

THE
CARTER CENTER



**Report on the Constituent Assembly
Of the Republic of Ecuador**

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Introduction

In this report, the Carter Center covers the principal events, discussions, decisions and outcomes of the Ecuadorian constituent process; the central aim of this process was the creation of a new draft Constitution by the National Constituent Assembly (CA),¹ which held session between November 2007 and July 2008. This is the final installment of the series of biweekly and bimonthly reports that the Carter Center has published since the beginning of the Assembly's sessions.

As described in the index, this report consists of five major sections. In the first one we explain the organization and operations of the CA (background information, composition, internal rules of operation, decision making bodies), as well as a brief overview of citizen participation in the constituent process. The second section covers the Assembly's most important products (except for constitutional articles, which are analyzed later on): these include 20 Mandates, 6 laws and a series of amnesties and pardons benefitting almost 2000 individuals.

In the third section, we provide an account of the main issues and controversies related to the constituent process, with a special focus on the constitutional articles that stood out as much for their controversial content (involving disagreements between the opposition and the pro-government parties or within the government's own supporting parties) as for their high level of significance for the country. This section includes information tables that display a selection of the articles of paramount importance.

The fourth section of the report focuses on the overall views of the process held by some of the country's major political and social actors at its conclusion. We focused on their evaluation of two major aspects: the Assembly as a constituent process and the Constitution as the Assembly's essential product. The section surveys the opinions and positions of political parties and diverse social groups, including the indigenous movement, labor unions, business organizations, and the Catholic Church (the most influential church in Ecuador). In the fifth section, we introduce the principal elements of the so-called Transitional Regime, as well as the most probable scenarios to unfold if "yes" or "no" wins in the Constitutional Referendum

¹ Also named the National Constituent Assembly (CA), as stated in its convocatory statute. Supreme Electoral Tribunal, Election Statute, Installation and Operations of the Constituent Assembly, Article 10. Online: http://app.tse.gov.ec/ResultadosAsamblea2007/Estatuto_Asam2007.pdf.



scheduled for September 28, 2008. Finally, as annexes, we include a chronology of the most important events in the CA and information tables summarizing the Mandates and laws approved.

I. Organization and operations of the CA

In this section we address five issues: background information on the CA; the process behind its installation and political makeup; the selection of its leaders and the approval of its rules of operation; the installation of the Working Groups, and, finally, a brief description of the role that citizen participation played in the CA and the process of writing the constitutional articles.

1.1 Brief Background on the CA

Once President Rafael Correa assumed office on January 15, 2007, his first act was to call for a popular referendum by decree to decide whether to hold the Assembly (Decree No. 2). On April 15, 2007 the referendum took place with 81.72% voting in favor of the Constituent Assembly.² A few months later, on September 30 2007, the constituents were elected. All in all, Ecuador selected 24 national Assembly members; 100 provincial Assembly member; and six representatives of the migrants living in the exterior (two for Latin America, two for the United States and Canada, and two for Europe). The results of the election were strongly favorable for the President's political movement. The *Patria Altiva y Soberana* (PAIS) coalition won 80 of the 130 seats in the Assembly (73 independently and 7 in alliance with other political movements).

According to Article 10 of its Statute, the Assembly would make decisions by an absolute majority of its members³, granting the government coalition a comfortable advantage. According to Article 23 of the Assembly Statute, as well as Article 69 of the Rules of Operation, once the constitutional text was approved by the CA, the TSE would call for another referendum for the Ecuadorian people to approve or reject the new Constitution, by at least half plus one of all votes.

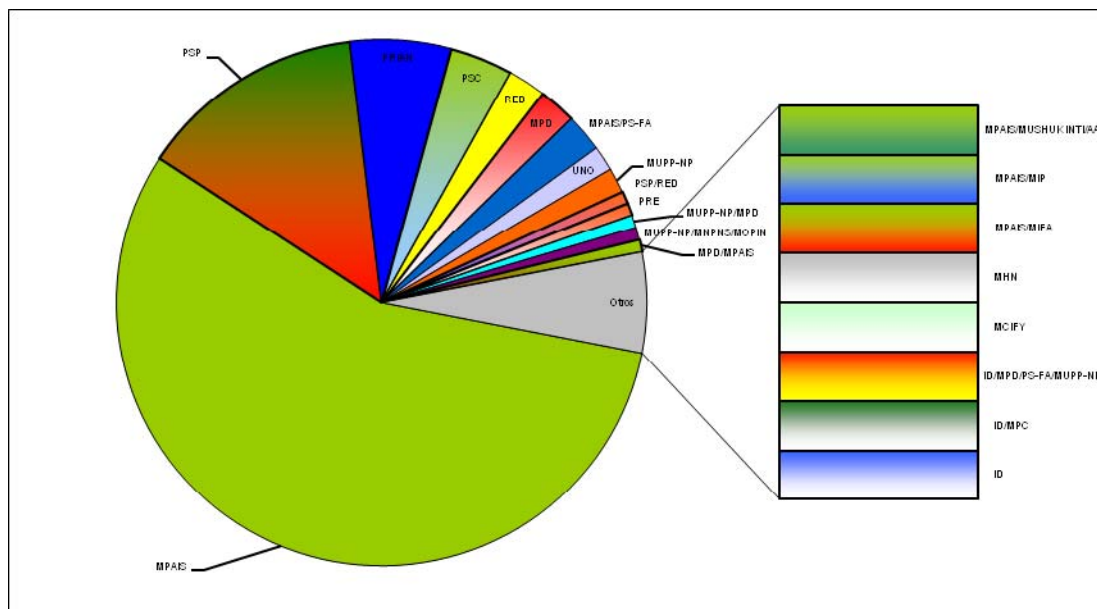
² Supreme Electoral Tribunal. Referendum Results 2007. Online: <http://www.tse.gov.ec/Resultados2007/>.

³ Supreme Electoral Tribunal, Statute on the Election, Installation and Operations of the Constituent Assembly, Article 10. Online: http://app.tse.gov.ec/ResultadosAsamblea2007/Estatuto_Asam2007.pdf



1.2 Installation and composition of the CA

The Assembly was installed on November 29, 2007 in Ciudad Alfaro, Montecristi, Province of Manabí. Alberto Acosta of PAIS, the most highly voted candidate in the national elections, was elected President of the Assembly, with 121 of 130 votes. The other members of the Director's Commission were elected the same day. In addition to Alberto Acosta, who presided over the CA until June 24, 2008 (when he resigned from the post), the Director's Committee was filled by Fernando Cordero (PAIS), first vice president of the Assembly; Aminta Buenaño (PAIS), second vice president; Jorge Escala (MPD) and Martha Roldós (RED) as spokespersons and Francisco Vergara as Secretary General.⁴ The final political composition of the Constituent Assembly can be seen in the following graphics and table:



Abbreviations	Totals
MPAIS	73
PSP	18
PRIAN	8
PSC	5
RED	3

⁴ El Diario, 11/29/07. Online: <http://www.eldiario.com.ec/noticias-manabi-ecuador/61502>.



MPD	3
MPAIS/PS-FA	3
UNO	2
MUPP-NP	2
PSP/RED	1
PRE	1
MUPP-NP/MPD	1
MUPP-NP/MNPNS/MOPIN	1
MPD/MPAIS	1
MPAIS/MUSHUK INTI/AA	1
MPAIS/MIP	1
MPAIS/MIFA	1
MHN	1
MCIFY	1
ID/MPD/PS-FA/MUPP-NP	1
ID/MPC	1
ID	1

1.3 The Director's Committee and the internal rules of operation

During its first week of work the Assembly discussed its extensive Rules of Operation which were approved on December 11, 2007 by 86 of the 130 constituents.⁵ The rules affirm the plenipotentiary character of the Assembly (Art. 1), along with the supremacy of its decisions over those of the other constituted powers (Art. 3). The rules also indicate that the existing legal order will remain in effect, except when the Assembly resolves to the contrary (First Final Disposition). Below is a summary of some of the essential aspects of the Rules, to facilitate understanding of the CA's internal processes:

Decisive acts

The Assembly's decisive acts (Art.3) are:

1. The text of the new Constitution will be submitted to a national referendum.
2. Constituent Mandates will be decisions and rules that exercise its full powers. These mandates will go into immediate effect, without prejudice to its publication in the respective State authority.
3. Laws: regulations approved by the Assembly in exercise of its legislative faculties.
4. Resolutions and Directives, with the purpose of regulating the Assembly's operations.

⁵ National Constituent Assembly. Rules of Operation of the Constituent Assembly. Online: http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=733&Itemid=72



5. Agreements and Statements, which are pronouncements on political, administrative, civic, social or other matters.

Organization

The Assembly is organized into the following bodies (Articles 4 to 15):

- The **Plenary**, which is the maximum body of decision, composed of 130 Assembly constituents. The quorum for opening and operating is one more than half of the members. The Plenary will approve its decisions (except the approval of the constitutional text and laws) in one debate, with an absolute majority vote of its members.
- The **Director's Committee**, which is composed of the president of the Assembly, two vice presidents and two officials. The Director's Committee regulates and executes the administrative, financial and methodological proceedings of the Assembly. The President of the Assembly represents it in all of its decisions.
- The **Constituent Working Groups** organize the work of the constituents on ten selected topics (see the topics of the working groups below). The working groups choose a president and vice president, through a closed list system. The Director's Committee chooses a secretary for each working group who is not an Assembly member. Each Assembly member must join a Constituent Working Group. Each Constituent Working Group will consist of 13 members, with proportional party representation. Assembly members will be able to attend other working group sessions other than their own after receiving prior approval from the working group's presidents; they will have the right to speak but not vote. The working groups take decisions by absolute majority and include among their functions: a) to receive, analyze, systematize and discuss the proposals of their members, other Assembly members or citizens; b) draft and approve a proposal on the issues in its purview to be introduced to the Plenary. The majority report can be accompanied by one or more minority reports that include an articulated alternative proposal; and,



- The **Auxiliary Committees**, which will be created at the proposal of the Assembly or its president to address topics that require special attention.

Once established, the Director's Committee approved the following **internal instruments**:

a) the Rules of Operation for the Constituent Working Groups; b) the Rules for the Legislation and Oversight Working Group; and c) Administrative Instructions for Advisors of Assembly Members.

a) On January 7, 2008 the Commission approved the **Rules of Operation for the Constituent Working Groups**. The 31-article document defines the composition of the working groups and establishes some parameters for their operation. Some of the most significant provisions are that decisions will be made by absolute majority (Art. 7), there will be majority and minority reports with articulated alternatives (Art. 8) and they will name sub-working groups within themselves (Art. 9).⁶

b) On January 11, 2008 the Director's Committee approved the **Rules for the Working Group on Legislation and Oversight (Working Group 10)**. The 24-article rules grant the Director's Committee the power to authorize Working Group 10 to investigate and process oversight investigations for different public officials. Once authorized, this activity can be undertaken by any of the 130 Assembly members, by means of three mechanisms: a request for public information, a request for an appearance by dignitaries and officials, and a political trial. Should the Director's Commission authorize an oversight investigation, Working Group 10 will have ten days to investigate and compile the testimony of the accusers and the accused. It will then have three days to draft a report for the Director's Commission.⁷

c) On February 6, 2008, the Director's Commission approved the **Administrative Instructions for the Advisors of Assembly Members**. Each Assembly member can have a maximum of two advisors/assistants (Art. 1); the work week of the advisors will not fall below forty hours per week (art. 7); the advisors will not be able to hold any other public position (except University

⁶ Constituent Assembly, "Rules of Operation for the Constituent Working Groups". Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=1912&Itemid=80.

⁷ http://www.asambleaconstituyente.gov.ec/documentos/reglamento_mesa_10.pdf.



chair) while working for the Assembly (Art. 11) and they should compile periodic reports on their activities.⁸

1.4 The Constituent Working Groups and the approval process for constitutional articles

The approval procedure for the constitutional text relied upon early discussions of issues in the pertinent Working Groups, after which the group's minority and majority reports were sent to the Plenary. The Plenary would analyze the reports and return them to the working groups with its comments. Afterwards, the Working Groups considered its observations and prepared final versions of the reports or constitutional articles for a final round of debate in the Plenary. As described in the Assembly's Rules, once the president of the Assembly felt an issue had been sufficiently debated, he called for a vote on its content, and, if appropriate, the vote was article by article. For one final round of editing the Director's Commission formed a Special Editing Commission made up of specialists in the field, which submitted a first final draft on July 19, 2008, which received a few comments and additions before finally being voted on on July 24, 2008.⁹

The Constituent Working Groups were established and their respective presidents and vice presidents were named on December 13, 2007.

The 10 working groups were:

- 1) Citizen Rights
- 2) Organization and Citizen Participation
- 3) Institutional Structure of the State
- 4) Territorial Organization and Designation of Powers
- 5) Natural Resources and Biodiversity
- 6) Work and Production
- 7) Development Model
- 8) Justice and the Fight against Corruption

⁸ <http://www.asambleaconstituyente.gov.ec/documentos/instructivo%20asesores.pdf>.

⁹ For a summary of the controversy surrounding the differences between the version presented by the Committee on July 19, 2008 and the version that was ultimately voted on on July 24, 2008, see section "3.7 On the final version of the new constitutional text".



9) Sovereignty and Latin American Integration

10) Legislation and Oversight

The majority block PAIS occupied eight of the 13 available posts on each committee. The other five were shared between the rest of the minority parties. In the composition of the committees gender equality was maintained in naming the presidents and vice presidents: in total, there were ten men and ten women among the leaders.

The work of the Working Groups fell into three major stages: during the first stage they compiled a list of the most pressing problems and issues, the objectives they would attempt to address, as well as an outline of a working agenda. In the second stage, which lasted approximately two and a half months, the Working Groups toured around the country to collect citizen proposals on the issues they would be addressing (see “Citizen Participation”). Finally, the third stage consisted of analyzing the proposals and editing them until they could be translated into constitutional articles.

1.5 Citizen participation in the constituent process

Although citizen participation in the constituent process elicited a range of reactions - from praise to criticism of the lack of organization which inhibited adequate examination of the constituent proposals - the majority of Assembly members stressed the importance of citizen participation in a variety of the Assembly’s spaces (e-mail, letters, visits with the Working Groups, forums, etc) for achieving the final product.

