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# **Report on the Legislation and Oversight Commission Ecuador**

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## ACRONYMS

APDH	Permanent Assembly on Human Rights
CJ	Judiciary Council
CLF	Legislation and Oversight Commission
CNE	National Electoral Council
CNJ	National Court of Justice
CNNA	National Council on Children and Adolescents
CONAMU	National Women's Council
COPA	Parliamentary Confederation of the Americas
CPPCS	Council on Citizen Participation and Social Control
FARC	Revolutionary Armed Forces of Colombia
FENAJE	National Federation of Judges of Ecuador
FENOCIN	National Confederation of Rural, Indigenous and Afro-Ecuadorian Organizations
FLACSO	Latin American Foundation for Social Sciences
IESS	Ecuadorian Institute on Social Security
MPD	Movimiento Popular Democrático
PAIS	Alianza Patria Altiva y Soberana
PK	Movimiento Pachakutik
PRIAN	Partido Renovador Institucional Acción Nacional
PSC	Partido Social Cristiano
PSP	Partido Sociedad Patriótica
RED	Movimiento Red, Ética y Democracia
SENPLADES	National Secretariat for Planning and Development
TCA	Litigious Tribunal on Administrative Matters
TCE	Litigious Tribunal on Electoral Matters
UNICEF	United Nations Children's Fund

## **I. Introduction**

Over the past month, the Legislation and Oversight Commission (CLF) has approved three of the five laws originally named top priorities in the Constitution: the Organic Law on Elections and Political Organizations, the Organic Law on the Judicial Branch which also regulates the Judiciary Council, and the Law on Food Sovereignty.<sup>1</sup> From its installation through the end of February, the CLF approved a total of 16 laws. The CLF will enter a 15 day period of recess between April 13 and 27 that overlaps with the final stage of the upcoming election period.

Meanwhile, the Council on Legislative Administration (CAL) announced the timeline for its projects through March 30, which includes the following activities:

- March 4: first debate on the draft reforms to the Law on Social Security.
- March 5: deadline for the Executive to send a partial veto of the Law on the Judicial Branch.
- March 11: second debate on the draft reforms to the Law on Social Security.
- March 16: deadline for the Executive to process a partial veto of the Penal Procedural Code and the Organic Electoral Law.
- March 17: first debate on the draft Reform Law on Companies; in the afternoon they will debate the Law on the Creation of the IESS Bank.
- March 24: second debate on the draft Law on the Creation of the IESS Bank; and in the afternoon, second debate on the Law on Companies.
- March 30: expected announcement from the Executive on the Law on the Election of Representatives to the Latin American Parliament.

This report covers the legislative process that has taken place in the country during February of 2009. It is divided into the following sections: a) the Work of the Specialized Commissions; b) Discussions in the Plenary of the Legislation and Oversight Commission; c) Discussion on the Law on Food Sovereignty. It concludes with a chronology of the most important legislative events.

## **II. The Work of the Specialized Commissions**

### *Commission on Civil and Penal Law*

On February 2 the Commission heard from two Assembly members, Edison Narváez y Mario Játiva (PAIS), about the draft proposal for the Law on the Classification of the Crime of Ethnic Cleansing (that reforms the Penal Code), which treats ethnic cleansing as a crime against humanity with a sentence of 25 years, along with mass murderers who target a particular people. The draft also attempts to establish

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<sup>1</sup> According to the first transitory disposition of the Constitution, “the legislative body, in a period no longer than 120 days counted from the entrance of the Constitution into effect will approve the law that develops the policy of food sovereignty, the electoral law, the law that regulates the Judicial Branch, the Judiciary Council and the Council on Citizen Participation and Social Control”. The CLF decided to include the provisions on the Judiciary Council and Judiciary Branch in the same legal document. The only law that will be approved beyond the original deadline in the Constitution is the Law on the Council on Citizen Participation and Social Control, which, as approved by the self-named Constitutional Court, may be approved during the 120 days following the swearing in of the Council – essentially before May 25.

a punishment for the acts of aggression against resource extraction by the peoples living in voluntary isolation in Yasuni National Park.

