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This bi-monthly report summarizes the principal activities, debates and agreements of the National Constituent Assembly (CA) between 02/28/08 and 04/29/08. The report consists of four main sections. The first one is dedicated to describing the work in the Assembly's main decision-making bodies, as well as the documents approved during this period. In this way, we will introduce the Plenary's decisive acts, which include mandates, agreements, amnesties and pardons, and the approval of the "*Organic Law for the Recuperation of Public Use of the State's Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes.*" We also comment on the most notable aspects of the work of the constituent working groups, who started to produce article proposals for the new Constitution in the past two months. Likewise, we provide an overview of the oversight and prosecutorial cases being processed by the Working Group on Legislation and Oversight (Working Group 10). In the last part of the first section we provide a textual transcript of the first 17 constitutional articles approved by the Plenary, the most outstanding of which are those related to Unalienable Rights; Territorial Sovereignty and those that regulate the new Electoral Power.

The second section is dedicated to providing an account of the Assembly's relationships with the Executive and Legislative Powers. In the third section we present three significant debates that have generated heated controversy between Assembly members and other sectors of civil society: the first has to do with the new territorial organization that the new Constitution will seek to consolidate; the second, refers to the debate between multi-culturalism versus multi-nationalism; and, the final debate, breaks into three controversial issues: the secular nature of the State, the right to abortion and the rights of homosexual couples. The fourth section is a chronology of the key events of the period. Finally, we include a graphic annex that provides a diagram of the documents produced by the Assembly, their date of approval and the number of votes by which they were approved. It is worth noting that, according to statistics recently published by the Assembly, there are 256 constitutional articles on the agenda awaiting approval. In addition to the 17 approved, there are 45 pending for a second debate; 7 for a first debate; and 187 still being discussed in the Constituent Working Groups.¹

¹ Constituent Assembly. Online: http://www.asambleaconstituyente.gov.ec/documentos/cuadro_articulado_aprobado.pdf; "El bloque de A. País recibió nuevamente a Correa", El Comercio, 04/25/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=121130&anio=2008&mes=4&dia=25

I. Work of the Assembly

Decisive Acts of the Plenary

Mandates

Mandate No. 5.

On March 10 the Assembly approved Mandate No. 5, which ordered all the goods pertaining to the Customs Corporation of Ecuador (CAE) (food, clothing, blankets, mattresses, etc) that have been abandoned or otherwise decommissioned in customs to be given free of charge to those victimized by the Tungurahua volcano and recent flooding. The seven-article document specifically excludes vehicles, alcohol and financial goods or others that would not help the victims.² The mandate was approved by 87 votes.

Mandate No. 6.

On April 18 with 95 votes in favor, 1 against and 25 abstentions,³ the Plenary of the CA approved Mandate No. 6, better known as the “Mining Mandate. This mandate reverts around 3100 mining concessions to the State, equivalent to around 80% of all concessions granted to date.

Among the arguments consecrated within the mandate is the recognition that “*the current*

legal institutional framework is insufficient and does not respond to national interests, which is why it is necessary to immediately correct and stop the harmful environmental, social and cultural effects until a new Mining Law can enter into effect, with safe and efficient regulations, in accordance with the development model chosen by the country”. According to statistical data wielded by the Assembly, prior to the mandate, 12% of Ecuadorian territory was conceded to businesses dedicated to mining exploitation, and the 3,298 concessions granted made up 2 million three hundred thousand hectares.⁴ The approved Mandate, with 12 articles and 4 final resolutions, states the following:

² Constituent Assembly, “Mandate No. 5”. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandate_5.pdf

³ The vote against was cast by alternate Assembly member Alfredo Ortiz (RED-PSP) Max Freire.

⁴ El Universo. Mandate minero fue aprobado por la Asamblea. 04/18/08. Online: <http://www.eluniverso.com/2008/04/18/0001/9/E9344CD1D630478982A724AC69ED605E.aspx>

- Article 1 declares the expiration of all mining concessions that have not resulted in a single investment during the exploration phase by December 31, 2007, and that have not presented their respective studies on environmental impact or not completed the aforementioned study.
- Article 2 announces that mining concessions will expire if they have not paid for their patents and that these payments must be made by March 31 of every year.
- Article 3 declares the annulment, without financial compensation, of all mining concessions within protected natural areas, protected forests and buffer zones defined by the competent authority.
- Article 6 declares a moratorium on the granting of new concessions and new mining rights.
- Article 7 states that the non-metallic concessions and construction permits are not included in the previous articles and may continue their activities, but they are obligated to renegotiate their contracts in the new legal framework that will regulate their activity. There will be no compensation.
- Article 8 declares the suspension of metallic mining concessions that are not included in articles 1 through 5, until a new legal framework on the issue fails to pass.
- Article 9 establishes that the new legal framework should be developed in the next 180 days.
- Article 11 stipulates that the National Government, through the Ministry of Mining and Petroleum, will create a National Mining

Corporation, which will intervene in every phase of mining activity.⁵

The mining mandate has provoked tension between different groups in favor and against mining. For example, both before and after the approval of the mandate was known, some foreign businesses operating in the country expressed their disagreement because *“they considered it a threat to their investments and the future of business.”* Similarly the Chamber of Mining, in a recent statement, declared: *“We need a new Law, but not a mandate that kills all mining”*.⁶ Along the same lines, the president of the Cantonal Chamber of Ponce Enriquez, *“judged the mandate to be an imprudent measure, given that it assuredly will leave approximately 12 thousand people who work in mining without employment in the region”*.⁷ These statements coincide with similar ones made by some workers who are employed by mining operations in the west of the

⁵Constituent Assembly, “Mandate 06”. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandate_minero_definitivo.pdf

⁶ El Universo. Ecuador apuesta por retiro de concesiones mineras. 04/17/08. Online: <http://www.eluniverso.com/2008/04/17/0001/9/76FC5F379F7C44F58EB7B37B1CD48726.aspx>

⁷ El Universo. Mineros piden diálogos con el Gobierno. 04/21/08. Online: <http://www.eluniverso.com/2008/04/21/0001/9/F7E744FBD35C4547A816C120AEEF07C0.aspx>

country, who came to the Carondelet Palace (Government Seat) to demand work, given that mining provided their only sustenance.⁸

Now that the mandate is approved, a new mining law is expected, which will seek to introduce the figure of royalties and other mechanisms to ensure the State receives a portion of the income produced by commercialized mining.⁹ Additionally, in the introduction of his 66th radio address, President Rafael Correa declared that: *“In the new mining law (...) communities will have to be activists in these mining projects (...) We are supporters of this mandate, and these are tough measures, but they were necessary in light of the chaos”*.¹⁰

