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**Submission by CIVICUS: World Alliance for Citizen Participation,
NGO in General Consultative Status with ECOSOC
And
Fundación Ciudadanía y Desarrollo**

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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2 Fundación Ciudadanía y Desarrollo (FCD) is an Ecuadorian CSO established in 2009 that, through research and citizen education, aims to promote and defend the rule of law, democratic principles and individual freedom, as well as the promotion of citizen participation, social control, transparency, open government and public innovation.
- 1.3 In this submission, the two organisations examine the Government of Ecuador's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Ecuador's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in May 2017. To this end, we assess Ecuador's implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide follow-up recommendations.
- 1.4 During the 3rd UPR cycle, the Government of Ecuador received 25 recommendations relating to the space for civil society (civic space). Nineteen of these recommendations were accepted and six were noted. An evaluation of a range of legal sources and human rights documentation addressed in this submission demonstrates that the Government of Ecuador has only fully implemented two recommendations relating to civic space. Ten recommendations were partially implemented and 13 were not implemented. While the government has made important strides in reforming legal restrictions on the freedoms of association and expression, acute implementation gaps were found with regard to the right to the freedom of peaceful assembly and issues relating to the protection of HRDs, civil society activists and journalists.
- 1.5 We are deeply concerned by the lack of institutional mechanisms to protect and promote an enabling environment for HRDs and journalists in a context marked by recurrent judicial harassment, criminalisation and violence.
- 1.6 We are further alarmed by the repeated violations of peaceful assembly rights, in particular through the use of excessive force by security forces policing protests. Additionally, more efforts are needed to improve the legal framework governing the right to the freedom of expression.

1.7 As a result of these issues, civic space in Ecuador is currently classified as ‘obstructed’ by the CIVICUS Monitor, indicating that the space for civil society is constantly undermined.¹

- Section 2 of this submission examines Ecuador’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Ecuador’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Ecuador’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, media freedom and access to information.
- Section 5 examines Ecuador’s implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 3rd cycle.
- An annex on the implementation of 3rd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of association

2.1 During Ecuador’s examination under the 3rd UPR cycle, the government received two recommendations on the right to the freedom of association and creating an enabling environment for CSOs. The government committed to ensuring that ‘it grants the right to freedom of association and the possibility for associations to carry out their work without undue restrictions’ and to guaranteeing ‘a favourable environment for the work of all civil society actors active in the field of the protection and promotion of human rights’.² Both recommendations were accepted. As evidenced below, the government has made some advances in implementing these recommendations, although further efforts are needed to realise them fully.

2.2 Clause 13 of article 66 of the Ecuadorian Constitution guarantees the right to associate freely and voluntarily. Article 96 of the Constitution also recognises all forms of organising society as an expression of the people’s sovereignty.³ Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which

¹ CIVICUS Monitor: Ecuador, <https://monitor.civicus.org/country/ecuador>.

² 118.67 and 118.57 A/HRC/36/4 (10 July 2017).

³ Constitution of the Republic of Ecuador, 2008, http://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf.

Ecuador is a state party, also guarantees the freedom of association.

2.3 Despite these commitments, Ecuador lacks a comprehensive law governing the work of CSOs. The legal treatment of CSOs stems from the Civil Code, which has been in effect since 1861 and provides the executive with the authority to establish and dissolve CSOs.⁴ As a result, civil society work takes place in an insecure legal environment in which organisations are regulated by executive decrees and vulnerable to the discretion of government administrations. In August 2018, a Draft Law of Non-Profit Organisations was discussed in the National Assembly with the objective of reducing discretionary powers over CSOs.⁵ While this could be a significant improvement, the bill's second debate had not taken place as of March 2022.

2.4 Executive Decree No. 193 of October 2017 regulates the fundamental aspects regarding the establishment, recognition and operation of CSOs.⁶ This decree repealed two problematic instruments, Executive Decrees Nos. 16 and 739,⁷ and made advances by removing some excessive information requirements and simplifying procedures for registering and maintaining organisations' legal status. These changes resulted in an increase in the number of registrations in the Unified Information System of Social Organisations (SUIOS), with 28,184 CSOs receiving legal status between November 2017 and November 2019.⁸

2.5 Despite these improvements, continued regulation by executive decree undermines the legal security of CSOs. In addition, article 19 of Decree No. 193 still enables the dissolution of organisations on vague grounds such as 'moving away from the aims and objectives for which it was constituted' or 'engaging in partisan political activities'. The decree also maintains a prior authorisation procedure as the standard for the recognition of CSOs' legal status rather than the notification procedure recommended by experts.⁹ Civil society reports an ongoing issue of an excessive administrative burden when formalising organisations.¹⁰

⁴ Civic Freedom Monitor: Ecuador, International Center for Not-For-Profit Law, 3 January 2022, <https://www.icnl.org/resources/civic-freedom-monitor/ecuador>.

⁵ 'Legisladores debatieron el proyecto de Ley Orgánica de Organizaciones sin Fines de Lucro', National Assembly, 2 August 2018, <https://www.asambleanacional.gob.ec/es/noticia/56986-legisladores-debatieron-el-proyecto-de-ley-organica-de>.

⁶ Executive Decree No. 193, 23 October 2017, https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=105551.

⁷ See reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27 (21 May 2012) and A/HRC/23/39 (24 April 2013).

