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**COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS
REPORT ON ITS MISSION TO ECUADOR**

18 to 20 June 2007

► **ECUADOR**

Case No. EC/11 - F. AGUIRRE CORDERO
Case No. EC/12 - A. ÁLVAREZ MORENO
Case No. EC/13 - F. ALARCÓN SÁENZ
Case No. EC/14 - N. MACÍAS
Case No. EC/15 - R. AUQUILLA ORTEGA
Case No. EC/16 - A. E. AZUERO RODAS
Case No. EC/17 - E. A. BAUTISTA QUIJE
Case No. EC/18 - R. V. BORJA JONES
Case No. EC/19 - S. G. BORJA BONILLA
Case No. EC/20 - F. G. BRAVO BRAVO
Case No. EC/21 - M. L. BURNEO ÁLVAREZ
Case No. EC/22 - J. C. CARMIGNIANI GARCÉS
Case No. EC/23 - J. H. CARRASCAL CHIQUITO
Case No. EC/24 - L. O. CEDEÑO ROSADO
Case No. EC/25 - F. A. COBO MONTALVO
Case No. EC/26 - E. G. CHÁVEZ VARGAS
Case No. EC/27 - L. A. CHICA ARTEAGA
Case No. EC/28 - P. DEL CIOPO ARANGUNDI
Case No. EC/29 - M. S. DIAB AGUILAR
Case No. EC/30 - J. DURÁN MACKLIFF
Case No. EC/31 - E. B. ESPÍN CÁRDENAS
Case No. EC/32 - L. E. FERNÁNDEZ CEVALLOS
Case No. EC/33 - P. FIERRO OVIEDO
Case No. EC/34 - O. P. FLORES MANZANO
Case No. EC/35 - A. G. GALLARDO ZAVALA
Case No. EC/36 - M. V. GRANIZO CASCO
Case No. EC/37 - A. X. HARB VITERI
Case No. EC/38 - O. IBARRA SARMIENTO
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Case No. EC/40 - F. J. JALIL SALMÓN
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Case No. EC/45 - C. R. MAYA MONTESDEOCA
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A. BACKGROUND, PURPOSE AND CONDUCT OF THE MISSION

1. On 30 March 2007, a communication was submitted to the Committee on the Human Rights of Parliamentarians regarding the situation of 57 Ecuadorian deputies who had been dismissed by the Supreme Electoral Court (TSE) on 7 March 2007. The Committee examined that communication at its 117th session, held during the 116th Assembly of the Inter-Parliamentary Union (29 April to 4 May 2007) in Nusa Dua, Indonesia, and declared it admissible. Given the seriousness of the case, it decided to bring it to the attention of the Governing Council of the Inter-Parliamentary Union (IPU).

2. On that occasion, on 4 May 2007, the Governing Council expressed alarm at the revocation of the parliamentary mandate of the deputies in question and at the subsequent events. At the same time, given the magnitude, ramifications and complexity of the case, the Council considered that an on-site mission to Ecuador by the Committee could improve its understanding of the legal setting, ascertain the views of all the competent authorities and the parliamentarians concerned, and make it possible to pursue avenues towards a satisfactory settlement of the case.

3. The Committee entrusted the mission to Senator Rosario Green of Mexico and Senator Nelson Ávila Contreras of Chile, full and alternate members, respectively, of the Committee representing Latin America. The delegation was accompanied by Mr. Rogier Huizenga, IPU Human Rights Programme Officer.

4. Three of the dismissed deputies—Mr. Alfredo Serrano, Mr. Fernando Aguirre and Ms. Gloria Gallardo—sought an interview with the Secretary General in order to set out their cases. The interview took place at IPU Headquarters in Geneva, Switzerland, on 15 May 2007.

5. In his communication of 30 May 2007, the IPU Secretary General sought the approval of the President of the National Congress for the mission to go ahead, the proposed period being 18, 19 and 20 June 2007. Approval of that was conveyed on 7 June 2007 by the Office of the Chief of Protocol and Ceremonial of Congress. Owing to an important vote scheduled in the Senate of Chile for 19 June 2007, Senator Ávila was unable at the last minute to join the delegation. Senator Alberto Breccia of Uruguay, a substitute member of the First Standing Committee on Peace and International Security of the IPU Assembly and expert contributor in human rights matters for the meeting jointly organized by the IPU in La Paz, Bolivia, in June 2007, was requested to replace Senator Ávila and agreed to do so.

6. The delegation wishes to express its gratitude to all those persons who gave of their time to confer with it. It is particularly grateful to the parliamentary authorities and the personnel of Parliament who organized the meetings with the authorities of the Government and of the Judiciary. Although it greatly appreciated the interview held with the Minister and Deputy Minister for Foreign Affairs, delegated by the President of the Republic, it regretted, on account of the importance of the case, that no direct meeting took place with the President.

B. PROGRAMME OF THE MISSION

The mission interviewed the following persons:

(a) Parliamentary authorities

- Mr. Jorge José Cevallos Macías, President of the National Congress

(b) Government authorities

- Ms. María Fernanda Espinosa, Minister for Foreign Affairs
- Ambassador Rafael Paredes Proaño, Deputy Minister for Foreign Affairs
- Dr. Gustavo Larrea Cabrera, Minister of Government and Police

(c) Judicial authorities

- Dr. Patricio Pazmiño, President of the Constitutional Court (TC), Dr. Edgar Zárate Zárate (Vice-President), Dr. Ruth Seni Pinoargote (Member, President of the First Division), Dr. Alfonso Luz Yunez (Member) and Dr. Nina Pacari Vega Conejo (Member)
- Dr. Jaime Velasco Dávila, President of the Supreme Court of Justice
- Dr. Jorge Acosta Cisneros, President of the Supreme Electoral Court (TSE) and his colleagues, Dr. Hernán Rivadeneira Játiva and the lawyer Ms. Elsa Bucaram Ortiz.
- Dr. Jorge Germán Ramírez, Attorney General
- Dr. Santiago Velásquez, former President of the Constitutional Court (TC).

- (d) The dismissed deputies
Some 40 of the dismissed parliamentarians talked with the delegation.

C. BRIEF DESCRIPTION OF THE POLITICAL CONTEXT AND ITS CRISIS (1996-2007)

1. Several of the authorities emphasized that Ecuador had experienced a decade of deep institutional crisis beginning with the destitution by the National Congress in 1996, after barely six months in office, of President Abdalá Bucaram for "mental incapacity to govern". It became virtually routine for the subsequent presidents to leave office amid popular uprisings and demonstrations in a highly politicized context marked by instability of State institutions, in particular of the judicial system, where the most senior members—of the Supreme Court of Justice, the TC and the TSE—were replaced on a number of occasions unconstitutionally by the National Congress.

2. There is a need in particular to highlight the period following the presidential election victory of Mr. Lucio Gutiérrez in 2003. On 25 November 2004, Congress dismissed the TC and TSE members. On 8 December 2004, Congress dismissed the 31 magistrates of the Supreme Court of Justice and appointed its new members. Shortly afterwards, the new Supreme Court adopted a decision of huge political importance: it annulled the lawsuits against two former Presidents of the Republic, Mr. Abdalá Bucaram and Mr. Gustavo Noboa. In the face of growing popular protests and demonstrations, on 15 April 2005 President Gutiérrez dismissed the Supreme Court appointed on 8 December 2004 in a decision that was rejected by most citizens. For its part, Congress left without effect its own resolution of 8 December 2004, but did not order the reinstatement of the members of the previous Supreme Court. Ecuador was therefore without a Supreme Court and the Congress decision did not suffice to calm the public protest. With the wave of tension and violence, on 20 April 2005 the National Congress declared the relinquishment of office of President Gutiérrez and dismissed him. The population of the capital took to the streets in support of the decision by Congress, which handed over power to Vice-President Alfredo Palacio, an independent doctor, until 15 January 2007.

