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Introduction

The Carter Center led a nonpartisan electoral observation mission for Ecuador's constitutional referendum on Sept. 28, 2008, to help promote a transparent and fair electoral process and accompany the country as it continues its political and constitutional transformation. One of the major milestones in the process was the convening of the national constituent assembly (CA), which held session between November 2007 and July 2008. The CA's efforts culminated in the approval of a draft constitution, which was also approved by 63.93 percent of Ecuador's voters during the Sept. 28, 2008, referendum.

The Carter Center has been following Ecuador's political transformation closely since the middle of 2007. In particular, it observed the elections for the assembly members in September 2007 and, afterward, issued biweekly reports and a final report in Spanish and English on the main events and decisions in the CA. Furthermore, The Carter Center helped to organize two workshops targeted at assembly members on lessons learned from other constituent processes such as Bolivia's and Colombia's, that were held in early 2008.

In this context and in response to an invitation by Ecuador's Supreme Electoral Tribunal (*Tribunal Supremo Electoral*, or TSE), The Carter Center fielded during the referendum an international electoral observation team composed of experts on political and electoral issues. The observation mission was headed by Rodrigo Carazo, former president of Costa Rica and member of the Friends of the Inter-American Democratic Charter. The chief of the mission was Francisco Diez, the Carter Center's representative in Latin America. The Carter Center released a statement following the referendum but did not offer an extensive report due to the limited nature of the mission.

This report provides an account of the mission's chief activities, as well as its most important findings. In the first section, we describe the political context in which the referendum took place. In the second section, we report on the key activities and findings of the mission during the period leading up to the day of the referendum. The third section is dedicated to reporting the activities of the mission on the day of the vote. The next section offers a general assessment of the electoral process. In the final section, we include the results of the vote and outline different perspectives on the institutional transformation that has begun with the approval of what will be the new constitution; we also describe the main activities The Carter Center will conduct to continue following this process over the next several months.

I. The Political Context

In 1997 Ecuador experienced the beginning of a cycle of popular protests that at its height, led to the removal or overthrow of three of its presidents. In 1998, during the administration of Fabián Alarcón, the Ecuadorian people decided to initiate a constituent process in order to return the country to political stability. Its most immediate result was the country's 19th constitution ("the Constitution of '98," as it is popularly known). However, the new-found stability lasted a short while. Barely a year after the adoption of the new constitution, and as a result of the discord between the people's expectations and the present government's concrete policies, popular discontent returned to explosive levels. The years that followed bore witness to large popular marches, a successful *coup d'état*, and yet another presidential overthrow. In total, Ecuador saw eight presidents in a period of 10 years (1997–2007), and the majority of Ecuadorians developed a deep distrust of the foundational institutions of the state (Congress, judicial system, etc.) and the political parties. In this context, in early 2006 the presidential campaign of economist Rafael Correa surged in popularity due to his lack of affiliation with the traditional political parties. As his principal campaign issue he called for a new constituent assembly that would have full powers.

Once President Rafael Correa assumed office on January 15, 2007, his first act was to call for a popular referendum by decree to decide whether to hold the assembly (Decree No. 2). On April 15, 2007, the referendum took place with 81.72 percent voting in favor of the constituent assembly. A few months later, on Sept. 30, 2007, the assembly members were elected. Ecuador selected 24 national assembly members; 100 provincial assembly members; and six representatives of migrants living outside the country (two for Latin America, two for the United States and Canada, and two for Europe). The results of the election were strongly favorable for the president's political movement. The *Patria Altiva y Soberana* (PAIS) coalition won 80 of the 130 seats in the assembly.

The CA held its first session from Nov. 29, 2007, to July 24, 2008, during which the draft constitution

The Complaint by León Roldós

On Aug. 26, 2008, assembly member León Roldós (of the party *Red Ética y Democrática*, RED) presented the attorney general of Ecuador with allegations about ideological modifications to the draft constitution approved by the majority of the CA on July 24, 2008.

The complaint brought by Roldós focused on two central points:

- the alleged textual changes between the first version presented by the Special Editing Commission on July 19 and the second version the Commission presented which was voted on and approved on July 24
- the last-minute inclusion of the transitional regime as an integral part of the draft constitution that would be put for consideration before the citizens; according to Roldós, this regime never formed an integral part of the draft constitution

Roldós' complaint was received by the attorney general, Washington Bantez, who called for a public meeting with the president of the CA in recess, Fernando Cordero to hear his version of the events. The attorney general also requested that the president of the TSE send him a certified copy of the text received by the CA. On Sept. 8, 2008, Fernando Cordero testified before the attorney general. Cordero turned in 17,000 pages of the assembly's acts and 800 hours of video and audio as evidence. He also mentioned that Roldós allegedly missed the assembly's sessions between July 18 and 25, in violation of the CA's rules of operation.

