



Report on the National Constituent Assembly of the Republic of Ecuador

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Introduction

This report covers the main decisions, debates and tensions in the Constituent Assembly of Ecuador (CA) between January 4 and 25, 2008.

As was explained in the first report, according to Article 3 of the Assembly's Rules of Operation, the range of the Assembly's decisive acts includes: 1.- the text of the new Constitution, 2.- Constituent Mandates, 3.- Laws, 4.- Resolutions and Directives, y 5.- Agreements or declarations. We can summarize the Assembly's main decisions thus far, following the same order: 1.- The CA has been engaged in an intensive consultation project, receiving the proposals of and engaging in dialogue with different actors to form a base on which to craft the proposal for the Constitution. 2.- It has produced two new Constituent Mandates: Mandate No. 2 on compensation in the public sector and Mandate No. 3 on suspending the election of provincial representatives for the provinces of Santo Domingo de los Tsáchilas and Santa Elena. 3.- The CA is debating two new legislative projects from the Executive: the project on the Law on Ground Transportation, Transit, and Highway Safety and the project on the Organic Law for Recovering the Public Use of the State's Petroleum Resources. 4.- It approved two new rule sets: the Rules for Working Group Operations and the Rules for the Working Group on Legislation and Oversight (Working Group 10), which has special characteristics given that it has replaced the National Congress in these functions. 5.- The CA released a statement on a case of attempted bribery of Assembly members from PAIS as well as on the internal administrative decision to remove Assembly member Álvaro Noboa.

Following the structure of the first report, these decisions and the debates and tensions they have generated are presented in three parts. In the first we summarize the Assembly's internal work (discussion and approval of Mandates, Rules, Laws and Statements). In the second we present an array of issues that shape and reveal the Assembly's relations with civil society and the constituted

powers. In the third, we comment on a few points of tension that characterize the political debate within the CA. Finally, we include a brief timeline of some of the main events affecting the CA.

I. The Assembly's Internal Work

1. The Director's Committee and the approval of the Working Group Rules

The Director's Committee, composed of Alberto Acosta (Patria Altiva y Soberana - PAIS), Fernando Cordero (PAIS), Aminta Buenaño (PAIS), Jorge Escala (Movimiento Popular Democrático - MPD) and Martha Roldós (Red Ética y Democrática - RED), approved two rule sets: a) the Rules for the Operation of the Constituent Working Groups and b) the Rules for the Working Group on Legislation and Oversight.

a) On January 7, 2008, the Director's Committee approved the Rules for the Operation of the Constituent Working Groups. The 31-article document delineates the composition of the Working Groups and establishes parameters for their operation. The most important provisions were that decisions will be taken by absolute majority (Art. 7), they will release reports from the majority and minority with specific alternatives (Art. 8) and they will name sub-working groups within the Working Groups (Art. 9).¹

b) On January 11, 2008 the Director's Committee approved the Rules for the Working Group on Legislation and Oversight

(Working Group 10)². The 24-article rules, which have not been published on the Assembly's website, leave the Director's Committee the power to authorize Working Group 10 to investigate and process oversight appeals for different public officials.³

The powers of the Director's Committee established in the Rules for the Working Group on Legislation and Oversight provoked concern in some members of Working Group 10, who requested a revision. Along these lines León Roldós (RED) said "*it is not possible for a political investigation to depend, in the last instance, only on the five members of the director's committee*"⁴.

2. The Working Group on Legislation and Oversight (Working Group 10)

Working Group 10 started debating two projects it received from the Executive: a) on January 7, 2008 it received the draft Law on Ground Transportation, Transit, and Highway

² Assembly Press Room, "Comisión Directiva entrega Reglamento para la Mesa de Legislación y Fiscalización". Online:

http://asambleaconstituyente.gov.ec/blogs/mesa_10/2008/01/12/comision-directiva-entrega-reglamento-para-mesa-de-legislacion-y-fiscalizacion

