



Генеральная Ассамблея

Distr.: General
14 May 2019
Russian
Original: English

Совет по правам человека

Сорок первая сессия

24 июня – 12 июля 2019 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Посещение Эквадора

Доклад Специального докладчика по вопросу о поощрении и защите права на свободу мнений и их свободное выражение* **

Резюме

Специальный докладчик по вопросу о поощрении и защите права на свободу мнений и их свободное выражение посетил Эквадор с 5 по 11 октября 2018 года во взаимодействии со Специальным докладчиком по вопросу о свободе выражения мнений Межамериканской комиссии по правам человека, который посетил страну в период с 20 по 24 августа 2018 года. Цель этих поездок, которые были организованы по приглашению правительства, состояла в налаживании диалога и выработке рекомендаций для правительства и других заинтересованных сторон в течение переходного периода в стране. В докладе ставится акцент на приоритетах, которые специальные докладчики считают крайне важными для консолидации движения государства к построению такого будущего, которое обеспечит защиту и поощрение свободы выражения мнений. Специальные докладчики приветствуют первые шаги правительства по приведению правовых, стратегических и институциональных рамок Эквадора в соответствие с международными стандартами в области свободы выражения мнений. Мандатарии по-прежнему привержены сотрудничеству с правительством и народом Эквадора в их усилиях по выполнению обязательств государства в соответствии с международным гуманитарным правом.

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I. Introduction

1. Pursuant to Human Rights Council resolution 34/18, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Ecuador from 5 to 11 October 2018 to assess the situation of freedom of expression in the country, at the invitation of the Government. The mission was conducted in coordination with the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Edison Lanza, who visited the cities of Quito and Guayaquil from 20 to 24 August 2018.

2. The Special Rapporteurs are grateful for the cooperation of the Government of Ecuador in facilitating and organizing their visits. During their respective visits, the Special Rapporteurs met with the President, Lenín Moreno, the Minister for Foreign Affairs and other representatives of the executive branch and the judiciary, including the Prosecutor General, the Chief Justice of the National Court of Justice, the Chief Judge of the Provincial Court of Justice of Guayas, the Attorney General of the State, the acting Ombudsperson, the Minister and Deputy Minister of Information and Communications Technologies, the Minister of the Interior, the undersecretary of the Ministry of the Interior responsible for citizen security, a former Minister of Justice, Human Rights, and Religious Affairs and the acting Minister for that portfolio, the national Secretary and Undersecretary for Communication, the President of the National Assembly, the National Assembly committee on collective rights, the general manager of the Medios Públicos company, the Director General of the International Center for Advanced Communication Studies for Latin America, the agency for the regulation and oversight of telecommunications, the Council on the Regulation and Development of Information and Communications, the Superintendent of Information and Communications, the transitional council for citizen participation and social oversight and the transitional judiciary council, among others.

3. The Special Rapporteurs also met with journalists, media representatives, victims of violations of freedom of expression in Ecuador, members of indigenous communities, lawyers, academics, civil society representatives and members of the diplomatic community. The Special Rapporteurs would like to thank those interlocutors for their participation and contribution.

4. The Special Rapporteurs also met with representatives and staff of the United Nations country team and appreciated the support they provided during the visits.

5. The visits show that the State's public institutions are in the midst of a transition to overcome and remedy previous government policies that interfered with freedom of expression. The Special Rapporteurs agree that over the past decade, the Government of Ecuador had stigmatized and persecuted journalists, undermined independent civil society organizations and limited access to information, treating freedom of expression as a privilege rather than an individual right guaranteed by the Constitution and international human rights law.

6. The Special Rapporteurs recognize as significant progress the measures taken by the current Government to put an end to those violations of the right to freedom of expression, and to reverse their effects. They also welcome the measures taken to ensure that the importance of the work of the press and the protection of human rights in a democratic society is publicly recognized through statements by government authorities, public events and the dialogue initiated with these sectors of society.

7. The Special Rapporteurs note, furthermore, that this clear shift requires, in addition to the revision of laws and regulations, long-term commitments to guarantee every individual's right to freedom of expression. This requires a broad commitment to implementation at every level of government, a cultural shift inside and outside public institutions in thinking about open government and citizen participation, and a major effort to destigmatize and promote independent media, the profession of journalism, and community and public media development.

II. International legal standards

8. Article 19 (1) of the International Covenant on Civil and Political Rights, ratified by Ecuador in 1969, states that everyone is to have the right to hold opinions without interference. Article 19 (2) states, *inter alia*, that everyone is to have the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media of his or her choice. In accordance with article 19 (3), any restriction imposed on those rights must be provided by law and be necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health and morals.

9. Ecuador is also party to other United Nations human rights instruments pertaining to the right to freedom of expression, including the International Covenant on Economic, Social and Cultural Rights (ratification in 1969); the Convention on the Elimination of All Forms of Discrimination against Women (ratification in 1981); and the International Convention on the Elimination of All Forms of Racial Discrimination (accession in 1966).

10. At the regional level, Ecuador is party to the American Convention on Human Rights (ratified in 1977), which enshrines freedom of expression, including the right to information, in article 13. Article 13 (2) provides that the exercise of freedom of expression is not to be subject to prior censorship but is to be subject to subsequent imposition of liability, which must be established by law, pursue one of the aims described in article 13 (2) (a) and (b), and be necessary and proportionate to achieve that objective. Article 13 (3) provides that the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

11. The Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights in 2000, states, *inter alia*, that the imposition of obstacles to the free flow of information violates the right to freedom of expression; that prior censorship must be prohibited by law; and that laws penalizing offensive expressions directed at public officials restrict freedom of expression. It also states that journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State. The Special Rapporteurs encourage the recognition and inclusion of these principles in legal reforms seeking to strengthen freedom of expression in Ecuador.

III. Protection of freedom of expression

12. The Special Rapporteurs note that article 11 (3) of the Constitution of Ecuador establishes that the rights and guarantees set forth in the Constitution and in international instruments are to be directly and immediately enforceable by and before any public servant, whether administrative or judicial, *ex officio* or at the request of a party. In addition, article 426 establishes that judges, administrative authorities and public servants are to directly apply the provisions of the Constitution, and those of international human rights instruments when they are more favourable than those set forth in the Constitution, even when they are not expressly invoked by the parties.

