



**Committee to Protect Journalists, Fundamedios, and PEN International
Joint Contribution to the 13th session of the Working Group
of the Universal Periodic Review
Submission on the Republic of Ecuador**

The Committee to Protect Journalists, Fundamedios, and PEN International welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the climate for free expression and press freedom in Ecuador. This joint submission serves to underscore our shared concern over the deteriorating situation for press freedom during the last five years.

I. INTRODUCTION

1. Since President Rafael Correa took office in 2007, sweeping changes in laws, government policies, and new and proposed regulations have turned Ecuador into one of the region's most restrictive nations for the press.
2. In that time, the Ecuadoran government has built an alarming record of official censorship and anti-press harassment that includes the use of criminal and civil defamation suits to silence critics; a new constitution and new legislation that restrict the media; ballot measures with potentially far-reaching effects on news content and the diversity of media ownership; and a growing state media operation that serves to broadcast government opinions and discredit critics.
3. Local press freedom advocates are deeply concerned. The Andean Foundation for Media Observation & Study, known as [Fundamedios](#), has documented more than 380 free press violations from January 2008 through July 2011. From 22 documented cases in 2008, abuses spiraled to 151 in 2010 and may exceed that level in 2011.
4. This submission relies upon extensive research by the Committee to Protect Journalists (CPJ) and local partners. In addition to its investigation, CPJ also sought to meet with members of the Correa administration during an April 2011 fact-finding mission, but the government did not respond to that request.

II. ATTACKS ON THE PRIVATE MEDIA

A. Use of defamation laws to silence critics

i. criminal defamation provisions

5. CPJ, Fundamedios, and PEN are especially troubled that government officials have filed a series of criminal defamation complaints against independent journalists that have a chilling effect upon free expression.

6. President Correa himself lodged a criminal complaint against three executives and an editor of the Guayaquil-based newspaper *El Universo* in March 2011 in connection with an opinion piece that referred to the president as “the dictator.” The author, opinion editor Emilio Palacio, alleged that President Correa had ordered troops to fire “without warning” at a hospital even though it was “full of civilians and innocent people” during a violent labor standoff with national police in September 2010. In that standoff, police officers angered by planned pay cuts effectively barricaded Correa in a hospital for about 12 hours, prompting the government to summon troops to the scene. The nationwide police protests—which led to three fatalities, dozens of injuries, and the shutdown of airports and highways—also marked a low point in government restrictions on the news media. At the height of the crisis, the communications secretary ordered broadcasters to halt their own news reports and carry only state news programming for about six hours.

7. Shortly before the defamation trial began, Palacio stepped down from *El Universo* hoping that his resignation would prompt President Correa to withdraw his complaint. The newspaper’s directors also offered to print a correction and invited the president to write it himself. President Correa rejected the idea. Less than 24 hours after the trial started, a Guayaquil judge [sentenced](#) the four defendants to jail for three years each and ordered them and *El Universo* to pay a total of \$40 million in damages. All four defendants appealed the decision. President Correa also appealed, seeking \$80 million in damages, money he insisted he would use to support Yasuni National Park in the northeast corner of Ecuador.

8. Other Ecuadoran officials [have also used](#) the country’s criminal defamation provisions to retaliate against critical journalists. In the northern city of Esmeraldas, radio journalist Walter Vite Benítez was [sentenced](#) in May 2011 to a year in prison on criminal defamation charges related to his critical comments about a local mayor’s performance. (A subsequent court decision led to Vite’s release, although the narrow ruling found only that the statute of limitations had expired.) In 2008, journalists Freddy Aponte and Milton Nelson Chacaguasay Flores [were jailed](#) on criminal defamation charges related to critical comments about local officials. Both journalists were later released after serving most of their prison terms.

9. Ecuador’s criminal defamation laws run counter to the emerging consensus in Latin America that civil remedies provide adequate redress in cases of alleged libel or slander. In a region where the imprisonment of journalists has become rare, these criminal prosecutions are a serious concern.

10. Regional precedent also provides that public officials should not enjoy protection from public scrutiny. “Public officials are subject to greater scrutiny by society,” states the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights in 2000. “Laws that penalize offensive expressions directed at public officials restrict freedom of expression and the right to information.”

ii. Disproportionate fines in civil defamation suits and a chilling effect

11. President Correa has also used civil suits to silence critics. He filed a \$10 million defamation lawsuit against investigative journalists Juan Carlos Calderón and Christian Zurita, authors of the book *El Gran Hermano* (The Big Brother). The book, which was an investigation into official corruption, was first published in a six-part 2009 series in the Quito-based daily *Expreso* and alleges that companies belonging to President Correa’s older brother had obtained \$600 million in state contracts, an apparent violation of Ecuadoran law barring presidential family members from using their relationships for economic gain. Although President Correa canceled the contracts and said he was unaware of the arrangements, he preempted all broadcast programming three times to give presidential addresses that discredited the book and its authors. These preemptions, known as *cadenas* and traditionally used to deliver information in times of crisis, have become a forum for political messages.

