

THE
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Report on the Legislative and Oversight Commission Ecuador

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ACRONYMS

CAL	Council on Legislative Administration
CLF	Legislative and Oversight Commission
CNE	National Electoral Council
CPCCS	Council on Citizen Participation and Social Control
FESE	Federation of Secondary Students of Ecuador
FFAA	Armed Forces
FLACSO	Latin American Faculty of Social Sciences
IESS	Ecuadorian Institute on Social Security
ILDIS	Latin American Institute for Social Studies
MPD	Movimiento Popular Democrático
ONU	United Nations
SENPLADES	National Secretary for Planning and Development
SOAT	Compulsory Auto Accident Insurance
SRI	National Revenue Service
UNE	National Educators' Union
UNESCO	United Nations Educational, Scientific and Cultural Organization

I. Introduction

In the month of May the work of the Legislative and Oversight Commission (CLF) was framed by the political environment created by the delay in the final results from the April 26 elections. In addition, important debates took place over two crucial draft laws for the future of the institutions of the Ecuadorian State: the Organic Law on the Legislative Branch, and the draft Reform Law on Educator Standards and Pay Scale. The first debate centered on how far the oversight powers of the National Assembly should extend; the second draft law drew strong criticism from the teachers' unions over some provisions related to job stability in teacher training schools, depending on how they were phrased. This last controversy is connected to the current evaluation process being used by the Ministry of Education, which has also been resisted by some affiliates of the teaching schools.

This report covers the legislative process that has taken place in the country in May 2009. The report is organized 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 discussions in the Plenary of the CLF; description of the controversy over the draft Reform Law on Educator Standards and Pay Scale. Finally, we conclude with a chronology of the most important events.

II. The Work of the Specialized Commissions

Commission on Civil and Penal Law

The draft Organic Law on the Legislative Branch was submitted to the Council on Legislative Administration (CAL) on May 12 by a group of PAIS Assembly members that included María Paula Romo. The draft proposes: i) a 40 hour work week for the Assembly members, ii) attendance reporting through the use of electronic cards and electronic voting, iii) extending the time period for presenting first and second reports for debates; iv) the creation of two commissions in addition to those already established: a commission on education and culture and another on agrarian issues. The draft of this law will be further developed by the Commission on Civil and Penal Law. In addition, a copy will be submitted to the National Electoral Council (CNE) to distribute to each one of the National Assembly members elected on April 26 so that they can offer their observations and commentary to the Commission. After May 15, the Commission on Civil and Penal Law published the draft law and issued a call for citizen commentary and suggestions through a variety of channels.¹ For the Commission, the principal political objective of the law is to ensure that the National Assembly can assume its functions in an organized way and begin its work in the proper time and format.

Commission on Reform of the State and Public Management

On May 4, the CAL received the report for the first debate on two draft reform laws: the National Police Force Personnel Law and the Armed Forces Personnel Law.

¹ The draft can be found online: <http://www.asambleanacional.gov.ec/documentos-asambleanacional/Proyecto-Ley-Funcion-Legislativa.pdf>.

The president of the Commission, Fernando Salazar, explained that the two drafts proposed that the employment status and promotions through the official ranks would be determined by the Ministry of Defense and the Ministry of Government, based on ministerial agreement. This would allow more efficient management of the administrative processes. The draft included input from the interested parties, who indicated their agreement with the project.

Commission on Social Participation

A preliminary version of the draft Law on Citizen Participation was presented in a public forum on May 19, organized by the CLF, the Carter Center, Ecuador Dialoga, FLACSO and the Latin American Institute for Social Studies (ILDIS). During the forum, the participants had the opportunity to discuss the preliminary form of the draft and provide specific suggestions that the Commission on Social Participation committed to considering for the final version of the draft.² At the Commission's request and with the sponsorship of the Carter Center, Margarita López Maya, the Venezuelan professor and expert on citizen participation issues, participated in the forum to provide input based on her experience and help frame the discussion of key points in the draft law.