⁸ 'Las organizaciones sociales en Ecuador casi se duplicaron en dos años', El Comercio, 24 November 2019, <https://www.elcomercio.com/actualidad/creacion-organizaciones-sociales-personeria-juridica.html>.

⁹ United Nations General Assembly. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para. 58. 2012. <https://rb.gy/9vtbli>.

¹⁰ 'Evaluación Nacional de Ambiente Habilitante', FCD, June 2020.

- 2.6** On a positive note, some organisations that were arbitrarily dissolved under the previous regulation had their legal status restored after a change of government in October 2017. On 17 November 2017, the Environment Ministry issued a resolution reinstating the legal status of environmental foundation Pachamama Foundation, noting that the organisation’s dissolution in December 2013 had ‘violated due process’.¹¹
- 2.7** According to the International Trade Union Confederation, Ecuadorian workers face severe restrictions on their right to organise.¹² Article 326 of Ecuador’s Constitution imposes a single trade union system for all labour relationships in state institutions.¹³ Excessive restrictions are imposed on public servants’ right to strike and to collective bargaining.¹⁴ For instance, the Organic Law on Public Service (LOSEP) recognises only six legal grounds for the declaration of a strike. The Constitution and LOSEP prohibit any suspension of public services related to health, environmental sanitation, education, justice, the fire brigade, social security, electrical energy, drinking water and sewerage, hydrocarbon production, the processing, transport and distribution of fuel, public transportation, postal and telecommunication services.¹⁵

3. Harassment, intimidation and attacks against HRDs, civil society activists and journalists

- 3.1** Under Ecuador’s previous UPR examination, the government received seven recommendations on the protection of HRDs, journalists and civil society representatives. The government committed to several relevant recommendations including to ‘establish specialised protection mechanisms to ensure the safe and independent work of civil society and human rights defenders’.¹⁶ Of the recommendations received, five were accepted and two were noted. However, as examined in this section, the government has not implemented any of these recommendations.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further

¹¹ ‘La Fundación Pachamama volverá a trabajar en Ecuador luego de 4 años’, El Comercio, 20 November 2017, <https://www.elcomercio.com/actualidad/politica/fundacion-pachamama-ecuador-ong-ambiente.html>.

¹² International Trade Union Conference, Global Rights Index: Ecuador, <https://www.globalrightsindex.org/en/2021/countries/ecu>.

¹³ Constitution of the Republic of Ecuador, op. cit.

¹⁴ Organic Law on Public Service, 2010, <https://biblioteca.defensoria.gob.ec/bitstream/37000/2711/1/LEY%20ORGANICA%20DE%20SERVICIO%20PUBLICO%2005-08-2020.pdf>.

¹⁵ Ibid.

¹⁶ 118.58, A/HRC/36/4 (10 July 2017).

guarantees the freedoms of association, peaceful assembly and expression. In May 2020, Ecuador also ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). This instrument contains specific provisions on environmental HRDs' protection and access to justice.¹⁷

- 3.3** Despite these commitments, Ecuador still lacks a mechanism to protect HRDs, civil society activists and journalists. While the environment for these has slightly improved in the past five years, they continue to face violence, stigmatisation and legal harassment.
- 3.4** Penal offences such as 'sabotage', 'paralysing public services', 'attack or resistance' and 'damage to third party property' are repeatedly used in abusive criminal prosecutions to harass, intimidate and persecute HRDs and civil society activists.¹⁸ Indigenous, land and environmental defenders who oppose extractive industries and infrastructure megaprojects projects are key targets of judicial harassment and criminalisation.
- 3.5** In one example, about 70 residents of La Merced de Buenos Aires in the Imbabura province face charges of 'damages to third party property', 'illicit association' and 'intimidation' for their activism against mining.¹⁹ Since 2020, local environmental defenders have complained that a copper mining concession in the region was illegal and illegitimate because it lacked community consultation. At least seven criminal investigations were opened against community members and a local councillor. The town was militarised in August 2021, seemingly in response to the community's resistance against mining.²⁰
- 3.6** In April 2020, a crude oil spill affected waterways vital to several Indigenous communities in the Ecuadorian Amazon. After the disaster, affected communities in the Federation of Communes Union of Native People of the Ecuadorian Amazon (FCUNAE) filed a lawsuit against the government, private company OCP Ecuador

¹⁷ Observatory on Principle 10 in Latin America and the Caribbean, ECLAC, <https://observatoriop10.cepal.org/en/treaties/regional-agreement-access-information-public-participation-and-justice-environmental>.

¹⁸ Organic Integral Criminal Code, 2014, https://defensa.gob.ec/wp-content/uploads/downloads/2018/03/COIP_feb2018.pdf.

¹⁹ 'Situación de personas defensoras de derechos humanos, colectivos y de la naturaleza en Ecuador: Retos y desafíos en la construcción de sistemas integrales y diferenciados para su protección', Alianza de Organizaciones por los Derechos Humanos, June 2021, <https://ddhhecuador.org/sites/default/files/documentos/2021-06/Informe%20Situacio%CC%81n%20Defensoras.pdf>.