D. THE ESTABLISHMENT OF A CONSTITUENT ASSEMBLY AND ITS CHALLENGES

1. The President of Ecuador, Mr. Rafael Correa, took office on 15 January 2007, one of the key points of his political platform being the establishment of a Constituent Assembly. It is noteworthy that, in the legislative elections of 15 October 2006, President Correa put forward no candidate, publicly expressing his rejection of the members of the National Congress. Shortly after assuming the presidency and in accordance with his election pledge, he initiated the procedure of consulting the public on the establishment of a Constituent Assembly to reform Ecuador's institutional framework.

2. In Ecuador the idea of a Constituent Assembly is nothing new. In 1998 a Constituent Assembly was formed in which the traditional political forces obtained a comfortable majority. The authorities have stressed that it carried out a purely cosmetic task in many aspects of the Constitution. Since the popular overthrow of President Lucio Gutiérrez, the demand for the establishment of a Constituent Assembly gathered strength throughout the country. However, the traditional political forces have shown reluctance to contemplate constitutional reform.

3. Despite firm public support for the establishment of a Constituent Assembly, it will face a series of challenges, one of the most important and urgent being the depoliticizing of elections to and the operation of the high courts, in particular the TC and the TSE. The TC at present has nine members who are appointed by the National Congress as follows:

- Two from shortlists (of three candidates) sent by the President of the Republic.
- Two from such shortlists sent by the Supreme Court of Justice, from outside its membership.
- Two, elected by the National Congress, other than legislators.
- One from the shortlist sent by provincial mayors and prefects.
- One from the shortlist sent by trade unions and indigenous and campesino organizations of a national character and enjoying legal status.
- One from the shortlist sent by the legally recognized Chambers of Production.

4. In this respect, the Special Rapporteur on the independence of magistrates and lawyers of the United Nations Commission for Human Rights states, in his report E/CN.4/2006/52/Add.2, dated 31 January 2006, on his follow-up mission to Ecuador regarding the judicial and institutional crisis, that "the corporatist-functional mode of membership of the TC has operated against its professionalization and independence". With respect to the TSE, which according to Article 209 of the Constitution is made up of "seven Members, with their respective substitutes, representing the political parties and political movements or alliances having obtained the highest number of votes in the most recent elections", the Special Rapporteur refers to the "urgent need to reform the method of appointment to the TSE or its transformation into a veritable legal and impartial court trying electoral offences."

E. SUMMARY OF THE CASE ON THE BASIS OF INFORMATION PROVIDED BEFORE AND DURING THE MISSION: THE MOST NOTABLE POLITICAL AND LEGAL EVENTS

1. The President of Ecuador, Mr. Rafael Correa, took office on 15 January 2007, one of the key points of his political platform being the establishment of a plenipotentiary Constituent Assembly, including the power to dissolve the Congress elected in October 2006, for the purpose of drafting a new Constitution of Ecuador.

2. In this respect, by means of Executive Decree No. 2 of 17 January 2007, President Correa called upon the Ecuadorian people to answer the following question: "Do you agree that a Constituent Assembly should be convened and installed with full powers, in accordance with the accompanying Electoral Statute, to transform the institutional framework of the State and draw up a new Constitution?".

3. On 24 January 2007, the Supreme Electoral Court (TSE) requested the National Congress to rule on the issue of whether President Correa had complied with Article 283 of the Constitution, stipulating that, in urgent cases so qualified previously by Congress by a majority vote of its members, the President of the Republic could submit for referendum the approval of constitutional reforms. According to the Government, the TSE made a misinterpretation in this respect by referring to the National Congress since the referendum did not presuppose constitutional reforms but was a consultation in which citizens were to decide for or against the question asked, and that the question was "of crucial importance to the country", as mentioned in Article 104(2) of the Constitution, which does not require Congress to rule on the matter.

4. After several cancellations of the debate on the matter for want of a quorum, on 13 February 2007 the National Congress gave the go-ahead for qualifying as urgent the call for a referendum, but introduced reforms in the statutes of the Constituent Assembly, such as removing the requirement to obtain a minimum number of signatures in order to register as a candidate, which authority was questioned by the Government.

5. On 28 February 2007, President Correa issued Executive Decree No. 148 concerning the calling of a referendum, including as an annex revised statutes of the Constituent Assembly making it compulsory for legally recognized political movements and for citizen movements to submit a minimum number of signatures of support equivalent to 1% of the citizens appearing on the electoral roll of their constituency.

6. On 1 March 2007, the TSE set as a date for the referendum 15 April 2007, a measure that was questioned by the majority legislative groups in Congress since it was a new executive decree that should have been submitted for approval, which was all the more important since not all the changes of 13 February had been incorporated (see likewise para. 8). On 2 March 2007, Congress lodged in the Constitutional Court (TC) an unconstitutionality application for annulment of the call for a referendum.

7. On 6 March 2007 the National Congress, in its resolution No. R-28-053, decided to replace Dr. Jorge Acosta, President of the TSE, declaring "the loss of representative status of the Member of the Patriotic Society Party in the TSE..." and, in its resolution R-28-054, decided to make the substitute member, Mr. Alejandro Cepeda Estupiñán, a regular member. In this respect, the parliamentarians who took that decision state that it was for the political parties to withdraw their member in the event of his or her neglect of their interests; and in this respect they refer to Article 209 of the Constitution, which provides that "the TSE shall consist of seven Members, with their respective substitutes, representing the political parties and political movements or alliances having obtained the highest number of votes in the most recent elections". On the contrary, the Government considers that the members, once elected, "shall remain in office for four years", as stipulated in the same article of the Constitution, cannot be replaced

during that period, and can only be dismissed after impeachment proceedings (Article 130(9) of the Constitution), which has never happened.

8. The next day, 7 March 2007, the legislative groups of the Social Christian Party (PSC), the Patriotic Society Party (PSP), the National Action Institutional Renewal Party (PRIAN) and the Christian Democratic Union (UDC), as provided in the aforesaid Article 130(9) of the Constitution, proposed impeachment proceedings against Dr. Jorge Acosta, Dr. René Maugé, el Dr. Hernán Rivadeneira and Ms. Elsa Bucaram, all TSE members who had approved the resolution for a referendum, on the grounds that 18 constitutional breaches had been found in that connection. The impeachment application was submitted at noon and had the support of 69 legislators, and was due to be acted on immediately with the idea of being able to debate it within three weeks upon expiry of the regulation time limits.

9. Later the same day, 7 March 2007, the TSE declared inapplicable the two Congress resolutions dated 6 March 2007 and resolved to dismiss the 57 deputies and suspend their political rights for a year since, according to the TSE resolution, "they voted in favour of these resolutions and/or initiated the aforesaid actions in accordance with the provision of Article 155(e) of the Organic Electoral Law, which establishes that any authority, official or public employee not belonging to the electoral organization who interferes with the functioning of the electoral bodies shall be punished with dismissal and suspension of political rights for a period of one year".

