

THE  
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# Report on the Legislation and Oversight Commission

## **Ecuador**

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## **ACRONYMS**

CLF	Legislation and Oversight Commission
CNE	National Electoral Council
CNJ	National Court of Justice
CNNA	National Council on Childhood and Adolescence
CONAMU	National Women's Council
CONESUP	National Council on Higher Education
CPPCS	Council on Citizen Participation and Social Control
FENAJE	National Federation of Judges of Ecuador
ID	Izquierda Democrática
MPD	Movimiento Popular Democrático
PAIS	Alianza Patria Altiva y Soberana
PSC	Partido Social Cristiano
PSP	Partido Sociedad Patriótica
TCE	Litigious Electoral Tribunal

## **I. Introduction**

This report covers the legislative process taking place in the country through January, 2009.

The work of the Legislation and Oversight Commission (CLF) grows more arduous every day; given the sense of urgency in passing laws, especially those mentioned in the transitory provisions of the Constitution, there are many different unions and organizations who want to participate in the writing process, making debate a lengthy affair. The participation of a variety of social sectors has been consistent; the specialized commissions have listened to their arguments for and against the different draft projects in an effort to demonstrate and carry out a deliberative democratic process.

The report's different sections are: the work of the Specialized Commissions (on Civil and Penal Law; and on Reform of the State and Public Management); the work of the Commission on Oversight and Political Control; the discussions and decisions of the Plenary of the CLF; the CLF's relationships with other branches of government, specifically over the selection process for members of the Council on Citizen Participation and Social Control (CPCCS); and, to spotlight a controversial issue, the debate over the Draft Organic Law on the Judicial Branch.

Finally, we include a chronology of the most important legislative events.

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

### *Commission on Civil and Penal Law*

On January 5, 2009, the president of this Commission, María Paula Romo (PAIS), invited representatives from all the sectors tied to the judicial branch to share their concerns and input for the draft Organic Law on the Judicial Branch.<sup>1</sup>

Meanwhile, the Commission also released a majority report in favor of the draft Reform Law on the Penal Procedural Code and Penal Code (340 articles, 11 transitory provisions and 28 provisions that reform or repeal existing law). The report argues in favor of: a) the need to increase the responsiveness and effectiveness of the system for oral criminal proceedings to speed up the judicial process; b) the need for a Public Defender system to improve the functioning of the accusatory system; c) the incorporation of constitutional principles that would allow the State to serve as a guarantor rather than prosecutor, enabling it to punish certain criminal offenses through different means than imprisonment; d) the need for psychological counseling in domestic violence cases, as well

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<sup>1</sup> For more on this see below "Controversy over the Draft Organic Law on the Judicial Branch".

as e) the incorporation of protective custody as a precautionary measure in some exceptional cases.<sup>2</sup>

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

In the context of restructuring the Organic Law on Elections and Political Organizations, on January 7, 2009, this Commission organized a discussion forum attended by the President of the National Electoral Council (CNE), the President of the Litigious Electoral Tribunal (TCE), as well as representatives from different civil society and student organizations. Norman Wray (PAIS), the Commission's President, explained that the draft Law addresses five major areas: i) mechanisms for joint political responsibility (Executive/Legislative); ii) elimination of party influence in judicial or oversight authorities; iii) incentives for citizen participation; iv) democratization of the electoral system; v) strengthening of political representation. Wray explained that the draft is an attempt to develop a Democratic Code.

Below we summarize some of the draft Law's most important points:

- The law organizes the Judicial Branch between the CNE and TCE.
- It establishes an electoral system based on the principles of proportionality, equal voting rates, equity, parity and rotation of power between men and women, as well as equilibrium between urban and rural communities.
- Voting is optional for: i) persons between 16 and 18 years of age, ii) persons over 65, iii) Ecuadorian citizens residing in the exterior and iv) members of the Armed Forces and National Police Force.
- The law allows citizens to implement the mechanisms of direct democracy, guaranteeing their right to submit substantive legal proposals and proposals for constitutional reform; it also recognizes the option of calling for popular consults or referendums.
- The law allows the participation of national and international observers in elections.
- Voting rules can take different forms: i) open list, ii) preferential vote, and iii) closed list.
- It prohibits the use of government structures or resources, as well as government publicity, at all levels of government, towards the benefit of a particular political organization or candidate, in full compliance with the provisions in the Constitution.

On January 20 the Commission heeded the advice of the TCE on the draft, which argued that it was necessary for the Commission to serve as the authority to evaluate and apply sanctions – whether monetary (fines) and/or administrative (removals) - for electoral infractions.

