



## 2009 Human Rights Report: Ecuador

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2009 Country Reports on Human Rights Practices

Report

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Ecuador is a constitutional republic with a population of approximately 14.6 million. In September 2008, voters approved a referendum on a new constitution, which became effective in October of that year, although many of its provisions were still being implemented during the year. On April 26, voters reelected Rafael Correa to a four-year presidential term in elections that were considered generally free and fair. Civilian authorities generally maintained effective control of the security forces.

While the government generally respected the human rights of its citizens, there continued to be problems in the following areas: isolated unlawful killings and use of excessive force by security forces, sometimes with impunity; poor prison conditions; arbitrary arrest and detention; corruption and other abuses by security forces; a high number of pretrial detainees; and corruption and denial of due process within the judicial system. President Correa and his administration continued verbal and legal attacks against the independent media. Societal problems continued, including violence against women; discrimination against women, indigenous persons, Afro-Ecuadorians, and persons based on their sexual orientation; trafficking in persons and sexual exploitation of minors; and child labor; despite constitutional provisions and some positive governmental steps on these issues.

#### RESPECT FOR HUMAN RIGHTS

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

##### a. Arbitrary or Unlawful Deprivation of Life

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

On April 25, police officers allegedly shot and killed Carlos Songs, Oswaldo Chavez, and Walter Avila Murillo, after following them from El Puente Night Club in Manabi Province. According to a fourth victim who escaped without injury, the group assumed the attackers were robbers; they never identified themselves as police officers. On November 16, the prosecutor decided that there was insufficient evidence against the police officers to bring the case to trial and requested that the case be dismissed.

In December 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. At year's end an investigation into the killings continued.

Due to lack of evidence, a police court did not try the January 2008 case in which police allegedly shot and killed two men, one a fellow officer, without asking questions of the suspects.

In February the prosecutor in Esmeraldas released all three police officers involved in the May 2008 incident in which police arrested Klever Arce Toro, an off-duty military conscript, who was found dead three days later. The National Police's internal affairs unit found that the officers had no responsibility for Arce's death.

On December 8, the judge determined there was insufficient evidence to convict the defendants in the April 2008 mob lynching and burning alive of two Colombians who allegedly killed a local resident in an attempted robbery in San Vicente, Manabi Province, and the case was closed.

The presidential commission established in 2007 to investigate human rights violations committed under the government of Leon Febres Cordero (1984-88) and in other periods was expected to issue a final report in September, but had not done so by year's end. The press reported that a draft report leaked in early September stated that the commission found 87 cases of human rights violations among the 150 cases investigated.

The Ecumenical Human Rights Commission (CEDHU) reported that mob violence against suspected criminals continued at the level of the preceding year. Such violence occurred particularly in indigenous communities and poor neighborhoods of major cities, where there was little police presence. On October 30, a mob of indigenous women attacked the director of bilingual and intercultural education in Cayambe, Pichincha Province, and doused him with water from a hose and threw stinging nettles on him. The women allegedly shouted that they were "applying indigenous justice" because he was a member of "the government of Rafael Correa" and would not let them assemble in the local school after hours.

#### b. Disappearance

There were no reports of politically motivated disappearances.

Criminal kidnapping for profit continued to be a problem in selected regions of the country. There also were reports of extortion and threats of kidnapping of ranchers, farmers, and businessmen along the Colombian border. During the year police reported 28 kidnappings and 347 "express kidnappings" (in which a person is driven around and forced to make automatic withdrawals of personal funds), compared with 354 kidnapping cases and 143 "express kidnappings" in 2008.

#### 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, often with impunity.

The new constitution makes "any form of torture" illegal; the criminal procedures code has a similar provision, and the criminal code punishes state authorities and members of the police or military who use torture to force confessions. The Attorney General's Office tracked information on alleged torturers being imprisoned, but classified these cases as "crimes against life" and not as "torture." Such persons often were fined rather than imprisoned.

In April prosecutors began an investigation of seven police officers who allegedly tortured three suspects in a shopping mall robbery that occurred in March 2008. All charges against both robbery suspects were dropped, and the investigation into the actions of the police officers continued at year's end.

Through December 18, CEDHU registered 66 cases of alleged "torture" or "unwarranted physical aggression" by police forces.

In June police jailed 18-year-old Jose Elias Barberan Queirolo for killing a fan after a Quito soccer game. After being arrested, he claimed that police took him to a room, blindfolded him, and forced him to kneel while they hit him on the neck and head. Barberan claimed the police wanted him to confess to a crime he did not commit. On July 10, the court released Barberan; no charges were filed against him.

In June two police officers approached five Salesian Polytechnic University students, including Paul Trujillo and Fernando Munoz, and tried to arrest them. The students resisted arrest, and the police requested reinforcements. The police used force to load the students into police vehicles, physically attacked the students, and released them after an hour. The students filed a complaint, but at year's end there had not been a response.

The prosecutor's office reportedly found little evidence in the January 2008 incident in which police officer Fernando Santiago Moreno Charro, accompanied by other officers, entered the Salesian University and allegedly injured student Nadia Cristina Traslavina Bossano because of her personal disagreements with Moreno's daughter. The statute of limitations in this case expired in January.

On April 1, the Pichincha Provincial Criminal Court ordered an investigation into the police involved in the March 2008 case of three men in Quito who claimed that police arrested them for attempted robbery, detained them on charges of illegal possession of arms, and tortured them to force confessions that they had taken part in the robbery. The authorities banned the police chief allegedly involved in the case from leaving the country. The court absolved the three men accused of the robbery of all charges against them.

A police judge reconsidered the case of a 2007 police beating of 16-year-old Victor Javier Tipan Caiza and dismissed the case on grounds of lack of merit after an internal police investigation of two officers.

