INTERAMERICAN INSTITUTE FOR DEMOCRACY

INTER-AMERICAN BAR ASSOCIATION

"THE ROLE OF THE JUDICIARY IN THE VIOLATION OF HUMAN RIGHTS IN ECUADOR"

Human Rights - Case Study

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Recurring complaints of court rulings that violate human rights in the so-called states of the 21st-century socialism, *i.e.*, Cuba, Venezuela, Ecuador, Bolivia and Nicaragua, followed by protests among opposition sectors and the press of the judicialization of repression and criminalization of politics, have called into doubt the independence of these states' judicial systems, despite their efforts to continue posing as democracies.

According to the third article of the Inter-American Democratic Charter, "respect for human rights and fundamental freedoms," the "exercise of power in accordance with the rule of law," and the "separation of powers and independence of the branches of government" are—among others—essential elements of democracy. Their absence makes democracy non-existent and gives rise to authoritarianism and dictatorship—hence the importance of scientifically verifying cases representative of the infringement or disappearance of these democratic elements.

In this context, the Interamerican Institute for Democracy and the Inter-American Bar Association—as think tanks whose objectives include the defense of human rights, fundamental freedoms, democracy, justice, and the rule of law—have undertaken to prepare case studies of court decisions whose content and rulings may violate human rights. These are not political analyses, but rather strictly jurisprudential academic case studies that examine concrete legal records, proceedings, and rulings in light of upholding the human rights enshrined within the Universal Declaration reflected in the constitutional texts of all of the subject States.

This first study concerns "judicial decisions that infringe human rights in Ecuador," and similar studies are proposed on judicial decisions in Cuba, Venezuela, Bolivia and Nicaragua. It aims to bring into the field of scientific evidence what has thus far been reserved to outcry in press reports, political debate and analysis—and shed light on some of the victims of human rights abuses by judges who, instead of securing those rights, infringed them. They are works by independent professionals who, through their legal expertise, contribute to the efforts to restore judicial independence and the rule of law in countries that—like Ecuador—have turned justice into a systematic mechanism for the abuse of power and infringement of human rights.

Wider knowledge of these cases and dissemination of the expert findings presented in the case are effective contributions to the defense of human rights, calling out governments that, having ceased to be democracies, pretend to use justice for purposes of political pressure and repression.

Armando Valladares
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September 2016

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INTRODUCTION: JUDICIALIZED REPRESSION IN ECUADOR

Without checks and balances, democracy neither functions nor endures. This is the lesson of history. Absent effective checks on executive power, democracy tends to descend into authoritarianism, and authoritarianism to harden into dictatorship.

Regrettably, some governments of the left in our hemisphere tend to pursue their ends – whether good (benefiting the poor) or bad (consolidating a caudillo) – at the cost of checks and balances that are especially important for democracy. Among those essential institutions most under attack are independent judiciaries, free and critical media, political dissidents and social movements.

President Rafael Correa of Ecuador – presumably committed to the welfare of his people – appears not to appreciate the indispensable role of checks and balances. To be sure, Ecuador enjoys important elements of democracy. For example, the US State Department Country Report on Human Rights for 2015 acknowledges that President Correa won reelection in 2013 in voting that was "generally free and fair." The report also recognizes that civilian authorities in Ecuador maintain effective control over the security forces.

Nonetheless, according to the report, "The main human rights abuses were lack of independence in the judicial sector; [and] restrictions on freedom of speech, press, assembly, and association" (in addition to corruption). The report specifies that judges "reached decisions based on media influence or political and economic pressures in cases where the government expressed interest." It adds that, according to human rights lawyers, "the government also ordered judges to deny all 'protection action' legal motions that argued that the government had violated an individual's constitutional rights to free movement, due process, and equal treatment before the law."

These State Department assessments would doubtless be rejected by President Correa as Yankee imperialism, unworthy of credibility. But similar conclusions can be found in the reports of independent organizations and experts. A serious and credible example is the 2014 report, *Independencia judicial en la reforma de la justicia ecuatoriana*, sponsored by three prestigious civil society organizations: the Due Process of Law Foundation, based in Washington; DeJusticia, of Colombia; and the Instituto de Defensa Legal, of Perú. The report's author is Luis Pásara of Perú, a recognized expert and academic in matters of judicial independence. According to the three organizations, the evidence in his report "clearly demonstrates the deplorable use of the judicial system, specifically the criminal justice system, as an instrument at the service of government interests, in contravention of respect for judicial independence, and with high costs for democratic institutionality."

