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2010 Human Rights Report: Ecuador

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2010 Country Reports on Human Rights Practices

April 8, 2011

Ecuador is a constitutional republic with a population of approximately 14.3 million. In 2008 voters approved a referendum on a new constitution, which became effective in October of that year, although many of its provisions continued to be implemented. In April 2009 voters reelected Rafael Correa for his second presidential term and chose members of the National Assembly in elections that were considered generally free and fair. Security forces reported to civilian authorities.

The following human rights problems continued: 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. President Correa and his administration continued verbal and legal attacks against the independent media. Societal problems continued, including physical aggression against journalists; violence against women; discrimination against women, indigenous persons, Afro-Ecuadorians, and lesbians and gay men; 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

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

On April 23, the government's Unit for the Fight against Organized Crime released a report exposing the existence of a gang of hit men composed of active-duty police. The report stated that police were part of a "social cleansing group" that killed delinquents in Quevedo, Los Rios Province. In July the UN special rapporteur on extrajudicial executions, Philip Alston, called attention to "shocking" levels of impunity for killings in the country throughout the year. He accused police of

failing to investigate cases they label as "settling of accounts" between different gangs or criminal groups and stated that this "creates an easy cover for police who are themselves implicated in killings."

On August 1, police officers Nixon Guaman and Rolando Gualapanti allegedly shot and killed Christian Quimis Lozano. Police stated that gang members shot Quimis Lozano before police found him, while family members asserted that they saw police pursue and shoot him. The police opened an investigation into the case, but the two officers remained on active duty. The accused officers did not appear at the first hearing, and the case was rescheduled.

In 2008 the bodies of three men were found in a car in Manta. One of the victims was Yandry Velez, who had allegedly fled to Manta to hide from Diego Erazo, chief of the operational support unit of the Judicial Police in Pichincha Province. The family asserted that police killed Velez and his friends on orders from the mayor. The case was dismissed by year's end on grounds of insufficient evidence.

On June 5, the presidential commission established in 2007 to investigate human rights violations committed between 1984 and 2008 issued its final report. The commission reported that it had found numerous serious violations, including killings, during that period (see section 5).

Vigilante justice remained a problem. Such violence occurred particularly in indigenous communities and poor neighborhoods of major cities where there was little police presence.

On May 25, Victor Eduardo Naranjo Morejon and Pedro Mesias Velasco Morejon were beaten and burned to death by the local community in Orellana Province. One of the men had fought violently with a local indigenous teacher. After the killing, police took eight persons into custody and the prosecutor opened an investigation, which was ongoing at year's end.

On July 13, in Chimborazo Province, community members broke into a police detachment and proceeded to assault and burn alive Jose Ariel Pichu Toledo and Antonio Alfredo Delgado Navarrete, who were accused of robbing \$4,000 (the U.S. dollar is the official currency) from a woman and killing a taxi driver. Antonio Delgado died five days later from burn injuries. The provincial prosecutor stated that the case was under investigation, but no arrests had been made by year's end.

On July 25, Angel Molina was burned alive by community members in Azuay Province for robbing gasoline canisters. Molina died shortly thereafter in a local hospital. The police opened an investigation, but no arrests had been made by year's end.

b. Disappearance

There were no reports of politically motivated disappearances.

In September authorities opened an investigation and detained 17 police officers in connection with the reported disappearance in September 2009 of Georgy Cedeno (see section 1.c.).

Criminal kidnapping for profit was a growing problem in selected regions of the country. There were reports of extortion and threats of kidnapping of ranchers, farmers, and businessmen along the Colombian border. From January through November, police reported 25 kidnappings and an estimated 700 "express kidnappings" (in which a person is detained in a taxi and forced to make automatic withdrawals of personal funds), compared with 28 kidnapping cases and 347 "express kidnappings" in 2009.

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

Punishment

While the constitution and laws prohibit torture and similar forms of intimidation and punishment, some police officers reportedly tortured and abused suspects and prisoners, sometimes with impunity. In July the ombudsman acknowledged that "torture is a practice that has taken root."

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The constitution makes "any form of torture" illegal; the criminal procedures code (CPC) has a similar provision and criminalizes the use of torture to force confessions by state authorities and members of the police or military. The Prosecutor General's Office tracked information on imprisonment of alleged torturers, but classified these cases as "crimes against persons" and not as "torture." Those found guilty were often fined rather than imprisoned. According to the Judicial Council's Registration and Control Unit, during the year, 17 cases of torture were filed, with 12 defendants in prison awaiting trial and one conviction.

Through November the Ecumenical Human Rights Commission (CEDHU) registered 159 cases of alleged "torture" or "unwarranted physical aggression" by police forces. CEDHU reported that police beat suspects and used tear gas during arrests, and that police beat and threatened suspects throughout interrogations to force them to confess to crimes.

On July 25, Omar Vidal accused five police officers of attacking and arbitrarily detaining him. Vidal called the police after a robbery but stated that police attacked him and hit him in the face. Prosecutors opened an investigation and requested video from the street surveillance cameras for evidence in the case. On August 20, because of the investigation, two of the accused police officers, Wilmer German Galarza Loo and Armando Patricio Campoverde Llamuca, were separated from service. Another officer, Jorge Macias Moreira, was suspended.

In March the interior minister requested that the public prosecutor investigate the case of three siblings, Jenny Karina Pico Suarez, Fabricio Colon Pico Suarez, and Javier Universi Pico Suarez, and their stepfather, Georgy Hernan Cedeno Saltos. The Pico Suarez family accused seven members of the National Police Operations Support Group of illegally detaining and torturing them in northern Quito on September 30 and October 1, 2009. The family asserted that Cedeno disappeared after being detained with the others. The brothers filed a complaint with police, who initially refused to open an investigation. On September 8, authorities initiated an investigation and subsequently detained 15 police officers from the Operations Support Group and two from the Motorized Operations Group and charged them with involvement in arbitrary detention and torture. On October 30, a judge released the suspects from the Motorized Operations Group, ruling that they were following orders of their superiors.

On September 6, the interior minister asked the National Police to reopen an investigation into seven police officers involved in the 2008 case of three men in Quito who claimed police tortured them to force confessions that they had taken part in a robbery. In 2009 all charges against the robbery suspects were dropped. While the prosecutor requested that the case against all police officers be dropped, the charges against lower-ranked officers were kept. The investigation remained open, and all officers continued in active service.

From 2007 through August 2010, the National Police held 503 disciplinary tribunals for abuses committed by police. As a result, 367 police officers were dismissed, 171 were arrested, and 68 were sanctioned. On September 7, the interior minister reopened 290 cases of possible police abuses. Tribunals continued at year's end.

Prison and Detention Center Conditions

Conditions in prisons and detention centers were generally poor and tended to be worse in the tropical coastal areas than in the temperate highlands. Justice Minister Jose Serrano stated that existing facilities were overcrowded by 93 percent.

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

food. The National Agency for Social Rehabilitation (DNRS) reported that 42 prisoners died during the year, compared with six deaths in 2009.

