

Legal Norms and Civil Society Organizations

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académica corre siempre el riesgo de ser sancionada y censurada si sus posturas críticas se expresan de modo abierto en la esfera pública. El gobierno quisiera ver una academia trabajando en silencio, por fuera de la discusión pública, y volcada íntegramente a respaldar y legitimar sus objetivos de desarrollo.

Nota

¹ “Dos años de la Ley de Comunicación: Las cifras más allá de la propaganda oficial”, *Fundamedios*, 24 de Junio de 2015. Disponible en: <http://www.fundamedios.org/dos-anos-de-la-ley-de-comunicacion-las-cifras-mas-alla-de-la-propaganda-oficial/>. ■

Freedom of expression and association are guaranteed in Ecuador's 2008 constitution in Articles 66.6 and Article 66.13 respectively. The exercise of those rights, however, has been limited substantially under the Rafael Correa government through the enactment of new legal norms that regulate civil society organizations (CSOs). The regulations cover the full range of societal organizations at the national and subnational levels: business associations, labor unions, professional groups, community and identity-based entities, think tanks, philanthropies, advocacy groups, and foundations.

As in many Latin American countries, domestic and foreign CSOs in Ecuador have long been regulated by laws that required them to acquire legal standing (*personalidad jurídica*) in order to engage in public transactions. Prior to the Correa government, CSOs secured legal standing by registering with a government ministry overseeing the sectors in which they operated. The push to standardize the registration process and elaborate more specific regulations on the conduct of CSOs came under President Gustavo Noboa with the enactment of Executive Decree 3054 in 2002.

Under the Correa administration, the objectives and scope of CSO regulation underwent important transformations. In April 2008, President Rafael Correa issued Executive Decree 982. The decree mandated detailed new reporting requirements for CSOs and outlined a plan for creating a new national-level registration system. However, little initial progress was made in implementing the system.

Following his 2013 reelection victory, Correa unveiled a more comprehensive plan to register and regulate CSOs. Enacted

as Executive Decree 16 in June 2013, the package laid out a complex, two-tiered process for registering organizations that included an initial approval by a designated ministry to be followed by inscription with the cabinet-level Secretaría Nacional de Gestión de la Política. The decree mandated the reregistration of all existing organizations. By the government's own estimate, over 50,000 organizations were affected (Cedeño 2013).

Decree 16 required organizations to provide extensive information on their past and present. Along with the names of current leaders, organizations were expected to provide the names and identity card numbers of their original founders, the minutes of founding meetings, and certified copies of previous legal registrations. The organization's internal statutes also needed to provide for “internal democracy”: specifics on everything from rules governing how meetings are called, with what frequency, the determination of a quorum, and conflict resolution mechanisms had to be included. Depending on their size and function, organizations were also required to show proof of financial assets. Larger national-level organizations had to demonstrate a minimum of US\$4,000 in financial assets; smaller organizations had to show a minimum of US\$400.

While the new reporting and financial requirements were considered onerous by CSOs, the most problematic elements in Decree 16 resided in Article 26. The article laid out the conditions under which the government reserved the right to “dissolve” existing organizations or deny registration to new ones.

The nine infractions stipulated as grounds for revoking legal standing in Decree 16 were: (1) falsifying or adulterating documents or information; (2) deviating

from the goals and objectives for which the organization was originally constituted; (3) failing respectively to comply with orders from the relevant legal authority conferring legal standing or other oversight and regulatory bodies; (4) having been declared inactive by a ministry and remaining in this state for one year; (5) having membership less than the five-person minimum prescribed by the decree; (6) concluding the time period established in statutes; (7) pursuing partisan activities reserved for political movements registered with the Consejo Nacional Electoral and/or interference with public policies in a manner that threatens internal or external security of the state or affects public peace; (8) failing to comply with obligations laid out in the constitution, laws or Decree 16; (9) infringing other clauses in the decree.

The broad language of the decree clearly endowed government bureaucrats with enormous discretion in applying the rules. The provisions not only gave bureaucrats the power to police technical violations but made organizations subject to dissolution for activities in the public sphere. Bureaucrats could punish organizations for acts deemed to be outside of their declared aims, or for engaging in activities seen to be politically related. The ban on “partisan” activities was especially troubling to indigenous organizations and unions that have long-standing ties to political parties.

A wide spectrum of Ecuador’s CSOs denounced Decree 16 as an infringement on the right of free speech and association. In addition, the decree was criticized for its violation of the right to due process; it included no provisions for an independent review of ministerial decisions. CSOs filed three separate petitions challenging the constitutionality of Decree 16 with the Constitutional Court in 2013 (Fundamedios 2014). To date, the court

has issued no rulings or responses to the filings. In October 2013, civil society representatives presented their critiques of the decree in a special hearing of the Inter-American Human Rights Commission.

