



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

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### **Introduction**

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador (CA) between March 14 and March 27, 2008. In the first section, we summarize the work undertaken in the Assembly's two main forums: the constituent working groups and the Plenary. In this case it is worth emphasizing the work of four of the working groups that have passed as many proposed articles as other types of documents. Three of these proposals are now being discussed in the Plenary. In the second section, we describe the main points in the Assembly's relationship with the Executive and Legislative powers. In our sections on *Actors, Debates and Points of Tension*, we examine the beginnings of the discussion taking place on the Ecuadorian indigenous movement's proposal for the new Constitution to recognize the many nationalities in the Ecuadorian state. Finally, we offer a chronology of the most relevant events and developments.

One important announcement was made in this period by Assembly vice president Fernando Cordero (PAIS), who sustained that the scheduling clashes in the CA's original program of work over its first four months of work were caused by the lack of a structure to manage and plan the efforts of the working groups. However, with the new calendar it is expected that all the constitutional articles will be approved by June 16.<sup>1</sup>

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<sup>1</sup> Gisela Ronquillo, "Todas las elecciones se unificarán para noviembre", El Universo, 03/27/08. Online: <http://www.eluniverso.com/2008/03/27/0001/8/91A3E9C1CBA84B99A8A15183050E9897.aspx>

## I. The Assembly's Internal Work

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

On March 17 Working Group 10 returned to the debate on the Law on Ground Transportation, Transit and Highway Safety to draft a second report on this legal framework after taking in the observations and suggestions of the Assembly members.

### 2. The work of the Working Groups

In the period covered, there were four groups who approved documents with proposals for constitutional articles: Working Groups 1, 2, 6 and 9.

#### *Working Group 1. Citizen Rights and Constitutional Guarantees*

On March 15 Working Group 1 unanimously approved (13/13) a text with article proposals on the First Fundamental Rights and Political Rights.<sup>2</sup> It established 11 first principles:

- a) *Unalienable rights*
- b) *Exercise-ability and assurance of rights*
- c) *Equality in diversity and non-discrimination*
- d) *Non-restriction of rights*
- e) *Pro-humanity*

- f) *Wholeness or Cohesiveness*
- g) *Open clause*
- h) *Progressivity*
- i) *State responsibilities*
- j) *Social responsibilities*
- k) *Motivation for acts by the Public Powers*

With respect to political rights, the document approved nine articles, the most outstanding of which establishes the following political rights for Ecuadorians:

- “1. To elect and be elected.*
- 2. To present draft laws, rules, ordinances or any other normative proposal before the body with the power to approve it.*
- 3. To be consulted in the cases established in the Constitution.*
- 4. To exercise oversight of the activities of the organs of public power.*
- 5. To revoke the mandates conferred upon popularly elected dignitaries.*
- 6. To hold public positions and posts in accordance with a transparent selection and designation process that is inclusive, equitable, multi-cultural and democratic based on the merits, abilities and opposing views which guarantees the participation of all Ecuadorians, especially women, without any discrimination.*
- 7. To form parties, organizations and political movements and the free association or disassociation with them.*
- 8. To participate in the internal elections of parties and political movements authorized by the law.*

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<sup>2</sup> Constituent Working Group 1, “Titulo II. Las personas, los pueblos y la naturaleza”. Online: [http://www.asambleaconstituyente.gov.ec/documentos/principios\\_fundamentales\\_aprobado.pdf](http://www.asambleaconstituyente.gov.ec/documentos/principios_fundamentales_aprobado.pdf)

9. *To participate as citizens.*<sup>3</sup>

Also relevant is an article related to the promotion of methods of affirmative action: *“Will promote affirmative action that fosters conditions of equality of access for men and women in popular election processes, in filling positions of direction and decision in the public sphere, in the administration of justice, in the organisms of control and in political parties and movements, until substantive equality in their participation is achieved.”*<sup>4</sup>

*Working Group 2: Organization, Social and Citizen Participation, and Systems of Representation*

On March 18, the working group approved (article by article) a document on the electoral functions containing 13 articles and 2 transitory dispositions.<sup>5</sup> The document’s main point is the division of electoral functions between two entities: the National Electoral Council and the Litigious Electoral Tribunal. In its first article, the document establishes that *“Electoral functions are a Power of the State that enables the popular exercise of the political rights of citizens through the right to vote. They will be exercised by the organisms described in the Constitution and the law. They will act under the principles of equality, independence, transparency, revocability, responsibility and*