12. The authors of the book are straining under the financial and professional costs imposed by the civil suit, which is pending at the time of this writing. The threat of damages of such magnitude has a chilling effect on the wider Ecuadoran media and stifles its ability to report on corruption and government transparency. “Official intimidation is fostering a climate of self-censorship among some media and colleagues,” author Juan Carlos Calderón said. “Some media are not covering and following accusations of official corruption made by the political opposition.”

B. Creating a legal framework to restrict the media

13. The current government has also created an elaborate legal framework to restrict news media, beginning with the adoption of a new constitution in 2008. The revised constitution enabled President Correa to seek re-election through 2017 and expanded executive power over the legislative branch, the judicial branch, and economic policy.

14. Press freedom advocates cited concerns with two specific provisions in the 2008 constitution. Article 19 opened the way for government intervention in news media, stating: “The law will regulate the prevalence of informational, educational, and cultural content in the media’s programming and will promote the creation of spaces for national and independent producers.” Similarly, Article 18 grants all individuals the right to “find, receive, exchange, produce, and release truthful, verified, timely, contextualized, and plural information without censorship,” creating a mechanism for the government to restrict information that it disputes.

15. Article 312 of the constitution paved the way for new controls over media ownership by barring bankers from owning media companies—a provision media analysts believe specifically

targeted the television station Teleamazonas, which has frequently been critical of the administration. The law had an immediate effect: in September 2010, station owner Fidel Egas, a principal in Pichincha Bank, sold his ownership stake to local, Peruvian, and Spanish investors. Anchor Jorge Ortiz, who hosted the critical political talk show “La Hora de Jorge Ortiz,” resigned from the network a month before the sale was completed, explaining that he did not want to stand in the way of the acquisition.

C. Ballot measures to regulate news content and media ownership

16. The government has also used ballot measures to regulate news content and media ownership. In a May 2011 referendum, voters narrowly approved a series of ballot questions that strengthened executive branch powers, including two measures that harm press freedom. The first ballot question—posed with the prejudicial explanation that “media excesses” needed to be curbed—asked Ecuadorans to approve in principle a communications law that would create a media regulatory council. The precise text of the law must be approved by the National Assembly, which is currently debating the bill.

17. The provisions of the bill are ominous. Article 11, for instance, would forbid “the use of violent, bloody, and death-related images” in news coverage deemed to have insufficient context, and the new regulatory council would be authorized to determine what is contextual and what is not, a dangerously overbroad mandate. The new council would also regulate radio, television, and print content in broad and vaguely defined areas such as violence, sex, and discrimination, with the ability to unilaterally set penalties for violations. The council’s independence and impartiality is questionable since five of its seven members would either be appointed by the executive branch or chosen from groups with close ties to the executive branch.

18. Although President Correa’s Alianza País party controls the assembly, lawmakers have resisted repressive press measures in the past, rejecting a 2010 effort to enact a restrictive communications law. Now, however, with the new executive powers granted by the referendum, the administration may be able to turn the bill into law.

19. The second ballot measure bars “private national media companies, executives, and main shareholders from holding assets in other companies.” Principals in media companies must divest within two years under the provision, which still requires enabling legislation.

20. Journalists and free press advocates argue that the second measure is intended to weaken the finances of media that oppose government policies. The Ecuadorian Association of Newspaper Editors has already [challenged](#) the provision in the country’s Constitutional Court, arguing that it contradicts existing constitutional guarantees. According to the Association, the ballot measure would eliminate “fundamental rights for media companies, their directors, and shareholders.”

21. Supporters of the measure argue, on the other hand, that it would democratize the media. In published interviews, Communications Secretary Fernando Alvarado said the legislation would promote diversity in the press. President Correa insists he is fighting irresponsible journalism exercised by a small, elite group of media owners who hold too much power and are bent on toppling his administration to further their economic interests.

22. Historically, Ecuadoran broadcast media was controlled by powerful banking groups with close ties to politicians and political power bases. Some broadcasters were criticized, even within the profession, for not vigorously investigating the banking crisis that caused the collapse of several financial institutions in 2000 and cost taxpayers hundreds of millions of dollars. But today's media landscape in Ecuador is much more diverse and vibrant. Radio and television have large audiences, especially in the metropolitan areas of Quito and Guayaquil. Hundreds of radio stations operate around the country, among them numerous community and indigenous broadcasters in provincial regions. Five private television networks—Ecuavisa, Teleamazonas, RTS, Telerama, and Canal Uno—and more than 35 daily newspapers offer a wide range of opinions, analyses, and political perspectives.

23. Yet the Correa administration continues to challenge media owners. In May, President Correa [broadcast a cadena](#) to criticize media companies for holding interests in other businesses, including real estate, tourism, and insurance, and asserted that diverse holdings pose inherent conflicts of interests, accusing the companies of promoting their own business interests in the name of freedom of expression.

D. Building a state media apparatus that is used to discredit critical journalists

24. The Ecuadoran government operates one of the region's most extensive state media operations, a network of more than 15 television, radio, and print outlets that serves largely to promote the policies of the Correa administration.

