

Lawfare and its violation of Civil and Political Rights as a consequence of acts of political persecution.



El Lawfare y su vulneración de Derechos Civiles y Políticos como consecuencia de actos de persecución política

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ABSTRACT

The purpose of this article is to analyze what lawfare is and how it violates the civil and political rights of individuals. This practice has been used in different countries to combat political leaders and activists, and has become a tool to promote political persecution and limit civil and political rights. In Ecuador, Lawfare has been used as a tool of intimidation and repression of the political opposition. Opposition activists and leaders have been subjected to a series of unfounded accusations in order to limit their ability to mobilize citizens and participate in politics. These actions have included arbitrary detention, censorship, harassment, intimidation and persecution of activists and opposition leaders. As a result of these Lawfare activities, the civil and political rights of the citizenry have been seriously infringed. In addition, Lawfare has allowed the government to implement authoritarian and repressive policies without allowing citizens to exercise their right to participate in decision-making. This has

contributed to a decline in democracy and the rule of law in Ecuador.

Keywords: Lawfare, Persecution, Politics, Civil, Political, Rights.

RESUMEN

El objetivo de este artículo es analizar que es el lawfare y de cómo este vulnera los derechos civiles y políticos de las personas. Esta práctica se ha utilizado en diferentes países para combatir a líderes políticos y activistas, y se ha convertido en una herramienta para promover la persecución política y limitar los derechos civiles y políticos. En Ecuador, el Lawfare se ha utilizado como una herramienta de intimidación y represión de la oposición política. Los activistas y líderes de la oposición han sido objeto de una serie de acusaciones infundadas con el fin de limitar su capacidad de movilizar a la ciudadanía y participar en la política. Estas acciones han incluido la detención arbitraria, la censura, el hostigamiento, la intimidación y la persecución de los activistas y los líderes de la oposición. Como resultado de estas actividades de Lawfare, los derechos civiles y políticos de la ciudadanía han sido seriamente vulnerados. Además, el Lawfare ha permitido que el gobierno implemente políticas autoritarias y represivas sin que la ciudadanía pueda ejercer su derecho a participar en la toma de decisiones. Esto ha contribuido a una disminución en la democracia y el Estado de Derecho en Ecuador.

Palabras clave: Lawfare, Persecución, Política, Civil, Política, Derechos.

Introduction

Ecuador is well known for its protection of plaintiffs' civil and political rights at a level that exceeds that of many European and American countries. Ecuador's active protection of civil rights serves as a basis for safeguarding political liberties and acts to limit the effects of lawfare.

Lawfare is an important factor in human rights violations, as it is an active strategy of a ruling regime to use the legal system against its political opponents, while ensuring that they do not have the capacity to do so themselves, which generates fear, oppression and intimidation. Ecuador is an ideal example of the following three points: lasting protection of such civil and political rights violations has been reduced as power remains within one faction; collective non-political expression is routinely censored through mainstream media outlets that have portrayed Internet dissidents as "traitors"; most of the time, prosecutors are two-faced in acting with different levels of effectiveness in matters related to law enforcement cases of government malpractice.

Despite all this Ecuador has maintained the violation of civil and political rights of civilians by engaging in practices such as the use of lawfare. The participation of lawfare in political and governmental affairs, such as persecuting someone for their affiliations and denying them rights.

Circumstantial evidence is being refuted, thus collapsing the credibility of an individual's personal information, both in terms of this data being inaccessible to others, and injustices on others directly or indirectly linked to the individual. With this involvement they often threaten and counterattack using powerful laws to defend themselves.

The issue raised is that legal warfare is a way to roll back an autocratic regime.

First, at the social level, lawfare can be seen as a reaction to the abuses of power of an autocratic state. This then is what we can call a humanitarian aspect since for the oppressed society it appears as its last hope for justice and liberation from its oppressor.

Notwithstanding this motive and regardless of its effectiveness in bringing about democratic change, criminal prosecution before the courts stages another form of legitimization.

