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**ECUADOR WEEKLY REPORT®**

**KEY INDICATORS**

**For the week of Feb 12 – Feb 16, 2018**

**No More Heroes**

For many in Ecuador, the Inter-American Human Rights System, part of the Organization of American States, had provided a final bulwark of protection against the administration of Rafael Correa's interference in the judiciary. It thus came as a shock that its Human Rights Commission (IAHRC) could seek to undo one of the key elements of the Moreno referendum last February 4. Given its ramifications throughout the region and recent attempts by leftwing governments, led by Correa, to change the System, the dispute, while quickly ended by the Inter-American Human Rights Court, deserves another look.

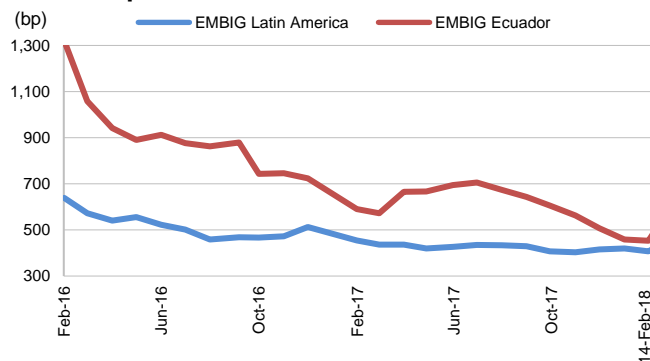
While the decision appeared to come like a bolt of lightning out of a clear sky, it did have a timeline that started when president Lenín Moreno called the referendum without waiting for Ecuador's Constitutional Court (CC) to issue an approval. The administration argued that Correa (2007-2017) had himself done so when the CC failed to act before a 20-day deadline. Additionally, within the minutiae of Ecuador's constitutional law (specifically, at the end of article 105 of the Organic Law on Jurisdictional Guarantees and Constitutional Control), it is understood that, if the CC fails to act within its deadline, it has de-facto permitted the matter in question to go ahead. This was disregarded by the petitioners, three of the five directors of the Citizens' Participation and Social Control Council (CPCCS) who stood to lose their job if voters approved the referendum's question pertaining to an overhaul of

**Ecuador's Global Bond Prices**

Bond	2018		Last Price (end of the month) 2017				
	16-Feb	Jan	Dec	Nov	Oct	Sep	Aug
Global 2020	108.00	109.98	110.94	109.64	109.10	108.03	107.39
Global 2022	112.97	116.32	117.48	115.86	113.13	111.77	110.05
Global 2023	105.96	110.12	110.67	108.46	104.90	103.39	102.34
Global 2024	101.52	106.04	106.60	104.42	100.89	99.14	98.22
Global 2026	109.77	114.40	115.03	112.45	108.04	105.60	105.25
Global Jun 2027	109.46	113.76	114.73	111.66	107.57	105.04	105.01
Global Oct 2027	104.75	109.17	109.90	106.82	102.40	-	-
Global 2028	98.54	102.04	-	-	-	-	-

