



## **Report on the National Constituent Assembly of the Republic of Ecuador**

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### **Introduction**

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador between January 26, 2008 and February 13, 2008. In the first section, we offer a panorama of the internal work of the Assembly's working groups (legislation projects, Constituent Mandates and developments in the consultation and drafting process of the new Constitution). In the second, we summarize the issues or events related to the Assembly's relationship with society or the existing constituted powers. In the third, we focus on an issue that has generated a number of tensions and public debates (the model of the media system that the Assembly will promote in the new Constitution). Finally, we include a chronology, with a selection of key events.

### **I. The Assembly's internal work**

In the last report, we focused on two problems facing the working groups: 1) audio problems and 2) the lack of systemization of social participation in the Assembly. Both have been partially resolved in the period covered in this report. In a visit to Ciudad Alfaro (Montecristi, Manabí), seat of the Assembly, we confirmed the installation of a sound system which facilitates internal communication in the working groups. We also obtained information on the number of

consultations undertaken by each working group<sup>1</sup>.

#### **1. Legislation and Oversight Working Group (Working Group 10)**

Working Group 10 continued debating the draft projects of the Law on Ground Transportation, Transit and Highway Safety and the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources.

Working Group 10 reached agreement on various modifications to the first project with

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<sup>1</sup> Visit to Montecristi by the author, 07/02/08.

the Association of Municipalities of Ecuador (AME). The AME, along with chauffeurs, was one of the sectors with the most objections to the original version.<sup>2</sup> For its part, the Executive has shown a willingness to make changes to the draft Law that facilitates agreements with the concerned sectors.<sup>3</sup> However, the Working Group has not released its Majority and Minority reports, nor brought the project to the plenary.

The opposite occurred with the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources: the Working Group went ahead with its Majority and Minority Reports after receiving 26 proposals from various social organizations and institutions.<sup>4</sup>

According to the summary in the Majority Report, the draft originally submitted by the Executive on January 11, 2008<sup>5</sup> proposes:

- *"To eliminate the allocations [established in various laws] for the use of petroleum*

*resources, as well as for the dispersal of these resources.*

- *To eliminate the practice of managing these resources through funds and trusts, and incorporate them into the General State Budget as Capital Income.*
- *To maintain the fiscal rule that all surplus from the petroleum resources may not be assigned to cover running expenses and must be used in investments.*
- *To facilitate the bureaucratic processes for external and internal indebtedness, maintaining other forms of control as necessary".<sup>6</sup>*

The majority report was approved on January 26, 2008 with 9 votes in favor out of the 13 Assembly members in the Working Group. Seven of these votes came from PAIS, one from Ximena Bohórquez of Movimiento Honradez Nacional and the other from Carlos Medina of Movimiento Popular Democrático (MPD). With this process, the Working Group sent the draft law on without modifications to be debated shortly in the plenary.

There were two minority reports on the proposal: one from León Roldós, of Red Ética y Democrática (RED), supported by Assembly member Francisco Castro Patiño, and another by Galo Lara, of Sociedad Patriótica (PSP). Roldós' report sustains that the current draft does not address:

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<sup>2</sup> Interview with Assembly member and Vice President of Working Group 10, María Paula Romo by the author, 07/02/08.

<sup>3</sup> Santiago Zeas, "El Gobierno y la Asamblea hacen lo posible para evitar conflictos", El Comercio, 01/02/08. Online:

[http://www.elcomercio.com/noticiaEC.asp?id\\_noticia=167713&id\\_seccion=3](http://www.elcomercio.com/noticiaEC.asp?id_noticia=167713&id_seccion=3); y Andrés Alcívar, "El gobierno rectifica por presión de transportistas", La Hora, 01/02/08. Online:

<http://www.lahora.com.ec/frontEnd/main.php?idSeccion=676479>

<sup>4</sup> Assembly Press Room "La Mesa 10 recibe 26 propuestas sobre la Ley de Recursos Petroleros".07/02/08. Online:

[http://asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=3194&Itemid=1](http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=3194&Itemid=1)

<sup>5</sup> Project on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources. Online: [http://www.asambleaconstituyente.gov.ec/documentos/proyecto\\_ley\\_fondo.pdf](http://www.asambleaconstituyente.gov.ec/documentos/proyecto_ley_fondo.pdf)

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<sup>6</sup> Working Group 10. Majority Report. Online: [http://www.asambleaconstituyente.gov.ec/documentos/informe\\_de\\_mayoria.pdf](http://www.asambleaconstituyente.gov.ec/documentos/informe_de_mayoria.pdf)

- *“The power to make decisions on budget modifications; and*
- *Issues related to the authorization of and previous statements on securing loans”.*<sup>7</sup>

In statements to the press, Roldós added that the project’s gravest aspect is that the Executive wants to grant more discretionary power to the Ministry of Finance to alter the budget: *“In practice, this implies throwing the budget approved by Congress in the garbage”*<sup>8</sup>. Assembly member Galo Lara (PSP) made similar arguments in the other minority report.<sup>9</sup>

## **2. The activities of the Working Groups**

In the first two weeks of February, the majority of the constituent working groups participated in discussion forums on their issues in different locations around the country. With the exception of Working Group No. 1 (Fundamental Rights and Constitutional Guarantees), the working groups have had one or more meetings outside of Montecristi with different institutions and sectors of civil society.

The Working Groups are slowly building consensus on the conceptual framework and focuses on which to base the articles that

pertain to them. However, as President of the Assembly Alberto Acosta announced on February 7, 2008, after February 18 the working groups will begin to debate the text of the articles, and after February 25 the debates move on to the plenary<sup>10</sup>.

## **3. Mandate No. 2 Modified through Mandate No. 4**

Practically since the day of its approval (01/24/08) PAIS Assembly member Nelson López suspected that, due to poor editing, Mandate 2 had left a loophole that might permit the continued payment of extraordinary sums to public servants in cases of *untimely dismissal* (Art. 8). López immediately informed his party members of the omission, who agreed to present a motion to the plenary to amend the mandate. Finally, after almost two weeks since its approval, on February 12, 2008 the Assembly approved Constituent Mandate No. 4 with 78 out of 130 votes, limiting compensation in the public sector for untimely dismissals. Mandate No. 4 consists of 3 articles and a final provision. Article 1 states that *“compensation for untimely dismissals, for the personnel employed in the institutions named in article 2 of Mandate No. 2 [...], agreed in collective contracts, transactional acts, settlements or any other form of agreement or statement that establishes the payment of compensation, bonuses or separation pay for the termination*

<sup>7</sup> Assembly Member León Roldos, Minority Report. Online: [http://www.asambleaconstituyente.gov.ec/documentos/informe\\_minoria\\_leonroldos.pdf](http://www.asambleaconstituyente.gov.ec/documentos/informe_minoria_leonroldos.pdf)

<sup>8</sup> “Ley para eliminar los fondos petroleros genera tensiones”, El Universo, 28/01/08. Online: <http://www.eluniverso.com/2008/01/28/0001/8/20875A7156DD44C2A572C9C468EF3F49.aspx>

<sup>9</sup> Assembly Member Galo Lara. Minority Report. Online: [http://www.asambleaconstituyente.gov.ec/documentos/fondos\\_petrolos.pdf](http://www.asambleaconstituyente.gov.ec/documentos/fondos_petrolos.pdf)

<sup>10</sup> Alberto Acosta, Press conference, Ciudad Alfaró, 07/02/08.

*of individual positions, under the figure of untimely dismissal, may not exceed three hundred (300) of the basic or minimum salary of a private worker.”<sup>11</sup>*

#### **4. Amnesties in debate**

On January 29, 2008, the Acuerdo PAIS block decided to form a group of lawyers to review the individual cases for possible amnesty or pardons solicited to the Assembly by President Rafael Correa.<sup>12</sup>

The cases fall into three categories: cases of individuals accused of crimes against the administration, of individuals accused of small drug-trafficking crimes, and of individuals who participated in the Dayuma protests.

