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Alternative report on Civil and Political Rights

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This report is presented by:

Réseau International des Droits Humains (RIDH)¹: Human rights non-governmental organization that contributes to strengthening the capacities of stakeholders related to the promotion and protection of human rights, providing information, analysis, and technical support in the processes in which they participate. We work as an intermediary in different processes of advocacy and dialogue.

Ruptura²: Ecuadorian political movement created in 2004. It was initiated by a group of young people that organised a public event called “Ruptura de los 25”. The name referred to the 25 years since the return to democracy. Ruptura held a political agreement with the government of Rafael Correa Delgado, between 2007 and 2011. The agreement ended at the beginning of 2011 when the President announced that the 2008 Constitution was going to be reformed. The movement made public their disagreement primarily because the Executive Power intended to interfere with the judicial system.

¹ For more information please refer to: <http://www.ridh.org/>.

² For more information please refer to: <http://rupturaecuador.blogspot.ch/>.

Executive summary

On the occasion of the sixth examination of the State's party report before the United Nations Human Rights Committee (CCPR), we present an alternative report in relation to the situation of vulnerability of civil and political rights in the country. The International Covenant on Civil and Political Rights (ICCPR) has been violated. To illustrate this, we wish to bring some of the many cases to the attention of the CCPR. To this end, we have taken into account the List of Issues (CCPR/C/ECU/QPR/6) and the replies of the State (CCPR/C/ECU/6):

Specific information on the implementation of the ICCPR

A. Constitutional and legal framework within which the ICCPR is implemented (text in general)

- Constitution of the Republic of Ecuador (2008)

1. The constitutional provisions are quoted, several times, throughout the country report, as an example of full compliance with the ICCPR. However, the Magna Carta has already been reformed twice. It has been considered to be too "protective" and to suffer from errors³, as has been noted on several occasions by the President Rafael Correa and by his Juridical Secretary, Alexis Mera.
2. The first Popular Consultation on the Constitution's reform (May, 2011) was won by a narrow margin. At this time, the Executive "put its hand into justice" like the President himself called it. It was approved that the Executive power would reform the judicial system, amongst nine other subjects⁴.
3. The second time, the so-called "amendments⁵" were approved in December of 2015 by parliamentary majority in violation of the constitutional process. On this occasion, 15 subjects of the Constitution were amended. Amongst these subjects, the most criticised are: the indefinite re-election of national authorities, including the President; restriction for autonomous decentralised governments to propose popular consultations; change in the age required to become President⁶ (specifically designed to enable the eligibility of the current President of the National Assembly, member of the ruling party); change in the Armed Forces mandate allowing their participation in internal security; and the decrease of competences of the General State Comptrollership.
4. Since then, the President has announced the intention to amend the Constitution for the third time⁷.

³ Diario El Comercio: Correa dice que prohibición constitucional de transgénicos es un "error" (27 September 2012), <http://www.elcomercio.com/actualidad/politica/correa-dice-que-prohibicion-constitucional.html>

⁴BBC: Ecuador: Consulta popular impulsa proyecto político de Correa (8 May 2011), http://www.bbc.com/mundo/noticias/2011/05/110507_ecuador_consulta_referendo_resultado_lr.shtml

⁵ Constitutional Court Decision (31 October 2014) http://especiales.elcomercio.com/documentos/2014/11/Sentencia_Corte.pdf

⁶Ecuavisa: Rafael Correa propone reducir la edad mínima para ser Presidente (6 June 2014) <http://www.ecuavisa.com/articulo/noticias/actualidad/66332-rafael-correa-propone-reducir-edad-minima-ser-presidente>

⁷Diario El Universo: Nuevo paquete de enmiendas estaría en Abril (9 January 2016), <http://www.eluniverso.com/noticias/2016/01/09/nota/5332579/nuevo-paquete-enmiendas-estaria-abril>

**- Inter-American System of Human rights
(Paragraph 4 of the CCPR/C/ECU/6)**

5. Ecuador, in the fourth paragraph of its sixth report, notes that the American Convention on Human rights (CADH) is part of its international framework governing civil and political rights. For several years the President has threatened to denounce the Convention. The President has criticised the Inter-American Commission of Human rights (IACHR) for its geographic location, he has called it “unnecessary”⁸ and he has considered the Convention as being used to undermine the progressive governments of the Latin American region⁹.

