

The “Citizen’s Revolution” and the Indigenous Movement in Ecuador: Re-centering the Ecuadorian State at the Expense of Social Movements¹

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1. Introduction

Ecuador is one of the countries in Latin America that has turned to the left in the last few years (French 2009). Since 2007, Rafael Correa, a President who questions both neo-liberalism and North American hegemony, is governing Ecuador. Correa claims to govern for the vulnerable and the dispossessed, and argues that he is radically changing the country through what his governing party, Alianza País, calls a “Citizen’s Revolution.” Initially, he sought the support of the indigenous movement for this transformation: He gave speeches in the Kichwa language, wore an outfit with indigenous symbols, and started his presidency with an event in rural Cotopaxi, in front of an indigenous community. Today, the Confederation of Indigenous Nationalities of Ecuador (Confederación de Nacionalidades Indígenas de Ecuador, CONAIE), the largest indigenous organization, is confronting this government in a conflict that is deepening by the days. For instance, in February 26, 2010 CONAIE decided in a general assembly to start an uprising against Rafael Correa’s government and to seek an alliance with other sectors and social movements to fight government’s policies. CONAIE also decided not to let any government officials enter indigenous territories or communities without permission of the organizations. Why is a leftist government whose agenda seems to

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coincide with the agenda of the indigenous and other social movements involved in such a conflict? Why are social movements fighting the government instead of supporting it?

In this paper, I will first discuss the current state of the indigenous movement in Ecuador, which according to observers has gone through a period of relative weakness and internal division from roughly 2004 to 2010 (Zamosc 2007). However, the indigenous movement, or at least some branches of it seem to have started a new stage of consolidation in its opposition to the current government. I will then analyze the advances and ambiguities of the 2008 Constitution regarding indigenous rights. I argue that the tensions in the Constitution reflect struggles among different currents within the governing coalition. Finally, I will focus on the ongoing conflict between the government of Rafael Correa and CONAIE, which culminated in the death of a Shuar teacher in demonstrations in September 30, 2009. This conflict is centered around two main issues: the discontinuation of the autonomy of indigenous organizations to manage the Intercultural Bilingual System of Education and other state institutions that focus on indigenous welfare, and the new Mining and Water Laws that, according to CONAIE, have been written without the participation and consent of social movements, strengthen the role of the state in the management of natural resources at the expense of communities, and present the risk of privatization of these strategic resources. In these two issues (control of state institutions for indigenous development and control of natural resources), what seems to be at stake is a process of reinforcement of state authority that implies the reduction of the participation and autonomy of social movements in the policies that affect them.

This conflict is being fought simultaneously at the level of the legal system and at the street level. The government is making its agenda known through executive decrees and other secondary legislation that according to indigenous and other activists contradict the principles of the 2008 Constitution and affect indigenous rights. Thus, much of the struggle is being fought in the Constitutional Court. On the other hand, these legal strategies of the social movements are reinforced with street demonstrations or the threat of them because the judicial system is weak in Ecuador and the government basically controls the Constitutional Court. What social movements are exposing are the contradictions between bodies of legislation or, perhaps, between government discourse and government practices. I propose that we could understand the Constitution as discourse or presentation of the government's self for international and national consumption, and secondary legislation as being more entangled with the actual practices of government that seem to be more pragmatic. Legal contradictions also reflect struggles between currents within the governing coalition: one that supports indigenous and human rights and that is environmentalist, and another that is authoritarian, seeks the reinforcement of the central state, distrusts social movements, and supports national development through the exploitation of non-renewable natural resources. The marginalization of Alberto Acosta, ex-president of the Constituent Assembly and a supporter of indigenous rights and the rights of nature, and of Fander Falconí, ex-Minister of Foreign Affairs and an environmental economist, from the governing coalition means that the authoritarian and pragmatic current is taking preeminence. These developments are contributing to deepen the conflict between the government and the indigenous movement.

2. Apogee, Crisis, and Revitalization of CONAIE

The indigenous movement of Ecuador has been called until recently the strongest indigenous movement in Latin America (Yashar 2005). Its modern manifestations started in the 1940s in collaboration with the left, particularly with the Communist Party (Becker 2008). At the time, the movement focused on the struggle for the improvement of conditions under, and eventual abolition of, the hacienda system, for access to land, and for education. Access to education was also linked to citizenship rights because the illiterate could not vote or be elected until 1979.