³ Wilson Benavides, "5 asambleístas decidirán la fiscalización en Ciudad Alfaro", El Comercio, 12/01/08. Online:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106339&anio=2008&mes=1&dia=12

⁴, "La Mesa de Legislación se muestra inconforme", El Comercio, 15/01/08. Online:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106724&anio=2008&mes=1&dia=15

¹ Constituent Assembly, "Reglamento de Funcionamiento de las Mesas Constituyentes". Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=1912&Itemid=80

Safety,⁵ and, b) on January 11, 2008 it received the project on the Organic Law for Recovering the Public Use of the State's Petroleum Resources⁶.

a) The draft Law on Ground Transportation, Transit, and Highway Safety has two areas of focus: ground transportation, which is currently unregulated, transit and highway safety, with provisions for highway education.⁷ Two main actors have objections on the project: 1.-Driving Schools and Taxi Drivers, whose power will be diminished in the directory of the National Transport Agency (NTA) as well as in the Provincial Transit Committees (they will be part of a Consultative Council with a voice but not a vote)⁸ and; 2.- the Assembly of Municipalities of Ecuador (AME), which questions the transfer of responsibilities to the NTA that currently reside with local governments (Art. 61 of the proposal).

On January 26, 2008 chauffeurs held a demonstration in Montecristi (seat of the Assembly) to demand changes to the

proposed law. A group of the protesters met with Working Group 10 to present them with their observations. At the end of the meeting, the president of the working group, César Rodríguez (PAIS) said the working group would consider changes on the issues of greatest concern to the chauffeurs and transportation workers.⁹

b) On the other hand, on January 16, 2008 the Legislative Committee created four working groups or sub-working groups to analyze certain legal projects or specific topics, including: the proposal for the Organic Law for Recovering the Public Use of the State's Petroleum Resources, which at the publication of this report had not generated any public debates; the proposal for the Transit Law; President Correa's petition for amnesty for certain people detained for their participation in the protests in the Dayuma case (See previous report)¹⁰; and, an investigation into the annulment of radio frequencies for the reporters of Radio Morena, in Manabí and Santa Elena, on

⁵ Online:
http://www.asambleaconstituyente.gov.ec/documentos/ley_organica_transito.pdf

⁶ Presidency of the Republic "Proyecto de Ley para el uso de los recursos petroleros fue a la Asamblea", 12/01/08. Online:
<http://www.presidencia.gov.ec/noticias.asp?noid=12304>.
The project can be found at
http://www.asambleaconstituyente.gov.ec/documentos/proyecto_ley_fondo.pdf

⁷ Ciudadanía Informada, "Ejecutivo envió proyecto de Ley de Tránsito a la Asamblea Nacional Constituyente". Online: <http://www.ciudadaniainformada.com/noticias-ecuador.php?id=8977>

⁸ "Los transportistas y los municipios del país se oponen a varios artículos de la nueva Ley de Tránsito", La Hora, 16/01/08. Online:
<http://www.lahora.com.ec/frontEnd/main.php?idSeccion=669329>

⁹ "Transportistas paralizan Montecristi", La Hora, 26/01/08. Online:
<http://www.lahora.com.ec/frontEnd/main.php?idSeccion=673620>

¹⁰ On the instruction of President Correa in the middle of last December an *Oversight Committee on the Dayuma Case* composed of the Minister of Justice and Human Rights Gustavo Jalkh, the Minister of Education Raúl Vallejo and human rights organizations (INREDH, APDH y SERPAJ) was formed to investigate the conduct of the armed forces during the protests in this region in the Amazon. The final report of the Committee was released on January 10, 2008 and can be found online on the President's webpage:
www.presidencia.gov.ec/descargas/Informe%20Final%20Comisión%20Dayuma.doc. Based on this report the President asked the CA to grant amnesty to a group of detained protesters (see above "Relationship with the Executive").