Implementation of the registration system was slow due to delays in the government’s rollout of software. This left many organizations in a state of legal limbo, uncertain about their status and how the new rules governing the public conduct of CSOs would be applied.

From 2013 through mid-2015, the only CSO whose legal status was terminated under Decree 16 was the Fundación Pachamama, an environmental advocacy group that had operated in Ecuador since 1997. The Ministry of the Environment ordered Pachamama’s closure after accusing activists of causing a public disturbance at a government-sponsored event. The organization had been an active supporter of the civic movement to stop the government from oil drilling in the Yasuní-ITT reserve (Colectivo de Investigación Psicosocial 2015).

The ministry’s dissolution order charged that the Fundación Pachamama was in violation of two provisions of Article 26: deviating from the organization’s original goals, and interfering in public policy and undermining security. The ministry subsequently denied the organization’s appeal of the decision in February 2014 and its assets were liquidated. In March 2014, officials from Fundación Pachamama testified on the circumstances of the closure at a hearing of the Inter-American Commission on Human Rights.

Although the government did not apply Decree 16 in a wholesale manner to eliminate organizations, Fundación Pachamama’s closure, along with the

confusion and bureaucratic delays surrounding the registration process, created a “chilly climate” in associational life. Overturning Decree 16 became one of the demands advanced by CSOs in antigovernment demonstrations staged in 2014 and 2015. International human rights monitors that included Human Rights Watch and Amnesty International expressed concerns about Decree 16’s restrictive effect on civil liberties.

In advance of mass protests scheduled for mid-August 2015, the government announced reforms to the regulatory framework of Decree 16. Executive Decree 739 was framed as a simplification of the rules governing CSOs. The decree scaled back the elaborate reporting requirements, dropped the financial assets requirements for both small and large organizations, and eliminated the requirement that organizations retain legal counsel for the registration process. Decree 739 also modified the provisions governing the dissolution of organizations. Nonetheless, Decree 739 maintained the ban on “partisan activity” by organizations and retained the language that allowed organizations to be closed if they deviated from the objectives stated in their statutes.

In the view of many CSOs, Decree 739 did not constitute a substantial change in the regulatory framework. Like Decree 16, Decree 739 limits speech and association by restricting an organization’s right to be involved in politics. It also retains the prohibition on activities that can be interpreted as “deviating” from the objectives laid out in an organization’s statutes. In addition, the text of Decree 739 did not contain an explicit derogation of Decree 16; from a legal point of view, both remain on the books (Confederación Ecuatoriana de OSC 2015).

To date, the government's use of Decree 739 for the purpose of closing an organization has been limited to one case involving the media monitoring organization Fundación Andina para la Observación Social y el Estudio de Medios (Fundamedios). Over the course of the Correa administration, Fundamedios emerged as a leading critic of the government on civil liberties issues. Commencing in 2013, Fundamedios became immersed in bureaucratic delays in updating its registration with the Ministry of Social Inclusion. In January 2014, Fundamedios was advised that the still incomplete registration process would be transferred to the cabinet-level Secretaría Nacional de Comunicación (SECOM)—a move that Fundamedios interpreted as threatening, given its criticisms of that agency's conduct. By its own count, Fundamedios had been targeted for verbal attacks by the President Correa and government officials in at least 41 Saturday-morning broadcasts and 20 separate television ads.

In June 2015, SECOM warned Fundamedios to refrain from engaging in communication on political matters. On September 8, 2015, SECOM notified Fundamedios of its decision to revoke its legal status. In justifying the decision, SECOM accused Fundamedios of two infractions: involvement in partisan activities, and deviating from the objectives for which it was originally constituted. Evidence of Fundamedios' involvement was the organization's use of Twitter. Tweets from the organization linked to blogs written by two Ecuadorian journalists highly critical of the Correa administration, José Hernández and Roberto Aguilar.

Five special human rights rapporteurs from offices in the United Nations and the Organization of American States issued a

joint communique criticizing the closure, insisting that persons in any organization have the right to disseminate information, including material that is political in nature. While not challenging the legal basis of SECOM's order, the Defensoría del Pueblo also urged reconsideration. In the face of substantial international and domestic criticism, SECOM rescinded its closure order in late September 2015. At the same time, SECOM issued a "final warning" to Fundamedios to cease political activities.

Overall, the new legal norms have cast a long shadow over associational life. The scope of the regulatory framework and the discretionary powers allotted to government bureaucrats create a large zone of uncertainty for CSOs. Moreover, the targeting of two important CSOs has put all organizations on notice that the government is willing to deploy the regulations against perceived opponents. Human rights monitoring organizations maintain that the practices of Ecuador's government in this realm contravene accepted international norms. As preparations for the 2017 national elections get under way, CSOs will be forced to contemplate the risks accompanying political participation under the current regulatory regime.

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