In the 1970s, the indigenous movement worked together with the Catholic Church that started to practice Liberation and later Inculturation theologies.² During this period, the priorities were the struggle for agrarian reform and agrarian development, to overcome exclusion from education, against discrimination, for cultural rights, and for indigenous territories.

CONAIE, a strong nation wide organization, was created in 1986, and Intercultural Bilingual Education was made official in 1988. The Intercultural Bilingual System of Education in Ecuador has been unique in Latin America because indigenous organizations nominated its authorities and administrators, hired its teachers, and designed its curriculum with autonomy (Abram 2004). However, the central government still supervised the system and controlled its finances. The creation of this autonomous system of education took place in the context of the sharp budget cuts in education that

² Inculturation theology consists in the respect of the Catholic Church for non-Western cultures. These cultures are supposed to contain the “seeds of the verb,” or manifestations of God’s will and Catholic values. The Catholic Church is expected to use the languages, and other cultural manifestations of native peoples in its liturgy.

took place in the 1990s (Montaluisa 1990), an example of what has been called recognition without redistribution (Fraser 1996). Starting in 1990, the indigenous movement staged a series of national uprisings that were able to halt the implementation of neo-liberal reforms and that contributed to ousting two presidents, Abdalá Bucarám in 1996, and Jamil Mahuad in 2000 (Zamosc 2007).

The indigenous movement in Ecuador has been considered stronger than others in the region because it was able to unify organizations from the community to the national level, and because its massive uprisings were able to deeply affect state policy (Yashar 2005, Zamosc 2007). It is less often noted that the movement also achieved the creation of a series of state institutions for education, health, and development that were managed directly by indigenous organizations. Political participation was another strength. In 1996, CONAIE in alliance with other social movements and sectors created the political party Pachakutik. CONAIE and Pachakutik had considerable impact in the 1998 Constituent Assembly that for the first time declared Ecuador a multicultural country, asserted the right of communities to preserve their culture, forms of political organization, and administration of justice. The 1998 Constitution also had provisions regarding the creation of indigenous territorial entities. However, many of these rights depended on the implementation of further legislation and this task was difficult because Pachakutik was a minority in Congress. The national representation of Pachakutik in Congress has been from 10 % to 7.5 % of congressional seats (Zamosc 2007). However, this party had important representation at the regional and local level. In the 2000 elections Pachakutik won 4 governorships and 17 mayoralties. In 2004, it won 3

governorships and 20 mayoralties, plus wide representation in provincial, municipal, and parish councils (Zamosc 2007).

The relative crisis of CONAIE from roughly 2004 to 2010 is multidimensional and different authors emphasize different reasons for it (Ospina 2009b). Many point to the ill-conceived alliance of the indigenous movement with Colonel Gutierrez who gave a coup d'état in 2000. The lack of solid democratic values of the indigenous movement for participating in this coup has been criticized (Zamosc 2007). In 2002, Gutierrez won the presidential elections in alliance with Pachakutik. This allowed CONAIE to participate in government, and some of its leaders to become ministers of state. For example, Nina Pacari became minister of foreign relations, and Luis Macas became minister of agriculture. However, a year after the election the alliance was broken as Gutierrez reinforced neo-liberal policies and started to negotiate the Free Trade Agreement with the United States, and the indigenous movement tried unsuccessfully to become an opposition from within. In 2003, Pachakutik was forced to leave the government and Gutierrez started a policy of dividing the indigenous movement. This consisted on clientelism at the community level to try to bypass CONAIE's organizational structures. Another strategy was to make alliances and give positions in state institutions to other smaller indigenous organizations such as FEI (Federación Ecuatoriana de Indios, Ecuadorian Federation of Indians, linked to the Communist Party) FEINE (Federación Ecuatoriana de Indígenas Evangélicos, Ecuadorian Federation of Evangelical Indigenous People, a Protestant Indigenous Organization) and FENOCIN (Federación Nacional de Organizaciones Campesinas Indígenas y Negras, National Federation of Peasant, Indigenous, and Black Organizations, linked to the Socialist Party).

Correa has continued this strategy of distributing money at the community level through social programs like the bonus for human development (a subsidy to the very poor), a bonus for housing, and the programs *socio páramo* and *socio bosque* (that subsidize communities that protect their natural environment), to co-opt the grassroots bypassing CONAIE. Correa has also allied with FEI, FEINE and FENOCIN. The exacerbation of internal divisions by different governments, and the co-optation of the grassroots and some part of the leadership is one reason for the crisis of CONAIE. To solve this problem, CONAIE has denied access to government officials to indigenous territories. Leaders argue that these officials arrive to divide indigenous people and to destroy their organizations (CONAIE, February 26, 2010).