Meanwhile, officials from the TSE affirmed that the investigation previously started by the attorney general could not interrupt the electoral processes or suspend the referendum. As of the release of this report and once the new constitution is approved in effect, the process underway in the attorney general's office will continue in a preinvestigatory stage that, according to Ecuador law, could last as long as one to two years.

Electoral Spending and Use of Public Funds During the Campaign

Another controversy during the campaign had to do with electoral spending. While there was a comparable balance in spending by political organizations registered with the TSE to campaign for both sides, according to reports released by *Participación Ciudadana*, which monitored electoral expenditures, The Carter Center believed that strong presence of the central government and certain sectional governments in the mass media and their promotion of public works projects created an imbalance in the campaign. Government publicity was not always limited to impartial promotion of the content of the constitutional draft, as the law requires. Instead, it occasionally tended to promote a "Yes" vote when conducted by the national government and some sectional governments or to promote a "No" vote when conducted by the mayor's office of Guayaquil. As stated by Francisco Diaz, the Carter Center's senior chief, "From the standpoint of observing the election, there is a clear imbalance; the president and his cabinet are campaigning. In the earlier process [to elect the national assembly member] (see the presentation c512 2e whTm (th

III. The Day of the Referendum

Two days prior to the referendum, Carter Center observers participated in preparatory sessions for referendum day. Experts on political and electoral issues participated in these sessions, and representatives from other observation missions and representatives of the TSE. On the day of the referendum, Sept. 28, the Carter Center dispatched two groups of observers in Guayaquil and three in Quito, due to the strategic electoral importance of the largest urban areas in Ecuador.⁸

electoral materials specially designed to facilitate voting for persons with disabilities. The TSE also made an outstanding effort to include the votes of the Ecuadorians living outside the country.

Similarly, The Carter Center recognized the work of the Ecuadorian forces who provided outstanding assistance for the preparation, order, and safety of the civic event. It also noted the participation of women, working professionals, and young people who served as the majority of poll workers with great civic enthusiasm.

Additionally, the mission recognized the important role played by observers from national and international organizations, especially the contributions of the *Participación Ciudadana* organization, the Organization of American States, the European Union, the Center for Electoral Assistance and Promotion, and the other observer delegations from various countries.

At the press conference following the referendum, Rodrigo Carazo, presented the Center's general assessment of the process and offered a few recommendations:

Despite a few minor problems observed during the day, the Carter Center's overall assessment was that the process was transparent, peaceful, and well-organized.

The Carter Center recommends that Ecuador institutions and society increase their efforts to:

- reduce the discretion used by poll workers in their determination of null votes so that the will of the voter is not altered and so as to avoid the possibility of conflict related to the vote count
- prioritize a better distribution of space in the polling stations to guarantee the efficiency of the process
- respect the limits and time periods established by the law related to electoral propaganda⁹

In addition, The Carter Center recommended that the electoral authorities continue their efforts to strengthen the regulatory laws on electoral spending and use of public funds during the campaign. This should further limit the possibility of discretionary use of public resources by authorities at all levels of government—national, provincial and municipal—to promote certain electoral outcomes as well as foster an environment for stronger control over electoral spending by electoral authorities. Along these lines, the Center recognizes that Article 115 of the newly approved constitution and Articles 14 and 15 of the transitional regime constitute important steps of regulating electoral financing and prohibiting state propaganda during a campaign. These steps should be developed further by future electoral laws approved by the Legislation and Oversight Commission (*Comisión Legislativa y de Fiscalización*, or CLF).

The Carter Center's assessment overlapped with the analysis conducted by *Participación Ciudadana*, which was released on the same day as the referendum. In its press release, *Participación Ciudadana* noted the following: 8.7 percent of the polling sites opened on time and 32.9 percent of the polling sites were accompanied by delegates from political parties and national, international, and citizen observers as they formally opened. *Participación Ciudadana* also stated that there were no substantive complaints about infringements on the right to vote in secret nor about any electoral propaganda taking place at voting sites on election day.¹⁰

⁹ The Carter Center, "Ecuador Constitutional Referendum: Preliminary Statement by The Carter Center" (Press Release) Sept. 29, 2008.

¹⁰ *Participación* 2 0510.5203 Tm(Ci00101 Tc 0.0025 Tw 10

V. Results and Perspectives on Institutional Transformation

On Oct. 13, 2008, the TSE finished tabulating all ballots. After waiting two days for any contest to the results, the TSE on Oct. 16 proclaimed the official results.

