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Ecuador

We denounce the renegotiation of the debt by Lenín Moreno's government

- IV Online magazine - 2020 - IV547 - August 2020 -

Publication date: Friday 7 August 2020

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We are releasing an open letter to the President of Ecuador and his government regarding the debt renegotiation that is under way. The letter is signed by former members of the Ecuadorian Debt Audit Commission (CAIC), including Eric Toussaint, international spokesperson for CADTM, Hugo Arias, Maria Lucia Fattorelli, Piedad Mancero, Alejandro Olmos, Ricardo Patiño, César Sacoto and Ricardo Ulcuango. Let us recall that in March 2020, at the beginning of the coronavirus crisis, the Ecuadorian National Assembly took an important position in favour of the suspension of the payment of the debt. [1] Let us also recall that in 2008-2009 the work of the CAIC, created in 2007, led to the suspension of the payment of the commercial debt and to a victory. [2] Finally, let us underline that the Ecuadorian people won a victory in October 2019 against the neo-liberal and authoritarian government of Lenín Moreno. [3]

Lenin Moreno, President of Ecuador

Richard Martínez, Minister of Economy and Finance

Guillermo Lascano, General Legal Counsel, MEF

As former members of the Debt Audit Commission, in response to a call from Ecuadorean civil society organizations and social movements, we file a claim and warn against the express violation of the constitutional mandates related to the external debt renegotiation currently in process.

The Debt Audit Commission, dependent of the Ministry of Economy and Finance, was created on July 9, 2007 pursuant to Executive Decree No. 472. The Summary of the Final Report, presented on September 2008 is an official document of the Ecuadorean government. It is 225 pages long and is a result of extensive research and economic, financial and legal analysis. The members of the Commission were Ecuadorean and foreign experts on debt.

The decision to pay the 2020 bonds and to bring forward the payment (through margin calls and penalties) of the repo operations with Goldman Sachs and Credit Suisse between February and June 2020 in order to recoup around \$3 billion in global bonds amid the pandemic, was a huge liquidity drain as part of the debt renegotiation (dubbed "consent solicitation"), admitted as such by the Ministry of Economy and Finance in the press releases on May 28 and July 7, 2020. This decision was taken against unanimous parliamentary Resolution RL-2019-2021-063 on March 24, 2020 and against the unanimous pronouncement from all parliamentary blocs' leaders. On top of this, the forward payments brought about full recovery of the abovementioned creditors' disbursements, which anchored the expectations of the rest of the commercial debt creditors in the June-August 2020 negotiations.

The proposed renegotiation, although it was framed as good news for Ecuador on July 7, 2020, omitted the fact that debt renegotiation started out from the par value of the bonds, as if the coronavirus crisis had not existed, against what Ecuador's Constitution's article 290#5 states. The financial conditions proposed by the Ministry of Economy and Finance on behalf of the Republic of Ecuador do not take into account the market value of the foreign debt bonds, that were priced between 20 and 25 cents on the dollar on March 31, 2020 and were priced at 35 cents on the dollar at the Credit Default Swaps auction on May 19. Creditors' ledgers had already updated those losses. In the Final Report of the Debt Audit Commission, the fact that Brady Plan and the Global Bond exchange did not take into account the market value of the Ecuadorean bonds was already stated as hurtful and as a source of illegitimacy.

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Ecuadorean foreign debt is thoroughly regulated by article 290 of Ecuador's Constitution. The Constitution prohibits anatocism in debt renegotiations. The "Invitation Memorandum" delivered by the Ministry of Economy and Finance on behalf of the Republic of Ecuador includes the interests becoming principal as a PDI bond, with the potential of payment of compound interests in case arrears occur. Committing to such an arrangement means anatocism and implies the express violation of article 290.4 of Ecuador's Constitution. This will imply legal action we shall take in the respective jurisdictional organs.

Ecuadorean citizens have not been aware that in the Invitation Memorandum shared with creditors Ecuador commits to announce a staff-level agreement with the IMF until July 31, 2020. This will mean subsequent violations of economic social and cultural rights of the Ecuadorean people. The principle of progressivity of the International Covenant of Economic, Social and Cultural Rights and the San Salvador Protocol of the Interamerican Convention of Human Rights establish that public services that guarantee human rights cannot diminish its quality or coverage. In order to comply with this, both of these human rights international treaties establish that States pursue the maximum available resources.

This renegotiation proposal does not contribute to the pursuit of maximum resources available to the State. It is tied to a new program with the IMF and macroeconomic assumptions in the Invitation Memorandum that are not aligned with the required financing for the United Nations' Sustainable Development Goals. What the government intends to approve would directly contradict article 290.2 of Ecuador's Constitution, that says that "public indebtedness will be overseen so as to not affect sovereignty, the rights of good living and the preservation of nature".

In the current international context, in which dozens of countries are in debt crises, it is the opportunity for the birth of an international public law framework for sovereign foreign debt restructuring. If Ecuador accepts draconian legal conditions before everyone else, it will become a negative precedent that will affect the rest of the South. It should not surprise that the same creditors that have resisted agreeing with Argentina have been swift to agree with Ecuador. In the midst of a pandemic - with a health, economic and social crisis - it is the moment to invoke the fundamental change in circumstances and the state of necessity and declare the non-payment of these external debt bonds, until a mutually beneficial solution is not agreed to at the global scale.

We call upon the Ombudsman to oversee MEF General Legal Counsel compliance with foreign debt matters and human rights. Specifically, the Counsel should apply the Foreign Debt and Human Rights Guiding Principles, the UNCTAD Principles for Sovereign Lending and Borrowing and the Reports by the Special Rapporteurs and Independent Experts on foreign debt and human rights of the Human Rights Council at the United Nations. These are all binding instruments in the case of Ecuador, according to article 93 of the Constitution.

We remind the President of Ecuador that, as Chief of the Executive and as President of the Debt and Financing Committee, his delegate Veronica Artola, the Secretary of Planning Sandra Argotty, the Minister of Economy and Finance Richard Martinez and the General Legal Counsel of the MEF Guillermo Lascano, that article 290.6 of Ecuador's Constitution says that "Administrative and civil liabilities caused by the acquisition and management of public debt will not prescribe".

Article 289 of the Constitution says that "The State will promote the instances for citizen power to watch and audit public debt". For a real transparency, oversight, and audit of public debt, we demand that the Invitation Memorandum, already published by the US Courts, be made publicly available in Spanish in the benefit of the Ecuadorean people, as established by article 2 of the Constitution.

Finally, but no less important, we call upon academics and social, political, indigenous and rural movements, and the Ecuadorean people in general, to exercise citizen power for the urgent oversight and audit of public indebtedness.

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Sincerely, July 30, 2020,

Former members of the Debt Audit Commission:

Hugo Arias, Maria Lucia Fattorelli, Piedad Mancero, Alejandro Olmos, Ricardo Patiño, César Sacoto, Eric Toussaint, Ricardo Ulcuango

Source: [CADTM](#).

PS:

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[1] See ["Will Ecuador once again set an example of courage in the face of creditors?"](#).

[2] See ["Video: The Ecuador debt audit, a seven minute summary"](#).

[3] See ["Ecuador's people have won a victory but government repression continues"](#).