



2008 Human Rights Report: Ecuador

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

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Ecuador is a constitutional republic with a population of approximately 13.8 million. In 2006 Rafael Correa won the presidency in runoff elections that were considered generally free and fair. Correa took office in January 2007. On September 28, voters approved a referendum on a new constitution, which became effective on October 20. Civilian authorities generally maintained effective control of the security forces.

While the government generally respected the human rights of its citizens, there continued to be problems in the following areas: isolated unlawful killings and use of excessive force by security forces, sometimes with impunity; poor prison conditions; arbitrary arrest and detention; corruption and other abuses by security forces; a high number of pretrial detainees; and corruption and denial of due process within the judicial system. Societal problems continued, including violence against women; discrimination against women, indigenous persons, Afro-Ecuadorians, and homosexuals; trafficking in persons and sexual exploitation of minors; and child labor.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Although the government or its agents did not commit any politically motivated killings, there continued to be credible reports that security forces used excessive force and committed isolated unlawful killings.

In May 2007 the president set up a commission to investigate human rights violations committed under the government of Leon Febres Cordero (1984–88) and in other periods. The commission investigated 307 cases of alleged human rights violations and investigations continued at year's end.

On January 15, police allegedly shot and killed two men, one a fellow officer, without asking questions of the suspects, after a citizen reported that she had been threatened. Police claimed the two men were carrying weapons; the officers shot first, killing the two men. An investigation continued at year's end.

On May 15, police in Esmeraldas arrested Klever Arce Toro, an off-duty military conscript, who was found dead three days later. An autopsy determined the cause of death was a gunshot fired at close distance.

Police officers Reynaldo Enrique Mendoza Roldan and Carlos Rene Guanotaxi Suntaxi, charged in the April 2007 killing of Juan Carlos Vera Faguizon in Manta, paid \$800 (the U.S. dollar is the official currency) for bail; charges against them were dropped, and they resumed their functions as police officers.

Police officer Miguel Angel Chiran was convicted and sentenced to 12 years' imprisonment for the 2006 off-duty killing of a taxi driver.

The Ecumenical Human Rights Commission (CEDHU) reported that mob violence against suspected criminals continued at the level of the preceding year. Such violence occurred particularly in indigenous communities and poor neighborhoods of major cities, where there was little police presence.

On April 7, a mob lynched and burned alive two Colombians after they allegedly killed a local resident in an attempted robbery in San Vicente, Manabi Province. The prosecutor investigated the case and requested that it be dismissed due to lack of merit.

b. Disappearance

There were no reports of politically motivated disappearances.

Criminal kidnapping for profit continued to be a problem in selected regions of the country. There also were reports of extortion and threats of kidnapping of ranchers, farmers, and businessmen along the Colombian border. As of August police registered 354 kidnapping cases and 143 "express kidnappings" (in which a person is driven around and forced to make automatic withdrawals of personal funds) and made 86 related arrests, compared with 357 kidnappings and 155 "express kidnappings" in all of 2007.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

While the previous and new constitutions and laws prohibit torture and similar forms of intimidation and punishment, some police officers reportedly tortured and abused suspects and prisoners, often with impunity.

At year's end the government had not acted on a 2005 finding by the UN Committee Against Torture that the country's laws on torture do not meet standards set by the UN Convention Against Torture, notably because the definition of torture in the criminal code criminalizes "corporal torment" but not psychological torture, and it does not correspond to the definition outlined in the convention. Torturers often were fined rather than imprisoned.

Through December CEDHU registered 67 cases of alleged "torture" or "unwarranted physical aggression" by police forces. On January 18, police officer Fernando Santiago Moreno Charro, accompanied by other officers, entered the Salesian University reportedly with the purpose of physically abusing student Nadia Cristina Traslavina Bossano because of her personal disagreements with Moreno's daughter. The police attacked two students who tried to defend Bossano. Bossano sustained injuries that caused physical incapacity. An investigation continued at year's end.

Three men in Quito claimed that on March 25-27, police arrested them for attempted robbery and then detained them on charges of illegal possession of arms. The men alleged that police handcuffed, beat, and tortured them to force confessions that they had taken part in the robbery. A medical examination found that one of the detainees was beaten on his arms, buttocks, and legs; no such examination was legally authorized for the two other detainees. The police allegedly called in a lawyer who, without conferring with his clients, signed the confession of the three men, who remained in detention. At the request of the Ministry of Government's Directorate for Human Rights, the police chief allegedly involved in the case was being investigated at year's end.

There were no known developments in the May 2007 police beating of 16-year-old Victor Javier Tipan Caiza. An internal police investigation in 2007 determined that two officers were guilty of committing a crime; no action was taken. However, a criminal investigation continued at the end of the year.

On March 14, the Constituent Assembly passed an amnesty to benefit individuals who were detained due to violations of military curfew in November 2007, when President Correa sent in the army to restore order in

Dayuma, Orellana Province. All detainees were released except Prefect Guadalupe Llori. Llori, who was originally detained in relation to this case and then imprisoned on charges of embezzlement, was released on September 23.

Prison and Detention Center Conditions

Conditions in prisons and detention centers generally were poor and tended to be worse in the tropical coastal areas than in the temperate highlands.

Overcrowding was a chronic problem in most prison facilities, although the Ministry of Justice reported that it had remodeled seven detention centers throughout the country. As of June the National Agency for Social Rehabilitation (DNRS) reported that 17,201 prisoners were being held in facilities designed to hold less than half that number.

A number of prisons experienced serious outbreaks of disease, and medical care often was inadequate. The daily allocation for prison rations was \$1 per inmate; prisoners often supplemented these rations by buying their own food.

