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

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## **INDEX**

	Page
I. Introduction	4
II. The Work of the Specialized Commissions	4
III. Discussions in the Plenary of the Legislative and Oversight Commission	6
IV. Controversy over the Draft Organic Law on the Legislative Branch	9
 CHRONOLOGY	 13

## ACRONYMS

ASOSEL	Legislative Servants Association
CAL	Council on Legislative Administration
CIA	Central Intelligence Agency
ICSID	International Center for Settlement of Investment Disputes
CLF	Legislative and Oversight Commission
CNE	National Electoral Council
CNJ	National Court of Justice
CONASA	National Council on Health
CPPCS	Council on Citizen Participation and Social Control
GPS	Global Position System
IESS	Ecuadorian Institute on Social Security
MPD	Movimiento Popular Democrático
ONU	United Nations
WFP	World Food Program
PSP	Partido Sociedad Patriótica
PRIAN	Partido Renovador Institucional Acción Nacional
RED	Movimiento Red Ética and Democrática
UNE	National Educators' Union
UNESCO	United Nations Educational, Scientific and Cultural Organization

## **I. Introduction**

Throughout the month of June, the work of the Legislative and Oversight Commission (CLF) centered on the controversy caused by the draft Organic Law on the Legislative Branch, which stirred up a series of questions about the extent of the powers of oversight and political control that will be vested in the legislative branch. The CLF also finished processing the draft Law on Educator Standards and Pay Scale; a legal initiative put forth by the government that had been rejected by the National Educators' Union, a union that mainly represents teachers from public education institutions. The CLF received the Executive's partial veto of the draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System. Finally, this month also featured the beginning of the debate process for the Law on the Council on Citizen Participation and Social Control.

This report covers the legislative process that took place between June 1<sup>st</sup> and July 2, the date on which the Organic Law on the Legislative Branch was approved. The sections include:

- The Work of the Specialized Commissions (on Civil and Penal Law, Reform of the State and Public Management and Social Participation)
- The discussions that took place in the Plenary of the CLF
- The debate over the Draft Organic Law on the Legislative Branch.
- Chronology of the most important events

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

### *Commission on Civil and Penal Law*

During the month of June, the Commission's work focused on the debate over the Draft Organic Law on the Legislative Branch (see later "Controversy over the Draft Law").

The members of the Commission met with representatives of the Legislative Servants Association (ASOSEL) in order to explain the protections that the draft Organic Law on the Legislative Branch provides for the job stability of these officials. The Commission specified that under the new law the public servants working in the Legislative Branch will be selected through a merit-based competition; in addition, it asked the ACOSELI for assistance in strengthening the image of the Legislative Branch as an institution, which has deteriorated over previous sessions and has lost some public approval.

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

On June 4, the Minister of Education, Raúl Vallejo, met with the Commission on the Reform of the State and Public Management to discuss the content of the draft Reform Law on Educator Standards. Vallejo argued that they needed to avoid corporative-style relationships between the government and the teacher training institutions, which make it difficult to implement public policies that are beneficial for education. Vallejo also refuted the claims that 12,000 open teaching positions would be

filled by affiliates of the party Movimiento País; he insisted that these positions would be filled by educators who had passed the knowledge tests administered by the Ministry of Education

For her part, the president of the National Educators' Union (UNE), Mery Zamora, informed the Commission that, although there are some notable advances in this draft law, such as the new requirement of a year spent training in a rural environment prior to beginning to practice professionally, there are some provisions that worry her Union. One of these provisions relates to the possibility that department heads will not be considered educators per se, which would leave them outside of the protection of the law. The UNE is also concerned that outright dismissal is a possible sanction for teachers without any type of due process, which would violate Article 76 of the Constitution on rights to protection. Finally, Zamora also stated that the law would likely lead to the lack of an adequate defense for the teacher training schools because they are not represented among the Commissions for Professional Defense. Zamora proposed to hold a major national debate to allow the discussion about the Law's reforms to continue with the participation of universities, pedagogical institutions, parents, students, teachers and the Ministry of Education.

