

# Prosecuting Presidents: The Politics within Ecuador's Corruption Cases

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*Abstract.* Across Latin America, many former presidents have faced criminal prosecutions on corruption charges, with widely varied outcomes. As with an impeachment, law and politics intersect in the prosecution of a president. In this essay, I examine this nexus by mapping the actions of agents who mobilise to influence how the justice system processes presidential prosecutions: first, accountability actors located in state-based institutions and civil society; second, partisan actors in the executive and legislative branches; and third, defendants, and their partisan and civil society supporters. This study argues that variations in the make-up, resources and alignment of these sets of actors fundamentally shape the trajectory of legal cases. Proceedings against three former presidents of Ecuador are analysed: Abdalá Bucaram, Jamil Mahuad and Gustavo Noboa.

*Keywords:* accountability, corruption, Ecuador, judicialisation, Supreme Court, presidents

## *Introduction*

Never before in Latin America's history have so many former presidents been called to account for their conduct in courts. Leaders who once sat at the commanding heights of power now sit in courtrooms as accused felons. The dizzying array of alleged crimes runs the gamut from homicide to arms trafficking to old-fashioned acts of corruption like graft and bribery. In the three decades from 1980 to 2010, no less than 34 former presidents have been the targets of criminal indictments.<sup>1</sup> In a region where democracy and the rule

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<sup>1</sup> The number is based on data collected from a wide range of news sources by the author along with data found in the appendix 'List of Prosecutions of Heads of State or Government, January 1990 to June 2008', in Ellen L. Lutz and Caitlin Reiger (eds.), *Prosecuting Heads of State* (Cambridge: Cambridge University Press, 2009), pp. 295–304. This country count

of law have long been plagued by the practice of impunity, the drive to prosecute so many former presidents is an astonishing development.

The most studied trials to date have been those in which presidents were charged with crimes related to human rights violations (HRVs). Path-breaking HRV prosecutions include Argentina's 1985 'trial of the juntas' and Bolivia's 1993 trial of General Luis García Meza.<sup>2</sup> The 1998 London arrest of Augusto Pinochet, his ensuing legal battle over extradition and the subsequent criminal cases in Chile preceding his death became the subject of extensive analysis.<sup>3</sup> Dramatic guilty convictions include that of Alberto Fujimori in Peru, Juan María Bordaberry in Uruguay, and those delivered in the latest trials against the previously convicted and amnestied military rulers in Argentina.<sup>4</sup>

Studies of presidential HRV trials stand as important contributions to the rapidly growing, multidisciplinary field of transitional justice.<sup>5</sup> But in contrast to the rich scholarship tracing the origins and consequences of the HRV trials, we know astonishingly little about the other category of presidential prosecution: cases involving allegations of corruption.<sup>6</sup> At least 20 former presidents in the period 1980–2010 faced legal action in such cases. In comparison with the dramatic and closely watched verdicts in HRV cases, presidential corruption trials have produced far less in terms of clarity and closure. Cases often languish in legal limbo for years while convictions vanish in appeals and sentencing. For even the most dogged researcher, piecing together the record of what happened in these cases can be a frustrating affair, thanks to persistent problems in accessing court documents.

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does not include the non-Spanish-speaking Caribbean. For an overview of the phenomenon in the region see Naomi Roht-Arriaza, 'Prosecutions of Heads of State in Latin America', in Lutz and Reiger (eds.), *Prosecuting Heads of State*, pp. 46–76.

<sup>2</sup> Carlos Santiago Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1998); René Antonio Mayorga, 'Democracy Dignified and an End to Impunity: Bolivia's Military Dictatorship on Trial', in A. James McAdams (ed.), *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997), pp. 61–92.

<sup>3</sup> Length considerations prohibit a complete listing of all the scholarly works dealing with the Pinochet legal cases. For an influential analysis of the process, see Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2005).

<sup>4</sup> On Fujimori, see Jo-Marie Burt, 'Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations', *International Journal of Transitional Justice*, 3: 3 (2009), pp. 384–405.

<sup>5</sup> For an overview of research in the transitional justice field, see Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in the Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).

<sup>6</sup> For a recent study of prosecutions that aggregates HRV and corruption cases, see Napoleon C. Reyes and Jurg Gerber, 'Above the Law? A Comparative Study of National Prosecutions of Heads of State', *Critical Criminology*, 19 (2011), pp. 43–73.

Where and how do we begin to unravel and explain the admittedly messy yet striking practice of prosecuting presidents for corruption? The laborious task of documenting individual cases is the essential first step. But what explanatory framework best serves the task of tracing how these cases originate, evolve and end? Analysing the legal issues in isolation runs the risk of restricting our understanding of the events. As with an impeachment, law and politics are bound to intersect in the prosecution of a president.<sup>7</sup> So what kind of political processes are at play in the making or unmaking of these cases? Who mobilises to promote prosecutions, and for what ends? How do pro- and anti-prosecution lobbies coalesce, and what resources do they bring to bear in their efforts to influence the judicial process? How does this mobilisation of state and societal actors impact case outcomes?

The rich scholarship on HRV trials provides a good starting point for thinking about how controversial cases against high-ranking defendants are made. It identifies a new generation of accountability actors – located in state institutions and civil society – as the prime movers in the making of these cases. As analysed by Cath Collins, ‘interested communities’ of accountability actors coalesced in a drive to demand justice for victims and to establish norms and procedures in order to prevent future abuse.<sup>8</sup> Acting together and as individuals, justice officials, journalists, lawyers, and grassroots and transnational groups engaged in political and legal activism, laying the groundwork for precedent-setting prosecutions of presidents and other high-ranking perpetrators.

Over the course of the last two decades, problems of corruption also became a focal point of state and societal activism in Latin America. A drive to build a new infrastructure of accountability took hold; with plenty of encouragement from international organisations, Latin American countries jumped on the bandwagon of the global anti-corruption crusade.<sup>9</sup> Governments demonstrated their commitment to the cause in various ways: signing international anti-corruption treaties, undertaking legal reforms, modernising the judiciary

<sup>7</sup> On the ‘inherently political’ nature of impeachment, see Naoko Kada, ‘Comparative Presidential Impeachment: Conclusions’, in Jody C. Baumgartner and Naoko Kada (eds.), *Checking Power: Presidential Impeachment* (Westport, CT: Praeger, 2003), p. 137; also see Aníbal Pérez-Liñán, *Presidential Impeachment and the New Political Instability in Latin America* (Cambridge: Cambridge University Press, 2007).

<sup>8</sup> Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: Pennsylvania State University Press, 2010), pp. 40–1. The framework used for this analysis of corruption cases was inspired by Collins’ actor-centric approach to HRV trials. This type of actor-centric approach is also found in the extensive literature on legal mobilisation: see Michael McCann, ‘Litigation and Legal Mobilization’, in Keith E. Whittington, R. Daniel Kelleman and Gregory Caldeira (eds.), *The Oxford Handbook of Law and Politics* (Oxford: Oxford University Press, 2008), pp. 533–40.

<sup>9</sup> Ed Brown and Jonathan Cloke, ‘Neoliberal Reform, Governance and Corruption in the South: Assessing the International Anti-corruption Crusade’, *Antipode*, 36: 2 (2004), pp. 272–80.

and police. Moreover, new bureaucracies wholly dedicated to the task of rooting out and preventing corruption were born. Anti-corruption commissions, ombudsmen, auditing offices and the like became part of a new edifice of what Guillermo O'Donnell has called 'mandated horizontal accountability' (MHA) institutions inside the state.<sup>10</sup>

As governments enhanced mechanisms of horizontal accountability, civil society mobilised to advance 'social accountability'. Enrique Peruzzotti and Catalina Smulovitz coined this term to describe the activities of a new array of watchdogs and whistle-blowers.<sup>11</sup> By exposing government abuses, citizen groups and the media put pressure on MHA and other state institutions to take corrective actions and hold public officials responsible.

It stands to reason that, as in HRV trials, the rise of new accountability actors in state and society should figure significantly in explaining the proliferation of corruption prosecutions. But accountability-seeking by MHA institutions and 'good governance' advocates in civil society is not the only kind of political process that we should expect to see at work when a former president becomes the target of legal action. In contrast to MHA institutions that are configured as 'independent' actors, party-based elites are in control of the executive and legislature, with powers that allow them to weigh in and affect whether and how the judicial system handles such cases.<sup>12</sup> And with partisan actors come partisan objectives, what Benjamin Ginsberg and Martin Shefter famously referred to as 'politics by other means'.<sup>13</sup> Accusations and investigations can be wielded for the purpose of inflicting political damage on opponents. Across Latin America, accused presidents have argued that their cases represent an ill-willed 'judicialisation' of politics: legal harassment masterminded by rivals bent on exacting revenge and banishing them from politics.<sup>14</sup>

<sup>10</sup> Guillermo O'Donnell, *Dissonances: Democratic Critiques of Democracy* (Notre Dame, IN: University of Notre Dame Press, 2007), pp. 87–8.

<sup>11</sup> Enrique Peruzzotti and Catalina Smulovitz, 'Social Accountability: An Introduction', in Peruzzotti and Smulovitz (eds.), *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies* (Pittsburgh, PA: University of Pittsburgh Press, 2006), p. 10.

<sup>12</sup> For the purpose of this analysis, I set aside the issue of how accountability actors may be influenced by partisan considerations. Accountability actors work under a primary mandate to engage in oversight, and therefore can be distinguished from party elites who may also engage in governmental oversight (for example, congressional investigations) among other functions, but who do so in conjunction with the pursuit of partisan interests. O'Donnell highlights this as an important difference that distinguishes MHA institutions from 'balancing' horizontal accountability institutions such as legislatures. See O'Donnell, *Dissonances*, p. 88.

<sup>13</sup> Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: Politicians, Prosecutors and the Press from Watergate to Whitewater* (3rd edition, New York: W. W. Norton, 2002).

