



Report on the National Constituent Assembly of the Republic of Ecuador

No. 10, May 2008. The Carter Center.
Quito, Ecuador

Introduction

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador between May 14, 2008, and May 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 Assembly's main relationships within the Assembly and with the Executive Branch and civil society. In the third section we address the principal criticisms offered by the Consortium of Provincial Councils of Ecuador to the recently approved articles proposed by Working Group 4 in relation to autonomous governments and special regimes of the State. Finally we include a chronology of the Assembly's key decisions.

In the past two weeks the Assembly notably approved the 60 day extension it was permitted in its statute, which grants it until July 26 to conclude its project. It also approved a motion which gives the President of the Assembly the power to convoke special sessions of the Plenary. In these special sessions, only constitutional articles may be addressed.¹ The Assembly's first vice president, Fernando Cordero, commented on the 60 day extension by noting that: *"Although we [the PAIS bloc] have a majority of votes, as much in the working groups as in the plenary, we have not used it nor will we. We believe that the power and forcefulness of our arguments and reasoning is larger than the number of votes we have, which is why we've always obtained more votes than we have as a political force."*²

¹ Press room of José Peralta, "¡La Constituyente aprueba, con 103 votos a favor, la prórroga por 60 días!", 20/05/08. Online: <http://asambleaconstituyente.gov.ec/boletines/aprobada-con-97-votos-prorroga-de-la-asamblea-por-60-dias.do>

² Cordero, Fernando, "60 días más de asamblea", 21/05/08. Online: <http://asambleaconstituyente.gov.ec/boletines/60-dias-mas-de-asamblea-una-muestra-mas-de-la-nueva-politica-democratica-y-participativa.do>

I. The Assembly's Internal Work

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

On May 27, Working Group 10 concluded its revision process based on the Executive's comments and approved the Organic Law on Transit, Ground Transportation and Highway Safety, with the repeal of the Temporary Law for the creation of the Transit Commission of Guayas (CTG). The law establishes that there will be 23 provincial commissions on the national scale, which will operate under the same regulations. The working group's president, César Rodríguez (PAIS), assured that while the CTG had lost autonomy on highway matters, it would maintain its budgetary and administrative autonomy.³

Meanwhile, on May 28, Group 10 approved (9/9 votes) the report that enables the Plenary to initiate prosecutorial action for the eventual removal of the acting Superintendent of Companies, Francisco Arellano, for his mistreatment of various female employees, failure to surrender information requested by Assembly Member Nécker Franco and various other irregularities attributed to him. Assembly Member María Paula Romo (PAIS), vice president of the working group, commented:

³ Política, "La Comisión de Tránsito del Guayas no tendrá autonomía", El Comercio, 28/05/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=125930&anio=2008&mes=5&dia=28

We recommend he be stripped of his position and declared in contempt".⁴

2. The work of the Working Groups

Working Group 1. Fundamental Rights and Constitutional Guarantees.

On May 20 Group 1 approved six articles on the right to education. The approved articles include: a) the obligatory nature of early, primary and secondary education or its equivalent; b) free education through the secondary level (third level); c) the guarantee of equal opportunities in access, continuity of institutions and graduation without discrimination of any kind; d) quality of education and e) the social dimensions of collective interests and the necessity of addressing them. The discussion on financing was left pending for the second round of approval for the articles.⁵

Working Group 4. Territorial Organization and Designation of Powers

Between the 27th and 28th of May Group 4 approved 17 articles in the chapter on "Autonomous and decentralized governments

⁴ Press room of José Peralta, "Se recomienda la destitución del Superintendente de Compañías Francisco Arellano", 28/05/08. Online: <http://asambleaconstituyente.gov.ec/boletines/se-recomienda-la-destitucion-del-superintendente-de-companias-francisco-arellano.do>

⁵ Constituent Assembly, Press room of José Peralta, *Avanza aprobación de articulado sobre derecho a la educación*, Boletín 1060, Ciudad Alfaró, 20/05/08. Online: <http://asambleaconstituyente.gov.ec/boletines/avanza-aprobacion-de-articulado-sobre-derechos-a-la-educacion-3.do>

and special regimes.” The articles approved by the Working Group establish that the provinces may form autonomous regions. To constitute an autonomous region certain factors will be considered, such as the decisions and initiative of the provincial governments that can draft a regionalization project and a statute of regional autonomy. It was determined that the citizenry should be consulted on the autonomous statute. An obligatory, progressive national system of responsibilities and powers would be in charge of managing the regimes of autonomous sectional governments.⁶

Working Group 6. Work, Production and Social Inclusion.