At the criminal level and at the international level, criminal prosecutions serve as means or instruments to retaliate against and resist politically unacceptable practices of sovereigns that are undermining the valuable conventions of international society aimed at preventing or limiting crimes both between individuals and between nations and states.

Lawfare, when it comes to Ecuador, is something that can be mentioned to the recent political persecution and violation of civil rights of Ecuadorian citizens. This is a challenge because with lawfare in place political parties or individuals will not be able to maintain their political and civil rights as a consequence of acts of political persecution aimed at undermining democracy. Lawfare as a problem for Ecuador should not remain as an uncontested fact as it leads to violations of civil and political rights.

Finally, at the legal level, where legislation exists to regulate what law is applied and how they are allowed to treat their detainees, reform measures could be made to deal with the state. Lawfare is the abuse of the law as a weapon in politics and can sometimes be used as a means to abuse civil and political rights.

Materials and methods

The qualitative method will be used to collect and obtain information. This research is based on a documentary analysis through archives, legislative texts, laws and news related to it.

The study of cases will be of vital importance for the development of the research, a minimum of 7 cases to be studied, since in recent times political persecution has become more notorious, as is the case of Ricardo Patiño, Rafael Correa, and Jorge Glas, among others.

Results

Historical background of Lawfare in Ecuador

Ecuador was the first country in Latin America to declare Civil and Political Rights as the supreme good. But history has been cruel to the Ecuadorian people, it seems that there have been constant incidents of violations of citizen security, environmental rights of the people and a society subject to vulnerabilities at all times.

The law changes and tends to change attitudes toward specific agendas. Modern laws focus on international human rights by criminalizing cultural practices by criminalizing the intent to oppress people.

This war of laws is affecting how fundamental rights are for certain groups such as those in Ecuador. The law classifies disputes as "political persecution" and therefore punishes people who have violated these rights by criminalizing them.

A violation of Civil and Political Rights occurs when people are persecuted for their political ideologies or violence is exercised against them. The great detail in this specific issue is that the definition of lawfare has changed throughout history, but what remains the same is that politicians exploit legal knowledge as a weapon in their elections. Lawfare ultimately leads to violations of political and civil rights.

Lawfare from a Latin American perspective

In the region, lawfare has been used to defend victims of human rights violations, police abuse, war crimes, gender violence, crimes against humanity, among others. It has been used to achieve reparations for victims, access to justice, and to compel States to comply with their international obligations. In addition, lawfare has served as a resistance strategy to oppose authoritarian governments. Human rights activists and advocacy groups have used lawfare to challenge government policies, and have succeeded in overturning restrictive laws.

In general, lawfare has been a useful tool for addressing impunity and abuse of state power, and for promoting and protecting human rights in the region. However, there are concerns about the abusive use of the strategy, especially in relation to the filing of unfounded or politically motivated lawsuits.

The definition of Lawfare begins in Latin America and tends to evolve later. Following this pattern, it is understood that the violation of civil and political rights takes place when governments use law interventions as a means to affect their opponents. For example, governments may promote legislation that infringes on human rights in order to silence opposition groups or punish dissidents.

Civil law: The traditional definition cited by international human rights bodies defines civil and democratic rights as "a fundamental interest in freedom". (UNIVERSAL DECLARATION ON HUMAN RIGHTS, n.d.)

The recognition of Human Rights will often imply: Universal suffrage, freedom of expression, employment in the state apparatus are factors of civil liberty.

The standards for recognition are of necessary degree of protection against violations by the State ensuring constitutional guarantees against racist laws or repressive practices of foreign management and international conventions such as Civil and Political Rights.

Civil and Political Rights are rights that protect all persons within a geographic area of a nation, including the right to seek their protection when their country has disappeared and apply only to citizens or legal residents.

