



Report on the National Constituent Assembly of the Republic of Ecuador

No. 8, April 2008. Carter Center.
Quito, Ecuador

Introduction

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador (CA) between April 13, 2008 and April 28, 2008. In the first section we summarize the work undertaken in the Assembly's two main forums: the constituent working groups and the Plenary. In the second section we analyze the main relationships within the Assembly, as well as with the Executive power and civil society. Finally we consider the issues up for debate related to the mandate currently being discussed by the Assembly on outsourcing and labor mediation. We also present a chronology of the most important events from this period.

In these two weeks the Assembly's working groups have passed an outstanding number of articles. As of May 6 the Assembly has the approval of 256 constitutional articles on its agenda. In addition to the 17 already approved, there are 45 more waiting for their second debate, 7 for their first debate, and 187 still being discussed in the working groups.¹

¹ Asamblea Constituyente. Online: http://www.asambleaconstituyente.gov.ec/documentos/cuadro_articulado_aprobado.pdf; "El bloque de A. País recibió nuevamente a Correa", El Comercio, 25/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=121130&anio=2008&mes=4&dia=25

I. The Assembly's Internal Work

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

On April 15, 2008 Working Group 10 approved (10/13 votes) the internal procedures for its oversight activities; the document was introduced by Assembly member Félix Alcívar (PAIS).² The same day, the Working Group began its discussion of the Organic Law on the National System of Public Contracts presented by the Executive. At President Correa's suggestion the group offered some observations and small additions. Assembly member Ximena Bohórquez (RED) declared that the Law *"is positive because it proposes the creation of one record of all the providers of consumables, articles, goods, services, consultants, to which all public institutions could go, through this information portal with the purpose of streamlining the acquisitions process and contracting processes that always take at least six months"*.³

Meanwhile, on April 18 the President of the Assembly, Alberto Acosta (PAIS), indicated that the Assembly may decide to initiate a political trial against the superintendent of Companies, Francisco Arellano, for alleged irregularities in his operations. Acosta stated

² Mesa 10, "Contratación Pública, Fiscalización y Tránsito, en la Mesa 10", 17/04/08. Online:

http://asambleaconstituyente.gov.ec/blogs/mesa_10/2008/04/17/contratacion-publica-fiscalizacion-y-transito-en-la-mesa-10/

³ Citada en *Ibidem*.

that Working Group 10 already has a list of questions they will present to Arellano as the first step in the trial process. Employees of the Superintendency accused Arellano of charging them fees to help finance Movimiento PAIS.⁴

2. The Work of the Working Groups

Working Group 1. Fundamental Rights and Constitutional Guarantees

Working Group 1 has already seen the approval of two of its articles in the Plenary related to the inalienability of rights and the principles of interpretation and exercise of the rights of individuals and peoples. Meanwhile, it continues advancing its internal discussions of 50 articles on civil and political rights, including the rights of speech, with the anticipated approval of the working group on April 30, 2008.⁵

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, which will be located in Section IV: On Nature and the Environment, Chapter II: Quality of Life, Title VI: Development Plan, of the Constitution. These articles express the *"necessity of*

⁴ "Acosta no descarta enjuiciar al Superintendente de Compañías", El Comercio, 19/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120223&anio=2008&mes=4&dia=19

⁵ "La Asamblea avanza". Online:

http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=7349&Itemid=

*reformulating or redefining the inter-relatedness of society and nature, economy and society, or nature, environment and culture, among others*⁶ and also address the proposals and demands received during the participative process previously undertaken by the Working Group.

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,⁷ the last of which was debated on April 14⁸. In the debate a large number of Assembly members emphasized *“the importance of this obligation and responsibility that the*

*government is re-addressing, of planning”*⁹; however, many also voiced demands, 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.

Working Group 8. Justice and the Fight Against Corruption

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.¹⁰

Working Group 9. Sovereignty and Latin American Integration

In addition to the articles on territorial sovereignty drafted by the Working Group that have already been approved by the Plenary, on April 22 the members of Group 9 introduced a majority report on the Colombian Army’s incursion into Ecuadorian territory: the “Monitoring Report on the Violation of National Sovereignty and Territorial Integrity.” The majority report was signed by Trajano Andrade, María Augusta Calle, María Elena Gómez, Tania Hermida, Linda Machuca, Alexandra

⁶ Mesa 5. “Artículos aprobados en la Mesa 5 para el debate en el Pleno”. Online:

http://www.asambleaconstituyente.gov.ec/documentos/articulos_aprobados_mesa5_pleno1.pdf

