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CARTER CENTER



# **Report on the selection process for the members of the temporary Council on Citizen Participation and Social Control**

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## 1. Introduction

In mid-December 2008, the Second Vice President of the Legislation and Oversight Commission (CLF) – the contact between the legislative body and international contacts and supporters – invited the Carter Center to serve as one of the international observers to monitor the process of selection, evaluation, appeal and appointment for the members of the temporary Council on Citizen Participation and Social Control (CPCCS).

The Carter Center accepted this request and organized a mission led by Cecilia Blondet (a member of the Group of Friends of the Inter American Democratic Charter and an expert in the field of social control and transparency)<sup>1</sup> and Marcelo Varela (joint director of the Americas Program at the Carter Center and an expert on issues of government reform in Costa Rica) and accompanied by two members of the Carter Center office in Ecuador Miguel Ruiz (Mexico) and Cécile Mouly (France). The Carter Center's observations served as an extension of its previous projects monitoring and providing support for the institutional transformation process in Ecuador that have been ongoing since late 2007 at the request of Ecuadorian authorities.

This report covers the selection process of the members of the temporary CPCCS, who assumed office on January 26, 2009. It draws on the observations of the four international observers sent by the Carter Center and their meetings and interviews with key players in the process.

The Commission on Social Participation of the CLF was in charge of organizing the merit-based competition to select the members of the CPCCS, one of the new institutions in the new Transparency and Social Control Branch. After years of difficult political and socio-economic conditions and high levels of corruption, the establishment of the Transparency and Social Control Branch is an attempt to respond to citizen demands for greater opportunities for influence and participation. The main functions and duties of the CPCCS include: a) naming the officials to fill positions in controlling authorities, and b) promoting citizen participation and citizen control over government management.

The process described in this report extends from the transition period until the new Constitution comes into full effect. Its purpose was to select the members of the temporary CPCCS, whose main responsibility is writing a draft law in 120 days that will provide rules for the permanent CPCCS in accordance with the Constitution. The members of the permanent CPCCS will be determined after the general elections on April 26, 2009.

## 2. The rules of the process

According to the temporary provisions of the Constitution, the CLF was responsible for designating the councilors on the temporary Council on Citizen Participation and Social Control (CPCCS). According to the interpretive judgment by the Constitutional Tribunal (the self-proclaimed "Constitutional Court"), published in the official record on December 12 2008, the CLF was supposed to make its selection after a merit based competition where candidates could apply or be nominated, and there would be citizen observation and appeal within a time period of 30 days.<sup>2</sup> The temporary CPCCS would consist of seven principal councilors and seven alternates. On December 18 2008, the CLF adopted a set of guidelines for the competition.<sup>3</sup>

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<sup>1</sup> Cecilia Blondet also served as the Minister of State in the Ministry for the Promotion of Women and Human Development in Peru.

<sup>2</sup> Constitutional Court, "Sentencia Interpretativa 002-08-SI-CC". Online: [http://asambleanacional.gov.ec/blogs/comision\\_8/files/2008/12/resolucion\\_del\\_cc.pdf](http://asambleanacional.gov.ec/blogs/comision_8/files/2008/12/resolucion_del_cc.pdf).

<sup>3</sup> Online: <http://asambleanacional.gov.ec/blogs/participacion/instructivo/>.

According to the guidelines, the councilors should be selected from among the candidates nominated by citizens and social organizations.

The guidelines established the following time limits and stages in the competition:

*Time Periods.* Nominations accepted over a 7 day period; evaluation and merit test over an 8 day period; publication of the candidates with the highest scores over a 1 day period; appeals, resolution of appeals and notification of results over a 7 day period; appointment and swearing in over a 1 day period.

*Gender Parity in Membership.* The CPCCS should have gender parity between men and women who obtained the highest scores and with at least one member, both principals and alternates, who is from an indigenous, Afro Ecuadorian or Montubio nationality.

*Evaluation.* The merit evaluation score will be based 50% on the overall application and the other 50% on the skills test. This skills test will cover issues related to social participation and control; it will consist of multiple choice and closed answer.

*Affirmative Action Measures.* Article 13 of the guidelines stipulated that all candidates would be evaluated, in addition to other merits, according to various favorable discrimination criteria.