²⁰ 'Presencia de militares y policías amenaza el derecho a la protesta y resistencia pacífica de la población de la Merced de Buenos Aires', Alianza de Organizaciones por los Derechos Humanos, 2 August 2021, https://ddhhecuador.org/sites/default/files/documentos/2021-08/Alerta%2091_DColectivos_Presencia%20de%20militares%20y%20polic%3%ADas%20amenaza%20el%20derecho%20a%20la%20protesta%20y%20resistencia%20pac%3%ADfica%20de%20la%20poblaci%3%B3n%20de%20la%20Merced%20de%20Buenos%20Aires%20_02.08.21.pdf.

and state-owned corporation Petroecuador, alleging negligence in managing pipelines. They demanded urgent environmental and community reparations. Their complaints were dismissed by local courts in Orellana province.²¹ Meanwhile, in September 2020 a lower-court judge filed a complaint against the plaintiffs and their legal representatives, accusing them of inciting ‘social instability’ and putting him at personal risk for speaking out about the trial. Kichwa defender and FCUNAE president Carlos Jipa and five defence lawyers have faced criminal investigations related to this complaint since September 2020.²²

- 3.7** On 11 April 2019, Swedish privacy rights defender Ola Bini was detained for alleged collaboration with ‘efforts to destabilise the government’. Bini is a software developer who has lived in Ecuador since 2013 and whose work has allowed journalists and activists to share information and gather evidence securely. The arrest was based on a public accusation by the Interior Minister and on information from an anonymous source. On 20 June 2019, a provincial court ordered his release after accepting a petition for habeas corpus, also recognising abuses in Bini’s arrest.²³ Despite being fraught with irregularities, including the raid of a witness’ offices, criminal proceedings against Bini have continued for alleged ‘unauthorised access to an information system’ under article 234 of the Criminal Code.²⁴ According to free expression advocates, the broad definition of this offence could be applied in an unfair and disproportionate manner, including against whistleblowers and activists.²⁵
- 3.8** Trade unionist Jorge Acosta, coordinator of the Trade Union of Banana and Campesino Agricultural Workers, has faced three criminal complaints since 2018 in retaliation for his labour rights work.²⁶ These included allegations of disseminating false information to create economic panic, invasion of privacy and tax fraud. According to the American Bar Association, these criminal proceedings were characterised by a series of serious irregularities that include vague and broad charges, attempts to seek personal information on the defendant unrelated to the

²¹ ‘Defenders of our planet: resilience in the face of restrictions’, CIVICUS Monitor, November 2021, <https://civicus.contentfiles.net/media/assets/file/DefendersOfOurPlanet.pdf>.

²² Alianza de Organizaciones por los Derechos Humanos, June 2021, op. cit.

²³ ‘Ecuador: Human rights violations in criminal proceedings against Ola Bini’, 26 August 2019, <https://www.amnesty.org/en/documents/amr28/0871/2019/en>.

²⁴ ‘Ecuador: Authorities must monitor trial against digital defender Ola Bini’, 3 March 2020, <https://www.amnesty.org/en/latest/news/2020/03/ecuador-authorities-must-monitor-trial-digital-defender-ola-bini>.

²⁵ ‘Ecuador: When digital rights and cybercrime collide’, Human Rights Watch, 15 November 2021, <https://ifex.org/ecuador-when-digital-rights-and-cybercrime-collide>.

²⁶ ‘Ecuador: Preliminary Report on Criminal Charges Filed Against Labor Organizer Jorge Acosta’, American Bar Association, 22 March 2021, https://www.americanbar.org/groups/human_rights/reports/ecuador--preliminary-report-on-criminal-charges-filed-against-la.

alleged misconduct and the denial of international observers' access to hearings without justification.²⁷

3.9 Article 182 of Ecuador's Criminal Code contains provisions on slander, which can lead to fines and imprisonment for up to two years. Article 396 of the Code criminalises 'expressions to discredit or dishonour of another'.²⁸ While these provisions have been used to punish government critics in the past, they have rarely been applied in recent years.²⁹ However, in one notable case, in 2020 journalist Juan Sarmiento was sentenced to 10 days in prison for 'discrediting' a local official in Napo province. Sarmiento directs and hosts the news and opinion programme Tendencia Digital, which is broadcast on television stations in Napo and on social media. The complaint against him refers to episodes of the programme and social media publications in April and May 2020 about alleged mishandling of the COVID-19 pandemic.³⁰

3.10 Journalist Dayanna Monroy of broadcaster Teamazonas TV has also faced intimidation and judicial harassment for reporting on alleged corruption involving former Ecuadorian President Abdalá Bucaram Ortiz and his family. On 1 February 2021, Bucaram filed a criminal lawsuit accusing Monroy of publishing confidential information about his family. If found guilty, she could face up to three years in prison.³¹ A prosecutor requested information about Monroy's assets from state institutions and urged Teamazonas to deliver videos and notes referring to her reporting on the former president's son. The Inter American Press Association called the lawsuit 'an act of intimidation that undermines press freedom'.³² The former president and his son have also used their social media accounts to threaten, insult, and discredit the work of Monroy and other journalists reporting on the corruption scandal.³³ In December 2021, three UN Special Rapporteurs expressed concerns about Monroy's situation and the chilling effect this case could

²⁷ Ibid.

²⁸ Organic Integral Criminal Code, 2014, op. cit.

²⁹ 'World Report 2019: Ecuador', Human Rights Watch, 2020, <https://www.hrw.org/world-report/2019/country-chapters/ecuador>.

