efforts to guarantee all Ecuadorians the right to free intercultural, diverse and participative communication in all environments and media and the right to search, receive, exchange produce and circulate truthful, verified, timely, contextualized and plural information (Peru); stick to its international commitments, particularly to article 19 of the International Covenant on Civil and Political Rights (Estonia); promote and protect the right to freedom of opinion and expression, in accordance with what is stated in article 19 of the Universal Declaration of Human Rights (Sweden); protect the right to freedom of expression for journalists (Australia); develop mechanisms to improve the safety of journalists and ensure that all cases of attacks are investigated by independent and impartial bodies (Austria).*

Information received from the State: On the recommendation made by Peru, it reported that: "For the first time in the history of Ecuador plural access to the media exists. Ecuador provides access to the electromagnetic spectrum to private, community based and public media. In this way the State is setting a policy that respects freedom of expression and guarantees the right to communication and information".

Acts of default:

- Article 18 of the Ecuadorian Constitution establishes the right to seek, receive and circulate information but conditions the exercise of this right to subjective criteria of objectivity, timeliness and veracity, in contradiction to international standards on the matter.
- In 2012 Fundamedios reported 172 attacks on journalists and so far in 2013 there have already been 68 attacks on freedom of expression. The largest number of these attacks came from the president of the Republic.
- During 2012 and so far in 2013 several public officials have announced the nationalization of communication as a service that must be provided, managed and granted by the State, rather than a fundamental right that must be recognized and guaranteed.
- The President ordered his ministers not to grant interviews to private media so as "not to give them the scoop". This verbal measure was obeyed by many members of the presidential cabinet and is still in force.
- President Correa forbade, under threat of dismissal, all members of his cabinet from providing members of the Assembly with any information they requested despite this being a constitutional and legal faculty. The president ordered that this information should be channeled only through the president of the Assembly.
- Assembly members cannot request information.

- During 2012 and so far in 2013 two Assembly members from opposition parties have been prosecuted after making allegations of possible acts of corruption in the civil service.
- In July 2012 the Communications Secretary ordered the removal of official advertising from private media outlets that are critical of the government.
- Between 2012 and 2013 four murders of social communicators were reported. The only one that was cleared concerned a freelance photographer who was the brother of the Minister of the Interior. There has been no known progress in the investigations regarding the other three cases.
- In 2012 ten media outlets were closed down by not renewing their frequency contract or by terminating it. Administrative actions often included the seizure and destruction of equipment as well as the use of excessive force by police officers who participated in the operations. The administrative processes to close down frequencies have been criticized for their failure to observe the rules of procedure established by law. In many cases they have been used to silence critical journalists or stations in areas where the national government is not popular.

3. Recommendations on the right to freedom of expression and association as requirements for exercising the right to social protest and the work of human rights defenders and NGOs in the country.

Recommendation: *Ensure that community activists and indigenous leaders can exercise their right to peaceful assembly and protest and that anti-terrorist legislation is not misused to inappropriately censure such activities (Canada); respect the right to freedom of expression and peaceful demonstration, and restrict to the absolute minimum the use of criminal prosecutions against people who exercise these rights (Belgium); ensure that criminal provisions are not misused to curb the ability of human rights defenders or other protesters to exercise their rights to freedom of expression, assembly and association and that appropriate authorities reconsider the cases of those arrested and prosecuted (Germany); promote, protect and respect the right to freedom of expression, assembly and association in compliance with the country's international HR obligations (Slovakia); ensure that all human rights activists operating in the country, including individuals cooperating with United Nations human rights mechanisms, are spared from any criminalization, harassment or intimidation and can perform freely their legitimate duties (Slovakia); examine recent restrictive legislation on NGOs with a view to prevent that legitimate demonstrations and protests by civil society can be taken to Court or criminalized under the penal*

definition of “terrorism” or “sabotage” (Spain); engage in a constructive dialogue with the media, NGOs and international bodies to promote freedom of expression in Ecuador (United Kingdom of Great Britain and Northern Ireland); ensure that Decrees No. 982 and No. 812, with regard to the freedom of association, freedom of assembly and freedom of expression, are not applied to block the legitimate work of NGOs (Switzerland); make sure that the Presidential Decree No. 982 is not applied as a way to impede the work of human rights defenders (Austria).