The Commission was also visited by Magaly Robalino, who represented the UNESCO office in Quito. Robalino urged the diverse actors involved in education to promote a substantial national agreement that would guarantee a high quality education for the whole country. The expert Robalino emphasized that all educators should be committed to the education vision of their institution and the education vision of the whole country.

Finally, during the time frame covered in this report, the Commission also made progress in its analysis of the draft reforms to Mandate 14, which served to establish a one-time 90 day extension for the National Council on Evaluation and Accreditation for Institutes of Higher Education in Ecuador (CONEA) to present a technical report on the status of the country's institutions of higher education before the National Council on Higher Education (CONESUP) and the Legislative Branch. During the debate over the reforms, representatives from CONEA, CONESUP and SENPLADES all participated.

#### *Commission on Social Participation*

On June 4 the Commission was visited by representatives of the National Council on Health (CONASA), as well as representatives of women's organizations, who came to discuss and contribute to the draft Organic Law on the Council on Citizen Participation and Social Control. Hugo Noboa, representing CONASA, argued that the draft should call for the creation of responsible units for promoting citizen participation and social control in all of the public entities financed by the State. Noboa added that in order to ensure that citizen participation rights would be promoted, an overarching authority would need to be created, and in the case of the health sector, that authority has been CONASA. Representing the women's organizations, Leonor Hernández stressed the importance of values such as fairness, parity and equity for ensuring the presence of different social sectors. Hernández suggested that the roles of CPCCS president and vice president should alternate between men and women.

In an attempt to seek additional input for the draft CPCCS Law, on June 24 the Commission invited representatives from the following authorities: President of the CPCCS, Julián Guamán; Comptroller, Carlos Pólit; Ombudsman, Fernando Gutiérrez, the Superintendent of Savings and Banks, Gloria Sabando; the Superintendent of Telecommunications, Fabián Jaramillo and, the Superintendent of Companies, Pedro Solines. Guamán praised the democratic process that has been used for developing the new laws, which has allowed citizens to participate and express their opinions. Guamán also recommended the inclusion of an article that would transfer the jurisdiction of the National Court of Justice to the members of the CPCCS, a change that would lead to more effective and efficient efforts to exercise social control and fight corruption. Sabando, for his part, described the new atmosphere of openness that had been created in her organization for the users of its financial services to express their feedback about the quality of those services. Jaramillo proposed that the draft law should include a mechanism for coordination that would direct citizen complaints straight to the Council.

Once the feedback of all of the different civil society organizations and authorities had been received and processed, on June 2 the Commission sent the report for the second debate on the draft law to the President of the CLF. The proposed law consists of 73 articles, seven temporary provisions, one provision that repeals existing law, and one final disposition. The law is on track to be discussed in a second debate within the first two weeks of July.

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

#### *Formal appearance by former Minister Gustavo Larrea*

Assembly members Marco Martínez and Rosa Elena de la Torre, both of the party Movimiento Acuerdo País, requested that the president of the CLF subpoena former Minister Gustavo Larrea to appear before the Plenary of the Commission to express his position on the allegations raised against him by the party Partido Sociedad Patriótica (PSP) over the attack on a FARC encampment in Angostura. On June 2 Larrea appeared in the Plenary of the CLF and explained that the Ministry he had presided over had received information from Colombian authorities that they were in hot pursuit of some FARC militants who had crossed over the border; however, he also explained that their attack involved the use of GPS-guided bombs that require a level of technology that Colombia does not possess (but countries such as the United States and Israel do). Larrea also insisted that Colombia had violated the norms of international law. Finally, he asked that the Commission on Oversight and Political Control investigate the incident to verify the existence of a plot orchestrated by the CIA as well as to investigate certain officials and journalists who may be receiving funds not only from the Ecuadorian government but also from foreign authorities.<sup>1</sup>

#### *Draft reforms to Title V of the Second Book of the Code on Children and Adolescents*

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<sup>1</sup> Press Release. “Ex ministro Larrea pidió investigar a funcionarios y periodistas que recibían doble sueldo”, 6/2/09. Bulletin N° 1081. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17731&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17731&Itemid=1)

