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Is Ecuador's Social Participation an Illusion?

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The Ecuadoran Constitution approved in 2008 is described as a guarantor or protective constitution because it incorporates various legal innovations to protect rights and social participation in political debate and public administration (NotiSur, Oct. 10, 2008). Five years later, not all innovations seem to have met the objectives for which they were created, such as the two branches of government added to the traditional executive, legislative, and judicial branches that make up the general structure of the state.

The 2008 Constitution incorporated a chapter related to the rights of nature, provoking an intense debate on whether nature could have legal rights, and a chapter defining protection proceedings (acción de protección) as the guarantee that protects all rights, including those of nature. The latter has now been used to block the national government from implementing its extractive policies. But the Constitution also changed the structure of the state, incorporating the two new branches: the National Electoral Council (Consejo Nacional Electoral, CNE) and the Council for Public Participation and Social Control (Consejo de Participación Ciudadana y Control Social, CPCCS).

In the past, the unicameral Asamblea Nacional (AN), previously called the Congreso Nacional, appointed the principal control authorities, such as the attorney general (Fiscal General del Estado) and magistrates of the Corte Nacional de Justicia (CNJ) and Tribunal Constitucional (TC). Similarly, Congress also appointed members of the Tribunal Supremo Electoral (TSE). This way of appointing the principal control authorities allowed the major political parties to appoint members to these positions and thereby control state institutions, especially the judiciary.

Parties such as the rightist Partido Social Cristiano (PSC), which today has very little power, controlled the judicial system for more than 20 years, giving it impunity not only for human rights violations but also for graft and crimes involving financial administration and for allowing the existence of shell companies, which finally led to the financial collapse of 1999.

In much the same way, control of the electoral system allowed the major parties to monopolize assignments of elected authorities, such as members of Congress, through the systems for allocating seats, which precluded the participation of minority groups, such as leftist parties or the indigenous movement.

Role of Consejo de Participación Ciudadana y Control Social questioned

Intense debates in the Asamblea Constituyente of 2007-2008 addressed this problem and considered the need to ensure the independence of the process for designating control authorities and those who would make up the electoral system. To that end, it created the Consejo de Participación Ciudadana y Control Social (NotiSur, Feb. 4, 2011).

Article 207 of the Constitution establishes the functions of the CPCCS by affirming that it "shall promote and encourage the exercise of the rights involving public participation, shall promote and set up social control mechanisms in matters of general welfare, and shall designate the authorities that pertain to it in accordance with the Constitution and the law."
The "Constitution and the law" now give one agency the power to name all control authorities, including members of the CNE and the Corte Constitucional (CC), the Defensor del Pueblo, the Fiscal General del Estado, superintendents of companies, banks, telecommunications companies, etc. One seven-person body was created with the power to shape all state control entities.

The Constitution also stipulated the structure of the CPCCS and the background of its members: "The selection of council persons shall be done from among candidates proposed by social organizations and the citizenry. The selection process shall be organized by the Consejo Nacional Electoral, which will conduct the competitive and merit-based public examination process, with submittal of candidacies, subject to citizen oversight and challenge in accordance with the law," says Article 207.

It is ironic that the CNE has the power to name the persons who will later appoint members to the same CNE. In addition, grassroots social organizations, the indigenous movement, leftist political parties, and all sectors that believe in social participation were naïve to assume that creating the CPCCS would complete the task of democratizing the designation of control authorities and that citizen nomination would take care of the rest. They assumed that the best professionals would be named as CPCCS councilors and that their independence would be guaranteed. They also believed that the governing party, one of the principal agents in creating the CPCCS, would not try to control it.

The reality has been something else; the government nominated its own candidates from diverse social spheres and even encouraged the creation of new social organizations to nominate candidates for the CPCCS. The result of this process is the existence of a new agency, with basically total power to nominate authorities, in the hands of the government or one party.

**Cure turns out worse than illness**

Various social and political sectors have challenged the appointment of the control authorities, since all the designations have favored members of the governing party or personal friends of President Rafael Correa.

The appointment system, according to the Constitution, should take place through a "competitive and merit-based public examination process." However, a large number of the authorities chosen who are close to the government did not obtain the highest scores, such as the Fiscal General del Estado and some members of the CNJ and CNE, who had to resort to being retested. After retesting, their scores inexplicably increased, and they ended up in first place, or their scores rose after an interview, which was also more heavily weighted than the score based on the candidate's merits.

If in the past, the strongest parties jockeyed among themselves to control the state institutions; today one agency makes such political confrontation unnecessary and appoints, under government supervision, all control authorities, making it possible for the executive to influence and control the other branches of government. It does not even need to negotiate politically with members of the AN but only needs to be concerned with nominating candidates from among its political cadres on behalf of citizen organizations created for that purpose.

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