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**FINAL REPORT**

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**Elections - 26 April 2009**

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## EXECUTIVE SUMMARY

The presidential and parliamentary elections in Ecuador were held on 26 April 2009. Upon invitation and in accordance with the Memoranda of Understanding signed by the European Commission with the National Election Council (NEC) and the Ecuadorian government, a European Union Election Observation Mission (EU EOM) was deployed. The EU EOM, led by Chief Observer, Mr. José Ribeiro e Castro, Member of the European Parliament, observed and assessed the election process in accordance with its mandate and the international standards for democratic elections. The EU EOM adhered to the “Declaration of Principles for International Election Observation”, commemorated at the United Nations in October 2005. The EU EOM deployed 117 observers from 21 EU Member States and Norway throughout the country.

The 26 April general elections marked a new era in the constitutional history of Ecuador. They also signified the end of an intense cycle of elections and referenda since late 2006. The elections were generally conducted in line with international standards. They were organised within a tight timeframe and under challenging circumstances: five different levels of election, new categories of voters and the establishment of a new election administration. The elections took place in a peaceful manner with local exceptions. Freedoms of expression and assembly were generally respected. However, the dominant presence of the incumbent President Rafael Correa in the media during the campaign period did not serve to promote a level playing field. To some extent, a similar situation was mirrored in the campaigns of some incumbent Prefects and Mayors. After Election Day, incidents by supporters of local candidates who rejected the results heightened the prevailing political tensions in the country.

The legal framework generally provided for a democratic, transparent and inclusive election process. The 2008 Constitution established the separation between the administrative and the judicial branches in the electoral power and the extension of voting rights to members of the security forces, non-convicted prisoners, certain foreigners and citizens older than 16 years. Some of these novelties were in line with previous EU EOM recommendations<sup>1</sup>. The legal framework was highly fragmented since the consolidated 2009 election law was not applicable for these elections. Therefore, shortcomings identified by previous EU EOMs remained. These included, among others, the lack of proportionality of sanctions for campaign violations and an inadequate procedure for the suspension of political rights. On the positive side, the 2009 Election Law addressed many of these shortcomings.

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<sup>1</sup> The EU EOM 2007 and EU EOM 2008 Final Reports on elections in Ecuador are available at <http://www.euomecuador.org>

Overall, NEC and its decentralized bodies operated independently and transparently. Pre-election logistical and operational preparations were generally conducted in an effective manner. However, some deficiencies in the training of election staff had a negative effect during the counting and tabulation. Transparency was enhanced by an informative web page and by the overseeing of the process by a large number of domestic and international observers. NEC intensified its efforts to enhance confidence with an open communication strategy in the media and by inviting parties and movements to participate in the Electoral Process Vigilance Commission. However, NEC did not appear able to explain in a clear manner the tabulation process to the general public and political stakeholders, which left it vulnerable to criticism. In fact, the atmosphere of distrust towards the electoral authorities that was observed in previous elections persisted to some extent.

The voter register was generally considered inclusive and enjoyed the confidence of parties and movements. Ecuador used a passive voter register with data drawn from the Civil Registry. A total of 10,529,765 voters were eligible to vote, an increase of more than 10 per cent as compared to the 2008 Referendum, due to the inclusion of the new categories of voters. However, some shortcomings identified in previous elections remained, such as the under-registration of part of the electorate. The candidates' registration process did not impose overly-restrictive requirements for candidates to stand for election and a large number of them were registered. Regretfully, the legal framework did not provide for independent candidates to contest the Presidential and the National Assembly elections.

A broad voter education campaign was conducted by NEC and civil society, mainly targeting the new categories of voters, with an emphasis in the 16 to 18 years old new electorate. However, there were some shortfalls identified such as a lack of uniform implementation and an insufficient voter education campaign targeting the rural and minority electorate. In addition, a more focused campaign about the complexities of the electoral system should have been implemented. Media played a key role in voter education, being the main source of information for voters, giving opportunities to candidates to present their platforms or organizing informative debates mainly at local level.

The election campaign was generally peaceful, despite some isolated incidents including attacks against some candidates. The campaign for the presidential contest was generally low-key and characterised by a lack of robust competition and lively political discourse. Although, the campaign of the incumbent President Rafael Correa was visible in all provinces, the campaign of the other Presidential candidates was much less evident. Some of these candidates complained about not having the same resources as Correa to campaign nationwide. Some of them also lacked meaningful national campaign structures. Regarding the campaigns for the other elections, candidates were able to campaign freely, although the atmosphere was highly polarized and with a high degree of negative campaigning. Little attention was given to political programmes.

NEC made some innovative attempts to enforce campaign regulations, *inter alia*, by endeavouring to adopt and implement new sanctions. Some measures to suspend or withdraw campaign materials that contravened the law were decided and applied. Globally, however, the system proved unable to fully address the use of state resources for campaign purposes notably in the media, as required by the 2008 Constitution. The prohibition of campaigning prior to Election Day was generally respected although, in some cases, the moratorium was ignored through the diffusion of government spots, news broadcast and other political programmes.

The publicly-financed media scheme, whereby all candidates enjoyed an equal opportunity to present their messages to voters, was further refined by introducing three television programmes to inform about the presidential candidates' proposals; however, this positive initiative did not fully achieve its objective, as the time allocated was insufficient. The spots were evenly distributed, but the saturation of the broadcasts made them ineffective. Electronic media failed to organise debates between presidential candidates, which lessened their opportunity to discuss their messages before the electorate.

The print and electronic media covered the pre-election process and campaign mainly through news programmes and bulletins. Freedom of speech was mostly respected and the overall climate for journalists remained within international standards. Nevertheless, the media environment would have been enhanced by a law that regulates and guarantees pluralism and journalists' independence in the state-owned media. Also, the political polarization seemed to increasingly engage the media, damaging an open democratic debate and level playing field. The dominant coverage of the incumbent President, in particular in the State media, fuelled permanent complaints from other candidates. President Correa also received the largest percentage of coverage in the news, albeit with a critical tone in the private media.

The Election Disputes Tribunal (EDT)'s handling of complaints and appeals relating to campaign rules violations did not prove to be effective. Inadequate timelines, excessive focus on procedural issues, legal vacuums and diverging interpretations undermined the timely enforcement of campaign rules and the confidence of electoral stakeholders. To the contrary, the handling of complaints and appeals relating to candidate registration was conducted adequately. EDT also carried out considerable organisational efforts to set up a new institution within a complex transitional period by establishing jurisprudence, the publication of cases in its comprehensive webpage and the launch of hotlines for enquiries on Election Day.

Civil society organisations enhanced the transparency of the electoral process, encouraging voter participation and monitoring the performance of the electoral administration. All these had a positive impact on voter and civil education. *Participación Ciudadana*, a well-known Ecuadorian civil society organisation, accredited around 8,000 observers during Election Day. Other domestic organization fielded observers, although to a lesser extent. An Organisation of American States (OAS) Observation Mission and 56 Latin American observation groups, mainly from national election management bodies, also overviewed the process.

The participation of women was prominent in these General Elections. The 2008 Constitution required candidates to be ordered alternatively by gender on the ballot paper. This led to a larger female representation in the National Assembly, compared to the Transitional Legislative

Commission. However, only 3 out of 18 national lists of the National Assembly were headed by women. Women represented approximately 50 per cent of the election administration staff at all levels. Since the percentage of women within the population is slightly higher than that of men, this was reflected in the percentage of women registered for these elections and in their participation as voters. Regretfully, NEC did not provide voter education with a gender focus, as the Election Law prescribed, and failed to educate vulnerable women voters (in particular illiterate or rural women) on voting procedures.