The Commission also chose February 10 to present the report for the second debate on the draft Reforms to the Penal Procedural Code. In the debate, the president of the Commission, María Paula Romo, insisted that the suggestions of the Attorney General were included in the proposal. The report incorporated the following suggestions:

- Introduction of reform agreements: to provide paths to rehabilitation that offer better solutions; for example, in the area of rehabilitation and reintegration, reparations for damages;
- Procedural simplification: in the areas of crimes against society, crimes against public authorities; sexual violence, domestic crimes, crimes against humanity, among others.
- Regulation of the trial and evidentiary time periods;
- Perfection of the oral arguments system;
- Use of unlawful detention as an exceptional measure;
- Reforms to the Law on the Fabrication, Import, Export, Commercialization and Possession of Arms, ammunition, explosives and accessories.

#### *Commission on the Reform of the State and Public Management*

The Commission introduced its report for the second debate on the draft Organic Law on Elections and Political Organizations. The report was presented by the Commission's new president, Fernando Salazar (PAIS), who replaced Norman Wray of (PAIS), who resigned from his seat in order to run as a municipal councilor for the city of Quito. During his presentation, he explained that the project's importance centers on the unification of various standards that were previously dispersed in different places and had impeded an efficient and effective process for the electoral system. He went into detail on the democratization of the electoral system, the strengthening of the efficiency of the representative political bodies, the need to rebuild the party system, and the strengthening of autonomy through a regional agreement. Salazar explained that although it has not been named the "Code of Democracy," the law embodies this idea, given that the draft was developed with consultation and input from all of the involved sectors of society. He emphasized the guaranteed independence of the controlling authorities; that is, the bodies in charge of political and administrative management in different provinces and districts; a system for evaluating the infractions committed by political subjects, natural persons, and public servants and authorities, among others; the right to file formal complaints against party affiliates; the institutionalization of ordinary appeals and the creation of an Institute for Electoral Investigation and Political Analysis.

### *Commission on Social Participation*

On February 9<sup>th</sup>, the Commission heard observations on the Law on Citizen Participation from Víctor Argoti, the sub secretary of the Secretariat on Peoples, Movements and Citizen Participation. Argoti explained that the Secretariat has held a series of workshops on the national level that will continue to take place in order to work on the central issues of the project and incorporate the feedback of citizens.

Meanwhile, on February 18<sup>th</sup>, the Commission heard from representatives of the Minga Ciudadana group and of FLACSO, who presented their proposals for the Law on Citizen Participation. These proposals argued that the content covered by the law should acknowledge the impacts of citizen policy initiatives at local, provincial level and national level. A representative of Minga Ciudadana, Franklin Ramírez, explained the need to activate mechanisms to support local groups, on the national and international level, as well as to establish a space for training them on organization, management and operations, with a defined plan of action. For his part, the professor representing FLACSO, Santiago Ortiz, asked for the establishment of clear rules on participation and representative democracy, the creation of a public forum for participation and the recognition of the autonomy of these organizations as well as their ability to intervene in the development of policy. He also indicated that this public forum should be open for participation and that social actors should be able to get involved at all phases of the policy making process.

On February 19, the Commission heard from the technical secretary of Ecuador Dialoga, Patricia Sarzosa, and the director of the National Council on Women (CONAMU), Ximena Abarca. The representative of Ecuador Dialoga offered an analysis of citizen participation under the framework of the new Constitution, based on the experiences of local groups. For her part, the director of CONAMU emphasized the importance of: i) the political rights of women in the most recent election contests; ii) the inclusion of women in the oversight and control processes; iii) the participation of women in labor organizations; and iv) their role in the creation of public policies.

On February 27, the Commission was visited by Sara Oviedo, the director of the National Council on Children and Adolescents, who highlighted the Council's work from the national to the local level and the different discussion forums with civil society promoted by the Council.

Finally, Betty Tola, the president of the Commission, announced that it would hold provincial and regional forums for the continued development of the Law on Citizen Participation. The forums would be called "Building together: the Law on Citizen Participation" and would take place in different cities around the country after March 4.

### **III. Discussions in the Plenary of the CLF**

#### *General topics*

The president of the CLF, Fernando Cordero, announced on February 2 that the CLF would continue working normally during the election period and would only enter into recess between April 13 and 27. He indicated that the Assembly members planning to run as candidates in the future National Assembly should request permission to begin

campaign activities and should be replaced by their alternates without leave. Meanwhile, the Assembly members planning to run for other positions should resign as soon as they sign up as candidates.

