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

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## ACRONYMS

AGD	Agency for the Guarantee of Deposits
CAL	Council on Legislative Administration
CEDCUT	Ecuadorian Center of Class-Conscious Organizations
CEOSL	Ecuadorian Center of Free Labor Organizations
CLF	Legislative and Oversight Commission
CNE	National Electoral Council
FLACSO	Latin American University for Social Sciences
FARC	Revolutionary Armed Forces of Colombia
FUT	United Worker's Front
IESS	Ecuadorian Institute on Social Security
ISSFA	Social Security Institute of the Armed Forces
ISSPOL	Social Security Institute of the Police
PAIS	Alianza Patria Altiva y Soberana
PSP	Partido Sociedad Patriótica
SIP	Inter American Society of the Press

## **I. Introduction**

During the month of March, the Legislative and Oversight Commission (CLF) received partial vetoes from the Executive branch of some of its time sensitive laws, including the Organic Law on the Judicial Branch, the Organic Law on Elections and Political Organizations, the Organic Law on Food Sovereignty and the Law on the Classification of Genocide and Ethnic Cleansing (which reforms the Penal Code). At the same time, an intense debate raged over the drafts of the Reform Law on Social Security and the Reform Law on the Ecuadorian Institute of Social Security (IESS) Bank; in addition to the legislators, other debate participants included the directors, members and retirees from the Institute.

This report covers the legislative process that has taken place in the country during March 2009. It is divided into the following sections: i) The Work of the Specialized Commissions, ii) Oversight and Political Control, iii) Discussions in the Plenary of the CLF, iv) Controversy over the Law on the IESS Bank and v) Chronology.

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

### *Commission on Civil and Penal Law*

On March 2, María Paula Romo, the president of the Commission, expressed her agreement with the Executive's partial veto to the section of the Organic Law on the Judicial Branch that dealt with the number of judges who would comprise the various courts in the National Court of Justice; essentially, that each judge should participate in two areas of the court. She also expressed her support for clarifying the role of the National Judiciary Council in the process of selecting prosecuting and defense attorneys, but only after the Attorney General and Ombudsman Office have presented the total number of personnel they require.

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

The circulation of the draft reforms to the Law on Companies was started on March 4. The Law's objective is to reform the legal structure that governs the participating shareholders in public companies, especially those that are subject to the control of the Superintendence of Companies. The draft project was sent to the Quito Intendance of Companies, the Superintendence of Companies, the National Federation of Chambers of Commerce, the Industrialist Chamber of Pichincha, the Small Business Chamber of Pichincha, and other organizations.

The President's General Legal Secretary, Víctor Pazmiño, visited the Commission on Reform of the State and Public Management on March 5 to describe the problems that arise when, in the creation of business corporations, investments are accepted from foreign legal entities, which are not always subject to the regulation of the Superintendence of Companies. Along these lines, Pazmiño emphasized the importance of making sure the law will facilitate effective regulation of the legal representatives and directors of these legally incorporated companies.

The draft building process continued on March 10 with the attendance of representatives from the Superintendence of Companies and the Agency for the Guarantee of Deposits (AGD). These delegates agreed on the importance of identifying the shareholders and/or partners in traded companies to discourage front companies, asset laundering, tax evasion and other similar crimes. Furthermore, they urged for the creation of a legal mechanism that would allow foreign investors to be registered as such.

On March 26, the Commission began its analysis of the draft reforms to the Personnel Law on the National Police and the Armed Forces. These draft Laws attempt to establish a system in the military with ascending official pay grades for officials, except for the highest ranking positions, which would be determined by the President of the Republic. The core content of these drafts was developed with advisement from the Ministries of Defense and Government, the Chief of Police and the Army, Navy and Air Force.

### *Commission on Social Participation*

On March 4, FLACSO hosted the first of a series of forums to solicit the observations of citizens and social organizations on the draft Law on Citizen Participation. In the forum “Building the Law on Participation Together,” the CLF’s vice president, Cesar Rodríguez, argued for the need to strengthen civil society through strengthening democratic social organizations. For his part, the Director of FLACSO, Adrián Bonilla, emphasized the need for authentic democratic participation to ensure a full representation of society and guarantee its participation in the decision making process.

The president of the Commission, Betty Tola, pointed to the cases of Bolivia, Brazil, Colombia and Venezuela to highlight the incidence of models of a participative budget process, social control and local governments. The FLACSO professor Santiago Ortiz Crespo stressed the importance of the role of social organizations in decision making not only at the local but also the national level, which will facilitate the decentralization of power as described in the new Constitution.

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

On March 24, the president of the Commission on Tax, Fiscal and Financial Policy, Jaime Ruiz (PAIS), announced that the Commission will investigate the banking and financial crisis that occurred in 1999, for which it requested pertinent information from the controlling authorities – the General Comptroller, the Supreme Court Of Justice, the Attorney General, the Superintendence of Banks and Companies, and the AGD – because 10 years later only three bankers had been tried and convicted. Furthermore, he indicted the Comptroller for failing to reach concrete resolutions in the various trials still in limbo as they await a final sentence.

