



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 February 28 and March 14, 2008. As in our previous reports, it is divided into three main sections: the Assembly's internal work; its relationships with the constituted powers and civil society; and a focus on relevant debated issues. In this report, the controversy over territorial demarcation is discussed.

In the first two weeks of March, Working Group 1, Sovereignty presented the first constitutional articles to the Plenary of the Assembly. However, the President of the Assembly, Alberto Acosta (PAIS) announced that, although the new Constitution will be approved article by article, the Assembly will debate it by chapters and titles. Acosta also emphasized the objective of approving the new Magna Carta by May 24, 2008, although he did not rule out an extension to June 11 or July 29, the last possible date.¹

It is also important to highlight another significant event that occurred during the period covered that did not have a direct impact on the constituent process, but did affect the national political debate and the Assembly. On March 1, 2008 the Armed Forces of Colombia launched an attack on a base camp of the Armed Revolutionary Forces of Colombia (FARC) in the border province Sucumbíos, Ecuador. This event, which is detailed below, provoked an intense protest from the President, the Constituent Assembly and numerous sectors of Ecuadorian society.

In other news, on March 10 the Plenary of the Assembly granted amnesty to Alejandra Cantos Molina, former director of the Agency for the Guarantee of Deposits. As of March 14, the Plenary also

¹ "Constitución tiene forma de aprobarse", El Comercio, 03/07/08. Online:
<http://www.eluniverso.com/2008/03/07/0001/8/9EB055F463694D27ABBB906CC40C8F78.aspx>

granted amnesty for the detainees in the Dayuma case: 357 social leaders who were criminally processed for protesting in defense of their communities and their environment, and for five former contract employees of the Postal Service of Ecuador.

I. The Assembly's Internal Work

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

During the two weeks covered in this report, Working Group 10 worked on two projects: the discussion and approval of the Definitive Report on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources; and the debate and approval of the first amnesties solicited by President Correa on January 15, 2008.

With respect to the first project, it is worth mentioning that on February 28, 2008 the President gave his observations to the Assembly on articles 8, 9, 11, 12, 13 and the seventh Transitory Disposition that the Working Group approved in the second preliminary report on the law. Among the Executive's principal observations, he referenced article 13 when commenting that *"the formation of a Committee on Debt and Financing on all internal or external public debt will go into effect whenever the respective debt exceeds 1% of the State General Budget".*² After analyzing the Executive's proposals, on March 6, 2008 the members of Working Group 10 decided to

accept some of the President's suggestions, yet they kept three points from their original report that the President wanted to change:

- Even though nonbinding, the Solicitor General must be informed beforehand.
- The Working Group discarded the President's proposal to eliminate the analysis and endorsement of the Committee on Debt and Financing of the financial and economic viability of taking on external loans that exceed 1% of the budget. The Working Group resolved that all loans – regardless of the amount – would pass through the Committee.
- The Executive proposed a change to the seventh transitory disposition to reduce the costs of extraction, transportation and commercialization of petroleum and its byproducts by not requiring an Investment Plan of Petroecuador. The Assembly did not accept this proposal because they believe that Government should not be granted "liberal" powers to use oil-related income.³

² Presidency of the Republic. Online: http://www.asambleaconstituyente.gov.ec/documentos/observaciones_%20presidente_%20ley_petrolera.pdf

³ Working Group 10, "Definitive Report on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources". Online: http://www.asambleaconstituyente.gov.ec/documentos/ley_organica_fondo_petrolero.pdf

Presented below are some key points on the law, contrasting the original project presented by the Executive, the Working

Group's first report, and the Final Report that will be taken to the plenary.