13. Furthermore, the Special Rapporteurs welcome the fact that the Constitution contains provisions guaranteeing various aspects of the right to freedom of expression, such as article 66 (6), which affords broad protections for this right by providing that individuals are entitled to and guaranteed the right to express opinions and thoughts freely in all their forms and manifestations. Similarly, the Constitution has a section on information and communications (arts. 16–20), which provides, *inter alia*, that the State shall encourage plurality and diversity in communication. In addition, the Special Rapporteurs underscore article 91, on petition for access to public information, and 92, on habeas data proceedings.

14. The right of access to information is also enshrined in the organic law on transparency and access to public information of 2004, whereby its article 2 establishes that the law guarantees and regulates the exercise of the fundamental right of individuals to information in accordance with the guarantees enshrined in the Constitution, the International Covenant

on Civil and Political Rights, the American Convention on Human Rights, and other international instruments in force to which the country is a signatory.

15. Despite these provisions, a wide range of violations of freedom of expression affected individual victims and society as a whole during the tenure of the previous Government. The Special Rapporteurs acknowledge that, since 2017, the Government has initiated a range of changes to improve the situation for freedom of expression. In that regard, they observe that the President recognized the systemic violation of fundamental rights and freedoms, and undertook to dismantle the situation of repression in areas such as the press, the defence of environmental rights, the rights of indigenous peoples and the political sphere. The Government has also taken the first steps to bring the legal and institutional frameworks, as well as the communications policy of the State, into line with international standards on freedom of expression. For instance, the Special Rapporteurs welcome the fact that the National Assembly passed legislation to amend the Organic Law on Communications in December 2018. The Special Rapporteurs also welcome the decision of the Constitutional Court, of 1 August 2018, to repeal a constitutional provision that had established that communication in all its forms should be understood as a public service regulated by the government, and not as a means to exercise freedom of expression.

16. Notwithstanding the progress observed in Ecuador during the visits, the process of transitioning to a consolidated inclusive democracy that guarantees an autonomous space free of threats for journalists, media outlets, civil society organizations and the opposition must continue and be reinforced. The Special Rapporteurs note that this transition should include the effective participation of all interested parties. In their meetings with journalists, media representatives, civil society organizations, members of indigenous communities and others, the Special Rapporteurs found that nearly a decade of persecution had placed a significant strain on those actors. Journalism as a profession and a fundamental institution of democracy had been undermined and discredited. Valuable members of the profession had been forced to leave journalism or the country for fear of retaliation and a lack of prospects, or had suffered the chilling effect of the aforementioned policies. Similarly, the Special Rapporteurs were informed by academics and journalists who did not share the current administration's politics that a climate of revenge could develop in society, which could have a chilling effect on pluralism and criticism of the current Government.

17. Because of this, the Special Rapporteurs urge the State, in addition to adapting the legal and institutional frameworks, to establish individual reparation measures aimed at providing restitution, compensation and rehabilitation to victims, as well as general measures of satisfaction and guarantees of non-repetition.

IV. Main findings

A. Legal change

1. Communications law

18. The Organic Law on Communications, as enacted in 2013, contained various provisions that violated international standards on freedom of expression and was used as an instrument of persecution and undue restriction, seriously affecting the operations of the media and journalism in Ecuador.

19. Following the visits and as conveyed to the Government in a joint communication on 11 January 2019,¹ the Special Rapporteurs acknowledge and commend the State for passing legislation in December 2018 to amend the Organic Law on Communications and put an end to a number of legal concepts and institutions that flagrantly violated the international principles of the right to freedom of expression. They welcome the express inclusion in the law, through the amendments published on 20 February 2019, of international instruments as guiding criteria for its interpretation and use. They also appreciate the elimination of the control over media content exercised by the Superintendency of Information and

¹ See www.ohchr.org/en/issues/freedomofexpression/pages/legislationandpolicy.aspx (Spanish only).

Communications (the State's former content regulator), the repeal of a series of restrictive provisions on freedom of the press and expression, the barring of indirect measures or mechanisms that may affect this right, and the prohibition of all prior censorship, as well as the establishment of media self-regulation to handle issues of journalistic ethics.

20. Despite these advances, some provisions in the new law warrant reservations under international standards. The Special Rapporteurs note that articles 16 and 17 amend articles 23 and 24 of the original law, granting the rights of correction and of reply to any person affected by media publications. The text adopted provides for the broad and unrestricted exercise of those rights, such that journalists and the media are not in a position to understand their scope and content for the purpose of determining when it is proper to invoke them. In addition, the adopted text essentially maintains article 42 of the 2013 text, which imposes mandatory qualification requirements. The Special Rapporteurs urge the State to take a functional approach to the protection of the practice of journalism and to remove any restrictions on such practice.

21. Furthermore, article 89, relating to article 108 of the 2013 text, establishes the modalities for the allocation of frequencies as follows: (a) direct allocation of frequencies for public media, only when available frequencies are requested; (b) competitive public process for private and community media when the demand for access to frequencies is greater than the availability. On this point, the Special Rapporteurs underline that the State must regulate this provision according to the international standards in the field and respecting the reservation of the spectrum in order to ensure access to community media.

22. The Special Rapporteurs recall that the allocation of frequencies must be guided by democratic criteria and pre-established, public and transparent procedures that can check the potential arbitrariness of the State and guarantee equal opportunities for all persons and sectors concerned.

23. In addition, the eighth transitional provision establishes an automatic renewal of radio and television frequency concessions granted under the law prior to its reform, subject to technical and legal reports from the regulatory authority. The aforementioned provision was cause for concern and rejection by the Coalición de Comunicación Comunitaria y Medios Comunitarios. In order to ensure a transparent and fair process, the Special Rapporteurs urge the State to refrain from using a process whereby current frequencies are automatically renewed. Finally, the Special Rapporteurs welcome the addition of article 42 (1), on the protection of media workers. However, they note that the article contains a general formula that requires robust implementation and the provision of resources by other levels of government.

