



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

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### **Introduction**

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador between February 14 and February 27, 2008. As in our previous reports, this one is divided into three main sections: I.- the Assembly's internal work; II.- its relationships with the constituted powers and civil society; and III.- a focus on one relevant issue for debate.

One of the events we focused on was the proposal for a tentative index of the Constitution presented by Alianza País to the Plenary of the Assembly for its consideration. We conclude with a chronology of the most relevant developments during the last two weeks of February.

### **I. The Assembly's Internal Work**

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

On February 14, 2008, Working Group 10 sent a preliminary Majority Report on the draft Law on Transit and Transportation to the Board of Directors. The report, signed by 11 of the 13 Assembly members in Group 10, modifies some substantial provisions of the Executive's original proposal.

The report offers an extensive, article-by-article comparison between the Executive's draft and the changes proposed by Working

Group 10.<sup>1</sup> The first of which in the Majority Report is the need to grant the proposal the status of Organic Law, by trying a strategic sector of the economy. The report also describes how the transit and transportation sector will be organized into the following bodies: a) the Ministry of the sector; b) the National Commission on Ground Transportation, Transit and Highway Safety and its decentralized organs (in place of the National Agency on Ground Transportation proposed by the Executive); c) the National

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<sup>1</sup> Working Group 10, Release from the Director's Commission of the Assembly. Online: [http://www.asambleaconstituyente.gov.ec/documentos/informe\\_preliminar\\_final.pdf](http://www.asambleaconstituyente.gov.ec/documentos/informe_preliminar_final.pdf)

Administration on Transit Control and Highway Safety and its decentralized organs. The report also proposes to amend Article 19 to grant the National Commission and its Directorate more power in the regulation of driving schools and vehicle technical control centers. It also suggests modifying Article 117 to allow not only driving schools but also Institutes of Higher Education to train drivers.<sup>2</sup> Until the publication date of this report, the Working Group continues discussing the legal project and a final Majority Report is expected to be issued in the coming days. These modifications would have diminished tensions with the municipal powers, but tensions with the transport sector will likely remain.

At the same time, on February 18, 2008 Working Group 10 passed (by 11 of 13 votes) the Majority Report on the draft Organic Law for the Recovery of Public Use of the State's Oil Funds. In the original proposal, the Executive proposed that taking out loans would be the exclusive responsibility of the Ministry of Finances. However, the Assembly members of the Working Group proposed the creation of a Debt and Financing Committee, which would analyze and authorize the acquisition, increase or decrease of the state's internal and external debt. The Committee would be composed of the President of the Republic or his delegate, the Minister of Finances or his delegate (who would preside over him) and the Secretary

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<sup>2</sup> For more details on the differences between the Preliminary Report and the Executive's version, consult the comparative annex in the report (see previous citation).

General of Planning. Another change to the government initiative is that the report of the Office of the State Attorney General will no longer be necessary for acquisition of the external debt.<sup>3</sup> León Roldós (RED), who did not sign the document and drafted a minority report instead,<sup>4</sup> argued however that the issue of external debt cannot be addressed by the Assembly unless the constitutional framework of the issue is discussed.

## 2. The work of the Working Groups

During the last two weeks of February, the majority of the constituent Working Groups continued discussion forums in various regions to discuss the respective issues of each area. They reached agreements on issues affecting different areas. Here we summarize only a few of the agreements reached.

### *Working Group 2: Organization and Citizen Participation*

In Working Group 2 the members arrived at their first agreements on reforms to the Assembly's ability to revoke mandates and the creation of an Electoral Court (judicial request, separate from the administrative authority that organizes elections). With respect to the first point, the working group's proposal advocates

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<sup>3</sup> Working Group 10. Majority Report. Online: [http://www.asambleaconstituyente.gov.ec/documentos/ley\\_petroleros\\_2\\_%20informe\\_final.pdf](http://www.asambleaconstituyente.gov.ec/documentos/ley_petroleros_2_%20informe_final.pdf)

<sup>4</sup> León Roldós, "Minority Report on the draft Organic Law for the Recuperation of Public Use of the State's Petroleum Resources". Online: [http://www.asambleaconstituyente.gov.ec/documentos/informe\\_minoria\\_leonroldos.pdf](http://www.asambleaconstituyente.gov.ec/documentos/informe_minoria_leonroldos.pdf)

widening the revoking powers of the mandate to include all popularly elected authorities, including the President and Vice President of the Republic. Regarding the electoral issue, the group agreed on the need to prevent partisanship and quotas in the Supreme Electoral Tribunal.

