

From personal correspondence with Andrés Mejía Acosta, Ecuador specialist at the University of British Columbia, April 27, 2005 (distributed with author's permission)

The 1998 constitutional reforms established life tenure for judges (though the constitution does not establish until what age, maybe this is established in the corresponding Ley organica de la funcion judicial). The appointment of candidates was left in the hands of the Corte Suprema de Justicia itself, which coopted new members with the favorable vote of 2/3 of its members. The Consejo Nacional de la Judicatura is an administrative and disciplining body in charge of dismissing judges. I lost track as to what the specific reform proposals were, there were still shuffling options hours before the congressional coup.

### The Congressional Coup

First and foremost, here is an issue of unconstitutional removal of the president by congress. A newly assembled coalition of the established parties and other satellite parties (PSC, ID, PCK, socialist, etc) gathered enough votes to dismiss the president-friendly president of congress, and meeting at a different building with less than the necessary 2/3 quorum, declared with an absolute majority of votes that Gutierrez had abandoned office.

This last one is indeed a constitutional cause for removal, but the congress used it while Gutierrez was STILL in the presidential palace. The congressional + street protests + internal divisions in the military elite triggered the fact that the army withdrew support from Gutierrez, less than one hour after the congressional "vote of no confidence". This action forced Gutierrez to step down and seek refuge in the Brazilian embassy. Technically speaking, congress acted unconstitutionally. Politically, the traditional opposition capitalized on the street chaos and took advantage of Gutierrez's own mistakes (for repressing people on the streets) to claim the legitimacy to remove who was perceived to be a would-be dictator. With a 4% presidential approval rating and streets on fire, few Ecuadorians questioned the congressional move. As in the case of Bucaram in 1997, this was a constitutional patch to contain the effects of an increasingly weak president who had violated the rule of law during the court stacking incident in December 2004 and was turning violent on citizens.

### Weekly Report - 3 May 2005

#### **ECUADOR: A most challenging start for Palacio**

**President Alfredo Palacio has not got off to a brilliant start. Several of his ministerial appointees decided not to take up their posts. Union members have declared themselves his opponents. The umbrella indigenous body has described his government as 'transitional'. The congress that installed him is openly reviled, and international bodies have been less than fulsome in their support.**

By 1 May, eleven days after taking office, Palacio was still unable to complete his cabinet. Of his initially announced appointees, four had second thoughts and decided not to take up their new posts: José Gallardo (energy minister), René Bucaram (representative of the executive of the state oil company, Petroecuador) and Vinicio Baquero (education minister). At the time of writing Palacio has not yet found anyone willing to take up three key ministries: energy, agriculture and labour.

The confirmed appointments (see box on page 6) do show Palacio living up to his promise of forming a cabinet without party-political connections. Only trade minister Oswaldo Molestina boasts a stint as congressman for Izquierda Democrática (ID). Most of the appointees have previous experience in high public administration posts, though in some cases this experience does not quite match their present remit. For example, foreign minister Antonio Parra Gil, a lawyer, has served on a regional electoral tribunal, as legal counsel to the central bank and as undersecretary of public works and of tourism. The one appointee who has served as a diplomat, Mauricio Gándara, is now interior minister. Economy minister Rafael Correa is an academic.

### **Dissent on the labour front**

Finding the right labour minister will prove crucial, given the fact that the grassroots union members have already come out strongly against the Palacio administration. More than 10,000 marched through Quito on 1 May chanting anti-government slogans - the most popular of which was, 'Fuera Palacio, fuera el congreso, fuera todos!' ['Out with Palacio, out with congress, out with them all!']. This demonstration was also a slap in the face to the union leadership, which was strongly criticised for its closeness to the political parties and cosiness with successive governments. The vast majority of the marchers did not attend the rally organised by the largest labour confederation, the Frente Unitario de Trabajadores (FUT).

The FUT leaders who found themselves addressing about 120 people did their best to adapt to the mood of their members. For example, Mesías Tatamuez announced that the FUT would retain a 'vigilant' watch over the government's actions, and continue to demand 'the suspension of the FTA negotiations with the US and non-involvement in Plan Colombia'. He also went as far as to acknowledge that 'the people want them all out'.

### **The Indians**

Luis Macas, president of the Confederación de Nacionalidades Indígenas de Ecuador (Conaie), the largest umbrella confederation of Indian organisations, said that the Palacio government has only one mandate: 'to summon the people so that the organised people can, in turn, organise a new democratic system'. He said that Conaie would not tolerate this new government 'merely applying patches so that this system can continue'.

'We want,' he said, 'the people to convene itself to assembly, to declare the president an interim ruler, and for this assembly to work out a new way to organise the state.'

Palacio appeared to take this as a cue, suggesting the possibility of convening a constituent assembly, but 'within the framework of the constitution and the rule of law', to carry out 'a profound restructuring of an obsolete state'. Legislators of virtually all parties are less than enthusiastic about this prospect, because it could spell a premature end to their mandates, particularly if, as has happened elsewhere in the region, the constituent assembly should declare itself sovereign and take over the functions of the congress until new representatives are elected under a new system.

### **International hesitation**

Three separate but overlapping organisations have been busy examining the recent developments in Ecuador: the OAS, the recently created South American Community of Nations and the Rio Group. They face two big problems. One is how to explain away the embarrassing fact that they did next to nothing as Ecuador's institutions began to be chipped away last year, despite their declared commitment to preserving democracy and its institutions throughout the region. The other is how to attribute responsibility for a confusing situation in which, for example, the legislature has acted both as a destroyer and a restorer of institutions and all parties have, at one point or another, resorted to highly questionable methods.

