



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

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Quito, Ecuador

### **Introduction**

This report covers the principal events, debates and decisions of the National Constituent Assembly of Ecuador (CA) between July 14 and 25, 2008. It is divided into two main sections. In the first section we report on the most important debates and resolutions from the Assembly Plenary, including the most recent groups of constitutional articles as well as four laws, one amnesty petition, and various previously pending mandates. The Assembly finished its work with the approval of the new Constitution on July 24 (93/126 votes; available online at <http://www.asambleconstituyente.gov.ec>), at which time it entered into recess until the results from the approval referendum are in, to be held on September 28. In the same section we provide a summary of the transitional regime that will enter into effect if the new Constitution is approved. In the second section, we review the main point of controversy from the last week of Assembly sessions: the debate on the destiny of the judges from the Supreme Court of Justice. In conclusion we offer a chronology of the main events.

This is the last of the bi-weekly reports on the Constituent Assembly's work. Towards the end of August we will publish one final full report where we will synthesize the principal issues and debates of the constituent process, as well as a analysis of the different political and social groups and their attitudes on those issues and the Constitutional text.

### **Correction**

In our previous report, we wrote incorrectly, in the section where we analyzed Mandate 13, that "On July 8, the AGD, via its resolution AGD-UIOGG-2008-12, ordered the seizure of around 190 businesses held by former stockholders and administrators of the bank Filanbanco S.A. (brothers Roberto and William Isaiás, who are currently seeking asylum in the United States)". In reality Robert and William Isaiás did not seek asylum in the United States (although their brother Estéfano Isaiás did); they simply live there.

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

### **1. Debates and Resolutions of the Plenary of the CA**

On July 14 the Plenary approved 33 articles on three issues: eight on forms of economic organization (average of 84/107 votes), seven for the chapter on residents (91 votes average), and 18 on biodiversity and natural resources (97 votes average). Noteworthy among the first articles was the definition of different forms of economic organization of production and its management; the democratization of the factors of production; economic exchange and fair trade; savings and investment.<sup>1</sup>

The articles on biodiversity and natural resources establish that the right to water is a fundamental and inalienable right, and it is a form of national strategic wealth for public use – inalienable, imprescriptible, not subject to seizure and essential for life. They also establish a prohibition on extractive activity for non-renewable resources in protected areas. They declare Ecuador free of genetically modified crops and seeds and prohibit the granting of rights such as intellectual property to any synthetics or by-products developed with collective knowledge associated with the nation's biodiversity. They also state that non-renewable resources and products of the subsoil are inalienable, imprescriptible and not subject to seizure.

On July 16 the Plenary approved the following groups of articles: 72 articles on: the Organization of Public Authorities (Constitutional Court, Public Administration); Institutions of the State, Public Services, the Legislative Branch; the Solicitor General; States of Emergency; The Armed Forces and National Police Force; State Advisory Council; Institutions for Public Protection; National Councils on Equality; and 39 articles for Chapter 4, on the Development Regime.

Out of the first group there are 31 important articles on the Legislative Branch; the articles are divided into three sections: on the National Assembly (AN) (Organization and Operations of the Assembly members), on Political Control and Control over Government Action and on the Formation and Approval of Laws (Legislative Initiatives, Ordinary Proceedings, Special Proceedings, and Constitutional Reform). The Legislative Branch will be headed by the National Assembly and will be made up of Assembly members elected to four year terms. It will include 15 national Assembly members, plus two elected for each province and one more for every 200,000 residents or fraction thereof greater than 150,000. For this calculation the most recent national census will be used. Article 4 establishes the powers and duties of the future Assembly:

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<sup>1</sup> All the approved articles can be consulted in the following online listing:  
[http://asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=5838&Itemid=102](http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=5838&Itemid=102)

Art. (4).-The National Assembly will have the following powers and duties:

1. Swear in the President and Vice President of the Republic when proclaimed elected by the National Electoral Council, on May 24 in their election year;
2. Declare the physical or mental incapacity of the President of the Republic and remove him from the post in accordance with the established provisions in the Constitution;
3. Elect the Vice President from the list of three candidates presented by the President of the Republic in case of a permanent absence;
4. Know the annual reports due from the President of the Republic and proclaim an opinion;
5. Reform the Constitution according to the terms of the Constitution and the law;
6. Issue, codify, reform, and repeal the laws and interpret them in a generally obligatory manner;
7. Create, modify, cede or abolish taxes, rates and other tributary income by law, with the exception of those attributed by the Constitution to the bodies of autonomous decentralized regimes;
8. Approve or reject treaties and other international instruments, in appropriate cases;
9. Exercise oversight of the acts of the Executive, Electoral, and Transparency and Citizen Monitoring Branches and other governing bodies according to the terms established in the Constitution and law, and solicit the reports it considers necessary from public officials;
10. Authorize with a two thirds vote of its members the criminal legal proceedings against the President or Vice President of the Republic when the competent authority requests so with grounds;
11. Swear in the Solicitor General, the General Comptroller, the Attorney General, the Ombudsman, the Public Defender Office, Superintendents, representatives of the National Electoral Council, representatives of the Judiciary Council, and all other officials established by the Constitution and law;
12. Approve the general State budget and oversee its execution;
13. Establish a limit on public debt, in accordance with the law;
14. Grant general amnesties for political crimes and pardons for common crimes, with a favorable vote from two thirds of its members. For granting pardons, the decision will be justified when there are intervening humanitarian reasons. Pardons will not be granted for crimes committed against a public authority or for crimes including genocide, torture, forced disappearances of persons, kidnapping and homicide for political reasons or reasons of conscience.
15. Those remaining stated in the Constitution and law.

The most important articles on the Supremacy of the Constitution and the Constitutional Court are the following:

**Art. 1.-**The Constitution is the supreme law and it prevails over any other Ecuadorian legal system. The regulations and acts of public authority should conform to constitutional provisions, and in cases to the contrary they will lack legal authority. The Constitution, the international treaties and agreements ratified by the State in

protection of human rights, that recognize as most favorable the rights contained in the Constitution, prevail over any other legal regulation or act of public authority.

**Art. 6.** - The Constitutional Court is the principal body for control, constitutional interpretation and the administration of justice on these matters. It exercises national jurisdiction and its seat is in the city of Quito. The decisions related to the attributions established in the Constitution will be adopted by the plenary of the Court.

**Art. 7.** - The Constitutional Court will enjoy administrative and financial autonomy. The law will determine its organization, operations, and procedures for the fulfillment of its powers and duties.

**Art. 9.**-The Constitutional Court will be filled by nine members who will carry out their duties in plenary and in courtrooms in accordance with the law. They will perform their duties for a term of nine years, without immediate reelection and they will be replaced in groups of three every three years.

**Art. 11.**-The selection of the members who will make up the Constitutional Court will be performed by a review committee consisting of delegates designated from each governmental branch: Legislative, Executive, and Transparency and Citizen Monitoring. The member selection process will begin from the list of candidates presented by each of the previously mentioned branches, through a public process of competition that may be contested by citizens. The Court's membership will include equal representation of men and women.

**Art. 13.**-The Constitutional Court will be assigned the following powers and attributes:

1. It is the highest authority for interpreting the Constitution and international treaties and agreements in protection of human rights ratified by the Ecuadorian State, via its rulings. Its rulings and decisions will be binding in nature;
2. Resolve questions of constitutional interpretation. These rulings will be binding and will go into general effect;
3. Know and resolve public actions that are unconstitutional, in form or content, in violation of general legal acts issued by the bodies and authorities of the State's institutions. The declaration of unconstitutionality will have the effect of rendering the challenged legal act invalid;
4. Declare ex officio the unconstitutionality of connected laws, when in the cases submitted for its judgment it concludes that one or more of them is contrary to the Constitution.
5. Know and resolve, by petition from the parties, the unconstitutionality the administrative acts in effect released by any public authority. The declaration of unconstitutionality will have the effect of voiding rendering the administrative act invalid;
6. Know and resolve the Actions of Noncompliance, by petition from the parties, that are brought forth with the purpose of guaranteeing the implementation of laws or general administrative acts, regardless of their nature or rank, as well as the compliance with judgments or rulings from international human rights courts or other bodies that cannot be executed through the ordinary legal channels;
7. Issue rulings that constitute binding jurisprudence for actions of protection, compliance, habeas corpus, habeas data, access to public information and other constitutional processes, as well as the cases selected by the Court for its review;
8. Resolve conflicts over powers and spheres of action between branches of the State or bodies established in the Constitution;