Based on the interviews conducted by the Carter Center, there was a marked contrast between the environment of the 1998 Assembly, which was concluded behind closed doors at a military site, and the current Assembly, which featured both virtual and physical contact between the citizens and the constituent proposals. For example, Assembly member Diego Borja, from Poder Ciudadano, called this a “deep capacity for dialogue with society” in contrast with the 1998 process.¹⁰

In the spirit of including citizens in the constituent process, the Assembly created a “Social Participation Unit” (UPS) in charge of collecting, organizing, categorizing, and properly channeling the thousands of proposals arriving to its seat in Ciudad Alfaro. In its *Activities Report*, UPS said that citizen participation had taken place in four major stages:

¹⁰ Diego Borja, interview with the Carter Center (CC), 08/11/08.



“a. Citizen proposals arrive to Ciudad Alfaro, brought by mobilizations, commissions, web pages, public forums, e-mail, travelling working groups [...]

b. Society makes an impact, when the Constituent Working Groups incorporate their proposals in the debate and article drafting process both in the Groups and the Plenary.

c. Citizen oversight takes place, through the formation of citizen observation and oversight groups, which are present as the articles are edited and approved, to ensure their proposals are considered in the Working Groups and the Plenary.

d. Information is relayed to the citizens, so that they may know and identify the content of the new constitutional text to be considered in the referendum on approval.”¹¹

Both the UPS coordinator and the Assembly members interviewed by the Carter Center agreed that the meetings with the Working Groups in Montecristi, as well as the traveling meetings around the country organized by the Groups, were two of the most important forums for citizen participation.¹² From the end of January until June, the Assembly members received approximately 70,000 visitors in Montecristi who presented their proposals or more specific demands.¹³ UPS, in a document on the categorization of the citizen proposals, reported that it had processed 1632 proposals, which it distributed to the Working Groups in the following way (For the table below, “Propuestas Ciudadanas” = Citizen Proposals; “Mesas” = Working Groups):¹⁴

¹¹ Social Participation Unit of the Constituent Assembly, “Activities Report,” July 2008. Electronic version.

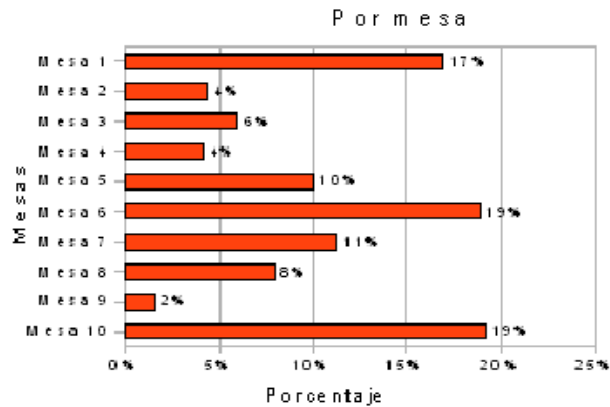
¹² Carmen Barrera, interview with the CC, 07/17/08, Montecristi.

¹³ UPS, “Activities Report”.

¹⁴ National Constituent Assembly, “Systematization of citizen proposals: Evaluation of the information on Citizen Proposals in the database and graph representing the most important ones”, July 2008, p. 11.



Propuestas Ciudadanas



Source: National Constituent Assembly, “Systematization of citizen proposals,” 2008, p. 15.

Some of UPS principal conclusions in the report are included below:

“The issues that attracted the most attention from citizens were dealt with by Working Groups 10 and 6, which each received 19% of all of the proposals. They were followed by the topics of Working Group 1, which received 17% [...]”

It is also important to note that 58% of the proposals came from individuals, with the remaining 42% coming from groups [...]

The presence of topics of local vs. national interest was practically identical, with local topics making up 49.6% while national made up 50.4%”¹⁵

While it is true that citizen participation was one of this process’s most outstanding features, both the Assembly members and UPS also recognized that not all the Working Groups received the same level of interest, which presented a limitation. Furthermore, UPS came up with a methodology for following citizen proposals which the Assembly failed to follow from the beginning; as it states in its report, *“the richness of the participation to flesh out the articles of the new Constitution could have been fully captured from the very beginning of the Assembly, if a working method had been designed (or the proposals offered by UPS had been implemented) for the Constituent Working Groups.”¹⁶* At the same time, a few oversight groups were formed

¹⁵ *Ibid*, p. 11-12.

¹⁶ UPS, “Activities Report.”



and officially recognized, such as a watchdog group for Afro Ecuadorians and other watchdog groups that united various environmentalist, women's, youth, and GLBT organizations.¹⁷

II. The work of the Plenary and its principal decisive acts: Beyond the new constitutional text

In this section, we summarize the Constituent Assembly's key decisive acts that had no direct connection to the constitutional articles.¹⁸ We are referring to the 20 Constituent Mandates, six laws and a group of amnesties and pardons approved by the Assembly throughout the course of its term. The Mandates and amnesties were mostly approved between January and July. However, the debate and approval of the laws was concentrated in the first (December) and last (July) months of the CA's term. At the conclusion of the report we annex several tables that summarize the name, content, and date of approval of each of these decisive acts.

2.1 The Mandates

The Assembly approved 20 Constituent Mandates on a wide variety of subjects; some provided internal definitions to the CA (defining full powers; functions of the CA, etc) and others responded to demands from the Executive or citizens that the Assembly members considered to warrant urgent attention (reversing mining concessions, redistribution of goods held by the Customs Corporation to address the needs of natural disaster victims, naming of new officials, etc). The approval of the Mandates was concentrated in the period leading up to the CA's final weeks of work. *Below, we briefly summarize the content of these Mandates:*

The first decree of the Assembly, issued on November 29, 2007, was ***Constituent Mandate No. 1***. The Mandate's principal points were:

- a) By popular mandate, the Assembly "...assumes and exerts the constituent power with full powers" (Art. 1). Approved with 96/130 votes.

¹⁷ *Ibid.* The organization Participación Ciudadana also exercised oversight of the Constituent Assembly's process.

¹⁸ The articles on the most pressing, controversial issues are covered in the next section: "III. The major issues and controversies of the CA".



- b) Its decisions “are hierarchically superior to any other rule of legal order and demand obligatory compliance by all natural persons and legal and other public powers with no exceptions. No decision of the Constituent Assembly will be subject to the control or impugnation of any of the constituted powers. [...] The judges and courts that take any action against the decisions of the Constituent Assembly will be removed from their positions and subjected to a corresponding trial.” (Art. 2). Approved with 90/130 votes.
- c) Ratifies “and guarantees the rule of law” (Art. 5). Approved with 103/130 votes.
- d) Ratifies “the economist Rafael Correa Delgado as the Constitutional President of the Republic of Ecuador and ... Lenín Moreno Garcés, as Vice President...” (Art. 6). Approved with 107/130 votes.
- e) Assumes “...the functions and duties of the Legislative Branch. Therefore, declares the primary and secondary legislators in recess [...] During this recess the legislators will not enjoy immunity, special privileges nor wages or any other compensation, nor will they be able to convoke themselves for any reason.” (Art. 7). Approved with 110/130 votes, the most of any article.
- f) Declares as “concluded the terms of office for the following officials: Comptroller, Solicitor General, Attorney General, Public Defender, and the Superintendents of Telecommunications, Businesses, Banks and Insurance” and designates provisional replacements for these positions (Art 8.) Approved with 87/130 votes.
- g) Ratifies the “judges of the Supreme Court of Justice and the officials of the National Legal Council, the Constitutional Tribunal and the Supreme Electoral Tribunal” (Art. 9). Approved with 91/130 votes.

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. Assembly member Gustavo Darquea of PAIS said the purpose of the Mandate was to “*put an end to the gilded bureaucracy, those overpaid officials with disproportionate salaries that exceed the salary of the President of the Republic*”.¹⁹ The

¹⁹ Luis Moncayo, “La Asamblea busca réditos a costa de la ‘burocracia dorada’”, El Comercio, 01/23/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=107677&anio=2008&mes=1&dia=23. This article offers a figure on the number of officials whose interests would be effected by this Mandate which is confirmed by the press release from the National Federation of Public Servants, which states that Ecuador has 467,000 public servants, of which 12% (56,000) have much higher than average wages.



mandate stipulates the following measures: no public servant can earn more than 25 basic salaries on a monthly basis; that is to say, no 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).²⁰

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, based on the fact that the Congress was in recess. The mandate postponed the elections until after the referendum on the new constitutional text.²¹

Almost two weeks after Mandate No.2 had been approved, on February 12, 2008, the Assembly approved **Constituent Mandate No. 4** with 78 votes, which placed a limit on payments for damages to officials in the public sector for "untimely dismissals." Mandate No. 4 consists of 3 articles and a final provision. Article 1 states that *"compensation for untimely dismissals, for the personnel employed in the institutions named in article 2 of Mandate No. 2 [...], whether agreed in collective contracts, public records, settlements or any other form of agreement or statement that establishes the payment of compensation, bonuses or separation pay for the termination of individual positions, under the figure of untimely dismissal, may not exceed three hundred (300) of the basic or minimum salary of a private worker."*²²

On March 10 the Assembly approved **Constituent Mandate No. 5** by 87 votes, which orders that all the goods (food, clothing, blankets, mattresses, etc) that have been abandoned or otherwise decommissioned in customs and are in the custody of the Customs Corporation of Ecuador (CAE) should be given free of charge to those victimized by the Tungurahua volcano and recent flooding.²³

On April 18, 2008 the Plenary approved **Mandate No. 6**, better known as the "*Mining Mandate*". This mandate reverts around 3100 mining concessions to the State, equivalent to

²⁰ Constituent Assembly, "Mandate No. 2". Online:
http://www.asambleaconstituyente.gov.ec/documentos/Mandato_numero_dos.pdf.

²¹ Constituent Assembly, "Mandate No. 3". Online:
http://www.asambleaconstituyente.gov.ec/documentos/Mandato_numero_tres.pdf.

²² Constituent Assembly, Mandate No. 4. Online:
http://www.asambleaconstituyente.gov.ec/documentos/Mandato_4.pdf.

²³ Constituent Assembly, "Mandate No. 5". Online:
http://www.asambleaconstituyente.gov.ec/documentos/Mandato_5.pdf.



around 80% of all concessions granted to date. According to one of the arguments articulated in the Mandate, “*the existing legal institutional framework is insufficient and fails to respond to the national interests, which makes it necessary to immediately correct and stop the environmental, social and cultural impacts [of mining] until a new Mining Law can go into effect, with safe and efficient regulations that respond to the development model the country desires*”. According to the Assembly’s statistics, prior to the Mandate, 12% of Ecuadorian territory was distributed in concessions granted to businesses involved in mining exploitation and 3,298 concessions had been distributed covering 2,300,000 hectares of land.²⁴

On April 22 the Assembly designated Diego García as the new interim State Attorney General. Through **Mandate No. 7**, (84/130 votes), the PAIS-nominated Diego García replaced Xavier Garaicoa, who resigned on April 18 after President Correa called for an investigation of alleged cases of corruption in the Attorney General and Comptroller’s offices²⁵

On April 30, 2008, just after the session began, the Assembly approved **Mandate No. 8** with 95 votes in favor, which establishes two basic points: the elimination of labor mediation; and the provision that permits revision of clauses in collective labor contracts, signed by institutions of the public sector and by private legal entities in which the State or its institutions have majority controlling stock interests, that contain disproportionate and exaggerated benefits and privileges that serve against the general interest.²⁶ One of the most controversial points on collective contracts established that they would not protect private workers in director or executive positions, nor public employees who were currently employed in the Civil Service and other low ranking public positions.

On May 13, the Assembly approved **Mandate No. 9** (84 votes in favor), which provides for the capitalization of almost 200 million dollars in electric and telecommunications businesses in the Solidarity Fund through investment plans, of which the Electric Administration Corporation of Guayaquil (Categ) will receive 45 million. The Mandate asserts that “*the highest priority needs in the entire country have the objective of expanding and improving the country’s physical infrastructure or new projects. These resources should not be earmarked for running expenses*

²⁴ El Universo. “Mandato minero fue aprobado por la Asamblea.” 04/18/08. Online: <http://www.eluniverso.com/2008/04/18/0001/9/E9344CD1D630478982A724AC69ED605E.aspx>.

²⁵ Constituent Assembly, “Constituent Mandate No. 7”. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_7_final.pdf.

²⁶ Constituent Assembly, “Mandate No. 8”. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_tercerizacion12.pdf.



for any reason.” Article 2 of the Mandate establishes that the Solidarity Fund, through its enterprises (primarily Transelectric S.A.) will make the necessary investments to execute the plans and programs for the expansion and improvement of physical infrastructure or new projects that depend on the Guayaquil electric system.²⁷

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 companies. 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.²⁸

On June 13, the Plenary designated Pedro Solines Chacón as the interim Superintendent of Companies via **Constituent Mandate No. 11** (73 votes). The Mandate’s single article states that the appointment is of a provisional nature and it may be revoked at any time, and it does not entail any sort of vested rights.²⁹

On July 7 the Plenary approved **Mandate 12** (82/113 votes), which suspended the sectional elections planned for October 19 until after the proclamation of the results from the referendum on the approval of the Constitution.³⁰

Mandate 13, approved on July 9 (87/103 votes), determined that the procedures for seizing assets should be applied to all the banking institutions being audited by the Agency for the Guarantee of Deposits (AGD). This decision arrived shortly after the AGD’s recent seizure of the assets of the former stockholders in the bank Filanbanco S.A., to collect a debt it maintained with the State in the amount of \$661.5 million. The mandate also made the AGD’s recent resolution essentially “ironclad” to prevent appeals for constitutional protection or other special acts: *“and if such action has already been filed, it will be immediately shelved without being able to suspend or avoid compliance with this resolution.”*

²⁷ Press Room of José Peralta, “Cerca de 200 millones de dólares para capitalizar las empresas del Fondo de Solidaridad”, 05/13/08. Online: <http://asambleaconstituyente.gov.ec/boletines/cerca-de-200-millones-de-dolares-para-capitalizar-las-empresas-del-fondo-de-solidaridad.do>.

²⁸ Constituent Assembly, “Mandate No. 10”, 05/23/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_10.pdf.

²⁹ Press Room of José Peralta, “El nuevo superintendente de Compañías es Pedro Solines”, 06/13/08. Online: <http://asambleaconstituyente.gov.ec/boletines/el-nuevo-super-de-companias-es-pedro-solines.do>.
³⁰ CA. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_electoral_12.pdf.



Mandate No. 14 (72 votes) revoked the accreditation of the Universidad Cooperativa de Colombia del Ecuador (UCCE), originally granted by law on August 10, 1998.