Notwithstanding a general recognition of indigenous and Afro-Ecuadorian peoples' rights in the 2008 Constitution, the lack of voter and civic education and the fact that few campaign activities were conducted in indigenous languages seemed to affect their informed participation in the political process especially in rural and remote areas. Indigenous and Afro Ecuadorian peoples were under-represented in the election administration and their rights were rarely discussed in the electoral campaign.

Election Day generally went smoothly and the atmosphere was largely calm and orderly. Observers assessed the opening and voting processes as mostly positive. Procedural shortcomings were noted, including a lack of safeguards to protect secrecy of voting in 16 per cent of the cases. Whilst the incumbent President set a positive precedent by abstaining from attending and delivering a speech at the E-Day's inaugural ceremony, proselytism by other presidential candidates was observed inside voting centres. Most of the problems and shortcomings relating to E-Day and its aftermath derived from the fact that five elections were held on the same day, with six different ballot papers, and with a complex voting and tabulation system for the three pluripersonal ballots. This put pressure and stress upon a system with limited resources, which at certain stages proved to be overwhelming.

Counting was assessed more negatively than voting, as in many cases procedural deficiencies were observed. Due to non-realistic timelines for different stages of the process and a number of unexpected difficulties, the announcement of preliminary results fell behind the established schedule. In addition, sporadic incidents of electoral violence were reported in some provinces, resulting in the suspension and rescheduling of voting in some cantons of Manabí, Guayas, Loja and Zamora-Chinchipec.

NEC established tabulation centres throughout the country aiming at providing the public with speedy preliminary results. Re-counts were ordered in all provinces, as a large number of results protocols at all levels of elections showed numeric inconsistencies. In areas where the re-count was observed by EU EOM, it generally proceeded in an open but unorganized manner as the layout of the premises did not facilitate their transparency. The Mission considered that discrepancies found were the result of unintentional human errors, probably a consequence of the long hours of work during Election Day and the low understanding of counting procedures, and did not reveal any pattern that might raise suspicions of fraud. In some provinces, re-counts were conducted in a tense atmosphere and were repeatedly stalled by some contesting candidates and parties. The tabulation and posting of the results by NEC were carried out according to legal provisions but did not comply with the schedule due to unrealistic procedures for tabulations, failures in the transmission of results and a large number of protocols with numeric inconsistencies. In addition, NEC did not appear able to explain in a clear and effective manner

the tabulation of results to the general public, which raised criticism when candidates started to challenge the results.

On 30 May, the official electoral results for the presidential election were announced and the incumbent President Rafael Correa was declared as winner with 51.99 per cent of the valid votes, followed by Lucio Gutiérrez with 28.24 per cent. As a result, President Correa was re-elected with no need of a run-off election. There were no legal challenges against the presidential results. Regarding the National Assembly elections, there are no official results at the time of this writing. National Assembly results as posted in NEC's website showed that *MPaís* and leftist parties and alliances gained a total of 73 seats (*MPaís*, 57 seats; *Pachakutik*, 4; *MPD*, 3; Indigenous movement *Amauta Yuyay* 1 seat, and several left-led alliances, 8 seats<sup>2</sup>), out of the total of 124 that compose the National Assembly. *PSP* would gain 18 seats and 1 more in alliance. The alliance *PSC/Madera de Guerrero* 11 seats and *PRIAN* 5 seats and 1 more in alliance. *Movimiento Municipalista* would obtain 2 seats and 3 more in alliances, *PRE* 3 seats and *ID* 1 seat. Other six movements would obtain a total of 6 seats<sup>3</sup>. There was only one legal challenge filed before EDT against the results of a provincial assembly member, which was dismissed.

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<sup>2</sup> Left-led alliances: in Cañar, *MPD* with local movements; in Pastaza, *Pachakutik* with *MPD*; in Azuay, *MPaís* with local movement *MED* and in Tungurahua, *MPaís* along with *Democratic Left* and *Socialist Party*.

<sup>3</sup> *MIOSA*, *Movimiento Conservador*, *ARE/APLA*, *MIUP*, *CND* and *CC*.

## INTRODUCTION

The presidential and parliamentary elections in Ecuador were held on 26 April 2009. Upon invitation and in accordance with the Memoranda of Understanding signed by the European Commission with the National Election Council (NEC) and the Ecuadorian government, a European Union Election Observation Mission (EU EOM), led by Chief Observer Mr. José Ribeiro e Castro, Member of the European Parliament, was deployed. The EU EOM assessed the conduct of the elections in accordance with international standards for democratic elections and adhered to the *Declaration of Principles for International Election Observation*. The EU EOM deployed 117 observers from EU Member States and Norway throughout the country and was joined by a five-member delegation from the European Parliament, led by Ms. Renate Weber. On Election Day, EU EOM members visited 1,049 polling stations to observe voting and counting. The EU EOM is independent in its findings and conclusions from EU Member States, the European Parliament and the European Commission.

### I. POLITICAL BACKGROUND

#### A. *Political Context 2006 - 2008*

Rafael Correa, backed by his newly-formed movement *Alianza País*, was elected in the second round of Presidential Elections in November 2006 with 57 per cent of the vote. *Alianza País* did not present any candidates to the simultaneously elected new Congress as Correa considered that the Congress was a source of corruption and did not legitimately represent the will of the people. The resulting political landscape was thus marred by a tense relationship between the Congress and the President.

From the beginning of his mandate, the promotion of economic, social, political and institutional reforms was high on the agenda of President Correa. These reforms were at the core of the so-called “*Citizen’s Revolution*” and “*Socialism of the XXI Century*” and had as a primary mechanism a constitutional rupture through the election of a Constituent Assembly. After weeks of political turmoil, the referendum to convene a Constituent Assembly was held on 15 April 2007. A total of 82 per cent of the electorate voted in favour.

On 4 May 2007 the former Supreme Electoral Tribunal (TSE) called for the Constituent Assembly elections to be held on 30 September that year which was observed by an EU EOM. Ecuadorians elected a total of 130 representatives and *Movimiento País (MPaís)*<sup>4</sup> and its allies confirmed their position as the strongest movement in Ecuador, gaining a total of 80 seats (61.6 per cent of the Constituent Assembly’s composition). The Constituent Assembly took office on 29 November 2007, and focused on delivering a new Constitution within a term of 240 days.

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<sup>4</sup> Upon consolidation of the Constituent Assembly *Alianza País* started using its official name: *Movimiento País*.

The process of writing the Constitution was participatory; the Assembly called upon all social movements, associations, universities, faculties, national and international experts, local governments, etc., to debate and provide inputs regarding diverging issues under the new Constitution. This led to an internal debate involving the different sectors of society and resulted in numerous proposals being put forward. Nevertheless, some political parties complained that the Constitution reflected mainly the political views of *MPaís* since they had the majority in the Constituent Assembly and not sufficient effort was made to achieve consensus. In addition, some opposition parties and political movements expressed their concern about a possible control of the transitional institutions by *MPaís*, since the Constituent Assembly appointed the State's General Controller, the Attorney General, the Ombudsman as well as the superintendents of Telecommunications, Banks-and-Insurance and of Companies.

The final draft of the main body of the Constitution was approved on 24 July<sup>5</sup>. The Constitutional referendum was held on 28 September 2008 which was observed by an EU EOM, and the draft Constitution was approved with a resounding 63.9 per cent of valid votes in favour, 28.10 per cent against, 7.23 per cent invalid ballots and 0.75 per cent blank votes, which meant a new and clear triumph for President Correa and his movement (*MPaís*). The “No” option won in Napo Province and in Guayaquil, Guayas<sup>6</sup> - where the opposition was led by the Mayor Jaime Nebot who continued to be, with his former allegiance the *Partido Social Cristiano* (PSC), one of the major opposing actors to Correa.