Information on the number of prisoners who died during the year was not available. In April 2007 prisoners Juan Carlos Alava Chavez and Israel Mariscal Vasquez were found dead at Coastal Penitentiary Center in Guayaquil. A police report suggested that the prisoners died suspiciously, but a judge dismissed the case for lack of merit.

In May 2007 marines responding to a domestic violence call arrested Juan Lorenzo Delgado Zambrano and transferred him to the local precinct of the National Police. The following afternoon, at the suggestion of authorities, family members went to a hospital in Portoviejo where they were informed that Delgado had fallen while fighting with another detainee. Delgado died later that day. An investigation of two police officers who were responsible for Delgado continued at year's end.

Conditions were notably better in the Quito women's prison than in men's facilities. Vice President Moreno reported that as of December there were no adolescents and children over three years old living with their incarcerated mothers; for children younger than three--who cannot be separated from their mothers--appropriate day care facilities within detention centers were provided. Pretrial detainees were held with convicted prisoners. According to CEDHU, male guards were responsible for guarding female inmates, and female inmates reported being beaten by male guards who accused them of trying to escape.

Although in most instances the government permitted prison visits by independent human rights observers, authorities occasionally did not permit human rights observers to visit prisoners who had been placed in isolation cells after they allegedly had been beaten.

d. Arbitrary Arrest or Detention

While both the previous and the new constitution prohibit arbitrary arrest and detention, in 2006 the UN Working Group on Arbitrary Detention noted that provisions in the Criminal Procedure Code, the Penal Code, and some regulations adopted by central or provincial authorities "undermine the guarantees and protection offered." The working group cited two laws of particular concern: one imposes an obligation on judges to order detention for persons awaiting trial, i.e., "preventive detention," which in practice created a situation in which thousands of persons were detained for longer periods than the constitution allowed, often years longer, thus violating their right to be tried within a reasonable time. The second measure abolishes sentence reductions, which led to a large number of persons serving lengthy sentences for minor offenses. In 2006 the Constitutional Court ruled the preventive detention provision unconstitutional, holding that no person can remain in prison unsentenced for more than one year for penal crimes and six months for lesser crimes. The clock for inmates already incarcerated and all

future incarcerated individuals started in October 2007. However, in October 2007 Congress passed an interpretative law determining that detainees who purposely delayed the judicial process were not subject to the ruling of the Constitutional Court.

The law stipulates that pregnant women cannot be jailed in prison facilities, yet many were jailed rather than being confined to their homes.

Role of the Police and Security Apparatus

The National Police are under the authority of the Ministry of Government. National Police effectiveness was impaired by corruption, poor hiring procedures, and insufficient training, supervision, and resources. President Correa's declaration of a state of emergency in several areas in October 2007 continued to result in a higher level of resources for the National Police, totaling over \$300 million.

Some municipalities, such as Quito and Guayaquil, have their own metropolitan police forces in addition to the National Police. A police internal affairs office investigates complaints against police officers and can refer cases to the police courts. Nongovernmental organizations (NGOs) claimed that members of the Quito and Guayaquil metropolitan police occasionally used excessive force. Police corruption was sometimes a problem.

The National Police contracted with NGOs to provide human rights training.

Arrest and Detention

The law requires authorities to issue specific written arrest orders within 24 hours of detention, and authorities must charge a suspect with a specific criminal offense within 24 hours of arrest. Within 24 hours of arrest, detained persons could challenge the legality of their detention through a habeas corpus petition to the senior elected official in the locality where detention took place, usually the mayor; however, in practice few such petitions were presented. Under the new constitution, which went into effect in October, an individual must present a habeas corpus petition to a court rather than the senior elected official.

Prior to adoption of the 2008 constitution, mayors could release a person illegally detained, based solely on procedural issues under the habeas corpus mechanism. The new constitution provides that a prisoner may be released only by court order.

There was no known investigation into the July 2007 arrest of Manuel Xavier Cornejo Delgado who claimed that, after he had filed a lawsuit against two police officers, police detained him incommunicado for two weeks and searched his home without a warrant or probable cause.

Bail is allowed only in the case of less serious crimes, those punishable with "correctional imprisonment," and is prohibited for more serious crimes involving narcotics and other major offenses requiring long-term incarceration (offenses that "affect or put at risk" the public, punishable by three to 35 years' imprisonment).

Although the law entitles detainees to prompt access to lawyers and family members, there were delays depending on the circumstances and officials' willingness to enforce the law; alleged narcotics traffickers commonly waited 24 to 48 hours for these visits. Detainees with sufficient resources have bribed prison officials to facilitate access. CEDHU reported that an unknown number of prisoners were held in facilities that did not accommodate visits by family or counsel.

Although the law prohibits incommunicado detention, human rights organizations continued to report occasional

violations. Authorities charged with determining the validity of detention often allowed frivolous charges to be brought, either because they were overworked or because the accuser bribed them. The system frequently was used as a means of harassment in civil cases in which one party sought to have the other arrested on criminal charges.

Investigative detention up to and including trial is legal if a judge determines that it is necessary, and if evidence that a crime has been committed is presented. The law limits immediate detention to 24 hours for in flagrante crimes or to allow for investigative detention to begin. In most jurisdictions, the immediate detention is often considerably longer. If the investigation report is detrimental, the judge may order preventive detention, which is limited to six months for minor offenses and 12 months for major offenses.

