

# JUDGES OF THE CONSTITUTIONAL COURT OF ECUADOR

Dr. Richard Omar Ortiz Ortiz – President

Case No. 167-25-IN

## I. BACKGROUND

Pursuant to Article 12 of the Organic Law on Jurisdictional Guarantees and Constitutional Review, the International Service for Human Rights (International Service for Human Rights - ISHR) submits the following **AMICUS CURIAE** in the context of the public action for unconstitutionality filed against the Organic Law on Social Transparency, published in the Official Register, Third Supplement No. 112, of August 28, 2025.

## II. INTEREST IN THE CASE

The International Service for Human Rights (“ISHR”) is an independent nongovernmental organization headquartered at 777 UN Plaza, 7th Floor, New York, NY 11017. It is dedicated to the promotion and protection of human rights through support for human rights defenders, the strengthening of human rights systems, and leadership and participation in human rights coalitions. ISHR has a mandate to prevent attacks and human rights violations against human rights defenders and to seek justice and accountability when such violations occur.

## III. ARGUMENTS AND CONTRIBUTIONS TO THE CASE

### Introduction

1. This case concerns an Action for Unconstitutionality filed by Acción Ecológica, the Ecuadorian Populorum Progressio Fund, the Center for Economic and Social Rights, the Hermanos y Unida Fbu Foundation, the Quito Civic Council, the Maquita Cushunchic Foundation (trading as Hermanos-Mcch), the Ecuadorian Coordinating Body of Organizations for the Defense of Nature and the Environment, and the Heifer Ecuador Foundation before the Constitutional Court of Ecuador (the “**Action for Unconstitutionality**”), against the Organic Law on Social Transparency published on August 28, 2025.
2. The Organic Law on Social Transparency establishes a legal framework for the registration, oversight, and financial accountability of nonprofit social organizations (“NPOs”) in the Republic of Ecuador.
3. The law’s operational provisions introduce extensive state control mechanisms, such as registration requirements, funding restrictions, and severe consequences for non-compliance—including dissolution—which, in our view, violate the rights of human rights defenders and NGOs, as well as Ecuador’s international human rights obligations.

4. Through this *amicus curiae* brief, ISHR undertakes to guide the Constitutional Court by presenting the applicable international human rights law and standards regarding the right to freedom of association in this case. This includes the International Covenant on Civil and Political Rights (“ICCPR”), ratified by Ecuador on March 6, 1969<sup>1</sup>, and the United Nations Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“**United Nations Declaration on Human Rights Defenders**”), adopted by consensus by the United Nations General Assembly in 1998.<sup>2</sup> We have also drawn upon relevant reports by United Nations Special Rapporteurs and the “Declaration +25,” a supplement to the United Nations Declaration on Human Rights Defenders that articulates jurisprudential developments regarding the right to defend rights in the 25 years since the adoption of the Declaration on Human Rights Defenders.

### **Relevant International Framework**

5. The Constitution of Ecuador, through Articles 11(3), 417, and 424, incorporates international human rights treaties and instruments into domestic law.<sup>3</sup>
6. Article 20(1) of the Universal Declaration of Human Rights guarantees freedom of association in unequivocal terms: “Everyone has the right to freedom of peaceful assembly and association.”<sup>4</sup>
7. Articles 22(1) and 22(2) of the ICCPR define the scope of this important right:
  - “1. Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.
  2. The exercise of this right may be subject only to such restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, public

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<sup>1</sup> United Nations Treaty Bodies Database, “Ratification Status for CCPR – International Covenant on Civil and Political Rights,” available [here](#).

<sup>2</sup> Special Rapporteur on Human Rights Defenders, “The Declaration on Human Rights Defenders,” available [here](#).

<sup>3</sup> Constitution of the Republic of Ecuador, Art. 11(3) (2008) (“The rights and guarantees established in the Constitution and in international human rights instruments shall be directly and immediately applicable by and before any public, administrative, or judicial official, either ex officio or upon request by a party”); idem, art. 417 (“International treaties ratified by Ecuador shall be subject to the provisions of the Constitution. In the case of treaties and other international human rights instruments, the principles of human dignity, non-restriction of rights, direct applicability, and the open clause established in the Constitution shall apply”); id., art. 424 (“The Constitution is the supreme law and prevails over any other provision of the legal system. The laws and acts of the public authorities must be in conformity with the constitutional provisions; otherwise, they shall lack legal effect. The Constitution and international human rights treaties ratified by the State that recognize rights more favorable than those contained in the Constitution shall prevail over any other legal norm or act of public authority”) (*cited in* Human Rights Watch, “Amicus on Refugees in Ecuador” (June 16, 2014), Section III(a), available [here](#)).