⁷ Mesa 7. “Artículos aprobados en la Mesa 7 para el debate en el Pleno: Planificación de Desarrollo”. Online:

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

⁸ José Peralta. “Mesa 7 aprueba artículos constitucionales sobre Planificación de Desarrollo”. Online:

<http://asambleaconstituyente.gov.ec/boletines/mesa-7-aprueba-articulos-constitucionales-sobre-planificacion-de-desarrollo.do>

⁹ 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>

¹⁰ Mesa 8. “Artículos”. Online:

http://www.asambleaconstituyente.gov.ec/documentos/jueces_%20de_%20paz_%20primer_%20debate.pdf

Ocles, Gabriela Quezada and Francisco Velasco.¹¹

3. Debates and resolutions of the Plenary of the CA

On April 17 the Assembly conducted its first debate on the seven articles on the planning system approved by the Working Group on Development Strategy. The president of Working Group 7, Pedro Morales (Pachakutik), was in charge of introducing the articles. He argued that one of the proposals aims was for state policies to be approved, modified or eliminated via popular consults. However, Assembly members Pablo Lucio Paredes (Futuro Ya) and Leonardo Viteri of Partido Social Cristiano (PSC) challenged several points in the Working Group's approved report. Paredes judged the articles to be imposed by Correa's government through the National Secretary of Planning and Development (Senplades). His counter-proposal was the creation of a National Development Council and High Level Socioeconomic Council, so that development policies might be independent of governments of the moment.¹²

¹¹ Mesa Constituyente No. 9 "Comunicado Importante", 23/04/08.

Online:

http://asambleaconstituyente.gov.ec/blogs/mesa_9/2008/04/23/los-asambleistas-de-acuerdo-pais-de-la-mesa-9-de-soberania-relaciones-internacionales-e-integracion-latinoamericana-a-la-opinion-publica/

¹² "La planificación y el sistema de justicia fueron debatidos ayer", El Comercio, 18/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120000&anio=2008&mes=4&dia=18

On a different note, on April 18, with 95 votes in favor, 1 against and 25 abstentions,¹³ 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. The approved Mandate, with 12 articles and 4 final resolutions, states the following:

- 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 this payment 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

¹³ El voto en contra fue del asambleísta alterno de Alfredo Ortiz (RED-PSP) Max Freire.

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.¹⁴

On April 22 the CA designated Diego García as the new interim State Attorney General. Via Constituent Mandate No. 7¹⁵ (84/130 votes) the official replaced Xavier Garaicoa, who resigned on April 18 after President Correa solicited the investigation of cases of corruption in the Attorney General and Comptroller's offices.¹⁶ 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

¹⁴ "Mandato 06". Online:

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

¹⁵ "Mandato Constituyente No. 7". Online:

http://www.asambleaconstituyente.gov.ec/documentos/mandato_7_final.pdf

¹⁶ EFE, "Asamblea designa a Diego García como nuevo Procurador del Estado", en El Comercio, 22/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120712&anio=2008&mes=4&dia=22

Patriótica) questioned the fact the President Correa had not submitted a short list of candidates to the Assembly so that it might choose the new Attorney General.¹⁷

Meanwhile, also on April 22, the Plenary of the Assembly approved 10 articles and three transitory resolutions on the Electoral Branch of the State.¹⁸ 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:

¹⁷ "García, Procurador por mandato", El Comercio, 23/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120778&anio=2008&mes=4&dia=23

¹⁸ "Artículos sobre Función Electoral". Online:

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

On 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 its 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 ruled 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 during 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 as 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 immediating 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.

Meanwhile, on April 28, with 87 votes, the Plenary approved an agreement draft introduced by Alexandra Ocles (PAIS), which demands an immediate audit of the Post of Advanced Operations of the Manta Military Base. The agreement advocates the conformation of a Civic-Military Commission of the Ecuadorian state, with the participation of at least one Assembly delegate, to “*investigate the possible infiltration of the Central Intelligence Agency of the United States (CIA) in the country’s internal matters*”.¹⁹

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

1. The Assembly’s Relationship with the Executive Power

In addition to the numerous visits made by various ministers of the president’s cabinet to the Assembly to introduce various proposals for the new constitutional framework, such as the proposal for the creation of a National

¹⁹ “Asamblea demanda inmediata auditoría a FOL de Base de Manta”, 28/04/08. 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_asamblea_mesa9.pdf

