

THE
CARTER CENTER



Report on the Legislative and Oversight Commission Ecuador

April 2009

Office of the Carter Center in Ecuador
Italia N32-10 y Mariana de Jesús,
Ed. Mariana de Jesús Piso 4, Of. 401
Quito, Ecuador
www.cartercenter.org

INDEX

	Page
I. Introduction	4
II. The Work of the Specialized Commissions	4
III. Oversight and Political Control	5
IV. Discussions in the Plenary of the Legislative and Oversight Commission	6
IV. Controversy on the draft Organic Law on Monthly Reserve Fund Payments and the Unified Unemployment System	
CHRONOLOGY	10

ACRONYMS

CAL	Council on Legislative Administration
CLF	Legislative and Oversight Commission
FFAA	Armed Forces
FARC	Revolutionary Armed Forces of Colombia
FEDESEP	Federation of Public Servants
FPV	Frente para la Victoria
IESS	Ecuadorian Institute on Social Security
MPD	Movimiento Popular Democrático
PAIS	Movimiento Patria Altiva y Soberana
SENRES	National Secretary for the Development of Human Resources and Compensation in the Public Sector

I. Introduction

This month was defined by the general elections on April 26. One of its most significant effects on the Legislative and Oversight Commission (CLF) was the decision of various Assembly members to launch their campaigns as candidates for different popularly elected posts, which required them to seek permission or abandon their seats in order to campaign. Additionally, the CLF took a recess between April 13 and 27 that prevented the development of comprehensive debates about draft laws such as the law on the Reserve Fund, which was introduced by the Executive branch as an urgent project. However, other draft laws did have a chance to be processed, including the Law on the Creation of the Ecuadorian Institute on Social Security (IESS) Bank, and the Executive's partial veto of the Organic Law on Elections and Political Organizations was also addressed. Meanwhile, once its legislative agenda had been reestablished after the elections, the CLF received a visit from former American President Jimmy Carter.

This report covers the legislative process in the month of April divided into the following sections: the work of the Specialized Commissions (on Civil and Penal Law, Reform of the State and Public Management, and Social Participation); the work of the Commission on Oversight and Political Control; the debates that took place in the CLF Plenary; and the controversy over the draft Organic Law on Monthly Reserve Fund Payments and the National Unified Unemployment System and Job Stimulus. Finally, we include a chronology of the most important events.

II. The Work of the Specialized Commissions

Commission on Civil and Penal Law

On April 2, in a debate over the Organic Law on the Judicial Branch attended by representatives of universities, courts and professors, the president of this Commission, María Paula Romo (PAIS), explained that the law was circulated around for almost four months while the Commission gathered the observations of various organizations. Romo added that the law grants substantial authority to attorneys in order to prosecute crimes and more power to judges in the sentencing process. She reiterated that the law's intent is to take a tough approach in dealing with those who commit crimes, while also protecting the rights of the accused who are innocent. On the issue of writing hot checks, she explained that it was still considered a crime, but it could be handled through the civil or the penal code; on shoplifting by minors, she explained that the new classification of the crime means that the accused will usually pay back the value of what was taken, rather than going to jail.¹

Commission on Reform of the State and Public Management

On April 8, Assembly member Jorge Escala (MPD) called for the Minister of Education, Raúl Vallejo, to appear before the committee to testify about the alleged violation of article 348 of the Constitution which establishes that education shall be free

¹ Press Release. "Reformas penales agilizan administración de justicia y protegen a los inocentes", 4/2/09. Bulletin N° 842. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17447&Itemid=1

for citizens and paid for by the State – the violation owing to the denial of resources to certain schools, which affected the rights of teachers, students and parents in the coastal zone. Along the same lines, Escala requested documentation of the availability of financial resources, in addition to the number and names of renovated schools, repairs needed at certain educational facilities, the amount of money allotted per student and the legal measures in place to guarantee Social Security contributions from educators.²

