

**REPORT ON THE SITUATION OF FREEDOM OF EXPRESSION AND  
ASSOCIATION (ARTICLES 19 & 22) IN ECUADOR IN THE LIGHT OF THE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS PRESENTED  
BY THE ANDEAN FOUNDATION FOR SOCIAL OBSERVATION AND MEDIA  
STUDY (FUNDAMEDIOS)**

**HUMAN RIGHTS COMMITTEE  
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The Andean Foundation for Social Observation and Media Study, Fundamedios, is an Ecuadorian civil society organization that has been working since 2007 to promote and defend the freedoms of expression, press and association. Fundamedios has prepared this report, which provides information on the situation of the freedoms of expression and association in the country. Fundamedios received the support of the International Network of Human Rights- RIDH, a non-governmental organization based in Geneva.

**FREEDOM OF EXPRESSION**

1. Freedom of expression has been the right that has suffered the most setbacks over the last decade. From the moment itself when President Rafael Correa took office, he declared the media as his main enemy. This declaration has led to constant acts of aggression, a stigmatizing discourse, legal processes, the adoption of restrictive regulations, among others. Prominent during this period have been the criminal proceedings against the newspaper El Universo, its opinion editor and its directors, for an opinion piece, punished with three years in prison and the payment of 40 million dollars in compensation to the president; the civil proceedings against journalists Juan Carlos Calderón and Christian Zurita, who after publishing a book were sentenced to pay a compensation of 2 million dollars for spiritual damage to the Chief Executive, a figure not included in the Ecuadorian legislation; the closing down of at least 20 media outlets; and the adoption of the Organic Communications Law (Organic Act on Communication or Communication Act), which clearly contradicts international standards. From 2008 until the drafting of this report, a total 1,585 attacks on freedom of expression have been recorded in Ecuador.
2. 2015 will be remembered as one of the most difficult years for the exercise of freedom of expression and specifically for the work of media. The selective and arbitrary implementation of legislation that is in itself one of the most restrictive of the continent, preemptive censorship via the imposition of content carried out by various authorities by abusing the right of reply and rectification (implemented

without distinction), dozens of cases of persecution of Twitter users, bloggers and even the administrators of Facebook pages, the censorship of online content, the closing down of media outlets and the seizure of equipment, new insults and a stigmatizing discourse, physical attacks, imprisonment and repression against those who exercise the right to protest, self-censorship and the concentration of media, configured the situation of freedom of expression in the country.

3. In the first report issued by Fundamedios in 2008, 22 attacks were recorded. The last report, issued in 2015, presented a record 377 attacks, i.e., more than one attack per day, making it the most violent year against freedom of expression, as the attacks increased by 44% compared to 2014. On the due date of this report, more than 170 attacks have already been recorded for 2016.
4. Most of the attacks in 2015 (99) fell within the category "Processes due to the enforcement of legislation contrary to freedom of expression". One in four reported cases is the result of accusations and sanctions against the media through the enforcement of the Organic Communications Law. Since it came into force, Fundamedios has registered more than 200 sanctions against the media, mostly warnings and fines that have severely affected the economy of large, medium and small media outlets. Another direct consequence of the coming into force of the Organic Communications Law is the existence of a regime of preemptive censorship, through the imposition of official content, with the obligation to disseminate and/or publish replies, rectifications or public apologies. This has happened dozens of times in print media, radio and television. The following are the cases that have attracted the most attention through the enforcement of the Organic Communications Law.
5. On 31 January 2014, the Superintendency of Information and Communication (SUPERCOM) decided to impose a fine on the newspaper El Universo, equivalent to 2% of its average turnover for the last three months (approximately USD 90,000) and demanded that a cartoon authored by Xavier Bonilla "Bonil", published on 28 December 2013, should be rectified within 72 hours. In it, El Universo's cartoonist portrayed the raid and seizure of the computers of journalist and activist Fernando Villavicencio.
6. On 13 February 2015, the Superintendency of Information and Communication (Supercom) again sanctioned El Universo and cartoonist Xavier Bonilla "Bonil" with the obligation to make a public apology to Afro-Ecuadorian groups, on the grounds that they were affected by discriminatory content due to their socio-economic status by a caricature published in August 2014 in which assemblyman and former soccer player Agustin Delgado was lampooned for his lack of reading skills.