Legal project	Report prior to the announcements from the executive	Final report approved by the Working Group
All the public resources related to oil should be included in the General State Budget as Capital Income to be used for investments.	The returns from the investments of the Sole Running Account will not be included in the running budget nor the utilities of the Central Bank of Ecuador and they will be earmarked for health and education.	All public resources related to oil will be incorporated in the General State's Budget as Capital Income to be invested. They will also maintain the provision from the final report presented to the Assembly related to the destination of the returns generated by the investments from the Sole Running Account.
The undertaking of internal or external debt will not require the ruling of the State Solicitor General, the Central Bank of Ecuador, nor the authorization or approval of the President of the Republic.	Every new loan or increase or decrease in debt will be evaluated by a Committee on Debt and Financing, composed of: the President, the Minister of Finances or his delegate, the Chief of the Secretary General of Planning, with the prior informed consent of the State Solicitor General (non-binding).	The President will maintain the responsibility of authorizing new loans and will plan for the creation of a Committee on Debt and Financing, which will endorse every new loan and increase or decrease in debt. This Committee will be made up of: the President, the Minister of Finances or his delegate, the Chief of the Secretary General of Planning, with the prior informed consent of the State Solicitor General (non-binding). The actions and decisions of the committee will be public. The prior requirements of informing the Solicitor General and the Central Bank were eliminated.
The Minister of Finances can approve increases or reductions of loans that alter the amounts predetermined in the General State Budget.	The Minister of Finances can approve increases or reductions of loans that alter the amounts predetermined in the General State Budget within 15% of the original amount approved by the legislature.	The restriction on the Minister of Finances related to the approval of increases or reductions of loans that alter the predetermined amounts from the General State Budget within 15% was maintained.

On March 6, 2008, Working Group 10 released a first draft of a resolution that recommends amnesty for the former director of the Agency for the Guarantee of Deposits (AGD), Alejandra Cantos, due to the political nature of the trials against her.⁴ The draft resolution was submitted to the Director's Group for the consideration of the plenary (see included Deliberations and Resolutions of the plenary of the CA). The document was approved by 9 of 10 votes with one abstention. At the same time, on the Dayuma case the working group recommended granting amnesty to those implicated in the conflict with the armed forces in December 2007, including the prefect of the Orellana Province, Guadalupe Llori. Finally, the petition for amnesty for former President Abdalá Bucaram –presented by Assembly member César Garcia, of the Partido Roldosista Ecuatoriano (PRE)- was denied.⁵

2. The activities of the Working Groups

During the first two weeks of March the constituent working groups continued to organize traveling discussion forums throughout the country. Some working groups reached agreements on various constitutional

principles, but only one (the Sovereignty Working Group) translated those principles into actual articles. What follows is a synthesis of the principal advances in the working groups that provided information:

Working Group 2: Organization and Citizen Participation

On March 5, 2008 Working Group 2 approved some basic principles (9/11 votes): the National Electoral Council was named the highest authority responsible for all electoral functions and will be divided in two sub-systems, the Electoral Court and the Administrative Unit of the Electoral Process. Furthermore, the National Electoral Council will be made up of seven members, divided between these two branches (the Court and the Administrative Unit). These members will be named after a public contest based on merit through a Selection Committee and will accept complaints from the citizenry. They established that the Electoral Court's decisions will be definitive and final; that the terms of the Council's members cannot coincide with political terms and rotation of members will be staggered. Once selected by the Selection Committee, members will appear before the Congress, although the Congress will not be able to reverse the Commission's decision.⁶ On March 6,

⁴ Alejandra Cantos faces four criminal charges and six previous investigations. She has been in Venezuela as a political refugee for over a year.

⁵ José Peralta, "Amnistía para Alejandra Cantos y Ley Petrolera listos para el Debate en el Pleno", 06/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/amnistia-para-alejandra-cantos-y-ley-petrolera-listos-para-el-debate-en-el-pleno.do>

⁶ José Peralta, "En la Mesa 2 hay consenso sobre la nueva Función Electoral", 05/03/08. Online: http://asambleaconstituyente.gov.ec/blogs/mesa_2/2008/03/05/en-la-mesa-2-hay-consenso-sobre-la-nueva-funcion-electoral/

Working Group 2 also unanimously approved the following principle: “*That the right to vote be extended to members of the Public Forces on active duty, in a non-obligatory manner*”.⁷

Working Group 9: Sovereignty and Latin American Integration

Working Group 9 approved a constitutional article on territorial sovereignty during the second debate on February 28, 2008. The working group approved the following articles:

“ART. The territory of Ecuador constitutes a historic unity of natural, social and cultural dimensions, passed down through its peoples for millennia. It comprises the land, lakes and rivers, the adjacent islands, the territorial sea, the Galápagos Archipelago; the soil, underground, and aerial space of the continent, islands and sea. Its limits are those determined by the binding treaties. The capital of Ecuador is Quito, Metropolitan District.