The second debate on this draft law took place on June 2. The debate's point of departure was the presentation of the report made by the president of the Commission on Labor and Social Security, who stressed the need not only to establish the existence of rights for this vulnerable sector of society, but also to define the mechanisms that will serve to protect and exercise these rights. He explained the obligations of biological or adoptive parents to provide adequate nutrition. He also added that if for a variety of different reasons the parents are unable to fulfill this obligation, it will be assumed by the grandparents, siblings older than 18 years of age, and/or aunts and uncles. Ultimately, the law was approved with 64 votes in favor.

#### *Executive-sponsored draft Law on Public Safety and the State*

On June 3, President Rafael Correa sent the CLF a copy of the draft Law on Public Safety and the State, which is an attempt to establish strategies and actions to ensure citizen safety, via the creation of a system of public safety made up of public entities, policies, laws, resources, and linking procedures. In addition, the draft imagines the creation of a committee on public safety headed by the President of the Republic, the Vice President, the president of the National Assembly, the president of the National Court of Justice, the Ministers for Coordinating Internal and External Security, National Defense, and Government, the Chief of the Joint Command of the Armed Forces and the Chief of Police.

#### *Draft reforms to the Law on Educator Standards and Pay Scale*

As a result of the discussion of the draft reforms to the Law on Educator Standards on June 4, which featured the participation of Assembly member María José Carrión (PAIS), representatives of different parent and student organizations and a group of educators, a coordinating Commission was created to measure progress in educator evaluations. Carrión explained that the new permanent positions for new education techniques, which were established in accordance with article 95 of the Constitution, were established for the sole purpose of improving education, and through that, improving the futures of children and young people.<sup>2</sup>

On June 16 the first debate on the draft Law took place. Assembly member Fernando Salazar (PAIS) explained that the draft was created through the collaboration of all of the actors in the education field and it protects all of the rights of educators established in the law; in addition, he emphasized how important it was for education to serve as the foundation for the country's development, which will require that educators, parents, students, government and all of the sectors tied to education put all of their best efforts together.

The representatives of the party Movimiento Red Ética and Democrática (RED) expressed their support for strengthening education in the rural areas, but they did not agree with the decision to grant the Ministry of Education the authority to appoint and remove those in director's positions, which seems to contradict the notion that these

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<sup>2</sup> Press Release. "Coordinadora de maestros, padres de familia and estudiantes medirá avances de evaluación a docentes", 6/4/09. Bulletin N° 1101. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17753&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17753&Itemid=1)

positions would be filled through a merit based competition. For the party Movimiento Pachakutik, the draft fails to address the greatest problem facing the education system or to even address the issue of teacher retirement; the representatives of the party Partido Renovador Institucional Acción Nacional (PRIAN) expressed a similar sentiment about teacher pay levels, which in the majority of cases do not cover the costs of basic necessities, much less any additional training.<sup>3</sup>

#### *Draft Organic Law on the Council on Citizen Participation and Social Control*

In a plenary session on June 16, the first debate on this draft law took place. Betty Tola, president of the Commission on Social Participation, presented the report and went over the details of what would make up the CPCCS, how potential members would be nominated and candidate requirements and evaluation criterion, among others. Tola described a wide level of participation from diverse social sectors in the draft writing process, balanced representation of men and women in the Council membership, and the need to continue the debate on certain issues that will hopefully be concluded in time for the presentation of the report before the second debate. For his part, Julián Guamán, president of the CPCCS, stressed the need for the draft to really feature the principles of citizen participation and social control protected in the Constitution, without limiting them or parsing them down in certain instances. Guamán proposed that the councilors be under the privilege of the National Court of Justice (CNJ) and that they also be subject to citizen oversight and political impeachment. Assembly members from different parties all agreed on the project's importance, but also the need to improve its structure because it has so many regulatory articles.