Also on March 24, the Council on Legislative Administration (CAL) accepted the petition for a political trial against the former Minister for the Coordination of Internal and External Security Policies, Gustavo Larrea, which was submitted by Assembly member Julio Logroño from Partido Sociedad Patriótica (PSP). Assembly member

Logroño accused former Minister Larrea of negligence in carrying out his duties and of violations of the law. The alleged negligence is owed to the lack of action in response to the FARC encampments on Ecuadorian territory, which Gustavo Larrea would have been informed of days prior to the Colombian military operation in Angostura one year ago.

Julio Logroño's petition was submitted for the consideration of the Commission on Oversight and Political Control on March 25. On March 30, the Commission approved the initiation of the next step in the investigation after it had verified that the petition fulfilled all of the legal requirements. In this context, former Minister Larrea expressed his willingness to participate in the trial against him, in order to demonstrate the alleged "conspiracy" against him and the Government.

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

##### *General Topics*

The Commission on Tax, Fiscal and Financial Policy organized a seminar between March 11 and 13 on "The International Financial Crisis: impact and points of departure for Ecuador and Latin America"; conference participants came from Mexico, Argentina, Peru and Ecuador.

On March 15 the CLF responded to the report by the Inter American Society of the Press (SIP) which asserted that journalists lacked free access to the CLF's different spaces. The Commission responded that it had distributed press credentials to approximately 500 correspondents, journalists, photographers and technical staff, who had not made any complaints or criticisms of any restrictions. The CLF also pointed out that all of its information could be accessed on its web page as a primary source. Fernando Cordero rejected the SIP's report, inviting its representatives to Ecuador so that they could visit the CLF to see for themselves the high level of transparency with which it handles and releases information. Cordero also announced that he was receptive to the idea of opening the doors of its sessions to citizens, as long as basic security measures were in place.

##### *Reform Law on the Penal Code*

On March 3 the first debate took place on the draft Reform Law on the Penal Code which separately classifies the crimes of genocide and ethnic cleansing, with the intended sentence of between one and 25 years in prison for those who commit them. The draft proposes to punish the perpetrators of mass killings of ethnic groups and for both physical and mental wounds inflicted. The Plenary approved the draft on March 9 with 47 votes in favor.

##### *Law on Companies*

In the plenary session on March 24, the first debate was held on the draft Reforms to the Law on Companies. The report presented by the Commission on Reform of the State and Public Management reflected its support for the draft submitted by the Executive, based on the caution that should be exercised where the State's interests are concerned.

The draft proposes a change to article 18 which relates to the normalization of foreign indirect investment. It also establishes parameters for the participation of foreign companies in social capital, in a limited capacity, as well as the registration of foreign companies.

#### *Reform Law on Social Security*

In the plenary session on March 3 the first debate took place on the draft Reform Law on Social Security. The report described the draft law as an attempt to increase social security and rehabilitation for the workforce, which is why the report approved of a reduction of the pension amount when retirees begin working again and return to paying into the IESS. For her part, Betty Amores (PAIS), president of the Commission on Labor and Social Security, explained that the Law tries to provide the IESS with tools to be able to provide for the needs of retirees and other members by expanding mortgage credits that would allow the mortgages to be transferred from private banks to the IESS. In relation to the possibility of employer defaults she explained the need for the formation of employer default agreements with the business sector that include a grace period, the review of reserve funds, and the reduction of the time period for unemployment payments. On March 9 the second debate on the draft went on: it reiterated that no fines or surcharges should be applied to loan requests, as well as the proposals that there be a 40% reduction of the state's payments to retirees who become employed and a 60 day period for the establishment of some rules for the Director's Council of the IESS. The plenary approved the draft with 43 votes in favor.

#### *Other laws*

In the plenary session on March 24, 57 Assembly members voted to approve the draft Reform Law on Diplomatic Privileges and Immunities, which sought to establish the benefits granted to the members of the Foreign Service who serve in diplomatic posts in consular offices (including technical services and additional expenses).

#### *Vetoes from the Executive*

- *Partial veto of the Organic Law on the Judicial Branch.* On March 3, the Plenary approved the partial veto the Executive sent on the Organic Law on the Judicial Branch.
- *Veto of the Organic Law on Elections and Political Organizations.* On March 16, President Correa sent down his partial veto of the law, offering 34 observations, of which the most notable were: regulation of the different aspects of the electoral system and representation; extending the election period from the date of convocation from 90 to 120 days; the right of reply in the mass media; and the prohibition of anonymous campaign donations, among others.
- *Partial veto of the Organic Law on Food Sovereignty.* On March 20, the Executive partially vetoed 11 articles and 3 provisions of the law, including the duties of the State, land access, food subsidies, foreign trade, nutritional quality, and the formation and functions of the Consultative Council on Food Sovereignty, etc.
- *Partial veto of the draft Law on the Classification of Genocide and Ethnic Cleansing (which reforms the Penal Code).* The veto was signed on March 25 to alter the sentences established for genocide and ethnic cleansing. The veto