*Working Group 3: Institutional Structure of the State*

Working Group 3 has already defined the separation of the Supreme Electoral Tribunal's functions, National Electoral Council (administrative issues) and a National Electoral Court (which will process complaints and disputes).

*Working Group 5: Natural Resources and Biodiversity*

Working Group 5 has held three forums to date in which it has agreed to declare water as a strategic resource, a human right and a public good. The group has also drafted a document entitled the "Declaration of Lago Agrio."<sup>5</sup> The document sustains that Ecuador's strategies for economic growth have been based on the intensive exploitation of natural resources as well as an international competitiveness, which have resulted in social exclusion and some non-sustainable environmental conditions. For this reason, the Working Group agrees it cannot delay the

reconsideration of the country's development model.

*Working Group 6: Labor and Production*

The first agreements reached by this group center around the definition of credit as a social service with an aim to lower interest rates. The group has also produced concrete proposals on the different legal classifications of land ownership; the tenancy of land can be classified in the following categories: cooperative, community, mixed, public and private. Moreover, there is a consensus that the State should guarantee food sovereignty.

*Working Group 7: Development Model*

The Development Model Working Group will propose recognizing the economy as having a social, human, equitable and inclusive character; therefore, the current social development model of the market should be reformed.

*Working Group 8: Justice and the Fight Against Corruption*

This group has met with a variety of social sectors, including the Armed Forces. On February 20, 2008, for example, it met with the Vice Minister of Defense, Miguel Carvajal, who proposed to Groups 8 and 3, among other things, restoring soldiers' voting rights. It is worth mentioning, however, that it remains unclear if there is agreement on this issue.

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<sup>5</sup> Constituent Assembly. Blog of Assembly Member Manuel Mendoza. Online: [http://asambleaconstituyente.gov.ec/blogs/manueldejesus\\_mendoza/2008/02/26/victorioso-foro-en-lago-agrio-2/](http://asambleaconstituyente.gov.ec/blogs/manueldejesus_mendoza/2008/02/26/victorioso-foro-en-lago-agrio-2/)

### 3. The proposal for the Structure of the Constitution

On February 11, 2008, a working group was created on this issue, composed of the President of the Assembly, Alberto Acosta, first Vice President Fernando Cordero, Virgilio Hernandez, Working Group 2 President Betty Tola, and Betty Amores, along with legal expert Marco Albuja, who advises Aminta Buenaño and director of the Lexis foundation. The group's objective was to develop a proposal for a tentative index of the new Constitution.<sup>6</sup> On February 19 the *Acuerdo PAIS Proposal for the Structure of the New Constitution* started to circulate among the Assembly members.<sup>7</sup> On February 27 it was officially presented to the Plenary of the Assembly. The document has eight titles, each one divided into various chapters:

TITLE I. FUNDAMENTAL PRINCIPLES AND SUPREMACY OF THE CONSTITUTION

TÍTULO II. INDIVIDUALS, PEOPLES AND THE ENVIRONMENT

TÍTULO III. GUARANTEES

TÍTULO IV. ORGANIZATION OF POWER

TÍTULO V: TERRITORY, LEVELS OF GOVERNMENT AND ITS ORGANIZATION

TÍTULO VI: DEVELOPMENT MODEL

TÍTULO VII. INTERNATIONAL RELATIONS

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<sup>6</sup> "La próxima Constitución ya tiene, al menos, su esqueleto", *El Comercio*, 02/15/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=110654&anio=2008&mes=2&dia=15](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=110654&anio=2008&mes=2&dia=15)

<sup>7</sup> Acuerdo País, "Structure of the New Constitution". Online: [http://www.asambleaconstituyente.gov.ec/documentos/opuesta\\_de\\_acuerdo\\_pais.pdf](http://www.asambleaconstituyente.gov.ec/documentos/opuesta_de_acuerdo_pais.pdf)

## TÍTULO VIII. REFORM OF THE CONSTITUTION AND RULES FOR INTERPRETATION

### 4. The debate over amnesties continues

As we mentioned in the previous report, the cases of likely amnesties are divided into three types: individuals accused of crimes against the administration, individuals accused of minor drug trafficking crimes, and individuals who participated in the Dayuma protests.