10. The dismissed deputies rejected the decision and, when the police prevented them from entering the Congress building, they continued meeting as the National Congress in several Quito hotels. Eight amparo applications were lodged in different parts of Ecuador requesting that the dismissal be left without effect. In general, the judges dealing with these proceedings declared themselves disqualified. However, on 16 March 2007, one of them, the Judge of the Fourteenth Civil Court of Rocafuerte decided to reject the amparo application on the grounds that it was not legitimate since it opposed a normative act issued by a public authority. Consequently, 50 of the dismissed deputies lodged an appeal in the TC. Furthermore, the dismissed deputy Mr. Pascual del Cioppo Aragundi, also acting as representative of the other dismissed deputies, meanwhile lodged in the TC an unconstitutionality application for annulment of the dismissal of the 57 deputies.

11. On 9 March 2007, the President of Congress, Mr. Jorge Cevallos, asked the Constitutional Court (TC) for clarification of competence, stating that "at the moment the country is faced with two decisions, one adopted by the TSE and the other by the National Congress". On 14 March 2007, the TC considered the request for clarification to be inadmissible, mainly because it had not respected the provision of Article 277 of the Constitution that such petitions could not be lodged personally but at the request of a majority of Congress.

12. On 20 March 2007, at a regular sitting of the National Congress, 21 of the substitute deputies were given full status on taking the statutory oath for assumption of office. Congress subsequently became caught up in discussions and in the delay of regular sittings pending the TC ruling on the appeals, so that debates were suspended until 10 April 2007.

13. On 27 March 2007, in response to an amparo application lodged by an Ecuadorian citizen against the revocation of the mandates of the 57 Congress members, Mr. Juan José Ramírez Massuh, Substitute Judge of the Fifteenth Penal Court of Guayas province, granted it and so left the TSE decision without effect.

14. On 28 March 2007, the TSE ratified its own decision of 7 March removing the 57 deputies. It also decided to dismiss the Substitute Judge, Mr. José Ramírez Massuh, and suspend his political rights for one year on account of his having committed the electoral offence defined in Article 155(e) of the Organic Electoral Law.¹

15. In his communication of 3 April de 2007, the President of Congress requested the Attorney General to rule on the validity, compulsory nature and implementation by Congress of the latest TSE decision (dated 28 March). In his written reply of 4 April 2007, the Attorney General stated that, since no appeal or challenge had been lodged within three working days of notification of the decision, the latter was applicable, valid and binding.

¹ On 4 April 2007, the Human Resources Commission of the Judiciary decided to comply with the TSE decision on the grounds that it was not for the Commission to examine the reasons for it, leaving intact the right of the official to exercise his defence by such legal means as he might deem appropriate.

16. In a communication dated 9 April 2007, several of the dismissed deputies wrote to the Attorney General criticizing his reply and asking him for rectification, on the grounds that the law forbade any ruling on "actions and appeals" that had been or were in the process of being settled by constitutional courts.

17. In an application dated 12 April 2007, 21 of the deputies given titular status requested the Pichincha District Attorney to seek of the judge in the case pre-trial detention for 24 of the dismissed deputies for compromising State security and for overriding functions on account of their having set up an unlawful parallel congress, and for the other culprits, accomplices and accessories after the fact in those offences. After the submission of that application, six of the 24 persons affected left the country immediately, albeit temporarily, travelling to seek protection in Colombia, while others went into hiding in Ecuador. On 24 April 2007, the Pichincha District Attorney, as requested by the deputies given titular status, asked the judge, Ms. Elsa Sánchez, to study the case and order pre-trial detention for the defendants. On 7 May 2007 the judge declined to handle the case, arguing that two of the dismissed deputies charged, retired Colonels Fausto Cobo and Luis Tapia, enjoyed High Court privileges.

18. On 15 April 2007, 81.5% of those voting in the referendum regarding the organization of a Constituent Assembly expressed their support, while the "No" obtained 12.43% of the votes, the remainder being blank or null votes.

19. On 23 April 2007, the TC handed down its judgment on the appeal (see para. 10) in which it annulled the revocation of the mandates of 50 Congress members (the remaining six had not signed the amparo application underlying the judgment), concluding that it was an unlawful measure since, for one thing, the Constitution provided that Congress members could not be held civilly or criminally liable for the votes cast or opinions expressed in the discharge of their duties.

20. On 24 April 2007, Congress decided to dismiss the TC judges on the grounds that their mandates had expired in January 2007 and, in early June, appointed the new members.

21. On 4 May 2007 the TSE, in accordance with the referendum and the Statute for convening a Constituent Assembly, set 30 September 2007 as the date for election of the 130 constituent members. Candidates had until 18 June 2007 to register.

F. PARLIAMENTARY IMMUNITY AND LOSS OF THE PARLIAMENTARY MANDATE

1. Under the TSE decision of 7 March 2007, the 57 deputies were dismissed because they had voted in favour of the two National Congress resolutions calling for the dismissal and replacement of the President of the TSE. In that respect, the dismissed deputies affirm that the resolutions were adopted by a simple and not a roll-call vote and that, consequently, there was no record of how each deputy voted; and that several of those dismissed were in fact absent at the time of the vote, as shown by doctors' certificates. The authorities emphasize that the TSE decision of 7 March mentions that the dismissal likewise affects those who "initiated the aforesaid actions", namely the unconstitutionality application (of 2 March 2007) against the calling of the referendum,² and the fact that the National Congress, at the request of several of its members, had instituted impeachment proceedings against four TSE members.

2. Although the authorities agreed that Ecuadorian deputies enjoyed parliamentary immunity (according to Art. 137, "they shall not be civilly or criminally liable for the votes cast or opinions expressed in the discharge of their duties"),³ they affirm that during electoral periods the country is "in an electoral state of emergency", so that no organization, individual or legal person may carry out any act causing impediment or obstacle, in this case to the referendum for which the TSE had fixed as the electoral period the interval between 15 February and 15 May, inclusive. In the meeting the delegation held with the members of the TSE, they stressed that the dismissed deputies had been punished for taking an unlawful decision in their eagerness to disrupt the convening of a Constituent Assembly and that, if the National Congress had wished to dismiss a member of the TSE, it should have embarked on impeachment proceedings, which it omitted to do.

3. The dismissed deputies emphasize that, in addition to being entitled to parliamentary immunity, under the Constitution they can only forfeit their deputy status for breach of the Congress Code of Ethics,

² It is noteworthy that the Constitutional Court did not accept the unconstitutionality application lodged by the National Congress owing to a number of inaccuracies and returned it to the Parliament Secretariat for correction.

³ As also established by the Organic Law of the Legislative Function in its Articles 60 and 61.

following a majority vote of the Congress members and upon appearance before the Privileges Committee for revocation of mandate (effected by referendum after at least one year of proceedings) and sentencing.