#### Prison and Detention Center Conditions

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

Overcrowding continued to be a problem in most prison facilities, although the number of detainees dropped sharply due to a presidential pardon that released thousands of persons serving sentences for drug trafficking that involved less than two kilograms of narcotics, or if they had been jailed for more than 12 months without trial. The decrease also reflected the work of a temporary public defenders' unit that hired over 150 lawyers to defend poor prisoners, especially those awaiting sentencing. As of December the National Agency for Social Rehabilitation (DNRS) reported that 10,808 prisoners were being held in 45 facilities designed to hold 7,527 prisoners, a decline from a total of 17,201 in the previous year.

A number of prisons experienced serious outbreaks of disease, and often medical care was inadequate. The daily allocation for prison rations was one dollar per inmate (the U.S. dollar is the official currency); prisoners often supplemented these rations by buying their own food. The DNRS reported that six prisoners died during the year, a decrease from 21 deaths in 2008.

A court acquitted two police officers charged in the 2007 death of Juan Lorenzo Delgado Zambrano, who died in a hospital reportedly after fighting another detainee in the local precinct jail. Delgado's family could not afford an attorney and was forced to leave the investigation to the prosecutor's office.

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

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

identified officials and representatives from nongovernmental organizations (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.

#### d. Arbitrary Arrest or Detention

While both the previous and the new constitutions prohibit arbitrary arrest and detention, in 2006 the UN Working Group on Arbitrary Detention noted that provisions in the Criminal Procedures Code (CPC), the Penal Code, and some regulations adopted by central or provincial authorities "undermine the guarantees and protection offered." In 2007 Congress passed an interpretive law stating that detainees who purposely delayed the judicial process were not subject to a benefit from the constitutional limitation of the length of preventive detention. However, the criminal courts did not apply this interpretation evenly nationwide.

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.

#### Role of the Police and Security Apparatus

The National Police are under the authority of the Ministry of Government. National Police effectiveness was impaired by corruption, poor hiring procedures, and insufficient training, supervision, and resources. President Correa's October 2007 declaration of a state of emergency in several areas, which lasted six months, continued to result in a higher level of resources for the National Police. Police contacts said they had received an additional \$160 million as of August to combat crime and increase citizen security. On September 30, Correa declared a 60-day "state of exception" in the cities of Quito, Guayaquil, and Manta, permitting military forces to assist police in controlling crime. The Constitutional Court upheld the decree on October 2, and the government later extended it until the end of December.

Some municipalities, such as Quito and Guayaquil, have their own metropolitan police forces in addition to the National Police. Guayaquil also has a separate municipal 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. Police corruption was sometimes a problem. The National Police contracted with NGOs to provide human rights training.

#### Arrest Procedures and Treatment While in Detention

The law requires authorities to issue specific written arrest orders prior to detention, and authorities 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 prosecutor dropped the case of the 2007 arrest of Manuel Xavier Cornejo Delgado in Manta, who asserted that he was arrested and held incommunicado for two weeks, for lack of merit.

Bail is allowed only in the case of crimes punishable with jail terms of less than five years, and is prohibited for hate, sexual, and domestic violence crimes and those which, in the judge's opinion, may cause public alarm.

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

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

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

The law limits the period prisoners 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 about to expire. The majority of the accused remained in prison during the investigation phase. According to government data, as of December, approximately 52 percent of detainees had not been sentenced. Of those, 70 percent corresponded to cases filed in the previous six months.

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

The judiciary consists of the National Court of Justice, provincial circuit courts, tribunals, and first instance tribunals. The new constitution created the Constitutional Court, in place of the former Constitutional Tribunal, to hear cases concerning constitutional matters. Citizens may file cases directly with the Constitutional Court. The Judicial Council has more ample powers under the new constitution to provide oversight not just of the judiciary, but also of prosecutors and private attorneys. The Prosecutor General's Office is part of the judicial branch.

The constitution provides for a unified judicial system, which abolished separate military and police judicial systems, although the National Assembly postponed the date of judicial unification. In October the National Court of Justice ordered ordinary courts to begin processing pending and new police and military cases. However, the Judiciary Council, which is responsible for the administration of the judicial system, postponed implementation of that order for 90 days, until specialized judges could be trained and the budget established.

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

#### Trial Procedures

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

There are no juries in the justice system. Defendants are presumed innocent until proven guilty and have the right to a public trial, defense attorneys, and appeal. They may present evidence, refuse to testify against themselves, and confront and cross-examine witnesses. The law extends these rights to all citizens. Although a public defender system exists, in practice only 330 attorneys were available to defend the large number of impoverished defendants throughout the country. Of those public defenders, 150 were hired during the year.

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

The regular court system tries most nonmilitary defendants, although some indigenous groups try members independently for violations of tribal rules. The new constitution mandates elimination of military courts and orders military courts to hand over their cases to the National Court of Justice. However, this court--established in December 2008--had not tried members of the military or police at year's end.

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

Reforms to the CPC effective March 24 distorted the criminal justice system by, for example, limiting the length of detention prior to conviction but allowing prosecutors to add new charges, which keep suspects in detention. In addition the new constitution places the prosecutor general within the judicial branch and under its supervision, giving the Judicial Council exclusive power to train, evaluate, and sanction prosecutors. This also threatened prosecutorial independence, since prosecutors are obligated to submit their discretionary decisions regarding the prosecution of a case for review by a magistrate at an adversarial, evidentiary hearing conducted during the investigative phase of the trial. Reforms aimed at providing criminal procedural protection created a more complex system, thus slowing the judicial process. The law increased the number of formal steps in the investigative cycle, with no fewer than 20 hearings needed before preparation for trial hearing (similar to a preliminary hearing), which also includes ruling on motions related to evidentiary matters.