Information received from the State: “Accusations of terrorism under Ecuadorian law cannot be comprehended under the international notion, especially the criteria on terrorism handled by UNODC, since they have different notions and considerations of applicability by virtue of the different historical moment in which the offense was typified in Ecuador. In this sense, it appears that the terms applied by the Ecuadorian Criminal Code are unrelated to the international concept of terrorism. On the other hand, in the case of those who participate in social protests resulting in the destruction of public property and services and their performance incurs in criminal actions, the National Police applies Ministerial Agreement No. 1699 of the Ministry of the Interior dated 18 August 2010 which regulates and has institutionalized the Progressive and Differential Use of Force”.

Acts of default:

- In 2012 10 left-wing young activists (the Luluncoto 10) were arrested when they had gathered to organize a peaceful march. They were originally accused of flagrant offenses but these could not be proven. They were linked without any evidence to the explosion of pamphlet bombs in the city of Guayaquil. Finally, the National Court of Justice sentenced them to one year in prison for the crime of attempted terrorism, changing the criminal offense for which they were originally charged.
- Within the framework of the "Luluncoto 10" case, the relatives of the accused were victims of multiple acts of harassment, surprise seizures and arbitrary raids at their homes by the police, sometimes without a warrant from a relevant authority.
- In August 2012 peasant leaders Carlos Pérez Guartambel, Federico Guzmán and Efraín Arpi were sentenced to eight days in prison by the National Court of Justice for the crime of blocking public roads and the obstruction of basic services after carrying out a protest on the streets in 2010 against the Water and Mining Law in defense of the Kimsacocha reserve.
- In May 2012 the Confederation of Indigenous Nationalities CONAIE presented to the Assembly an Amnesty request for 129 indigenous leaders who currently face prosecution because of their protest and social organization activities.²³

accusations, of which 17 are criminal, 2 civilian and 4 administrative actions. In the case of the criminal accusations, 6 are for sabotage and terrorism.

- In March 2013 several young students from the Central Technical School were arrested after participating in a public demonstration in protest of the curriculum reform that would prevent students from obtaining technical diplomas on graduation. There will be a hearing when the prosecutor's charges will be announced on 12 June. Several of the accused are minors. The president has used his Saturday program Enlace Ciudadano to order that students "should be expelled" and "prosecuted to the full extent of the law".
- Since 2012 President Correa has been threatening to expel from Ecuador the U.S. Agency for International Development USAID, claiming that it funds destabilizing acts. USAID provides funds to 16 projects in various areas.
- In September 2012 the government formalized the expulsion of 26 international NGOs, claiming a breach of their operational plans or that they had completed their operations in the region. 16 more were given the order to sign a new agreement. In May 2013 it was reported that 26 NGOs must update their data in accordance with the provisions of Executive Decree 812 of 2011 and that they are at risk of being expelled from the country.

4. Recommendations concerning the adaptation of criminal law on matters of freedom of expression and the use of types of offenses that criminalize information and opinion.

Recommendation: *Undertake a review of existing and proposed legislation relating to freedom of expression and media freedom to ensure its alignment with international standards, and more specifically, eliminate any existing criminal defamation provisions, also known as desacato [contempt] laws (Canada); decriminalize defamation and make the necessary amendments in this regard, in line with Inter-American and international standards (Norway); repeal all legal provisions that contravene international norms on freedom of expression, especially all insult laws and all norms that criminalize defamation of public officials and institutions (Latvia); align criminal legislation on insult and defamation with international standards governing freedom of expression. It is hoped that these important elements would be taken into account in the ongoing reform of the Penal Code (Belgium); guarantee in all circumstances the independence of the media and take the necessary measures in order that domestic legislation on the offense against honor and defamation does not undermine the freedom of expression (France); consider taking measures to guarantee freedom of expression, particularly the freedom of the*

press and to harmonize national legislation in this area with international norms (Costa Rica); stick to its international commitments, particularly to article 19 of the International Covenant on Civil and Political Rights (Estonia).

