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When Ecuadoran President Rafael Correa announced on Nov. 20, 2008, that he would "seek not to pay the illegitimate debt, the corrupt debt, and the illegal debt," many Ecuadorans thought that finally the government was heeding the request of dozens of social organizations that, for at least two decades, have been demanding the nonpayment of the foreign debt.

Nevertheless, the government's announcement entangled the country in a legal labyrinth that forced President Correa to recognize that the foreign debt was legal and, therefore, must be paid. Ecuador's debt has been questioned by various government officials who have even carried out studies describing in detail what happened to the funds that should have come to the country but that, instead, ended up with multinational businesses based in the same countries that made the loans or with Ecuadoran financial groups, with no evidence that any of the money was used for real investment in Ecuador.

For example, organizations such as Jubileo 2000, headed by Ricardo Patino, currently economy and finance minister and one of the mainstays of the Correa government, or the Centro de Derechos Economicos y Sociales (CDES), headed by Patricio Pazmino, currently president of the Corte Constitucional (CC), demonstrated the illegitimacy of the debt acquired from Norway. Through their efforts, in 2006 Norway recognized its "shared responsibility" for the illegitimate loans and unilaterally canceled the debt not only with Ecuador but also with four other countries: Egypt, Jamaica, Peru, and Sierra Leone.

Report cites irregularities in debt process

What is new is that the conclusions in the earlier studies are the same as those of the Comision para la Auditoria Integral del Credito Publica (CAIC), created by the national government. The CAIC's report uncovers a series of irregularities in loan agreements, which could even carry legal penalties for the government officials who assumed the debt, such as former finance ministers, former central bank managers, presidents of the monetary board, among others. "Each person will have to take responsibility and pay accordingly from their assets," said Correa when he received the report.

The CAIC, after auditing original debts and their renegotiations from l976 to 2006, called the process "an incalculable fraud for Ecuador." It spelled out, for example, how in 1992 former Banco Central general manager Ana Lucia Armijos, then finance minister Mario Ribadeneira, and Ecuador's consul in New York Miriam Mantilla unilaterally gave up the country's right to prescribe the foreign commercial debt, which it was entitled to because it had been in arrears for six years. Signing this agreement cost the country US$6.992 billion.

Also, CAIC analyzed how Ecuador's foreign debt increased from US$240 million in 1970 to US$17.4 billion in 2007 without contributing to reducing poverty or increasing infrastructure and social

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investment. On the contrary, according to the report, this "has been a tool for plundering resources and submitting to policies imposed by multilateral agencies."

Continuous renegotiations of the debt forced the government to take on new debt to pay old debt and avoid its prescription, accept late-payment penalties and high interest rates, pay interest on interest, and revalue securities depreciated in the market, among other irregularities.

The paradigmatic case presented by the CAIC was that of the Global Bonds, in which US$6.298 billion in exchangeable bonds (Brady and Eurobonds) were priced on the financial market at 30% (US$1.575 billion) and exchanged for US$3.950 billion of the denominated Global Bonds 2012 and Global Bonds 2030, earning interest rates of 12% and 10%. Ecuador has already paid US$2.450 billion in interest on these bonds and must pay off the principal in 2012 and 2030.

Default a risky option

Along with carrying a high political significance, the report also demonstrates the shared responsibility for the debt between lending countries and the governments of the debtor countries. It encourages other auditory initiatives such as those going forward in Paraguay, Argentina, and Peru, and the Auditoria Cidada da Divida (Citizen Debt Audit) in Brazil. It also makes it clear that applying the "do not pay" recommendation is difficult in a financial world that has ensnared countries and made them give up their sovereignty. Past financial decisions have been classified as "legal decisions," buoying the contractual obligations.

The argument for paying is that the debt obligations were assumed by democratic governments whose duly appointed and authorized officials acted in the name of the country. Thus, former economy minister Maurico Pozo, one of the debt renegotiators, argues, "Everything that was done is legal and the country must honor its debts." For economist Pablo Davalos, vice minister of economy when Rafael Correa headed the ministry,

Correa's mistake was not just confusing illegality with illegitimacy but also not having a strategy in place to follow up on the report. "The report should aim specifically to uncover the illegitimacy of the debt," said Davalos. "Once that illegitimacy is established, a declaration of illegality should be sought. However, this cannot be done by the country and even less by a commission, but must be done through international bodies."

In looking for a declaration of illegality, a high-level government commission, headed by Ricardo Patino, made an international trip to drum up support for Ecuador's position on not paying the debt. The support was not long in coming, but no one has figured out how to declare the debt illegal, a step prior to nonpayment. So, President Correa had to announce during his regular Saturday radio program that "the debt may be legal."

"The government's greatest weakness is in the series of contradictions that have occurred," said Davalos. "The government began with a declaration of nonpayment, then asked for a renegotiation to reduce the amounts of the global bonds, and ended up by meeting the payment schedule on time. This has caused the creditors to harden their position." Davalos continues, "If the government wants to set a historic precedent, it must assume a frontal position, not pay the debt, and determine the

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negotiators' responsibility. Otherwise, the report becomes an attempt by the government to win over the social organizations that are beginning to question Correa's model of government."

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