

THE
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Report on the Appointment of the Temporary Electoral Authorities of Ecuador

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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

Introduction

As described in the Transitional Regime of the Constitution approved by referendum on September 28, 2008, the Constituent Assembly held its final session (the 98th) in order to appoint the members of the Legislation and Oversight Commission, as well as the members of the temporary electoral authorities that together form the Electoral Branch: the National Electoral Council (NEC) and the Litigious Electoral Tribunal (LET). For the first time in Ecuador's modern history, the organization and evaluation of its elections have been left to two autonomous agencies: the NEC will be in charge of organizing and executing electoral processes and the LET will have jurisdictional authority on electoral matters.¹ This report provides an account of the process of selecting and naming the temporary representatives of these two agencies. The Carter Center's principal motivation in writing this report is to make a contribution to informing national and international audiences about the process of institutional transformation taking place in Ecuador. Although they are temporary, the new electoral authorities have an important and specific purpose in organizing and judging the fairness of the next general election scheduled for April of 2009.

The legal foundation for appointing the electoral authorities

There are two constitutional foundations for selecting the new electoral authorities: a) two articles in the Constitution that describe the nature and formation process for the NEC and LET; and b) an article in the Transitional Regime that states the Constituent Assembly will be the authority to appoint the temporary members of both institutions.

In the first case, Article 218 states that the NEC will consist of five principal councilors, whose president will be a representative of the Electoral Branch. Article 220 establishes that the LET will consist of 5 principal members who must possess a Law degree (third level) and have practiced as an attorney or legal professor for at least ten years.² In the second case, Article 18 of the Transitional Regime states that the Constituent Assembly will appoint the temporary members of these authorities.³

The appointment proceedings

¹ The articles on the Electoral Branch can be found in articles 217-224 of the Constitution of the Republic of Ecuador.

² **Art. 218.-** *The National Electoral Council is composed of five principal councilors, who will serve during six-year terms. The National Electoral Council will be partially renewed every three years; two members on the first occasion, three on the second, and so on in succession. There will also be five alternate councilors who will be replaced in the same way as the principals*

From among its members it will elect a President and Vice President, positions that will carry a three-year term.

The President of the National Electoral Council will be a representative of the Electoral Branch. The law will determine the organization, operation and jurisdiction of the autonomous electoral authorities, which are of a temporal nature. To be designated a member of the National Electoral Council one must possess Ecuadorian citizenship and political rights.

Art. 220.- *The Litigious Electoral Tribunal is composed of five principal judges who will serve six-year terms. The Litigious Electoral Tribunal will be partially replaced every three years; two members on the first occasion, three members on the second, and so on in succession. There will also be five alternate judges who will be replaced in the same manner as the principals.*

From its principal members it will elect a President and Vice President, positions that will last for three years.

To be a member of the Litigious Electoral Tribunal one must possess Ecuadorian citizenship and political rights; hold a third level - law degree - recognized in the country; and have practiced as an attorney or legal professor while meeting ethical standards for a minimum period of ten years..

³ **Art. 18.- (Electoral Branch)** *In order to facilitate the immediate realization of the electoral process established in this Transitional Regime, the Constituent Assembly will appoint the temporary members who will form the National Electoral Council and the Litigious Electoral Tribunal.*

The members of these authorities, once so designated, will be replaced by those who are rated highest in the competition process established in the constitution. The selection process will begin once the electoral process is over.

While Article 18 of the Transitional Regime only states that the Assembly “will appoint” the electoral officials, without providing further details on the procedure for these appointments, the Director’s Commission of the Constituent Assembly decided to hold an open call to the public for potential candidates as a demonstration of greater transparency and increased opportunity for participation by the citizens.