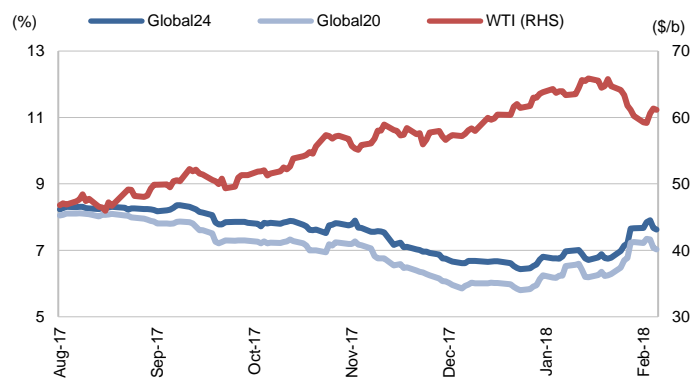
Source: Bloomberg and Analytica

**EMBIG Spread**



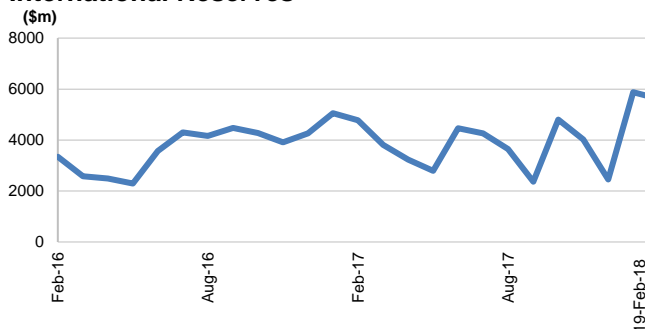
Source: JP Morgan and Analytica

**Bond Yields vs. WTI**



Source: Bloomberg and Analytica

**International Reserves**



Source: BCE and Analytica

the unelected body introduced by the 2008 constitution.

As political scientists warned at the time and as we have commented on numerous occasions, the CPCCS has been instrumental in ensuring *correísta* control over nominally autonomous and even independent functions of the state. While supposedly an independent branch of the state, alongside the executive, legislative, judicial, and electoral functions, the CPCCS became stacked with former government officials. Its supposedly merit-based contests to pick high-ranking officials had sufficient leeway particularly in personal interviews of the candidates to make sure that the desired people got the jobs. One of the most egregious examples of this was Carlos Pólit, reappointed as comptroller in March 2017 with a perfect score, only to flee the country in time to avoid charges as part of the Odebrecht corruption case. Besides replacing functions normally held by a legislature in a democracy, the CPCCS also completely abandoned its supposed task of investigating corruption, not least demonstrated doubly by Pólit's reconfirmation as comptroller. It focused instead on replacing the role of civil society in Ecuador. Another example of its pro-Correa staffing policy was when it appointed a former interior minister, Gustavo Jalkh, to oversee the judiciary. During his tenure, which continues to this day, Jalkh's judiciary council has discretionally removed judges alleging "unforgivable errors" in their ruling, which independent reviewers have chastised as control of the courts by Correa. In short, the CPCCS was one of Correa's leading instruments in his bid to establish a "perfect dictatorship." While many critics had recommended Moreno decide to have the voters scrap it altogether, the president opted to make it an elected body from 2019. In the interim, he asked the voters for permission to create a transitional CPCCS tasked with reviewing and potentially replacing the last batch of appointees.

Notwithstanding the body's true track record to the

contrary, the three CPCCS petitioners said that this put the rule of law at risk, as well as the separation of powers and judicial independence, and gravely threatened their individual rights given that they had no chance to defend themselves. After receiving information from Ecuador's prosecutor general, who resigned the week before the referendum, the IAHR largely agreed and asked the Human Rights Court to issue a preliminary injunction to protect them. As we described last week, the Court in less than 48 hours flatly said no, without waiting to hear the government's side. In the face of the slew of attacks that the IAHR was subject to by Correa, the commission perhaps thought it would look like it was being independent by trying to protect three *correístas*.

Instead, its decision led to two kinds of rebuttals. On its part, the government, in words that looked taken from the *correísta* playbook, accused the Commission of interfering in Ecuador's sovereignty. Moreno phoned the OAS secretary general, Luis Almagro, to complain, and foreign minister María Fernanda Espinosa called back Ecuador's ambassador to the body for consultations in protest. Leading jurists suggested that the IAHR was misinformed when it chose to support the petitioners, while defending the Commission's role in the region as a protector of human rights. Catalina Botero, a former special IAHR rapporteur for freedom of speech, said the Commission had no business protecting bureaucrats from losing their jobs. Farith Simon, dean of law at Universidad San Francisco, in a column in *El Comercio* noted that recent legal precedent also meant that the petitioners could be removed as part of constitutional reform, pointing to the occasions when the new constitution replaced earlier institutions. Daniela Salazar, also at the USFQ, noted that the Commission acted swiftly in this case but failed to respond with appropriate speed when Ecuador sent Cuban refugees back to the Castro dictatorship in August 2016.