³⁰ 'Ecuadorian journalist Juan Sarmiento sentenced to prison for 'discrediting' local official', Committee to Protect Journalists, 20 November 2020, <https://cpj.org/2020/11/ecuadorean-journalist-juan-sarmiento-sentenced-to-prison-for-discrediting-local-official>.

³¹ 'Former Ecuadorian president threatens, files suit against journalist Dayanna Monroy', Committee to Protect Journalists, 9 February 2021, <https://cpj.org/2021/02/former-ecuadorian-president-threatens-files-suit-against-journalist-dayanna-monroy>.

³² 'Judicial harassment against Ecuadorian journalist undermines press freedom', Inter American Press Association, 2 February 2021, <https://en.sipiapa.org/notas/1214362-judicial-harassment-against-ecuadorian-journalist-undermines-press-freedom>.

³³ 'Director de Código Vidrio recibe amenazas de prófugo de la Justicia', Fundamedios, 7 September 2020 <https://www.fundamedios.org.ec/alertas/codigo-vidrio-amenaza-profugo-bucaram>.

have.³⁴

3.11 The work of HRDs and civil society activists in Ecuador is undermined by extra-legal measures including intimidation, physical attacks, smear campaigns and killings. In 2021, the Alliance for Human Rights Ecuador documented 22 cases demonstrating systematic rights violations of at least 449 HRDs over the previous decade.³⁵ Indigenous, land and environmental defenders are particularly vulnerable to violence. These repeated attacks led local and international civil society to demand concrete and durable action from the government to protect HRDs in August 2018.³⁶

3.12 On 17 March 2021, water defender Andrés Durazno was killed in Llantahuayco, Azuay province. Durazno was a member of groups resisting mining near the National Cajas Park, both from government-authorised projects and illegal miners. Several communities in the area organised to resist the large-scale Río Blanco project, facing years of criminalisation and violence. Mining has also been a source of conflict within local communities. Between September 2019 and April 2020, communities opposed to mining reported intimidation and surveillance, and at least seven environmental defenders received death threats from pro-mining community members. According to the Alliance for Human Rights Ecuador, Durazno was killed by another member of a local community amid an argument over mining.³⁷

3.13 According to press freedom group Voces del Sur, the situation of journalists in Ecuador improved with the change of government in 2017, as the intensity of polarisation and animosity towards journalists and the media decreased. However, 2019 saw a significant uptick in attacks after mass protests erupted in October. At the time, there was a revival of a stigmatising discourse and hostility towards the press.³⁸ Aggressions decreased in 2020,³⁹ but increased significantly again in

³⁴ AL ECU 4/2021, Mandatos de la Relatora Especial sobre la situación de los defensores de derechos humanos; del Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, 15 December 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26890>.

³⁵ Alianza de Organizaciones por los Derechos Humanos, June 2021, op. cit.

³⁶ 'Ecuador: Open letter to President Lenin Moreno on the situation of defenders of the land, the territory and the environment', Amnesty International, 9 August 2018, <https://www.amnesty.org/en/documents/amr28/8885/2018/en/>.

³⁷ Alianza de Organizaciones por los Derechos Humanos, June 2021, op. cit.

³⁸ 'Freedom of Expression, Press Freedom and Access to Information: Towards the 2030 Agenda', Voces del Sur, July 2020, <http://www.vocesdelsurunidas.org/wp-content/uploads/2020/09/Shadow-Report-Final.pdf>.

³⁹ 'Journalism in the times of Covid-19: authoritarianism, disinformation and fragility in Latin America', Voces del Sur Unidas, 2021, <https://www.fundamedios.org/wp-content/uploads/2022/01/Reporte-Sombra-2020-1-Ingles%CC%81s.pdf>.

⁴⁰ 'Ecuador 2021: ...Y a los periodistas nos siguen pegando bajo', Fundamedios, December 2021, https://www.fundamedios.org.ec/wp-content/uploads/2021/12/Informe-ec_compressed-1.pdf.

2021.⁴⁰ The situation shows that more efforts are needed to consolidate a lasting enabling environment for communicators.

3.14 On 26 March 2018, three members of a El Comercio news team were kidnapped by an armed group while working in northern Ecuador near the Colombian border.⁴¹ Reporter Javier Ortega, photojournalist Paúl Rivas and driver Efraín Segarra were confirmed dead on 13 April 2018. They had been investigating narcotrafficking-related violence in Esmeraldas province.⁴² Colombian authorities linked the crime to a dissident group of the Revolutionary Armed Forces of Colombia and arrested at least one suspect for the abduction and killings.⁴³

3.15 There are no comprehensive policies or mechanisms to protect HRDs and journalists in Ecuador. An interinstitutional dialogue on this matter was launched in December 2019, but civil society groups criticised the drawn-out process as lacking a diagnosis on the situation of HRDs and transparency on how civil society input would be considered.⁴⁴ An Inter-Agency Committee to Protect Journalists was also convened in 2020, yet local groups have said this committee has only acted on an ad hoc basis and did not advance in creating a protocol to promote effective protection mechanisms for journalists.⁴⁵

4. Freedom of expression, media freedom and access to information

4.1 Under the 3rd UPR cycle, the government received 14 recommendations relating to the freedom of expression, media freedom and access to information. For example, the government pledged to ‘align national laws and regulations on freedom of expression with international human rights standards’ and ‘fully guarantee freedom of expression and freedom of assembly and protect journalists and human rights defenders against threats and aggression’.⁴⁶ It accepted 10 of the recommendations and noted four. However, only two recommendations were fully implemented. Eight were partially implemented and four were not implemented.

