



# Report on the situation of serious violations of the rule of law and of fundamental rights and freedoms in Ecuador

## Presented by:

Colectivo Europeo de la Diversidad Ecuatoriana (C.E.D.E)

Gesellschaft für Menschen Rechte Amnestie und Chancengleichheit  
Internationale Aktionen (G.R.A.C.I.A)

Norwegian Forum for Democracy and Rights in Ecuador (N.O.F.E.C)

Association des Migrants Latino-Américains en France (A.L.M.A)

Associazione Amici dell'Ecuador (A.D.E)



## I. Introduction

Ecuador is going through a deep social, economic, political, democratic and security crisis. The rule of law and the fundamental rights and freedoms of Ecuadorians are no longer guaranteed. The rule of law presupposes respect for the separation and balance of the different powers of the State, which alone makes it possible to protect and guarantee respect for human rights.

Since 2018, in Ecuador, the judicial system has been profoundly reshaped, ruining the guarantees of independence and impartiality of justice. Members of the Judiciary Council, magistrates of the Constitutional Court, 70% of the members of the National Court of Justice, the Attorney General and others have been arbitrarily removed from their positions, without having committed any fault and without respect for their rights of defence. Since then, the power of attorney has turned into service of the government getting to the point of criminalize political opponents. In addition, the media actively participate in strategies to create the figure of the "enemy opponent" propagating an official message without retrospective or evidence. The concern for the institutional future of Ecuador is greater because the current President of the country is planning demagogically to call for a new referendum, which in reality intends to politicize the law enforcement offices.

The legal and media powers attack to political opponents, known as "lawfare" has been used mainly against the leaders and supporters of the Revolución Ciudadana (RC) movement. They have been subjected to several trials in clear violation of the law and their human rights. Without fair trials and with degrading and unhuman treatments.

International control agencies, such as the Interpol File Control Commission, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, the Inter-American Commission on Human Rights, the United Nations Working Group on Arbitrary Detention and the Belgian Commissariat General for Refugees and Stateless Persons and others all come to the same conclusion that lawfare has been used repeatedly to criminalize, discredit and delegitimize not only political opponents but also leaders of social and indigenous movements who protest asking for the implementation of policies that respect their social, economic and cultural rights. Among the victims of the assault on human rights are also Julian ASSANGE, psychologically tortured in the Ecuadorian embassy since the arrival to the presidency of L. MORENO, then arbitrarily deprived of his refugee status, and Ola BINI, arbitrarily arrested and imprisoned, victim of an unfair trial, for his links with the founder of WikiLeaks.

Democracy requires the possibility of a representative expression of different political thoughts of the population. After the breakup within the Alianza País party in 2018, and following the sudden political turn of R. CORREA DELGADO's successor, supporters of the "Revolución Ciudadana" were systematically prevented from creating a new party or political alliance that would allow them to participate, on equal terms, in the 2019 regional and 2021 national elections. As in Brazil, lawfare has undermined the right of fair and democratic elections.

Since 2017, poverty and violence have increased alarmingly. Economic, social and security difficulties have led to widespread protests in 2019 and 2022. The same ones that were violently repressed leaving a result of several dead and hundreds injured. In response to popular discontent, the freedoms of expression and demonstration have been violated through the abuse of states of emergency and the excessive use of force. This disproportionate use of public forces has been condemned internationally. The Ecuadorian government has also used these mass demonstrations as a excuse to criminalize its "opponents". Democratic dialogue is generally denied and disqualified.

In 2019, the prison administration underwent structural and budgetary reform. The overuse of incarceration and the lack of investment have led to significant overcrowding in conditions that do not allow for the classification of prisoners, and the number of prison guides in prison facilities has been depleted. The State can no longer guarantee the right to life and respect for the physical integrity of prisoners in Ecuador. Since December 2020, despite the state of emergency declared in September 2021, more than 400 prisoners have lost their lives in violent clashes. These are massacres with some victims having been dismembered and/or decapitated. It has not been decided what structural measures could be taken, nor significant investments in this field.

The crisis in Ecuador reveals a management that seriously undermines the fundamental rights and freedoms of Ecuadorians (right to live in dignity, right of health, right of freedom of expression and demonstration, right of life, right to be respected for any physical integrity, right of a fair trial, right of freedom to exercise political rights or preferences).

The breakdown of the rule of law is a matter of deep concern, as it is a necessary condition for the development of people's fundamental rights and freedoms.

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## II. Breakdown of the rule of law - establishment of a judiciary under the tutelage of the executive, lacking independence and impartiality.

### A. Process of "dismantling" of the judiciary

#### 1. Referendum 2018

1. Among the constitutional powers of the President of the Republic is the power to *"call a referendum in the cases and with the requirements set forth in the Constitution"*<sup>1</sup>.

On October the 2<sup>nd</sup> in 2017, the President of the country requested that the Constitutional Court issue a prior and binding opinion regarding the constitutionality of the referendum back then, and the questionnaire relating to five questions suggesting to the following topics: fight against corruption, indefinite re-election, citizen participation and institutional, social and environmental issues<sup>2</sup>.

Question 3 of the referendum specifically stated:

*"Do you agree with amending the Constitution of the Republic of Ecuador to restructure the Council of Citizen Participation and Social Control (CPCCS) as well as to terminate the constitutional term of its current members, and that the Council that temporarily assumes their functions has the power to evaluate the performance of the authorities whose appointment corresponds to it, being able, if necessary, to anticipate the termination of their terms, according to Annex 3?"*<sup>3</sup>

Annex 3 had the following content:

*"Early termination of term: The constitutional terms of the principal and alternate members of the Council of Citizen Participation and Social Control are hereby terminated, who shall cease in their functions on the day on which the Council of Citizen Participation and Social Control is installed, which shall carry out the transition in accordance with this annex.*

*[Transitional regime of the Council for Citizen Participation and Social Control: The terms of office of the councilors of the current Council for Citizen Participation and Social Control are terminated in advance. Until the installation of the new Council of Citizen Participation and Social Control in accordance with the system established in the amended Constitution, a Council of Citizen Participation and Social Control is*

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<sup>1</sup> Constitution of the Republic of Ecuador, Art. 147 numeral 14.

<sup>2</sup> Office of the President of the Republic, Oficio No. T.141-SGJ-17-0331 of October 2, 2017.

<sup>3</sup> Presidency of the Republic, Oficio No. T.141-SGJ-17-0331 of October 2, 2017.

*established which will temporarily assume all the powers, duties and attributions that the Constitution and the laws grant to the Council of Citizen Participation and Social Control and will be comprised of seven members appointed by the National Assembly from among shortlists sent by the President of the Republic. (...) The transitional Council shall have the mission of strengthening the mechanisms of transparency and control, citizen participation, and prevention and fight against corruption for which it shall propose the necessary reforms to the competent bodies. The Transitional Council shall evaluate the performance of the authorities appointed by the terminated Council of Citizen Participation and Social Control, within a maximum term of six months from its installation, being able, if necessary, to declare the early termination of their terms, and if it does so, it shall immediately proceed to convene the respective selection processes. To this effect, it shall issue a regulation that regulates the evaluation process, guaranteeing due process, with a hearing for the evaluated authorities and including the necessary mechanisms for contestation and citizen participation. Likewise, it shall guarantee the improvement, objectivity, impartiality and transparency of the selection mechanisms of the authorities whose appointment is within its competence [...]"<sup>4</sup>.*

Without waiting for the binding ruling of the Constitutional Court, former Ecuadorian President L. MORENO called on voters to go to the polls on February 4, 2018.

2. The Council of Citizen Participation and Social Control (CPCCS) is a constitutionally established body, whose members are elected by popular vote, which oversees multiple institutions (Attorney General's Office, Prosecutor General's Office, Judiciary Council, etc.). popular vote, which oversees multiple institutions (Attorney General's Office, Prosecutor General's Office, Judiciary Council, etc.).

Their dismissal outside the time and conditions set by law and their replacement by members chosen by the political power clearly endangered the structure of the State and the independence of the judiciary.

The Organization of American States (hereinafter OAS) invited the Ecuadorian State to wait for the result of the constitutionality review, but the government objected. The OAS then issued a critical preliminary report highlighting the illegality of the lack of prior review by the Constitutional Court; the disproportion between the organizations in favour of "yes" (supporters of President Moreno) and "no"; the lack of dissemination of the "no" campaign; the use of state resources in favour of "yes"; and the lack of legibility/clarity of the questions asked<sup>5</sup>.

On January 24, 2018, the UN Special Rapporteur on the independence of judges and lawyers told Ecuador:

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<sup>4</sup> Presidency of the Republic, Oficio No. T.141-SGJ-17-0331 of October 2, 2017.

<sup>5</sup> OAS, "Preliminary Report on the Referendum in Ecuador by the Electoral Experts Mission of the organization of American States," February 5, 2018, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=S-002/18](https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-002/18)



*"Our attention is particularly drawn to the matters that touch on the composition of the Council of Citizen Participation, a constitutional entity. According to this information, this would lead to the dismissal of the current members and the appointment of a new Council. It is alleged that this would lead to an appointment by the executive of the members of such Council and would affect, consequently, the autonomy of the Public Defender's Office, the Attorney General's Office and the organs of the Transparency and Social Control Function. Additionally, it is alleged that it could lead to the dismissal of the members of the Constitutional Court.*

*(...)*

*I would like your government to inform us, as soon as possible, on the following (...)*

*3. Guarantees that the ongoing process will not lead to a Citizen Participation Council controlled by the Executive Branch or affect the independence of bodies such as those mentioned above, in particular the Constitutional Court, the Attorney General's Office and the Public Defender's Office"*<sup>6</sup> ;

3. At the request of the CPCCS members, on February 6, 2018, the Inter-American Commission on Human Rights (hereinafter IACHR) asked the Inter-American Court of Human Rights to issue provisional measures: order the government to refrain from removing these members in order to create a CPCCS-Transitional (hereinafter CPCCS-T)<sup>7</sup> .

The Inter-American Court of Human Rights did not consider the requested measure until after the dismissal of the members of the CPCCS, and therefore declared it without subject matter.

The appeal of the dismissed members of the CPCCS was declared admissible by the IACHR: *"the Commission considers that the allegations of the petitioner regarding their dismissal as members of the CPCCS are not manifestly unfounded and require a study of the merits since the alleged facts, if corroborated as true, could characterize violations of Articles 8 (judicial guarantees), 23 (political rights), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)"*<sup>8</sup> .

4. In 2019, new elections were held to replace the politically appointed CPCCS-T.

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<sup>6</sup> UN Special Rapporteur on the independence of judges and lawyers, January 24, 2018, OL ECU 1/2018, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23589>

<sup>7</sup> OAS press release, "IACHR refers request for provisional measures in favor of members of the Citizen Participation Council of Ecuador," February 6, 2018, <https://www.oas.org/es/cidh/prensa/comunicados/2018/021.asp>

<sup>8</sup> IACHR, Report No. 195/21. Petition 2377-17. Admissibility. Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García. Ecuador, September 7, 2021, <https://www.oas.org/es/cidh/decisiones/2021/ECAD2377-17ES.pdf>



Previously, however, the CPCCS-T had succeeded in getting the "new" Constitutional Court (see below) to pass a resolution prohibiting the newly elected members from being able to evaluate the work of the CPCCS-T<sup>9</sup>.

As a result of this constitutional decree, the new members of the CPCCS, elected by popular vote, among other things to oversee the work of the CPCCS-T, were dismissed. Since the 2018 referendum, this institution is in crisis<sup>10</sup>, like many others<sup>11</sup>.

5. Despite the guarantees requested by the UN Special Rapporteur on the independence of judges and lawyers, the process irregularly initiated in February 2018 led to the dismissal of all the judges of the Constitutional Court<sup>12</sup>, of the attorney general, as well as 70% of the judges of the "National Court of Justice", the second highest court in the country (see below).

This was the first phase of a systematic dismantling of the judiciary.

## **2. Transitory Council of Citizen Participation (CPCCS-T)**

6. The referendum called by L. Moreno took place on February 4, 2018.

Shortly thereafter, the members of the CPCCS were dismissed and a CPCCS-transitory was appointed by the National Assembly, instead of being elected, following the proposal of then President L. MORENO.

7. On March 13, 2018, the CPCCS-T resolved to initiate the evaluation process to all control authorities and those appointed by the dismissed Council of Citizen Participation and Social Control<sup>13</sup>.

On March 28, 2018, the Plenary of the CPCCS-T approved the Terms of Reference for the Evaluation of Authorities, which regulated the process of administrative investigation, evaluation, challenge and resolution on the authorities appointed by the dismissed Council for Citizen Participation and Social Control<sup>14</sup> with the following administrative processes: request of a management report to the respective authorities; evaluation concluded with a Technical Investigation Report; the evaluated authority is informed of the Technical Report so that, within

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<sup>9</sup> El Comercio, "What are the decisions of the Cpccs-t armored by the Constitutional Court? ", May 10, 2019, <https://www.elcomercio.com/actualidad/politica/CPCCS-T-dictamen-corte-constitucional-autoridades.html>

<sup>10</sup> El Comercio, "El Cpccs va por su cuarto presidente", February 10, 2022, <https://www.elcomercio.com/actualidad/cpccs-presidente-hernan-ulloa-ecuador.html>

<sup>11</sup> Primicias, "Nine institutions in crisis due to resignations, dismissals and lack of renewal" February 23, 2022, <https://www.primicias.ec/noticias/politica/nueve-instituciones-inestabilidad-prorrogas-subrogaciones/>

<sup>12</sup> Jorge Luis Rivera Choez, Orlando Ivan Ronquillo Riera, "Removal of Constitutional Court members and its implications in Ecuador's domestic legal system," September 18, 2019, <https://recimundo.com/index.php/es/article/view/541>

<sup>13</sup> CPCCS-T Plenary, Resolution No. PLE-CPCCS-T-O-001-13-03-2018.

<sup>14</sup> CPCCS-T Plenary, Resolution No. PLE-CPCCS-T-O-009-28-03-2018.

three to ten days, it may exercise its right of defence; public hearing; application of the evaluation parameters previously determined by the Plenary of the CPCCS-T; decision within five days; challenge, after three days of the evaluated authority being notified; resolution on the claim under review by the CPCCS-T, last instance.

8. On May 14, 2018, the Permanent Committee for the Defence of Human Rights was already expressing its concern about the powers assumed by the CPCCS-t:

*"We observe that several members of the Transitory Council of Citizen Participation and Social Control (CPCCS-T) have stated that the popular will has granted them an extraordinary power, and, on that basis, they have made a normative interpretation, even indicating that their acts are at the same level as the Constitution itself, we believe that this statement is a mistake. The effect of this is that the Transitory Council performs a series of acts exceeding the mandate received by the Ecuadorian people, arrogating to itself functions for which it has no attribution or competence such as: to appoint new authorities to replace the dismissed ones without observing that the specific laws do establish succession rules; to pretend to evaluate and dismiss the Constitutional Court whose appointment according to the Constitution does not correspond to the CPCCS but to a Qualifying Commission in which participate, among others, the Executive Function, the Legislative Function and the Transparency and Social Control Function, the latter conformed by several organs, that is to say that in this case the CPCCS-T pretends to assume integrally as the three functions of the State"<sup>15</sup>.*

Professor RUIZ-CHIRIBOGA, after having made a sharp analysis of the (i)legality of the February 2018 referendum, concluded that:

*"The constitutional amendments sought by President Moreno should have been reviewed by the Constitutional Court, but Moreno evaded this review. The lack of constitutional review produced serious problems for democracy and human rights. Question 3 of the referendum creating the CPCCS-T was incomplete, unclear and blurred, which affected the electorate's right to vote with full knowledge of the facts. The Constitutional Court could have corrected the question had it been allowed to conduct its constitutional review. The obscurity of the question represented an obstacle to the expression of the popular will. (...)*

*The all-powerful CPCCS-T presented itself as the voice of the people. It had the arrogance to call its decisions "mandates", as if they had been approved by the people, presenting them as supra-constitutional. The CPCCS-T was unstoppable. It became an ad hoc administrative court that did not apply pre-established rules and procedures. The referendum altered the separation of powers and the autonomy of public functions.*

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<sup>15</sup> Comité Permanente por la Defensa de los Derechos Humanos, "CPCCS-T EXTRALIMITA MANDATO DE CONSULTA POPULAR", May 24, 2018, <https://www.cdh.org.ec/ultimos-pronunciamientos/354-cpccs-t-extralimita-mandato-de-consulta-popular.html>

*Such a change, according to the Constitution, should not be approved by referendum. The 2018 constitutional amendments in Ecuador were unconstitutional."*<sup>16</sup> .

### **3. Removal and replacement of the Judiciary Council**

9. The Judiciary Council is the governing, administrative and disciplinary body of the Judicial Function (Ecuadorian judiciary). This body is not jurisdictional, so it cannot administer justice.

In June 2018, the CPCCS-T resolved to cease and terminate the term of the vocals of the Judiciary Council<sup>17</sup> . It was also resolved to appoint five vocals in charge of the Judiciary Council until the appointment of the incumbents.

10. The President of the National Court of Justice, the State Attorney General, the Ombudsman, the Executive Branch and the National Assembly were to present a list of candidates to form the new Judiciary Council.

A technical commission, created by the CPCCS-T, was in charge of examining the candidates' qualifications, incompatibilities and merits, and then drew up a shortlist. In the end, the CPCCS-T carried out a "recusal" phase to keep only the desired candidates.

This brief description of the "procedure" followed to form the Council of the Judiciary illustrates the dominance of politicization over appointments to key state functions. CPCCS-T over the appointment to key State functions. The Council of the Judiciary is, in effect, the body that brings together the entire judicial institution: the National Court of Justice, the Attorney General of the State, the Ombudsman, etc.

On January 23, 2019, the CPCCS-T appointed the new principal members of the final Judiciary Council<sup>18</sup> .

11. In the same Resolution, the CPCCS-T urged the new members of the Judiciary Council to, "in response to citizen demand", proceed to set the parameters and the immediate evaluation of judges and associate judges of the National Court of Justice.

Regarding the evaluation of the judges of one of the highest courts in the country, the CPCCS-T had already announced:

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<sup>16</sup> Oswaldo Ruiz-Chiriboga, "The 2018 Constitutional Referendum in Ecuador and the Transitory Council of Citizen's Participation and Social Control," from 2021, [https://www.researchgate.net/publication/350740720\\_The\\_2018\\_Constitutional\\_Referendum\\_in\\_Ecuador\\_and\\_the\\_Transitory\\_Council\\_of\\_Citizen's\\_Participation\\_and\\_Social\\_Control](https://www.researchgate.net/publication/350740720_The_2018_Constitutional_Referendum_in_Ecuador_and_the_Transitory_Council_of_Citizen's_Participation_and_Social_Control) free translation.

<sup>17</sup> CPCCS-T, Resolution N°. PLE-CPCCS-T-O-037-04-06-2018 : decision  
CPCCS-T, Resolution No. PLE-CPCCS-T-E-048-14-06-2018 : denial of appeals for review.

<sup>18</sup> CPCCS-T, Resolution N°. PLE-CPCCS-T-O-240-23-01-2019

*"It is stated that the evaluation of the members of the National Court of Justice must comply with the standards of due process guarantees indicated by the Inter-American Court of Human Rights. However, "at this point in the transition it would not guarantee these standards due to the insufficient time to evaluate the performance and individual productivity of the 21 judges and associate judges of the Court"<sup>19</sup> .*

#### **4. Removal and replacement of the Constitutional Court**

12. In August 2018, the CPCCS-T terminated the mandate of the nine judges of the Constitutional Court<sup>20</sup> .

On September 19, 2018, the Transitional Council approved the terms of reference for the process of selection and appointment of the members of the Constitutional Court by the "Qualifying Commission". This Commission was composed of delegates from the public administration appointed by the Transitory Council<sup>21</sup> . At the end of the process, the CPCCS-T could still object and impede certain candidates under the pretext of "social control".

The Transitional Council validated the appointment of the 9 new members of the Constitutional Court on January 30, 2019<sup>22</sup> .

13. The Constitutional Court, which was initially declared "vacant" for 60 days, remained so for more than five months vacancy" for 60 days, remained so for more than five months.

On May 7, 2019, at the request of the President of the CPCCS-T, the "new" Constitutional Court issued an "interpretative opinion" that prohibits the future elected CPCCS-T from reversing decisions adopted by the CPCCS-T:

*"The definitive Council of Citizen Participation and Social Control does not have the extraordinary powers that the "Transitional Regime of the Council of Citizen Participation and Social Control" granted to the Transitory Council. For this reason, it does not have the power to review the decisions made by the Transitory Council in exercise of those powers"<sup>23</sup> .*

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<sup>19</sup> Transitional Council press release no. 212, September 19, 2018. Online: <https://www.cpccs.gob.ec/2018/09/la-corte-nacional-de-justicia-sera-evaluada-por-el-consejo-de-la-judicatura-definitivo/>

<sup>20</sup> El Comercio, "Consejo de Participación transitorio cesa a los nuevos jueces de la Corte constitucional," August 23, 2018, <https://www.elcomercio.com/actualidad/consejo-participacion-ceso-corte-constitucional.html>

<sup>21</sup> Transitional Council press release no. 214, September 19, 2018. Online: <https://www.cpccs.gob.ec/2018/09/se-aprobo-mandato-de-designacion-de-la-corte-constitucional-cc/>

<sup>22</sup> Transitional Council press release no. 408 dated January 30, 2019. Online: <https://www.cpccs.gob.ec/2019/01/designados-nuevos-miembros-de-la-corte-constitucional-del-ecuador/>

<sup>23</sup> Constitutional Court, "Constitutional interpretation of the extraordinary powers "Transitional regime of the Council of Citizen Participation and Social Control", number 2-19-IC/19, May 7, 2019, <https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=2-19-IC/19>

## 5. Removal and replacement of judges of the National Court of Justice (CNJ)

14. The "new Council of the Judiciary" has been charged by the CPCCS-T to evaluate the judges of the National Court of Justice in light of "citizen demand".

The Plenary of the Judiciary Council approved the different resolutions to "fix" the new rules for dismissing and appointing judges of the highest jurisdiction in the country<sup>24</sup>.

The process of drafting the rules, establishing an "expert committee", preparing a report on the work of the judges, conducting written and oral examinations and reviewing appeals lasted only 7 months: from February to November 2019. At the end of this process, 70% of the judges of the National Court of Justice (hereinafter CNJ) were dismissed.

After the dismissals, the Council of the Judiciary resolved to *"Declare the extraordinary and emergent need for the appointment of temporary associate judges in the National Court of Justice", from among the judges of the Provincial Courts and the Contentious Administrative and Tax Courts of the country to replace those who had not passed the evaluation.*<sup>25</sup> The Judiciary Council resolved: *"To declare the extraordinary and emergent need for the appointment of temporary judges in the National Court of Justice", from among the judges of the Provincial Courts and Administrative and Tax Courts of the country to replace those who*

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<sup>24</sup> Resolution No. 010-2019 of February 19, 2019, whereby it issued the *"Regulations for the comprehensive evaluation of judges and associate judges of the National Court of Justice of the Republic of Ecuador"*.