<sup>4</sup> Universal Declaration of Human Rights (adopted and proclaimed by the General Assembly in its resolution 217 A (III) of December 10, 1948), available [here](#).

safety, or public order, or for the protection of public health or morals or the rights and freedoms of others. [...]”.<sup>5</sup>

8. Therefore, under the ICCPR, any restriction on freedom of association must meet all of the following conditions: (i) it must be provided for by law; (ii) it may only be imposed for one of the reasons set forth in paragraph 2 (i.e., national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others); and (iii) it must be necessary in a democratic society to achieve one of these objectives.<sup>6</sup>
9. Article 5 of the United Nations Declaration on Human Rights Defenders also unconditionally establishes the rights of individuals and groups to freedom of association:

“In order to promote and protect human rights and fundamental freedoms, everyone has the right, individually or collectively, at the national and international levels: (a) To assemble or demonstrate peacefully; (b) To form, join, or participate in non-governmental organizations, associations, or groups; (c) To communicate with non-governmental and intergovernmental organizations.”<sup>7</sup>

10. Article 17 of the United Nations Declaration on Human Rights Defenders clarifies the unconditional nature of the rights of individuals and groups to associate and seek remedies:

“In the exercise of the rights and freedoms set forth in this Declaration, no one, individually or collectively, shall be subject to any restrictions other than those imposed in accordance with applicable international obligations and commitments and prescribed by law, solely for the purpose of ensuring due recognition and respect for the rights and freedoms of others and meeting the just demands of morality, public order, and the general welfare of a democratic society.”<sup>8</sup>

## **Key restrictions imposed by the Organic Law on Social Transparency on the right to freedom of association**

### Registration requirements

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<sup>5</sup> International Covenant on Civil and Political Rights (Adopted and opened for signature, ratification, and accession by the General Assembly in its resolution 2200 A (XXI) of December 16, 1966), available [here](#).

<sup>6</sup> Human Rights Committee, *Boris Zvozkov et al. v. Belarus*, CCPR/C/88/D/1039/2001 (October 17, 2006), para. 7.2, available [here](#); Human Rights Committee, *Aleksander Belyatsky et al. v. Belarus*, CCPR/C/90/D/1296/2004 (July 24, 2007), para. 7.3, available [here](#); Human Rights Committee, *Daher Ahmed Farah v. Djibouti*, CCPR/C/130/D/3593/2019 (November 4, 2020), para. 7.3, available [here](#).

<sup>7</sup> Resolution Adopted by the General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” A/RES/53/144 (March 8, 1999), Art. 5, available [here](#).

<sup>8</sup> Resolution Adopted by the General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, A/RES/53/144 (March 8, 1999), art. 17, available [here](#).

11. The Organic Law on Social Transparency establishes a burdensome registration (and re-registration) process for Ecuadorian NGOs. Article 17 establishes a government-managed digital platform for collecting information, on which nonprofit organizations must register in order to operate. The second transitional provision stipulates that even those nonprofit organizations that are already legally incorporated and operating in Ecuador must register in the new system within 180 days of the law's entry into force. It is essential to note that the Organic Law on Social Transparency amends Article 36 (freedom of association) of the Organic Law on Citizen Participation to establish, *among other things*:

“[...] The incorporation of an organization with legal personality is finalized upon the approval and registration of its bylaws by the competent authority, in accordance with the procedure established in the Law and the Regulations, without prejudice to the obligation to register in the Unified Information System for Non-Profit Social Organizations, in order to commence its activities within Ecuadorian territory. Once the incorporation is complete, failure to update the registry, failure to notify changes, or exclusion from public registries shall not affect the organization's existence, but may limit its ability to enter into legal acts, access public funds, participate in state proceedings, or enjoy benefits that require formal proof in official registries. [...]” (emphasis added)