4. In addition, they stress that it cannot be argued that all of them were dismissed for opposing the organization of a Constituent Assembly, which was approved by Congress in a resolution of 13 February 2007, for those voting in favour included 19 members of the Patriotic Society Party (PSP) who were dismissed. Furthermore, although several Congress members decided not to take part in the vote on 13 February 2007 because they opposed the principle of a Constituent Assembly,⁴ others joined them later as they criticized the form of the process, in particular the omission by the TSE of the consultation of Congress regarding the new version of the Statute of the Constituent Assembly. The dismissed deputies add that all those events took place in a context in which President Correa, from the outset, stated publicly that Congress was totally discredited and he was not going to take it into account, despite the fact that 80% of the deputies who won in the elections of 15 October 2006 had been elected for the first time. Hence they considered that, since they had been dismissed barely three months after taking office, it was hardly convincing to criticize their work. According to several of the deputies, the real reason for their dismissal was the bid to foil the efforts, led by Ms. Gloria Gallardo with broad parliamentary support, to initiate, on the day of their dismissal, impeachment proceedings against the Minister of the Economy, Mr. Ricardo Patiño, for speculation with public debt bonds and the sale of insurance.⁵

G. COMPETENCE OF THE TSE AND THE ORGANIC LAW OF ELECTIONS

1. The dismissed deputies affirm—with regard to Article 119, which provides that "The State institutions, their organizations and departments, and public officials shall not exercise other functions than those allocated by the Constitution and by law, ..."—that the TSE is not empowered to dismiss elected deputies for electoral offences. In this respect, the deputies point out that, according to Article 155(e) of the Organic Law of Elections, "public authorities, officials and employees" can be dismissed, and that Article 120 of the Constitution draws a clear distinction between public dignitaries, authorities and officials, the first being, as in the case of the deputies, elected by popular will. Nevertheless, according to the authorities, in election periods the decisions of the TSE take precedence and, in this respect, they refer to Article 210 of the Constitution, which specifies that "the TSE shall organize, direct, supervise and guarantee electoral processes" and that the Organic Law of Elections confers on it competence to dismiss and punish deputies for interfering in their functioning.

2. The dismissed deputies point out that Article 143 of the Organic Law of Elections stipulates that "the offences in question, except for those punishable under the Penal Code, shall be tried by the Supreme Court of Justice in the case of persons subject to the jurisdiction of the Supreme Court", and that Ecuadorian deputies enjoy Supreme Court privileges.⁶ Hence the TSE, in dismissing the deputies, assumed powers vested by law in the Supreme Court of Justice. In addition, they affirm, Articles 209(8) and 130(9) of the Constitution stipulate that the National Congress is the entity appointing the members of the TSE, also exercising supervision and control of that electoral body and its members, so that it is unthinkable that those appointed by the National Congress could dismiss their appointers, namely the deputies exercising a popular mandate.

3. According to the dismissed deputies, the TSE, without establishing the offences, imposed sanctions when this cannot be done without prior establishment of the offence, as guaranteed in Articles 23 and 24 of the Constitution. They likewise affirm that, even assuming wrongly that the TSE had been competent, it failed to respect the rights to due process and to defence, which were violated since no proceedings were conducted in accordance with Chapter II, Title V, of the Organic Law of Elections. Furthermore, the TSE decision is invalid because it was adopted by a minority of three of the seven members, since the fourth vote, of Dr. Jorge Acosta, did not count because he had lost his status as a member.

⁴ The deputies of the National Action Institutional Renewal Party (PRIAN) and of the Social Christian Party (PSC) left the plenary hall before the vote.

⁵ In May 2007, the so-called "Patiño-videos" recorded on 12 February 2007 were made public. According to the dismissed deputies, with the videos out the authorities could not avoid sanction.

⁶ The Organic Law of the Judicial Function states in its Article 13(2): "Among its powers and duties, the Supreme Court shall: Entertain, at first and second instance, any criminal case brought against ... principal Legislators and substitute Legislators when the latter were deputizing for the former."

H. THE AMPARO APPLICATIONS

1. In the eight amparo applications lodged, six of the judges declared themselves to be disqualified from handling them. When an appeal was lodged in the TC in those cases, the TC returned them to the first-instance judges on the grounds that, in amparo cases, no disqualification is involved and the judges are obliged to entertain the case.⁷

2. The TSE members emphasized that, during election periods, their decisions cannot be complied with and that the regular judges are not competent to hear amparo cases, for want of jurisdiction and competence since, once the TSE calls elections, its acts become enactments against which any amparo application is inadmissible. This argument was indeed accepted on 16 March 2007 by the Fourteenth Civil Court of Rocafuerte, which decided to reject the amparo application.

3. The authorities criticize the fact that the deputies and their allies lodged several amparo applications in a number of places outside Quito, since only their judges are competent in this case and, according to Article 47 of the Organic Law of Constitutional Control, it is in Quito that "the unlawful act violating protected constitutional rights is consummated or may produce its effects". However, the dismissed deputies emphasize that the National Congress is a function of the State with national jurisdiction which may, in accordance with Article 126 of the Constitution, be based in Quito but may, in exceptional circumstances, sit in any part of the national territory. Consequently, while the functions discharged by a legislator are not confined to a specific territory, although the decisions taken in the performance of that function are generally adopted in Quito, it is no less certain that any decision or action taken by a deputy in another part of the national territory is equally valid and effective. Furthermore, Article 135 of the Constitution, referring to the contested act, namely the decision of the TSE, stipulates that it is an "organ with national jurisdiction the decisions of which, for that reason, are effective throughout the national territory".

4. The authorities emphasize that Article 57 of the Organic Law of Constitutional Control prohibits the lodging of more than one amparo application on the same subject and for the same purpose before more than one judge or court. In this respect, they assert that the granting, on 27 March 2007, of an amparo application by Mr. Juan José Ramírez Massuh, Substitute Judge of the Fifteenth Penal Court of Guayas province, annulling the TSE decision, is invalid. The deputies stress that the decision of the Judge was immediate and that any opposition had to be presented during the appeal to the TC.

I. THE TC DECISION OF 23 APRIL 2007; THE CIRCUMSTANCES OF ITS APPROVAL; THE DISMISSAL OF THE TC AND THE EFFECT ON THE REINSTATEMENT OF THE DEPUTIES

The conclusions of the Constitutional Court

1. The TC cannot act of its own motion; it can only respond to unconstitutionality applications or amparo proceedings. With respect to the former, it was presented with two unconstitutionality applications, one concerning the dismissal of the President of the TSE and the other on the dismissal of the 57 deputies. Before responding to those applications, for which the time limits had not expired, the TC had to respond to the appeal of 50 of the dismissed deputies against the decision of 16 March 2007 of the Fourteenth Civil Court of Rocafuerte, in which the Court decided to reject the amparo application. On 23 April 2007 the TC approved its decision, concluding that there was no legal basis for dismissing the 57 deputies, and granted amparo to the 50 dismissed deputies who had signed the appeal, reinstating them in their posts.

2. To reach that conclusion, the TC first rejected the argument of the aforesaid Judge that the regular judges were not competent to examine amparo applications against TSE decisions. In that respect, the TC stated that the TSE decision in question was not a normative act of a general nature since it would refer to an individual juridical situation and that it was possible to determine the concrete subjects to which it was addressed. The TC further stated that, on many occasions regarding constitutional amparo applications, it had expressed the view that an act was unlawful when it was issued by an authority lacking competence for the purpose, when it was issued without following the procedures specified by the legal order, if its content was contrary to the legal order in force, or if it was issued without foundation or

⁷ The Constitutional Control Law stipulates in its Article 47: "In no case will there be disqualification of the judge or of the court in which the amparo application is lodged...".

sufficient motive, meaning that not only the competence but also the cause, the content and the object had to be examined.

3. The TC concluded that there was no such concept as "electoral state of emergency" and that the TSE, in election periods included, "had without any doubt to respect the constitutional norms protecting all citizens and their electoral agents, since the TSE could not be turned into a TC". It put it like this: "While the constitutional norm determines the conditions of the exercise of a function (that of legislator) and guarantees rights for all citizens, accepting its infringement undoubtedly not only violates the constitutional norms but is also in breach of Article 272 of the Constitution, establishing as it does an order and hierarchical ranking of the legal order, and the constitutional norm is paramount".