*integrity.”*<sup>6</sup> In addition to defining the articles related to the designation and composition of the Council and Tribunal, which establish that the councilors (5 officials with 5 substitutes) and judges (3 principals and 3 substitutes) will be chosen through competition based on merits, the Working Group defined the functions of both organisms. The Council will have 11 functions, including the organization, direction, vigilance and guarantee the electoral processes. For its part, the Tribunal *“will have the functions of knowing and resolving the matters related to recourses and electoral appeals, violations of the pertinent norms on electoral spending previously determined by the National Electoral Council, the system of parties and political movements, and the rest determined by the Constitution and the law. Its judgments and resolutions will be final will constitute electoral jurisprudence.”*<sup>7</sup> Finally, the text establishes that the Selection Commissions for the members of both organisms will be composed of a representative from each branch of government and with equal representation from the population.

The Assembly members who voted against the articles or abstained the majority of the time were César Rohón, of the Partido Social Cristiano (PSC) and Andrés Pavón, of the

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3 Ibid.

4 Ibid.

5 The average breakdown was 10 votes in favor, 2 against and one abstention; the figures varied for every article.

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6 Working Group No. 2, “Articulado de la Función Electoral”.

Online:

[http://asambleaconstituyente.gov.ec/blogs/mesa\\_2/files/2008/03/votacion-mesa-2-funcion-electoral.pdf](http://asambleaconstituyente.gov.ec/blogs/mesa_2/files/2008/03/votacion-mesa-2-funcion-electoral.pdf)

7 Ibidem.

Partido Renovador Institucional Acción Nacional (PRIAN). In Rohón's case, for example, it should be noted that there is an Electoral Tribunal against the jurisdictional unity of the country: "*I don't agree with the notion of an electoral court as part of the Electoral Function (...) I still think a special court in the Supreme Court of Justice would be more viable*".<sup>8</sup>

*Working Group 6. Work, Production, Equality and Social Inclusion.*

Between March 24 & 25 Working Group 6 approved the first nine articles of the Section on Work.<sup>9</sup> The first article states: "*The right to work. – To work is a social and economic right, a source of wealth and a base for the economy. The State will promote the different modalities of work and will insure the respect for a dignified existence for the worker and his/her family. It recognizes the right to obligatory rest for workers. The State will guarantee the conditions to permit the exercise and assurance of these rights.*"<sup>10</sup>; the third article establishes fundamental rights on work, as does the fourth one on "*Categories of organization of work. – The State recognizes*

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8 "Una comisión seleccionará a los vocales de la Función Electoral", El Comercio, 20/03/08. Online:

[http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=15733&anio=2008&mes=3&dia=20](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=15733&anio=2008&mes=3&dia=20)

9 Working Group 6. "Artículos constitucionales debatidos y aprobados por mesa de trabajo", 26/03/08. Online:

[http://asambleaconstituyente.gov.ec/blogs/mesa\\_6/2008/03/26/articulos-constitucionales-debatidos-y-aprobados-por-mesa-de-trabajo/](http://asambleaconstituyente.gov.ec/blogs/mesa_6/2008/03/26/articulos-constitucionales-debatidos-y-aprobados-por-mesa-de-trabajo/)

10 Ibidem.

*and protects the diverse forms of organization of productive work, domestic, self-sustaining, and of human care and guarantees the equality of rights and conditions. It recognizes the autonomous workers, community economic units, cooperatives, relatives and associations as productive social sectors. It guarantees and protects their rights and their access to social security, in accordance with the law.*"

At the same time, on March 26 the vice president of Working Group 6, Irina Cabezas (PAIS), presented a draft mandate to the Assembly Secretary General that prohibits outsourcing and labor mediation.<sup>11</sup> The six-article document, which is supported by four other PAIS Assembly members, will be discussed by the Plenary in the coming weeks.

