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## INTERVIEW: Ecuador's return to the carbon market hinges on forthcoming legislative vote

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A legislative vote is slated to take place in Ecuador in the coming weeks, with the potential to greenlight carbon market development in the heavily-forested South American country after years of inactivity.

Legal constraints imposed in the 2008 constitutional reform have been widely considered to limit Ecuador's carbon markets participation, with some stakeholders interpreting the country's nature protection laws as forbidding carbon market transactions.

But a current debate surrounds that interpretation, with other stakeholders believing that carbon market activity should be encouraged so long as the government provides an oversight and regulatory function.

“What the Constitution actually requires is that the State regulates to ensure protection, access, and sustainable use of environmental services,” said Daniel Ortega Pacheco, who was Ecuador’s environment minister over 2015-16 and is currently director of the country’s Center for Public Policy Development at the ESPOL Polytechnic University.

“Ecuador is advancing in dialogues to enable the return of its domestic private sector to access climate finance channeled through the global carbon market,” he added.

Several proposed amendments to the country’s Organic Environmental Code could help clarify the legality of carbon trades – including through the voluntary carbon market – by specifying the role for government to regulate and guide carbon market activity.

The National Assembly of Ecuador held its first debate on the subject on March 15, 2023, with the second debate and final vote expected during the first half of May.

If passed, the amendments would grant power to government departments to regulate or otherwise guide the development and participation in carbon market activity.

This could include creating safeguards to protect the rights of Indigenous and local populations for land-based carbon projects, as well as ensuring the fair distribution of benefits from the promotion of environmental services.

## HISTORY LESSONS

Ecuador, along with countries such as Bolivia and Venezuela, are known to oppose carbon markets on ideological grounds, a position sometimes explained as forbidding the commoditisation of nature.

But Ecuador’s stance is not only born on ideological grounds, according to Ortega, but also from unfavourable experiences that took place outside the UN’s Clean Development Mechanism in the Kyoto Protocol era predating the Paris Agreement, where it had until 2008 keenly participated in projects spanning hydroelectricity, wind power, energy efficiency, and electricity production from sugarcane residual biomass.

“At the time that we were having discussions for the new [2008] constitution, we also had some pretty bad cases of offsetting projects,” said Ortega, noting one such deal as the Forest Absorbing Carbon Dioxide Emissions **FACE-PROFAFOR**. (<https://ejatlas.org/conflict/face-pine-plantation-profafor-ecuador>)

“There were a few organisations that made deals with Indigenous people, and some affected their rights to the land. Out of those specific cases, the entire perception around everything that is wrong with the carbon market was taken,” he added.

As a result, the 2008 reform, which integrated strong laws to recognise the rights of nature, included language to help prevent those types of events from ever being repeated.

Article 74 of the constitution restricts any individual to establish property rights on carbon, or any other environmental service, concretizing the prohibition on the appropriation of environmental services without the State regulating their production, delivery, use, and development.

## INTERPRETATIONS

While Article 74 bars individual's from selling property rights to environmental services, Ecuador's constitution also calls on the government to facilitate access to, and sustainable use of, environmental services.

Article 74 notes that while environmental services will not be subject to appropriation, their production, provision, use and exploitation must be regulated by the State.

"This last part has been interpreted differently by different executive branches across time," said Ortega.

"And these subjective interpretations by some parties needs a final resolution," he added.

While some believe that the constitution prohibits any type of participation in carbon markets, others believe that the additional wording instead asks government to regulate any such participation, essentially acting as a guardian to environmental services.

After two rulings from Ecuador's constitutional court on that interpretation, assembly members agreed that a vote was needed.

The general assembly's vote will cover how the Ministry of Environment and other government departments should define the rules around environmental services, including carbon markets, amending the environmental code to ensure a clear mandate to this effect.

"If the National Assembly makes a decision, it will help with legal certainty, so that both internally but also at the international level we create conditions to attract investment and contribute to the country's decarbonisation which is critical for an oil dependent economy at this juncture of limited fiscal space, climate driven sovereign risk, and debt distress," said Ortega.

## REFERENDUM

Ecuador's government had been working to return the economy to a path of sustainable growth after the devastating effects of the coronavirus pandemic.

But the political context is currently very delicate, with President Guillermo Lasso facing potential impeachment over corruption and other charges, and pledging to dissolve the chamber and call early elections as necessary.

The turmoil adds to Lasso's already fragile political standing, with voters having rejected his proposed constitutional changes in a February referendum, voting against proposed reforms that included the environment alongside other pressing criminal and political agendas.

"Out of the eight questions that were included, one of the questions was whether or not Indigenous communities and private actors should receive direct compensation because of environmental services being provided," said Ortega.

"But because of the political context, all of the questions were rejected," he said.

Although this route to clarify Article 74 was stalled, next month's vote could see progress made on carbon markets if government ministries are granted privy to engage.

## DOING IT RIGHT

“Ecuador has been absent from the carbon market for almost 15 years, and if we are going to come back, we should do it in accordance with best practices,” noted Ortega.

This means following principles related to robust governance, transparency, environmental integrity, alignment to the Paris Agreement, and safeguards, he said.

These rules will help Ecuador establish itself as a credible player within international carbon markets, potentially helping to guide other regional players.

A key goal will be to help ensure that local and Indigenous populations have direct access to climate finance, while the government acts to establish strong safeguards to these transactions.

The country has seen interest in forest carbon from a series of different actors, including the LEAF coalition and the ART TREES carbon standard.

The public-private LEAF coalition said in November that it had doubled the total amount of financial commitments for the purchase of forest carbon credits to over \$1.5 billion.

Auto manufacturer Volkswagen Group and fashion retailer H&M Group are the latest global companies to sign on to LEAF, joining over twenty-five global corporations including Amazon, Salesforce, Bayer, PwC, Unilever, Blackrock, E.ON, McKinsey and Company, and GSK.

Ecuador was one of the first countries to sign a memorandum of agreement (MOA) with Emergent, the coordinator of the LEAF coalition, aiming to sign a more binding agreement as soon as possible.

Without clarity on Ecuador's legal framework for carbon market engagement, arrangements made under these types of initiatives would be likely be restrained to results-based payments.

## ALL HANDS ON DECK

Last Friday was the final call for input to the National Assembly on the matter, with Ortega having spearheaded a Carbon Platform group that submitted advice on environmental integrity issues surrounding carbon market participation with support of a group of international experts.

But if the vote is successful, further policy advice is likely to be needed to help the Ministry of Environment and other government bodies establish a robust regulatory pathway.

Ortega noted the Carbon Platform's willingness to work with global experts to advance this guidance, something he said could emerge if the international community becomes better informed about the status of the debate.

This robust policy development process will be key to helping ensure that Ecuador's return to carbon markets is grounded in high social and environmental integrity, he said.

By Katherine Monahan – [katherine@cabon-pulse.com](mailto:katherine@cabon-pulse.com)

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