6. From 2013, the state has not attended the IACHR audiences. Ecuador appeared briefly in 2015 for an audience, but left without explanation. Recently, for the 157th period of sessions in April of 2016, the representatives of the state did not attend either. There have been several reports of threats, reprisals and actions to discredit those who have engaged with the Inter-American System of Human rights¹⁰.

B. Equality and non-discrimination
(Paragraphs 5, 6, 40, 63, 64, 264 and 269 CCPR/C/ECU/6)

- National Equality Councils Act

7. In 2014 Ecuador approved the National Equality Councils Act. This law was the fusion of several Bills. This Bill was initially assigned to the Commission of Justice and Structure of the State of the National Assembly (NA) but later was handed over to the Commission of Collective Rights, a commission considered not to be influential within the Parliament.

8. The law weakens the Councils competences compare to those enshrined in the Constitution, does not include the principles an equality law should have and only contemplates the organic structure of the Councils.

9. Furthermore, despite coming into force in 2014, several National Councils for Equality have still not been created. Ecuador claims that the status of these Councils is currently in "transition" (as it has been since 2008).

⁸ Diario El Tiempo (Colombia): “Presidente Correa arremete contra la CIDH” (25 May 2015), <http://www.eltiempo.com/mundo/latinoamerica/presidente-correa-arremete-contra-la-cidh/15818282>

⁹ “Correa denuncia que Convención de DDHH es usada para perseguir gobiernos” (10 November 2011), <http://noticias.terra.com/americ-latina/ecuador/correa-denuncia-que-convencion-de-ddhh-es-usada-para-perseguir-gobiernos,5917193815f83310vgnvcm10000098f154d0rcrd.html>

¹⁰ Organisation of American States (OAS): “Report on the 153 Period of Sessions of the CIDH” (29 December 2014), <http://www.oas.org/es/cidh/prensa/comunicados/2014/131a.asp>

**C. Violence against women
(Paragraphs 36, 45, 46, 47, 51 CCPR/C/ECU/6)**

**- Parliamentary women subject to the orders of the Executive
(Paragraph 132 CCPR/C/ECU/6)**

10. Although there is evidence of a gender perspective in the drafting of laws, these positive changes took place in an earlier period of the National Assembly's work (2009-2013).

11. Since the Presidency of Gabriela Rivadeneira, there have been no advances in relation to equality and non-discrimination. Despite the increased percentage of congresswomen and female Presidency and Vice-presidencies, it is of public knowledge that civil society and women movements struggle every day to safeguard current legislation. Political violence against women in public office is well known (the Bill seeking to criminalize political violence was not approved by the ruling party).

12. For instance, the President called a congresswoman a traitor for voicing a conscientious objection against the provision that sought the criminalization of abortion in cases of sexual assault¹¹.

13. The President threatened to step down if the motion was approved. Unfortunately, the pressure towards women in Parliament was such, that the motion was withdrawn.

14. This pressure in the political debate has had serious consequences in the application of the law, as the sanction and imprisonment of women for suspending their pregnancies has reached unprecedented levels in the country¹².

¹¹ Pronunciamientos del Presidente Rafael Correa en el canal OROMAR tv (10 de octubre de 2013): "La decisión es única, yo creo q hablé muy claro en la campaña cuando esas personas, que sabemos era pro aborto, que se tomaron la foto conmigo para ganar las elecciones y sabían cual era la posición [...] Cualquier cosa que se aparte de esa línea es simplemente traición, que hagan lo que quieran. Yo jamás aprobaré la despenalización del aborto más allá de lo que consta en las actuales leyes y, es más si siguen estas traiciones u deslealtades. Si mañana se evidencia algo muy lamentable que esta sucediendo en el bloque de PAIS, yo presentaré mi renuncia al cargo. Si son cosas tan de "conciencia" que manden al suplente a votar. Lo que no puede ser es traicionar decisiones del bloque. Por el aborto estoy dispuesto, en mis principios también, para defender la vida, estoy dispuesto a renunciar esto y la Historia sabrá juzgar. Es una puñalada al proceso revolucionario y al Presidente de la República". Enlace Ciudadano No. 343 desde Portoviejo, Manabí (12 de octubre de 2013):