Resolution No. 035-2019 of March 26, 2019, whereby it issued the *"Instructions for the formation and operation of the committee of experts and the evaluation committee of the comprehensive evaluation process of judges and associate judges of the National Court of Justice of the Republic of Ecuador"*.

\* Resolution No. 059-2019 of April 26, 2019, by which it resolved to *"Appoint the members of the Committee of Experts for the Comprehensive Evaluation of Judges and Associate Judges of the National Court of Justice"*.

Resolution No. 094-2019 of June 18, 2019, whereby it resolved to *"Approve the final report corresponding to the Comprehensive Evaluation Methodology for judges and associate judges of the National Court of Justice and its annex"*.

Resolution No. 103-2019 of July 2, 2019, whereby it resolved to *"Reform Resolutions 010-2019 and 035-2019, regarding the incorporation of social control in the process of comprehensive evaluation of judges of the National Court of Justice"*.

Resolution No. 116-2019 of July 12, 2019, whereby it resolved to *"Appoint the members of the Committee of Evaluators for the Comprehensive Evaluation of the judges and co-judges of the National Court of Justice"*.

Resolution No. 140-2019 of September 6, 2019, whereby it resolved *"To specify that the delivery of results to the person evaluated by this Committee consists of recording, through a record, that the indicators for the oral evaluation of orders and/or judgments have been met in terms of time (...)"*.

Resolution No. 141-2019 of September 7, 2019, whereby it resolved to *"Open the phase of oral substantiation of competencies in the exercise of their office of the judges and co-judges of the National Court of Justice and declare itself in permanent session during September 7, 8, 9 and 10, 2019"*.

Resolution No. 147-2019 of September 17, 2019, whereby it resolved: *"To specify the content within the evaluation criteria for the "quality analysis of admission / inadmissibility orders" for the judges of the National Court of Justice"*.

Resolution No. 163-2019 of October 23, 2019, whereby it resolved: *"To approve the final report of the results of the comprehensive evaluation process of the judges and co-judges of the National Court of Justice"*.

Resolution No. 187-2019 of November 15, 2019, whereby it resolved: *"To approve the final results report and declare the comprehensive evaluation process of judges and associate judges of the National Court of Justice concluded"*.

<sup>25</sup> Plenary of the Judiciary Council, Resolution No. 188-2019 of November 15, 2019.

had not passed the evaluation carried out. It resolved: *"To appoint the temporary co-judges for the National Court of Justice"*<sup>26</sup>. According to the list, 26 temporary judges were appointed, who took office on December 2, 2019.

15. This process clearly undermines the principles of independence and impartiality of justice.

On September 18, 2019, the UN Special Rapporteur on the Independence of Judges and Lawyers (REIMA) reiterated his concern to Ecuador:

*"In the context of the aforementioned issue and taking into account the allegations received, I would like to express my concern about the fact that the comprehensive evaluation process of the judges and co-judges of the National Court of Justice of the Republic of Ecuador may not meet international standards on the matter, should those allegations be founded. It should be emphasized that any judicial evaluation process must ensure effective compliance with the principle of judicial independence."*

*The evaluation process and the criteria established could affect the principle of judicial independence and involve interference or intimidation in the judicial process. Moreover, there could be a risk that the purpose of the evaluation could be to justify removals or serious disciplinary proceedings, which would violate the principle of irrevocability and the standards for the imposition of disciplinary measures, suspension and removal from office. This risk is accentuated when, according to the allegations presented, the evaluation criteria established in the process conflict with the objective of a performance evaluation and include disciplinary issues that would have the purpose of removing judges from office"*<sup>27</sup>.

On June 10, 2020, the REIMA returned to Ecuador:

*"Without prejudice to the expansion of information on the facts of the case, I express my deep concern about the consequences that the new evaluation procedure for judges and associate judges of the National Court of Justice and the removal of judges and magistrates, as well as the conditions of instability in the performance of the functions of judges and temporary magistrates of the court, could have for the independence and impartiality of the judiciary in Ecuador."*

*In this regard, I note with concern the flaws in the Regulations for the comprehensive evaluation of judges and associate judges of the National Court of Justice, the composition of the Support Committee for the comprehensive evaluation, and the report prepared by the same that formed the basis for the decision taken by the plenary of the*

<sup>26</sup> Plenary of the Judiciary Council, Resolution No. 197- 2019 of November 28, 2019.

<sup>27</sup> REIMA, September 18, 2019 appeal, AL ECU 14/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24848>



*Judiciary Council to dismiss the judges and associate judges, apparently without due consideration of the applicable internal legal constraints.*

*In addition, I express my grave concern about the consequences of the appointment of temporary judges, apparently without a clear basis in domestic law, for the administration of justice in the National Court of Justice. I recall that the establishment of a situation in which the judiciary can be controlled, directed or influenced in the performance of its judicial functions is incompatible with the notion of an independent court"<sup>28</sup>.*

16. Several judges dismissed from the National Court of Justice have filed judicial appeals in Ecuador.

On December 21, 2021, the Constitutional Court invalidated the impeachment process of the CNJ judges:

*"89. In this regard, this Agency has explained that: "Institutional judicial independence, both internal and external, is essential, in turn, to guarantee the individual or functional independence of the judges, so that the parties can exercise their right to an independent, impartial and competent judge, in accordance with Article 76, paragraph 7 (k) of the Constitution (...) Judicial independence is, therefore, a basic guarantee of due process of law, but not only because of the specific right to be judged by an independent judge, but also because of the independence of the judiciary. (...) Judicial independence constitutes, therefore, a basic guarantee of due judicial process, but not only because of the specific right to be judged by an independent judge, but also because the independence of the judge depends, in turn, on the due protection of other rights and principles, some of which are part of due process".*

*(...)*

*94. This Constitutional Court emphasizes that judicial independence is a right of the justiciable, a guarantee of due process and a principle that constitutes a structural element of the system of administration of justice.*

*(...)*

*141. In the present case, regarding the guarantee of determination of the judges and associate judges of the National Court of Justice, it is observed that constitutionally and legally their appointment has been established for a fixed term of nine years.*

*(...)*

*143. In this sense, (...) and therefore, it generated the violation of legal certainty, because the realization of an evaluation process on all the members of the National Court of Justice, whose consequence was the removal and whose opportunity and*

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<sup>28</sup> REIMA, appeal of June 10, 2020, AL ECU 1/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25333>



*frequency were unpredictable, "would be equivalent to relativize the duration of their mandates, with the same effects of a "ratification".*

(...)

*149. In the American Convention on Human Rights, Article 9 contemplates the principle of legality by stating that: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under the applicable law at the time it was committed.*

(...)

*(...) the derivation of the sanctioning process by means of regulations infringes the principle of legality of the infringements and their sanctions"<sup>29</sup>.*

Judge JIMENEZ's concurring opinion, more in line with international standards, also states:

*"14. However, in my opinion, the evaluation becomes detrimental to judicial independence when under ordinary constitutional conditions it: 1) is not carried out in accordance with the time limits and normative parameters pre-established in the law and, 2) unduly enters the sphere inherent to the jurisdictional activity, to justify the removal.*

(...)

*20. In my opinion, it is clear that on the basis of Resolution No. 10-2019, an evaluation was proceeded to regulate and execute an evaluation regarding this interpretative activity of the national judges that served as the basis for their unconstitutional removal. This evaluation is even confused in the aforementioned Resolution with a disciplinary process, an issue that is analysed in the majority vote. The evaluation resulted in that, based on a report issued by an ad-hoc committee, which does not exercise jurisdiction, the CJ removes national judges, without following the deadlines and procedures previously established by law, also violating judicial independence" (pp. 57-60)<sup>30</sup>.*

The analysis of Judges SALAZAR MARIN and LOZADA PRADO, more in line with international requirements, is along the same lines:

*" 5.1. The guarantee of irrevocability was violated by the removal of national judges and associate judges without having guaranteed due process, in particular, by having violated the principle of legality, legal certainty and the procedure set forth in the Organic Code of the Judicial Function ("COFJ").*

*5.2. The guarantee of irrevocability of judges was violated by the removal of 70% of an Ecuadorian High Court outside the periods allowed by the Constitution.*

<sup>29</sup> Constitutional Court of Ecuador, Decision No. 37-19-IN/21, December 21, 2021, [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcNBlDGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOC0xNDMxODhhY2UxOWUucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcNBlDGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOC0xNDMxODhhY2UxOWUucGRmJ30=)

<sup>30</sup> Constitutional Court of Ecuador, Decision No. 37-19-IN/21, December 21, 2021, [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcNBlDGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOC0xNDMxODhhY2UxOWUucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcNBlDGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOC0xNDMxODhhY2UxOWUucGRmJ30=)

*5.3. The guarantee against external pressures was violated because the quality of the rulings and orders was used as the main and determining criterion to remove the judges and co-judges evaluated.*

*(...)*

*30. We consider that the mere fact that judges have been removed outside the renewal periods established in Article 187 of the Constitution is more than enough to constitute, by itself, a violation of the guarantee of removability. The unforeseen and arbitrary implementation of a comprehensive evaluation process outside the constitutionally established periodicity constitutes a breach of the State's obligation to refrain from removing judges for reasons other than the completion of the term or the commission of very serious misconduct.*

*31. In addition, this may sow doubts in a reasonable observer as to the motivations behind the evaluation process.*

*(...)*

*34. It is extremely relevant to consider that the process under examination in this case culminated with the removal of more than 70% of the judges, judges, co-judges and co-judges evaluated. Undoubtedly, what happened can be described as a massive removal of judges and associate judges from the National Court of Justice, the highest body for the administration of ordinary justice, which is extremely worrisome.*

*(...)*

*39. However, it is no less true that evaluating the quality of the rulings of a High Court can be at odds with judicial independence, by generating a chilling effect on judges. The control of the quality of the rulings may condition the judges with respect to the power in power. If a national judge is aware that the Judiciary Council may in the future use its legal criteria to remove him or her from office, this generates external pressure, in that it may condition the predisposition of judges to adopt decisions that are not to the liking of the Judiciary Council or even the political power in power" (pp. 65 et seq.)<sup>31</sup>*

17. Beyond the sanction of the evaluation process of the CNJ judges, protection/reparation actions have also been filed by some dismissed judges.

Thus, on December 30, 2021, the Provincial Court of Justice of Pichincha highlighted the seriousness of the violations of fundamental rights committed. For the Special Chamber, there is no doubt that *"In the specific case, the defendant entity through the Evaluation Process carried out to the judges and co-judges of the National Court of Justice in 2019 violated the right to due process; judicial independence and no removability of judges and co-judges elected for a fixed term."* The Provincial Court of Pichincha determined that the members in charge of

<sup>31</sup> Constitutional Court of Ecuador, Judgment No. 37-19-IN/21, December 21, 2021, [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcNBlGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOWVlOC0xNDMxODhhY2UxOWUucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcNBlGE6J3RyYW1pdGUUnLCB1dWlkOidiODc2MzYwMy04MjZkLTRmYWVlOWVlOC0xNDMxODhhY2UxOWUucGRmJ30=)

evaluating the judges of the CNJ were not impartial; they changed the rules and procedures during the evaluation process; they ruled on the quality of the sentences issued, without having any jurisdictional power; they intervened outside the constitutionally established deadlines; they illegally sanctioned the dismissed judges outside the existing disciplinary framework<sup>32</sup>.

18. After the decisions of the Constitutional Court and the Provincial Court of Pichincha, a controversy has arisen in Ecuador: what should happen with the decisions of the illegally appointed temporary judges<sup>33</sup>?

In a press release dated January 3, 2022, the Judiciary Council bizarrely stated:

*"The Plenary of the Judiciary Council (CJ) warned that the ruling of the Criminal Court of the Court of Pichincha - which favour judges removed from the National Court of Justice (CNJ) for failing the 2019 evaluation - contradicts the ruling of the Constitutional Court (CC), which already ruled on this issue.*

*At a press conference this Monday, January 3, 2022, the authorities of the CJ announced that they will file an appeal for amplification and clarification and an extraordinary action for protection against the Provincial Court's ruling, since its content goes against the pronouncement of the Constitutional Court (Ruling 37-19-IN/21).*

*(...)*

*The authorities recalled that on December 29, 2021, the institution filed before the CC, an Appeal for Clarification and Extension of Ruling 37-19-IN/21, since it did not consider that the CJ developed the evaluation of judges and judges of the CNJ, based on the exhortation formulated by the Transitional Participation Council"*<sup>34</sup>.

The serious institutional crisis created by the unconstitutional referendum of February 2018 continues.

## **6. Removal from office and appointment of a new Attorney General of the State (FGE)**

19. Parallel to the replacement of the Judiciary Council, the Constitutional Court and the National Court of Justice, the CPCCS-T evaluated and replaced the State Attorney

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<sup>32</sup> SALA ESPECIALIZADA DE LO PENAL, PENAL MILITAR, PENAL POLICIAL Y TRÁNSITO DE LA CORTE PROVINCIAL DE JUSTICIA DE PICHINCHA, Juicio Especial No. 1716020202000272, Thursday, December 30, 2021, available at <http://consultas.funcionjudicial.gob.ec/informacionjudicial/public/mobil.jsf?jsessionid=WFO+9cEDsGFtG5W78pm9EORD>

<sup>33</sup> Regarding this: Primicias, "Qué pasó en la evaluación de jueces de 2019 que tiene en apuros a la Judicatura", January 3, 2022, <https://www.primicias.ec/noticias/politica/evaluacion-destitucion-jueces-apuros-judicatura/>

<sup>34</sup> "Consejo de la Judicatura alerta que fallo provincial que favorece a exjueces contradice a Corte Constitucional", January 3, 2022, <https://www.funcionjudicial.gob.ec/es/saladeprensa/noticias/item/10593-consejo-de-la-judicatura-alerta-que-fallo-provincial-que-favorece-a-exjueces-contradice-a-corte-constitucional>

General (hereinafter FGE)<sup>35</sup>, a key position in the "judicial apparatus". In fact, the FGE is the one who initiates and directs criminal proceedings.

After the dismissal of the FGE, several people have occupied this position before the elaboration of an appointment process through an evaluation by a Citizen Technical Selection Commission (evaluation value: 50/100), an Academic Commission (evaluation value 20/100) and the CPCCS-T (evaluation value 30/100). After the written tests regarding the legal knowledge of the candidates, *"Julio César Trujillo, president of the CPCCS-T, said that he expects that 'the best lawyer' will be appointed as head of the Attorney General's Office, for his or her integrity, wisdom and honesty. Trujillo pointed out that the State Attorney General 'is the most powerful official in Ecuador'"*<sup>36</sup>. The table of evaluation of the candidates for the post of attorney general shows without a doubt that the attorney general, D. SALAZAR, was not chosen at all for her legal abilities (score obtained 10/20, inferior to other contestants) but for her political connections, allowing her to suddenly overtake much more deserving candidates than herself<sup>37</sup>.

20. At the same time, the appointment of "temporary magistrates" in the Attorney General's Office, which is detrimental to the independence of the function, is a practice that continues to occur.

Thus, in a resolution dated May 31, 2021, the Judiciary Council states:

*"(...) the detail of the vacant positions of Fiscal Agents as of this date, showing a total of twenty-nine (29) vacant positions; seventeen (17) are effectively vacant and twelve (12) are identified as vacant/dismissal.*

*(...)*

*Article 2: The Plenum of the Council of the Judiciary shall appoint the prosecutors and agents.*

*temporary taxation in accordance with the determination of the extraordinary need set forth in the preceding article"*<sup>38</sup>.

## 7. Conclusion

21. In its Rule of Law Report 2020, the European Commission recalled that:

<sup>35</sup> Plenary of the CPCCS-T, Resolution No. PLE-CPCCS-T-O-009-28-03-2018 of April 4, 2018.

<sup>36</sup> El Comercio, "El Cpccs difundió las notas obtenidas por los postulantes a Fiscal General en el examen escrito", 19 February 2019, <https://www.elcomercio.com/actualidad/cpccs-notas-postulantes-fiscal-examen.html>

<sup>37</sup> Diana Salazar obtained a total of 88.17 with the following scores: Citizens' Technical Selection Committee (49/50), Academic Committee (10/20) and CPCCS-T (28.17/30).

His immediate "rival", Merck Milko Benavides Benalcázar, obtained a score of 85.17 with the following marks: Citizens' Technical Selection Commission (50/50), Academic Commission (13/20) and CPCCS-T (22.17/30).

The most qualified lawyer, Javier Bosques Villena, only obtained a 77.91 with the following scores: Citizens' Technical Selection Committee (44.01/50), Academic Committee (15/20) and CPCCS-T (18.9/30).

<sup>38</sup> Judiciary Council, Resolution 070/2021, May 31, 2021, <https://www.funcionjudicial.gob.ec/www/pdf/resoluciones/2021/070-2021.pdf>

*"The European Union is based on a set of common values, such as fundamental rights, democracy and the rule of law. They are the basis of our societies and our common identity. No democracy can function without independent jurisdictions that protect fundamental rights and public freedoms and without an active civil society and a free and pluralistic media. (...)*

*The rule of law is enshrined in Article 2 of the Treaty on European Union as one of the common values of all Member States. It guarantees that all public authorities always act within the limits established by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial jurisdictions. (...)*

*The rule of law has a direct impact on the life of every citizen. It is a prerequisite for equal treatment before the law and for the defence of the rights of citizens of the Union. (...) The existence of national mechanisms that balance powers and maintain respect for the rule of law is essential to ensure that such restrictions on our rights are limited to what is strictly necessary and are proportionate, limited in time and subject to the control of national parliaments and jurisdictions"<sup>39</sup>.*

22. It follows from the above that the balance of powers has completely broken down in Ecuador.

The country's most senior judges of the Constitutional Court and 70% of the members of the National Court of Justice were arbitrarily removed from office, in clear violation of international law. None of the dismissed judges had committed any serious misconduct. The guarantees of independence and impartiality of judges and prosecutors are no longer guaranteed.

Justice has become an instrument of politics to criminalize "opponents". Political persecution, through unfair criminal/administrative proceedings, has multiplied (see below). The magistrates who do not follow the "guidelines" of the new State Attorney General. The risk of being dismissed for decisions made in the exercise of their functions is high for those magistrates who do not follow the "guidelines" of the new State Attorney General. At the same time, the media amplify the message of authorities interfering in judicial proceedings, preparing public opinion for the most legally aberrant decisions, lacking any evidentiary basis or contrary to international law.

These elements indicate a breakdown of the rule of law in Ecuador.

#### *B. Use of the judiciary for political persecution/repression*

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<sup>39</sup> European Commission, "Rapport 2020 sur l'état de droit La situation de l'état de droit dans l'Union européenne", 30 septembre 2020, COM(2020) 580 final, available at. [https://ec.europa.eu/info/sites/info/files/communication\\_2020\\_rule\\_of\\_law\\_report\\_fr\\_0.pdf](https://ec.europa.eu/info/sites/info/files/communication_2020_rule_of_law_report_fr_0.pdf)

## 1. Contextualization

23. In Latin America, what can be called a "judicialization of politics" seems to have become widespread.

The expression means that political conflicts are resolved through the instrumentalization of justice. This phenomenon is so worrisome that it led the Inter-American Commission on Human Rights to request an advisory opinion from the Inter-American Court of Human Rights<sup>40</sup>. Recalling what happened in Honduras, Paraguay and Brazil, the Commission considered that *"such situations should call attention to possible cases of distortion of the figure of impeachment, with the consequent risk of its arbitrary use as a cover for a parliamentary coup d'état"* (§10).

It should be noted that Ecuador opposes the issuance of this opinion and argues in favour of the inadmissibility of the request formulated by the Inter-American Commission on Human Rights<sup>41</sup>.

24. As this phenomenon grew, the Lawfare Institute was created, a body that studies the misuse of law as a "weapon" to achieve a political objective, as a tool to discredit a political enemy.

This organization describes the term "lawfare" as follows:

*"The term lawfare was created in 2001 by U.S. Army Major General Charles Dunlap and has since been studied at leading universities such as Harvard, for example. Lawfare is a powerful weapon to combat political enemies, combining apparently legal actions with extensive media coverage. The idea is to disrupt the enemy to the point where they become extremely vulnerable to unfounded accusations. Once weakened, they lose popular support and all power to react"*<sup>42</sup>.

This Institute analysed the case of Ecuador and considered that lawfare acted in several processes against various political figures linked to the movement of former President CORREA DELGADO<sup>43</sup>.

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<sup>40</sup> IACHR, " Demande d'avis consultatif : démocratie et droits de l'homme dans le cadre des procès politiques ", 13 October 2017, [https://www.corteidh.or.cr/docs/solicitudoc/solicitud\\_13\\_10\\_17\\_fre.pdf](https://www.corteidh.or.cr/docs/solicitudoc/solicitud_13_10_17_fre.pdf)

<sup>41</sup> Ecuador, Observations transmitted on April 26, 2018 by the Embassy of Ecuador in Costa Rica, San José, ref. n°4-3-14/2018.

<sup>42</sup> Free translation of:

*"The term lawfare was created in 2001 by US army major General Charles Dunlap, and has been studied ever since in major universities such as Harvard, for example. Lawfare is a powerful weapon for fighting political enemies, combining apparently legal actions and widespread media coverage. The idea is to embarrass the enemy to the point where they become extremely vulnerable to the baseless accusations. once weakened, they lose popular support and any power of reaction".*

Institute Lawfare - About the Institute - [http://lawfareinstitute.com/?page\\_id=4](http://lawfareinstitute.com/?page_id=4)

<sup>43</sup> Lawfare Institute, "Expert opinion issued on occurrence of lawfare in Ecuador," October 18, 2018, <http://lawfareinstitute.com/expert-opinion-issued-on-occurrence-of-lawfare-in-ecuador/>



25. As a reminder, on May 24, 2017, Mr. CORREA DELGADO voluntarily resigned from the presidency of Ecuador.

It was the candidate of his party, Alianza País, who won: Mr. Lenín Moreno. Consequently, everyone expected continuity of governmental action. However, from the first days of Moreno's government, decisions and measures were taken that completely broke with previous policies.

L. Moreno made a series of statements questioning the policies of his predecessor, accusing him of not having prepared the transition, of having over-indebted the country, of having created an economic crisis, of having poorly executed public works, of having announced his desire to distance himself from the Union of South American Nations (UNASUR), created in 2008 to "counterbalance" the OAS<sup>44</sup>, etc., etc. Shortly after his appointment, President Moreno began to appoint people opposed to the outgoing president to public positions. Among the decisions taken by L. Moreno, the suppression of the political asylum granted to Julian Assange also testifies to the turnaround.

Elected in tandem with Lenín Moreno as vice president, Jorge Glas publicly accused the Moreno administration of improper practices. This provoked the beginning of an avalanche of judicial proceedings, violating the basic norms of a fair trial, against the now so-called "correístas"<sup>45</sup>.

