



Report on the National Constituent Assembly of the Republic of Ecuador

No. 7, April 2008. The Carter Center.
Quito, Ecuador

Introduction

This report covers the principal events, debates and decisions of the National Constituent Assembly (CA) of Ecuador between March 28, 2008 and April 12, 2008. In the first section we summarize the work undertaken in the Assembly's two main forums: the constituent working groups and the Plenary. The most outstanding accomplishments have been the approval of the first five constitutional articles on territorial sovereignty on April 1 by the Plenary, two articles on unalienable rights (04/10/08), as well as the Assembly's approval of its second law, the *Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes*. In the second section we analyze the relationships between the Assembly, the constituted powers, and civil society. Finally, we examine the points of debate related to three controversial issues: the inclusion of the invocation of God in the new Constitution, and issues related to abortion and the recognition of homosexual unions.

I. The Assembly's Internal Work

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

On April 3, the Vice President of Working 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. The total sum of this documentation warrants the initiation of prosecutory action*".¹

1 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:

Meanwhile, on April 10 the Working Group approved a report that recommends granting amnesty to former President Gustavo Noboa and members of the external debt commission in his government by a 9/10 vote. The report was written by the sub commission composed of Ximena Bohórquez, Diana Acosta and Galo Lara. The report asserts that in the process of re-negotiating debt there were no side-payments, perks for third parties, nor was the State harmed. The only vote against the report came from Carlo Medina, alternate for Lenin Hurtado (MPD), because during Noboa's government "Ecuador took on the greatest amount of debt".² Finally, on April 11, the Working Group voted in favor of pardons for all prisoners in the country who were terminally ill. The approved report was presented by Assembly member Félix Alcívar and it establishes that the terminally ill prisoners who have exhausted all legal appeals can petition for a pardon with the Minister of Justice and Human Rights or the Directory of the Center for Rehabilitation where they are interned.³

<http://asambleaconstituyente.gov.ec/boletines/la-Working-Group-no.-10-exige-fiscalizacion-sobre-el-superintendente-de-companias.do>

² "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=19048&anio=2008&mes=4&dia=11

³ José Peralta, "Informe favorable para el indulto a enfermos terminales", 11/04/08. Online: <http://asambleaconstituyente.gov.ec/boletines/informe-favorable-para-el-indulto-a-las-y-los-enfermos-terminales.do>

2. The work of the Working Groups

Working Group 1. Fundamental Rights and Constitutional Guarantees

In addition to the fundamental constitutional principles referred to in the previous bulletin, on April 2 Working Group 1 approved various political rights subject to the discussion of the Plenary of the Assembly. These rights 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 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.*⁴

⁴ Constituent Assembly, Working Group 1, "Derechos Fundamentales y Garantías Constitucionales". Online: http://www.asambleaconstituyente.gov.ec/documentos/principios_fundamentales_aprobado.pdf

Working Group 6. Work, Production and Social Inclusion

Working Group 6 unanimously approved a proposed Mandate to eliminate labor mediation and outsourcing. The proposal consists of 7 articles, 2 general regulations, 2 transitory regulations, and 2 final regulations. To draft the proposal, the Working Group argued that *“the outsourcing of complementary services, labor mediation and hour-based contracts constitute working conditions that jeopardize the rights of the worker and the principles of stability, fair compensation, organized unions and collective contracts”*.⁵ The proposed mandate has had its first discussion in the plenary. Next week it is expected to be analyzed during the second debate prior to its eventual approval.

Working Group 8. Justice and the Fight Against Corruption.

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

“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,

⁵ Working Group 6, National Constituent Assembly. “Propuesta de Mandato que elimina la precarización laboral”. Consulta en línea:
http://www.asambleaconstituyente.gov.ec/documentos/mandato_ultima_version_tercerizacion.pdf

*competition, merits, transparency, oversight and citizen participation.”*⁶

Working Group 9. Sovereignty and Latin American Integration

On April 8 Working Group 9 approved two articles on International Treaties. The first stipulates that international agreements will be developed according to the new Constitution and will take precedence over laws of lower status; the second confirms the President of the Republic as the relevant authority to subscribe, ratify and adhere to international treaties and agreements.