12. We understand that, prior to this amendment, Article 36 expressly provided that incorporation as a legal entity was not necessary for the exercise of the right of association.<sup>9</sup> The exclusion of this provision in the amended article suggests that the Law now requires all nonprofit organizations to obtain legal personality through registration and approval by the competent authority as a prerequisite for exercising their freedom of association.
13. The combined effect of these provisions is that new nonprofit organizations wishing to operate in Ecuador (as well as those already operating in Ecuador without being registered) must register on a new digital platform and obtain authorization from a competent authority to be established as a legal entity in order to exercise their freedom of association. Even non-profit organizations already registered and operating in Ecuador must register on the digital platform within the stipulated timeframe.
14. The mandatory registration requirement constitutes a restriction on the right of nonprofit organizations to freedom of association as established in Articles 22(1) and 22(2) of the ICCPR and in Article 5 of the United Nations Declaration on Human Rights Defenders.
15. The Human Rights Committee has held that the existence of a reasonable and objective justification for limiting freedom of association is not sufficient: the State must demonstrate that restrictions on association are necessary to prevent a real, and not merely hypothetical, danger to national security or democratic order.<sup>10</sup> The State must also demonstrate that less

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<sup>9</sup> Constitutional Challenge, page 19.

<sup>10</sup> Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, CCPR/C/84/D/1119/2002 (July 20, 2005), para. 7.2, available [here](#).

intrusive measures would be insufficient to achieve the same purpose<sup>11</sup> and that the restriction is proportional to the interest it seeks to protect.<sup>12</sup>

16. In several concluding observations, the Human Rights Committee has expressed concern regarding onerous, unreasonable, unduly restrictive, and disproportionate registration requirements,<sup>13</sup> including mandatory registration<sup>14</sup> for associations to operate. It has recommended that limitations on the operation of associations and organizations not exceed those permitted under Article 22 of the Covenant<sup>15</sup> and has repeatedly urged States to review relevant laws to bring them into line with Article 22<sup>16</sup>.
17. Onerous restrictions on freedom of association through mandatory registration requirements as a precondition for operation do not meet the necessity requirement (“least intrusive”) for restricting freedom of association under Article 22 of the ICCPR or Article 17 of the Declaration on Human Rights Defenders. Ecuador must demonstrate that the purpose of enacting this law is a legitimate ground for restricting freedom of association and that less intrusive measures would not be sufficient to achieve that purpose.
18. The Commentary on the United Nations Declaration on Human Rights Defenders explains that Article 5 “affirms protection against arbitrary interference by the State or private persons when, for any reason or for any purpose, an individual wishes to associate with others or has already done so.”<sup>17</sup> Similarly, the Commentary explains that “States Parties [...] may not prohibit or

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<sup>11</sup> Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, CCPR/C/84/D/1119/2002 (July 20, 2005), para. 7.2, available [here](#).

<sup>12</sup> Human Rights Committee, *Raisa Mikhailovskaya and Oleg Volchek v. Belarus*, CCPR/C/111/D/1993/2010 (July 24, 2014), para. 7.3, available [here](#); Human Rights Committee, *Daher Ahmed Farah v. Djibouti*, CCPR/C/130/D/3593/2019 (November 4, 2020), para. 7.3, available [here](#).

<sup>13</sup> Human Rights Committee, Concluding Observations on the sixth periodic report of Sri Lanka, CCPR/C/LKA/CO/6 (April 26, 2023), para. 42, available [here](#); Human Rights Committee, “Concluding Observations on the fifth periodic report of Egypt,” CCPR/C/EGY/CO/5 (April 14, 2023), paragraphs 49–50, available [here](#); Human Rights Committee, Concluding Observations on the third periodic report of Turkmenistan, CCPR/C/TKM/CO/3 (April 12, 2023), para. 46, available [here](#); Human Rights Committee, Concluding Observations on Equatorial Guinea in the absence of its initial report, CCPR/C/GNQ/CO/1 (August 22, 2019), paragraph 56, available [here](#) (*cited in* European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, ‘Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association’ (July 2023), p. 5, available [here](#) (the original source is available only in English)).

<sup>14</sup> Human Rights Committee, “Concluding Observations on the Second Periodic Report of Turkmenistan,” CCPR/C/TKM/CO/2 (April 20, 2017), para. 46, available [here](#); Human Rights Committee, Concluding Observations of the Human Rights Committee on Turkmenistan, CCPR/C/TKM/CO/1 (April 19, 2012), para. 19, available [here](#); Human Rights Committee, “Concluding Observations of the Human Rights Committee on Lithuania,” CCPR/C/79/Add.87 (November 19, 1997), para. 20, available [here](#).