26. The intention to purge all officials loyal to the ideals and/or policies of former President CORREA DELGADO was clearly expressed.

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<sup>44</sup> Lenín MORENO has finally announced that he will leave UNASUR in March 2019.

<sup>45</sup> The systemic and widespread nature of political persecution could fall within the scope of Article 7(1)(h) of the ICC Statute, which provides:

*"Article 7 Crimes against humanity*

*For the purposes of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack:*

*a) Murder;*

*b) Extermination;*

*c) Slavery;*

*d) Deportation or forced population transfer;*

*(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*

*f) Torture ;*

*g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of comparable gravity;*

*(h) Persecution of a self-identified group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds universally recognized as unacceptable under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court".*



The Minister of Communication indicated in October 2018 that it was necessary to combat "correístas moles" throughout the Ecuadorian government<sup>46</sup>. The newspaper El Comercio headlined "The Government announces a purge to 'correct' the Executive":

*"'Mafia', 'fanatics', 'moles'. Those are the terms used by the Government authorities to refer to officials of their administration who remain from the previous Regime and who, according to them, have established a system to guarantee impunity for corruption."*

*(...)*

*"GRANDA therefore recommends to other ministers and secretaries of state to conduct an evaluation of employees and collaborators of the institutions they lead to identify more infiltrators."<sup>47</sup>*

With the argument of the "fight against corruption", as he did to disintegrate the judicial function, and despite the fact that he himself was for a long time a member of the State apparatus, Mr. Moreno and his government made war on the "correista moles":

*"'Since his arrival to power in May 2017, and after discovering a whole series of alleged embezzlements that had left the public coffers empty, Moreno made the fight against corruption one of his main objectives (...)*

*(...)*

*"We have -and we have to be very sincere- Correa's moles entrenched in the whole system of the Government and State functions. We have many entrenched moles", acknowledged the national secretary in view of this possibility.*

*(...)*

*A man of Moreno's confidence and the most visible face of this new way of doing politics that the president of Ecuador has institutionalized, Michelena insists that the message of the fight against corruption is "forceful"<sup>48</sup>.*

27. The change of president in 2021 has not changed the authorities' discourse.

The intervention of the authorities in the judicial processes related to the "correístas" continues to be highlighted (see below). In 2022, the President of the Republic, Guillermo Lasso, acknowledged that *'he has set the goal that correísmo does not return to the Government, although, he said, he must hand over power to someone else, he stated that it must be someone*

<sup>46</sup> EFE, "Ecuador has correista moles throughout government system, says communication minister," October 24, 2018, <https://www.efe.com/efe/america/politica/ecuador-tiene-topos-correistas-en-todo-el-sistema-de-gobierno-dice-ministro-comunicacion/20000035-3791343>

<sup>47</sup> El Comercio, "El Gobierno anuncia una purga para descorreizar al ejecutivo," October 25, 2018, <https://www.elcomercio.com/actualidad/gobierno-anuncia-purga-descorreizar-ejecutivo.html>

<sup>48</sup> Entorno Inteligente, "ANDRÉS MICHELENA: 'ECUADOR HAS CORREIST MOLES THROUGHOUT THE ENTIRE GOVERNMENT SYSTEM,'" April 24, 2018, <https://www.entornointeligente.com/andrs-michelena-ecuador-tiene-topos-correstas-en-todo-el-sistema-de-gobierno/>

*who respects the fundamentals of democracy, freedom, who believes in free enterprise, initiative, private entrepreneurship*<sup>49</sup>.

28. An indispensable factor in lawfare is the creation of the figure of the enemy and the amplification by the press of the accusations made against this political enemy.

The media have been widely used to influence public opinion in Ecuador. This factor reflects the lack of a fair trial for the victims of these media campaigns.

The following cases only illustrate the phenomenon of lawfare against "correístas" in Ecuador. Many correístas, or alleged correístas, working in the administration have lost their jobs for this reason alone and/or are subject to discrimination/threats/evictions. Few have the knowledge, will and means to fight in court to try to enforce their rights. Lawfare has recently extended to indigenous leaders of the June 2022 protests (see below).

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<sup>49</sup> Radio Pichincha, "Me he planteado la meta de que los correístas no puedan regresar al Gobierno, reconoce Guillermo Lasso", June 5, 2022, <https://www.pichinchacomunicaciones.com.ec/me-he-planteado-la-meta-de-que-los-correistas-no-puedan-regresar-al-gobierno-reconoce-guillermo-lasso/>

## 2. Rafael Correa Delgado's case

29. The former president of Ecuador CORREA DELGADO has been criminally prosecuted in two cases: the "Balda" case and the "Bribes" case.

He was directly and publicly presented by the authorities, with wide press coverage, as guilty of the alleged crimes.

On January 24, 2018, the UN Special Rapporteur on the Independence of Judges and Lawyers (REIMA) has made a call of attention to Ecuador regarding its international obligations and on the guarantees that must be given so that the trial was conducted in an independent and impartial manner<sup>50</sup>. The Special Rapporteur reiterated his concern on January 28, 2019<sup>51</sup>. The Commission for the Control of Interpol's Files refused to disseminate the red notices requested by Ecuador<sup>52</sup>. When questioned by others involved in the "Bribery case", REIMA reiterated on July 9, 2021<sup>53</sup> and on January 26, 2022<sup>54</sup> its serious concern not only about the lack of independence and impartiality of the judges in this case, but also about the violation of other facets of the right to a fair trial.

30. In both cases, the legal figure of "effective collaboration" - denunciation of a defendant in exchange for a reduced sentence - was fundamental.

Although objective evidence is required to corroborate the informant's assertions, these cases lack it. In the "Balda" case, the main effective collaborator, Mr. Chicaiza, later admitted that he had been pressured, including by the president of the CPCCS-T, to implicate the former president<sup>55</sup>.

In the "Bribery" case, the notebook that supported the testimony of P. Martínez, the effective collaborator, was, according to her own confession, written years after the criminal acts and was allegedly transcribed at the same time<sup>56</sup>. P. Martinez could never be cross-examined by

<sup>50</sup> REIMA, appeal of January 24, 2018, OL ECU 1/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23589>

<sup>51</sup> REIMA, appeal of January 28, 2019, AL ECU 2/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24304>

<sup>52</sup> EuropaPress, "Interpol refuses for the third time to issue its 'red alert' against former Ecuadorian President Rafael Correa," August 18, 2021, <https://www.europapress.es/internacional/noticia-interpol-rechaza-tercera-vez-emitter-alerta-roja-contra-expresidente-ecuatoriano-rafael-correa-20210818233148.html>

<sup>53</sup> REIMA, appeal of July 9, 2021, AL ECU 2/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26537>

<sup>54</sup> REIMA, appeal of January 26, 2022, AL ECU 1/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26981>

<sup>55</sup> Confirmado.net, "Caso Balda: Chicaiza afirmó que Trujillo le amenazó con 9 años de prisión si no implicaba a Correa en el supuesto secuestro de Balda", 3 January 2022, <https://confirmado.net/2022/01/03/caso-balda-chicaiza-afirmo-que-trujillo-le-amenazo-con-9-anos-de-prision-si-no-implicaba-a-correa-en-el-supuesto-secuestro-de-balda/>

<sup>56</sup> Confirmado.net, "Ecuador: le armaron la "causa de los cuadernos" a Rafael Correa pero los escribieron cuando ya no era presidente," September 7, 2019, <https://confirmado.net/2019/09/07/ecuador-le-armaron-la-causa-de-los-cuadernos-a-rafael-correa-pero-los-escribieron-cuando-ya-no-era-presidente/>

the defence. For this trial, the Attorney General's Office created an Internet page to propagate its accusations through, among other things, multiple video clips, accompanied by a martial music background<sup>57</sup>. At the end of this procedure, Mr. CORREA DELGADO was sentenced as perpetrator of a crime of corruption by psychic influence<sup>58</sup>, as head of a State qualified as a criminal organization, to 8 years imprisonment with prohibition to exercise his political rights. The duration and timing of the Bribes case attest to the political purpose of the prosecution. The entire case against almost 20 defendants, including the investigation, was processed in only 17 months, despite the pandemic that had justified the paralysation of all other proceedings in the country. The Court of Cassation resolved the 16 appeals introduced against the more than 820 pages of the appealed sentence in a record time of 20 days<sup>59</sup>, and issued a 231-page sentence. Sentence that came out at the right time to prevent Mr. CORREA from running for the vice-presidency in the 2021 elections.

31. Former President CORREA DELGADO is also involved in a multitude of other, less successful, proceedings on sometimes totally implausible charges.

He is being investigated for "crimes against humanity/extrajudicial execution".<sup>60</sup> with respect to events that occurred on September 30, 2010, the day on which he himself was the victim of an attempted coup d'état condemned by the international community<sup>61</sup>.

The avalanche of denunciations, supported by the authorities and commented on in the press, is a sign of the lawfare underway in Ecuador.

32. On March 15, 2022, Belgium recognized the refugee status of Ecuador's former president<sup>62</sup> as a result of political persecution in the form of unfair criminal proceedings.

This news was widely disseminated and brought to the attention of the Ecuadorian authorities. The Ecuadorian authorities continued to insist in the media that they would request extradition

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<sup>57</sup> Cf: <https://www.fiscalia.gob.ec/caso-sobornos-2012-2016/>

<sup>58</sup> Confirmado.net, "Rafael Oyarte: "Qué pendejada fueron a meter en el fallo", sobre sentencia contra Correa de autoría mediata por influjo psíquico", 21 May 2021, <https://confirmado.net/2021/05/21/rafael-oyarte-que-pendejada-fueron-a-meter-en-el-fallo-sobre-sentencia-contracorrea-de-autoria-mediata-por-influjo-psiquico/>

<sup>59</sup> Primicias.ec, "Un trámite falta para que se ejecute la sentencia de Rafael Correa", 7 September 2020, Primicias.ec: <https://www.primicias.ec/noticias/politica/sobornos-decision-casacion/>

<sup>60</sup> El Comercio, "16 denuncias vinculadas con el 30-S apuntan a Rafael Correa", September 29, 2019, <https://www.elcomercio.com/actualidad/denuncias-victimas-insubordinacion-rafael-correa.html>

<sup>61</sup> El Comercio, '30S police insubordination', <https://especiales.elcomercio.com/2011/09/30s/>

The event has been unanimously condemned by most Latin American countries and the United States, as well as Unasur, the OAS, the UN and ALBA: [https://es.wikipedia.org/wiki/Crisis\\_pol%C3%ADtica\\_en\\_Ecuador\\_de\\_2010#Reacci%C3%B3n\\_internacional](https://es.wikipedia.org/wiki/Crisis_pol%C3%ADtica_en_Ecuador_de_2010#Reacci%C3%B3n_internacional)

<sup>62</sup> Rtbf, "Diplomatie : la Belgique accorde l'asile à l'ex-président équatorien Rafael Correa", 22 April 2022, <https://www.rtb.be/article/diplomatie-la-belgique-accorde-l-asile-a-l-ex-president-equatorien-rafael-correa-10979730>

to Belgium, despite previous refusals by Interpol<sup>63</sup>. This new media campaign was carried out despite the non-refoulement obligation implied by the political refugee status<sup>64</sup>.

### 3. The case of Jorge GLAS

33. The case of former Vice President Jorge Glas is an emblematic example of lawfare.

Jorge GLAS took a very firm position against the new policy implemented by Lenín Moreno. As soon as the vice president, elected with the same electoral ballot as Mr. Moreno, publicly manifested his continued support for the policies backed by Mr. Correa Delgado, a political and judicial persecution against him began, supported by President Moreno<sup>65</sup>.

34. Jorge Glas was accused for the first time in the "Odebrecht" case, linked to the famous "Lava Jato" operation in Brazil.

In October 2017, former Vice President Jorge Glas was arrested in the framework of the "Odebrecht case". Very quickly, in December 2017, he was sentenced to six years in prison, which was confirmed on appeal. It was in connection with this case that, in October 2018, the lawfare Institute analysed in detail the manner in which the former vice president was placed in pretrial detention, deprived of the office to which he had been elected and sentenced without the benefit of basic due process<sup>66</sup>. The conviction of Jorge Glas was based mainly on the statements of Brazilian "effective co-operators" who could never be questioned by the defence. There is no objective evidence to support the accusations of the informants, who enjoyed total impunity in Ecuador. The case is now before the Inter-American Court of Human Rights (see below).

The reliability of the testimonies of Odebrecht employees has also been strongly questioned since former Odebrecht director Carlos Armando Paschoal revealed that he was "almost forced"

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<sup>63</sup> DiarioCorreo, "Cancillería pedirá a Bélgica extradición de Rafael Correa", May 29, 2022, <https://diariocorreo.com.ec/71285/nacional/contraloria-pedira-a-belgica-extradicion-de-rafael-correa>

<sup>64</sup> DW, "Belgium will dismiss extradition of Rafael Correa, says his defense," May 7, 2022, <https://www.dw.com/es/b%C3%A9lgica-desestimar%C3%A1-extradici%C3%B3n-de-rafael-correa-dice-su-defensa/a-61716250>

<sup>65</sup> La República, 'Diario "La Estrella de Panamá" habla de existencia de grave expediente contra Glas', 2 November 2016. Online: <https://www.larepublica.ec/blog/politica/2016/11/02/diario-estrella-panama-habla-existencia-grave-expediente-glas/>

El Comercio: Lenín Moreno: 'Lastimosamente ingeniero Jorge Glas, el dedo apunta cada vez más hacia usted', 4 August 2017. Online: <https://www.elcomercio.com/actualidad/leninmoreno-jorgeglas-guayaquil-carta-funciones.html>

El Universo " Pretrial detention for Jorge Glas, who accepts it 'under protest'," October 3, 2017. Online: <https://www.eluniverso.com/noticias/2017/10/03/nota/6412954/prision-preventiva-glas-quien-acepta-bajo-protesta>

<sup>66</sup> Lawfare Institute, "Expert opinion issued on occurrence of lawfare in Ecuador," October 18, 2018, <http://lawfareinstitute.com/expert-opinion-issued-on-occurrence-of-lawfare-in-ecuador/>

to build a case against former Brazilian president LULA DA SILVA for political purposes<sup>67</sup>. Messages exchanged between the prosecutors in charge of the case against former President Lula and former judge Sergio Moro, who became Brazilian President BOLSONARO's Minister of Justice, have also been made public. The UN Human Rights Committee has recognized the violation of the presumption of innocence and the right to a fair trial and its implications for the exercise of the political rights of former Brazilian President Lula da Silva, falsely implicated in the "Lava Jato" case<sup>68</sup>.

35. Former Vice President Jorge GLAS was also convicted in the "Bribery" case (see above), for which Belgium granted refugee status to Mr. CORREA DELGADO in view of the blatant injustice of the proceedings.

36. Jorge Glas is finally involved in a "Singue" case, related to the alleged illicit awarding of an oil contract.

This case has not yet been definitively resolved, but it should be noted that Ecuador has just lost before the International Arbitration Court against the company that won the contract<sup>69</sup>.

37. Placed in pre-trial detention in October 2017, the former vice president was transferred in 2018 to a high-security prison where, in the face of constant threats against him, he had to live in isolation.

The situation was so dangerous that he obtained a provisional measure from the Inter-American Commission on Human Rights (IACHR) to guarantee the preservation of his life and health<sup>70</sup>.

Despite Mr. Glas' serious health problems and the precautionary measures ordered by the IACHR, Ecuador has kept him, without justification, in solitary confinement in a high security prison where he did not receive adequate health care. The United Nations Working Group on Arbitrary Detention (WGAD) issued an opinion on September 9, 2021, stating "*65. The Working Group wishes to express its grave concern at the deteriorating health of Mr. Glas Espinel, as well as the dangerous conditions in which he is alleged to be detained. According to the source, Mr. Glas Espinel has received death threats during his detention at the Cotopaxi Social Rehabilitation Centre. In addition, other prisoners at the Centre have recently reportedly lost their lives as a result of violence inside the prison. The Working Group urges the Government of Ecuador to take immediate action to safeguard the safety and well-being of Mr.*

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<sup>67</sup> Le Monde article, "Au Brésil, des révélations sur l'opération 'Lava Jato' ternissent encore l'image de la justice," July 18, 2019. Online: [https://www.lemonde.fr/international/article/2019/07/18/de-nouvelles-revelations-sur-l-operation-lava-jato-ternissent-encore-l-image-de-la-justice-bresilienne\\_5490761\\_3210.html](https://www.lemonde.fr/international/article/2019/07/18/de-nouvelles-revelations-sur-l-operation-lava-jato-ternissent-encore-l-image-de-la-justice-bresilienne_5490761_3210.html)

<sup>68</sup> HRC, *Lula da Silva v. Brazil*, CCPR/C/134/D/2841, 27 March 2022, <https://tbinternet.ohchr.org/>

<sup>69</sup> El Universo, "Procuraduría planteará una acción de anulación al laudo arbitral que condenó a Ecuador a pagar \$ 11 millones a Gente Oil", June 9, 2022, <https://www.eluniverso.com/noticias/politica/procuraduria-planteara-una-accion-de-anulacion-al-laudo-arbitral-que-condeno-a-ecuador-a-pagar-11-millones-a-gente-oil-nota/>

<sup>70</sup> IACHR, *Jorge David Glas Espinel* regarding Ecuador, December 31, 2019, RESOLUTION 69/2019, Precautionary Measure No. 1581-18, available at: <https://www.oas.org/es/cidh/decisiones/pdf/2019/69-19MC1581-18-EC.pdf>



*Glas Espinel, including the granting of alternatives to detention, including early release or other non-custodial measures"*<sup>71</sup> .

Therefore, a habeas corpus application was filed to obtain an alternative mode of execution of the sentence. A judge accepted this request on April 9, 2022. As soon as this decision was made public, the highest authorities - the president of the Republic, the president of the National Court, the state attorney general, the president of the Judiciary Council, the president of the National Assembly's Auditing Commission and the attorney general - interfered in the judicial process<sup>72</sup> . So much so that the president of the Constitutional Court, on April 25, 2022, issued a video in which he stated that *"the public manifestations of the president of the National Court of Justice and the president of the Judiciary Council seem to disregard the Constitutional Court's own competencies, the jurisprudence on habeas corpus and the institution of binding precedent. Furthermore, they constitute a clear interference in the functions of the Constitutional Court, which we firmly and emphatically reject"*<sup>73</sup> .

The judge who granted the habeas corpus was suspended from his duties<sup>74</sup> . On May 20, 2022, the Court of Santa Elena ordered that Jorge Glas be located immediately and taken back to the Regional Prison of Cotopaxi, but also that the Prosecutor's Office investigate the actions of the judge and the officials of the National Service of Attention to Detainees who intervened in the first instance proceedings<sup>75</sup> .

<sup>71</sup> WGAD, Opinion 39/2021, September 9, 2021, A/HRC/WGAD/2021/39

<sup>72</sup> OFFICIAL COMMUNIQUE | In view of the judicial decision granting habeas corpus in favor of J. Glas, we express our rejection and legal disagreement, as well as our concern for the abuse of constitutional actions available in: <https://twitter.com/ComunicacionEc/status/1512971387018911749?s=20&t=tLABLd4mASEyNBs8n4GY2g> #ATTENTION | In view of the habeas corpus request filed by the defense of Jorge Glas, on whom there are 2 enforceable sentences and a pending process (on appeal), #FiscalíaEc informs the citizenship (communiqué). <https://twitter.com/FiscaliaEcuador/status/1512949416621129730?s=20&t=tLABLd4mASEyNBs8n4GY2g> at: [https://twitter.com/CJudicaturaEc/status/1513003124046409729?s=20&t=IkGSx5iT6wx5ppFL\\_fXJFQ](https://twitter.com/CJudicaturaEc/status/1513003124046409729?s=20&t=IkGSx5iT6wx5ppFL_fXJFQ) The Judiciary Council @CJudicaturaEc Apr 10 #ComunicadoCJ | The Judiciary Council to the country [https://twitter.com/CJudicaturaEc/status/1513003124046409729?s=20&t=IkGSx5iT6wx5ppFL\\_fXJFQ](https://twitter.com/CJudicaturaEc/status/1513003124046409729?s=20&t=IkGSx5iT6wx5ppFL_fXJFQ), available at: <https://www.dw.com/es/ecuador-refuerza-vigilancia-de-exvicepresidente-por-temor-a-fuga/a-61442839> Interview with Gen. (sp) Patricio Carrillo, Minister of the Interior in La Posta, April 12, 2022, available at <https://www.youtube.com/watch?v=FGm2C4tShLo>

"Lasso: 'I will never allow Ecuador to become a state under siege by drug trafficking gangs aided by corrupt or cowardly judges'", 24 April 2022, <https://srradio.com.ec/lasso-jamas-permitire-que-el-ecuador-se-convierta-en-un-estado-sitiado-por-bandas-de-narcotrafico-auxiliadas-por-jueces-corruptos-o-cobardes>

<sup>73</sup> The Constitutional Court of Ecuador to the media and the citizenry, April 24, 2022, available at <https://www.youtube.com/watch?v=ehl76kM37fY>

<sup>74</sup> National Court of Justice requests suspension and investigations of judges who granted habeas corpus to Jorge Glas and the leader of Los Choneros, April 24, 2022, available at <https://www.eluniverso.com/noticias/politica/corte-nacional-de-justicia-pide-suspension-e-investigaciones-a-jueces-que-dieron-habeas-corpus-a-jorge-glas-y-al-lider-de-los-choneros-nota/>

<sup>75</sup> Expreso.ec, "Corte de Santa Elena ordena la localización y captura de Jorge Glas", May 20, 2022, <https://www.expreso.ec/actualidad/corte-santa-elena-ordena-localizacion-captura-jorge-glas-127853.html>



38. At the end of May 2022, given the seriousness of the situation, the IACHR decided to expedite the processing of the appeal filed by Jorge Glas in the "Odebrecht" case<sup>76</sup>.

#### 4. The case of Carlos OCHOA

39. Mr. Carlos Alberto OCHOA HERNANDEZ was superintendent of communications under the CORREA administration.

On January 24, 2019, the Prosecutor's Office filed charges for the crime of forgery and use of false document, but finally charged him as a perpetrator of the crime of ideological forgery<sup>77</sup>.

The former official assured that in his case the presumption of innocence and due process have been flagrantly violated by the Prosecutor's Office. Mr. OCHOA HERNANDEZ has requested political asylum in Bolivia<sup>78</sup>. Interpol, an institution designed to facilitate international criminal cooperation, refused to execute the red notice request issued by Ecuador<sup>79</sup>.

#### 5. Case of Fernando ALVARADO ESPINEL

40. Mr. ALVARADO ESPINEL was Minister of SECOM (Secretariat of Communication).

Mr. ALVARADO ESPINEL was accused of having entered into an employment contract for media coverage with a person who *a priori* was not qualified to perform this function. This contract had a duration of 8 months and provided for a monthly remuneration of 1,500 dollars. Mr. ALVARADO ESPINEL was charged solely in his capacity as head of the administration where the "unqualified" person had been hired.