The law permits prisoners to be held for an indefinite period after indictments have been issued but before they have been convicted or sentenced. The majority of the accused remained in prison during the investigation phase. According to government data, as of June approximately 61 percent of detainees had not been sentenced.

e. Denial of Fair Public Trial

While the constitution provides for an independent judiciary, in practice the judiciary was at times susceptible to outside pressure and corruption. The media reported extensively on the susceptibility of the judiciary to bribes for favorable decisions and resolution of legal cases and on judges parceling out cases to outside lawyers who wrote judicial sentences on cases before the court and sent them back to the presiding judge for signature. CEDHU further asserted that judges occasionally reached decisions based on media influence or political and economic pressures.

The judiciary consisted of the Supreme Court, superior circuit courts, other courts, tribunals that hear cases in accordance with the constitution and other laws, and the Judicial Council, which is charged with administering the court system and disciplining judges. There also were military and police tribunals that had the same status as circuit courts, as well as criminal, provincial, and cantonal (county) courts. The Supreme Court supervised the open and competitive selection of all appellate judges. The 2008 constitution changes the judicial structure and procedures. Among other changes the Supreme Court was renamed the National Court of Justice, citizens are allowed to file cases directly with the Constitutional Court, and most military and police cases must be decided in civilian courts.

In February 2007 the Inter-American Commission on Human Rights ruled that the 2005 appeal by 27 justices of the Supreme Court, who had been replaced by Congress in 2004, was admissible. The case remained pending at year's end.

Trial Procedures

Despite efforts to modernize the court system, the judiciary continued to operate slowly and inconsistently. There were lengthy delays before most cases came to trial. Judges reportedly rendered decisions more quickly or more slowly as a result of political pressure or, in some cases, the payment of bribes. The failures of the justice system contributed to cases in which communities took the law into their own hands, such as mob violence against suspected criminals.

There are no juries in the justice system. Defendants are presumed innocent until proven guilty and have the right to a public trial, defense attorneys, and appeal. They may present evidence, refuse to testify against themselves, and confront and cross-examine witnesses. The law extends these rights to all citizens. Although a public defender system exists, in practice only 180 attorneys were available to defend the large number of impoverished defendants

throughout the country.

Civil society groups, lawyers' associations, universities, and foreign donors sought to support vulnerable groups that did not have access to legal defense.

The regular court system tries most nonmilitary defendants, although some indigenous groups try members independently for violations of tribal rules. The law permits police or military courts to try police officers and military defendants in closed sessions in accordance with the respective military and police court martial manuals. Only the Supreme Court may try cases involving flag-rank officers. Despite a constitutional provision that civilian courts have jurisdiction over police or military officers charged with criminal offenses, these officers were often tried in police or military courts. However, the 2008 constitution mandates the elimination of military courts by declaring jurisdictional unity and orders military courts to hand over their cases to the National Court of Justice. An interim National Court of Justice established on December 17 had not tried members of the military or police at year's end.

Although the law and the previous and new constitutions recognize indigenous communities' right to exercise their own systems of justice based on their traditions and customs, they do not specify how this right would be implemented. This parallel system raised questions of both jurisdiction and conformity to the right to a fair trial.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Civilian courts and the Administrative Conflicts Tribunal, generally considered independent and impartial, handle lawsuits seeking damages for, or cessation of, human rights violations. However, civilian lawsuits seeking damages for alleged wrongs by the state were rarely filed since such suits were time-consuming and difficult to prosecute, with judges taking up to a decade to rule on the merits.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution and the law prohibit such actions, and the government generally respected these prohibitions in practice.

Although wiretapping by the National Police to investigate crimes is legal with a court order, there is no specific procedural guidance for obtaining such approval.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The previous and new constitutions provide for freedom of speech and of the press, and the government, while critical of the media, generally respected these rights in practice. An independent press and a largely democratic political system combined to promote freedom of speech and of the press. The independent media were active and expressed a wide variety of views, although the government did scrutinize those views and intervened in two television stations.

In January, the government's television and radio regulatory agency, the Consejo Nacional de Radiodifusion y Television (CONARTEL), issued an order in January to two radio stations to "correct" reports critical of President

Correa. In August the Deposits Guarantee Agency took administrative control of two national television stations, Gamavision and TC Television, to prepare them for sale to recoup debts caused by the 1998 Filanbanco bank failure of their alleged majority stock owners, William and Roberto Isaias. Three programs on those television channels were taken off the air after their seizure.

President Correa often used his weekly radio address and other public comments to criticize the media and accuse it of bias, frequently naming specific reporters and outlets. On January 10, El Comercio newspaper on January 10 quoted President Correa as stating, "The press in Ecuador is a political actor, and there are media outlets that are openly against the government." The Ecuadorian delegation to the 64th General Assembly of the Inter- American Press Association asserted that the aggressive attitude of President Correa's government toward the press was a strategy to convert media outlets into a political opposition.

On June 17, the courts dismissed a May 2007 lawsuit President Correa filed against the president of La Hora newspaper's board of directors; the president had invoked the country's "insult laws" over an editorial in La Hora.

On September 25, Freddy Aponte Aponte, a reporter for a local radio station in the city of Loja, was sentenced to six months imprisonment for defamation. Former Loja mayor Jose Bolivar Castillo Vivanco pressed charges against Aponte because Aponte reportedly called him a thief during a June 2007 radio program. After a series of appeals, the Supreme Court upheld the sentence. Aponte, jailed on October 29, denied the charges and claimed that the trial was plagued with irregularities. On November 25, the former mayor filed a second lawsuit against Aponte seeking one million dollars in damages.

On December 17-19, the government transmitted short spots during the broadcast of the Direct Contact program on the Ecuavisa network in which it criticized the program's host, Carlos Vera. Media analysts stated that this maneuver was illegal because the Radio and Television Broadcasting Law only gives the government the right to broadcast spots on two or more channels at a time, not on a single channel, and that the information should be about government activities.

On a number of occasions during the year, the police questioned individuals for having allegedly insulted President Correa at rallies or public gatherings.