ART. The territory of Ecuador is unalienable, irreducible, whole and indivisible. No part of the territory can be conceded, leased, or in any way transferred temporarily or finally. No citizen, community, collective, people, or private or state entity can complete any act that compromises this territorial unity or foments any territorial separation or split.

⁷ José Peralta. “En la Mesa No.2 se da luz verde para el voto facultativo de policías y militares”. 06/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/en-la-mesa-no.-2-se-da-luz-verde-al-voto-facultativo-de-policias-y-militares.do>

ART. All the natural resources found in its territory belong to Ecuador, including the water, biodiversity, genetic wealth, mineral and hydrocarbon deposits, intangible and immaterial components, and the electromagnetic spectrum.

ART. Ecuador will exercise its rights in the corresponding segments of the synchronic geo-stationary orbit and the Antarctic, in accordance with International Law and internal legislation.

ART. Ecuador is a territory of peace, and therefore it will not be home to foreign military bases nor foreign installations with military purposes.”⁸

3. Deliberations and agreements in the plenary of the Constituent Assembly

On March 4, 2008, the plenary of the Constituent Assembly unanimously approved (116/116 votes) the first seven numerals of an Agreement on the military operation launched by the Colombian military during the night on March 1 against an encampment of the Revolutionary Armed Forces of Colombia (FARC) in the border sector of Santa Rosa in the Sucumbíos province. In its first point, the document establishes: “*the energetic condemnation of the violation of sovereignty and territorial integrity, given that this act of aggression constitutes a threat for all of Latin*

⁸ Mesa 9. “Soberanía Territorial. Propuesta de articulado”. Online: http://www.asambleaconstituyente.gov.ec/documentos/articulo_mesa_9.pdf

America”⁹ It furthermore ratifies the peaceful vocation of Ecuador and reiterates the Ecuadorian state’s policy of non-intervention in the Colombian conflict and Ecuador’s spirit of cooperation for its neighbor country to peacefully resolve its problems. Finally, the Agreement urges the Government to take measures to guarantee the rights of the people in the northern border, to convoke national unity for the defense of its sovereignty and to call upon other Latin American governments and the international community to encourage the regionalization of peace, not war and violence.

The plenary began to debate the articles proposed and approved by Working Group 9 on March 5. Pablo Lucio Paredes (Futuro Ya) questioned the fact that in the territorial definition specifies that all natural resources belong to the State. In his view, this issue should have been discussed by other groups, such as those on the Development Model and Natural Resources: *Working Group 7 has not had joint discussion with Group 9 and, as a consequence, it is dangerously likely that our debates will be limited by what is presented in these articles*”¹⁰ After the first debate, these observations were passed on to Group 9 to be considered for inclusion in a new report, which

will be discussed in the second and final debate in the plenary.

Another decisive act in the plenary took place on March 10, 2008. By 103 out of 130 votes the Assembly granted total amnesty to Alejandra Cantos Molina for all the actions undertaken while serving as director of the Agency for the Guarantee of Deposits (AGD). Cantos’ amnesty covers the period between April 27, 2005 and March 1, 2007; with it, all the judicial processes against her were ordered to be filed away.¹¹ As has been previously mentioned, on March 14 the plenary of the Assembly granted amnesty to the detainees in the Dayuma case, el caso Dayuma; 357 social leaders who were criminally processed for protesting in defense of their communities and their environment, and for five former contract employees of the Postal Service of Ecuador.¹²

At the same time, on March 10, the Assembly approved Mandate No. 5 by 87 votes, which orders all the goods (food, clothing, blankets, mattresses, etc) that have been abandoned or other decommissioned in customs and pertain to the Customs Corporation of Ecuador(CAE) be given free of charge to those victimized by the Tungurahua volcano and recent flooding. The seven-article document specifically excludes vehicles,