The registration process for candidates was simple: any Ecuadorian citizen could register him or herself or other citizens through the web page of the Assembly, by sending a request in the mail, or dropping the names off in the offices of the Constituent Assembly. Interested candidates were able to register from the first week in October through October 23. The ease of the process for registering candidates resulted in 270 nominations for both agencies. However, many of these were submitted without the prior awareness of the nominated candidates and the registration paths were not widely advertised. The last point could be attributed to the short time available to hold the open call based on the short time limits established in the Transitional Regime.⁴ As a basic screening, the Director’s Commission announced that candidates interested in continuing with the process should personally send their resumes and proof of citizenship to the Secretary of the Assembly. Of the 270 candidates registered, only 93 submitted the requested documents.⁵

On October 23, the day that Session 98 went into recess, the party leaders of the Constituent Assembly met to attempt to reach a consensus on the appointments to the new authorities. None of the parties released official statements on the course of the meeting. According to several interviews of Assembly members, the only party that presented a complete list of nominees to fill the two temporary courts was PAIS. While the PAIS Assembly members publicly insisted that they made an effort to reconcile their positions with those of the other parties in the Assembly, some Assembly members from minority parties indicated that they had withdrawn from the negotiating process because they felt it lacked the conditions of political transparency needed to effectively challenge the candidates or modify the list presented by PAIS.

The day of the appointments

On October 24 the 98th session recommenced. The session started with a round of formal speeches for the formal nomination of the candidates for the electoral bodies.

Before going into voting procedure, Assembly Member Julio Logroño of *Partido Sociedad Patriótica* (PSP) presented the Secretariat of the Constituent Assembly with a request to publish the complete list of candidates so that citizens might have a chance to object to the candidacies. The Plenary voted on the motion by Logroño and it was rejected. Those who opposed the motion argued that the appointment process was not a public competition and therefore citizen objections were not part of the procedure.

Once the motion was rejected, the nominees for the NEC were processed first, followed by the nominees for the LET; all candidates were introduced one by one. Practically all of the nominees were suggested by PAIS Assembly members, by minority parties affiliated with PAIS, or by independents. The opposition blocks abstained from making nominations. Except for the position of the ranking member on the NEC, which received two nominations, the rest of the positions only saw one candidate nominated. The list of principal and alternate councilors appointed to both organizations resulted in the following list:

⁴ According to Article 17 of the Transitional Regime, the Constituent Assembly had to convene five days from the official announcement of the results of the referendum.

⁵ The complete list of nominees, as well as a link to their resumes, has been published in a data base on the website of the Constituent Assembly. Online: <http://www.asambleaconstituyente.gov.ec>.

National Electoral Council	Litigious Electoral Tribunal
<i>Primary</i>	<i>Primary</i>
Omar Simon María Manuela Cobacango Fausto Camacho Marcia Elena Caicedo Carlos Cortez	Carmina Alexandra Cantos Jorge Moreno Ximena Endara Arturo Donoso Tania Arias
<i>Alternate</i>	<i>Alternate</i>
Lucila de las Mercedes Vallejo Germán Rojas Santa de Gloria Romero Wilson Mayorga Ana Arteaga	Douglas Quinteros Amanda Páez Juan Paúl Ycaza Nelly Cevallos Oswaldo Segovia

The appointments of these members were supported by the PAIS block and its allied parties and other independent Assembly members. The opposition parties either voted against them or abstained across the board; however, some minority Assembly members did lend their support to the candidates nominated by the majority. On average, the new appointees received over 85 votes out of 112 Assembly members in attendance. In other words, they received the support of approximately 75% of the Assembly members present. Once elected, according to Mandate 22, they assumed their “offices” in the new electoral authorities.⁶

Selection criteria and profiles of the electoral authorities

As you can gather from the Constitutional articles previously mentioned, and by inference from the absence of more specific criterion that the Constituent Assembly could have established, the requirements for members of the NEC were not very restrictive (“possess Ecuadorian citizenship and political rights”). The requirements for members of the LET were slightly more specific (in addition to the requirements for the NEC, candidates must also “hold a third level legal degree recognized in the country; and have practiced as an attorney or legal professor while meeting ethical standards for a minimum period of ten years”). None of these positions had a public list of desired or required skills.

However, based on a series of interviews conducted by the Carter Center among diverse political and social actors, it can be inferred that a set of common criteria prevailed in selecting the members of the electoral authorities, which included gender equality and ethnic representativeness.