On February 18, 2008 the Plenary of the Constituent Assembly approved the pardon of three terminally ill Spanish citizens convicted in Ecuador of drug trafficking for humanitarian reasons. The plenary approved by a favorable majority of 101 out of 130 Assembly members the pardon petitions presented by Spanish Ambassador in Quito Juan María Alzina in favor of José Luis González, 44; José Forment, 51; and José Asensio, 52, who was hospitalized in Quito.<sup>8</sup>

Also, on February 26, 2008 Assembly member Lenin Hurtado (MPD) of Working Group 10 called for increased speed in the expedition of the amnesties and pardons under review, given that the date for the presentation of the report is set for March 6, 2008.<sup>9</sup> Even though there is a final draft, the lack of

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<sup>8</sup> EFE, "Asamblea Constituyente aprobó el indulto a tres presos españoles", *El Comercio*, 02/19/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=111285&anio=2008&mes=2&dia=19](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=111285&anio=2008&mes=2&dia=19)

<sup>9</sup> Working Group 10, Constituent Assembly, "Citizen Revolution is an era." Online: [http://asambleaconstituyente.gov.ec/blogs/mesa\\_10/2008/02/26/revolucion-ciudadana-es-una-etapa/](http://asambleaconstituyente.gov.ec/blogs/mesa_10/2008/02/26/revolucion-ciudadana-es-una-etapa/)

agreement among Assembly members has delayed its discussion in the plenary of the Assembly. Media sources say there is already a standing pre-agreement to grant amnesties to all the individuals involved in the Dayuma case, including the prefect of Orellana, Guadalupe Llori. The main tensions are centered on whether or not to hold the government responsible for alleged abuses in the use of force by the Armed Forces.<sup>10</sup>

## **II. Relationship of the Assembly with the Constituted Powers and Society**

### **1. Assembly's Relationship with the Executive Branch**

There were multiple facets to the relationship between the Assembly and the Executive branch in the last two weeks of February: meetings with the President for members of the constituent working groups; presentation of proposals to the Assembly through the attendance of high level officials of the Executive to working group sessions; exchange of information between the Assembly and the Executive through Correa's delegate, etc. Below is a list the main elements of the relationship.

- On February 15, 2008 a delegate from the Superintendent of Telecommunications, Juan Córdova,

met with various constituent working groups to explain the procedures for issuing broadcast frequencies and highlight the changes needed in the procedures. One issue for review will be the method of selecting members for the National Council of Radio and Television (Conartel) to guarantee plurality in the issuing of frequencies.<sup>11</sup>

- The Minister of Government, Fernando Bustamante, attended a session of Working Group 10 on February 18, 2008 to explain the administration's reasons for declaring a state of emergency in Dayuma on November 26, 2007. Bustamante explained that as far as the administration is concerned the matter is closed and it is now up to the justice system to determine any civil or penal responsibilities.<sup>12</sup>
- The Minister of Culture submitted a proposal on Cultural Rights to three working groups (1, 7 and 9).
- On February 21, 2008 the Comprehensive Auditing Commission on Public Credit (CAIC), which was created by the Executive, presented a preliminary report of its findings to the

<sup>10</sup> "Tratamiento sobre exceso en Dayuma retrasa informe final". El Universo, 02/27/08. Online: <http://www.eluniverso.com/2008/02/27/0001/8/4204366A72C14D52AFDA7CA24874BD31.aspx>

<sup>11</sup> "Cuatro mesas discuten el retiro de frecuencias", El Universo, 02/16/08. Online: <http://www.eluniverso.com/2008/02/16/0001/8/683A1FF835C9475E80BE0384313A3325.aspx>

<sup>12</sup> "Asamblea sin definir articulados para debate", El Universo, 02/19/08. Online: <http://www.eluniverso.com/2008/02/19/0001/8/C0E43A9EB4E242A594C1EC48D7856AB4.aspx>

Working Group on the Development Model. After classifying the types of debt (external: multilateral, bilateral and commercial; and internal), the report concludes that: *“The public debt has been an instrument for subsidizing the state’s financial resources and destroying the economy due to a lack of savings and local investment. It has caused a great deal of destruction to the environment; sought to diminish the size of the State and its capacity for authority, limiting it to the role of an economic regulator. The debt has been an instrument of power and domination against our country.”*<sup>13</sup>

- On February 23, 2008 President Correa asked the Assembly to “do something” to prevent officials in the petroleum sector who resigned before the approval of Mandate 4 (which limited indemnity payments in the public sector) from collecting disproportionately large sums of money. Correa complained that the resignations from Petroecuador represent \$32 million, of which \$11 million have already been paid. In his address to the Assembly, Correa did not specify the mechanism by which the Assembly could stop the

payments.<sup>14</sup> Assembly members did not delay in their response to the President’s request: on February 24, 2008 Assembly Vice President Fernando Cordero (PAIS) stated that Mandates 2 and 4 left the door closed to these types of requests from the President: *“I don’t think it is too feasible (to review his request) because we would be in a situation (...) where it would be necessary to heed caution around the universal principal that these things are not retroactive”*.<sup>15</sup>