<sup>15</sup> Human Rights Committee, “Concluding Observations of the Human Rights Committee on Lithuania,” CCPR/C/79/Add.87 (November 19, 1997), para. 20, available [here](#) (*cited in* European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, ‘Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association’ (July 2023), p. 5, available [here](#) (the original source is available only in English)).

<sup>16</sup> Human Rights Committee, “Concluding Observations on the Second Periodic Report of Turkmenistan,” CCPR/C/TKM/CO/2 (April 20, 2017), para. 47, available [here](#); Human Rights Committee, Concluding Observations on the third periodic report of Turkmenistan, CCPR/C/TKM/CO/3 (April 12, 2023), para. 47, available [here](#).

<sup>17</sup> United Nations Office of the High Commissioner for Human Rights, “Commentary on the Declaration on Human Rights Defenders” (Second Edition, 2016), page 47, available [here](#).

interfere with the formation of associations or their activities.”<sup>18</sup> The registration requirements of the Organic Law on Social Transparency mentioned above would effectively make the creation, operation, and activities of all nonprofit organizations contingent upon compliance with new and arbitrary registration, reporting, and review mechanisms, depending on the risk level assigned to each organization. Taken together, these administrative requirements contravene the right to freedom of assembly and association without restrictions, guaranteed by Article 5 of the United Nations Declaration on Human Rights Defenders.

19. The United Nations Special Rapporteur on the situation of human rights defenders has specifically addressed the situation of associations without legal personality. The Special Rapporteur clarified that associations do not need to assume legal personality to fall within the scope of Article 22, as de facto associations enjoy the same protection.<sup>19</sup> The Special Rapporteur notes how laws on NGOs restrict freedom of association:

“The legal frameworks governing NGOs leave registration authorities with broad discretion to make decisions, often without providing organizations with adequate means to challenge them and, in many cases, without providing for any form of independent judicial review. [...] Governments and registration authorities often apply existing laws and regulations in ways that are highly detrimental to the independent functioning of a healthy civil society. Ambiguous requirements, lack of transparency, and cumbersome and protracted procedures can restrict the right to freedom of association.”<sup>20</sup>

#### *Extensive financial oversight and disclosure obligations*

20. The Organic Law on Social Transparency establishes extensive oversight and reporting mechanisms for nonprofit organizations, including those working in the field of human rights, which may have a deterrent effect on their legitimate and important work.
21. The Law establishes a supervisory body for the “monitoring, auditing, intervention, control, and supervision” of nonprofit organizations (Article 6), which will assign a risk classification to nonprofit organizations, taking into account (among other things) the “[o]rigin of funds, whether domestic or international, public or private” (Article 7). All nonprofit organizations must comply with various obligations, including, *among others*, “[k]nowing and properly identifying their donors, especially when dealing with foreign individuals or entities” and “[v]erifying the legal, complete, and traceable use of their financial resources [...]” (Article 8), as well as conducting due diligence in identifying donors, beneficiaries, and partners based on their risk level (Article 11). They may be required to publish information on various topics,

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<sup>18</sup> United Nations Office of the High Commissioner for Human Rights, “Commentary on the Declaration on Human Rights Defenders” (Second Edition, 2016), p. 48, available [here](#).

<sup>19</sup> Report of the Special Rapporteur on the situation of human rights defenders (Margaret Sekaggya), paragraph 21, A/64/226 (August 4, 2009), available [here](#).

<sup>20</sup> Report of the Special Rapporteur on the situation of human rights defenders (Margaret Sekaggya), paragraphs 53–54, A/64/226 (August 4, 2009), available [here](#).

including their “[s]ources of funding, donors, donations, and relevant expenditures” (Article 15). Depending on their risk classification, nonprofit organizations must also submit reports to the supervisory body on their “management and use of resources,” including “a breakdown of income and expenditures, specifying public funds, private donations, and international cooperation funds” (Article 16).