December 12, 2007 the National Council of Radio and Television (Conartel) terminated the contract for the radio frequencies in those provinces, claiming irregularities in operations.¹¹

3. Work in the Working Groups

Throughout the month of January the Constituent Working Groups analyzed the main problems facing the country in their subject area as a base for planning their work¹² and received hundreds of proposals from diverse social sectors and government bodies. In only the third week of January the CA heard from around six thousand people, and more than 500 organizations, groups and government authorities, according to the Assembly press room.¹³

The ten working groups will record their activities in blogs available from the Assembly home page.¹⁴ However, there is a huge information deficit because the Working Groups are not systematizing all of the proposals received, which makes it difficult on one hand to adequately process them for debates (identifying issues, main actors, points of agreement/disagreement with other

proposals received, necessary points of debate), and, on the other, to have accountability to the citizenry¹⁵.

Another problem worth mentioning is the inadequate physical space where the Working Groups deliberate. The absence of a roof between the cubicles for each working group generates a permanent murmur in the air, making it impossible to hear clearly from one side of the table to the other in one working group¹⁶. As a space privileged for national debate, this shortcoming constitutes a serious problem for the operations of the CA.

4. Two new Mandates: Nos. 2 and 3

The Mandates are orders or “decision-making acts” of the Assembly exercised by its full powers as indicated in article 3 of the Regulations; they are expressed as norms effective immediate.

On January 24, 2008 the Assembly approved Constituent Mandate No. 2, which places caps on salaries, earnings and settlements for public officials. It was approved with an average of 90 out of 130 votes. The votes came from the parties PAIS, MPD, RED and Partido Roldosista Ecuatoriano (PRE). Assembly member Gustavo Darquea of PAIS said the purpose of the Mandate was to “*put an end to the gilded*

¹¹ “Mesa Legislativa analiza retiro de frecuencias”, La Hora, 23/01/08. Online: <http://www.lahora.com.ec/frontEnd/main.php?idSeccion=672353>

¹² See, “Síntesis general de los Informes de las Mesas Constituyentes”. Online: http://www.asambleaconstituyente.gov.ec/documentos/sintesis_de_la_mesas.pdf

¹³ Press Room José Peralta, Bulletin 269, “Asamblea trabaja a fondo y sin descanso”. Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=2787&Itemid=1

¹⁴ <http://www.asambleaconstituyente.gov.ec/>

¹⁵ From conversations with CA officials in a visit to Montecristi on January 18, 2008; the author of this report was informed of this problem and the hopes for its rapid resolution.

¹⁶ Observation of the author, visit to Montecristi, January 18, 2008.

bureaucracy which is nothing more than those overpaid officials and disproportionate salaries that exceed the salary of the President of the Republic.¹⁷ The mandate stipulates the following measures: no public servant can earn more than 25 basic salaries on a monthly basis; that is to say, more than 5,000 dollars, which is the President's current salary (Art. 1), except officials in the foreign service (Art. 3); the mandate's provisions are not open to complaint, contest, legal protection, appeal or challenge or any other type of legal or administrative contest (Art. 9).¹⁸

The discussion of this mandate was marked by conflicting opinions. For Assembly member León Roldós (RED) "*this Mandate is a ticking time bomb, because there are no technical studies into the implications the Assembly's decision will have in practice*".¹⁹

On the same day, the Assembly approved Mandate No. 3, which postponed elections that had been called by the Supreme Electoral Tribunal (TSE) for the provincial representatives from Santa Elena and Santo Domingo de los Tsáchilas given that the Congress was in recess. The mandate

postponed the elections until after the referendum on the new Constitution.²⁰

5. Other relevant decisions

Other decisions made by the Assembly included: a) the removal of Assembly member, former presidential candidate and leader of the Partido Renovación Institucional Acción Nacional (PRIAN) Álvaro Noboa and, b) the petition to the Attorney General to investigate a presumed case of bribery of Assembly members.

a) Álvaro Noboa was removed from his position as an Assembly member for not turning in a sworn statement of earnings as required in the Assembly's Internal Rules (Art. 17).²¹ The decision was finalized on January 24, 2008 when the Assembly validated what is laid out in the Rules by 81 votes. The PRIAN Assembly members walked out of the session. Noboa was replaced by his alternate, Carlos Julio Arosemena.²²

¹⁷ Luis Moncayo, "La Asamblea busca réditos a costa de la 'burocracia dorada'", El Comercio, 23/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107677&anio=2008&mes=1&dia=23. An approximate figure for the number of officials who would be affected by this Mandate is included in the same press statement from the National Federation of Public Servants, which sustains that Ecuador has 467,000 public servants, out of which 12% (56,000) have privileged wages.