On July 23, the Plenary approved **Mandate No. 15** on the Electric Sector (85 votes), whose objectives included expanding electric service to areas without it, establishing a universal tariff rate, and forgiving debts for 700 thousand persons who will benefit from this dignity tariff.³¹

On July 23 the Plenary also approved **Mandate No. 16**, known as the Agricultural Mandate, which provides logistical support to make Executive Decree No. 1137 viable. The 18 article document establishes a program design for the Food Sovereignty program, whose goal is increasing productivity and growth in the agricultural sector. This program seeks to lower production costs in the agricultural sector and will be financed with public funds from petroleum.³²

Also on July 23 the Plenary approved **Mandate No. 17** (97 votes; “Ciudad Alfaró” Mandate). The 6 article document proposes that the facilities in Ciudad Alfaró (where the Assembly has operated) be administered by the Ciudad Alfaró Corporation as a nonprofit enterprise to provide the public service of promoting educational, cultural and academic sectors in the Manabí Province and throughout the country.³³

On July 24th the Assembly appointed Fernando Gutiérrez Vera as the temporary Ombudsman and Fabián Jaramillo Palacios as the temporary Superintendent of Communications through **Mandate No. 18** with 84 votes.³⁴

On July 24th the Plenary also approved **Mandate No. 19** with 82/85 votes, which simultaneously declared: a) that the Assembly will fulfill the role of the Legislative Branch from July 26 to the proclamation of the official results from the Referendum; b) that 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

³¹ CA, Mandate No. 15, 07/23/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_electrico_23-07-2008.pdf.

³² CA, Mandate No. 16, 07/23/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_agrario_23-07-2008.pdf.

³³ CA, Mandate No. 17, 07/23/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_ciudad_alfaro.pdf.

³⁴ CA, Mandate No. 18, 07/24/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/Mandato_defensor_del_pueblo.pdf



of all of its resources and contracts, approving whatever reforms are necessary in its proposals.³⁵

On July 24 the Plenary unanimously approved *Mandate No. 20* which limits the public's liability for captured funds and deposits, in order to protect citizens who are faced with noncompliance by natural or legal persons, whether in public or private law.³⁶

2.2 The Amnesties and Pardons

These resolutions originated after a request presented by the President of the Republic on January 15, 2008, during his address on his first year in office. President Correa asked for a collection of amnesties and pardons both for citizens who were unjustly detained for acts of citizen protest, and for small scale carriers of narcotics (the so called "drug mules").³⁷ After this request, certain human rights organizations and environmental organizations also petitioned the Assembly for a variety of other cases, such as the one touted by the Ecumenical Commission for Human Rights (CEDHU), Ecological Action and INREDH, which sought amnesties for "*the hundreds of social and community leaders who were systematically criminalized for exercising their fundamental right to protest and resist projects that were highly destructive to their environments and violated human rights*".³⁸ Finally, some former officials of the AGD and former Presidents of the Republic accused of a wide variety of offenses also presented amnesty petitions to the Assembly. Not all the petitions were received favorably. Below we offer a summary of the amnesties and pardons granted that benefitted almost 2000 people.

On March 10 the Plenary granted amnesty to former director of the AGD, Alejandra Cantos, and ordered that all the proceedings against her be permanently sealed.³⁹

On March 14 the Assembly also granted amnesty to three large groups of people: the individuals detained in the Dayuma case, with 83 votes; 357 social leaders who were criminally

³⁵ CA, Mandate No. 19, 07/24/08. Online:

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

³⁶ CA, Mandate No. 20, 07/24/08. Online:

http://www.asambleaconstituyente.gov.ec/documentos/cancelacion_pasivospdf

³⁷ According to the current Constitution "*general amnesties may be granted for political crimes, and pardons may be granted for common crimes*" (Art. 130) and it is expressly prohibited to grant a "*pardon for crimes committed against the public authorities*" (Art. 130, num. 15).

³⁸ INREDH. Online: <http://www.inredh.org/noticias/noticias.php?modulo=noticiasleermas&idioma=es&id=152>.

³⁹ Constituent Assembly. Online:

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



processed for protesting in defense of their communities and their environment, with 92 votes⁴⁰ ; and five former contract employees of the Postal Service of Ecuador who were accused of crimes in their fight against outsourcing and labor mediation.⁴¹

On May 15 the Plenary approved pardons with 84 votes for 193 persons detained at the national level who had exhausted all legal options but whose health was in terminal condition.⁴²

On June 13, with 98 votes the Plenary approved amnesty for 62 members of the Taura command groups who participated in events leading to the uprising against the government of Febres Cordero on January 16, 1987.⁴³

On July 4, with 76/84 votes, the Plenary approved a pardon in favor of around 1200 people who had been detained as carriers for drug traffickers; the pardon was supported in a report presented by the Working Group on Legislation and Oversight, which argued that the sanction imposed on the crime of carrying small amounts of narcotics was disproportionately harsh.⁴⁴

On the same day, the Plenary approved amnesty for former President of the Republic, Gustavo Noboa (67/96 votes).⁴⁵ However, within the government party PAIS there was disagreement on the issue. For example, the minister of Policy Coordination, Ricardo Patiño, and former Assembly president, Alberto Acosta, spoke out against the amnesty. Prior to voting against the amnesty resolution in the PAIS meeting, Acosta recalled that during Noboa's term as

⁴⁰ The cases for which the social leaders had been criminally processed were the following: a) Eight mining intervention projects: the Intag/Ascendant Copper Corporation case, the Yantzaza/Aurelian case, the El Panguí/Corriente Resources (ECSA) case, the Poblador/Minero Industrial case, the Limón Indanza/Sipetrol case, the Echandía and Las Naves/Curimining or Salazar S.A. cases (occurring between 2007 – 2008), the Victoria del Portete/IAMGOLD case and the Molleturo/EcuadorGold case; b) Three for intervention in petroleum projects: the Payamino/Perezco case, the Pindo/Petroriental case and the Técnico petrolero/Compañía Petrobrás case; c) Two for hydroelectric interventions: the San Pablo de Amalí/Hidrotambo case and the Pangua/la Maná case; d) Three for defending communal land, collective rights and public spaces: the Salango/hotel developer case, the Las Acacias/Municipio de Quito case and the Centro Comunitario/Lorenzo Voltoline case in the canton of Latacunga; e) Two cases of defending water and environmental quality: the Tumbaco/EMAAP–Q case and the El Rosal/ADELCA case; and f) A case of forestry exploitation: the Predio Pambilar/ENDESA-BOTROSA case. Online: <http://asambleaconstituyente.gov.ec/boletines/acosta-se-ha-hecho-justicia-con-los-perseguidos-politicos-por-defender-la-naturaleza.do>.

⁴¹ Press Room of José Peralta, Constituent Assembly, "84 votos se pronunciaron a favor del proyecto de resolución presentado por la Mesa 10", 03/14/08. Online: <http://asambleaconstituyente.gov.ec/boletines/amnistia-en-caso-dayuma.do>.

⁴² El Universo, "Asamblea aprobó indulto para reos con enfermedades terminales," 05/15/08.

Online: <http://www.eluniverso.com/2008/05/15/0001/8/79325A7BBED545E69B1477B016BC5BAA.html>.

⁴³ Press Room of José Peralta, Constituent Assembly, Bulletin 1224, *Los comandos de Taura reciben amnistía de la Constituyente*, 06/13/08. Online: <http://asambleaconstituyente.gov.ec/boletines/los-comandos-de-taura-reciben-la-amnistia-de-la-constituyente.do>.

⁴⁴ CA. Online: http://www.asambleaconstituyente.gov.ec/documentos/indulto_transporte_drogas.pdf.

45 CA.. Online: http://www.asambleaconstituyente.gov.ec/documentos/amnistia_gustavo_noboa.pdf



Vice President of the Republic – while Jamil Mahuad served as President – 161 million dollars were illegitimately transferred to the country’s external debt creditors.⁴⁶ Along the same lines, the Assembly also granted amnesty to the former director of the AGD, Wilma Salgado (81/95 votes), due to its characterization of the charges and judicial processes brought against her as political in nature and without legal merit. Salgado’s amnesty permanently closed the files on all the criminal judicial processes that were initiated against her for her performance as director of the AGD.⁴⁷

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.⁴⁸

2.3 The Laws

In addition to Mandates, amnesties, pardons and constitutional articles, the CA approved six laws. These laws were all introduced by the Executive, which considered them urgent matters; this claim provoked criticism from the opposition parties in the Assembly, who argued that the Statute approved in the popular consult did not grant the Assembly the authority to pass laws, but rather only granted them the authority to work on a draft of a new Constitution. One certainty is that, beyond these criticisms, the process of approving these laws followed a path that featured wide debate. The Working Group on Legislation and Oversight was the first stop for draft law proposals. This Group would release minority and majority reports on each draft law, which included the observations of social sectors that would be affected by the proposal. Once the reports were released, they were introduced in the Plenary for discussion and eventual approval. The majority of laws approved were concentrated in the Assembly’s last working week. Below we briefly summarize the most important debates and provisions of each one.

⁴⁶ Political Summary, “La Asamblea dio la amnistía a Gustavo Noboa y a W. Salgado”, El Comercio, 05/07/08.

Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=131569&anio=2008&mes=7&dia=5

⁴⁷ CA, 07/22/08. Online: http://www.asambleaconstituyente.gov.ec/documentos/resolucion_final_wilma_salgado.pdf

⁴⁸ CA, 07/22/08. Online:

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



The draft *Law on Tax Equity* submitted by the Executive stirred intense debate between the different party blocks in the Assembly, as well as civil society groups.⁴⁹ The minority reports criticized the short time frame permitted for discussion as well as the lack of citizen review that a referendum would have allowed. At the same time, they also questioned the law's centralization and accumulation of power in the hands of the Ministry of Economy.⁵⁰ After analyzing the range of opinions on the proposal,⁵¹ the Legislation Working Group released its final majority report, which modified some aspects of the Executive's original proposal. On December 28, 2007, a majority of 90 Assembly members (of PAIS, MPD, Pachakutik, Movimiento Honradez Nacional and Poder Ciudadano-Izquierda Democrática) approved the Law on Tax Equity. 23 members voted against it (from PSC, PSP and PRIAN); there were 6 abstentions and 11 absentees⁵²

The Law finally approved contains the following stipulations: a) it creates new taxes (Tax on Foreign Exchange and Rural Properties) and modifies the rules for paying income tax, value added taxes (IVA), and special consumption taxes (ICE) b) increases the penalties for failing to comply with tax obligations by passive inaction, c) the Internal Revenue Service (SRI) will have more tools to control the tax collection process, d) taxes on inheritances, gifts and donations will take on progressive increments up to 35%.⁵³

On January 26, 2008 the Executive presented the Assembly with a draft *Organic Law for the Recuperation of the State's Petroleum Resources*. After reviewing a preliminary majority report, two preliminary minority reports and multiple proposals from Assembly members and social sectors, the final report was approved by 9 of 13 Assembly members in Working Group 10 on February 19, 2008. Unlike the preliminary majority report, the final draft made several major changes to the government's original proposal.

On April 2, the Plenary of the Assembly approved the "*Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming*

⁴⁹ The most vocal objections came from the business chambers of Guayaquil, the mayor of that city (Jaime Nebot), as well as the Assembly party representatives of PRIAN and PSC.

⁵⁰ CA. Online: <http://asambleaconstituyente.gov.ec/documentos-oficiales/informe-de-minoria-sobre-la-ley-de-equidad-tributaria-abg.-leon-roldos.do>.

⁵¹ El Universo. Online:

<http://www.eluniverso.com/2007/12/27/0001/8/3D861E515CFE466BAAEB5667E6E4738A.aspx>

⁵² CA. Online: http://asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=1578&Itemid=76.

⁵³ "Impuestos. "Las claves de la nueva Reforma Tributaria", El Comercio, 01/09/08, p. 1-16 and, "José Peralta", Constituent Assembly, 12/29/07. Online: <http://asambleaconstituyente.gov.ec/ley-para-la-equidad-tributaria.do>.



*Processes*⁵⁴ with 89 votes in favor (from PAIS, Pachakutik, MPD, and ID). This law, which offers the “*power of timely and technical use of petroleum resources that allow an increase in the flexibility of fiscal policy and consequently all economic policy in the country*”, brought on the incorporation of economic resources that represent close to 5 billion dollars in the budget of the central government.⁵⁵

The most vocal critic of this law was Assembly member León Roldós (RED), who objected to the notion of all the petroleum remittances being treated as capital income, as this would cause the municipal budgets to fall short by some \$150 million dollars. The same would occur with the amount assigned to education, which would be reduced by \$300 million.⁵⁶

On January 7, 2008, the Executive sent the Assembly a draft *Law on Ground Transportation, Transit and Highway Safety*.⁵⁷ As indicated by its name, the project seeks to regulate two different major spheres: ground transportation, on one hand, and transit and highway safety on the other. With respect to the first sphere, the project excludes chauffeurs, taxi drivers and driving schools from the directorate of the National Agency of Transit, Ground Transportation and Highway Safety (ANT. Art. 61); instead, they will become part of a Consultative Council that will give non-binding, informative advice to the directorate of the ANT. With respect to the second area, the law aspires to prevent transit accidents, modify the current sanctions system, and increase the safety of citizens in light of the risks posed by transit.

As soon as the Executive’s proposal was made public, a variety of social actors reacted with strong objections. To respond to these objections, the Legislation and Oversight Working Group held forums to hear comments on the project from the concerned parties. After a series of debates, the Working Group accepted the inclusion of some proposals from the Municipality Association of Ecuador (AME) and the transportation worker unions.

However, in light of the lack of consensus between the different actors involved, the project was left for the Assembly’s final week of work for further discussion and debate. It was not until July 24, 2008 that the Plenary unanimously approved the law (82 votes). Among other

⁵⁴ CA, *Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes*. Online:

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

⁵⁵ María Paula Romo, cited in the Press Room of José Peralta, “¡Se acabó el festín de los fondos petroleros!”, 04/02/08. Online: <http://asambleaconstituyente.gov.ec/boletines/se-acabo-el-festin-de-los-fondos-petroleros.do>.

⁵⁶ Summary, “Aprobado el libre uso de fondos petroleros”, *El Universo*, 04/03/08. Online:

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

⁵⁷ Online: http://www.asambleaconstituyente.gov.ec/documentos/ley_organica_transito.pdf



provisions, it establishes that the National Commission on Transportation, Transit and Highway Safety is the highest regulatory authority for this sector in the country. In order to make sure the system is adequately decentralized, it requires each province to form an Advisory Council on Ground Transportation, Transit and Highway Safety, whose functions will be based on the example of the National Advisory Council; these Councils will serve as exclusively advisory organisms who will consult on transit issues, but their decisions will be completely non binding.