#### 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, and the government partially respected these rights in practice. Verbal and legal attacks against the press by President Correa and his government increased significantly during the year, causing relations between the press and the government to deteriorate and reports of indirect censorship and self-censorship to increase. Nonetheless the independent media remained active and expressed a wide variety of views, including those critical of the government.

On October 28, authorities arrested Giancarlo Zunino and Felix Pilco, members of activist group New Civic Union, and placed them in pretrial detention pending an investigation into charges of "separatism." The prosecutor ordered their arrest for hanging placards around Guayaquil saying "Guayaquil Declares President Rafael Correa Persona Non Grata." On November 6, a judge released them on a \$500 bond. Attorneys for the accused said they would bring a case against the prosecutor and judge to the Constitutional Court.

President Correa regularly used his weekly radio and television address and other public appearances to criticize the media 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.

On January 17, Correa criticized the Teleamazonas channel for not paying taxes on a regular basis. On May 2, Correa stated that the press was "a grave political enemy [that] needs to be defeated." He listed what he considered the "worst" media outlets in terms of corruption. On July 18, Correa attacked the newspaper *El Comercio* for not verifying its sources when reporting a statement by the former governor of Azuay that he had warned President Correa about his brother's contracts with the government. During his August 10 inaugural speech, Correa stated that his "greatest adversary" throughout his previous term had been the press, asserting that it took on a political role even though it had "no democratic legitimacy" because it was not elected.

On July 18, Fernando Alvarado, Director of Public Relations and Communication for President Correa, said he would not communicate directly with the private press and would only make official announcements through state-owned media. On August 4, Alvarado submitted a formal complaint to the Inter American Press Association (IAPA) against *Expreso* general editor Juan Carlos Calderon and columnist Jorge Vivanco for exhibiting what he called "discriminatory" behavior against journalists from the state-run online newspaper *El Ciudadano*. According to Alvarado, both Calderon and Vivanco refused to be interviewed by the government paper regarding their articles criticizing the government.

In March the IAPA General Assembly asserted that the government continued to "systematically threaten and insult the press and journalists" and limit their access to information. Between January and August, there were more than 30 reported cases of harassment (threats, attacks, or arrests) against journalists or other representatives of the press and four break-ins or robberies of media outlets.

On February 11 in Quito, prosecutor Luis Ramiro Sanchez threatened Angelo Chamba, a photographer for the newspaper *Hoy*, and a police officer attacked Chamba while he was covering the arrest of another journalist accused of a crime. Two police officers put Chamba in a vehicle, threatened him, and took away his camera, radio, and cell phone. They held Chamba for 30 minutes and then released him. The following day he appeared in court to continue his coverage of the same story, and police confiscated his camera again and reviewed the photos on it.

On March 13, Emilio Palacios, editorial writer for the newspaper *El Universo*, received death threats via e-mail, which referenced his March 1 piece criticizing Correa for his weekly attacks on the media. At Palacio's request, the government agreed on March 19 to provide the journalist and his family protection.

On July 3, armed men broke into the offices of the magazine *Vanguardia*, threatened the employees, and raided their computers and files. On July 7, two armed men assaulted Jose Luis Estrada, the magazine's general manager, outside his office and stole his briefcase and personal computer; the two incidents were not proven to be connected.

There were several incidents of crowds or individuals within crowds assaulting and yelling 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.

On March 6, Jose Toledo, vice president of the news division of three television channels that the government had confiscated in July 2008, resigned less than a year after he was appointed to the position following the state takeover of the stations. In resigning he cited political pressure to favor government candidates in coverage of the April elections. At year's end the government continued to control those three channels--Gamavision, TC Television, and a cable station, CN3 Cablesnoticias.

There were also instances of the government utilizing legal mechanisms to restrict the media, including use of libel laws to suppress criticism.

On May 18, an audit commission created by the new constitution found over 700 irregularities in its examination of 1,637 radio and television frequency concessions, among them expired concessions, "clandestine frequencies," and monopolistic behavior. Due to the report's inconsistencies, however, in August the government created a new commission to analyze the report and provide recommendations for subsequent legal action. The report had not been released by year's end.

On June 3, the government's television and radio regulatory agency, the National Radio and Television Council (CONARTEL), issued its first sanction against an independent television station, Teleamazonas, for showing violent images of a bullfight during "family" hours, resulting in a \$20 fine imposed on the station. On June 25, CONARTEL sanctioned the station a second time with a \$40 fine for reporting on a "clandestine vote counting center," which CONARTEL decided was based on "rumors" instead of hard evidence. The government dissolved CONARTEL in July during a reorganization of the telecommunication sector that was previously announced in October 2008.

On August 29, President Correa demanded closure of Teleamazonas due to the station's alleged illegal airing of a clandestine audio tape on August 25 that purportedly captured the president and other government officials discussing how they altered language in the new constitution after it had already been approved by the National Assembly. President Correa accused the station of breaking the Broadcasting Law by reproducing covertly acquired recordings, "spying on the president," and "threatening national security." On September 2, a Correa government spokesperson retracted Correa's statement and asserted that the government would follow due process. A third government investigation of Teleamazonas concerned alleged misinformation about gas exploration on the island of Puna aired by the station, which ultimately led to a 72-hour suspension of programming, announced by the superintendent of telecommunications (SUPERTEL) on December 22.

Also on December 22, SUPATEL 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 late September that led to the death of a Shuar protester. The station appealed the loss of frequency decision, allowing it to remain on the air, and the case was pending at year's end (see section 2.b.).

