

Towards a Repository of Policy Options for IIA Reform

Research Project

Ecuadorian Citizens' Commission for a Comprehensive Audit of Investment Protection Treaties and of the International Arbitration System on Investments (CAITISA)¹ⁱⁱⁱ

Commission for a Comprehensive Audit of Investment Protection Treaties and of the International Arbitration System on Investments (CAITISA)

In May 2013, the Ecuadorian government decided to create a Commission to Audit its bilateral investment treaties and arbitration cases.ⁱⁱⁱ This is the first time a government has decided to organise a review of its investment protection system as a multi-stakeholder auditing process. The Commission, formed by a mix of investment lawyers, civil society representatives and government officials, was launched in October 2013.

The Audit Commission includes a majority (8 out of 12) of people from outside the government and most are non-Ecuadorians. The Commission is also unique in its inclusion of 4 representatives of civil society organisations.

The Commission has been tasked with determining the legality and legitimacy of Ecuador's Bilateral Investment Protection Treaties (BITs) and the cases filed against the country. The Commission is also expected to assess whether the BITs have helped to attract foreign direct investment (FDI) to Ecuador and/or contributed to the quality of investment in terms of national development. Finally, the Commission will propose legal and policy alternatives to BITs and the international arbitration system.

The work of the Commission has been organized in 3 axes:

- **The Bilateral Investment Treaties of Ecuador:** including the origin of the BITs, and the conditions under which these treaties were signed, assessment of the clauses included in the Ecuadorian BITs, compatibility of BITs with national and international law, and the impact of BITs on regional integration
- **Investment Arbitration System and cases against Ecuador:** including how have BITs been used by foreign investors, the neutrality (or lack of) of the international arbitration system; the arbitrators that decided on Ecuador cases; the costs of cases; and the social, economic, political and ecological impacts of investor-state cases (or threats of cases) under the Treaties.
- **The Relationship between Bilateral Investment Treaties, Foreign Investment and Development Model:** including defining what is investment for development, the correlation between signing BITs and attracting FDI, the necessary regulation of transnational capital, and an economic analysis of the benefits of investments protected under BITs.

¹ The opinions expressed in this paper are those of the author and do not necessarily reflect the views of the UNCTAD Secretariat or its Member States.

Regardless of the final outcome, which is expected by February 2015, this Ecuadorian initiative will contribute towards the ongoing international assessment of the necessity for and impact of the international investment regime on the development of countries in the Global South.

The mere fact that the Commission was created and set up as an open process, with strong participation from civil society and academia, sets a precedent in contributing to a public debate about the legitimacy and “benefits” of the current investment protection framework.

The decision of the Ecuadorian government to create this Commission will hopefully inspire other governments to undertake similar review processes.

The final audit report, including its conclusions and recommendations will be shared through the Commission’s website (www.caitisa.org) as soon as it is completed.^{iv}

ⁱ www.caitisa.org.

ⁱⁱ Members that contribute to the audit include: Four representatives of the State’s institutions: The Planning and Development National (SENPLADES) Secretary: Pabel Muñoz; The National Politics Secretary, Viviana Bonilla; The Foreign Relations Commerce and Integration Minister, or his/her delegate: Alejandro Olmos (Argentina) (nominated as a delegate of Ricardo Patiño, Ecuadorean Minister of Foreign Affairs); The National Legal Secretary of the President of the Republic’s Office, Dr Alexis Mera; Eight researchers or experts of international prestige: Carlos Gaviria (Colombia) (resigned); Osvaldo Guglielmino (Argentina); Muthucumaraswamy Sornarajah (Australia); Hugo Ruiz (Paraguay); Cecilia Olivet (Uruguay); Piedad Mancero (Ecuador); Javier Echaide (Argentina); Alberto Arroyo (Mexico).

ⁱⁱⁱ Decree 1506: <http://decretos.cege.gob.ec/decretos/decretos.aspx?id=2009>

^{iv} The report will be updated once the final audit report is published.