Like the aforementioned law, the rest of the laws were approved in the Assembly's last week of work. For example, on July 21, 2008, the Plenary approved (76/78 votes) the *Organic Reforms and Interpretation of the law on the Domestic Tax Regime and the Tax Code, the Reformed Law on Tax 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 Tax Equity which was approved in December, 2007."⁵⁸

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 establishes a new membership composition for the National Council on Social Rehabilitation and lays out a merit based system for the reduction of penalties for 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/her delegate, who will preside and cast the deciding vote; the Minister of Health or his/her delegate; the Minister of Labor or his/her delegate; the Minister of Education or his/her delegate; and the Ombudsman or his/her delegate.⁵⁹

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 and regulating the procedures for awarding goods and the provision of works and services within the public sector.⁶⁰

⁵⁸ 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

⁵⁹ 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

⁶⁰ CA, 07/22/08. Online : http://www.asambleaconstituyente.gov.ec/documentos/informe_mayoria_contratacion_publica.pdf



III. The major issues and controversies of the CA

In this section we address the main issues and controversies over the constituent process and the articles of the new draft Constitution, both within the Assembly and in general public opinion. In the first subsection we discuss the controversies over the constituent process itself; in the second section we lay out the arguments presented by some of the most important political and social actors on the most important issues of the Constitution writing process. In some cases the controversies were over issues that divided the government and opposition parties; however, sometimes the divisions occurred within the parties who supported the government. In the final section we include tables that summarize the key information from the most relevant articles in each of the areas selected.

3.1 On the constituent process

Full powers vs. limited powers

From the Assembly's very first day (November 29, 2007), the minority parties PRIAN, PSC, PSP and UNO rejected the text of Constituent Mandate No.1 by arguing that the statute approved in the referendum did not permit the Assembly to close Congress or remove other officials before the second referendum. Along the same lines, some opposition Congress members placed in recess by the Mandate (from parties like Izquierda Democrática, Partido Roldosista Ecuatoriano and PSP), along with Assembly members from the same parties expressed their disapproval of the Mandate arguing that the Assembly had overstepped its bounds.⁶¹ These same actors also objected to various provisions of the Rules of Operation because they believed the Rules put minority parties at risk of not being heard in the Assembly.

⁶¹ El Universo. Online: <http://www.eluniverso.com/2007/12/01/0001/8/0662D1B5405140798101EFB8C9723545.aspx>



This debate remained active throughout the constituent process, rearing its head again with the approval of each new controversial law or Mandate.

Debate on the CA's time frames

The Assembly spent the better part of its first months of work dedicated to hearing citizen proposals and debating laws, Mandates and amnesties, which caused the originally planned calendar for approving the constitutional articles to be significantly delayed. Initially, this incited protest from opposition party members, who argued that the Assembly had fallen off the track the citizens had laid out for it in its mandate in concentrating more on drafting laws and other decisions than on producing a new constitutional text.

Later on in the process, the debate over time frames occurred primarily within the pro-government party alliance, but in a different sense: the debate was over the political electoral considerations and the need for the alliance to meet its own deadlines in order to have the best prospects for actually winning the approval referendum on the Constitution.

In this context, until mid-June, Alberto Acosta – then president of the Assembly – tried in vain to convince the other members of the PAIS party and alliance that it was necessary to extend the Assembly's term by a few extra weeks beyond its foreseen conclusion on July 25, 2008. However, his attempts ultimately failed. On June 24, Acosta announced his resignation of the Presidency of the CA amid public controversy, including President Correa's disappointed remarks about his former ally. Acosta explained that the main reason behind his departure was the aforementioned failed proposal for prolonging the Assembly's term beyond July 26, the date established in the text of the referendum approved on April 15, 2007: *"I don't believe that debate, deliberation, and taking ownership and identifying with the process, clarity and quality of texts, should be sacrificed for the pace of the times. We have not been distracted from our work - that is proven by what we've accomplished already. I take responsibility for the mistakes made, which can easily be made when you take a more inclusive and democratic path. This statement and personal position, of not sacrificing debate for the pace of the times, is not shared throughout this body, nor by the majority of the leadership of Acuerdo PAIS, the movement to which I belong and to which I reaffirm my membership and support. Therefore, given my de facto loss of their support, they have asked me to step down to make way for another person who will*



follow a different path and pressure for the approval of a text by the final date of July 26. I respect their position.”⁶²

This explanation of his reasons for resignation was confirmed a few days later by President Correa himself, who stated during his radio address on June 26 that Acosta’s resignation “*hit him very hard,*” but it “*was inevitable given the necessity of meeting the timetable established for completing the new Constitution.*”⁶³

Beyond the different appraisals of Acosta’s resignation, the one certainty is that the new President of the CA, Fernando Cordero (PAIS), did not have the same level of consensus among the diverse political groups represented in the Assembly. The loudest critics of Cordero’s selection and the accelerated rate of projects being approved by the Plenary were Assembly members of the opposition, for whom the new situation limited their ability to participate and debate. However, off the record, Assembly members from the government alliance also expressed discontent over the rushed pace of the Assembly’s final stage.

3.2 On the Constituent Elements of the State (Title I) and Rights (Title II)

Defining the nature of the State: the debate on multi-ethnicity

One of the most significant discussions within the CA centered on the demand made by the National Indigenous Confederation of Ecuador (CONAIE) for the Assembly to confirm the multi-ethnic character of the Ecuadorian state in its new Magna Carta.

Among the major proponents of the multi-ethnic state there were several indigenous Assembly members from PAIS, as well as those affiliated with CONAIE; Mónica Chuji (PAIS), who was president of Working Group 5 in the Assembly, explained that a multi-ethnic state does not imply the dissolution of the Ecuadorian state, but it does imply “*a new form of the social contract that respects and honors the rights of the peoples and indigenous nationalities with the legal structure current policies, recognizing them in their status as political subjects with full rights*”.⁶⁴

⁶² Alberto Acosta, “Renuncio a la Presidencia de la Asamblea, y sigo en la lucha!!!”, 06/24/08. Online: http://asambleaconstituyente.gov.ec/blogs/alberto_acosta/2008/06/24/carta-de-renuncia-de-alberto-acosta-a-la-presidencia-de-la-anc/.

⁶³ EFE, “La Renuncia de Alberto Acosta me golpeó mucho: Rafael Correa”, El Comercio, 06/28/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=130534&anio=2008&mes=6&dia=28

⁶⁴ Mónica Chuji. “El reto a reconocernos como diferentes: Estado y Democracia Plurinacional”, 02/11/08. Online:



Although in the early stages of the Assembly the government emphasized its recognition of multi-culturalism, as the process moved forward it altered its original position in favor of an approach that was closer to the multi-ethnic concept. The greatest moment of clarity on the subject came during President Correa's radio address on April 19, when he assured the citizens 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 multi-culturalism, 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"*.⁶⁵ Below we include the text of the first article of the draft Constitution, which does recognize the multi-ethnic nature of the Ecuadorian state:

Art. 1. - Ecuador is a constitutional State governed by laws and justice; it is democratic, sovereign, independent, unified, multi cultural, multi ethnic and secular. It will be organized as a republic with a decentralized style of government.

The rights of nature and the right to water

Practically all of the Assembly members interviewed by the Carter Center (as much from PAIS as other minority parties) agreed that the right to water and the rights of the environment were central elements of the new draft Constitution. Both rights would grant a pioneering spirit to the new document compared with other constitutional examples. The main difference between the proposed Constitution and the current one is that the current model does not place clear limits on a development model that is based on unregulated exploitation of the environment. In contrast, the draft of the new Constitution innovates by treating nature as a subject in possession of rights. As a result, all the development projects underway that have significant impact on ecosystems will have to fall into line with the new principle. Meanwhile, the conception of the right to water has advanced with its reimagining as a fundamental and inalienable human right, in comparison with other conceptions that plead for limiting access. Below we offer a sampling of the articles that regulate the aforementioned rights:

http://asambleaconstituyente.gov.ec/blogs/monica_chuji/2008/02/11/el-reto-a-reconocernos-como-diferentes-estado-y-democracia-plurinacional/

⁶⁵ Political Summary, "La nueva estructura que tendrá el Gobierno, definida", El Comercio, 04/20/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=120287&anio=2008&mes=4&dia=20.



Art. 12. - The human right to water is a fundamental and inalienable right. It is a form of national strategic wealth for public use – inalienable, imprescriptible, not subject to seizure and essential for life.

Art. 71.- The natural environment or Pachamama, where life reproduces and takes place, has a right to exist, maintain itself, and regenerate its own vital cycles, structure, functions and evolutionary processes. Any individual, people, community or nationality may demand the observance of the rights of the natural environment before public authorities. To apply and interpret these rights, the principles established in the Constitution (in the proceeding clauses) will be observed.

The State will provide incentives for natural and legal persons and collective groups to protect the environment and will promote respect for all of the elements that form an ecosystem.

Art. 73. - The State will apply precautionary and restrictive measures to activities that could lead to the extinction of a species, the destruction of ecosystems, or permanent alteration of natural cycles.

It prohibits the introduction of organic and inorganic organisms and materials that could definitively alter the national genetic heritage.

Art. 74. - All persons, communities, peoples and nationalities will enjoy the right to derive benefit from the environment and the natural riches that foster a high quality of life.

Environmental services will not be subject to appropriation; their production, provision, use and enjoyment will be regulated by the State.

Rights of communities, peoples, and nationalities on natural resources

In addition to multi-ethnicity, another demand from indigenous peoples was the inclusion of the right of peoples to decide on the use of natural resources located in their territory. This demand came into conflict with the government's position, which asserted that communities had the right to be consulted on such matters, but without the guarantee that the use of those resources required the community's "*express consent*."

In this controversial context, a bloc of Pachakutik Assembly members and a sector of PAIS diverged from the President's official position. Similarly, on May 13 CONAIE released a statement against President Correa's position on prior consent. In the document's fourth point, the organization of indigenous nationalities resolved "*to express to the government and Constituent Assembly that the demand for FREE AND INFORMED PRIOR CONSENT with the binding right to veto that has been proposed by the indigenous movement and other social sectors and that makes up a part of the conquests of indigenous peoples at the international*



Ultimately, the principle of “*free and informed prior consultation*”, which would be non-binding, was enshrined in numeral 7 of Article 57 of the draft Constitution, as will be shown below. However, it is worth mentioning that article 57 also establishes that the collective rights of communities, peoples and nationalities would be protected by the Constitution as well as in pacts, agreements, declarations and other international instruments. We mention this because Article 32 of the United Nations Declaration on the rights of indigenous peoples from September 13 2007 guarantees the right of indigenous peoples to “*free and informed consent prior to approving any project that would affect their land or territory and other resources, particularly in relation to development and the use or exploitation of mineral, water or other types of resources.*”⁶⁷ Article 57 of the Constitutional proposal could therefore serve as a resource for peoples and communities to actually demand protection of this “consent” right. Below we include some of the final articles on the issue.

Art. 10. - Persons, communities, peoples, nationalities, and collectives are entitled to and will enjoy the rights guaranteed in the Constitution and in international instruments.

Art. 56.- 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.

Art. 57. - Recognizes and guarantees for communes, communities, indigenous peoples and nationalities their rights in the Constitution and in pacts, agreements, declarations and other international instruments of human rights, including the following collective rights: [21 numerals follow]

[...] 7. Free and informed prior consultation, within a reasonable time frame, on plans and programs for prospecting, exploitation and commercialization of non renewable resources found on their lands and that may affect them, environmentally or culturally; participation in the benefits yielded by these projects and receipt of payment for the social, cultural and environmental damages they are caused. The competent authorities should carry out the obligatory prior consultation in a timely fashion. If the consent of the

⁶⁶ CONAIE, “Boletín Informativo. Resoluciones de la Asamblea Extraordinaria de las Nacionalidades y Pueblos Indígenas del Ecuador”, 05/13/08. Online: <http://www.conaie.org>

⁶⁷The United Nations, “Declaration of the United Nations on the rights of indigenous peoples,” Resolution 217 A(III). Online: <http://www.un.org/esa/socdev/unpfii/es/drip.html>.



consulted community is not obtained, the process will proceed in accordance with the Constitution and the law.

Art. 60. - The ancestral, indigenous, afro-Ecuadorian and Montubio peoples may constitute territorial districts for the preservation of their culture. The law will regulate their formation.

Recognizes that these communities have a form of collective property of their land, as an ancestral form of territorial organization.

On the legalization of same sex unions and abortion

One of the greatest controversies in the CA occurred within the PAIS bloc and also pulled in some organizations from civil society, as well as the Catholic Church. This controversy was based around the possible inclusion of two issues in the new Constitution: the role of the State in protecting life “*from conception*” or the possibility of decriminalizing abortion; and, finally, the issue of unions between couples of the same sex. The reactions of some sectors of civil society to the official PAIS positions (of recognizing life from conception but not homosexual unions) were immediate. For example, the specialist in health policy for the National Women’s Council (Conamu) Cecilia Tamayo commented that the PAIS initiative does not represent any advance for the rights of women, given that it merely confirms what was approved in the 1998 Constitution. Tamayo also warned that the explicit recognition of life after conception puts abortion as a treatment option at risk of being outlawed. Meanwhile, Abel Anzoátegui, one of the leaders of the movement for the recognition of homosexual rights asserts that the position of the PAIS Assembly members demonstrates the power of religion to limit those rights in Ecuador. He clarified that homosexuals are not asking for “marriages,” just legal recognition of existing unions. Finally, the coordinator of the Permanent Forum of Ecuadorian Women, Liliana Durán, judged the PAIS position to be “biased and moralistic”, given that it does not view life in its whole context.⁶⁸

Ultimately, in the articles approved the State recognizes and guarantees the protection of life from conception, which does not explicitly prohibit nor legalize abortion and leaves the debate open for legislative consideration. Meanwhile, the articles also provide recognition of the family

⁶⁸ Summary, “Las organizaciones de mujeres rechazaron la posición de A. País”. El Comercio, 04/02/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=117736&anio=2008&mes=4&dia=2.



in its diverse forms, but maintain the institution of marriage as something exclusive to unions between a man and a woman. The articles related to these issues are the following:

Art. 45. - Children and adolescents will enjoy the rights common to human beings, in addition to those specific to their age. The State will recognize and guarantee life, including care and protection from conception.

Art. 66. - Recognizes and guarantees for all persons:

1. The right to the protection of life. The death penalty is prohibited [...]

Art. 67. - 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.