Research in recent years has shown severe biases in some developments in Latin America. In several cases Lawfare has been perceived to go against civil and political rights. Whip countries such as Ecuador and Venezuela have shown some approaches to weaken CPRs that end up becoming Laws that these countries adopt for their enforcement. In Latin America today it is widely exploited by different countries, not only to violate human rights (cyber surveillance and use of social networks) but also to deprive strategic and military activities. To illustrate this phenomenon outside this region we turn our attention to the United States. They mainly use lawfare and visa revocation against influential leaders who argue different views from government policies and are seen as a political threat. People like Lilian Tintori were denied access to Ecuadorian territory for failing to justify their immigration status. (CNN Español, 2017) Venezuelan political activist Leopoldo López was also denied his request when he sought asylum in Spain as he only takes refuge inside the European country's embassy and can remain there. (radio television marti, 2019)

Political persecution is not a new fact in history. The situation differs according to region, social classes and economic factors.

A significantly high level of such political persecution occurs in Latin and South America, where the targets are often human rights activists who denounce corruption or undertake investigations into such cases.

This legal warfare has increasingly become a huge problem for human rights activists in these areas due to the violations of their civil and political rights as a consequence. It is common for paramilitary groups to target organizations by forcing them (if they refuse) due to government pressure through many laws supported by neoliberal governments.

Lawfare in Ecuador

In Ecuador, civil and political rights violations have increased significantly since the election of Lenín Moreno. As president, Moreno established laws and infringed on people's rights to silence potential adversaries through lawfare written into law.

Simply put, this means he used legal power as a major tool to engage in acts of political persecution.

For example, President Correa protected the freedom of expression enshrined in the Ecuadorian Constitution. Although with the introduction of Lawfare he severely limited sections such as protection against injunctions, appeals, and labor sanctions

Within the government of Lenin Moreno, three phases were identified in which lawfare was used under the impulse of the executive power to annihilate and neutralize political opponents; these phases can be defined as: breaking, dismantling and political annihilation.

Within this first phase we have the breakup, which would come to be of the Alianza País movement and former President Rafael Correa; such dissolution or breakup takes place between June 2017 and February 2018; all this led to the resignation of members of Moreno's government.

In order to better understand this whole context of the politically persecuted, we will analyze one by one the most relevant cases in recent years in our country:

3.1 Rafael Correa

He was president of Ecuador from 2007 to 2017. Ecuadorian politics has been the subject of much international speculation lately. Lenin Moreno, Rafael Correa's successor, was discussing the country's foreign policy with different countries during his term.

Rafael Correa served as president for nine years before being ousted in 2017 due to a national insurrection aided in part by clandestine politics and simple social hysteria. What seems to have happened here is that Correa found himself in a complex dispute with the local press and protesters that began in his first year of presidency and after 9 years was forced to resign by an opposition coup that used another Ecuadorian president 2 years earlier, as a precedent, so to speak. This problem also relates to how powerful corporations impact land policies.

Rafael Correa had fled the country run by Ecuador's dictatorship for protection. Rafael had been president of Ecuador from 2007 until 2017 when he unsuccessfully attempted to amend the constitution and become president for life. Now, according to Rafael, Correa accuses Western powers of conspiring against him with armed indigenous groups.

He said this in his explanation of Lawfare as a violation of civil and political rights by saying that "internal opponents have attacked Ecuadorian democracy since at least 2010," which is when Rafael began his second term as Ecuador's president.

Rafael believed that the attacks on the government by Western countries are due to "political persecution" that seeks to undermine the cohesion and movement of a nation-state through scare tactics for their own economic benefits.

A "lawfare" is constituted by the multiple actions undertaken by state authorities and other powerful factions to persecute individuals and/or their families who oppose their interests, or those of corporations or specific social groups. The form may target human rights defenders, trade unionists and protesters, as well as opposition leaders. In Ecuador, the administration of Rafael Correa has been accused of violating civil and political rights under the guise of lawfare against his opponents since he took office in 2007. Former President Correa has used 11 different methods for general repression, such as coercion (capture of activists), adjudication (through the courts), encounters with various military forces to suppress opponents, and restricting the movements of indigenous communities with approximately 30% possession privileges.