¹⁸ Constituent Assembly "Mandato No.2". Online: http://www.asambleaconstituyente.gov.ec/documentos/mandato_numero_dos.pdf

¹⁹ *Ibidem*.

²⁰ Constituent Assembly, "Mandato No. 3". Online: http://www.asambleaconstituyente.gov.ec/documentos/mandato_numero_tres.pdf

²¹ Wilson Benavides, "Noboa, fuera de la Asamblea por no entregar su declaración de bienes", El Comercio, 13/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106474&anio=2008&mes=1&dia=13

²² EFE, "Noboa está fuera de la Asamblea oficialmente", El Comercio, 24/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107890&anio=2008&mes=1&dia=24

b) On January 22, 2008 the Plenary held an extraordinary session with a six point agenda, including the approval of a petition to the Attorney General to initiate an investigation into a presumed case of corruption. The case was related to the attempted bribery of 25 PAIS Assembly members so that they would vote against the President's proposals and the new Constitution. The scandal began on January 22 when a video was broadcast showing Cao Lay Muñoz and Bolívar López Santos meeting with PAIS Assembly member Gabriel Rivera to offer him 3,000 dollars in exchange for convincing 25 of his party members to vote against the government's initiatives. Rivera himself recorded the video with a hidden camera with the Public Minister's authorization and was released by the Minister of Government, Fernando Bustamante; the Anti-corruption secretary, José Luis Cortázar; the Chief of Police, Bolívar Cisneros, and Rivera. The two individuals implicated in the case were arrested the same day. In the video the individuals introduced themselves as intermediaries for Assembly member Julio Logroño of Sociedad Patriótica and former president of Ecuador and leader of the same party Lucio Gutiérrez²³. Former president Gutiérrez and his fellow party members distanced themselves from the case,

²³ "La Asamblea se instaló para tratar supuesto intento de soborno", *El Comercio*, 23/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107778&anio=2008&mes=1&dia=23; Redacción, "Fallida 'compra' de asambleístas, denuncia PAIS", *El Universo*, 23/01/08. Online: <http://www.eluniverso.com/2008/01/23/0001/8/DD134B2FCC404819A9EBF5DF8293ADD6.aspx>

claiming they were "*victims of a perverse plot*"²⁴.

On January 23, 2008 the Assembly adopted a resolution unanimously for the first time. All 128 attendees supported the petition made by the Assembly president the day before for the Attorney General to investigate the alleged case of corruption described above in an urgent manner.²⁵

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

1.- Assembly's Relationship with the Executive Branch

On January 15, 2008 President Correa delivered his first Government Report to the Assembly. In it, he outlined the process of restructuring the state's institutions as well as the outstanding advances and challenges that remain in different areas.²⁶

With respect to the President's address, the media emphasized its conciliatory tone. The newspaper *El Comercio*, for example, observed: "*Correa even apologized to the organism of full powers for the excesses he committed during his term. The Commander in Chief proposed that the country arrive at*

²⁴ Ecuavisa, "El ex presidente Lucio Gutiérrez niega liderar un plan para desestabilizar al actual Gobierno Nacional". Online:

<http://www.ecuavisa.com/Desktop.aspx?id=958&e=1405>

²⁵ Luis Moncayo, "Baja el tono sobre posible soborno", *El Comercio*, 24/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107836&anio=2008&mes=1&dia=24

²⁶ The full version of the address can be found online at: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=2251&Itemid=80

*minimum basic agreements and warned that political struggle does not undermine the foundations of the nation. "No more strikes, no more violence, everything by dialogue, nothing by force".*²⁷ At the same time, the President asked the Assembly to grant amnesty to individuals the Executive considers unfairly imprisoned or persecuted, such as those detained in the case of the former officials from the General Deposits Agency (GDA)²⁸, former president Gustavo Noboa; *"the hundreds of men and women [detained for transporting drugs]"*²⁹ and some individuals detained during the protests in Dayuma the past December.³⁰ The petition was political; it is hoped that in the coming days Correa will present a formal petition where he offers legal and political reasons for the different amnesty and pardon processes.