Marriage is the union between a man and a woman; it is based on the free consent of the contracting persons and on the equality of their rights, obligations and legal status.

3.3 On Participation and Distribution of Power (Title IV)

The major modification to the 1998 Constitution is the organization of the State in five different Branches. In addition to the pre-existing Executive, Legislative and Judicial Branches, now an Electoral Branch and a Transparency and Citizen Monitoring Branch are included. Below we briefly summarize the principal characteristics of each of the mentioned branches:

Legislative Branch

The most significant aspect of the Legislative Branch is the following: it will be headed by the National Assembly⁶⁹ and will be composed 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. Various Assembly members interviewed by the Carter Center agreed that the future Assembly will have certain powers that the current Congress did not, such as the power to approve the national general budget, as well as to oversee and investigate the actions of the Executive, Electoral, and

⁶⁹ The new name for the current Congress.



Transparency and Citizen Monitoring Branches as well as other public authorities. Below we include the articles that describe the functions and duties of the National Assembly:

Art. 120. - The National Assembly will have the following functions 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 respond to them;
5. Participate in the process of constitutional reform;
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, which will include limits to public debt, and oversee its execution;
13. 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.

Judicial Branch

Meanwhile, the most controversial issues related to the Judicial Branch centered on the composition of the Supreme Court of Justice (CSJ) and the transformation process for the National Court of Justice (CNJ). Within the PAIS party bloc there was a lack of consensus over



the fate of the judges from the CSJ. Currently the CSJ is made up of 31 judges, but one of the articles approved by the Assembly members stated that the new Court should only consist of 21 members, which called into question the future of the judges who are not selected for the new court. A first draft of this temporary provision proposed the dismissal of 21 of the 31 judges, keeping on only 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.⁷⁰

During the second debate on the Transitional Regime (on 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. For its part, the Judiciary Council, in a period no longer than 180 days, will be organized and have its members appointed by the procedures established in the Constitution.⁷¹ Below, we present some of the articles on the Judicial Branch:

⁷⁰ Summary, "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.

⁷¹ Press Room of José Peralta, "Concluye segundo debate del Régimen de Transición y mañana se someterá a votación", 07/22/08. Online: http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18180&Itemid=1.



Art. 178. - The jurisdictional organs, without prejudice to the other organs with equally recognized powers in the Constitution, are those in charge of administering justice, and they will be the following:

1. The National Court of Justice.
2. The provincial courts of justice.
3. The tribunals and judges established by law.
4. Justices of the peace.

Art. 182.-The National Court of Justice will be composed of twenty one judges, who will have specialized sub court dockets and will be appointed to nine year terms; they may not be reelected and they will be replaced in groups of three every three years. They will end in their positions in accordance with the law.

The judges of the National Court of Justice will elect a President from among their members who will represent the Judicial Branch and will serve for three years. In each court level a president will be elected for a period of one year.

There will be alternates who will constitute part of the Judicial Branch, who will be selected according to the same processes and will have the same responsibilities and will be bound by the same regime on conflicts of interests as the principals.

Art. 184. - 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.

Electoral Branch

The most significant aspect of the recently created Electoral Branch is the separation of the body in charge of organizing electoral processes and the body in charge of evaluating the validity of those processes. The first duties (organization and execution) will be managed by the National Electoral Council; however, the Litigious Electoral Tribunal will serve as the jurisdictional authority on these matters. The majority of our interviewees noted the attempt to reduce partisanship in both bodies, which are currently appointed by the Council on Citizen Participation and Government Monitoring. Below we include the text of the basic articles on the Electoral Branch.



Art. 217. - 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 their 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

Art. 218. – The National Electoral Council 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 a member of the National Electoral Council one must possess Ecuadorian citizenship and political rights.

Art. 220. - The Litigious Electoral Tribunal 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. [...]

Art. 224. - The members of the National Electoral Council and the Litigious Electoral Tribunal will be appointed by the Council on Citizen Participation and Government Monitoring, after 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.

Transparency and Citizen Monitoring Branch

Finally we have the Transparency and Citizen Monitoring Branch (also commonly referred to as the “citizen power” branch). This is also a novel addition to the Constitution of 1998. The



new branch will be headed by the Council for Citizen Participation and Government Monitoring, the Ombudsman, the General Comptroller and the superintendencies. Each of these entities will constitute a legal person and will have administrative, financial, budgetary and organizational independence. The major criticism of this branch by the opposition was expressed in terms of doubt over whether or not the political parties in power in the Executive would interfere with the selection process. For example, Assembly member Pablo Lucio Paredes (Futuro Ya) asserted that the mechanisms were not clearly defined enough for the formation of the Council for Citizen Participation and Government Monitoring.⁷² What follows is a collection of the principal articles on the Branch for Transparency and Citizen Monitoring:

Art. 204. - The people are the first authority and entity to exercise oversight over the State, in exercise of its right to participation [...]

The Transparency and Citizen Monitoring Branch will be made up of the Council for Citizen Participation and Government Monitoring, the Ombudsman, the General Comptroller and the superintendencies. These entities will constitute legal persons and will have administrative, financial, budgetary and organizational autonomy.

Art. 205. - The representatives of the entities making up the Transparency and Citizen Monitoring Branch will serve five year terms, will fall under the jurisdiction of the National Court and will be subject to political trials in the National Assembly. In case of such a trial, and a subsequent removal, a new appointment process will take place. In no case may the Legislative Branch appoint the replacement.

Art. 206. - The heads of the entities in the Transparency and Citizen Monitoring Branch will form a body for coordination and they will elect from the members a President of the Branch every year. The functions and duties of the coordinating authority will be as follows, in addition to those established by law:

1. Create public policies for transparency, control, accountability, promotion of citizen participation, and prevention of corruption.
2. Coordinate a plan of action for the Branch's various entities, without affecting their autonomy.
3. Articulate a national plan for the fight against corruption.
4. Present proposals for legal reform in its subject area to the National Assembly.
5. Make an annual report to the National Assembly on the activities related to the fulfillment of its duties, or as necessary.

Art. 207. - The Council On Citizen Participation And Government Monitoring will promote and incentivize the exercise of citizen participation rights, will promote and establish mechanisms for government

⁷² Pablo Lucio Paredes, interview with the CC. 08/08/08. Quito.



monitoring on issues of public interest, and will designate the corresponding authorities in accordance with the Constitution and the law. [...]

Candidates will be selected from the nominees proposed by social organizations and citizens. The selection process will be organized by the National Electoral Council, which will oversee a public competition based on opposition and merits, based on openness to citizen review and objection, in accordance with the law.

3.4 On The Territorial Organization Of The State (Title V)

One of the most intensely controversial issues in the constituent process was the political-administrative re-organization of the Ecuadorian territory. The principal actors in this controversy were the Secretary of Planning and Development (Senplades); Working Group 4 (Territorial Organization and Designation of Powers); the Consortium of Provincial Councils of Ecuador (CONCOPE); the Association of Municipalities of Ecuador (AME) and the mayor of Guayaquil, Jaime Nebot.

The point of departure for the controversy is the recognition that in their present state, the various levels of government (central, provincial, municipal) are characterized by disorder in the designation of their powers.⁷³ Given this reality, the actors involved have offered different proposals. At first, Senplades proposed the creation of seven regions as administrative entities, in addition to the possibility of the Provinces converting into governments, implying the popular election of governors and the creation of legislative organs at the regional level. The first proposal of Senplades generated unrest in the organization that groups together the provincial prefects (CONCOPE). Under pressure from that organization, Senplades called for the creation of an Inter-institutional Commission on the Reform of the State, composed of itself, CONCOPE, AME and the National Council of Parochial Cabinets of Ecuador (Conajupare). After various meetings with this Commission, Senplades modified its original position and reformulated its proposal. Senplades proposed that the decentralization and regionalization projects should be long term, staged achievements. As part of this negotiating process between the different actors, on April 22, 2008, the Executive, CONCOPE, and CONJAPURE signed a “*National Agreement for the Comprehensive Reform of the State, Decentralization and the Autonomies*”.

⁷³ Working Group 4. “*Una conversación sobre descentralización*”, 02/28/08. Online: http://asambleaconstituyente.gov.ec/blogs/mesa_4/2008/02/28/una-conversacion-sobre-descentralizacion/



For its part, Working Group 4 offered three major ideas on the decentralization issue: a) strengthening of the municipalities as basic cells of sectional organization; b) formation of Commonwealths of municipalities; and c) constitutionalizing the sectional autonomous governments.⁷⁴

Ultimately, the Working Group approved a group of articles that included proposals from the aforementioned actors both on regionalization and the distribution of power. The articles state that the decentralized autonomous governments will enjoy political, administrative and financial autonomy and will be governed by the principles of solidarity, interterritorial equity, and comprehensive participation. They also outlined the different levels of territorial organization and their corresponding governing authorities. The primary levels include regions, provinces, cantons and rural parishes.⁷⁵ Their governing bodies will be the following, respectively: Regional Councils, Provincial Councils, Municipal Councils, and Parochial Tribunals. The highest authorities of the different levels of government (regional governor, provincial prefect, mayor, parochial representative) will be elected by popular vote (Art. 251-Art. 255). Additionally, a National System of Competencies will be created, which will define the policies and mechanisms for resolving territorial imbalances. At the same time, they guarantee that district, regional, metropolitan, provincial and cantonal governments will have legislative powers in their realm of authority. Below are the articles approved on the issues of regionalization and autonomous governments:

⁷⁴ Press Room of José Peralta. "El miércoles de la próxima semana se realizará el primer debate sobre textos constitucionales." Bulletin 531. 02/29/08. Online.
<http://asambleaconstituyente.gov.ec/boletines/el-miercoles-de-la-proxima-semana-se-realizara-el-primer-debate-sobre-textos-constitucionales.do>.

⁷⁵ In addition to those previously mentioned, there were other special forms of territorial organization, such as autonomous metropolitan districts, the Galápagos province and the indigenous territorial districts and multi cultural territories.



Art. 238. - The autonomous decentralized governments will enjoy political, administrative and financial autonomy, and will be governed by the principles of solidarity, subordination, interterritorial equity, and comprehensive citizen participation. In no case will the exercise of autonomy permit secession from the national territory.

The following constitute decentralized autonomous governments: rural parochial councils, municipal councils, metropolitan councils, provincial councils and regional councils.

Art. 239. - The regime of decentralized autonomous governments will be based on the corresponding law, which will establish a national system of competencies of an obligatory and progressive nature and will define the policies and mechanisms for resolving territorial imbalances in the development process.

Art. 242. - The State will be territorially organized into regions, provinces, cantons and rural parishes. For reasons of environmental conservation, ethnicities and cultures or population, special regimes may be established.

The autonomous metropolitan districts, the Galápagos Province, and indigenous territorial districts and multi-cultural territories constitute special regimes.

Art. 244.- Two or more provinces with territorial continuity, and regional service greater than 20,000 square kilometers, and a combined population greater than 5% of the national population, may form autonomous regions in accordance with the law. They will achieve interregional equilibrium, historical and cultural affinity, ecological complementarity, and integrated watershed management. The law will create economic and other incentives for provinces to form regions.

Art. 251. - Each autonomous region will use popular vote to elect its regional council and regional governor, who will have the deciding vote and preside over the region. The regional councilors will be proportionally elected for the urban and rural populations for four year terms, and from them a vice governor will be selected.

Each regional government will establish the citizen participation mechanisms foreseen by the Constitution in its statute.

Art. 257. - In the framework of political administrative organization, indigenous or afro-Ecuadorian territorial districts may be formed, which will carry out the functions of the corresponding territorial autonomous government, and will be governed by the principles of multi-culturalism, multi-ethnicity and respect for collective rights.

The parishes, cantons or provinces formed primarily of indigenous, afro-Ecuadorian, montubio or ancestral communities, peoples or nationalities may adopt this special administration regime, after a consult approved by at least two thirds of valid votes. Two or more districts being administered by



indigenous territorial governments may combine to form a new district. The law will establish the rules for formation, operation, and functions of these districts.

3.5 On the Development Regime (Title VI)

Without a doubt, the issue that stirred the most debate in the realm of development planning was related to the rights to land and property – in particular a proposal by Working Group 6 (*Work, Production, Equality and Social Inclusion*) that floated the concept of “*expropriating unproductive private property to serve the collective social interest and well being.*” For the president of this Working Group, Pedro de la Cruz (PAIS), the purpose of this provision was to guarantee the health of the population and include marginalized rural sectors by providing them “*democratic access to the resources for production*”.⁷⁶

However, for some opposition Assembly members, the proposal carried the hidden intention of threatening the status of private land and property. For example, in his minority report, Francisco Cisneros (PSP) argued that it is impossible to regulate land tenancy with a constitutional principle.⁷⁷

However, Irina Cabezas, vice president of Group 6, argued that the figure of expropriation will only be used when it is necessary for the construction of a highway, school or public work for the community; moreover, these expropriations could only be carried out after a prior study evaluating the merits and necessity of the project.⁷⁸

To reassure the groups with the greatest worries over these measures, on June 10 Assembly member Gustavo Darquea (PAÍS) maintained that this provision would not violate the right to private property: “*We want this to be a country of property owners and producers and not of a small group of property owners*”⁷⁹.

In the final version approved by the Assembly, the State guarantees land property in all of its forms, as long as it fulfills its social and environmental functions. For some opposition Assembly members, the phrase “as long as it fulfills its social function” is too ambiguous.

⁷⁶ Political summary, “La soberanía alimentaria: atada a la eliminación del latifundio”, El Comercio, 06/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=126846&anio=2008&mes=6&dia=4

⁷⁷ *Ibid.*

⁷⁸ Business Summary, “El debate sobre la propiedad se queda en la tenencia de la tierra”, El Comercio, 05/31/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=126367&anio=2008&mes=5&dia=31.

⁷⁹ Guayaquil summary, “Las tierras improductivas deben tener apoyo de créditos y riego”, El Comercio, 06/10/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=127794&anio=2008&mes=6&dia=10



Some of the strongest opponents of this restriction were Galo Lara (PSP) and Vicente Taiano (PRIAN). However, María Paula Romo (PAIS) insisted that the articles “*recognize and guarantee the right to private property. They meet the requirements of many sectors and they are included in all of Ecuador’s past constitutions and in those of other countries*”.⁸⁰

The approved articles read as follows:

Art. 282. - The State will regulate the use and access of land, which should be fulfilling its social and environmental functions. A national land fund, established by law, will regulate equal access to land for rural citizens.

Large estates and the concentration of land ownership are prohibited, as are hoarding and the privatization of water and its sources.