<sup>14</sup> This type of judicialisation stands in sharp contrast to that described in recent scholarship which focuses on the use of courts as a 'rights claiming' arena. See Rachel Sieder, Line Schjolden and Alan Angell (eds.), *The Judicialization of Politics in Latin America* (New York:

While it is clearly in the interest of the accused to represent prosecution as a judicialised form of political persecution, this dark view is also supported by a considerable body of historical evidence. As Sznajder and Roniger convincingly show, Latin America has a long history of driving former presidents into exile, with legal charges serving as the basis for forcing this type of political exclusion.<sup>15</sup>

In their conflicts with new accountability-seekers and partisan foes, presidents and their supporters respond with strategies of their own. To varying degrees, they turn to partisan politics and other forms of lobbying in their efforts to disrupt and derail prosecutions. This defensive counter-politicisation forms a third layer of the political activation found in the course of presidential prosecutions. As the subsequent case studies show, defensive politicisation can assume different forms, ranging from a relatively benign public relations campaign to political pacts and aggressive attacks on the judiciary itself.

The following analysis offers a framework for understanding the origins and outcomes of presidential corruption prosecutions based on mapping the actions and interactions of the three 'interested communities' outlined above: (1) accountability-seeking actors (in MHA institutions, the press and civil society organisations); (2) partisan actors (political elites in the executive and legislative branches); and (3) defence actors (the accused, along with party or civil society supporters). In sum, the analysis directs attention to the ways in which state-based and societal actors seek to influence the judicial system's handling of these politically charged cases and the impact that these efforts can have.

My three-case comparative study shows how variations in the make-up and alignment of these interested communities, in conjunction with the differing powers and resources that these actors bring to bear, can fundamentally shape the trajectory of these legal cases. Political struggles are a constant in opening cases, keeping them alive, or bringing them to a close. During the long slog

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Palgrave Macmillan, 2005); and Javier Couso, Alexandra Huneeus and Rachel Sieder (eds.), *Judicialization and Political Activism in Latin America* (Cambridge: Cambridge University Press, 2010). For a definition of judicialisation focused on the use of the judicial branch as a partisan 'tool for political pressure, manipulation and blackmail', see Santiago Basabe-Serrano, 'Presidential Power and the Judicialization of Politics as Determinants of Institutional Change in the Judiciary: The Supreme Court of Ecuador (1979–2009)', *Politics and Policy*, 40: 2 (2012), p. 342. For further exploration of Ecuador's judicial culture, see Santiago Basabe-Serrano, 'Judges without Robes and Judicial Voting in Contexts of Institutional Instability: The Case of Ecuador's Constitutional Court, 1999–2007', *Journal of Latin American Studies*, 44: 1 (2012), pp. 127–61.

<sup>15</sup> Mario Sznajder and Luis Roniger, *The Politics of Exile in Latin America* (Cambridge: Cambridge University Press, 2009), pp. 257–85.

through the court system, pro- and anti-prosecution lobbies wax and wane. Changes in government shuffle political power, often reconfiguring the cast of actors involved. Instability and turnovers in the judiciary itself open up new opportunities for actors to weigh in and reset the proceedings. The legal stages in each case, from investigation to indictment and beyond, are not the only ‘moving parts’ of the story – the actors who mobilise to influence the case and the stakes involved are themselves a changing mosaic.

Because this qualitative analysis requires a detailed reconstruction of case histories, a comprehensive discussion of all the recent prosecutions in Latin America is a task beyond the scope of a single article. The following work is therefore intended as a modest launch in comparative research on presidential corruption prosecutions, beginning with the country that leads the region in the number of such cases. Ecuador’s appetite for prosecuting chief executives has gone hand in hand with another form of punitive action against presidents: forcing them out of office before their terms expire. In the period 1997–2005, three presidents (Abdalá Bucaram, Jamil Mahuad and Lucio Gutiérrez) were forced out in the midst of political crisis and massive public demonstrations against them.<sup>16</sup> In the same period, six of the country’s seven presidents became targets of judicial investigations after leaving office. Four eventually faced judicial proceedings on corruption charges: Abdalá Bucaram, Fabián Alarcón, Jamil Mahuad and Gustavo Noboa.<sup>17</sup> To date, no other Latin American country has seen as many former presidents become the target of criminal proceedings on corruption charges.

To make my task manageable, I focus on the three most significant legal cases in the period: those in which the alleged crimes were committed during the execution of presidential duties (Bucaram, Mahuad and Noboa).<sup>18</sup> But before tracing how interested communities mobilised in relation to the cases,

<sup>16</sup> For a discussion of these crises, see Andrés Mejía Costa and John Polga-Hecimovich, ‘Parliamentary Solutions to Presidential Crisis in Ecuador’, in Mariana Llanos and Leiv Marsteintredet (eds.), *Presidential Breakdowns in Latin America: Causes and Outcomes of Executive Instability in Developing Democracies* (New York: Palgrave Macmillan, 2010), pp. 73–90. For an overview of the growing literature on ‘interrupted’ presidencies, see Kathryn Hochstetler, ‘The Fates of Presidents in Post-Transition Latin America: From Democratic Breakdown to Impeachment to Presidential Breakdown’, *Journal of Politics in Latin America*, 3: 1 (2011), pp. 125–41.

<sup>17</sup> León Febres Cordero, president from 1984 to 1988, was the first chief executive in the country’s history to be charged with corruption; the case against him was dismissed in 1990. Because of length considerations, the cases against Febres Cordero and Fabian Alarcón are not included. Former president Lucio Gutiérrez was jailed for nearly five months in 2005–6 on charges of endangering national security for remarks that he made to the international media after his overthrow; the charges were later dismissed.

<sup>18</sup> The author conducted field research in trips to Quito and Guayaquil from 2006 to 2011. The research included interviews with principal actors in the cases along with the compilation of pertinent court documents and news reports.

it is important to understand the troubled history that made the Supreme Court, the institution responsible for judging Ecuador's presidents, so susceptible to the pressures that gathered around it.

### *The politicised Supreme Court*

In Ecuador's 1978 and 1998 constitutions, the Corte Suprema de Justicia (Supreme Court of Justice, CSJ) was charged with original and exclusive jurisdiction over cases involving criminal wrongdoing by the country's chief executive. Judging presidents became one of many political controversies in which the CSJ became embroiled after the country's return to civilian rule in 1979.

Partisan battles over CSJ appointments were part of the fabric of executive-legislative conflict from the start of civilian government. Governing in one of Latin America's most fragmented party systems, Ecuador's presidents frequently wrestled with the problem of constructing working majorities in Congress, with varying degrees of success.<sup>19</sup> With both the executive and the legislature battling for an upper hand and political parties looking for leverage in their conflicts with each other, control over the judicial system was a sought-after prize. Ecuador's 1979 Constitution guaranteed that the CSJ would become a site for partisan conflict by giving Congress control over appointments to the court. In 1984, President León Febres Cordero violently challenged Congress's jurisdiction over CSJ appointments and sent tanks to stop the court from functioning. The ensuing four-month standoff ended when both sides agreed on a formula to divide up the appointments between the executive and legislature.

After President Bucaram was forced from office in 1997, an angry public clamoured for constitutional changes, including judicial reform. The interim president, Fabián Alarcón, included a question on reforming the CSJ in the May 1997 referendum; 61 per cent of the electorate approved a measure allowing the CSJ to select its own justices for lifetime terms.<sup>20</sup> Voters solidly endorsed stripping Congress of its control over the court in the hope of establishing a judiciary with some degree of independence.

Despite the public's demand for change, legislators balked at the idea of ceding control, especially as the spectre of corruption prosecutions hung over Congress and President Alarcón. Even though the new 1998 Constitution established the CSJ's right to name its own appointees, Congress stepped in

<sup>19</sup> On the party system see Simón Pachano, *La trama de Penélope: procesos políticos e instituciones en el Ecuador* (Quito: FLACSO, 2007); and Andrés Mejía Costa, *Informal Coalitions and Policymaking in Latin America* (New York: Routledge, 2009).

<sup>20</sup> Ramiro Rivera Molina, *Reforma política: más dudas que certezas* (Quito: Fundación Konrad Adenauer, 2005), p. 151.

with a 'one-time' transitory measure that allowed it to make one last set of court appointments before applying the new rule. Among the big winners in the appointment process was the conservative Partido Social Cristiano (Social Christian Party, PSC), the party with the largest congressional caucus, led by former president León Febres Cordero. Approximately half of the 30-member CSJ was deemed in press accounts to be PSC-leaning.<sup>21</sup>

Questions about Febres Cordero's influence over the CSJ became a permanent bone of contention in national politics and contributed to the institution's legitimacy crisis. Among the public, the CSJ was one of the country's least respected institutions; it registered confidence ratings of 28, 32 and 29 on a 100-point scale over three successive public opinion surveys in 2001, 2004 and 2006. Only parties and Congress fared worse on the scale.<sup>22</sup> In all three cases examined here, the fate of the accused lay in the hands of an institution suffering from an acute legitimacy crisis because of its widely recognised involvement in partisan power struggles. And among the numerous critics of the CSJ, no one was more insistent in challenging the court's legitimacy and bringing political resources to bear in a battle against it than Abdalá Bucaram.

### *Bucaram: Fighting Felony with Party Politics*

Unlike Jamil Mahuad and Gustavo Noboa, Bucaram began his post-presidential legal fight with several notable advantages in political resources and experience. Despite his disastrous presidency, forced exit from office and exile in Panama, Bucaram retained control over his populist Partido Roldosista Ecuatoriano (Roldosist Ecuadorean Party, PRE), and it was still a force to be reckoned with in Ecuador's national legislature. Before becoming president in 1996, Bucaram had already parlayed PRE congressional votes into amnesties on two occasions; these overrode pending legal cases against him and allowed his return to electoral politics.

Bucaram was a spectacular failure as president, lasting less than a year in office. His administration was marked by chronic accusations of corruption, unpopular economic policies and the wildly embarrassing antics of Bucaram himself.<sup>23</sup> The experience provoked an unprecedented public backlash and

<sup>21</sup> '14 magistrados rechazan politización', *El Universo*, 13 Sep. 2003.