24. The Special Rapporteurs take note that the President presented his partial objection to the bill approved by the National Assembly last December and exercised his power to veto articles 1, 8, 14, 23, 25, 32, 36 to 39, 41, 66, 69, 71, 77, 79, 82, 87 to 89 and 93, the third, fifth, sixth and eighth transitional provisions, and the repealing provision. They proposed modifications to several of the provisions above in the communication sent to the authorities in January 2019. The President also referred to the legislative branch a bill to amend article 5 of the law, which had not been modified in the amendments approved by the National Assembly, maintaining the concept of communications as a public service. However, several civil society organizations expressed reservations about some of the solutions presented by the President.

2. Penal code

25. The Special Rapporteurs received information on the prosecution of journalists, media outlets and citizens by public officials on the basis of charges such as criminal defamation. According to information received during the visits, such prosecution is due to the vagueness of the provisions contained in the new Comprehensive Criminal Code, enacted in 2014. The Special Rapporteurs note that while the Code reflects substantial progress by decriminalizing "crimes of contempt" and eliminating the offence of criminal insult, it still criminalizes slander, with a formulation that is incompatible with international human rights standards. Similarly, speech attacking a person's honour is still penalized under the Code. The Special

Rapporteurs emphasize that the provisions contained in these articles of the Code are extremely onerous with respect to the exercise of freedom of expression.

26. Article 182 criminalizes slander, defined as the conduct of someone who, by any means, falsely accuses another of a crime, with a penalty ranging from six months to two years of imprisonment. The Special Rapporteurs note that this provision does not meet the requirement of necessity, namely, that it be the option that least restricts the protected right. By excluding evidence of the veracity of claims in cases where a final decision has already been rendered by the criminal justice system, the rule establishes a radical and excessive limitation on the right to freedom of expression in the protection of the right to honour. It is tantamount to an absolute prohibition on referring to certain facts and persons in cases where there is a final judgment of dismissal, which is incompatible with the principles of a democratic system, especially in the case of public officials or those who aspire to be public officials.

27. Article 396, in turn, provides for imprisonment of 15 to 30 days to be imposed on anyone who, by any means, engages in speech that discredits or dishonours someone else. This provision is extremely vague and ambiguous, and therefore has an undeniable discouraging and inhibiting effect on speech. The Special Rapporteurs further observe that the Code contains other problematic offences, such as those established in articles 307 and 322, which provide for penalties of five to seven years of imprisonment for anyone who disseminates false information that results in economic or financial panic. Provisions such as these are bound to have a chilling effect on those commenting on the economy or financial affairs, such as journalists, media outlets and academics.

28. The Special Rapporteurs therefore urge the State to repeal these provisions and adopt relevant provisions in accordance with international human rights law. By deterring speech and the transmission of information, the existing law affects not only journalists and others, but also the amount of information the public is able to receive.

B. Promoting independent journalism

29. The 2013 Organic Law on Communications severely eroded media independence, as did governmental pressures on journalists and reporters under the previous Administration. Self-censorship and apprehension surrounding investigative reporting persists among members of the press, as they continue to fear persecution under the Law, despite its legal and technical reform.

30. The practices of the previous Government have left behind a legacy of public distrust of journalists, and have cast doubt on the existence of a free and independent press. The case of journalist Emilio Palacio and the directors of the newspaper *El Universo* is one of the most emblematic cases of the use of criminal law during the past decade to prosecute and impose example-setting penalties against journalists and columnists. The cases of Fernando Villavicencio and Freddy Aponte are also paradigmatic. While the Government has made efforts towards change, the Special Rapporteurs were informed that a culture in which the role of journalism in a democratic society is not fully understood remains in Ecuador. The Special Rapporteurs are concerned that, as a result of inadequate support for media training in higher education, there is low media literacy and inconsistent application of professional standards. According to information received, journalists in Ecuador still experience low standards of living and the social protections they enjoy are limited.

31. Finally, journalists and media outlets themselves play a critical role in promoting independent journalism and a healthy profession. Despite frustrations with reporting, journalists in Ecuador have not developed a standardized code of professional ethics, or a self-regulatory media accountability and fact-checking system. Restoring public trust in the press and the promotion of independent journalism will require a collective effort from the Government, journalists and the people of Ecuador as a whole.

C. Safety of journalists

32. The Special Rapporteurs agree that the changes in the country's political context in 2017 have had a positive impact on the state of freedom of expression, with a decrease in attacks on journalists in 2018. Nevertheless, they were informed that the right to freedom of expression continued to be at risk, with civil society organizations reporting cases involving physical assaults against journalists and other people who exercise freedom of expression on a regular basis, and attacks on digital rights. While acknowledging the Government's efforts to address this climate of violence against journalists, previously characterized by stigmatizing and denigrating speech, the Special Rapporteurs are concerned about the possibility that cases and acts of violence against journalists remain unpunished, thereby contributing to the occurrence of new cases.

33. The Special Rapporteurs also note that the kidnapping and subsequent murder of the journalist Javier Ortega Reyes, the press photographer Paúl Rivas Bravo and their driver, Efraín Segarra Abril, in 2018 was the most serious attack on the Ecuadorian media by an organized criminal group. In addition to issuing precautionary measures, the Inter-American Commission on Human Rights set up a special follow-up team at the request of Ecuador, outlining the mandate of the team in its resolution 54/2018 of 17 July 2018. The team was officially installed on 25 July 2018, and has been in operation ever since. The Special Rapporteurs condemn this atrocious crime and express their solidarity with the families of the men who were murdered.

34. The Special Rapporteurs note that the attack revealed protection deficiencies in Ecuador, which reportedly has almost no measures or protocols in place to ensure the safety of journalists and media workers. The case also drew public attention to shortcomings in access to public information, especially by families, during crisis situations such as kidnappings or disappearances. In view of this situation, the Special Rapporteurs urge the Government to take significant steps to strengthen press operations and security in Ecuador, especially in high-risk areas such as the border with Colombia, and to implement effective protection mechanisms. The Government should help establish risk maps and provide accurate information regarding potential dangers journalists may face. It should also collect and publish data regarding incidents of violence against journalists and media workers.