⁹ Constituent Assembly. “Acuerdo sobre Soberanía Nacional”. Online: http://www.asambleaconstituyente.gov.ec/documentos/acuerdo_soberania_nacional.pdf

¹⁰ “La Asamblea debate los primeros artículos”, El Comercio, 06/03/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=113623&anio=2008&mes=3&dia=6

¹¹ Constituent Assembly. Online: http://www.asambleaconstituyente.gov.ec/documentos/instituto_alexandrac_antos.pdf

¹² José Parla, Asamblea Constituyente, “84 votos se pronunciaron a favor del proyecto de resolución presentado por la Mesa 10”, 14.03.08. Online: <http://asambleaconstituyente.gov.ec/boletines/amnistia-en-caso-dayuma.do>

alcohol and financial goods or others that would not help the victims.¹³

4. The investigation into the presumed buying of allegiances continues

On March 5, the multi-party commission investigating the supposed vote-buying of Assembly members, to which we refer in the ‘debates’ section of Report No. 4, arranged for the release of its first findings on the matter. The first to appear were the investigated party Julio Logroño, of Partido Sociedad Patriótica (PSP); César Rodríguez (PAIS), president of Working Group 10; and Jorge Escala, of Movimiento Popular Democrático (MPD) and member of the Director’s Commission of the Assembly. Logroño denied the accusations, while Rodríguez and Escala argued that he should remain suspended until the end of the Constituent process. After their testimony, the Commission solicited a report from the Intelligence Unit of the Armed Forces about the investigation for which, according to Logroño, they supposedly requested his cooperation.¹⁴

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

1. Relationship with the Executive

¹³http://www.asambleaconstituyente.gov.ec/documentos/mandato_5.pdf

¹⁴ “Ante comisión investigadora se pidió suspensión definitiva para Logroño”, El Comercio. 06/03/08.

On February 28 the Director’s Commission received a draft Organic Law on a National System on Public Contracts from the Executive.¹⁵ Discussion has yet to begin.

On March 10, the Attorney General, Washington Pesantez, the Solicitor General, Xavier Garaicoa, and the Anti-corruption Secretary, José Luis Cortázar, presented the President of the Assembly, Alberto Acosta, with a draft Organic Law on the Confiscation. The document proposes that “*the goods that have served as a means or instrument in committing infractions, or that come from illicit activities that cause harm to the public heritage can be transferred to the Ecuadorian state*”.¹⁶

On a different matter, and in relation to the bi-national tensions caused by the Colombian army’s incursion, on March 4 the coordinating minister of Internal and External Security, Gustavo Larrea, visited the plenary of the Assembly to explain the Ecuadorian government’s position on the conflict.¹⁷

2. Relationship with the Courts

On February 28, the President of the Supreme Court of Justice (CSJ), Roberto Gómez Mera, along with four other judges

¹⁵ “Proyecto de Ley orgánica del Sistema Nacional de Contratación Pública”. Online: http://www.asambleaconstituyente.gov.ec/documentos/proyecto_contratacion_publica.pdf

¹⁶ “Una Ley para recuperar bienes”, El Comercio, 11/03/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=114366&anio=2008&mes=3&dia=11

¹⁷ “Asambleístas escuchan a Larrea”, El Universo, 04/03/08. Online: <http://www.eluniverso.com/2008/03/04/0001/8/5945429827BD495AAED2844305C0B9C7.aspx>

arrived in Ciudad Alvaro to show their disagreement with the government's proposal to create a new Constitutional Court as a new function of the State. They instead propose the creation of a Constitutional Control unit within the CSJ. The judges on the Supreme Court are equally against the creation of an Electoral Court; they agree with the Supreme Electoral Tribunal (TSE) in that one of the courtrooms from the contentious administration could take charge of electoral infractions.¹⁸

3. Relationship with Civil Society

In addition to the numerous forums organized by the Working Groups in various provinces, the president of the Assembly, Alberto Acosta, has continued meeting with different sectors of civil society; the most significant meetings of the period were the following:

- On February 29, in the Hall of Ecuadorian Culture, Acosta met with 5,000 people belonging to various social organizations, who presented him with a mandate proposal from the popular sectors.¹⁹
- On March 11, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) organized an indigenous mobilization in Quito. The objective of the

demonstration was to present both the President of the Assembly as well as the Vice President of the Republic, Lenin Moreno, with a series of demands from the indigenous movement with respect to the new Constitutional framework and the development projects of Correa's government. The central points of CONAIE's proposed mandate were the following:

- 1.- To build a pluri-national and sovereign state with rights to natural resources, intercultural, bilingual education and indigenous health.
- 2.- To defend the state indigenous institutions (Codenpe, Dofepi, Dineib and Salud Indígena), achieved through the struggle of the indigenous peoples and nationalities.
- 3.- To control and fix the prices of the basic food basket.
- 4.- To form a legal commission to process the cases of their compatriots under persecution.
- 5.- To remove the Minister of Environment and evaluate the expiration process of the contracts with Petrobras, Philips and CGC.²⁰

III. Actors, Debates and Points of Tension

1. The debate on territorial demarcation

One of the issues of the constituent process that has generated intense debates is the possible political and administrative re-

18, "La CSJ no cree en la Corte Constitucional", El Comercio, 29/02/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=112714&anio=2008&mes=2&dia=29

¹⁹ "Propuestas. Alberto Acosta estuvo en el ágora de la CCE", El Comercio 01/03/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=112865&anio=2008&mes=3&dia=1

²⁰ "Indígenas defienden recursos naturales", La Hora, 12/03/08. Online: <http://www.lahora.com.ec/frontEnd/main.php?idSeccion=693204>

organization of the Ecuadorian territory. The principal actors in this controversy are the Secretary of Planning and Development (Senplades); Working Group 4 (Territorial Organization and Designation of Powers); the Consortium of Provincial Councils of Ecuador (Concope); the Association of Municipalities of Ecuador (AME) and the mayor of Guayaquil, Jaime Nebot.

The point of departure for the controversy is the recognition that in their present state, the various levels of government (central, provincial, municipal) are characterized by disorder in the designation of their powers.²¹ Senplades, for example, asserts that “*there is triplication of efforts in the provinces. It is unclear which roles pertain to which governmental entity, evidenced by the lack of articulation and clarity in public actions*”.²²

Given this reality, the actors involved have offered different proposals. In the first place, Senplades proposed the creation of seven regions as administrative entities, in addition to the possibility of the Provinces converting into governments, implying the popular election of governors and the creation of legislative organs at the regional level. The first proposal of Senplades generated unrest in the organization that clogs up the provincial prefects (Concope).

Under pressure from that organization, Senplades called for the creation of an Inter-institutional Commission for the Reform of the State, composed of itself, Concope, AME and the National Council of Parochial Cabinets of Ecuador (Conajupare). The Commission hopes to reach a consensus on a model for the State that “*establishes an articulation of parochial cabinets, municipalities and provincial councils with the central Government and a framework for decentralized management in accordance with the new development strategy applied by the Government towards the National Development Plan*”.²³ After various meetings with this Commission, Senplades modified its original position and reformulated its proposal: during the Extraordinary General Assembly of Concope (March 7, 2008) the secretary of Senplades, Fander Falconí, recognized that the Provincial Governments will continue to exist. He proposed that the decentralization and regionalization projects should be long term and staged achievements: in 0 to 4 years they would promote the administrative de-concentration and de-centralization; in 4 to 8 years the creation of regions, on a voluntary basis; and in 8 to 12 years, the autonomies.²⁴ For its part, in this same Assembly, Concope approved the following resolution: “*To*

²¹ Working Group 4. “Una conversación sobre descentralización”, 28/02/08. Online: http://asambleaconstituyente.gov.ec/blogs/mesa_4/2008/02/28/una-conversacion-sobre-descentralizacion/

²² Redacción “La propuesta del Gobierno es crear siete regiones en el país”. El Comercio. Consulta en línea: http://www2.elcomercio.com/noticiaEC.asp?id_noticia=145791&id_seccion=10

