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Ecuador: Made-to-Order Justice

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Control of the Ecuadoran justice system has long been an objective of whatever government is in power, and it uses various tactics from imposing judges by force to employing processes that appear democratic but are unable to maintain their independence. President Rafael Correa’s administration is a case in point.

A history of interference

The most serious incidents of interference with the Ecuadoran judiciary in the country’s recent democratic history undoubtedly occurred during the administrations of rightist President León Febres Cordero (1984-1988), populist President Lucio Gutiérrez (2003-2005), and President Correa.

The most outrageous instance took place during Febres Cordero’s administration. The 1978 Constitution gave Congress the power to elect judges to the Corte Suprema de Justicia (CSJ), which it did in early October 1984. Febres Cordero ordered the Policía Nacional to prevent the judges chosen by Congress from entering the Palacio de Justicia and surrounded the building with military tanks. The judges were forced to resign, and Congress chose a new CSJ with judges suggested by the office of the president.

Since then, each elected government has made control of the CSJ a priority, including the administrations of Presidents Rodrigo Borja (1988-1992) and Sixto Durán Ballén (1992-1996). Control of the court was made easier because judges were appointed for four-year terms coinciding with presidential terms. This continued until the 1998 Asamblea Constituyente, controlled by the rightist Partido Social Cristiano (PSC) and Democracia Popular (DP), established lifetime terms for CSJ judges, who were appointed under an agreement between the two parties.

When President Gutiérrez took office in 2003, he also made it a priority to control the CSJ, which at the time was trying cases related to the 1999 financial crisis. Congress fired the CSJ judges, despite their lifetime appointments, and created a new court, whose first act was to throw out the corruption charges against former President Abdalá Bucaram (1996-1997), ousted by Congress in 1997 (NotiSur, Feb. 7, 1997). That action was one reason Gutiérrez was overthrown in April 2005 (NotiSur, Jan. 7, 2005, and April 22, 2005).

President Correa’s administration and the 2008 Asamblea Constituyente again brought to the political stage the need for judicial reform. This time, however, Correa dismissed not only the CSJ but also all judges in the system and set up a Consejo de la Judicatura Transitorio staffed by three trusted allies who began to select national judges (NotiSur, Feb. 4, 2011). The Consejo also changed the functions of the office of the attorney general (Fiscalía General) and the civil law notaries (notarias públicas).

The administration named an international observer team to ensure transparency in the process, since opposition political sectors denounced various anomalies that benefitted persons close to the administration. This observer team was headed by former Spanish Judge Baltasar Garzón, who
praised the restructuring of the Ecuadoran judiciary but noted the lack of independence of some of the appointed judges and the failure to fulfill necessary requirements.

Submissive and fearful judges
Most sitting judges and prosecutors opted to participate in the new selection process; they also opted to ingratiate themselves with the administration to keep their positions as the new courts and prosecutors' offices were set up. Thus, a period of legal persecution began against opposition social leaders and individuals who challenged government officials.

The trials of Marlon Santi (NotiSur, March 13, 2009), former president of the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE); Delfín Tenesaca, president of Ecuarunari, the principal indigenous organization in the Ecuadoran highlands; and Mónica Chuji (NotiSur, Aug. 12, 2011, and March 16, 2012), vice president of the Confederación de Nacionalidades Indígenas de la Amazonía del Ecuador (CONFENIAE) are some examples of legal processes before judges who followed administration directives and who have been denounced in reports by national human rights organizations and international bodies such as the Inter-American Commission on Human Rights (IACHR), special UN committees, and Amnesty International (AI).

Several judges and prosecutors who did the administration's bidding were promoted to new positions in the judiciary. One such case is that of Antonio Gagliardo, the former district prosecutor in Guayas province, who blocked an investigation to determine the origin of the judgment in the lawsuit against Diario El Universal (NotiSur, Oct. 14, 2011), since accusations were made that the author of the judgment for the plaintiff was Guntemberg Vera, President Correa's lawyer. Gagliardo was appointed magistrate of the Corte Constitucional del Ecuador after dismissing the complaint, despite various items of evidence and testimonies supporting it.

Another example of submission to the interests of the administration is former prosecutor Diana Fernández León, who has now been appointed a judge. Spokespersons for relatives of 10 young people detained since March and accused of terrorism say Fernández León exhibited absolute bias, violated due process, and ignored defense requests that could demonstrate that search and arrest orders in the case were forged or illegally drafted.

The ambiguity of the new judiciary
In recent weeks, two cases have demonstrated the ambiguity of the Ecuadoran judiciary. One deals with the 10 youth, known as the Luluncoto 10, accused of terrorism, and the other involves President Correa's cousin Pedro Delgado, who was the director of Banco Central de Ecuador (BCE) and led several sales of government assets after falsifying an academic degree to obtain his positions (NotiSur, Jan. 27, 2012).

The first case involves the detention last March of ten young people, seven men and three women—one of whom was pregnant—who were accused of sabotage and terrorism. They were picked up in the poor Quito neighborhood of Luluncoto while they were meeting to discuss supporting the Marcha por la Dignidad y la Vida that the indigenous movement was organizing that month.

The report "El Ocaso de la Justicia" by three leading Ecuadoran human rights organizations said that an elite police squad broke into the meeting room illegally, with no search or detention orders. They held the young people for more than seven hours during which the youth were subjected to
cruel treatment, while the police looked for a way to legalize the detentions, which was provided by prosecutor Diana Fernández, who did not finish the legal process since she was later named a judge.

Interior Minister José Serrano announced the capture of the 10 at a press conference and said they were guilty. Since then, judges and prosecutors who have had dealings with the case have been forced to agree with the minister, but because of the lack of evidence, they have not hesitated to slow up the process by not appearing at the scheduled hearings and disallowing evidence of innocence presented by the defense lawyers.

The seven men were released after a hunger strike and before the Christmas holidays, and the woman who was pregnant when she was detained was also released and is caring for her newborn son. The two other women are still in jail. The Luluncoto 10 face a new hearing on Jan. 19, 2013, since the hearing set for Dec. 10 was cancelled because one of the judges was absent. A habeas corpus hearing was also cancelled because of the recusal of another judge.

In another case, the judiciary has also shown its total loyalty to President Correa, dismissing several complaints against his cousin Pedro Delgado, who falsified an economics degree to obtain a master's degree, enabling him to receive several government positions. The accusations that Delgado had falsified his academic credentials were denied by President Correa and dismissed by Fiscal General Galo Chiriboga, a personal friend of the president, who argued that the complaint was never formalized with the authentication of the complainant's signature.

When Delgado could no longer maintain his lie, he publically admitted his mistake, resigned as BCE president, and left the country for Miami, where another pending complaint alleges he paid cash for a mansion using bank transfers from his cronies.

Since Delgado did not have the required academic qualification for the positions he assumed, his actions as a public official can be declared legally null, including the sale of some assets confiscated in the 1999 banking collapse (NotiSur, March 19, 1999). Among them is the Ingenio Azucarero EQ2, whose sale was also challenged, since it might have been sold to a consortium that had no effective financial capital.

Other accusations against state officials have also been dismissed. Therefore, the new Ecuadoran judiciary walks hand in hand with the executive and is ready to act on behalf of government directives rather than on behalf of an independent judiciary that adheres to law, as mandated by the 2008 Constitution, despite the government's costly investment to modernize the judicial infrastructure.

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