## ***B. The Transitional Period 2008-2009***

The 2008 Constitution established the rules governing the transitional period from the entering into force of the Constitution until the establishment of the new elected institutions. This period was regulated by 30 specific articles named the *Transitional Regime* as well as 30 *Transitional Dispositions*, which turned out to be extremely complex and provided a very short time to create a series of laws and structures. In addition the *Transitional Regime* provided the rules governing the first general elections under the new constitutional regime. This opened the door for the opposition to question the legality (and constitutionality) of some of the laws that the Legislative Commission adopted.

Following the adoption of the Constitution, the Constituent Assembly appointed the new members of the Electoral Power - the National Electoral Council (NEC) and the Electoral Disputes Tribunal (EDT) - as well as a Transitional Legislative Commission (commonly known as *Congresillo*) in its last session. The Transitional Legislative Commission is composed of 76 Assembly members and endeavoured to maintain the political proportionality present in the former Constituent Assembly. The Transitional Legislative Commission had an extensive constitutional mandate to draft and adopt the basic legal rules, including a new election law<sup>7</sup>, and had an important role in facilitating changes of State Structures, during the interim period as

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<sup>5</sup> The *Preamble* and the *Transitional Regime* were approved separately on 23 and 24 July. The process of final approval of the draft Constitution was questioned by some opposition members.

<sup>6</sup> Albeit with a narrow margin in Guayaquil (46.97 per cent against 45.68 per cent for the “Yes”).

<sup>7</sup> Adopted on 9 April 2009. It was not applicable for these elections.

defined in the Constitution. The mandate of the Legislative Commission remains until the new National Assembly is established.

### **C. Political Parties and Movements**

Ecuador's political landscape is characterized by a plethora of traditional political parties and movements. In addition, new movements representing local contests were created in the last few months. These ranged from *Movimiento Municipalista (MMIN)* which encompassed approximately 120 incumbent mayors with the main goal of achieving a democratic and decentralized local administration, to Jaime Nebot, incumbent Mayor of Guayaquil who established his own movement, *Movimiento Madera de Guerrero*, which ran in an alliance with PSC, in order to reinforce his political strength across the province of Guayas.

The following is a summary of the most important parties and movements which presented candidatures for the general elections 2009:

*Partido Sociedad Patriótica (PSP), Unión Demócrata Cristiana (UDC), Partido Social Cristiano (PSC), Partido Renovador Institucional Acción Nacional (PRIAN), Partido Roldosista Ecuatoriano (PRE), Partido Izquierda Democrática (ID), Partido Movimiento de Acuerdo Nacional (MANA) Partido Movimiento Popular Democrático (MPD) Partido Socialista – Frente Amplio (PS-FA), Movimiento Unidad Plurinacional Pachakutik-Nuevo País (MUPP), Movimiento Municipalista por la Integridad Nacional (MMIN), Movimiento Red Ética y Democracia (RED), Movimiento Patria Altiva i Soberana (MPaís), Movimiento Concertación Nacional Democrática (MCND).*

## **II. LEGAL ISSUES**

### **A. Legal Framework for the 2009 General Elections**

The 2009 general elections were governed by a diverse range of legislation which was generally in line with international standards. It was comprised of: the 2008 Constitution, including the *Transitory Dispositions* and the *Transitional Regime*; pre-constitutional laws - most importantly the *2000 Electoral Law*, the *2000 Law on Political Parties* and the *2000 Law Governing Expenditure and Electoral Publicity* - which remained applicable in areas not covered by the 2008 Constitution; and the regulations and directives adopted by NEC and EDT, in accordance with the competence conferred to them under Article 15 of the *Transitional Regime*.

### **B. Universal and Regional Standards**

Ecuador has ratified all major human rights treaties containing international standards for elections: the 1966 “*International Covenant on Civil and Political Rights*”(CCPR) (and the Optional Protocol), the 1979 “*Convention on the Elimination of All Forms of Discrimination against Women*” (CEDAW), the 1966 “*International Convention on the Elimination of All Forms of Racial Discrimination*” (CERD), the 1969 “*American Convention on Human Rights*” (ACHR) and the 1989 “*International Labour Organization Convention No. 169 on Indigenous*

*and Tribal Peoples in Independent Countries*” (ILO Convention 169). The aforementioned human rights instruments guarantee the equal right of all citizens to political participation<sup>8</sup>. They also stipulate other essential preconditions for the exercise of political rights, such as the right to freedom of expression, assembly and association. According to the 2008 Constitution, international treaties ratified by Ecuador are part of the Ecuadorian legal framework and have a higher rank than other laws of the country with the exception of the Constitution. Most of the human rights obligations accepted by Ecuador are held to be “self-executing” and considered as directly applicable.

### ***C. The 2008 Constitution and other applicable legislation***

The 2008 Constitution defines Ecuador as a Presidential Republic with the President as the head of the Executive Power (State and Government) and the Supreme Authority of the security forces (army and national police). The legislative power resides in the single chamber National Assembly. The judiciary is organized in a three-tiered structure with the National Court of Justice as the maximum authority. The Constitutional Court guarantees the supremacy of the Constitution. Administratively, Ecuador is divided into 24 provinces. At provincial level there are a total of 221 cantons, which are subdivided into 1204 parishes.

The Ecuadorian Constitution provided the basic principles for genuine and democratic elections, stipulating the principle of universal, equal, direct and secret elections. In addition, the Constitution contained civil rights guarantees, which are necessary preconditions for the exercise of the right to political participation: the right to free communication and exchange of information, the freedoms of expression, assembly and association. The Constitution established NEC and EDT as supreme organs of the Electoral Power, regulating their respective composition and competencies.

The 2008 Constitution contained several improvements that coincided with some of the recommendations made by the EU EOM in 2007 and 2008, such as the separation between the administrative and the judicial branches in the Electoral Power and the extension of voting rights to members of the security forces and non-convicted prisoners<sup>9</sup>. Another improvement was the provision for alternating women and men on the candidates’ lists<sup>10</sup>. Regrettably, some weaknesses remain in the 2008 Constitution, such as the vague delimitation of competencies between NEC and EDT.<sup>11</sup>

A new electoral law was adopted on 9 April by the Transitional Legislative Commission. This law comprehensively regulates all aspects of the electoral process which were previously

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<sup>8</sup> The essential provisions guaranteeing the right to political participation are Article 23 of the American Convention of Human Rights and Article 25 of the International Covenant of Civil and Political Rights.

<sup>9</sup> Likewise, teenagers of 16-18 years and foreigners who have been residing for at least 5 years in Ecuador were allowed to vote.

<sup>10</sup> For the 2007 elections, an *ad-hoc* Statute had already established the obligation providing for an alternate placement of men and women.

<sup>11</sup> While this caused problems during these elections, the respective competences of these institutions are further clarified in the new electoral law which was adopted on 9 April 2009.

contained in different laws. It also contains a number of provisions in line with the EU EOM recommendations. However, this new law was not applicable to these elections and, thus, the pre-constitutional laws regulating the electoral process remained widely in force in areas not covered by the 2008 Constitution.

Therefore, many of the problematic aspects that were identified by the EU EOMs 2007 and 2008 persisted during these elections. The following two issues were of particular concern.

Firstly, the sanctioning system, especially with regard to violations of campaign regulations was particularly problematic. Sanctions provided by the law in many instances lacked the appropriate graduation of disciplinary action and were in most cases not adequate since they proved to be disproportionate in comparison to the seriousness of the violation. NEC made an attempt to introduce a degree of proportionality with respect to violations of campaign regulations<sup>12</sup>. However, this effort was frustrated by EDT's strong objection to NEC's competence to adopt such measures. On a positive note, the *2009 Election Law*, which will be applicable to future elections, provides for a certain graduation of sanctions and establishes EDT's competence to, among others; impose fines in cases of violations of campaign regulations.