In addition, the indigenous movement seemed for a while to have lost its relevance as an avant-garde of anti-neoliberal and radical groups with the rise of Correa's post-neoliberal project. CONAIE led radical leaning groups in the decade of the 1990s in a context of the international crisis of the left with the collapse of communism in the Soviet Union and Eastern Europe. However, the Latin American left recovered in the decade of 2000 (French 2009). For instance, Correa's project attracted a good number of intellectual collaborators of Pachakutik and CONAIE, further weakening the indigenous movement. Nevertheless, now that social movements and environmentalists and their agendas have been marginalized from the governing coalition, CONAIE has the potential to lead again Ecuadorian social movements.

The crisis of the indigenous movement in the second half of the decade of 2000 was reflected in electoral results. In the 2006 elections Pachakutik run with its own indigenous candidate, Luis Macas, trying to replicate Evo Morales' 2005 victory in

Bolivia. Macas only obtained below 2 % of the national vote (Báez and Bretón 2006). However, Pachakutik kept some of its strength at the regional and local level. This relative electoral failure has led some regional and local indigenous leaders to ally with Alianza País, Correa's political party, while many of them also remain in Pachakutik or CONAIE.

For instance, the lack of support of Pachakutik for Correa's candidacy in 2006 is at the root of the separation between Correa's project and the indigenous movement. It is also at the root of the division of CONAIE, since some branches like the Indigenous and Peasant Movement of Cotopaxi (MICC, Movimiento Indígena y Campesino de Cotopaxi) wanted to ally with Correa whereas other regional leaders like Auqui Tituaña, former mayor of Cotacachi, opposed this alliance. These divisions have reached the indigenous movement in intimate ways dividing kin against kin: For example, Marlon Santi, current president of CONAIE has become a radical opponent to Correa's government whereas his first cousin, Carlos Viteri is distributing subsidies in the Amazon to increase support for the government among Amazonian peoples.

Víctor Bretón (2005) adds further reasons for the crisis of the indigenous movement. He has emphasized the role of a World Bank Program called PRODEPINE (Programa de Desarrollo de los Pueblos Indígenas y Negros del Ecuador, Program for the Development of Indigenous and Black Peoples of Ecuador) in weakening the indigenous movement. PRODEPINE has granted money to indigenous organizations for local development projects. According to Bretón, the World Bank has encouraged indigenous organizations to privilege a technocratic instead of a political leadership and to focus on

short-term goals instead of focusing on a long-term political project. This has resulted in the depolitization and demobilization of CONAIE.

A third explanation that I develop in my book *Repensando los movimientos indígenas* (Martínez Novo 2009) is the growing separation between the leaders and the grassroots. Some leaders have become technocrats focused towards national and international contexts that have lost contact with the communities. In addition, the communities have not seen enough change at the grassroots level after more than a decade of uprisings and political participation. This has led indigenous people to complain about the corruption of the leadership and to become tired of organizing and demonstrating without seeing clear results (Tuaza 2009). Finally, the grassroots seem to be more interested in economic mobility and inclusion than in reinforcing indigenous culture. Ethnicity is a strategy that seems to have benefited indigenous leaders, but much less communities and the grassroots. This is yet another reason for the grassroots to be attracted by Correa's political project.

Despite this situation, in the last months some branches of the indigenous movement have become stronger and more unified in the confrontation with the government of Rafael Correa. Particularly, Amazonian indigenous peoples are becoming unified against what they perceive as a renewed offensive of oil and mining companies that want to penetrate their territories with the support of the government. In the highlands the main issues radicalizing indigenous populations are the distribution of water and the control of state institutions for indigenous education and development. Also, the lack of respect of Correa for indigenous leaders whom he calls "*pelucones*,"

“ponchos dorados,” (preppies and golden ponchos) and unprepared to lead a social movement has had an effect in radicalizing CONAIE’s position.

3. Advances and Ambiguities in Indigenous Rights in the 2008 Constitution

The 2008 Constitution has meant some advances for indigenous rights over the 1998 Constitution. However, due to tensions in the ruling coalition, some points have been kept intentionally ambiguous, some advances have not been possible, and even some turn backs are taking place, mainly through the secondary legislation that is being issued after the Constitutional text was approved.