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<sup>2</sup> Press Release. "Comisión Legislativa busca mecanismos para agilizar el proceso penal", 1/6/09. Bulletin N° 372. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=16820&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16820&Itemid=1).

### **III. Commission on Oversight and Political Control**

On January 12, 2009, the Commission shelved the ongoing political trial against the Minister of Transportation and Public Works, Jorge Marún. The decision was based on the lack of evidence presented by the Assembly member, Galo Lara (PSP), who initiated the investigation. In the Commission's judgment, this information was based on contract documents that were never executed; therefore, it resolved to send the file back to the 76 Assembly members so they might perform an analysis and resolve whether there were sufficient grounds to initiate a new investigation and trial.

### **IV. Discussions and decisions of the CLF Plenary**

#### *General Topics*

In its first session of the year, January 6, 2009, the Plenary's first move was accepting the resignation of Diego Borja (Poder Ciudadano/ID), who was appointed as the Coordinating Minister on Economic Policy. The session continued with expressions of solidarity for the Palestinian people from different Assembly members. The Plenary produced a resolution on the ongoing Middle East conflict that consisted of four points: i) condemning Israel's bellicose behavior in Palestine; ii) demanding investigation and criminal proceedings against the responsible parties; iii) joining the call for a ceasefire; and iv) urging the Andean Parliament to make a statement on the subject.<sup>3</sup>

On January 15 President Correa presented his second annual government report to the CLF. The main focus of his address was on economic and financial issues. The President noted as the main achievements from his second year in power the approval of the Constitution and successes in economic policy. Other mentioned advances were the restructuring of ministries, secretaries and councils. He also denounced bankers, journalists and some business sectors as enemies of the ongoing process of change. While criticizing the mass media, he emphasized the need to create alternative media outlets that would allow citizens to better make up their own minds.<sup>4</sup>

#### *Draft Mining Law*

In the plenary session on January 12 the CLF held the second debate on the draft Mining Law. The Commission on Economic Development and Production reported that the draft included inputs from public and private institutions, social organizations, and environmental and indigenous movements, among others. A minority report warned that the draft was designed to benefit transnational businesses before nationally based businesses. The Vice Minister of Mining, José Serrano, participated in the discussion as a

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<sup>3</sup> Online:

[http://www.asambleanacional.gov.ec/index.php?option=com\\_docman&task=doc\\_download&gid=123&Itemid=188](http://www.asambleanacional.gov.ec/index.php?option=com_docman&task=doc_download&gid=123&Itemid=188).

<sup>4</sup> Press Release. "Régimen de desarrollo que privilegie al ser humano sobre el capital, otro puntal del Gobierno", 1/15/09. Bulletin N° 459. Online:

[http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=16920&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16920&Itemid=1).

representative of the Executive branch. In the debate, the PAIS Assembly members argued that the law protects sovereignty, the rights of women and children, and asserted that it was developed in consultation with indigenous peoples and nationalities. The debate concluded with the approval of the Mining Law (50 votes in favor, 6 against, 3 blank, and 6 abstentions).

A few days after it was approved, President Correa partially vetoed the law (a minimal veto over structuring issues). On January 26, the Plenary discussed the partial veto sent by the Executive, which was approved with 50 votes in favor, 3 against, 2 blank and 10 abstentions. Once the Law comes into effect, a six month period will begin in which regulations will be developed for its practical application, as well as negotiating procedures for mining contracts.

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

On January 14 the Plenary started its first debate on the draft Organic Law on Elections and Political Organizations (396 articles, four transitory provisions, and three provisions that reform or repeal existing law), focused on the scope of the proposal which included in a single legal text all regulations about the principles ruling the electoral system as well as the related rights and duties. On January 19 the debate continued. The Plenary focused on creating incentives for citizen participation to make the electoral system more democratic, as well as boosting representation for Ecuadorians in the exterior by creating electoral councils outside of the country. On a related note, the Plenary incorporated proposals from the Participación Ciudadana organization on national and international electoral observation. It also discussed the powers and duties of the TCE in evaluating electoral disputes, as well as its autonomy and independence, given that its members will have the ranking of judges. The CLF made a few adjustments from the first debate to the sections of the report on publicity and electoral spending – issues that were not clearly defined. For elections to fill multiple posts, the members of the Commission argued in favor of an “open list” system and a “continuous divisors” method for assigning seats to reflect majority preference. This opens up the possibility for the voter to make their selection of candidates without being restricted to a single party or political movement.<sup>5</sup>

