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Ecuadoran Government's Two-Pronged Policy: To Convict and then Pardon

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"To convict and pardon" seems to be the formula that Ecuadoran government officials have found to resolve conflicts with the media and social leaders who question their actions. With the formula, the government simultaneously obtains a conviction that becomes a legal precedent with which it can intimidate detractors and also increases its popularity through its supposed magnanimity in granting a pardon to those convicted.

Disproportionate sentences

In the government's ongoing conflict with private media, which have historically been tied to the political right and the national financial system, several public officials have complained of having been libeled by the media or by social leaders who expressed their opinions in the media.

After the alleged libel, the public officials had ample opportunity to respond, using the same private media outlets as well as public media, which are now as extensive as the private networks (NotiSur, Aug. 12, 2011). Additionally, to refute information that it considers erroneous, the government has routinely aired myriad compulsory national radio and television broadcasts and President Rafael Correa's nationally broadcast Saturday radio programs, which he uses to denigrate his supposed detractors.

Nevertheless, the government officials, with President Correa in the lead, believed it necessary to also prosecute journalists and opinion makers for their alleged slander, and they therefore brought various legal actions, which have run their course during the past year and resulted in sentences that were disproportionate to any harm caused.

Emilio Palacio, a former columnist for the Guayaquil daily El Universo, along with Carlos, César, and Nicolás Pérez, owners of the paper, were sentenced to three years in prison and payment of US $40 million in damages to President Correa for having said that he "ordered [the military] to fire at will on a hospital," referring to events during the Sept. 30, 2010, uprising during which sectors of the Policía Nacional (PN) took the president prisoner in the police hospital. Correa was rescued in a military operation (NotiSur, Oct. 15, 2010).

Mónica Chuji, Amazonian indigenous leader and former delegate to the Asamblea Constituyente, was sentenced to a year in prison and payment of US$100,000 in damages for having said that Secretario de la Administración Vinicio Alvarado was among the government's "nouveau riche," in reference to government publicity contracts with businesses tied to him and his family, which had been denounced in various investigations by the national press (NotiSur, Jan. 27, 2012).

Juan Carlos Calderón and Cristian Zurita were each ordered to pay US$1 million for having affirmed that President Correa knew about state contracts with his brother Fabricio Correa through shell companies in Panama (NotiSur, Oct. 14, 2011). The judge ruled that Correa suffered "moral damage akin to spiritual harm."
Jaime Mantilla, director of Diario Hoy, received the lightest sentence, just three months in prison and a US$25 fine, for supposedly libeling Carlos Bravo for his action while he headed the Agencia de Garantías de Depósitos (AGD), the agency responsible for recovering the money from the financial institutions that went bankrupt in 1999.

The judiciary decided these cases in record time. It is unusual for cases to make their way through the system's three levels in less than a year. Various social sectors saw the expediency as the result of government pressure and the control that it exerts on the judiciary.

"We call upon all the judicial bodies that have worked with speed and efficiency in these cases, even handing down decisions in a matter of days, to act with the same agility in all cases brought before them," said the Consejo Directivo de la Fundación Regional de Derechos Humanos (INREDH), in a public communiqué analyzing the judiciary's role in these cases.

### Pardon: international pressure or concerns about popularity

Once the courts handed down the decisions, the plaintiffs made public their decisions to "pardon" the defendants, using a legal maneuver called "remission."

Remission allows the plaintiff to determine that the accused does not have to pay the damages awarded or serve the jail sentence that a legal conviction brings; thus, in the aforementioned cases, those sentenced no longer have to go to prison or pay the multimillion-dollar damages awards.

Mónica Chuji rejected the pardon granted by Alvarado, saying that it does not annul the sentence, it annuls only the obligation to serve the sentence. "To accept the pardon is to leave in place a sentence that can be used to intimidate other indigenous leaders; it is a legal precedent that can be invoked in other similar trials," said Chuji in notifying the court of her decision to continue her legal defense.

Despite Chuji's decision, the judges closed the case, an action that will be analyzed by the Corte Constitucional (CC), which in such cases has shown total identification with government criteria. If the CC ratifies closing the case, Chuji expects to appeal to international tribunals, in particular, the UN Special Committee against Discrimination.

Those convicted in the Diario El Universo case appealed to the Inter-American Commission on Human Rights (IACHR) to solicit precautionary measures in their favor. The IACHR granted the measures and harshly challenged the government regarding the effects of the disproportionate sentences handed down by the courts on freedom of speech. Correa rejected the IACHR decision and accused it of following US policies.

Evidence in the Diario El Universo case could support the accusation of serious libel, which Reporters Without Borders (RWB) acknowledged, saying, "This outcome will hopefully also encourage certain media to measure their words before publishing or broadcasting. They were partly to blame and we have said so from the start. Such charged words as ‘dictator’ and ‘crime against humanity’ cannot be uttered lightly." However, the sentence is not aimed at repairing the damage but rather seems aimed at bankrupting and closing a media outlet.

Various national and international agencies pressured President Correa to withdraw the complaints; however, the legal proceedings continued until the sentences were handed down, after which the president said he was only looking for the truth to shine forth and expose the real face of the press.
"I sought the truth, I never wanted even one cent," said Correa in announcing his decision to pardon those involved in the Diario El Universo case and the Big Brother case, as the Calderón and Zurita case became known.

The president's decision resulted in a rise in popularity, and his action would seem to be a strategy calculated to strengthen his image. However, pardoned defendant Calderón insists that the decision was made "because of international pressure and the cracks that were becoming evident within the president's own movement."

Street fights and trolls

Regardless of the intentions of the president, or the other officials, in granting a pardon in every case where lengthy sentences were handed down, this pardon tactic has not reduced the confrontation that the plaintiffs experience in the streets or in the media.

The trials not only took place inside the courts but also involved clashes between sympathizers from opposing sides outside the courtroom, with Alianza País groups confronting sympathizers of the defendants, for whom these confrontations have become daily occurrences.

"Every day I have to deal with people in the street who call me a traitor," said Mónica Chuji. And the newspapers to which the convicted journalists belong receive constant insults and denigrating messages on their Web sites, messages that could be coming from a "troll center," directed by the Secretaría de Comunicación.

In the virtual world, a troll is a person whose aim is to intentionally provoke readers or Internet users, by posting insulting or incendiary comments or creating controversy. Fernando Balda, an activist who was linked to the government, denounced the existence of such a group, financed by the Secretaría de Comunicación, which could be dedicated to uploading insults on the media's Web sites. This would explain the proliferation of these messages in the comment spaces on news sites, especially when the news reports criticize government actions. It is clear that the pardon tactic has not eliminated the confrontation and that it will continue.

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