Sobre el cambio de Guardia Presidencial: "Un grupo, pero jovencitas, que ya no dan no rabia sino que dan pena, dan tristeza. Confunden lo que es protestar con ser malcriadas, con irrespetar los símbolos patrios [...] no respetar el cambio de guardia, empezaron a gritar eran muchachitas pro aborto...que ¿a nosotras quién nos protege? que Correa antiabortista..qué abusivo..que si tú parieras y esas tonterías de siempre. Creen que mientras más malcriados más sabidos son. Inclusive, empezaron a gritar mientras se cantaba la canción patria, yo no se qué entendieron estas jóvenes manipuladas por viejas politiqueras por sabemos "los dirigentes de siempre", ¿qué entienden por protestar? ¡Ojalá que la ciudadanía reaccione! ¡Somos mil a 1, la inmensa mayoría!. No permitan que nos roben lo más sagrado un grupo de chicas desubicadas que, además, piden cosas con las que el pueblo ecuatoriano y personalmente yo estoy contra el aborto.Y si creen que siendo malcriadas van a lograr cambiar mi posición. Están totalmente equivocadas. Yo recibo a todo el mundo, pero a ese grupo de malcriaditas JAMÁS las voy a recibir, precisamente por malcriadas [...] son las chicas del movimiento de mujeres "pro aborto" que irrespetaron el cambio de guardia. Tengan la seguridad que, lo he dicho una y mil veces, yo vetaré cualquier intento de despenalizar el aborto más allá de lo que ya contiene el Código Penal, que tengan la seguridad que jamás las recibiré, por malcriaditas. Lo que quieren es que reaccionemos para hacerse famosas. Ciudadanía a reaccionar, somos la inmensa mayoría...Son los mismos que piden consulta popular para el ITT Yasuní, maravilloso, hacemos una consulta popular para el aborto para ver los resultados. La mayoría de ecuatorianos rechaza la eutanasia pre-natal... Dicen "es mi cuerpo hago lo q me da la gana" ya no es su cuerpo.La inmensa mayoría concuerda con la posición del Presidente y mientras yo sea Presidente, no despenalizaré el aborto ¿Cuándo se aprobó esto en campaña? Somos la inmensa mayoría y no permitamos que un grupo de desubicadas nos roben lo más sagrado...".

¹² El Comercio: "74 women on trial for abortion the last two years" (25 January of the 2016), <http://www.elcomercio.com/actualidad/ecuador-mujeres-juicios-aborto-carcel.html>

**- From "National Inter-Sectorial Strategy for the Prevention of Teenage Pregnancy (ENIPLA)" to "Family Plan"
(Paragraph 134 CCPR/C/ECU/6)**

15. By the end of 2014, the presidential adviser Mónica Hernández (openly declared close to Opus Dei and member of "prolife" groups) was put in charge of ENIPLA.

16. In addition, competences of the Ministries of Public Health, Economic and Social Inclusion and Education were reduced. Women movements objected to these decisions through several means (among them an open letter¹³ and a public claim of unconstitutionality before the Constitutional Court, which to this date, has not been answered).

17. Although one must respect the right to freedom of religion and of thought of Ms. Hernández, it is clear that ENIPLA changed its approach according to her personal moral values (the new name "Family Plan" speaks for itself).¹⁴ In October of 2014, she publicly stated her objection to the consideration of homosexuality as something natural. Besides, she noted that "it has already been expressed, on repeated occasions, that the President opposes people that promote gender ideology in the Government"¹⁵.

- Lacking of special and fast-track procedures in cases of violence: the case of Jéssica Jaramillo.

18. The Criminal Code (known in Spanish as COIP) issued in February of 2014, does not establish a special or fast-track procedure for cases of physical, psychological or sexual violence. Victims do not have access to a comprehensive response nor protection in such cases.

19. The case of Jéssica Jaramillo, a 31-year-old lawyer, exemplifies the experience of millions of victims of sexual violence in Ecuador.

20. At the beginning of 2015, in Tonsupa (Esmeraldas province), after having dinner with a friend, the two of them were abducted for two hours. During this time, she was sexually assaulted (anal and vaginal rape) while another criminal forced her to practise oral sex on him. They managed to escape. Some villagers found her nude on the beach and covered in blood. They dressed her and cleaned her face. The Police arrived 40 minutes later but they could not find the perpetrators. The legal medical examination was practised in a private medical centre, because no public centre would examine her. The doctor prescribed Erythromycin (500 mg) which she had to buy herself. She was never informed of any protocol or the need to have antiretroviral drugs.