Mandate No. 7

On April 22 the CA designated Diego García as the new interim State Attorney General. Via Constituent Mandate No. 7¹¹ (84/130 votes) the official replaced Xavier

⁸ El Universo. Trabajadores mineros rechazan Mandate en Carondelet. 22/04/08. Online: <http://www.eluniverso.com/2008/04/22/0001/9/D466644838914D6C86AFE30694D0E015.aspx>

⁹ “Ecuador apuesta por retiro de concesiones mineras”. El Universo, 04/17/08. Online: <http://www.eluniverso.com/2008/04/17/0001/9/76FC5F379F7C44F58EB7B37B1CD48726.aspx>

¹⁰ El Universo. Ecuador quiere participación de comunidad en proyectos mineros. 04/26/08. Online: <http://www.eluniverso.com/2008/04/26/0001/8/DE2633D290C143BB8241669FB384A9D0.aspx>

¹¹ “Constituent Mandate No. 7”. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandate_7_final.pdf

Garaicoa, who resigned on April 18 after President Correa solicited the investigation of cases of corruption in the Attorney General and Comptroller’s offices.¹² The votes in favor of the designation of the new Attorney General were from PAIS, MPD, MHON and Pachakutik; UNO, RED, PRIAN, PSC and PSP did not vote. Assembly member Rafael Estévez (former member of Sociedad Patriótica) questioned the fact that President Correa had not submitted a short list of candidates to the Assembly so that it might choose the new Attorney General.¹³

Agreements

On March 4 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*

¹² EFE, “Asamblea designa a Diego García como nuevo Procurador del Estado”, in El Comercio, 04/22/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120712&anio=2008&mes=4&dia=22

¹³ “García, Procurador por Mandate”, El Comercio, 04/23/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120778&anio=2008&mes=4&dia=23

America".¹⁴ 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.

On April 28 the CA Plenary approved an Agreement with 87 votes presented by Alexandra Ocles (PAIS) that demanded an immediate audit of the Advanced Operations Post at the Manta Base. The agreement supports the formation of a Civil Military Commission of the Ecuadorian state, with the participation of at least one Assembly delegate, to "*investigate the possible interference of the Central Intelligence Agency (CIA) of the United States in the country's internal matters*".¹⁵

¹⁴ Constituent Assembly. "Acuerdo sobre Soberanía Nacional".

Online:

http://www.asambleaconstituyente.gov.ec/documentos/acuerdo_soberania_nacional.pdf

¹⁵ Constituent Assembly, "Asamblea demanda inmediata auditoría a FOL de Base de Manta", 04/28/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/la-asamblea-demanda-inmediata-auditoria-a-fol-de-base-de-manta.do>; el

acuerdo también en línea en:

http://asambleaconstituyente.gov.ec/documentos/resolucion_asambleista_Working_Group9.pdf

Laws

On April 2, the Plenary of the Assembly approved the "*Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes*"¹⁶ with 89 votes (PAIS, Pachackutik, MPD, ID). This law, which offers the "*power of more timely and technical use of petroleum resources that will allow an increase in the flexibility of fiscal policy and consequently the political economy of the country*,"¹⁷ will mean the incorporation of economic resources representing almost 5 billion dollars into the state budget.¹⁸ Below we present the main points of the law:

¹⁶ Constituent Assembly, *Organic Law for the Recuperation of*

State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes. Online:

http://asambleaconstituyente.gov.ec/documentos/ley_aprobada_2_abril_del_2008.pdf

¹⁷ *Ibid*.

¹⁸ María Paula Romo, cited in Press Room José Peralta, "¡Se acabó el festín de los fondos petroleros!", 02/04/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/se-acabo-el-festin-de-los-fondos-petroleros.do>

Organic Law for the Recuperation of Public Use of the State's Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes

- Petroleum-based public resources will be incorporated in the General Budget as capital income and they will be “solely and exclusively” for investment purposes, they may not be used for running expenses.
- This rule eliminates all currently existing funds that have been pre-assigned, with the exception of the Fund established in Law 010 for Eco-development in the Amazon Region.
- All negotiations on restructuring, exchange, loan plans, forgiveness or refinancing of public external debt and bond arrangements from public internal debt, should be approved by the Committee on Debt and Financing, composed of: the President of the Republic, the Minister of Finances, and the Secretary of the National Secretariat of Planning.
- The contracts for public external debt taken out with multilateral organisms, governments, commercial credits and loan contracts whose amount exceeds .15% of the general State budget should be analyzed and evaluated by the Committee on Debt and Financing prior to the formal negotiation process with the loaner.
- For the processes of taking out internal and external debt the Institutions of the Public Sector will not require the input of the Central Bank of Ecuador.
- The restriction on the Minister of Finances will be maintained in relation to the approval of increases or decreases in credits that alter the fixed amounts in the State General Budget within 15% of the amount approved by the Congress.

The main criticism of the Law was expressed by Assembly member León Roldós (RED), who objected to the notion of all the petroleum remittances being treated as capital income, as this will cause the municipal budgets to fall short by some \$150 million dollars. The same will occur with the amount assigned to education, which will be reduced by \$300 million.¹⁹

¹⁹ “Aprobado el libre uso de fondos petroleros”, El Universo, 04/03/08. Online: <http://www.eluniverso.com/2008/04/03/0001/8/EE73AF1EB89B4B70A11F588080AEE712.aspx>

Amnesties and Pardons

On March 10, 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).²⁰

The other individuals who were granted amnesty were divided into three types: a) individuals accused of crimes against the administration, b) individuals accused of minor drug trafficking infractions, and c) individuals

²⁰ Constituent Assembly. Online: http://www.asambleaconstituyente.gov.ec/documentos/indulto_al_exandrac_antos.pdf

who participated in the demonstrations in Dayuma, and other demonstrations related to social and environmental protests. On March 14 the plenary granted amnesty to the detainees in the Dayuma case, with 83 votes; 357 social leaders who were criminally processed for protesting in defense of their communities and their environment, with 92 votes,²¹ and five former contract employees (outsourced) of the Postal Service of Ecuador who had been charged with crimes in relation to their struggle against outsourcing and labor mediation.²²

²¹ 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-BOTROSA case. Online:

<http://asambleaconstituyente.gov.ec/boletines/acosta-se-ha-hecho-justicia-con-los-perseguidos-politicos-por-defender-la-naturaleza.do>

²² Press Room José Parla, Constituent Assembly, “84 votos se pronunciaron a favor del proyecto de resolución presentado por la Working Group 10”, 03/14/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/amnistia-en-caso-dayuma.do>

