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Report on the Legislation and Oversight Commission

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Acronyms used in this report

ABPE	Association of Private Banks of Ecuador
ANC	National Constituent Assembly
CAL	Council on Legislative Administration
CFCP	Commission on Oversight and Political Control
CLF	Legislation and Oversight Commission
CNE	National Electoral Council
CNJ	National Court of Justice
CPCCS	Council on Citizen Participation and Social Control
PSP	Partido Sociedad Patriótica
RED	Red Ética y Democrática

I. Introduction

This report covers the main activities and resolutions of the Legislation and Oversight Commission (CLF) during the month of December. The report is divided among the following sections: the work of the specialized commissions (on Civil and Penal Law, Reform of the State and Public Management, and Social Participation); the work of the Commission on Oversight and Political Control; the discussions undertaken in the Plenary of the CLF; the CLF's relationship with the other branches of government; and, to focus on a controversial issue, the debate over the draft Law on the Financial Security Network. Finally, we provide a chronology of important events.

II. The Work of the Specialized Commissions

Commission on Civil and Penal Law

On December 2, 2008, the Commission on Civil and Penal Law received a list of directives from the Association of Judges of Ecuador, who offered their ideas about the formulation of the draft Organic Law on the Judicial Branch and also asked that this law emphasize a greater role for citizen participation.

On a different note, after analyzing the draft Organic law on Ground Transportation, Transit, and Highway Safety (submitted to the Commission on December 2, 2008) on the 8th of December the Commission released its report in favor of initiating the first round of debate on the reform project.¹ One of the draft's main provisions would repeal the sanction against mobile vendors who conduct their business within their transportation vehicle and change licensing standards for drivers. On December 19, the Commission released another favorable report to prompt the second round of debate. On December 23, the draft was approved (57 votes in favor), which will enable 25,000 mobile vendors across the country to go on about their business free of restrictions.²

Meanwhile, after receiving the draft Reform Law on the Penal Procedural Code and Penal Code, on December 24 the Commission released its report in favor of initiating the first round of debate, in which it pointed out that this draft does differ from the version offered by the Executive, but it still maintains the same general concept, namely the creation of an effective system for the prevention, control and punishment of crimes, with the overarching goal of reducing the number of criminal infractions. The members of the Commission came to agreement on this report, taking expert input into account, and including reforms to achieve a system based on open prosecutions.

Finally, on December 29, the Commission published the draft Law on the Organic Code of the Judicial Branch to the public to solicit its suggestions and observations.

Commission on the Reform of the State and Public Management

On December 19, 2008, the Commission on the Reform of the State and Public Management submitted a report on the draft Organic Reform Law to Constituent Mandate No. 23 to open the first debate on the matter. Norman Wray, president of the Commission, argued that Mandate No. 23 should be reformed because, in its current state, it would allow for the immediate firing of any official for failing to turn in documents, which would violate the right to due process and a fair

¹ The complete name of the draft is "*Proyecto de Ley Derogatoria del Literal e) del artículo 139 de la Ley de Transporte Terrestre, Tránsito y Seguridad Vial*"

² Press Release, José Peralta, "Cerca de 25.000 comerciantes informales podrán realizar sus ventas en los buses sin restricciones", 12/23/08. Bulletin N° 331. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16766&Itemid=1.

defense. Furthermore, the original 5 day period granted for officials to respond to information requests from the CLF was considered insufficient by the PAIS Assembly members; thus, the draft of the reforms to the law stipulates that article 24 of the Mandate should be altered to extend this period.³

On another note, after receiving the first draft of the Elections Law from the National Electoral Council (CNE) (November 18) written with support from the Litigious Electoral Tribunal (TCE), the Commission decided to hold different workshops with both of these electoral bodies in early December in order to analyze the draft and take in whatever observations are pertinent. Afterward, on December 12, the CLF received the draft so that it could begin to debate and discuss the project.