Plan V: "Ecuador: women prosecuted for abortion" (16 February 2016), <http://www.planv.com.ec/historias/sociedad/ecuador-mujeres-perseguidas-aborto>

¹³Open letter to President Correa (09 December 2014),

http://www.comunicandoenigualdad.es/1/carta_abierta_al_presidente_rafael_correa_de_ecuador_1813712.html;

Plan V: Plan Family or going back one hundred years (14 March 2015), <http://www.planv.com.ec/historias/testimonios/plan-familia-ecuador-o-un-retroceso-cien-anos>

¹⁴Gkill city: "To the new director of the ENIPLA does not care about the sexual education" (01 December 2014), <http://gkillcity.com/articulos/fuck-you-curuchupa/la-nueva-directora-la-enipla-no-le-importa-la-educacion-sexual>

¹⁵ Letter signed by Mónica Hernández (28 October 2014), <https://estadodepropaganda.files.wordpress.com/2014/12/enipla-doc-oct-2014.pdf>

21. In Quito, her mother took her to a private doctor. He advised her to go to a Public Health Centre so that they could provide her with some antiretroviral drugs according to the protocol established for cases of sexual violence. These were not available in either of the two main public health centres in Quito, including the Isidro Ayora Maternity Hospital. She only received the antiretroviral drug, 7 days after the rape. She was re-victimized in the public health system when having to explain the story several times and when struggling to find the medicine.

22. The Ecuadorian justice system has failed to fulfil its obligations. Up until today the only available information is the number of the complaint (080601815010040). Nothing has been done. There is no version and no investigation. Even though the District Attorney's office has the physiognomy of the rapists, no perpetrator has been found. A crime of sexual rape is an *ex officio* criminal proceeding and the victim should not be the one pushing for the case to move forward.

- The Monetary and Financial Organic Code weakened and suppressed resources from the Maternity Law

23. Ecuador's Maternity Law (1994) is a regulatory instrument that, at that time, and thanks to the efforts of organised women, tried to give an answer to the deficiencies of the health system. Only because this law entered into force, these rights could be claimed

24. The Monetary and Financial bill, presented by the Executive in July of 2014, pretended to derogate this law. Congresswomen from the ruling party "clarified" that they would not derogate the law, but only that they would eliminate its funding (Gina Godoy, via twitter).

25. By this reform, the Executive Unit of the Law lost its functions, since there is no economical funding for its work. This was a big concern, since it is only because of the law that several medicines are funded by the state. Furthermore, the reform eliminated the sanction related to the retention or lack of transfer for these services and health provisions. This sanction was very useful for the law compliance.

26. Ecuador informed to the CEDAW Committee in 2012 that the Executive Unit of this Law was created in the year 2002 and contemplated protocols of attention, quantification of costs, methodologies, improvement of the quality of the services, instruments to measure quality, goals compliance instruments and management agreements. Ecuador noted that because of the Law, 75% of the funding needed for family planning methods; institutional childbirth, prenatal coverages and for healthy new, was available.

27. CEDAW Committee in 2012 asked to empower the activities of this Executive Unit, specially the role of the User Committees (143 at that time).

**I. Freedom of expression and of association
(Paragraphs 7, 244-247 of the CCPR/C/ECU/6)**

- On the Organic Communication Act, the Communication Superintendency and the Secretariat of Communication

28. The Organic Act on Communication came into force on 25 June 2013¹⁶. It created the Superintendency of Information and Communication (SUPERCOM), the state agency responsible for monitoring media, particularly the press. Non-judicial sanctions are thereby created, forcing the media to publish or broadcast specific contents (such as “rectifications” or “retorts”) failing which, they can be reprimanded or fined. Funds collected through the fines are allocated to the penalizing organ (SUPERCOM).

29. The implementation of these mechanisms has created a way to pressure the private media and instigate self-censorship¹⁷. The prospect of being fined can become indirect mechanisms of prior censorship. Hundreds of media outlets have been sanctioned and hundreds of thousands of dollars have been collected through the enforcement of this law¹⁸.

30. The Communication Regulation Council (CORDICOM), a mechanism created by the same Act, will be responsible for approving the concession of 1472 licences for radio and television frequencies. The licence concession process is going to take place in the last months of the government’s term and can present the risk of limiting freedom of expression and pluralism in the media ahead of the upcoming electoral process. Concerns have been voiced in the country as to the impact that these mechanisms will have on freedom of expression in the long term¹⁹.

- The case of Ruptura, violation of political rights and the right to due process

31. It is publicly known that the Ruptura political movement withdrew its support to the National Government because of the disagreements with the Popular Consultation of 2011, which included the first reform to the Constitution of 2008. The movement made its disagreement public, in particular regarding the intervention of the Executive in the Judicial Function, the central axis of the reform²⁰.