The Pásara report analyzes twelve cases of social or political importance in Ecuador, prosecuted after the judicial reform of 2011, as well as some 42 resolutions of the Council on the Judiciary issued in other cases during the same period. The author concludes that there "currently

exists in Ecuador a political utilization of justice that seriously compromises judicial independence."

Similar conclusions are evidenced in the current report, *El uso del poder judicial para vulnerar los derechos humanos en el Ecuador* (2016) (*The use of the judiciary to violate human rights in Ecuador*), sponsored by the Interamerican Institute for Democracy and the Interamerican Federation of Lawyers. The report presents six case studies. According to the sponsoring organizations, these criminal proceedings were used by Ecuadoran authorities to "harass, intimidate, persecute, silence and prosecute students, indigenous persons, people who denounce corruption, business owners and political dissidents."

The six cases are summarized by their respective authors in the text of the report. Accordingly, I do not here pretend to summarize either the cases or all the violations of due process. It suffices simply to highlight some of the violations, in order to illustrate the excesses that appear to have been committed.

The Cases

In the case of the ***Ten of Luluncoto,*** ten young people were arrested during a meeting. According to them, the meeting was for the purpose of planning their participation in an indigenous march for Water, Life, and Dignity of Peoples. The prosecutors alleged a different motive: an attempt to organize terrorism. However, when the arrests took place, the prosecutors had not identified any specific criminal charge. Worse, in spite of the apparent absence of individualized evidence against the majority of the youths, they were all ordered into pretrial detention: one for three months, seven for nine months, and two for a year. The criminal proceedings lasted four years. In the end the National Court of Justice dismissed the charges with prejudice. If there were truly evidence that the youths participated in terrorism, is this result credible?

The case of ***Sebastián Cevallos*** involves a political dissident who, in a series of tweets, disclosed a list of relatives of a high public official who held government jobs. One tweet stated that Paula Rodas, a niece of the high public official, held her government job, "effectively, [her uncle] is the minister of employment of his family."

The implication was that she had gained her position thanks to her uncle's political support. But she responded that, in fact, she won a merit-based competition to earn her position. She filed a criminal complaint against the tweeter for the crime of making "expressions in discredit or dishonor against another." The tweeter was convicted, fined, and sentenced to 15 days in prison.

Nonetheless, once the sentence was confirmed, Ms. Rodas pardoned the tweeter and asked that the case be dropped. In order to avoid prison, the tweeter accepted the arrangement. The court approved it.

Both the proceeding and the precedent are troubling. It would have been possible to respond to the tweeter with a public denial, a demand for retraction or clarification, or even a civil suit for

defamation. To criminally prosecute for a tweet that implies something negative but mistaken about a public official is disproportionate and threatening to free expression.

For example, Principle 11 of the *Declaration of Principles on Freedom of Expression*, approved by the Inter-American Commission on Human Rights, declares that, "
In this case a different law was used to penalize the criticism, but free expression was equally violated. The effect of such criminalization can be to intimidate those who dare to criticize public officials on the internet.

Another political dissident, ***Francisco Daniel Endara Daza***, was sentenced to 18 months in prison for the crime of "paralyzing public services." In the absence of evidence of his direct participation in acts damaging the property of Ecuador TV on 10 September 2010, when there was a sort of police uprising against President Correa, Mr. Endara was convicted for "applauding" the demonstrators. The unacceptability of both his conviction and his punishment speaks for itself.
In another case of "paralyzing public services," the case of the ***29 of Saraguro***, an indigenous group blocked the Panamerican Highway. Two of the demonstrators were sentenced to four years in prison. The disproportionality of their sentence is obvious.

The case of the seizure of the television media, ***TC Television and Gamavision***, was justified on the basis of criminal cases brought against the effective owners of the media enterprises. At first, both the Prosecutor General and the Supreme Court found no basis to prosecute the owners. In response, President Correa, as well as various legislators of his party, publicly declared their disagreement and demanded the dismissal and sanctioning of the judges. The new judges, amenable to Correa's political forces, sentenced the owners to eight years in prison.

Upon examining the case, the Human Rights Committee of the United Nations condemned the seizure of the television properties as a violation of due process. However, despite the dissenting vote of Committee member Yuval Sheny, the majority did not consider the public statements about the case by President Correa to constitute undue interference with the independence of judiciary. With all respect, I believe that Dr. Sheny, and not the majority, was correct. In Ecuador, when President Correa speaks, judges listen.

