

Flash Report

Ecuador Struggles with Rafael Correa's Legacy: The 2018 Referendum and Aftermath

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April, 2018



Ecuador's referendum cleared the path towards the restitution of horizontal accountability, starting with the election of the Council of Citizens' Participation and Social Control

Rafael Correa became Ecuador's most consequential president since the democratic transition from military authoritarian rule in the late 1970s. Elected in 2006, he held power for more consecutive years than any other president in Ecuadorian history, after a prolonged period of political instability that witnessed ten presidents sworn into office in less than ten years. He was also the first left-of-centre President to be elected. For a country recovering from financial turmoil that led to a massive emigration wave, the promises of progressive change and to "take the country back" ignited support across historically divided constituencies.

The peak of Correa's presidency coincided with the commodities boom, especially oil, the staple Ecuadorian export. His government boosted incentives already in place to stimulate domestic demand. Large investments in infrastructure and new mega-projects like two new

hydropower dams, a new refinery and new educational facilities followed. The percentage of people living under extreme poverty went from 9.3% in 2006 to 4.8% by the end of 2015. But Correa's popularity started cracking precisely this year, as the commodity boom reached exhaustion. The public learned about massive amounts of debt to support state sponsored mega-projects. The swift change of the economic cycle immediately affected Correa's state-driven model of development and his long-standing popular support, despite visible infrastructure and social advances.

Democracy did not fare well during Correa's decade in power. As early as 2007, the administration used its overwhelming support to convene a Constitutional Assembly to rewrite Ecuador's constitution. When members of Congress voted against this initiative, they were removed. By the end of 2008, Correa had a new Constitution, massively approved in a popular referendum, after which, he was again elected president in a landslide with more than 67% of popular support. The new Constitution invested Correa with new powers that seriously limited horizontal accountability. The creation

of a Council for Citizen's Participation and Social Control (CPCCS) signalled a return to corporatist bodies where the Executive can easily control and appoint cronies and sympathizers of the party in charge. Most significantly, the CPCCS had the responsibility to elect the most important judicial appointees: The Attorney General, the General Prosecutor, the General Comptroller, the Ombudsman and the newly created position of Superintendent of Communications.

On September 30th 2010 the good times came to an end: a police revolt, initially demanding the continuity of salary bonuses attached to honours and medals led to President Correa being held captive inside the Police Central Headquarters in Quito. The president characterized the event as an attempted coup. The administration seized the opportunity to call for another referendum to seek permission to intervene as well as reform the Judicial System.

Correa's move did not please anybody with some knowledge of the recent past and it marked a point of no return for the constitutionality and rule of law under the Citizens' Revolution. He famously declared in

one of his Saturday press addresses: “The President is the boss of all state functions: Executive power, legislative power, judiciary power” (2009). Paradoxically, his government put democracy into a slow death (*muerte lenta*) amidst a wave of popular support never experienced by former presidents of Ecuador.

Friends or foes?

Correa could not guarantee a successor who would prolong his legacy and ensure his future electability and, most importantly, shield him from any challenge to his probity and that of his close entourage. His anointed candidate, Lenin Moreno, had difficulties negotiating autonomy and authority over his own presidential campaign and his transition team. In fact, President Correa imposed the permanence of his then vice-president, Jorge Glas as Moreno’s running mate. Correa’s constant disavowal and overruling of Lenin’s campaign pledges added fuel to the fire of a well-known internal dispute.

At the same time, a more decisive issue was vexing the core of the democratic system: the existence of free and fair elections. It was not only the uneven playing field, marked by a President willing to spend public money with profligacy to elect his candidates; or, the state use of the vast public media network for propaganda while restricting independent media from publishing any information or investigative reporting that affected official candidates in any way—the integrity and independence of electoral institutions was seriously jeopardized. Since the CPCCS also had the crucial responsibility of selecting the

top members of the National Electoral Council in charge of organizing and managing elections, Correa made sure that close presidential advisors and even personal friends were in charge. Not one member of the opposition sat in the electoral council since the reform in 2009.

In this context, the 2017 presidential elections became highly contested. Although the Organization of American States cleared the election of any fraud allegations, the conservative party CREO, the main organization of the opposition, contested the election results. CREO considered the shutdown of vote counting over a few hours and a sudden blackout of the electoral software system as unacceptable irregularities and signs of possible wrongdoing. Lenin Moreno barely won with a difference of just over 226,000 popular votes in a percentage of 51.1 to 48.8%. Some segments of the population reacted with outrage to the final results. The country was in a standstill for weeks while middle class voters in the main cities—Quito and Guayaquil—turned to the streets denouncing fraud and demanding a total recounting of votes.