Secondly, the overarching competences of EDT, especially with regard to the possible removal and suspension of political rights of authorities and public officials who interfere with the functioning of the electoral bodies were especially critical, especially given the limited procedural guarantees<sup>13</sup> established in the regulatory framework in cases of violations. In fact, on 17 March 2009, EDT dismissed a judge who had admitted an appeal against a decision of the Provincial Electoral Board (PEB) in Los Ríos and ordered the re-registration of the concerned candidates. In accordance with the election law, EDT has the competence to safeguard the integrity of the electoral process against outside interference; however, the dismissal of a judge by another power encroaches upon the necessary independence of the judiciary<sup>14</sup>. The new election law, while still providing for the removal and suspension of political rights, at least establishes due process guarantees.

In the absence of a consolidated election law, the legal framework for these elections was highly fragmented and dispersed. In addition, while the 2008 Constitution provided for a certain hierarchy of norms by establishing the priority of the Transitional Regime, the patchwork character of election-related legislation led to a lack of clarity. In an attempt to harmonize the Constitution with the previous legislation, NEC adopted the "*Codification of the General Norms for the Elections foreseen under the Transitional Regime*" (hereinafter *General Norms*). While these regulations clarified and detailed most aspects of the applicable legal framework, they

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<sup>12</sup> Article 132 *General Norms*; deduction of 1/1000 of the total amount of campaign expenditures.

<sup>13</sup> The procedures provided no details on the right to defence, only an internal right to appeal within the same institution (Article 93 EDT's Regulations).

<sup>14</sup> See "Basic Principles on the Independence of the Judiciary", endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. These Principles establish, *inter alia*, that judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties; and that all suspension or removal proceedings should be subject to independent review.

contained some contradictions vis-à-vis EDT regulations<sup>15</sup>. This resulted in diverging interpretations by both the electoral authorities and political actors with respect to its application. For example, NEC and EDT had different understandings about NEC's competence to adopt sanctions in cases of violations of campaign regulations. Likewise, while certain Provincial Electoral Boards (PEBs) directly reacted to cases of campaign violations and ordered, for instance, the suspension of illegal TV/radio emissions (Pastaza), other PEBs (Napo, Los Ríos) restrained themselves from submitting the files to NEC or EDT without taking further action. On a positive note, the new election law comprehensively deals with all aspects of the electoral process, and includes, among others, regulations concerning political parties and campaign expenditure.

#### ***D. The Electoral System***

The President and the National Assembly members were elected by popular vote for a four-year term. To be elected, a presidential candidate needed the absolute majority of the votes cast or at least 40 per cent of the valid votes and a difference of at least 10 per cent with the second most voted candidate. If not, a second round between the two leading candidates would have been scheduled for 14 June.

The new National Assembly is unicameral with 124 members elected for a four-year term, with the possibility of one re-election of its members<sup>16</sup>. The 2008 Constitution established three different types of constituencies: one national, 24 provincial and three out-of-country constituencies. It also determined the formula to calculate the number of seats for the provincial constituencies. For the 2009 Elections, 15 representatives were elected in a nationwide constituency, 103 in 24 in-country provincial constituencies and six representatives for the three out-of-country constituencies. The number of seats in the provincial constituencies ranged from 17 in Guayas to two in the out-of-country constituencies or the less populated provinces.

The Constitution established inclusiveness as a central principle of the election system for the National Assembly and determined that it should be proportional, equal and with gender alternation in the lists. Candidates on the ballot papers were sorted by lists, representing parties, movements or coalitions. While these lists were clearly identified on the ballot paper through their logos, there was no possibility for the voter to mark them, as the Constitution stipulated that voters should indicate candidates either from the same list or from different lists, up to the number of seats contested in the respective constituency. The election system used in the National Assembly was open-list proportional representation with "*panachage*".

While this system offered voters a wide range of choice, it was also complex and difficult for the electorate to understand. This complexity was caused by the fact that the strength of the vote varied depending on whether it was cast for only one candidate, several candidates or all the candidates included under one list. In this regard, some parties and movements claimed that

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<sup>15</sup> The "Norms which are indispensable for the Exercise and the Realization of the Competences of EDT" and the "Regulation of the Procedures of EDT".

<sup>16</sup> "*Elected authorities can only run for one re-election, either consecutively or not, for the same position*". Article 114, 2008 Constitution.

many voters were unaware of the weighting of their individual vote. NEC did not conduct any voter information campaign on this issue.

Two methods were employed to allocate the seats. Firstly, the *Sainte Lagüe* proportional formula in constituencies electing three or more representatives to the National Assembly; then, the seats obtained by each list were allocated to the candidates with the highest number of votes within the list. Secondly, in constituencies where two seats were elected, the first one was given to the list with the highest number of votes, once the votes of the candidates of each of the lists were added up; and the second seat was allocated to the second most voted list, provided it achieved at least 35 per cent of the votes of the first one; if not, both seats were allocated to the most voted list.

### ***E. Delineation of Constituency Boundaries***

The 2008 Constitution, including the *Transitional Regime*, established the basic method for drawing the provincial constituency boundaries and distribution of seats, according to population and territorial representation criteria. The territorial criterion guaranteed a minimum of two seats per each one of the 24 provinces, while the population criterion gave one additional seat per 200,000 inhabitants or fraction larger than 150,000 inhabitants, according to the last 2001 national census. The use of this census caused inequalities in some provincial constituencies: provinces like Imbabura, with 303,413 registered voters<sup>17</sup>, elected three seats, while Cotopaxi province, with 301,827 registered voters, was attributed four seats. This can be explained by the use of an outdated population census as compared to the civil registry. The attribution of two seats to each of the three out-of-country constituencies was established in the *Transitional Regime*.

The rule of a minimum of two seats per constituency resulted in the fact that highly densely-populated provinces, such as Guayas, Pichincha or Manabí, were under-represented in terms of seats especially as compared to the out-of-country constituencies. For instance, in Guayas, this ratio was 147,612 electors per seat; it was even higher in Pichincha with 154,165.<sup>18</sup> In contrast, Galapagos had a ratio of 7,863 voters per seat and the Eastern provinces also had low ratios: Pastaza, 26,616; Napo, 30,909, and Orellana, 36,936 voters per seat. The average ratio in the provincial constituencies was 96,603 electors per seat. In the Latin American, Caribbean and Africa constituency the average ratio was 6,907 electors per seat, in the North American constituency there were 16,791 electors per seat.

## **III. ELECTION ADMINISTRATION**

### ***A. Structure and Composition of the Election Administration***

The 2008 Constitution established the electoral function as one of the powers of the State and created two election-management bodies: NEC, tasked with the organisation of the elections, and

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<sup>17</sup> Ecuador used a passive voter register with data drawn from the Civil Registry.

<sup>18</sup> The ratio elector/seat is obtained by dividing the number of electors by the number of seats to be elected in a given constituency.

EDT, responsible for handling complaints and appeals. In order to strengthen their independence, the Constitution provided for a non-partisan recruitment of their members, and outlined how they should function. Members were appointed by the Constituent Assembly according to public service procedures in October 2008. The selection process was apparently conducted in accordance with the established criteria<sup>19</sup>. However, some political parties maintained that some of the selected members were linked to the government. This had an adverse effect on the confidence of the opposition parties with regard to the impartial management of the elections. The mandate of the current members will terminate once the newly elected institutions are established.