Mr. ALVARADO ESPINEL was placed on an electronic bracelet, with a prohibition to leave the country. However, he fled the country because of the persecution he was suffering.

In October 2018, Ecuadorian authorities requested a red notice for an alleged misappropriation of funds by his administration. Interpol refused to issue the red notice requested by Ecuador<sup>80</sup>.

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<sup>76</sup> RadioPichincha, "CIDH acelera el proceso en Caso Glas por presuntas violaciones a sus derechos humanos", June 3, 2022, <https://www.pichinchacomunicaciones.com.ec/cidh-acelera-el-proceso-en-caso-glas-por-presuntas-violaciones-a-sus-derechos-humanos/>

<sup>77</sup> El Universo, "Exsuperintendente Carlos Ochoa es llamado a juicio por el delito de falsificación ideológica", March 20, 2019, <https://www.eluniverso.com/noticias/2019/03/20/nota/7242710/exsuperintendente-carlos-ochoa-es-llamado-juicio-delito/>

<sup>78</sup> Metro, "Sofía Espín and Carlos Ochoa are in Bolivia for political asylum," January 31, 2019, <https://www.metroecuador.com.ec/ec/noticias/2019/01/31/sofia-espin-carlos-ochoa-estan-bolivia-asilo-politico.html>

<sup>79</sup> El Universo, "Interpol denies red notice against exsuperintendent of Communication Carlos Ochoa," February 13, 2019, <https://www.eluniverso.com/noticias/2019/02/13/nota/7187066/interpol-niega-difusion-roja-contraxsuperintendente-comunicacion/>

<sup>80</sup> Your name does not appear on the Interpol wanted list (red notice) - <https://www.interpol.int/fr/Notre-action/Notices/Voir-les-notices-rouges>

In October 2020, a majority vote of the judges of the National Court of Justice (CNJ), before the inexistence of the crime of embezzlement, declared Alvarado's innocence. The then national judge and now president of the CNJ, Iván Saquicela, involved in the cases against former president CORREA and former vice-president GLAS, was the one who issued a different opinion, stating that the crime of embezzlement did exist.

The Prosecutor's Office appealed the majority decision. Despite the acquittal, the Prosecutor's Office also filed an appeal for Mr. ALVARADO ESPINEL to be sentenced for non-compliance with the precautionary measure ordered in 2018<sup>81</sup>. On November 10, 2020, the Ministry of Government published a photo of Fernando Alvarado Espinel on the country's "Most Wanted for Corruption" list<sup>82</sup>, despite the fact that there was no longer an arrest warrant.

## 6. Case of Vinicio ALVARADO

41. Vinicio ALVARADO was involved in the "Bribery" case, as well as former President CORREA and former Vice President GLAS.

On August 8, 2019, the Ecuadorian justice system requested Interpol to issue the red notice and proceed with the location and capture of the former secretary of the Administration, Vinicio Alvarado.

Interpol denied the Ecuadorian request. The international organization concluded that the request falls within the scope of Article 3 of its Constitution, and therefore it is not appropriate to approve it<sup>83</sup>. This provision *"strictly prohibits (...) the Organization from any activity or intervention in questions or matters of a political, military, religious or racial nature."*<sup>84</sup> Based on this article, Interpol indicated that the General Secretariat is not in a position to issue the red notice and that the information on Alvarado will be removed from the agency's databases.

## 7. The case of Walter SOLIS

42. Walter Solís was head of the National Water Secretariat (SENAGUA) and Minister of Public Works during Rafael Correa's administration.

He was charged in the "Bribery" case, as well as former President CORREA and former Vice President GLAS. On August 8, 2019, the Ecuadorian justice requested Interpol to publish the red notice and proceed to locate and capture Walter Solís. Interpol denied it.

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<sup>81</sup> El Universo, "Por el incumplimiento de decisiones legítimas de autoridad competente Fiscalía pide audiencia para formular cargos contra Fernando Alvarado", 17 November 2021.

<sup>82</sup> Expreso.ec, "Fernando Alvarado, el más buscado en Ecuador por delitos de corrupción", November 10, 2020, <https://www.expreso.ec/actualidad/fernando-alvarado-buscado-ecuador-delitos-corrupcion-93336.html>

<sup>83</sup> Primicias.ec, "Interpol denies red notice request for Vinicio Alvarado", February 17, 2020, <https://www.primicias.ec/noticias/politica/interpol-niega-solicitud-difusion-roja-vinicio-alvarado/>

<sup>84</sup> Article 3, Interpol Constitution.

On January 4, 2021, a criminal court of Ecuador's National Court of Justice (CNJ) again sentenced W. SOLIS to eight years in prison, found him guilty of "peculation" or embezzlement of public funds<sup>85</sup>.

Despite this double conviction<sup>86</sup>, given the political profile and violations of the right to a fair trial, Interpol did not issue a red notice for him<sup>87</sup>.

On January 26, 2022, following an urgent action filed by W. SOLIS, C VITERI, V. BONILLA and R ALVARADO, the UN Special Rapporteur on the independence of judges and lawyers expressed serious concerns to Ecuador regarding compliance with its international obligations in relation to the right of access to an independent and impartial judge and to a fair trial<sup>88</sup>.

## 8. Case of Ricardo Armando PATINO

43. Mr. PATINO was Minister of Foreign Affairs under the CORREA government.

At the end of October 2018, meeting with militants of the so-called 'citizen revolution', Patiño harangued in Latacunga: *"It is necessary to go on the offensive. We change the strategies of passive and organized resistance to combative resistance"*. He was prosecuted for the crime of "incitement to commit a crime" for having called members of the opposition to undertake a "combative resistance with peaceful means" in order to reject government policies and demand the release of the former Vice President of the Republic, Jorge GLAS<sup>89</sup>.

A judge ordered on April 18th, 2019, the preventive detention of Ricardo Patiño, for his alleged participation in the crime of instigation and requested the red notice to Interpol<sup>90</sup>. Mr. PATINO, then leader of the opposition political party filed an appeal before Interpol<sup>91</sup>, which once again refused to meet the Ecuadorian request.

<sup>85</sup> DW, "Ecuador: Walter Solis sentenced to jail for embezzlement," January 5, 2021, <https://www.dw.com/es/ecuador-walter-solis-condenado-a-la-c%C3%A1rcel-por-malversaci%C3%B3n/a-56129491>

<sup>86</sup> The Telegraph, "Dos juicios, prisión y extradición afronta Walter S.", March 10, 2020, <https://www.eltelegrafo.com.ec/noticias/judicial/12/walter-solis-caso-sobornos>

<sup>87</sup> Your name does not appear on the Interpol wanted list (red notice) - <https://www.interpol.int/fr/Notre-action/Notices/Voir-les-notices-rouges>

<sup>88</sup> REIMA, Appeal of January 26, 2022, AL ECU 1/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26981>

<sup>89</sup> La República "Patiño calls for 'combative resistance' against Moreno's government", 28 octobre 2018, <https://www.larepublica.ec/blog/politica/2018/10/28/patino-llama-resistencia-combativa-contra-gobierno-moreno/>

<sup>90</sup> El Comercio, "Ricardo Patiño es prófugo de la Justicia; juez ordena su prisión y solicita su ubicación internacional a Interpol", 18 April 2019, <https://www.elcomercio.com/actualidad/prision-ricardo-patino-interpol-profugo.html>

<sup>91</sup> El Universo, "Ricardo Patino espera que la Interpol deseche de difusion roja en su contra", 22 avril 2019. En ligne : <https://www.eluniverso.com/noticias/2019/04/22/nota/7297289/patino-espera-que-interpol-deseche-pedido-difusion-roja-su-contra>

## 9. Alexis MERA Case

44. Alexis Javier Mera Giler, former Legal Secretary of the Presidency of the Republic of Rafael Correa (2007-2017) was involved in the Bribery case.

He is currently serving a sentence in the Ambato prison. Former judge Edgar Flores one of the magistrates who integrated the Court that in July 2019 resolved the appeal of the sentence, stated on the afternoon of Thursday, August 4, 2022, during his appearance in the process of political trial against the Judiciary Council (CJ): *"The former legal secretary of the Presidency, Alexis Mera, should have been released immediately when the preventive detention order was lifted against him for the crime of extortion, within the Green Rice (Bribes) case; however the National Court of Justice (CNJ) issued alternative measures "to avoid a scandal"*<sup>92</sup>.

## 10. Case of Maria DUARTE

45. María de los Ángeles Duarte, former minister of the Citizen Revolution (2007-2017) was involved in the "Bribes" case.

As for former president CORREA, she condemns that due process has not been complied with, that several legal principles have been violated in a case in which she should not even have been called to trial. She also accuses the media lynching and expressed that everything that is happening was to prevent Correa or someone of his entourage to participate in the electoral process<sup>93</sup>.

María DUARTE took refuge in the Argentine Embassy in Quito, where she has been living with her son for more than two years as a humanitarian guest. In March 2022, Interpol again refused to issue the red notice requested by Ecuador<sup>94</sup>. In view of the prolonged *de facto* detention of the former minister and her son, several NGOs have requested that she be formally granted diplomatic asylum<sup>95</sup>.

## 11. Julian ASSANGE's case

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<sup>92</sup> El Universo, "Alexis Mera was to be released, but alternative measures were dictated to avoid a scandal", revealed Édgar Flores, ex-judge of the National Court of Justice", August 4, 2022, <https://www.eluniverso.com/noticias/politica/edgar-flores-exjuez-de-la-corte-nacional-de-justicia-revelo-que-alexis-mera-debia-ser-liberado-pero-se-dictaron-medidas-alternativas-para-evitar-un-escandalo-nota/>

<sup>93</sup> Confirmado.net, "María Duarte.- "Hemos sufrido linchamiento mediático que antes se penaba y ahora es normal"", February 18, 2020, <https://confirmado.net/2020/02/18/maria-duarte-hemos-sufrido-linchamiento-mediatico-que-antes-se-penaba-y-ahora-es-normal/>

<sup>94</sup> Confirmado.net, "Interpol denies red notice against María de los Ángeles Duarte, former minister of Rafael Correa," March 9, 2022, <https://confirmado.net/2022/03/09/interpol-niega-difusion-roja-contra-maria-de-los-angeles-duarte-ex-ministra-de-rafael-correa/>

<sup>95</sup> La República, "ONGs piden a Argentina dar asilo a exministra María de los Ángeles Duarte", 18 April 2022, <https://www.larepublica.ec/blog/2022/04/18/ongs-piden-a-argentina-dar-asilo-a-exministra-maria-de-los-angeles-duarte/>

46. Julian Assange is an Australian journalist, activist and founder of WikiLeaks<sup>96</sup>. His life has been dedicated to working for the right to freedom of the press and access to citizen information, with a social, political or protest purpose<sup>97</sup>.

Assange published through the WikiLeaks platform information of public interest on cases such as bank corruption in Switzerland or Iceland, extrajudicial executions in Kenya, environmental crimes in the Ivory Coast, Internet censorship in China, or relevant information from other countries such as Saudi Arabia or Russia. Similarly, WikiLeaks published documents proving human rights violations and war crimes committed by the U.S. Army in Iraq and Afghanistan, as well as public documents relating to torture in Guantanamo.

As a result of the dissemination of information on serious violations committed by U.S. authorities, Assange was charged with 18 counts, 17 of which are framed under the *Espionage Act* of 1919, thus initiating a whole persecution from the United States against a journalist for the simple fact of publishing truthful information that proves the execution of very serious crimes. In view of this situation, Assange requested asylum before the Ecuadorian authorities, which was granted on August 16, 2012, during the government of Rafael Correa. The asylum was requested at the Ecuadorian Embassy in London.

During the time Assange remained in the diplomatic mission, multiple human rights organizations intervened and demanded his freedom, such as the Working Group on Arbitrary Detention of the UN Human Rights Council, which condemned Sweden, the United Kingdom and the other countries involved for keeping the journalist in a situation of detention contrary to international law<sup>98</sup>. However, the Government of Lenín Moreno, in Ecuador, violating the principle of non-refoulement of any refugee that the Inter-American Commission on Human Rights itself had reminded him of, withdrew his asylum status on April 11, 2019, suspended the Ecuadorian citizenship to which he had acceded, and allowed the British Metropolitan Police access to the diplomatic mission to arrest the founder of WikiLeaks<sup>99</sup>.

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<sup>96</sup> WikiLeaks is a news portal that has been publishing documents of public interest from anonymous sources since 2006. The platform designed a system of IP firewalls to prevent anyone, not even the news platform itself, from identifying the *whistleblowers* who submitted the documents. Thanks to the information published by WikiLeaks, multiple human rights violations around the world have been revealed.

<sup>97</sup> <https://www.cndh.org.mx/index.php/noticia/el-gobierno-de-ecuador-concede-asilo-politico-julian-assange-fundador-de-wikileaks>

<sup>98</sup> Le Monde, Un groupe de travail de l'ONU estime que Julian Assange a été "détenu arbitrairement", 5 février 2016, [https://www.lemonde.fr/pixels/article/2016/02/05/julian-assange-a-ete-detenu-arbitrairement-par-la-suede-et-la-grande-bretagne-estime-l-onu\\_4859913\\_4408996.html](https://www.lemonde.fr/pixels/article/2016/02/05/julian-assange-a-ete-detenu-arbitrairement-par-la-suede-et-la-grande-bretagne-estime-l-onu_4859913_4408996.html)

Special Rapporteur on the right to privacy, 18 April 2019, AL ECU 6/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24557> ;

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 18 April 2019, AL ECU 5/2019,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24556>;

All UN decisions on the J. Assange case can be found on this site: <https://spcommreports.ohchr.org/TmSearch/>

<sup>99</sup> <https://www.bbc.com/mundo/noticias-internacional-47902652>

It was then that the United States revealed what was already known, that there was a secret case against him in the Eastern District of Virginia, United States, formally requesting his extradition. Since then, Assange has been held in provisional detention in Belmarsh, a maximum-security prison known as "Britain's Guantanamo Bay". His legal team is currently fighting to prevent his extradition to the United States.

47. Julian ASSANGE's case differs somewhat from the other cases described in this chapter. However, it is relevant in the sense that his refugee status, and consequently his nationality, was withdrawn in violation of the right to a fair trial and an effective remedy, to satisfy the political interests of the government of Lenín Moreno, which has taken a clear turn in favour of the United States of America.

In its advisory opinion of May 30, 2018, the Inter-American Court of Human Rights had unanimously concluded that:

*"The right to seek and receive asylum in the framework of the Inter-American system is configured as a human right to seek and receive international protection in foreign territory, including with this expression the status of refugee according to the relevant United Nations instruments or the corresponding national laws, and territorial asylum according to the various Inter-American conventions on the matter.*

*(...)*

*The principle of non-refoulement is enforceable by any foreign person, including those seeking international protection, over whom the State in question is exercising authority or who is under its effective control, regardless of whether he or she is in the land, river, maritime or air territory of the State.*

*(...)*

*The principle of non-refoulement not only requires that the person not be returned, but also imposes positive obligations on States".<sup>100</sup>*

However, Julian ASSANGE's fundamental rights have been grossly violated by Ecuador. In an interpellation on October 2, 2019, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment noted the numerous violations of Julian ASSANGE's human rights by the government of Lenin MORENO:

*"Given that your Excellency's Government has provided no credible evidence for the existence, on 11 April 2019, of a medical emergency, imminent security threat or other temporary need to terminate Mr. Assange's asylum, which he had been in since 2012, and given the very serious risks to the human rights of Mr. Assange in the in the event of his extradition to the United States, it does not appear convincing and plausible that*

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<sup>100</sup> IADH Court, Advisory Opinion OC-25/18 of May 30, 2018 requested by the Republic of Ecuador, <https://www.refworld.org/es/pdfid/5b48db9a4.pdf>



*it would have been impossible or unreasonable for your Excellency's Government to allow my mandate to conduct an on-site visit to Mr. Assange before removing him from the Embassy.*

*(...)*

*Indeed, since his arrest by British police on April 11, 2019, concerns have been proven correct by the repeated and ongoing violations of his fair trial rights in the British criminal and extradition proceedings conducted against him*

*(...)*

*For the same reasons, the assurances given by the United Kingdom to His Excellency's Government that Mr. Assange would not be extradited to a country where he might face the death penalty or face torture, or ill-treatment lack the credibility and reliability necessary for Mr. Assange's removal to the United Kingdom to be permissible under international law. As this mandate has consistently observed diplomatic assurances have proven incapable of providing the protection required under the peremptory principle of non-refoulement*

*(...)*

*In summary, it is my considered opinion that, at least since March 2018, the primary factors, stemming from the responsibility of the Ecuadorian authorities, cumulatively and continuously inflicted severe mental and emotional suffering on Mr. Assange, thus producing the medical symptoms typical of victims of psychological torture*

*(...)*

*In sum, while there may be situations in which diplomatic asylum may be lawfully terminated, the rule of law requires that any such decision be made in a regular proceeding subject to due process of law, including the possibility for the affected person to present and appeal to a judicial authority. Moreover, none of the circumstances raised by your Excellency's Government appear to have created a situation of such gravity or urgency as to justify or require the termination of Mr. Assange's diplomatic asylum. The prohibition of non-refoulement in the face of a real risk of torture, being absolute, non-derogable and peremptory, overrides any other consideration*

*(...)*

*As accurately determined by the WGAD in its decision of 4 December 2015, in light of these risks, Mr. Assange's presence at the Ecuadorian Embassy could not at any time be considered voluntary, but amounted to arbitrary confinement, although admittedly not attributable to Ecuador, but to Sweden and the United Kingdom. I also acknowledge that the initial five years of years of cohabitation between Mr. Assange and the staff of the Ecuadorian Embassy from June 2012 to May 2017 appear to have been marked by respectful and friendly relations.*

*However, following the election of the current Ecuadorian government in 2017, the Ecuadorian authorities have reportedly begun to deliberately create and maintain circumstances that make Mr. Assange's living conditions increasingly difficult and oppressive.*



(...)

*These findings by the undersigned mandate holder and two independent medical experts experienced and specialized in examining torture victims provide "reasonable grounds to believe" that Ecuadorian officials have contributed to Mr. Assange's psychological torture. As a matter of international law, therefore, Your Excellency's Government does not have the discretion to simply refute of refute these findings but has a clear and unequivocal obligation to conduct a prompt and impartial investigation into these allegations."*<sup>101</sup> .

## 12. Ola BINI case

48. Ola Bini is a Swedish software developer, programmer, and Internet activist. He works for the Centre for Digital Autonomy on privacy, security and cryptography issues<sup>102</sup> .

Dedicated to promoting the use of free software, he has been domiciled in Ecuador since 2013.

For allegedly being linked to Julian Assange, WikiLeaks and Correismo<sup>103</sup> was detained and arrested at Quito airport as he was preparing to board a flight to Japan on April 11, 2019<sup>104</sup> . This follows the detention of the WikiLeaks founder at the Ecuadorian Embassy in London. Within the arraignment hearing, Interior Minister María Paula Romo pointed to Bini as a suspect of participating in a plot to destabilize Moreno's government<sup>105</sup> .

On May 11, 2019, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights of the Organization of American States sent a letter to the Ecuadorian government:

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<sup>101</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2 October 2019, AL ECU 15/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24861>

<sup>102</sup> The Center for Digital Autonomy, a non-profit organization incorporated in Ecuador and Spain "for the purpose of making the Internet a safer place for everyone," of which he is technical director, released a statement<sup>7</sup> detailing his contributions and noting that he had been ranked by Computerworld as Sweden's #6 developer (in 2008), and that he "created two programming languages" and is "a long-time activist for free software, privacy and transparency." The statement listed his contributions to loke, Seph, JesCov, JRuby, JtestR, Yecht, JvYAMLb, JvYAML-gem, RbYAML, Costillas, ActiveRecord-JDBC, Jatha, Xample and JOpenSSL. <https://autonomia.digital/2019/04/12/ola-bini-arrest.html>

<sup>103</sup> Expreso.ec, "El paso de Ola Bini por Ecuador", 12 April 2019, <https://web.archive.org/web/20190412234313/https://www.expreso.ec/ciencia-y-tecnologia/olabini-informatica-casoassange-telecomunicaciones-GE2754118>

<sup>104</sup> Infobae, "A collaborator of Julian Assange was arrested while trying to leave Ecuador bound for Japan," 11 April 2019, <https://www.infobae.com/america/mundo/2019/04/11/un-colaborador-de-julian-assange-fue-detenido-al-intentar-salir-de-ecuador-rumbo-a-japon/>

<sup>105</sup> La Republica, "Arraignment hearing against Swede fingered as close to Assange," 12 April 2019, <https://www.larepublica.ec/blog/2019/04/12/audiencia-de-formulacion-de-cargos-contra-sueco-senalado-como-cercano-a-assange/>

*"We would like to express our dismay, particularly, because the arrest and charges against Mr. Bini appear to be connected to his public support and friendship with Julian Assange, as well as his work and activism in the area of privacy (...).*

*express our concern about the circumstances surrounding the arrest and detention of Mr. Bini (...)*

*we recall that any person detained must be informed, at the time of arrest, of the reasons for his detention, and notified, without delay, of the charge against him, in accordance with Articles 9 (2) of the ICCPR and 7 (4) of the ACHR. The authorities must provide sufficient information to enable the person to challenge the reasons for detention (...).*

*Finally, we refer to the allegation that Mr. Bini was detained in an unofficial place of detention on April 11, and that he was repeatedly denied access to his lawyers. On this point, we express our concern about the alleged lack of safeguards to prevent rights violations"<sup>106</sup>.*

On July 26, 2019, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights of the Organization of American States again questioned the Ecuadorian government:

*"Despite noting the release of Mr. Ola Bini from prison, we still remain concerned about the ongoing investigations and criminal proceedings against him, given the lack of information we observe as to the reasons that may underlie these proceedings (...).*

*Although the aforementioned evidence could qualify for Mr. Bini's preventive detention under Ecuadorian domestic law, no response has been given regarding the legal or factual basis for the accusations against him, for which reason we would like to remind your Excellency's government of its obligations under the International Covenant on Civil and Political Rights"<sup>107</sup>.*

The Observation Mission that has been monitoring Bini's case for the past few years and which includes Ecuadorian and international civil society organizations such as Access Now, Article 19, Electronic Frontier Foundation (EFF), the Free Software Association of Ecuador (ASLE), Brazil de Fato, Karisma Foundation, Indymedia Ecuador, and others has delivered its report on

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<sup>106</sup> Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights of the Organization of American States, interpelacion del 11 de Mayo 2019, UA ECU 7/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24566>

<sup>107</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights of the Organization of American States, interpelacion of July 26, 2019, UA ECU 12/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24774>

May 2022<sup>108</sup>. The report recalls that at the time of his arrest, Bini was imprisoned without charges being filed against him, and the then president of Ecuador, Lenín Moreno, went so far as to claim that the activist may have attempted to interfere in the U.S. elections<sup>109</sup>. After 70 days in jail, Bini was released, but the judicial process against him continues. Bini is banned from leaving Ecuador and his bank accounts have been frozen. The report also explains that Fabian Hurtado, an expert witness in Bini's case who prepared a report on the prosecution's charges against Bini, has been charged with obstruction of justice and his home was the subject of a police search operation. Amnesty International says Hurtado, who worked for Bini's defence, had his electronic equipment violently confiscated and that the police action was an "intimidating" act that undermines the digital rights activist's defence<sup>110</sup>. Human rights organizations claim that the Swedish programmer is the target of a campaign of judicial harassment. The prosecution is relying on Article 234 of the Penal Code to charge Bini with the crime of non-consensual access to a computer, telematic or communications system. The penalty is three to five years in prison. His defence is seeking to have the case dismissed. After years of postponements, Bini's trial was scheduled to resume on May 16, 2022, but there is still no sentence.