In late 2007 the Controller General issued a report citing irregularities in 370 concessions of television and radio stations between 2003 and 2005, and in February CONARTEL decided to take back 42 of those concessions. On November 20, in compliance with the 2008 constitution, President Correa created the Commission for Auditing Radio and Television Concessions. The seven-member commission's responsibility was to determine whether frequency concessions since 1985 comply with constitutional provisions. The 2008 constitution prohibits oligopolies or monopolies in the ownership of means of communications and in the use of frequencies. It also precludes financial groups, their legal representatives, stockholders, and board members from participating in the control of the "social means of communication" in terms of capital, investment, and patrimony.

In June 2007 a former government advisor, Quinto Pazmino, filed a \$10 million lawsuit against President Correa for libel. Authorities subsequently detained Pazmino for insulting the president. In September 2007 the Supreme Court ruled that Pazmino, as a Constituent Assembly candidate, enjoyed special privileges, and he was freed after the payment of a fine. A criminal proceeding against the president requires Congressional authorization, which Congress did not provide before November 2007, when the Constituent Assembly declared the Congress in recess. In June the Supreme Court determined that the statute of limitations had expired in the lawsuit against President Correa. An investigation by the Prosecutor General's Office of the lawsuit filed by President Correa against Pazmino continued at year's end.

Business- and private-interest pressures, both from media owners and businesses outside the media groups, sometimes influenced the content of news reporting.

The 2008 constitution contains a number of provisions relating to "social communication," the rights of citizens to receive information from the media, the government's control over the electromagnetic spectrum (i.e., television and radio frequencies), and how media ownership will be treated.

The constitution declares the frequency spectrum a nonrenewable resource owned by the state and mandates that the state receive no less benefit than the company involved in the exploitation of that resource. The constitution also states that the social communication system will assure the exercise of the rights of communication, information, and freedom of expression.

The Correa administration enforced a provision in the Radio and Television Broadcasting Law that requires all stations to broadcast at no charge government programs on education and health issues for up to an hour per day (Mondays through Saturdays). It also mandates the broadcast of messages and reports by the president and his cabinet free of charge.

The 2008 constitution maintained the previous constitutional provision stating the right of all persons to receive information that is true, verified, timely, contextualized, plural, and without prior censorship. It also included a provision stating that the law will regulate the informational, educational, and cultural content of the programming of communication outlets.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet access was widely available in larger cities, but access in remote locations was poor. The International Telecommunication Union reported that there were 13 users per 100 inhabitants in 2007.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom of peaceful assembly, and the government generally respected this right in practice. Security forces used force and tear gas to quell some violent demonstrations, resulting in several injuries. Public rallies require prior government permits, which generally were granted, although exceptions occurred.

On May 30, several employees of the Superintendency of Companies protested in Quito to demand the resignation of Superintendent Francisco Arellano because of alleged corruption and mistreatment. The police removed the protesters by using tear gas, and two persons were treated subsequently by firefighters.

On August 16, there were altercations between the police and university students during and after President Correa's radio address broadcast from the Catholic University of Guayaquil. The students stated that the police employed excessive force by using tear gas and physical violence and that they had been persecuted because they supported the "no" vote in the referendum. University authorities presented a lawsuit before the Guayas authorities in defense of the students, stating that at least five of them were injured during the incidents and arguing that the university's autonomy had been violated. On September 27, the police imposed nine days of detention on two

policemen who were involved in the altercations. Investigations continued at year's end.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right in practice.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice.

The government requires religious groups to be licensed or registered if they engage in proselytizing activity.

Societal Abuses and Discrimination

Muslim leaders reported that members of their community occasionally experienced random discrimination when applying for work or housing. There were no reports of anti-Semitic acts or other societal abuses or discrimination based on religious affiliation, belief, or practice.

For a more detailed discussion, see the 2008 International Religious Freedom Report at www.state.gov/g/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons,

Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. Protesters blocked roads, but less frequently than in previous years.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations, such as the International Organization for Migration (IOM), in assisting refugees and asylum seekers.

The law prohibits forced exile, and the government did not use it.

Protection of Refugees

The laws provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. The government granted refugee status or asylum. In practice, the government provided protection against the expulsion and return of refugees to countries where their lives or freedom were threatened. The government also provided temporary protection to individuals who might not qualify as refugees under the 1951 convention or the 1967 protocol. This included providing services to the continuing flows of Colombians crossing the northern border throughout the year.

The government reported that through the first nine months of the year, it received 7,767 applications for refugee status. Several thousand additional cases from this and preceding years remained pending. Rejected applicants have a legal right to appeal; after appeals are exhausted, they have 30 days to leave the country. While the UNHCR and the government reported difficulty dealing with the number of applicants and appeals, both the UNHCR and the IOM supported the government refugee office's efforts to streamline its decision-making and appeals processes and

reduce its case backlog.

There were nearly 20,000 recognized refugees in the country. The UNHCR estimated that approximately 133,000 persons were in need of international protection, of whom approximately 72,000 were registered as asylum seekers with the government and 61,000 were not registered.

Colombians accounted for 92 percent of asylum seekers, and the rest originated from a wide variety of countries, including Cuba, Peru, Haiti, Iraq, Somalia, and Sri Lanka. The law provides persons granted refugee status the right to work; however, this right is not extended to asylum seekers. The law guarantees recognized refugees and asylum seekers the same access to public health services as Ecuadorians, including psychosocial support, emergency dental services, and free basic maternity assistance. Ministerial Agreement No. 337, issued on September 26, removed the requirement for documentary proof of immigration status by foreign students who apply to public educational establishments. Under the new order, the presentation of any identity document is sufficient to ensure access to public educational institutions.