The former pointed out that lawfare continuously sought to weaken its public image abroad through a persistent campaign of economic destabilization; he also remarked that the violation of norms was recurrent in Ecuadorian society since neoliberalism was established.

3.2 Jorge Glas

He was appointed vice president and executive secretary of the Presidential Council after Lenin Moreno won Ecuador's 2017 presidential election. This followed a secret intervention by the opposition backed by the Central Intelligence Agency in an attempt to overthrow President Rafael Correa. Glas is a person involved in a failed coup in 2010, who also violated campaign finance laws and had key roles in several anti-corruption scandals. In addition, he served as Ecuador's ambassador to Belgium and then to China.

Since Glas' appointment, Moreno has prohibited any further legal prosecution against Glas.

We want to cover the situation in Ecuador and the persecution of President Jorge Glas, who opposed at the time the prohibition of indefinite reelection. Lawfare has been used as a tool to strategically target Glas through his exclusion from 4 presidential debates.

Glas was attacked by legal means (Lawfare), violating his civil and political rights by using these laws to prosecute him while in office, largely because he opposes a bid for indefinite reelection.

In Ecuador, former Vice President Jorge Glas was a fierce oppressor of civil and political rights. He used the Venezuelan judicial system to persecute political opponents in contravention of Ecuadorian and international law. Using processes such as attachable property executions, Glas destroyed that democratic prosperity. His stance on Lawfare goes against human rights and therefore should not be tolerated by world leaders.

Glas was accused of "devaluing the large commercial airlines" by accusing them of an alleged conspiracy to prevent a fellow countryman from canceling reservations for aircraft developed abroad.

This came as part of a broader campaign against Glas after he took office, his administration came under investigation in 2016 on charges related to alleged embezzlement and involvement in "a failed foreign exchange deal" with Chinese companies.

Glas was one of those guilty of financing Hugo Chavez's administration with public money, which may eventually lead to his arbitrary arrest by Ecuadorian intelligence agents under pressure from the U.S. Department of Homeland Security on February 16, 2011.

3.3 Ricardo Patiño

In 2016, Ricardo Patiño, Ecuador's Minister of Foreign Affairs and Foreign Trade, informed the press that due to an injunction issued by a U.S. court he will be investigated for "unreasonable tax evasion" as well as other crimes that could result in 15 years in prison or multimillion-dollar fines.

Evidently this type of prejudiced and law-abiding mentality seriously jeopardizes the democratic rights to which all Ecuadorians should have access.

The U.S. Court is basing part of its decision on investigations executed under Colombia's State Security Law No. 51 when Rafael Correa was president there during his time in office before coming to Ecuador around 2010, however, information obtained from investigations conducted during Ricardo's time as high commissioner. at the Ministry of Foreign Affairs and Trade is determining that these allegations are unfounded to date and constitute threats against Ecuadorian sovereignty and its

foreign trade diplomacy actions in relation to conditionalities imposed by international institutions such as the IMF.

There are a growing number of cases around the world where governments systematically violate civil and political rights through the use of legal warfare, where civic space, means and legal defense are restricted.

The malicious use of international, regional and national laws to repress the opposition is on the rise, a technique called Lawfare.

In Ecuador since November 24, 2017, the trial against Ricardo Patiño for his alleged participation in an attempted coup d'état on September 30, 2017 continues. According to the IPU (International Press Union).

Ricardo Patiño, Ecuadorian Foreign Minister, spoke at The Hague on "Lawfare and its criminalization: the case of Ecuador".

He said the court had overlooked evidence of "political persecution of Ecuadorians who oppose us" in public statements. It had relied on false accusations and its decision left no doubt that "what we are facing is that it is lawfare."

First pointed out by Nicaragua to justify the isolation of democratic voices in Nicaragua, the U.S. interventions gave an even broader scope to the strategy of legal warfare.