Despite this long period of time since his arrest and the obligation to try people within a reasonable time, Ola Bini is still under a ban on leaving the country and is under constant surveillance.

### **13. Diplomatic asylum after the October 2019 "protests".**

49. After the persecution of the leaders of the social protest of October 2019 (see below), seven 'correístas' decided to take refuge in the Mexican embassy, where they were granted diplomatic asylum and then a safe-conduct to flee Ecuador<sup>111</sup>.

### **14. The use of the judiciary to pressure the legislature**

50. The 2021 presidential elections brought Guillermo LASSO to power.

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<sup>108</sup> Access Now, Article 19, Electronic Frontier Foundation (EFF), the Free Software Association of Ecuador (ASLE), Brasil de Fato, Karisma Foundation, Indymedia Ecuador, and others, "Informe de un proceso paradigmático para los derechos humanos en la era digital: El caso Ola Bini", May 2022, [https://www.eff.org/files/2022/05/09/final\\_report\\_ola\\_bini\\_case\\_in\\_spanish\\_informe\\_final\\_caso\\_ola\\_bini\\_en\\_espanol.pdf](https://www.eff.org/files/2022/05/09/final_report_ola_bini_case_in_spanish_informe_final_caso_ola_bini_en_espanol.pdf)

<sup>109</sup> See also, Amnesty International, "Équateur, Ingérence dans la procédure pénale contre Ola Bini," 26 août 2019, <https://www.amnesty.be/infos/actualites/equateur-ingerece-ola-bini>  
Amnesty International, "Le droit d'Ola Bini à un procès équitable menacé," 6 septembre 2019, <https://www.amnesty.be/infos/actualites/article/equateur-droit-bini-proces-equitable-menace>

<sup>110</sup> Amnesty International, "Équateur. Une violente descente de police menace le droit d'Ola Bini à un procès équitable", 6 septembre 2019, <https://www.amnesty.org/fr/latest/press-release/2019/09/ecuador-allanamiento-violento-pone-en-riesgo-juicio-justo-ola-bini/>

Amnesty International, "Équateur. Les autorités doivent surveiller le procès contre le défenseur des droits numériques Ola Bini", 3 mars 2020, <https://www.amnesty.org/fr/latest/news/2020/03/ecuador-authorities-must-monitor-trial-digital-defender-ola-bini/>

<sup>111</sup> CNN, "Militanes correístas asilados en embajada viajan a México", January 9, <https://cnnespanol.cnn.com/2020/01/09/alerta-militantes-correistas-asilados-en-embajada-viajan-a-mexico/>

Although he has been elected president, his party has only 11 seats out of 137 in the National Assembly. The National Assembly elected Guadalupe LLORI, from another political party, as president.

However, several incidents led her peers to create a commission to determine whether Ms. LLORI respected the law and her competencies. This process is, of course, highly political.

51. Ms. LLORI was seconded by Chairman LASSO<sup>112</sup>.

Ms. LLORI and some parliamentarians tried to prevent the normal development of the parliamentary activity. They filed several appeals to prevent her dismissal and/or to obtain precautionary measures to interrupt the evaluation process decided by the plenary of the National Assembly<sup>113</sup>.

The Prosecutor General has opened an investigation against 93 deputies<sup>114</sup>.

On May 31, 2022, Ecuador's National Assembly finally removed its president, Guadalupe Llori, from office for failing to perform her duties and for allowing the chamber to fall into disrepute<sup>115</sup>.

52. This episode is evidence of another attempt to use justice as a political weapon.

### **III. Violation of the right to form a political party of the most important political force in the country and lawfare within the electoral system.**

53. One of the founding elements of any democracy is the possibility for citizens to organize themselves into political parties, so that they can bring their economic, social and ideological sensibilities to bear on the governance of the country.

54. Rafael CORREA DELGADO was one of the historical founders of the political party Alianza País, a political party founded in April 2006 from the alliance of several leftist parties.

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<sup>112</sup> El Universo, "Lasso announces support to Guadalupe Llori to avoid her dismissal", May 29, 2022, <https://www.ecuadorenvivo.com/index.php/politica/item/143516-lasso-anuncia-el-respaldo-a-guadalupe-llori-para-evitar-su-destitucion>

<sup>113</sup> El Comercio, "Juzgado acepta medidas cautelares y frena proceso de destitución de Llori", May 27, 2022, <https://www.elcomercio.com/actualidad/politica/juzgado-medida-cautelar-frena-destitucion-guadalupe-llori.html>  
Primicias, "Asamblea: Nuevas medidas cautelares buscan salvar a Llori de la remoción", 24 May 2022, <https://www.primicias.ec/noticias/politica/nuevas-medidas-cautelares-salvar-llori-remocion/>

<sup>114</sup> El Comercio, "Fiscal Salazar defiende investigación contra 93 asambleístas denunciados por Llori", May 7, 2022, <https://www.elcomercio.com/actualidad/seguridad/fiscal-salazar-investigacion-asambleistas-denuncia-llori.html>

<sup>115</sup> DW, "Ecuador's National Assembly ousts Guadalupe Llori," June 1, 2022, <https://www.dw.com/es/asamblea-nacional-de-ecuador-destituye-a-guadalupe-llori/a-61992607>

Rafael CORREA DELGADO ran for election, with Lenín MORENO as his vice-presidential candidate, in 2006. After winning that election, Mr. CORREA DELGADO was re-elected consecutively.

In 2017, Mr. CORREA DELGADO announced his decision not to run for re-election after his two terms and proposed his former vice president, Lenín MORENO, to succeed him.

However, the liberal turn given by Lenín Moreno after his victory in 2017 caused a split within the Alianza País party. As a result, supporters of the Citizen Revolution movement attempted to create a new political party. This was prevented.

55. The public authorities, and more specifically the National Electoral Council (hereinafter "CNE"), remodelled after the arrival of the CPCCS-T, systematically and arbitrarily denied any attempt by the "correístas" to form a new political movement:

- On December 29, 2017, the Correístas presented the formal conditions to request permission to initiate the process of creation of the "Revolución Ciudadana" party. On January 23, 2018, the CNE denied the authorization to initiate the process of creation of this party, arguing that the name "Revolución Ciudadana" was the slogan that identified Movimiento *Alianza País*. The CNE also justified its refusal arguing that on December 13, 2017, a request had been made by a person close to the then Executive Secretary of Alianza País to reserve the name "Partido de la Revolución Ciudadana"<sup>116</sup>.

- On March 6, 2018, in a new attempt to achieve legal recognition of their party, the Correístas filed a request before the CNE to initiate the process of legalization of the party "Movimiento de la Revolución Alfarista: Hacia un–Nuevo Polo Ciudadano" (Movement of the Alfarista Revolution: Towards a New Citizen Pole). On April 5, 2018, the CNE again rejected the request, this time arguing that the name "Alfarista" could not be granted to an organization that claims to be leftist and socialist, since Alfaro, according to the CNE, would be a person linked to political liberalism. The appeals against this refusal have all remained without effect<sup>117</sup>.

56. Faced with these repeated blockades, the activists of the citizen revolution contacted a political movement that was already accredited, the Movimiento Acuerdo Nacional (hereinafter MANA).

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<sup>116</sup> Colectivo de Abogados por la Democracia, "Judicialización de la política y bloqueo político: El caso del "proceso" de la Revolución Ciudadana en Ecuador", pp. 14-15. <http://economiaenbicileta.com/wp-content/uploads/2018/09/Judicializaci%2n-de-la-Pol%Altica.pdf>

<sup>117</sup> Colectivo de Abogados por la Democracia, "Judicialización de la política y bloqueo político: El caso del "proceso" de la Revolución Ciudadana en Ecuador", pp. 15-17. <http://economiaenbicileta.com/wp-content/uploads/2018/09/Judicializaci%2n-de-la-Pol%Altica.pdf>

Mr. Juan Pablo Arévalo was, in this context, designated as legally responsible for the collection of citizens' signatures on behalf of this movement in order to be able to run in the 2019 local elections. In a few months, 462,000 signatures were collected. These signatures were to be submitted to the CNE. The former representative of MANA, who had resigned on May 4, 2017, then suddenly announced the expulsion from the movement of Mr. Rafael CORREA DELGADO and nine others. The CNE refused to recognize the capacity of Juan Pablo Arevalo to act on behalf of MANA.

Thus, the alliance with the MANA party<sup>118</sup> was avoided.

Supporters of the citizen revolution finally managed, *in extremis*, to run in the local elections of March 24, 2019, through the political movement 'Compromiso Social Listas 5' (FCS). Despite the evident lack of communication to the population about this participation, List 5 won the elections in two highly populated provinces of Ecuador, Pichincha and Manabí, and came second in the most populated province of the country, Guayas<sup>119</sup>.

57. Therefore, the FCS positioned itself favourably for the February 2021 presidential and parliamentary elections.

Suddenly, despite his previous participations, he came under attack by the Office of the State Comptroller General. In August 2019, the Comptroller's Office issued a report stating that some parties, including Fuerza Compromiso Social, did not meet the legal requirement to participate in the elections. The plenary of the National Electoral Council (hereinafter CNE) dismissed said report<sup>120</sup>. Despite this decision, on June 19, 2020, the Comptroller General of the State issued a press release stating, once again, that the FCS would not have complied with the legal requirements to be able to run in the elections. The CNE members were subjected to extreme pressure, threatened with fines and dismissal<sup>121</sup>. No one dared to oppose the request for the suppression of the four political parties, including Fuerza Compromiso Social<sup>122</sup>. The party could not run in the 2021 general elections<sup>123</sup>.

<sup>118</sup> NotiMundo, "Correístas suspend delivery of signatures to the CNE due to controversy with MANA faction", August 9, 2018, <https://notimundo.com.ec/correistas-suspenden-entrega-de-firmas-al-cne-por-controversia-con-faccion-de-mana/>

El Comercio, "El CNE deja sin posibilidades de participación a la facción correísta del movimiento MANA", 23 August 2018, <https://www.elcomercio.com/actualidad/cne-mana-participacion-faccion-correista.html>

<sup>119</sup> Telesur, "Ecuador's CNE publishes sectional election results," March 26, 2019, <https://www.telesurtv.net/news/Correismo-se-consolida-como-primer-fuerza-electoral-en-Ecuador-20190326-0007.html>

<sup>120</sup> El Comercio, "Fuerza Compromiso Social, movimiento del correísmo, podrá presentar candidatos para las elecciones del 2021", January 3, 2020, available at <https://www.elcomercio.com/actualidad/fuerza-compromiso-social-correismo-elecciones.html>

<sup>121</sup> Expreso.ec, "El contralor Pablo Celi se enfrenta a la justicia electoral", July 12, 2020, available at <https://www.expreso.ec/actualidad/contralor-pablo-celi-enfrenta-justicia-electoral-15585.html>

<sup>122</sup> El Comercio, "Suspension of four groups will be the defense of CNE councilors," July 21, 2020, available at <https://www.elcomercio.com/actualidad/suspension-consejeros-cne-partidos-politicos.html>

<sup>123</sup> El Universo.com, "TCE niega recurso a Fuerza Compromiso Social a resultados de la segunda vuelta", May 5, 2021, online: <https://www.eluniverso.com/noticias/politica/tce-niega-recurso-a-fuerza-compromiso-social-a-resultados-de-la-segunda-vuelta-nota/>



During this process, the Secretary General of the Cabinet of the President of Ecuador, Juan Sebastián ROLDÁN, also made this thinly veiled threat:

*"It is a good risk to be a correísta candidate because justice will focus its eyes on those who are not yet fugitives or convicted. There are few left"*<sup>124</sup>.

In relation to these presidential and parliamentary elections, on October 5, 2020, the European Parliament asks a question addressed to the Vice-President of the Commission and High Representative of the European Union for Foreign Affairs and Security Policy Commission and High Representative of the European Union for Foreign Affairs and Security Policy, on the subject, underlining that *"a number of political parties, including the party backed by former President Rafael Correa, have been prevented from standing, [and] have complained that the government has placed legal obstacles in the way of the electoral process to prevent fair elections"*<sup>125</sup>.

58. Faced with the attacks and the scenario of the possible elimination of the FCS, on July 8, 2020, the Revolución Ciudadana decided to form an alliance with the Movimiento Centro Democrático Listas 1, which was called UNES, Unión por la Esperanza (Union for Hope).

The UNES list was finally able to run in the elections, without being able to include any of its historical leaders, due to the lawfare against them, which prevents them from participating against them, which prevents them from participating.

During the 2021 election campaign, the lawfare continued, with authorities claiming that supporters of the "Citizens' Revolution" were criminals linked to the drug cartel. Former President Lenin Moreno accused Andres Arauz and Rafael Correa of being linked to Colombian drug trafficking<sup>126</sup>. Electoral and judicial authorities seconded the outgoing president's accusations<sup>127</sup>.

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<sup>124</sup> Tweet, "Roldán speaks of imprisoning Correísmo candidates," August 8, 2020.

See "Juan Sebastián Roldán amenaza a "candidatos del correísmo" y dice que la justicia pondrá "los ojos sobre ellos", August 7, 2020, available at <http://www.pichinchacomunicaciones.com.ec/juan-sebastian-roldan-amenaza-a-candidatos-del-correismo-y-dice-que-la-justicia-pondra-los-ojos-sobre-ellos/>

<sup>125</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2020-005442\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-005442_EN.html) (free translation).

<sup>126</sup> Europa press.es, "Moreno to request information from Colombia on alleged financing of Arauz campaign by ELN", 2 February 2021, <https://www.europapress.es/internacional/noticia-moreno-pedira-informacion-colombia-presunta-financiacion-campana-arauz-parte-eln-20210202120111.html>

<sup>127</sup> El Universo, "Tribunal Contencioso desecha denuncia de campana contra Andrés Arauz por pruebas de COVID-19; Fiscalía pide información a Colombia sobre supuestos aportes del ELN", 12 February 2021, <https://www.eluniverso.com/noticias/politica/tribunal-contencioso-desecha-denuncia-de-campana-contra-andres-arauz-fiscalia-pide-informacion-a-colombia-sobre-supuestos-aportes-del-eln-nota/>

However, the ARAUZ-RABASCALL duo won the first round of the presidential election with 32% of the vote<sup>128</sup>.

During the campaign for the second round of the presidential elections, the attorney general, who was a political appointee to her post (see above), officially invited the Colombian Prosecutor's Office to a high-profile judicial cooperation for the alleged financing of the campaign of the correista candidate, Andrés ARAUZ, by the ELN<sup>129</sup>. The attorney general even issued a TV spot with the Colombian prosecutor<sup>130</sup>, despite the fact that the cooperation was only being carried out in the framework of a preliminary investigation, which was dropped after the elections.

Faced with this "intervention" of the judiciary in the electoral campaign, the UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, expressed his concern about the judicial harassment of the progressive candidate, Andrés ARAUZ<sup>131</sup>. On March 2, 2021, UN Secretary General Antonio GUTERRES called on "*all stakeholders to act responsibly and in accordance with institutional and legal frameworks in the run-up to the April 11 presidential runoff elections*"<sup>132</sup>.

"Agency France Presse" (AFP) also identified the use of "*fake news*" aimed at discrediting Andrés ARAUZ and raising fears for the country's economic future<sup>133</sup>.

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<sup>128</sup> BBC article, "Ecuador election goes into run-off with Arauz in the lead", February 8, 2021, available at <https://www.bbc.com/news/world-latin-america-55934856>

<sup>129</sup> Primicias, "Fiscalía pide asistencia a Colombia sobre supuesto aporte del ELN a Andrés Arauz," February 9, 2021, available at <https://www.primicias.ec/noticias/politica/fiscalia-asistencia-colombia-aportes-eln-andres-arauz/>

La Hora, "Fiscal de Colombia viaja a Ecuador por posible financiación del ELN a candidato correista", February 12, 2021, available at <https://lahora.com.ec/noticia/1102340580/fiscal-de-colombia-viaja-a-ecuador-por-posible-financiamiento-del-eln-a-candidato-correista> - (free translation)

Semana, "El viaje del fiscal Barbosa a Ecuador y los informes que entregó sobre el candidato de Rafael Correa," April 11, 2021, available at <https://www.semana.com/nacion/articulo/el-viaje-del-fiscal-barbosa-a-ecuador-y-los-informes-que-entrego-sobre-el-candidato-de-rafael-correa/202124/>

<sup>130</sup> "#ATTENTION. | #prosecutorEc y @FiscaliaCol meet for the delivery of information found in the devices of alias 'Uriel', of the ELN, in the framework of criminal cooperation between both countries." - Tweet from the Ecuadorian Prosecutor's Office, February 12, 2021, available at <https://twitter.com/FiscaliaEcuador/status/1360359986992467972>

"I thank @FiscaliaCol and your Attorney General for having accepted the request for information that you have delivered to us today. It is a very important exercise in the fight against criminality, we are together and this is how we will fight it." @DianaSalazarM2" - Tweet from Ecuador's Attorney General's Office; February 13, 2021, available at <https://twitter.com/FiscaliaEcuador/status/1360363112688402434>

<sup>131</sup> Confirmado.net, "Diego Garcia-Sayan-UN Special Rapporteur: Ecuador judges and prosecutors should not interfere, directly and indirectly, in the tasks of electoral bodies and processes," March 4, 2021, <https://confirmado.net/2021/03/04/diego-garcia-sayan-relator-especial-de-la-onu-ecuador-los-jueces-y-fiscales-no-deben-interferir-de-manera-directa-e-indirecta-en-las-tareas-de-organos-y-procesos-electorales/>

<sup>132</sup> UN, "Secretary-General Welcomes Peaceful Elections in Ecuador", 2 March 2021, SG/SM/20611, available at <https://www.un.org/press/en/2021/sgsm20611.doc.htm>

<sup>133</sup> For example:

AFP, "No record of Maduro sending 'revolutionary hug' to Andres Arauz," April 11, 2021, available at <https://factual.afp.com/no-hay-registro-de-que-maduro-haya-enviado-un-abrazo-revolucionario-andres-arauz>

59. The repeated interventions of the authorities arbitrarily using their power to prevent the participation of candidates, the creation of a party, the consolidation of an electoral alliance, to intimidate candidates or to continuously tarnish the reputation of UNES candidates, constitutes a serious violation of the political rights of the direct victims of these attacks, but also of Ecuadorian democracy in general.

#### IV. Violent crackdown on social protest in October 2019.

60. Having elected a "leftist" president, Ecuadorians were massively dissatisfied with the liberal policies implemented under the MORENO government.

In early October 2019, the Ecuadorian government approved decrees eliminating public fuel subsidies. On October 3, 2019, Ecuadorian citizens, supported by the indigenous movement, rose up against these measures. Some analysts point out the causes of the citizen mobilization:

*"We can see behind these demonstrations the weariness of the population, which has been subjected for two and a half years to very aggressive neoliberal structural adjustment policies: suspension of certain rights, of social benefits, etc. Since Moreno came to power in 2017, there has been a shift to the neoliberal right, seeking to reduce the role of the State and the tax burden. There has been a huge tax amnesty for the richest in society. At the same time, the country suffered a fiscal deficit that forced the government to go into debt with the International Monetary Fund. The IMF granted a loan of US\$4.2 billion but demanded a reduction in state and public administration expenditures, which led to numerous layoffs. This contrasts with President Correa's previous term, which was a period of social progress, reduced inequality and economic growth. Correa's government had doubled the GDP in ten years and did so without making neoliberal reforms"*<sup>134</sup>.

*"A large social movement is shaking Ecuador, marked by road and oil well blockades in the Amazon, demonstrations and strikes. For researcher Marie-Esther Lacuisse, President Moreno has not kept his ecological and social promises and is paying the price for it"*<sup>135</sup>.

61. The reaction of the government of Lenín Moreno was to declare a state of emergency.

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AFP, "La fotografía del candidato ecuatoriano Andrés Arauz con Nicolás Maduro es un montaje," December 11, 2020, available at: <https://factual.afp.com/la-fotografia-del-candidato-ecuadoriano-andres-arauz-con-nicolas-maduro-es-un-montaje>

AFP, "Andrés Arauz no se refirió a la caravana indígena de Ecuador en eventos con migrantes en EEUU," February 23, 2021, available at: <https://factual.afp.com/andres-arauz-no-se-refirio-la-caravana-indigena-de-ecuador-en-eventos-con-migrantes-en-eeuu>

<sup>134</sup> IRIS, "Manifestations en Equateur: symbole d'un revirement annoncé", 7 October 2019. <https://www.iris-france.org/140720-manifestations-en-equateur-symbole-dun-revirement-annonce%E2%80%8989/>

<sup>135</sup> Reporterre, "Equateur : un pays révolté par le retour du FMI dans la politique", 11 October 2019, <https://reporterre.net/Equateur-un-pays-revolte-par-le-retour-du-FMI-dans-la-politique>

These presidential decrees, denounced as unconstitutional<sup>136</sup>, allowed the criminalization and arrest of those who participated in the demonstrations.

During the month of October, the government systematically criminalized the most politically influential protesters. In total, at least 1192 people were arbitrarily detained between October 3 and 13, 2019. They were carried out searches to journalists, and members of the political party Social Commitment for the Citizen Revolution (FCS).

On October 9, 2019, the Inter-American Commission on Human Rights (hereinafter IACHR) expressed concern about the excessive use of force by State agents. It also noted allegations of pressure exerted to destroy evidence of police violence<sup>137</sup>. On October 17, 2019, the IACHR announced an on-site investigation<sup>138</sup>.

On October 11, 2019, the Ecuadorian State was also questioned by the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights of indigenous peoples and by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. This interpellation follows the receipt of allegations regarding *"serious violations of the rights to freedom of expression, freedom of peaceful assembly and freedom of association in Ecuador, in the context of the demonstrations that have taken place since October 3, 2019 following the declaration of a state of emergency, including excessive use of force against demonstrators (including children, adolescents, pregnant women, elderly people, and persons with disabilities), members of indigenous peoples and journalists, which has caused at least 929 detainees and hundreds of injured, and at least 5 people have reportedly lost their lives while participating in the protests. We have also received information about alleged mass detentions, and events that could constitute torture, cruel, inhuman and degrading treatment or punishment in detention centres"*<sup>139</sup>.

