



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/60/Add.4
29 March 2005

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 11 (d) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS
OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION
OF JUSTICE, IMPUNITY**

**Report of the Special Rapporteur on the independence
of judges and lawyers, Leandro Despouy**

Addendum

Preliminary report on a mission to Ecuador*

* This report is being distributed in English and Spanish.

Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, visited Quito from 13 to 18 March 2005 at the invitation of the Government of Ecuador. The purpose of the visit was to study the situation with regard to the country's highest courts, since recent decisions by the National Congress, involving the removal of judges and the appointment of their successors, may have violated the constitutional order and the independence of the judiciary, and may also have breached Ecuador's international commitments in this area. The Special Rapporteur is grateful to the Government of Ecuador and all the officials and representatives of civil society who cooperated extensively with him during his visit and provided him with valuable information, as well as the local United Nations office for its precious assistance.

2. During his stay, the Special Rapporteur met the President of Ecuador and other senior government officials, the President of the National Congress and deputies of various political affiliations, as well as judges of the Supreme Court, the Constitutional Court and the Supreme Electoral Court, both those newly appointed and those recently dismissed. He also met members of the National Council of the Judiciary, the mayor and members of the council of Quito metropolitan district, representatives of the Catholic church, members of the Andean Parliament, associations of judges and judicial officials and non-governmental organizations and prominent Ecuadorian legal experts. He also held discussions with many diplomatic representatives accredited to Ecuador.

I. PRELIMINARY OBSERVATIONS

3. The final version of the Special Rapporteur's report will be submitted to the Commission at its next session. However, in view of the delicate situation in the country, the Special Rapporteur considers it necessary to disclose some of his preliminary observations, which are summarized below:

(a) With regard to the Supreme Electoral Court: the Special Rapporteur focused on the manner in which the former judges were replaced. During interviews with five of the seven members of the present Court (two of them said they had not been informed of the interview by the President of the Court), it was suggested that the reason for the change was the fact that the majority parties had hitherto had a stranglehold on the court, and that the appointment of the new judges was intended to rectify the constitutional anomaly whereby one member belonged to a party which no longer existed. Most of the legal experts consulted said that the Congress had replaced the judges without supplying any of the grounds provided for in the Constitution and without following the procedure stipulated in the Constitution, namely impeachment. The Special Rapporteur also notes that the National Congress is not competent to resolve or rectify an unconstitutional situation, since this is the exclusive right of the Constitutional Court. Some parties pointed to a violation of article 209 of the Constitution, in that judges were appointed to represent those parties without the parties having been invited to submit the names of their candidates. Whether in keeping with the intent of the Constitution or the interpretation of it provided by its members, the Supreme Electoral Court is seen more as a political body than as a court dispensing justice in electoral matters;

(b) With regard to the Constitutional Court: various irregularities have been recorded, both in the dismissal of the former judges and in the appointment of their successors. In principle, on the basis of the analysis carried out, the sequence of events here is surprising. On 25 November 2004, the National Congress, alleging that the composition of the Constitutional Court was unlawful, appointed replacements for the judges without dismissing the existing judges through impeachment. Subsequently, on 1 December, in an impeachment process based on different grounds - a vote by some judges in the Constitutional Court in favour of a specific court decision, which is unlawful under article 175 of the Constitution - the National Congress failed to agree on a motion to censure the judges. Lastly, on 8 December, in another impeachment process on the same issue, and in the absence of the accused, the censure motion was approved. It is clear that in this case the right to a defence and other elements of a fair trial were violated. It should be mentioned that, just as the Congress lacks competence to declare acts of the executive unconstitutional, it also lacks competence to rule on their lawfulness, contrary to the claim made in the decision of 8 December. It should also be mentioned that under the Constitution, the only means the Congress may adopt for the removal of the members of the Constitutional Court is impeachment, which was not followed in this case. The Special Rapporteur is all the more concerned since the Constitutional Court is competent to make final judgements on matters relating to human rights and fundamental guarantees set out in the Constitution and in international agreements which Ecuador has signed. This latter concern has been raised by many human rights organizations;

(c) With regard to the Supreme Court: the incident which has had the greatest impact was the dismissal of the Supreme Court judges elected in 1997 and the action of the National Congress at the same session in appointing a new Court, displaying manifest irregularities as to the manner in which the former judges were dismissed and the appointment of the present judges. Despite the fact that a referendum in 1997 expressly removed from the National Congress its competence to appoint and dismiss members of the Supreme Court, and enshrined the principle of co-optation, and despite the fact that in the same year a constitutional reform laid down that the Congress would appoint the members of the Court for the last time, the Congress arrogated to itself that double power in December 2004. In addition, the present Supreme Court has removed competences in the administrative and disciplinary fields from the National Council of the Judiciary, and has embarked on a reorganization of the lower levels of the justice system, prompting a strong reaction on the part of the Federation of Judicial Employees.

II. PRELIMINARY RECOMMENDATIONS

4. The events described above have led to serious unrest in the country, which threatens to worsen if the normal working of the institutions is not restored. Consequently, the Special Rapporteur considers it necessary to make the following preliminary recommendations:

(a) It is vital and urgently necessary to secure the full restoration of the rule of law;

(b) Since it is the National Congress which took the principal steps that provoked the situation (dismissal and appointment of members of the Supreme Court, the Supreme Electoral Court and the Constitutional Court), it is incumbent on the Congress to adopt measures to rectify the situation and thus create conditions for embarking on the path towards a final solution.

5. Various options for resolving the crisis are being discussed in Ecuador. Rather than expressing a view on the various alternatives, the Special Rapporteur believes that, in keeping with United Nations standards, the country should immediately arrive at a formula to govern the appointment of a Supreme Court which will include the following elements:

- (a) Independence of judges;
- (b) Co-optation, as a guarantee that there will be no external interference in the future composition of the Court;
- (c) A system for the election of judges which will guarantee their suitability and probity;
- (d) Machinery to ensure transparency in the selection of judges and enable members of the public to be aware of the candidates and express their opinions about them.

6. Once an independent, efficient and transparent Supreme Court has been established in this way, it will be necessary, in addition to settling the issues raised concerning the Constitutional Court and the Supreme Electoral Court:

- (a) To enact a new law on the organization of the judiciary;
- (b) To enact a law laying down standards and safeguards for the judiciary;
- (c) To give practical effect to the principle that only judicial bodies may perform judicial functions;
- (d) To establish an effective system of legal aid.

7. The Special Rapporteur encountered a climate favourable to resolution of the crisis, and appeals to those involved in the legal and political spheres in Ecuador to combine their efforts to achieve such a resolution speedily, in line with international principles relating to the independence of the judiciary and the proper administration of justice. Regrettably, acts of aggression such as those suffered by the Secretary-General of the Federation of Judicial Employees, Mr. Muñoz, merely postpone a speedy resolution of the crisis and must be investigated and condemned.

8. The people of Ecuador have paid dearly for the high level of politicization which has contaminated their courts, and so it is vitally and urgently necessary to reconstruct a system of institutions which is free of political interests and vicissitudes. The Special Rapporteur reaffirms the unrestricted backing of the international community and the United Nations for democratic institutions.

9. The Special Rapporteur will continue to monitor the situation, and offers his assistance to the Government and the judicial system in connection with any action they may deem useful in following up his recommendations.