9. Execute immediate control, ex officio, of the constitutionality of declarations of states of emergency, when they entail the suspension of constitutional rights;
10. Know and sanction the noncompliance of its constitutional rulings and judgments;
11. Declare the unconstitutionality of acts committed by the institutions of the State or public authorities which, by omission, fail to observe the mandates contained in constitutional norms, in whole or in part, within the time frame established in the Constitution or in the time deemed reasonable by the Constitutional Court. If the period of noncompliance by omission continues, the Court, may provisionally issue a rule or execute the omitted act, in accordance with the law; and,
12. The other attributes conferred upon it by the Constitution and the law.

Meanwhile, the Assembly also approved 39 articles in Chapter 4 on the Development Regime: “A Life Fit For All,” which includes the following sections: Rights; Building Human Potential and a Decent Life in Peace; a National System for Inclusion and Social Equity; Education; Health; Social Security; Recreation; Habitat and Housing; Culture and Enjoyment of Free Time; Science, Technology and Investigation; Ancestral Knowledge and Wisdom; Risk Management; Population; Human Security; and Transport.

Out of these articles 22 stand out on the National System for Inclusion and Social Equity (99 votes on average). This group of articles establishes the creation of a National System for Inclusion and Social Equity as a grouping of systems and institutions that will ensure the exercise, guarantee, and free use of rights. The System will operate along the guidelines articulated in the National Development Plan. The State will assign permanent resources for the System’s operation.<sup>2</sup> The nucleus of the system will be the creation of a National Education System, which will include all the institutions, policies and actors of the education system and will be articulated with the System of Higher Education. The system will integrate a cultural and multiethnic vision into education that responds to the reality of the geographic, cultural and linguistic diversity of the country. In addition, there will be a public independent institution that will perform evaluations to improve the quality of education.<sup>3</sup>

It also approved two articles that call for the creation of National Councils on Equality, which will be the bodies responsible for ensuring the free exercise of rights, among whose attributes stand out the formulation, universalization, observance, monitoring and evaluation of the public policies related to

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<sup>2</sup> Press Room of José Peralta, “Aprobados 21 artículos y 9 transitorias sobre Sistema Nacional de Inclusión y Equidad Social”, 07/16/08. Online :

[http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=17390&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=17390&Itemid=1)

<sup>3</sup> *Ibid.*

the issues of gender, ethnicity, age, disability and human mobility. The Councils will be made up in equal part by representatives of civil society and the State.<sup>4</sup>

On July 17 the Plenary approved the final 72 articles of the Constitution. The first group of 39 articles refers to: the Rights of Groups for Priority Attention, Collective Rights, Family, Cultural Rights, the Right to a Healthy Environment, Human Mobility, Youth, and Consumers. The other group of 33 articles deals with Ordinary Justice, Notary Services and Constitutional Rights. Out of the first group of articles, the following stand out:

**Rights of Communities, Peoples and Nationalities:**

**Art. 1.-** The indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and communes form a part of the Ecuadorian State, one and indivisible.

**Right to a Healthy Environment:**

**Art. 1. -** Recognizes the right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and quality of life, Sumak Kawsai. Declares as matters of public interest the preservation of the environment, conservation of ecosystems, biodiversity and the integrity of the country's genetic heritage, the prevention of environmental harm, and the recovery of degraded natural spaces.

**Rights of Families:**

**Art. 1. -** Recognizes the family in its diverse forms. The state will protect it as the fundamental core of society and will guarantee conditions that comprehensively favor the achievement of its goals. Families are constituted by legal bonds or by common law and will be based on equality of rights and opportunities for their members.

**Rights of Groups of Priority Attention:**

**Art. 1. -** Persons including older adults, children, adolescents, pregnant women, persons with disabilities, incarcerated persons suffering from catastrophic or highly complex illnesses, will receive priority and specialized attention in public and private spheres. At risk persons and victims of domestic and sexual violence, child abuse, natural or man-made disasters will receive the same treatment. The State will offer special protection to persons who are doubly vulnerable.