Commission on Social Participation

Toward the end of April, the Commission on Social Participation had a structured outline of the Law on Social Participation, which it worked on throughout the legislative recess with assistance from advisors. The Commission received input from the Secretary of Peoples, Social Movements and Citizen Participation during the debate forums in Guayaquil and Quito; it expected to hold additional forums during the first weeks of May in Salinas and Ambato.³

III. Oversight and Political Control

As part of the ongoing investigation on Gustavo Larrea, on April 8 the Commission on Oversight and Political Control called for several members of the armed forces to provide testimony on the accusations of negligence against former Minister Larrea on the Angostura case. The session was reserved for this purpose at the request of Assembly member Betty Amores (PAIS). On April 29, the Commission heard statements from the police officials Gerardo Zapata and Jorge Addaty on the same case.

On April 30 the Commission heard the statement of Gustavo Larrea, the former Coordinating Minister on Internal and External Security. Jaime Hurtado, the Commander General of the Police, was expected to give his statement afterward, but he did not attend. Mauro Andino (PAIS), president of the Commission, explained that these statements concluded the period for evaluating evidence and the Commission would have five days to prepare its report for the president of the CLF.⁴

Gustavo Larrea held a press conference in which he announced that he had asked the Commission to conclude its political investigation as soon as possible so he could be cleared of the accusations against him.⁵

² Press Release. “Jorge Escala llama a Ministro de Educación a Comisión de Reforma del Estado”, 4/8/09. Bulletin N° 872. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17487&Itemid=1

³ Political Summary. “El ‘Congresillo’ estructura la Ley de Participación Ciudadana”, El Comercio, 4/29/09. Online: http://www.elcomercio.com/noticiaEC.asp?id_noticia=273655&id_seccion=3

⁴ Press Release. “Comisión de Fiscalización recibe declaraciones de Gustavo Larrea”, 4/30/09. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17560&Itemid=1

⁵ Press Release. “Gustavo Larrea pide que Comisión de Fiscalización dé paso a su enjuiciamiento”, 4/30/09. Bulletin N° 933. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17563&Itemid=1

IV. Debates in the Plenary of the Legislative and Oversight Commission

Law on Public Safety

During the process of circulating the Law on Public Safety (a project being handled by the Commission on International Relations and Public Safety), Daniel Pontón, the coordinator of the “City Safety” bulletin, proposed a restructuring of the national police, so that it is better suited to the needs of civil society and the democratic reality of the country today. Pontón believes that safety must be increased along with public confidence in the police in a democratic society and as part of a strategy to improve the State’s ability to govern.⁶

Law on the Ecuadorian Institute on Social Security (IESS) Bank

On April 2, the president of the National Confederation of Rural Social Security Members, César Cabrera, expressed his support for the creation of the IESS Bank, a project that rural members have advocated since 1993 but has never been put into practice. Cabrera emphasized the importance of including a representative of the Confederation on the Director’s Board of the Bank, given that it represents almost one million members.⁷

On April 3, the Commission on Tax, Fiscal and Financial Policy presented its report for the second debate on the draft Law on the Creation of the IESS Bank. The report specified that the Bank’s social objective would be to provide financial services, the administration of unanticipated public funds and the provision of financial services for members and retirees. The director’s board will consist of the President of the Director’s Council of the IESS; a member to be appointed by the Director’s Council of the IESS; and a member to represent the active retirees and other members in the system. The last two members will be selected via public competition under the oversight of the Council on Citizen Participation and Social Control. The Commission’s report incorporated the suggestions and feedback from different social sectors, such as the United Workers’ Front, the Defense Front for Ecuadorian Social Security, the Confederation of Retirees and Pensioners, the Ecuadorian Confederation of Free Labor Organizations, and others.⁸ Finally, on April 6 the draft was approved with 41 votes in favor, six against, three left blank, and seven abstentions.