4. In more precise terms in this case, the TC concluded that the TSE had acted outside the legal constitutional framework since the dismissed deputies enjoyed parliamentary immunity, came under the jurisdiction of the Supreme Court of Justice, had not been given a chance to defend themselves and, consequently, their right to due process had not been respected. In addition, with respect to the Organic Law of Elections, the TC concluded that the deputies could not be sanctioned under its Article 155(e), and that there had been no interference by Congress in the functioning of the TSE since the latter consisted of both full and substitute members and, in the case in question, it could have functioned with one or more substitute members.

5. With regard to the decision of the TSE to declare inapplicable the decisions of Congress to dismiss the TSE President and replace him with a substitute, the TC affirmed that the TSE was not empowered to do that since it could only, according to Article 274 of the Constitution, declare inapplicable *legal precepts* that it might consider unconstitutional, always being required to submit to the TC a report on the declaration of unconstitutionality to enable the TC to settle the case in a general and binding manner.

Circumstances of the approval of the decision and the competence of the TC, according to the account of Dr. Santiago Velásquez Coello

6. The appeal of the 50 deputies dismissed was officially accepted for hearing in Division III of the TC, consisting of the judges Manuel Viteri Olvera, Germán Alvear Macías and Santiago Velásquez Coello (President of the TC). Following a drawing of lots, it fell to the latter to prepare the presentation in this case. According to Dr. Velásquez, it had been agreed with the magistrates that the case would be heard and settled by the full Court, a requirement when one of the members dissents from the conclusions of the presentation, which was the case since Dr. Viteri was clearly not in agreement with it. Dr. Velásquez emphasizes that Dr. Viteri was provided with a certified copy of the case. They agreed that they would meet on 23 April 2007 to deal with the case. On the appointed date, Dr. Velásquez and Dr. Alvear met with Dr. Viteri, who, despite having a certified copy of the case, said that he had never had it in his hands. When the full Court began its meeting, Dr. Viteri said that he had not had a chance to study the case and asked for a week's suspension. The full TC did not accept this and decided to proceed with and settle the case. It is noteworthy that the members Dr. Enrique Tamariz and Dr. Jacinto Loaiza declined to take part in the discussion since they had recently met with four of the dismissed substitute deputies, and they had themselves replaced by their substitutes, Dr. Jaime Donoso and Dr. Manuel Jalil. Dr. Viteri raised procedural objections saying that the Rocafuerte judge was not competent since he was not domiciled where the instance of unconstitutionality had occurred, and left the courtroom. Dr. Velásquez told the delegation that, according to Article 24 of the Regulations concerning case formalities in the TC, in special cases the reports could be oral, and that Dr. Viteri had already given his opinion on the matter. At the same plenary sitting, the Vice-President of the Court expressed agreement with what Dr. Viteri had said about the judge not enjoying competence and, after taking a call on his mobile telephone, also left the courtroom. Dr. Velásquez said that the matter had to be broached immediately, and so it was.

7. A little later a police lieutenant warned Dr. Velásquez that demonstrators of the Popular Democratic Movement (MPD) wanted to enter the building and make a statement to the full Court. Dr. Velásquez decided to close the doors and moved to an adjoining room, where he improvised a press conference, informing the media of the decision in draft form, which concluded that the dismissal of the deputies was unlawful and that they should be reinstated. The demonstrators entered without, according to Dr. Velásquez, any reaction from the security personnel. Four of the TC members and a secretary shut themselves up in a washroom. There Dr. Velásquez signed the decision, which was then placed by the TC Registrar in the pigeonholes of the other members. The secretary then went out but the four members had to stay since the place had been taken over; according to Dr. Velásquez, the security personnel did nothing whatsoever. People went on arriving since, by means of his radio programme "La Luna", the journalist Paco Velazco was haranguing the public. People arrived from the Patchacutik political party and one of its

deputies, Mr. Salvador Quishpe, reportedly said: "Chuck them from the tenth floor; we've got petrol here." Finally the police arrived and transferred the four members from the tenth floor to the basement. There they remained sitting on the floor until they were taken out, having to run the gauntlet of blows, bottles and stones. According to Dr. Velásquez, the next day when he left Quito, the security police accompanying him avowed that they had received orders from the authorities to let the demonstrators into the building.

Dismissal of the members of the TC and the validity of the decision of 23 April 2007

8. The next day the TC decision was communicated to the parties, which, according to the TC Regulations, had a time limit for seeking clarification, of which the TSE availed itself. However, on the same day, 24 April, the National Congress decided, by 52 votes in favour, to dismiss the members of the TC on the grounds that the period of four years in office had expired. In the decision, Congress maintained that the terms of the judges had ended in January 2007, when the period of the previous judges would have ended had they been kept on in their posts.

9. This decision is based on the Congress decision of 25 November 2004, which stated that the TC members had been appointed unlawfully, whereupon Congress proceeded to appoint them in accordance with the Constitution, stipulating that "they shall remain in their posts until lawfully replaced in January 2007". It is noteworthy that the new members were dismissed in April 2005, after which the TC was vacant for 10 months until 22 February 2006, when the members were appointed who were ordered dismissed on 24 April 2007.

10. According to the dismissed deputies, in accordance with Article 275 of the Constitution, the TC is appointed by Congress for a period of four years. The decision of 22 February 2006 whereby the new constitutional judges were appointed does not state that the period of their mandate shall be less than four years. In this respect, they emphasize that the TC judges can only be dismissed through a formal process of dismissal in which the right to due process is respected.

11. On account of the request for clarification, the TC decision of 23 April 2007 had still not been implemented. Nevertheless, although extensions and clarifications can be issued, according to the dismissed deputies, the former President of the TC and the President of Congress, the new TC could not alter the essence of that decision. In the delegation's interview with the new TC President and his colleagues, they stated that the affair was very much politicized, that they had a big backlog of work, but that they were going to deal with the case of the dismissed deputies and rule on the matter within a reasonable lapse of time. In any case, the TC was not going to yield to pressures from any of the parties, and was going to take and state reasons for its decision strictly on the basis of the law. In that respect, the President of Congress said that the handling of the case by the TC could become drawn out and that the events in connection with the Constituent Assembly would then make it impossible or difficult to reinstate the deputies. According to the President of Congress, the most that could be hoped for was some form of compensation. In addition to delay in the consideration of their case, the dismissed deputies expressed their fear that the new TC would annul the decision of 23 April 2007 on some procedural grounds. It is to be noted here that, according to Dr. Velásquez's account, the demonstrators who invaded the TC building that day went off with the tape-recording of the plenary discussion used for drafting the minutes of the meeting.

J. THE POSITION OF AND EFFORTS BY THE PRESIDENT OF CONGRESS TO RESOLVE THE SITUATION

1. Mr. Jorge José Cevallos, the President of Congress, was elected to fill the post as representing the political party that obtained the largest number of seats in the last legislative elections, PRIAN (National Action Institutional Renewal Party), founded by Mr. Álvaro Noboa, the rival of the present President of Ecuador, Mr. Rafael Correa, in the last presidential elections.

2. According to the President, in the past 10 years Congress was very much discredited on account of several highly questioned acts that seemed to serve only the interests of the traditional political parties and their leaders. The victory of President Rafael Correa in the presidential elections in late 2006 and his bid to organize a Constituent Assembly came in response to strong public demand in favour of reforming the constitutional framework in order to strengthen democracy in Ecuador. According to the President of Congress, as was to be expected, the traditional parties did their utmost from the outset to avoid the establishment of such an Assembly for fear of seeing it diminish their powers. In the opinion of the President of Congress, the last straw was when, in their eagerness to boycott it, the deputies decided to

dismiss the President of the TSE, a serious mistake and an unconstitutional decision that prompted the TSE to respond by dismissing them, which action in the Congress President's view was also lacking in validity.