At least one petition for amnesty was not approved – that in favor of former president Abdalá Bucaram. It was introduced by Assembly member César Garcia, from the Partido Roldosista Ecuatoriano (PRE). Gustavo Noboa’s petition is much better positioned for approval, with a report in his favor by Assembly members Ximena Bohórquez, Diana Acosta and Galo Lara being approved on April 10 by 9 out of 10 votes in Working Group 10. The report asserts that during the process of debt renegotiation there was no willful misconduct, kickbacks for third parties, nor harm done to the State.²³

Meanwhile, on April 11 the Working Group came out in favor of granting pardons to prisoners whose health is in terminal condition. The report states that individuals being held whose health is in terminal condition and who have exhausted all legal options may present a petition to the Minister of Justice and Human Rights or to the Directors of the Center for Rehabilitation where they are imprisoned.²⁴ Along these lines, pardons were approved for Spanish citizens José Asensio Herrera, José Forment Delegido and José Luis González, detained for illegal possession of narcotic substances in the Rehabilitation Center for

²³ “La Working Group 10 recomienda la amnistía para Gustavo Noboa”, El Comercio, 04/11/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=119048&anio=2008&mes=4&dia=11

²⁴ Press Room José Peralta, “Informe favorable para el indulto a enfermos terminales”, 04/11/08. Online: <http://asambleaconstituyente.gov.ec/boletines/informe-favorable-para-el-indulto-a-las-y-los-enfermos-terminales.do>

Males in the city of Quito, who were terminally suffering from AIDS, Hepatitis C and Diabetes, respectively. Finally, also on April 11, Assembly members Nelson López and Marisol Peñafiel (PAIS) introduced a report in favor of former director of the AGD, Wilma Salgado, arguing that she was subjected to political persecution and denied her right to due process.²⁵

The Working Group on Legislation and Oversight (Working Group 10)

On February 28 the Director's Commission of the Assembly received a draft Organic Law on a National System for Public Contracts from the Executive; they referred the project to Working Group 10.²⁶ On April 15 Group 10 started its discussion of the project. At the president's recommendation they offered their comments and additions. Assembly member Ximena Bohórquez (RED) Assembly member Ximena Bohórquez (RED) declared that the Law *"is a good step because it proposes the creation of one record of all the providers of consumables, articles, goods, services, and consultants, to which all public institutions*

²⁵ Constituent Assembly, *"Amnistía para Wilma Salgado se decidirá la próxima semana"*, 11/04/08. Online:

http://asambleaconstituyente.gov.ec/blogs/WorkingGroup_10/2008/04/11/amnistia-para-wilma-salgado-se-decidira-la-proxima-semana/

²⁶ President of the Republic "Proyecto de Ley orgánica del Sistema Nacional de Contratación Pública". Online: http://www.asambleaconstituyente.gov.ec/documentos/proyecto_contratacion_publica.pdf

*could go, via this information portal which will aim to streamline the acquisitions and contracting processes that always take at least six months".*²⁷

Meanwhile, on March 26, 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 that date. It should be mentioned that the debate prior to the motion's approval was marked by heated controversy that included four motions to take a vote and a public statement 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 the Inter-American System of Human Rights.²⁸ On April 10 the Plenary (77/130 votes) decided to authorize a penal trial against Logroño. The petition for prosecution was made by the Second Penal Body of the Supreme Court of Justice. The Plenary's resolution also authorizes the initiation of a penal investigation into the conduct of Assembly member Laly Caicedo (PSP) for the alleged falsification of her professional credentials.²⁹

²⁷ Cited in *Ibid*.

²⁸ Press Room 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>

²⁹ EFE, "Asamblea autoriza inicio de juicio penal contra Logroño", in *El Comercio*. Online:

On another note, On April 3 the Vice President of Group 10, María Paula Romo (PAIS), brought a petition before the Director's Commission to initiate an investigation of the Superintendent of Companies, Francisco Arellano, for allegations of corruption and mistreatment of female employees in his agency. Romo stated, "*These are allegations that we cannot keep quiet about. These documents warrant the initiation of prosecutory action*".³⁰ On April 18 the President of the Assembly, Alberto Acosta (PAIS), indicated that the Assembly may decide to initiate a political trial against Arellano. Acosta stated that Working Group 10 already has a list of questions they will present to Arellano as the first step in the trial process.³¹

Also related to prosecution and oversight actions, on April 15, Working Group 10 approved (10/13 votes) the internal procedures for its oversight activities; the document was

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=18954&anio=2008&mes=4&dia=10

³⁰ Press Room José Peralta, "Se espera la respuesta de la Comisión Directiva ante la solicitud de investigación presentada por María Paula Romo frente a las actitudes de Alfredo Arellano para con las trabajadoras del organismo y supuestas irregularidades cometidas", 04/03/08. Online: <http://asambleaconstituyente.gov.ec/boletines/la-Working-Group-no.-10-exige-fiscalizacion-sobre-el-superintendente-de-companias.do>

³¹ "Acosta no descarta enjuiciar al Superintendente de Compañías", El Comercio, 04/19/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120223&anio=2008&mes=4&dia=19

introduced by Assembly member Félix Alcívar (PAIS).³²

The Constituent Working Groups

Working Group 1. Fundamental Rights and Constitutional Guarantees

Group 1 has already seen the approval of two of its articles in the Plenary related to the inalienability of rights and the principles for the interpretation and exercise of the rights of individuals and peoples (See below, Approved articles). Meanwhile, it continues advancing in its internal discussion of 50 articles on civil and political rights, including the rights of speech, with the anticipated approval of the working group on April 30, 2008.³³ The rights under discussion include: a) To elect and be elected, b) To present draft laws, rules, ordinances or any other normative proposal before the body with the power to approve it, c) To be consulted in the cases established in the Constitution, d) To exercise oversight of the activities of the organs of public power, e) To revoke the mandates conferred upon popularly elected dignitaries, f) To hold public positions and posts in accordance with a transparent

³² Working Group 10, Constituent Assembly, "Contratación Pública, Fiscalización y Tránsito, en la Working Group 10", 04/17/08. Online:

http://asambleaconstituyente.gov.ec/blogs/Working-Group_10/2008/04/17/contratacion-publica-fiscalizacion-y-transito-en-la-Working-Group-10/

³³ Constituent Assembly, "La Asamblea avanza". Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=7349&Itemid=

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, g) To form parties, organizations and political movements and the free association or disassociation with them, h) To participate in the internal elections of parties and political movements authorized by the law, i) citizen participation, and j) political asylum.³⁴

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

(See below, Approved articles)

Working Group 3 Structure and Institutions of the State

On April 24 the Assembly members introduced the articles on the Executive Branch. The proposal consists of 21 articles that assign the powers of the President, Vice President, and Ministers of State and also institute a State Council . The head of the Working Group, Gustavo Darquea, stated that article 11 would be subject to some changes, which refers to the possible recall of the National

³⁴Constituent Assembly, Working Group 1, "Derechos Fundamentales y Garantías Constitucionales". Online: http://www.asambleaconstituyente.gov.ec/documentos/principios_fundamentales_aprobado.pdf

Assembly. Initially, it stated that the President of the Republic could petition the National Electoral Council to recall the National Assembly a single time during their term. Another article expected to undergo changes is number 15, which refers to the rules of succession in the case of the permanent absence of the Vice President of the Republic.³⁵

Working Group 4. Territorial Organization and Designation of Powers

Group 4 has yet to approve any articles, although it has produced 30 articles on territorial organization that are pending debate and possible approval on May 5.