2.- Assembly's Relationship with the Legislative and Judicial Powers

²⁷ Luis Moncayo, "Correa habla de perdón y diálogo", El Comercio, 16/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106820&anio=2008&mes=1&dia=16

²⁸ The former officials of the GDA (the organism in charge of investigating the use of savings by Ecuadorians, as well as the State's loans to private banks) have been prosecuted by Ecuadorian courts, accused of various crimes. The former officials (Luis Villacís, Carlos Arboleda y Vilma Salgado) maintained their innocence and declared themselves unfairly persecuted by a legal system manipulated by bankers that were affected by the investigations they oversaw.

²⁹ The people used by the drug trafficking industry to transport small quantities of illegal substances are known as "mules."

³⁰ Luis Moncayo, "Correa habla de perdón y diálogo", El Comercio, 01/16/08. Online: [.http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106820&anio=2008&mes=1&dia=16](http://www.elcomercio.com/solo_texto_search.asp?id_noticia=106820&anio=2008&mes=1&dia=16)

There are two outstanding issues: a) a challenge to the constitutionality of Mandate No. 1 by a group of citizens to the Constitutional Tribunal (TC) and the court's decision, and; b) the attempts of a group of Congress members placed in recess by the Assembly to gather the rest of the Congress members to reinstall themselves in power.

a) On January 7, 2008 the TC rejected the claim of unconstitutionality of Mandate 1 supported by almost one thousand citizens. According to the appeal, the Assembly violated explicit portions of the existing Constitution by calling the Congress into recess and removing the Attorney General and the Superintendent of Banks. The TC justified its decision with Art. 2 of Constituent Mandate No. 1, which states that *"No decision of the Constituent Assembly will be subject to the control or impugnation of any of the constituted powers."*³¹. The TC also argued that Article 276 of the current Constitution does not clarify its ability to decide the constitutionality of Constituent Mandates.

b) At the same time, on January 8, 2008, the Congress made its second attempt to call itself back into session after being declared in recess by the Assembly. Only 16 of the 100 members attended.³²

³¹ Constituent Assembly. Constituent Mandate 1. Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=258&Itemid=80

³² "Los diputados otra vez no logran reunirse", El Comercio, 09/01/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=105924&anio=2008&mes=1&dia=9

3. Assembly's Relationship with the municipal powers

The Association of Municipalities of Ecuador (AME) has met with Constituent Working Groups on various occasions to discuss its constitutional proposals. A permanent point of tension with the Assembly is what the AME considers a strategy of centralization of the Executive Branch. On January 25, 2008, the president of the AME and mayor of Babahoyo, Jonny Terán, said that *"the message of the President and his officials is completely clear: decentralization and autonomy, but there are interests in favor of maintaining centralization before decentralization can continue"*.³³

4. Assembly's Relationship with Civil Society

The Assembly has been open to dialogue with all social sectors and to modifying its proposals (especially legislation proposals) based on public consultations and demonstrations.

In just the first few days of 2008, the Assembly vice president Fernando Cordero (PAIS) said the Assembly had received around 340 proposals from the citizens on specific issues.³⁴ For her part, Aminta

Buenaño (PAIS), the second vice president, estimated that the Assembly had received almost 10 Constitutional proposals.