35. The Special Rapporteurs stress the importance of, and view positively, the creation of an inter-institutional committee for the protection of journalists and media workers, announced by the Secretary for Communication and established on 29 April 2019. According to reports, the committee will coordinate the efforts of various institutions and civil society to provide protection for journalists in situations of risk and to establish a violence-prevention policy. The Special Rapporteurs remind the State that this committee should include stakeholders such as journalists, civil society organizations, representatives of the media and relatives of victims. Its risk assessment methodologies should include a differentiated approach that takes account of the specific risks faced by certain groups of journalists, including women journalists and community and indigenous media workers.

36. In addition, the Special Rapporteurs recommend that the Government ensure that all staff members of every department involved in the committee be trained on how to meet their obligations to protect journalists and media workers, and that they fully understand the importance of the role of journalists in a democratic society. The Government must also provide sufficient resources for the initiative to ensure effective coordination among all the authorities and to enable it to operate sustainably in the different regions of the country. It is also essential to strengthen coordination with the Office of the Prosecutor General so that it can fulfil its responsibility to identify and investigate the risks faced by journalists who are attacked and threatened. The Government must be firm in its condemnation of threats and violence against journalists, and must investigate such incidents fully, effectively and impartially.

37. In addition to the reports of physical attacks, the Special Rapporteurs learned during their visits of reports of journalists and media outlets being hacked. Digital safety and security were often sabotaged by the previous Government, which carried out cyberattacks on journalists. Many journalists had their content taken down from social media and other online

platforms, and experienced challenges in keeping journalistic sources confidential in the face of compromised access to encryption and anonymity software. The Special Rapporteurs also express concern about the government surveillance of journalists and media outlets in the past, noting that such surveillance can only be justifiable under the most extreme circumstances, when the principles of necessity and proportionality are satisfied.

D. Pluralism and diversity in communications

1. Community radio

38. The Special Rapporteurs observe that Ecuador has adequate constitutional protections regarding community media. The Constitution provides for guarantees of plurality and diversity in communications (art. 17), equitable distribution of frequencies (art. 16), promotion of freedom of expression for indigenous groups (art. 57) and protections against discrimination (art. 11 (2)). Despite these constitutional guarantees, in their communication sent to the authorities in January 2019, the Special Rapporteurs expressed concern about the text approved by the National Assembly in December 2018 to amend the Organic Law on Communications, which could reverse the advances made in regulations for the sector, and proposed amendments to several of the provisions. Community media representatives had strongly rejected some of those provisions because, in their view, the proposed changes in the mechanism for granting radio and television frequencies were unconstitutional and illegitimate.

39. The Special Rapporteurs note that some of the concerns raised by community media outlets were addressed by the President when he presented his partial objection to the text approved in December 2018, through the exercise of his power to veto articles 88, 89 and 93. Nevertheless, such outlets stressed that both texts, from the National Assembly and from the President, would discriminate against community media. According to community radio representatives, the eight approved provisions would continue to allow the automatic renewal of frequencies that had been renewed under the previous law, and would therefore be unconstitutional. In addition, the Special Rapporteurs were informed that some of the modifications proposed by the President (to articles 8, 38, 69, 82 and 87 of the text) would affect, among others, the provisions on affirmative action established in the law. In this regard, the Special Rapporteurs consider it positive that, following the presidential veto and the claims made by the community media sector, the affirmative actions guaranteed by the Constitution were maintained in the text published on 20 February 2019. With respect to article 8, which replaced article 11 of the original text, community media outlets indicated that part of the wording contradicted the meaning of affirmative action.

40. The Special Rapporteurs note that article 38 of the law, which replaces the original article 49, eliminates the responsibility of Council on the Regulation and Development of Information and Communications to evaluate communication projects in cases of competition for frequency assignment. This eliminates one of the fundamental responsibilities of that Council, namely, monitoring and evaluating public policies related to community media. Concerning article 87, on the equitable distribution of frequencies, which replaces article 106 of the original text, community media representatives raised concerns that the word “availability” in the text contradicted the reservation of frequencies for community media and left such outlets without access to frequencies in cities where there was no availability on the spectrum. The representatives indicated that the change would also increase the percentage of frequencies assigned for private media and reduce the percentage of frequencies assigned for public media.

41. The Special Rapporteurs reiterate that it is essential that the law guarantee genuine community media on terms under which communities do not have to compete with private actors according to the same criteria. Community radio, to be successful, requires government financial and training support so that local initiatives can ensure rural and indigenous peoples’ access to information and communication. Community radio offers diverse groups, such as women and indigenous, Afro-Ecuadorian and lesbian, gay, bisexual, transgender and intersex communities, access to information that they might not otherwise

obtain and, conversely, allows people who have been discriminated against historically to have a voice and to transmit important information affecting their communities.

42. During their visits, the Special Rapporteurs were also informed that the suspension of the 2016 tender for the allocation of 1,472 radio and television frequencies by the agency for the regulation and oversight of telecommunications – following the issuance by the Office of the Comptroller General of a binding opinion instructing the bodies in charge of the bidding process to suspend it – has caused concern and legal uncertainty among private media outlets and in the community sector. According to reports, at the time of the suspension, in June 2018, the allocation processes had been completed for 268 frequencies, while another 800 frequencies were still pending examination and decision by the aforementioned agency. According to updated information provided by the State, as at 11 February 2019 211 frequencies still needed to be examined. The Council on the Regulation and Development of Information and Communications reported that its Executive Directorate, through resolution No. 788 of 14 September 2018, had, in accordance with the current legal system, brought the process for opening the administrative procedure into compliance with the recommendation of the Comptroller General, and that due process would be respected.

43. The Special Rapporteurs note that various media actors agree that there were irregularities in some of the bids processed and in different aspects of the competition. Nevertheless, some of the actors who participated in the competition in good faith met their obligations and in some cases have already obtained licences to operate; other actors who participated in the competition reported that the State had suspended the bidding process.

44. In view of the above, the Special Rapporteurs recommend that the State establish an advisory council or forum for all the stakeholders involved (public, private, commercial, and community media), in order to engage in a dialogue on the general framework for spectrum allocation, a case-by-case review of the rights already granted to beneficiaries in good faith, and the establishment of new allocation processes. The Special Rapporteurs offer their assistance, in the form of follow-up and technical advice, to the State in handling this process.