In the NEC’s case, there was an effort to include both individuals with experience in electoral issues as well as representatives of different social sectors, ethnic groups, and geographic areas with relevant professional experience from a wide variety of fields. Thus, two of the appointed councilors have a long history of electoral experience: Fausto Camacho, with 8 years of experience in different positions in the Supreme Electoral Tribunal,⁷ and Omar Simon, with 6 years of experience working on electoral observations with the *Participación Ciudadana* organization. The other positions on the council were filled by an indigenous director in the National Confederation of Indigenous, Farming and Black Organizations (*Confederación Nacional de*

⁶ Constituent Assembly, “Mandate No. 22”. Online: http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=19022&Itemid=1.

⁷ Fausto Camacho was also an assistant to Working Group 2 on “Social and Citizen Organization and Participation and Systems of Representation” in the Constituent Assembly.

Organizaciones Campesinas, Indígenas y Negras, FENOCIN), Manuela Cobacango, who is a native of Cayambe in the northern part of the Pichincha province; Marcia Elena Caicedo, an Afro-Ecuadorian attorney from Esmeraldas; and an economist from Guayaquil with experience in the public and academic sectors, Carlos Cortez. With these members, the NEC can be considered the most diverse electoral authority that Ecuador has ever had, with indigenous or Afro Ecuadorians joining in for the first time.

With respect to the party affiliations of the councilors, we have learned that none of them had an active history of support for the current political parties, although admittedly some of them have been affiliated with parties or social organizations amenable to the PAIS political agenda, such as *Movimiento Popular Democrático* (MPD) or FENOCIN. During the period before their appointments, the media outlets took up the case made in public statements by some minority party Assembly members that various candidates had political ties to the current regime. However, none of the minority party Assembly members formally contested the candidacy of the appointees on the day they were selected; they only voiced objections in the “campaign” period beforehand. It should be noted that there was disagreement between PAIS Assembly members and other key actors we interviewed over whether the original list presented by PAIS was the same as the list that was voted on. In any case, the final list presented was based on agreement between PAIS and the parties that supported it in the Assembly. For their part, some minority Assembly members said in interviews that the new councilors of the NEC were selected for their expected “unconditional” support for the government.

Once appointed, the primary councilors of the NEC met on October 27 and designated Omar Simon as the body’s president and Carlos Cortez as its vice president. Omar Simon, a sociologist from Latacunga, served for two years as the deputy director of the NGO *Participación Ciudadana*, playing a significant role in its electoral observation projects. As for Carlos Cortez, his experience with financial issues led the Council to request that he provide an overview of its budgetary issues.

As for the LET, the majority of those interviewed agreed that the prevailing criteria was solid experience in the legal field, in accordance with Article 220 of the Constitution, which requires at least 10 years of practice. Unlike the members selected for the NEC, the technical requirements took precedence over considerations of diversity in the selection process due to the comparatively more technical nature of the LET.

However, that experience in the legal field did not necessarily have to be related to electoral matters; the only candidate selected with significant electoral experience was Jorge Moreno, who served as president, vice president and representative of the Provincial Electoral Tribunal of Azuay. According to our interview subjects, the Constituent Assembly faced the issue that most of the attorneys in the country with electoral experience were tied to one of the political parties; as such, the highest ranked criteria were professionalism, experience in the legal field, and lack of current affiliation with an active political party. The other members selected were Tania Arias, former advisor to the National Secretariat of Planning and Development (SENPLADES) and former legal director of the National Council on Science and Technology (CONACYT); Ximena Endara, instructor and former assistant to Working Group 8 in the Constituent Assembly; Arturo Donoso, who served as a judge for five years on the Supreme Court of Justice; and Carmina Alexandra Cantos, former director of the Agency for the Guarantee of Deposits, who received amnesty from the Constituent Assembly. While, similar to the NEC, we gathered that none of the selected members had an active political affiliation with a political party, some opposition Assembly members claimed that certain members of the LET had close relationships with high ranking officials in the current regime or a history of ties to political parties similar to PAIS, and said their political independence remained to be seen through their conduct.

Finally, it is worth mentioning that the selection of the president and vice president of the LET was handled by its members one week after being named by the Constituent Assembly. Tania Arias was elected president and Ximena Endara vice president.