PAIS Assembly members introduced a proposal on property to Working Group 6. The first article proposed the recognition of six types of property: private, state, mixed, public, community and cooperative; the three final categories do not exist in the current Constitution. The second article describes the criterion a property must meet to fulfill its social function: *“Social function means that the different types of property satisfy the needs of society, they respond to redistributive justice; they protect collective rights and promote multi-cultural coexistence; they are used in sustainable and socially responsible*

⁶ , “La creación de regiones autonómicas tiene vía libre”, El Comercio, 28/05/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=125929&anio=2008&mes=5&dia=28

*production; they used and enjoyed with respect for the well being of society”.*⁷

Working Group 8. Justice and the Fight Against Corruption

Group 8 approved articles on the System for Protection and Assistance for Victims, Witnesses and Participants in the Penal System. The proposal’s objective is to re-imagine the new Attorney General as an entity that works to prevent crime and is also a key element in a system of restitution for the rights of victims, permitting a holistic vision within the justice branch.⁸

3. Debates and resolutions of the Plenary of the CA

On May 15 the Plenary approved pardons with 84 votes for 193 detained persons on the national level who have exhausted all legal appeals but were in terminal condition.⁹

Meanwhile, on May 20, 7 articles were approved on international treaties and instruments (91/123 votes). Some of the

⁷ , “PAIS reconocerá tres nuevas formas de propiedad en la Constitución”, El Universo, 20/05/08. Online: <http://www.eluniverso.com/2008/05/20/0001/8/075D7DA185FF446FB3F3EAB67EB5A574.html>

⁸ Política, “Las víctimas recibirán protección”, El Comercio, 24/05/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=125349&anio=2008&mes=5&dia=24

⁹El Universo, Asamblea aprobó indulto para reos con enfermedades terminales, 15/05/08. Online: <http://www.eluniverso.com/2008/05/15/0001/8/79325A7BBED545E69B1477B016BC5BAA.html>

approved proposals included: a) the prohibition of entering into international treaties in which the State cedes its sovereign jurisdiction to instances of international arbitration in contractual or commercial disputes between the State and legal or private entities (this received 30 votes against, one abstention and one blank vote); b) provided an exception for such treaties if they establish a solution for controversies between States and Latin American citizens through regional arbitration mechanisms or jurisdictional organs designated by the signatory countries; c) the subscription, adherence and ratification of treaties and other international instruments is a power of the President of the Republic, with the control of the National Assembly or the citizenry, via popular consult or referendum; d) in light of the controversies related to external debt, the Ecuadorian State should promote arbitration to resolve questions over the taking out of new debt, under the principles of transparency, equity and international justice; e) the approval or rejection of treaties by the National Assembly will be limited to eight proposed categories, including territorial or border issues, political or military alliances, the presence of foreign troops on Ecuadorian territory, and treaties that may jeopardize the country's natural heritage and especially its water, biodiversity and genetic heritage.¹⁰

¹⁰Constituent Assembly, Press room of José peralta, *Aprobados artículos sobre tratados e instrumentos internacionales*, Boletín 1064, Ciudad Alfaro, 20/05/08. Online:

On the same day the Assembly approved a pair of articles that will guide the State's international relations, with 92 and 93 votes in favor, respectively. The first article, with 13 clauses, promotes the independence and legal equality of States, peaceful coexistence and the self-determination of peoples. It upholds the peaceful resolution of international conflicts and controversies, condemns the interference in State internal matters by other States, at the same time that it promotes peace and universal disarmament of weapons of mass destruction. It also establishes the principle of universal citizenship and respect for the free movement of all the inhabitants of the planet and respect for the rights of migrants. Finally, it wholly condemns all forms of imperialism, colonialism, and neocolonialism, advocating a multi polar global order, with the active participation of regional economic and political blocs that, in turn, permit the political, cultural and economic integration of the Andean Region, South America and Latin America, with a new system of commerce based on justice and solidarity. For its part, the second article establishes that Ecuador's foreign policy should embody the aforementioned principles, as well as the interests of the people to whom it shall be accountable.¹¹

<http://asambleaconstituyente.gov.ec/boletines/aprobados-articulos-sobre-tratados-e-instrumentos-internacionales.do>

¹¹ Constituent Assembly, Press room of José Peralta, *Aprobados artículos de los principios que guían las relaciones internacionales*, Boletín 1063, Ciudad Alfaro, 20/05/08. Online: <http://asambleaconstituyente.gov.ec/boletines/aprobados->

On May 23, the Assembly approved (82/88 votes) an Agreement that once again condemns what is considered a new act of aggression from the Colombian government towards Ecuador. Its first article proposes: *“We condemn this new aggression towards national sovereignty by the Government of Álvaro Uribe Vélez, who has initiated an investigation against Assembly Member María Augusta Calle through the Colombian Attorney General Mario Iguarán Arana, just as we repudiate any intervention that compromises the sovereignty of Ecuador which is not only territorial, but also jurisdictional.”*¹²

Finally, on May 23, the Plenary approved (72/86 votes) Mandate No. 10 on numeric portability so that, from 2009 onward, users may maintain their cellular telephone number even when they change networks, services or operating businesses. The mandate’s approval came only a few weeks after the Ecuadorian government reached an agreement with the representatives of the businesses CONECEL (Porta), OTECEL (Movistar) and TELECSA (Alegro) on the extensions of their telephone service contracts for the next few years.¹³

articulos-de-los-principios-que-guian-las-relaciones-internacionales.do

¹² Press room of José Peralta, “Asamblea condena nuevamente agresión a Soberanía Nacional”, 23/05/08. Consulta en línea: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=125189&anio=2008&mes=5&dia=23