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

The Correa administration enforced a provision in the Radio and Television Broadcasting Law that requires all stations to broadcast at no charge government programs on education and health issues for up to an hour per day (Mondays through Saturdays). This law also mandates the broadcast of messages and reports by the president and his cabinet free of charge. The new constitution maintains the previous constitutional provision stating the right of all persons to receive information that is true, verified, timely, contextualized, pluralistic, and without prior censorship. It also includes a provision stating that the law will regulate the informational, educational, and cultural content of the programming of communication outlets.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet access was widely available in larger cities, but access in the most remote locations was poor. In November the National Telecommunications Secretariat reported that there were 2,034,000 Internet users, approximately 14 percent of the population.

#### Academic Freedom and Cultural Events

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

#### b. Freedom of Peaceful Assembly and Association

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

In January several persons were injured when they blocked roads in the southern provinces of Azuay, Zamora Chinchipe, Loja, and Morona Santiago to protest the government's proposed law on mining. On January 5, residents of Pueblo Nuevo, Azuay Province, beat two police officers and held one of them prisoner for 36 hours. On January 7, altercations between the police and Pueblo Nuevo residents resulted in several injured, including schoolchildren who were affected by tear gas.

On September 29, Bosco Wisum was killed in Morona Santiago Province during a Shuar indigenous protest against a proposed water law and the extant law on mining. Preliminary reports noted that Wisum was likely killed accidentally by other protesters when police arrived to clear the barricaded road. At year's end, the government and the National Assembly were investigating the incident.

On April 9, a judge dismissed the case against six students prosecuted for having offended President Correa during the August 2008 altercations between the police and university students during and after the president's radio and television address broadcast from the Catholic University of Guayaquil.

#### Freedom of Association

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

#### c. Freedom of Religion

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

The government requires religious groups to register.

#### Societal Abuses and Discrimination

Muslim leaders reported that members of their community occasionally experienced discrimination when applying for work or housing. There was an isolated report of an anti-Semitic act of graffiti on a wall in Quito. There were no other reports of societal abuses or discrimination based on religious affiliation, belief, or practice.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at [www.state.gov/j/drl/rls/irf/](http://www.state.gov/j/drl/rls/irf/).

#### 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 (IOM), in assisting refugees and asylum seekers.

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

#### Protection of Refugees

The new 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 in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion and 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 also provided temporary protection to individuals who might not qualify as refugees under the 1951 convention or the 1967 protocol. This included providing services to the continuing flows of Colombians crossing the northern border throughout the year.

The government reported that during the year, it received 12,363 applications for regular refugee status and recognized 5,067 refugees. On March 23, the government fully implemented an "enhanced registration" program that improved the refugee registration process for Colombian asylum seekers so that those in need of international protection could be interviewed, assessed, and issued documentation on the same day. Previously, the refugee registration process could take one to two years to complete, and more than 30,000 cases were pending in the regular process at the beginning of the year. From March to December, the government recognized more than 21,000 refugees under the enhanced registration program. The program was expected to target up to 50,000 Colombian refugees for registration and documentation over a 12-month period in the northern border region. Applicants rejected in either the regular or the enhanced refugee process have a legal right to appeal; after appeals are exhausted, they have 30 days to leave the country. There were no reports of anyone without refugee status being expelled. While the UNHCR and the government reported difficulty dealing with the number of applicants and appeals, both the UNHCR and the IOM supported the government refugee office's efforts to streamline its decision-making and appeals processes and reduce its case backlog.

There were 45,820 recognized refugees in the country. The government and UNHCR estimated in 2008 that approximately 135,000 persons were in need of international protection, of whom approximately 68,000 were not registered in the asylum process at that time.

Colombians accounted for 90 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 provides recognized refugees and asylum seekers the same access to public health services as citizens. The presentation of any identity document is sufficient to ensure access to public educational institutions.

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

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

#### Elections and Political Participation

In accordance with the new constitution, elections for offices at all levels of government were held on April 26 and June 14. On April 26 voters reelected Rafael Correa to a four-year presidential term. In addition voters chose a vice president, provincial prefects and vice prefects, mayors, National Assembly members, and city councilors; a total of 1,969 offices. Election of five members to the Andean Parliament and 3,985 rural parish council members took place on June 14. 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.

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 along with the new constitution, 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. An interim Citizen Participation and Social Control Council, an institution under the newly created Transparency and Social Control branch of government, was installed on January 26 and disbanded on September 9 when the law regulating the selection of the permanent council went into effect. On the basis of that law, the National Electoral Council began supervising the merit-based selection of members of the permanent Citizen Participation and Social Control Council. The Transparency and Social Control branch of the state is designed to promote citizen participation and prevent and combat corruption.

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

The new constitution provides for gender balance in the lists of political parties' candidates for the National Assembly and other representative institutions. Voters elected 40 women to the 124-seat National Assembly, which was installed on July 31. As of December there were nine women in the 27-member cabinet and two female secretaries of state with the rank of minister.

There was one Asian-Ecuadorian but no Afro-Ecuadorians or indigenous persons in the cabinet.

#### 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.

In June local media reported that businessman Fabricio Correa, the brother of President Rafael Correa, had signed public sector contracts worth over \$80 million during the Correa administration, raising public concerns of corruption. On September 5, in response to the allegations, President Correa announced he would nullify all government contracts connected to his brother. On September 9, Comptroller General Carlos Polit announced that his office's review of the public contracts in question yielded contracting "irregularities" including 31 instances of unfulfilled jobs or orders by Fabricio Correa's companies. According to the comptroller's report, the total amount in government contracts received by Correa's companies was \$167 million. In response to the nullification of his contracts, Fabricio Correa leveled his own accusations of corruption within his brother's administration and, in support of this, submitted alleged evidence against several of President Correa's cabinet members to the Prosecutor General's Office. The Prosecutor General's Office and the National Assembly both opened investigations into Fabricio Correa's accusations; the investigations continued at year's end.