22. Article 13 of the United Nations Declaration on Human Rights Defenders states that:

“Everyone has the right, individually or collectively, to solicit, receive, and use resources for the express purpose of promoting and protecting, by peaceful means, human rights and fundamental freedoms, in accordance with Article 3 of this Declaration.”<sup>21</sup>

23. By referring to the rights holder as “everyone,” the provision clarifies that not only registered associations, but also individuals and unregistered associations, have the right to access and use funding; therefore, “laws that allow only registered associations to receive foreign funding [...] violate international human rights standards regarding freedom of association”<sup>22</sup>, regardless of “the sources of funding, whether domestic, foreign, or international”<sup>23</sup>. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has also stated that “[t]he requirement that civil society organizations disclose their financial information constitutes a serious restriction on freedom of association.”<sup>24</sup>

24. Article 10 of the +25 Declaration on Access to Resources states the following:

“States should not impede the flow of financial resources to human rights defenders, including through domestic and international funding.

In particular, States must:

(a) Ensure that human rights defenders can seek, receive, and use funding and other resources from individuals, associations, foundations, or other civil society organizations, governments, aid agencies, the private sector, the United Nations, and other entities, whether domestic or foreign, even in highly restrictive environments.

(b) Refrain from imposing restrictions, conditions, reporting requirements, and other discriminatory, unreasonable, or arbitrary administrative processes and obstacles that impede the ability of human rights defenders or their registered or unregistered associations to seek, receive, or use funds or other resources under, for example, the pretext of

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<sup>21</sup> Resolution Adopted by the General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,’ A/RES/53/144 (March 8, 1999), art. 13, available [here](#).

<sup>22</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Maina Kiai), A/HRC/23/39 (April 24, 2013), para. 17, available [here](#).

<sup>23</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Maina Kiai), A/HRC/23/39 (April 24, 2013), para. 17, available [here](#).

<sup>24</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Clément Nyaletsossi Voule), A/HRC/50/23 (May 10, 2022), para. 23, available [here](#).

combating foreign interference or in the interest of national security, the fight against corruption, money laundering, or the fight against terrorism.”<sup>25</sup>

25. Burdensome procedures and reporting requirements regarding funding restrict the right to freedom of association under Article 22 of the ICCPR, Article 17 of the Declaration on Human Rights Defenders, and Article 10 of the +25 Declaration.
26. As mentioned in paragraph 14 above, the Human Rights Committee has held that the existence of a reasonable and objective justification for limiting freedom of association is not sufficient: the State must demonstrate that restrictions on association are necessary to prevent a real, and not merely hypothetical, danger to national security or democratic order.<sup>26</sup> The State must also demonstrate that less intrusive measures would be insufficient to achieve the same purpose<sup>27</sup> and that the restriction is proportionate to the interest it seeks to protect.<sup>28</sup>
27. In its concluding observations, the Human Rights Committee has noted the unreasonable, onerous, and disproportionate nature of the requirement that NGOs publish information on their sources of funding and their expenditures.<sup>29</sup> It has raised similar concerns regarding NGOs that receive foreign funding and face increasing scrutiny and restrictions,<sup>30</sup> and has commented that the requirement for NGOs to publicly identify their foreign sponsors is unreasonable, onerous, and restrictive.<sup>31</sup> The United Nations Human Rights Council has also stated in a resolution on the protection of human rights defenders that human rights advocacy activities should not be delegitimized by the source of funding.<sup>32</sup>

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<sup>25</sup> Declaration on Human Rights Defenders +25 (2024), Art. 10, available [here](#).

<sup>26</sup> Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, CCPR/C/84/D/1119/2002 (July 20, 2005), para. 7.2, available [here](#).

<sup>27</sup> Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, CCPR/C/84/D/1119/2002 (July 20, 2005), para. 7.2, available [here](#).

<sup>28</sup> Human Rights Committee, *Raisa Mikhailovskaya and Oleg Volchek v. Belarus*, CCPR/C/111/D/1993/2010 (July 24, 2014), para. 7.3, available [here](#); Human Rights Committee, *Daher Ahmed Farah v. Djibouti*, CCPR/C/130/D/3593/2019 (November 4, 2020), para. 7.3, available [here](#).

<sup>29</sup> Human Rights Committee, “Concluding Observations on the third periodic report of Kyrgyzstan,” CCPR/C/KGZ/CO/3 (December 9, 2022), para. 49, available [here](#) (cited in European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, “Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association” (July 2023), p. 33, available [here](#) (the original source is available only in English)).