Council on Equality introduced by the coordinator for the Executive and the Assembly, Augusto Barrera, on April 15, 2008,²⁰ in the last two weeks the president’s public statements on the issue of multiculturalism have strongly stood out. On his radio channel on Saturday April 19, President Correa assured the citizenry that they should not fear multiculturalism, because its 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 multiculturalism, which is basically the recognition of different peoples, cultures and world views that exist within the country and that all public policies such as education, health and housing recognize this multicultural dimension*”.²¹

2. Relationship with Society

²⁰ “Un Consejo Nacional de la Igualdad captará el control de los ciudadanos”, El Comercio, 16/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=19885&anio=2008&mes=4&dia=16

²¹ “La nueva estructura que tendrá el Gobierno, definida”, El Comercio, 20/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120287&anio=2008&mes=4&dia=20

On April 24 the Association of Television Channels changed over its director's board, which will now be headed by Nicolás Vega, chief officer of Gamavisión. Upon taking office, Vega announced that in the coming days the Association over which he presides will go to the Assembly to advocate for its point of view on how the right to speech and communication should be consecrated in the new Constitution. In particular, the Association of Channels considers to the mass media to be a service of the public interest and not a public service, as it was formulated by Working Group 1. According to his press statement, Vega asserted that his trade union is apprehensive that the State might use this service to its own desires, arguing for its public character. With respect to the re-issuing of licenses, Vega argued that the contracts should be renewed automatically after 10 years; if not done this way, "*it would leave a certain discretion for the government of the moment to decide subjectively*".²²

III. Actors, Debates and Points of Tension

Elimination of Labor Mediation

The mandate proposal being studied by the Assembly on the elimination of labor mediation, which was drafted in part as a response to the requests of 80% of the delegations that visited

Working Group 6 and that attended the traveling sessions in various cities throughout the country,²³ has caused important tensions, as much among Assembly members, as within the industrial sector and trade unions. The proposed mandate emerged in the economic context of 8% unemployment and 45% under-employment,²⁴ and in which the members of the chambers of commerce ask for even more flexibility in labor legislation.²⁵ In this sense, the business sector has affirmed that if this mandate is approved, it runs the risk of reducing an important number of labor positions. Pilar Moncayo, president of the Federation of Business Owners in Labor Mediation, Promotion of Employment and Complementary Services (an organization that includes 110 intermediary businesses) stated that this law would affect the 435,000 workers who now serve as labor negotiators. On the other hand, some union organizations support the Assembly's proposal and deny that the

²² Guayaquil, "Los canales quieren un diálogo con la Asamblea", El Comercio. Online:
http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=121099&anio=2008&mes=4&dia=25

²³ José Peralta. "Listo Mandato Constituyente que elimina y prohíbe la intermediación y tercerización laboral." Boletín 824. 11/04/08. Online.

<http://asambleaconstituyente.gov.ec/boletines/listo-mandato-constituyente-que-elimina-y-prohibe-la-intermediacion-y-tercerizacion-laboral.do>

²⁴ José Peralta. "Gobierno y dirigentes sindicales apoyan Mandato que elimina toda forma de precarización laboral." Boletín 786. 07/04/08.

<http://asambleaconstituyente.gov.ec/boletines/gobierno-y-dirigentes-sindicales-apoyan-mandato-que-elimina-toda-forma-de-precarizacion-laboral.do>

²⁵ "Asamblea debate hoy la reforma laboral". El Universo, 09/04/08. Online.

<http://www.eluniverso.com/2008/04/09/0001/8/46741A9D720C4F1B81FFF8EBFFC5B766.aspx>

business sector's predictions will play out, especially considering the statements in the mandate that forbid the removal of employees as a consequence of the mandate.²⁶ In addition to this discussion that was already ongoing during the first debate on the mandate, a new tension has arisen upon the proposed inclusion of new statements that would result in the revision of collective negotiation contracts. Some Assembly members such as Eduardo Alcívar, Héctor Terán and Guillermo Touma, warned that they would vote against the mandate if it included the revision of collective contracts, finally agreeing that they needed *"to lay out a better draft that defined the supposed abuses and exaggerations in certain contracts [...] If this is true, we will analyze our votes. If not, the streets of the country will be the scene setting where the workers come out to claim their rights"*.²⁷

²⁶ "Ceosl descarta que eliminación de tercerización genere desempleo.", El Universo, 08/04/08. Online.
<http://www.eluniverso.com/2008/04/08/0001/9/442B9FAEFADA420098984349F5CFD7CE.aspx>

²⁷ "Oficialismo decidió limitar prebendas y conquistas sindicales", El Universo, 25/04/08. Online:
<http://www.eluniverso.com/2008/04/26/0001/8/C974B0B5E9C247CBB306B5791B2D6144.aspx>

Chronology

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.