Overcrowding continued to be a problem in most prison facilities, although the number of detainees dropped sharply in 2009 primarily due to a law that limits the period prisoners may be held before conviction or sentencing. The decrease also reflected the continuing work of a temporary public defenders' unit that hired more than 150 lawyers to defend poor prisoners, especially those awaiting sentencing. As of July, the DNRS reported that 38 facilities designed to hold 8,480 prisoners were holding 11,800 prisoners, compared with 10,808 in the previous year. According to a report by the international nongovernmental organization (NGO) Prisoners Abroad, resources in the prisons were minimal and prisoners (and their families) were expected to provide almost all mattresses, clothing, and medicines. Three very basic meals a day were provided, but prisoners reported that the quality of food could be very poor. There was usually hot water in the women's prison, although not in the men's prison. Water shortages were common in the women's prison in Quito. Chronic overcrowding and lack of preventive healthcare measures meant that disease spread very quickly. Healthcare provision was minimal and only sufficient for emergencies.

Conditions were notably better in the Quito women's prison than in men's facilities. There were no adolescents or children more than three years old living with their incarcerated mothers. Detention centers provided day-care facilities for children younger than three who could not be separated from their mothers. Pretrial detainees were held with convicted prisoners. According to CEDHU, male guards were responsible for guarding female inmates, and female inmates reported that male guards requested sexual favors in return for assistance.

Although in most instances the government permitted prison visits by independent human rights observers, authorities occasionally did not permit observers to visit prisoners who had been placed in isolation cells after they allegedly had been beaten. The DNRS stated that all properly identified officials and representatives from NGOs were able to visit prisoners, yet many times observers and authorities were not able to find prisoners because of poor record keeping and corruption of prison officials. According to a report by Prisoners Abroad, prisoners were allowed all-day visits three days a week and, in the men's prisons, women could stay overnight every other Saturday.

One new maximum-security facility, with more than 70 double-occupancy cells, opened in July in Guayaquil. An additional Social Rehabilitation Center opened in Santo Domingo in October when 80 prisoners were transferred there. When finished, the facility will accommodate up to 1,054 prisoners in both men's and women's sections. On August 31, the government declared that the penitentiary system was in a state of emergency due to overcrowding and poor conditions and budgeted \$40 million to start construction on four new facilities in 2011.

d. Arbitrary Arrest or Detention

While the constitution prohibits arbitrary arrest and detention, in 2006 the UN Working Group on Arbitrary Detention noted that provisions in the CPC, the penal code, and some regulations adopted by central or provincial authorities "undermine the guarantees and protection offered."

Role of the Police and Security Apparatus

The National Police are under the authority of the Ministry of Interior. National Police effectiveness was impaired by corruption, poor hiring procedures, and insufficient training, supervision, and resources. NGOs provided human rights training for police officers at the request of the National Police. The government undertook major initiatives to improve the preparedness of police, including increasing funding and salaries and purchasing equipment.

Some municipalities, such as Quito and Guayaquil, have their own metropolitan police forces in addition to the National Police. Guayas Province also has an autonomous transit police department. A police internal affairs office investigates

complaints against police officers and can refer cases to the courts. According to reliable NGOs, members of the Quito and Guayaquil metropolitan police occasionally used excessive force.

On September 30, the National Police at Quito's First Regiment barracks staged a strike over benefits, which quickly spread to other police detachments nationwide and some military units. The protest in Quito became violent, and when visiting the barracks in an attempt to convince the protesters to end their strike, President Correa was assaulted, aggravating an injury to his recently operated knee. Correa sought refuge and received treatment at the National Police Hospital; he eventually was rescued that night in a combined police/military operation after expressing fear for his personal safety, based on the actions of police protesters in and around the hospital throughout the day.

On September 30, President Correa declared a nationwide five-day state of exception, covering the whole country, to allow the military to assume the responsibilities of the police and restore order. Beginning October 1 and in the following days, the military assumed police duties and patrolled the streets. Police began to resume their duties on October 1 and within a few days returned to their normal patrols in coordination with the military.

On October 5, the state of exception was extended for three additional days nationwide. On October 9, President Correa extended the state of exception only for Quito, allowing the military to continue to exercise police duties in protection of government installations, including the National Assembly. The state of exception in Quito expired on December 7.

Following the protest, the Prosecutor General's Office opened 10 different investigations for attempting to assassinate the president, threatening internal security, murder, rebellion, and sabotage. All 10 investigations were ongoing at the end of the year. Prosecutors formally charged at least 65 persons and heard testimony from over 700. The National Police also carried out internal investigations resulting in administrative sanctions for police who disobeyed orders. Twenty-three persons reportedly remained in pretrial detention while the investigations continued, and 33 were released on bail. Fourteen employees in two ministries were accused of paralyzing public services during the protest and were fired from their jobs.

Arrest Procedures and Treatment While in Detention

The law requires authorities to issue specific written arrest orders prior to detention, and they must charge a suspect with a specific criminal offense within 24 hours of arrest. Within 24 hours of arrest, detained persons may challenge the legality of their detention through a habeas corpus petition to a judge in the locality where detention took place. The constitution provides that a prisoner may be released only by court order.

The law stipulates that pregnant women cannot be held in prison facilities during pretrial detention, although women who are pregnant or become pregnant after sentencing must remain incarcerated. However, according to reliable NGOs, police sources, and press reports, many pregnant women were jailed rather than being confined to their homes during pretrial detention.

Bail is allowed only in the case of crimes punishable with prison terms of less than five years and is prohibited for hate, sexual, and domestic-violence crimes and in cases where, in the judge's opinion, release may result in public alarm.

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

The law limits the period that detainees may be held after indictments have been issued, but before conviction or sentencing, to six months in the case of less serious crimes (those punishable with "correctional imprisonment") and one year in the case of major crimes. However, authorities repeatedly circumvented this provision by filing new charges when the limit was close to expiring. Most accused persons remained in prison during the investigation phase. According to government data as of July, approximately 53 percent of prisoners had not been sentenced.

Although the law entitles detainees 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 bribed prison officials to facilitate access and carry cell telephones. CEDHU reported that Judicial Police facilities holding persons for preliminary investigation did not allow 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.

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 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 the judicial sentences and sent them back to the presiding judge for signature. Judges occasionally reached decisions based on media influence or political and economic pressures.

The constitution provides for a unified judicial system, which abolished separate military and police judicial systems. On April 27, the National Assembly passed a law integrating the members of the former military and police courts in the ordinary judicial system; as a result, the ordinary judicial system tries military and police cases.

The 2005 appeal by 27 Supreme Court justices who were replaced by Congress in 2004 remained pending with the Inter-American Commission on Human Rights.

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 due to 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 convicted in trial, and have the right to a public trial, defense attorneys, and appeal. They may present evidence, invoke the privilege against self-incrimination, and confront and cross-examine witnesses. The law extends these rights to all citizens. The Transitory Public Defense Unit, established in 2007, became the autonomous Public Defense Office and has 127 criminal defense lawyers in charge of 4,800 cases. An additional 300 attorneys were contracted from legal services centers, and they handled about 7,800 additional cases.

Civil society groups, lawyers' associations, and universities--some contracted by the Transitory Public Defense Unit--continued to provide support for vulnerable groups that did not have access to legal defense.

The regular court system tried most defendants, although some indigenous groups tried members independently for violations of tribal law. While the law and the constitution recognize indigenous communities' right to exercise their own systems of justice based on their traditions and customs, they do not specify how this right is to be implemented. This parallel system raised questions of both jurisdiction and conformity with the right to a fair trial, as well as the possibility of inconsistent results between systems.