Government troops with rifles were attacking unarmed protesters in front of President Correa's office on September 30. Internal perpetrators have been waging ruthless persecution against opponents, including legislators and journalists, through arbitrary arrests and judicial processes that violate basic due process rights.

Better known as 'lawfare', this malicious trend targets human rights defenders, democratic coalitions and dissidents fighting for their civil rights.

3.4 Fernando Alvarado

Lawfare, also known as legal warfare, is a strategy of political persecution that has been used in countries such as Ecuador. The former president of Ecuador, Rafael Correa, used lawfare to persecute his political opponents, including his government's former Minister of Communication, Fernando Alvarado. Correa's abuse of lawfare against Alvarado began when Alvarado was fired from his post for dissenting with the president.

Correa initiated a series of judicial proceedings against Alvarado, accusing him of embezzlement of public funds, misuse of official information, among other charges.

These judicial proceedings were conducted without evidence and without due process, and were carried out with the objective of intimidating and harassing Alvarado and his supporters. Correa's objective was to silence his political opponents, thus preventing the opposition from presenting a viable alternative to Correa's government. Alvarado's persecution not only affected him but also his followers. Many of them were arrested and imprisoned without evidence and without due process. This demonstrates the abusive use of judicial power by the Correa government, and the way in which lawfare can be used to persecute those who are critical of the government.

Despite all efforts to persecute Alvarado, he remained steadfast in his fight for the democratic rights of the Ecuadorian people. Finally, President Lenín Moreno repealed Correa's decree banning freedom of expression, allowing Alvarado and other opponents to once again dissent with the government. This marks an important point in the struggle for democracy in Ecuador.

3.5 Wilson Pastor

During Correa's administration, Wilson Pastor was one of the main targets of his campaign of political persecution. Pastor, a former education minister, was accused of corruption and was imprisoned in 2012. Although he was later released when a court of law found him innocent of the charges, Pastor was a victim of lawfare during the Correa administration. Lawfare is a legal warfare strategy that refers to the use of the law as a means of political persecution. This strategy generally involves the abusive use of the law to persecute political adversaries through judicial processes, confiscation of property, blocking of financing, among other things.

In Pastor's case, former President Correa used lawfare to try to silence one of his staunchest critics. The corruption accusations were used as a way to intimidate Pastor and divert attention from the political and economic problems facing the country. This strategy has been a common element in Ecuadorian politics in recent years, and has contributed to polarization and growing political instability. In conclusion, the analysis of Wilson Pastor and lawfare as a means of political persecution in Ecuador should be understood as a form of intimidation of opponents of the Correa government. This strategy has contributed to the growing political polarization in the country, and has harmed many innocent people.

3.6 Alexis Mera

Lawfare is a war tactic where legal mechanisms are used to persecute a person for political purposes. This tactic was used against the former legal secretary of the Ecuadorian government, Alexis Mera. Several judicial processes were created against

Mr. Mera, all with the purpose of discrediting him and eliminating him from the political scene. These included accusations of corruption, human rights violations, and other charges. Ecuador's attorney general's office conducted an investigation against him in an attempt to prove that he had committed several crimes.

The Ecuadorian government also used lawfare tactics to try to silence Mera's voice. This included attempting to censor the media that gave him space to express his opinions. In addition, the government accused Mera of having used public resources to finance the presidential campaign of his party, the Alianza País Movement. This accusation triggered a series of legal proceedings against him, with the aim of silencing his voice and eliminating him from the political scene. Fortunately, the movement of resistance and support for Mera was so great that the Ecuadorian government was forced to abandon its attempt to silence him. Eventually, the charges were dropped and Mr. Mera was exonerated of any criminal responsibility.