The 1998 Constitution declared Ecuador a “multicultural and pluriethnic” state. Although the idea that Ecuador should be “plurinational” was an indigenous demand since the early 1990s, it was not accepted in the 1998 Constitution because some sectors feared that this could give grounds for the division of the fatherland. In the Constituent Assembly of 2008, there was a debate on whether Ecuador should be “plurinational” or “intercultural.” The plurinational side got support from the ideas of Portuguese intellectual Boaventura de Sousa who is an icon of the Latin American left, and an organizer of World Social Forums that, according to John French (2009), have been able to successfully articulate the post-neoliberal left in Latin America. On the indigenous activist side, the position of plurinationality was led by Mónica Chuji, a Amazonian indigenous woman who became spokesperson for Correa’s government and a representative to the 2008 Constituent Assembly while remaining a member of CONAIE. For de Sousa (2007), plurinationalism did not mean the division of the state, but it did mean self-determination, celebration of diversity, anti-discrimination, and a transitional

period of affirmative action, as well as redistribution of resources. Plurinationality should also mean according to de Sousa to share decisions over natural resources. According to Monica Chuji (interview by author April 11, 2008), plurinationality is a political process that seeks to restructure the state with a new geographical organization where indigenous territories have equal privileges than traditional geographical divisions such as provinces or municipalities. She also proposed special participation of the indigenous nationalities in all structures of the state such as Congress, the Supreme Court, the Electoral Court, and so on. Finally, she emphasized that indigenous peoples should be consulted regarding natural resources and that their decisions should be taken into account by the state.

The intercultural side was led by Ecuadorian intellectual Galo Ramón and by indigenous peasant activist Pedro de la Cruz, president of FENOCIN, an indigenous organization articulated to the Socialist Party. According to Ramón (2008), *interculturalidad* recognizes the right to difference and diversity, but emphasizes a process of living together and the construction of unity. *Interculturalidad* is not based on autonomy of indigenous peoples in their own territories, but on inclusion and equality in diversity that pervades all institutions of society. This project is particularly relevant for territories that are shared by *mestizos* and diverse indigenous groups. Also, according to Ramón, *interculturalidad* is more relevant for Afro-ecuadorians than plurinationality since few of them live in their own territories. Pedro de la Cruz (interview by author, April 11, 2008) adds that autonomy can be used by the conservatives to strengthen their power and to resist change, and emphasizes the need for unity as well as equality. Although, de la Cruz given the tradition he is coming from emphasizes class unity among

the poor regardless of their ethnic or racial background, he is also for anti discrimination and affirmative action laws.

After this debate, a consensus was reached in the governing party and both terms, plurinationality and *interculturalidad* were included in the Constitution, but some of the demands of the first as well as of the second seem to have been somewhat diluted. Plurinationality was accepted as a term, but emphasizing the unity and predominance of the central state. The sovereignty of the state supersedes territorial autonomy, and special representation of indigenous nationalities beyond regular democratic representation is not accepted. Furthermore, non-renewable natural resources belong to the central state. Indigenous peoples should be consulted, but it is in dispute whether the state needs to follow these recommendations. This led some critics to argue that the term plurinationality was accepted but not the meaning (DINEIB communication, July 7, 2008). More critiques to the government's understanding of plurinationality came when Rafael Correa, through executive decrees suspended the autonomy of indigenous state institutions and placed them under the authority of different Ministries (as an example see executive decree 1585, February 18th 2009).

Another issue that created tensions in the governing coalition was whether to declare Kichwa an official language together with Spanish. Many deputies to the Constituent Assembly wished to do so, but the final consensus reached by Correa's party was to leave Spanish as the only official language, and to declare native languages "languages of intercultural communication." The reasons given by Alianza Pais to keep Kichwa in an inferior hierarchy in relation to Spanish were: That Kichwa is an oral language, that it is not a national language, that it is very costly to implement making

Kichwa an official language, that the imposition of Kichwa in the coast would generate resentment, and that the population should better learn English (DINEIB communication, July 23, 2008). Some observers argued that the bottom reason not to accept Kichwa as an official state language lied in polls that showed that such decision would affect the popularity of Correa.