<sup>22</sup> Mitchell A. Seligson, *Democracy Audit: Ecuador 2006* (Quito: CEDATOS Editions, 2006), p. 67. With respect to the rest of Latin America in 2006, Ecuador measured last in trust in the judicial system. See Juan Carlos Donoso, 'Justice and Democracy: The Rule of Law in the Americas', in Mitchell A. Seligson (ed.), *Challenges to Democracy in Latin America and the Caribbean: Evidence from the Americas Barometer, 2006–2007* (Nashville, TN: Latin American Public Opinion Project, Vanderbilt University, 2008), p. 280.

<sup>23</sup> Among Bucaram's most controversial acts was launching a singing career with the release of a CD entitled *Un loco que ama*. For more on his political career, see Flavia Friedenberg, *Jama*,

brought together a diverse set of actors. Political elites, including four former presidents, united across partisan lines, joining labour, social movements and business organisations in Quito street protests against Bucaram. Congress voted to remove Bucaram as president on 11 February 1997 on the grounds of 'mental incapacity'. In the immediate aftermath, party leaders of all stripes, along with leaders from civil society, began laying the groundwork for legal action against the deposed president.

Corruption was not the only issue that toppled Bucaram, but it attracted significant media attention from the start of his administration. Newspaper columnists honed in on Bucaram's penchant for appointing family members and cronies to important government posts.<sup>24</sup> Investigative reporters at the newspaper *Hoy* found evidence that funds raised by the president in a Christmas telethon for poor children were missing. Another *Hoy* investigation uncovered malfeasance in a major government program aimed at providing backpacks and school supplies for children.<sup>25</sup> As media coverage of corruption problems intensified, US ambassador Leslie Alexander joined in the public questioning. In a high-profile speech to the business community, Alexander railed against the 'widespread corruption' that ensnared US companies into paying bribes to Ecuador's customs agency.<sup>26</sup>

The political crisis of February 1997 ended with Bucaram heading to Panama, where he was granted political asylum in April. While there had been no attempt to detain Bucaram in Ecuador, the new interim government under the direction of President Fabián Alarcón was under pressure to take action. Alarcón promised investigations of the deposed president and his entourage. A CEDATOS poll taken in March 1997 reported that the public viewed corruption as the country's number one problem and that Bucaram was considered the most corrupt president since the 1979 transition.<sup>27</sup>

Kicking off the anti-corruption crusade, Alarcón created a new MHA entity: a special anti-corruption commission. It would eventually be institutionalised in the 1998 Constitution as the Comisión de Control Cívico de la Corrupción (Commission for Civic Control of Corruption, CCCC). He tapped well-respected appointees from civil society organisations; the eight-member board included two journalists, a women's rights activist, academics and the former head of the CSJ. The original commissioners took their

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*caleta y camello: las estrategias de Abdalá Bucaram y el PRE para ganar las elecciones* (Quito: Corporación Editora Nacional, 2003); and Carlos de la Torre, *Populist Seduction in Latin America: The Ecuadorian Experience* (Athens, OH: Ohio University Press, 2000).

<sup>24</sup> Diego Araujo Sánchez, 'Nepotismo', *Hoy*, 18 Aug. 1996.

<sup>25</sup> For the investigative reports, see 'La Navidad de los pobres en vivo y en directo', *Hoy*, 5 Jan. 1997; and 'Mochila escolar: solo interrogantes', *Hoy*, 9 Jan. 1997.

<sup>26</sup> 'Ecuador tiene una corrupción penetrante', *Hoy*, 30 Jan. 1997.

<sup>27</sup> For the CEDATOS data, see 'Corrupción: mayor mal', *Hoy*, 24 March 1997.

mandate to represent civil society seriously and regarded the press as a key partner in building public support for their investigations.<sup>28</sup>

The commission went to work in March 1997. It prioritised investigations into customs racketeering and Bucaram's alleged theft of government funds in the waning days of his administration. But the newly created commission faced serious obstacles in its efforts to compile evidence. Fearful of the commission's broad mandate to investigate all public corruption, government agencies and officials were loath to cooperate in providing information. The government's own auditing agency, the Contraloría General del Estado (Controller General of the State), never produced a report on the customs case – a fact that Bucaram cited insistently as a lack of legal due diligence. Not surprisingly, there was no paper trail to follow in the customs case. A former bodyguard testified that periodic kickback payments were delivered to Bucaram while he was president, but there was no documentation.<sup>29</sup>

The anti-corruption commission was not the only institution working to mount a legal case against Bucaram. CSJ president Carlos Solórzano promised an aggressive investigation, as did the offices of the Fiscal General (Prosecutor General) and Contraloría.<sup>30</sup> Congress was also under pressure to do something. Acting on multiparty agreement, Congress's oversight committee went to work. Napoleón Saltos Galarza, leftist congressman of the Movimiento Unidad Plurinacional Pachakutik (Pachakutik Plurinational United Movement, MUPP), led the commission's exhaustive inquiry with the aid of volunteer MUPP researchers. The commission's documentation in the customs case, along with others, was forwarded to the attorney general's office.<sup>31</sup>

Despite the magnitude of the crimes alleged to have taken place in customs, the case eventually fell apart. In November 1998, CSJ president Hector Romero Parducci ruled in favour of a provisional dismissal.<sup>32</sup> He concluded that none of the institutional investigations had produced a 'smoking gun' demonstrating Bucaram's direct participation in the customs crimes. Still, the provisional dismissal allowed for a reopening of the case with new evidence. The CCCC vowed to keep the case alive, but it turned up no new evidence.<sup>33</sup> In 2001, Romero's original ruling was upheld. In a macabre turn, the

<sup>28</sup> Interview with Simón Espinoza, former CCCC commissioner, 13 Oct. 2006; interview with Pedro Vorruba, former CCCC executive director, 25 Oct. 2006.

<sup>29</sup> 'Maletas de billetes', *Hoy*, 28 March 1997.

<sup>30</sup> 'Todos se unen contra corruptos', *Hoy*, 7 March 1997.

<sup>31</sup> Interview with Napoleón Saltos Galarza, former congressman, 22 Nov. 2006. Galarza published the findings of the commission in his voluminous report, *Ética y corrupción: estudio de casos* (Quito: Proyecto Responsabilidad/Anticorrupción en las Américas, 1999).

<sup>32</sup> 'Bucaram en caso aduanas', *Hoy*, 29 Jan. 1999.

<sup>33</sup> On the CCCC's determination to continue the case, see 'Esfuerzos contra Bucaram', *Hoy*, 27 Jan. 1999.

bodyguard who implicated Bucaram was murdered in 2002; police found his body bound and gagged with bullet wounds to the back of his head.<sup>34</sup>

Yet criminal accusations remained pending against Bucaram in two other cases. In one, it was alleged that Bucaram had stolen US\$ 3 million from government discretionary funds (*gastos reservados*). In a second case, Bucaram was accused of taking part in a kickback scheme involving government purchases of backpacks for schoolchildren (*mochilas escolares*). The CSJ opened judicial investigations in these cases in 1997 armed with the findings of a congressional subcommittee headed by Gustavo Terán, leftist deputy from the Movimiento Popular Democrático (Popular Democratic Movement, MPD). Adding to Bucaram's legal woes were convictions in two separate defamation suits. The suits were filed by two noted politicians from centre-right parties, and each conviction carried a two-year prison term.<sup>35</sup>

The drive to prosecute Bucaram enjoyed the support of political elites from across the ideological spectrum, as well as civil society actors and the public at large. But for political elites, holding Bucaram accountable in a court of law was not the only objective. Fed up with Bucaram, they wanted him out of politics altogether and the legal cases provided a means to that end.

Charged with writing a new constitution, the 1998 constituent assembly became a venue for intense partisan brainstorming about how to thwart Bucaram's promised return to elected office. While the assembly was dominated by a centre-right alliance of the PSC and Democracia Popular (Popular Democracy, DP), representatives from parties of the Left and centre also agreed with the goal of entrenching barriers to Bucaram's return in the new Constitution. After heated debate about how to do it, a compromise emerged. Article 101 of the 1998 Constitution barred anyone who had been found guilty of a crime carrying a prison sentence, or anyone charged with such crimes in a case that had reached the plenary trial stage, from running for public office.<sup>36</sup> Even if Bucaram had returned to defend himself in his two pending criminal cases, the extant prison sentences in the two defamation cases ruled out any immediate electoral bid. In short, political elites deftly intertwined pending legal cases with the new Constitution, creating a steep barrier for Bucaram. To return to public office, Bucaram needed to be free of all charges.

From his Panamanian exile, Bucaram challenged the legitimacy of the government and the legality of its actions. He denounced his removal as an illegal coup d'état and the Alarcón administration as a de facto government.

<sup>34</sup> 'Asesinaron al "Pepudo Alejo"', *El Universo*, 16 Aug. 2002.

<sup>35</sup> 'Romero sentenció con dos años de prisión Bucaram', *Hoy*, 6 Jan. 1998.

<sup>36</sup> *Constitución Política de la República del Ecuador* (Quito: PUDELECO Editores, 1999), pp. 75–6.

Bucaram contended that he was the victim of a legal witch hunt led by his long-time nemesis, former president and PSC leader León Febres Cordero.<sup>37</sup>

Bucaram's arguments about the legal irregularities involved in his case were not without merit. Unable to mount a two-thirds majority for impeachment, Congress had sacked him with no medical proof of 'mental incapacity' and a simple majority of 44 votes. Moreover, Bucaram vehemently maintained that the 'transitory' measure used in 1998 allowing Congress's appointment of new CSJ judges was unconstitutional and rendered the court illegal. Bucaram's attorneys, Fernando Rosero and Hector Solórzano, incorporated their client's political reasoning in their legal defence. They also sought delays, filing procedural objections and petitions for recusal. Two lower-court provincial judges issued injunctions (*amparos*) rescinding Bucaram's arrest warrants. When CSJ president Galo Pico summarily dismissed the injunctions, Bucaram charged that Pico was acting on orders from Febres Cordero.

Convinced that the CSJ was stacked against him, Bucaram counted on the PRE's clout in Congress as leverage for solving his legal problems. Even after his ouster, the PRE retained its electoral base in coastal Ecuador, making it the third-largest caucus in the 1998 Congress with 23 seats. Bucaram's absence, however, started to take a toll. In the 2002 congressional election, the PRE was reduced to 15 seats. Still, the number was enough to assure the PRE's bargaining power in a fragmented Congress.