2. Public broadcasting

45. The Special Rapporteurs would like to highlight the importance of the process undertaken by the Secretary for Communication to ensure pluralism in the public media. They also appreciate that the legislation amending the Organic Law on Communications puts an end to the 33 per cent quota for public media. The Special Rapporteurs stress that public service media must be accessible to all, represent the views of a broad range of political and social interests, including those of vulnerable groups, and have sufficient financial and human resources. The Special Rapporteurs urge the State to develop public broadcasting media protocols and measures to guarantee pluralism in coverage, especially in electoral contexts, as well as to guarantee the independence of journalists and analysts from government influence.

46. During their visits, the Special Rapporteurs were informed of the discontinuation of the national mandatory government broadcasts, which had been used to interfere with the functioning of the media. They note that, as part of its strategy of attacking the press, opponents and human rights advocates, the previous Government abused its legal power to air national government broadcasts. Ceremonies or events led by the President of the Republic, known as *Ok* – which lasted for hours – were broadcast live through the public media and used to discredit or mock journalists, social leaders and dissidents. The Special Rapporteurs welcome this shift in position, and remind the State that public service media are public non-profit institutions with a public purpose, that is, non-governmental or official, which must be afforded editorial independence and adequate protection against arbitrary interference by governments and corporations. For this reason, they recommend that the State develop this area, leading ultimately to an independent public broadcasting entity that is accessible to all people in Ecuador.

47. Finally, the Special Rapporteurs are concerned by reports that the general manager of the Medios Públicos company, Martha Moncayo, has received threats following the process to expose alleged irregularities detected in the public media seized during the tenure of the President Rafael Correa Administration. The Special Rapporteurs note that Ms. Moncayo

filed a complaint with the Office of the Prosecutor General in October 2018, and urge the State to investigate the allegations fully, effectively and impartially.

3. Commercial broadcasting

48. During the visit, the Special Rapporteurs were informed about violations of freedom of expression and sanctions that Ecuadorian broadcasters were subjected to under the Organic Law on Communications prior to 2017. As reported by the Ecuadorian broadcasting association, certain provisions of the former Law represented threats to the performance of its communications and business activities. The association also pointed out the lack of legal security in the processes of assignment, revocation and renewal of licences developed during the tenure of the previous Government. The Special Rapporteurs understand that the private broadcasting sector also requires a transition with clear and transparent criteria for the renewal and assignment of frequencies.

E. Access to information

49. The Constitution protects universal access to public information (art. 18 (2)). The organic law on transparency and access to public information reinforces the guarantee of access to information. The law expressly states that access to public information is a right of individuals, guaranteed by the State (art. 1). The law specifically applies to the Government and defines public information as any document, in any format, that is in the possession of public institutions and legal persons referred to in the law and any content created or obtained by them that are under their responsibility or have been produced with State resources (art. 5). In addition, non-disclosure criteria are established in articles 17 and 18 of the law. The Special Rapporteurs stress that, in addition to observing the principles of legality, necessity and proportionality, the authorities, when classifying information on the basis of legal exceptions, must conduct what is known as a harm and public interest test. This consists in proving that the disclosure of the information represents a real and identifiable risk of significant harm to the legitimate interest to be protected and that the risk exceeds the public interest of disseminating the information.

50. Although there are legal protections in place to guarantee the right of access to information, journalists and members of civil society organizations report a routine lack of access to government information. Those looking for documents from government ministries and archives are regularly told that the information is subject to some kind of exception to the constitutional guarantee. According to the information provided, there remain challenges in overcoming the culture of secrecy and having greater access to information held by the State. Women's rights organizations reported that there was a lack of access to statistics that was properly disaggregated, including with regard to cases of femicide and sex crimes and to abortion. Likewise, it was reported that the information provided in response to such requests for information was inconsistent, and that the State in some cases responded incompletely to requests, or alleged that the information did not exist.

51. The Special Rapporteurs stress that international human rights law protects the right of access to publicly held information, a right that is fundamental to promoting transparency and public accountability. Everyone, whether as journalists or members of the public, should be able to file information requests without providing reasons for the request, and the State should have limited bases on which not to disclose.

52. The Special Rapporteurs were pleased to learn that an active transparency monitoring mechanism had been implemented, aiming towards compliance with the standards set forth in article 7 of the organic law on transparency and access to public information, which requires the Government to provide through, inter alia, a website, information regarding government institutions, such as their financial information. The Special Rapporteurs also welcome the announced resolution, championed by the Office of the Ombudsperson, that will lead to the Office issuing general guidelines for dealing with requests for access to public information. It is imperative that the various government bodies have a standard process for responding to access to information requests in a manner that is compatible with international human rights. In tandem with such processes, government agencies should ensure full

training of civil servants about the need to be responsive to requests for information, in accordance with article 8 of the organic law on transparency and access to public information.

53. The Special Rapporteurs noted that Ecuador does not protect whistle-blowers as a matter of law or practice. The Government should protect any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety. Protecting whistle-blowers creates an enabling environment for freedom of information, investigative journalism and the fight against corruption. The Special Rapporteurs recommend adopting legislation to protect whistle-blowers and were encouraged to learn of a proposed anti-corruption law that would be including such protection.

F. Protection of freedom of expression online

54. In the past decade, the Internet was used in Ecuador as a space for attacking journalists and critics. Some of the strategies were systematic, such as the hiring of a company to request that the main platforms take down politically critical accounts and content, alleging infringement of the Digital Millennium Copyright Act of the United States of America; distributed denial of service; and attempts to reveal the identity of anonymous users. The previous President also created a network to expose and register social media users critical of his Government, and the State reportedly procured malware from the Hacking Team company during this period.

55. The Special Rapporteurs appreciate the fact that no action has been taken on the bills presented to the National Assembly in recent years with the aim of exercising government control over social networks. However, they remain concerned that the bill on regulating acts of hate and discrimination on social networks and the Internet, introduced by the previous President the day before his departure from office, has not been definitively shelved to date.