Anti-discrimination and affirmative action legislations are important advances in the 2008 Constitution. After the 1998 Constitution, secondary anti-discrimination laws could not be developed or approved by Congress. Anti-discrimination principles appear throughout the constitutional text and have been further developed through Presidential Decree 60, issued in September 28, 2009, which is based on a previous academic plan for public policy requested by the government (Antón and García 2009). Presidential Decree 60 seems very radical (a positive characteristic) in relation to the current situation of the country. For example, it reads (my translation) “the state will try to achieve (*procurará*) the hiring of Afro-ecuadorians, Indigenous, and *montubios* in all its institutions in a proportion that will not be less than their participation in the total population.” This Decree, however, has not been sufficiently diffused among the population, social movements do not know it well and, therefore, have not pressured yet for its implementation.

A problem that the 2008-2009 legislation on anti-discrimination and affirmative action raises is that other groups besides afro-Ecuadorians and indigenous have been included. Anti-discrimination laws also include *montubios* (*mestizo* peasants from the coast) and *mestizos*. According to the ideology of *mestizaje*, this category could very well include all or at least most Ecuadorians. Affirmative action also favors *montubios*. The

problem is that if many groups are included the legislation may be diluted and lose its effectiveness as a tool to remedy historical disadvantages and injustices. It is interesting that the anti-discrimination law has been mainly conceived as a law intended for Afro-Ecuadorians in a context in which the Afro-Ecuadorian movement is closer to Correa's government than the indigenous movement. The Decree explains specifically the effects of racism over Afro-Ecuadorians and argues: "the main victims of racism are Afro-Ecuadorians." Perhaps this is correct, but it is still interesting the lack of emphasis of the decree on anti-indigenous discrimination and indigenous exclusion in a context of confrontation between the government and CONAIE.

The question of indigenous territories and control of non-renewable natural resources remains a problematic and ambiguous arena in the Constitutional text. Similarly to the 1998 Constitution, indigenous territories (*circunscripciones territoriales indígenas*) are included in the text. However, these territories do not pertain to the regular territorial organization of the state and do not have equal rights (including budgets) as provinces, counties (*cantones*), municipalities, and so on. Their legal status will be defined by secondary legislation that has not yet been developed and that is causing tensions. Furthermore, it is clear in the constitutional text that non-renewable resources belong to the central state. The chart of indigenous rights in the Constitution establishes that communities should be consulted when their territories or rights are affected, but it is not clear whether this consultation is binding for the state. Alianza País did not accept unambiguous binding consultation of indigenous peoples in the Constitution. This point created tensions between a section of the ruling coalition led by Alberto Acosta and close to environmentalist and pro-indigenous concerns that promoted autonomy and the

importance of binding consultation with communities, and another sector of the ruling coalition that prioritized national development and the extraction of natural resources. Alberto Acosta and his follower environmentalists and supporters of indigenous rights lost this battle, but introduced an ambiguity in the Constitutional text that they are trying to use in favor of communities. They included in the chart of indigenous rights of the Constitution that Ecuador would respect all international treaties regarding indigenous and human rights. That would include the new United Nations Declaration of Indigenous Rights that stipulates that the consent of indigenous communities is needed in order to extract natural resources from their territories.

4. Some Post-Constitutional Conflicts Regarding Secondary Legislation and Executive Decrees

In the 2008 Constitution, there were advances and also ambiguities that created expectations on the part of indigenous peoples, but that also announced conflicts. The first strong conflict pertains to the System of Intercultural Bilingual Education. In February 2009, through Executive Decree 1585, the government of Correa abolished the autonomy of indigenous organizations to elect the authorities of DINEIB or to decide on educational policies. This Decree established that the intercultural bilingual system would be managed by the Minister of Education according to national public policies. All authorities including the National Director of Intercultural Bilingual Education and the Provincial Directors would be freely nominated and removed by the Minister. This meant a big change and a turn back for indigenous organizations because since 1988, these organizations according to how representative they were among indigenous

peoples, had been able to elect the authorities of the system, to design the curriculum and educational policies, and to hire its teachers. This decision, which contradicts the concept of plurinationality declared in the 2008 Constitution, caused great discontent in the indigenous movement. It is important to note that many of the movement's cadres are bilingual teachers. The intercultural bilingual system is also one of the main sources of employment for indigenous professionals. Furthermore, the autonomy of the intercultural bilingual system of Ecuador is unique in Latin America (Abrams 2004). Indigenous organizations in many countries are struggling to achieve what Ecuadorian indigenous nationalities already had.