Later, on May 21, Julián Guamán, president of the Council on Citizen Participation and Social Control (CPCCS), sent the president of the CLF, Fernando Cordero, the draft Organic Law on the CPCCS.³ Julián Guamán explained that the construction of the draft had been shaped by the results of 26 workshops throughout the country, in which around 6,000 national leaders and 2,000 Ecuadorian citizens living in the exterior participated. Julián Guamán described the challenge and path to participation as a means to strengthen social control, increase transparency in public management, fight corruption, and improve the designation process for authorities. For his part, Fernando Cordero insisted that there would be a responsible, openly democratic debate and that members of the CPCCS would participate in the debates in the Plenary. The Commission on Social Participation was visited by the councilors of the CPCCS on May 30 so they could directly present their arguments in favor of the draft Law. The members of the Commission announced that they would accept citizen input on the project until June 2 and that, after June 3, they would begin to discuss the proposal article by article.

III. Commission on Oversight and Political Control

The political investigation of former Minister Gustavo Larrea was closed on May 7 by a vote of four of the seven Assembly members on the Commission for Oversight and Political Control (all members of PAIS).⁴ They justified their decision by the lack of

² A Power Point presentation with the essential policy content of the draft Law can be located online: http://asambleanacional.gov.ec/blogs/comision_8/blog/2009/05/20/version-preliminar-de-la-ley-de-participacion/.

³ The draft Law can be consulted online: http://asambleanacional.gov.ec/blogs/comision_8/files/2009/05/proyecto_consejo_participacion_ciudadana_control_social.pdf.

⁴ The votes in favor came from Mauro Andino, Betty Amores, Patricio Pazmiño and Rosana Alvarado. The three votes against were from Vicente Taiano, Rafael Esteves and Galo Lara.

evidence against Gustavo Larrea. The Assembly members argued that if there had been evidence of the irregularities referenced at the heart of the original charges, it would fall back on the department as a whole, not on the individual. In the view of the Commission, the defense and the evidence presented by the former Minister demonstrated that he had estimably fulfilled his duties. Mauro Andino, the president of this Commission, also affirmed that the evidence presented by both sides was irrelevant to the allegations that were the initial grounds for an investigation (which were the alleged negligence of Gustavo Larrea in fulfilling his duties and his alleged failure to abide by legal and constitutional requirements).

Meanwhile, on May 20 the Commission on Oversight and Political Control was visited by the members of the Commission on Transparency that investigated the Angostura case. Assembly member Mauro Andino submitted the statements from the police and military to the Commission. The coordinator of the Commission on Transparency, Francisco Huertas, announced that he would travel to Colombia to establish concrete plans with the Colombian authorities to sort through the Angostura incident.

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

General Topics

The indigenous Awá people that reside in the northern border area of Ecuador were represented by the directors of the Federation of Awá Groups and the Government Council in a meeting on May 4 with the president of the Commission on International Relations and Public Safety, Marcos Martínez, where they expressed their concern over the frequent interference on their land by the irregular armed Colombian groups, as well as the absence of the Ecuadorian government in maintaining education, health, and basic services in the area, and the illegal presence of mining operations, among other issues. Along these lines, Marcos Martínez committed to circulating the draft Law on Public Safety and the State (which will be discussed by his Commission) to the Awá population, as well as to acting as a mediator in the dialogue between the Awá people and the state to ensure the safety of the region.

Working agenda of the CLF

Fernando Cordero, president of the CLF, announced that eight urgent draft laws had been prioritized for completion prior to the swearing in of the new lawmakers.

- the draft Organic Law on the Legislative Branch which will replace the law repealed by the Constituent Assembly and Constituent Mandate No 23;
- the draft Organic Law on the Constitutional Court which will be developed by the Commission on Civil and Penal Law;
- the draft Law on Hydrological Recourses, which will be developed by the Commission on Health and the Environment;
- the draft Law on the Civil Service, developed by the Commission on Reform of the State and Public Management;

- the draft Organic Law on the Council on Citizen Participation and Social Control;
- the draft Law on Decentralization and Territorial Organization, which was written by SENPLADES and will be developed by the Commission on Territorial Organization and Autonomous Governments;
- the draft Law on Public Companies;
- the draft Law on Public Safety, developed by the Commission on International Relations and Public Safety.