56. The Special Rapporteurs note that the attack and blocking of accounts has reportedly decreased since 2017. However, during the visits, civil society organizations, journalists and media outlets reported several cases of limitations on freedom of expression on the Internet, including the suspension or blocking of Twitter accounts, such as in the cases of Fernando Villavicencio and the satirist who wrote under the name of “Crudo Ecuador”, as well as distributed denial-of-service attacks on opinion or investigative journalism portals, following political publications and in the context of existing polarization. Civil society organizations also reported an increase in attacks on vulnerable groups on social networks, in particular attacks based on xenophobia, homophobia and misogyny.

57. The Special Rapporteurs note that there are also institutional issues that Ecuador will need to address in order to ensure a future of non-discrimination for content and content providers. Currently, for instance, the agency for the regulation and oversight of telecommunications, which is also responsible for Internet issues, is a subsidiary body of the ministry responsible for telecommunications, with its directors appointed by the President. To ensure against claims of politicization, the Government should reform the Organic Law on Telecommunications to ensure the independence of this regulatory body, clarifying its position as an independent agency and ensuring multi-stakeholder roles in appointing its directors. There is also a distinct lack of clarity concerning the Government’s commitment to network neutrality, which is protected by law but also left uncertain by article 64 of the telecommunications law, which permits variable tariff plans by Internet service providers.

58. The Special Rapporteurs learned during their visits that there was a proposal for a data protection law that could further protect the rights to privacy and freedom of opinion and expression. Currently, the right to personal data protection is guaranteed by article 66 (19) of the Constitution. The Special Rapporteurs welcome the proposal and emphasize that the new law on data protection should be consistent with international standards.

G. Access to the Internet

59. The Internet is an essential tool for exercising the right to freedom of expression, including access to information. It is also connected to the exercise of, inter alia, the right to education, the right to freedom of association and assembly and the right to cultural diversity. Access to the Internet includes access to pluralistic, diverse, uncensored content, and access to connections and infrastructure, including the appropriate hardware.

60. Internet access in Ecuador has steadily increased in the past few years. According to the ministry responsible for telecommunications, Internet connection coverage in 2018, including fixed and mobile connections, was at around 65 per cent of the population, with mobile connection coverage at 53 per cent and fixed broadband connection coverage at 43 per cent.²

61. Nevertheless, the costs for high-quality fixed and mobile broadband connections in Ecuador continue to be among the highest in the region. According to statistics from 2017, about 5 per cent of those who did not have access to the Internet indicated that it was due to a lack of coverage; about 63 per cent cited a lack of economic resources as the reason.³ Additionally, in 2017 about 10.5 per cent of people in Ecuador between the ages of 15 and 49 lacked digital literacy. It is clear that connectivity cost is one of the critical factors to be considered in the policies of universal access. The Government must work to ensure that all members of Ecuadorian society have access to the Internet so that each person can fully exercise his or her rights.

H. Protecting civil society and human rights defenders

62. Nearly a decade of persecution and harassment has seriously eroded social organizations, and fear and mistrust persist among human rights defenders. Civil society organizations reported during the visits that there were positive signs from the Government to move forward from that abuse. For example, they referred to the elimination of the *Enlace ciudadano* broadcast and changes in the editorial line of State-owned media, which had previously been used to attack and wage campaigns to disparage those who thought differently.

63. The Special Rapporteurs were also informed that a bill on non-profit organizations was currently pending in the National Assembly, and that it contained provisions relating to the establishment and dissolution of non-profit organizations. Civil society organizations in Ecuador have historically been regulated through executive decrees; the bill would eliminate their regulation by the executive branch, establishing legal protections for them. Pursuant to the draft legislation, civil society organizations would not need to provide information on their operations to any executive branch entity.

64. The Special Rapporteurs see this legislative initiative as positive, as it would eliminate arbitrary government decisions that are regulated by executive decrees. Nevertheless, it is important to note that certain provisions of the bill are not sufficiently clear and precise and may affect the right to freedom of association. These concerns were conveyed to the Government through a communication dated 11 December 2018.⁴

65. It is important to note that Executive Decree No. 16 of 2013 (later amended by Executive Decree No. 739 of 2015), which established the regulations for the unified information system for social organizations, resulted in the dissolution of Fundación Pachamama, in 2013, and of the national teachers union, in 2016. The organization Fundamedios was subjected to two attempts to dissolve it, and Acción Ecológica to one. The Special Rapporteurs recognize that there was a progressive and substantial turnaround in this situation with the arrival of the current President, and that in October 2017, through Executive Decree No. 193, President Moreno repealed Executive Decrees 16 and 739. Nevertheless,

² See <https://observatoriotic.mintel.gob.ec/estadistica/index.html> (Spanish only), accessed on 19 February 2018.

³ Ibid.

⁴ See www.ohchr.org/en/issues/freedomofexpression/pages/legislationandpolicy.aspx.

the Special Rapporteurs note that this decree still poses several problems and that civil society organizations have reported that it remains a cause for concern, especially with regard to defining when the Government can dissolve an organization. In particular, they stated that it maintained a wide margin of discretion by providing that departure from the aims and objectives for which an organization was established, and reducing the number of members to less than the minimum established, are grounds for an organization's dissolution.

I. Social protest and demonstrations

66. The Special Rapporteurs were informed that numerous cases involving the criminalization of human rights activists were reported during the tenure of the previous Government in the context of social protests and demonstrations, relating both to the content of their criticism of the Government and the forms of protest they used. According to the Office of the Ombudsperson, between 2007 and 2017, 841 people were subjected to criminal action in relation to 98 documented protests. Of those cases, 90 per cent were initiated by the State.

67. The Special Rapporteurs observe that in spite of the marked decrease in the number of cases of criminalization of social protest since 2017, excessive use of force by the security forces against demonstrators has been reported in specific cases. For instance, the Special Rapporteurs received reports of police repression against Alianza País activists sympathetic to former President Correa, and assaults on demonstrators during a sit-in outside the Judicial Unit of Cuenca where a hearing was being held to seek protection against extractive activity in indigenous territory.