While these jurists shied away from indicating that the Commission acted out of political interest, the point made by Salazar and similar complaints by other local lawyers about its inaction as the Correa administration concentrated power in the executive branch do lead us to suspect that such interests may have come into play in the CPCCS controversy. From the start, Correa showed a strong disregard for constitutional checks and balances. In 2007, completely ignored by the international community as well as the commission, Correa had a newly elected congress disbanded and a friendly majority in congress installed, all in the face of silence by the IAHR. Subsequently, he went against freedom of speech and judicial independence, attracting long overdue attention from human rights organizations. During this time, the IAHR's prestige in Ecuador grew as it issued injunctions to protect individuals like investigative journalist Fernando Villavicencio. It also gained sympathies thanks to Correa's attacks on it. This latest episode however led it to lose a lot of goodwill. As the Court criticized, this mostly stems from the commission's discretionary choice of whom it defends (Patricio Pazmiño, whom Correa despite a lack of experience as a judge made the head of the CC, became a judge at the Court after a \$1m donation ordered by Correa, a huge amount considering its annual budget is just \$5m. Given his potential conflict of interest, Pazmiño didn't participate in the decision).

Last December 31<sup>st</sup>, the IAHR published a human rights investigation on Venezuela. According to the commission, it took the decision to undertake this analysis on its own, rather than at the request of human rights lawyers or other OAS members. In introductory remarks, it explains that *"The Commission decided to prepare this report in response to the serious deterioration of the validity of human rights, and the serious political, economic and social crisis that Venezuela is going through in the last two years and especially in 2017. For several*

*years, the Inter-American Commission has been observing the weakness in the democratic institutional framework and the progressive deterioration of the human rights situation in Venezuela, which have been significantly deepened and intensified since 2015 and at an alarming rate in the 2017. Although the problem is complex and involves a multiplicity of factors, the IAHR considers that a determining factor is interference by the Executive Power in other public powers, in violation of the principle of separation and balance of powers. Indeed, the worsening of the recent crisis in Venezuela is closely, though not exclusively, related to the decisions taken by the Supreme Court since 2015, which entailed serious interference in the powers of the National Assembly and affected the principle of separation of powers."*

This document has galled many in Ecuador. Firstly, the concentration of powers in the executive fails to adequately explain the human misery in Venezuela, which is instead due to the corruption and incompetence of said executive branch. Of course, there is no doubt that the lack of checks and balances facilitated this degradation of government, but to imply direct causality is too simple an argument. Secondly, the deterioration of checks and balances began in 1999 and progressed very gradually in Venezuela and was later emulated in Bolivia, Ecuador, and Nicaragua, not just during the past few years. It is highly unfortunate that the IAHR fails to mention these cases. This has led Ecuadorians opposed to *correísmo*, now easily a majority in the country, as the referendum showed, to feel discriminated by a body that supposedly is there to protect them from abuse by the state. Instead, they have been reminded of Almagro's gushing praise for Correa after he had decided not to run in the 2017 elections (notwithstanding his elimination of judicial independence and of term limits and the hobbling of the comptroller general's office, to name just three examples).

As *The Economist* noted in a recent article, the

Court, too, has tested politically dangerous waters in recent years by interpreting its mandate as one that could force countries to directly adjust their legislation in line with the human-rights treaties they have signed. While that looks like a no-brainer on the face of it, this can quickly become highly controversial, as in the effect it had on Costa Rica's elections in January when the Court said that country had to legalize same-sex marriages. The much older European Court of Human Rights, to which even Russia and several other former Soviet Republics are subject, lacks such a deep power over local legislation. The organization of the Inter-American Human Rights System hence does call for some rethinking, of course in the opposite direction from that which Correa and other populist authoritarians wanted. Hopefully, the return of democratic vis-à-vis populist governments in Latin America could bring some weight behind real strengthening of the System, thanks to the checks and balances prevalent in these countries. After the birth of the System in the 1980s and 1990s, it would be of immense benefit for the region to strengthen it financially and significantly boost its independence, perhaps considering experiences in Europe, the only other region with such a supranational system in place to help defend citizens from the state, and not the other way around.

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