The second and final group of approved articles was on Ordinary Justice, Notary Services and Constitutional Rights. The following articles on Justice were noteworthy:

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<sup>4</sup> Press Room of José Peralta, "Aprobados 2 artículos y 1 transitoria sobre los Consejos Nacionales para la Igualdad", 07/16/08. Online : [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=17346&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=17346&Itemid=1)

## Judicial Branch. Chapter 5.

### First Section. Principles and general norms

Art. 1. - The judges will administer justice according to the Constitution, international treaties and instruments on human rights and the law. Judges, judicial servants and other agents of justice will apply the principle of due diligence in the process of the administration of justice. Judges will be responsible for the prejudice they cause to the parties for delay, dismissal or infringement of the law.

### Second Section. Organization and operation

Art. 6. - The Judicial Branch is composed of jurisdictional bodies, administrative bodies, auxiliary bodies, and autonomous bodies. Its function, structure, functions, attributes and powers will be determined by law.

### Third Section. Ordinary Justice.

Art. 8. - The duties of the National Court of Justice, in addition to those determined by law, are the following:

1. - Know appeals for higher courts, review, and others established by law.
2. - Develop a system of jurisprudential precedents based on three repeated judgments.
3. - Know the cases initiated against State officials with privilege.
4. - Introduce draft laws related to the system of the administration of justice.

And the following on Constitutional Rights:

**Art. 1. Classification.** - The rights discussed in this Constitution include the following: legal and jurisdictional rights, rights to public policies, rights to the provision of public goods and services, and citizenship rights.

**Art. 2. Legal Rights.** - The National Assembly and all bodies with legal authority will have the obligation to subordinate laws and other legal rules, in form and content, to the rights set out in this Constitution, Treaties, Declarations and other international instruments of human rights or of peoples and nationalities. In no case will reform of the Constitution, laws, other legal rules or acts of public authority be able to threaten the rights established in this Constitution.

Finally, between July 18 and 19, the Assembly approved several articles and transitory provisions that had been set aside for “reconsideration” during these last sessions. One significant article describes the conditions for the eventual reforms to the new Constitution. The article, which was popularly termed the “constitutional padlock,” states that the addition or modification of one or more articles of the Constitution that do not alter its fundamental structure will be realized through: a referendum solicited by the President of the Republic or by the citizens with support from at least 8% of the citizens in the electoral registry and by a petition before the President of the National Assembly with at least one third of the Assembly members support (Art. 31).<sup>5</sup>

<sup>5</sup> Press Room of José Peralta, “Fue aprobado el ‘candado’ constitucional”, 07/19/08. Online : [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=17858&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=17858&Itemid=1)

On July 19 the Special Editing Commission, in conjunction with the president of the Assembly, Fernando Cordero, held a press conference in which they announced that the final total of articles in the new Constitution will be 444, plus 30 transitory provisions, plus the preamble and a special section on a transitional regime. Around 50 articles were polished up by the Commission to eliminate repetitions.<sup>6</sup>

Meanwhile, on July 21, the Plenary approved (76/78 votes) the Organic Reforms and Interpretation of the law on the Domestic Tax Regime and the Tributary Code, the Reformed Law on Tributary Equity in Ecuador, and the Law on the Electric Sector. According to the report prepared by the president of the Working Group on Legislation and Oversight, María Paula Romo, these legal reform projects have provided “*an adjustment to allow the improvement of the Law on Tributary Equity which was approved in December, 2007.*”<sup>7</sup>

On July 22, with 79 votes, the Plenary approved the Reforms to the Law on Sentence Fulfillment and the Penal Code for the Transformation of the System for Social Rehabilitation, which establish a new membership composition for the National Council on Social Rehabilitation and lays out a merit based system for the reduction of penalties for the inmates in the country’s prisons. The proposal presented by Working Group 10 consists of 6 articles with a final provision. It stipulates that the National Council on Social Rehabilitation will be made up of the following members: the Minister of Justice and Human Rights or his delegate, who will preside and cast the deciding vote; the Minister of Health or his delegate; the Minister of Labor or his delegate; the Minister of Education or his delegate; and the Ombudsman or his delegate.<sup>8</sup>

Also on July 22 the Plenary unanimously approved (74 votes) the Organic Law on the System of Public Contracts. This law’s central objective is increasing transparency in public contracting processes in Ecuador; regulating the procedures for awarding goods and the provision of works and services within the public sector.<sup>9</sup>

