



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

National Endowment for
Democracy, Secretariat

1025 F St., NW, Suite 800
Washington, D.C. 20004

Tel: + 202-378-9700
Fax: +202-378-9889

world@ned.org
www.wmd.org

Defending Civil Society

Ecuador Country Report Summary

(* This summary was prepared by World Movement Secretariat staff.)

The legal framework for Civil Society Organizations (CSOs) in Ecuador is the Civil Code adopted in 1861, which has since been reformed several times. The articles that apply to CSOs have been controlled by a regulation known as the “Regulation for Approval of the Statutes, Reforms and Codifications, Liquidation and Dissolution, and Registration of Members and Directives, of the Organizations under the Civil Code and Special laws” (the Regulation). In 2008, the Regulation was reformed, introducing requirements, controls, and causes for dissolution of CSOs that did not previously exist. These new stipulations provide the State with an excessive amount of discretion regarding the dissolution of CSOs and the information it is allowed to obtain for this purpose.

According to the National Constitution approved by referendum on 2008, all organizations in society are recognized to be an expression of popular sovereignty, and may therefore carry out processes of self-determination, and influence decisions, public policy, and social control of public bodies and all levels of government. The “Council of Citizen Participation and Social Control” is one of the bodies that exercises the functions of social control and transparency in the country, and the constitution gives to CSOs¹ the ability to nominate the counselors and advisors who serve on this Council. However, the Constitution does not clearly identify which governmental body is going to exercise social control and transparency. The following rights are acknowledged in the Constitution, but not limited to: the right to protect one’s own beliefs; the right of conscientious objection, to the extent it does not cause damage to another person; freedom of association; freedom of reunion and manifestation. In addition, according to the Constitution, international human rights treaties ratified by the State prevail over any other law or act of public authority. In some cases, these treaties recognize more favorable rights than those contained in the Constitution.

The Civil Code acknowledges two types of CSOs: corporations and foundations for public charity. Corporations seek the common good for its associates or a determined community and one of more founders, whereas a Foundation seeks to promote common good for the general public. Aside from this, there is little that distinguishes these two types of organizations in the Civil Code. Both corporations and foundations require the approval of the President to become corporate bodies, a minimum number of members, and for corporations, and a minimum amount of assets. They are required to present the necessary documents established in The Regulation to the appropriate ministry or to the general secretary of the Public Administration.

The Regulation also requires that all the organizations be registered with the Registry of Civil Society Organizations, though there is no legal limitation to creating and operating unregistered groups. The Registry is accessible to the public but is not comprehensive, as it has been only recently implemented. Foreign CSOs are required to register with the Ministry of Foreign Affairs, Commerce and Integration. Incomes of CSOs are free of certain tax obligations under specific conditions. Donors, however, do not receive any incentives.

¹ There is no definition in the Constitution clearly defining civil society organizations.

The President is responsible for the supervision and control of CSOs, but delegates this responsibility to the Ministries of the State. The President is entitled to dissolve CSOs according to the Civil Code, despite the wishes of its members, if they compromise the safety or interests of the State, or do not follow the purpose of their institution. Other than dissolution, there is no other penalty legally identified for a CSO not acting in accordance with the law.

There is a lack of legislation that provides protection to CSOs against harassment or persecution by the State. Additionally, should CSO representatives be threatened or violence perpetrated against them, there is no law protecting them aside from those already provided in the rules of protection for common people. Though the law acknowledges the right to freedom of expression to oppose the government or advocate other political causes, current President Rafael Correa has been vocally aggressive towards CSOs, which has increasingly been viewed by the public as a threat to the freedom of expression. The government's justification for some of the CSO restrictions are that there has been a significant growth of CSOs in the country, to the extent that they have not been regulated or controlled in advance and their activities should be coordinated with the State.

CSOs are free to communicate with internal or external actors, and there are no existing regulations forbidding domestic CSOs from receiving foreign funds. According to the National System of Public Contractual law, however, contracts that are financed via an agreement with a multilateral organization or with international development organizations are subject to monitoring to ensure they are within the legal parameters of their respective agreements.

CSOs are free to participate in commercial and economic activities only for the purposes of reinvesting in the organization, as CSOs are not permitted to obtain profits. The organizations are able to compete for funding from the Government, but must be accredited and subject to subsequent control by the Central Controller of the State.

Since April 2008, standards regarding CSOs have deteriorated. Reforms have increasingly provided the State with more discretion over these organizations, making the situation grave for CSO activities. Today, the main priority for many CSOs is engagement with the Ministry of Coordination and Social Development regarding the 2008 reform of the Regulation in the Civil Code. Various CSOs are engaged in a dialogue with the Ministry concerning reform, although this has not resulted in any policy changes. To address this threat, the following three pronged approach is proposed:

- Build a coalition among CSOs to distribute information regarding the new laws within the Regulation and their implications to CSOs and establish a system of transparency and internal-control;
- Develop a public campaign to highlight CSOs' role and contributions to society, establish a system of transparency for the public to see the internal controls and management of funding, and establish systems of auto-regulation that are public;

- Develop a campaign directed toward State authorities wherein CSOs offer support and advice, reach out to the international community, including regional CSO networks that support the development of mechanisms to control the quality, nature, and efficacy of democratic institutions and above all freedom of association.

This effort would motivate CSOs to obtain minimum standards for their operations, as well as provide CSOs with the capacity to present complaints and proposals, and to be represented at different international fora responsible for guaranteeing democratic liberties.