The State will regulate the use and management of irrigation water for the production of sustenance, based on the principles of equity, efficiency, and environmental sustainability.

Art. 321. - The State recognizes and guarantees the right to property in its diverse forms: public, private, community, state, associative, cooperative, mixed. It should always fulfill its social and environmental functions.

Art. 323. - To enact plans for social development, sustainable management of the environment, and collective well being, the institutions of the State, for public use or the national and social interest, may expropriate property, given prior and fair valuation and compensation in accordance with the law.

All forms of confiscation are prohibited.

Art. 324. - The state will guarantee the equality of rights and opportunities for men and women in access to property and in the decision-making for the administration of married society.

⁸⁰ Political Summary, “El texto sobre propiedad tiene reparos en el Pleno”, El Comercio, 06/22/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=129555&anio=2008&mes=6&dia=22



Meanwhile, another relevant group of articles related to biodiversity and natural resources establishes a prohibition on extractive activity for non-renewable resources in protected areas, and declares Ecuador free of genetically modified crops and seeds and prohibits the granting of rights such as intellectual property to any synthetics or by-products developed with collective knowledge associated with the nation's biodiversity. The articles also state that non-renewable resources and products of the subsoil are inalienable, imprescriptible and not subject to seizure. These are the articles that deal with this section of the development regime:

Art. 407. - Extractive activity of non renewable resources is prohibited in protected areas and declared untouchable zones, including forestry exploitation. As an exception these resources may be exploited after a well founded petition by the Presidency of the Republic and a prior declaration of the national interest by the National Assembly, which, if deemed appropriate, will call for a popular consult.

Art. 408. - Non-renewable natural resources and, in general, products of the subsoil, mineral deposits and hydrocarbons, substances whose nature is distinct from the soil, including those found in areas covered by the waters of the territorial sea and maritime zones, as well as biodiversity, genetic heritage and the radio electric spectrum, are the inalienable, imprescriptible, and not subject to seizure property of the State. These resources may only be exploited in strict compliance with the environmental principles established in the Constitution.

The state will receive benefit from the enjoyment of these resources, in an amount no less than that received by the company's extracting them.

3.6 On the Constitutional Court (Title IX)

Another controversy stemmed from the idea of creating a Constitutional Court (which does not currently exist). The main objections from the opposition centered on the excessive concentration of power in the future Court, as well as the participation of the Executive in the selection process for its members. Among the most vocal opponents to the final text of the articles on the Court was León Roldós (RED), for whom the Court had become *"a judging superpower; and moreover, the principle organ of justice in Ecuador will be designated by the Executive"*.⁸¹ However, the PAIS Assembly members had a slightly different take on the articles: for them, article 434 guarantees that the naming of members to the Court will be based on the

⁸¹ León Roldós, interview with the CC, 07/17/08. Montecristi.



decision of a commission representing three of the five branches of government: Legislative, Executive, and Transparency and Citizen Monitoring. In summary, the Court was defined as the highest authority for control and interpretation of the Constitution; it will have nine members who will serve nine year terms. Below we include the articles on the Constitutional Court.

Art. 429. - 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 functions and duties established in the Constitution will be adopted by the plenary of the Court.

Art. 432. - 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. 434. - 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.

The procedures, time frames, and other elements of the selection and evaluation process will be determined by law.

3.7 On the final version of the new draft Constitution

This controversy was based on the fact that in order to meet the deadlines established in the Assembly statute, the constituents had to work especially rapidly during the final weeks of the process; particularly during the final days, when more than half of the Constitutional articles were voted on in the Plenary. On July 19 the Special Editing Commission⁸² presented the Assembly members with a revised version of the constitutional text. This version underwent several different modifications between the 19th and the 24th, when the new constitutional draft was voted on as a whole by the Plenary. The lag occurred because there were still a few sections

⁸² The Special Editing Commission named by the Director's Commission was charged with revising and polishing the legal language of the articles approved by the Plenary. The original nominees were: Consuelo Yáñez (professor at the Real Academia de la Lengua), Teresa Viteri (professor at Catedrática de Lingüística), Tarquino Orellana (constitutional scholar); Ramiro Ávila (constitutional scholar) and Fausto Aguirre (constitutional scholar). However, a few days later both Consuelo Yáñez and Fausto Aguirre declined their nominations. María Augusta Vintimilla Carrasco and Xavier Andrés Flores Aguirre participated in their place.



being reconsidered, including the Preamble and the text of the Transitional Regime. This decision to push the short time frame to its limit was validated by the Plenary on July 17 when it voted to authorize the Director's Commission to call for votes on the Preamble and the Transitional Regime in the next five days. One result of these last-minute procedural changes was that the version presented on July 19 and the version voted on on July 24 did not completely match. The Assembly's secretary of the press, Orlando Pérez, clarified that the report containing the definitive final changes was delivered to the assembly members on July 23, a day before the final vote.⁸³

According to the analysis of the Konrad Adenauer Foundation,⁸⁴ while both versions contained 444 articles, there were 27 changes from the constitutional articles of the 19th to those of the 24th. However, one of the analysts indicated that there was no manipulative intent behind the changes; in other words, they found changes to a variety of issues that were not significant enough to strengthen or weaken any particular branch or power.⁸⁵

The objections to these changes in the text came as loudly from within PAIS as from its opponents. This was the case for former president of the Assembly Alberto Acosta, who stated in various articles and interviews that "*any confusion over the text should revert to what was approved by the Plenary of the Assembly, regardless of any position of the Special Editing Commission*".⁸⁶ For Acosta, perhaps the most significant change had to do with Article 13 on food sovereignty. In the first version presented by the Special Editing Commission it stated that "*The State will guarantee the right to food sovereignty*"; in the text submitted for approval in the referendum, however, it read as follows: "*The State will promote the right of food sovereignty*".⁸⁷ Similarly, in an interview with the Carter Center, the PAIS Assembly member said he lamented the fast pace for making the changes due to the impending deadline; however, according to Acosta, the differences do not significantly alter the substance of the text and they are not

⁸³ Political Summary, "Varios extranjeros pulieron el texto", El Comercio, 08/05/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=136277&anio=2008&mes=8&dia=5.

⁸⁴ Analysis conducted by Sebastián Toral and Juan Rivadeneira.

⁸⁵ Political Summary, "27 cambios, de los cuales 13 son de fondo, hay en las dos versiones del proyecto", El Comercio, 08/04/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=136095&anio=2008&mes=8&dia=4.

⁸⁶ Ecuatoradio, "Si cambios en texto de proyecto de Constitución causan confusión no se deben tomar en cuenta": Acosta", in El Comercio, 08/01/08. Online:

http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=135714&anio=2008&mes=8&dia=1.

⁸⁷ Alberto Acosta, interview with the CC, 08/04/08, Quito.



grounds for throwing out the whole constitutional proposal, as some opposition parties are suggesting.⁸⁸

Meanwhile, Assembly member León Roldós (RED) filed a complaint with the Attorney General on the grounds that the text sent to the TSE was fraudulent because it did not represent what had been voted on in the plenary sessions. In his opinion the most serious changes can be found in the articles on jurisdictional rights, secularism in education, international instruments, foreign jurisdiction, food sovereignty, the radio electric spectrum, and government publicity.⁸⁹ On September 5 Roldós testified to the electoral observation mission from the OAS on the supposed modifications to the text of the draft Constitution. Roldós also produced a video covering the final seven minutes of the last Assembly session, in which, according to Roldós, the constitutional text was changed.

⁸⁸ *Ibid.*

⁸⁹ Political Summary, “Denuncia detalla siete cambios en textos del proyecto de Constitución”, in *El Universo*, 08/31/08. Online:
http://www.eluniverso.com/2008/08/31/0001/servicios/todos_los_titulares.html.



IV. Evaluations and positions of the main social and political forces on the CA and the new constitutional text

In this section we provide an overview of the opinions expressed by the principal social and political actors in the country. Based on articles in the press, interviews, and official releases, we describe their overall evaluation both of the constituent process itself and the new Constitution, as well as their positions on the referendum set for September 28, 2008. At the conclusion of this section we include a table displaying the main political actors and their positions on the referendum.

4.1 Evaluation of political parties and Assembly members

The group of political parties leading the campaign for a “Yes” vote in the referendum is headed by President Correa’s party, Alianza País, which has been joined by other parties such Pachakutik, MPD, and a few other minority party Assembly members who supported them throughout the Assembly.

While the formal beginning of the PAIS “yes” campaign got a head start with a massive demonstration in Quito, various delegations of its Assembly members (both as individuals and in groups) have been traveling around the country to promote the draft Constitution since the day the Assembly approved it. The Carter Center had the opportunity to interview various Assembly members for a sampling of their opinions on the implications and limitations of the constituent process and the new political charter.

Virtually all the PAIS interviewees⁹⁰ agreed that the crowning achievement of the constituent process was the high level of citizen participation throughout the Assembly’s efforts (see above “Citizen participation”); however, they also recognized with self-criticism that the lack of political experience for many Assembly members (the majority of whom were filling their first legislative role) limited the effective flow of dialogue, both with society and within the Assembly. The PAIS representatives insistently pointed to the contrast between the openness to

⁹⁰ The interviews for this part of the report took place in Jul and August in Montecristi and Quito. The PAIS Assembly members interviewed were: Tania Hermida, Mónica Chuji, Fernando Vega, Beatriz Tola, Alberto Acosta, Germánico Pinto and Fernando Cordero. We also spoke with the advisors of many PAIS Assembly members.



participation and inclusive debate that characterized the current process and the 1998 process (in areas such as openness to proposals, dialogue with different social sectors, location of sessions, election process for constituents, and approval of the project by popular consult).

Furthermore, as far as advancements in content, the following issues ranked highly for the PAIS members: the recognition of the multi-ethnic nature of the Ecuadorian state, a recognition long overdue to the indigenous peoples; the inclusion of the rights of nature and the right to water as pioneering articles on a global level that will strengthen the construction of a model of sustainable development, as well as the definition of that model's highest objective as "quality of life"; removing partisanship from the electoral system; the establishment of five branches of government (executive, legislative, judicial, electoral, and transparency and citizen monitoring), as well as the creation of a Constitutional Court as guarantor of the supremacy of the Constitution. For these reasons, the interviewees argued that the opposition's interpretation of the new constitutional text as "hyper-presidential" is false.⁹¹

While differing somewhat on the nuances of their opinions, the PAIS interviewees also argued that there were major advances in the expansion of rights. While some praised the significant advances they saw in the fundamental areas of the institutional redesign of the State (balance of powers, autonomous regions, and regionalization processes), some also lamented the time constraints that limited the depth of discussion on these fundamental issues.

With respect to the ID party, during its twenty second National Convention held on August 16, 2008, its members expressed some inconsistent opinions on their support for the draft Constitution approved by the Assembly. For ID's historic director and current city council member for Quito, Andrés Vallejo, the party should advocate a "yes" vote, because to do otherwise would mean "*aligning ourselves with the position of the parties on the right such as PSC or PRIAN*".⁹² Other ID faithful, however, said they supported the null or blank vote. The lack of consensus within the party stemmed from an original position that would have seemed neutral: let the members of the party decide for themselves how to vote. However, this lack of a

⁹¹ Fernando Vega, interview, 07/18/08, Montecristi; Alberto Acosta, interview, 08/04/08, Quito.

⁹² Political Summary, "La ID va por el voto nulo, pero la decisión dividió al partido", El Comercio, 08/18/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=138289&anio=2008&mes=8&dia=18.



Similarly, independent Assembly member Diego Borja, who was voted in to the Assembly representing both ID and Poder Ciudadano, stated in an interview that, while he would not be openly campaigning, he would come out in favor of the new constitutional text. Borja applauded the high level of dialogue shared between the Assembly and society. He also noted that many of ID's proposals were included in the constitutional text. For Borja, one of the draft Constitution's greatest virtues is the high level of coherence between its organic and dogmatic parts – that is, between its *“definition of rights and the mechanisms for their enforcement”*⁹⁴

On the other end of the political spectrum were parties who will advocate voting “no” in the referendum, including PSP, PRIAN and PSC. Even before the constitutional text had been approved by the Assembly, PSP had started to campaign against it, concentrating its efforts in the central Sierra and cities in indigenous areas.⁹⁵ Along the same lines, in a Manifest to the Nation signed by former President of Ecuador and PSP leader Lucio Gutiérrez, it states that President Correa and his political movement *“delegitimized the constituent process from the beginning. They converted the Constituent Assembly into a replica of the old corrupt political practices. The Constituent Assembly was always hijacked by Correa and his so-called ‘movement’ [...] Now, they want to pass ‘just a small legal-constitutional packet’. The new draft Constitution was not made by the Assembly members but rather by foreign tailors: a suit designed and made to order by Correa [...] Correa’s Constitution threatens the ethical, moral and spiritual traditional values of the Ecuadorian people. Among other things, it FAVORS ABORTION AND LEGALIZES GAY MARRIAGE.”*⁹⁶

This position is shared by the PRIAN party Assembly members, who spoke out against the draft Constitution for being subjective, rhetorical, and centralist and concentrating too much power in one place. Assembly member Vicente Taiano said the proposal granted practically totalitarian omnipotence to President Correa. For her part, Assembly member Anabela Azín

⁹³ This was the case for the Prefect of the Pichincha province, Gustavo Baroja, who decided to end his affiliation with ID along with 80 other members. “El prefecto G. Baroja se desafilia de la ID”, El Comercio. Online: http://www.elcomercio.com/noticiaEC.asp?id_noticia=215424&id_seccion=3.

⁹⁴ Diego Borja, interview with the CC, 08/11/08, Quito.

⁹⁵ Riobamba Summary, “PSP es el abanderado del NO en la Sierra centro”, El Comercio, 05/05/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=136279&anio=2008&mes=8&dia=5.