On July 22 the Plenary approved (85/89 votes) an amnesty on behalf of approximately 120 persons in the following cases: the individuals involved in the happenings in the Chillanes canton in the Bolívar province; individuals involved in the national mining strike and individuals who were criminalized for defending the right to territoriality, collective rights, peoples and natural resources such as forests, mangrove swamps, and rural possessions against mining and petroleum exploitation that threatened the water supply.<sup>10</sup>

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<sup>6</sup> Political Summary, “El proyecto de nueva Constitución tiene 444 artículos y 30 transitorias”, El Comercio, 07/20/08. Online : [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=133798&anio=2008&mes=7&dia=20](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=133798&anio=2008&mes=7&dia=20)

<sup>7</sup> Press Room of José Peralta, “Se aprobó la Ley Orgánica Reformatoria e Interpretativa a la ley de Equidad Tributaria”, 07/21/08. Online : [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=17994&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=17994&Itemid=1)

<sup>8</sup> Press Room of José Peralta, “Aprobada la Ley Reformatoria al Código de Ejecución de Penas”, 07/22/08. Online : [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=18114&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18114&Itemid=1)

<sup>9</sup> CA, 07/22/08. Online : [http://www.asambleaconstituyente.gov.ec/documentos/informe\\_mayoria\\_contratacion\\_publica.pdf](http://www.asambleaconstituyente.gov.ec/documentos/informe_mayoria_contratacion_publica.pdf)

<sup>10</sup> CA, 07/22/08. Online : [http://www.asambleaconstituyente.gov.ec/documentos/aministia\\_personas\\_chillanes\\_bolivar.pdf](http://www.asambleaconstituyente.gov.ec/documentos/aministia_personas_chillanes_bolivar.pdf)

On July 23, the Plenary approved Mandate 15 on the Electric Sector (85 votes), whose objective was expanding electric service to areas without it, establish a universal tariff rate and forgive debts for 700 thousand persons who will benefit from the dignity tariff.<sup>11</sup>

On July 23 the Plenary also approved Mandate 16, known as the Agricultural Mandate, which provides support and viability to Executive Decree No. 1137. The 18 article document establishes a program design for the Food Sovereignty program, whose goal is increasing productivity and growth and the agricultural sector. This program seeks to lower production costs in the sector and will be financed with public funds from petroleum.<sup>12</sup>

Also on July 23 the Plenary approved Mandate 17 (97 votes; “Ciudad Alfaro” Mandate). The 6 article document proposes that the facilities in Ciudad Alfaro (where the Assembly has operated) be administered by the Ciudad Alfaro Corporation as a nonprofit enterprise to provide the social or public service of promoting educational, cultural and academic sectors in the Manabí Province and throughout the country.<sup>13</sup>

On July 24 the Plenary approved the Preamble of the new Constitution (86 votes):

WE, the sovereign people of Ecuador,  
RECOGNIZING our roots, forged by men and women of different peoples for thousands of years,  
CELEBRATING nature, Pacha Mama, of which we are a part and which is vital for our existence,  
APPEALING to the wisdom of all the cultures that enrich us as a society,  
AS INHERITANTS of the social struggles against all forms of domination and colonialism,  
AND with a deep commitment for the present and future,  
We decide to build  
A new form of citizen coexistence, in diversity and harmony with nature, to achieve a high quality of life, *sumak kawsay*;  
A society that respects the dignity of individuals and peoples, in all its dimensions;  
A democratic country, committed to Latin American integration, peace and solidarity with all the land’s peoples;  
In exercise of our sovereignty, in Ciudad Alfaro, Montecristi, Manabí Province, we present this Constitution of the Republic of Ecuador.