Law on Companies

On May 6, the partial veto sent by the Executive of the Law on Companies was approved (with 48 votes in favor, five blank and 14 abstentions). This law attempts to regulate, control and make transparent the resources invested in foreign legal entities involved in free capital investment.

Draft reform Laws on the Armed Forces Personnel and the National Police Personnel

On May 6 the CLF held the first debate on the draft reform Laws on the Armed Forces Personnel and the National Police Personnel, which proposes that promotions be determined by the Ministers of Defense and Government via ministerial agreement, and by the President of the Republic for the highest ranking positions. The purpose of the draft is to increase administrative efficiency within the institutions and decentralize these functions. Afterward, on May 19 the Plenary approved both drafts: the one on the Armed Forces with 46 votes; the one on the Police with 45 votes.

Organic draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System

On May 19 the second debate on this project took place, presented by the Commission on Labor and Social Security. The report issued by the Commission emphasized the opportunity for members of the Ecuadorian Institute on Social Security (IESS) to receive an anticipated monthly repayment from their contributions to the reserve fund. The report also clarified that the members are free to solicit or not the monthly advance from the fund. In the debate in the Plenary it was emphasized that the law will benefit the members struggling as a result of the global economic crisis. However, some Assembly members, such as Rafael Estévez, stated that the project would not be legally binding due to the fact that it was presented as an “urgent” project by the Executive, but the 30 day period for the project’s development had already passed. To this objection, the president of the Commission on Labor and Social Security, Betty Amores, replied that the project is not unconstitutional and the character of the project can be changed by the President of the Republic. Finally, the draft law was approved with 46 votes in favor.

Draft reforms to Title V of the Second Book of the Code on Children and Adolescents

On May 14 the first debate was held on the draft reforms to Title V of the Second Book of the Code on Children and Adolescents, presented by the Commission on Labor and Social Security. The Commission's report argued for the necessity of ensuring timely attention to nutritional pensions for the children of parents who have divorced. Along these lines, it is expected that the Judiciary Council will implement a system for access to information about the contributions from those obligated to donate food, who will sign an agreement with the Internal Revenue Service (SRI).

Before presenting the second report, Betty Amores, president of the Commission, requested a period of 7 days from the president of the CLF, Fernando Cordero, to discuss the report. To ensure the highest quality for the second report, the Commission consulted the directors of the National Commission of Courts for the Protection of the Rights of Children and Adolescents. They expressed the need to establish guarantees for the fulfillment of their mandates, specifically the issues related to providing pensions for nutrition in such a way that mothers will not have to wait for several years to access them. In addition, they requested clarification of the jurisdiction that corresponds to each canton for carrying out their powers and duties. Betty Amores announced that to ensure the speed of these processes, the following measures had been put into place: the ability to file without an attorney, summons issued through one notice, one hearing, description of evidence in the claim, presentation of evidence in the hearing, issuing of a decision in one hearing, among others.

V. Controversy over the proposed draft Reform Law on Educator Standards and Pay Scale

In response to the government's announcement that it would reform the Law on Educator Standards and Pay Scale to make teaching evaluations mandatory, the National Educators' Union (UNE), the largest union in the country, conducted a march in protest and indicated that its members would not be attending the evaluations scheduled to begin in the last week of May. In light of this demonstration, President Rafael Correa stated that the evaluations were obligatory and necessary to ensure academic excellence, and were included in the Ten Year Education Plan of 2006, which was incorporated in one of the five revolutions in the National Development Plan. The draft reforms to the law were released in a polarized environment between the government and the teacher's college affiliated with UNE. In addition to the reform project, the government is promoting a mandatory evaluation process for basic education providers throughout the country, an idea that UNE also opposes. The evaluations differ from the stipulations of articles 26, 232, 233, 344, 349 and numeral 15 of article 326 of the Constitution, which modified the original law passed in 1990.

On May 18, William Pazmiño, president of the UNE branch in Guayas, expressed his disagreement with the draft. In his view, the law attempts to reduce and/or eliminate the UNE's role as a participant in investigatory proceedings at the teaching schools. For her part, the president of the UNE at the national level, Mery Zamora, added that it would be better for the CLF to reject the project; otherwise the legislators would have to confront the UNE's protests. The National Congress of the UNE ratified this position on May 19.⁵

⁵ Resolutions from the XVIII National Congress of the UNE. Online: <http://www.une.org.ec/noticias/consejo.pdf>.