## 2. Assembly’s Relationship with Civil Society

The first development that should be mentioned is that during this period there have been two polls on the acceptance of the work of the Constituent Assembly among Ecuadorians. The most noteworthy finding is that both polls differ substantially in their results. On one hand, a study conducted by the firm of Santiago Pérez indicates that 60% of those polled think that the work of the Constituent Assembly is positive because it has been discussing the new Constitution. On

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<sup>13</sup> Asamblea Nacional Constituyente. Blog del asambleísta Germánico Pinto. Consulta en línea: [http://asambleaconstituyente.gov.ec/blogs/germanico\\_pinto/2008/02/26/la-realidad-de-la-deuda-externa/](http://asambleaconstituyente.gov.ec/blogs/germanico_pinto/2008/02/26/la-realidad-de-la-deuda-externa/)

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<sup>14</sup> Redacción, “Correa pide a la Asamblea detener el pago a burócratas”, El Comercio, 24/02/08. Consulta en línea: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=111937&anio=2008&mes=2&dia=24](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=111937&anio=2008&mes=2&dia=24)

<sup>15</sup>, “La Asamblea cierra el paso al pedido de Rafael Correa”, El Comercio, 02/25/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=112071&anio=2008&mes=2&dia=25](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=112071&anio=2008&mes=2&dia=25)

the other hand, the poll conducted by the business Cedatos, found that 61% of Ecuadorians believe the Assembly has assumed dictatorial powers by declaring the Congress in recess when it was installed on November 30. It also found that 57% described Correa's influence on the Assembly as negative.<sup>16</sup>

On another note, the enormous influx of diverse delegations of citizen groups into Montecristi has not ceased: up until February 15, the constituent working groups had met with 435 delegations composed of more than 4300 people.<sup>17</sup>

One of the delegations that received the most press attention was one of a group of citizens from Guayaquil. On February 20, 2008 the president of the Assembly, along with Assembly members of different parties from the Guayas province (César Rohon, Cristina Reyes and Cristina Kronfle of PSC; Lenin Hurtado of MPD; Roberto Ponce del Prian; and María José de Luca and Rolando Panchana of PAIS) met with a group of about 200 people from Guayas, who submitted a proposal entitled the "mandate of Guayaquil" that was promoted by the Guayaquil mayor and national government opposition leader, Jaime Nebot (and supported by 320

institutions in the province).<sup>18</sup> The seven point mandate emphasizes the following issues: the consolidation for well being, indivisible national unity, an economic and social plan to encourage well being and employment, as well as the promotion of autonomy, municipalities, and a model of self ownership.

At the same time, the press took advantage of Assembly president Alberto Acosta's invitations to numerous journalists. For example, on February 18, 2008 Acosta met with one of the most prestigious journalists in the country: Carlos Vera, anchor of the nightly news program ECUAVISA and editorial writer for the Quito newspaper *El Comercio*.

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

#### **The case of the videos and alleged bribery**

As we covered in previous reports, on January 22, 2008, a video was made public, showing Cao Lay Muñoz and Bolívar López Santos meeting with PAIS Assembly member Gabriel Rivera to offer him 3 million dollars in exchange for convincing 25 of his party members to vote against the government's initiatives. Rivera recorded the video with a

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<sup>16</sup> "Las cifras de las encuestas sobre la Asamblea y su imagen no cuadran", *El Comercio*, 02/17/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=110878&anio=2008&mes=2&dia=17](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=110878&anio=2008&mes=2&dia=17)

<sup>17</sup> "Constitución sigue diferida en la Asamblea", *El Universo*, 02/26/08, Online: <http://www.eluniverso.com/2008/02/26/0001/8/445F558C85F6424E887E761C0608400F.aspx>

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<sup>18</sup> "Alberto Acosta diluyó reclamos por mandato de Guayaquil", *El Comercio*, 02/21/08, Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=111592&anio=2008&mes=2&dia=21](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=111592&anio=2008&mes=2&dia=21). Both President Correa and Assembly members of PAIS (Aminta Buenaño) expressed their support for proposals of this kind; however, they did criticize the fact that it was called a "mandate" and not a proposal.

hidden camera and authorization by the Office of the Public Prosecutor, and the video was released by Minister of Government Fernando Bustamante, Anticorruption Secretary José Luis Cortázar, Commander-in-chief of Police Bolívar Cisneros, and Gabriel Rivera himself. The Attorney General ordered the capture of the two men implicated in the incident, who were imprisoned that same day. The two individuals introduced themselves in the video as intermediaries of Sociedad Patriótica Assembly member Julio Logroño, as well as of former President of Ecuador and leader of that party, Lucio Gutiérrez, who separated themselves from the incident.<sup>19</sup>