In December the government started an enhanced registration program that improves the refugee registration process so that those in need of international protection can be interviewed, assessed, and issued documentation on the same day. Previously, the refugee registration process could take one to two years to complete. The nationwide program was expected to target up to 50,000 Colombian refugees for registration and documentation over a 12-month period.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

Rafael Correa was elected in 2006 and inaugurated in January 2007. Independent observers, including the Organization of American States (OAS) electoral mission, described the elections as generally free and fair.

As of year's end there were 10 women in the 27-member cabinet and two female secretaries of state with the rank of minister. There was one Asian-Ecuadorian but no Afro-Ecuadorians or indigenous persons in the cabinet.

A referendum on a new constitution took place on September 28; 63.9 percent of the voters favored adopting the constitution, written by the Constituent Assembly elected in September 2007. OAS, European Union, and Carter Center observers concluded that the elections were free and fair, with minor irregularities.

The 2008 constitution grants suffrage to members of the armed forces and the police, and lowers the minimum voting age from 18 to 16. It creates the Transparency and Social Control Branch of the state to promote citizen participation and prevent corruption. The constitution provides for state-promoted, gender-balanced representation in the public sector, including in decision-making positions, and mandates government adoption of affirmative action policies to promote the participation of affected groups.

Along with the 2008 constitution, voters approved a "transition regime," which regulates the transition to the new institutional order. The transition regime mandates elections scheduled for April and June, 2009 for elected offices at all levels of government. On October 25, in accordance with the transition regime, the Constituent Assembly appointed from among its members an interim Legislative and Oversight Commission, composed of 76 members. On October 21, the Constitutional Tribunal proclaimed itself the Constitutional Court, with the powers granted by

the 2008 constitution. An interim National Court of Justice, which replaced the Supreme Court, was established on December 17.

Government Corruption and Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively. The World Bank's worldwide governance indicators reflected that government corruption was a serious problem.

On July 8, Prosecutor Alfredo Alvear requested a criminal investigation of Ombudsman Claudio Mueckay for employing public funds, which were destined to assist the families of deceased citizens abroad, to appoint officers abroad. On July 23, at the request of the Supreme Court, the Constituent Assembly lifted Mueckay's privileges and permanently removed him from his office the following day. The prosecutor's investigation continued at year's end.

On August 27, Comptroller General Carlos Polit submitted to the Prosecutor General's Office a report on Constituent Assembly advisors' and administrative personnel's contracts. The report showed irregularities involving several assembly members' staffs, suggesting time and attendance fraud.

On December 3, Minister of Sports Raul Carrion, resigned after three of his advisors were placed under preventive detention during an investigation of their alleged illicit enrichment and asset laundering, among other charges. A court order prohibited former minister Carrion from leaving the country. These investigations continued at year's end.

The Constituent Assembly required all its members to present their 2006 tax returns, authorize access to their local and overseas bank accounts, and file an assets affidavit by January 11. Assembly member Alvaro Noboa failed to submit his tax return and lost his seat in the Assembly.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials cooperated with the groups but often did not act on their views.

An Ombudsman's Office focused on human rights problems; however, some observers criticized its lack of independence in practice. The office had adequate resources but was not considered effective on human rights issues.

The Constituent Assembly's Fundamental Rights and Constitutional Guarantees Commission held hearings on human rights before writing the constitution. The Constituent Assembly granted 13 amnesties and five pardons to individuals and groups allegedly involved in a variety of crimes.

The Commission for Truth, created in 2007 to investigate alleged human rights violations (particularly during the 1984-88 period), investigated 307 cases of human rights violations, and continued its work at year's end.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The previous and new constitutions prohibit discrimination based on race, gender, disability, language, or social status; however, women, persons with disabilities, indigenous persons, Afro-Ecuadorians, homosexuals, and

transgendered persons continued to face discrimination.

Women

Although the law prohibits violence against women, including within marriage, abuses were widespread.

The law criminalizes rape, including spousal rape, and provides a penalty of up to 25 years in prison. In cases of statutory rape involving "amorous" sex with a minor, the rapist may marry the victim, cancelling the charges unless the marriage subsequently is annulled. The penalty for rape where death occurred is 35 years' imprisonment. As of August there were 3,159 reported rapes, 527 cases where charges were filed, and 156 cases prosecuted successfully. Many rapes were not reported due to the victim's reluctance to confront the perpetrator.

The law provides penalties for domestic violence of up to a fine of \$28 or seven days in prison and gives family courts the power to remove an abusive spouse from the home if continued cohabitation creates a risk to the victim of abuse. The courts also may issue restraining orders prohibiting the abusive spouse from approaching the victim or her place of employment or study; prohibiting the abusive spouse from persecuting or intimidating the victim or any member of her family; reinserting the victim into the family home, if shared, while simultaneously removing the abusive spouse from the premises; and ordering any treatment deemed beneficial to the affected family.

The Ministry of Government's Office of Gender, based on partial reports it had received, reported 39,979 cases of sexual, psychological, or physical mistreatment of women and 6,065 cases involving male victims. Thirty-one special Police Stations for Women and Families handled such issues as domestic violence. The government's National Commission on Women (CONAMU) may accept complaints about abuse of women but must refer cases to the Prosecutor's Office for action. CONAMU had projects in all provinces, focusing primarily on equal opportunities, public policy programs toward women, and lines of credit for women's businesses. In some police stations, social workers employed by city governments or NGOs assisted victims. A variety of NGOs offered legal and psychological assistance to victims of domestic violence.

Prostitution is legal for persons over the age of 18 so long as the businesses are registered with the government and follow health regulations. Trafficking in persons for prostitution was a problem.