- a) For being under 30 years old, 3 points.
- b) For being over 65 years old, 3 points.
- c) For having a disability, 3 points.
- d) For residing in a rural parish for the last 5 years, 3 points.
- e) For belonging to the lowest fifth income group, 3 points.
- f) For residing in the exterior for at least 3 years, 3 points.

### **3. Description of the process**

The following timeline documents the order of the process:

1. On November 7 2008, the proposal from the president of the CLF's Commission on Social Participation, Betty Tola (PAIS), was approved, prompting the open call for nominations to the competition to fill the CPCCS.<sup>4</sup> Based on article 207 of the Constitution, Tola suggested that the competition should be organized by the National Electoral Council (CNE). This proposal was criticized by opposition Assembly members who argued that the CLF itself should run the competition, based on article 29 of the Transition Regime of the Constitution. For its part, the CNE requested that the Constitutional Court step in to determine the competent authority for organizing the competition.
2. On December 11 2008, the "Constitutional Court" decided that the CLF should hold the competition to fill the CPCCS, establishing a period of 30 days for its formation, by January 11, 2009.
3. On December 12 2008 the Commission on Social Participation submitted the draft "Guidelines" that would regulate the designation of the CPCCS members to the CLF's Council on Legislative Administration. This document was developed with input from different civil society organizations.
4. On December 18 2008, the guidelines for the competition were approved.

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<sup>4</sup> Press Release, "Pleno convocó a concurso para designación de miembros del Consejo de Participación Ciudadana", 11/7/08. Online:

[http://www.asambleanacional.gov.ec/index.php?option=com\\_content&task=view&id=16427&Itemid=169](http://www.asambleanacional.gov.ec/index.php?option=com_content&task=view&id=16427&Itemid=169)

5. On December 22 the open call was widely announced through the private and public media outlets, as well as on the CLF's web page.
6. From December 23 through 29, nominations were accepted. In total, 315 applications were received. The applications were received by the Secretary of the Commission on Social Participation; printed and numbered, sealed, and copied in files to limit the possibility of members of the Commission manipulating the documents. The sealed folders were delivered to the private company in charge of evaluating their merits.
7. From December 23 2008 through January 1 2009 the merits of the candidates were evaluated using the standard resume forms provided by the Commission on Social Participation. The evaluation was conducted by the private company Teleaccess in the presence of observers, based on the criterion of the guidelines and after undergoing a brief training session offered by the members of the Commission on Social Participation.
8. On December 31 2008 the names of the candidates qualified to take the skills and knowledge test was posted on the CLF website. Only the applicants who provided a sworn declaration on certain basic requirements were deemed eligible to take the test.<sup>5</sup> The first list of eligible candidates had to be updated afterward, because, according to the Commission on Social Participation, there were problems in the information database and some of the information put into the software that evaluated the applications had not been correctly recorded. The Commission on Social Participation realized the problem late on January 1, after Teleaccess conducted a quality control test and discovered that the information of some of the applicants eligible to take the exam had not been recorded. To ensure that all of the eligible candidates were aware of the final list, the Commission on Social Participation had to call the candidates who did not appear on the list that was published on December 31.
9. On January 2, 2009, the skills and knowledge test was given in the Universidad Andina Simón Bolívar. Of the 182 eligible candidates, 156 participated in the exam. Teleaccess graded the tests based on the grading keys provided by the multi university team that wrote the exam.
10. From January 2 to 3, the candidates' scores were calculated based on the two parts of the competition (applications and test results), as well as affirmative action factors.
11. On January 3 the list of 24 finalists was published, ordered by highest score, gender parity and the other methods of affirmative action described in the guidelines.
12. From January 4 through 10, a period was opened for appeals and their resolution that would culminate in the publication of the final results, followed by the appointment and swearing in of the new CPCCS on January 11. However, apart from a few petitions appealing the leading candidates, the majority of the petitions received by the Commission on Social Participation were more geared towards reevaluating the original merit scoring or contest results. The main argument of the reports seriously challenged the quality of the evaluation process as it was handled by the business in charge of it. The Commission on Participation decided to go ahead with a second evaluation of the candidates who requested it and whose names appeared on the list of the 24 highest marked candidates. After the second evaluations, a new list of 24 candidates was published and distributed. However, upon the petition of various candidates who had requested a re-evaluation, the Commission decided to go beyond the process established in the guidelines and presented a motion before the CLF arguing that the best course would be to initiate a complete re-evaluation process to ensure that no one was left out.