<sup>30</sup> Human Rights Committee, “Concluding Observations on the third periodic report of Kazakhstan,” CCPR/C/KAZ/CO/3 (September 3, 2025), para. 53, available [here](#). See also Human Rights Committee, “Concluding Observations on the Seventh Periodic Report of the Russian Federation,” CCPR/C/RUS/CO/7 (April 28, 2015), para. 22, available [here](#) (cited in European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, “Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association” (July 2023), p. 34, available [here](#) (the original source is available only in English));

<sup>31</sup> Human Rights Committee, “Concluding Observations on the Sixth Periodic Report of Hungary,” CCPR/C/HUN/CO/6 (May 9, 2018), para. 53, available [here](#) (cited in European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, “Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association” (July 2023), p. 34, available [here](#) (the original source is available only in English)).

<sup>32</sup> Human Rights Council, Resolution adopted by the Human Rights Council, A/HRC/RES/22/6 (April 12, 2013), para. 9 (b), available [here](#) (cited in Declaration on Human Rights Defenders +25 (2024), art. 10, available [here](#)).

28. Restrictions on freedom of association through burdensome procedures and reporting requirements do not meet the necessity requirement (“least intrusive possible”) for restricting freedom of association under Article 22 of the ICCPR or Article 17 of the Declaration on Human Rights Defenders. Ecuador must demonstrate that the purpose of enacting this law is a legitimate ground for restricting freedom of association and that less intrusive measures would not be sufficient to achieve that purpose.

### *Dissolution of Nonprofit Organizations as a Result of Noncompliance*

29. The fourth unnumbered article added by the Organic Law on Social Transparency after Article 36 of the Organic Law on Citizen Participation establishes the “[g]rounds for dissolution of social organizations.”<sup>33</sup> One of the grounds listed in paragraph (4) is “[d]ue to proven non-compliance with the obligations set forth in the Constitution, the law, the bylaws, and the specific regulations governing the organization’s activities [...].”
30. Furthermore, the second transitional provision states that if nonprofit organizations operating legally in Ecuador as of the date the new law takes effect fail to register in the online system within 180 days, their activities will be suspended. In the event of a repeat offense, their legal status will be revoked. The amended Article 36 of the Organic Law on Citizen Participation also provides that the legal status of a nonprofit organization will be revoked if it repeatedly fails to comply with the obligation to update its registration, fails to report changes, etc.
31. The dissolution of an organization is one of the most severe forms of restriction under Article 22 of the ICCPR.<sup>34</sup> The Human Rights Committee has observed that the right to freedom of association guarantees not only the right to form an association, but also the right of that association to freely carry out its statutory activities.<sup>35</sup> The protection afforded by Article 22 extends to all activities of an association, and the dissolution of an association must comply with the requirements of paragraph 2 of that provision.<sup>36</sup>
32. In *Korneenko et al. v. Belarus*, the Human Rights Committee considered that Belarus’s decision to dissolve an association for failing to meet the documentation requirements imposed by national legislation constituted a disproportionate restriction on freedom of association under Article 22, paragraph 2.<sup>37</sup> In this and several other cases, the Committee has taken into account

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<sup>33</sup> Constitutional Challenge, page 15.

<sup>34</sup> Paul M. Taylor, A COMMENTARY ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (2020), p. 622 (the original source is available only in English).

<sup>35</sup> Human Rights Committee, *Aleksander Belyatsky et al. v. Belarus*, CCPR/C/90/D/1296/2004 (July 24, 2007), para. 7.2, available [here](#).

<sup>36</sup> Human Rights Committee, *Aleksander Belyatsky et al. v. Belarus*, CCPR/C/90/D/1296/2004 (July 24, 2007), para. 7.2, available [here](#); Human Rights Committee, *Viktor Korneenko et al. v. Belarus*, CCPR/C/88/D/1274/2004 (October 31, 2006), para. 7.2, available [here](#).

<sup>37</sup> Human Rights Committee, *Viktor Korneenko et al. v. Belarus*, CCPR/C/88/D/1274/2004 (October 31, 2006), para. 7.6, available [here](#) (cited in European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, ‘Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association’ (July 2023), p. 37, available [here](#) (the original source is available only in English)).

the particularly serious consequences of dissolution for the right to freedom of association when unregistered organizations are not permitted to operate.<sup>38</sup>

33. Similarly, given that the Organic Law on Social Transparency prohibits unregistered organizations from operating in Ecuador and they cannot exercise their freedom of association, dissolution is an extreme and disproportionate consequence of nonprofit organizations' failure to comply with the extensive registration, reporting, and other onerous requirements imposed upon them. This violates the right to freedom of association guaranteed in the various international human rights laws and standards mentioned above.