⁴⁰ ‘Ecuador 2021: ...Y a los periodistas nos siguen pegando bajo’, Fundamedios, December 2021, https://www.fundamedios.org.ec/wp-content/uploads/2021/12/Informe-ec_compressed-1.pdf.

⁴¹ ‘Two journalists, driver kidnapped in Ecuador near Colombia border’, Committee to Protect Journalists, 27 March 2018, <https://cpj.org/2018/03/two-journalists-driver-kidnapped-in-ecuador-near-c>.

⁴² ‘Deadly Border’, Forbidden Stories, October 2018, <https://forbiddenstories.org/case/deadly-border>.

⁴³ ‘Autoridades colombianas capturan a disidente de las FARC implicado en el asesinato del equipo de El Comercio’, Fundamedios, 12 August 2019, <http://www.fundamedios.us/autoridades-colombianas-capturan-a-disidente-de-las-farc-implicado-en-el-asesinato-del-equipo-de-el-comercio>.

⁴⁴ Alianza de Organizaciones por los Derechos Humanos, June 2021, op. cit.

⁴⁵ ‘Ha pasado un año y el protocolo para protección de periodistas, no está listo’, Ecuador En Directo, 4 August 2021, <https://ecuadorendirecto.com/2021/08/04/ha-pasado-un-ano-y-el-protocolo-para-proteccion-de-periodistas-no-esta-listo>.

⁴⁶ 118.51 and 118.65, A/HRC/36/4 (10 July 2017).

- 4.2** ICCPR article 19 guarantees the right to the freedoms of expression and opinion. Article 66 of the Constitution of Ecuador also guarantees the right to the freedom of expression.⁴⁷ While there were improvements in the protection of this right in the past five years, these advances have been moderate and inconsistent.
- 4.3** The 2013 Organic Law on Communication is the main instrument regulating media in Ecuador. The original legislation contained a series of provisions promoting broad state control over the media and was used to punish and silence critical voices during the government of President Rafael Correa. The law was reformed in 2019, eliminating administrative sanctions and criminal offences that had been used to stifle journalism. The reform also abolished the Superintendency of Information and Communication, a government body that implemented 706 sanctioning processes against journalists, critics and media outlets between October 2013 and March 2018.⁴⁸ Even with the reforms, efforts to fully repeal and replace the current law are ongoing. Five draft laws were presented on the matter in 2021, including some initiatives proposed in cooperation with civil society.⁴⁹ On 8 December 2021, a consolidated bill drawing from the five proposals was presented by a legislative commission and the first debate on the project took place on 15 December 2021.⁵⁰
- 4.4** Ecuador's 2004 Organic Law on Transparency and Access to Public Information (LOTAIP) is broad in scope, but does not fully comply with international best practice. It provides a wide margin for government discretion in granting access to information and does not establish an enforcing authority or an independent administrative appeals body.⁵¹ This has led to enforcement and compliance issues. During the COVID-19 pandemic, the deadlines set by law for responding to information requests were often not respected.⁵² Several bills aiming to reform LOTAIP and adapt it to international standards have been introduced for discussion

⁴⁷ Constitution of the Republic of Ecuador, op. cit.

⁴⁸ 'Civil society reports decrease in freedom of expression violations in 2018', CIVICUS Monitor, 20 March 2019, <https://monitor.civicus.org/updates/2019/03/20/civil-society-reports-decrease-freedom-expression-violations-2018>.

⁴⁹ 'Ecuador: state of emergency amid rising crime', CIVICUS Monitor, 31 October 2021, <https://monitor.civicus.org/updates/2021/10/31/ecuador-state-emergency-amid-rising-crime>.

⁵⁰ 'Libertad de Prensa, Opinión, Expresión y Comunicación, ¿qué dijeron los asambleístas durante el primer debate en la Asamblea?', FCD, January 2022, <https://www.ciudadaniaydesarrollo.org/projects/libertad-de-prensa-opinion-expresion-y-comunicacion-que-dijeron-los-asambleistas-durante-el-primer-debate-en-la-asamblea>.

⁵¹ 'Global Right to Information Rating: Ecuador', <https://www.rti-rating.org/country-data/Ecuador>.

⁵² 'El impacto de la pandemia de COVID-19 sobre el derecho de acceso a la información en la región', Alianza Regional por la Libre Expresión e Información, 28 September 2020, <https://www.ciudadaniaydesarrollo.org/projects/saber-mas-xi-el-impacto-de-la-pandemia-de-covid-19-sobre-el-derecho-de-acceso-a-la-informacion-en-la-region>.