### *Other laws*

In the Plenary session on January 14 the first debate took place on the draft Reform Law on the Labor Code, Civil Service Law and Public Servant Administration, and Standardization of Compensation in the Public Sector. The Plenary debated parental leave, to establish a shared responsibility for both parents. The leave would be for 15 days with the same pay rate and 25 days in the case of a premature or ill baby. This right was based on provisions in the Constitution and the Code on Children and Adolescence. The proposal was supported by the majority of the Assembly members and all of their commentary was directed at the Commission on Labor and Social Security, which is in charge of writing the

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<sup>5</sup> Press Release. “Ley Electoral garantizará participación ciudadana en asuntos de interés público”, 19/1/09. Bulletin N° 475. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=16944&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16944&Itemid=1).

draft law. On January 30, in a plenary session, the draft was approved, making paternal leave a matter of law.

On January 26 was held the first debate on the draft Law on Elections for Latin American Parliament Members presented by the Commission on Reform of the State and Public Management. The Commission argued that Ecuador should maintain a permanent position in the Parliament, given that its legal foundation is in accordance with the International Agreements Ecuador has signed. In the Plenary, Wray, representing the specialized Commission, suggested working on this law in conjunction with the Organic Electoral Law.<sup>6</sup>

After December 31, the President's office voiced an objection to the section of the draft reform law on the Law on the Foreign Service that addresses the formation of the Disciplinary Commission of the Ministry on Foreign Relations, the authority that judges the conduct of ambassadors. On January 26 the plenary passed it into law, incorporating the suggested changes.

## **V. The CLF's relationships with other branches of government**

### *Appointing members to the CPCCS*

Throughout the month of January the merit-based competition for naming the members of the temporary CPCCS continued to develop. This competition, which started in December, was organized by the CLF's Commission on Social Participation. Below we provide a brief summary of the process:<sup>7</sup>

- On January 2, 2009, the skills and knowledge test was held for the approved candidates.
- On January 3 a list of 24 finalists was published, ordered by the highest score, gender equity and other measures of affirmative action laid out in the directives that regulated the process.<sup>8</sup>
- From January 4 through 10, there was a period for challenging nominees and resolving the challenges that should have culminated in the publication of final results, followed by the appointment and swearing in of the new CPCCS on January 11. Given the requests for re-evaluation by some of the candidates, the Commission decided to present a motion before the CLF to request a complete reevaluation process.
- On January 11, in an extraordinary session, the Plenary of the CLF passed a resolution extending the term of the competition to allow a complete reevaluation and a new period for challenges.

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<sup>6</sup> Press Release. "Elección de Parlamentarios Latinoamericanos se incorporaría a Ley Electoral", 26/1/09. Bulletin N° 521. Online:

[http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17004&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17004&Itemid=1)

<sup>7</sup> For more detail on the competition the Carter Center is about to publish a timely report on the subject.

<sup>8</sup> This directive was approved by the plenary of the CLF on December 18, 2008. Online:

[http://asambleanacional.gov.ec/blogs/comision\\_8/blog/2008/12/18/el-instructivo-paso-a-paso/](http://asambleanacional.gov.ec/blogs/comision_8/blog/2008/12/18/el-instructivo-paso-a-paso/)

- From January 13 to 15 there was a period for reevaluations of the candidates who had not already requested one.
- On January 15, the Commission on Social Participation published a new list of 24 finalists.
- From January 17 through 20 new challenges and reevaluation requests were received.
- On January 22 and 23, 2009, public hearings took place accompanied by media representatives and national and international observers so the six challenged candidates could present evidence in their defense.
- In a session on January 23 the Commission accepted two of the challenges that had been filed, leading to the final definitive list of the 24 members of the CPCCS.
- In a session on January 26, 2009, the plenary of the CLF resolved in a point of order to address the selection process for members of the temporary CPCCS. Representatives of the minority parties, such as MPD, Pachakutik and PSC criticized the process for being doomed from the outset. After hearing speeches from a dozen Assembly members, a motion to annul the process and restart it again was submitted to a vote by an MPD Assembly member. The motion was rejected by the PAIS majority, leaving the final membership of the temporary CPCCS intact, with 47 votes in favor, 6 abstentions, and no votes against. Immediately afterward, the 14 members were sworn in. Their names are included below:

*Principals*

1. Guamán Gualli Julián
2. Banegas Cedillo Mónica Eulalia
3. Vera Quintana Carlos Manuel
4. Salazar González Betsy Ana
5. Cornejo Zambrano Pablo Ignacio
6. Silva Chicaiza Emma Roxana
7. Ruiz Falconí Oswaldo Vinicio