The Constitution and the *General Norms* afforded NEC wide powers to appoint the members of the lower levels of the election administration, but did not detail the criteria for selection. NEC operated throughout the country with permanent and temporary bodies. The decentralised administration was composed of 24 Provincial Electoral Boards (PEB), 24 Provincial Electoral Delegations (PED) and 45,256 Polling Stations. The selection of the members at lower levels of election administration also raised questions among some political stakeholders.

The functioning of PEBs and PEDs, as parallel structures in the provinces, relied mostly on the cooperation from both bodies, as there were some discrepancies in NEC regulations with regards to their competencies. This situation resulted in overlaps between the two bodies on operational issues. The ample, yet vague powers given to the PED concerning the recruitment of essential election personnel, caused concern among political stakeholders, who claimed that the recruitment procedures in some provinces did not completely follow the public service procedures.

### ***B. The Administration of Elections***

Ecuador was confronted with a complex process with five different elections, new categories of voters and the establishment of a new election administration, which represented a huge challenge for the two new bodies of the Electoral Power. Prior to Election Day, the logistical and technical preparations were generally conducted in an effective manner and according to schedule. NEC managed a budget of around 93 million US dollars, excluding the public financing scheme of the election campaign.

During the pre-election period, NEC generally operated collegially and in a transparent manner. The sessions were public; however, they were not announced well enough in advance and the agenda was often distributed just before the sessions, which made difficult the presence of the public, parties, media and observers. NEC webpage provided the public with useful and generally-updated information on its decisions, as well as on electoral laws and regulations. Lower levels of the election administration also displayed openness towards political stakeholders and observers.

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<sup>19</sup> See “Report on the appointment of transitional electoral authorities”. The Carter Center.

NEC enacted numerous regulations and directives aiming at facilitating the electoral process and making it compatible with the pre-2008 Constitution legal framework, including the establishment and implementation of the lower levels of the election administration. NEC also undertook different initiatives targeted at accelerating the tabulation process, made considerable efforts to update the voter register and conducted a comprehensive public outreach programme to voters. However, several operational and procedural decisions with regards to the counting and tabulation resulted in major shortcomings during the post-elections period (See *Tabulation of Election Results*).

NEC made a concerted effort to train election officials, tabulation centres' staff, members of the Army and Police forces and political parties' delegates. Nonetheless, the training for polling staff only reached 59 per cent of the more than 311,000 polling station members<sup>20</sup>. Although the EU EOM observers assessed the quality of the training as adequate, the relatively low percentage of trained polling station members had a relevant consequence during the counting of the ballots at the polling stations, as a large number of results protocols showed evident inconsistencies and/or lacked signatures.

NEC intensified its activities to enhance transparency and confidence among political parties. Prior to the elections, it employed an open communication strategy in the media and invited parties and movements to participate in the Electoral Process Vigilance Commission (EPVC), a forum for scrutinising the election process, in which most parties and movements participated. However, the atmosphere of distrust that was observed in previous elections persisted to some extent, as demonstrated by some continuing allegations from opposition parties regarding possible irregularities and political bias. This atmosphere of distrust among political actors increased after the elections.

Although NEC made some innovative attempts to enforce campaign regulations *inter alia* by adopting new sanctions and endeavouring to implement them, the system globally proved unable to fully address the use of state resources in the media for campaign purposes, mainly at national level. NEC conducted monitoring of campaign publicity. At the time of this writing, NEC had decided on a total of 47 cases, including the suspension of electoral advertisements from several Presidential candidates<sup>21</sup>, National Assembly candidates and governmental publicity<sup>22</sup> for different breaches of the election campaign regulations<sup>23</sup>. However, NEC, as well as the provincial levels of the election administration, failed to apply in many cases consistent and

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<sup>20</sup> Around 37,000 polling station members were between 16 and 18 years old.

<sup>21</sup> On 31 March NEC took action against President Rafael Correa campaigning in favour of *MPaís* during the weekly radio and television address of 28 March and also virulently attacked his opponents Lucio Gutiérrez and Álvaro Noboa, which was forbidden according to the present legislation. NEC also issued him a warning stating that, if he were to commit the same violation, his weekly address to the nation would henceforth be suspended. A spot of Melba Jácome, Presidential candidate for the movement *Tierra Fértil*, was not authorised for the use of children.

<sup>22</sup> TV spot by the Ministry of Education was suspended for including the incumbent Vice-President, Lenin Moreno.

<sup>23</sup> These cases are related to the inclusion of the acting Guayas prefect, Jaime Nogales (PSC), in a TV spot sponsored by the provincial Government. The election administration in Pichincha also removed billboards that were posted without authorization.

efficient administrative sanctions to candidates. This was widely considered to be one of the factors for the frequent disrespect of campaign rules by parties.

NEC's decisions proved more effective when cancelling or suspending broadcasts contravening electoral regulations. These decisions were generally observed and respected. NEC also took action to enforce respect for the period of silence between the close of the campaign and Election Day, including prohibiting the presidential *Informe Sabatino* on 25 April. Both decisions were an improvement when compared with previously observed elections and referenda.

#### **IV. VOTER REGISTRATION**

##### ***A. The Right to Vote***

The 2008 Constitution further extended the right to vote to foreigners with more than five years of legal residence, non-convicted prisoners, members of the Army and Police forces, and citizens between 16 and 18 years olds. Some of these novelties were in line with previous EU EOM recommendations and are welcomed by the EU EOM. Voting was mandatory for all Ecuadorian citizens living in the country, including non-convicted prisoners, between 18 and 65. Voting was not compulsory for the rest of the aforementioned categories, illiterate individuals, persons with disabilities as well as Ecuadorian voters registered in the out-of-country constituencies<sup>24</sup>.

##### ***B. Voter Registration Procedures***

The voter register can be regarded as inclusive and enjoyed the confidence of political parties and movements. NEC was responsible for the elaboration and update of the voter register according to the 2008 Constitution. Ecuador used a passive voter register with data drawn from the Civil Registry. A total of 10,529,765 voters were eligible to vote. Due to the inclusion of the new categories of voters, the voter register had an increase of more than 10 per cent as compared to the 2008 Constitutional Referendum.

The previous EU EOMs identified some shortcomings that have not been addressed for these elections. Most importantly, an estimated 500,000 qualified voters are still not registered according to the Civil Registry. In addition, adequate procedures seemed not to have been put in place for the display of the voter register. Despite Voting Information Centres and telephone hotlines being set up after the cut-off date of 5 February 2009 to provide information, the electorate was unable to make any changes to the register.

Voter registration for the new voters was also passive and they were inserted into the regular voters list with the exception of the non-convicted prisoners. Voters' lists were disaggregated by gender<sup>25</sup> with no further specifications. A more detailed register would have facilitated inclusion of information regarding the turn out of the new categories of voters and the identification of

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<sup>24</sup> The 2008 Constitution grants Ecuadorians living abroad the right to elect the President and Vice-president, as well as their representatives in the National Assembly. These voters can be elected for any position.

<sup>25</sup> Male and female voted separately in different polling stations.

possible shortfalls to be addressed in future elections. Furthermore, there were some procedural shortcomings which resulted in a number<sup>26</sup> of Army personnel not being able to exercise their vote. This occurred as a result of not being included in their respective voter register due to inaccurate information on where they would be stationed on Election Day. Another problem was that, according to the Civil Registry, around 160,000 citizens between 16 and 18 years old and non-convicted prisoners did not possess an ID card<sup>27</sup>, Nonetheless, the Civil Registry made a concerted effort to launch campaigns in various provinces to encourage these categories of voters to obtain an ID card<sup>28</sup>.

## V. VOTER AND CIVIC EDUCATION

The legal framework for civic and voter education in the 2009 General Elections is established by the 2008 Constitution and other Electoral Laws. According to the Constitution, NEC is responsible for organizing an “Institute in charge of research, capacity building and electoral promotion” as well as for decentralizing electoral information centres<sup>29</sup>.