In August a multinational oil company provided government authorities with clandestinely recorded videos that it alleged exposed a bribery scheme related to a multi-billion dollar environmental lawsuit pending against it in an Ecuadorian court. The judge who had been presiding over the case, as well as some members of President Correa's Proud and Sovereign Fatherland Movement, were shown on the recordings. The Prosecutor General's Office opened an investigation into the allegations, while plaintiffs in the lawsuit claimed the videos were fabricated.

The prosecutor's investigations continued into the July 2008 criminal investigation of former ombudsman Claudio Mueckay for alleged misuse of public funds and the August 2008 case of irregularities involving contracts and staff members advising the Constituent Assembly.

On January 7, authorities imprisoned former minister of sports Raul Carrion, who resigned in December 2008 after three of his advisors were placed under preventive detention during an investigation of their alleged illicit enrichment and asset laundering, among other charges. On April 27, a National Court of Justice criminal tribunal freed him, but reversed its decision on May 5 amidst widespread criticism, including by the Prosecutor General. Carrion was released from prison on December 22 after reaching the statutory limits on preventive detention. At the same time, the prosecutor dismissed the charges against him for asset laundering due to insufficient evidence. However, Carrion still had fraud charges pending, and the judicial proceedings continued at year's end.

In December 2008 President Correa created via presidential decree the National Secretariat for Management Transparency, tasked with investigating and reporting corruption cases and promoting transparent practices in the public administration.

The new 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 2004 Law on Transparency and Access to Information defines these rights, and requires that government agencies make available to the public, free of charge, all information gathered by organizations that receive public funds, including unions and NGOs. Personal information about individual citizens, and information regarding national security, are excluded. As a result, government agencies increasingly put budget information, functions, organizational information, lists of government officers, and all official notices on the Internet, in addition to responding to written requests.

An NGO's year-long study of this law's implementation found that while many agencies lagged in publishing the required information on the Internet, 97 percent of written requests for information were answered, and only one petition did not receive a response. Agencies responded to 63 percent of requests within the time limit established by law. In a few cases, the NGO noted that the specific information requested was not received, either because it did not exist or it was not accessible to the official searching. The report noted that many government agencies did not have the budgets required to fully implement the law, nor the technological systems to make information easily searchable. Other NGOs rated government compliance with publishing the required data on their Web pages at about 70 percent, although the data may not be complete or accurate.

#### 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.

An Ombudsman's Office focused on human rights problems. The new constitution describes the Ombudsman's Office as an independent part of the judiciary established to ensure equal access to justice and the protection of rights. The office has 50 members and regularly presents cases to the prosecutor's office, but with limited success. In July 2008 the Constituent Assembly appointed an interim ombudsman. As with many of the restructured or new institutions established by the new constitution, this organization was not yet in final form. Once the permanent Council for Citizen Participation and Social Control is established in mid-2010, it is expected to create a merit-based system for receiving nominations and selecting the ombudsman.

The Commission for Truth, created in 2007 to investigate alleged human rights violations (particularly during the 1984-88 period), investigated 150 cases of human rights violations but did not release its report by year's end (see section 1.a.).

#### Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

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

## Women

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

The law criminalizes rape and provides a penalty of up to 25 years in prison. The law does not criminalize spousal rape, although under family law spousal rape is considered a type of violence. The penalty for rape where death occurred is from 16 to 25 years' imprisonment. As of October there were 3,547 reported rapes, 914 cases where charges were filed, and 294 cases prosecuted successfully. 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 Government's Office of Gender reported, based on preliminary and partial reports it had received as of October 31, 48,022 cases of sexual, psychological, or physical mistreatment of women and 7,040 cases involving male victims as of June. Police and judicial reluctance to act on domestic violence cases was an additional factor. Authorities referred many women who reported domestic abuse or sexual crimes to the judicial system, but gaps in this process contributed to dropping charges against the perpetrators.

While the new constitution eliminated the 34 special Police Stations for Women and Families, which formerly handled issues such as domestic violence, the government established new joint service centers to assist citizens. These centers provided assistance free of charge to victims of domestic and gender violence on legal issues, social and medical assistance, and police protection. The law provides penalties for domestic violence of a fine of up to \$28 or seven days in prison and gives family courts the power to remove an abusive spouse from the home if continued cohabitation creates a risk to the victim of abuse.

The new constitution provides for courts specializing in women and family issues, which are to be under the judicial branch and have the power to authorize restraining orders prohibiting the abusive spouse from approaching the victim or her place of employment or study; to prohibit the abusive spouse from persecuting or intimidating the victim or any member of her family; 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. In November the Constitutional Court established a Regional Observers Office for Judicial Decisions that would review court decisions from six Latin American countries to report whether those countries comply with international norms, including UN declarations, involving women's rights.

The new constitution affords women an array of benefits in the economic, political, and social areas. While women's organizations applauded these provisions, they noted that many legal and financial steps remained to implement the reforms. Meanwhile, a transitional council handled projects in all provinces, focusing primarily on equal opportunities, public policy programs toward women, and lines of credit for women's businesses. 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.

Adoption of the new constitution restructured the former National Council on Women (CONAMU)--whose main role was the enactment and enforcement of public policies for the advancement of women's issues and rights. The council became part of the Secretariat on Peoples, Social Movements, and Citizen Participation, a cabinet-level ministry charged with ensuring the participation of the citizenry in government decision making, especially among historically disadvantaged groups.

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

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

The new constitution acknowledges sexual and reproductive rights. 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. According to statistics from the Population Reference Bureau, 69 percent of women had skilled attendants present during childbirth, and 99 percent had health care providers present during childbirth. A 2004 survey of demographic and maternal health care noted that over 70 percent of women used contraceptives, with a 5 percent "unmet need" for family planning. The gap between the rural and urban contraceptive prevalence rate was small, at 67 percent and 77 percent respectively. More than 36 percent of modern contraceptive method users received these services through government-sponsored programs. The government began implementing a national HIV/AIDS program to prevent mother-to-child transmission of the disease and provided free screening for all women. The law also promotes a greater role for men in care giving by providing paternity leave of up to 10 days.