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<sup>136</sup> NORTESUR, "The dictatorship in Ecuador: the unconstitutionality of the states of exception decreed by Lenín Moreno", p.5, October 13, 2019, <https://nortesur.media/2019/10/13/la-inconstitucionalidad-de-los-estados-de-excepcion-decretados-por-lenin-moreno/>

<sup>137</sup> IACHR, "IACHR and its Special Rapporteurship Concerned about Excessive Use of Police Force against Demonstrators and Attacks on Journalists during Protests in Ecuador," October 9, 2019, press release 252, [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/252.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/252.asp)

<sup>138</sup> IACHR, "IACHR Announces Observation Mission to Ecuador in Response to Protests," October 17, 2019, press release 262, [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/262.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/262.asp)

<sup>139</sup> Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; of the Special Rapporteur on the situation of human rights defenders; of the Special Rapporteur on the rights of indigenous peoples; and of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Interpellation of 11 October 2019, UA ECU 16/2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24900>

62. On October 13, 2019, the Government reached an agreement with the indigenous movement<sup>140</sup> which initiated mobilizations.

The repeal of one of the controversial decrees and the lifting of austerity measures in the indigenous territories placated the citizens and put an end to the insurrection.

63. According to human rights organizations, the police repression left at least 8 dead and 1400 wounded. Among those arrested, 32 people were prosecuted for "rebellion"<sup>141</sup>.

In 2019, the UN Committee on Economic, Social and Cultural Rights expressed its "*concern at the manner in which the state of emergency proclaimed on 3 October 2019 was implemented following protests against the adoption of austerity measures, in particular with regard to the suspension of freedom of association.*" It is also concerned about the violence related to social protests against austerity measures, which in some cases was accompanied by acts of vandalism, and the use of force, sometimes disproportionate, against protesters and human rights defenders, including by the army (art. 2, para. 1)"<sup>142</sup>.

On January 14, 2020, the IACHR presented its observations on its visit to Ecuador in relation to the social protests that took place from October 3 to 13, 2019. It noted the violation of multiple fundamental rights in the context of these protests:

***"A. Attacks and assaults on the press during protests***

*The escalation of violence resulted in the obstruction of the work of the press, due to a series of attacks against journalists and media outlets, both by public security forces and by demonstrators (...)*

*(...) They also denounced permanent cuts in Internet access by the telephone platforms of Claro and Movistar. (...)*

***B. Violations of the rights to freedom of expression and association***

*(...) Through a public statement, different alternative media outlets that covered the demonstrations in Ecuador denounced the government for technological and digital censorship and indicated that their rights had been intervened and violated. (...)*

***C. Violations of personal integrity in the context of social protests***

*During its working visit, the Inter-American Commission received documentary information, audio-visual material and hundreds of testimonies related to the violations of personal integrity in the context of the social protests in Ecuador.*

<sup>140</sup> Le Monde, "Equateur : gouvernement et indigènes trouvent un accord pour sortir de la crise", October 14, 2019.

<sup>141</sup> ANRed, "Ecuador: Lenin Moreno persecutes communicators and political opponents," October 18, 2019, <https://www.anred.org/2019/10/18/ecuador-lenin-moreno-persigue-a-comunicadores-y-opositores-politicos/>

<sup>142</sup> UN CESCR, "Observations finales concernant le quatrième rapport périodique de l'Équateur", 14 November 2019, E/C.12/EQU/CO/4, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fEQU%2fC.O%2f4&Lang=fr](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fEQU%2fC.O%2f4&Lang=fr)

(...)

*These damages were allegedly caused by the violent actions of the law enforcement officers through "mounted police", kicks, blows, verbal aggressions and, even, by firing pellets and/or tear gas directly at the demonstrators or at those who were in the surrounding areas. As a consequence, dozens of people were injured, some of them seriously, due to fractures caused by the impact of projectiles or by pellets lodged in various parts of the body. (...)*

*In addition to the above, the IACHR received at least nineteen testimonies of people who had lost their sight totally or partially, through the loss of an eye, due to the impact of tear gas bombs or pellets used to disperse the protests, both by police officers and military (...)*

*The information available to the IACHR reveals that the aggressions and point-blank shots fired by police officers and military forces were also directed against those providing medical assistance to demonstrators. (...)*

(...)

*In relation to the above, the Inter-American Commission concludes that the violent reaction and the disproportionate use of force by police and military agents in the context of the operations to disperse the demonstrations would be the main cause of the high number of injured persons. As a consequence, the IACHR warns that the State has failed to comply with its obligations to respect and guarantee the right to personal integrity, as enshrined in the American Convention.*

#### ***D. Affections to life in the context of social protests.***

*(...) In the framework of its working visit to Ecuador, the IACHR received information from the Ombudsman's Office, civil society organizations and testimonies from the victims' families about eleven people who reportedly lost their lives in the context of the social protests in the country. (...)*

(...)

*In particular, the IACHR warns that the precipitation of two people from the San Roque bridge occurred during a police operation whose circumstances would indicate a repressive and violent action by State agents in a context that would allow the use of alternative conflict resolution measures (...)*

#### ***E. Arrests, criminalization and stigmatization of protesters in the context of social protests.***

*(...) in the period from the start of the social protests on October 2, 2019, until October 13, 2019, a total of 1228 people were arrested*

(...)

*the IACHR received diverse information of numerous detentions in which due process was allegedly violated. (...)*



*The IACHR is alarmed by the information received indicating torture and other cruel, inhuman or degrading treatment in the context of detentions. In this regard, according to the information provided by civil society organizations, as well as that received through testimonies, numerous detainees were strongly verbally and physically assaulted; they were allegedly threatened, beaten with fists, kicks and metal batons, pepper sprayed in the face and forced to perform physical exercises. (...)*

*In terms of criminalization, the IACHR received information on the use of the criminal justice system against protesters and social and opposition leaders. (...)*

*Finally, the IACHR notes that on several occasions these criminalization processes are preceded and accompanied by stigmatization campaigns (...)*

*On December 6, the IACHR granted precautionary measures in favour of Paola Verónica Pabón Caranqui, Prefect of Pichincha; Virgilio Hernández, Executive Secretary of the Movimiento de Compromiso Social por la Revolución Ciudadana; and Christian Fabián González Narváez. The IACHR, in deciding to grant the measures, noted that among the evidence that can be taken into account when assessing the risk situation of the proposed beneficiaries, following alleged threats and acts of harassment allegedly related to their work as political opposition leaders, it considered the allegedly stigmatizing statements of high-ranking authorities in which they are directly accused of being responsible for the altercations"<sup>143</sup>.*

These findings confirm that the Ecuadorian authorities have seriously violated the fundamental rights and freedoms of Ecuadorians, including political opponents, by arbitrarily detaining them, mistreating them and violating their right to a fair trial.

In a report made a year after the harsh repression of social protest in October 2019, "Alianza por los Derechos Humanos Ecuador" -which groups 18 organizations- pointed out:

- Denial of the facts by the authorities.
- The lack of concrete measures to address the social challenges identified by the population.
- Violation of the constitutional right to protest.
- The focus on certain as a tactic to avoid the media.
- Asymmetrical criminal prosecutions leading to impunity for law enforcement and lack of redress.
- The abuse of the use of the state of emergency by the Executive<sup>144</sup>.

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<sup>143</sup> IACHR, "IACHR Issues Observations Following Visit to Ecuador," January 14, 2020, press release 008, [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/008.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/008.asp)

<sup>144</sup> Alianza por los Derechos Humanos Ecuador, "Verdad, Justicia y Reparación: A un año de la protestas sociales Octubre 2019 - Informe actualizado, Ecuador", pp.94-95, October 15, 2020, [https://ddhhecuador.org/sites/default/files/documentos/2020-10/informe\\_actualizado\\_paroec.pdf](https://ddhhecuador.org/sites/default/files/documentos/2020-10/informe_actualizado_paroec.pdf)

64. This management of a social protest through repressive measures that violate fundamental rights and freedoms constitutes a serious violation of the rule of law and the values that are the basis of any democratic state.

The abusive use of the state of emergency in the face of an economic and social crisis, the violent repression of demonstrators, the impunity of the forces of law and order, the criminalization of protest leaders, etc. were repeated in June 2022 (see below).

## **V. Massive violation of the right to life and respect for the physical integrity of persons deprived of their liberty**

65. The Ecuadorian penitentiary system is experiencing great difficulties.

In 2019, when the Ministry of Justice was eliminated by the Government, the new National Service for the Comprehensive Care of Adults Deprived of Liberty and Adolescent Offenders (SNAI) received a budget of \$98 million. In 2020, it was reduced by 43%: only about \$55 million was allocated. By 2021, the budget was increased by \$8 million, reaching \$63 million<sup>145</sup>.

It is estimated that in some social rehabilitation centres there is only one guide for every 20 to 30 people<sup>146</sup>. There is also a lack of personnel in other areas that are indispensable for true social rehabilitation: educators, doctors, psychiatrists, psychologists.

The lack of management and funding of the prison system has led to "monstrous" overcrowding. The pandemic has increased this problem. *"To reduce the number of prisoners in the midst of the coronavirus outbreak, the government commuted the sentences of those convicted of minor offenses, reducing overcrowding from 42% to 30%"*<sup>147</sup>. Unfortunately, this was not enough to ease tensions.

66. In February 2021, extremely violent riots broke out in several Ecuadorian prisons. Some 80 people died.

The IACHR recalled *"the unavoidable legal duty of the State of Ecuador, as guarantor of the rights of persons deprived of liberty, to take concrete actions to guarantee their life and personal integrity. As part of this obligation, the State must adopt measures aimed at preventing and controlling possible outbreaks of violence in detention centres, such as disarming detainees, imposing effective controls to prevent the entry of weapons and other prohibited items, investigating and punishing acts of violence in prison facilities, and preventing the*

<sup>145</sup> "Prison in Équateur", [https://fr.wikipedia.org/wiki/Prison\\_en\\_%C3%89quateur#cite\\_note-5](https://fr.wikipedia.org/wiki/Prison_en_%C3%89quateur#cite_note-5)

<sup>146</sup> Primicias, "Cárceles tienen déficit de casi 70% de guías penitenciarios," August 3, 2020, <https://www.primicias.ec/noticias/sociedad/carceles-tienen-deficit-setenta-por-ciento-guias-penitenciarios/>

<sup>147</sup> Dayly Sabah, "At least 75 killed in prison riots in Ecuador," February 23, 2021, available at <https://www.dailysabah.com/world/americas/at-least-75-killed-in-prison-riots-in-ecuador> (free translation).

*actions of criminal organizations with a presence in prisons"*<sup>148</sup>. The IACHR also indicated that through "a February 23 communication addressed to the President of Ecuador, the "Ombudsman's Office" indicated that intra-prison violence has deepened since 2018, with a progressive increase in violent deaths"<sup>149</sup>.

67. After this terrible episode, the government did not take adequate measures and the massacres inside the prisons were repeated.

In a report on persons deprived of liberty in Ecuador, published in March 2022, the IACHR stated:

*"Ecuador is going through a serious penitentiary crisis of a structural nature, characterized by unprecedented levels of violence and corruption within the prisons, and that responds to the abandonment of the penitentiary system by the State for years, as well as the absence of a comprehensive criminal policy. (...) In this sense, we observe the use of a policy that favours incarceration to solve citizen security problems. This, in turn, has resulted in an exponential increase in incarceration in recent years, excessive use of pretrial detention, obstacles to replace alternative measures to imprisonment, and the impossibility of guaranteeing the social reintegration of detainees.*

*2. In this scenario, during 2021 a total of 316 persons deprived of liberty died in State custody, and hundreds of others were injured, in a succession of violent attacks carried out in a planned manner by organized groups formed by the detainees themselves" (p.8);*

*"In this regard, the Commission has pointed out that States must establish strategies to dismantle the criminal structures rooted in prisons that control various criminal activities, such as drug and alcohol trafficking and the collection of extortion fees from other prisoners.*

*(...)*

*These serious acts of violence are evidence of a collapsed penitentiary system. There is consensus among the various actors interviewed that the events that occurred in 2021 are not isolated and that the country is facing a "crisis in the penitentiary system", the product of a structural situation that responds to the abandonment of the penitentiary system by the State" (p.86-87);*

*"the IACHR issues the following recommendations to the State of Ecuador:*

*(...) 1.1. Guaranteeing the life, security and personal integrity of the persons in its custody, as well as of the officials who perform their duties in detention centres, must be a priority of the State. In this scenario, it is recommended that the State prioritize the*

<sup>148</sup> IACHR, "IACHR condemns the death of 79 people in Ecuadorian prisons," February 26, 2021, available at <https://www.oas.org/en/IACHR/jsForm/?File=/es/cidh/prensa/comunicados/2021/044.asp>

<sup>149</sup> IACHR, "IACHR condemns the deaths of 79 people in Ecuadorian prisons," February 26, 2021, available at <https://www.oas.org/en/IACHR/jsForm/?File=/es/cidh/prensa/comunicados/2021/044.asp>

*urgent implementation of effective actions aimed at preventing and controlling all types of violence in prisons, as well as re-establishing control of prisons" (p.88)<sup>150</sup>.*

68. Despite sustained international attention<sup>151</sup>, the new government has not taken the necessary immediate structural measures.

On May 9, 2022, another massacre took place, claiming 43 new victims and as many families in mourning<sup>152</sup>.

On May 10, 2022, Amnesty International reported:

*"Since December 2020, at least 390 people have been killed in Ecuador's prisons. Following the May 9 massacre at the Santo Domingo de los Tsáchilas prison, in which at least 44 prisoners died, and 10 others were injured, Erika Guevara-Rosas, Amnesty International's director for the Americas, stated that:*

*"Being deprived of liberty in Ecuador has become almost a death sentence. Repeated mistakes by Ecuadorian authorities in managing the prison crisis have resulted in the deaths of hundreds of people. Authorities must address, once and for all, the structural causes of this problem, such as overcrowding, corruption and impunity, through a comprehensive prison policy focused on human rights. All deaths and violations of the human rights of persons deprived of their liberty must be thoroughly, independently and impartially investigated.*

*"In response to this latest massacre, President Guillermo Lasso announced the transfer of "six criminal gang leaders" to other prisons. However, these superficial measures are insufficient to fulfil the main obligation of the authorities in this context: to protect the lives and safety of thousands of people who are deprived of their liberty and who are currently at risk""<sup>153</sup>.*

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<sup>150</sup> OAS-IACHR, "Persons Deprived of Liberty in Ecuador", Report Approved by the Inter-American Commission on Human Rights on February 21, 2022, [https://www.oas.org/es/cidh/informes/pdfs/Informe-PPL-Ecuador\\_VF.pdf](https://www.oas.org/es/cidh/informes/pdfs/Informe-PPL-Ecuador_VF.pdf)

<sup>151</sup> See also, Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interpellation of 27 October 2021, AL ECU 3/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26685>

<sup>152</sup> El País, "Al menos 43 presos mueren en un nuevo enfrentamiento en una cárcel de Ecuador", May 9, 2022, <https://elpais.com/internacional/2022-05-09/al-menos-20-presos-mueren-en-un-nuevo-enfrentamiento-en-una-carcel-de-ecuador.html>

<sup>153</sup> AI, "Ecuador: In light of new prison massacre, authorities must address structural causes", 10 May 2022, <https://www.amnesty.org/en/latest/news/2022/05/ecuador-prison-massacre-authorities-must-address-structural-causes/> (Free translation).

Despite the state of emergency declared by President Lasso in the prison system since September 2021, the massacre of 13 inmates was again reported on July 19, 2022<sup>154</sup>, bringing the number of victims since 2020 to over 400. Some detainees were dismembered and decapitated.

69. Persons deprived of their liberty are a vulnerable category of people who are totally under the control of the State.

The failure to guarantee respect for the fundamental rights that are the right to life and the protection of the physical integrity of persons, due to the absence of adequate governmental measures for years, attests to the serious violation by Ecuador of the rights that are at the core of any democratic state.

## **VI. Impoverishment, increased violence, state of emergency, repression and criminalization of democratic debate**

70. In 2019, the UN Committee on Economic, Social and Cultural Rights raised some concerns regarding Ecuador, such as *"the impact of the austerity measures of the 2018-2021 Prosperity Plan and of the agreement concluded with the International Monetary Fund under the Extended Fund Facility on the enjoyment of economic, social and cultural rights"*<sup>155</sup>.

The lack of a social response adapted to the needs of the population has led to an increase in the poverty rate. World Bank data show that, after declining from 2008 (35.1%) to 2017 (21.5%), the ratio between the poor population and the national poverty line has steadily increased to reach 33% in 2020<sup>156</sup>. The appeal of the Special Rapporteur on the human rights to safe drinking water and sanitation illustrates the lack of contemplation of the basic needs of the most deprived:

*"Although it is not intended to prejudge the accuracy of the above information, the possibility that water cut-offs due to lack of payment may be repeated to families in vulnerable and poor situations in Ecuador, after the expiration of the Humanitarian Support Law, in which case their human rights would be violated, is a cause for concern. This concern is accentuated in the current Covid19 pandemic context, given the need*

<sup>154</sup> 20Minutos.es, "Al menos 13 muertos por una nueva masacre entre reclusos en una cárcel de Ecuador", 19 July 2022, <https://www.20minutos.es/noticia/5031726/0/al-menos-13-muertos-por-una-nueva-reyerta-en-una-carcel-de-ecuador/>

<sup>155</sup> UN CESCR, "Concluding observations on the fourth periodic report of Ecuador," 14 November 2019, E/C.12/EQU/CO/4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/324/90/PDF/G1932490.pdf?OpenElement>

<sup>156</sup> "Ratio de la population pauvre en fonction du seuil de pauvreté national (% de la population) - Ecuador", 2007-2020, <https://donnees.banquemondiale.org/indicateur/SI.POV.NAHC?end=2020&locations=EC&start=2007&view=chart>

*for affected people to have access to water and sanitation in order to comply with health recommendations. (...) water cut-offs for lack of payment to people in situations of vulnerability and poverty constitute human rights violations that all States must avoid at all costs in compliance with existing international human rights obligations"*<sup>157</sup>.

71. The more difficult living conditions are not unrelated to increased insecurity and violence.

Thus, *"In parallel to the prison crisis, Ecuador has been dealing since last year with a wave of violence that has triggered an increase in the number of murders, especially those committed by hired assassins, and has led to the declaration of recurring states of exception and emergency, increasing police and military manpower in the streets and imposing curfews. The last state of exception was decreed two weeks ago, without having stopped the violent deaths. As of March, there are 959 homicides in Ecuador. Last year, there were almost 2,500, 80% more than in 2020"*<sup>158</sup>.

In response to the increased violence, Ecuador has not taken the necessary structural measures, but rather, as in the case of the October 2019 protests, has introduced a state of emergency, i.e. mobilized the armed forces to maintain order, suspended citizens' rights and introduced curfews<sup>159</sup>.

72. Economic, social and environmental problems particularly affect Ecuador's indigenous populations.

In 2019, the UN Committee on Economic, Social and Cultural Rights expressed that it was "concerned about the persistence of systemic discrimination, de facto and through violent manifestations, towards some population groups, in particular (...) indigenous peoples"<sup>160</sup>.

On May 4, 2022, Amnesty International reported:

*"Authorities and companies in Ecuador threaten the Amazon with extractivist laws, policies and projects (mainly oil and mining) that have not obtained the free, prior and informed consent of indigenous peoples or that have affected their territories, environment, health, water or food, Amnesty International said today, as it released the report Ecuador: The Amazon in danger.*

<sup>157</sup> Special Rapporteur on the human rights to safe drinking water and sanitation, appeal of 24 February 2021, OL ECU 1/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26079>

<sup>158</sup> El País, "Al menos 43 presos mueren en un nuevo enfrentamiento en una cárcel de Ecuador", May 9, 2022, <https://elpais.com/internacional/2022-05-09/al-menos-20-presos-mueren-en-un-nuevo-enfrentamiento-en-una-carcel-de-ecuador.html>

<sup>159</sup> Le Temps, "L'état d'exception décrété en Equateur en raison des violences liées au narcotrafic", October 19, 2021, <https://www.letemps.ch/monde/letat-dexception-decrete-equateur-raison-violences-liees-narcotrafic>

<sup>160</sup> UN CESCR, "Concluding observations on the fourth periodic report of Ecuador," 14 November 2019, p.5, E/C.12/ECU/CO/4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/324/90/PDF/G1932490.pdf?OpenElement>



*"Ecuador must guarantee the consent of Indigenous Peoples to legislation, policies and projects that may put their existence at risk. The Amazon is also a critical ecosystem for overcoming the climate crisis that threatens all life on our planet, and Indigenous Peoples have protected it for centuries"*<sup>161</sup>.

73. In June 2022, following the rejection of the discussion attempts initiated by the Confederation of Indigenous Nationalities of Ecuador (Conaie), the largest organization of indigenous peoples in the country<sup>162</sup> undertook a national strike action, also blocking some highways.

*"CONAIE demands to reduce fuel prices, address the problem of unemployment, regulate the prices of rural products and combat crime and insecurity, among other requests"*<sup>163</sup>. The social protest, initiated by CONAIE, was supported by the unions<sup>164</sup> and other civil society groups<sup>165</sup> who joined the protests.

The national strike began on June 13, 2022.

74. The initial reaction of the authorities was twofold.

On the one hand, the authorities detained the president of CONAIE, Mr. IZA, who was finally released on parole.

On the other hand, President LASSO decreed a "state of emergency due to serious internal commotion"<sup>166</sup>. Despite the approval of this decree, social protest continued. It was violently

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<sup>161</sup> AI, "Ecuador: Authorities and companies threaten the Amazon and its Indigenous Peoples", 4 May 2022, <https://www.amnesty.org/en/latest/news/2022/05/ecuador-authorities-companies-threaten-amazon-indigenous-peoples/>

<sup>162</sup> Conaie helped overthrow three Ecuadorian presidents between 1997 and 2005. The indigenous community represents more than one million of Ecuador's 17.7 million inhabitants.