Reforms to the CPC in 2009 distorted the criminal justice system by limiting the length of detention prior to conviction but allowing prosecutors to amend charges or charge the same defendant with different crimes in order to continue detaining the person. In addition the constitution places the Prosecutor General's Office within the judicial branch and under its supervision, giving the Judicial Council exclusive power to train, evaluate, and sanction prosecutors. This judicial oversight threatened prosecutorial independence over which cases to investigate and charge. Under the current system, some prosecutorial decisions may be subject to review by a magistrate at an adversarial evidentiary hearing conducted during the investigative phase of the trial. CPC reforms aimed at providing criminal procedural protection also created a complex, sometimes confusing, system and slowed the judicial process by retaining vestiges of the old inquisitorial system, which required that certain matters be submitted in writing. Some protections for defendants increased. For example, up to 20 preparation hearings (similar to a preliminary hearing) including ruling on motions related to evidentiary matters are possible before the actual trial proceedings.

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.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, but the government restricted these rights in practice. Verbal and legal attacks against the press by President Correa and his government continued during the year. The relationship between the press and the government continued to deteriorate, and there were reports of indirect censorship and self-censorship. During the year several well-known television and radio political commentators resigned, publicly attributing their decisions to government pressure on their media outlets.

Generally, individuals could criticize the government publicly or privately without reprisal. However, it is illegal to threaten or insult the president or executive branch, and violators can be reprimanded with six months' to two years' imprisonment or a fine of \$16 to \$77. While the independent media remained active and expressed a wide variety of views, including

those critical of the government, the NGO Monitoring Network of Threats to Press Freedom reported 151 cases of harassment (threats, attacks, or arrests) against journalists or other representatives of the press.

On January 17, unidentified persons broke into the home of Alfredo Negrete, the executive director of the Ecuadorian Association of Journalists. While the house was carefully searched, only items of little value were missing.

On January 27, police detained Carlos Julio Solano nine hours for supposedly making an obscene gesture at the president while he exited a television station. President Correa later apologized for the abuses of the police.

A March 3 Inter-American Press Association report asserted that the government "redoubled its offensive" against press freedom. According to the 2009 Report of the Inter-American Commission on Human Rights' special rapporteur for freedom of expression, "Ecuador has seen a rising climate of polarization in which attacks on and threats against journalists and media outlets of all editorial positions have increased."

On March 13, President Correa encouraged citizens to organize and oversee the activity of media outlets and promote lawsuits against journalists whose activities may violate human rights.

On May 16, a journalist from *El Mercurio* newspaper in the city of Manta was allegedly assaulted by police officers and taken into custody for more than an hour for refusing to hand over his camera. The journalist was covering a car accident in an area where police used tear gas to control an incident.

In June and July, during the broadcast of the Soccer World Cup matches, the government ran a media campaign against the press, referring to media outlets as corrupt and delinquent. The campaign featured expressions such as "nobody believes them anymore" and images, such as a snake jumping out of the television screen. Several media outlets requested that the government clarify who were the targets of the accusation. On July 9, the national legal secretary, Alexis Mera, stated that the government was not legally obligated to respond to these inquiries.

On June 25, a nationwide government broadcast criticized Jorge Ortiz of Teleamazonas for making statements critical of President Correa during his television show on June 20. The government required that its broadcast be shown during Ortiz's live television program on June 25. Teleamazonas later apologized for having misreported the information on which Ortiz based his comments. Ortiz's program was suspended on July 23, and he resigned from Teleamazonas on August 28.

On several occasions, crowds or individuals within crowds assaulted and yelled insults at journalists covering a protest or event. There also were a few high-profile cases of indirect censorship of the media by the government.

President Correa regularly used his weekly radio and television address and other public appearances to criticize the media, question its competence and professionalism, and accuse it of bias, frequently naming specific reporters and outlets. Several journalists and individuals involved in local press associations reported that Correa's "systematic" verbal attacks against the media created "a hostile environment for journalists." They also noted similar behavior exhibited by other high-level government officials. Journalists stated that these attacks caused them to practice self-censorship.

On April 5, 20 editorialists of the government-run newspaper *El Telegrafo* resigned, asserting that the newspaper censored content.

There were also instances of the government using legal mechanisms to restrict the media, including use of libel laws to suppress criticism. On March 26, a judge sentenced journalist Emilio Palacio to serve three years in prison and pay a \$10,000 fine for having offended government official Camilo Saman in an article entitled "Camilo, the Bully" that was published in August 2009. Palacio appealed the decision based on a May 21 court ruling establishing that the judge who

convicted Palacio did not have jurisdiction to rule on the case. Before the appeal was resolved, Saman withdrew the charges.

Following up a May 2009 audit commission examination of radio and television frequency concessions, in August the Comptroller General's Office issued a report making recommendations; however, these reports had little effect on transmissions.

On January 20, authorities dropped charges against Giancarlo Zunino and Felix Pilco, who were arrested and detained in October 2009 on charges of "separatism," stemming from placards critical of the president that they had hung in Guayaquil.

In 2009 the government investigated the independent television station Teleamazonas for broadcasting alleged misinformation about gas exploration on the island of Puna. The investigation resulted in a 72-hour suspension of programming in December 2009. (Teleamazonas was also sanctioned for two other broadcasts in 2009.) On February 3, Teleamazonas won an appeal before a provincial court, which ordered the government to compensate the station for the suspension of programming. The superintendent of telecommunications appealed this decision to the Constitutional Court. On November 18, the Constitutional Court overturned the ruling of the provincial court. Teleamazonas has the right to file a new appeal.

In December 2009 the Office of the Superintendent of Telecommunications (SUPERTEL) announced that the radio station La Voz de Arutam, broadcasting in Morona Santiago Province to the Shuar indigenous community, would lose its frequency rights for inciting violence during indigenous protests in September 2009 that led to the death of Bosco Wisuma, a Shuar protester. The station appealed the decision and lost. However, on January 26, the National Council of Telecommunications reversed its decision to close down the radio station and instead referred the case to the Prosecutor General's Office for a criminal investigation of four persons suspected of inciting violence over the radio (see section 2.b.).

The constitution declares the frequency spectrum a state-owned nonrenewable resource and mandates that the state receive no less benefit than the company involved in the exploitation of that resource. It prohibits oligopolies or monopolies in the ownership of means of communications and in the use of frequencies and precludes financial groups, their legal representatives, stockholders, and board members from controlling the "social means of communication" through capital and investment. It also mandates that all public and private media organizations and regulatory bodies 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 government programs on education and health issues for up to an hour per day (Mondays through Saturdays) at no charge. This law also mandates the broadcast of messages and reports by the president and his cabinet free of charge. The government regularly asked media stations to broadcast statements by the president and other leaders, and this cut into the stations' paid programming. During police protests on September 30, the government forced all stations to broadcast the government channel for about six hours, which virtually eliminated all independent reporting during the crisis.

The constitution provides for the right of all persons to receive information that is true, verified, timely, contextualized, pluralistic, and without prior censorship. It also states that the law would regulate the informational, educational, and cultural content of the programming of communication outlets.

On April 20, a law on citizen participation became effective. The law requires the independent media to disclose financial information once a year if the public so requests.