#### *Partial Veto to the draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System*

On June 19, President Correa issued a partial veto to the draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System. The veto was examined in the plenary session on June 23. Betty Amores, president of the Commission on Labor and Social Security, indicated that allowing employers to directly issue payments to their workers would produce a recurring shortfall; on this point she asked that the Executive provide greater clarification. She also asked that the Plenary ratify the third temporary provision, which would mean that at the request of the interested party the IESS would issue the reserve fund payment in a period no longer than 48 hours.<sup>4</sup>

#### *CLF approves the petition to withdraw from CIADI.*

In a plenary session on June 12, the CLF approved the petition presented by President Rafael Correa for Ecuador to withdraw from the International Center for Settlement of Investment Disputes (ICSID), a part of the World Bank, on the grounds

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<sup>3</sup> Press Release. "Pleno tramitó en primer debate las reformas a la Ley del Magisterio", 6/16/09. Bulletin N° 1165. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17826&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17826&Itemid=1)

<sup>4</sup> Press Release. "Comisión de lo Laboral sugiere que pago mensual del fondo de reserva se lo haga a través del IESS", 6/12/09. Bulletin N° 1201. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17808&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17808&Itemid=1)

that the ICSID agreement undermines the State's sovereignty in managing its own economic affairs and relationships with foreign companies.

*CLF condemns the military coup in Honduras.*

On June 28, the CLF publicly announced its condemnation of the “break from democratic order by the high military commands” that led to the forcible removal of the President of Honduras, Manuel Zelaya, to transport him to Costa Rica and to the Ambassadors from Cuba, Nicaragua and Venezuela. The Assembly asked for the unconditional support of the international community and democratic organizations to help restore democracy in Honduras.<sup>5</sup>

#### **IV. Controversy over the Draft Organic Law on the Legislative Branch**

The first debate on the draft Organic Law on the Legislative Branch took place on June 12. This first report was presented by María Paula Romo. The object of the draft law is to structure the rules so as to ensure that the legislature functions properly as it passes and reforms laws, as well as to structure the oversight and political control functions that will fall to the legislature. Some of the most important points from the draft law – which includes 155 articles, 19 chapters, 7 special provisions, 4 temporary provisions, 8 provisions that repeal existing law and one final disposition – are:

- The National Assembly will be the highest democratic representative body in Ecuador. The Assembly will be unicameral, and it will have economic, financial, administrative, budgetary and operational autonomy.
- The Assembly will consist of the Plenary, the presidency of the National Assembly, the Council on Legislative Administration (CAL), the Secretary General of the National Assembly, the Specialized Commissions and the other bodies established by the Plenary or the CAL.
- The National Assembly will feature twelve permanent Specialized Commissions. In addition, there will be a permanent Commission on Oversight and Political Control that will be made up of seven Assembly members who can also serve on the other Specialized Commissions. One of the major responsibilities of the Specialized Commissions will be to discuss, draft and approve by majority different draft laws before submitting them for the approval of the Plenary of the National Assembly.
- All of the draft laws will be submitted to the CAL, the body that will evaluate each draft law and will verify that the drafts meet the requirements established in the Organic Law on the Legislative Branch. Once a law has begun to be processed, and has been determined eligible by the CAL, the draft law will be published for citizens to evaluate on the webpage of the Legislative Commission.
- The draft laws will also be examined by the Specialized Commissions, who will have a period of 20 days starting from the day they began to discuss the draft law, after which they will send a report with their observations on the draft law

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<sup>5</sup> Press Release. “Asamblea Nacional del Ecuador condena golpe de Estado en Honduras”, 6/28/09. Online: [http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=17914&Itemid=1](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17914&Itemid=1)

to the president of the Assembly. Furthermore, during the first ten days of the aforementioned period, citizens and social organizations that will be directly impacted by the draft law can appear before the appropriate Specialized Commission to offer their opinions, arguments and suggestions for the draft law and their input will be considered by the members of the Commission.