25. Before the 2007 election, state media consisted of a single radio network, Radio Nacional de Ecuador. In a remarkably short time, the government has erected an extensive state media apparatus. The foundation began with the 2008 government takeover of two private television stations, TC Televisión and Gama TV, and several other media outlets owned by Grupo Isaías, whose principals, Roberto and William Isaías, allegedly owed \$661 million to Ecuador after the 1998 collapse of their banking institution, Filanbanco. The government takeover encompassed nearly 200 other businesses, but the television stations were especially significant since they drew nearly 40 percent of the country's news audience.

26. At the time of the takeover, President Correa promised that his administration would sell the media assets to recover money owed to Ecuadorans, but this has not happened and the networks remain under state control. Moreover, since the takeover, the government has continued investing heavily in state media—the exact amount has not been disclosed—as it built an operation that now consists of several TV stations (TC Televisión, Gama TV, and Ecuador TV, and cable stations CN3 and CD7), radio stations (Radio Pública de Ecuador, Radio Carrousel, Radio Super K 800, and Radio Universal), newspapers (*El Telégrafo*, *PP El Verdadero*, and *El Ciudadano*), magazines (*La Onda*, *El Agro*, *Valles*, and *Samborondón*), and a news agency (Agencia Pública de Noticias del Ecuador y Suramérica). The government considers the former Grupo Isaías outlets to be “confiscated” private media, rather than state-owned, although they are managed by the state.

27. The government uses this expanding network of state-owned media to discredit journalists who oppose the administration's policies. President Correa himself has used his Saturday radio broadcast to launch verbal assaults against media companies and individual journalists. The outlets most frequently targeted are the national dailies *El Universo*, *La Hora*, *El Comercio*, and *Expreso*, along with the television network Teamazonas. Dozens of television, print, and radio journalists have been targeted in personal and derogatory ways. The president has described critics in the press as "ignorant," "trash-talking," "liars," "unethical," "mediocre," "ink-stained hit men," and "political actors who are trying to oppose the revolutionary government."

E. *Cadenas* and coerced rebuttals: commandeering broadcasting for criticism

28. The administration has not confined its message control to state media. Correa makes frequent use of *cadenas*, the presidential broadcast addresses which preempt programming on stations nationwide. From January 2007 to May 2011, Ecuadoran television was preempted 1,025 times for *cadenas* totaling more than 150 hours, according to [Fundación Ethos](#), a nonpartisan Mexico-based research organization. Fundación Ethos explained that *cadenas* had historically been used in Ecuador at times of national emergency, but in the Correa administration had become "a tool for propaganda and confrontation."

29. A "rebuttal" is a process by which the government forces a specific station to air the government's response to critical programming. In at least 15 instances since December 2009, the Correa administration has ordered individual broadcasters to dedicate portions of their news programming to rebuttals. The administration claims that it derives its authority to preempt independent broadcasting for its rebuttals from the country's Broadcasting and Television Law. However, Article 59 of the law authorizes the government to use *cadenas* and rebuttals "exclusively for information regarding the activities of the respective offices, ministries, or public entities." In published comments, Communications Secretary Alvarado has justified the use of *cadenas* on the grounds that they allow the government to convey the "truth" in the face of misinformation. But the government has conflated its own viewpoint with the "truth" and portrayed differing perspectives as "lies," revealing an intolerance of criticism.

30. On October 25, 2011, César Ricaurte, head of Fundamedios, [gave a presentation](#) about freedom of expression in Ecuador along with a coalition of Ecuadoran press freedom groups before the Inter-American Commission on Human Rights. President Correa responded to the presentation by holding a *cadena* to denounce Ricaurte and Fundamedios. Ricaurte subsequently received death threats and now [fears for his life](#). At the time of this writing, Ricaurte and Fundamedios continue to be vilified by the Ecuadoran government. CPJ, Fundamedios, and PEN International condemn the verbal attacks upon Ricaurte and Fundamedios and call for the government to ensure their safety.

III. RECOMMENDATIONS TO ECUADORAN AUTHORITIES

- Stop the use of outdated criminal defamation laws to silence critical journalists, editors, and media executives.
- Repeal criminal defamation laws or enact superseding defamation laws that meet international standards of freedom of expression.

- Halt the use of retaliatory civil defamation lawsuits that silence critical journalists and have a chilling effect upon speech by demanding disproportionate damages.
- Ensure that provisions in the pending communication bill in the National Assembly respect guarantees of freedom of expression enshrined in the constitution and in international covenants ratified by Ecuador.
- Halt or significantly reduce the government's use of *cadenas* to preempt independent coverage and gain unfair access to the broadcast media.
- Use *cadenas* in compliance with Ecuadoran law only for information “regarding the activities of the respective offices, ministries, or public entities.”
- Tolerate media criticism and stop personal attacks aimed at discrediting journalists and their news outlets.
- Halt the use of inflammatory language that labels critics as unprofessional or unethical.
- End systematic campaigns to discredit critical journalists, including campaigns carried out by media outlets sympathetic to the government.