## **V. Controversy over the Law on the IESS Bank**

On the topic of the creation of the IESS Bank, also called the Members Bank, on March 11 the Commission on Tax, Fiscal and Financial Policy was visited by representatives of the United Worker's Front (FUT), the Ecuadorian Center of Class-Conscious Organizations (CEDOCUT), the Ecuadorian Center of Free Labor Organizations (CEOSL) and representatives of retirees. The members of this specialized Commission explained that the Bank would not be fully controlled by the Executive but would also be under the direction of IESS members and retirees. The representatives expressed their concern that the Bank would turn into "petty cash" for the sitting government of the moment, to which the Commission's president replied that this would not happen given that its investment portfolio is designed for stability and security.

The first debate on the draft law took place on March 24. The report by the Commission on Tax, Fiscal and Financial Policy suggested the creation of a public financial institution that had full technical, administrative, budgetary and financial autonomy. The services provided by the IESS Bank would have to meet the criteria of the investment bank. The director's board would consist of five members: the President of the Director's Council of the IESS, a member appointed by the Director's Council of the IESS, a representative of IESS members, a representative of retirees, and a representative of employers. During the debate it was emphasized that the creation of this bank not only fulfills the constitutional mandate but also the aspirations of retirees and other members. Assembly members also pleaded for the possibility of the bank providing unsecured loans, secured loans, and mortgage credits to directly benefit its members. One of the most controversial issues was the majority presence of representatives of the State on the Bank's director's board. For some opponents this could lead to use of the bank as a source of "petty cash" for the sitting government.

In the context of this debate, on March 27, retirees marched in Quito to challenge this proposal, request an increase in pension payments and demand the resignation of Ramiro González, head of the Director's Council of the IESS. According to Edgar Saravia, President of the Confederation of Retirees and Pension holders of Montepío, Ecuador, the bank will be tailored to the preferences of the Executive, leaving the needs of retirees to the side. For his part, the president of the Federation of Retirees, Hernán Naranjo, expressed disagreement with the selection process for the members of the bank's director's board: rather than a merit based competition he proposed that they be selected through electoral colleges. Retirees argued that a debtor of the IESS, such as the State, should not preside on its director's board. They also find it problematic that the director of the Director's Council of the IESS would also preside over the bank. The protestors on March 27 included older women and men, who, in addition to protesting some of the draft proposal's provisions, also opposed the reforms to the Law on the IESS, and also petitioned for a bonus payment of \$70 USD for "Senior Citizen's Day."

Meanwhile, the spokespersons for the IESS, Felipe Pezo and Luis Idrovo, expressed their concerns to the CLF president about the serious consequences that would follow

from any politicization of the bank. They also announced that the IESS Director's Council would present an alternative proposal for structuring the bank. They said they had felt left out by the Executive in the development of the proposal.

Other discussion topics focused on whether the bank should be one or two stories, and on the transfer of some State owned businesses (Hotel Quito, Cementos Guapán and Ingenio Azucarero del Norte) to the new bank. During the last week in March and just before the second and final debate on the subject, the president of the Commission on Tax, Fiscal and Financial Policy, Jaime Ruiz, clarified that the bank would not be in competition with other commercial banks.

On March 31, the Commission on Tax, Fiscal and Financial Policy requested a seven day extension for the CLF prior to presenting its report for the second debate, in order to hear and act on the feedback that the Commission had been hearing in its meetings with representatives of retirees and other IESS members.

### **CHRONOLOGY**

**03/02/09.** The Executive issued a partial veto of the Organic Law on the Judicial Branch.

**03/04/09.** The forum "Building the Law on Citizen Participation Together" took place in FLACSO in Quito.

**03/04/09.** The second forum on "Building the Law on Citizen Participation Together" took place in the University of Cuenca.

**03/09/09.** A workshop was held on Evaluating the Fundamental Principles behind the draft Regulatory Law on the Public Service.

**03/11/09.** Between March 11 and 13 the seminar was held on "The International Financial Crisis, impact and points of departure for Ecuador and Latin America".

**03/16/09.** The Executive issued a partial veto of the Organic Law on Elections and Political Organizations.

**03/18/09.** The third forum was held on "Building the Law on Citizen Participation Together" in the University of Guayaquil.

**03/20/09.** The Executive issued a partial veto of the Organic Law on Food Sovereignty.

**03/24/09.** The Reform Law on Diplomatic Privileges and Immunities was approved.

**03/25/09.** The CAL approved a recess for the CLF between April 13 and 27.

**03/25/09.** The Executive issued a partial veto of the Law on the Classification of Genocide and Ethnic Cleansing (which reforms the Penal Code).

**03/26/09.** The vice president of the CLF, Cesar Rodríguez, represented Ecuador in the second Forum for Presidents of Legislative Bodies held in Cartagena (Colombia).