The Carter Center's Perspective in Ecuador

Due to this new legal/political framework, The Carter Cen

Carter Center Electoral Observation Mission Delegation

Observers in Quito

Rodrigo Carazo (former president of Costa Rica) leader of the Mission
Francisco Dez, (Argentina) Chief of the Mission
Sarah King (United States)
Carmen Sánchez-Manda (Spain)
Sandra Edwards (United States)
Natalia Mantilla (Colombia)
Miguel Ruiz (Mexico)

Observers in Guayaquil

Florencia Ruiz (Argentina)
Cécile Mouly (France)
Jessica Eby (United States)
Antonio González (Venezuela)

Coordination and Logistical Support

Andrea Durango
Verónica Guzmán

The Carter Center to Observe Ecuador's Constitutional Referendum

8 September 2008

FOR IMMEDIATE RELEASE

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The Carter Center will field an electoral observation mission during Ecuador's constitutional referendum to be held on September 28, 2008, in response to an invitation by Ecuador's Supreme Electoral Tribunal (*Tribunal Supremo Electoral*). The mission will be composed of electoral experts and political leaders and led by Rogelio Carazo, former president of Costa Rica, and member of the Friends of the Inter-American Democratic Charter. The chief of the electoral mission is Francisco Diez, Carter Center representative in Latin America.

"This will be a small mission that completes the monitoring of the constitutional process in Ecuador we have been carrying out since last year," said Jeffrey McCoy, director of the Carter Center's Americas Program, who is currently in Ecuador to initiate the mission. "The referendum is an important opportunity for the Ecuadorian people to express their intent regarding the proposed new constitution peacefully and through the democratic process."

The Carter Center also observed Ecuador's September 2007 constituent assembly election and has remained in-country to monitor the process of drafting a constitution, as well as pursue other initiatives such as the facilitation of a dialogue process between key civil society actors from Colombia and Ecuador to improve bilateral relations and carrying out an analysis for the determination of public policies on development in the northern border region.

The electoral mission will coordinate with those of the European Union, the Organization of American States, and *Participación Ciudadana*, and will issue a statement following the election, but will not offer a comprehensive report of the campaign and election administration due to its limited nature.

McCoy will meet with the president of the Supreme Electoral Tribunal and representatives of civil society and the international community. Over the course of their mission, the

Carter Center's delegation will meet with representatives of the Supreme Electoral Tribunal, governmental authorities at both national and regional levels, and Ecuadorian civil society and political party representatives in Quito and Guayaquil.

The Carter Center recognizes that this referendum is a process by Ecuadorian citizens and institutions and will fully cooperate with domestic observers and institutions to carry out the tasks for which it was invited in a professional, impartial, and objective manner in accordance with national rules and standard international practice.

The Carter Center conducts its election observation in accordance with the Declaration of Principles and Code of Conduct for International Election Observation adopted at the United Nations in 2005. As such, our interest is in the integrity of the process and not in the outcome of the referendum.

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"Waging Peace. Fighting Disease. Building Hope."

The Carter Center is celebrating its 25th anniversary this year. It is a non-governmental and non-profit organization that has helped to improve life for people in more than 70 countries by resolving conflicts, and advancing democracy, human rights and economic opportunity. The Carter Center was founded by former U. S. President Jimmy Carter and his wife, Rosalynn Carter, in partnership with Emory University with the purpose of promoting peace around the globe. To learn more about The Carter Center, please visit our website at: www.cartercenter.org.

Ecuador Constitutional Referendum:
Preliminary Statement by The Carter Center

Sept. 29, 2008

FOR IMMEDIATE RELEASE

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The Carter Center congratulates the Ecuadorian people for their democratic participation in the Sept. 28 constitutional referendum, which expressed their civic and peaceful will in a transparent manner.

The Carter Center fielded an international electoral observation mission during the referendum in response to an invitation by Ecuador's Supreme Electoral Tribunal (*Tribunal Supremo Electoral*). The mission, led by Rodrigo Carazo, former president of Costa Rica and member of the Friends of the Inter-American Democratic Charter, was composed of electoral and political experts. The chief of the electoral mission was Francisco Diez, Carter Center representative in Latin America. This mission compleme

The Carter Center recognizes the work of the Ecuadorian Armed Forces, who were of great help in the preparation, order, and security of the civic process.

The Center also stresses the significant participation of poll workers, the majority of whom were young people, women, and professionals, who served with a great civic enthusiasm.

Inclusive dialogue is an essential element for the strengthening of Ecuadorian democracy, which needs national agreements to fight poverty, inequality, and social exclusion. Building strong democratic institutions and a just and harmonious society requires not only a normative framework, but also the continuous and decisive will of all sectors of society.

The new institutions outlined in the approved constitution will have as much legitimacy and relevance as bestowed upon them by the main social and political actors. The Carter Center stands ready to continue accompanying Ecuadorian people in this democratic process.

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The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. The Center has observed 70 elections in 28 countries. To learn more about The Carter Center, please visit: www.cartercenter.org.