Working Group 5. Biodiversity and Natural Resources

Working Group 5 presented its first proposed articles (7 in total) to the Assembly to be discussed in a first Plenary debate. These articles will be located in the following sections of the Constitution: section IV: On Nature and the Environment; chapter II: Quality of Life; Title VI: Development Plan. These articles express the "*necessity of reformulating or redefining the inter-relatedness of society and nature, economy and society, or nature,*

³⁵ Constituent Working Group No. 3, "En la Working Group No. 3 se plantea reconsiderar cinco artículos sobre la Función Ejecutiva", 25/04/08. Online: <http://asambleaconstituyente.gov.ec/boletines/en-la-Working-Group-no.-3-se-plantea-reconsiderar-cinco-articulos-sobre-la-funcion-ejecutiva.do>

*environment and culture, among others*³⁶ and also address the proposals and demands received during the participative process previously undertaken by the Working Group.

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.³⁷ The first article states: *“The right to work. – Work is a social and economic right, a source of wealth and the basis of the economy. The State will promote the different modalities of work and will insure the respect for the 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*³⁸; the third article establishes fundamental rights on work, as does the fourth one on *“Categories of organization of work. – The State recognizes and protects the diverse forms of organization of productive, domestic, self-sustaining and human based work and guarantees the equality of rights and conditions. It recognizes the autonomous workers, community economic*

³⁶ Working Group 5. “Artículos aprobados en la Working Group 5 para el debate en el Plenary”. Online:

http://www.asambleaconstituyente.gov.ec/documentos/articulos_aprobados_Working Group5_Plenary1.pdf

³⁷ Working Group 6. “Artículos constitucionales debatidos y aprobados por Working Group de trabajo”, 03/26/08. Online:

http://asambleaconstituyente.gov.ec/blogs/Working Group_6/2008/03/26/articulos-constitucionales-debatidos-y-aprobados-por-Working Group-de-trabajo/

³⁸ Ibid .

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.³⁹ 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 7. Development Strategy

Working Group 7 has presented two series of proposed articles to the Assembly. The first of these consists of four articles on the principles of the development strategy, which were amended on April 21 within the Working Group to be presented to the Plenary for a second debate. The second group of articles presented by the group has to do with development planning, with 5 articles related to the National System of Planning and one related to the National Development Plan,⁴⁰ the last of which was debated on April 14⁴¹. In

³⁹ Online:

http://www.asambleaconstituyente.gov.ec/documentos/Mandate_irina_cabezas.pdf

⁴⁰ Working Group 7. “Artículos aprobados en la Working Group 7 para el debate en el Plenary: Planificación de Desarrollo.”.

Online:

http://www.asambleaconstituyente.gov.ec/documentos/titulo_seis_planificacion.pdf

⁴¹ Press Room José Peralta. “Working Group 7 aprueba artículos constitucionales sobre Planificación de Desarrollo”.

Online:

the debate a large number of Assembly members emphasized “*the importance of this obligation and responsibility [of planning] that the government is re-addressing*”⁴². however, many also voiced reservations, such as that expressed by Social Christian Cesar Rohón, who said it would be necessary to define the economic development model that will be selected in the Constitution: “*It is fundamental that we know where we are going with this; if we will maintain a social market economy that respects property and free enterprise, or perhaps will establish a new model based on the socialist model of the 21st century*”⁴³ After hearing the first debate and reviewing the 18 suggestions offered by 16 different Assembly members, the Working Group finished preparing the text, which is awaiting a second debate in the Plenary.⁴⁴

Working Group 8. Justice and the Fight Against Corruption

On April 3 Working Group 8 approved two articles on the administration of justice:

[http://asambleaconstituyente.gov.ec/boletines/Working Group-7-aprueba-articulos-constitucionales-sobre-planificacion-de-desarrollo.do](http://asambleaconstituyente.gov.ec/boletines/Working%20Group-7-aprueba-articulos-constitucionales-sobre-planificacion-de-desarrollo.do)

42 Press Room José Peralta, “La planificación del Desarrollo pasó primer debate en la Asamblea”. Online: <http://asambleaconstituyente.gov.ec/boletines/la-planificacion-del-desarrollo-paso-primer-debate-en-la-asamblea.do>

43 *Ibid*

44 Working Group 7. “Artículos listos para el segundo debate sobre Planificación Participativa para el Desarrollo”. Online: http://www.asambleaconstituyente.gov.ec/documentos/titulo_seis_planificacion.pdf

“Article 8. Principle of Provision without Charge. The administration of justice is free in all its subjects and instances, except for in cases determined by law.

*Article 9. – Appointment Criterion. To become a part of the Judicial Branch these criteria will be observed: equality, equity, integrity, competition, merits, transparency, oversight and citizen participation.”*⁴⁵

On April 21 the Working Group approved 4 articles in second debate, one related to alternative methods for conflict resolution and three resolutions on Justices of the Peace.⁴⁶

Working Group 9. Sovereignty, International Relations, and Latin American Integration

Group 9 was the first to translate its proposals into articles on territorial sovereignty, some of which were approved on February 28 and others as of April 1 have been waiting on the approval of the Assembly with a few small changes. Additionally, an article with guiding principles for international relations and international treaties is pending a second debate, expected to take place on May 13, 2008.⁴⁷ Notions of peace and a just, equitable and democratic international order

45 Press Room José Peralta, “La Working Group 8 aprobó dos principios más de la Función Jurisdiccional”, 03/04/08. Online: <http://asambleaconstituyente.gov.ec/boletines/la-administracion-de-justicia-sera-gratuita-en-el-pais.do>

46 Working Group 8. “Artículos”. Online: http://www.asambleaconstituyente.gov.ec/documentos/jueces_%20de_%20paz_%20primer_%20debate.pdf

47 *Ídem*.

are proposed as the conceptual frame of reference for international relations.