Several reasons were given for this change that goes against the idea of autonomy that the declaration of the pluri-national state implies. According to the Ministry of Education, Intercultural Bilingual Education had been delegated to indigenous organizations in the context of the neo-liberal retrenchment of the state. For this reason, bilingual education had become the booty of a handful of corrupt leaders who had used the system for their own profit, who had politicized it, and who were the cause of the deep problems of quality in the system. The ministry also accused CONAIE in several sections of this document of being "racist," because they had monopolized intercultural education for the sake of indigenous organizations, had taught children about indigenous struggles, and had not included *mestizos*. "Corporatist organizations" (i.e. social movements) are accused of all the problems of the system, and the context of neo-liberal budget cuts and constraints in which indigenous organizations had to operate is not mentioned (Ministry of Education, March, 2009).

This presidential decree has been renegotiated after recent demonstrations that culminated in the death of a Shuar teacher in September 2009. As a result of the negotiations between the government and CONAIE, the executive issued Decree n. 196 in December 2009 to substitute the earlier legislation. This decree keeps the authority of the Minister of Education over the intercultural bilingual system and the election of its authorities. The government, however, accepted CONAIE's proposal that indigenous authorities be elected by the Minister through a competition based on merit. A National Commission of Intercultural Bilingual Education composed by representatives of the 14 indigenous nationalities that exist in Ecuador was also added. However, this institution would only have an advisory character, and would not be elected by indigenous organizations. On the contrary, its representatives would be elected by the Council of Citizen's Participation and Social Control, an institution whose delegates are selected under the close supervision of the executive. Decree 196 also stipulates that persons who have been twice Provincial Directors of Intercultural Bilingual Education cannot be elected to National or Provincial Director, that authorities can only hold their position for two years, and that those who have challenged authority or participated in an unconstitutional strike cannot be chosen. The Decree also requires five years of teaching experience at the classroom level.

It is clear that what these stipulations are seeking is to exclude the established leadership of the indigenous movement who have already held high positions and who have challenged the government in demonstrations and strikes. The government seems to be seeking to promote new people, closer to the grassroots and more faithful to its project. CONAIE has questioned the fact that indigenous nationalities are not allowed to

choose their representatives independently through their own institutions and methods. It has also questioned the instability that short periods in office would bring.

Interestingly, even though the government claims to have an interest in the reinforcement of central state control and in eliminating the historical delegative nature of the Ecuadorian state that intensified under neo-liberalism (Martínez Novo 2007), the President issued another Decree (Presidential Decree n. 1780, June 2009), delegating the administration of education, health, development, and infrastructure in the Amazon to the Catholic missions with the economic and political support of the state. This happened despite the fact that, after many heated debates, the Constitution declared Ecuador a secular state, allowed religious pluralism, and required equality and non-discrimination of different faiths in the country. Interestingly, the Catholic Missions are perceived as depositories of the “general interest,” whereas indigenous organizations and other social movements are perceived as specific and corporatist.

Another source of conflict between the government and indigenous organizations relates to the administration of natural resources such as oil, minerals, and water. The discussion of the Mining and Water Laws has produced demonstrations on the part of CONAIE, and the reform of these laws is a central point in its political agenda. The hydrocarbons law has not been issued yet, but it is also likely to produce social conflicts. One complaint is that these laws have been written without the participation and without the consent of the indigenous communities that will be affected by them. Very typical of this government is the authoritarian practice of organizing workshops where they socialize their ideas through a power point presentation. Usually, there is not even a question and answer section in these workshops, and much less a real participation of

those invited. Some authors have argued that an authoritarian form of technocracy characterizes the regime (Ospina 2009a).

Besides the possibility of real participation, what is at stake is choosing between a form of development based on the defense of human and indigenous rights and those of the environment, and another understanding of development based on the exploitation and export of non-renewable natural resources for the alleged sake of the “whole nation.” The main idea sanctioned in the Constitution is that the state is the supreme owner of non-renewable natural resources. Also, national development is very important for the regime, and this may include giving concessions to transnational and national companies for the exploitation of resources supposedly for the “general good,” which seems to be in opposition to the “corporative” interests of indigenous communities.