Information received from the State:None

Acts of default:

- Articles 230 and 231 of the Criminal Code establish criminal categories akin to contempt protecting the honor of the president and several public officials. The crimes categorized as slanderous and non-slanderous offenses, contained in Title VII of the Code on crimes against honor, contain open provisions that do not exclude from their scope of application either public interest issues or public officials. In practice they have been used by these to silence the press or critical opponents who report acts of corruption.
- The Organic Comprehensive Criminal Code bill has maintained the criminal categories of contempt under other names and increased its scope of application to other situations not covered by the Code of 1998.
- In addition, the bill incorporates other criminal categories that without being related to crimes against honor affect the exercise of freedom of expression: political harassment, rebellion, offenses against national symbols, insubordination, instigation, etc., could affect the exercise of freedom of expression because of their extent and vagueness.
- The Communications Bill that will shortly be approved by the Assembly contains provisions that regulate the ethics of the media and journalists from the State, establishes programming quotas and regulate content. It could lead to the creation of a supervisory body whose independence from the Executive is being questioned and whose competency is not clearly defined.
- Other laws and non-criminal regulatory bodies have also been approved with the aim of silencing debate and criticism. The Organic Electoral and Political Organizations' Law (Democracy Code), whose last reforms took effect in February 2012, included provisions that lessened the press' ability to report and express opinions during electoral periods. In October 2012 the Constitutional Court declared the partial unconstitutionality of the Reforms but kept in force the provisions prohibiting the press to "express an opinion for or against any candidate".
- In regard to legal proceedings and judicial harassment against journalists presented as further liability, in 2012 there were 11 lawsuits in different forums: criminal, judicial, electoral contentious and constitutional. Also included are actions initiated by the Prosecutor's Office. These processes were initiated after an opinion was expressed or information on matters of public interest

was reported, a political position within an electoral process was declared or allegations of corruption were made. They all ended with convictions against the journalists or media outlets that were prosecuted. So far in 2013 three cases of sentences issued by high courts have been reported that threaten adherence to the right to free expression.

5. Recommendations related to the protection that the press and human rights defenders should have against acts of persecution and harassment, as well as guarantees for the work of NGOs in the country.

Recommendation: *Create an enabling legal environment for civil society organizations to contribute to democratic governance by creating entry points for dialogue and refraining from restricting their freedom to operate independently and freely (Canada); facilitate that different civil society actors express their views and opinions with responsibility and objectivity (Holy See); protect human rights defenders and journalists against harassment and attacks and fully ensure freedom of assembly (Latvia); (Luxembourg); allow national and international human rights organizations the space to undertake their non-violent advocacy, campaigning, reporting and investigative work and that the Government of Ecuador engage constructively with human rights defenders in seeking solutions to address Ecuador's human rights challenges (Norway).*

Information received from the State: **None**

Acts of default:

- Since April 2012 the president of the Republic and several public officials have accused Fundamedios of being "guards of the Empire" and of engaging in acts to "destabilize the State". The allegations emerged through a diplomatic cable from the U.S. Embassy in Ecuador, which indicated that certain information had been provided by a "watchdog" organization. These accusations have persisted to date. The accusations also refer to an alleged triangulation of funds and subversive acts. Within the framework of these accusations some public officials have threatened to initiate investigations against Fundamedios, but have not provided any information about the existence of such processes.
- The Ecuadorian president has engaged in similar actions to discredit and ridicule the president of the Ecumenical Human Rights Foundation, Elsie Monge, and the president of CONAIE. In 2102 Fundamedios reported that 20.8% of aggressions were acts of verbal harassment by the president and

several public officials and so far in 2013 15 acts of harassment against the press have been reported and the use of national chains to insult, discredit or harass the press and human rights defenders constitutes 17,19% of reported aggressions.