²³ SENPLADES. La comisión interinstitucional trabaja hoy en la reforma del Estado. Press Bulletin N° 13. 25/02/08. Online: www.senplades.gov.ec/c/document_library/get_file?folderId=31&name=DLFE-185.pdf –

²⁴ CONCOPE, “CONCOPE y gobierno de acuerdo en mantener las provincias”, Press Bulletin. Online: <http://www.concope.gov.ec/archivos/BOLETIN%20DE%20OPRENSA%20No%2001-2008.pdf>

strengthen the State's unitary model of decentralized government with a high level of autonomy at the sub-national level, with the objective to maximize the state's capacity to improve the well being of its citizens [...] The intermediate level of government will be represented by Provincial Councils and will have a key role in linking the dependent, deconcentrated administration and the decentralized administration. Its decisions will have jurisdiction throughout the territory, as much in the urban as in the rural'.²⁵

For its part, Working Group 4 offered three major ideas on the decentralization issue: a) strengthening of the municipalities as basic cells of the sectional organization; b) formation of Commonwealths of municipalities; and c) constitutionalize the sectional autonomous governments.²⁶ In this sense, it discussed 24 Commonwealths of Cantons equivalent to the number of provinces that exist in the country, which would have an authority elected by the popular vote and would be advised by a Legislative Organ composed of a representative from each canton comprising the province. These Commonwealths of Cantons could potentially group themselves into Commonwealths of Provinces.

²⁵ CONCOPE, "Reforma del Estado. Propuesta del Consorcio de Consejos Provinciales del Ecuador", 03/03/08, Presentación Power Point. Online: <http://www.concope.gov.ec>

²⁶ Peralta. El miércoles de la próxima semana se realizará el primer debate sobre textos constitucionales. Bulletin 531. 29/02/08. Online: <http://asambleaconstituyente.gov.ec/boletines/el-miercoles-de-la-proxima-semana-se-realizara-el-primer-debate-sobre-textos-constitucionales.do>

Finally, we have the Mandate of Guayaquil, which, as we mentioned in our fourth report, is a proposal that was promoted by the mayor of Guayaquil, Jaime Nebot (and supported by 320 institutions in the province) and was presented to the CA on February 20, 2008. In its fifth article, the proposal suggests a model of autonomous regions as political-administrative forms of government: "*Autonomy is freedom, and therefore, it should be voluntary; there is no room for forced regions or imposed objectives. Autonomy should not mean more processes and bureaucracy whose costs affect the central Government and the municipalities, and therefore they should not create new government entities but rather transform the sectional organisms into autonomous governments, as long as they meet the necessary requirements. Autonomy should not injure the jurisdiction, powers or income of any other autonomy, province or canton, nor affect the exercise and funding of the non-transferable powers that correspond to the central Government*".²⁷

²⁷ "Mandato Ciudadano desde Guayaquil, por la Patria". Online: http://es.wikipedia.org/wiki/Usuario:Alfredo_Molina/Mandato_de_Guayaquil

Chronology

02/28/08. The Director's Commission of the Assembly received a draft Organic Law on a National System on Public Contracts from the Executive.

03/04/08. The plenary of the Assembly unanimously approved an Agreement on National Sovereignty to condemn the incursion of the Colombian armed forces to dismantle a FARC camp on March 1.

03/05/08. The plenary started to debate the first articles proposed by the Working Group on Sovereignty.

03/05/08. Assembly member Julio Logroño appeared before the Multi-party Commission investigating the supposed case of vote buying of assembly members.

03/06/08. Working Group 10 approved the final report on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources.

03/10/08. The Assembly approved Mandate No. 5 to grant the Customs Corporation of Ecuador the ability to give freely the goods in its custody to the victims of the Tungurahua volcano and recent flooding.

03/10/08. The plenary approved amnesty for the former director of the Agency for the Guarantee of Deposits.

03/14/08. The plenary granted amnesty to the detainees in the Dayuma case; 357 social leaders who were criminally processed for protesting in defense of their communities and their environment, and for five former contract employees of the Postal Service of Ecuador.