3. The President of Congress said that he had always done what he could to resolve the political crisis and the confusion that paralysed Congress when it lost the majority of its full members. On several occasions, and despite the mass protests outside Congress, he had tried to secure the reinstatement of the 57 deputies dismissed and had proposed a compromise to annul both the dismissal of the deputies (and opposition to the referendum) and that of the President of the TSE, but all his efforts in that respect had been rejected and he had been called a "traitor".

4. In the beginning, Congress was unable to function because there were only 43 deputies left. At the same time, Article 11 of the Standing Orders provided that two thirds of the 100 Congress members could decide to hold their sittings in a place other than their normal seat. Hence the sessions in Quito hotels of the 57 dismissed deputies, since that did not make the requisite majority, were not valid as representing the "true Congress".

5. On 9 March 2007, the President of Congress asked the TC for clarification of authority, observing that "at the moment the country is faced with two decisions, one adopted by the TSE and the other by the National Congress", which on 14 March 2007 were declared inadmissible.

6. After 13 days of crisis and given the need for Congress to resume its functions, in accordance with Article 13 of the Standing Orders, 21 of the substitutes of the 57 dismissed deputies were sworn in before the President of Congress on 20 March 2007, so that a majority was restored for the adoption of decisions. According to the President, the other substitutes were not given titular status at the time because they received threats from their political parties.⁸ Of the first 21 substitutes made full deputies, 10 were substitutes of PRIAN, 9 of the PSP, and 2 of the PSC. This group decided to form the "national dignity" bloc and to act independently of the decisions of the parties to which they previously belonged. In that respect, the 57 dismissed deputies report that the 21 substitutes made full deputies concluded a deal with the authorities, as shown in television footage when, before being given full status, they met with the secretary of the Ministry of Government and, on being surprised by the press, covered their faces on leaving the meeting.

7. The situation became complicated again when, on the one hand, on 27 March 2007 amparo was granted and the deputies were reinstated and, on the other, the next day the TSE ratified its previous decision dismissing the 57 deputies. In the light of that situation, the President suspended the Congress sittings and, on 3 April 2007, requested the Attorney General to rule on the most recent decision of the TSE and state whether it was valid for Congress, which was confirmed to be the case by the Attorney General on 4 April 2007. On 10 April 2007, the President of Congress resumed its sittings in order to normalize the legislative functions pending a prompt and definitive pronouncement from the TC on the matter.

8. On 10 June 2007, the President of Congress was expelled from his party, PRIAN, without being given any chance, according to him, to defend himself. After his dismissal from membership, PRIAN requested that a member of the party be nominated for the Congress presidency. According to the President of Congress, the regulations stipulate specific grounds for dismissing the President and state that the first requirement is to institute impeachment proceedings, which was not done.

9. At the close of the delegation's interview with the President of Congress, he emphasized that anything the IPU could do to assist the Ecuadorian institutions in achieving their desire to strengthen the constitutional framework and democracy in Ecuador would be welcome indeed.

K. HARASSMENT OF AND ATTACKS ON THE DISMISSED DEPUTIES

1. Since the last presidential and legislative elections in Ecuador, the political climate has been marked by intense politicization and confrontation in the State institutions, and by a high degree of popular mobilization around the theme of the Constituent Assembly.

2. On various occasions there have been incidents in which several of the 57 persons affected were attacked by demonstrators, in a number of instances carrying flags of political parties close to the Government. In nearly all these cases, the aggression took place in a context in which violent

⁸ However, they subsequently joined Congress, although some 10 deputies do not usually attend the sittings.

demonstrators in a crowd launched attacks, often in the presence of the police. In this respect, the authorities have affirmed that the members of the National Congress are so looked down on that it is very difficult to maintain internal security, but that the police have always acted in defence of the dismissed deputies. According to the latter, in each of the incidents there was a lack of guarantees: the police presence was minimal or non-existent, and even when they were present they did not necessarily do anything very effective to curb the violence. Moreover, despite the existence of abundant audiovisual record of the incidents and official complaints to the competent authorities, according to the dismissed deputies not a single one of those responsible for the attacks has yet been apprehended. However, when the delegation was received by the Minister of Government and Police, he said that some of the culprits had been detained but that the 57 persons affected had not lodged any formal complaint. In two cases, the culprits were sentenced for a minor offence. In response to the allegation of the dismissed deputies that the authorities were behind the mobs and paid them, the authorities said that there were large popular movements supporting the ideas of President Correa, but that the Government was in no way involved in what they did and had asked them to act peacefully.

Among the incidents that took place, the following are notable:

3. A first incident occurred on 30 January 2007 when activists of the Popular Democratic Movement (MPD) demonstrated against the National Congress calling for a referendum to be held, but the demonstration got out of hand when the police was unable to contain it and the deputies had to leave the congressional premises.

4. Other incidents had to do with the efforts of the 57 persons affected to enter the Congress building after the TSE decision of 7 March 2007, following the granting of the amparo application on 27 March and the TC decision of 23 April 2007. In all these cases, police reinforcements outside the National Congress, which the Minister of Government and Police had placed by order of the TSE, prevented the dismissed deputies from entering. In some cases, the dismissed deputies allege that they were ill-treated both by the demonstrators outside Congress and by members of the police. In this respect, the former Vice-President of Congress, Mr. Édison Chávez, had mustard gas projected in his face by the police when he tried to enter Congress.

5. Other incidents occurred on 8 March 2007, when the dismissed deputy Mr. Oswaldo Flores was attacked in the car park of the Hilton Colón by a mob that included activists of the Popular Democratic Movement, who struck him with the shafts of their flags. Mr. Flores lodged a complaint in the Attorney's office. In his interview with the delegation, the Attorney General said that the complaint was being investigated, although nobody seems to have been apprehended so far. Also attacked was Mr. Hugo Romero, who had to be taken to a first-aid centre with severe trauma in the lumbar region owing to a fall. The car of the dismissed deputy Mr. Carlos Larreátegui, was attacked as it left the Hotel Colón. The television footage clearly shows on the car the figure of the substitute delegate and leader of the Ecuadorian revolutionary youth movement (*Juventudes Revolucionarias*), Mr. Marcelo Rivera. The car of the dismissed deputy Mr. Henry Carrascal was likewise struck on that occasion. In the afternoon of Thursday, 8 March 2007, after the Hotel Colón incidents, several deputies dismissed by the TSE met in the Hotel Quito. Demonstrators arrived outside chanting slogans against the dismissed legislators.

6. On 13 March 2007, at least two persons were injured when a group of unknown motorcyclists shot at a group of followers of dismissed Ecuadorian deputies outside the Hotel Marrito in Quito.

7. On 15 March 2007, on arrival for the judicial hearing in Rocafuerte, two dismissed deputies, Ms. Gloria Gallardo and Ms. Sylka Sánchez, were attacked and their vehicles damaged when a crowd of people carrying flags of political parties close to the Government threw stones at them, forcing them to take cover in a shop. The police had to disperse the angry group with tear gas and the dismissed deputies were evacuated in a special police vehicle.