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 expression of views via the Internet, including by e-mail. In September SUPERTEL reported that there were three million Internet users, approximately 21 percent of the population. Internet access was widely available in larger cities, but access in the most remote locations was poor.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution provides for freedom of peaceful assembly, and the government generally respected this right in practice, although some exceptions occurred. Public rallies required prior government permits, which were generally granted with some exceptions.

On April 30, high school student Xavier Gallardo lost his eye while protesting the increase of the price of milk. Preliminary police reports were unclear whether the cause was a police rubber bullet or a stone. In May the vice president announced that the government would help the student with all medical care and a prosthesis. An investigation continued at year's end.

On July 5, the prosecutor's office opened an investigation of indigenous leaders Marlon Santi and Delfin Tenesaca for clashes with police caused by protesters during demonstrations surrounding the Bolivarian Alliance of the Americas' summit in Otavalo, Imbabura Province. The case was pending at year's end.

In July a government investigation into the death of Bosco Wisuma, killed in September 2009 during a Shuar indigenous protest, found that Wisuma died of pellet wounds similar to those caused by indigenous weapons used for hunting, thereby exonerating police from the killing. A French forensics specialist conducted the autopsy with government and indigenous representatives present. Indigenous National Assembly members and leaders rejected the investigation results, claiming that police killed Wisuma and that the investigation was politically influenced. At the recommendation of the National Assembly, the Truth Commission organized two expert investigations, one ballistic and one forensic. The investigations determined that Wisuma was killed by a pellet, indicating that it was not a police bullet but rather came from the crowd of protesters.

Freedom of Association

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

The government began requiring reregistration of organizations based on a 2008 decree that provides the government discretion to dissolve organizations (including civil society, foundations, and churches) on multiple grounds, including compromising the interests of the state, not posting the names of all of their members on a public Web site, or not providing access to information requested by the government. Some groups found particularly onerous an interpretation that would require a ten-fold increase in the minimum asset requirement to register.

c. Freedom of Religion

For a complete description of religious freedom, please see the *2010 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.

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, in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

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

Protection of Refugees

The constitution recognizes the rights of asylum and refuge, including "special protection in view of guaranteeing the full exercise of their rights." The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

The government reported that, from January through September, it received 24,761 applications for regular refugee status and recognized 7,577 refugees. The enhanced registration program, implemented in 2009 and part of 2010, targeted Colombian refugees for expedited registration and documentation over a 12-month period in the northern border region. Applicants rejected in either the regular or the enhanced refugee process had a legal right to appeal; after appeals are exhausted, they have 30 days to leave the country. There were reports of police detaining and attempting to unlawfully deport Colombians in the northern border region in May and June. The UNHCR confirmed two possible cases of forced repatriation from that time.

There were 52,452 recognized refugees in the country as of September. The government and the UNHCR estimated that approximately 155,000 persons were in need of international protection by the end of the year, of whom approximately 30,000 had cases pending and the rest were not registered in the asylum process. In September the government reported that it received 10,000 asylum requests a month.

Colombians accounted for 98 percent of asylum seekers, and the rest originated from a wide variety of countries, including Cuba, Peru, Haiti, Nigeria, Pakistan, and Bangladesh. The law provides persons granted refugee status the right to work; however, this right is not extended to asylum seekers. The law also provides recognized refugees and asylum seekers the same access to public health services as citizens. The presentation of any identity document is sufficient to provide access to public educational institutions. However, numerous NGOs asserted that local school authorities frequently prohibited non-Ecuadorian children from enrolling in school. Various NGOs reported that the Civil Registry did not always cooperate in registering refugee children or registering children of refugees born in Ecuador, despite legal requirements to do so.

The government provided temporary protection to individuals who may not qualify as refugees. The government and NGOs also provided humanitarian aid and additional services, such as legal, health, education, and psychological assistance, to Colombians recorded as having crossed the border during the year. Most aid was cut off if official refugee status was denied. The government opened new refugee offices in Guayaquil, Esmeraldas, Tulcan, and Ibarra.

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 based on universal suffrage.

Elections and Political Participation

Elections for offices at all levels of government, including the presidency and the multiparty National Assembly, were held in April and June 2009. Organization of American States and European Union observers concluded that the elections were generally free and fair, with local irregularities, and highlighted areas for further improvement in subsequent elections. Domestic observers also observed elections throughout the country. Although the international and domestic observation teams reported no major fraud, there were some reports of missing or marked ballots, counting and vote calculation irregularities, and incidents of violence.

In 2008 voters approved a "transition regime," which regulated the transition to the new institutional order. The interim Constitutional Court and National Court of Justice remained in place during the year. The permanent Citizen Participation and Social Control Council, an institution under the newly created Transparency and Social Control branch of government, was selected in March, and it began working on the selection of permanent government officials, a process expected to conclude in 2011.

The constitution mandated the reregistration of political organizations after the 2009 elections. On March 3, the National Electoral Council approved the required rules for reregistration. While there is no deadline for registration, in order to compete in elections, political organizations must be legally recognized at least six months prior to elections. Only two political organizations completed the reregistration requirements by year's end.

The constitution provides for state-promoted, gender-balanced representation in the public sector, including in the lists of political parties' candidates for the National Assembly and other representative institutions. As of December 1, there were 42 women in the 124-seat National Assembly, 12 women in the 27-member cabinet, and two female secretaries of state with the rank of minister.

There were seven Afro-Ecuadorians and indigenous persons in the National Assembly, but no Asian-Ecuadorians. There was one Afro-Ecuadorian but no Asian-Ecuadorians or indigenous persons in the cabinet.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. The World Bank's worldwide governance indicators reflected that government corruption was a serious problem.

There were media reports of police corruption. Labor leaders and business owners reported corruption among inspectors (see section 7.e.).

On November 17, 11 prison guards at the Center for Social Rehabilitation in Guayaquil were detained for corruption. An investigation of 52 guards found evidence that the guards allowed drug trafficking within the prison and demanded bribes from prisoners in return for security.

The National Secretariat for Management Transparency is tasked with investigating and reporting public complaints of corruption and with promoting transparent practices in the public administration. The Presidency's Secretariat for Transparency of the Public Administration investigates corruption cases brought by the government.

In March the Prosecutor General's Office initiated an investigation of Juan Xavier Aguinaga, former under secretary of foreign affairs for the Ministry of the Coast Region, along with several notary publics, for alleged involvement in the illegal naturalization of Cuban citizens. On April 1, police temporarily detained Aguinaga and two other persons. The prosecutor opened cases against 74 persons, and two notary publics were suspended. The National Secretariat for Management Transparency and the Ministry of the Interior also began investigations. In early September the foreign ministry annulled 174 naturalizations because of fraud. On November 8, press reports indicated that Aguinaga had fled the country. On December 16, police detained the director of immigration in the same investigation into visa fraud. Press reports stated that up to 2,000 visas might have been issued illegally.

In February 2009 former solicitor general Xavier Garaicoa was charged with violating public contracting and public spending laws by giving out \$10,000 bonuses to 348 employees in the Solicitor General's Office. On July 14, the National Court ordered that Garaicoa be placed in pretrial detention, but the arrest warrant was overturned before he was detained. The case was pending at year's end.