One issue facing the Assembly in this process is the classification of the crimes, particularly in cases from the first category, given that the Constitution permits the “*Concession of general amnesties for political crimes, and pardons for common crimes*” (Art. 130) and expressly prohibits the granting of “*pardons for crimes committed against the public administration*” (Art. 130).

## **II. The Assembly’s Relationship with the Constituted Powers and Society**

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<sup>11</sup> Constituent Assembly, Mandate No. 4. Online: [http://www.asambleaconstituyente.gov.ec/documentos/m andato\\_4.pdf](http://www.asambleaconstituyente.gov.ec/documentos/m andato_4.pdf)

<sup>12</sup> “Abogados revisarán casos para amnistías”, El Universo, 01/02/08. Online: <http://www.eluniverso.com/2008/02/01/0001/8/012DCE2C6B0146FF8FE770CF9B11B847.aspx>

### **1. The Assembly’s Relationship with the Legislative and Judicial Powers**

On January 31, 2008, the Attorney General rejected the complaint filed on November 23, 2007 by former President of Congress, Jorge Cevallos, against Assembly members for impeding the operation of the Parliament. The complaint was rejected by the Attorney General’s office because “*the statements or pronouncements made by Assembly members do not constitute grounds for a trial*”.<sup>13</sup>

At the same time, the recently elected president of the Supreme Court of Justice (CSJ) Roberto Gómez Mera, lashed out with sharp criticism of Mandate No. 2, which directly affects the compensation of the Court’s 31 judges, and announced he would demand reforms to the document from the Assembly.<sup>14</sup>

### **2. The Assembly’s Relationship with civil society**

An important development in the period analyzed is the publication of the number of visits from social actors received by the Assembly. According to statements by the President of the Assembly, Alberto Acosta,

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<sup>13</sup> “Ciudad Alfaro. La Ley de Tránsito en Análisis”, El Comercio, 01/02/08. Online: [http://www.elcomercio.com/noticiaEC.asp?id\\_noticia=167715&id\\_seccion=3](http://www.elcomercio.com/noticiaEC.asp?id_noticia=167715&id_seccion=3)

<sup>14</sup> “Gómez Mera arma un frente”, El Universo, 01/02/08. Online: <http://www.eluniverso.com/2008/02/01/0001/8/A8E716EC85554FD085A1A2DCFCBC79B8.aspx>

between January 1, 2008 and January 2, 2008, 335 delegations made up of 3,776 people were received in Montecristi by the Working Groups.<sup>15</sup> This number does not include the delegations that were received by groups of Assembly members during the same period. Other forms of participation include proposals sent and received electronically (810 proposals) and the spaces for debate generated by the Traveling Working Groups and the forums around the country.<sup>16</sup>

For his part, the President of the Assembly, Alberto Acosta, continued meeting with various groups from civil society in the central plaza of Montecristi. For example, Acosta met with the members of the Network of Popular Ecologists (“Red de Ecologistas Populares”) on January 29, 2008, who presented him with a petition for amnesty for more than 50 defenders of human rights and the environment who are imprisoned or persecuted for their peaceful efforts against mining and petroleum operations and other extractive activities. After the meeting, Acosta promised to promote a mandate to control mining activity, as well as to support the petition for amnesty.

### **III. Actors, Debates and Points of Tension**

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<sup>15</sup> Alberto Acosta, Press conference, Ciudad Alfaro, 07/02/08.

<sup>16</sup> Interview with Carmen Barrera and María Piedad Maldonado, Coordinators of The Social Participation Unit of the Assembly, Montecristi, 07/02/08.

From the multiple issues of tension and debate generated by the constituent process, we chose the media and its role in a democratic society for this report.

#### **1. The Media in debate**

There are a few antecedents to keep in mind when analyzing the debate over the role of the media that the Constituent Assembly will promote: a) the constant tensions and conflicts between the Executive and the principal private media organizations, since the beginning of Correa’s term, and b) the Executive’s complaint over the highly concentrated ownership of the media and the Comptroller’s report which revealed the exchange of TV and radio frequencies for political favors. Here we briefly develop these points and later establish the current state of debate on the issue, in Working Group No. 2.