Approved articles of the New Constitution

The Plenary of the Constituent Assembly of Ecuador approved the first five articles of the new Magna Carta on April 1, on sovereignty and territory:

“Art. 1. The Ecuadorian territory constitutes a geographic and historical unit with natural, social and cultural dimensions, bequeathed by our fore fathers and ancestral peoples. This territory consists of the continental and maritime space, the adjacent islands, the territorial sea, The Galápagos Archipelago, the soil, the continental shelf, the sub-ground and the air space above, on land and at sea. Its limits are those determined in the binding treaties. The capital is Quito.

Art. 2. The territory of Ecuador is unalienable, irreducible and inviolable. No one may threaten its territorial unity or encourage secession.

Art. 3. The Ecuadorian state is proprietary and exercises special sovereignty over non-renewable natural resources found on its territory, including water, mineral and hydrocarbon deposits, as well as its biodiversity and genetic heritage and the electromagnetic spectrum. Its cultural heritage is a public good, under the distinct forms of property established by the Constitution and the law.

Art. 4. The Ecuadorian state will exercise control of the corresponding segments of the geo-stationary synchronic orbit, maritime spaces and the Antarctic, in accordance with the norms of International Law and national legislation.

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.⁴⁸

⁴⁸ Sala de Prensa José Peralta, “¡¡¡La Asamblea Constituyente aprueba los primeros cinco Artículos de la Nueva Constitución!!!”, 01/04/08. On line: : <http://asambleaconstituyente.gov.ec/boletines/la-asamblea-constituyente-aprueba-los-primeros-cinco-articulos-de-la-nueva-constitucion.do>

On April 10 the Plenary approved two additional articles on fundamental rights: the first on the inalienability of rights was approved by 91/102 votes; the second on the principles for the application and interpretation of rights of individuals and peoples was approved by 96/102. The new concept introduced by the article on the inalienability of rights is that, in addition to recognizing the rights of individuals and peoples, nature is also recognized as having rights. The article on “Principles for the Application and Interpretation” of fundamental rights includes sub-points from “a” to “i,” in which the following principles are consecrated: Exercise-ability and the Assurance of Rights, Equality through Diversity and Non-Discrimination, Direct Exercise, Free exercise of rights, Pro-Humanity, Wholeness and Inclusiveness, Progressiveness, and State Responsibility.⁴⁹

Meanwhile, on April 22, the Plenary of the Assembly approved 10 articles and three transitory provisions on the Electoral Branch of the State.⁵⁰ On average, the articles were approved with more than 100 votes, coming from the parliamentary blocs of PAIS, Movimiento Popular Democrático (MPD), Red

Ética y Democrática (RED), Pachakutik and some members of Sociedad Patriótica (PSP). The articles approved were the following:

⁴⁹ National Constituent Assembly, “Texto Constitucional aprobado en la sesión del Plenary No. 25 del 10 de abril de 2008”, Online:
http://www.asambleaconstituyente.gov.ec/documentos/texto_aprobados_derechos_fundamentales.pdf

⁵⁰ Constituent Assembly, “Artículos sobre Función Electoral”. Online:
http://www.asambleaconstituyente.gov.ec/documentos/funcion_electoral_aprobado.pdf

On Its Nature

Art. ___ The Electoral Branch guarantees the exercise of the political rights that are expressed with suffrage, such as those related to the political organization of the citizenry. It is composed of the National Electoral Council and the Litigious Electoral Tribunal, organs of public law seated in Quito, with national jurisdiction, administrative, financial and organizational autonomy, and their own legal personnel. The Law will determine the organization, operation and jurisdiction of the sub national electoral organisms, which will have a temporary character. It is guided by the principles of: autonomy, independence, equality, justice, public knowledge, transparency, equity, multi-culturalness, gender equality, responsibility, speed and integrity.

The National Electoral Council

Art. ___ It is composed of five principal councilors, who will serve for six-year terms. The National Electoral Council will be partially renewed every three years, two members on the first occasion, three on the second, and so on in succession. There will also be five alternate councilors who will be replaced in the same way as the principals. From among its members it will elect a President and Vice President, positions that will carry a three-year term. The President of the National Electoral Council will be a representative of the Electoral Branch, and his or her functions will be established by law, with respect for the autonomy of the Litigious Electoral Tribunal. To be designated a member of the National Electoral Council one must possess Ecuadorian citizenship and political rights.

On the Functions of the National Electoral Council

Art._ The functions of the National Electoral Council are:

1.- To organize, direct, oversee and guarantee electoral processes; to convoke elections; to perform electoral computation; to proclaim the results; and to swear in the winners of the elections, guaranteeing transparency in the process; 2.- To form the sub national electoral organisms; 3.- To exercise control of electoral propaganda and spending, to know and evaluate the accounts presented by political organizations and candidates; 4.- To guarantee the transparency and legality of the internal electoral processes of political, social , professional and academic organizations as well as others, in accordance with the Constitution and the law; 5.- To present proposals for legislative initiatives on the subject matter governed by the Electoral Branch, taking into account the suggestions of the Litigious Electoral Tribunal; 6.-To regulate the legal norms on: electoral issues; popular consults; the system of parties and political movements; electoral records within and outside of the country; electoral education and political training; and, financing, propaganda and electoral spending, taking into consideration the suggestions of the Litigious Electoral Tribunal; 7.- To determine its own organization, and formulate and execute its budget; 8.- To maintain the permanent record of political organizations and verify the registration processes; and ensure that political organizations comply with the law, its regulations and its respective statutes; 9.- To execute, administer and control the state financing for electoral campaigns, in accordance with the law; 10.- To know and resolve the administrative challenges and complaints about the resolutions of sub national organisms during electoral processes and to impose sanctions in accordance with the law; 11.- To organize and manage the permanent electoral records in coordination with the Civil Registry; 12. –

To organize and manage the operations of an institute for electoral investigation, training, and political promotion; 14.- The rest will be determined by the Constitution and the Law.

The Litigious Electoral Tribunal

Art.____ It is composed of five principal judges who will serve six-year terms. The Litigious Electoral Tribunal will be partially replaced every three years, two members on the first occasion, three members on the second, and so on in succession. There will also be five alternate judges who will be replaced in the same manner as the principals. From its principal members it will elect a President and Vice President, positions that will last for three years. To be designated a judge on the Litigious Electoral Tribunal one must possess Ecuadorian citizenship and political rights and be an attorney.

On the Functions of the Litigious Electoral Tribunal

Art.____ The functions of the Litigious Electoral Tribunal are to know and resolve all the uses of electoral resources in conflict with the acts of the National Electoral Council and sub national organisms, as well as to establish sanctions for noncompliance with norms on financing, propaganda and electoral spending; the elaboration of an electoral record within and outside of the country; the litigious matters of political organizations; and, the other resources and functions determined by the Constitution and the Law. It is also in charge of determining its organization, formulating and executing its budget. Its judgments and resolutions will constitute electoral jurisprudence and will be binding and final, requiring immediate compliance.