68. Civil society organizations additionally reported that, until the entry into force of the current Criminal Code in 2014, several criminal offences whose statutory definitions were drafted in a manner inconsistent with the principle of strict legality had been used to criminalize social protest. These included the crimes of illegally obstructing roadways, sabotage, advocating crime, terrorism, promotion of unauthorized parades or public demonstrations, conspiracy against the security of the State, and offences against public officials, among other crimes. It is of concern to the Special Rapporteurs that, while certain offences that contributed to greater criminalization were eliminated in the new Criminal Code, new, equally open-ended punitive provisions have been incorporated to include crimes such as conspiracy, attack or resistance, incitement to public discord, and the blocking of public services, which have allowed for the continued repression of social protest.

69. Finally, the Special Rapporteurs were informed about the request for a new proposal to provide amnesty for the activists who had been criminally prosecuted for mobilizing, protesting or resisting during the tenure of the previous Government. The activists acknowledged that President Moreno had granted seven pardons, but noted that the National Assembly seemed unable to make progress in granting amnesties to all those affected. According to reports, some 177 individuals had reportedly been subjected to criminal prosecution in those contexts. This information was reported by the Confederation of Indigenous Nationalities of Ecuador through a request made in June 2018 to the Office of the Ombudsperson and the Public Defender Service to pursue the amnesty processes in the legislature. The Special Rapporteurs note that, in response to this request, a technical committee was set up to process applications for amnesty. They also note that, in order to expedite the granting of such applications, regulations for the admission and processing of applications for amnesties submitted to the National Assembly in cases of the criminalization of human rights defenders have been drawn up and are currently under review by the National Assembly.

V. Conclusions and recommendations

70. **The Special Rapporteurs recognize the progressive and substantial turnaround in the situation of freedom of expression in Ecuador and stand ready to provide technical advice and assistance to the Government to fully achieve freedom of expression in the country.**

71. The Special Rapporteurs call upon the relevant authorities to implement the recommendations listed below.

Legal change

72. With regard to the Organic Law on Communications, the Special Rapporteurs call upon the relevant authorities to:

(a) Ensure interpretation and implementation of the provisions of the rights to correction and to reply contained in articles 23 and 24 of the amended law in accordance with the right to freedom of expression in order to prevent indirect censorship or intimidation of the media;

(b) Revise the rule that establishes compulsory qualification requirements for the practice of journalism.

73. With regard to the Criminal Code, the Special Rapporteurs call upon the relevant authorities to:

(a) Decriminalize offences against honour and reputation and convert them into civil violations, consistent with international human rights law and best practices;

(b) In particular, amend articles 182 and 396 of the Criminal Code, which allow criminal sanctions in connection with expression targeting an individual's honour and good name;

(c) Also amend articles 307 and 322 of the Criminal Code, which provide for penalties of five to seven years of imprisonment for anyone who disseminates false information that results in economic or financial panic, both only vaguely defined in the Criminal Code.

Promoting independent journalism

74. The Special Rapporteurs call upon the relevant authorities to:

(a) End the culture of acting with impunity against journalists. To start, those journalists who have suffered attacks should have access to some form of reparation, whether moral or compensatory;

(b) Promote journalism and the purposes of a free press in democratic society so that journalists can carry out their work free from undue influence by governmental and other pressures;

(c) Strengthen the legal framework in order to effectively guarantee the right of journalists and media outlets to protect their sources and to ensure that any restrictions meet the strictest standards in accordance with relevant international norms. Ensure that journalists are able to use the tools necessary to keep their sources confidential, including encryption and online programmes that ensure anonymity;

(d) Encourage media training in secondary education and in universities, build robust media literacy and foster among the population an environment of respect for journalistic work;

(e) Lead, together with media outlet owners, a comprehensive effort to improve standards of living and social protections for those in the profession of journalism;

(f) Support the development of a journalistic code of ethics and a self-regulatory mechanism. Journalists and media outlets also have a responsibility to ensure that they produce quality reporting rooted in principles of accuracy, independence and fairness. Journalists must maintain professionalism in reporting by developing and adhering to a standardized code of ethics that they themselves develop and apply, which should include a provision on refraining from promoting discrimination. Journalists and other civil society members should create and maintain a media accountability and fact-checking system, to allow for self-regulation while building trust between the media and the public;

(g) Delegate the drafting of the content of the codes of ethics, for discussion, to a press or media council, in order to include the participation of representatives of the media, academia, civil society organizations and the public.

Safety of journalists

75. With regard to prevention, the Special Rapporteurs call upon the relevant authorities to:

(a) Collect and publish detailed and disaggregated data regarding incidents of violence against journalists;

(b) Be vocal in denouncing threats and violence against journalists and continue to recognize the legitimacy and value of the work of all journalists;

(c) Establish risk maps and accurately provide information regarding potential dangers journalists may face;

(d) Adopt all measures necessary to prevent the repetition of crimes against journalists in high-risk areas;

(e) Provide training for journalists on the safety of journalists and protection of journalistic sources;

(f) Refrain from conducting surveillance, including of a digital nature, of media outlets or journalists except under the most extreme circumstances where the principles of necessity and proportionality are met. Journalists who have been put under surveillance in the past should be alerted and any files pertaining to them should be made available to them at their request.

76. With regard to protection and accountability, the Special Rapporteurs call upon the relevant authorities to:

(a) Investigate crimes against journalists thoroughly, effectively and impartially;

(b) Put into operation the inter-institutional committee for the protection of journalists and other media workers, which should include stakeholders such as journalists, civil society organizations, media representatives and relatives of victims. The State should establish a policy of protection for journalists and ensure that its content is in line with international standards, providing the committee with the human and financial resources necessary to carry out its mandate. It should also take into account the specific risks faced by particularly vulnerable groups of journalists, including women journalists and community and indigenous media workers;

(c) Strengthen digital security and the prohibition of digital surveillance of journalists and their sources. States have positive obligations to protect digital communications systems against cyberattacks and to bolster digital safety and security for those who are at risk of such attacks, including journalists;

(d) Investigate, thoroughly and impartially, incidents of journalists and human rights defenders being hacked, respond appropriately and take steps to ensure the non-repetition of such acts.