NEC’s Direction of Communication successfully implemented a professional and nationwide voter incentive campaign through a public tender won by the advertising agency *Mediterraneo*. Key messages in main national and provincial media did not target the general public, but mainly informed the new electorate about their right to vote. A similar campaign, set up in cooperation with Ecuadorian Embassies and Consulates, targeted the out-of-country electorate, although with a limited budget. Furthermore, NEC launched a cross-media informative campaign urging the electorate to consult NEC’s website, call centres and Voting Information Centres in order to find out where to vote. Through innovative alliances with supermarkets, banks and mobile telephone operators, NEC successfully reached the urban electorate. The effectiveness of the information campaign is evidenced by the fact that the call centres received approximately 12 million enquiries. NEC successfully promoted the optional vote of the 16-18 year old electorate through a network of institutional and civic collaborations. Furthermore, the NGO *Participación Ciudadana* ran a parallel campaign on “*How to vote in a responsible way*”. As a result, civic education of the young electorate can be considered a major achievement in this election process.

Nevertheless, the voter education campaign was a major concern in several provinces. Although NEC decentralized the voter education campaign throughout its provincial delegations, the EU EOM observed a lack of uniform implementation, insufficient adequate voter education initiatives targeting the rural and minority electorate, as well as a generalized deficiency of instructions about polling procedures on E-day. A more decentralized campaign, adapted to socio-economic, educational and demographic specifications would have been more relevant. Also, the EU EOM considered that the lack of information about the complex process of vote distribution and seat assignment did not allow the electorate to vote with full understanding.

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<sup>26</sup> At the time of this report, there were no figures available.

<sup>27</sup> The ID card and the passport were the only documents valid for Ecuadorians to prove identity at the polling stations.

<sup>28</sup> Campaigns were launched in major centres in Guayas and Pichincha provinces for non-convicted prisoners. A similar campaign was launched to target voters between 16 and 18 years old, achieving nearly 7.000 new ID holders.

<sup>29</sup> Article 219 of the Constitution.

Media played a key role in voter education, being the main source of information for voters, giving opportunities to candidates to present their platforms or organizing debates mainly at local level. While the civil solidarity project *Taxi Solidario*, offering free transport for disabled voters to polling stations, was exemplary in itself, the initiative was not advertised enough and remained unknown in several provinces and did not benefit from NEC's support.

## **VI. REGISTRATION OF PARTIES, MOVEMENTS AND CANDIDATES**

### ***A. Registration of Political Parties and Movements***

The 2008 Constitution guaranteed political pluralism and the freedom of association. It also referred to the participation of political parties and movements and tasked NEC with their registration. Political parties must be national-based and must keep a register of their membership. To the contrary, political movements could be regional, provincial or locally based and did not need to keep records of their memberships. Political parties and movements that participated in the 2007 Constituent Assembly Elections could participate in the 2009 elections without further requirements. For those that had not participated in the 2007 elections, requirements were simple and not onerous, as they were only requested to submit supporting signatures equivalent to one per cent of voters registered in the relevant constituency.

### ***B. Registration of Candidates***

Non-restrictive requirements for registration of candidates have allowed a large number of candidatures. In order to run for the Presidency, candidates had to be Ecuadorian citizens over 35 years old and in possession of their political rights. Similar requirements applied to candidates for the National Assembly, although the minimum standing age was 18 years old. Members of the Judiciary and the Electoral Power, Security Forces or convicted prisoners could not run as candidates. Under the current legal framework, citizens could not run as independent candidates for the National Assembly or Presidential contests.

NEC was responsible for the registration of the Presidential and National Assembly candidates at the national constituency. Candidates running for the National Assembly in provincial constituencies could register at the respective PEB. Lists of candidates for the National Assembly had to include as many names as the number of seats to be contested in the respective constituency, with a gender alternation. Following the nomination of candidates, NEC or PEB respectively, published a provisional list and candidates then had the opportunity to appeal the decisions. There were few complaints concerning the registration process. EDT accepted the legal challenges in only 13 cases -16.2 per cent- as in most of the cases the lists have not

complied with the formal requirements necessary for registration being mainly related to the lack of the required number of signatures<sup>30</sup>. (See *Complaints and Appeals Section*).

According to NEC, a total of 13 political parties, 37 national movements and 180 local and provincial movements were registered for the general elections. Eight political parties and movements nominated binomials for the Presidential elections<sup>31</sup> (in tickets of President and Vice-president). NEC rejected the registration of two Presidential candidates, as they failed to provide the required number of signatures. Two presidential and one vice-presidential candidate were female. For the parliamentary elections, a total of 269 lists and 1,598 candidates were registered for the National Assembly contest, with gender alternation. Only 1 out of 19 lists submitted for the national contest of the National Assembly failed to provide the required documentation; the candidates included in that list did not qualify.

## VII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

### A. Overview of the Election Campaign

According to the *General Norms*, the official campaign commenced on the 10 March and ended at midnight of the 23 April. A moratorium period of 48 hours prior to the elections was established. The campaign atmosphere was generally peaceful and freedoms of expression and assembly were generally respected. Parties reported no evident restriction on their ability to campaign. However, some violent incidents were reported. On 7 April, *TV Telecosta* and *Radio Gaviota* stations in Esmeraldas were attacked.<sup>32</sup> In addition, On 5 April, *MPaís* complained to the EU EOM that their supporters allegedly experienced several aggressive actions by metropolitan police agents and by members of the Guayaquil Mayor's movement *Madera de Guerrero*. In Ambato, four *MPaís* campaign activists were arrested on 14 April after being accused of destroying campaign materials from other movements.

The Presidential campaign was conducted in a low key manner, apparently due to a perceived lack of genuine competition. The main forms of campaigning consisted of small-scale events and door-to-door canvassing. Posters and billboards for displaying campaign material were also widely used. Observers reported that a large number of violations of campaign rules relating to billposting were evident around the country.<sup>33</sup> Although low-key, the incumbent President Correa toured the country extensively, attracting strong attention from the media. Observers stated that it was difficult to distinguish between his role as President and his campaign as candidate, although in many cases the roles were formally separated, which the EU EOM regarded as a progress when compared with previous elections. The other presidential candidates, except for Lucio Gutiérrez, evoked little public interest, as the campaign progressed.

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<sup>30</sup> This entailed the registration of candidatures in ten cases and the rejection of three cases.

<sup>31</sup> *Partido Sociedad Patriótica (PSP)*, *Partido Renovador Institucional Acción Nacional (PRIAN)*, *Red Ética y Democracia (RED)*, *Movimiento Patria Altiva i Soberana (MPaís)*, *Movimiento Tierra Fértil (MTF)*, *Movimiento Independiente, Justo y Solidario (MIJS)*, *Movimiento de Integración y Transformación Social (MITS)* y *Movimiento Triunfo Mil (MTM)*.

<sup>32</sup> The owners of the station accused the MPD followers of this attack. MPD is the leading party in the province.

<sup>33</sup> EU EOM observers reported that many billboards were placed in unauthorized places and without NEC's logo.

At provincial level and for local elections, the campaign generally mirrored the national campaign, with speeches focusing on development, health, education and the economy. Women's issues were generally disregarded. In three provinces, namely Santo Domingo, Esmeraldas and Morona-Santiago there were allegations that the campaign took on a racist tone<sup>34</sup>. Lastly, there were confirmed reports of certain candidates using schools to campaign in Napo, Manabí, Santo Domingo and Los Ríos.

