Ecuadoran Government Pushing for Major Changes to Country’s Constitution

Luis Ángel Saavedra

Follow this and additional works at: https://digitalrepository.unm.edu/notisur

Recommended Citation
https://digitalrepository.unm.edu/notisur/14272

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiSur by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
Ecuadoran Government Pushing for Major Changes to Country’s Constitution

by Luis Ángel Saavedra
Category/Department: Ecuador
Published: 2014-09-12

The administration of President Rafael Correa is calling for a series of constitutional reforms based on the argument that the Ecuadoran Constitution—which has been hailed by many for its strong emphasis on human rights and was developed in a constituent assembly and approved by a large majority in a national referendum—is preventing the government from ruling and thus jeopardizes the welfare of the people. Part of the problem, according to the administration, is that constitutional guarantees designed to protect citizens’ rights are being used abusively to boycott government plans.

The government presented the Asamblea Nacional (AN), Ecuador’s unicameral legislature, with 17 amendments that will modify the widely praised document in such a way as to allow for more state control, indefinite presidential re-election, and a scaling back of the rights of citizens and indigenous communities. The administration is pursuing the changes even though the Constitution, in Article 441, establishes that "one or various constitutional articles can be amended only if [the reforms] do not alter its fundamental structure or the character and constituent elements of the state, restrict rights and guarantees, or modify the established procedure for reforming the Constitution."

Rejecting the referendum route

In the past, the Correa administration looked to legitimize its policies through popular referendums. It did so in 2007 to establish a constituent assembly and again in 2008 to approve the Constitution that the assembly drew up (NotiSur, April 20, 2007, and Oct. 10, 2008). The government even used a referendum in May 2011 to decide a number of issues, including rules pertaining to bullfighting, which had no real political significance (NotiSur, June 10, 2011).

The goal of these referendums was to capitalize politically on the popular vote. But when citizen groups have asked for a referendum, as they did regarding oil drilling in the Parque Nacional Yasuní, an Amazon rain-forest preserve, the government has opposed the idea (NotiSur, May 16, 2014). And in this case, which merits a referendum given the huge political significance of the proposed constitutional reforms, the government, rather than employ what had been its most powerful tool, is taking advantage of another clause in Article 441 (stating that constitutional amendments require a two-thirds majority in the legislature) to place the matter in the hands of the AN, over which it has total control.

Members of the right-wing opposition, meanwhile, are looking to collect signatures and demand that the constitutional reform be put to a popular vote. The indigenous movement and independent left-wing groups, however, disagree with the strategy and are organizing a national demonstration set to take place Sept. 17.

Exposing traditional knowledge

One of the amendments proposed by the government has to do with the collective knowledge held by the country’s indigenous peoples. Currently, the Constitution protects that knowledge
by prohibiting, for example, the appropriation in any way of indigenous peoples’ know-how, innovations, and collective practices. The government wants to change the wording to allow "access to and use of collective knowledge provided that there is free, prior, and informed consent by its legitimate owners and that they share in a fair and equitable way in the benefits that are obtained."

At first glance, the change seems like it could benefit indigenous communities. Theory and practice, however, are two different things. Companies, especially those in the pharmaceutical industry, have been known to convince a member of an indigenous community to share the necessary information and then patent that information with minimal modifications. Such was the case with Banisteriopsis caapi, a vine known locally as yage, which, when combined with other ingredients, produces ayahuasca, a potent hallucinogen with anti-inflammatory properties. Another example is the tricolor poison frog (Epipedobates tricolor), whose natural toxins were extracted to develop an extremely effective anesthesia for use in high-risk surgeries. The ayahuasca patent has since been nullified (NotiSur, May 14, 1999). The "Epibatidine" patent, however, is still valid despite evidence that the product was developed using 750 tricolor poison frogs smuggled out of Ecuador.

The constitutional reform also opens up the possibility of establishing intellectual property rights for procedures and products developed using traditional indigenous knowledge of Ecuador’s biodiversity. The stipulation, again, is that the indigenous groups in question, as the legitimate holders of that knowledge, must share in the profits obtained.

Aware that it would be impossible to control the sharing of knowledge or distinguish between what was given out voluntarily and what was obtained illegally, the constituent assembly that drafted the Constitution included language that would at least help Ecuador avoid biopiracy. Once the reforms go through, the country’s traditional knowledge will go back to being as vulnerable as it was prior to 2008, when the Constitution went into effect. That knowledge forms the basis of more than 50% of the medications synthesized from plants and commercialized by multinational pharmaceutical companies.

Interestingly, the Correa administration’s effort to reform the Constitution is taking place just as Ecuador has concluded talks to sign a free-trade agreement with the European Union (EU). The timing has fueled suspicions among some observers regarding the government’s true motive for trying to rush the amendments into place.

**Limiting constitutional guarantees**

The administration is dealing another blow to constitutional rights under the pretext of strengthening guarantees and preventing them from being abused. It is focusing in particular on a guarantee known as the Acción de Protección (protection action), which, according to Article 88, applies directly to all rights that the Constitution recognizes.

The government plans to limit the Acción de Protección by proposing a law making it inadmissible in cases where a judge, using his or her own discretion, determines that the guarantee is being misused. As such, judges will have the power to dismiss the Acción de Protección in cases involving campesino or indigenous communities that invoke the guarantee to protect themselves from large-scale industrial projects. Limiting the Acción de Protección opens the door to any number of abuses that authorities might carry out against regular citizens.
Extending government control

Other amendments pertain to presidential re-election, coordinating the armed forces and Policía Nacional (PN) to control crime, placing all civil servants under a single regulatory body, limiting the powers of sectional governments, and defining communication as a public service that would therefore be regulated by the state. All these issues ought to be the subject of an intense public debate rather than be rushed through the AN and Corte Constitucional, which are eager to offer the government the happy conclusion it’s hoping for.

The presidential re-election issue, for one thing, seems to be a done deal since neither the right-wing opposition nor the left is offering much of a challenge despite having made significant gains in local elections held this past Feb. 23 (NotiSur, March 14, 2014).

Regarding transforming communications activities into a public service, Ecuador’s privately-owned media outlets have also been conspicuously quiet, presumably out of fear that, if they do speak up, they could be threatened, harassed, and ultimately forced to shut down, as was the case with Diario Hoy. After operating for 30 years, the Quito-based daily closed down in late August on orders from the Superintendencia de Compañías, which faulted the company for its persistent economic losses. The government body has not, however, acted accordingly with the state-owned daily El Telégrafo, which has lost an estimated US$28 million since 2007. The government’s information secretary, Fernando Alvarado, in an interview with the news channel CNN, estimated El Telégrafo losses at US $17 million.

It stands to reason that a government hoping to stay in power indefinitely would have a lot of interest in controlling the media, the reaction of the people, and, above all, the mechanisms that protect citizens’ rights.

-- End --