In June 2009 the media reported that companies allegedly associated with businessman Fabricio Correa, the brother of the president, had signed large public-sector contracts during the Correa administration. In September 2009 President Correa announced he would nullify all government contracts connected to companies with which his brother was allegedly involved. These companies were registered as unfulfilled contractors in the State's Public Procurement Web site; this action impedes them from receiving contracts with the state from September through November 2014, depending on the company. In July the Prosecutor General's Office rejected the accusations against Fabricio Correa in the following cases: the bidding process for the construction of the bridge over the River Paute (July 7), the signing of the contract for the construction of the road Milagro-Indanza-Gualaquiza (July 7), and the Ivanhoe case (July 28). At year's end, the Office of the Comptroller General and the National Secretariat for Management Transparency continued to investigate other cases, and citizen oversight committees examined contracts linked to companies with which Fabricio Correa is alleged to have a relationship. In response to the nullification of his contracts, Fabricio Correa leveled his own accusations of corruption against his brother's administration and maintained demands against the state for an estimated \$60 million and five criminal procedures against two government officers.

In August 2009 the multinational oil company Chevron provided Ecuadorian government authorities with secretly recorded videos it had obtained from two individuals. The company claimed the videos exposed a bribery scheme involving Juan Nunez, the presiding judge in the multibillion dollar environmental lawsuit pending against the company in an Ecuadorian court (see section 6). In September 2009 Nunez recused himself under pressure from the prosecutor general. On September 29, the National Judicial Council disbarred Nunez for breaking the law by expressing his opinion on the case before its conclusion.

On May 3, the prosecutor general requested that the National Court of Justice initiate a proceeding against two attorneys representing Chevron and seven former government officials related to allegations of fraud in an environmental remediation release agreement between Chevron and the government. A preliminary hearing to determine if charges should be filed had not taken place by year's end. The company claimed the action was politically motivated and that previous prosecutors general had dismissed the same allegations.

On August 4, the prosecutor general requested that the National Court of Justice file charges against former minister of energy and mines Pablo Teran. The case involves accusations that Teran had benefitted financially from a pipeline construction contract with Oleoducto de Crudos Pesados. Teran claimed the case against him was politically motivated. The case was originally opened in 2003 by the Prosecutor General's Office to investigate the allegations, but was suspended in 2005 for lack of evidence. The prosecutor general reopened the investigation in April 2008. The court had not filed charges against Teran by year's end.

Fraud charges remained pending against former minister of sports Raul Carrion for contracting irregularities in the construction of a stadium in Morona Santiago Province. On July 5 and September 23, the prosecutor general filed two new embezzlement charges. Carrion had three cases pending against him at year's end.

The constitution states that all persons have the right to access information gathered by public or private organizations receiving state funds. It further requires that the information be available in the native language of the citizen. The law requires all organizations (public and private) that receive public funds to respond to written requests for information; publish specific information on their Web site; and submit an annual report to the Ombudsman's Office that details their compliance with the transparency law. Personal information about individual citizens and information regarding national security are excluded from the transparency law requirements. Government officials are required to declare their financial holdings upon taking office and if requested in an investigation, and all agencies must disclose salary information annually. As a result, government agencies increasingly put budget information, functions, organizational information, lists of government officers, and official notices on the Internet in addition to responding to written requests.

An NGO that monitored the implementation of this law found that compliance with some of the law's requirements improved dramatically. According to the NGO Citizen Participation, in 2009 only 36 percent of the organizations surveyed complied with the requirements to publish information on their Web page. During the year, 72 percent of those same organizations complied with the Web site requirements. Despite this improvement, there were still some compliance problems, especially with respect to submission of annual reports to the Ombudsman's Office. In June, Fernando Gutierrez, the interim ombudsman, stated that only 470 entities out of 4,800 had submitted the required annual report detailing their compliance with the law.

Section 5 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 recommendations.

The Ombudsman's Office focused on human rights problems. The constitution describes the Ombudsman's Office as an administratively and financially independent body under the Transparency and Social Control branch of government. As of June, the office had 65 lawyers and regularly presented cases to the prosecutor's office, but with limited success. In 2008 the Constituent Assembly appointed an interim ombudsman, who served pending appointment of a permanent ombudsmen through a process managed by the Citizen Participation and Social Control Council.

On June 5, the Truth Commission established by the government in 2007 issued its final report. The commission investigated human rights violations committed from 1984 to 2008, with a focus on violations under the government of Leon Febres Cordero (1984–88). The commission reported that, during Febres Cordero's government, illegal arrests, acts of torture, extrajudicial executions, and forced disappearances were carried out in a systematic and generalized manner and that human rights violations continued during subsequent administrations (between 1988 and 2008). The report stated that, over the 24 year period, 456 individuals were victims of human rights violations, 78 percent of which occurred in the Febres Cordero period.

The Truth Commission identified 458 individuals allegedly responsible for crimes against humanity. The commission requested investigation, trial, and punishment against those found responsible. The commission also recommended the implementation of an administrative program dedicated to reparations. The commission's mandate was extended through December to help implement its recommendations.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution prohibits discrimination based on race, gender, disability, language, or social status; however, women, persons with disabilities, indigenous persons, Afro-Ecuadorians, and gay, lesbian, bisexual, and transgender persons continued to face discrimination.

Women

Although the law prohibits violence against women, including within marriage, abuses were widespread. On March 8, the Ombudsman's Office released a report stating that approximately 83,000 women annually suffered some sort of violence or abuse. The report also noted that 7,000 women were assaulted monthly and that more than 200 women were victims of some sort of violence on a daily basis.

The law criminalizes rape and provides penalties of up to 25 years in prison. Under family law, spousal rape is considered a type of violence and may be prosecuted under the criminal code. The penalty for rape where death occurred is from 16 to 25 years' imprisonment. The prosecutor general received reports of 4,045 rapes from January to November, with 329 convictions and 87 acquittals. Many rapes were not reported due to the victim's reluctance to confront the perpetrator.

The most pervasive violations of women's rights involved domestic and sexual violence. Although prohibited by law, both were widespread and vastly underreported. The Ministry of Interior's Office of Gender reported, based on partial reports it had received as of December 2009, a total during the year of 63,837 cases of sexual, psychological, or physical mistreatment of women. Although authorities referred many women who reported domestic abuse or sexual crimes to the judicial system, cultural prejudices, financial dependence, family pressure, and the victim's fear of testifying at a trial contributed to a large number of charges against perpetrators being dropped.

In April the government initiated a campaign against sexism titled React Ecuador, Sexism is Violence, which sought to eradicate gender violence by improving the justice system, protecting victims of violence, and raising awareness of violence against women as a human rights violation. A study published by the campaign indicated that in 2009 approximately 64 percent of deaths among women were due to gender-based violence. According to the campaign, 80 percent of women experienced physical, psychological, or sexual violence.

Governmental joint service centers provided assistance on legal issues, social and medical assistance, and police protection free of charge to victims of domestic and gender violence. According to family law, domestic violence may be punished with a fine for "damages, pain and suffering" ranging in value from \$320 to \$4,800, depending on the severity of the crime. The law also gives family courts the power to remove an abusive spouse from the home if continued cohabitation creates a risk to the victim of abuse. In 2009, 31 government centers for women received almost 73,000 complaints

The constitution provides for courts specializing in women and family issues. These courts, under the judicial branch, have the power to authorize restraining orders prohibiting the abusive spouse from approaching the victim or the victim's place of employment or study and from persecuting or intimidating the victim or any family member; to reinsert the victim into the family home, if shared, while simultaneously removing the abusive spouse from the premises; and to order any treatment deemed beneficial to the affected family.