*Alternates*

8. Mosquera Aguirre Gabriela Catalina
9. Alfaro Reyes Gil Eloy
10. Yambay Aucancela Mariela Concepción
11. Ortega Paucarina Edgar Marcelo
12. Pachacama Chacha Jaqueline del Rosario
13. Cárdenas Ramírez César Wilfrido
14. Mosquera Castro Leydi Viviana

## **VI. Controversy over the Draft Organic Law on the Judicial Branch**

In accordance with the First Transitory Provision of the Constitution, in which the approval of legislation to regulate the Judicial Branch is established as a priority, on December 18, 2008, President Correa submitted the Draft Organic Law on the Judicial Branch to the CLF.<sup>9</sup> From its introduction, the draft has sparked a heated debate among the different sectors with ties to the judicial system in Ecuador. Some of the draft law's principal points are summarized below:

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<sup>9</sup> To Access the complete proposal submitted by the President, see: [http://www.asambleanacional.gov.ec/index.php?option=com\\_docman&task=doc\\_download&gid=81&Itemid=188](http://www.asambleanacional.gov.ec/index.php?option=com_docman&task=doc_download&gid=81&Itemid=188).

- The Organic Law on the Judicial Branch introduces changes in its structure; it incorporates the Attorney General of the State and the Ombudsman; the Judiciary Council becomes a representative body of the entire branch; and the powers and duties of the different governmental bodies associated with it were altered.
- Judges take on the role of guarantors of basic rights for citizens and should take a more active role in managing the processes under their control.
- The jurisdiction of the Judiciary Council expanded, now that, in terms of administration, it is in charge of the Judicial Branch. However, it cannot interfere in jurisdictional decisions.
- Now that the Attorney General and Ombudsman have joined the Judicial Branch, the public servants in these organizations must follow the same standards of professionalism and competence in legal matters.
- Thus, only judges account for the judiciary career; prosecutors for the prosecutors career and public defenders for the defense career. All other public servants, including those who are employed in the Judiciary Council, are part of the administrative civil service branch.
- Within 180 days the entire judicial apparatus will be reorganized. To remain eligible, all employees should participate in evaluations.
- The Attorney General will have autonomy on administrative and financial issues, but sanctions of its employees will pertain to the Judiciary Council.

This draft project falls under the purview of the specialized Commission on Civil and Penal Law, which received input from the following individuals and institutions.

- Association of Notary Employees of Pichincha: suggestions on the notary position, pay rates, contracting processes, and social security for employees.
- Judicial civil servants: observations on articles related to ensuring continuity in the profession.
- Attorney General of the State: Despite supporting the majority of the draft document, the Attorney General Washington Pesántez criticized the lack of autonomy on issues such as appointments, budgets and personnel management. .
- José Vicente Troya (President of the National Court of Justice (CNJ)), representatives of the National Foundation of Notaries, representatives of the National Court of Criminal Justice and Assembly member Cesar Rodríguez (PAIS) shared their observations on a few of the articles.

*The Commission on Civil and Penal Law's discussion with different social sectors tied to the justice system*

On January 2, the president of the CNJ presented his observations on the draft Justice System Code, promoting a new role for the Judiciary Council as the governing authority over the Branch, which would improve the administration of justice.

On January 7 there was a meeting between the Attorney General, the president of the CNJ, and the Minister of Justice. At the meeting the Attorney General stated his opposition to the new role of the Judiciary Council. He stated that “depending on the Judiciary Council

would contaminate [the branch's] processes given its history of problems. This has nothing to do with any personal issue; it has simply been a highly inefficient organization in its 12 years of existence".<sup>10</sup>

Along similar lines, on January 19 the judges belonging to the National Federation of Judges of Ecuador (FENAJE) declared a permanent assembly. According to FENAJE former president, Fidel Chiriboga, this move was triggered by the lack of consultation with the professional group at the time of making decisions with regard to the judicial career to be included in the draft law. On January 20, the Commission on Civil and Penal Law heard from representatives of FENAJE, who stressed the need for maintaining the different tracks for judges, prosecuting and defense attorneys. In addition, they requested the inclusion of a temporary provision that would allow judges to end the classes they are teaching through the rest of the academic year to later return to full time practice as judges. The Commission also heard from the president of the provisional directory of Family Service Agents.<sup>11</sup>