<sup>11</sup> CA, Mandate 15, 07/23/08. Online: [http://www.asambleaconstituyente.gov.ec/documentos/mandato\\_electrico\\_23-07-2008.pdf](http://www.asambleaconstituyente.gov.ec/documentos/mandato_electrico_23-07-2008.pdf)

<sup>12</sup> CA, Mandate 16, 07/23/08. Online: [http://www.asambleaconstituyente.gov.ec/documentos/mandato\\_agrario\\_23-07-2008.pdf](http://www.asambleaconstituyente.gov.ec/documentos/mandato_agrario_23-07-2008.pdf)

<sup>13</sup> CA, Mandate 17, 07/23/08. Online: [http://www.asambleaconstituyente.gov.ec/documentos/mandato\\_ciudad\\_alfaro.pdf](http://www.asambleaconstituyente.gov.ec/documentos/mandato_ciudad_alfaro.pdf)

On July 24 the Plenary approved (81/97 votes) the Extension Agreement for the five year additional term for the Binational Development Plan for the Border Zone, created originally by the General Ecuadorian-Peruvian Agreement for Border Integration, Development and Friendly Neighbors, signed on October 26, 1996.

Also on the 24<sup>th</sup> the Plenary resolved to appoint Attorney Juan David Cevallos of Alianza PAIS as the principal spokesman for the Supreme Electoral Tribunal (TSE), to replace Andrés León Calderón, who had concluded the term of the position established in the Assembly's first Mandate. This appointment came at the request of Ricardo Patiño, Executive Secretary of the Alianza PAIS movement, who argued that Alianza PAIS deserves to fill the head TSE position because it won the most votes in the last elections.<sup>14</sup>

Also on the 24<sup>th</sup> the Assembly appointed Fernando Gutiérrez Vera as the temporary Ombudsman and Fabián Jaramillo Palacios as the temporary Superintendent of Communications. Fernando Gutiérrez Vera's appointment was made by a mandate with 84 votes, and Fabián Jaramillo Palacios was also appointed by a mandate with 70 votes.<sup>15</sup>

On July 24 the Assembly approved a mandate with 82 of 85 votes that simultaneously declared: a) the Assembly will practice the role of the Legislative Branch from July 26 to the proclamation of the official results from the Referendum; b) the Assembly will enter into recess on July 26, 2008. This recess could be temporarily suspended by decision of the Assembly president for extraordinary and well founded reasons. Meanwhile, the Director's Commission of the Constituent Assembly will assume the administration, liquidation and control of all of its resources and contracts, approving whatever reforms are necessary in its proposals.

Also on the 24<sup>th</sup> the Plenary unanimously approved (with 80 votes) a Mandate to cancel the public's liability for deposits and captured funds, with the objective of offering protection to citizens against noncompliance by any natural or legal persons, in public or private law.

Also on the 24<sup>th</sup> the Plenary unanimously approved (82 votes) the Organic Law on Ground Transportation, Transit and Highway Safety. Among other considerations, the Law stipulates that the National Commission on Transport, Transit and Highway Safety is the highest body regulating this sector in the country. With the goal of complying with a more decentralized system, the law states that each province will establish an Advisory Council on Ground Transportation, Transit and Highway Safety, with their own specific attributes, that will follow the basic outline of the National Advisory Council; these Councils will be constituted as bodies who are strictly advisory on the issue of transportation, whose decisions will not be binding.

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<sup>14</sup> Press Room of José Peralta, "Juan David Cevallos, nuevo vocal del Tribunal Supremo Electoral", 07/24/08. Online: [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=18470&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18470&Itemid=1)

<sup>15</sup> Press Room José Peralta. "Nombrados nuevos Defensor del Pueblo y Superintendente de Telecomunicaciones, 07/24/08. Online: [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=18481&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18481&Itemid=1).

Also on the 24th the Plenary unanimously approved (90 votes) a new constitutional text that will go in a subsection of Chapter 4 on the Character of the State, where kichwa and shuar are designated official languages of the State along with Spanish: *“Spanish is the official language of Ecuador; Spanish, kichwa and shuar are official languages of intercultural exchange. The other ancestral languages are for official use by their indigenous communities in the zones in which they reside and the terms established by law. The State will respect and stimulate their conservation and use.”*

Finally, on July 24 the Assembly approved the new Political Constitution of Ecuador with 93 of 130 votes.

On July 25 the closing ceremonies for the CA were held and completed. Speakers included Aminta Buenaño, first vice president of the Assembly, Fernando Cordero, president of the Assembly, and Rafael Correa, President of the Republic, who characterized the new Constitution as the birth of a New Homeland: *“It is a decisive step towards achieving our second independence.”* The president of the Assembly presented the text of the new Constitution to Jorge Acosta, president of the Supreme Electoral Tribunal, to be submitted to referendum on September 28, 2008.