32. After the termination of its alliance with the government, Ruptura complied with all the requirements to register as a national political movement. In February of 2012, the National

16 Registro Oficial No. 22, Third supplement. 25 June 2013. Available in <http://www.presidencia.gob.ec/wp-content/uploads/downloads/2013/08/leydecomunicacion-espaniol.pdf>

17 See preliminary results of the study on the application of the Communication Act: <http://www.fundamedios.org/wp-content/uploads/2015/06/loc-2-a%C3%B1o-you-portrait-in-figures-presentacion.Pdf>

18 El País Newspaper, “Ecuador ha sancionado a casi 200 medios en dos años” (25 June 2015) http://internacional.elpais.com/internacional/2015/06/24/actualidad/1435177369_550550.html

Barbosa, Francisco “El preocupante balance de la Ley de Comunicación en el Ecuador” (El Tiempo Newspaper, 2 July 2015), <http://www.eltiempo.com/mundo/latinoamerica/ley-de-comunicaciones-en-ecuador/16032995>

19 Fundamedios, Concurso de frecuencias debe suspenderse: <http://www.fundamedios.org/fundamedios-insta-suspender-concurso-de-frecuencias/>

²⁰ See: “Ruptura of the 25 decided to separate from the Government this morning” <http://www.eluniverso.com/2011/01/28/1/1355/ruptura-25-separara-gobierno-correa.html>; “Ruptura of the 25 separates from Alianza PAIS’ government” <http://www.ecuadornoticias.com/2011/01/ruptura-de-los-25-se-separa-del.html> and “Ruptura 25 abandons Rafael Correa” <http://www.elcomercio.com/actualidad/politica/ruptura-25-abandona-a-rafael.html>

Electoral Council (CNE), national organism in charge of supervising electoral processes, stated that Ruptura had fulfilled the requirements of the Democracy Code and obtained 12.000²¹ signatures above the required amount to constitute a political party.

33. The formal existence of the organisation was decided and notified legally²². However, the registration of the Movement Ruptura, Listas 25 was unexpectedly hindered by a process of “re-verification”²³ of the signatures. On Saturday 21 July 2012 (over a month after having been formally notified) the President of the Republic reported a supposed massive falsification of signatures in the registration of different political movements that were planning to take part in the elections of 17 February 2013. El Comercio, one of the biggest newspapers in the country, reported his intervention:

It is very grave, it is one of the greatest frauds in history, political fraud that shows the political corruption that exists in the country. I am referring to the massive falsification of signatures to register fraudulently, this is fraud ²⁴.

34. After that, the National Electoral Council proposed a review of the requirements that hampered the registration of all political organisations except the ruling party. It seemed inconceivable to Ruptura and other movements and national and local parties that the CNE, having previously been called to verify the signatures leading to successful registration, was now stepping back from its position, owing to supposedly “falsified signatures”.

35. A month afterwards, the President affirmed that his movement (Alianza PAIS) “only had 11% of falsified signatures”. As reported by El Comercio Newspaper, El Ciudadano, the Government's digital newspaper, replaced the term “falsified” with “invalid” when reporting the President's intervention.

36. After the process of “re-verification” of the signatures in support of Ruptura, imposed without any legal basis by the CNE, 163.035 were approved, leaving out 9000 more signatures which were verified on 28 September. The “ratification” of the electoral register of the Movement Ruptura was notified through the resolution PLE-CNE-44-9-10-2012, only few weeks before the date fixed to submit the names of the candidates for the elections of the following year.

37. In this way, Ruptura started, within the framework of the Democracy Code, the process of primary internal elections to designate the candidates to the seats of Presidency and Vice-presidency of the Republic, members of the National Assembly, as well as for the Andean Parliament. Ruptura presented candidates at the national elections of 2013 in spite of its economic difficulties; the non-existing control by the electoral authority over the official candidacy's financial excesses and the use of public resources for campaigning; as well as the

²¹ In 2011 Ruptura begins to collect accession signatures. At least 157.000 valid signatures were necessary, among others legal requirements. After eight months, Ruptura had 400.000 signatures of accession.

²² On 15 June 2012, during the CNE's Plenary (city of Machala) the Electoral Provincial Delegation approved the resolution PLE-CNE-7-15-2012 that included Ruptura's register and list number.

²³ From 3 - 13 August 2012, the “re-verification” of signatures was carried out. Ruptura's re-verification took place at the Municipal School “Sebastián of Benalcázar” (from 03h00 to 08h00) and in the Centre of Conferences in where, at 24h30 of 08 September 2012, the organisation had been approved “for the second time”.