The constitution affords women an array of benefits in the economic, political, and social areas. The law stipulates that the government should formulate and implement policies to achieve gender equality, incorporate a gender focus into plans and programs, and provide technical assistance to implement the law in the public sector.

Despite the legal prohibition of sexual harassment, women's rights organizations described harassment in the workplace as common. Between January and June, the national police received 325 reports and complaints of sexual harassment.

The law acknowledges sexual and reproductive rights, including the basic right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children. The Free Maternity Care Law protects the sexual and reproductive rights of women and calls for free prenatal care, family planning services, and cancer screening. The law also promotes a role for men in care giving by providing paternity leave of up to 10 days. During the year the Ministry of Health's budget for applying the law was \$27 million. According to statistics from the Population Reference Bureau, 69 percent of women had skilled attendants present during childbirth in 2009. The Ministry of Public Health stated that only 30 percent of births to self-identified indigenous mothers took place in hospitals or health centers. The UN Population Fund estimated that the maternal mortality rate in 2008 was 140 deaths per 100,000 live births.

The 2005 National Demographic and Maternal Health Survey (the latest available information) reported rural and urban contraceptive prevalence rates of 67 percent and 77 percent, respectively. The Population Reference Bureau reported in 2009 that more than 36 percent of modern contraceptive method users received these services through government-sponsored programs.

The government continued to implement a national HIV/AIDS program begun in 2009 to prevent mother-to-child transmission of the disease and provided free screening for all women. Information was not available on whether women were equally diagnosed and treated for sexually transmitted infections, including HIV; however, women may receive more screening than men, since 84 percent received antenatal care according to the Population Reference Bureau.

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 enjoyed the same legal status as men, women often did not receive equal rights in practice. According to the World Economic Forum's *2010 Global Gender Gap Report*, for example, women received approximately 61 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. Little reliable data existed regarding the situation of women within the tightly knit indigenous communities.

Children

Citizenship is acquired either through birth in the country or by birth to an Ecuadorian mother or father abroad (until the third generation). A registration campaign by the Social Registry, the Ministry of Social and Economic Inclusion, and the Child and Family Institute called Put Your Name Down registered approximately 60,000 children throughout the country during the year. In 2009, according to the Observatory of the Rights of Children and Adolescents, there were 300,000 unregistered children in the country. Health centers and hospitals had the ability to register births at their facility, so all children born in hospitals should be registered shortly after birth.

In May newspapers reported an excessive demand for civil registration by parents whose children needed to be registered in order to enroll in public schools. Although the law prohibits this requirement, some schools set their own requirements. President Correa threatened legal action against schools requiring civil registry documents and ordered the education minister to investigate. Other government services, including welfare payments and free primary health care, require some form of identification.

The constitution requires a minimum of 15 years of schooling. The Ministry of Education reported that most children achieved a sixth-grade education; however, in some provinces, public schools denied entry to students due to the lack of

space. By law, education was free through high school, but additional costs, such as for uniforms and books, and a lack of space in public schools prevented many adolescents from attending school.

There were reports of abuse against children. According to the government, 21 percent of children had suffered some form of sexual abuse. Projects sponsored by local NGOs reported that children living in the streets suffered exploitative conditions. In the last two decades there was an increase in abandoned children and teenage mothers in the streets or hospitals. Most of these abandoned children came from poor indigenous families.

Commercial sexual exploitation of minors remained a problem. The law prohibits child pornography, with penalties of six to 16 years' imprisonment. The law covers statutory rape where the age of consent is 14. The penalty for statutory rape is 16 to 25 years' imprisonment.

The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html.

Anti-Semitism

There were no reports of anti-Semitic acts. There was a small Jewish community, including an estimated 250 families in Quito, according to the local synagogue.

Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* 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 and public transportation for persons with disabilities, the government did not fully enforce it.

The constitution extends benefits to persons with disabilities, particularly in the areas of education, employment, and access to social security. The law requires that percent of employees in all public and private enterprises with more than 25 employees be persons with disabilities. On May 8, Vice President Lenin Moreno stated that government agencies were fully compliant with the law and that private companies would face stiff fines for noncompliance. According to government information, only 35 percent of the 1,532 audited companies complied with this law. Through the beginning of June, nine companies were fined a total of \$600,000 for not complying with the law.

An initiative called Ecuador without Barriers, led by the vice president, helped create an unspecified number of jobs for persons with disabilities, provided funding to more than 200 municipalities to improve access to public buildings, and opened training and rehabilitation centers. The initiative also created a record to show the degree of compliance by companies that hire persons with disabilities. In addition to this program, the government was building centers for those considered intellectually disabled.

The vice president also led an initiative to conduct a census, registry, and survey of living conditions of persons with disabilities. As of early December, the initiative had registered 294,166 persons with disabilities nationwide. In addition, the caregivers of persons with severe disabilities received a government subsidy equivalent to the minimum monthly wage. In 2009 the municipality of Guayaquil, the country's largest city, passed a regulation requiring all businesses and public

institutions to improve access for the disabled and the elderly. Also in 2009, seven municipalities located in areas of high risk of natural disasters finished developing guidelines for the rescue and assistance of persons with disabilities during and following a disaster.

National/Racial/Ethnic Minorities

Afro-Ecuadorian citizens, who account for approximately 3 percent of the population, suffered pervasive discrimination, particularly with regard to educational and economic opportunity.

Afro-Ecuadorian organizations noted that, despite the absence of official discrimination, societal discrimination and stereotyping continued to affect them. For example, they continued to assert that 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, except for the Municipality of Quito, which in 2008 prohibited private and public institutions in Quito from accepting curriculum vitae with pictures.

The Corporation for the Development of Afro-Ecuadorians (CODAE) noted that Afro-Ecuadorians still lacked access to basic education. CODAE stated that the school registration rate for Afro-Ecuadorian children was 87 percent, below the national average. A national survey by CODAE revealed that high levels of racism and discrimination against minority groups persisted and that 88 and 71 percent of Afro-Ecuadorians and indigenous persons, respectively, had been victims of racism and discrimination.

The constitution declares the state to be plurinational and affirms the principle of nondiscrimination by recognizing the right of indigenous, Afro-Ecuadorian, and Montubio (a rural, farming population recognized as an independent ethnic group) communities to restitution for acts of discrimination. It also mandates affirmative action policies to provide for the representation of minorities. A 2009 executive decree calls for all public-sector bodies to ensure that "access to labor" reflects the percentage of the population of indigenous persons, Afro-Ecuadorians, and Montubios.

Indigenous People

An estimated 7-30 percent of the population maintained their indigenous cultural identity and lived in indigenous communities. The vast majority of indigenous citizens resided in rural areas, including the highlands and Amazonian provinces. Despite their political influence and advocacy efforts of grassroots community groups, indigenous persons 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 literacy rate among the indigenous population was approximately 72 percent.

The constitution strengthens the rights of indigenous persons; it declares the state plurinational, recognizing Kichwa and Shuar as "official languages of intercultural relations," and specifically recognizes indigenous justice. However, the lack of a clearly defined relationship between indigenous justice and the regular justice system led to a number of legal conflicts between the government and indigenous leaders. According to press reports, there were 18 cases of indigenous justice during the year.