On the Designation of the Members of the National Electoral Council and Litigious Electoral Tribunal

Art.____ The members of the National Electoral Council and the Litigious Electoral Tribunal will be selected through a public competition based on opposition and merits with nominations and challenges from the citizenry, guaranteeing conditions of equity and equality for men and women, in accordance with the norms established by the Constitution and the Law. The selection process for the occupancy of an electoral councillorship or judgeship will proceed as follows: the candidates that obtained the highest scores in ranked order in each competition, will be named the principals and then the alternates. The Legislative Branch will swear them in. Those who hold the position of alternate will replace the principals in cases of temporary or permanent absence, in accordance with the order of their evaluation and designation. The members of the National Electoral Council and the Litigious Electoral Tribunal who are serving terms may not participate in the public competitions based on opposition and merit to determine their replacements.

On Political and Social Control

Art.____ The acts and sessions of the electoral organisms will be public.

Art.____ The members of the National Electoral Council and the Litigious Electoral Court may be subjects of a political trial for noncompliance with their duties and responsibilities as established in the Constitution and law. The Legislative Branch is the competent organism to try them and rule on their removal and will require at least two thirds of its members. The Legislative Branch may not designate the replacements for the removed members.

Art.____ The electoral organisms will be subject to the social comptroller in accordance with the Constitution and the law. It guarantees for political organizations and candidates the faculties of control and oversight of the activities of electoral tribunals.

On the Selection Committee

Art. ___ The Selection Committee will be designated with an opportunity for competition and will be composed of a delegate from each Branch of Government and an equal number of representatives of the population, who will be chosen via public lottery among the applicants to join the Selection Committee who meet the requirements. Its operations will be determined by the Constitution and the law.

II. Relationships with the Constituted Powers

With the Executive

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 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”*.⁵¹

In 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.⁵² On a

related note, on March 31 the President of the Assembly Alberto Acosta alleged that there were organized intelligence pockets within the Armed Forces, controlled by diverse groups, which had carried out investigative work and espionage using advanced technology. These statements followed a meeting of the Director’s Commission with the then Minister of Defense, Wellington Sandoval, and the High Military Command.⁵³ According to Acosta, the High Military Command provided the identity of these groups, but they were not revealed to the

<http://www.eluniverso.com/2008/03/04/0001/8/5945429827BD495AAED2844305C0B9C7.aspx>

⁵³ On 04/09/08 Wellington Sandoval was removed from his position by President Correa. The context of his removal was the President’s statements on the presumed non-institutional collaboration between the high command of the military intelligence and the Ecuadorian police with Central Intelligence Agency of the United States (CIA). One of the repercussions from Sandoval’s removal was the petition by some Assembly members such as Partido Social Cristiano’s César Rohón’s petition that Sandoval and the High Military Command appear before the Plenary of the Assembly to respond to Correa’s allegations. “Asambleísta Rohón solicita comparecencia de ex ministro Wellington Sandoval al pleno”. El Comercio, 09/08/07. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=118830&anio=2008&mes=4&dia=9

⁵¹ “Una Ley para recuperar bienes”, El Comercio, 03/11/08.

Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=114366&anio=2008&mes=3&dia=11

⁵² “Asambleístas escuchan a Larrea”, El Universo, 03/04/08.

Online:

press while the investigation was still ongoing.⁵⁴

With the Judicial

On February 28, the President of the Supreme Court of Justice (CSJ), Roberto Gómez Mera, along with four other judges arrived in Ciudad Alfaro to show their disagreement with the government's proposal to create a new Constitutional Court as a new branch of the State. They propose instead 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 say that they agree with the Supreme Electoral Tribunal (TSE) that one of the sub-courts of that contentious body should handle electoral infractions.⁵⁵

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".*⁵⁶ The document also requested that, if 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.

However, the greatest tension to date between the two powers (Constituent and Judicial) relates to the process of appointing ministers to the Supreme Court of Justice (CSJ). On March 12 the president of Working Group 10, César Rodríguez (PAIS), asked the president of the 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 request came after allegations 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 the requested information should be gathered by Ulpiano Salazar, president of the Commission on Human Resources of the National Judiciary Council

⁵⁴ "La fuerza pública niega que expíe a los asambleístas", El Comercio, 01/04/08. Online: http://www2.elcomercio.com/buscar_ediciones.asp?cantPaginas=10&id_medio=1&pagina=16&fecha=2008-04-01

⁵⁵ "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

⁵⁶ "La Constituent Assembly pide a las FF.AA. aclarar operaciones de inteligencia", El Comercio, 20/03/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=115877&anio=2008&mes=3&dia=20

(CNJ), who was in charge of the selection process.⁵⁷ 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.⁵⁸

However, in a last minute decision, on March 25 the president of the Court unauthorized the resolution adopted by 17 judges and determined that, despite the irregularities, positions would continue to be filled. Given Gómez Mera's decision, the controversial placements of judges were left in legal limbo until the Assembly adopts a definitive resolution on the issue.⁵⁹

III. Issues, Debates and Tensions

1. The debate on Territorial Organization

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

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

Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=16640&anio=2008&mes=3&dia=26

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

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=115930&anio=2008&mes=3&dia=21

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

Online:

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

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 (from the opposition) 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.⁶⁰ 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*".⁶¹

Given this reality, the actors involved have offered different proposals. First of all, 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. This first proposal of Senplades caused a stir in the organization

⁶⁰ Working Group 4. "Una conversación sobre descentralización", 02/28/08. Online:

http://asambleaconstituyente.gov.ec/blogs/WorkingGroup_4/2008/02/28/una-conversacion-sobre-descentralizacion/

⁶¹ "La propuesta del Gobierno es crear siete regiones en el país". El Comercio. Online:

http://www2.elcomercio.com/noticiaEC.asp?id_noticia=145791&id_seccion=10

that collectively represents 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*”.⁶² 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 autonomous

regions.⁶³ For its part, in this same Assembly, Concope approved the following resolution: “*To strengthen the State’s unitary model of decentralized government with a high level of autonomy at the sub-national level, with the objective of maximizing 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*”.⁶⁴

As part of this renegotiation process between the different actors, on April 22 the Executive, Concope and Conajupare signed a “*National Agreement for the Whole Reform of the State, decentralization and autonomous regions.*” This agreement did not include AME’s proposals, so on April 28 representatives from that organization visited the Assembly to voice their objections. Johnny Terán, mayor of Babahoyo and president of AME, stated that AME did not sign the document because it failed to address various issues such as the allocation of resources: “*At least 30% of the total income to the central Government should*