L. CRIMINAL CHARGES AGAINST 24 DISMISSED DEPUTIES

In an application dated 12 April 2007, 21 of the deputies given titular status requested the Pichincha District Attorney to seek of the judge in the case pre-trial detention for 24 of the dismissed deputies for compromising State security and for overriding functions on account of their having set up an unlawful parallel congress, and for the other culprits, accomplices and accessories after the fact in those offences. On 24 April 2007, the Pichincha District Attorney supported the application of the deputies accorded full status and requested the judge, Ms. Elsa Sánchez, to examine the case and order the pre-trial detention of

the accused. On 7 May 2007, the judge declined to handle the case, arguing that two of the dismissed deputies charged, retired Colonels Fausto Cobo and Luis Tapia, enjoyed High Court privileges. In the interview the delegation had with the Attorney General, he emphasized that the action of the Pichincha District Attorney was not fitting but that in principle there was no impediment to once more bringing the charges against the deputies via the appropriate legal channels.

M. EVENTS SINCE THE MISSION TO ECUADOR

On 25 July 2007, the present TC left without effect the decision of 23 April 2007 of its predecessor, finding constitutional breaches and procedural flaws, this new decision being unappealable and hence final. It seems that the argument of the full court for declaring without effect the reinstatement of the opposition deputies is that the sitting of 23 April 2007 got under way with only four full members, Dr. Santiago Velásquez, Dr. Jorge Alvear, Dr. Juan Montalvo and Dr. Carlos Soria, namely without a quorum. That sitting was also attended by two substitutes, Dr. Jaime Donoso and Dr. Manuel Jalil, who were not legally convened or legitimized, according to the present TC. The two substitutes replaced the members Dr. Jacinto Loaiza and Dr. Enrique Tamariz, who had declined to handle the case because they had previously met with several dismissed deputies. The two substitutes therefore had no competence to act and, consequently, the full TC met that day without the statutory quorum, since five members are needed for the Court to sit, observed Dr. Edgar Zárate, Vice-President of the TC. Another flaw in the sitting of 23 April, according to the plenary TC, is that the reinstatement of the legislators was not on the agenda, with the result that the relevant legal norms were breached and the decision was devoid of legal effect. On that decision, the President of the TSE, Dr. Jorge Acosta, sought an extension and clarification, which was not acted upon since the said act lacked legal value and resulted in annulment of the proceedings. It was also ruled that the file should be closed on the other amparo applications on the subject. According to the TC, that decision settled the case of the dismissed deputies definitively since it had acted in accordance with the law and as required by the constitutional norms.

N. CONCLUSIONS OF THE DELEGATION

1. The delegation is aware that the past decade in Ecuador has been marked by a series of political and institutional confrontations which have done much to impair the functioning of Ecuadorian State institutions, consequently leaving large parts of the population disillusioned and wanting to change and strengthen the constitutional framework. The delegation likewise observes that, as affirmed by several of the authorities with which it conversed, in the past 10 years the National Congress took a series of decisions of great importance the conformity of which with the Constitution was in doubt, thereby leaving Congress discredited in the eyes of a substantial part of the population.

2. In this regard, the delegation commends the desire of the present authorities to strengthen the democratic and constitutional framework of Ecuador and is confident that the Constituent Assembly will be able to function in an effective and participatory manner in order, ultimately, to reinforce the institutional framework. At the same time, whatever criticism there may be of Congress, the delegation wishes to emphasize that in this case the same institutional and constitutional nature that it is sought to protect by reforming the Constitution is the focus of concern. In this connection, the delegation wishes to state the following:

The question of parliamentary immunity and the loss of the parliamentary mandate: The IPU has always emphasized that parliamentary immunity in respect of opinions expressed and votes cast in Parliament is the cornerstone of representative democracy and is firmly protected in parliaments the world over, thereby shielding members of parliament from any judicial or other proceedings for any vote cast or opinion expressed in the exercise of their parliamentary mandate. For the delegation, there can be no doubt that the 57 deputies were dismissed on account of the decisions—albeit questionable from the constitutional point of view—that they took in the exercise of their mandate. The delegation believes that the fact that Ecuador was in an election period did not relieve the electoral authority of its obligation to respect those guarantees. The delegation therefore concluded that the parliamentary immunity of the dismissed deputies was not respected, including their right to the jurisdiction of the Supreme Court of Justice.

With regard to the dismissal of the deputies, the delegation notes that the legal norms, in particular the Constitution, clearly stipulate the situations, reasons and processes which may lead to loss of the parliamentary mandate in Ecuador. Furthermore, the Constitution enshrines extensive protection of the right to due process. For the delegation it is clear that there is no norm empowering the TSE to dismiss

national deputies for electoral offences; and not in election periods either. Clearly, too, the 57 deputies were given no chance to defend themselves.

Question of harassment and aggression: Although the delegation realizes that the authorities cannot prevent every instance of demonstrations getting out of hand, it considers that appropriate guarantees can and should be adopted to protect the dismissed deputies and that, in the case of attacks, everything possible should be done to prosecute and punish the culprits. In this respect, the delegation is not convinced that the authorities always afforded those appropriate guarantees. In addition, the delegation is concerned at the fact that in most of the cases, despite the existence of television and video footage clearly showing the perpetrators of the attacks, those persons have not been apprehended and sentenced. The delegation wishes to emphasize here that action by the authorities should not be conditional on complaints from victims. In view of this situation, the delegation urges the authorities to fulfil their duty to do everything possible to ensure justice in this case and to afford the dismissed deputies effective protection. The delegation wishes to highlight its special concern at the violence and the incursion into the Constitutional Court (TC) on 23 April 2007 and at the reported lack of action by the police, as allegedly ordered by the authorities, and therefore urges the latter to clarify the circumstances of that situation and to hold the culprits responsible.

The criminal charges and the application for pre-trial detention of 24 of the deputies: Although the 24 dismissed deputies are not at present being tried on criminal charges, the delegation understands that, in principle, such proceedings may be instituted at any time via the appropriate legal channels. The delegation expresses its concern over the legal basis of the charges against the dismissed deputies, directly linked to their parliamentary work and making the present uncertainty continue to hang over them like a sword of Damocles. The delegation therefore hopes that the case will be swiftly and definitively thrown out.

The decision of the TC of 23 April 2007 and the dismissal of its members: The delegation observes that a TC decision exists with an extensive and sound legal basis for declaring the dismissal of the 57 deputies to have been unlawful. The delegation expresses its great concern at the fact that, on 24 April 2007, Congress decided to dismiss the members of the TC on the grounds that their mandate had expired in January 2007. The delegation fears that the considerations behind the decision were more political than legal. In this respect, the delegation draws attention to the time of the dismissal, which took place not in January 2007, when the mandate of the members is said to have expired, but on the day after the adoption by the TC of its highly important decision, and to the fact that the 52 deputies who approved the decision dismissing the members of the TC included those who had previously been substitutes, and that in taking the decision they were both judge and party because of their interest in avoiding the return of their predecessors.

Since the mission, the delegation has learnt with surprise and concern of the decision of the new TC members of 25 July 2007 to annul and close the file on the decision of the previous TC reinstating the 57 deputies. The delegation considers that, given the closing of the case without any ruling on its merits and without any response to the sound arguments that were advanced by the dismissed deputies and accepted by the former TC, they were denied the opportunity to obtain justice.

Instability of institutions, in particular the judicial system: The delegation considers that several of the events in this case have to do with the fragility of the judicial system and the tendencies to make justice serve political ends. The delegation encourages the authorities to apply the recommendations of the United Nations Special Rapporteur in order to depoliticize the judicial system and ensure an administration of justice based on the principles of independence and competence. In this respect, the delegation highlights the important role that the National Congress, together with the Constituent Assembly, should play to achieve this goal and welcomes the proposal of the Congress President that the IPU, which is already providing Congress with technical assistance, cooperate in the constitutional reform process.