*Working Group 9: Sovereignty and International Relations and Latin American Integration.*

On March 17, Group 9 approved 5 articles on Territorial Sovereignty, which were submitted to the Director's Commission for a second and final debate in the Plenary of the Assembly. The first four articles were approved unanimously. The fifth, which refers to the interference of foreign military bases in Ecuadorian territory, was approved by a majority of 8/13. In the first articles, in addition to declaring the territory unalienable, irreducible and inviolable, the text prohibits the

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11 Online:

[http://www.asambleaconstituyente.gov.ec/documentos/mandato\\_irina\\_cabezas.pdf](http://www.asambleaconstituyente.gov.ec/documentos/mandato_irina_cabezas.pdf)

encouragement of secession and declares and establishes the full exercise of sovereignty over non-renewable resources (such as water), cultural heritage, mineral and hydrocarbon deposits, biodiversity, the electromagnetic spectrum and genetic heritage. The controversial article on the military bases was approved in the following form: *“Art. 5. Ecuador is a territory of Peace. It will not permit the establishment of foreign military bases or foreign installations with military purposes on its territory. It will not allow the loan of national military bases to foreign security forces.”*<sup>12</sup> One day after approving this article, on March 18, Working Group 9 resolved to start a preliminary audit of the Manta Base and to consider the termination of the agreement with the Armed Forces of the United States.<sup>13</sup>

### 3. Debates and Resolutions of the CA Plenary

On March 19, the Plenary started to debate the proposed articles on Fundamental Rights and Political Rights approved by Working Group 1.

Meanwhile, on March 26, the debate began on the document approved by Working Group 3 on the Electoral Function. One of the most controversial points was the proposal that the Selection Committee for the members of the

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<sup>12</sup> Ibidem.

<sup>13</sup> “Una auditoría para la Base de Manta se resolvió en Montecristi”, El Comercio, 03/19/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=115614&anio=2008&mes=3&dia=19](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=115614&anio=2008&mes=3&dia=19)

Council and the Tribunal would be made up of representatives of each branch of government and “representatives of the population.” The opposition complained that those last representatives, given the present concentration of political forces, could lack autonomy.<sup>14</sup>

The same day (3/26/08), the Plenary voted 81 out of 130 to suspend Assembly Member Julio Logroño (PSP) for 60 days. Logroño may return to the Assembly only in mid-June, should the Assembly extend its efforts until those dates. It should be mentioned that the debate prior to the approval was marked by heated controversy that included four motions to take a vote and a pronouncement against the investigation of Logroño by 20 Assembly members from the opposition. For his part, Logroño announced that if the sanction is carried out, he will file charges with international Human Rights bodies.<sup>15</sup>

### 4. A collection of amnesties approved

On March 14, the Plenary of the Assembly granted amnesty to: 1) the individuals detained in the Dayuma case, Coca, Orellana province (83 votes in favor).<sup>16</sup> 2) 357 social leaders who

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<sup>14</sup> “Los partidos, fuera de la función electoral”, El Comercio, 03/27/08. Online:

[http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=116796&anio=2008&mes=3&dia=27](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=116796&anio=2008&mes=3&dia=27)

<sup>15</sup> Press Room of José Peralta, “Suspensión de 60 días para Julio Logroño”, 03/26/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/suspension-de-60-dias-para-julio-logrono.do>

<sup>16</sup> Press Room of José Perata, Asamblea Constituyente, “84 votos se pronunciaron a favor del proyecto de resolución

were criminally processed for protesting in defense of their communities and their environment (92 votes in favor). The cases for which the social leaders had been criminally processed were the following: a) Eight mining intervention projects: the Intag/Ascendant Copper Corporation case, the Yantzaza/Aurelian case, the El Pangui/Corriente Resources (ECSA) case, the Poblador/Minero Industrial case, the Limón Indanza/Sipetrol case, the Echandía and Las Naves/Curimining or Salazar S.A. cases (occurring between 2007 – 2008), the Victoria del Portete/ IAMGOLD case and the Molleturo/Ecuadorgold case; b) Three for intervention in petroleum projects: the Payamino/Perezco case, the Pindo/Petroriental case and the Técnico petrolero/Compañía Petrobrás case; c) Two for hydroelectric interventions: the San Pablo de Amalí/Hidrotambo case and the Pangua/la Maná case; d) Three for defending communal land, collective rights and public spaces: the Salango/hotel developer case, the Las Acacias/Municipio de Quito case and the Centro Comunitario/Lorenzo Voltoline case in the canton of Latacunga; e) Two cases of defending water and environmental quality: the Tumbaco/EMAAP–Q case and the El Rosal/ADELCA case; and f) A case of forestry exploitation: the Predio Pambilar/ENDESA-

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presentado por la Mesa 10”, 03/14/08. Online: <http://asambleaconstituyente.gov.ec/boletines/amnistia-en-caso-dayuma.do>.