On January 23 there was an intense verbal exchange between the Attorney General and the Minister of Justice, Gustavo Jalkh. The Attorney General expressed his objections to naming the Judiciary Council as the authority to determine the appointments, creation and removals of judges and other officials in the judicial branch. For his part, Jalkh argued that this change would actually strengthen the level of autonomy in the administration of justice.<sup>12</sup> Afterward, on January 27, the Attorney General announced that he would resign if the draft law was approved. However, on January 28, the PAIS Executive Committee met with the Coordinating Policy Minister and worked out a deal that allowed the Attorney General to work in conjunction with the Judiciary Council on the appointments of the judicial officials in the Attorney General's Office.<sup>13</sup>

### *Discussions of the Plenary*

On January 9, the president of the specialized Commission on Civil and Penal Law submitted the majority and minority reports to the Council on Legislative Administration. The minority report was submitted by Assembly member Vicente Taiano Álvarez (PRIAN), who argued that he opposed the draft law because of how it affected the autonomous organizations in the judicial sector and the supposed discrepancies between its text and the constitutional principles on the issues of administrative, economic and financial autonomy for these organizations.

On the same day the first debate on the draft Organic Law on the Judicial Branch took place, in which the administrative, financial and budgetary autonomy that the Attorney

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<sup>10</sup> Political Summary. "El control a la Fiscalía agita el debate", El Comercio, 1/7/09. Online:

[http://www.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=160022&anio=2009&mes=1&dia=7](http://www.elcomercio.com/solo_texto_search.asp?id_noticia=160022&anio=2009&mes=1&dia=7).

<sup>11</sup> Press Release. "Comisión de lo Civil refuerza análisis del Código Orgánico de la Función Judicial", 1/20/09. Bulletin N° 486. Online:

[http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=16953&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16953&Itemid=1)

<sup>12</sup> Political Summary. "El fiscal Pesántez se va contra Jalkh", El Universo, 1/23/09. Online:

<http://www.eluniverso.com/2009/01/23/1/1355/3E7BD3925E92459E92A33BDF17C524F2.html>

<sup>13</sup> Political Summary. "Fiscal participará en selección de funcionarios judiciales", El Universo, 1/30/09.

Online: <http://www.eluniverso.com/2009/01/30/1/1355/65F102E769F24AD1B392665FD3968EC1.html>

General had insisted upon was a focus. On January 21 the debate continued with the presence and input of the president of the CNJ, the Attorney General, a representative of the President, a representative of the Judiciary Council, and some judges from the CNJ. Some points of discussion included the need to guarantee autonomy for the Attorney General and Ombudsman, the creation of justices of peace with fair compensation levels, the creation of indigenous prosecuting offices, and the importance of guaranteeing the resolution of citizen demands. However, various Assembly members requested that the debate take a wider view than simply the Attorney General's Office. The second debate and vote on the law was postponed for early February.

## **CHRONOLOGY**

**01/06/09.** The resignation of Assembly member Diego Borja is accepted; Borja goes on to serve as the new Coordinating Minister for Economic Policy, and his replacement, Roberto Espinel, was accepted.

**01/06/09.** The CLF expressed its solidarity with the Palestinian people via resolution.

**01/06/09.** The debate opened on the draft Law on the Judicial Branch.

**01/11/09.** The resignation of Assembly member María José de Luca is accepted, as is her replacement Gina Godoy.

**01/11/09.** The CLF decided to extend the deadlines for the selection process for the CPCCS.

**01/12/09.** The Mining Law is approved.

**01/14/09.** A contract is signed between the CLF and CONESUP for consultation in the development of draft laws.

**01/14/09.** The first debate takes place on the Organic Law on Elections and Political Organizations.

**01/19/09.** The debate continues on the first report on the draft Organic Law on Elections and Political Organizations.

**01/21/09.** The debate continues on the first report on the draft Organic Law on the Judicial Branch.

**01/23/09.** Results of the survey conducted by the Santiago Pérez firm show a high approval rating for the CLF (73% report confidence in its work).

**01/26/09.** The selection process for the members of the temporary CPCCS culminates with the swearing in of the CPCCS members.

**01/26/09.** The National Journalists Union awards the National Journalism Prize in the Communication Technology category to the National Constituent Assembly via its website.

**01/27/09.** The International Forum on Territorial Organization was held in Cuenca, coordinated by the CLF, the Municipal Association of Ecuador, the National Symposium Commission on Urban Development and the Government of Aragón (Spain).

**01/28/09.** A public forum was held to analyze the draft Law on the Judicial Branch, with representatives from various academic sectors and judicial unions in attendance.

**01/29/09.** The Commission on Reform of the State and Public Management held a “Discussion Forum on Political Organizations and Parties.”