Ecuador's Mutual Death Clause

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On May 17, Ecuadorian President, Guillermo Lasso, dissolved the National Assembly by activating a unique constitutional clause known as *muerte cruzada,* or 'mutual death.' Under this provision, added to Ecuador's Constitution in 2008 but never before used, the President can dissolve the Legislative, call general elections, and rule by decree until a new Legislative and President are elected. The current situation is especially unprecedented because the President applied this constitutional clause just as the National Assembly initiated impeachment proceedings against him. The Legislature aimed to remove him from office due to embezzlement charges. The president continues to deny these charges, which he claims are politically motivated (here, here).

Below, I briefly report on these recent events in Ecuador and the role of the Constitutional Court.

Background

Continued tension between President Lasso and various opposition factions has characterized political life in Ecuador in recent months. This tension has spilled over into the streets and led to an ongoing dispute between the executive and the National Assembly.

In 2022, the National Assembly tried to remove Lasso from power but did not obtain the necessary votes. In the last few weeks, the dispute between the two escalated when the National Assembly initiated yet another attempt to remove Lasso. This time, they demanded impeachment on alleged embezzlement charges, allegations that Lasso has denied. It was not clear if the opposition had enough votes to oust Lasso from power.

On 17 May 2023, while the impeachment process was underway, Lasso, via a decree claiming a national state of "*political crisis and domestic unrest*", decided to activate Article 148 of the Ecuadorian Constitution. This Constitutional clause is known as "mutual death" [*muerte cruzada*] because it gives the Ecuadorian President unilateral power to send home the entire legislative branch with a single presidential decree. Indeed, once activated, Article 148 requires that new elections be held for the President and the National Assembly. However, while the Assembly ends its functions immediately, the President remains in office, governing via decree, until all new office holders are elected.

The Mutual Death Clause as Non-Reviewable

During the last decade, inside the Ecuadorian political sphere, the 'cross death' clause functioned as a sort of political "nuclear option" for the President, offering more leverage as a threat than through its actual application. In the past, several previous presidents have considered (here and here) the possibility of using Article 148 to threaten the legislative. However, the clause was never used because of its unpredictable consequences. This time, once President Lasso was up against the wall, he triggered the mythic 'mutual death' clause (Article 148) to forego his impeachment trial while calling for early elections.

But is it constitutionally correct that an Ecuadorian President can instantly dissolve the entire legislative branch with a simple decree, *ipso facto,* and call for elections while staying in power? Last week, the answer given by the Ecuadorian Constitutional Court in its interpretation of Article 148 was, with some caveats, "yes".

The text of Article 148 is the following:

> *The President can dissolve the National Assembly when, in his/her opinion, it has taken up duties that do not pertain to it under the Constitution, upon prior favorable ruling by the Constitutional Court; or if it repeatedly without justification obstructs implementation of the National Development Plan; or because of severe political crisis*

> *and domestic unrest.This power can be exercised only once during the first three years of his/her term of office.[…] Within at most seven days after the publication of the decree of dissolution, the National Electoral Council shall convene, for the same date, legislative and presidential elections for the rest of the respective terms of office […]*

Since this is the first time that an Ecuadorian President has made use of this clause, its legal consequences remain unclear and the decision itself could fall outside of constitutional review. Different actors in the opposition have filed legal remedies before the Constitutional Court to stop the enforcement of the Presidential decree. The argument has been that the existence of a *"severe political crisis and domestic unrest",* an essential condition for the application of the 'mutual death' clause was not fulfilled. Thus, opposition actors have claimed that the grounds for activating Article 148 cannot be entirely and subjectively determined by the President himself and that the Court has the obligation to assess if these conditions have indeed been met.

On 18 May 2023, the Constitutional Court dismissed, in a series of judgments, all legal remedies filed against the 'mutual death' decree. The Court clarified the legal nature of Article 148 as a 'self-judging' clause outside of any constitutional or judicial review. The main argument of the Court was that Ecuadorian drafters of the Constitution explicitly chose to place Article 148 outside of any type of 'judicial review' favoring 'democratic' political control to be exercised only by Ecuadorian citizens through their vote at the polls. To sum up, an Ecuadorian president under the Constitution can subjectively determine that a *"political crisis and domestic unrest"* exist and thus trigger the *'mutual death'* clause at any moment during the first 3 years of his/her term.

The Road Ahead

The immediate consequences of the President's activation of Article 148 and the Constitutional Court's rejection of all allegations that this Executive Decree was unconstitutional are:

1. **The legislative branch has been effectively dissolved:** In practical terms, this means the national assembly is closed and all the 137 [former] legislators officially ended their terms on 17 May 2023.
2. **New, early, extraordinary elections will be held:** While Article 148 mandates that the National Electoral Council (CNE in Spanish) ought to call elections *"within at most seven days after the publication of the decree"*, it does not specify any other condition, leaving some leeway for the CNE to establish its own schedule based on Ecuador's national electoral laws. The CNE decided that the elections would be held on August 20. If needed, a ballotage was set for October 17, and the official results will be announced on November 30, 2023, which would be the last day of Lasso as President in case of losing the elections.
3. **The President continues to rule by decree:** Article 148 mandates that the President, *upon a prior favorable ruling issued by the Constitutional Court*, can issue decrees on *'urgent economic matters'*. This power makes the President the only legislator in the land, placing the Constitutional Court as the only institutional balance to his power.

The latest events make Ecuador a textbook example of Latin American constitutionalism: internal tension between an extensive bills of rights and the concentration of power in the President (here). On the one hand, the Ecuadorian Constitution of 2008 inserted an extensive and innovative bill of rights that included, for example, the recognition of the 'rights of nature' among many others. On the other hand, the same Constitution concentrated power in the President providing him/her with unique 'self-judging' provisions, such as the Article 148 'cross death' clause that could in turn endanger the fulfillment of those same rights.

In the next months, the Ecuadorian Constitutional Court will have to figure out how to resolve this tension. They undoubtedly bear the responsibility for developing clear legal standards that could come to limit the broad legislative power granted to the President by the same Constitution.

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