## 2. Definition of the post-Assembly Calendar and Transitional Regime.

On July 15 sources from the Supreme Electoral Tribunal (TSE) announced that the referendum to approve or reject the new Magna Carta the Assembly has drafted will take place on September 28; the official announcement will launch on August 13 and the referendum will happen 45 days later.<sup>16</sup>

Meanwhile, between July 21 and 22, the Plenary debated the proposal for the Transitional Regime for the period between the Constitution’s potential approval in the referendum and the swearing in of the next National Assembly. On July 23, it approved 30 articles on the transitional regime with an average of 80 votes in favor. Below we provide a synthesis of the content of the main articles<sup>17</sup>:

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| <ul style="list-style-type: none"><li>• In the case of a “yes” vote in the referendum, the term of the principal and alternate deputies elected on the 15<sup>th</sup> of October of 2006 will be declared concluded.</li></ul>   |
| <ul style="list-style-type: none"><li>• 5 days after the proclamation of the official results of the plebiscite the Constituent Assembly will meet to establish a Legislation and Oversight Commission <i>“[that] maintains the political proportionality had by the Constituent Assembly Plenary.”</i> This Commission will assume the powers of the national legislative body. It</li></ul> |

<sup>16</sup> EFE, “TSE confirma que el 28 de septiembre se realizará el referéndum”, El Comercio, 15/07/08. Online : [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=133018&anio=2008&mes=7&dia=15](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=133018&anio=2008&mes=7&dia=15)

<sup>17</sup> The complete article on the transitional regime can be found at: [http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=18730&Itemid=133](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18730&Itemid=133)

will also elect the temporary members of the National Electoral Council and the Litigious Electoral Tribunal.
<ul style="list-style-type: none"> <li>This temporary National Electoral Council will call general elections to designate: the President and Vice President of the Republic; 5 Andean Parliament Members; Assembly members: 2 from each province and one for every 200,000 inhabitants or fraction of 150,000 inhabitants; 15 national representatives and 6 for the constituencies in the exterior; prefects and vice prefects; municipal mayors; 5 to 15 councilors; and 5 representatives of rural parochial councils.</li> </ul>
<ul style="list-style-type: none"> <li><b>Transition in the National Court of Justice:</b> 10 days after the proclamation of the official results the 31 current judges will conclude their terms. The National Electoral Council will organize a lottery among those 31 judges to select 21 judges to head the CSJ, until the completion of competition envisioned in the new Constitution for the selection of the 21 full term judges.</li> </ul>
<ul style="list-style-type: none"> <li><b>Transition in the Judiciary Council:</b> in a period no longer than 180 days after the proclamation of the official results of the referendum, this body will be organized according to the terms established in the new Constitution.</li> </ul>
<ul style="list-style-type: none"> <li><b>Transition in the Constitutional Court:</b> with participation from the Legislative, Executive and Citizen Monitoring branches, a selection committee will be organized to select the members of the Constitutional Court. Each branch will propose 9 candidates for consideration.</li> </ul>

## II. Actors, Debates and Points of Tension

### The debate on the destiny of the judges from the Supreme Court of Justice

On July 17 the Plenary failed to approve certain transitory provisions related to the section on Ordinary Justice. The difficulty had to do with the lack of consensus within the PAIS bloc over the destiny of the current judges on the CSJ. Currently the CSJ is made up of 31 judges, but one of the articles approved by the Assembly members proposes that the new Court should only consist of 21 members, which calls into question the future of the judges who are not selected for the new court.

In a first draft of this transitory provision, it proposed the dismissal of 21 of the 31 judges, keeping on the 10 who received the highest scores in the selection process in 2005. This proposal was voted down (on two occasions) by an important group of PAIS Assembly members, as well as by members of the PSP, PSC, PRIAN and RED party blocs.<sup>18</sup>

However, on July 18, overnight, the president of the Assembly, Fernando Cordero, presented the proposal for the articles on the transitional regime in which he included an article (Art. 19) about the judges on the Court with the same idea as the aforementioned proposal. In the opinion of Fernando Burbano (PAÍS), member of the Director's Commission (who joined it as the replacement for Martha