⁶² SENPLADES. La comisión interinstitucional trabaja hoy en la reforma del Estado. Boletín de prensa N° 13. 02/25/08. Online: www.senplades.gov.ec/c/document_library/get_file?folderId=31&name=DLFE-185.pdf –

⁶³ CONCOPE, “CONCOPE y gobierno de acuerdo en mantener las provincias”, Boletín de prensa. Online: <http://www.concope.gov.ec/archivos/BOLETIN%20DE%20PRENSA%20No%2001-2008.pdf>

⁶⁴ CONCOPE, “Reforma del Estado. Propuesta del Consorcio de Consejos Provinciales del Ecuador”, 03/03/08, Presentación Power Point. Online: <http://www.concope.gov.ec>

be set aside for the sectional autonomous governments". In Terán's opinion, the role of the provincial councils should be limited to the coordination of planning and land issues: "*As of last winter the little work that had been done by the provincial councils was undone*". With respect to the regionalization issues, AME supports the formation of regions, as long as it is on a voluntary basis. Finally, he proposes that in the administrative sphere, the levels of government should break into four categories: central, provincial, municipal and rural parochial.⁶⁵

For its part, Working Group 4 offered three major ideas on the decentralization issue: a) strengthening of the municipalities as basic cells of sectional organization; b) formation of Commonwealths of the municipalities; and c) constitutionalizing the sectional autonomous governments.⁶⁶ 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.

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 place 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*".

⁶⁵ "Los alcaldes cuestionan el acuerdo del Concope", El Comercio, 04/29/08. Online
:http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=121643&anio=2008&mes=4&dia=29

⁶⁶ Press Room José Peralta. El miércoles de la próxima semana se realizará el primer debate sobre textos constitucionales. Boletín 531. 02/29/08. Online.
http://asambleaconstituyente.gov.ec/boletines/el-miercoles-de-la-proxima-semana-se-realizara-el-primer-debate-sobre-textos-constitucionales.do

2. The debate on multi-culturalism

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:

On one side, a prominent critic of the multi-ethnic model is historian Enrique Ayala Mora, who argued that *“Recognizing (...) political rights in the State for indigenous peoples or nationalities would be a step backward. It would mean that democracy has been split into special sections and we have renounced a democratic system in which the citizens are one group”*.⁶⁷ In Ayala’s view, there are various risks in adopting the multi-ethnic model: 1. Conceiving of democracy in corporative terms, compartmentalizing the citizenry; 2. Dissolving indigenous unity. Therefore he argues that the alternative should be multi-culturalism *“as an axis of Ecuadorian society, which recognizes diversity and rights but also creates a space of unity. This space still does not exist”*⁶⁸

On the other side we have the defenders of the multi-ethnic model, including some prominent indigenous Assembly members from PAIS as well as CONAIE. 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 rather *“a new form of the social contract that respects and harmonizes the rights of the indigenous peoples and nationalities with the current legal structure and policies, recognizing them in their status as political subjects with full rights”*.⁶⁹

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 the entire collective”*.⁷⁰

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 held by Vice President Lenin Moreno, they agreed upon the creation of an inter-institutional commission of five ministers to discuss and spread the debate on multi-ethnicity.⁷¹

⁶⁷ Diario Hoy. Queremos organizaciones sociales vigorosas, sin cuotas en el Estado. Entrevista a *Enrique Ayala Mora*. Online: <http://www.hoy.com.ec/especial/2004/semana/semana.htm>

⁶⁸ Revista Vanguardia. Interview with Enrique Ayala Mora. 03/25/08. Online: <http://www.guapulo.com/content/view/762/70/>

⁶⁹ Mónica Chuji. “El reto a reconocernos como diferentes: Estado y Democracia Plurinacional”, 02/11/08. Online: http://asambleaconstituyente.gov.ec/blogs/monica_chuji/2008/02/11/el-reto-a-reconocernos-como-diferentes-estado-y-democracia-plurinacional/

⁷⁰ María Victoria Romero. “Los indígenas abogan por un Estado plurinacional”, El Mercurio Digital, 03/17/08. Online: <http://elmercuriodigital.es/content/view/8232/1/>

⁷¹ “Conaie niega apoyo al régimen”, El Universo, 03/16/08. Online:

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

By mid-April the parliamentary blocs of Pachakutik, MPD and PAIS reached an agreement on multi-ethnicity. Assembly president Acosta announced that on the occasion: *“the hour has arrived for the Ecuadorian state to be declared unitary, multi-cultural and multi-ethnic, and these elements also characterize our social state,”* the goal of which is to *“end the negative society that stems from numerous sources: the permanent discrimination to which primarily the men and women of these peoples have been subjected to”*.⁷²

It is worth mentioning that, although Correa’s government started out emphasizing the recognition of multi-culturalism, during recent weeks –in response to pressure from the indigenous movement – it re-directed that emphasis behind multi-ethnicity. The moment of clarity on the issue came during the president’s radio address on April 19, in which President Correa reassured the citizens that that they should not fear their the notion of a multi-ethnic society, because its only objective is to recognize that *“in this country we are diverse but not unequal and we should all have the same opportunities [...] the next step is to adequately define the scope of multi-ethnicity, which is basically the recognition of the different peoples, cultures and world views that*

exist in the country and the assurance that all public policies such as education, health and housing recognize this multi-ethnic dimension”.⁷³

The heart of the matter is not about semantics (multi-ethnic versus multi-cultural) but rather the real power over the administration of the natural resources found on the ancestral territories of indigenous peoples, which is, of course, a crucial element in defining the development model. At the close of this report (this issue will be discussed in future reports) President Correa and Conaie had been split over the issue.

3. Three controversial issues: abortion, God, and the rights of homosexuals.

During the period studied the main controversy stirred up by the CA occurred within the PAIS bloc, although the President of the Republic and some civil society organizations also intervened. This controversy centered on the possible inclusion of three issues in the new Constitution: the secular nature of the State and the mention of God in the new Magna Carta; the role of the State in protecting life *“from conception”* or the possibility of decriminalizing abortion; and, finally, the issue of unions between couples of the same sex.