Not long after Lenin Moreno’s inauguration on May 24th 2017, the first wave of corruption cases started to fill the airwaves and newspapers across the country. President Correa had previously stymied any revelation about Odebrecht cases in Ecuador through a tight control of the press; Moreno did not follow the same policy. Once the pressure over the press was removed, a cascade of testimonies, proof and accusations

fell directly towards the vice-president, Jorge Glas. President Moreno neither defended his vice-president nor protected him from a criminal investigation. This ruptured the already difficult relationship with former president Correa. The protracted battle over the control of the party and the people in positions of power inside the state became the central fixture of the first six months of the new administration.

Social mobilization resurrected

Context is extremely important to understand the referendum of February 4th 2018. The political brinkmanship inside *Alianza País* was just a small part of the story. With President Moreno, and even the official opposition, suddenly open to public criticism—for the first time in ten years—the floodgates for social and political mobilization opened. Amidst a wave of corruption scandals, rallies around the country put more pressure on President Moreno. Civil society organizations coordinated efforts to push for significant reforms that prevent corruption from going unpunished.

The first move was to defend and empower the longest serving civic organization combating corruption in the country. The National Council Anti-Corruption, mainly composed by elders with impeccable records of honesty and social recognition, was under attack. The previous administration sued their most prominent members for defamation. Civil society organizations started a pressure campaign to force the government to lift the charges against them. In less than two months, the

campaign succeeded, emboldening the organization to publicly ask for the resignation of a number of public servants under investigation, among them, Vice President Jorge Glas. In August 8th 2017, the same organization conducted a mock trial against the vice-president for the Odebrecht scandals that went viral on multiple media platforms. Glas became the symbol of all of what needed to be reformed in order to restore credibility in the democratic system.

At the same time, more organizations joined a consortium called *Mesa de Convergencia* (The Convergence Table) that became a locus for national dialogue to reach consensus around necessary reforms. All of the participants coalesced around the idea that only the popular vote could credibly restore democratic horizontal accountability in the country.

The core aim of this electoral exercise was to obtain a mandate to leave behind the authoritarian model imposed by Rafael Correa through two main strategies: First, stop his re-election ambitions by cancelling the constitutional reform that allowed it. Second, to restore the independence of the judiciary by completely overhauling the Council of Citizens Participation and Social Control (CP-CCCS) ruled by Correa's followers. Only a referendum could attain these two reforms.

President Moreno accepted the referendum at the beginning of September 2017, calling civil society organizations for advice and suggestions to decide the set of questions. *Mesa de Convergencia* presented five questions that dealt directly with the

possibility of Correa's re-election and the independence of the judiciary. More demands swiftly followed. Environmental organizations demanded a popular vote to stop oil exploitation in Yasuní National Park; indigenous organizations demanded a vote to stop mining extraction of metals in the country; groups defending children against sexual abuse wanted the offenses against children to never prescribe. President Moreno seized the opportunity to gain the support of disenchanted constituencies and accepted to put forward a total of seven questions: five of them were a referendum, in the sense that their application was immediate and mandatory; the last two were public consultations, meaning that their application was neither automatic nor mandatory, and they would both need to be subjected to policy regulations enacted by the National Assembly. *Mesa de*

Convergencia became an important social force advancing discussions in other areas like education and social security to move the national debate into progressive policy reform, very much like the movement *Peru SigloXXI* that led the national debate after president Alberto Fujimori debacle in 2000.

The final list of questions for the referendum was officially presented in October 2nd 2017. All of them had annexes that explained the extent of the reforms and the procedures to be taken. The central issue to each question and the popular support each earned at the ballot box are synthesized in the table below.

As the table shows, only the first three questions dealt with political reform. However, the change was centred in two objectives: first, ban Rafael Cor-

Issue questions	YES %	NO %	% Of nulls and blanks over total registration
1. A lifetime ban for people convicted for corruption from serving in the public sector or running for office	74	26	7.46
2. Eliminate unlimited re-election possibilities	64.3	35.7	7.59
3. In favour of restructuring and renew the CPCCS	63	37	7.90
4. For the non-prescription of the statute of limitations for sexual abuse cases against minors	73.8	26.2	8.07
5. Limit new mining concessions of metals near cities or protected areas	68.9	31.1	8.17
6. Eliminate the tax over capital gains on real state property	62.2	36.8	8.14
7. To stop any exploitation at the Yasuni National Park in the Amazon	67.6	32.4	8.46

Source: Consejo Nacional Electoral (Official Results)



National Assembly of Ecuador, Session No. 484. November 14, 2017
 Photo: Alberto Romo/Asamblea Nacional

rea—and any member of his entourage convicted for corruption—from running for office; second, devolve some independence to the judiciary and other agencies providing horizontal accountability still under the tight control of Correa’s close allies. It was clear that the first objective (contained in questions one and two) would not be possible without first achieving the second (contained in question three).