The law also recognizes the rights of indigenous communities to hold property communally. Land in many cases is titled to the indigenous community. In other cases, indigenous groups managed a reserve that the government set aside for biodiversity protection. Although indigenous persons have the same civil and political rights as other citizens, some of their leaders reported discrimination and prosecution.

The constitution grants indigenous persons and communities the right to be consulted and participate in decisions about the exploitation of nonrenewable resources that are located in their lands and that could affect their culture or environment. In May indigenous organizations opposed a government project to regulate water resources by participating in protests in different parts of the country. In one of those protests, two indigenous persons and 11 police officials were injured. Indigenous groups claimed that newly passed or proposed laws covering mining, water resources, and hydrocarbon resources did not take indigenous viewpoints sufficiently into account and furthermore intruded upon indigenous autonomy over their lands and resources. According to an April ruling by the Constitutional Court, the National Assembly must consult with affected communities on water issues before the legislature can vote on the draft laws.

The constitution allows indigenous persons to participate in the benefits that projects may bring and to receive compensation for any damages that result. It mandates, in the case of environmental damage, immediate corrective government action and full restitution from the responsible company, although some indigenous organizations asserted a lack of consultation and remedial action.

An environmental lawsuit brought by certain indigenous communities against the multinational oil company Chevron was pending at year's end under the jurisdiction of the Sucumbios Provincial Court (see Section 4). The lawsuit, which was filed in Ecuador in 2003, is a continuation of a lawsuit originally launched in 1993 in the United States for damage allegedly caused by oil production activities of Texaco (later purchased by Chevron) prior to its 1992 departure from Ecuador. The plaintiffs, representing 30,000 indigenous persons who claimed that their health, welfare, and livelihoods were affected by environmental damage caused by Texaco, revised their damages estimate from \$27 billion up to \$113 billion in September 2010.

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. Settlers, including those from other indigenous groups, 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. Small-scale mining, often on the part of indigenous communities themselves, also contributed to serious environmental damage.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual

Orientation and Gender Identity

The constitution includes the principle of nondiscrimination and establishes choice of sexual orientation as a right. Transsexual persons have the right to identify themselves by their chosen gender on their national identification cards, according to a court case in Pichincha Province. Although the law prohibits discrimination based on sexual orientation, gays, lesbians, transgender persons, and transvestites continued to suffer discrimination from both public and private bodies.

Lesbian, gay, bisexual, and transgender (LGBT) organizations reported no incidents of violence perpetrated by police or other government agents towards their organizations. Such groups organized multiple gay-pride marches in the preceding decade, including one in Quito on July 4, with the authorization of pertinent authorities and received police protection. An

LGBT film festival was organized in six cities in September. However, LGBT groups claimed that police and prosecutors did not thoroughly investigate deaths of LGBT individuals, including when there is suspicion that the killing was because of sexual orientation.

Societal discrimination was present. Members of the LGBT community continued to report that their right of equal access to formal education was violated frequently. The LGBT population involved in the sex industry reported abusive situations, extortion, and mistreatment by security forces but did not file or press charges in the Office of the Public Prosecutor.

Other Societal Violence or Discrimination

The constitution specifically prohibits discrimination directed at persons with HIV/AIDS. There was no societal violence against persons with HIV/AIDS; however, NGOs reported that individuals with HIV/AIDS believed they were discriminated against, including on issues such as equal employment opportunities and access to appropriate health care.

Section 7 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. There were a number of cases reported in which workers were fired for union activities, despite the law. 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--3 percent of the workforce was organized.

The constitution terms worker rights "irrevocable;" it provides for the right to unionize and to strike (except in instances which might cause "paralysis" in strategic sectors) and commits state support for democratic unions. The worker-rights provisions in the constitution require the adoption of additional implementing laws.

The law does not require reinstatement of workers fired for union activity but does require compensation and fines.

The law prohibits the majority of public-sector employees from joining unions or exercising collective bargaining rights. Under the law, employees that fall into the technical, administrative, or professional categories may not join a union or bargain collectively. Most public employees maintained membership in a labor-sector association, but such associations are not allowed to strike or bargain collectively. The labor code and the constitution require workers in state enterprises to be represented by a single labor union.

The law does not provide the majority of public workers with the right to strike. Public-sector employees in strategic sectors may not take any action that paralyzes those sectors, including striking. The constitution designates health; environmental sanitation; education; justice; the fire brigade; social security; electrical energy; drinking water and sewerage; hydrocarbon production; the processing, transport and distribution of fuel; public transport; and post and telecommunications as strategic sectors. Some of the sectors defined as strategic exceeded the International Labor Organization (ILO) standard for essential services.

The law includes a provision that striking public-sector workers are liable to between two and five years in prison. The ILO has noted repeatedly that this law could lead to compulsory labor as punishment for participation in peaceful strikes, a violation of international labor standards.

There were 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 Relations 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. 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 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.

In January, 19 employees were summarily dismissed, with the approval of the Ministry of Labor, from an electricity generating company in Guayaquil for interrupting services to the public and "insulting the majesty of the president" as a result of protests in 2009. The employees were charged with sabotage and terrorism, but the charges were dismissed by the prosecutor on March 29, a decision confirmed by a judge on May 30. In October the workers went to the Labor Commission of the National Assembly to demand reinstatement and hired lawyers to fight for their case.

On July 29, the Provincial Court of Justice overturned the tripartite commission's ruling in favor of the union in a 2009 case involving striking workers at a tire manufacturing company. On September 23, the company, workers, and the Ministry of Labor Relations reached an agreement. On September 29, the company fired 120 former strikers (the strike had officially ended); the firings were declared legal by the Ministry of Labor Relations so long as the appropriate severance payouts were made. The workers protested the firings and were attempting to be reinstated at the end of the year.

The constitution prohibits the use of outsourcing and of discriminatory criteria in hiring. Outsourcing includes subcontracting, third party, and hourly contracts. The law grants an exemption for outsourcing services that are not an integral part of the company's productive processes. Public sector enterprises may subcontract for certain technical workers with the Ministry of Labor's approval. The law permits part-time contracts, but only with full-time employee benefits.

The new Public Service Law expanded the definition of workers classified as technical and administrative workers and subject to the Civil Service and Administrative Career Law (LOSCA) rather than the labor code. Workers who fall under LOSCA have limited rights to collective bargaining and freedom of association. Also, those who work in strategic sectors are not legally permitted to strike, although they may participate in collective bargaining negotiations.

Individual workers may take complaints against employers to the Labor Inspection Office if they are still employed by the firm or to courts charged with protecting labor rights if they are no longer employed by the organization. Unions may also take complaints to a tripartite (union, employer, government) arbitration board established to hear these complaints.

b. The Right to Organize and Bargain Collectively

All private employers with 30 or more workers belonging to a union are required to negotiate collectively when the union so requests. However, the law requires a minimum of 30 workers for the creation of associations, work committees, or assemblies to organize work committees, and does not allow foreign citizens to serve as trade union officers. The ILO considered these requirements impediments to the right to organize. According to the International Confederation of Trade Unions, to form a works council, the approval of 50 percent plus one of the workforce is required. If the works council had more members than the union, the union would have no bargaining power in the workplace.