⁷² Press Room José Peralta, “Acuerdo País, Pachakutik y MPD celebran la declaración de Estado Intercultural y Plurinacional”, Online: <http://asambleaconstituyente.gov.ec/boletines/acuerdo-pais-pachakutik-y-mpd-celebran-la-declaracion-de-estado-plurinacional.do>

⁷³ “La nueva estructura que tendrá el Gobierno, definida”, El Comercio, 04/20/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120287&anio=2008&mes=4&dia=20

The debate was set off by a series of statements made by PAIS Assembly members Diana Acosta and Rosanna Queirolo in late March and early April in favor of a reference to God in the new Constitution, as well as for the explicit prohibition of abortion and homosexual marriage. Some of their co-party members such as Betty Amores do not believe those positions are compatible with PAIS' objectives and therefore that the aforementioned Assembly members should resign their posts. On the other hand, the Assembly Vice President Fernando Cordero (PAIS) argues that abortion and homosexual marriage should not be included in the new Constitution because they are not constitutional issues. For his part, President Correa stated that the Constitution should be secular and free of references to God, although he has spoken out against homosexual marriage and abortion on numerous occasions.⁷⁴

In an attempt to resolve these differences of opinion, the PAIS bloc held a meeting on March 31, which President Correa also attended. One of the results of this meeting was the publication of a public statement from PAIS in which it "*clarifies to the citizens*" that Acuerdo PAIS will hold the following positions:

1. *"The absolute and unrestricted respect of all the convictions and belief of the Ecuadorian people.*
2. *The secular nature of the State as a guarantee of the freedom and independence of the organization of society from religious convictions.*
3. *In the preamble of the Constitution the name of God will be incorporated in a universal way along with the diverse forms of religiousness, spirituality and beliefs of Ecuadorians.*
4. *The new Constitution will guarantee life. It will recognize and protect it in all its stages, including care and protection starting at conception.*
5. *The State will strengthen the family as a nuclear unit of society. Marriage will continue to be the union of a man and a woman, recognizing free unions.*
6. *No one will suffer discrimination for their sexual orientation*"⁷⁵

The reactions of some sectors of civil society to this "clarification" were immediate. For example, the specialist in health policy for the National Women's Council (Conamu) Cecilia Tamayo commented that the PAIS initiative does not represent any advance for the rights of women, given that it merely confirms what was approved in the 1998

⁷⁴ "Rafael Correa se reúne con sus asambleístas", El Comercio, 04/01/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=17581&anio=2008&mes=4&dia=1;

"Asamblea aprueba cinco primeros artículos de nueva Constitución", El Comercio, 04/01/08. Online:

http://www2.elcomercio.com/buscar_ediciones.asp?cantPaginasIonline=10&id_medio=1&pagina=15&fecha=2008-04-01

⁷⁵ Acuerdo País. "El bloque de asambleístas de Acuerdo País a la opinión Pública", 04/01/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/acuerdo-pais-aclara-a-la-ciudadania.do>

Constitution. Tamayo also discerned that the recognition of life after conception puts abortion as a treatment option at risk of being outlawed. In fact, the organization to which Tamayo belongs released a statement on April 4 warning against the possible steps backward based on this position: *“The National Constituent Assembly has a fundamental role in guaranteeing the respect for the rights of women, and the decisions it makes on sensitive issues such as the right to life and particularly the idea of life beginning at conception carry the risk of taking steps backwards in relation to the cases in which it is permitted to interrupt a pregnancy in the country, which have existed since 1971 (Penal code, art. 447), thereby denying among others the right to liberty, the right to physical integrity, the right to equality, the rights to health and reproductive health and the right to privacy; this is a step backwards.”*⁷⁶

Meanwhile, Abel Anzoátegui, one of the leaders of the movement for the recognition of homosexual rights asserts that the position of the PAIS Assembly members demonstrates the power of religion to limit those rights in Ecuador. He clarified that homosexuals are not asking for “marriages” but rather legal recognition of existing unions. Finally, the coordinator of the Permanent Forum of

⁷⁶ CONAMU, “La Nueva Constitución y las implicaciones para los derechos de las mujeres”, 04/04/08. Online: <http://www.conamu.gov.ec/CONAMU/portal/main.do?sectionCode=180>

Ecuadorian Women, Liliana Durán, judged the PAIS position to be “biased and moralistic”, given that it does not view life in its whole context.⁷⁷

The PAIS statements on these issues are the fruit of agreements reached in the midst of profound internal differences. The debate on abortion probably comes down to the difference between including protection for the right to life “from conception and without exceptions” within the article that protects that right – which would exclude even abortion as a medical treatment option – and the inclusion of phrase “from conception” within the article that guarantees the protection of the family, which would lay the groundwork for more open ended legislation for medical abortion and other kinds. As far as the rights of homosexual couples, the existing union would be recognized, not the “marriage,” with the same rights, as is currently established.

⁷⁷ “Las organizaciones de mujeres rechazaron la posición de A. País”. El Comercio, 04/02/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=117736&anio=2008&mes=4&dia=2

IV. 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 (outsourced) of the Postal Service of Ecuador.

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

04/01/08. The Plenary of the CA approved the first five articles of the new Constitution on territorial sovereignty.

04/01/08. The Plenary began its first debate on the structure of the Electoral Organs.

04/02/08. The Plenary approved (89/130 votes) the "*Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes.*"

04/05/08. The Assembly held its first virtual forum with Ecuadorian migrants in Spain, Italy and Venezuela.

04/09/08. President Correa removed Minister of Defense Wellington Sandoval.

04/10/08. The Plenary of the Assembly approved two articles on the Inalienability of Rights.

04/10/08. The Plenary authorized (77/130) a criminal trial against Assembly member Julio Logroño.

04/11/08. The Plenary began to debate the articles approved by Working Group 7 on the concept of development and the duties of the State in relation to it.

04/15/08. Working Group 10 approved the internal procedures for its oversight functions.

04/18/08 The CA Plenary approved Mandate No. 6, better known as the “Mining Mandate”.

04/22/08 The Assembly designated Diego García as the new interim State Attorney General, via Constituent Mandate No. 7.

04/22/08 The Plenary of the Assembly approved 10 articles and three transitory

resolutions related to the Electoral Branch of the State.

04/28/08 The Plenary voted on an Agreement that demands an immediate audit into the Post of Advanced Operations at the Manta Base.

Documents approved by the Plenary of the CA between 02/28/08 and 04/29/08

Name	Body	Date	Subject Matter	Vote
Mandate 5	Plenary	03/10/08	Orders all abandoned or decommissioned goods in possession of the Customs Corporation of Ecuador to be given freely to the victims of the Tungurahua volcano and recent flooding.	87/130
Mandate 6	Plenary	04/18/08	Mining Mandate; reverts around 3100 mining concessions to the State	95/121
Mandate 7	Plenary	04/22/08	Designates Diego García as the interim State Attorney General	84/130
Law	Plenary	04/02/08	Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes	89
Agreement	Plenary	03/04/08	Strongly condemns the violation of sovereignty and territorial integrity	116/116
Agreement	Plenary	04/28/08	Demands an immediate audit of the Advanced Operations Post at the Manta Base	87/130