Commission on Social Participation

On December 11 the Constitutional Tribunal (the self-proclaimed “Constitutional Court”) decided in an interpretive ruling that the CLF should be the authority to manage the competition to fill the positions on the temporary Council on Citizen Participation and Social Control (CPCCS), establishing a 30 day period for the task, with a deadline of January 11, 2009.⁴ The next day the Commission on Social Participation sent its draft “directives” to regulate the selection process for the members of the temporary CPCCS to the Council on Legislative Administration (CAL) of the CLF. This document was developed with input from some civil society organizations.

On December 18, 2008, the directives were approved (41 votes in favor, 12 against, 3 blank and 1 abstention) for regulating the fair and open competition to select the members of the temporary CPCCS.⁵ The Commission on Social Participation still maintained the responsibility of monitoring the process and hearing citizen objections. The open call to the public was handled through the media on December 22, officially opening the contest. The candidates’ applications were received for seven days, through December 29. The evaluation of merits was conducted with support from a private company, Teleaccess, until January 2, 2009.

Meanwhile, a team of professors from the Universidad Andina Simón Bolívar, the Universidad Politécnica Salesiana and the Universidad de Cuenca collaborated to produce a skills and knowledge test for the competition. On December 31, 2008, the CLF published the names of the applicants qualified to take the test on its web page; the test was scheduled for January 2, 2009. As the process was developing, many national and international observers were present, including some from the Carter Center.

III. Commission on Oversight and Political Control

Once the Commission on Oversight and Political Control (CFCP) was formed, on December 3 it held its first meeting in order to designate its president, Mauro Andino, and vice president, Betty Amores (PAIS). Both declared their commitment to full transparency for the Commission as well as their openness to input and participation from the citizens and the media.

³ Press Release. “Reforma al Mandato 23 sobre plazo para entrega de información pasó primer debate”, 12/19/08. Bulletin N° 317. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16747&Itemid=1.

⁴ Constitutional Court, “Sentencia Interpretativa 002-08-SI-CC”. Online:

http://asambleanacional.gov.ec/blogs/comision_8/files/2008/12/resolucion_del_cc.pdf.

⁵ For more information on the selection process, evaluations and objections to the nominees for the temporary CPCCS see *below* “V. The CLF’s Relationships with Other Branches Of Government” and the next published Carter Center report.

It initiated its first political trial on December 15 against the Minister of Transportation and Public Works, Jorge Marún Rodríguez (after receiving permission from the CAL); however, on December 19, it also examined a complaint over signature falsification from Assembly member Carlos Pilamunga (Pachakutik), who claimed that he had not actually signed the legal document initiating the trial against Marún Rodríguez. The confusion was apparently caused because when Galo Lara (a proponent of the trial) was collecting signatures, Pilamunga was not attending the session and his alternate signed for him, it would seem, without understanding the document. The CFCP also decided (with 5 votes in favor) to transfer the Assembly Member's complaint to the Attorney General so that it could conduct its investigation in accordance with the Penal Procedural Code. For his part, Mauro Andino expressed that although an investigation into the false signature was necessary, it would not impede the proceedings against the Minister.⁶

IV. Discussions in the Plenary of the CLF

On December 9 2008, the Plenary met to debate the draft Organic Reform Law on the Internal Tax Code and the Reform Law for Tax Equity in Ecuador. During the Plenary's debate on December 10, it argued over the need to better classify the constitutional rules on fiscal policy and incentive creation for productive sectors. Assembly member Jaime Ruiz argued that these were not "organic" laws since they centered on success in the banking sector.

On December 15 2008, once the death of former President León Febres Cordero was announced, the Plenary offered its condolences and declared a day of national sorrow.⁷

On December 17 it readdressed the debate over the competition for the CPCCS.⁸ In the same session, the Plenary held the first debate on the draft reforms to the Organic Law on the Foreign Service. With reforms to this law, access to positions managed by the Ministry of Foreign Relations would be open to individuals who have not necessarily followed the diplomatic career track. A final point covered was the second debate on the reforms to the Law on the Internal Tax Code and the Reform Law for Tax Equity in Ecuador, which were both approved with 43 votes in favor, 4 left blank and 3 abstentions.⁹

The Plenary session on December 18 started off with the first debate on the Mining Law, which included input from many different institutions and social groups in the report, as well as suggestions gleaned from workshops organized in different cities. The draft proposes that child labor remain completely outlawed and demands the use of clean, non-polluting technologies. It also grants access to the profits of mining activity to the municipal governments and facilitates their recuperation of the proceeds. There are several controversial points in the law, including: the possibility of large scale mining projects; the granting of mining concessions to private and foreign businesses; as well as the possible contradiction between the rights of the environment established in the Constitution and some of the provisions of the draft law.