The political opening for Bucaram finally came in 2004 as President Lucio Gutiérrez searched for support to stave off allegations of corruption and a possible impeachment. Elected as a leftist reformer in 2002, Gutiérrez lacked a stable congressional majority. After the Left broke with Gutiérrez, he struck an uneasy alliance with the Right and Febres Cordero's PSC. When that alliance crumbled he turned to the PRE, knowing that Bucaram's demand for legal relief would be at the heart of the negotiations. In September 2004, Gutiérrez met with Bucaram in a hotel in Panama. Among the possibilities discussed in the meeting was the idea of creating a special judicial commission to reconsider the lower court injunctions that the CSJ had reversed. Bucaram also urged Gutiérrez to 'constitutionalise Ecuador', reasserting that the judiciary had been illegally restructured after his 1997 ouster.<sup>38</sup> Bucaram made it clear that some kind of intervention in the judicial branch was expected: without a purge of

<sup>37</sup> For Bucaram's interpretation of events, see Abdalá Bucaram Ortiz, *Golpe de Estado* (Guayaquil: PREdiciones, 1998). In 2010, Ecuador's Comisión de la Verdad (Truth Commission) documented the 1986 clandestine operation undertaken by the Febres Cordero government to frame Bucaram on bogus drug trafficking charges in Panama; see Comisión de la Verdad, *Informe de la Comisión de la Verdad, Relatos de Casos Período 1984-1988*, vol. 3, part 4 (Quito: Comisión de la Verdad, 2010), pp. 347-52.

<sup>38</sup> 'Bucaram: apoyo a Gutiérrez para evitar un golpe', *El Universo*, 3 Sep. 2004.

the CSJ, he would continue to be at the receiving end of adverse rulings and unable to run for office.

The Panama meeting touched off a political firestorm and fuelled talk in Congress about a possible impeachment of Gutiérrez.<sup>39</sup> Bolstered by PRE votes, Gutiérrez managed to avoid an impeachment vote in November 2004. Bucaram's awaited quid pro quo quickly followed: a purge of the justice system ensued. PRE legislators led an improvised coalition that replaced all members of the constitutional tribunal and CSJ on the assertion that their 'transitory' terms had expired.

There was no mistaking the blatantly pro-Bucaram composition of the new court, which included Guillermo 'Pichi' Castro, Bucaram's long-time friend and former attorney general.<sup>40</sup> Gutiérrez's deal with Bucaram to stack the CSJ thrust Ecuador into a full-fledged political and constitutional crisis that played out over the first quarter of 2005. Partisan opponents of Gutiérrez and Bucaram, ranging from Right to Left, joined with a civic opposition in denouncing and demonstrating against the rulings. This opposition included the upper echelons of civil society found in internationally funded NGOs such as Participación Ciudadana (Citizen Participation) and the Corporación Latinoamericana de Desarrollo (Latin American Development Corporation).<sup>41</sup>

As pressures from partisan and civil society actors intensified, CSJ president Guillermo Castro made the move to absolve Bucaram. In late March 2005, he nullified the two pending cases. Castro's ruling drew heavily on Héctor Solórazano's diverse defence arguments. Castro argued that Bucaram's status as president required that he be afforded a trial in Congress (*juicio político*) prior to being subject to criminal proceedings.<sup>42</sup> He asserted that Bucaram had a right to be judged according to the new 1998 Constitution, which stipulated that a criminal prosecution of a president required an authorisation by Congress with a two-thirds vote. On another procedural issue, Castro harked back to the argument that the Contraloría was obliged to present reports on the matters on which the former president should have been tried, but had failed to do so. According to Castro, the procedural violations were sufficient to conclude that Bucaram had been denied his right to due process.<sup>43</sup>

<sup>39</sup> 'De madrugada, Lucio y Abdalá pactan el retorno', *El Universo*, 2 Sep. 2004.

<sup>40</sup> 'Magistrados de la CSJ', *El Universo*, 10 Dec. 2004.

<sup>41</sup> Franklin Ramírez Gallegos, *La insurrección de abril no fue solo una fiesta* (Quito: Taller El Colectivo, 2005), p. 38.

<sup>42</sup> The question of whether former presidents had to be judged by Congress before any criminal prosecution was a matter of considerable legal controversy. In both the Bucaram and Mahuad cases, Congress dismissed the CSJ's queries about the need for a political trial, and the CSJ proceeded with the cases.

<sup>43</sup> Presidencia de la Corte de Suprema de Justicia, 'En el juicio penal no. 16-97', 31 March 2005, photocopy; and 'En el juicio penal no. 10-97', 31 March 2005, photocopy.

Public consternation over Castro's ruling turned to outrage when Bucaram's promised return to Ecuador took place in early April. The event was shown on live television, and Bucaram staged a spectacular show.<sup>44</sup> Arriving by helicopter for a mass rally in downtown Guayaquil, he mocked his nemesis, Febres Cordero, and promised that he would run for the presidency yet again. Enraged at the spectacle, protestors returned to the streets in Quito. They demanded the resignations of Gutiérrez and CSJ president Castro, and the reinstatement of criminal charges against Bucaram. Unable to restore order in the capital, Gutiérrez fled the presidential palace on 20 April 2005, leaving Vice-President Alfredo Palacio to be sworn in as chief executive. Bucaram disappeared from sight and reclaimed asylum in Panama.

As these events played out, it became clear that the CSJ was defunct. It took close to a year for the Palacio government to reopen the court with new appointees. In 2006, CSJ president Jaime Velasco reinstated the criminal charges against Bucaram in the discretionary funds and the school backpack cases on the grounds that Castro did not have the power to overturn previous rulings on matters that had already been settled in procedural appeals.<sup>45</sup>

Bucaram's failed return eroded what was left of the PRE's political power. In the 2006 election, PRE presidential candidate Fernando Rosero garnered a mere 2.1 per cent of the vote. In the 2006 congressional race, the PRE picked up just six of the 100 hundred seats in the unicameral body. In the 2007 constituent assembly election, Bucaram's stalwart attorney, Héctor Solórzano, won just 0.32 of the vote, and the PRE failed to win a single seat. The task of fighting Bucaram's corner was left to his son, Abdalá 'Dalo' Bucaram Pulley, who was elected to the national assembly in 2009 along with just two other PRE legislators. Drawing on his father's playbook, Bucaram Pulley looked for political opportunities to resolve the cases. Appealing directly to President Rafael Correa, Bucaram Pulley lobbied for an investigation of his father's 1997 removal and for amnesty on the grounds that Bucaram had been the victim of more than a decade of political persecution at the hands of corrupt political elites. Correa conceded that Bucaram was the victim of an unconstitutional coup d'état. As of the first half of 2012, however, the perceived costs of absolving Bucaram in a political deal remained higher than any benefits to the Correa government and the cases remained on the court's docket.

Actors in civil society and party elites converged around the cause of prosecuting Bucaram. The CCCC was born, and institutional investigations were launched. The criminal cases rapidly became the key to realising a goal shared by a wide range of political elites: keeping Bucaram out of politics.

<sup>44</sup> Carlos de la Torre, 'El regreso de Abdalá', *Íconos*, 23 (2005), pp. 101–8.

<sup>45</sup> Presidencia de la Corte Suprema de Justicia, 'Juicio penal 10-97', 7 Feb. 2006, photocopy; and 'Juicio penal 16-97', 1 March 2006, photocopy.

Bucaram responded in kind with a Machiavellian political strategy that enticed President Gutiérrez into the disastrous decision to upend the CSJ. That galvanised partisan foes and groups in civil society ranks to undo Bucaram's political project, putting the legal cases back on the docket once more.

*Mahuad: Criminalising Economic Management*

Winning the 1998 presidential election that followed Bucaram's ouster, Jamil Mahuad attracted voters with the promise of rooting out corruption. Known for his successful tenure as mayor of Quito, Mahuad was regarded as an efficient technocrat with credentials from Harvard's Kennedy School. Nonetheless, Mahuad's presidency crumbled in the face of falling commodity prices, natural disasters and a faltering banking system. Mahuad met the same fate as Bucaram: he was forced from office and became the subject of prosecution for years thereafter.

Ecuador's under-regulated and overextended banking system was ground zero in what became one of the worst economic crises in the country's history.<sup>46</sup> In an effort to stave off a complete collapse of the banks in 1999, Mahuad won congressional approval for the creation of a new government agency aimed at bailing out financial institutions by insuring 100 per cent deposit protection. The reform fell short, however – despite the millions of dollars extended to prop up the banks, half of all domestic private banks went broke and many of their top executives fled to Miami to avoid prosecution.

The banking debacle became synonymous with political scandal. In October 1999, Fernando Aspiazú, president of the collapsed Banco El Progreso, divulged that he had provided over US\$ 3 million to Mahuad's 1998 campaign and that some of the funds had ended up in the personal bank account of Mahuad's brother. The contributions per se were not illegal, so neither the prosecutor general nor the CSJ pursued a criminal indictment against the president. Nonetheless, the affair left the press and public with the view that Mahuad was crafting his unpopular policies with the interests of political contributors in mind.

In the course of managing the economic crisis, President Mahuad made two decisions that would later become the core of the legal case against him. On 9 March 1999, Mahuad issued Executive Decree 681 declaring a national state of emergency. Two days later, invoking national security law, he issued Executive Decree 685; this measure froze all long-term bank deposits and half

<sup>46</sup> For a detailed analysis of the banking system in this period, see Gabriel Z. Martínez, 'The Political Economy of the Ecuadorian Financial Crisis', *Cambridge Journal of Economics*, 30: 4 (2006), pp. 567–85.

of all short-term bank deposits.<sup>47</sup> At the same time, the government announced gas and electricity rate hikes to boost public revenues. The freeze and the price hikes evoked panic and outrage; unions and the Confederación de Nacionalidades Indígenas del Ecuador (Confederation of Indigenous Nationalities of Ecuador, CONAIE) organised protests. By the time average citizens were allowed access to their bank accounts, devaluation and inflation had drastically reduced their value.