Despite the legal prohibition of sexual harassment, women's rights organizations described harassment in the workplace as common. CONAMU is charged with designing public policies to promote women's human rights and equality in cases of sexual harassment.

Despite legal protection of women's rights in politics, the home, and employment, societal discrimination against women was pervasive, particularly with respect to educational and economic opportunities for older women and for those in the lower economic strata. Although women enjoy the same legal status as men, women often did not receive equal rights in practice. According to the government, women received approximately 65 percent of the pay received by men for equal work. Women's advocates alleged that culture and tradition inhibited achievement of full equality for women. There were fewer women than men employed in professional work and skilled trades.

The Ecuadorian Women's Permanent National Forum included more than 320 women's organizations and promoted social, economic, and cultural change, including increased political participation by women. CONAMU provided support for approximately 500 women's organizations, many of which promoted social consciousness and greater participation by women in the political process. The NGO Women's Political Coordinator, which operated in 22 provinces, also promoted women's rights, with emphasis on political participation and human rights.

The 2008 constitution affords women an array of benefits in the economic, political, and social areas. For example,

it provides for gender balance in decision-making government institutions and in the lists of political parties' candidates for the National Assembly and other representative institutions. While women's organizations applauded these provisions, they noted that there were many legal and financial requirements necessary in order to implement the reforms.

Children

The government was committed to children's rights and welfare and increased funding for child health and education; however, those steps were not fully effective.

The 2008 constitution raised the minimum 10-year requirement of schooling to 15 years; however, due to shortages of schools, inadequate school funding, and the comparatively high cost of books and uniforms, the government rarely enforced either the old or new minimum requirement.

There was no societal pattern of abuse against children.

Commercial sexual exploitation of minors remained a problem.

More than 20 NGOs promoted child welfare. The UN Children's Fund and several private organizations were active in programs to assist street children.

Trafficking in Persons

While criminal laws prohibit trafficking in persons, there were reports that women and children were trafficked within, to, from, and through the country.

According to the 2007 survey of the National Council for Children and Adolescents, the Child Welfare Police reported 81 cases of trafficking in persons for various purposes, such as begging and sexual exploitation.

Traffickers were organized criminal gangs specializing in movement of persons, proprietors of small businesses such as bars or brothels, or illicit employment brokers. Accounts indicated that traffickers' recruitment modalities varied depending on the type of exploitation. In the case of sexual exploitation, victims were lured romantically or with promises of legitimate employment and then forced into prostitution. Recruiters for forced labor and begging included business owners in and outside the country. These traffickers offered parents education and work opportunities for their young children and then forced victims into trafficking situations, including prostitution domestically and in Colombia, Venezuela, and the Dominican Republic.

Foreign victims were transported across the border in public buses and in vehicles owned by traffickers. Victims from Colombia reportedly crossed the border in trucks. Falsified civil registry documents facilitated trafficking by disguising the nationalities of trafficking victims and the ages of juveniles.

The law criminalizes trafficking in persons and provides for prison terms of six to 35 years. The law also provides for penalties of six to 12 years in prison for promoting sexual tourism and child sex tourism. Numerous provinces, such as Pichincha, El Oro, Sucumbios, and Azuay, created networks joining local and national government institutions, NGOs, and civil society groups to combat trafficking in persons. These networks developed antitrafficking action plans and prevention campaigns, and in some cases worked together on adoption of ordinances.

The Public Ministry reported 98 cases of trafficking for sexual exploitation from January to July and nine convictions,

seven for sexual exploitation, one for child pornography, and one for forced begging.

The 2008 constitution requires the state to adopt measures to prevent and eradicate trafficking in persons and to assist victims, provide them with social reintegration, and protect them against revictimization (particularly during the judicial process) and from any type of threat or other forms of intimidation.

Under this new legal framework, trafficking victims of sexual exploitation may sue their spouse, partner, or relatives. The government must also undertake all necessary measures to protect foreign victims' rights even though they may have an irregular immigration status.

A 2007 presidential decree affords protection to victims, witnesses, and others involved in the judicial process to encourage victims to assist in the investigation and prosecution of trafficking cases. The program provides immediate protection, psychological and medical attention, economic assistance, and employment assistance. Since the economic resources of this program were limited, the government made agreements with several foundations and organizations that help provide the required services.

During the year the national government, in conjunction with NGOs and local governments, provided shelter to 76 trafficking victims while assisting them to reintegrate in their communities. On November 18, the Ministry for Social and Economic Inclusion opened the first government-run shelter for trafficking victims in El Oro Province.

From January to October, the Ministries of Government and Foreign Affairs and the National Child and Family Welfare Institute coordinated the repatriation of 21 victims of labor exploitation: 19 in the Dominican Republic, one in Colombia, and one in Chile. The ministries and the institute also assisted the return of two Colombian trafficking victims to their communities of origin.

The Ministry of Justice and Human Rights trained 4,000 police officers on trafficking in persons during the year.

The Ministry for Social and Economic Inclusion expanded its National Program for Special Protection that includes trafficking prevention activity in the provinces of Chimborazo, Tungurahua, Canar, and Guayas. The National Council of Children and Adolescents launched trafficking prevention campaigns in multiple provinces, specifically trafficking with the purpose of begging, with a strong focus on the central highlands.

The State Department's annual Trafficking in Persons Report can be found at www.state.gov/g/tip.

Persons with Disabilities

The constitution prohibits discrimination against persons with physical and mental disabilities in employment, education, access to health care, and the provision of other state services. The interagency National Council on Disabilities oversees government policies regarding persons with disabilities. Although the law mandates access to buildings for persons with disabilities, the government did not enforce it.