This reality was demonstrated with equal clarity in the sixth case, that of the ***students of Central Technical High School***. Twelve students of the school were among 600 students demonstrating against the change of name of the school proposed by the Ministry of Education. The prosecutor in the case decided not to bring charges against the 12 students, for lack of sufficient evidence of their guilt. The judge agreed.

Two days later, President Correa criticized the decisions of the prosecutor and judge. He insisted that they feared to rule against the students in the face of media pressure. The events were not a simple social protest, he declared, but criminal acts. As long as he remained President he would not permit this kind of behavior by "boys acting out of place" ("muchachos desubicados").

Two days later, the Provincial Prosecutor revoked the decision not to prosecute and took the 12 students to trial. They were then convicted of rebellion.

In other words, by his public declarations in this and other cases of political interest, President Correa has effectively converted himself into the highest court of appeal in Ecuador.

A Note of Clarification

In order to analyze violations of due process, it is neither necessary nor relevant to determine the innocence or guilt of the persons being prosecuted. For example, the seizure of the television media TC Television and Gamavision was justified on the basis of criminal cases brought against the owners. There are accusations of corruption against the owners, concerning which I am not sufficiently informed to opine. Nonetheless, for purposes of this report, this does not matter: even on the assumption of their guilt – bearing in mind the presumption of innocence – there is no justification for violating their right to a fair trial.

Two Caveats

The studies in the current report appear to demonstrate violations of judicial independence as well as the politicized use of criminal trials. However, two *caveats* should be mentioned. The first is that the authors of some of the studies are the defense lawyers for the accused. This fact diminishes the appearance, and possibly the reality, of the objectivity of the studies. Nonetheless, even with this limitation, the reports present evidence which is *prima facie* convincing of irregularities in the trials (as described above). In addition, these studies should be evaluated in the context of other reports, by diverse organizations, which also criticize the lack of judicial independence in cases of interest to the government in Ecuador.

The second *caveat* is the absence in the report of a response from the State. In the judgment of this writer, it is preferable that reports on violations of human rights in a country, if feasible, invite the observations of the State and include them, or at least a summary, in the report.

In spite of these *caveats*, the current report is a valuable contribution to public debate about the politicization of justice in Ecuador.

Conclusion

The six cases in the report should be cause for concern by everyone committed to judicial independence and justice free of politics in Ecuador. One hopes that the report may be read, pondered and debated in Quito.

Douglass Cassel
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September 2016

PROLOGUE

As early as March 27, 2009 President Correa made an astonishing statement while participating in an event at the Abel Jimenez Parra Coliseum in Guayaquil. On that occasion he candidly expressed his personal conceptualization of the powers vested in him as president of Ecuador. I quote:

"The president of the Republic, listen to me and listen well, is not only the head of the Executive Branch; he is the head of the entire Ecuadorian state, and the Ecuadorian state is the Executive Branch, the Legislative Branch, the Judicial Branch, the Electoral Branch, the Transparency and Social Control Branch, the offices of the superintendents, the attorney general, the comptroller – all that is the Ecuadorian state".

We should thank president Correa for candidly laying out the paradigm of the new dictatorships of the XXI century, as former Ecuadorian president Osvaldo Hurtado has correctly named them. There is no room for academic or semiotic confusion here. And, as the readers of this book will soon find out, there is also no difference between Correa's rhetoric and his presidential practice.

The judicial procedures carried out against various Ecuadorian citizens and now compiled in this book are clear evidence on how far president Correa has implemented his dictatorial vision on the Judicial Branch of his country. The six cases we now present to you unfortunately represent not the exception, but the actual trend in the way that justice is administered under Correa. The commitments to the national Constitution, international human rights covenants and the Democratic Charter of the OAS, are all conveniently swept aside to expediently punish those who dare to contradict the will of the autocrat and his servants.

The InterAmerican Institute for Democracy and the InterAmerican Bar Association did not take up this research as a political task but as an academic responsibility. In this book you will not find political statements, but the objective and detailed reports of lawyers and scholars narrating six cases that experienced pervasive intrusion of the Executive Branch in an already weakened and submissive judiciary.