The bank freeze became the subject of litigation on constitutional grounds even before Mahuad's ouster. Congressional deputies of the PSC and PRE, along with the DP president of Congress, filed complaints with the Tribunal Constitucional (Constitutional Tribunal, TC) with the support of the Defensoría del Pueblo (Ombudsman's Office). In November 1999, the TC declared that Mahuad had overstepped his constitutional powers by using national security law to enact the bank freeze and that he had unlawfully seized private property.<sup>48</sup>

In January 2000 Mahuad made another unpopular decision, and it was one that became the final straw: he proposed the elimination of the country's currency and the adoption of the US dollar as a means of stabilising the economy. The measure galvanised popular opposition to the government. Taking over the Congress, protestors from CONAIE joined with a group of dissident military officers led by Colonel Lucio Gutiérrez, declaring themselves as the de facto government. The coup plotters failed in taking power, but succeeded in forcing Mahuad from the presidential palace on 22 January 2000. By the next day, he had agreed to turn power over to Vice-President Gustavo Noboa.<sup>49</sup>

Like Bucaram, Mahuad left Ecuador with no criminal charges pending, although initial steps in that direction were taken. In early January, Socialist Party president Congressman Víctor Granda filed a complaint asking that the CSJ pursue criminal charges on the basis of the earlier TC ruling. The idea had the support of trade union and peasant organisations.<sup>50</sup> No doubt

<sup>47</sup> Liisa L. North, 'State Building, State Dismantling, and Financial Crises in Ecuador', in Jo-Marie Burt and Philip Mauceri (eds.), *Politics in the Andes: Identity, Conflict, Reform* (Pittsburgh, PA: University of Pittsburgh Press, 2004), p. 201.

<sup>48</sup> The president of the Congress, Juan José Pons, was from the president's own DP party. Among the congressmen petitioning the TC were Víctor Granda, Fernando Rosero and Jaime Nebot, leaders of the Socialist, PRE and PSC parties respectively. The Defensoría del Pueblo also submitted a report in support of the case. See Tribunal Constitucional, 'Resolución nro. 078-99-TP', 8 Nov. 1999, photocopy.

<sup>49</sup> For a complete overview of the events, see José Hernández et al., *21 de enero: la vorágine que acabó con Mahuad* (Quito: El Comercio, 2000).

<sup>50</sup> Interviews with Víctor Granda Aguilar, former congressman, 12 March 2009 and 8 June 2011. Letter to the Supreme Court president from Dr. Víctor Granda Aguilar, 8 Jan. 2000, photocopy; letter to Supreme Court president Galo Pico Mantilla signed on behalf of the Frente Unitario de Trabajadores (United Workers' Front), Federación

Mahuad was unpopular; his final approval rating as president was a mere 7 per cent, just one point higher than that of Bucaram.<sup>51</sup> He headed to Boston, landing a visiting post at Harvard's Kennedy School.

President Gustavo Noboa showed no interest in pursuing Mahuad.<sup>52</sup> Noboa had been involved in economic policy as Mahuad's vice-president, and his new government kept the controversial dollarisation intact. The push to prosecute Mahuad came from other quarters. The CCCC, the commission originally created to deal with Bucaram, weighed in; concurring with the TC, it concluded that Mahuad had violated the Constitution and civil liberties with the freeze on bank deposits. It urged Prosecutor General Mariana Yépez to forward the case to the CSJ on the charges that Mahuad had breached his public duties (*prevaricato*), abused legal powers (*abuso de autoridad*) and violated constitutional rights (*atentado arbitrario contra derechos constitucionales*).<sup>53</sup> But some in the pro-prosecution ranks wanted more. In May 2000, Socialist Party congressman Víctor Granda sent a letter to the CSJ asking that the indictment be expanded to include crimes other than those in the TC case, including *concusión* (graft) and *peculado* (embezzlement).<sup>54</sup>

Taking heat for what critics, including the CCCC, depicted as foot-dragging in the case, Prosecutor General Yépez finally presented her charge recommendations in October 2001. Yépez limited the charges to *prevaricato* and *abuso de autoridad*. She argued that the bank freeze measures constituted an act of economic policy-making but did not meet the criteria for a charge of *peculado*.<sup>55</sup>

In December 2001, Galo Pico, president of the Supreme Court, ruled in favour of proceeding with the case – but he shocked observers by ignoring Yépez and the CCCC. In his decision, Pico argued that there was sufficient evidence to accuse Mahuad of *peculado* because he had effectively taken control of assets and then manipulated public funds in a way that benefited

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Ecuadoriana de Trabajadores Agropecuarios (Ecuadorian Federation of Agricultural Workers), Confederación Ecuatoriana de Organizaciones Clasistas Unitarias de Trabajadores (Ecuadorian Confederation of United Class-Based Worker Organisations) and Confederación Ecuatoriana de Organizaciones Sindicales Libres (Ecuadorian Confederation of Free Trade Unions), 19 Jan. 2000, photocopy.

<sup>51</sup> *Revista Estudios y Datos*, Jan. 2007, p. 6.

<sup>52</sup> In an interview on CNN, Noboa said that 'political ends' and animosity were at work in the legal proceedings and that he expected the case would go nowhere. The interview was cited by Jamil Mahuad Witt in the voluminous defence document he submitted to the CSJ, 'Alegato final', June 2011, photocopy provided by Mahuad's defence team.

<sup>53</sup> CCCC, letter to Dr. Mariana Yépez Andrade de Velasco, Oficio no. CCCC.2000.67, 27 April 2000.

<sup>54</sup> Letter to the Supreme Court President from Dr. Víctor Granda Aguilar, 30 May 2000, photocopy.

<sup>55</sup> Interview with Mariana Yépez, former prosecutor general, Quito, 28 Nov. 2006.

banks, not the general public.<sup>56</sup> By opting for *peculado*, Pico chose the most serious crime. Article 121 of the 1998 Constitution eliminated the statute of limitations in cases of public officials charged with the crimes of embezzlement, fraud or bribery.<sup>57</sup> The CCCC reacted harshly, implying that Pico had purposely mischarged the case to make dismissal more likely. Mahuad's lawyers, however, did not regard the charge as a gift. They believed the charge was punitive; with no statute of limitations, it ensured a long legal travail for Mahuad.<sup>58</sup>

Mahuad's defence team lodged an appeal. At the heart of Mahuad's defence was the contention that none of the actions taken during the bank freeze approximated the legal definition of *peculado*; there was no evidence that Mahuad personally benefited or that his actions were undertaken with the intention of defrauding the public and benefiting third parties. Mahuad maintained that his policies were those of a rational policy-maker wrestling with a catastrophic financial crisis. Oral arguments were held in the appeals hearing on May 2002, but the case languished with no decision.<sup>59</sup>

Unlike Bucaram, Mahuad had no active political strategy or resources for fighting the case. He remained in the United States and kept a low profile. Anticipating censure by his own party, Mahuad quit the DP in 2001.<sup>60</sup> The results of the 2002 election did not bode well. Lucio Gutiérrez, the army colonel who led the 2000 uprising against Mahuad, won the presidency. Despite Mahuad's divorce from the DP, voters severely punished the party. In the 2002 congressional election, just four deputies from the party won seats, a dramatic decline from the 32 seats in the 100-seat unicameral body won in 1998. With no political support in Congress and a hostile president in power, Mahuad had no hope of striking a deal for amnesty.

The Bucaram-inspired 2004 purge of the CSJ and the ensuing 2005 hiatus in court operations left Mahuad's case in limbo. In June 2006, the penal chamber of the newly constituted CSJ finally delivered a decision on

<sup>56</sup> The ruling in the case is found in Galo Pico Mantilla, 'Auto de apertura del plenario', in *Jurisprudencia: juicios bancarios y otros casos de fuero* (Quito: Corte Suprema de Justicia del Ecuador, 2003), pp. 18–42.

<sup>57</sup> Article 121 of the Constitution could not be applied retroactively to the Bucaram cases, and because of changes in penal law, the question of what statute of limitations provision applied was another source of legal controversy in those cases. In 2009 the court ruled that the previous statute of limitations would be applicable, thus ending the cases in 2017.

<sup>58</sup> Interview with Ramiro Aguilar, defence attorney for Mahuad, 6 June 2011; interview with Patricio Vivanco, defence attorney for Mahuad, 9 June 2011.

<sup>59</sup> For a summary of the defence arguments, see Walter Guerrero Vivanco, *Relatos penales* (Quito: PUDELECO, 2006), pp. 483–502.

<sup>60</sup> Mahuad responded to a DP inquiry with a written defence of his policies. See Jamil Mahuad Witt, *Para la historia: el congelamiento de depósitos* (Quito: n.p., 2001).

the appeal. In a two-to-one vote, the three-member CSJ panel voted to issue a provisional dismissal. The judges in favour of dismissal found no clear evidence that Mahuad had acted with the intention of benefiting the banks illicitly; nor was there proof that Mahuad had personally benefited from the measures. The judges also maintained that the Contraloría had failed to provide a report quantifying the alleged losses incurred as a result of the freeze, an element necessary for a conviction on the charge. Nonetheless, the judges had hedged: the provisional dismissal meant that the case could be reopened within three years if new evidence were to come to light.<sup>61</sup>

Still living in the United States, Mahuad welcomed the decision. Unlike Bucaram, he made no attempt to return. Defence attorney Walter Guerrero hailed this as evidence that the Supreme Court was acting independently, but that view was not shared by many partisan actors or a vocal segment of the Ecuadorian public.<sup>62</sup> The leftist MPD and MUPP parties derided the decision.<sup>63</sup> So did a new board of directors at the CCCC, despite the fact that the CCCC had not made a case for the peculado charge in its original 2000 report. Readers of Quito's principal newspaper, *El Comercio*, voiced their rage at the former president and railed against the verdict in an online forum.<sup>64</sup> Joining forces with former CCCC commissioner Jorge Rodríguez, Socialist Party crusader Víctor Granda submitted an appeal for reopening the case in December 2006 that included 6,952 folders of documents.<sup>65</sup> Agreeing that there was new evidence, the CCCC also urged the court to reopen.<sup>66</sup>

Advocates for reopening the case found a new political ally in the 2006 presidential candidate Rafael Correa. Campaigning as a leftist maverick dedicated to rooting out corruption, Correa denounced the ruling, arguing that the banking freeze had constituted a violation of human rights. By making it impossible for many people to buy food and medicine or pay their bills, Correa maintained that Mahuad's policies were responsible for 'loss of human life, psychiatric breakdowns, suicides, bankruptcies, and the massive emigration of Ecuadoreans with its disorganising impact on social, familial, emotional, economic and cultural [life]'. Candidate Correa filed a formal petition with the prosecutor general's office, asking that the case be regarded as one of 'crimes against humanity'.<sup>67</sup>

<sup>61</sup> Corte Suprema de Justicia, Segunda Sala de lo Penal, 'Juicio penal no. 044-2000', 6 June 2006, photocopy; 'El fallo a favor de Mahuad se da por falta de pruebas', *Hoy*, 8 June 2006.