in the National Assembly.⁵³

- 4.5** In May 2021, the National Assembly adopted a data protection law, introduced under former President Lenín Moreno after a breach of personal data affected millions of people in 2019.⁵⁴ The process received stakeholder input, including from civil society, to deliver what experts have said is a ‘modern law’ with the principles, rights and fundamental guarantees needed to ensure personal data protection.⁵⁵ However, complementary regulation has not been issued, leaving the legislation yet to be implemented.
- 4.6** Also in May 2021, lawmakers adopted legislation known as the Digital Violence Law,⁵⁶ which aimed to protect victims of sexual violence from online harassment. However, the text included provisions that threatened journalists’ ability to work without fear of criminal penalty, including provisions on disclosure of secrecy, dissemination of personal content and defamation.⁵⁷ President Guillermo Lasso objected to several problematic articles of the bill in June and the National Assembly modified the law in July 2021.⁵⁸ However, legislators retained provisions reforming Article 396 of Ecuador’s Criminal Code, which establishes prison terms of up to 30 days for uttering ‘expressions to discredit or dishonour of another’, to expressly state that this offence can take place through the use of ICTs.⁵⁹
- 4.7** According to Reporters Without Borders, between 2017 and 2020 much of the tension between the government and privately-owned media was defused. The country’s ranking in the World Press Freedom Index improved from 105th in 2017 to 96th in 2021, of 180 countries. However, improvements have been inconsistent.⁶⁰ Moderate legislative advances to protect the freedom of expression

⁵³ ‘FCD expuso ante la Comisión de Transparencia el proyecto sustitutivo LOTAIP 2.0’, FCD, 29 November 2021, <https://www.ciudadaniaydesarrollo.org/2021/11/29/fcd-expuso-ante-la-comision-de-transparencia-el-proyecto-sustitutivo-lotaip-2-0>.

⁵⁴ ‘Filtración de datos en Ecuador: la “grave falla informática” que expuso la información personal de casi toda la población del país sudamericano’, BBC, 16 September 2019, <https://www.bbc.com/mundo/noticias-america-latina-49721456>.

⁵⁵ ‘Lo que Ecuador necesita: Proyecto de ley de protección de datos personales’, Access Now, 26 January 2021, <https://www.accessnow.org/lo-que-ecuador-necesita-proyecto-de-ley-de-proteccion-de-datos-personales>.

⁵⁶ Law to Prevent and Combat Digital Sexual Violence and Strengthen the Fight Against Computer Crimes

⁵⁷ Fundamedios, December 2021, op cit.

⁵⁸ ‘Ecuador: criminalisation of environmental defenders and bills affecting freedom of expression’, CIVICUS Monitor, 22 July 2021, <https://monitor.civicus.org/updates/2021/07/22/ecuador-criminalisation-environmental-defenders-and-bills-affecting-freedom-expression>.

⁵⁹ ‘Ley Orgánica Reformatoria Del Código Orgánico Integral Penal Para Prevenir Y Combatir La Violencia Sexual Digital Y Fortalecer La Lucha Contra Los Delitos Informáticos’, August 2021, <https://www.asambleanacional.gob.ec/es/multimedios-legislativos/68159-ley-organica-reformatoria-del-codigo>.

⁶⁰ Reporters Without Borders: Ecuador, 2022, <https://rsf.org/en/ecuador>.

have taken place, but communicators and media outlets are still frequently subjected to intimidation, stigmatisation and attacks.

- 4.8** Local groups have reported a growing climate of insecurity for journalistic activity with threats coming from state and non-state actors. Rising insecurity linked to organised crime has affected the work of journalists, particularly those covering narco-trafficking and the crisis in the country's prison system. Between 2017 and 2021, Fundamedios recorded 3,045 attacks on the press, 289 of which took place in 2021. This was the highest number of incidents documented since 2018.⁶¹
- 4.9** Attacks on members of the press and independent outlets were particularly prominent during the wave of anti-government protests in October 2019. Journalists covering protests were subjected to arbitrary arrests and police violence, as well as attacks by protesters. Several radio and TV stations, such as Radio Centro Ambato, were prevented from broadcasting by power cuts coordinated by the authorities. The headquarters of Radio Pichincha Universal were raided and searched by the authorities, who warned that the outlet's radio frequency would be withdrawn if they did not change their editorial policies.⁶² Their broadcast licence was revoked in January 2020; telecommunications regulator ARCOTEL argued the outlet had acted against national security during the demonstrations.⁶³

5. Freedom of peaceful assembly

- 5.1** During Ecuador's examination under the 3rd UPR cycle, the government received two recommendations on the right to the freedom of peaceful assembly. The government committed to adopting 'the appropriate measures to guarantee the free exercise of the rights of assembly and association without unjustified restrictions' and to ensure 'training for law enforcement and security forces in relation to human rights standards in management of peaceful assemblies', as well as committing that 'all allegations of excessive use of force and arbitrary detention are investigated and that perpetrators are prosecuted'.⁶⁴ Both the recommendations were accepted, but as evidenced below, were not implemented.

⁶¹ Fundamedios, December 2021, op. cit.

⁶² 'Media targeted in Ecuador's deepening crisis', Reporters Without Borders, 10 October 2019, <https://rsf.org/en/news/media-targeted-ecuadors-deepening-crisis>.

⁶³ 'Ecuador rejects IACHR report on human rights violations and Ombudsman receives death threats', CIVICUS Monitor, 19 March 2020, <https://monitor.civicus.org/updates/2020/03/19/ecuador-rejects-iachr-report-human-rights-violations-and-ombudsman-receives-death-threats>.

⁶⁴ 118.62 and 118.31, A/HRC/36/4 (10 July 2017).

5.2 Clause 13 of article 66 of the Ecuadorian Constitution guarantees the right to the freedom of peaceful assembly.⁶⁵ ICCPR article 21 also guarantees this right. However, there is no law specifically regulating the exercise of this right. Municipalities are in charge of the use of public spaces and require advance notice of demonstrations.