### Conclusion

34. This *amicus curiae* brief is intended to assist the Court in its analysis of whether Ecuador's Organic Law on Social Transparency complies with international legal and normative standards regarding the right to freedom of association. Our analysis concludes that the registration regime, the restriction on sources of funding, and the dissolution provisions of the Law, as currently drafted, contravene international law and standards, in particular Article 22 of the ICCPR and Articles 5, 13, and 17 of the United Nations Declaration on Human Rights Defenders.

35. Article 4 of the "Declaration +25" also states that States must:

"[a]bstain from enacting, maintaining, or enforcing laws and policies that criminalize, obstruct, or otherwise impede the right to defend human rights, including by restricting freedom of expression, assembly, and association, restricting the establishment of civil society organizations, or otherwise contravening the spirit and objectives of the Declaration and the Declaration+25."<sup>39</sup>

36. The United Nations has made clear that States have a responsibility to ensure a safe and enabling environment in which civil society and human rights defenders can operate freely, safely, and effectively. Under Article 2, paragraph 1, of the United Nations Declaration on Human Rights Defenders:

"States have the primary responsibility and duty to protect, promote, and fulfill all human rights and fundamental freedoms, inter alia, by taking the necessary measures to create the social, economic, political, and other conditions, as well as the legal safeguards required,

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<sup>38</sup> Human Rights Committee, *Viktor Korneenko et al. v. Belarus*, CCPR/C/88/D/1274/2004 (October 31, 2006), para. 7.7, available [here](#). See also Human Rights Committee, *Boris Zvozkov et al. v. Belarus*, CCPR/C/88/D/1039/2001 (October 17, 2006), para. 7.4, available [here](#); Human Rights Committee, *Natalya Pinchuk v. Belarus*, CCPR/C/112/D/2165/2012 (October 24, 2014), para. 8.5, available [here](#); Human Rights Committee, *Katsora, Sudalenko, and Nemkovich v. Belarus*, CCPR/C/100/D/1383/D/2005 (October 25, 2010), para. 8.3, available [here](#) (cited in European Center for Not-for-Profit Law and International Center for Not-for-Profit Law, 'Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association' (July 2023), p. 4, available [here](#) (the original source is available only in English)).

<sup>39</sup> Declaration on Human Rights Defenders +25 (2024), art. 4, available [here](#).

so that every person within their jurisdiction, individually or collectively, may enjoy in practice all such rights and freedoms.”<sup>40</sup>

37. Furthermore, the United Nations Human Rights Council (HRC) has reaffirmed that States must ensure that civil society actors can “seek, obtain, and use resources,” enjoy accessible registration procedures, participate meaningfully in lawmaking and policymaking, and benefit from transparent laws and access to justice.<sup>41</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association has likewise affirmed the positive obligation of States, under Article 22 of the ICCPR, to “establish and maintain an enabling environment in which associations can function effectively, including by promoting and facilitating their access to financial resources.”<sup>42</sup>
38. Therefore, ISHR urges the Court, in its assessment of the constitutionality of this law, to respect Ecuador’s national and international obligations to guarantee the right to freedom of association. This will also be a fundamental step toward ensuring a safe and conducive environment for human rights defenders and civil society organizations in Ecuador.
39. ISHR also urges the Court to immediately suspend the law’s enforcement through precautionary measures until the Court rules on the merits.

#### **IV. NOTIFICATIONS**

I will receive any notifications addressed to me at the following email addresses: [m.pai@ishr.ch](mailto:m.pai@ishr.ch)

#### **Signature**

Full Name: Maithili Pai

Occupation/Title (if applicable): UN Advocate, International Service for Human Rights

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<sup>40</sup> Resolution Adopted by the General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, A/RES/53/144 (March 8, 1999), Art. 2(1), available [here](#).

<sup>41</sup> Human Rights Council, Resolution adopted by the Human Rights Council on July 1, 2016, A/HRC/RES/32/31, available [here](#).

<sup>42</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Clément Nyaletsossi Voule), A/HRC/50/23 (May 10, 2022), para. 12, available [here](#).