OBSERVATIONS SUPPLIED BY THE DISMISSED DEPUTIES

We hereby wish to convey to the Committee our observations on the mission's report and, in view of their great importance, we request that they be taken into account for the final report on our case.

Paragraph 1

It should be noted that we, the unconstitutionally dismissed deputies, were elected on 15 October 2006 by popular vote, taking office on 5 January 2007.

Paragraph 4

It is important to note that the Statutes approved by the National Congress included the obligation for the Constituent Assembly to respect the period of office of the present Congress members elected by popular vote.

Paragraph 5

The Government failed to respect the statutes approved by the National Congress and on that occasion sent the Supreme Electoral Court different statutes, calling a referendum with the new statutes and not those approved by the National Congress.

Paragraph 9

What is important to highlight is that the 57 deputies were dismissed not just for having replaced the President of the Supreme Electoral Court, but that other causes included having sought impeachment proceedings and lodged an unconstitutionality application for annulment of the call for a referendum.

Paragraph 10

It should be made clear that the Judge of the Fourteenth Civil Court of Rocafuerte issued at first instance a Precautionary Measure temporarily suspending the decision of the Supreme Electoral Court, which measure was certainly not respected by the Government. Five days after that decision, Judge José Ramírez Massuh rejected the amparo application and we deputies lodged an appeal in the Constitutional Court.

It is also important to make clear that Deputy Pascual del Cioppo did not lodge an unconstitutionality application but that, on the basis of Article 97 of the Organic Law of Elections and of Article 147, submitted a complaint intended to avoid implementation of the decision of the Supreme Electoral Court, which measure was certainly not respected either.

Paragraph 12

Under Article 2 of the Code of Ethics of the National Congress, deputies must take possession in the National Congress, that is, once it has been installed with the necessary quorum. However, the President of the National Congress, who at that time had already given in to the National Government, decided as President of the National Congress to induct them himself.

Paragraph 14

It is unprecedented that we should have been tried twice on the same account, and this happened on 28 March 2007 when the Supreme Electoral Court dismissed us again after Substitute Judge José Ramírez had granted our amparo application. The Supreme Electoral Court disobeyed what had been decided by the Judge. However, it referred the matter to the Constitutional Court, thereby acknowledging that what had been decided by Judge Ramírez was in accordance with the law.

Paragraph 16

Article 13 of the Organic Law of the Office of the Attorney General prohibits the Attorney from dealing with referendums on matters that have been settled by judges or courts of the Republic or are being handled by them, the dispute being blocked, including actions and appeals that are or should be under consideration by the Constitutional Court, as was our case.

F. PARLIAMENTARY IMMUNITY AND LOSS OF THE PARLIAMENTARY MANDATE

Paragraph 1

It should be noted in this paragraph that some of the deputies dismissed were even outside the country. No material or evidence whatsoever exists against the deputies who voted in favour of dismissing the President of the Supreme Electoral Court.

Paragraph 4

It is important to stress that the Congress taking possession on 5 January 2007 included 83 deputies entering the National Congress for the first time, so that they had barely two months in which to discharge their duties, when they were elected for the four-year period.

G. COMPETENCE OF THE SUPREME ELECTORAL COURT (TSE) AND THE ORGANIC LAW OF ELECTIONS

Paragraph 1

There is no norm in either the Political Constitution of the Republic or the Electoral Law that empowers the Supreme Electoral Court to dismiss deputies of the Republic, let alone the concept of electoral emergency, so that everything affirmed by the Members of the TSE is quite without any legal substance.

H. THE AMPARO APPLICATIONS

Paragraph 4

It is true that Article 57 of the Organic Law of Constitutional Control prohibits the lodging of two constitutional amparo applications on the same subject. But it is also true that this was not the case since no deputy lodged two applications. What happened was that a citizen in Guayaquil who had voted for the deputies—and consequently felt that his interests had been harmed—lodged an amparo application in his personal capacity. This is therefore fully consistent with Ecuadorian legislation.

I. THE DECISION OF THE CONSTITUTIONAL COURT OF 23 APRIL 2007

Paragraph 11

Article 58 of the Organic Law of Constitutional Control provides that: "Decisions handed down in amparo application proceedings shall be implemented immediately by the official to whom or the public authority to which the decision is addressed; otherwise the official or authority failing to carry out the decision shall compensate the applicant for the prejudice thereby caused."

Article 59 of the Constitutional Control Law stipulates that "no incidents of any kind shall be allowed during proceedings in the Constitutional Court and appeals for constitutional guarantees, which must abide by the principles of procedural celerity and immediacy".

Article 95 of the Political Constitution of the Republic also orders that the decision must be implemented immediately. This background makes it clear that there was no proper means of preventing implementation of the Constitutional Court decision reinstating the 57 deputies.

J. THE POSITION OF THE PRESIDENT OF THE NATIONAL CONGRESS

The President of the National Congress, Mr. Jorge Cevallos, was part of this plot directed by the Government and carried out by the Supreme Electoral Court, and of course with the connivance of both the President of the Supreme Electoral Court and of the President of the National Congress. This is borne out by the fact that they made public some videos of clandestine meetings held between the President of Congress and Ministers of State on 12 February, the day before the approval of the call for a referendum for the Constituent Assembly. The videos were made public in May 2007, so revealing the plot in which the President of Congress was involved. On account of that action, the party to which Mr. Cevallos belonged brought proceedings against him in the Office of the Attorney General of the Nation for illicit enrichment, which are pending.

K. HARASSMENT OF AND ATTACKS ON THE DISMISSED DEPUTIES

Paragraph 2

The assertion by the Minister of Government that no complaints of attacks were lodged is untrue. Such complaints were made not only before the country but also to international human rights bodies.

M. EVENTS SINCE THE MISSION TO ECUADOR

One thing that will go down in the history of Ecuador as the most blatant piece of legal nonsense is the Constitutional Court's decision of 25 July whereby it left without effect the decision of 23 April 2007 by the previous Constitutional Court, arguing that procedures and formalities had been infringed. That too is untrue since the Court had to comply with the instructions of those who elected it, namely the deputies who replaced the 57 dismissed deputies. I venture to point out that Article 192 of the Political Constitution of the Republic stipulates that: "... Justice shall not be sacrificed on account solely of the omission of formalities."

Nor is there any legal norm permitting the present Members of the Constitutional Court to leave without effect decisions which were *res judicata*, such as those of 23 April 2007.

N. CONCLUSIONS OF THE DELEGATION

Paragraph 2

The position of the authorities of Ecuador that they are seeking to strengthen the public institutions is a mere political statement since, in practice, they have done and continue to do just the opposite.

CONCLUSIONS

1. At present, we the dismissed deputies are indeed subjected to criminal proceedings in one of the chambers of the High Court of Quito, the expectation being that the trial will be used against us as a means of political persecution.
2. In addition, we suggest that the Committee on the Human Rights of Parliamentarians urge the Ecuadorian State take the following action.
3. It is clear that the rule of law has not been restored in Ecuador. Therefore one of the first measures should be to recover the rule of law by reinstating the deputies elected by the Ecuadorian people for a period of four years.
4. The judiciary and the public prosecution authorities should be urged to shelve the criminal case unjustly brought against 24 dismissed deputies.
5. This type of action taken against 57 deputies should be condemned to set a precedent for parliaments the world over in order to prevent any recurrence of such wrongdoing.
6. IPU member parliaments should be recommended to issue resolutions of support for the 57 unlawfully dismissed parliamentarians.