3. Debates and Resolutions of the CA Plenary

The plenary of the Constituent Assembly of Ecuador approved the first five articles of the new Magna Carta on April 1, which refer to 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

⁶ José Peralta, “Working Group 8 aprobed two more principles of the Judicial Branch”, 03/04/08. Online:
<http://asambleaconstituyente.gov.ec/boletines/la-administracion-de-justicia-sera-gratuita-en-el-pais.do>

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.”⁷

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 for 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 Applicability, Free exercise of rights, Pro-Humanity, Wholeness and Inclusiveness, Progressiveness, and State Responsibility.⁸

Meanwhile, on April 1 the Plenary began to debate the structure of the Electoral Organs proposed by Working Group 2. The initiative – which has a majority and minority report – advocates the division of this responsibility in two bodies: the National Electoral Council and the Litigious Electoral Tribunal. Along the same lines, on April 11 the Plenary started its debate of the first four articles approved by Working Group 7 - Development Plan, which define the concept of a Development Plan, the objectives of development, the State’s duties for the achievement of a high quality of life, and the

⁷ José Peralta, “¡¡¡La Asamblea Constituyente aprueba los primeros cinco Artículos de la Nueva Constitución!!!”, 01/04/08. Online: <http://asambleaconstituyente.gov.ec/boletines/la-asamblea-constituyente-aprueba-los-primeros-cinco-articulos-de-la-nueva-constitucion.do>

⁸ National Constituent Assembly, “Texto Constitucional aprobado en la sesión del Pleno No. 25 del 10 de abril de 2008”, Online: http://www.asambleaconstituyente.gov.ec/documentos/texto_aprobados_derechos_fundamentales.pdf

powers of individuals, communities and peoples to achieve the same.⁹

On a different note, 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*,” arguing that the law was necessary to activate the political economy of the State, the needs of a dollarized economy, as well as the necessity to provide efficient mechanisms for the obtainment of foreign loans by the National Government. The Law¹⁰ was passed with 89 votes in favor, including votes from Acuerdo País and its allies: Pachackutik, Movimiento Popular Democrático and Izquierda Democrática.

This law, which offers the “*power of timely and technical use of petroleum resources that allow an increase in the flexibility of fiscal policy and consequently in the policy of political economy in the country*”,¹¹ will mean, as stated by Assembly member Maria Paula Romo (PAIS), the incorporation in the budget of the

central government of the economic resources that represent close to 5 billion dollars.¹²

However, León Roldós (RED) objected to the notion of all the petroleum remittances being treated as capital income, as this will affect the municipal budgets which will lack some \$150 million dollars. The same will occur with the amount assigned to education, which will be reduced by \$300 million.¹³ Next we present the principal provisions of the law:

Organic Law for the Recuperation of State Use of 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

⁹ Working Group 7. “Culmina primer debate del articulado sobre régimen de desarrollo”, 11/04/08. Online:

http://asambleaconstituyente.gov.ec/blogs/Working_Group_7/2008/04/11/culmina-primer-debate-del-articulado-sobre-regimen-de-desarrollo/

¹⁰ Constituent Assembly, *Ley Orgánica para la Recuperación del Uso de los Recursos Petroleros del Estado y Racionalización Administrativa de los Procesos de Endeudamiento*. Online:

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

¹¹ *Ibidem*.

¹² 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>

¹³ “Aprobado el libre uso de fondos petroleros”, El Universo, 03/04/08. Online:

<http://www.eluniverso.com/2008/04/03/0001/8/EE73AF1EB89B4B70A11F588080AEE712.aspx>

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 Committee 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.