<sup>62</sup> Guerrero made his comments in an interview on 9 March 2009.

<sup>63</sup> 'MPD y Pachacutik alistan una recepción a Jamil', *Hoy*, 8 June 2006.

<sup>64</sup> Collection of posts to Foro Electrónico, *El Comercio*, 6 July 2008.

<sup>65</sup> Letter to the Supreme Court president from Dr. Víctor Granda Aguilar and Ec. Jorge Rodríguez Torres, 14 Dec. 2006, photocopy.

<sup>66</sup> CCCC, letter to the Supreme Court president, 15 March 2007, photocopy.

<sup>67</sup> 'Denuncia presentada en la Fiscalía General de la Nación, 2006', photocopy.

Correa's victory in the 2006 presidential election was a setback for Mahuad's defence team. In March 2007, Prosecutor General Jorge German endorsed the Granda–Rodríguez petition asking the CSJ to reopen hearings.<sup>68</sup> In April 2007, President Correa created a blue-ribbon commission to investigate the 1999 bank meltdown. One of the board members was Ramiro Larrea, the former CCCC president who had pushed for charging Mahuad in 2000. By June, CSJ president Jaime Velasco agreed to new hearings and in early July the presidential commission delivered its report. Drawing heavily on previous CCCC reports as well as new estimates of the financial damages caused by the banking collapse, the commission concluded that the actions taken in the course of the bank freeze constituted a 'fraudulent maneuver' and forwarded its voluminous documentation to the CSJ for inclusion in Mahuad's case.<sup>69</sup> Still the report fell short of producing damaging new revelations. Acknowledging that Mahuad had 'not acted alone', the report pointed to a whole range of government institutions involved in the economic policy-making process.

In late August 2007, CSJ president Velasco rejected Mahuad's petition for a dismissal and ordered another round of evidence collection, including testimony from the presidential commission members. Defence attorney Patricio Vivanco characterised the case's reopening as a 'political decision'. Vivanco cited the string of CSJ judges who had sought to be recused as evidence that the proceeding was regarded as a political and legal minefield.<sup>70</sup> Pro-prosecution proponents like Víctor Granda saw just the opposite: the revolving door of judges in the case helped the defence to delay a final judgement.<sup>71</sup>

Further delays in the case ensued as result of the new 2008 Constitution. It mandated the creation of an entirely new high court to replace the CSJ, the Corte Nacional de Justicia (National Court of Justice, CNJ). In 2011, the government undertook a second sweeping six-month personnel reorganisation that culminated with the swearing-in of a new set of CNJ judges in January 2012. In March 2012, the three-member penal chamber confirmed a December 2011 ruling by Judge Wilson Pacheco that ordered the case to proceed to the final plenary trial. Still living in the United States, Mahuad

<sup>68</sup> Fiscalía General del Estado, letter to the Supreme Court president from Dr. Jorge W. German Ramirez, 14 March 2007, photocopy.

<sup>69</sup> Comisión Investigadora de la Crisis Económica Financiera, 'Síntesis de los resultados de la investigación', July 2007, p. 78, photocopy. Correa was displeased with what he viewed as a lack of specifics in the report and ordered that a follow-up commission continue the investigations. See 'Las comisiones antiguas tienen partida de defunción', *Hoy*, 14 April 2008.

<sup>70</sup> Interview with Patricio Vivanco, 9 June 2011. In 2006, the CSJ modified its internal procedures; cases involving public officials were transferred from the court president's docket to judges in the penal chamber of the court.

<sup>71</sup> Interview with Víctor Granda Aguilar, 8 June 2011.

broke his long media silence. While lamenting the suffering caused, he still continued to defend his economic policies as the only option to avoid total financial collapse.<sup>72</sup>

Mired in legal confusion about how it was charged and virtually dead in the water by 2006, Mahuad's case came back to life in 2007 and continued through 2012 thanks to a revitalisation of the pro-prosecution lobby. The CCCC lined up with pro-prosecution stalwarts Granda and Rodríguez, and they were joined by a new president who readily voiced the still smouldering public anger towards Mahuad. In the midst of massive reorganisation and personnel changes, the CNJ went along with the reconfigured pro-prosecution lobby.

### *Noboa: Economic Crime Revisited*

Gustavo Noboa succeeded to the presidency after Mahuad's ouster in January 2000. With a background as a law professor in Guayaquil, he assumed office with a reputation as a sober manager. While Noboa lifted the remaining restrictions on bank withdrawals in April 2000, he maintained many of Mahuad's policies, including the controversial dollarisation of the economy. Despite intermittent protests during his tenure in office, Noboa managed to complete his term in 2003. In contrast to the single-digit approval ratings of Bucaram and Mahuad, Noboa concluded his presidency with a relatively respectable 35 per cent approval rating and without the opprobrium that had accompanied his predecessors.<sup>73</sup>

Yet Noboa became the target of criminal accusations related to decisions on economic policy. PSC leader and congressman León Febres Cordero wielded his formidable political power to campaign against Noboa in May 2003 with the assertion that the incumbent was responsible for the 'biggest robbery' in Ecuador's history.<sup>74</sup> In a sensational appearance on the floor of Congress, Febres Cordero blasted Noboa for mismanaging a debt swap in which the Ecuadorean government repurchased its existing Brady and Euro bonds for newly issued global bonds.<sup>75</sup> Febres Cordero maintained that the terms of the deal would in the long run result in a loss of over US\$ 9 billion for the Treasury. But the transaction, according to Febres Cordero, was not just

<sup>72</sup> 'El invierno de Jamil Mahuad', *Vistazo*, 1 Feb. 2012.

<sup>73</sup> *Revista Estudios y Datos*, Jan. 2007, p. 6. No civilian president since 1979 has left office with an approval rating above 50 per cent. Setting aside the extremely low numbers of Bucaram and Mahuad, Noboa's score is just slightly above the average approval rating of 34 per cent for the period 1979–2006.

<sup>74</sup> 'LFC contra GNB', *Hoy*, 23 May 2003.

<sup>75</sup> Febres Cordero's appearance attracted widespread media coverage. Although a congressman, Febres Cordero rarely attended legislative sessions, citing health concerns related to a heart condition and Quito's altitude.

ill-designed. He charged that the money from the deal was used for private profit: to prop up two troubled Guayaquil banks, Filanbanco and Banco del Pacífico. Another alleged impropriety in the deal involved the government's contract and subsequent payment of US\$ 42 million to the US brokerage firm that worked on the swap, Salomon Smith Barney (SSB). Febres Cordero vowed to pursue Noboa 'like a hungry dog'.

Febres Cordero's accusations were not entirely new; he had railed against the bank bail-out in September 2001.<sup>76</sup> Neither was Febres Cordero the only critic of bond transactions. From the opposite side of the political spectrum, groups on the left agreed that the bond swap was poorly designed and detrimental to national interests. Among the most vocal groups was Jubileo 2000 Red Guayaquil, an anti-debt movement inspired by the Catholic Church's call for international debt relief. Nonetheless, the Left's concern with the debt swap deal did not lead to an outright alliance with its nemesis, Febres Cordero. On 27 May, in the company of other PSC congressmen, Febres Cordero filed an official accusation with Prosecutor General Mariana Yépez. Press coverage of the case was replete with references to the long-standing feud between Febres Cordero and Noboa.<sup>77</sup>

Noboa was convinced that the fight with Febres Cordero was both political and personal. Noboa considered it a vendetta because he had been unwilling to defer to Febres Cordero and 'follow orders' when he was president. In a 2001 interview, Noboa added insult to injury by deriding Febres Cordero as 'a neighbourhood thug' who ran his political party like 'Don Corleone'.<sup>78</sup> Ricardo Noboa, the brother of the former president, was another source of irritation to Febres Cordero. Once a rising star in the PSC, Ricardo Noboa had broken with Febres Cordero and served in his brother's administration.

Febres Cordero's much-touted sway over the judicial system was openly on display as he pushed to have the case charged. In an unusual expression of candour, CSJ president Armando Bermeo told the press that 'a principal political leader' had subjected him to threats and demanded that he issue 'an arrest warrant'.<sup>79</sup> Febres Cordero threatened to lodge impeachment proceedings against Prosecutor General Yépez if she failed to expedite the case. A few days after, Yépez opened a preliminary investigation of Noboa on criminal charges of peculado in relation to the bond transactions and the SSB payment;

<sup>76</sup> 'Filanbanco 91 cuentas polémicas', *Hoy*, 21 Sep. 2001.

<sup>77</sup> For a compilation of the newspaper coverage of the case, see Gustavo Noboa Bejarano, *Corrupción judicial y judicialización de la política* (Guayaquil: Artes Gráficas Senefelder, 2005).

<sup>78</sup> Interview with Gustavo Noboa Bejarano, 14 Nov. 2006. For the newspaper interview, see 'Noboa: filanbanco fue el golpe más duro', *El Universo*, 31 Aug. 2001.