Throughout the book, the reader will get a closer look at the government of Ecuador's continuous attempts to harass, intimidate, persecute, neutralize and put on trial members of every segment of the Ecuadorian society: students, indigenous peoples, entrepreneurs, political dissidents, and whistle blowers on corruption.

At the InterAmerican Institute for Democracy we are too familiar with the pattern of governance that is common, in some degree or another, to all governments that have embraced the so-called Socialism of the XXI Century. I would like to dedicate these closing remarks, at the end of today's session, to that broader theme.

What is the current connection between those regimes governed by the paradigm that Correa described, and the broader arch of antidemocratic forces in the region and the world?

I am afraid that a prominent weakness of too many foreign affairs analysts is their fragmented vision of reality. The same way that many agencies in pre 9/11 USA failed to see the connecting dots between various ongoing events, some experts now tend to separate their analysis of interconnected events as well as the behavior of some key players. Consequently, they keep addressing secondary questions on isolated processes instead of formulating a comprehensive vision of their significance.

Allow me to present you with three briefs reflections on this matter.

My first remark is to raise a question: What is the present danger to democratic regimes throughout the world?

From my perspective, we are facing a new unholy alliance between authoritarian and totalitarian states (secular and theocratic), some authoritarian-prone political parties, irregular terrorists forces, and international crime cartels, which are linked to those totalitarian states and the irregular forces they sponsor.

During the Cold War, the issue of containing communism was the organizing idea for analysts and policymakers that cemented western alliances. No new organizing idea will emerge until we see the dots now connecting these different players currently confronting the values of democracy and human rights throughout the world.

(Retired) Lieutenant General Michael T. Flynn mentions in his recently published book (*The Field of Battle*) that an unstructured alliance of countries and groups share their hatred of the West. I would add that not only those countries mentioned by Flynn such as North Korea, Russia, China, Cuba (and its Venezuelan *narco colony*), but also others such as Nicaragua, Syria, and Iran are relevant players in that undeclared anti western alliance.

Why was the cooperation with the DEA the first target to be attacked when the leaders of the so-called "Socialism of the XXI Century" came to power in Bolivia and Ecuador? How can a certificate of "good conduct" be extended to Havana while Venezuela – a country under the control of their intelligence and military advisors – is heavily engaged in drug trafficking? When are we finally going to connect the dots?

My second remark is about the pervasive strategy that these global actors pursue through different local parties with a Leninist approach to power. Political movements and parties –such as *Alianza País* in Ecuador or *Podemos* in Spain– seek to get elected only to start a process of gradually dismantling democracy.

Following a careful political strategy, designed by Fidel Castro immediately after the fall of the Soviet Union, the rise of those types of parties and politicians was fostered by the millionaire financial support extended to them by the late Hugo Chavez when the value of a barrel of oil was beyond $110 in the global markets.

Nothing could be clearer to that respect than the direct quotation of president Correa showing his twisted understanding of the unlimited powers that he claims he was allegedly granted to reign over the country. Once elected to the head the Executive Branch of government, these

dictatorial-prone politicians aim to blow up the pillars of a democratic regime: the separation of powers, and a system of check balances among them, combined with full respect to personal liberties and legal due process.

These political players see elections as another way to achieve power. But they do not seek a provisional power. They aim to install themselves as a permanent power that from then on would guide a transition from a democratic regime to an authoritarian or even totalitarian regime.

For more than a decade, the alliance between all these anti-western governments has made itself felt in regional multilateral institutions such as the Organization of American States and the Council on Human Rights of the United Nations. These antidemocratic forces effectively concert their actions in those forums in an attempt to neutralize any criticisms, and even to attack their opponents. Unless we finally come to acknowledge that such an international antidemocratic collaborative coalition exists, we will not be able to identify and neutralize their tactics.

My third brief and last remark is on how we can identify these challenges at an early stage. What signs could we use to recognize when a particular government is aligning with these anti-western players?

Simple: when they start to locally undermine the separation of powers and the system of check balances between them. With Ecuador, this process started under president Correa. But again, only a few were connecting the dots at that time.

Juan Antonio Blanco, Ph.D.
Project Director
Miami, F.L.
September 14, 2016

INTER-AMERICAN BAR ASSOCIATION

This book compiles six case studies on human rights violations in Ecuador whose common denominator is—as the book's title suggests—the issue of *judicial decisions that infringe human rights in Ecuador*.