On December 19 2008, Sergio Chacón, an Assembly member from the Partido Sociedad Patriótica (PSP), was elected as the fourth representative on the CAL (with 44 votes in favor). Afterward, the Plenary started the first debate of the draft Organic Reform Law to Constituent

⁶ Press Release. "Comisión de Fiscalización enviará a la Fiscalía denuncia sobre presunta falsificación de firma", 12/20/08. Bulletin N° 319. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16748&Itemid=1.

⁷ Press Release. Minute by Minute Coverage, 12/15/08. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16710&Itemid=166.

⁸ See *below*.

⁹ Press Release. Minute by Minute Coverage. 12/17/08. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16723&Itemid=166.

Mandate No. 23 (substitution of numeral 3 of article 34), which would extend the period granted for state officials to respond to the CLF's official requests for information.

The Plenary met again on December 23 to discuss the draft reforms to Constituent Mandate No. 2, which authorized double the compensation to public servants in the Galápagos province. The argument was that given the technical expertise required to work in the zone, public servants deserved higher compensation. However, for Assembly member Luis Hernández (Red Ética y Democrática, RED) doubling the salary is exaggerated, especially given the country's overall economic situation.

In the plenary session on December 30, the CLF debated and voted in favor of the partial veto sent by President Correa to the Law on Financial Security, in which the President proposed that the investment management for the private banks liquidity fund could be invested in ventures that have an international rating at or below AA.

In the same session the second debate unfolded on the draft reforms to the Law on the Foreign Service, which was approved with 50 votes in favor, 0 against, 6 left blank and 5 abstentions. Similarly, on December 30 the reform law for Mandate No. 23 passed with 43 votes in favor, 0 against, 2 left blank and 3 abstentions.

V. The CLF's relationship with other branches of the State

Competition to select the Council on Citizen Participation and Social Control

The selection process for the members of the temporary CPCCS was delayed after the CLF decided, in November, that the CNE should be the authority to manage the competition. The CNE immediately asked the Constitutional Court to determine the competent authority for the task. On December 11, 2008, the Constitutional Court ruled with 5 votes in favor that the CLF should be the body to manage the competition.

The directives for the competition stipulated that 7 councilors and 7 alternates should be selected, with gender parity (between men and women) from the candidates who had received the highest scores. The competition for men and women would be held separately, with the first position going to the candidate from either gender with the highest score. The directives also guaranteed a position for a representative from an indigenous, Afro-descended or Montubian nationality in the primary 7 positions, as well as among the 7 alternates (article 3). The requirements for candidates included that they must: possess Ecuadorian citizenship, be 18 years of age or older, have not served as a director in a political party or movement within the last 3 years, among others. The directives allowed nominations to come from social organizations as well as citizens and determined selection criteria such as career path, experience, regional background, training and expertise, and public support (articles 5, 6, 11, 12). In all, the CLF received applications from 315 candidates, including 23 who are currently residing in the exterior.

VI. Controversy over the draft Law on Financial Security and Reform Law on the Internal Tax Code

In the plenary session on December 10, 2008, the Law on the Creation of a Financial Security Network passed with 47 votes in favor and 7 abstentions. Some of the most controversial points in the debate were: a) the conduct of the private and public sectors in negotiations both within and outside of the market, b) management by the Ministry of Finance of the assets, rights and

jurisdictional areas that were left behind with the extinction of the Agency for the Guarantee of Deposits (AGD) and c) the financing of certain institutions in the budget. The law was sent on to President Correa, who had a period of ten days to sanction it.