5.3 State of emergency declarations issued by Ecuador's executive have sometimes limited fundamental freedoms, including the freedom of peaceful assembly. FCD has expressed concern about the recurrent and sometimes political use of exception regimes, as well as the role these declarations play in legitimising excessive state control and surveillance.⁶⁶ A notable example was Executive Decree No. 884, which declared a 60-day national state of emergency and suspended the rights to the freedoms of assembly and association.⁶⁷ The decree was issued in October 2019 by then-President Moreno in response to nationwide demonstrations.⁶⁸

5.4 While the 2014 Criminal Code removed a series of open legal concepts that had previously enabled the criminalisation of protest, criminal law continues to be used to disrupt protests and subject protesters to judicial proceedings. Article 346 of the Code punishes, with one to three years' imprisonment, people who prevent, hinder or paralyse the normal provision of a public service.⁶⁹ Other provisions such as those on 'attack or resistance' and 'illicit association' have also been used to limit demonstrations.

5.5 Government authorities and private companies have resorted to the justice system to intimidate and silence protesters. On 13 September 2021, four Afro-descendant farmers and environmental defenders of the Barranquilla de San Javier community were sentenced to pay US\$151,000 to Energy & Palma, which manages an oil palm plantation in the Esmeraldas province.⁷⁰ The community has resisted the company's presence, saying that Energy & Palma's activities affected their livelihoods by

⁶⁵ Constitution of the Republic of Ecuador, op. cit.

⁶⁶ FCD, June 2020, op. cit.

⁶⁷ 'IACHR Issues Observations Following Visit to Ecuador', Inter-American Commission on Human Rights, 14 January 2020, https://www.oas.org/en/iachr/media_center/PReleases/2020/008.asp.

⁶⁸ 'Mass protests in Ecuador: hundreds detained and thousands injured in ten days', CIVICUS Monitor, 23 October 2019, <https://monitor.civicus.org/updates/2019/10/23/mass-protests-ecuador-hundreds-detained-and-thousands-injured-ten-days>.

⁶⁹ Organic Integral Criminal Code, 2014, op. cit.

⁷⁰ 'Abuso del Sistema Judicial en el Caso de la Palmicultora Energy & Palma contra Defensores de la Naturaleza de Barranquilla', Acción Ecológica, 8 September 2021, <https://www.accionecologica.org/abuso-del-sistema-judicial-en-el-caso-de-la-denuncia-de-la-palmicultora-energy-palma-a-defensores-de-la-naturaleza-de-barranquilla>.

polluting natural resources and causing deforestation in the Chocó Forest.⁷¹ In their lawsuit, the company claimed that a peaceful protest blocked an access road between 2019 and 2020, resulting in harvest losses. However, according to Front Line Defenders, there are many roads that access the location and the demonstration could not have caused the losses claimed by the company.⁷² Before this complaint, the company sought a court order to halt the protest, which resulted in a violent police intervention against protesters in February 2020.⁷³

- 5.6** The repression of protests by law enforcement has been a recurrent practice across multiple government administrations. In recent years, there have been attempts to shield officers from responsibility for excessive use of force. In May 2020, Ecuador's Ministry of Defence adopted a regulation that allowed escalating use of force by members of the armed forces in meetings, demonstrations and disturbances that lead to 'situations of serious internal commotion'. This would have enabled the use of lethal force and given the military an instrument to justify the repression of demonstrations.⁷⁴ Ecuador's Constitutional Court suspended the regulation in June 2020 and in May 2021 declared it unconstitutional based on a challenge filed by human rights organisations.⁷⁵
- 5.7** In October 2019, mass protests erupted against an economic package announced by then-President Moreno which included the withdrawal of fuel subsidies. Within a few days, President Moreno declared a state of emergency in response to the national strike, limiting protest rights. As protests escalated, the police repressed them with many instances of excessive force, particularly against Indigenous protesters.⁷⁶ Disproportionate force included instances of teargas being fired in closed spaces and at close range and police violence against medical aid groups. Between 3 and 13 October 2019, 1,228 people were detained and 1,507 were injured, including 435 security agents.⁷⁷

⁷¹ 'Open letter from civil society to consumer goods companies re: concerns over Strategic Lawsuit Against Public Participation by palm oil company in Ecuador', 1 December 2021, <https://www.forestpeoples.org/sites/default/files/documents/Open%20letter%20to%20consumer%20goods%20companies%20re%20concerns%20over%20SLAPP%20by%20palm%20oil%20company%20in%20Ecuador.pdf>

⁷² 'Global Analysis 2021', Front Line Defenders, February 2022, https://www.frontlinedefenders.org/sites/default/files/2021_global_analysis_-_final.pdf.

⁷³ Alianza de Organizaciones por los Derechos Humanos, June 2021, op. cit.

⁷⁴ 'Austerity measures during COVID-19 lead to protests in Ecuador', CIVICUS Monitor, 2 July 2020, <https://monitor.civicus.org/updates/2020/07/02/austerity-measures-during-covid-19-lead-protests-ecuador>.

⁷⁵ 'Corte de Ecuador decreta inconstitucional acuerdo sobre uso progresivo de fuerza militar', El Ciudadano, May 2021, <https://www.elciudadano.com/actualidad/corte-de-ecuador-decreta-inconstitucional-acuerdo-sobre-uso-progresivo-de-fuerza-militar/05/07>.

⁷⁶ Inter-American Commission on Human Rights, 14 January 2020, op. cit.