At first sight, this topic seems contradictory in its own terms. This is because, traditionally, in Latin America victims suffered human rights abuses from the police or military forces, but not directly from the judiciary. The victims sometimes sought relief from the courts of justice. Some countries denied their human rights victims access to the courts. These victims eventually submitted their complaints to international human rights institutions. However, a "new generation" of human rights violations has evolved, which is what the title of this book conveys. These new human rights violations take place primarily within the States' judicial apparatus. The governments or authorities wishing to commit harm against a person formulate "any" kind of legal action to initiate a judicial proceeding. Most of the times the authorities initiate criminal proceedings, but sometimes administrative proceedings are sufficient to serve their purpose. Afterwards, the proverbial inefficiency and lack of independence of the Latin American judicial structures destroys the lives of their victims. The courts of justice have become the new accomplices of ruthless rulers and corrupt public authorities.

The procedural abuses committed by the judiciary can take place by way of lack of a balanced and reasoned evaluation of the evidence, lack of relevant and independent criminal investigation, the extension *ad aeternum* of judicial proceedings, the forced removal of judges who have no negative predisposition against the victim, the imposition of "provisional measures" that freeze all the victims' assets so that they have no resources to pay for effective legal counsel, and many other measures. This new type of human rights violation is more sophisticated than the blunt measures taken by previous generations of autocratic leaders, who had their victims kidnapped, tortured, and summarily executed. The result, however, is similar: people who suffer from oppressive justice systems are excluded from society and political life. They will not be able to take part in any democratic political process. In addition, in countries like Ecuador, the weak parliamentary structures and extensive powers of the Presidency have allowed the adoption of laws that create quasi-judicial procedures which operate parallel to the ordinary judiciary. These serve to

oppress human rights. In Ecuador, the 2013 Communications Law created such procedures for alleged libel and slander cases against public authorities, which so far have caused substantial harm to the freedom of expression in that country.

Today, most victims of human rights violations have the right to access international human rights mechanisms. If we focus on Ecuador, victims may chose between a wide array of human rights bodies, primarily those of the United Nations and the Inter-American Human Rights System. In the United Nations, victims can bring individual complaints to the Human Rights Committee for violations of all classic civil and political rights, as outlined in the International Covenant on Civil and Political Rights. Alternatively, they can submit their claims to the Committee against Torture, or the Committees on Enforced Disappearance, on the Elimination of All Forms of Discrimination against Women, on the Elimination of All Forms of Racial Discrimination, on Economic, Social and Cultural Rights, and on the Rights of Persons with Disabilities.

Regarding the Inter-American Human Rights System, the victims will present their cases to the Inter-American Human Rights Commission. Regardless of the mechanism the victim choses, the final resolution will be binding upon the State as an emanation of the treaty's binding force, although it is not an international judgment with immediate enforceability. Only the judgments of the Inter-American Human Rights Court have the legal force of an international judgment. In practice, however, the Inter-American Human Rights Commission submits only a very small minority of cases to the Court.

Regardless of the legal and symbolic importance of these mechanisms, they are not always an efficient solution to the problems faced in the member States. Four characteristics may be identified that hinder the mechanisms' efficiency in an ideal scenario. First, these international human rights mechanisms are composed of individuals who have been nominated by the mechanisms' member States. These are the same States against which the mechanisms are handling the human rights cases. Second, international NGOs have increasingly permeated the system, pursuing often their own agendas beyond the strict boundaries of an independent, international, human rights enforcement mechanism. Third, the States finance these mechanisms, and hence they influence the mechanisms' efficiency through the increase or reduction of funding. For instance, in

Latin America, the reduction of the States' contributions to the budget of the Inter-American Human Rights System has contributed to reduce its efficiency. Fourth, and last, the international human rights mechanisms depend on the voluntary and spontaneous compliance by the States with the mechanisms' resolutions on human rights cases. The States, however, often do not comply, or only comply partially, with these resolutions. The victims feel the consequences of these characteristics of the international human rights mechanisms whenever they address their complaints to them. These particularities also explain why the real change in the judicial systems of the Latin American countries must come from within the affected countries.

This book is a first attempt at pointing towards the problems of the judicial system in Ecuador, and to formulate solutions needed within Ecuador to remedy these shortcomings. I hope this book raises the awareness about the risks of the usurpation of the courts of justice by the governments, and I encourage the authors to continue the international denunciation of these judicially made human rights violations.