On December 19, the Association of Private Banks of Ecuador (ABPE) announced that the measures taken by the CLF on this “solid, solvent and liquid” law could be undermined by its other decisions, such as the approval of the draft Reform Law on the Internal Tax Code. The ABPE argued that some of the Executive’s initiatives strive to intervene in the economy, which should be left to the private sphere. Specifically, the ABPE asked President Correa to veto some of the provisions such as the creation of a 0.5% tax on capital flight. For this banking association, “it is desirable from a technical standpoint and for the interest of the country that the National Constituent Assembly deny President Correa’s requests, given that they are totally inconvenient and negative for the economy of Ecuador. The national government will not stop with the proposed tax on new capital or capital flight”.¹⁰

The different business and banking unions urged President Correa to request a reconsideration of the economic measures in both initiatives for having such a limited scope. Furthermore, for these sectors, these measures should be accompanied by a reduction in public spending. The bankers explained that the reforms would alter the economy’s liquidity, reducing some \$245 million dollars in income. For his part, on his Saturday radio program on December 20, President Correa threatened to imprison the bankers who had issued formal statements on the risks of the Financial Security Law and had caused so much uncertainty in the public.¹¹

Finally, on December 24, 2008, President Correa submitted a partial veto document to the CLF on the Financial Security Law with six observations on a) the investments in the Liquidity Fund, b) the jurisdiction of the National Court of Justice, c) commercial receipts and invoices, d) the input of the Central Bank, e) centralized securities deposits, and f) the hierarchy of the Law on the Monetary Code. In the CLF’s Plenary session on December 30, it passed the law with part of the Executive’s modifications, except for those proposed for article 2 related to the investments in the Liquidity Fund.¹²

¹⁰ ABPE, “El impuesto del 0.5% a la salida de divisas: un tributo inconveniente”, Press Release, 12/18/08. Online: <http://www.asobancos.org.ec/internas.asp?opcion=noticias.asp>

¹¹ “A la banca le preocupa la liquidez”, El Comercio, 12/23/08. Online:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=158017&anio=2008&mes=12&dia=23.

¹² National Assembly. “Objeción Parcial Proyecto de Ley de Red de Seguridad Financiera”. Draft Laws, Partial Objections. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_docman&task=cat_view&gid=953&Itemid=188.

CHRONOLOGY

12/1/08. Fernando Cordero, president of the CLF, swore in Leonardo Vicuña as the new spokesperson for the Directors of the Central Bank.

12/3/08. The CFCP selected its directors: Mauro Andino (president) and Betty Amores (vice president).

12/3/08. The reports authorizing the first debate were passed on the draft Reform Law for the Internal Tax Code and the Reform Law for Tributary Equity in Ecuador.

12/4/08. El presidente de la CLF, Fernando Cordero, visitó el Parlamento Latinoamericano.

12/5/08. The Latin American Parliament supported Ecuador's proposal for a full auditing of public debts.

12/9/08. The Center for the Right to Housing and Against Homelessness (Centro por el Derecho a la Vivienda y Contra los Desalojos, COHRE) awarded a prize to the CLF for being a "Protector of the Right to Housing.

12/10/08. The Law for the Creation of a Financial Security Network was passed.

12/11/08. The CAL opened the way for a political trial against the Minister of Transportation.

12/15/08. The CLF paid its respects upon the death of former President León Febres Cordero.

12/16/08. The president of the CLF, Fernando Cordero, called the approval of the Constitution the most transcendent event of the year.

12/17/08. The CLF repudiated the crimes of xenophobia against Ecuadorian citizens Marcelo Lucero and José Sucuzhañay.

12/17/08. The CLF approved the draft law that would reform the Internal Tax Code and Tax Equity in Ecuador.

12/18/08. The directives for the fair and open competition for selecting the members of the temporary CPCCS were released.

12/19/08. Sergio Chacón was named the fourth official of the CAL.

12/30/08. The CLF's final session of the year was completed.