BOTROSA case.<sup>17</sup> 3) Five former contract employees of the Postal Service of Ecuador who were accused of crimes in their fight against outsourcing and labor mediation.<sup>18</sup>

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

### **1. The Assembly’s Relationship with the Executive Power**

On March 19, the president of the Assembly Alberto Acosta released an official letter through which the Director’s Commission of the CA requested the appearances of the Minister of Defense Wellington Sandoval and the Minister of Government Fernando Bustamante, as well as the Chief of Police Bolívar Cisneros and the Chief of the Joint Command of the Armed Forces, Héctor Camacho so they could *“really inform us of the intelligence activities they had completed on the Assembly since its installation in November 2007 to the present date”*.<sup>19</sup> The document also requested that, if

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<sup>17</sup> Press Room of José Peralta, Asamblea Constituyente, “Se ha hecho justicia con los perseguidos políticos por defender la Naturaleza”, 14/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/acosta-se-ha-hecho-justicia-con-los-perseguidos-politicos-por-defender-la-naturaleza.do>.

<sup>18</sup> Press Room of José Peralta, Asamblea Constituyente, “Hoy la Asamblea concedió amnistía a ex trabajadores de Correos del Ecuador”, 14/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/asamblea-otorga-amnistia-a-ex-trabajadores-de-correos-del-ecuador.do>

<sup>19</sup> Citado en “La Asamblea Constituyente pide a las FF.AA. aclarar operaciones de inteligencia”, El Comercio, 20/03/08. Online:

that had taken place, they provide details on the technological methods being used in the intelligence gathering process. This relates to the ongoing investigation of Assembly Member Julio Logroño of Sociedad Patriótica (PSP), who we have mentioned in numerous previous reports.

Meanwhile, also on March 19 the Movimiento Popular Democrático (MPD) bloc rejected the naming of Alfredo Vera Arrata as the National Secretary of the Anti-corruption Commission. The Assembly members argued that Congress removed Vera Arrata as Minister of Education in 1991 for mismanagement in purchasing construction materials for schools.<sup>20</sup>

## 2. The Assembly's Relationship with the Judicial Power

On March 12, the president of Working Group 10, César Rodríguez (PAIS), asked the president of the Supreme Court of Justice (CSJ), Roberto Gómez Mera, for current information on the processes for naming the ministers of that body, as well as in the superior courts, of head judges and notaries throughout the country. The petition was made through the allegation that some vacancies had been supposedly filled by candidates who did not formally go through

the application process or who did not meet the minimum requirements. On March 17, Gómez Mera responded that requested information should be gathered by Ulpiano Salazar, president of the Commission on Human Resources of the National Judiciary Council (CNJ), who was in charge of the selection process.<sup>21</sup> Given this response some PAIS Assembly members crafted a draft mandate to suspend the filling of new judgeships in the superior courts. The project urged the Comptroller to audit the selection of judges and ministers in superior courts to verify whether this task has been carried out in accordance with the law.<sup>22</sup>

However, in a last minute decision, on March 25 the president of the Court unauthorized the resolution adopted by 17 judges that determined that, despite the irregularities, positions would continue to be filled. Given Gómez Mera's position, the controversial placements of judges were left in legal limbo until the Assembly adopts a definitive resolution on the issue.<sup>23</sup>

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[http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=115877&anio=2008&mes=3&dia=20](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=115877&anio=2008&mes=3&dia=20)

20 "Mandato prohibirá tercerizar", El Universo, 20/03/08. Online: <http://www.eluniverso.com/2008/03/20/0001/8/1AAE791E7277473995088EC89FBE5A5F.aspx>

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21 "El plazo para la Corte se agota", El Comercio, 26/03/08.

Online:

[http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=116640&anio=2008&mes=3&dia=26](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=116640&anio=2008&mes=3&dia=26)

22 "La Asamblea no pudo frenar la posesión", El Comercio, 21/03/08. Online:

[http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=115930&anio=2008&mes=3&dia=21](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=115930&anio=2008&mes=3&dia=21)

23 "Titular de CSJ suspendió posesión", El Universo, 26/03/08.