On February 26, the president of the CLF asked that the Solicitor General, Diego García, act immediately on the killing of 8 Awás indigenous people by FARC guerrillas along the southern Colombian border (in the Nariño district). He made this request because the Constitution defines Ecuadorians as persons belonging to indigenous peoples, communities and/or nationalities who are present in the border zone.<sup>2</sup>

### *Draft Law on the Judicial Branch*

In the plenary session on February 2 the CLF discussed the second report on the draft Organic Law on the Judicial Branch. The president of the Specialized Commission on Civil and Penal Law, María Paula Romo, explained that the report included all the observations submitted by Assembly members for revision, and also bore in mind the commentary from different social sectors the Commission had met with (the Ministry of Justice, the Commissioner on Women and Families, CONAMU, the Litigious Tribunal on Administrative Matters, the National Federation of Judges of Ecuador, and the Council on Childhood and Adolescence). It was clarified that the payment of shared judicial fees for lawyers was eliminated. It would also create specialized judges on violence against women and children, based on the causes mentioned in Law No. 103 “The Law on Violence against Women and Children.” Finally, she also specified that the judicial officials, prosecuting and defense attorneys would be part of that respective professional track and that the autonomy of the representatives and jurisdictions of the Attorney General and the Public Defender’s Office would be guaranteed. Later, after the Attorney General and the Minister of Justice participated in the debate, the draft Law was approved with 41 votes in favor, 5 against, one blank and 11 abstentions.

Although the final version included some of the suggested changes offered by the Attorney General, on February 3 the members of the AG’s office in Cuenca protested against it, demanding total autonomy for the Attorney General. For his part, the Attorney General himself, Washington Pesántez, announced that he would hold a march to the presidential palace to request that President Correa veto certain sections of the law.

On February 9 the Attorney General sent a letter to President Correa requesting a veto for certain portions of the Law, arguing that it could lead to two interpretations of the powers and duties of the Judiciary Council. Similarly, the president of the Attorney’s College of Pichincha announced that Assembly member María Paula Romo and then Minister of Justice, Gustavo Jalkh (now the Minister of Government) had been expelled from the college for having approved and participated in approving the draft law.

On February 27 the President of the Republic sent a partial veto to the CLF that responded to some of the Attorney General’s suggestions.

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<sup>2</sup> Press Release. “Fernando Cordero solicitó a Procurador actuar ante asesinato de indígenas de la etnia Awá”, 2/26/09. Bulletin No. 682. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17229&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17229&Itemid=1)

### *Draft Reforms to the Penal Procedural Code*

In a session on February 10, the plenary debated this draft law, which criminalized public demonstrations of hatred and the interception of calls without an order from the court. Hatred will be sanctioned as a crime when expressed in public and carries a punishment of six months to three years. For intercepting calls the punishment will be from 2 to 12 months in prison. Crimes of moral and physical violence motivated by racism were granted penalties of six months to two years. María Paula Ramo, president of the Commission on Civil and Penal Law, explained that the draft's importance lay in breaking with the simplistic vision of managing social conflicts, given that the earlier criminal procedural system delayed many cases, thereby increasing the number of cases of impunity.

### *Draft Organic Law on Elections and Political Organizations*

On February 10, the second debate was held on this draft, which was introduced by the Commission on the Reform of the State and Public Management. The Assembly members urged attention to different points of view in order to make changes to improve the draft's content. Luis Hernández (RED), while acknowledging the law's importance, also asserted that the project seemed to “perpetuate the group majority [of PAIS] that exists today.” For his part, Jorge Sarango (PK), explained that, in relation to electoral financing, this could lead to discrimination against the candidates for parochial councils.

The debate continued in a session on February 11, when the president of the Commission on the Reform of the State and Public Management, Fernando Salazar, introduced a report that included around 60 proposals offered in the earlier debate. Criticisms from seven PAIS Assembly members of certain aspects of the draft prevented its approval on that day. For Virgilio Hernández, a former Assembly member and one of the main consultants who designed the draft Law, the 7 who abstained were protesting the fact that they were not included as candidates in the PAIS primary elections. Meanwhile, some minority party blocs (MPD, PSC, PRIAN, Pachakutik) took issue with the use of the D'Hondt method of assigning seats proposed in the draft and with the annulment of registered political parties and organizations that do not secure a percentage of votes greater or equal to 5% of the voting population for the election.