<sup>79</sup> 'El Presidente de la Corte Suprema es amenazado', *El Comercio*, 19 June 2003. While Bermeo did not identify the leader by name, journalists covering the case identified the person as Febres Cordero.

she asked CSJ president Bermeo to issue an arrest warrant for Noboa in conjunction with the preliminary investigation. Bermeo refused the request even as Febres Cordero attempted to link Bermeo to alleged financial wrongdoing related to the acquisition of a new court building. Yépez's appeal was then directed to the court's penal chamber, a division in which at least three of the judges were known to have close ties to Febres Cordero. Still, Febres Cordero's reach did not extend into every institution with a say in the case. In July, the CCCC pointed to possible administrative errors in the bond transaction, but fell short of identifying criminal wrongdoing by Noboa. A subsequent investigation by the Contraloría General also cleared Noboa.<sup>80</sup>

Noboa, a political independent, had no party caucus to defend him in Congress. He refused to appear before Congress's oversight committee. Opting for an advocacy approach, Noboa argued his innocence to the public and fellow elites in media appearances and in print. Guayaquil newspaper *El Universo* took Noboa's side, as did numerous opinion columnists. In July, Noboa published a detailed review of the legal issues and technical considerations involved in the debt transaction; it was the first of many publications that he issued dealing with the substantive and procedural issues surrounding his case.<sup>81</sup>

Anticipating an adverse judicial ruling, Noboa took refuge in the embassy of the Dominican Republic in late July and petitioned for political asylum. He maintained that he was a victim of 'political persecution' by Febres Cordero and his PSC. In his asylum petition, Noboa cited the public threats against Yépez and Bermeo as evidence of the politicised nature of the case.<sup>82</sup> As Noboa awaited the decision on his asylum request, the penal chamber of the Supreme Court gave credence to the accusations by issuing a preventive detention warrant, stipulating house arrest because of the former president's age. However, Noboa won his request and was allowed to leave Ecuador for the Dominican Republic on 23 August 2003. From the safety of exile he launched a content-laden website, posting relevant documents and press coverage on his case.

Noboa's attorney, Joffre Campaña, concluded that there was nothing to do but file motions to delay further proceedings and wait for 'something extraordinary to happen' that might trigger a change in the make-up of the court.<sup>83</sup> The extraordinary did happen in late 2004, when the Gutiérrez-Bucaram deal removed the incumbent CSJ judges. Campaña took advantage

<sup>80</sup> CCCC, *Informes Memorias 2000–2004* (Quito: CCCC., n.d.), pp. 165–6; 'Gustavo Noboa exculpado', *La Hora*, 20 Nov. 2003.

<sup>81</sup> Gustavo Noboa Bejarano, *Respuesta a una infamia* (Guayaquil: Polígrafa, 2003).

<sup>82</sup> Gustavo Noboa Bejarano, *El asilo por infamias* (Guayaquil: Edino, 2010), p. 29.

<sup>83</sup> Interview with Joffre Campaña, defence attorney for Gustavo Noboa, 3 March 2009.

of the opening to renew the push to close the prosecutorial investigation and won the endorsement of the attorney general. A few months later, in March 2005, CSJ president Guillermo 'Pichi' Castro dismissed all proceedings against Noboa, in a move that many observers, including Noboa's defence team, viewed as an attempt to tamp down public reaction to the dismissal of the charges against Bucaram.<sup>84</sup> Castro's ruling on Noboa was announced simultaneously with Bucaram's dismissal. Although Noboa's defence attorneys had made it a point to distance their case from that of the unpopular Bucaram, they embraced the dismissal.

Noboa returned to Guayaquil, but the legal victory was short-lived. Gutiérrez's ouster from the presidency in April 2005 scrambled the justice system once again. The CSJ ceased functioning. Unlike Bucaram, however, Noboa did not flee. Despite the fact that there were no charges or arrest warrant, Acting Prosecutor General Cecilia Armas insisted on house arrest. Television viewers saw the aged former president unceremoniously yanked from his beach residence by police and whisked to Guayaquil by helicopter. The callously executed and legally questionable arrest was condemned by the press and human rights groups.<sup>85</sup> A ten-month home detention ensued as Noboa awaited a new CSJ to be constituted.

In 2006, the new CSJ president, Jaime Velasco, reinstated the case. He nullified the 2005 ruling by Guillermo Castro – this was consistent with the ruling on Bucaram – but he also reduced the charge and rescinded the house arrest. Dismissing the more serious *peculado* count, he cited Noboa for conspiracy in failing to supervise transactions by his minister of finance.<sup>86</sup>

Noboa's legal case, like that of Mahuad, became the subject of presidential intervention with the election of Rafael Correa. While Correa had agitated openly to revive the Mahuad case, he took a substantially different position on Noboa. Like many others on the left, Correa had been a vocal critic of the debt management policies of previous governments and the global bond swap.<sup>87</sup> But he was also an ardent enemy of Febres Cordero and believed that Noboa

<sup>84</sup> Presidencia de la Corte Suprema de Justicia, 30 March 2005, photocopy. Castro also dismissed a corruption case pending since 1996 against former vice-president Alberto Dahik.

<sup>85</sup> According to Ecuadorian law, the attorney general did not have the power to issue an arrest warrant. Noboa subsequently filed a civil suit against Armas. See Gustavo Noboa Bejarano, *Cecilia Armas Erazo de Tobar y la destrucción del estado de derecho* (Guayaquil: Polígrafa, 2005).

<sup>86</sup> Presidencia de la Corte Suprema de Justicia, 'En la instrucción fiscal no. 49-2003', 16 March 2006, photocopy; 'El Titular de la Corte liberó a Gustavo Noboa', *El Universo*, 17 March 2006.

<sup>87</sup> Rafael Correa, *Ecuador: de banana republic a la no república* (Bogotá: Random House Mondadori, 2009), pp. 93–8.

had been the victim of a politically motivated prosecution. Moreover, Correa had a personal connection to Noboa; the two had known each other since Correa's youth in Guayaquil.<sup>88</sup> In January 2008, President Correa addressed the newly convened constituent assembly and made the case for stopping the legal proceeding against his childhood acquaintance. The assembly had replaced the previous Congress, and Febres Cordero's PSC was obliterated. Correa depicted Noboa as the target of Febres Cordero: 'a judicial victim of someone who believed he was the owner of the country and, lamentably, remains owner of the courts'.<sup>89</sup> Correa urged his party majority to enact an amnesty for Noboa and an amnesty bill passed in July 2008 with 67 votes cast in favour, 12 votes opposed and 17 abstentions.<sup>90</sup> With the case closed, Noboa returned to private life in Guayaquil.

The amnesty served a clear political purpose. By ending the case, Correa used presidential power to deliver another punishing blow to his arch-rival Febres Cordero. At the same time, however, the debate on Noboa's amnesty revealed fissures in the Left about how to regard the case and how to seek accountability for past policy-making. Alberto Acosta, the leftist intellectual who served as president of the assembly, vigorously opposed the amnesty. He argued that the bond swap had been so detrimental to the country's economic well-being that it was indeed criminal, meriting a much-expanded definition of *peculado*.<sup>91</sup> The president's own blue-ribbon commission, created to investigate Ecuador's debt policies, later concluded that the global bond transaction was marked by 'serious indicators of illegality'.<sup>92</sup> Yet, the commission was silent on the matter of exactly what crimes were committed and who the perpetrators were.

<sup>88</sup> As a professor at Guayaquil's Catholic University, Noboa was active in Church circles and met Correa as a young student. Correa's brother has referred to Noboa as their 'spiritual father'. Rafael Correa has been less kind in recent comments, dismissing Noboa as 'completely useless but honest'. See 'Correa: Gustavo Noboa es un tipo inútil pero honesto', *Expreso*, 9 Jan. 2010.

<sup>89</sup> 'Mensaje del señor Presidente Rafael Correa ante la Asamblea Constituyente al cumplirse el primer año del gobierno', 15 Jan. 2008, available at [www.presidencia.gob.ec/discursos/01-15-08Mensaje\\_primerAnioGobierno.pdf](http://www.presidencia.gob.ec/discursos/01-15-08Mensaje_primerAnioGobierno.pdf).

<sup>90</sup> 'La Asamblea dio la amnistía a Gustavo Noboa y a W. Salgado', *El Comercio*, 5 July 2008. For the basis of the assembly's vote, see Asamblea Nacional Constituyente, 'Informe de la Mesa de Legislación y Fiscalización sobre la amnistía solicitada por el señor Presidente Constitucional de la República a favor del Dr. Gustavo Noboa Bejarano', 16 April 2008, photocopy.

<sup>91</sup> Noboa's amnesty was one of several issues that prompted Acosta to resign as president of the assembly. See Alberto Acosta, 'Todo en función de los acreedores: acerca de una amnistía inconveniente', *Insignia*, 20 July 2008.

<sup>92</sup> Comisión para la Auditoría Integral del Crédito Público, *Informe final de la Auditoría Integral de la Deuda Ecuatoriana*, Nov. 2008, p. 151.

*Conclusions*

The pro-prosecution lobby that bore down on Ecuador's weak judicial system had its own distinctive characteristics in each of the three cases. The breadth of partisan, institutional and civil society support for each prosecution, along with views of the legal issues and political stakes, varied widely and was subject to change over time. On the other side, the accused presidents confronted their cases with evident differences in their capacity to marshal party-based or civil society allies. Each case's journey through the legal system was shaped profoundly by the changing configuration of actors arrayed around it.

Of the three cases considered here, Bucaram faced the most broadly based pro-prosecution coalition. Even before he was ousted, investigative reporters were churning up stories on corruption that angered the public and fuelled subsequent investigations. The anti-Bucaram protests of February 1997 included parties, unions and grassroots organisations. Investigations in Congress and by the CCCC of the most notorious allegations – the corruption cases related to customs, the discretionary funds and the school backpacks – forged a consensus on the indictments. For the CCCC, responding to the public's demands for accountability was its first important task as an institution. But while taking Bucaram to court was part of a search for accountability, it also served partisan objectives. By securing criminal cases against Bucaram and crafting a new constitutional provision that tied prosecution to electoral exclusion, rival political elites made his political return impossible. Bucaram, however, still had political power to wield in the form of congressional votes, and he used those resources to lure President Gutiérrez into a fateful political pact. By agreeing to Bucaram's demand to purge the CSJ, Gutiérrez provoked a partisan and societal backlash that toppled his government, leading to an entirely new court that reinstated the cases against Bucaram.