- The Plenary's decisions about draft laws will be determined in a single debate leading to a vote by absolute majority of the Assembly members.
- Once the draft law has been approved by the Assembly, the president of the Assembly will forward the law to the President of the Republic, who will be able to modify or object to portions of the law. In the case of a total veto, the Assembly will not be able to reconsider the same draft law until a full year has passed; in the case of a partial veto, the Assembly will have a chance to analyze the changes made by the President of the Republic.
- The President of the Republic can dissolve the General Assembly if it has tried to assume functions not granted to it by the Constitution, upon receiving a favorable judgment on the matter by the Constitutional Court; if it has obstructed the course of the National Development Plan; if there is a grave political crisis or if there is chaos within the National Assembly.
- The censure and removal of the President or Vice President can be carried out with a favorable vote from at least two thirds of the members of the National Assembly. To censure or remove the public officials listed in Article 131 of the Constitution, a favorable vote from an absolute majority will be necessary.
- In accordance with Art. 86 of the draft law, the Assembly can initiate political investigations and proceedings on public authorities and officials in any case where they do not fulfill the duties assigned to them by the Constitution and the law.
- To honor the principle of openness established in the Constitution, all of the Plenary sessions of the National Assembly will be recorded and made available to the public.
- The draft law establishes the creation of SIL, the Legislative Information System, as a communications tool for publishing information about the functions and activities carried out by the Legislative Branch.

During the first debate on this draft proposal, the representatives from Partido Sociedad Patriótica (PSP) emphasized the need to have a fair manner of sharing power, especially in relation to the representation of minority parties on the Specialized Commissions; they proposed that the Assembly members who received the most votes as individuals would direct the sessions and that the commissions would reflect the proportional representation within the wider Assembly; they added that the decision to initiate investigatory legal proceedings should be made by the plenary and, finally, that the CAL's role should be more administrative rather than substantive. The representatives from Movimiento Popular Democrático (MPD) advocated for the Assembly to approve a binding budget and for the Assembly to have full knowledge of any issues related to treaties that would affect the country's sovereignty, the use of genetically modified organisms, and the use and exploitation of intangible zones. For their part, the RED representatives expressed disagreement with the proposed creation of the Commission on Issues Affecting Communities, Peoples and Nationalities because they believe the Assembly needs to act for the whole nation and should not legislate by sectors; they suggested that the membership of the Commission on Oversight and

Political Control should include representatives of multiple parties and that the editorial council should be independent.

Public opinion makers and other social groups also spoke about the draft law. For recently elected Assembly member César Montúfar, the powers granted to the CAL in the draft are cause for concern because they would expand its role from being merely administrative to being more political (evaluating and prioritizing draft laws, evaluating investigations, among others). For Montúfar, this draft law primarily serves the interests of the government and the Movimiento País party.

The comments offered by the experts who gathered in the Forum on “Modernization of Latin American Parliaments and Better Legislative Practices” had a different tone. There, some participants such as Rolando González (former vice president of the Latin American Parliament and the current head of the Office of the President of the Legislative Assembly of the Republic of Costa Rica) and Roberto Menéndez (from the OAS Program of Support for Legislative Institutions (PAIL)) agreed that the version of the draft law currently being debated would be enviable for many other countries in Latin America, because it is a step towards strengthening the democratic system. They emphasized the need to spur more active participation from all sectors in the structure of a strategic agenda, with plural dimensions, that would guide the work of the Assembly toward issues of the highest national interest. González called on the Assembly members to reconsider the powers of the CAL as they are currently structured in the draft, because he argued that the act of evaluating draft laws should not fall solely on the CAL but rather a wider authority.

With this input, the Commission on Civil and Penal Law wrote a second report that incorporated suggestions from Assembly members about different powers and elected Assembly members. On July 2, María Paula Romo (PAIS) went before the Plenary to present the second “majority if not consensus” report, highlighting some of the changes the Commission had made, including: the redefinition of the CAL’s powers and duties, passing some of them on to the Plenary of the National Assembly; and the creation of rules governing legislative voting blocs, which also establish the requirements for forming voting blocs based on specific criterion and in accordance with the Constitution. These rules establish the possibility for each of the party blocs to take on two advisors who will assist in completing evaluation processes and joint planning exercises as well as strengthening each party’s proposals. As far as decisions on the importation of genetically modified seeds and resource exploitation in protected zones, Romo stressed that these provisions would be addressed in two debates, with the approval of two thirds of the members of the National Assembly. She also stipulated that a Technical Team would be assembled to write non-binding reports that would allow the Assembly members and the Ecuadorian people to maintain a general idea of the laws and processes underway in the Assembly.