Argentine foreign minister Rafael Bielsa summed up this last dilemma saying: 'The problem in Ecuador is that they are all sinners.' Bielsa suggested that having three separate bodies working on the issue is not helpful: 'We have to agree on a single discourse and act consequently.'

The OAS is expected to produce its conclusions in mid-May. For now, all three organisations have avoided explicitly legitimising the Palacio administration; nevertheless, they have extended it de facto recognition by committing themselves to assist it in the rebuilding and strengthening of Ecuador's institutions.

The vacillation goes beyond normal diplomatic caution. At stake is the ability of the OAS to invoke its Democratic Charter in such a manner that it is credible. There is much concern that too 'soft' a verdict on Ecuador would appear to be a whitewash and detract from the credibility of the charter. The US is particularly keen to see the charter honed into a useful instrument - though others are wary of the broad hints that it will be invoked in Venezuela and Nicaragua. The doubters would also like to see the application of the charter better defined in the light of the situation in Ecuador.

## Weekly Report - 10 May 2005

### ECUADOR: 'Forajidos' to protest against new regime

**People assuming the mantle of the forajidos - who triggered the downfall of President Lucio Gutiérrez - are organising a mass demonstration on 12 May against the new authorities, alleging that 'nothing has changed' and that politicians are still 'sharing out power' among themselves. Their first target is congress.**

As with Gutiérrez, they are using Radio La Luna's phone-in programmes to spread the word. Their complaints have been directed mainly against the Partido Social Cristiano (PSC) and Izquierda Democrática (ID), accused of having taken over the top offices in the legislature and in the electoral tribunal. There has also been criticism of President Alfredo Palacio, for clearing the way for 'conservative politicians to take over the ministries and almost all public offices'.

There is a growing feeling that the present-day forajidos are not so much the irate citizens who spontaneously took to the streets to demand Gutiérrez's resignation, but activists of left-leaning 'social organisations' who have hijacked the title. There has already been a public assembly of self-appointed 'representatives' of the forajidos, at which demands were issued for an end to negotiations over a free-trade agreement with the US and for the cession of airbase facilities to the US at Manta.

In attendance at the assembly was the 72-year-old Alejandro Serrano, a self-styled 'right-of-centre' politician chosen last week by congress to fill the vacancy left by Palacio as vice-president.

## Weekly Report - 17 May 2005

### ECUADOR: As OAS dithers, protesters target congress

**With the OAS mission lamely proposing a 'dialogue of all sectors' and issuing an empty warning, protesters in Quito have again taken to the streets, now demanding the resignation of all legislators and the gathering of a constituent assembly. An attempt by congress to show that it is capable of cleansing itself backfired when it was exposed in another instance of rule-bending.**

On 12 May some 3,000 self-styled forajidos ('hooligans', see box) congregated before the congress building to demand the resignation of all legislators. An attempt by a radical group to storm the building was thwarted by other demonstrators determined to keep the event peaceful; the police obeyed interior ministry orders to remain on the sidelines. When the protesters discovered that the legislators had vacated the building, they hung a sign on the door which read,

'Congress closed'.

The leaders of legislative blocs have stated that they have no intention of resigning, some arguing that it would leave Ecuador 'in the hands of a dictatorship'. But even among legislators the idea has some supporters. Leading the way is Carlos Vallejo, of the Partido Renovador Institucional Acción Nacional (Prian), who resigned his seat as soon as Gutiérrez was ousted. 'If everyone who had links with the [Gutiérrez] government should leave, then everyone should go,' he said, alluding to the fact that at one point or another the various blocs all negotiated deals with the government. He proposes invoking a constituent assembly within 90 days as the only proper 'constitutional' response to the institutional breakdown Ecuador has suffered. Also in favour of all legislators resigning is congressman Mario Touma of the Partido Roldosista Ecuatoriano (PRE).

On 11 May the congress made a big show of voting to expel four of its members for bringing the legislature into disrepute. They had engaged in a drunken brawl in a Lima hotel triggered by the verbal and physical abuse of one of their number, congresswoman María Augusta Rivas. She was among those expelled, in proceedings rushed through with scant regard for the rules. This did not earn congress any points with the forajidos, who still want 'everyone out'.

The congress also found time to reject the recommendations filed that same day by the OAS mission, which had visited the country days earlier headed by secretary-general Luigi Einaudi. Obviously at a loss regarding a potential solution, the mission recommended that the OAS should 'promote a broad and urgent process of dialogue' and, for good measure, warn 'the authorities and society of Ecuador' that the Inter-American Democratic Charter could be invoked against them.

### **Quick guide to changing invective**

The spontaneous demonstrators who triggered the downfall of President Lucio Gutiérrez were initially dismissed by his government as forajidos (strictly 'outlaws', but with the connotation of 'desperados' or 'hooligans'). They assumed this as a badge of honour. Since it became evident that this non-partisan protest movement had been hijacked by radical social organisations, they began to be described pejoratively as foragiles (a half-pun which could be rendered as 'fora-dupes' or 'hoolidupes'). The authentic forajidos call the members of congress ratas (rats). Attempts to introduce the term alacranes (scorpions) were rejected on the grounds that 'scorpions have the dignity of stinging only when cornered'. Congress now calls the protesters anarquistas ('anarchists').