President Correa has stated that “*the greatest danger for democracy is the concentration of the media in private hands with their own interests, because they can create nonexistent truths [...] the Constituent Assembly will have to think of how to make the media rectify its erroneous publications, as well as to regulate, in an improved way, all of the media, especially when so much of the media is concentrated in few hands, with powerful interests*”<sup>17</sup>. For their part, the media tends to present Correa as an authoritarian

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<sup>17</sup> “Correa señala ‘peligrosa’ concentración de medios en manos privadas”, El Universo, 15/09/07. Online: <http://www.eluniverso.com/2007/09/15/0001/8/DED96C37A24648F8BFAD46A5941E17FA.aspx>

president who does not respect freedom of expression.

Beyond the mutual accusations, the property structure of the media in Ecuador is concentrated in large economic groups, as studies by academic specialists have demonstrated.<sup>18</sup> In the conclusion of one of these studies it is held that: "*all the most important social media [in Ecuador], with no exceptions is part of large groups with economic power*".<sup>19</sup> For his part, Comptroller Carlos Pólit declared that some 370 TV and radio frequencies would be annulled due to the serious irregularities in the way they were granted. "*Many frequencies were granted without respect to the law (between 2003 and 2005) and this must be corrected*"<sup>20</sup>. The Comptroller notified the National Council on Radio and Television Broadcasting (Conartel, the regulatory institution for telecommunications) to proceed with the annulments.

The challenge of the Assembly is to build a pluralistic and democratic model of communication that, on one hand, discourages the concentration of media ownership and operational ties to economic and political interests, and, on the other hand, doesn't substitute that structure with one concentrated in the State's hands. This

appears to be the philosophy guiding the work of the Working Group on Citizen Participation and Organization (Working Group 2). In effect, there is agreement among all the members of the working group on the conceptual aspects of the new model, such as: the relevance of information, freedom of expression and communication for democracy, the constitutionalization of communication as a guaranteed right for the entire population, the incompatibility of media organizations and associations with political and economic interests, the media's obligation to act in the public interest and the promotion of community-based media<sup>21</sup>.

However, as president of the Working Group Virgilio Hernández (PAIS) recognized, the real challenge will be to maintain this conceptual agreement when they begin drafting and debating the actual text.

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<sup>18</sup> The most serious and detailed investigation on the issue is by economist Guillermo Navarro Jiménez, *Poder económico, poder político y poder fáctico. Tomo II. Los poderes fácticos*, Quito, Ediciones Zitra, 2006.

<sup>19</sup> *Ibid*, p. 192.

<sup>20</sup> El Comercio. Online:  
[http://www2.elcomercio.com/noticiaEC.asp?id\\_noticia=169227&id\\_seccion=3](http://www2.elcomercio.com/noticiaEC.asp?id_noticia=169227&id_seccion=3)

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<sup>21</sup> Assembly Member Virgilio Hernández, Montecristi, interview 07.02.08.

## **Chronology**

**01/26/08.** The Working Group on Legislation and Oversight releases one majority and two minority reports on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources.

**01/28/08.** Anniversary of the death of Eloy Alfaro. The Constituent Assembly declared Montecristi, Alfaro's birth city, as the seat of the Assembly through a Decree of National Patrimony, Culture and History.

**01/31/08.** The Attorney General rejected and closed the complaint presented by former President of Congress Jorge Cevallos, from November 23, 2007, against the Assembly members for impeding the operation of the Parliament.

**01/31/08.** The president sends the Assembly a draft project on the Reform Law on the Organic Laws on the Solicitor General of the State, the General Comptroller of the State, and the Law on Public Contracts.

**02/12/08.** The Assembly approved Mandate No. 4 with 78 votes, modifying article 1 of Mandate No. 2 on the limits of compensation for public servants.