Dr. Björn Arp
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Washington, D.C.
September 14, 2016

CASES

I. THE JUDICIARY AS A TOOL TO SILENCE FREEDOM OF EXPRESSION ONLINE IN ECUADOR

by Daniela Salazar Marín[1].

Ecuador has drawn international attention for its poor record on freedom of expression. The most prominent examples involve sanctions levied on mass media outlets and the use of criminal defamation laws. This text, by contrast, focuses on a less known case about a young Twitter user who was subjected to criminal prosecution after disseminating information about alleged cases of nepotism in Correa's government. The chilling effect caused by this prosecution affected other social media users, which is particularly problematic because social media is the only space left to freely express opinions and ideas that challenge the actions and policies of the current government. The case illustrates how the judiciary has become an important actor in silencing critics in Ecuador, even online.

[1] Professor Salazar is the Associate Dean of the Universidad San Francisco de Quito Law School (Quito) and a former Human Rights Specialist for the Inter-American Commission on Human Rights. She has also written many articles in International Human Rights Law and Immigration Law. Professor Salazar received her LL.B from the University San Francisco Law School (Quito) and her LL.M from Columbia Law School (New York). Among her affiliation, she is also a member of the academic branch of Legal Science for *Casa de la Cultura Ecuatoriana*, Extraterritorial Obligations Consortium (Heidelberg) and member of SELA – Yale University.

II. TERRORISM FORGED IN A CONSTITUTIONAL STATE OF LAW: THE CASE OF "TEN OF LULUNCOTO".

***by Dr. Jaime Vintimilla*[2].**

On March 3, 2012, for alleged terrorism, ten young people were arrested in the area called Luluncoto located in the south of Quito. The hearing of flagrante delicto rating was held on March 4. Prior accusatory opinion, on the basis of Article 160 of the Penal Code, a summons to judgment was issued. On March 7, 2013, the Third Criminal Court convicted of terrorism to ten young people in the attempted imposing the sentence of one year, with written notice on May 15, 2013. On December 24, 2013, the Provincial Court of Pichincha, rejected the appeal upholding the judgment of first instance. Finally, on June 7, 2016, the National Court of Justice notified the judgment in which it decided to apply the rule or principle of lenity, especially being based on the fact that the subsequent law is more favorable.

The purpose of the case study called the " Ten of Luluncoto " seeks to show the serious violations of human rights that occurred during the conduct of proceedings before different courts, being the most relevant the abuse of various precautionary measures as well the transgression of the principle of criminal doctrine of consistency through the distorted interpretation and application of *Iura Novit Curia* principle, all of which leads us down the dark path of criminal law of the Enemy.

[2] Professor. Vintimilla is a faculty member of San Francisco University Law School, and a professor at the graduate programs in law at Andean Simon Bolivar University (Quito) and Alcalá de Henares (Spain). Has written more than 25 articles and books about Constitutional and financial law, also about arbitration, mediation, history, genealogy and Indian justice.

III. AN UNJUST JUDGMENT AND A SHAMEFUL CONVICTION: A POLITICAL INSTRUMENT TO CONFISCATE PRIVATE TELEVISION CHANNELS.

***by Dr. Jorge Zavala Egas*[3].**

This study concerns the infringement of human rights through the political control of judges to justify the taking of private media. The study focuses on the criminal proceedings used to justify the unlawful seizure and taking of the television channels *TC Television* and *Gamavision*. There, the parties' fundamental rights were infringed by proceedings that did not respect the minimum guarantees required by international human rights conventions, and thus left them defenseless. The study documents the serious violations of due process and the principles of non-retroactivity of the law, equality of the parties, judicial impartiality, and the presumption of innocence, among others, against the businessmen Roberto and William Isaias, and a group of professionals.

The study also introduces the findings of the recent resolution by the U.N. Human Rights Committee that held the Ecuadorian State responsible for human rights violations against the brothers William and Roberto Isaías. The ruling further condemned the state and ordered "full reparation" to the victims—namely, the restoration of the parties' legal standing to the *status quo* before the expropriation, the return of unlawfully seized properties not already disposed of or assigned, indemnification for properties that have disappeared or been assigned to third parties, and a public apology.

[3] Professor Zavala, is a faculty member of the graduate program in law at *Pontificia Universidad Catolica* (Guayaquil and Cuenca). He also teaches law at UESS (*Universidad de Especialidades Espíritu Santo Santiago de Guayaquil*) and *San Gregorio* University (Portoviejo). He has written many articles, books and conducted several workshops on Constitutional, Criminal, and Procedural Law.