¹³ Constituent Assembly, “Mandato No. 10”, 23/05/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/mandato_10.pdf

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

1. The Assembly’s Relationship with the Executive Power

On May 24 President Correa criticized the PAIS Assembly members for taking on issues outside of the scope of the group’s goals and projects: *“Trust [in the Assembly by the population] has shrunk, probably due to the mistakes of the Assembly members; by making a lot of noise about whatever they want”*. He also blamed Assembly members from PRIAN, PSP and PSC for working against the Assembly. In the same speech, Correa took the opportunity to announce a new forthcoming mandate for the Assembly to create a singular electric company to manage the electrification in all its phases: generation, transmission and distribution, which are currently separated.¹⁴

2. Relationship with Society

On May 16 representatives from the country’s professional colleges mobilized to Montecristi to petition the CA to include a statement in the new Constitution that recognizes the legitimacy of their

¹⁴ Negocios, “Correa exige más agilidad a la Asamblea”, El Comercio, 25/05/08. Consulta en línea: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=125529&anio=2008&mes=5&dia=25

organizations and maintains the obligation of paying school fees for professional members. This movement was in response to the judgment published on May 14 by the Official Registry of the Constitutional Tribunal (TC) which declared the obligation to pay school fees to be unconstitutional, as President Correa had asked. The TC rejected the arguments brought forth by the unions in favor of maintaining the right to grant licenses and credentials. For the President of the Federation of Dentists, Iván Pinillo, *“The judgment will lead to disaffiliations. Who will watch over the professional ethics of those who abandon these professional organizations in order to feel more free?”*. For these reasons, the professional unions presented their proposal to the President and Vice President of the Assembly.¹⁵

III. Actors, Debates and Points of Tension

Objections to the proposal for autonomous governments.

On May 28, Group 4 on Territorial Organization and Designation of Powers approved a group of articles on autonomous, decentralized governments and special regimes. The political-territorial units established are the parish, the canton, the

province, and the metropolitan district: a) each rural parish will have a parochial tribunal composed of representatives by popular election; b) each canton will form its own town council or municipality and will be made up of a council consisting of the mayor and the councilors, elected by popular vote; c) each province will have a provincial council based in its capital and will be made up of a governor elected by popular vote, representatives of the cantons and metropolitan districts, who will be mayors or vice-mayors, and parochial representatives elected from the presidents of the rural parochial tribunals under the terms established by law; d) one or more cantons that form an urban concentration of more than 800,000 inhabitants may constitute a metropolitan district and the government will be managed by the Metropolitan Council whose members will be elected by popular vote; e) each autonomous region will have a regional government, presided over by a governor elected by popular vote, and a legislative body composed of representatives from each province and district, also elected by popular vote; f) finally, the Amazon provinces constitute territories of ancestral peoples and shall be special regimes.

Once it became aware of the approved articles, the Provincial Councils represented in CONCOPE announced their disagreement, especially with the proposals for the creation of a legislative and prosecutorial body at the intermediate level of government as well as with the definition of Metropolitan Districts and

¹⁵ , “Profesionales piden que se les reconozca en la Constitución”, El Universo, 17/05/08. Online: <http://www.eluniverso.com/2008/05/17/0001/8/6B6A7D0A72204FC9A823353F5F4D30F2.html>

the decrease in powers. In a public statement on May 29, 2008, CONCOPE maintained that *“These reforms will promote the superposition at the executive level of a plethora of directives, a situation that will lead to un-governability and political, legal and administrative chaos.”*¹⁶

To confront this situation, the directors of the councilors, employees and workers of the organization called a meeting. The document they produced concludes that *“CONCOPE and all of its sectors believe that this decision, in a premeditated and involuntary way, will lead to failures at the intermediate level represented by the Provincial Councils as long as they do not constitute autonomous regions. Moreover, it alters the definition of a Metropolitan District and decreased the scope of powers, which involves a reduction in the sphere of action for sectional governments”*.¹⁷

05/15/08. The Plenary of the Assembly approved a pardon for 193 prisoners on the national level who have exhausted all legal appeals while in terminal condition.

05/20/08. The Assembly approved a 60 day extension to conclude its writing of the new Constitution.

05/20/08. The Plenary approved 7 articles on international treaties and instruments and a pair of articles on international relations.

05/23/08. The Plenary approved an Agreement in support of Assembly member María Augusta Calle.

05/23/08. The Plenary approved Mandate No. 10 on the portability of cellular telephone numbers.

05/28/08. Working Group 10 approved a report for the Plenary to initiate prosecution for the eventual removal of the Superintendent of Companies.

¹⁶ CONCOPE, “Reunión urgente en Montecristi de dirigentes de los gremios: CONSEJOS PROVINCIALES SE DECLARAN EN ALERTA”. Online: <http://www.concope.gov.ec/archivos/BOLETIN%20DE%20PRENSA%20No%2073-2008.pdf>

¹⁷ *Ibidem*.