Due to the fact that many prefects and mayoral candidates were campaigning for their re-election and seats were generally more contested than at the national level, some candidates instigated smear campaigns against their opponents. Furthermore, the level of the threats of violence, rumours of possible hostility between local candidates and in some instances "alleged vote-buying" peaked towards the end of the campaign and was also confirmed by the occurrence of electoral violence witnessed at polling stations on Election Day.

The 48 hour moratorium period prior to Election Day, as envisaged by the *General Norms*, was mostly respected. However, there were some breaches by the electronic media through the diffusion of government spots and inadequate news<sup>35</sup> broadcast during the moratorium. Another case was the programme broadcast by *Gama TV* on 24 April against the administration of Mayor Jaime Nebot. With regards to the latter, NEC reacted promptly by ordering the immediate suspension of any similar programmes and the opening of a corresponding case file. Nonetheless, there have been instances whereby the Electoral Administration failed to react adequately to violations. At the local level there were a few isolated incidents whereby a pocketful of candidates continued to disseminate their messages via various means. Furthermore, many short messages supporting different candidates were sent to citizens' mobile phones during the moratorium period and even on Election Day.

### ***B. Use of State Resources***

The prohibition of the use of state resources for campaign purposes is stipulated in the 2008 Constitution, including the *Transitional Regime*, and the *General Norms*<sup>36</sup>. Nevertheless throughout the campaign, evidence of the use of State resources mainly through the media<sup>37</sup> and some cases of vote buying were reported and many cases some were observed by the EU EOM. The President's use of State owned means of transport during his countrywide tour raised many

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<sup>34</sup> Two of these allegations were against *MPaís* (Manabí and Esmeraldas) and the third allegation concerned the acting prefect of Santo Domingo who allegedly attacked a prefectural candidate from list 62.

<sup>35</sup> For instance, on 23 and 24 April, a news bulletin in the newspaper *Hoy* and a report by *Teleamazonas* respectively, attacked the incumbent President for the use of the governmental airplane during the campaign period. This could be interpreted as illegal campaigning by a political subject during the moratorium period.

<sup>36</sup> Article 115 of the Constitution, 14 of the *Transitional Regime* and 134 of the *Code of General Norms* prohibits the use of public resources and governmental publicity for campaign purposes.

<sup>37</sup> EU EOM sent some letters to NEC related to a number of different cases raising some possible violations of the campaign rules at both national and provincial level for their consideration. NEC answered to these letters sent before 26 April on 28 May. NEC's answers seemed more satisfactory in those related to local and provincial elections. However, for those regarding the national elections, in the opinion of the EU EOM, NEC should adopt a more strict and firm criterion in order to ensure equity among the candidates during the campaign period.

complaints. Also Correa's frequent appearance in governmental television programmes (See *Media section*) fuelled further discussions on the use of state resources for campaign purposes. The opposition claimed that these events undermined their capacity to campaign fairly as they did not have the access to the same resources. This did not promote equality between the candidates.

The level playing field was also affected to some extent in the campaigning of some incumbent Prefects and Mayors. There were many cases around the country whereby incumbent offices used billboards to promote their own campaign<sup>38</sup>; this was particularly relevant in the Coastal and Eastern regions of the country. Posters and billboards did not always comply with the legislation; on many occasions, they were attached to public buildings and premises. Furthermore, in provinces such as Napo, Los Ríos, Guayas, Manabí and Santo Domingo de los Tsáchilas candidates were observed giving money or other prohibited gifts<sup>39</sup> in order to influence the voters, and in some cases using official inaugurations<sup>40</sup> to promote their respective candidatures.

### ***C. Financing of Political Parties***

The legal framework regulating the financing of political parties and movements was inclusive and comprehensive. The 2008 Constitution provided for equal rights of political parties with respect to their activities and their own financing. In particular the 2000 Law on Political Parties provided detailed rules for the public and private financing of political parties and movements.

The Ecuadorian public financing system has a two-fold structure: a permanent fund, to fund permanent activities, and a specific electoral fund for the election year, to fund campaign expenses (See *Campaign Financing*). Public financing is only provided to parties and movements which received more than 4 per cent of valid votes during the last pluri-personal elections (thus the 2007 Constituent Assembly elections). The only parties and movements reaching this threshold were *MPaís*, *PSP*, *PRIAN* and *PSC*<sup>41</sup>. In addition, political parties enjoyed indirect public funding through tax exceptions on real estate and income due to financial activities.

According to the information provided to the EU EOM by NEC, there are no major complaints by political parties as regards the 4 per cent threshold; supposedly due to the fact that the regulation is very clear and does not give rise to potentially problematic interpretation. However the *MPD* and *Partido Socialista* parties claimed the need of a better sharing of the fund for the future elections by decreasing the 4 per cent threshold. Furthermore, as a public financed scheme for advertising/campaign spots and programmatic proposals is applied, also small parties have

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<sup>38</sup> Article 21 of the 2000 Law Governing Expenditure and Electoral Publicity prohibits the promoting of names of civil servants for public works.

<sup>39</sup> The *General Norms* prohibit the use of donations and presents of more than two US dollars in order to canvass for votes.

<sup>40</sup> Article 132 of the Code of *General Norms* prohibits running candidates to promote their candidature during inauguration events of public works.

<sup>41</sup> *MPaís* with 75.88 per cent, *PSP* with 9.63 per cent, *PRIAN* with 8.34 per cent and *PSC* with 6.15 per cent.

the possibility to campaign. This was confirmed to the EU EOM by representatives of political parties with minor possibilities to access the Permanent Fund and the Electoral Fund<sup>42</sup>.

The provisions of public funding for permanent activities were designed to protect the development of small political parties and provided certain equality by distributing 60 per cent of the public funding on an equal basis.<sup>43</sup> The remaining 40 percent was distributed according to the strength of each party or movement on the basis of the share of votes obtained in the last pluri-personal elections. For 2009, according to the information provided by NEC, the amount of the permanent fund was not determined, and it was not yet allocated, due to a budget deficiency.

In addition, the Law on Political Parties regulated the private sources for the funding of political parties and movements limiting the sources of funding to contributions of supporters, state subsidies and revenues from their investments and donations by their supporters. The law further established that the supporters of parties and movements must pay a periodic contribution. However, the law did not establish any limit to the amount of these contributions. The law prohibited the contribution of persons and companies who are contracted by the state, its enterprises or institutions as well as from sources of foreign countries.

The law on political parties required that each political party kept records on the source and amount of contributions for at least 5 years. State financing/subsidies have to be registered separately and presented in an annual report to NEC<sup>44</sup>. Overall, the legal provisions concerning political party financing are detailed. However, there was little tradition of enforcing the law related to party financing since law did not provide with sanctions for the non-compliance of this provision. Therefore, the political parties generally did not submit the annual financial reports to the former Supreme Electoral Tribunal as required.

#### ***D. Campaign Financing***

The legal framework regulating financing of political parties and their campaigns is comprehensive and detailed. The 2008 Constitution guarantees the equal form of state financing. Likewise, it prohibits the use of state resources for campaign purposes.

In any election year, political parties and movements receive an electoral fund, a variable amount according to the annual State budget. These funds are assigned among political subjects according to the percentage of votes received. For the 2009 elections, NEC distributed the total amount of 3,633.750 USD<sup>45</sup> to *MPaís*, *PSP* and *PSC*; *PRIAN* should also have received its share. However, in January 2009, NEC suspended the money allocation until *PRIAN* paid the fine

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<sup>42</sup> *MPD, Pachakutik, ID, Partido Socialista, Red-Polo Democrático.*

<sup>43</sup> Originally, the permanent fund was only meant for parties and excluded movements. However, in July 2008, the TSE and extended the Permanent Fund to movements as well, following a consultation with the General Prosecutor of the State.