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<sup>5</sup> Requirements established in Art. 5 of the guidelines: a) Be an Ecuadorian citizen; b) Possess rights to political participation; c) Be at least 18 years old on the date of their application; d) Be free of any legal or constitutional impediment to serving in a public post or serve as a candidate in a popular election; e) Not have served as a director of the political parties or movements registered in the Electoral Records over the past two years; f) Not have filled a popularly elected post in the last three years.

13. On January 11, in an extraordinary session, the plenary of the CLF adopted a resolution that extended the time limits of the competition to enable the re-evaluations.
14. From January 13 through 15, there was a period for second evaluations of the candidates who had not already requested one. For this part of the process, the Commission on Participation invited observers from the National Council on Higher Education (Conesup) in addition to the observers who were already participating.
15. On January 15, the Commission on Social Participation published a new list of 24 finalists, ordered by highest score, gender parity and other affirmative action factors described in the guidelines.
16. From January 17 through 20 new appeal requests arrived. According to the CLF's resolutions, citizens had the right to appeal any of the 24 finalists, as long as they had not already been appealed before. The written appeals were sent to the Commission on Social Participation, which, after analyzing the submitted documents, decided which appeals to pursue based on the competition's guidelines. For the appeals that met the requirements, the applicants in question were sent written notification so they would be able to present evidence in their defense at public hearings.
17. On January 22 & 23 public hearings were held, accompanied by the country's media outlets and national and international observers, so the six appealed candidates could present evidence in their own defense. The appealed candidates had the opportunity to present documents to prove their qualifications and had to respond to a series of questions that the Commission on Social Participation had prepared over the subject of the appeal. Given the magnitude of this task and the need for legal expertise, the Commission on Social Participation was supported by a team of attorneys from the Legal Subcommittee of the CLF, who presented their observations on the appeals and defenses to the Commission. These legally-based criteria assisted the members of the Commission on Social Participation in deciding which appeals should be accepted or rejected. During the session on January 23, which was covered by observers and media outlets, the Commission accepted two of the presented appeals as valid: one for irregularities in the documentation submitted by the candidate and the other for the lack of evidence of known integrity of one of the candidates. These appeals referred the candidates occupying the 15<sup>th</sup> and 18<sup>th</sup> spots, respectively.
18. Once the appeals had been resolved, the seven top finalists retained their positions. The only modifications to the list was due by the resignation of Pablo Sarzosa, who held the 11<sup>th</sup> position<sup>6</sup>, and by the successful appeal against the candidate in the 15<sup>th</sup> position. After the developments of the resignation and disqualification, the Commission on Social Participation organized a lottery to determine who would occupy the 13<sup>th</sup> position on the list because there was a tie between two of the candidates. The lottery was observed by a notary and held in public with media and other observers present. The lottery concluded the selection process for the 14 members of the temporary CPCCS.
19. In a session on January 26, 2009, the plenary of the CLF adopted as its second point of order the final appointment of the members of the temporary CPCCS. While various PAIS Assembly members called the process an advance towards building a more inclusive and participative democracy, representatives from other parties such as Movimiento Popular Democrático (MPD), Pachakutik and Partido Social Cristiano (PSC) criticized the process for being corrupted from the beginning. After speeches from a dozen Assembly members, an Assembly member from MPD submitted a motion for a vote to annul the entire process and begin a new one. The

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<sup>6</sup> Pablo Fernando Sarzosa Játiva strongly questioned the selection process. Sarzosa and other candidates publicly announced their complaints over the supposed lack of constitutionality of the guidelines, as well as the supposed lack of transparency in the process. The Commission on Participation of the CLF responded to these complaints on the web page it set up to provide an account of the details of the process: <http://asambleanacional.gov.ec/blogs/participacion/>.

motion was rejected with 44 votes against it. Afterward, a motion submitted by a PAIS Assembly member to swear in the final members of the temporary CPCCS was approved with 47 votes in favor. This motion was met with 6 abstentions and no votes against. Immediately afterward, the fourteen members of the temporary CPCCS assumed office; their names are listed below:

#### *Principals*

1. Guamán Gualli Julián
2. Banegas Cedillo Mónica Eulalia
3. Vera Quintana Carlos Manuel
4. Salazar González Betsy Ana
5. Cornejo Zambrano Pablo Ignacio
6. Silva Chicaiza Emma Roxana
7. Ruiz Falconí Oswaldo Vinicio

#### *Alternates*

8. Mosquera Aguirre Gabriela Catalina
9. Alfaro Reyes Gil Eloy
10. Yambay Aucancela Mariela Concepción
11. Ortega Paucarina Edgar Marcelo
12. Pachacama Chacha Jaqueline del Rosario
13. Cárdenas Ramírez César Wilfrido
14. Mosquera Castro Leydi Viviana

#### **4. Observations on the process**

The selection process for the members of the temporary CPCCS took place in the midst of questions of theory (debates over representative democracy versus participative) and practice from a variety of political and social actors. At the same time, setbacks emerged from the very first day with the debate over which organization should manage the process to fill the temporary CPCCS.

Overall, both opponents and supporters of the government agreed that the process suffered from a series of irregularities that caused distrust and put the legitimacy of the process at risk. For some, the process was dead on arrival; it was too mixed up with Correa's supporters and it was a set up to allow him to strengthen his power. For others, the mistakes were a result of too much improvisation and lack of experience. In this controversial context there were a few proposals to annul the process and others to try out other alternatives to bring about a better outcome.

Below we summarize some of the most discussed problems and some of the actions taken to address them:

- Many commentators agreed that the main problem was the short time frame and its conflict with the holiday season that impeded the smooth unfolding of the planned timeline. In practice, these issues caused pressure and improvisational action, undermining the confidence of the public and some political actors.
- The lack of precision in the guidelines on candidate requirements, the second evaluations and the appeals of the results. The guidelines laid out some demanding rules of the game, considering the short time granted to candidates. It required sworn and notarized documents that many candidates were not able to obtain, adversely affecting their scores.<sup>7</sup>
- The complexity of the affirmative action standards only fed the distrust of the process. In response to numerous objections on this subject, the Commission on Social Participation decided to provide a detailed explanation on these standards on its Web page, in addition to promoting these explanations through various media outlets.

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<sup>7</sup> Various candidates from distant or rural provinces felt victimized by the standards.

- The lack of parameters for evaluating certain elements in the merit based competition. Particularly criticized in this area was the ambiguity of the type of activities that candidates could describe as “citizen participation” or “social control.”
- The contracting of a private business to evaluate the application documents and skills and knowledge tests. Various actors criticized the fact that the Commission on Social Participation had not conducted the evaluations itself, instead delegating it to a private business. In the public hearings for the secondary evaluations, the Commission on Social Participation played a more proactive role in supervising the process and posted an advisor at each evaluation post, along with a representative from Teleaccess and an observer. Candidates were also invited to attend the re-evaluation process so they could defend their applications and promote a high level of transparency.
- The failures of the information system that captured applicant information. As we previously mentioned, these problems led to errors in recording the complete applications of some candidates, which led to discrepancies between the list of candidates originally approved to take the skills test and the final version of the list.
- The lack of effective quality control procedures in the processing of the information.
- The lack of regulations on the observers caused some friction between the observer groups, as well as with members of the Commission on Social Participation. The national observers were a diverse group that seemed to favor close attention to particular candidates over observing the overall transparency of the process.

To summarize, the lack of experience in facing a novel and complicated process, and the short time for it to take place, led to forced decision making and rule changes on the go, which boosted doubts over the management of the process. However, in light of these foundational and procedural problems, we would venture that the approach of the Commission on Social Participation was to seek alternative solutions that tended to favor transparency and the rights of citizens over the rules and restrictions imposed on the process. Furthermore, the Commission made a noteworthy effort to keep the citizens and candidates informed of their decisions as they were made, which was reflected through the consistent updating of its website and, above all, an openness to the press and observers at various times and points of deliberation, although under pressured conditions.

## **6. Evaluation and recommendations with a view to the future**

While the process certainly faced a variety of difficulties and was not immune from criticism or controversy, the civic commitment and enthusiasm of the various social and political actors who participated in it should be recognized. Also noteworthy was the willingness of all involved to make an effort to safeguard the complete respect of the citizen rights consecrated in the Constitution.