In contrast, Mahuad's case involved a significant measure of disagreement inside the original group of pro-prosecution actors; the disagreement also divided justice officials. A diverse set of party, government and grassroots leaders agitated for legal action against Mahuad, but the dispute over bringing charges against him complicated the legal case. The 1999 TC ruling, declaring that Mahuad had violated the constitution, opened the door to some kind of post-presidential prosecution. The CCCC and the prosecutor general initially recommended charging Mahuad for crimes consistent with the TC ruling. However, the CSJ president's decision to side with advocates of the embezzlement charge was a troublesome legal stretch. To the satisfaction of leftists and a disgruntled public, the charge guaranteed that Mahuad, at a minimum, would be trapped in a long legal fight, with no statute of limitations to save him. Yet, the questionable drawing up of charges provided sufficient leeway for the 2006 provisional dismissal. Nonetheless, pro-prosecution forces regrouped

to keep the case alive, with a significant assist from President Rafael Correa. Without any party support and still loathed by many in the general public, Mahuad was unable to counter the political drive to re-open the case.

Of the three cases, Noboa's prosecution had the least political and institutional support. The case was masterminded almost exclusively by a single party leader, León Febres Cordero. The CCCC rejected criminal charges, as did the Contraloría. Leftist critics had decried the debt swap policies of the Noboa administration, but Febres Cordero so dominated the push to prosecute Noboa that it became regarded as a personal vendetta and a demonstration of his power to bully the CSJ. As in Mahuad's case, the legal arguments tying complex economic policy decisions to the crime of peculado were murky at best. Nonetheless, the case went on until Febres Cordero's power over Congress and the judiciary was broken by President Correa. The absence of broad societal support for the original prosecution and some measure of public sympathy for the aged president who never ceased the public relations campaign to clear his name made the amnesty palatable. For the Correa administration, it was a relatively easy and politically useful resolution of the case.

While no lengthy comparison of the politics surrounding corruption and HRV prosecutions will be attempted here, one striking feature stands out in the corruption case studies: partisan actors were consistently at the forefront. Politicians influenced every aspect of the cases, from how they were charged to how they made their way through the justice system. At the same time, none of the presidents enjoyed a stable 'legislative shield' of supporters capable of countering the mobilisation of rival partisans.<sup>93</sup> Limitations on the relative influence of the principal state-based MHA institution, the CCCC, meant that when the CCCC's findings differed in some measure from the positions taken by principal partisan proponents of prosecution, as in the Mahuad and Noboa cases, the views of partisan actors prevailed in the justice system.<sup>94</sup>

Intrusive executive branch involvement marked all three cases. Incumbent presidents went far beyond expressing opinions; they took direct actions that impacted the legal process. Gutiérrez's presidential intervention went to the extreme of defenestrating the Supreme Court for the purpose of dismissing the charges against Bucaram. Correa did not simply denounce the provisional dismissal in the Mahuad case; he created a blue-ribbon commission that generated more testimony and documentation, helping to keep the case alive.

<sup>93</sup> As demonstrated by Aníbal Pérez-Liñan, the presence or absence of a 'legislative shield' is a key variable in determining outcomes in presidential impeachments. See Pérez-Liñan, *Presidential Impeachment*, pp. 132–75.

<sup>94</sup> As a result of the 2008 Constitution, the CCCC was disbanded. Its tasks were transferred to a new fourth branch of government, the Consejo de Participación Ciudadana y Control Social (Council on Citizen Participation and Social Control).

Correa marshalled his political power to deliver amnesty for Noboa, a move that simultaneously served as a punishing blow to a rival politician. In short, none of the cases made their way through the legal process without some form of executive intervention aimed at either ending or furthering the case.

The extraordinary instability in the high court made these cases subject to long delays, and by extension, exposed the cases to attendant changes in the political environment. In the period under discussion, the court underwent five major reorganisations involving changes in personnel, in 1998, 2004, 2005, 2008 and 2011. With each change in the court and its judges, the opportunities for lobbying and resetting the cases in some way opened up anew. And as the court changed over time, so did the cast of political actors involved in the cases and their relative political power. The politically contingent character of the cases was captured perfectly by Noboa's attorney, Joffre Campaña. Describing his legal strategy as waiting for 'something extraordinary to happen', Campaña recognised that his client's fate depended less on keen legal argument and more on a change in the political environment that would shake up the court.

More comparative case studies can shed further light on whether corruption prosecutions elsewhere in the region are marked by the same sort of intense partisan intervention as in Ecuador. Clearly, the weaker the judicial system, the greater the opportunities are for partisan-induced judicialisation or partisan-inspired resolution of the cases. In Nicaragua, for example, partisan politics is believed to have weighed heavily in the corruption case of former president Arnoldo Alemán. Alemán was prosecuted successfully under the administration of his rival, President Bolaños, but his conviction and 20-year sentence for money laundering was overturned on appeal in 2009. Immediately thereafter, Alemán directed his party to vote with government legislators in Congress, prompting observers to see the judicial reversal as a quid pro quo for a revived political pact between Alemán and President Daniel Ortega.<sup>95</sup>

As we look forward to further research on corruption prosecutions, the Ecuadorean experiences offer two additional insights worth keeping in mind. First, it is important to recognise the profound differences in the types of legal cases often lumped together under the broad rubric of 'corruption'. Bucaram was accused of old-fashioned corruption: using the presidency to line his pockets and allowing friends and family to do the same. This traditional kind of 'extractive' corruption has been the grist of many recent trials, including those of Alemán, Paraguay's Luis Gonzalez Macchi and Guatemala's Alfonso Portillo. In contrast, the Mahuad and Noboa cases were framed in more

<sup>95</sup> David Close, 'President Bolaños Runs a Reverse, or How Arnoldo Alemán Wound up in Prison', in David Close and Kalowatie Deonandan (eds.), *Undoing Democracy: The Politics of Electoral Caudillismo* (Lanham, MD: Lexington, 2004), pp. 167–82.

complex terms. Although both men were originally charged with embezzlement, no evidence of personal enrichment on the part of the accused was ever uncovered. Instead, the cases became a platform for putting the presidents and their controversial economic policies on trial. Proponents of the prosecution argued that the benefits derived from the policies were so skewed toward the banking sector that they amounted to favouritism of criminal proportions. The effort to frame these cases in this way approximates what Ran Hirschl identifies as the judicialisation of meta-politics: 'a judicial scrutiny of executive-branch prerogatives in the realm of macroeconomic planning'.<sup>96</sup> This is distinct from the judicialisation described earlier as a use of courts for partisan ends. The Mahuad and Noboa cases show that a multilayered judicialisation can be at work in these cases: partisan animosity toward the accused and deeper policy clashes over executive authority go hand in hand. The unsuccessful attempt to prosecute Argentina's former president Fernando de la Rúa for his debt policies provides another example of layered judicialisation.

Second, while this analysis directs attention to how politics shape the trajectory of these legal cases, future research might also reflect on the reverse: the collateral developments impacting law and politics that can flow from struggles over these cases. For example, an enduring legacy of the simultaneous efforts of partisan and accountability actors to bring Bucaram to justice and keep him out of politics was the constitutional stipulation that makes the president and other public officials subject to prosecution on certain types of corruption charges without any statute of limitations.<sup>97</sup> That rule alone – making it impossible for the accused to 'run out the clock' on these cases – set the Mahuad and Noboa cases on a trajectory that they otherwise would not have followed. The constitutional change and the broad legal interpretations of *peculado* that emerged in the Mahuad and Noboa cases carry implications for the future, especially if accountability and judicial actors remain weak vis-à-vis partisans. In Latin America's new anti-corruption era, criminal charges now loom as an even more powerful weapon, making them all the more tempting to those who would use them for reasons less lofty than the pursuit of democratic accountability.

### *Spanish and Portuguese abstracts*

*Spanish abstract.* A lo largo de Latinoamérica muchos expresidentes han enfrentado juicios bajo cargos de corrupción con resultados muy variados. Como cualquier

<sup>96</sup> Ran Hirschl, 'The Judicialization of Mega-Politics and the Rise of Political Courts', *Annual Review of Political Science*, 11 (2008), p. 98.

<sup>97</sup> Ecuador's 2008 Constitution preserved this provision. See Article 233 in *Constitución de la República del Ecuador, Concordancias* (Quito: Corporación de Estudios y Publicaciones, 2011), p. 165.

acusación legal a funcionarios públicos (impeachment), la ley y la política se entremezclan en el enjuiciamiento a un presidente. Dicho nexo es examinado mediante el mapeo de las acciones de los agentes que se movilizan para influir en cómo el sistema de justicia procesa los enjuiciamientos presidenciales. Primero, en relación a los actores en instituciones estatales o en la sociedad civil vinculados con la rendición de cuentas; segundo, los actores partidarios en las ramas ejecutivas y legislativas; y tercero, los imputados, y sus apoyos en la sociedad política y civil. El análisis señala que las variaciones en la configuración, los recursos y el alineamiento de estos grupos de actores configuran de manera fundamental la trayectoria legal de los casos. Se analizan los procedimientos en contra de tres expresidentes de Ecuador: Abdalá Bucaram, Jamil Mahuad y Gustavo Noboa.

*Spanish keywords:* rendición de cuentas, corrupción, Ecuador, judicialización, Corte Suprema, presidentes

*Portuguese abstract.* Por toda América Latina, diversos ex-presidentes enfrentaram processos criminais de corrupção, seguidos de desfechos altamente variados. Assim como nos casos de *impeachment*, lei e política cruzam-se no julgamento de um presidente. Esta conjuntura é examinada pelo mapeamento das ações de agentes que mobilizam para influenciar a maneira pela qual o sistema judiciário processa as acusações contra presidentes. Em primeiro lugar estão atores situados em instituições estatais e na sociedade civil, que pressionam pela transparência e responsabilização; em segundo, os partidários nos setores executivos e legislativos; e em terceiro, os réus e seus apoiadores partidários da sociedade civil. A análise argumenta que as variações na composição, nos recursos e no alinhamento destas conjunturas de atores definem de forma fundamental a trajetória de processos legais. Casos contra três ex-presidentes do Equador são analisados: Abdalá Bucaram, Jamil Mahuad e Gustavo Noboa.

*Portuguese keywords:* transparência e responsabilidade, corrupção, Equador, judicialização, Corte Suprema, presidentes