On February 12 – as the debate continued – Fernando Cordero explained that the D'Hondt method was the most favorable for minority parties and that they will have four years to analyze its performance, given that the formula will not be applied in the April general elections (although a similar method will be used in order to evaluate the formula's relevance). If necessary, the rules could be modified and improved. On the same day, the Plenary approved the draft Law with 45 votes in favor, 11 against, two blank and 11 abstentions.

### *Other laws*

On February 5, President Correa presented his partial objection to the section on leave with pay in the draft Organic Reform Law on the Labor Code and the Law on the Civil Service and Public Servant Administration, and Standardization of Compensation in the Public Sector. He proposed that leave with pay be offered both to public servants as well as other workers, based on the presentation of a medical certificate issued by the Ecuadorian Institute on Social Security (IESS), which would prevent partial treatment by employers. Furthermore, he suggested that the leave should be extended from two weeks prior to the birth through ten weeks afterward.

In the plenary session on February 16, the Commission on Labor and Social Security had its president, Betty Amores (PAIS), present its report on the draft reforms to the Law on Social Security the Laws on Social Security for the Armed Forces. She explained the viability of transferring the mortgage loans affiliated with the financial system to the IESS, given that the Institute's loans are more widely available and come with lower interest rates.

On February 18, the second debate was held on the draft Law on the Election of Ecuadorian Representatives to the Latin American Parliament, which refers to the election process for the members of the Andean Parliament as far as voting, seat assignment and campaign spending. The debate highlighted the importance of unifying different groups to achieve integration and development and, therefore, the importance of having representatives in the Andean Parliament. The debate continued through February 26. The report suggested that candidates be sworn in by the National Assembly five days after the election results are proclaimed. It also indicated that there should be six principals and six alternates elected. The election process would be organized by the National Electoral Council (CNE), which would receive nominations from political parties, and would also determine the method for assigning seats. Afterward, this law was approved with 43 votes in favor, 12 against, two blank and six abstentions.

In the plenary session on February 26, the first debate on the draft Law on the Confiscation of Goods of Illegal Origin, Use or Purpose, was postponed in order to circulate the project more widely. The plenary decided to send the draft over to the Commissions on Civil and Penal Law and on Public Contracts. During the debate, Rafael Esteves, an independent Assembly member, suggested that the project be dismissed for being unconstitutional. In the opinion of Esteves, the draft would threaten rights in the private civil sector.

#### *Forum for the Presidents of Legislative Bodies in Latin America*

On the 18, 19 and 20 of February the CLF and the city of Cuenca hosted the Forum for the Presidents of Legislative Bodies, which brought together representatives of different Parliaments throughout Latin America. The forum's purpose was to draft a joint declaration to establish conditions to help confront the global economic crisis.

In the opening ceremonies of the Forum, high level attendees included President Rafael Correa and the Parliamentary Presidents of Argentina, Bolivia, Colombia, Cuba, Ecuador and México, as well as members of the Andean Parliament and the Parliamentary Confederation of the Americas (COPA). On the last day they

unanimously approved the “Declaration of Cuenca.” Among the Forum’s principal resolutions were: 1) “Ensure that the national crisis plans provide incentives to their national markets, regional trade in Latin America and their connectedness, and also promotes and preserves employment, providing special support to micro, small and mid-sized businesses” and 2) “promotes within the legislative bodies in Latin America the development of rules that will lead to greater transparency and clarity in capital movement, incentivize relationships of trust with the agents that intervene in the market, ensure that fiscal stimulus initiatives are not overly general and are instead targeted to the most vulnerable sectors”.<sup>3</sup>

#### IV. Discussion on the draft Law on Food Sovereignty

On February 9, the CLF held the first debate on the draft Law on Food Sovereignty, which was introduced by the Commission on Health and the Environment. Jaime Abril, the President of the Commission, stated that the draft took into consideration all of the proposals submitted by the public sector, ministries, CONAMU, SENPLADES, the directors of FENOCIN, the Eloy Alfaro National Peasant Foundation and Animal Protection of Ecuador. Abril explained that the draft was based on the constitutional frameworks on development, participation rights, and rights to quality of life, among others. He explained that in recognizing the complexity of food sovereignty, there would need to be various laws on the subject, such as an Agriculture Law, Law on Land, Law on Water, Law for the Promotion of Farming, Law on Sanitation, Law on Livestock and Produce, among others. Along these lines, he explained that the Commission worked on the most general principles of the Law, such as the factors of production and the commercialization of food sovereignty.<sup>4</sup>

The debate covered a variety of topics:

- Support for national production: creation by the government of democratic environments for the promotion of national products; policy that supports rural needs; access to high quality materials; policies that favor agriculture and organic production; and the strengthening of fiscal, tax, and customs policies;
- Food safety: sanitation, supply of healthy and nutritious food, free of toxic chemicals;
- Mandatory insurance for agricultural loans: subsidies towards the premium, a fund for development of an agricultural union;
- Technical assistance and training: diversification of technologies; wholesaling of products;
- Access to water for human uses and irrigation;
- Access to domestic and foreign markets: imports and exports;
- Reduction and eradication of malnutrition and malnourishment: nutritional quality.