For the September referendum, the Supreme Electoral Tribunal (TSE) did not print ballots in braille but allowed blind individuals to have assistance from a relative while voting. The TSE provided sign language translators and made efforts to ensure that voting precincts were fully accessible to persons with disabilities.

The law requires the hiring of persons with disabilities in all public and private enterprises with more than 25 employees; however, there was no information on its implementation. An initiative, "Ecuador without Barriers," led by Vice President Lenin Moreno, helped create approximately 2,800 jobs for persons with disabilities by December 17.

The 2008 constitution extends benefits to persons with disabilities, particularly in the areas of education, employment, and access to social security.

National/Racial/Ethnic Minorities

The estimated 758,000 Afro-Ecuadorian citizens suffered pervasive discrimination, particularly with regard to educational and economic opportunity.

The Afro-Ecuadorian Cultural Center estimated that 70 percent of Afro-Ecuadorians lived in poverty. Afro-Ecuadorian organizations noted that, despite the absence of official discrimination, societal discrimination, including stereotyping, continued to affect them. For example, they continued to assert that the police stopped Afro-Ecuadorians for document checks more frequently than they stopped other citizens and that employers often would not interview persons whose job applications carried Afro-Ecuadorian photos. There were no special government efforts to address these problems.

The 2008 constitution declares the state to be plurinational, affirms the principle of nondiscrimination by recognizing the right of indigenous, Afro-Ecuadorian, and Montubio communities to restitution for acts of discrimination, and mandates affirmative action policies to ensure the representation of minorities.

Indigenous People

Estimates of those who maintained their indigenous cultural identity and lived in indigenous communities varied between 7 and 20 percent of the population. The vast majority of indigenous citizens resided in rural areas, including the highlands and the Amazonian provinces. Despite their political influence and the advocacy efforts of grassroots community groups, indigenous people continued to suffer discrimination at many levels of society and, with few exceptions, were at the bottom of the socioeconomic scale.

Arable land was scarce in the more heavily populated highland areas, where high infant mortality, malnutrition, and epidemic disease were common among the indigenous population. Electricity and potable water often were unavailable. Although the rural education system was seriously deficient, many indigenous groups participated with the Ministry of Education in the development of the bilingual education program used in rural public schools.

The 2008 constitution strengthens rights of indigenous peoples; it declares the state plurinational, recognizing Kichwa and Shuar as "official languages of intercultural relations," and specifically recognizes indigenous justice. Existing law also recognizes the rights of indigenous communities to hold property communally, to administer traditional community justice in certain cases, and to be consulted before natural resources are exploited in community territories. Indigenous people also have the same civil and political rights as other citizens.

The former and new constitutions grant indigenous peoples the right to participate in decisions about the exploitation of non-renewable resources that are located in their lands and that could affect their culture or environment. They allow indigenous people to participate in the benefits the projects may bring and to receive compensation for the damage that could result. The 2008 constitution mandates, in the case of environmental damage, immediate corrective government action and full restitution from the responsible company. However, some indigenous organizations asserted a lack of consultation and remedial action.

Indigenous groups lobbied the government, enlisted the help of foreign and domestic NGOs, and mounted protests in attempts to win a greater share of oil revenues and a greater voice in natural resource and development decisions. Colonists, drug traffickers, and loggers illegally encroached into indigenous territory. Corrupt local officials, a lack of political will, and divisions among and within indigenous communities undermined indigenous

efforts to stop the flow of illegally harvested timber. Widespread environmental damage, in part due to deforestation and petroleum production, constituted another serious problem.

The ombudsman's office had representatives in indigenous communities throughout the country. These had responsibility for promoting human and indigenous rights among indigenous communities and providing specific advisory services to these groups.

Other Societal Abuses and Discrimination

Although the law prohibits discrimination based on sexual orientation, homosexuals, transsexuals, and transvestites continued to suffer discrimination from both public and private bodies.

The 2008 constitution includes the principle of nondiscrimination, and establishes choice of sexual orientation as a right.

According to the NGO Kimirina, police subjected homosexuals, transsexuals, and transvestites to cruel, inhuman, and degrading treatment. The NGO accused the police of specifically targeting them and inflicting physical and psychological abuse, threats, extortion, and robbery. Police routinely arrested homosexuals and transvestites in public areas.

On April 29, a policeman pushed and punched a member of a sexual minority group. Two other policemen then forced the individual into a police car and accused him of being a criminal, while insulting him. They drove with him in the car and then pulled one of his friends into the car. The officers later released them.

The 2008 constitution specifically prohibits discrimination directed at persons with HIV/AIDS. There was no societal violence against persons with HIV/AIDS; however, persons with HIV/AIDS often preferred to conceal their health condition in order to avoid social discrimination.

Section 6 Worker Rights

a. The Right of Association

While the law provides most workers with the rights to form and join trade unions of their choice, legal protections of these rights were inadequate, sometimes failing to deter employers from retaliating against workers for organizing. Members of the police, the military, and most public sector employees (those who fall under the civil service law) were not free to form trade unions. Approximately 1 percent of the workforce was organized.

While employees of state-owned organizations enjoyed rights similar to those in the private sector, the law prohibits the majority of public sector employees from joining unions or exercising collective bargaining rights. Most public employees maintained membership in a labor sector association; such associations are not allowed to strike or bargain collectively.

The 2008 constitution, whose worker rights provisions require the adoption of implementing laws, terms workers' rights "irrevocable"; provides for the right to unionize and to strike (except in instances which might cause "paralysis" in public services such as health, education, public safety, and utilities); and commits state support for democratic unions.