7. On 12 June 2015, the Superintendency of Information and Communication (SUPERCOM) fined the newspaper El Universo the equivalent to 10% of its average turnover for the past three months (approximately USD 350 thousand) on the grounds that the newspaper was a repeat offender that had allegedly failed to comply with a request for a reply from the Communications Secretariat (SECOM). The outlet declared itself in defiance on the grounds that it was defenseless regarding the processes that SUPERCOM had initiated against it. In a statement, the newspaper declared that its decision would remain effective "until Supercom guarantees, through its administrative procedures, legal certainty and due process".
8. Diario La Hora was the victim of the first sanction under the figure of "censorship by omission" following a complaint by the mayor of Loja, José Bolívar Castillo, who considered that the outlet "deliberately" omitted his work report and that it should be punished for this offense. Thus, on 13 May 2015, the newspaper was obliged to pay a fine for USD 3,540.
9. TV station Teamazonas was convicted of "media lynching" the president of the Ecuadorian Football Federation, Luis Chiriboga, and forced to publicly apologize for comments made by a puppet during the sports program 'Dream Team', a comedy program that used puppets in its segments. Supercom stated in its ruling that: *"(the information) was issued repeatedly, more than once, through dialogues between the program's presenters and the character called 'engineer', who is a puppet"*.
10. On 10 September 2015, newspapers La Hora and Expreso were prosecuted and forced to apologize for failing to issue a reply that Supercom itself had ordered to an advertisement contracted by the Ecuadorian Association of Newspaper Publishers, which pointed to the media's legal defenselessness against the Communications Law in force in Ecuador. This was the first time an outlet was sanctioned for publishing a paid advert. La Hora questioned the fact that Supercom wanted to *"prevent the media from opening its doors to the opinions of third parties and now judges advertisements that make the authorities in power uncomfortable"*.
11. Teamazonas TV station was fined for broadcasting a wrestling program. For the Communications Superintendency (Supercom), the dissemination of the well-known professional wrestling program 'WWF RAW' included violent content that showed the *"intentional use of physical and psychological force in deed and word"*. Therefore, on 4 June it fined the outlet USD 1,770.

12. Radio Fútbol has been sanctioned more than a dozen times by Supercom. The case in which talking about "lovers" was subject to punishment stands out, as Supercom fined the station USD 3,540 for issuing comments that, according to the authority, were not suited to the type of audience and the time slot for the program. During the program the announcers repeatedly used the word "lover", lessening the status of women in doing so according to the authorities. The fine was issued after a process initiated ex officio by the entity that regulates the media.
13. Another kind of attack that has increased at an alarming rate is related to the violation of so-called digital rights with 40 cases in 2015, among them the hacking into the computer systems of media outlets and social organizations, cyber threats and systematic harassment through social networks and the media, censorship on the internet involving the arbitrary closing down and suspension of social network accounts and the abuse of copyright rules in order to silence critical comments, among others.
14. Fundamedios has reported on more than ten occasions that platforms such as YouTube and Vimeo, or social networks such as Facebook and Twitter, have removed videos or photos that made reference to the Ecuadorian government's performance. In almost every case, the company that claimed alleged copyright, representing State TV station Ecuador TV, public institutions and even the government movement Alianza PAIS, was Ares Rights, a Spanish firm that allegedly fights piracy.
15. There have also been several attacks through servers that host websites, especially media websites. Thus, digital portals such as PlanV, Focus Ecuador, Mil Hojas, 4 Pelagatos, Ecuador en vivo or La República, have received warnings and threats telling them to remove certain content from their web pages.
16. In the period between 2008 and 2016, there have been 264 legal proceedings against journalists and civilians. In 2015 alone, 39 cases of criminal proceedings were recorded, especially the detention of citizens who were exercising their freedom of expression amid protests, enforcing the regulations of the Organic Penal Code (Ecuador's Criminal Code), in full force since August 2014.
17. Between late 2015 and early 2016, the mayor of the city of Loja, José Bolívar Castillo, sued Councilwoman Jeannine Cruz for a publication in her personal Twitter account. He called for the councilwoman to be processed under Article 396 of the Organic Penal Code, which prescribes 15 to 30 days in prison for the person who "by any means, utters expressions to discredit or dishonor another".

Cruz was found guilty and sentenced to 30 days in prison, which she served at the Provisional Detention Center of Loja, and also fined.