<sup>18</sup> "La transitoria de la Corte divide a A. País", El Comercio, 07/18/08. Online : [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=133398&anio=2008&mes=7&dia=18](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=133398&anio=2008&mes=7&dia=18)

Roldós, of RED), this provision was not denied but rather was merely not approved, which justified its inclusion in the articles on the transitional regime. This opinion was not shared by some other PAIS members, such as Alberto Acosta, who argued that the proposal was definitively denied by the Plenary. Along the same lines, León Roldós (RED) also stated that the inclusion of the article in the transitional regime section showed the Government's desire to control the administration of justice: *"It is an extremely coarse and unethical move to interfere with the justice branch"*.<sup>19</sup>

During the second debate on the transitional regime (July 22) the proposal was modified for a final time; the new provision establishes that after 10 days of the proclamation of the results of the Approval Referendum, the 31 judges will cease performing their duties and the National Electoral Council will organize a public lottery among the 31 judges to select 21 who will take on the duties and responsibilities of the National Court of Justice until the designation of its new leaders, according to the procedures established in the new Constitution. Finally, on July 23 this final proposal was approved.<sup>20</sup>

## Chronology

**07/14/08.** The Plenary approved 33 articles on four issues: eight on forms of economic organization, seven for the chapter on residents, and 18 on biodiversity and natural resources.

**07/16/08.** The Plenary approved the following groups of articles: 72 articles on: the Organization of Public Authorities (Constitutional Court, Public Administration); Institutions of the State, Public Services, the Legislative Branch; the Solicitor General; States of Emergency; The Armed Forces and National Police Force; State Advisory Council; Institutions for Public Protection; National Councils on Equality; and 39 articles for Chapter 4, on the development regime.

**07/17/08.** The Plenary approved a group of 39 articles on the Rights of Groups for Priority Attention, Collective Rights, Family, Cultural Rights, the Right to a Healthy Environment, Human Mobility, Youth, and Consumers, and another group of 33 articles on Ordinary Justice, Notary Services and Constitutional Rights.

**07/19/08.** The Plenary approved the last articles and transitory provisions that had been set aside for "reconsideration" during the final sessions.

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<sup>19</sup> Political Summary, "Los ojos de Acuerdo País siguen en la Corte", El Comercio, 07/19/08. Online : [http://www2.elcomercio.com/solo\\_texto\\_search.asp?id\\_noticia=133578&anio=2008&mes=7&dia=19](http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=133578&anio=2008&mes=7&dia=19)

<sup>20</sup> Press Room of José Peralta, "Concluye segundo debate del Régimen de Transición y mañana se someterá a votación", 07/22/07/08. Online :

[http://www.asambleaconstituyente.gov.ec/index.php?option=com\\_content&task=view&id=18180&Itemid=1](http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18180&Itemid=1)

**07/21/08.** The Plenary approved the Organic Reforms and Interpretation of the law on the Domestic Tax Regime and the Tributary Code, the Reformed Law on Tributary Equity in Ecuador, and the Law on the Electric Sector.

**07/22/08.** The Plenary approved the Reforms to the Law on Sentence Fulfillment and the Penal Code for the Transformation of the System for Social Rehabilitation.

**07/22/08.** The Plenary approved the Organic Law on the System of Public Contracts.

**07/22/08.** The Plenary approved an amnesty on behalf of 120 persons in the following cases: the individuals involved in the happenings in the Chillanes canton in the Bolívar province; individuals involved in the national mining strike and individuals who were criminalized for defending the right to territoriality, collective rights, peoples and natural resources.

**07/23/08.** The Plenary approved Mandate 15 on the Electric Sector.

07/23/08. The Plenary approved Mandate 16, known as the Agricultural Mandate.

07/23/08. The Plenary approved Mandate 17 (“Ciudad Alfaro” Mandate).

07/24/08. The Plenary approved the Preamble for the new Constitution.

07/24/08. The Plenary approved a mandate that declares the CA in a recess as of 07/26/08.

07/24/08. The Plenary approved a mandate to cancel the public’s liability for deposits and captured funds.

07/24/08. The Plenary approved the Organic Law on Ground Transportation, Transit and Highway Safety.

07/24/08. The Assembly approved the new Political Constitution of Ecuador.

07/25/08. The closing ceremonies for the CA were held.