²⁴ Diario El Comercio: “Correa denuncia falsificación de firmas en inscripción de partidos, (28 July 2012), <http://www.elcomercio.com/actualidad/politica/correa-denuncia-falsificacion-de-firmas.html>

last-minute electoral reforms. Ruptura participated in the elections of 17 February 2013 without obtaining any seat.

38. Ruptura decided it would not take part in the local elections of February of 2014, after expressing its doubts in relation to these uneven conditions in the electoral process and the lack of clear norms on alliances, financing in non-electoral periods, etc.²⁵ The decision, moreover, was based on the Democracy Code provision, which states that electoral participation is a right and not a duty for the political organisations.

39. It is worth mentioning that the National Democracy Code establishes some distinctions between the rights and obligations of parties and political movements. For example, the movements do not receive party funds (a budgetary allocation to support their operation), which also explains why a party -which receives money of the State- needs to comply with specific requirements to enjoy this allocation. In this sense, the Movement Ruptura never received any budgetary allocation on behalf of the National Electoral Council.

The dissolution of the National Political Movement RUPTURA, Listas 25

40. On 03 July 2014, the press and social networks reported that the National Electoral Council had decided “to extinguish” the Movement's legal identity, and that of other political organisations. Without notification or knowledge on the text of the resolution, the movement learnt that this was done on the basis of the legal argument that the political organisation had not reached the minimum amount of valid votes required in two (2) consecutive elections.

41. On 4 July 2014, Ruptura was notified by means of the resolution of the CNE, PLE-CNE-1-3-7-2014²⁶, Article 2, which provides:

*“The annulment of the registration of the political organisations: PARTIDO RENOVADOR INSTITUCIONAL ACCION NACIONAL, Listas 7; PARTIDO ROLDOSISTA ECUATORIANO, Listas 10; PARTIDO MOVIMIENTO POPULAR DEMOCRÁTICO, Listas 12; and, **RUPTURA, Listas 25**, from the National Register, based on the grounds enshrined in paragraph 3 of Article 327 of the Democracy Code (...)”*

The resolution is based on article 327 paragraph 3 of the Code of the Democracy which dictates:

Art. 327.- *The National Electoral Council, ex-officio, or by initiative of a political organisation, cancels the registration of a political organisation in the following cases:*
3. *If the **political parties** do not obtain four percent of the valid votes in **two consecutive elections** at national level; or, at least three representatives in the National Assembly; or, at least eight percent of city councils; or, at least a councillor in each one of, at least, the ten percent of the cantons of the country.*

²⁵ This decision, together with the exhibition of the arguments of the Movement, was presented to the Electoral National Council on 30 October 2013, also announced and debated publicly. See, Official Communiqué and documents presented to the CNE <http://rupturaecuador.blogspot.com/2013/10/ruptura-anuncia-al-cne-que-no.html>

²⁶ Resolution of the Electoral National Council PLE-CNE-1-3-7-2014, adopted in extraordinary session on 3 July 2014, with the favourable vote of the advisers: Domingo Paredes Castillo, Nubia Magda Villacís, Roxana Silva Chicaiza and Luz Haro Guanga. Available in: <http://cne.gob.ec/es/secretaria/resoluciones/308-record-resolutiva-no-036-ple-cne>