Online:

<http://www.eluniverso.com/2008/03/26/0001/8/594E1F2220614052B17BB9EA5D467261.aspx>

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

#### The Debate on a Multi-Ethnic State

One of the most significant discussions from this period was the demand made by the National Indigenous Confederation of Ecuador (CONAIE) to the Assembly to confirm the multi-ethnic character of the Ecuadorian state in the new Magna Carta. This discussion implies a reformulation of the structure of the State, the development model, and the recognition of a collection of rights for indigenous peoples, of which the most controversial are those related to territory. Below we examine some of the main positions on the issue:

Mónica Chuji (PAIS), president of Working Group 5 in the Assembly, explained that a multi-ethnic state does not imply the dissolution of the Ecuadorian state, but it does imply *“a new form of the social contract that respects and honors the rights of the peoples and indigenous nationalities with the legal structure current policies, recognizing them in their status as political subjects with full rights”*.<sup>24</sup>

At the same time, Boaventura de Sousa Santos, the Portuguese sociologist and lawyer who is an expert on the subject, visited the Assembly to offer his point of view. He commented that the main resistances to the proposal of multi-ethnicity have to do with the

issue of self-management in the indigenous territories: *“The reason why this issue is more dramatic in America is because there exists a self-management on land that is very important. 90% of the natural resources are on indigenous territories. If we’re going to consider the idea of multi-ethnicity with territory, we should change the economic model guiding the use of resources.”*<sup>25</sup>

For his part, Humberto Cholango, the indigenous leader of CONAIE, clarified that *“No one is saying that the indigenous communities are going to appropriate the oil, the water, the natural sources. We are saying that those resources are of the Ecuadorians and are of the peoples and their administration should be by the community for all the collective”*.<sup>26</sup> In the same sense, the political party branch of CONAIE, Pachakutik (PK) plans to present the following proposal for the constitutional text to the Assembly in the next week: *“Ecuador is a multi-ethnic State, united and indivisible”*.<sup>27</sup>

After the indigenous march in Quito on March 11, which counted among its central objectives the demand for recognition of multi-ethnicity, and other meetings between the indigenous movement and the Executive, they

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24 Mónica Chuji. “El reto a reconocernos como diferentes: Estado y Democracia Plurinacional”, 11/02/08. Online: [http://asambleaconstituyente.gov.ec/blogs/monica\\_chuji/2008/02/11/el-reto-a-reconocernos-como-diferentes-estado-y-democracia-plurinacional/](http://asambleaconstituyente.gov.ec/blogs/monica_chuji/2008/02/11/el-reto-a-reconocernos-como-diferentes-estado-y-democracia-plurinacional/)

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25 “La plurinacionalidad es irreversible”. El Comercio, 16/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/la-plurinacionalidad-es-irreversible.do>

26 María Victoria Romero. “Los indígenas abogan por un Estado plurinacional”, El Mercurio Digital, 17/03/08. Consulta en línea. <http://elmercuriodigital.es/content/view/8232/1/>

27 El Comercio. La Asamblea Constituyente está abierta a la plurinacionalidad. 23/03/08.

<http://asambleaconstituyente.gov.ec/boletines/la-asamblea-constituyente-esta-abierta-a-la-plurinacionalidad.do>

agreed upon the creation of an inter-institutional commission of five ministers to discuss and spread the debate and conversation on multi-ethnicity.<sup>28</sup>

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28 "Conaie niega apoyo al régimen", El Universo, 16/03/08.

Online:

<http://www.eluniverso.com/2008/03/16/0001/8/7A11C47B99CF4AAB845BD253B9207C27.aspx>

## **Chronology**

**03/15/08.** Working Group 1 unanimously approved (13/13) a text with article proposals on the First Fundamental Rights and Political Rights.

**03/17/08.** Working Group 9 approved 5 articles on Territorial Sovereignty.

**03/18/08.** Working Group 2 approved the articles on the Electoral Function.

**03/25/08.** Working Group 6 approved the first 9 articles of the Work Section.

**03/26/08.** The Plenary approved the suspension of Assembly member Julio Logroño (PSP) for 60 days by a vote of 81/130.