Approved partial veto to the Organic Law on Elections and Political Organizations

⁶ Press Release. “En socialización de ley de Seguridad Pública, proponen reformar la Policía Nacional”, 4/1/09. Bulletin N° 837. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17444&Itemid=1

⁷ Press Release. “Confederación Nacional del Seguro Campesino respalda creación de Banco del IESS”, 4/2/09. Bulletin N° 843. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17446&Itemid=1

⁸ Press Release. “Se presentó informe para segundo debate del Banco del IESS”, 4/3/09. Bulletin N° 850. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17456&Itemid=1

The Executive's partial veto of the Organic Law on Elections and Political Organizations was approved in the plenary session on April 9 with 42 votes. In this format, the law came to govern the first round of elections for all elected authorities except the candidates for president and the Assembly members who make it to the second round; the method of seat assignment in multiple person elections will be the greater quotient method, applying the continuous divisors method; finally, there will be stronger regulations on the companies that conduct electoral surveys to avoid the use of their results in campaign strategies.

Other Laws

On April 9, the draft Law on Companies was approved with 49 votes after its second debate, which attempts to identify the actors in foreign companies that have investments in Ecuador, so that the resources being invested in the country can be tracked and regulated via investment in social capital. However, on April 30, the Executive issued a partial veto of the law that it sent to the CLF, which included several objections such as the need to clarify that foreign companies are only required to pay taxes when they control companies in Ecuador, not when they merely represent divisions or interests within Ecuadorian companies. If a shareholder is from a foreign country, they must provide the company with annual certification of their legal existence in the country of origin.⁹

Jimmy Carter meets with the CLF

On April 27 former United States President, Nobel Peace Prize winner and founder of the Carter Center, Jimmy Carter, visited the CLF during his tour through Ecuador, Peru, Bolivia and Brazil. In addition to meeting with President Correa, Chancellor Fander Falconí and representatives of various organizations, on April 28 Jimmy Carter visited the CLF. Jimmy Carter met with Fernando Cordero in private and later with the members of the Council on Legislative Administration (CAL). In this last meeting there was an exchange of commentary on the search for lasting peace and information transparency in the legislative branches of Latin American countries. Afterward, the CLF presented Jimmy Carter with an Award of Recognition for his efforts to promote dialogue and his investigation into methods of conflict resolution, promoting democracy, protecting human rights and preventing illness. The award also recognized the contributions provided by the Carter Center in order to promote the strengthening of democratic institutions.

V. Controversy over the draft Organic Law on Monthly Reserve Fund Payments and the National Unified Unemployment System and Job Stimulus

⁹ Press Release. "Reformas a Ley de Compañías con veto parcial", 04/30/09. Bulletin N° 936. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17568&Itemid=1

On April 6 the Executive sent the CLF the draft of the Organic Law on Monthly Reserve Fund Payments and the National Unified Unemployment System and Job Stimulus, classifying it as an urgent project on economic policy. It establishes that all private or public workers are entitled to have their employer pay out 8.33% of their salary or compensation used as a baseline for contributions to the IESS along with the rest of their earnings or salary, as a type of reserve fund, except in the cases affected by other special regimes. This law reforms article 283 of the Law on Social Security, as well as the Law on the Internal Tax Regime, and it also replaces article 196 in the Employment Code.¹⁰

Along these lines, the president of the CLF, Fernando Cordero, commented that this law would boost the monthly earnings of workers. Fernando Cordero emphasized that, despite the opposition of the Association of Chambers of Commerce, some businesses see this monthly payment as a compatible measure for their limitations, because it will relieve some of the difficulties they encounter when they have to pay the year's accumulation of social security payments in one month. Fernando Cordero also clarified that the fund will be left in the hands of the IESS members to be used as they see fit for their needs.¹¹

On April 8 the draft law was analyzed by the Commission on Labor and Social Security. The president of the Commission, Betty Amores (PAIS), announced that the Minister of Finances, the National Secretary for the Development of Human Resources and Compensation in the Public Sector (SENRES), the IESS and labor organizations had been asked to testify with additional information on the possible impacts and complications this provision could cause. Due to the urgent nature of the project, she said an extraordinary session would be necessary and she requested that the invited parties appear to share their observations so the process can move forward.