42. That is to say, a norm directed to political parties was applied to a political movement, the two being distinct political organisations as determined in the Ecuadorian Constitution (Article 108) and in the Democracy Code.
43. The CNE justified the application of said norm directed to parties, **by analogy (!)** to a movement, supposedly in virtue of the principles of equality and equity:
(...) Registration could never be cancelled for political movements, even in cases where they may act in a way that would cause cancellation of a political party. This situation would run counter to the principles of equity and equality, essential principles for electoral law and electoral Power (...) we can affirm that cancellation of political parties registration, and that of political movements can occur in analogous cases; and, therefore the National Electoral Council can issue the cancellation of a national political movements registration, applying the same regulation as those applied to political parties, based on the premise that both are political organisations.
44. That is to say, for the CNE such an important sanction as the extinction of an organisation's legal identity founded in the right to the citizen participation (Art. 16 of the ICCPR), can be applied by analogy, contravening the principle of legality (*Nullum crime, nulla poena sine praevia lege*, Art. 14 and 15 ICCPR).
45. The CNE's resolution not only applied the sanction by analogy, but it supposed that the Movement Ruptura had not obtained the vote established in Article 327 Paragraph 3, in two consecutive elections. At the time that the resolution was issued, Ruptura had only taken part in the electoral process of 2013, for the election of the President of the Republic, Vice-president, Members of the Assembly and Members of the Andean parliament. In the elections of 2014, Ruptura decided not to take part, communicating it to the CNE.
46. On 5 July 2014, Ruptura challenged the resolution that ordered its extinction. The legal challenge took into account the right to due process (Article 14 ICCPR) and the hierarchical order of the norms established in the Constitution (Article 425), as the sanction imposed was initiated by a report of the CNR's National Direction of Political Organisations, which constitutes an administrative act (lowest gradation of the normative hierarchy in relation to the Constitution and the human rights instruments).
47. Likewise, Ruptura alleged that the resolution contravened the constitutional principle of most favourable interpretation (article 11 numeral 5 of the Constitution), which forces public servants to apply the norm and the interpretation that is more favourable to its effective force.
48. In concordance with the article 226 of the Magna Carta, public civil servants are to operate according to the law that empowers them; and, therefore, it forbids them – in this case – to apply a legal broad interpretation or analogy. Likewise, in relation to article 424 of the Constitution that establishes the lack of juridical effects to the acts of public power that transgress the principle of constitutional supremacy.
49. On 16 July 2014, and without being part of a process (since the decision of the CNE was already taken), the Movement Ruptura assisted to a General Commission that they requested to the CNE, with the aim of exposing their objection.
50. On 6 August 2014, Ruptura was notified with the resolution PLE-CNE-7-4-8-2014 that gave answer to the legal challenge, which rejected their petitions and reaffirmed their decision.

51. On 8 August 2014, Ruptura presented an appeal²⁷ before the Electoral Disputes Tribunal (TCE), regarding the CNE's decision. Amongst the arguments, Ruptura alleged that the CNE did not notify them with the decision that cancelled their register, and that they were only heard thirteen (13) days after the sanction was decided (not based on a public hearing).

52. Ruptura requested the TCE on three occasions to be called for a hearing (11 August, 13 August, 21 August 2014). These requests received no answer from the judge²⁸.

53. On 25 August 2014, the TCE delivered a judgement confirming the extinction of Ruptura and justified the application of this sanction by analogy:

(...) article 327 of the Code of the Democracy has two parts, the first is a supposition and the second is a consequence, in the present cause, the supposition complements with the integrity of the norm that refers to the political organisations, this does not mean that the legal void or broad interpretation, but on the contrary, is the result of the logical chaining of a factual situation specific to the content of the provision.

54. That is to say, the application of a sanction to a political movement of a norm foreseen explicitly for parties results in a "logical chaining" of the content of this norm.

55. In other words, the analogy seemed so obvious and logical to the electoral judge, that he failed to explain how applying a provision to a case that is not stipulated but similar in appearance, does not involve an analogy. Even if one could say there is no analogy, the TCE ratified the CNE's decision that stated this matter. The TCE ruled that not applying article 327 numeral 3 to Ruptura, would have contravened constitutional principles and human rights instruments (without specifying which ones). TCE ended its judgement as follows:

After the review of the dossier, we conclude that the appellant has failed to present any evidence that supports its compliance to article 327 of the Code of the Democracy, thereby to avoid its cancellation (...)

56. In this sense, the TCE denied the appeal and ratified in all its parts, the CNE, PLE-CNE-1-3-7-2014 and PLE-CNE-7-4-8-2014 decisions.

57. It has to be noted that all of CNE²⁹ and of the TCE³⁰ members, at that time, had direct or indirect bonds with the official movement, Alianza PAIS. Amongst them, one could find former ministers, advisers of the presidential office or authorities in the Executive, including founders of Alianza PAIS. All these are charges of confidence in Rafael Correa's government.

58. May of 2016:

- Ruptura has presented its case at the Inter-American Commission of Human Rights.

²⁷ Cause No. 229-2014-TCE.