It was not a surprise to anyone that all political parties supported President Moreno’s called for a YES vote to all of his questions in a unanimous effort to overcome correísmo. The only political force opposing the

referendum call became Rafael Correa and the faction of Alianza País still loyal to him. The stakes were extremely high for them—at risk was their political survival and judicial protection against future corruption charges. As such, President Correa took the lead of the public campaign for the “NO” vote. He rallied around the country, with special attention to his traditionally loyal districts in the coastal region. However, the majority of the rallies were met with public animosity, if not visible apathy. Some cities welcomed Correa’s caravan with rotten eggs. There was no city where the former president could attract massive audiences like in the past.

Correa’s spokespeople did not fare better at presenting arguments for their defense either. They advanced the idea—similarly tested by Evo Morales in Bolivia—that limiting indefinite re-election violates basic human rights; that is, the right of any politician to be re-elected for life if that is “the will of the people”, conveniently omitting the power of the incumbent to use the system in their favour. Democracy’s basic principle of alternation of power was secondary in their arguments. Correa’s movement advanced this same line of defense: reforming the CPCCS is a violation of basic human rights. Moreover, they charged president Moreno as just another power grab-

ber who just want his people instead of Correa's in charge of the most important institution that controls political appointments in the offices of control and accountability.

Hope with a grain of salt

The "YES" vote obtained an average of 67% of the total valid votes. Notwithstanding, it did not stop the battle among factions of Alianza País. Just three days after the vote took place, the Inter-American Commission on Human Rights (IACHR) released a notification that question 3 of the referendum was under scrutiny and it was transferring the case to the Inter-American Human Rights Court (Court-IAHR) in Costa Rica to pass judgment. Three members of the soon to be removed CPCCS denounced the referendum as a violation of their human rights, that the Commission had accepted the case months ago and they had petitioned for precautionary measures that, if granted, would have halted the results. Their decision to extend a notification of the case triggered a diplomatic crisis with the Organization of American States. President Moreno and his diplomatic team opted to reproduce the same discrediting arguments that President Correa used to wage against the Inter-American System. The standoff ended thanks to a swift decision of the Inter-American Court denying the precautionary measures on procedural grounds. However, the crisis clearly dampened the sense of optimism after the period of overwhelming support for the reforms.

President Moreno did not seize the moment either. There was no clear leadership about how and to what extent the popular mandate was going to be implemented. The weeks after the referendum witnessed a successive streak of more corruption scandals once again reaching prominent members of the Correa administration and even Moreno's. The last one involved nothing less than the President of the National Assembly discussing with the former General Controller ways to incriminate the General Prosecutor in a corruption case. In the mist of the latest crisis of legitimacy, President Moreno had no choice but to open public consultations about the list of nominees to replace the CPCCS. Many civil society organizations, including academic groups, provided names for seats in the transitory Council, and the National Assembly voted for the final members among seven lists with 35 names proposed by the presidency.

On March 1st 2018, the transitory CPCCS was finally elected. The selection did not disappoint. The majority of them have a clean record and social recognition to guarantee transparency and accountability in the selection and evaluation of future nominees to the judiciary and other organs of control, at least for now. By April, the new team at CPCCS had already ceased two of the most controversial figures of the Correa era: the Superintendent of Communication, Carlos Ochoa, for abrogation of justice, and the Superintendent of Popular Economy and former Minister of Finance, Patricio

Rivera, for negligence. They have also announced a thorough investigation into the conduct of the powerful Judiciary Council, even calling for open complaints about any wrongdoing.

There are at least three take-aways from Ecuador's process to restore trust in the democratic process. The first and most important is that only civil society engagement and mobilization can keep reforms from stalling. Civic engagement was paramount to bringing the government and the opposition forces together to, at the very least, work towards a minimalist agenda of change to leave behind authoritarian models and practices developed over the past decade. Second, plebiscites are the best way to solve a crisis of legitimacy where corruption at the highest levels of power and co-optation of judicial bodies have become prevalent. Neither the newly elected government nor the opposition parties by themselves had the political capital to take the necessary steps without the popular vote. Finally, there is no easy or fast recovery from a democratic breakdown. Even though Rafael Correa's decade in power did not consolidate an authoritarian regime, it steadily and systematically eroded the concomitant conditions that keep democracies alive, like rule of law and respect for civil and political rights and freedoms.

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