The case took on new dimensions when a videotape of the now detained Cao Lay Muñoz with Assembly member Julio Logroño surfaced on February 20, 2008. In the video they mention the possibility of forming a majority against Correa that would work against the elaboration of the new Constitution. On February 21, 2008 Assembly member César Rodríguez, president of Working Group 10, and another 17 representatives of PAIS petitioned president Alberto Acosta to allow *“the Plenary of the Constituent Assembly [to immediately] suspend Julio Logroño in his capacity as an Assembly member and, granting him the human right of appeal, remove him and those*

<sup>19</sup> “La Asamblea se instaló para tratar supuesto intento de soborno”, El Comercio, 02/23/08. Online: [http://www.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=107778&anio=2008&mes=1&dia=23](http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107778&anio=2008&mes=1&dia=23); “Fallida ‘compra’ de asambleístas, denuncia PAIS”, El Universo, 02/23/08. Online: <http://www.eluniverso.com/2008/01/23/0001/8/DD134B2FCC404819A9EBF5DF8293ADD6.aspx>

*who appear to be involved with him in this reproachable conduct”.*<sup>20</sup> In the same way, on February 23, 2008, President Correa asked the Assembly to revoke the immunity of both Logroño and Gilmar Gutiérrez (party leader of Sociedad Patriótica) in order to bring them to justice for their alleged plot against the national government. Even a fellow party member, Rafael Esteves, asked for Logroño’s removal; he also stated that following his decision to leave the Sociedad Patriótica party, he began to receive death threats.<sup>21</sup> Days later, on February 25, 2008, Esteves presented his resignation from the Assembly because he considered the case a disgrace to the Constituent Assembly.<sup>22</sup> That same day, the Sociedad Patriótica Assembly members Gilmar Gutiérrez and Julio Logroño presented a petition to remain in the Assembly until the investigations into their involvement in the alleged corruption acts continue to develop and clarify the facts. Their permission to stay is in effect until March 15.<sup>23</sup>

<sup>20</sup> “20 asambleístas piden la destitución de Logroño”, El Comercio, 02/22/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=111760&anio=2008&mes=2&dia=22](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=111760&anio=2008&mes=2&dia=22)

<sup>21</sup> AFP, “Correa pide retirar inmunidad a los asambleístas Gutiérrez y Logroño”, El Comercio, 02/23/08. Online: [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=111872&anio=2008](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=111872&anio=2008)

<sup>22</sup> Press Room - José Peralta, “Rafael Esteves presentó su renuncia a la Asamblea Constituyente”, 02/25/08. Online:

<http://asambleaconstituyente.gov.ec/boletines/rafael-esteves-presento-su-renuncia-a-la-asamblea-constituyente.do>

<sup>23</sup> Press Room - José Peralta, “Gutiérrez y Logroño piden licencia”, 02/25/08. Online: <http://asambleaconstituyente.gov.ec/boletines/gilmar-gutierrez-y-julio-logrono-piden-licencia.do>

Both the requests from assembly members of PAIS and the three members of Movimiento Popular Democrático (MPD) were sent to the Board of Directors. The procedure for investigating Assembly members is established in article 68 of the Internal Regulation. In the second paragraph it states “the request will be decided by the Board of Directors in a maximum period of five (5) days after it is submitted. In the event an investigation request is dismissed, the Director’s Commission must state the reasons for its decision”.<sup>24</sup>

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<sup>24</sup> Constituent Assembly, “Internal Regulations.” Online: [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=733&Itemid=72](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=733&Itemid=72)

## **Chronology**

**02/14/08.** Working Group 10 sent its preliminary Majority Report on the Law on Transit and Transportation to the Board of Directors.

**02/18/08.** Working Group 10 approved a final Majority Report on the draft Organic Law for the Recovery of Public Use of the State's Oil Funds.

**02/18/08.** The plenary approved pardons for three Spanish citizens incarcerated in Ecuador for drug trafficking who were terminally ill from chronic-degenerative illnesses.

**02/21/08.** Assembly members from PAIS and MPD petitioned the Director's Commission to suspend Gilmar Gutiérrez and Julio Logroño (PSP) for their alleged involvement in attempted bribery.

**02/25/08.** Rafael Estevez (PSP) resigned from the Assembly.

**02/25/08.** Gilmar Gutiérrez and Julio Logroño petitioned the Assembly to allow them to stay while the investigations into the alleged bribery are underway.

**02/27/08.** The *Acuerdo PAIS Proposal for the Structure of the New Constitution* was formally presented to the plenary of the Constituent Assembly.