²⁸ The judge for the cause was the Dr. Patricio Baca Mancheno, President of the Electoral Disputes Court. His brother was the political adviser of President Correa. See several press releases in that it expresses a potential conflict of independence by this designation:<http://www.elcomercio.com/blogs/desde-la-tranquera/bomberos-no-se-pisan-manguera.html>, <http://www.elcomercio.com/actualidad/politica/jueces-electorales-designados.html>, <http://www.eluniverso.com/2012/03/31/1/1355/tribunal-contencioso-electoral-20-aspirantes.html>

²⁹ Domingo Paredes Castillo, President -CNE; Paúl Salazar, Vice-president -CNE; Nubia Magdala Villacís Carreño, Adviser -CNE; Roxana Silva Chicaiza, Adviser -CNE; Luz Haro Guanga, Adviser -CNE; Juan Pablo Pozo, Adviser -CNE; Natalia Cantos Romoleroux, General Coordinator of Legal advice -CNE; Mireya Jiménez Rosero, General Coordinator of Legal advice (temporary). René Maugé Mosquera, National Coordinator Technician on Processes of Political Participation -CNE; Diego Tello Flores, National Coordinator Technician of Electoral Processes -CNE; Alexis Rivas Toledo, General Coordinator of Strategic Management and Planning -CNE; Fabián Revelo Cárdenas, National Director of Political Organisations (s) -CNE; María Elena Rizzo, National Coordinator of Electoral Processes -CNE and Geovanny Santamaría, National Director of Electoral Statistics -CNE.

³⁰ Patricio Baca Mancheno, Judge President -TCE (Judge Speaker); Guillermo González Orquera; Judge Vice-president -TCE; Patricia Zambrano Villacrés, Judge -TCE; Miguel Pérez Astudillo, Judge -TCE; Angelina Velóz Bonilla, Judge -TCE.

- Partido Movimiento Popular Democrático has attained again its registration with the denomination Unidad Popular.
- Partido Roldosista Ecuatoriano has attained again its registration with the denomination Fuerza Ecuador.

59. The first weeks of November of 2015 the CNE presented to the National Assembly a Bill that reforms the Code of Democracy. Among other subjects, they propose the reform of article 317 (the one used to dissolve Ruptura) so that the provision could include the word "organisations" instead of "parties". That is to say, if it is approved, the provision will contemplate the possibility to dissolve movements also. Regardless, the National Electoral Council has already applied it in this sense.

Conclusions

60. The situation in Ecuador is not one where rights are respected and guaranteed, particularly civil and political rights. Given the continued social inequality, the current economic crisis, the legal insecurity and the damaging impact of the recent earthquake Ecuador is confronted with major challenges. The restriction and violations of human rights, the non-separation of state powers³¹, the threats towards political opponents, the lack of freedom of expression; and other obstacles to the exercise of political rights constitute an authoritarian environment, very distinct from the reality described in official documents. These examples and concrete cases deserve to be analysed in international human rights fora to allow for a comprehensive evaluation of the performance of a State. The State has the obligation to answer for violations and cannot pretend to replace reality with national and international propaganda.

Recommendations

61. ***Full respect for the Constitution:*** The Magna Carta, issued in 2008 cannot continue to be modified at the free will of the government, who must respect the constitutional procedures to reform and amend it.

62. ***Full respect for international human rights Law:*** Ecuadorian government has ratified a number of international human rights instruments and has recognised the competence of tribunals and treaty bodies in the matter. Accordingly, the State must fully comply with its pronouncements. In particular, Ecuador should join the efforts to strengthen the Inter-American Human Rights System and refrain from threatening to exit.

³¹ See Pásara Luis, Independencia Judicial en la reforma de la justicia ecuatoriana, 2014, http://www.dplf.org/sites/default/files/indjud_Ecuador_inform_esp.Pdf

63. **Harmonize secondary legislation to the Constitution of the Republic and international human rights instruments:** National laws should be issued in compliance with international and national commitments to human rights. In addition, a number of laws must be reformed which have been regressive for the country. Mainly the Criminal code, the Equality Councils Act and the Communications Act. Moreover, the indiscriminate use of “economic emergency” laws must be stopped, as it provides for a debating period of only one month in the National Assembly. This economic emergency laws have been used on many occasions by the Executive including in relation to very extensive legislative bills.

64. **End interference between branches of the state:** the state of Ecuador, currently composed of five branches (Executive, Legislative, Judicial, Electoral and Citizen Participation), must restore independence between them. In addition, there is no clear difference at the moment between the State, the national Government and the ruling party.

65. **Remedy to victims of human rights violations:** the state of Ecuador must fulfil its obligations to respect, protect, prevent, investigate and punish. The obligation to restore and repair is particular importance to those involved in this report.

66. **Give special attention to the actual exercise of civil and political rights due to the pre - electoral period in which the country finds itself:** As 2016 is a pre-election year (elections will be held in February 2017), this situation may represent a scenario in which human rights violations are likely to occur, especially the right to participation.