18. *In November 2015, Twitter user and national deputy director of the political movement Unidad Popular, Sebastián Cevallos, was sentenced by a court in the city of Cuenca to 15 days in prison for the same violation typified in Article 396 of the Organic Penal Code. Cevallos had reported through the social network an alleged case of nepotism involving relatives of a State minister, and was sued for having disregarded the honor and good name of the official's family.*
19. On 3 December 2015, the National Assembly approved a package of 15 amendments to the Constitution proposed by the block of ruling party assembly members. One of the constitutional amendments turned communication into a public service, a serious setback and a violation of the right to freedom of expression. By so doing the State acquired ownership of a human right, also according to the Constitution, *"it is [exclusively] responsible for the provision of public services"*, and will *"establish their control and regulation"*.
20. In April 2016 the Agency for the Regulation and Control of Telecommunications (Arcotel) and the Council for the Regulation and Development of Information and Communications (Cordicom) publicly called for a tender to award 1,472 frequencies, equivalent to 65% of the audiovisual media and radio stations existing in the country. It is the largest process in the history of the media in Ecuador and probably throughout the region. This process does not guarantee basic principles of independence, transparency, accountability, justice, diversity and inclusion, as stipulated in international standards and specifically the "freedom of expression standards for free and inclusive broadcasting" of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.

## **FREEDOM OF ASSOCIATION**

21. Executive Decree No. 16 came into force on 20 June 2013, containing various restrictions and threats to the freedom of association, as it infringes the autonomy of the civil society and has created a system that aims to functionalize the work of organizations. For the first time figures such as controversial dissolution, leaving open the possibility of disappearing any civil society organization based on unclear grounds and without access to due process, have been enshrined as law.
22. It should be further noted that it violates the principle of legality, since according to the Constitution of Ecuador fundamental rights must be guaranteed by an organic law, not by an executive decree, a hierarchically inferior regulation. It

also violates the so-called principle of legal reserve, as the responsibility of issuing a rule of this nature should fall on the National Assembly and not the President of the Republic.

23. This Executive Decree was enforced in December 2013 by the National Government to close the Pachamama Foundation. A direct order from the President of the Republic, on the grounds that the organization had moved away from its statutory purposes and intervened in public policies attempting against the State's internal security, closed down an organization that worked to promote and protect the rights of nature and indigenous peoples and nationalities.
24. On 3 August 2015, President Rafael Correa issued Executive Decree No. 739, which amends and codifies Executive Decree No. 16. This amendment continues to maintain restrictions and disruptions to the fundamental human right to free association and assembly.
25. According to this regulation, organizations are obliged to allow membership to any person who claims to have a "legitimate interest" to participate in its activities, violating thus the essence of the fundamental right, which is the faculty to associate freely.
26. As for the process of obtaining legal personality, the State has been granted extensive powers to hinder it. Once the application and documentation are delivered, an official is in charge of checking that the proposed statute is not contrary to public order. If the official decides that the application does not meet the requirements, he will grant a period of time for corrections, but if these corrections do not satisfy him, he has the right to introduce ex officio any reforms he deems necessary.
27. Moreover, organizations are forced to keep all documents related to their work, an extreme and burdensome requirement. Failing to comply with this obligation, however, could constitute grounds for dissolution. For alleged control purposes, the State must be provided with the minutes of meetings, financial reports, audit reports, approved reports, or any other information on its activities. Organizations are also required to provide access to these documents to the relevant government officials so that they can carry out physical verifications of the documentation.
28. The most serious issue, however, relates to the broad and discretionary grounds for forced dissolution. The lack of proportionality in the sanction could open the way for an organization to be dissolved for technical errors that have a minimal impact and could be easily corrected. We should recall that, in the opinion of the highest human rights organizations, a forced dissolution should only be applied



in the most serious cases and always observing the fundamental guarantees of due process.