⁹⁶ Lucio Gutiérrez, “Manifiesto a la Nación”. Online: <http://www.sociedadpatriotica.com/>. The quoted portions are from President Gutiérrez’s original document.



voted against the proposal because she believed that it jeopardized certain fundamental rights and principles such as free speech, private property and autonomy for the sectional governments. *“This is the worst kind of centralism – a step backwards from all our past achievements”*, given that the State assumes control of areas such as health and education, which could be requested by the sectional governments in the previous Constitution.⁹⁷ The PRIAN block also spoke out against the Commission that will come together if the “yes” vote does win⁹⁸ *“because it is unconstitutional and goes against the popular mandate”*, and argued that immediately after the referendum elections should be called to elect deputies to fill the new National Congress.⁹⁹

Finally, we have PSC’s position, who spoke through Leonardo Viteri, one of its most vocal Assembly members throughout the constituent process, when he asserted that the Constitution up for vote is null and void, because the original version approved by the Plenary did not include the Preamble or modifications that were voted on July 24. Therefore, the PSC spokesman argued that the draft Constitution *“is completely null and void, it is a crime; falsifying, mangling documents is a crime; the Public Ministry should take formal action. One period, one comma, one mis-conjugated word changes the spirit of an article, or worse if it is mutilated or inserted [...] I hope that “no” prevails, so these provisions fail. Our proposal in the Assembly was that general elections be called the moment after or “yes” or “no” emerges triumphant.”*¹⁰⁰

⁹⁷ PRIAN, “La Asamblea dominada por la mayoría gobiernista ha elaborado una Constitución a la medida del Presidente Correa” (Press release), 07/16/08. Online: <http://www.prian.org.ec/Paginas/Noticias.php?Codigo=200>

⁹⁸ See “V. The Transitional Regime and the electoral calendar.”

⁹⁹ *Ibid.*

¹⁰⁰ Glenda Pillasagua, “Nueva Carta Magna es nula”, CRE, Guayaquil, 08/05/08. Online: <http://cre.com.ec/Desktop.aspx?Id=135&e=116305>.



Political Party	How would you vote in the referendum?
Alianza País	YES
Movimiento Popular Democrático	YES
Pachakutik	YES
Partido Sociedad Patriótica	NO
Partido Renovador Institucional Acción Nacional	NO
Partido Social Cristiano	NO
Izquierda Democrática	Would not advocate a choice for its members

4.2 Evaluation of the Executive

Upon the Assembly's closing ceremony, President Rafael Correa called on the citizens to vote "yes." Rafael Correa called the new Constitution the birth of the New Homeland: "*it is a decisive step towards achieving our second independence [...] We have all made the new Constitution! We have been a positive force! We are all responsible for the future of the Homeland!*".¹⁰¹

During the weeks following its approval, the Executive concentrated on forging a large group of social and political forces to wage a joint campaign for "yes." For example, in a meeting held on August 4 with 23 of the 24 provincial prefects (of diverse political affiliations), the attendees agreed to form a joint front in support of the "yes" vote. Only the prefect from Guayas, Nicolás Lapentti (PSC), did not attend. During the meeting, the members of the Consortium of Provincial Councils (CONCOPE) signed a document in which they promised to work on behalf of the new Constitution. Rodrigo Vivar, the head of CONCOPE and prefect from Loja, explained that they supported the Constitution because the Assembly had responded to all the requests of the provincial governments.¹⁰²

¹⁰¹ Press Room of José Peralta, "La nueva Constitución fue entregada por la Asamblea Constituyente", 25/07/08. Online: http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18716&Itemid=1

¹⁰² Redacción Política, "23 Prefecturas y el Ejecutivo sellan alianza por el Sí", El Comercio, 05/08/08. Online: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=136282&anio=2008&mes=8&dia=5.



Similarly, on August 8, a delegation representing 190 mayor's offices met in Quito with the Policy Coordination Minister, Ricardo Patiño, to announce their support for the new Constitution. The leaders of these local authorities announced the creation of a political organization that would work towards a "yes" result in the referendum: the Municipal Movement for the Homeland. One of its spokesmen, Johnny Fimal (mayor of the Simón Bolívar canton in the Guayas province) commented that the mayors "*will sign up in support of "yes," following along with the other political organizations*". For his part, Juan Salazar, coordinator of the Municipal Movement, explained that the draft Constitution would strengthen small local authorities, which is why they are campaigning for it to pass.¹⁰³

Meanwhile, the Executive also started a massive media campaign from the beginning of August (via television, radio, and press) to promote the content of the new Constitution, emphasizing those aspects that would have the greatest impact on the population. A few of the campaign's announcements stood out by attempting to contrast some of the approved articles related to the "right to life" with the interpretation and official position of the Catholic Church.

However, President Correa has also expressed criticism of some of the articles in the draft Constitution. Without being particularly precise, he stated publicly that there were some errors in the text that would have to be corrected with reforms after the referendum. While the President certainly has expressed general approval of the project, he has also made it known that it has room to be "*perfected*".¹⁰⁴

4.3 Evaluation of civil society groups

The indigenous and rural movement

In its Extraordinary Assembly on July 30, 2008, ECUARUNARI, the organization of indigenous communities from the Sierra, a sub organization in CONAIE, released a strongly favorable statement on the Constitution. Considering it the fruits of the labors of the indigenous and other social movements, and its strides towards making a multi-ethnic State and multi-

¹⁰³ Political Summary, "El gobierno y los cabildos de unen", El Comercio, 08/09/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=136946&anio=2008&mes=8&dia=9.

¹⁰⁴ Political Summary, "Correa piensa reformar el texto", El Comercio, 08/20/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=138607&anio=2008&mes=8&dia=20.



cultural society possible, as well as overcoming neoliberalism, racism, and the mechanisms for political, economic, social and cultural exclusion, ECUARUNARI resolved the following:

“1) Vote for “yes,” as a vindication of the struggle and resistance by the indigenous peoples and exploited, marginalized and excluded social groups to recuperate their sovereignty and Homeland.

2) Call for a “United Front,” between the indigenous movement and social sectors to face the referendum and promote the “yes” vote for the new Constitution, to build an effective and real Multi-Ethnic State, that is authentically anti-neoliberal and free.

3) Promote socialization processes for the new Constitution approved by the Constituent Assembly, through a campaign stressing its political and legal advances and limitations, with organizations in: workshops, assemblies, forums and demonstrations for information and promotion of the new Constitution.”¹⁰⁵

It is important to point out that despite the campaign they planned on behalf of a “yes” outcome, the members of ECUARUNARI also criticized several aspects of the final draft Constitution, such as the failure to explicitly incorporate the right of indigenous peoples to give express consent on the use of their natural resources. Even so, and in spite of their conflicts with President Correa, who has spoken out against their supposed “indigenous infantilism,” they considered the new Constitution a good platform for continuing their efforts in defense of their rights as peoples.¹⁰⁶

Similarly, on September 4 CONAIE resolved to endorse the constitutional draft with a “critical yes.” The largest indigenous organization at the national level recognized the advances made in the new Constitution, such as the multi-ethnic state, but it also stressed that the Assembly did not incorporate all of the indigenous proposals and therefore it withheld its complete support.

For similar reasons, on August 8, the president of the National Federation of Rural, Indigenous and Black Organizations of Ecuador (FENOCIN), Pedro de la Cruz¹⁰⁷ explained the general approval his organization would grant the new Charter: while his organization certainly disagrees with some articles, *“the draft in general incorporated changes towards achieving real*

¹⁰⁵ ECUARUNARI, “Resoluciones: Asamblea Extraordinaria Ecuatorunari”, 07/30/08. Online: http://www.ecuarunari.org/es/noticias/no_20080730.html.

¹⁰⁶ See “Rights of communities, peoples and nationalities”.

¹⁰⁷ Also a PAIS Assembly members and former president of Working Group No. 6.



justice and redistribution of wealth”.¹⁰⁸ Meanwhile, the National Federation of Free Peasants of Ecuador (FENACLE) also announced its support for a “yes” vote for the new Constitution. For Guillermo Touma, FENACLE’s president, the text up for referendum enshrines many of the aspirations of Ecuador’s citizens, especially its workers and rural peasants.¹⁰⁹

Student and workers unions

On July 31 the directors of the National Union of Educators (UNE), the Federation of Secondary Students of Ecuador (FESE) and the Federation of University Students (FEUE) formed the Provincial Education Front in Guayas to promote the draft Constitution approved by the Assembly. At the same meeting, the vice president of UNE, Francisco Rojas, announced that more than 300,000 educators would distribute the Constitutional draft from education centers throughout the country; the focus of the campaign will not be simply the students but their entire family.¹¹⁰ The major argument by this group of students and educators has been that the draft Constitution guarantees free education at all levels, including university.

Similarly, on August 9, a large coalition of student and workers union organizations agreed to work jointly with Alianza País, PS, MPD and Pachakutik to promote the “yes” vote. This coalition includes the following organizations: the General Workers Union of Ecuador (UGT), the Sole National Federation of Rural Social Security Organizations (FEUNASC), the National Union of Educators (UNE), the Federation of Secondary Students of Ecuador (FESE), the Federation of University Students (FEUE), the United Confederation of Neighborhoods of Ecuador, the United Federation of Retail Traders, the Federation of Women of Ecuador for Change and the Union of Popular Artists. The members of the “yes” coalition argued that the Constitution approved by the Assembly is “*progressive, democratic, and anti-neoliberal, because it captures the majority’s long postponed hopes for change*”.¹¹¹

¹⁰⁸ Patricio González, “Fenocin y universitarios harán marcha de apoyo”, El Telégrafo, 08/08/08. Online: http://www.telegrafo.com.ec/actualidad/noticia/archive/actualidad/2008/08/08/Fenoc_ED00_n-y-universitarios-har_E100_n-marcha-de-apoyo.aspx

¹⁰⁹ “Fenacle prepara campaña en sector rural”, El Telégrafo, 08/01/08, p. 6.

¹¹⁰ Patricio González, “Se formó un Frente Educativo por el Sí”, El Telégrafo, 08/01/08, p. 6.

¹¹¹ MPD Public Relations, “Partidos y Organizaciones de izquierda se unen por el sí”, (Press release) 08/09/08. Online: <http://www.mpd15.org.ec/boletines.htm#ma114>.



The Catholic Church

The Episcopal Conference of Ecuador, the body of high ranking bishops in the Catholic Church, released a public statement in which it reflected the following: *“The Bishops have unanimously observed that the draft Constitution has incorporated many generous statements related to the centrality of the person for the goals of society, in the economy, education and health, with emphasis on promotion of the poor. These are areas the Church has always called attention to, although we would have liked to see mention of the fight against poverty and corruption. We have noted, however, unfortunate inconsequences with respect to other fundamental issues, such as abortion, the family, education and religious freedom.”*¹¹² The bishops also specified their points of disagreement with the constitutional text: *“It does not clearly recognize the right to life from conception; It undermines the family as the basic unit of society and the common good; In education statism is more obvious than ever.”*

Despite their strong criticisms of the constitutional draft, the bishops’ document does not explicitly call for voting “no.” However, the mass media have reported that various priests from the Catholic Church have issued opinions on the subject during mass, without necessarily following the criticisms pointed out by the Episcopal Conference. Additionally, within the Ecuadorian Catholic Church there are a variety of interpretations of the draft Constitution: from those who are openly campaigning for a “yes” outcome to those who are doing the opposite, as well as some in the middle. \

However, other organizations based in the Catholic Church and some well known and respected priests have publicly spoken out against the Episcopal Conference’s position; these organizations and ministers sustain that the draft Constitution is compatible with the Christian values they promote. One example is the position adopted by the group *Experience, Faith and Politics*, which publicly stated its satisfaction with the fact that *“many priests, religious figures and Christians around the country have already learned to think for ourselves and to decide while following the Gospel. Fortunately we know that sometimes the only way to love the Church is to disobey its hierarchy with the hope of building a more authentic Church. Many of us will vote “Yes ...”*¹¹³

¹¹² Episcopal Conference of Ecuador. “The Constitutional Project”. Online: http://www.iglesiaecuador.org.ec/index.php?option=com_content&task=view&id=220&Itemid=31.

¹¹³ Xavier Guachamín, “La posición de la Jerarquía Católica no representa a todos los cristianos”, Commission on Experience, Faith and Politics, 08/03/08.



Business groups

There was no uniform position among the different unions in the business sector on the draft Constitution approved by the CA, nor on how the members of the business community should cast their vote in the referendum. However, there were some sentiments that they shared - more or less. For example, Roberto Aspiazu, president of the Ecuadorian Business Committee (CEE) declared: *"We see this [constitutional] project as, without a doubt, statist, centralist, and power-concentrating- that is, authoritarian".*¹¹⁴ Although he also recognized that *"property is guaranteed, although relatively,"* he maintained that the development project envisioned in the Constitution is based on *"the egalitarian redistribution of the benefits of the means of production" [...]* *"If we read it word for word the article sounds nice, but it also implies expropriation and confiscation and obviously our perception is that the authors have tried to place the State as the principal actor at all levels".*¹¹⁵ Despite these strong criticisms of the document approved by the CA, Aspiazu also announced that the business organizations would not formally campaign for "yes" or "no," but instead would continue to organize forums in which the new Constitution might be studied and debated further.¹¹⁶ This position was shared by the president of the Ecuadorian-American Chamber of Commerce, Bernardo Traversari, who asserted that *"business representatives are not made to fill political spaces"*, but he would advocate a public discussion of those aspects of the draft Constitution that he argued might weaken a process of national compromise among a wide range of social actors. In particular, Traversari believes that the draft Constitution leaves much to interpretation on key issues such as the social and environmental functions of private property and the development model that aims for an egalitarian distribution of the profits from development and the means of production.¹¹⁷

Meanwhile, on July 31 the directors of 16 Councils of Chambers of Production held an analytical meeting on the new constitutional text. Although they did not explicitly come out in favor of a "no" vote, they questioned the lack of guarantees for private investment, as well as the *"egalitarian redistribution of wealth, [and] the excessive power accumulated by the President of*

¹¹⁴ AFP, "La nueva Constitución preocupa a empresarios", cited on the CEE webpage.

<http://www.cee.ec/jsp/news/load.do;jsessionid=07904511FDE80464860219E697C41673?action=read&categoryCode=&code=180>.

¹¹⁵ *Ibid.*

¹¹⁶ Guayaquil Summary, "Los empresarios analizaron el proyecto de Constitución", El Comercio, 08/14/08. Online: http://www.elcomercio.com/noticiaEC.asp?id_noticia=213974&id_seccion=6.

¹¹⁷ Bernardo Traversari, interview with the CC, 08/21/08. Quito.



the Republic,” as stated by the Council president, Patricio Donoso.¹¹⁸ The organization also petitioned the TSE to exclude the Transitional Regime from the referendum on September 28. To Patricio Donoso, the Transitional Regime falls outside of the constitutional text, and the TSE should exclude the transitory provisions: *“No matter the results of the referendum, the Transitional Regime should be decided by the people through an electoral process with the election of a new legislature which would participate with the other branches of government in naming the new officials”*.¹¹⁹

V. The Transitional Regime and the electoral calendar

In this final section we address two issues: the articles on the Transitional Regime and the reactions it caused; and the basic political scenarios the country will face depending on whether “yes” or “no” wins in the constitutional referendum for September 28, 2008.