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 government, for example, women received approximately 65 percent of the pay received by men for equal work. Women's advocates alleged that culture and tradition inhibited achievement of full equality for women. There were fewer women than men employed in professional work and skilled trades. Little reliable data existed regarding the situation of women within the tightly knit indigenous communities.

The Ecuadorian Women's Permanent National Forum included more than 320 women's organizations and promoted social, economic, and cultural change, including increased political participation by women throughout the entire constitutional drafting process carried out in 2007-08 by the Constituent Assembly. According to the forum, participation by women was greater in the 2008 constitutional referendum than in previous

elections.

#### Children

Citizenship is acquired either through birth in the country or by birth to an Ecuadorian mother or father abroad (until the third generation). Since 2006 the government encouraged civil registration and made it easier for adults and children to register. The Ministry of Health implemented a program to register newborns at birth in hospitals and clinics, and mobile registration centers reached out to rural areas regularly. As a result, the number of unregistered citizens fell 40 percent, from 1.5 million to less than 900,000. Of those, 100,000 were indigenous persons and 300,000 were under 18.

Authorities did not use lack of documentation to deny access to education, therefore some parents reportedly did not understand the importance of registering their children. Other government services, however, including welfare payments and free primary health care, require some form of identification. The registration campaign was designed in part to teach adults about the benefits of registering themselves and their children, as well as their obligations as citizens.

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

There was no societal pattern of abuse against children.

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

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

#### Trafficking in Persons

The government recognized that trafficking in persons was a national problem, and the law prohibits such trafficking. Nonetheless, there were reports that women and children were trafficked within, to, from, and through the country. The country was both a source and a destination for trafficking.

The Child Welfare Police reported that the majority of identified trafficking victims were from the provinces of Pichincha, El Oro, and Orellana.

Traffickers were mainly criminal gang members specializing in movement of persons, proprietors of small businesses such as bars or brothels, and illicit employment brokers. Recruitment modalities varied depending on the type of exploitation. In the case of sexual exploitation, victims were lured romantically or with promises of legitimate employment and then forced into prostitution. Recruiters for forced labor offered parents education and work opportunities for their children.

The law criminalizes trafficking in persons and provides for prison terms of six to 35 years. The law also provides for penalties of six to 12 years in prison for promoting sexual tourism. From April through December, authorities opened 41 cases involving trafficking in persons, forced labor, or sexual exploitation; data on convictions were not available at year's end.

The government had a specialized antitrafficking Police Unit with 18 investigative agents and two intelligence analysts. During the year this unit received 46 reports of human trafficking, conducted 15 investigations or "sting" operations, detained 17 suspects, and rescued 44 trafficking victims, according to the National Judicial Council.

Numerous municipalities had antitrafficking action plans, prevention campaigns, and antitrafficking networks working in conjunction with the national government. The Trafficking in Persons and Sexual Crimes Unit of the Prosecutor's Office in the city of Cuenca reported four cases of trafficking in persons, which were related, respectively, to child pornography, labor exploitation, sexual exploitation, and forced begging. All of these cases remained under investigation at year's end. Other cases included kidnapping and selling newborn children, and children used to transport drugs and commit petty theft.

The government provided shelter and assistance to trafficking victims. In Pichincha Province, for example, authorities provided direct assistance, including reintegration opportunities, to 71 trafficking victims during the year. In December a court in the province sentenced a trafficker arrested in 2006 to eight years' imprisonment for sexually exploiting an adolescent.

The Ministries of Government and Foreign Affairs, the National Child and Family Institute, and the National Secretariat for Migrants coordinated the return of five Ecuadorian victims of labor exploitation from Colombia and Chile. The Ministry of Tourism launched a campaign in 24 provinces to prevent sexual exploitation of children and adolescents. In October an investigation led to the arrest of a woman traveling from Ecuador to Venezuela with six children and four adolescents. None of the children had documents permitting them to leave the country, and the prosecutors suspected the woman was part of a ring to exploit children as domestic laborers. At year's end, the case remained under investigation.

In July the government established a state-run integrated database system to collect important statistical information on trafficking. The IOM taught and provided technical assistance to different state officials, mainly at the Ministry of Justice, on the administration and use of this technical tool.

The State Department's annual *Trafficking in Persons Report* can be found at [www.state.gov/j/tip](http://www.state.gov/j/tip).

#### Persons with Disabilities

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

For the April 26 elections, the National Electoral Council (CNE) printed ballots in braille only for the presidential race. According to the CNE, due to the significant number of candidates running for office and the complex voting system—for entire lists or candidates among lists—the CNE did not print ballots in braille for the remaining offices at stake on April 26 or for the June 14 election. Instead, the CNE allowed blind individuals to have assistance from a relative while voting and provided training to CNE field coordinators, as well as police and military officials, to raise awareness on specific needs for voting by persons with disabilities. The CNE provided sign language translators and made efforts to ensure that voting precincts were fully accessible to persons with disabilities.

The new constitution extends benefits to persons with disabilities, particularly in the areas of education, employment, and access to social security. The law requires the hiring of persons with disabilities in all public and private enterprises with more than 25 employees. According to a radio address by Vice President Lenin Moreno on November 28, 92 percent of public and private companies complied with the law. Moreno said the remaining companies would be sanctioned, but did not specify how. An initiative, "Ecuador without Barriers," led by the vice president, helped create an unspecified number of jobs for persons with disabilities. In November the municipality of Guayaquil, the largest city in the country, opened debate on a regulation that would require all businesses and public institutions to improve access for the disabled and the elderly. The final regulation had not been issued as of year's end.