On April 16, the date of the extraordinary session, the Commission heard from the executive director of the Ecuadorian Business Committee, Roberto Aspiazu; the legal advisor for the Federation of Industrial Chambers, Francisco Díaz; the deputy director of the Chamber of Councils, Paola Romero; as well as advisors from the Quito Chamber of Commerce, the legal advisor to the Chamber of Industry and Production, Viviana Andrade and the president of the Federation of Public Servants (FEDESEP), Miguel García. The participants expressed some concerns about the project, arguing that if it is approved it will make saving more difficult for businesses. The business representatives also expressed doubt in the ability of the IESS to provide financing for loans, which would reduce their liquidity. At the end of the meeting, Amores announced that the gathering had been fruitful.¹²

¹⁰ Press Release. "Ejecutivo presentó proyecto de ley urgente para pago mensual de Fondo de Reserva", 4/6/09. Bulletin N° 852. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17464&Itemid=1

¹¹ Press Release. "Proyecto urgente mejorará ingreso mensual de los trabajadores en 8.33 por ciento", 4/7/09. Bulletin N° 866. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17478&Itemid=1

¹² Press Release. "Empresarios y trabajadores opinaron sobre cambios en fondos de reservas", 4/16/09. Bulletin N° 894. Online:

http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17515&Itemid=1

Her opinion notwithstanding, the business representative, Roberto Aspiazu, said that the initiative should be based on a tripartite agreement between the government, businesses and workers. Aspiazu stated that the fund should be mandatory, but only for the duration of the crisis. For his part, the president of FEDESEP explained that three points of agreement had been reached: the reserve fund's validity as a right for all workers, the recognition of a debt based on the concept of current contributions to the reserve fund, and acceptance of the notion that the funds will be withdrawn in two years.¹³

Once the CLF resumed its activities after the legislative recess, on April 28 a first debate was held on the project. Fernando Cordero made the following points about the draft law:

- That the IESS will maintain compulsory jurisdiction so that it will remain the authority that can demand payment of these funds from all public institutions and individuals who do not fulfill their obligations;
- That the IESS return its collected funds to the members and workers in the construction branch who do not have unsecured loans;
- That each member shall be the one to directly administer his or her funds, given that they will either receive it directly each month or will decided to leave it in the IESS.

Fernando Cordero also emphasized that this is a provisional or temporary measure that will help to stimulate the economy and the productive sectors in the country. The PAIS Assembly members insisted that this did not signify the elimination of an obligatory contribution system, nor the eventual decapitalization of the IESS because these funds are distinct from the obligatory contribution system.

For their part, Assembly members from the minority parties expressed their doubts about the project, especially on how it relates to unemployment pay: in cases where employees have been dismissed, when the total accumulated in the individual unemployment account is less than twice their salary or compensation rate as of the last month prior to termination, this difference will be covered by the State. The Assembly members warned that this provision could be exploited by failing businesses to get rid of their employees.¹⁴

CHRONOLOGY

04/03/09. The workshops on “Parliamentary Procedure under the framework of the new Constitution” and “Online Services as Tools for Information Technology and Communication” are held, and targeted toward media affiliates.

¹³ Press Release. “Un acuerdo tripartito permitiría consensuar las reformas a los fondos de reserva y de cesantía”, 4/16/09. Bulletin N° 895. Online:
http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17516&Itemid=1

¹⁴ Press Release. “Pleno debatió ampliamente el proyecto para el pago mensual del fondo de reserva”, 4/28/09. Bulletin N° 924. Online:
http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17553&Itemid=1

04/08/09. The Commission on Oversight and Political Control called on members of the armed forces to provide their versions of events as part of the political investigation of former Minister Larrea.

04/06/09. The law on the creation of the IESS Bank is approved.

04/09/09. The Executive's partial veto of the Organic Law on Elections and Political Organizations is approved.

04/09/09. The Law on Companies is approved.

04/13/09. The CLF opened its doors to the public to make its history available along with works of art by the artists Oswaldo Guayasamín and Luis Mideros.

04/13/09 – 04/27/09. Legislative recess.

04/28/09. The CLF received a visit from former US President Jimmy Carter.

04/30/09. Gustavo Larrea made a formal statement in the political proceedings before the Commission on Oversight and Political Control.

04/30/09. The Executive issued its partial veto of the Law on Companies.