IV. THE JUDICIARY AS AN INSTRUMENT OF CENSORSHIP

by Dr. Fabricio Rubianes Morales[4] & Carlos Manosalvas Silva[5].

This study aims to establish the grave infringement of fundamental rights committed through the prosecution of Ecuadorian citizens who think differently from their Government. The study centers on the illustrative case of Francisco Daniel Endara Daza, who, for allegedly clapping in a social protest against the Ecuadorean government outside the facilities of the state-run television channel *Ecuador TV* on September 30, 2010 (known as "30S"), was convicted of "terrorism and sabotage" and sentenced to four years in prison and ordered to pay fines. After five years of litigation followed by appeals, Endara's charges first shifted from "co-author" to "accomplice by applause" in the crime of "sabotage and terrorism," and ultimately resulted in his sentencing by the National Court of Ecuador ("the country's closest equivalent to the U.S. Supereme Court") to an 18-month prison sentence as co-author in the crime of "paralyzing public services," a different crime than that for which he stood accused at the outset of the proceedings against him.

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[4] Professor Rubianes is a faculty member of *Universidad Central del Ecuador* (UCE*)* and managing partner at Rubianes and Associates Law Firm (Ecuador). Professor Rubianes received a B.A. in Political and Social Science from UCE and has a Juris Doctor from *Universidad Internacional del Ecuador*. He also has a Master's degree in Education and is candidate for a Master of Law in Criminal and Procedural Law from UCE.

[5] Mr. Manosalvas is an associate in Quevedo & Ponce Law Firm in Ecuador and one of the attorneys that represented Mr. Franscico Endara in the criminal proceedings against him. Mr. Manosalvas received a Master of Law in International Environmental Law and a Master in International Negotiation and Foreign Commerce.

V. THE RELATIONSHIP BETWEEN GOVERNMENT AND CIVIL SOCIETY, AND THE ABUSE OF CRIMINAL LAW IN ECUADOR: THE 29 SARAGURO.

by Rafael Paredes Corral[6].

This analysis presents the case of "The Saraguro 29", where following protests on several points against the National Government, a group of people from the Indigenous community of Saraguro were extremely repressed and 31 members arrested. These citizens were charged and prosecuted for -blockage of a public service- a crime sanctioned with up to 3 years in prison. This case illustrates the persecution of social and indigenous leaders who have been denied their right of assembly, protest, resistance and due process of law. The use of malicious criminal proceedings as a means of intimidation for political purposes has been a common practice in Ecuador.

[6] Mr. Paredes is an Ecuadorian lawyer with a Master of Law (LLM) from University College London. He practices law in Ecuador and can provide legal advice on legal matters relating to international law in countries of Latin America. His areas of specialization are Competition Law, Investment and Energy Law, and Human Rights. Rafael practice in human rights cases, including crimes against humanity, such as torture, illegal imprisonment and enforced disappearance of persons. As an expert in Trafficking in Persons he provides technical assistance to State institutions, international organizations and non-governmental organizations on TIP prevention, protection of TIP victims, and sanction of traffickers. Mr. Paredes received and LL.B. from San Francisco University Law School (Quito) and B.A in Political Science and International Development from Saint Mary's University (Canada)

VI. THE RELATIONSHIP BETWEEN GOVERNMENT AND CIVIL SOCIETY, AND THE ABUSE OF CRIMINAL LAW IN ECUADOR

by Sebastián González[7] & Pier Pigozzi[8].

The criminal prosecution of the student-demonstrators of *Colegio Central Técnito* reveals the widespread lack of judicial independence, the persecution of real or perceived opposition, and the criminalization of social protest in Ecuador. In this case, President Rafael Correa made public statements during his weekly address to the nation disapproving the performance of judges and prosecutors, who had acquitted from criminal responsibility 12 high school students. These 12 students from *Colegio Central Técnico* had taken part in a protest against a decision by the Ministry of Education to change the name of their high school. After the President's public intervention, the student protest turned into a crime of rebellion, the prosecutor (illegally) overturned his acquittal and summoned the students to stand a trial before a court that lack any guarantee of independence and due procedure, which also violated the student's freedom of expression. This case shows that President Correa's government is willing to manipulate criminal trials regardless the relevance of the matter, the position and age of the perceived opponents, or any previous judgments that could have established the innocence of the persons the government is aiming for.

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