<sup>163</sup> CNN Ecuador, "Judge in Ecuador orders the release of Leonidas Iza, president of the Confederation of Indigenous Nationalities, and orders alternative measures to prison," June 15, 2022, <https://cnnespanol.cnn.com/2022/06/15/ecuador-libertad-leonidas-iza-conaie-orix/>

<sup>164</sup> For example: Latam Gremial, "Sindicatos apoyan el paro nacional que inició hoy en Ecuador convocado por comunidades indígenas", June 13, 2022, <https://latamgremial.com/sindicatos-apoyan-el-paro-nacional-que-inicia-hoy-en-ecuador-convocado-por-comunidades-indigenas/>

"Ecuador: the CFS expresses solidarity and condemns the violence and repression in the country," June 27, 2022, <https://csa-csi.org/2022/06/27/ecuador-la-csa-expresa-su-solidaridad-y-condena-la-violencia-y-la-represion-en-el-pais/>

<sup>165</sup> For example: El Mercurio, 'Universitarios lideraron protesta en Cuenca', 14 June 2022, <https://elmercurio.com.ec/2022/06/14/universitarios-lideraron-protesta-en-cuenca/>

<sup>166</sup> L'Express, "Equateur: poursuite des protestations indigènes malgré l'état d'urgence", 19 juin 2022, [https://www.lexpress.fr/actualites/1/monde/equateur-le-president-declare-l-etat-d-urgence-les-protestations-se-poursuivent\\_2175486.html](https://www.lexpress.fr/actualites/1/monde/equateur-le-president-declare-l-etat-d-urgence-les-protestations-se-poursuivent_2175486.html)

GK, "Guillermo Lasso decreed a state of exception in 3 provinces, what does the decree say?", June 17, 2022, <https://gk.city/2022/06/17/que-dice-decreto-excepcion-pichincha/>

repressed by the forces of law and order (see below)<sup>167</sup>. Numerous videos, showing children affected by tear gas or protesters on the ground beaten by the police<sup>168</sup>, have circulated on social networks<sup>169</sup>, without being broadcast in the "mainstream media". On June 24, 2022, there were six deaths<sup>170</sup>. The number of injured, as well as the number of detainees, was very high<sup>171</sup>.

75. In a statement dated June 20, 2022, Amnesty International denounced the violent management of the social crisis:

*"The repression by the government of President Guillermo Lasso of demonstrations called by indigenous, trade union and social organizations in the framework of a national strike since June 13, 2022, is causing a human rights crisis with multiple reports of harassment, excessive use of force, arbitrary detentions, ill-treatment, and criminalization of protesters, journalists and human rights defenders, Amnesty International said today.*

*(...)*

*On June 17, President Lasso issued Executive Decree No. 455, which declared "a state of emergency due to serious internal commotion in the provinces of Cotopaxi, Pichincha and Imbabura", suspending freedom of association, assembly and transit for thirty days.*

*(...)*

*On June 18, despite the fact that the state of emergency suspended freedom of association and assembly, the Presidency issued Official Bulletin 561, entitled "The capital of Ecuadorians marches for Peace", to promote a march of "hundreds of Quito citizens (...) concerned about the situation of the country and the acts of violence and vandalism". The bulletin included the message "The National Government supports this initiative and joins this cause". Both the official page hosting the bulletin, as well as the tweet promoting it, were subsequently deleted. A video disseminated in social networks, allegedly recorded during the march, shows a group of people chanting racist messages against the indigenous population"<sup>172</sup>.*

<sup>167</sup> See in particular: Publico.es, "Lasso militariza Ecuador y reprime la protesta indígena contra los recortes", 23 June 2022, <https://www.publico.es/internacional/lasso-militariza-ecuador-reprime-protesta-indigena-recortes.html>

<sup>168</sup> [https://twitter.com/virgiliohernand/status/1540697129987063810?s=20&t=-BMDvjb7WJ5uxgweLkj\\_ew](https://twitter.com/virgiliohernand/status/1540697129987063810?s=20&t=-BMDvjb7WJ5uxgweLkj_ew)

<sup>169</sup> In particular, see [https://twitter.com/conaie\\_ecuador?lang=fr](https://twitter.com/conaie_ecuador?lang=fr)

France24, "Violentes manifestations en Équateur : "J'ai soigné un homme avec une lésion à l'œil gauche" ", 28 juin 2022, <https://observers.france24.com/fr/am%C3%A9riques/20220628-equateur-manifestations-violences-indigenes-police>

<sup>170</sup> LaLibre.be, "Equateur: 6 morts lors de violents incidents devant le Parlement ", 24 juin 2022, <https://www.lalibre.be/international/amerique/2022/06/24/equateur-6-morts-lors-de-violents-incidents-devant-le-parlement-TDDB26RRSVDIFIR7XMIIVFZZLI/>

<sup>171</sup> El Universo, "En diez días de protestas se aprehendió a 106 personas; los delitos imputados son posesión de armas de fuego, ataques a servidores y bloqueo de servicios públicos", 22 June 2022, <https://www.eluniverso.com/noticias/ecuador/en-diez-dias-de-protestas-se-detuvieron-106-personas-los-delitos-van-desde-posesion-de-armas-de-fuego-ataques-a-servidores-bloqueo-de-servicios-publicos-nota/>

<sup>172</sup> Amnesty International, "Ecuador: Repression against protests is causing human rights crisis," June 20, 2022, <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/ecuador-represion-contra-protestas-esta-causando-tesis-de-derechos-humanos/>

Many other human rights organizations have reacted to the brutality of the repression used against the demonstrators<sup>173</sup>. A preliminary report of an observation mission indicated that *"The testimonies collected are heart-breaking. They all coincide in highlighting the repressive violence deployed and the massive attack on the defenceless civilian population. The security forces acted with vehemence and impunity in the exercise of repression. Following direct orders from the executive power, they deployed abusive, excessive and disproportionate interventions, causing serious injuries, in some cases lethal (...) Thus, according to official sources, the information provided by human rights platforms and the complaints and testimonies received directly, we can report the following human rights violations: • Killings at the hands of the police and military forces. Injuries of varying degrees and mutilations due to disproportionate action by police and military forces. Massive arbitrary detentions and false accusations. Kidnapping, persecution and attacks against the integrity of indigenous and social leaders. • Kidnappings and threats to demonstrators. • Violation of the right to social protest through untimely and unjustified attacks on peaceful demonstrations or agglomerations, particularly the attack on the Casa de la Cultura on Friday, June 24. • Violation of judicial guarantees and access to justice for citizens (failure to receive complaints in public prosecutors' offices, failure to investigate ex officio acts of police violence, among others). • Denial of medical attention by public health institutions on racial and anti-indigenous grounds. Violation of women's integrity, evidencing episodes of humiliation, verbal and symbolic violence. Violation of children's rights. Especially in the context of the repression of mobilizations. • Threats by police forces to volunteer health personnel in peace zones. • Repeated attacks on peace and humanitarian shelter zones, putting thousands of people affected by tear gas launched by security forces during the night in grave danger. Armed attacks by civilian organizations and police forces, based on racist and anti-indigenous violence. • Censorship of community media and blocking of the free flow of information. Blocking of internet service and social networks. Hacking of personal accounts of indigenous and social leaders. Forced disappearance of people who were participating in the mobilizations"*<sup>174</sup>.

On June 24, 2022, the IACHR and the Special Rapporteur for Freedom of Expression expressed their concern, making an urgent call for dialogue:

*"The protests, which began on June 13, following a call by the Confederation of Indigenous Nationalities of Ecuador (CONAIE), contain several demands, among which stand out the attention to economic, social, cultural and environmental rights*

<sup>173</sup> CubaDebate, "Ecuador: Movimientos sociales denuncian la violencia policial", June 22, 2022, <http://www.cubadebate.cu/noticias/2022/06/22/ecuador-movimientos-sociales-denuncian-la-violencia-policial-video/>

Telam, "Ecuador: Una misión de solidaridad argentina releva la situación de los DDHH", June 25, <https://www.telam.com.ar/notas/202206/596607-ecuador-una-mision-de-solidaridad-argentina-releva-la-situacion-de-los-ddhh.html>

<sup>174</sup> International Solidarity and Human Rights Mission, "Informe preliminar : violación de DDHH en Ecuador en el marco del paro nacional 2022", 28 June 2022, <https://www.resumenlatinoamericano.org/2022/06/28/ecuador-se-ha-dado-a-conocer-el-informe-preliminar-de-la-mision-de-solidaridad-internacional-y-derechos-humanos-que-visito-este-pais-graves-constataciones-sobre-la-represion/>

*(DESCA). (...) In the current call, organizations denounced the absence of effective dialogue mechanisms to respond to these demands.*

*The State declared a state of emergency due to serious internal commotion (...) Ecuador has the duty to ensure that the provisions adopted are proportional and that the suspension of rights or guarantees is carried out when it is the only way to deal with a given situation (...).*

*The IACHR is concerned that according to information from the Ombudsman's Office, 6 people lost their lives in the context of the protests, at least 2 as a result of gunshot wounds. Also, according to other sources, at least 166 demonstrators have been injured and 120 agents of the National Police. According to official figures, 108 people have been arrested. For their part, civil society organizations have expressed concern about the detention of social leaders, including the detention of the leader of CONAIE; and possible cases of abuse of police force, including raids on shelters in university campuses where demonstrators were staying. The IACHR and its RELE condemn all human rights violations committed in the context of social protest and urge the State to clarify the circumstances of the deaths with due diligence.*

*In addition, at least 86 serious acts of violence against the press covering the National Strike were reported by civil society organizations. The reports include acts of physical aggression - including the use of whips and spears - and the throwing of hot liquids against journalists, threats, harassment, damage, illegal appropriation of equipment and impacts by tear gas bombs. In addition to the above, the information reports attacks on websites of newspapers or civil society organizations that monitor and report on the events of the National Strike.*

*(...)*

*Lack of access to information has the potential to affect both institutional and civil society voices, hindering social understanding of the environment and making it more difficult to resolve disputes.*

*The IACHR and its RELE, in addition, took note of the various acts of violence reported by the State against public agents and public property, (...)*

*However, the State of Ecuador must act on the basis of the lawfulness of protests as a manifestation of the rights of association, freedom of expression and peaceful assembly. The fact that some groups or individuals exercise violence does not, per se, make all protests violent or illegitimate, nor does it allow public authorities to criminalize in a generalized manner or security forces to resort to the use of force or mass arrests.*

*(...)*

*Within the framework of democratic institutions, the State is responsible for guaranteeing the rights and channelling the claims of the population, so it must ensure the strengthening of spaces that address petitions, claims and demands"*<sup>175</sup> .

76. In the face of the demonstrations, the government did not initiate a dialogue, but argued that the social protest was aimed at destroying democracy<sup>176</sup> , disregarding the government's serious lack of legitimacy<sup>177</sup> .

The government's response has been to criminalize protest leaders, establish a state of emergency, not to dialogue, support the forces of law and order, and criminalize democratic debate.

- Criminalization of protest leaders

The day after the general strike, the police arrested the president of CONAIE<sup>178</sup> . The judiciary was once again used to discredit the social movement. The arbitrary detention and criminalization of the leader of the indigenous movement was widely denounced<sup>179</sup> . The Alianza por los derechos humanos Ecuador, of which 13 organizations are members, has made *"an URGENT call to the judiciary to maintain its independence in all procedural actions in which it must intervene. We ask that a rational, proportional and last resort use of criminal law be made, that it be rigorous in the observance of national and international standards on due process and the human rights of indigenous peoples, and above all that it take into account the history of serious human rights violations"*<sup>180</sup> .

<sup>175</sup> OAS, "CIDH y RELE observan con preocupación la agudización de tensiones sociales en Ecuador e instan a un diálogo urgente, inclusivo y efectivo", 24 June 2022, <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/145.asp>

<sup>176</sup> Infobae, "Ecuador's Defense Minister said that "democracy is at serious risk" due to protests against Lasso's government," June 21, 2022, <https://www.infobae.com/america/america-latina/2022/06/21/el-ministro-de-defensa-de-ecuador-dijo-que-la-democracia-esta-en-serio-riesgo-por-las-protestas-contr-a-el-gobierno-de-lasso/>

<sup>177</sup> RFI, "Lasso completes one year in power with popularity on the decline", 24 May 2022, <https://www.rfi.fr/es/am%C3%A9ricas/20220524-lasso-cumple-un-a%C3%B1o-en-el-poder-con-una-popularidad-a-la-baja>

EcuadorEnVivo, "Credibilidad de Lasso en el 12 %, tras un año de gestión", 17 June 2022, <https://ecuadorenvivo.com/index.php/entrevistas/a-primera-hora/item/144506-credibilidad-de-lasso-en-el-12-tras-un-año-de-gestión>

<sup>178</sup> BBS News, "Ecuador police arrest protest leader Leonidas Iza", 14 June 2022, <https://www.bbc.com/news/world-latin-america-61796430>

<sup>179</sup> See in particular, FrontLine Defenders, "Detención arbitraria y criminalización del defensor indígena Leonidas Iza Salazar en el marco de protestas pacíficas en el país", 17 June 2022, <https://www.frontlinedefenders.org/es/case/arbitrary-detention-and-criminalization-indigenous-defender-leonidas-iza-salazar-context>

Inred.org, "Inredh ante la detención ilegal de Leonidas Iza, presidente de la Conaie, y el contexto de movilizaciones", 14 June 2022, <https://inredh.org/inredh-ante-la-detencion-ilegal-de-leonidas-iza-presidente-de-la-conaie-y-el-contexto-de-movilizaciones/>

<sup>180</sup> Alianza por los Derechos Humanos, "Paro nacional - Junio 2022: Pronunciamiento desde la Alianza por los Derechos Humanos sobre las acciones legítimas de protesta social y la respuesta estatal de criminalización por parte del Gobierno Nacional", 14 June 2022, <https://ddh.ecuador.org/sites/default/files/documentos/2022-06/Pronunciamiento%20Alianza%20DDHH%20sobre%20protesta%20social%20Junio%202022%20.%2014.06.22.pdf>



In contrast to this call for restraint, the Ecuadorian Attorney General's Office raided the premises of the Casa de la Cultura Ecuatoriana (CCE), a symbolic place of the indigenous social struggle, following an anonymous complaint<sup>181</sup>.

- State of emergency

The general strike began in Ecuador on June 13, 2022. On June 17, 2022, President Lasso declared a state of emergency (decree n°455), without having initiated any dialogue with CONAIE leaders<sup>182</sup>.

The extent of the restrictions implied by the presidential decree, coupled with police violence and the government's chaotic management of the crisis, led members of the National Assembly to call for a democratic debate on the presidential decree. In response to this announcement, the executive reacted by filing requests for provisional measures before the courts to prevent the parliamentary session from taking place<sup>183</sup>. The President of the Republic, Guillermo Lasso, then pre-empted the National Assembly by revoking his decree n°455 and replacing it with a new decree on June 20, 2022. The debate did not take place due to President Lasso's sudden decision to end the state of emergency on June 25, 2022.

- Lack of dialogue, support for the forces of law and order, criminalization of democratic debate

Despite the strong popular mobilization and the impact of the general strike in the country, President Lasso did not meet with the leaders of the social movement, but instead adopted unilateral measures that were considered unsatisfactory<sup>184</sup>. It was not until June 27, 2022, 14 days after the beginning of the national strike, that the government, under international pressure, held its first meeting with the various leaders of the indigenous organizations<sup>185</sup>. On June 28, 2022, President Lasso announced the suspension of the dialogue.<sup>186</sup>

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<sup>181</sup> El Comercio, "Fiscalía de Ecuador allana la Casa de la Cultura en Quito por paro indígena", 19 June 2022, <https://elcomercio.com.ec/2022/06/19/fiscalia-de-ecuador-allana-la-casa-de-la-cultura-en-quito-por-paro-indigena/>

<sup>182</sup> France24, "Guillermo Lasso declares state of emergency in Ecuador after fifth day of claims", 18 June 2022, <https://www.france24.com/es/am%C3%A9rica-latina/20220618-guillermo-lasso-declara-el-estado-de-excepci%C3%B3n-en-ecuador-tras-quinto-d%C3%ADa-de-reclamo>

<sup>183</sup> El Universo, "Paro nacional: hay dos pedidos de medidas cautelares para que la Asamblea Nacional no se reune y deroga el decreto 455", 20 June 2022, <https://www.eluniverso.com/noticias/politica/paro-nacional-presentan-solicitud-de-medidas-cautelares-para-que-la-asamblea-nacional-no-se-reuna-y-derogue-el-decreto-455-nota/>

<sup>184</sup> Pressenza, "Ecuador: el Paro no para", June 27, 2022, <https://www.pressenza.com/es/2022/06/ecuador-el-paro-no-para/>

<sup>185</sup> El Comercio, "Gobierno llega a reunión con la Conaie en la Basílica", June 27, 2022, <https://www.elcomercio.com/actualidad/politica/conaie-dialogo-ejecutivo-poderes-estado.html>

<sup>186</sup> El Comercio, "Lasso suspends dialogue with Conaie due to attack on military personnel in Shushufindi", June 28, 2022, <https://www.elcomercio.com/actualidad/politica/lasso-suspende-dialogo-conaie-ataque-militares-shushufindi.html>



While refusing to engage in dialogue, the Ecuadorian authorities positioned themselves as victims. They maintained a discourse that discredited and criminalized the social movement, without condemning the serious abuses and police violence, and also suggested without evidence that the protesters were infiltrated by criminal groups<sup>187</sup>.

The June 2022 protests highlighted a serious pre-existing crisis of governance and legitimacy<sup>188</sup>.

The UNES party, which groups together supporters of the Citizen Revolution, then made a political analysis, pointing out that President Lasso did not have the support of Ecuadorians, that his government did not have a majority in the National Assembly and that the country was in a state of serious social unrest, which justified the adoption of presidential decrees establishing a state of emergency. To overcome this crisis, UNES considered it appropriate to use the constitutional mechanism known as "cross death" which implies new presidential and parliamentary elections<sup>189</sup>.

CONAIE is an organization that represents indigenous peoples, but it is not a political party. The political party that brings indigenous demands to the National Assembly is called PACHAKUTIK. On June 25, 2022, PACHAKUTIK announced that, given the lack of dialogue and the brutal repression of demonstrations, it was calling on its members to support the constitutional request for the impeachment of President Lasso. *"Our commitment is with the people, we have demanded dialogue as a way out of the crisis, the response has been repression, today we have the possibility to act from the Legislative"*<sup>190</sup>.

In the face of civil and political criticism, the government has accused, through the press, the "correístas" of having originated the popular protest movement<sup>191</sup> and of being allies of drug trafficking, on the one hand, and on the other hand has insisted that those who support the demand for the president's removal would be coup plotters.<sup>192</sup>

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<sup>187</sup> EcuadorEnVivo, "Lasso announces that he will use all the resources of the public force and accuses Iza of being a coup leader", June 24, 2022, <https://www.ecuadorenvivo.com/index.php/politica/item/145035-lasso-anuncia-que-empleara-todos-los-recursos-de-la-fuerza-publica-y-acusa-a-iza-de-golpista>

<sup>188</sup> In this sense: Primicias.ec, "Revocatoria del mandato contra Lasso avanza silenciosamente durante el paro", 13 June 2022, <https://www.primicias.ec/noticias/politica/revocatoria-mandato-lasso-paro-nacional/>

<sup>189</sup> Constitution of Ecuador (2008), [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf)

Article 130 of the Ecuadorian Constitution:

*"The National Assembly may remove the President of the Republic from office in the following circumstances following cases:*

*(...)*

*2. Due to serious political crisis and internal commotion*

<sup>190</sup> [https://twitter.com/PK Nacional18/status/1540755980161622016?ref\\_src=twsrc%5Etfw](https://twitter.com/PK Nacional18/status/1540755980161622016?ref_src=twsrc%5Etfw)

<sup>191</sup> EcuadorEnVivo, "Villavicencio: Esta intentona golpista es liderada por el correísmo desde Bélgica", May 23, 2022, <https://ecuadorenvivo.com/index.php/politica/item/144935-villavicencio-esta-intentona-golpista-es-liderada-por-el-correismo-desde-belgica>

<sup>192</sup> El Universo, "'Este es el golpista", le responde el presidente Guillermo Lasso a Rafael Correa sobre propuesta de revocatoria de mandato", 23 June 2022, <https://www.eluniverso.com/noticias/politica/este-es-el-golpista-le-responde-el-presidente-guillermo-lasso-a-rafael-correa-sobre-propuesta-de-revocatoria-de-mandato-nota/>

There is no reason to believe that the correístas originated the protest movement against President Lasso. This rhetoric is used to link the indigenous social movement with an "enemy" already fabricated by lawfare (see above). The unfounded accusation<sup>193</sup> of a link between the correístas and drug trafficking<sup>194</sup> is also intended to delegitimize and discredit social protest and avoid debate and consideration of the economic and social problems that justified the magnitude of the protests.

As for the use by the National Assembly of the prerogative offered by a constitutional provision, this can in no way be considered a coup d'état, since it is a legal solution to the crisis in Ecuador. The government's discourse<sup>195</sup> was clearly demagogic. However, continuing with the lawfare approach, a criminal investigation was opened against the numerous parliamentarians who favoured the use of the "cross death" mechanism<sup>196</sup>.

After several days of debate in the National Assembly, a vote was held on the presidential impeachment request: 80 parliamentarians - the two largest parties in the country, UNES and PACHAKUTIK - voted in favour, 40 voted against and 9 parliamentarians abstained. The National Assembly has 137 members. President Lasso's CREO party has 12 deputies. All parliamentarians accepted the vote, in accordance with fundamental democratic principles.

Some media presented this result as a "victory" for President Lasso<sup>197</sup>. However, it reflects an unprecedented governmental crisis.

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<sup>193</sup> Ministry of Government Ecuador, "The Department of Justice through the US DEA decorates Minister Serrano for his management in the fight against drugs", 2016, <https://www.ministeriodegobierno.gob.ec/el-departamento-de-estado-de-eeuu-condecora-al-ministro-serrano-por-su-gestion-en-la-lucha-antidrogas/>

*"In the last 6 and a half years, 191 % more drugs have been seized on average per year than in the previous 10 years. 332 metric tons of drugs from 2010 to date, versus 268 from 2000 to 2009. We have seized practically the same amount in approximately 6 and a half years as in 19 years".*

<sup>194</sup> El Universo, "Declaración del presidente Guillermo Lasso enfureció a Rafael Correa", June 23, 2022, <https://www.eluniverso.com/noticias/politica/declaracion-del-presidente-guillermo-lasso-enfurecio-a-rafael-correa-nota/>

Also reproduced: El Universo, ""Este es el golpista", le responde el presidente Guillermo Lasso a Rafael Correa sobre propuesta de revocatoria de mandato", 23 June 2022, <https://www.eluniverso.com/noticias/politica/este-es-el-golpista-le-responde-el-presidente-guillermo-lasso-a-rafael-correa-sobre-propuesta-de-revocatoria-de-mandato-nota/>

See also: El Comercio, "Correísmo denuncia a Ministro Carrillo y pide su comparecencia en Asamblea",

<sup>195</sup> SwissInfo, "Lasso accuses Correísmo of trying to "assault democracy" in Ecuador", [https://www.swissinfo.ch/spa/ecuador-gobierno\\_lasso-acusa-al-corre%C3%ADsmo-de-intentar--asaltar-la-democracia--en-ecuador/47711392](https://www.swissinfo.ch/spa/ecuador-gobierno_lasso-acusa-al-corre%C3%ADsmo-de-intentar--asaltar-la-democracia--en-ecuador/47711392)

<sup>196</sup> EcuadorEnVivo, "Villavicencio: Esta intentona golpista es liderada por el correísmo desde Bélgica", May 23, 2022, <https://ecuadorenvivo.com/index.php/politica/item/144935-villavicencio-esta-intentona-golpista-es-liderada-por-el-correismo-desde-belgica>

<sup>197</sup> ABS International, "Lasso retains presidency and defeats opposition Correa", June 29, 2022, [https://www.abc.es/internacional/abci-lasso-retiene-presidencia-y-derrota-correismo-opositor-202206290642\\_noticia.html](https://www.abc.es/internacional/abci-lasso-retiene-presidencia-y-derrota-correismo-opositor-202206290642_noticia.html)

77. In the end, despite the announcement of the refusal to dialogue with the president of the Conaie<sup>198</sup>, the government had to agree to sit at the negotiating table.