Once this report had been presented, the second debate on the project got underway and covered five major aspects of the law. One controversial aspect was the timeframe for approving the draft law. Vicente Taiano (PRIAN), Luís Hernández (RED), Tito Nilton Mendoza (PRIAN), among others, agreed that it was not viable to approve a law of such great magnitude in a single second debate session, because there were still several alternative proposals that had not been addressed, in addition to the lack of agreement within the Commission. A second point of controversy among the

Assembly members was the inclusion of a rule on legislative party blocs; according to Assembly member Taiano, this section (number eight) was not included in the first version of the law that was presented in the first debate, which means it should be discussed separately or otherwise it would be unconstitutional. In addition, Assembly member Nilton Mendoza called the proposal “discriminatory” towards the minority political parties that do not satisfy the requirements for forming an electoral voting bloc. Another aspect of the controversy was the issue of the membership of the Oversight Commission and the CAL, which, according to Luís Hernández (RED), Nilton Mendoza and Julio Logroño (PSP), should all be multi-party in makeup and should consist of representatives of different political parties in order to fortify democratic, impartial and transparent institutions. Another controversial point was the selection of the dignitaries of the Legislative Branch because of the concern that one party voting bloc could have an excessive concentration of power; these concerns were expressed by Assembly member Ximena Bohórquez (Honradez Nacional), who argued in favor of maintaining a balanced representation of the party blocs. The fifth point of controversy was related to the 13 Specialized Commissions. According to various Assembly members, the ‘jurisdictions’ of the Specialized Commissions are not clearly defined. For Vicente Taiano, this lack of clarity raises the possibility of conflicts over the subject matter pertaining to each Commission. For her part, Betty Amores (PAÍS) alleged that the rules for determining the members of the Commissions are not explained. Jorge Sarango (Pachakutik) suggested the creation of a Specialized Commission focused on development issues and rights in the Amazon provinces – especially the border provinces – and the Galápagos in order to promote the full development of all of the country’s regions. Mauro Andino (PAIS) criticized the lack of specific information about the subject areas pertaining to each Specialized Commission.

Ultimately, the second debate was suspended upon the petition of the president of the Commission on Civil and Penal Law, María Paula Romo, who stated her commitment to taking the more than 50 suggestions offered during the debate into consideration. Romo announced that the Commission will incorporate these suggestions before presenting the final version of the draft, which will be discussed for the last time and submitted to a vote on July 7.

## **CHRONOLOGY**

**6/2/09.** Gustavo Larrea defended himself before the Plenary of the CLF against the accusations made against him by Assembly members and journalists.

**6/2/09.** The Plenary approved the draft reforms to Title V of the Second Book of the Code on Children and Adolescents

**6/4/09.** The Commission on Reform of the State and Public Management met with the Minister of Education and the president of UNE to reach agreement on the draft Law on Educator Standards.

**6/12/09.** The Plenary approves Ecuador's withdrawal from the ICSID.

**6/12/09.** The Plenary holds the first debate on the Draft Organic Law on the Legislative Branch.

**6/16/09.** The Plenary holds the first debate on the draft Reform Law on Educator Standards and Pay Scale.

**6/16/09.** The Plenary holds the first debate on the Draft Organic Law on the Council on Citizen Participation and Social Control.

**6/17/09.** The CLF and the United Nations World Food Program (WFP) signed a Cooperation Agreement to combat poverty and improve the quality of life for Ecuadorian citizens.

**6/18/09.** A Citizen Forum was held to discuss the Law on Public Safety and the State in the Assembly's chambers.

**6/19/09.** The Executive issued a partial veto of the draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System to the CLF.

**6/28/09.** The CLF condemns the military coup in Honduras and the expulsion of President Manuel Zelaya from the country.