The labor code and the 2008 constitution require workers in state enterprises to be represented by a single labor union. The law does not require reinstatement of workers fired for union activity but does require compensation and

finances. The 2008 constitution prohibits the use of outsourcing and of discriminatory criteria in hiring.

There are few restrictions on the right of private-sector workers to strike, although a 10-day period is required before a strike can be declared. The law allows solidarity strikes or boycotts of three days if the Ministry of Labor approves them. In some industries, during a legal strike, workers may take possession of the factory or workplace (thus ending production at the site) and receive police protection during the takeover. However, in other industries, such as agriculture, the law requires a 20-day waiting period from the day the strike is called. During this time, workers and employers must agree on how many workers are needed to ensure a minimum level of service, and at least 20 percent of the workforce must continue to work in order to provide essential services. The law provides that "the employer may contract substitute personnel" only when striking workers refuse to send the number of workers required to provide the minimum necessary services, although in practice this law was not enforced. The law protects strikers and their leaders from retaliation.

The law does not provide the majority of public workers with the right to strike. It includes a provision that striking public-sector workers are liable to between two and five years in prison. A temporary law passed by the Constituent Assembly on April 30 provided a 180-day deadline for the revision of all public sector collective bargaining agreements to exclude excessive benefits for workers.

b. The Right to Organize and Bargain Collectively

The law requires all private employers with 30 or more workers belonging to a union to negotiate collectively when the union so requests. Collective bargaining agreements covered 25 percent of the organized workforce. Most of the economically active population was employed in the agricultural sector or the urban informal sector; the vast majority of these workers were not organized. The law allows businesses to hire workers on individual contracts.

There is special legislation regulating labor in export processing zones. Most workers in export processing zones are hired on temporary contracts, and as such do not appear to be protected by key elements of the labor code.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there were reports that children were trafficked for labor (see section 5, Trafficking).

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits exploitation of children in the workplace and forced or compulsory labor; however, the government did not effectively enforce the law, and child labor remained a problem.

The labor code, the child and adolescent code, and the 2008 constitution set the minimum working age for minors at 15 for all types of labor and the maximum hours a minor may work at six hours per day, five days per week. The law lists 15 jobs that are not suitable for children and prohibits minors from working in hazardous conditions, including in mines or in jobs requiring exposure to toxic or dangerous substances. The law requires employers to pay minors at least 80 percent of the wages received by adults for the same type of employment. Penalties for violations of the child labor laws include fines of \$50 to \$300 for parents or guardians, fines of \$200 to \$1,000 for employers hiring adolescents between ages 15 and 17, and a fine of \$1,000 for any employer found to have hired children under the age of 15. In cases of repeated infractions, the employer's business can be closed.

The Ministries of Labor and of Economic and Social Inclusion and the Minors' Tribunal were charged with enforcing child labor laws, but enforcement, while improving, was not fully effective. The 2006 National Institute of Statistics

and Census's Child Labor National Survey found that 367,000 children between ages five and 14 were engaged in labor not permitted by law, primarily working in rural areas in the informal sector, compared with 550,000 in 2001.

The government's 28 child labor inspectors inspected workplace locations that specifically employed child labor; these inspectors had the authority to cite violations and sanction companies and employers found to have illegally hired child labor. From January to September, the inspectors conducted approximately 2,397 workplace inspections and found approximately 1,305 minors working in violation of labor laws.

The Ministry of Labor's five-officer Division for Child Labor meets monthly with other divisions in the ministry and the National Committee for the Progressive Eradication of Child Labor, which includes government agencies, businesses, and labor organizations.

While the Ministry of Labor's Social Service Directorate monitored child labor in businesses such as factories, enforcement in most sectors of the economy remained limited. In urban areas many children under age 15 worked in family-owned businesses in the informal sector, shining shoes, collecting and recycling garbage, or as street peddlers. Other children were employed in commerce, messenger services, domestic services, and begging. Children as young as five or six often sold newspapers or candy on the street to support themselves or to augment family income.

The government supported the Program for the Schooling and Protection of Child Workers, which implemented a workshop program in 40 cities to work with families and schools on the problem of child labor.

e. Acceptable Conditions of Work

The 2008 constitution mandates an annual revision of the minimum wage to match progressively the cost of a family's basic needs. The minimum wage plus mandated bonuses provided a gross monthly compensation of \$233. The statutory minimum wage did not provide a decent standard of living for a worker and family. Most organized workers in state industries and formal-sector private enterprises earned substantially more than the minimum wage and also received other significant benefits through collective bargaining agreements. However, most workers worked in the large informal and rural sectors without obtaining the minimum wage or legally mandated benefits.

The law provides for a 40-hour workweek and two consecutive days of rest per week. If required to work beyond the standard workweek, workers must be paid overtime. A higher overtime rate is set for working at night. The maximum number of hours of overtime was 12 hours per week, which generally was respected, except in subcontracting companies, where workers sometimes were required to work up to 28 hours of overtime per week, and in the case of some domestic employees. The Ministry of Labor did not deploy sufficient resources to enforce labor laws.

The Social Security Institute is responsible for enforcing health and safety standards and regulations. In the formal sector, occupational health and safety was not a significant problem. However, there were no specific regulations governing health and safety standards in the agricultural sector, and in practice there was no enforcement of safety rules in the small mines that made up the vast majority of enterprises in the mining sector.

The 2008 constitution provides that workers have the right to a healthy and safe work environment. A worker may request that an inspector from the Ministry of Labor confirm a workplace hazard; that inspector then may close down the workplace. Response time for inspectors ranged from three days in major cities to much longer in the countryside.

The 2008 constitution protects self-employed workers who work in public areas and prohibits the confiscation of

their products or work tools, a provision intended to benefit informal sector workers, such as street vendors.