III. Actors, Debates and Points of Tension

The Constituent process has generated several points of tension. Some are clearly linked to the political battle between actors competing for control of the state, other have more to do with disagreements over procedures and the roles of minorities and majorities in the Assembly. Others are essentially disagreements over the projects at stake for the country. Of these issues, in this Report we will focus on those related to the Development Model, petroleum extraction and other resources and their tensions with environmental concerns and indigenous rights.

Working Groups 7 (Development Model) and 5 (Natural Resources and Biodiversity) have addressed the issue of the development model. Part of Working Group 5's general objective is *"...to develop a sustainable, responsible and comprehensive economic model [...] for current and future generations"*³⁵, after identifying as a key national problem the adoption of a *"primarily export-based economy, based on over-exploitation of the environment and the irrational use of resources [...] which intensified inequality, the accumulation of*

³³ "Municipios quieren descentralización", La Hora, 26/01/08. Online: <http://www.lahora.com.ec/frontEnd/main.php?idSeccion=673625>

³⁴ "SP cuestiona metodología del trabajo de las comisiones", El Universo, 5/01/08. Online: <http://www.eluniverso.com/2008/01/05/0001/8/C84C641DEB9945FCBAEF39FFC6A8E794.aspx>

³⁵ Working Group on Natural Resources and Biodiversity. Agenda of Work Working Group 5. http://www.asambleaconstituyente.gov.ec/documentos/cronograma_mesa5.pdf

wealth in few hands, and severe damage to the environment and living spaces on which the majority of the population depends".³⁶

If the National Development Plan for 2007-2010 establishes the promotion of a healthy and sustainable environment among its 12 objectives³⁷, it also includes several possible contradictions that may pose challenges for the Assembly in forming a Model like the one envisioned. For example, in the President's celebratory outline of his first year in office, he listed the construction of hydroelectric and petroleum-related projects as among the country's main challenges. Dam construction along with the diverse problems related to oil and mining exploitation have sparked important social protests over the rights of the environment and the rights of indigenous groups, and these issues are likely to remain among the most conflictive, not just between the Government and the Opposition, but also within the government's supporting forces.

Along these lines, one important event was the January meeting of the Congress of the Confederation of Indigenous Nationalities of Ecuador (Conaie), in which the leadership changed hands and issues such as the defense of natural resources, the defense of indigenous territories and the need for independence from Government decisions were central issues. The organization's new president, Marlon Santi,

said "*We will talk to the base to learn their needs and if necessary we will mobilize to Montecristi to demand that they respect our multinational state and discourage the occupation of our territories. We will be radical in this effort and if we have to clash politically with the government, we'll do it*".³⁸

³⁶ *Ibíd.*

³⁷ National Government of Ecuador. Presentation: Democratic Reform of the State. http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=2251&Itemid=80

³⁸ El Universo, CONAIE quiere independencia frente al Gobierno, 14.01.08, Santo Domingo, <http://www.eluniverso.com/2008/01/14/0001/8/C2A795157B91456BB7436BFDD5ED8B42.aspx>

Chronology

01/07/08. The Executive submits its proposal for the Law on Transit to the Assembly.

01/07/08. The Directors Committee approves the Rules for the operations of the working groups.

01/11/08. The Director's Committee approved the Rules for the operations of the Legislation and Oversight Working Group.

01/11/08 The President submits his draft for the Organic Law for Recovering the Public Use of the State's Petroleum Resources to the Assembly.

01/15/08. President Correa addresses the Assembly with his first government report.

01/19/08. President Correa holds a demonstration in Guayaquil to celebrate his government's first year. The president and vice president of the Assembly attend.

01/21/08. The Working Group on Legislation and Oversight started its review of the proposal for the Law on Recovering the Use of the State's Petroleum Resources.

01/22/08. A video is released showing former president Gutiérrez and an Assembly member from PSP conspiring to buy votes from PAIS Assembly members.

01/24/08. The Assembly approves Mandate 2, which establishes salary and earnings caps for government employees,

and Mandate 3, which postponed the election of representatives for the new provinces of Santa Elena and Santo Domingo.

01/24/08. Demonstration held in Guayaquil by its mayor and Correa opponent Jaime Nebot.