29. The current regulation establishes a long list of subjective grounds, including repeatedly contravening provisions issued by the authorities, or engaging in partisan politics or in activities that may affect public peace. In addition, an organization can disappear for violating the obligations or infringing the prohibitions contained in the executive decree. And this is precisely the most discretionary, because in this way any "non-compliance" with the general provisions of the decree can become grounds for dissolution.
30. In addition, the figure of controversial dissolution has been established, whereby anyone, based on his own criteria, can accuse an organization of violating the decree, and then request its legal death. In this case, the regulation does not establish guarantees or due process for the organization, so that its destiny is decided between the complainant and the authority. The accused is prevented from participating in the process and exercising its right to defense, and it is simply notified when a decision has been made, in an abusive and arbitrary manner.
31. Based on the regulations of Decree No. 739, on 8 September 2015 the Ecuadorian government, through the National Communications Secretariat, began the process of dissolving the Andean Foundation for Social Observation and Media Study, Fundamedios, for allegedly failing to comply with its own statutes by disseminating *"alerts, messages and essays, with unquestionable political overtones that make clear the position of this social organization"*. The evidence presented included messages sent through Twitter in which the content of media outlets and journalists' opinion blogs were disseminated and promoted. Thanks to the timely action of several international agencies and organizations, the process was abandoned.
32. A few weeks later Fundamedios began the process to reform its statutes so that its main objectives, the promotion and defense of the freedoms of speech, press and association, were clearly established. The reform was initially rejected, using the argument that the defense of rights is an exclusive function of the State and therefore, a civil society organization does not have the legal capacity to engage in it.
33. In August 2013, several civil society organizations such as the Confederation of Peoples of Kichwa Nationality of Ecuador (ECUARUNARI), the United Confederation of Retailers and Independent Workers of Ecuador (CUCOMITAE) and the Andean Foundation for Media Study and Observation (FUNDAMEDIOS), filed actions of unconstitutionality against Executive Decree

No. 16 before the Constitutional Court of Ecuador. The case, which included a request for precautionary measures to prevent the fundamental rights of Ecuadorians from being violated, has not been processed to date.

## **SUGGESTED QUESTIONS**

34. If the Organic Communications Law does indeed guarantee the right to freedom of expression, in what way have the figures of media lynching (Articles 10 and 26), ethical standards (Article 10), identification and classification of content (Article 60), and prohibition of preemptive censorship (Article 18), met this objective?
35. Can you explain how the State prevents the use of the figures of rectification and reply by public officials from becoming a mechanism of censorship through the imposition of content?
36. What actions has the Ecuadorian State taken to comply with its mandate to sell the seized media that are part of the so-called Media Management Unit?
37. Why didn't the Ecuadorian State propose the complete elimination of criminal definitions that criminalize expression and opinion in the so-called Organic Penal Code? Why does the Ecuadorian State still criminalize opinion and expression through sanctions as a result of expeditious processes that have resulted in up to 30 days in prison using the legal figure of violation?
38. What actions have been taken by the Ecuadorian State in response to the offer by the Special Rapporteurs on the right to freedom of peaceful assembly and association, on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders from the United Nations, and the Rapporteur for Human Rights Defenders and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, to provide technical assistance to the authorities to ensure the realization of the rights to freedom of expression and association in Ecuador?
39. Why has the State, specifically the Constitutional Court, not processed the actions of unconstitutionality filed regarding Executive Decree No. 16?

## **RECOMMENDATIONS FOR THE STATE**

40. To propose the repeal of the Organic Communications Law, since its provisions are contrary to the rights guaranteed in international instruments that are part of the national legal system and do not conform to international standards established by the Inter-American and Universal Human Rights Systems.



41. To repeal any provisions contained in other regulations (Democracy Code, Antitrust Law, Organic Citizen Participation Law, Organic Telecommunications Law, among others) that run counter to international standards guaranteeing the freedoms of expression and of the press.
42. In strict compliance with the principles of legality and legal reserve, to repeal Executive Decrees No. 16 and No. 739 to guarantee the right to freedom of association.
43. To repeal all provisions of the Organic Penal Code that criminalize expression and opinion, as well as the freedom of association and assembly, in opposition to international standards guaranteeing these fundamental rights.
44. Request information from the State regarding all actions taken to fully guarantee the rights to freedom of speech, press, access to information, association and peaceful assembly.
45. The State should request from international agencies and organizations for the protection of human rights, including the Special Rapporteurs of the United Nations, the Special Rapporteurs of the Inter-American Commission on Human Rights, and the UNESCO's Information and Communication Sector, comprehensive assistance in any process for the creation of regulations concerning the exercise of the freedoms of speech and of the press, as well as of association and peaceful assembly. This process of assistance should be extended to any frequency allocation process carried out by the State.