CONAIE has started a lawsuit to declare the new Mining Law unconstitutional. CONAIE’s arguments are: According to the Constitution, indigenous peoples should have been consulted before the law was written and they were not. The Mining Law contemplates consultation after the concessions to companies are made and not before, as mandated by the Constitution. The Mining Law claims to prevail over all other laws. However, an ordinary law cannot prevail over organic laws. During the constituent process, the representatives were careful to name economic laws ordinary and those laws that pertained to human and social rights and the rights of nature as organic. The rationale for this was that the economy should be at the service of the human being and not on reverse (Acosta, communication with Members of Constitutional Court, June 9, 2009). However, the government by giving preeminence to the mining law and by calling mining a national priority is trying to reverse this principle according to CONAIE’s

lawyers. Furthermore, the Mining Law obliges the owners of the land to allow mining companies to carry out prospective and extractive activities in their property in exchange for a monetary compensation. CONAIE argues that this regulation violates the integrity, indivisibility, and the right to customary use of indigenous territories established both in the Constitution and in international treaties such as the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Moreover, indigenous peoples consider the right to territory the basis of all other collective rights. Thus, this subordination of territorial rights to mining activities would, according to CONAIE, threaten the very survival of indigenous communities and cultures. CONAIE also complains that the law favors private mining companies and that, according to the Constitution, private initiative should be severely restricted in strategic sectors such as mining.

Alberto Acosta, who was the first president and ideologue of the Constituent Assembly, agrees that this law is unconstitutional (Acosta, communication with Constitutional Court, June 9 2009). First, it violates the rights of consultation and participation. It also goes against international treaties of human rights and indigenous rights that Ecuador should follow as mandated by the Constitution. Extractive activities, Acosta argues, divide and alienate the territories of indigenous peoples, hinder or make impossible their economic activities, and produce multiple forms of pollution, illness, violence, and exploitation that are contrary to human and indigenous rights. Acosta adds that extractive activities have seriously damaged the rights and interests of the inhabitants of the Amazon for the profit of transnational companies and national elites that have camouflaged their interests as the “common good.” Finally, the law allows the government and the mining companies to criminalize and repress the inhabitants of the

areas where these activities take place if they oppose them (Acosta, communication with Constitutional Court, June 9 2009).

CONAIE and ecologist groups such as Acción Ecológica (Ecological Action) criticize the following issues from the new Water Law: A source of dispute is that the government wants to create a single water authority that would eliminate the autonomy that indigenous communities used to enjoy to regulate the use of water. This would threaten the plurinational character of the Ecuadorian state because the law does not respect the rights of communities, peoples, nationalities, and peasants who have their own forms of organization of water distribution and use. The law does not recognize indigenous authorities and places them under the single water authority. Although the Constitution establishes that water cannot be privatized, the water law gives priority to the industrial use of water by hydroelectric and mining companies. Also, the water law establishes that the use of water can be transferred with a property and that water that is naturally retained in a property belongs to the owner of the land. This is considered a form of privatization of water that contradicts what is mandated by the Constitution, which is that water cannot be privatized. The law also ratifies previous concessions, which again allows according to CONAIE, for the privatization of water and also hinders its redistribution to common people, which is required by the Constitution. In addition, the law does not sanction those who pollute water, and does not establish mechanisms of recovery of waters and ecosystems that have been already polluted. Finally, the law establishes that tariffs would be charged for the use of water to subsidize water systems. CONAIE and ecologist groups propose state investment in water systems with community and decentralized control. Social movements also complain of the new law of

Public Security, which allows repression against populations that reject extractive activities such as hydroelectric and mining.

5. Conclusion

The indigenous movement of Ecuador confronts a new radical project of state formation in a moment of relative organizational weakness. However, CONAIE is becoming stronger in the last months as the confrontation with the government on important issues hardens. This radical government has allowed for some advances in indigenous rights like the legislation on plurinationality, anti-discrimination, affirmative action, and the rights of nature. However, these good intentions made Constitutional principles are contradicted by executive decrees, secondary legislation, and practices of government. The reason for this is that the government has been constituted by different currents, some environmentalist, for indigenous rights, and participatory, some statist, developmentalist, and authoritarian. The second current seems to be gaining strength at the expense of the first, as the marginalization of Acosta, Fander Falconí and their teams show. The high expectations that the process of change opened in indigenous peoples, contrast with authoritarian practices, ambiguities, and a turn back in some important issues. This is causing strong tensions and even violence towards indigenous organizations that is unprecedented in a peaceful country such as Ecuador.

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