⁷⁷ 'Ecuador: Lessons from the 2019 Protests. Evidence of Excessive Force, Killings, Arrests; Violence by Demonstrators', Human Rights Watch, 6 April 2020, <https://www.hrw.org/news/2020/04/06/ecuador-lessons-2019-protests>.

- 5.8** A truth commission created by the Ombudsperson's Office attributed the deaths of six protesters to security forces. It attributed around 75 per cent of human rights violations during the protests to police and 13 per cent to the military.⁷⁸ There were also many instances of violence by protesters and hundreds of recorded attacks by state and non-state agents on outlets and journalists covering the demonstrations.⁷⁹ Judicial investigations of protest-related abuses have been drawn out and have presented few results, plagued by a lack of cooperation by government agencies involved.⁸⁰ Rather than take steps to guarantee justice for victims, in March 2020 authorities in the Moreno government minimised state responsibility for abuses documented in a report from the Inter-American Commission on Human Rights.⁸¹
- 5.9** On 13 November 2021, human rights and environmental defender Víctor Guailas was murdered amid a massacre inside a Guayaquil prison. A campesino and member of the San Pedro de Yumate commune in Azuay, he advocated for the protection of natural resources affected by mining.⁸² Guailas was detained during the wave of protests in October 2019. He had been appealing against a conviction for alleged 'sabotage' at the time of his death. His detention and prosecution were criticised by human rights groups, who considered he had been criminalised for exercising his right to protest.⁸³

6. Recommendations to the Government of Ecuador

CIVICUS and FCD call on the Government of Ecuador to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

⁷⁸ 'World Report 2022: Ecuador', Human Rights Watch, 2022, <https://www.hrw.org/world-report/2022/country-chapters/ecuador>.

⁷⁹ 'La prensa fue blanco de los violentos: 138 periodistas agredidos en 12 días de protestas', Fundamedios, 14 October 2019, www.fundamedios.org.ec/alertas/la-prensa-fue-uno-de-los-blancos-de-los-violentos-138-periodistas-agredidos-en-12-dias-de-protestas.

⁸⁰ Human Rights Watch, 6 April 2020, op. cit.

⁸¹ CIVICUS Monitor, 19 March 2020, op. cit.

⁸² 'Victor Guailas, Defensor del Territorio y la Naturaleza', Acción Ecológica, 15 November 2021, <https://www.accionecologica.org/victor-guailas-defensor-del-territorio-y-la-naturaleza>.

⁸³ 'Víctor Guailas: el defensor del agua y los páramos que fue asesinado en la cárcel mientras esperaba su liberación', Astrid Arellano for Mongabay, 7 December 2021, <https://bit.ly/3J4l7el>.

6.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the freedom of association.
- Review cases of CSOs that have been arbitrarily and unduly sanctioned or deregistered and, if necessary, reinstate their legal status.
- Amend Executive Decree No. 193 to reform provisions on the dissolution of organisations and remove undue restrictions on the freedom of association to bring it into compliance with ICCPR articles 21 and 22.
- Promote an enabling legal framework for civil society, including through the adoption of a comprehensive law on CSOs.
- Guarantee the effective and independent functioning of autonomous trade unions by removing proscriptions on the formulation of independent labour unions and undue limitations on the right to strike.

6.2 Protection of HRDs

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- End the harassment and criminalisation of HRDs and journalists, and review the Criminal Code to repeal articles that criminalise expression in all its forms.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Immediately and unconditionally release all HRDs, including journalists and bloggers detained for exercising their fundamental rights to the freedoms of association, peaceful assembly and expression, and review their cases to prevent further harassment.
- Publicly condemn at the highest levels of government instances of harassment and intimidation of CSOs and activists.

- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs, including by adopting a specific law on the protection of HRDs in accordance with Human Rights Council resolution 27.31.

6.3 Freedom of expression, media freedom and access to information

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Ensure that laws governing communications are in line with best practices and international standards in the area of the freedom of expression.
- Reinstate all media outlets that have unwarrantedly been closed.
- Reform defamation legislation in conformity with ICCPR article 19, including provisions on slander and crimes against honour in the Criminal Code.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Guarantee unfettered access for all people in Ecuador to domestic and foreign media information, both offline and online.
- Develop an action plan to ensure that internet laws comply with the government's commitment to guarantee the freedom of expression, media freedom and access to information, including by ensuring free access to electronic media, ceasing censorship and surveillance, liberalising electronic media ownership rules and enabling journalists, bloggers and other internet users to play a full and active role in promoting and protecting human rights.
- Reform, and if necessary replace, the Organic Law on Transparency and Access to Public Information in order to bring it into line with best practices and international standards, promoting the full exercise of the rights to the freedoms of expression and opinion.

- Implement legislative measures to enable access to information and establish mechanisms to facilitate public access, in line with international best practices.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which calls for simple processes for the notification of assemblies being held rather than permission being required, and by General Comment No. 37 on the right to peaceful assembly adopted by the UN Human Rights Committee in 2020.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces in the context of protests.
- Review and update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest levels all instances of the use of excessive and brutal force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.
- Provide recourse to judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; 4) Special Rapporteur on extrajudicial, summary or arbitrary executions; 5) Special Rapporteur on the right to privacy; and 6) Working Group on Arbitrary

Detention.

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation, implementation and evaluation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.