Collective bargaining agreements covered only 140,000 workers of the total workforce of 4.3 million. 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.

The law prohibits the dismissal of workers from the moment a union notifies the labor inspector of its general assembly until the formation of its first executive board. However, labor leaders have reported many cases in which employees were

fired after the employers were notified of the formation of the union. Even if the workers win a legal case against the employer, the law does not require reinstatement, only a fine, which is limited to between \$50 and \$200.

There is special legislation regulating labor in export processing zones. Most workers in export processing zones are hired on temporary contracts, and, while technically covered by the labor code, enforcement of the code was weak.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there were reports that children were subjected to forced labor. Children were exploited (or forced to work) as street vendors or domestic servants. In June the UN special rapporteur on contemporary forms of slavery reported adult forced labor in the palm oil industry and among domestic workers.

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the 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, especially in informal sectors. According to the UN special rapporteur on contemporary forms of slavery, child labor continued to be an obstacle to the development of the country. Areas in which child workers were most likely to be found were banana plantations and garbage dumps. Children also worked in the production of broccoli, sugarcane, and strawberries. They were also involved in brick-making and small-scale gold mining.

Forced child labor took the form of involuntary domestic work, forced begging, and forced labor in mines. Also, see the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

The labor code, the child and adolescent code, and the 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 jobs that are not suitable for children and prohibits minors from working in hazardous conditions, including in agriculture, mines, domestic work, garbage dumps, slaughterhouses, or in jobs requiring exposure to toxic or dangerous substances or loud noises. The law requires employers to pay minors the same 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 and fines of \$200 to \$1,000 for employers hiring children less than age 15. An employer's business is subject to closure for repeated infractions.

The Ministries of Labor and of Economic and Social Inclusion and the Minors' Tribunal enforce child labor laws, but enforcement, while improving, was not fully effective. The 2006 National Institute of Statistics and Census's Child Labor National Survey (the latest available information) found that 367,000 children between the ages of five and 14 were engaged in labor not permitted by law, primarily working in rural areas or in the informal sector, compared with 550,000 in 2001. UNICEF estimated the number of child laborers at around 340,000. From January to May, the National Directorate of Police for Children and Adolescents received 75 reports of child labor, the majority for forced begging.

In March the government combined the child labor inspectors with the regular labor inspections force. The force of approximately 110 inspectors is in charge of enforcing all labor laws, including those for child labor. In addition, the Ministry of Mines and Energy had an agreement with the Ministry of Labor Relations that allowed Ministry of Mines' inspectors to enforce child labor laws and impose sanctions for violations found in mines. During the year over 2,000 children were removed from different sectors working in conditions that violated labor laws.

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 the age of 15 worked in family-owned businesses in the informal sector, shining shoes, 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 augment family income.

In March the government announced a program, Ecuador without Child Labor, aimed at eliminating all forms of illegal child labor. The UN Committee on the Rights of Children in January noted the amendment regarding the minimum age of 15 and the National Plan for the Prevention and Progressive Elimination of Child Labor. Nevertheless, it expressed concern that many children were still performing harmful work, such as domestic work with characteristics of slavery, and executing dangerous tasks around garbage dumps, banana plantations, and within the small-scale mining industry, including forced labor. In most of these cases, children did not attend school or receive any type of education. In December the government announced that it had practically eradicated child labor in garbage dumps, reducing the number of children working there from around 2,000 to only 29.

e. Acceptable Conditions of Work

The constitution mandates an annual revision of the minimum wage to match the cost of a family's basic needs. The National Council on Salaries, a technical agency under the Labor Ministry, acted as the negotiating and arbitration arm. On January 15, the minimum monthly wage was raised from \$218 to \$240. The statutory minimum wage did not provide a decent standard of living for a worker and family. The basic national shopping basket cost approximately \$535 a month per household. The Ministry of Labor Relations enforced the minimum wage. Most organized workers in state industries and formal-sector private enterprises earned substantially more than the minimum wage and 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.

A campaign, Decent Domestic Employment, was launched on March 19 by the Ministry of Labor Relations to educate domestic employees and employers about labor laws, including the need for a contract, registration of the employee with the Ecuadorian Social Security Institute (IESS), and the payment of the minimum wage, two bonus-month salaries, and social security taxes. The campaign also included a registration drive for the IESS and nationwide inspections by the Ministry of Labor Relations to confirm the legal employment of domestic workers.

The law limits the standard work period to 40 hours a week, eight hours a day, with two consecutive days of rest per week. Underground workers, such as miners, are limited to six hours a day and may only work one additional hour a day with premium pay. Premium pay is 1.5 times the basic salary for work done from 6:00 a.m. to 12:00 a.m. Work done from 12:00 a.m. to 6:00 a.m. receives twice the basic salary, although workers whose standard shift is at night receive a premium of 25 percent. Premium pay also applies to work done on weekends and holidays. Overtime is limited to no more than four hours a day and a total of 12 hours a week. Mandatory overtime is prohibited. Foreign and migrant workers are subject to the same labor standards. Violators are subject to fines and other legal action.

The constitution provides for the health and safety of workers and there are health and safety standards in the labor code, to be enforced by the Ministry of Labor Relations and the Social Security Department of Hazards. In the formal sector, occupational health and safety was not a significant problem. There were no specific regulations governing health and safety standards in the small-scale agricultural sector. The labor code singles out the health and safety of miners; however, there was no enforcement of safety rules in the small mines that made up the vast majority of enterprises in the mining sector.

The Ministry of Labor Relations did not deploy sufficient resources to enforce labor laws, and violations were common. Workers do not have the right to remove themselves from situations that endanger health or safety without jeopardy to their employment.

Labor inspections may be conducted by appointment, although this was uncommon, or after a worker complaint. If a worker requests an inspection and a Ministry of Labor Relations inspector confirms a workplace hazard; that inspector then may close down the workplace. Inspections also occurred after other types of labor complaints. Labor inspections generally occurred because of complaints, not as a preventative measure. In some cases, violations were remedied, but other cases were subject to legal challenges that delayed changes for months. Various NGOs claimed that complaints by certain classes of workers, such as migrants and refugees, were rarely investigated. Labor leaders and business owners also claimed corruption was common among the inspectors. During the year the Ministry of Labor Relations began implementing a series of reforms aimed at improving labor rights enforcement, including in labor inspections. For example, labor inspectors were assigned functional areas, such as layoffs and compensation issues; a new electronic system helped significantly reduce the wait for an appointment for a hearing with an inspector.

If a worker is fired after filing a complaint and the complaint is found to be valid, the worker is eligible to receive severance pay. A company is liable for medical care and compensation to a worker injured through noncompliance with safety standards. The government admitted the number of on-the-job injuries was seriously underreported in the country. According to the IESS, the Ministry of Labor Relations, and the Ministry of Health, approximately 15,000 on-the-job injuries were reported each year. The ILO estimated the number should be approximately 160,000. Violations were reportedly common in the banana, palm oil, flower, and gold-mining industries, particularly involving exposure to toxic chemicals.

The UN special rapporteur on contemporary forms of slavery reported severe abuses and little government oversight in the palm oil industry, where many workers were Colombian migrants. The abuses included excessive work hours, very low or no wages, and inhumane living conditions. Additional abuses were found in the banana, flower, and small-scale gold-mining industries.

The 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.

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