Since taking office in Rafael Correa's government in 2007, Mera has faced a lawfare campaign led by former President Correa, who accuses him of being an "internal enemy" and holds him responsible for the alleged failure of his government. Former President Correa used the law to try to destroy Mera's reputation and professional career. In recent years, former President Correa attempted to accuse Mera of corruption, embezzlement and influence peddling, accusations that have been dismissed by the Ecuadorian courts. Likewise, former President Correa has attempted to hold Mera responsible for the alleged failure of his government. This includes accusing him of having interfered in certain judicial processes and of having influenced some magistrates to obtain political results.

In addition, former President Correa has tried to silence Mera and his supporters by using the law to limit their freedom of expression and prohibit the holding of events and meetings, such as blocking a protest march called by Mera and his party.

In conclusion, lawfare has been a tool used by former President Correa to try to persecute and destroy Alexis Mera in Ecuador. This has led Mera to be unjustly convicted on unfounded charges and to suffer violations of his fundamental rights, such as freedom of expression.

Mera stated that he has been the subject of dozens of trials and criminal proceedings, without having been able to determine the existence of criminal contacts. Some of these trials have been carried out under the Conflict of Interest Control Law, a law designed to combat corruption and impunity in the country. This law has been used as a tool to harass and persecute those who oppose the government. In addition, Mera

has also been the victim of a smear campaign and intense surveillance by the state media. This smear campaign has contributed to limiting the scope of her political activities, as it has contributed to the creation of a social climate in which dissent is perceived as a threat to the regime.

In conclusion, lawfare has become a tool increasingly used by authoritarian regimes to persecute their opponents. In the case of Alexis Mera, this has led to the application of draconian laws, a systematic defamation campaign and increased surveillance by the state media. This has contributed to the limitation of his freedom of expression and limited the scope of his political activities.

3.7 Pedro Delgado

In the case of Ecuador, lawfare has been used against Pedro Delgado, a former Ecuadorian banker and politician who was the presidential candidate of the CREO movement in the 2017 presidential elections. After the election, Delgado was accused of allegedly financing his election campaign with money from a private company. This led to a government investigation and a series of legal proceedings against him.

In recent years, Delgado has been the subject of several court cases, many of which have been brought through the legal figure known as lawfare. This has included civil lawsuits, criminal prosecutions and other legal proceedings that have been used to limit his actions and restrict his freedom of expression. In particular, Delgado's lawyers have argued that lawfare has been used as a form of political persecution to limit the impact of Delgado and his political movement CREO. This has led to a series of accusations of human rights violations and abuse of the judicial system.

Overall, the Pedro Delgado case demonstrates how lawfare can be used as a form of political persecution to limit an individual's or group's freedom of expression and action. This practice is not only unjust, but can also have negative effects on democracy by limiting the ability of citizens to express their political opinions.

Conclusions

Lawfare has become a powerful tool used by the Ecuadorian government to combat judicial and legal actions brought by various actors, including human rights organizations and journalists.

The Ecuadorian government has used Lawfare to conduct an online smear campaign and to file lawsuits and civil suits against those who criticize the government or its policies.

Lawfare has been an effective tool to curb the exercise of freedom of expression and investigative journalism, leading to increased censorship in the country. Lawfare has also been used to limit the activity of human rights organizations and other human rights defenders, leading to a decline in the performance of these organizations.

The use of lawfare practices in Ecuador has generated great concern among defenders of freedom of expression and human rights, as it has contributed to a climate of censorship and fear.

Lawfare is a legal and media strategy that has been successfully used by some actors in Ecuador to achieve political and economic results. In recent years, the Ecuadorian government has faced a variety of lawsuits, accusations and claims for compensation in international courts. This strategy has proven successful for the actors that have used it, as the results have been the return of funds, the establishment of new policies, the conduct of investigations, and the closure of some cases. This has allowed the Ecuadorian government to establish a legal framework for strengthening human rights and protecting citizens' rights. Although lawfare is a useful tool, it can also be a double-edged sword if not used responsibly. Therefore, the government must work to ensure that lawfare is used to promote human rights and the welfare of the citizenry.

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