#### National/Racial/Ethnic Minorities

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

The Afro-Ecuadorian Cultural Center estimated that 70 percent of Afro-Ecuadorians lived in poverty. Afro-Ecuadorian organizations noted that, despite the absence of official discrimination, societal discrimination, including stereotyping, continued to affect them. For example, they continued to assert that the police stopped Afro-Ecuadorians for document checks more frequently than they stopped other citizens and that employers often would not interview persons whose job applications carried Afro-Ecuadorian photos. There were no special government efforts to address these problems, except for the Municipality of Quito, which in December 2008 prohibited private and public institutions in Quito from accepting curriculum vitae with pictures.

The Center for Racial Equity and Development reported increased violence by the public forces. According to the center, on January 10, members of the armed forces detained and reportedly tortured three young Afro-Ecuadorian men in the area of Carcelen, Quito. The ombudsman determined that the attack was based on racial discrimination and recommended that the officers be dismissed. The military court that heard the case imposed an administrative measure of two days' detention. The civilian prosecutor to whom the case was referred said that a criminal investigation in civilian courts could not proceed because the case had already been tried in military court and defendants cannot be prosecuted for the same offense twice. (Military courts were abolished later in the year.)

The new constitution declares the state to be plurinational, affirms the principle of nondiscrimination by recognizing the right of indigenous, Afro-Ecuadorian, and Montubio communities to restitution for acts of discrimination, and mandates affirmative action policies to ensure the representation of minorities. On October 13, the government published an Executive Decree with a National Pluricultural Plan to Eliminate Racial Discrimination. Among other provisions, it calls for all public sector bodies to ensure that "access to labor" reflects the percentage of the population of Afro-Ecuadorians, indigenous persons, and Montubios (a rural, farming population recognized as an independent ethnic group).

#### Indigenous People

Estimates of those who maintained their indigenous cultural identity and lived in indigenous communities varied between 7 and 30 percent of the population. The vast majority of indigenous citizens resided in rural areas, including in the highlands and the Amazonian provinces. The literacy rate among the indigenous was approximately 72 percent. Despite their political influence and the 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 new constitution strengthens rights of indigenous peoples; it declares the state plurinational, recognizing Kichwa and Shuar as "official languages of intercultural relations," and specifically recognizes indigenous justice. Existing law also recognizes the rights of indigenous communities to hold property communally, to administer traditional community justice in certain cases, and to be consulted before natural resources are exploited in community territories. Land in many cases is titled to the indigenous community, and some indigenous groups hoped to expand these areas. In other cases, indigenous groups managed a reserve that the government set aside for biodiversity protection. Indigenous persons also have the same civil and political rights as other citizens.

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

Indigenous groups lobbied the government, enlisted the help of foreign and domestic NGOs, and mounted protests in attempts to win a greater share of oil revenues and a greater voice in natural resource and development decisions. Settlers, drug traffickers, and loggers illegally encroached into indigenous territory. Corrupt local officials, a lack of political will, and divisions among and within indigenous communities undermined indigenous efforts to stop the flow of illegally harvested timber. Widespread environmental damage, in part due to deforestation and petroleum production, constituted another serious problem.

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

#### Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The new constitution includes the principle of nondiscrimination and establishes choice of sexual orientation as a right. Homosexual acts are not criminalized. Transsexuals 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. In September the National Electoral Council published rules governing the selection of the national prosecutor general, comptroller, members of the Council for Citizen Participation, and directors of certain regulatory bodies that gave lesbian, gay, bisexual, and transgender (LGBT) candidates for those positions two additional points on their applications. The measure was designed to help traditionally disadvantaged groups participate more effectively in government.

LGBT organizations existed and were not aware of incidents of violence perpetrated by the police or other government agents towards the establishment of these organizations. Such groups organized multiple Gay Pride marches in the last decade with the authorization of pertinent authorities and received police protection.

Despite the lack of official discrimination, societal discrimination was present. The NGO Kimirina advised that members of the LGBT community believed that their right of equal access to formal education and employment was frequently violated. The LGBT population involved in the sex industry reported abusive situations, extortion, and ill-treatment by security forces but did not file or press charges in the Office of the Public Prosecutor.

The April 2008 case in which a policeman reportedly pushed and punched a member of a sexual minority group remained under investigation at year's end.

#### Other Societal Violence or Discrimination

The new 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. In May an employer laid off 26 workers in a tuna factory in Manabi Province after they formed a union. In July managers fired 46 workers at a wood plantation and 15 workers at a hospital after forming unions. 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 1.2 to 3 percent of the workforce was organized.

While employees of state-owned organizations enjoyed rights similar to those in the private sector, the law prohibits the majority of public sector employees from joining unions or exercising collective bargaining rights. Under the law, employees that do not fall into the technical, administrative, or professional categories may join a union and bargain collectively. Public sector employees in strategic sectors, as designated in the new constitution, may not take any action that paralyzes those sectors, including striking. The constitution lists 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. Most public employees maintained membership in a labor sector association; such associations are not allowed to strike or bargain collectively.

Despite the law, however, teachers, state oil refinery workers, and workers in an electricity generating company held strikes during the year. The teachers union called for strikes intermittently through the year, most recently from September 15 to October 7. In November workers protested at an electricity generating company in Guayaquil during a surprise visit by President Correa. Correa told reporters that he would have the organizers investigated under the article in the penal code prohibiting interference in the provision of public services. By December, 22 employees had been summarily dismissed, with the approval of the Ministry of Labor, for interrupting services to the public and "insulting the majesty of the president." The director of the firm also asked the prosecutor to charge the employees with sabotage and terrorism. At year's end the workers had hired lawyers to challenge the decisions.