However, on May 21, the CAL submitted the draft Reform Law on Educator Standards and Pay Scale to the Commission on Reform of the State and Public Management. The draft law seeks a “new model for a revolution in education” with a permanent system for professional development, rigorous academic standards and periodic evaluations of all the actors in the system. Some of the project’s main points include:

- Teachers must complete a year of training in a rural area with corresponding recognition.
- Vacancies will be filled through a merit based competition, with priority by the candidate’s area of residency.
- Director positions will serve four year terms and may only be reelected one time, but only if they reapply and win the merit based competition.
- Termination of duties will be issued when there is a resignation, retirement, or deficient scores in the evaluation.
- Performance reviews will be held every four years in urban districts and every three years in rural districts.⁶

The president of the Commission, Fernando Salazar, described the draft as a point of departure to make the changes needed in the education sector. In addition, the project is in compliance with the Constitution, which establishes the principle of evaluation. Furthermore, Salazar announced that a working timeline would be implemented so that the community involved with education issues can present its observations and suggestions.

For its part, on May 22, the political party Movimiento Popular Democrático (MPD)⁷ expressed its opposition to the section of the draft on mandatory evaluations and the use of a merit based competition to fill vacancies. However the parents and families of some students expressed their approval of the evaluation process for teachers on May 23.

Meanwhile, the president of the CLF, Fernando Cordero, asked that teachers actively participate in the evaluation to treat it like a commitment to change and responsibility for the institutions and the students, as well as the need to improve the overall quality of education. Fernando Cordero urged teachers not to see the evaluation as a type of sanction but rather as an opportunity for improvement.

On May 29, the Commission on the Reform of the State began to analyze and circulate the draft. The motives behind the controversial provisions were the need to create and implement a system of ongoing professional development that would be permanent, up-to-date and rigorous, which would include evaluations of the different actors in the education system. Fernando Salazar announced that the process of circulating the draft law to the citizens would be supported by the Ministry of Education, the Association of Rectors of Media Education Centers, UNE, the Federation

⁶ Press Release. “Comisión 6 tramita reformas a Ley del Magisterio Nacional”, 05/22/09. Bulletin N° 1026. Online: http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=17675&Itemid=1.

⁷ Many of the directors of UNE belong to this party.

of Secondary Students of Ecuador (FESE), representatives of the President's office, representatives of the Social Contract for Education, UNESCO, and others.

This draft law, as well as the evaluation process for teachers, has been defended by President Correa, who, after he had already announced that the failure to appear at the second call for the evaluation within 30 days would result in teachers being terminated, called on the citizens to hold a demonstration on May 29 in Guayaquil, in order to demonstrate the wide sectors of the population that do support the evaluations.

CHRONOLOGY

6/05/09. The partial veto of the Law on Companies was accepted.

7/05/09. The investigation of former Minister Gustavo Larrea was closed.

12/05/09. The president of the CLF, Fernando Cordero, received a visit from the Ambassador of Honduras, Eduardo Rosales.

15/05/09. The Plenary selected Assembly member Pedro del Cruz to serve as part of the Ecuadorian delegation to participate in the Permanent Forum on Indigenous Issues in the United Nations on May 18 to 29 in New York.

19/05/09. The first forum was held for the public discussion of the draft Law on Citizen Participation.

19/05/09. The reform Laws on the Armed Forces Personnel and the National Police Personnel were approved.

19/05/09. The draft Law on Monthly Reserve Fund Payments and the National Unified Unemployment System was approved.

19/05/09. The Plenary of the CLF accepted the resignation of the Assembly member from Manabí, Trajano Andrade Viteri, with 56 votes, who signed up as a candidate for the Andean parliament.

20/05/09. A citizen forum was held on reforms to the Compulsory Auto Accident Insurance Law (SOAT).

21/05/09. The Commission on Reform of the State and Public Management received the draft Reform Law on Educator Standards and Pay Scale.