5.1 The articles of the Transitional Regime

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. During the debates the opposition challenged the PAIS proposal with questions. For example, Pablo Lucio Paredes (Futuro Ya) questioned why Article 25 does not establish that if the referendum fails, elections would be called immediately for new Assembly members; instead it only alludes to the return of the deputies who have been declared in recess. Mae Montaña of UNO suggested changes to the proposal that would affect the term lengths for mayors, councilors and prefects. With respect to Article 25 she said it amounted to “moral blackmail,” because it pressures the electorate to vote for “yes” with the threat of the return of the deputies in recess.¹²⁰

¹¹⁸ “Los sectores empresariales abanderan las críticas”, El Comercio, 08/04/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=136093&anio=2008&mes=8&dia=4.

¹¹⁹ “Empresarios piden excluir el texto”, El Universo, 08/15/08. Online: <http://www.eluniverso.com/2008/08/15/0001/8/650B3E45E67E46CEA87CCC2EA7A61435.html>.

¹²⁰ Political Summary, “El Plan de transición de Acuerdo País enfrenta una dura resistencia”, El Comercio, 07/22/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=134083&anio=2008&mes=7&dia=22.



On July 23, 30 articles from the Transitional Regime were approved with an average of 80 votes in favor. Below we provide a synthesis of the content of the main articles:¹²¹

- In the case of a “yes” vote in the referendum, the term of the principal and alternate deputies elected on the 15th of October of 2006 will be declared concluded.
- 5 days after the proclamation of the official results of the referendum the Constituent Assembly will meet to establish a Legislation and Oversight Commission “*[that] maintains the political proportionality of the Plenary of the Constituent Assembly.*” This Commission will assume the powers of the national legislative body. It will also elect the temporary members of the National Electoral Council and the Litigious Electoral Tribunal.
- 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.
- Transition in the National Court of Justice: 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 the competition envisioned in the new Constitution for the selection of the 21 full term judges.
- Transition in the Judiciary Council: 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.
- Transition in the Constitutional Court: 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.

¹²¹ The complete text of the articles of the Transitional Regime can be found here:
http://www.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=18730&Itemid=133.



5.2 Possible scenarios and the electoral calendar

As we pointed out in the previous section, if the Constitution passes in the referendum, the Transitional Regime stipulates that the CA will have to meet to form a Legislation and Oversight Commission that, in addition to those duties, will also have to name the temporary members of the National Electoral Council and the Litigious Electoral Tribunal. Furthermore, if “yes” wins, the term for the Congressional deputies elected in October 2006 will end (Art. 17).

The first provision of the Transitional Regime has such a general nature that it leaves many possibilities open for the formation of the Legislative Commission, which *“in a maximum period of 120 days counted from the day the Constitution enters into effect will approve the law which establishes the regime on food sovereignty, electoral law, regulatory law for the Judicial Branch, Judiciary Council, and the Council for Citizen Participation and Social Control.”*¹²² While no one is certain of which of the possible conformations of the Commission will finally prevail, throughout August the president of the CA, outlined a few alternatives: *“I find it difficult to imagine that a 39 member legislative commission could write the five laws described in the draft in 120 days. There could be five commissions, one for each law. It would be more legitimate for the Plenary of the Assembly to name the necessary commissions. And on the day the laws are approved the Assembly would meet. There could be 5 commissions with 10 members, instead of one with 50. And on the day the laws are approved, which could also be the last five days of every month, the Plenary would meet, pay their expenses and the rest will continue in recess, as they do now.”*¹²³ In an interview with the Carter Center, Cordero stressed that while this proposal was on his own terms, it was likely that PAIS would present its own proposal on the day the Assembly returns to session, the day after “yes” wins the referendum.¹²⁴

Independent of how the Legislative Commission is ultimately formed, the electoral calendar will have to be fulfilled as established in the Transitional Regime. The temporary National Electoral Council (CNE), once named and formed, will have a maximum of 30 days to call elections for the following popular positions: President and Vice President of the Republic, Andean Parliament members, Assembly members, prefects and vice prefects, municipal mayors, councilors, and representatives of the rural parochial councils (Art. 3). For these

¹²² Transitory disposition, first in the draft of the new Constitution approved by the CA.

¹²³ Guayaquil Summary, “5 comisiones elaborarán las leyes”, *El Comercio*, 08/18/08. Online: http://www2.elcomercio.com/solo_texto_search.asp?id_noticia=138285&anio=2008&mes=8&dia=18.

¹²⁴ Fernando Cordero, interview with the CC, 08/20/08. Quito.



elections, the political organizations and alliances who participated in the Constituent Assembly elections can compete, as can other organizations that must present signatures from 1% of the corresponding citizens to Electoral Registrar Office (Art. 4).

In contrast, if “no” prevails in the referendum, the possible outcomes are much more difficult to foresee. First, the Congress elected in October of 2006 would have the possibility of re-installing itself and continuing its term through 2009. However, they may also simply hold a session to call for new Congressional elections. In either scenario, President Correa could take two different paths: continue serving his executive term or resign from the Presidency of the Republic. However, this last option is the most remote possibility, given that a variety of sources confirm that the current government would eventually be willing to initiate a dialogue with the deputies in recess, whether to facilitate new elections or to promote other reforms to the current Constitution.¹²⁵ If he leaves his position as President, the Congress should call new presidential elections and, possibly, elections for a new Congress (although that is not required). Whatever the President’s attitude, the only certainty is that, given a “no” vote, the 1998 Constitution will continue in effect and the Congress placed in recess by the Assembly will be back. The how of these political events will depend in large measure on the government’s ability to negotiate with the opposition sectors.

¹²⁵ “La baraja oculta del Referendo”, *Revista Vanguardia*, No. 151, August 19-25, 08.



1. Chronology

2007

01/15/07. Rafael Correa takes office.

01/16/07. Correa calls for a referendum on a Constituent Assembly with full powers by decree.

02/28/07. The government presents the statute for the election of a 130-constituent Assembly, granting it the option of revoking the mandates of the Congress and the President.

03/07/07. The TSE, claiming to be the maximum authority in election cycles, removes 57 opposition Congress members, accusing them of trying to interfere with the electoral process.

04/15/07. The popular consult to decide whether to hold a Constituent Assembly ends with 81.72% of voters voting “Yes.”

07/25/07. The Constitutional Tribunal upholds the removal of the 57 deputies.

09/30/07. Elections for the 130 Assembly constituents.

11/29/07. Installation of the National Constituent Assembly in Montecristi (Ciudad Alfaro, Manabí). The Assembly produces Constituent Mandate No. 1: the Assembly assumes full powers; ratifies President Correa; declares the Congress in recess.

11/30/07. Formal inauguration of the National Constituent Assembly. Alberto Acosta is elected its president.

12/11/07. The Assembly finishes approving the internal rules for its operations.

12/13/07. Members are selected for the ten working groups.

12/17/07. The Executive presents the Assembly with its Project on the Law on Tax Equity.

12/28/07. The Assembly approved the Law on Tax Equity with 90 votes from the parties: Acuerdo PAIS, Pachakutik, MPD, Poder Ciudadano-Izquierda Democrática and Movimiento Honradez Nacional.

2008

01/01/08. The Law on Tax Equity enters into effect.

01/03/08. Contrary to the recess established by Constituent Mandate No. 1 some Congress members called themselves into session to declare another “legislative term.”

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 approves 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.
- 01/22/08.** 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.
- 01/28/08.** Anniversary of the death of Eloy Alfaro. The Constituent Assembly declares Montecristi, Alfaro's birth city, as the seat of the Assembly through a Decree of National Patrimony, Culture and History.
- 01/31/08.** The Attorney General rejects and closes the complaint presented by former President of Congress Jorge Cevallos, from November 23, 2007, against the Assembly members for impeding the operation of the Parliament.
- 01/31/08.** The president sends the Assembly a draft project on the Reform Law on the Organic Laws on the Solicitor General of the State, the General Comptroller of the State, and the Law on Public Contracts.
- 02/12/08.** The Assembly approves Mandate No. 4 with 78 votes, modifying article 1 of Mandate No. 2 on the limits of compensation for public servants.
- 03/04/08.** The plenary of the Assembly unanimously approves an Agreement on National Sovereignty to condemn the incursion of the Colombian armed forces to dismantle a FARC camp on March 1.
- 03/06/08.** Working Group 10 approves the final report on the Organic Law for the Recuperation of Public Use of the State's Petroleum Resources.
- 03/10/08.** The Assembly approves Mandate No. 5 to grant the Customs Corporation of Ecuador the ability to give freely the goods in its custody to the victims of the Tungurahua volcano and recent flooding.
- 03/10/08.** The plenary approves amnesty for the former director of the Agency for the Guarantee of Deposits.
- 03/14/08.** The plenary grants amnesty to the detainees in the Dayuma case; 357 social leaders who were criminally processed for protesting in defense of their communities and their environment, and for five former contract employees of the Postal Service of Ecuador.
- 03/26/08.** The Plenary approves the suspension of Assembly member Julio Logroño (PSP) for 60 days by a vote of 81/130.
- 04/02/08.** The Plenary approves (89/130 votes) the "*Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes.*"
- 04/10/08.** The Plenary authorizes (77/130) a criminal trial against Assembly member Julio Logroño.



- 04/15/08.** Working Group 10 approves the internal procedures for its oversight functions.
- 04/18/08** The CA Plenary approves Mandate No. 6, better known as the “Mining Mandate”.
- 04/22/08** The Assembly designates Diego García as the new interim State Attorney General, via Constituent Mandate No. 7.
- 04/28/08** The Plenary votes on an Agreement that demands an immediate audit into the Post of Advanced Operations at the Manta Base.
- 05/13/08.** The CA approves mandate No. 9, for the capitalization of electric companies under the Solidarity Fund.
- 05/15/08.** The Plenary of the Assembly approves a pardon for 193 prisoners on the national level who were awaiting death sentences while in terminal condition.
- 05/20/08.** The Assembly approves a 60 day extension to conclude its writing of the new Constitution.
- 05/23/08.** The Plenary approves an Agreement in support of Assembly member María Augusta Calle.
- 05/23/08.** The Plenary approves Mandate No. 10 on the portability of cellular telephone numbers.
- 05/30/08** The Plenary dismisses the Superintendent of Companies, Francisco Arellano.
- 06/02/08** The Working Group on Legislation and Oversight approves the definitive report on the new Law on Transit.
- 06/10/08** The Plenary approves a cluster of reforms to the Assembly’s Internal Rules of Operation.
- 06/11/08** Working Group 10 approves the articles of the new Organic Law on Public Contracts.
- 06/13/08** The Plenary provisionally appoints Pedro Solines as the Superintendent of Companies, via Constituent Mandate No.11.
- 06/13/08** With 98 votes, the Plenary approves amnesty for 62 members of the Taura Command units.
- 06/19/08.** Correa speaks to the Assembly to request their approval of a series of emergency measures to stem the increase in prices and the inflation index.
- 06/24/08.** Alberto Acosta offers his resignation from the presidency of the CA. Fernando Cordero was designated as the new president of the Assembly.
- 06/25/08.** With 69 votes the Plenary approves a Resolution brought by Working Group 9 that condemns the return directive promulgated in the European Parliament.
- 06/27/08.** Working Group 10 selects its new leadership in a special session.
- 07/07/08.** They announce the names of the citizens who will make up the Editing Commission for the new Constitution.
- 07/07/08.** A pardon is granted for carriers of small quantities of illegal drugs (“drug mules”; amnesties are accepted for Gustavo Noboa and Wilma Salgado.
- 07/07/08.** Mandate 12 is approved which suspends regional elections until October.
- 07/09/08.** Mandate 13 on the actions of the Agency for the Guarantee of Deposits is approved.



07/19/08. The Plenary approves the last articles and transitory provisions that had been set aside for “reconsideration” during the final sessions.

07/21/08. The Plenary approves 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 approves 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 approves the Organic Law on the System of Public Contracts.

07/22/08. The Plenary approves 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 approves Mandate 15 on the Electric Sector.

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

07/23/08. The Plenary approves Mandate 17 (“Ciudad Alfaró” Mandate).

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

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

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

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

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

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



2. Laws approved by the Constituent Assembly

LAWS APPROVED BY THE CONSTITUENT ASSEMBLY	
SUBJECT	DATE OF APPROVAL
Reform Law for Tax Equity in Ecuador	December 28, 2007
Organic Law for the Recuperation of State Use of Petroleum Resources and Administrative Rationalization of Debt-Assuming Processes	April 2, 2008
Organic Reforms and Interpretation of the Law on the Domestic Tax Regime and the Tax Code, Tax Equity in Ecuador, and the Electric Sector	July 21, 2008
Reform Law on Sentence Fulfillment and the Penal Code for the Transformation of the System for Social Rehabilitation	July 22, 2008
Organic Law on the System of Public Contracts	July 22, 2008
Law on Ground Transportation, Transit and Highway Safety	July 23, 2008



3. Constituent Mandates approved

CONSTITUENT MANDATES APPROVED		
NO.	SUBJECT	DATE OF APPROVAL
001	Full powers	November 29, 2007
002	Maximum monthly compensation for the Public Sector	January 24, 2008
003	Suspension of the election of deputies for the Santo Domingo de los Tsáchilas and Santa Elena provinces	January 24, 2008
004	Top limit of damage payments for untimely dismissals	February 12, 2008
005	Victims Assistance (CAE)	March 10, 2008
006	Miner's Mandate	April 18, 2008
007	Designation of the National Solicitor General	April 22, 2008
008	Labor Mediation Mandate	April 30, 2008
009	Capitalization of businesses in the Solidarity Fund	May 13, 2008
010	Implementation of Numeric Portability in Ecuador	May 23, 2008
011	Designation of the Superintendent of Companies	June 13, 2008
012	Mandate that suspends Sectional Elections and grants the vote to Ecuadorians located in the exterior	July 7, 2008
013	AGD Mandate	July 9, 2008
014	Repeal of Law 130 which created the Universidad Cooperativa de Colombia del Ecuador, reform of the Organic Law on Higher Education (LOES) and Standardization of Higher Education	July 22, 2008
015	Electric Sector Mandate	July 23, 2008
016	Agricultural Mandate	July 23, 2008
017	Ciudad Alfaro Mandate	July 23, 2008
018	Ombudsman Mandate	July 23, 2008
019	Mandate declaring the Constituent Assembly in recess	July 23, 2008

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Mandate to cancel liability for deposits and captured funds

July 23, 2008