The new constitution, whose worker rights provisions require the adoption of implementing laws, terms worker rights "irrevocable"; 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 labor code and the constitution require workers in state enterprises to be represented by a single labor union. The law does not require reinstatement of workers fired for union activity but does require compensation and fines. The new constitution prohibits the use of outsourcing and of discriminatory criteria in hiring. Outsourcing includes subcontracting, third party, and hourly contracts. The law prohibits these activities except in the areas of security, catering, message delivery services, and cleaning if those services are not an integral part of the company's productive processes. The law permits part-time contracts, but only with full-time employee benefits. Public sector enterprises may subcontract for certain technical workers with the Ministry of Labor's approval.

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

The law does not provide the majority of public workers with the right to strike, although they were able to organize and bargain collectively. 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. In December the tripartite commission decided in favor of the union in the case of striking workers at a tire manufacturing company. The law includes a provision that striking public-sector workers are liable to between two and five years in prison.

Pursuant to a temporary law passed in 2008 calling for revision of all public-sector collective bargaining agreements to eliminate "excessive benefits" for workers, at year's end, 64 collective bargaining contracts had been reviewed, affecting approximately 46,000 workers. Excessive benefits include paid leave for professional training and union related/labor rights training; seniority bonuses; additional vacation (accrued due to seniority); the right to free or discounted public services; and the right to have a commissary, among other items.

A presidential decree signed on April 30 empowered SENRES (National Secretariat for the Development of Public Sector Human Resources and Remuneration) to evaluate the employment of workers in the public sector to establish which workers fall into the category of manual laborers and which are classified as technical or administrative workers. Workers who are classified as technical and administrative workers will be subject to the Civil Service and Administrative Career Law (LOSCA) and not the labor code. The LOSCA does not provide any assurances for the right to freedom of association or the right to bargain collectively. According to an NGO specializing in promoting worker rights, a likely result of this process is that 75 percent of union members in public sector enterprises will no longer be able to legally join a union or have a collective bargaining agreement. Those who work in strategic sectors already are not legally permitted to strike, although they may participate in collective bargaining negotiations.

In August the government officially incorporated SENRES into the Ministry of Labor Relations.

#### b. The Right to Organize and Bargain Collectively

The law requires all private employers with 30 or more workers belonging to a union to negotiate collectively when the union so requests. Collective bargaining agreements covered 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.

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

#### c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there were reports that children were trafficked for the purpose of forced labor (see section 6). Forced labor for children and adolescents occurred most often when the children were trafficked as street vendors or domestic servants. Women were sometimes forced into domestic servitude by their traffickers.

#### d. Prohibition of Child Labor and Minimum Age for Employment

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

The labor code, the child and adolescent code, and the new 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. In cases of repeated infractions, the employer's business can be closed.

The Ministries of Labor and of Economic and Social Inclusion and the Minors' Tribunal were charged with enforcing child labor laws, but enforcement, while improving, was not fully effective due to lack of resources. The 2006 National Institute of Statistics and Census's Child Labor National Survey (the latest available information) found that 367,000 children between ages five and 14 were engaged in labor not permitted by law, primarily working in rural areas in the informal sector, compared with 550,000 in 2001. Children worked in the production of bananas, flower, broccoli, sugarcane, and strawberries. They were also involved in brick-making and small-scale gold mining. There were reports of Ecuadorian children working as coca pickers in Colombia.

The government's 29 child labor inspectors inspected workplace locations that specifically employed child labor; these inspectors had the authority to cite violations and sanction companies and employers found to have illegally hired child labor. In January the government began implementation of a second phase of its Child Labor Eradication Program, supporting initiatives to combat child labor in domestic work, garbage collection, mines, slaughterhouses, brick factories, and flower and banana plantations. The objective was to prevent children and adolescents in 60 cantons of 16 provinces from working in these areas. During the year the inspectors conducted 3,992 workplace inspections and removed 2,056 minors working in dangerous conditions in violation of 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 age 15 worked in family-owned businesses in the informal sector, shining shoes, collecting and recycling garbage, or as street peddlers. Other children were employed in commerce, messenger services, domestic services, and begging. Children as young as five or six often sold newspapers or candy on the street to support themselves or augment family income.

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

The Observatory for the Rights of Children and Adolescents reported that the number of children and adolescents working under conditions of child labor in 2008 decreased to 7 percent and access to education increased to 78 percent.

#### e. Acceptable Conditions of Work

The new constitution mandates an annual revision of the minimum wage to match progressively the cost of a family's basic needs. The National Council on Salaries, a technical agency under the labor ministry, acts as the negotiating and arbitration arm. A trilateral body composed of representatives from the ministry, the private sector, and labor unions, performs the review each December and must be unanimous in its decision. The minimum wage was \$218 per month, plus mandated annual bonuses equivalent to two months' salary, which did not provide a decent standard of living for a worker and family. Most organized workers in state industries and formal-sector private enterprises earned substantially more than the minimum wage and also received other significant benefits through collective bargaining agreements. However, most workers worked in the large informal and rural sectors without obtaining the minimum wage or legally mandated benefits.

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

The Social Security Institute is responsible for enforcing health and safety standards and regulations. In the formal sector, occupational health and safety was not a significant problem. However, there were no specific regulations governing health and safety standards in the small-scale agricultural sector, which accounts for the majority of farms and workers. In practice, primarily due to the lack of labor inspectors, there was no enforcement of safety rules in the small mines that made up the vast majority of enterprises in the mining sector.

The new 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.

The new constitution provides that workers have the right to a healthy and safe work environment. A worker may request that an inspector from the Ministry of Labor confirm a workplace hazard; that inspector then may close down the workplace. Response time for inspectors ranged from three days in major cities to much longer in the countryside. Workers do not have the legal right to remove themselves from danger prior to the inspection, unless the employer agrees.