On another note, on April 10 the Plenary (77/130 votes) decided to authorize a penal trial against Assembly Member Julio Logroño (PSP). 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.¹⁴

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

1. The Assembly's Relationship with the Executive Power

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, that 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.¹⁵ According to Acosta, the High Military Command provided the identity of

¹⁴ EFE, "Asamblea autoriza inicio de juicio penal contra Logroño", en El Comercio. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=118954&anio=2008&mes=4&dia=10

¹⁵ 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

these groups, but they were not revealed to the press during the investigation.¹⁶

Meanwhile, on April 7, the Minister of Work, Antonio Gagliardo met with the Assembly members of Working Group 6 to lay out the Executive's position on the problem of labor mediation and outsourcing. The posture of Correa's government favors the elimination of these types of labor contracts to make way for a regulatory system for part-time shifts for those businesses that only operate part-time rather than full-time.¹⁷

2. Relationship with Society

On April 3 the President of the Assembly met with a delegation from the Confederation of Free Labor Union Organizations (CEOLS), who presented him with a document that demands the conservation of the autonomy of the Ecuadorian Institute of Social Security (IESS) and the elimination of outsourcing.¹⁸

Meanwhile, on April 5 the members of Working Group 2 held a virtual dialogue with representatives of the Ecuadorian migrants residing in Spain, Italy and Venezuela.

For Virgilio Hernández (PAIS), president of Working Group 2, the objective of the forum "Voices and Rights of Migrants in the Constituent Process" was to "*gather and debate proposals from the Ecuadorian migrant community and inform it of the advances in the constituent process on issues that relate to their rights*".¹⁹

Finally, on April 7, the hierarchy of the Catholic Church met with the president of the CA to present him a proposal on various issues: Monseñor Herrera, president of the Episcopal Conference and bishop of Machala, stated that this proposal advocates "*the defense of life, family and marriage between a man and a woman, high quality education for all Ecuadorians, the eradication of poverty and the fight against corruption*".²⁰

III. Actors, Debates and Points of Tension

During the period covered by this report, the main controversy caused by the CA occurred within the PAIS bloc, although the

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

¹⁷ "Gagliardo, duro con las tercerizadoras", El Comercio, 08/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=1 18584&anio=2008&mes=4&dia=8

¹⁸ *Ibidem*.

¹⁹ "Los migrantes expusieron sus demandas de forma virtual", El Comercio, 07/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=1 18413&anio=2008&mes=4&dia=7

²⁰ "La iglesia llegó con temas sobre la vida y la libertad religiosa", El Comercio, 08/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=1 18583&anio=2008&mes=4&dia=8

President of the Republic and some civil society organizations also intervened; this controversy was based around the possible inclusion of three issues in the new Constitution: the secular nature of the State and the mention of God in the 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.

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 they should resign from 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.²¹

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 would 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. *The preamble of the Constitution will incorporate the name of God in a universal way as well as 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.*

21 “Rafael Correa se reúne con sus asambleístas”, El Comercio, 01/04/08. 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, 01/04/08. Online: http://www2.elcomercio.com/buscar_ediciones.asp?cantPaginas=10&id_medio=1&pagina=15&fecha=2008-04-01

6. *No one will suffer discrimination for their sexual orientation.*²²

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 Constitution. Tamayo also discerned that the recognition of life after conception puts abortion as a treatment option at risk of being outlawed. 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 Ecuadorian Women, Liliana Durán, judged the PAIS position to be “biased and moralistic”, given that it does not view life in its whole context.²³

22 Acuerdo País. “El bloque de asambleístas de Acuerdo País a la opinión Pública”, 01/04/08. Online:

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

23 “Las organizaciones de mujeres rechazaron la posición de A. País”. El Comercio, 02/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=117736&anio=2008&mes=4&dia=2

Chronology

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

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

04/02/08. The Plenary approves (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 holds its first virtual forum with Ecuadorian migrants in Spain, Italy and Venezuela.

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

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

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

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