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<sup>3</sup> Forum Declaration. Online: <http://www.asambleanacional.gov.ec/documentos-asambleanacional/declaracion-cuenca-final.pdf>.

<sup>4</sup> Press Release. “Ley de Soberanía Alimentaria tiene un carácter global, integral y estratégico: Jaime Abril”, 2/9/09. Bulletin No 595. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17108&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17108&Itemid=1)

For his part, Fernando Cordero explained that the Law should conform to the National Territorial Plan to determine the location of the land and the territorial and environmental conditions needed to achieve sovereignty.

On February 13, Assembly member Romel Rivera (PSP) presented his observations on the draft, suggesting the incorporation of a section that would establish guarantees on the handling and quality of food, in addition to emphasizing the preservation of ecosystems based on their strategic importance, as well as the recovery of mangrove swamps.

The second debate took place on February 16. The President of the specialized Commission, Jaime Abril, explained that it had incorporated the suggestions it received in two national forums held by the CLF and through the process of announcing the project. These suggestions touched on more protection for biodiversity, access to land, and the social and environmental function of land. The main points expanded in the draft law were the factors of food production (water, land, seeds, research, technology); production and commercialization (development of capital); consumption and nutrition; and social participation (National Council on Food Sovereignty, National Conference on Food Sovereignty).<sup>5</sup>

On February 17 the debate continued until the draft Law (with 35 articles, four general dispositions, two provisions that repealed existing law, and a final disposition) was approved with 49 votes in favor, 2 against, 3 blank and 11 abstentions.

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<sup>5</sup> Press Release. “Ley de Soberanía Alimentaria desarrolla acceso a la tierra y amplía la función social y ambiental”, 2/13/09. Bulletin No. 638. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17166&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17166&Itemid=1).

## **CHRONOLOGY**

**3/02/09.** The President of the CLF, Fernando Cordero, received the formal visit of the United States Ambassador Heather Hodges.

**4/02/09.** A public forum was held on Food Sovereignty.

**6/02/09.** The General Comptroller presented a report on its activities, given by its secretary general, César Mejía Freire.

**7/02/09.** A second public forum took place on Food Sovereignty. Via video conference, representatives met from various provinces, including: Azuay, Guayas, Tungurahua, Imbabura, Loja, Manabí and Pichincha.

**10/02/09.** The CLF web page was offered in two languages: Spanish and Quechua.

**11/02/09.** The CLF honored the popular musician Milton Tadeo Carcelén.

**12/02/29.** The Organic Law on Elections and Political Organizations is approved.

**13/02/09.** The Secretary General of the CLF, Francisco Vergara, discredited the published accounts of his supposed resignation from the CLF in order to return to his post in the National Electric Corporation.

**17/02/09.** The Law on Food Sovereignty was approved

**17/02/09.** The CLF honored the Pichincha College of Attorneys for reaching its 100<sup>th</sup> anniversary as a foundation.

**17/02/09.** The President of the CLF and various Assembly members sent a floral display to the monument for former deputy Jaime Hurtado on the tenth anniversary of his killing.

**18/02/09.** The Forum for Presidents of the Legislative Bodies began on the topic of “Political Analysis and Identification of Opportunities in Crisis Moments”.

**19/02/09.** The mayor of Cuenca declared the Presidents of the Latin American parliaments as “distinguished guests.”

**26/02/09.** The Law on the Election of Ecuadorian Representatives to the Latin American Parliament was approved.

**26/02/09.** The President of the CLF, Fernando Cordero, met with Mexican Assembly members Cuauhtémoc Sandoval, José Antonio Almazán, Aleida Álvarez, Armando Barreiro and Cuauhtémoc Velasco to discuss the legal situation of Mexican citizen Lucía Morett, a survivor of the Colombian bombing in Angostura.