After 18 days of uninterrupted general strike and protests, an "Act for Peace" was signed, putting an end to the demonstrations and conceding some of the demands of the indigenous associations. The agreement provided for the continuation of negotiations in a peaceful atmosphere<sup>199</sup>.

The government's virulent attacks, widely publicized by the press, against R. CORREA DELGADO<sup>200</sup>, the UNES party, and CONAIE representatives<sup>201</sup> have not stopped. They vitiate the debate and undermine the right of Ecuadorians to a democratic and constructive resolution of their important points of concern.

78. Ecuador is currently undergoing a profound social, economic, security, political and democratic crisis.

The recent management of this crisis has seriously violated the fundamental rights and freedoms of Ecuadorians (right to live with dignity, right to health, freedom of expression and demonstration, right to life, right to respect for physical integrity, right to a fair trial, freedom to exercise political rights).

## **VII. Organization of a new referendum (2022): new fears of deinstitutionalization and politicization of the justice system**

79. In the midst of a crisis of legitimacy and governability, President Lasso announced in September 2022 his intention to call a new referendum.

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<sup>198</sup> ABS International, "Lasso retains presidency and defeats opposition Correa", June 29, 2022, [https://www.abc.es/internacional/abci-lasso-retiene-presidencia-y-derrota-correismo-opositor-202206290642\\_noticia.html](https://www.abc.es/internacional/abci-lasso-retiene-presidencia-y-derrota-correismo-opositor-202206290642_noticia.html)

<sup>199</sup> Government of Ecuador, "Finaliza paro en Ecuador, se firma acta por la paz", June 30, 2022, <https://www.presidencia.gob.ec/finaliza-paro-en-ecuador-se-firma-acta-por-la-paz/>

<sup>200</sup> For example: La Nacion, "El embajador de Ecuador en la Argentina apuntó contra Correa, Venezuela y Cuba por las protestas en su país: Son regímenes del mal", 1 July 2022, <https://www.lanacion.com.ar/el-mundo/el-embajador-de-ecuador-en-la-argentina-apunto-contra-correa-venezuela-y-cuba-por-las-protestas-en-nid01072022/>

El Comercio, "Guillermo Lasso: Correa 'is desperate to return to Ecuador to achieve impunity'", 18 July 2022, <https://www.elcomercio.com/actualidad/politica/lasso-correa-desesperado-regreso-ecuador-impunidad.html>

Expreso.ec, "Maniobras desestabilizadoras tejidas de varios frentes", July 9, 2022, <https://www.expreso.ec>

<sup>201</sup> For example: Rfi, "Indígenas de Ecuador niegan acusación del presidente que se financian con el narco", 10 July 2022, <https://www.rfi.fr/es/m%C3%A1s-noticias/20220709-ind%C3%ADgenas-de-ecuador-niegan-acusaci%C3%B3n-del-presidente-que-se-financian-con-el-narco>

GK, "Conaie: declaraciones de Lasso ponen en riesgo los acuerdos", 9 July 2022, <https://gk.city/2022/07/09/declaraciones-lasso-conaie-riesgo-acuerdos/>

The government justifies this new referendum by the need to improve security, the institutional framework of Ecuador and the protection of natural resources<sup>202</sup>, naturally laudable objectives.

Unfortunately, as in 2018, it quickly became clear that affirmative answers to the questions posed would not solve the serious problems facing Ecuador but would increase the risk of human rights abuses and violations, the lack of representativeness of certain citizens, and the politicization of institutions that should be independent. This is a matter of great concern, which constitutes one more step towards the disintegration of the rule of law.

80. The first concern is the *modus operandi* that the Government will adopt in relation to the necessary constitutional control of the questions asked in a referendum.

Indeed, on September 12, 2022, President Lasso presented the eight questions to which he wants the Ecuadorian people to answer "yes" or "no":

*" 1. Currently, the Armed Forces cannot support the National Police in the internal protection and maintenance of public order. Do you agree with allowing the complementary support of the Armed Forces in the functions of the National Police to combat organized crime, by amending the Constitution in accordance with the provisions of Annex 1?*

*2. Extradition of Ecuadorians is prohibited for all crimes, including those related to transnational organized crime such as drug trafficking, arms trafficking, human trafficking and migrant smuggling. Do you agree with allowing the extradition of Ecuadorians who have committed crimes related to transnational organized crime, through processes that respect rights and guarantees, amending the Constitution in accordance with Annex 2?*

*3. Currently, the Judiciary Council selects, evaluates, promotes, trains and sanctions prosecutors, despite the fact that the Prosecutor General's Office is an autonomous body. Do you agree with guaranteeing the autonomy of the Prosecutor General's Office, so that it selects, evaluates, promotes, trains and sanctions its employees through a Prosecutor Council, amending the Constitution in accordance with Annex 3?*

*4. At present, the National Assembly is made up of 137 assembly members and it is estimated that, with the population census of 2022, this number will increase to*

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<sup>202</sup> Reuters, "Ecuador plans referendum to cut to assembly seats, fight drug trafficking", 12 September 2022, <https://www.reuters.com/world/americas/ecuador-plans-referendum-cut-assembly-seats-fight-drug-trafficking-2022-09-12/>

Also: "Constitutional reforms related to the fight against insecurity, the quality of institutions, especially the National Assembly and the Council of Citizen Participation and Social Control (PSC), and other environmental policies are proposed" - El Universo, "Estas son las preguntas del referéndum impulsado por el gobierno de Guillermo Lasso", September 12, 2022, <https://www.eluniverso.com/noticias/politica/estas-son-las-preguntas-del-referendum-impulsado-por-el-gobierno-de-guillermo-lasso-nota/>

*approximately 152 assembly members. Do you agree with reducing the number of assembly members and that they be elected according to the following criteria: 1 assembly member per province and 1 additional provincial assembly member for every 250,000 inhabitants; 2 national assembly members for every million inhabitants; and 1 assembly member for every 500,000 inhabitants residing abroad? 2 national assemblymen for each million inhabitants; and 1 assemblyman for each 500,000 inhabitants residing abroad, amending the Constitution according to Annex 4?*

*5. There are currently 272 political movements in Ecuador. These do not guarantee citizen representation, nor adequate participation of their members. Do you agree with requiring political movements to have a minimum number of members equivalent to 1.5% of the electoral registry of their jurisdiction and obliging them to keep a registry of their members periodically audited by the National Electoral Council, amending the Constitution in accordance with Annex 5?*

*6. The Council of Citizen Participation and Social Control (CPCCS) is a public entity that currently has the power to appoint 77 authorities. Do you agree with eliminating the power to appoint authorities that the CPCCS has and implementing processes that guarantee meritocracy, public scrutiny, collaboration and control of different institutions, so that the National Assembly will be the one to appoint through these processes the authorities currently elected by the CPCCS and its advisors, amending the Constitution in accordance with Annex 6?*

*7. The Constitution excludes water protection areas from the National System of Protected Areas, so they do not enjoy its protection. Do you agree with the incorporation of a subsystem of water protection to the National System of Protected Areas, amending the Constitution in accordance with Annex 7?*

*8. The Constitution does not provide for compensations to those who support the generation of environmental services. Do you agree that individuals, communities, peoples and nationalities, may be beneficiaries of compensations duly regularized by the State, for their support to the generation of environmental services, by amending the Constitution in accordance with Annex 8?"*

As required by law, the Government first submitted its proposed questions to the Constitutional Court to evaluate their legal and constitutional relevance. In principle, the Constitutional Court has 20 days to make its evaluation. However, it seems extremely difficult, if not impossible, for the Constitutional Court to meet this deadline, given that the annex of the questions is a 470-page document.

There are therefore strong fears that, as in 2018 (see above), the Government will dispense with the constitutionality opinion. This approach was strongly criticized by several international bodies. Moreover, the need for such lengthy explanations is an indication of the complexity of

the issues and of the project that is hidden, so it is likely that the average citizen would not be able to vote with full knowledge of the facts.

However, the process to be followed is not the only source of concern. From a cursory analysis it is immediately apparent that affirmative answers would lead to consequences contrary to the objectives supposedly pursued. It is worth clarifying that the transcribed text on the questions is referential and that the annex announced in each one of them is the one that details the true scope and intentions of the consultation.

81. We believe it is important to call attention to the risks involved in some of the questions that the government intends to ask Ecuadorian citizens.

The first question reads:

*"1. Currently, the Armed Forces cannot support the National Police in the internal protection and maintenance of public order. Do you agree with allowing the complementary support of the Armed Forces in the functions of the National Police to combat organized crime, amending the Constitution in accordance with the provisions of Annex 1?"*

In theory, it is intended to improve the security of Ecuadorians.

However, it is worrying to pose such a question, the answer to which would increase the "militarization" of police action, without having previously implemented a government action plan against the increase in violence with the tools that Ecuadorian leaders already possess, and without having developed a strategy to tackle the main cause of the increase in violence: the impoverishment of the population and the increase in social inequalities (see above). It is really simplistic - although from a communication point of view very promising - to state that *"The current situation of violence and insecurity in Ecuador is largely caused by the presence of organized crime, which has become increasingly strong in recent years"*<sup>203</sup>.

Opting for the path of increased repression proposed by this question should only be done as a subsidiary option, after all other options have been explored. This is not the case. The question seems, therefore, demagogic, as it pretends to give the appearance of an answer to an extremely complex problem that will be impossible to contain by this means.

Moreover, the measure may be worrisome if one recalls that during the June 2022 demonstrations, the leaders of the social protest and their movements were labelled as criminals, as organized groups linked to drug trafficking.

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<sup>203</sup> Annex to the referendum questions, p.17



In addition, the Constitution of Ecuador itself provides that a constitutional reform as proposed in this question cannot be carried out through a popular consultation, as the President intends. Thus, there is a possibility that this question will not pass constitutional control due to its form.

82. The third question is even more problematic.

Consultation:

*"3. Currently, the Judiciary Council selects, evaluates, promotes, trains and sanctions prosecutors, despite the fact that the Prosecutor's Office is an autonomous body. Do you agree with guaranteeing the autonomy of the Prosecutor General's Office, so that it selects, evaluates, promotes, trains and sanctions the servants that make it up through a Prosecutorial Council, amending the Constitution in accordance with Annex 3?"*

The reaction of the Council of the Judiciary was immediate:

*On her hand, María Josefa Coronel, director of the Judiciary Council in Guayas, told CNN Spanish edition, that the proposal to remove functions from this institution is "disconcerting" and causes a duplication of competencies.*

*"My first reaction is one of bewilderment. The appropriate thing to do would be to leave justice free. A Judiciary Council has already been structured; if something does not work, we must verify why it does not work (...) Furthermore, Director Coronel pointed out that in the midst of the justice crisis in the country, the Judiciary Council must be strengthened. "They intend to create another council to guarantee fiscal autonomy when the Prosecutor's Office is autonomous", she specified"<sup>204</sup>.*

Basically, a positive answer to this question would lead to a situation contrary to the principle that judges cannot control themselves and that it is more appropriate for an independent body to be in charge of discipline. This principle is intended to guarantee the principle of independence of the judiciary. The Prosecutor's Office is part of the judiciary, so the Council of the Judiciary is the body in charge of selection, evaluation and enforcement of discipline.

The proposal, better described in the annex, goes in a direction that would give the Attorney General much more power than he currently has. He would become the disciplinary authority of all his subordinates. He could be completely transformed into an arm of political interest, over which no external control could be exercised. In the context of the lawfare described above, this proposal is alarming. What prosecutor would still dare to act with the independence and impartiality that his function requires?

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<sup>204</sup> CNN, "Ecuador's president proposes a list of questions for popular consultation," September 12, 2022, <https://cnnespanol.cnn.com/2022/09/12/ecuador-pliego-preguntas-consulta-popular-orix/>

Concern is heightened by the fact that this is the only issue for which there is no deadline for the National Assembly to proceed with the reform of the law should it be approved. The text of the annex establishes that the referendum proposal would be directly applicable, requiring only the adoption of a regulation by the current Attorney General.

83. Regarding the composition of the National Assembly, the following question is proposed:

*"4. At present, the National Assembly is composed of 137 assembly members, and it is estimated that, with the population census of 2022, this number will rise to approximately 152 assembly members. Do you agree with reducing the number of assembly members and that they should be elected according to the following criteria: 1 assembly member per province and 1 additional provincial assembly member for every 250.000 inhabitants; 2 national assemblymen for each million inhabitants; and 1 assemblyman for each 500,000 inhabitants residing abroad, amending the Constitution in accordance with Annex 4?"*

This issue seems to have been included to satisfy the growing voices in Ecuador against the inefficiency of the legislative branch and the abuses committed by some of its members. It seems, therefore, demagogic, since it is clear that reducing the number of parliamentarians will not solve these problems.

More fundamentally, it appears that its implementation will reduce the number of parliamentarians to one for the provinces which currently have two representatives. As E. RON explains, this modification is detrimental to the representativeness and plurality of the National Assembly, without providing any solution to the problem mentioned<sup>205</sup>. It will not have a positive impact, but risks concentrating power in the hands of a single person in these small provinces, which paradoxically could create an increase in the deficit of confidence in the legislative branch. In fact, as has been revealed in recent weeks, there is a possibility that this concentration and contraction of representation could increase the possibility of committing acts of corruption due to the disposition or hoarding of votes in parliament.

84. The fifth question is detrimental to political freedom and its diversity:

*"5. Currently there are 272 political movements in Ecuador. These do not guarantee citizen representation, nor adequate participation of their members. Do you agree with requiring political movements to have a minimum number of affiliates equivalent to 1.5% of the electoral registry of their jurisdiction and obliging them to keep a registry of their members periodically audited by the National Electoral Council, amending the Constitution in accordance with Annex 5?"*

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<sup>205</sup> E. Ron, electoral political expert, [https://www.facebook.com/jimmyjairala/videos/443760157731296/?extid=WA-UNK-UNK-UNK-AN\\_GK0T-GK1C&ref=sharing](https://www.facebook.com/jimmyjairala/videos/443760157731296/?extid=WA-UNK-UNK-UNK-AN_GK0T-GK1C&ref=sharing)

This proposal proposes to eliminate the institution of the "*permanent adherent*" and constitutionalizes the requirement of affiliates equivalent to at least 1.5% of the electoral roll in order to be recognized as a political party or movement. It also seeks that the electoral control body be stricter with the systems of verification of signatures of affiliates, and that these be permanent and continuous.

Making it difficult to create and maintain political structures does not seem to be in line with the objective of guaranteeing citizen representativeness.

85. All of the above highlights the demagogic nature of the referendum planned by President Lasso as a means of promoting the image of a man who acts while his government is paralyzed without sufficient support in parliament.

However, beyond this demagoguery, the project behind the planned referendum is extremely serious for democracy and is in line with the dismantling of the previous 2018 referendum (see above).

The danger lies existentially in question number 6:

*"6. The Council of Citizen Participation and Social Control (CPCCS) is a public entity that currently has the power to appoint 77 authorities. Do you agree with eliminating the power to appoint authorities that the CPCCS has and implementing processes that guarantee meritocracy, public scrutiny, collaboration and control of different institutions, so that it is the National Assembly that appoints through these processes the authorities currently elected by the CPCCS and its counsellors, amending the Constitution in accordance with Annex 6?"*

It changes the appointing body of the control authorities, from the CPCCS as it is now, to the National Assembly. In general, all authorities to be elected by the Assembly would come from shortlists presented by the Executive. The Superintendencies and the Attorney General would not be elected from shortlists but from fixed names proposed by the President for consideration by the Assembly<sup>206</sup>. The other authorities would come from shortlists to be chosen by the President himself, from 6 names that would come from different sources. In the case of the Prosecutor's Office, for example, they would come from pairs proposed by the National Court of Justice, the Prosecutor's Office itself and the President. For the Comptroller's Office, they would come from pairs presented by the National Court of Justice, the Comptroller himself and the President.

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<sup>206</sup> As in the U.S. Supreme Court, which recently demonstrated its political character in a decision contrary to all precedents that normally bind judges - BBC News, "Abortion in the U.S.: Supreme Court overturns Roe v. Wade and eliminates constitutional right to terminate pregnancy nationwide," June 24, 2022, <https://www.bbc.com/mundo/noticias-internacional-61806107>

What is most striking is that the proposal intends to grant the President practically unlimited powers, since a nomination initiative could only be denied with two thirds of the members of the Assembly<sup>207</sup>, a quorum that is very difficult to obtain. Furthermore, if the votes to deny the nomination or the nomination proposal were to be obtained, the President would have to send another proposal, which, in order to be denied again, would require  $\frac{3}{4}$  of the votes against the members of Parliament, a quorum impossible to obtain.

Also, the term to decide on the suitability of a candidate is very short: only 15 days for a Commission to analyse the probity of three persons and for the Plenary of the National Assembly to pronounce itself. In case of administrative silence, the proposal becomes effective by operation of law.

So, the proposal is a *carte blanche* to the President to appoint whoever he wants to assume the functions of control authority. The only exception would be the manner of election of the members of the CPCCS, who would come from a list of 18 persons proposed by the Attorney General's Office.

This is very serious for the rule of law and the preservation of the independence of the different powers among them, including the judiciary, which serves to ensure the protection of the rights of Ecuadorians against, among others, the administration. A serious politicization of public institutions. Furthermore, there is no logic or explanation in leaving the nomination of the members of the CPCCS to the Attorney General's Office. The link between citizen participation and the protection of public order is not understood, so that the Attorney General's Office is granted this privilege.

Concretely, this reform will mean that President Lasso - who criticizes the absence of appointment of some charges by the CPCCS<sup>208</sup> - could become a dictator by empowering him to appoint by hand those authorities who, as of the date of the consultation, have not been appointed.

This proposal clearly violates the principle of separation of powers, judicial independence, increases the politicization of the public service, arbitrariness and the risks of abuse of functions as well as lawfare.

86. After the dramatic consequences of the illegal referendum of 2018, it is extremely worrying to note that, in order to give himself the image of a man who takes action, the President of the Republic proposes to organize a new referendum, demagogically constructed, promising further politicization of justice and other instances of State control.

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<sup>207</sup> By comparison, in the U.S., it is denied only with a simple majority.

<sup>208</sup> Maintains that there are 10 authorities in extended functions. Acknowledges how the current CPCCS has failed to comply with its functions (see section 662 of the annex).

No one should forget that the rule of law is not an abstract concept. Its safeguarding is closely linked to the preservation of all individual rights and freedoms, which must be guaranteed to all without discrimination based on race, religion, ethnicity, political affiliation, etc.

Unfortunately, this report shows that the dismantling of the rule of law has gone hand in hand with the deterioration of the political, civil, economic and social rights of Ecuadorians. This situation is demonstrated by the attempt to unbalance the system of weights and counterweights, giving prevalence to the executive function so that it can interfere in the rest of the powers of the state.

87. A consultation approach that seeks to avoid the ideal channels established for this type of amendment.

Despite the fact that the Constitution of the Republic is clear in establishing the mechanism through which constitutional amendments can be made, it is evident that the proposal made by the President of the Republic in the first questions is not appropriate through a popular consultation.

Certain amendments require participation for treatment and debate in the National Assembly. Considering that it does not have the support of the legislative body, we infer that it intends to deceive the Constitutional Court by trying to insert them through consultation with the electorate. The truth is that in identical cases such as those raised in questions 1 and 6, it has been the same Court that has determined the suitable methods of constitutional reform<sup>209</sup>.

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<sup>209</sup> Ruling No. 018-18-SIN-CC of August 01, 2018 analyzed several constitutional reforms among which was the possibility of providing the Armed Forces with the constitutional capacity to contribute to the internal security of the country (similar to what is intended to be consulted with question 1). The resolution observes that the amendment process with the participation of the National Assembly was the ideal one, however each point that was proposed to be amended, should be voted individually and not as a block; and it was due to this last observation that finally the unconstitutionality of the amendment was declared, as observed in the operative paragraphs of that sentence:

"3. In exercise of the power enshrined in Article 436 numerals 1 and 2 of the Constitution of the Republic, in accordance with Article 76 numerals 4, 5 and 6 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, the unconstitutionality is declared by the form of the amendments to the Constitution of the Republic of Ecuador, approved by the National Assembly of Ecuador on December 03, 2015, with the exception of the constant amendments in Articles 2 and 4 that modified Articles 114 and 144 of the Constitution of the Republic, by virtue of the fact that they were repealed by effect of the promulgation of the results of the referendum and popular consultation carried out on February 4, 2018, in Official Gazette Supplement No. 180 of February 14, 2018. (...)

5. In exercise of the powers provided for in Article 436 numerals 1 and 6 of the Constitution of the Republic, it dictates the following jurisprudential rule, which shall be in force until the National Assembly regulates the procedure for the approval and voting of constitutional amendments of initiative of the National Assembly: In the processing of the draft constitutional amendment of initiative of the National Assembly, provided for in Article 441 numeral 2 of the Constitution of the Republic, the amendment vote by the National Assembly shall be carried out under the principle of democratic deliberation, with respect to each of the proposed articles, being prohibited the voting by block of the proposal."

In sentence No. 4-19-RC/19, the Court already resolved the issue regarding the elimination of the Council of Citizen Participation and Social Control (similar to what is now intended with question 6 of the popular consultation). Textually, it observed that the popular consultation was not the ideal constitutional means to implement this amendment, as can be read in the following lines:

Keeping coherence with the precedent pronouncements of the Court, it should ratify them and deny the possibility of consulting the people on certain issues.

## VIII. Conclusion

88. This report highlights the serious violations by the Ecuadorian State of the founding principles and essential values of the International Community and Human Rights Organizations<sup>210</sup>.

International current affairs demonstrate the international community's interest in actively engaging on these issues in order to anticipate and prevent the development of partnerships with states that do not share or violate the fundamental rights and freedoms that are at the core of democracies.

The attention paid by the international community is also a favourable factor for the citizens of partner states, respect and development of the fundamental values of our democracies.

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"V. Opinion.- 45. In merit of the foregoing, administering constitutional justice and by mandate of the Constitution of the Republic of Ecuador, the Plenary of the Constitutional Court rules: 45.1. In general, the reform procedure, established in art. 442 of the Constitution is apt for the issuance of the norms contained in the project under review, whose main topics were summarized in paragraphs 5 to 7 above, aimed at the elimination of the Council of Citizen Participation and Social Control, the redesign of the Legislative Function to make it bicameral; and the relocation of the State Attorney General's Office outside the Judicial Function to give it more autonomy."

<sup>210</sup> Fundamental rights and freedoms protected by the European Charter of Fundamental Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