Pluralism and diversity in communications

77. The Special Rapporteurs call upon the relevant authorities to:

(a) Ensure that the allocation or renewal of radio and television licences is guided by democratic criteria and pre-established, public and transparent procedures that serve as a check on the possible arbitrariness of the State and guarantee equal opportunities for all persons and sectors concerned;

(b) Establish an advisory council or forum for all the stakeholders involved (public, private, commercial and community media), in order to engage in a dialogue on the general framework for spectrum allocation, in a case-by-case review of the rights

already granted to beneficiaries in good faith, and in the establishment of new allocation processes.

78. With regard to community radio, the Special Rapporteurs call upon the relevant authorities to:

- (a) Ensure the implementation of legislation to promote community radio and ensure that radio-spectrum space is reserved for community media;
- (b) Ensure that the competitive bidding processes are differentiated from those established for the private sector, so that genuine community media do not have to compete with private actors according to the same criteria;
- (c) Create sector-support funds under transparent allocation mechanisms and in accordance with objectives that respect the independence and autonomy of indigenous communities and peoples;
- (d) Provide training support so that local initiatives can ensure rural and indigenous access to information and communications.

79. With regard to public broadcasting, the Special Rapporteurs call upon the relevant authorities to:

- (a) Encourage the development of public media, leading ultimately to an independent public broadcaster accessible to all people in Ecuador;
- (b) Make public service media accessible to all and ensure that such media represent the views of a wide spectrum of political and social interests, including those of vulnerable groups. A diverse and plural media system should include public broadcasting with sufficient economic and human resources so that they do not close owing to a lack of such resources;
- (c) Develop public media protocols and measures to guarantee both pluralism in coverage, especially in electoral contexts, and the independence of journalists and analysts from government influence.

Access to information

80. The Special Rapporteurs call upon the relevant authorities to:

- (a) Promote a culture of transparency, accountability and facilitation of public access to information, and train public servants accordingly about the need to be responsive to requests for information;
- (b) Issue general guidelines for dealing with requests for access to public information and establish standard processes for responding to access to information requests in a manner that is compatible with international human rights;
- (c) Support the Office of the Ombudsperson, as the guarantor of the organic law on transparency and access to public information, in exercising its power to enforce the law against government agencies and use the remedies of access to information or *amparo* to bring judicial enforcement proceedings in those cases in which the agencies refuse or omit to provide information without adequate justification under the regime of exceptions;
- (d) Include whistle-blower protections in law and implement them in practice. Authorities should protect any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to relate to situations that constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety.

Protection of freedom of expression online

81. The Special Rapporteurs call upon the relevant authorities to:

- (a) **Order an investigation into the purchase and use of malware to monitor journalists and human rights defenders during the previous administration;**
- (b) **Include experts on digital attacks in the programme for the protection of journalists;**
- (c) **Call on private sector platforms to publicly disclose the decisions they make regarding the blocking of content in Ecuador and the deletion of accounts reported for the alleged abuse of terms and conditions or copyright infringements, in cases of users persecuted for political or journalistic reasons;**
- (d) **Limit the requests to Internet companies for the takedown of content to the narrow restrictions available under article 19 (3) of the International Covenant on Civil and Political Rights;**
- (e) **Ensure a future of non-discrimination for content and content-providers, for instance, by reforming the Organic Law on Telecommunications to ensure the independence of the agency for the regulation and oversight of telecommunications, clarifying its position as an independent agency and ensuring multi-stakeholder roles in appointing its directors;**
- (f) **Identify, prosecute and punish those found responsible for the attacks against vulnerable groups perpetrated on social networks;**
- (g) **Ensure the Government's commitment to network neutrality, including by reconsidering and revising article 64 of the telecommunications law, which may interfere with neutrality by permitting variable tariff plans by Internet service providers.**

Access to the Internet

82. The Special Rapporteurs call upon the relevant authorities to:

- (a) **Continue the ongoing efforts to expand Internet coverage, in particular to rural areas, so that all members of Ecuadorian society have access to the Internet and may fully exercise their rights;**
- (b) **Ensure that the costs of high-quality fixed and mobile broadband connections are affordable.**

Protecting civil society and human rights defenders

83. The Special Rapporteurs call upon the relevant authorities to:

- (a) **Continue the transition process to strengthen an inclusive democracy that guarantees a space free of threats for civil society organizations and human rights defenders;**
- (b) **Ensure that the bill on non-profit organizations is in full compliance with international standards.**

Social protest and demonstrations

84. The Special Rapporteurs call upon the relevant authorities to:

- (a) **Ensure that the exercise of the right to peaceful assembly is ensured at all times during protests and that the rights to life, to humane treatment and to individual liberty are protected;**
- (b) **Develop policies, strategies and special training focused on negotiation techniques and peaceful conflict resolution, as well as law enforcement manoeuvres for responding to potential riots and disturbances with minimal risk to the lives and safety of civilians and police officers;**
- (c) **Adequately and effectively prevent, investigate and punish unnecessary and excessive use of force by law enforcement officers, showing greater rigour when the force has been directed against vulnerable groups, taking account of the historical**

discrimination against them on the basis of their ethnicity, race, sex or sexual orientation, among other grounds;

(d) Adopt measures to prevent undue judicial harassment of demonstrators and human rights defenders, such as protocols and training for court officials.

Reparations

85. The Special Rapporteurs call upon the relevant authorities to establish individual reparation measures aimed at providing restitution, compensation or rehabilitation to victims, as well as general measures of satisfaction and guarantees of non-repetition for the broad range of violations of freedom of expression in the last decade. The measures of reparation should include:

(a) The acknowledgement, through public statements by the most senior government officials, of the legitimacy and value of the work of journalists and the repudiation at all times of crimes committed against them;

(b) The enactment by the National Assembly of a transition provision in the amendment of the Organic Law on Communications to establish a process for reviewing the application of penalties by the Superintendency of Information and Communication;

(c) The enactment of an amnesty law for media professionals, human rights defenders and political leaders who have been subject to persecution by the authorities;

(d) The implementation of memory and truth processes aimed at ensuring that victims of criminal prosecution resulting from the exercise of the right to freedom of opinion and expression are aware of the truth of what happened, including the role of the various judicial bodies involved in their respective cases;

(e) The addressing, as a priority, of the petitions and cases submitted to the Inter-American Commission on Human Rights by victims of alleged violations such as those referred to in the present report, and participation without delay in the friendly settlement mechanisms requested by those victims.