As many participating political actors have mentioned, the members of the temporary CPCCS face important challenges ahead. Therefore, they will have to hope to be able to guide their actions to demonstrate their strengths and political independence. In 120 days, they will have to prepare a draft law to regulate the organization and operation of the permanent CPCCS<sup>8</sup> and submit it for the consideration of the CLF. Furthermore, according to the law, the CPCCS should regulate the formation of the citizen commissions that will select the authorities mentioned in the Constitution and establish the rules for each competition, which will take place after the officials elected in the next general elections have taken office. The temporary CPCCS will also have the authority to appoint the representatives of the Branch on Transparency and Social Control, in each of the citizen selection commissions.

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<sup>8</sup> See the powers and duties of the permanent CPCCS in annex.

In light of what we observed and with the future in mind, the Carter Center believes that similar process could benefit from keeping the following recommendations in mind:

1. Perform an exhaustive evaluation that summarizes the experiences from this process and generates input for the writing process of the law that will regulate the operations of the CPCCS.
2. Contemplate, in the fair and merit based competitions ahead, the incorporation of opportunities for public review with participation from observers and media outlets to strengthen the transparency and integrity of these processes. Also, anticipate a period for processing requests for appeals and re-evaluations before publishing a list of the candidates with the highest scores.
3. Improve the procedures for distributing information about each step in the process.
4. Provide more specific regulations on the participation of national and international observers at different stages of the process, using the international standards for best practices as a guideline.
5. Design a communications strategy that addresses the release of information on the process, paying special attention to the application of affirmative action standards.
6. Form a group of national and international observers to support the process of building the institution of the Branch on Transparency and Social Control in its various stages.



## **Annex: Powers and Duties of the Temporary CPCCS and the Permanent CPCCS**

### **A) Temporary CPCCS:**

In accordance with the interpretive ruling of the “Constitutional Court,” the powers and duties of the CPCCS include the following:

- In 120 days, it must prepare a draft law to regulate the structure and operations of the permanent CPCCS and submit it for the consideration of the CLF.
- While drafting the law, it should provide regulations on the formation of the citizen commissions for selecting the authorities mentioned in the Constitution and write the rules of the competitions, which should be held after the swearing in of the officials who will be elected during the next general elections.
- It will have the power to appoint representatives of the Branch on Transparency and Social Control to each one of the citizen selection commissions.

### **B) Permanent CPCCS:**

The permanent CPCCS will have a predominant role in promoting the rights on citizen participation and the establishment of social control mechanisms for matters of public interest. Furthermore, it will be in charge of appointing the key authorities in the new institutional order, such as the Ombudsman, the State Attorney General, or the members of the Judiciary Council, after completing the corresponding selection process.

According to the new Constitution, its duties and powers are the following:

- Promote citizen participation, stimulate processes for public deliberation, and develop the promotion of citizens, values, transparency and the fight against corruption.
- Establish accountability mechanisms for the institutions and organizations of the public sector and support processes of citizen oversight and social control.
- Urge the other organizations in the Branch to comply when they are asked to become involved in the areas that warrant intervention in the judgment of the CPCCS.
- Investigate complaints about acts or omissions that could hurt citizen participation or lead to corruption.
- Release reports that determine the existence of indicators of responsibility, formulate the necessary recommendations and move forward with the corresponding legal action.
- Play a role in the processes of the cases that are based upon the results of its investigations. When the judgment determines that the act of the crime involved misappropriation of funds or resources, the competent authority may begin to confiscate the personal property of the convicted person.
- Contribute to the protection of individuals who speak out against corruption.
- Request from whatever organization or individual with the institutions of the State the information it requires for its investigations or processes. The people or institutions will cooperate with the CPCCS and those who refuse to do so will be sanctioned in accordance with the law.
- Organize the process and monitor the transparency in the execution of the acts of the citizen commissions for selecting state authorities.
- Designate the chief authority in the General State Solicitor and the superintendence from the lists of three candidates proposed by the President of the Republic, after the corresponding process involving appeals and citizen oversight.
- Designate the chief authorities in the Ombudsman, Public Defender, Attorney General and the State General Comptroller, after completing the corresponding selection process.

- Appoint the members of the National Electoral Council, Litigious Electoral Tribunal, and the Judiciary Council, after completing the corresponding selection process.