<sup>44</sup> NEC has the authority to enforce the finance regulations. In the case of infractions, NEC has the competence for reduction or total withdrawal of public funds and EDT can impose sanctions that include fines and even suspension of political rights.

<sup>45</sup> *MPaís* 2,757,289.50 USD, *PSP* 349,930.12 USD and *PSC* 223,475.62 USD. *PRIAN* should have received 303,054.75 USD

imposed by the former TSE for exceeding the expenditure ceiling in the first round of the 2006 General Elections. The *PRIAN* appealed against this decision before the Provincial Court of Pichincha. At the time of writing this report the case remained pending.

In addition, the *Transitional Regime* established a public financing scheme for all election campaigns with the exception of the Parish boards. This scheme is conducted through media as well as on bill boards. Private publicity and propaganda in written press, radio, television and billboards is forbidden.

The law limited the campaign expenditure by a variable amount per party and candidate for all different levels of election<sup>46</sup>. Individual and enterprises contributions to campaign financing were also limited to a maximum of 10 per cent of the campaign expenditure for each candidate. Contributions of more than 1,500 USD had to be done either by check or bank transfer which enhanced transparency and facilitated control. Anonymous contributions are prohibited.

NEC was responsible for controlling the campaign propaganda and expenditure as well as reviewing the accounts presented by political organisations and parties. EDT was responsible for sanctioning the non-compliance of norms concerning financing, propaganda and campaign expenditure. Political parties and movements have to submit to NEC, or the respective PEBs, their campaign accounts within 120 days subsequent to Election Day. The accounts are reviewed by NEC. In the case of infractions, NEC will submit the case to EDT for the possible application of the respective sanction. Political parties which fail to present their accounts will not be allowed to take part in the following elections, without prejudice to civil and penal sanctions. Treasurers who do not submit the accounts can be sanctioned with the loss of political rights for two years. Excess of campaign expenditure will be fined with the double of the exceeded amount.

A total of 26 cases against parties regarding their failure to submit accounts or exceeding of campaign expenditure for the 2008 referendum were filed before EDT at the time of writing this report. EDT has decided on 18 cases, with only 3 of them resulting in a suspension of political rights of the responsible of the account of the respective movement. The other 15 cases have been dismissed as unfounded. Two NEC administrative decisions regarding financing campaign expenditure regulations were appealed before EDT. Both appeals were rejected for procedural reasons.

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<sup>46</sup> For the 2009 General elections, the maximum campaign expenditure for the first round of Presidential elections as well as for the national lists running for National Assembly was 1,555,427.40 USD. The maximum of campaign expenditure for the lists from out-of-country voting was 37,184.70 USD for Europe, Oceania and Asia constituencies; 6,492.30 USD for Canada and the USA; and 3,396.90 USD for Latin America, Caribbean and Africa. Regarding the provincial lists for the National Assembly elections, the highest amount permitted was in Guayas province with a ceiling of 370,754.10 USD. The minimum ceiling of 15,000 USD was applied in 5 provinces, namely Orellana, Galapagos, Zamora Chinchipe, Pastaza, Napo.

## VIII. MEDIA AND ELECTIONS

### *A. Media Landscape and Legal Framework*

Ecuador is characterized by a diverse media landscape, consisting of some 400 TV stations, around 1,200 radio stations and 34 daily newspapers. The media scene is mainly dominated by private operators. After the 2007 elections, an important change complemented the wide range of privately-owned media outlets, as, since then, the government owns and operates State news media<sup>47</sup>. CONARTEL (*National Council for Radio and Television Broadcasts*) was the broadcasting authority in charge of the ethical content of the publicity during the electoral process.

The legal framework governing the campaign in the media is mainly contained in the 2008 Constitution including the *Transitional Regime*. These norms are supplemented by the *Law on Governing Expenditures and Electoral Publicity*, the *Law of Radio and Television* as well as the *General Norms* adopted by NEC.

The 2008 Constitution (*Transitional Regime*) established an equitable public financing scheme for the election campaign at all levels of the election with the exception of the Rural Parishes boards. This equitable scheme is conducted through NEC in TV, radio and print media, as well as on billboards. Private advertisements on election-related issues in the media were forbidden. Furthermore, the Constitution prohibited the use of state resources and state infrastructure for purposes of electoral propaganda of all levels of government. The only exception to this prohibition, according to NEC's *General Norms*, was governmental publicity necessary for the execution of plans and programs of the Government<sup>48</sup>. The *Law Governing Expenditures and Electoral Publicity* forbade the advertising by candidates, parties and movements in works or projects conducted by public institutions.

### *B. Conditions for Journalists*

Freedom of speech was mostly respected and the overall climate for journalists remained within the relevant international standards. However, no specific law regulated and guaranteed pluralism and journalists' independence in the state owned media.

Since 2007, President Rafael Correa has set a hostile tone towards the press, frequently criticizing some media and defining some media interlocutors as "corrupt and mediocre". The media often responded in a similar negative tone and the political polarization seemed to increasingly engage media, damaging an open democratic debate and level playing field.

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<sup>47</sup> TV station *Ecuador TV*, the *Radio Pública del Ecuador* and the daily newspaper *El Telégrafo*. In 2007 *Gama TV* and *TC TV* were seized by the Government, because of a financial legal conflict between the State and the respective owners.

<sup>48</sup> The 45 day election campaign took place from 10 March to 23 April 2009; a 48 hours silence period before Election Day was thus foreseen (Article 129).

NGO *Reporters Without Borders* defined the freedom of the media in Ecuador as “enviable” compared to its neighbours Colombia and Peru (Report 2008). The *Asociación de Editores de Periódicos del Ecuador* (AEDEP) considered Ecuador a country with a good tradition of freedom of expression. On the contrary, more recently, the *Interamerican Press Society* (SIP) strongly criticised the alleged government attacks on the media and journalists in the country, and NGO *Fundamedios* (Andean Foundation for the observation and Study of the Media) reported on the deterioration of journalistic conditions.

### ***C. Monitoring of the Media Coverage of the Elections***

The EU EOM conducted a qualitative and quantitative analysis of six hours of primetime broadcasts each day on five TV stations<sup>49</sup>, five radio stations<sup>50</sup> and five daily newspapers<sup>51</sup> from 25 March until the end of the campaign. The programs were timed in order to measure the parties’ and candidates’ representation and tone in the media. The tone of the coverage was based and assessed on a scale of negative, neutral and positive.

A more equitable system for candidates was introduced by establishing a public financed scheme both for advertising/campaign spots (*promoción electoral*) and programmatic proposals (*franjas electorales*). According to the referred norm, the *Franja Electoral* was the contracted space designed to promote the diffusion and the debate of the programmatic proposals of the candidates. *The Electoral Promotion*, on the other hand, referred to the propagandistic campaign in the media for all the candidates except Parish boards. Within this positive scheme, candidates enjoyed an equal opportunity to present their messages regardless of any differences in their financial resources.

During the monitored period, TV Channels intensified the political coverage in the last two weeks of the campaign devoting an average of 45 minutes per day to elections. The absence of debates of the presidential candidates and special programmes dedicated to elections lessened the candidates’ opportunity to present their messages before the electorate. Moreover, according to media interlocutors, given the general lack of special programs, the extensive broadcast of spots created a saturation of all private media. Likewise, the new system of *franjas* introduced by NEC was criticized by a number of interlocutors as the airtime provided to candidates was considered insufficient. The *franjas* were broadcast on three different days during prime time hours and then re-run on Saturday at 20:00. Each candidate was entitled to up to 3 minutes per day to present their platform. The schedule was prepared by NEC and the order of appearance allocated through a lottery system on 7 April. On 9 April Martha Roldós and Álvaro Noboa did not attend the program due to previously arranged campaign events. Melba Jácome did not take part in any of these programmes either.

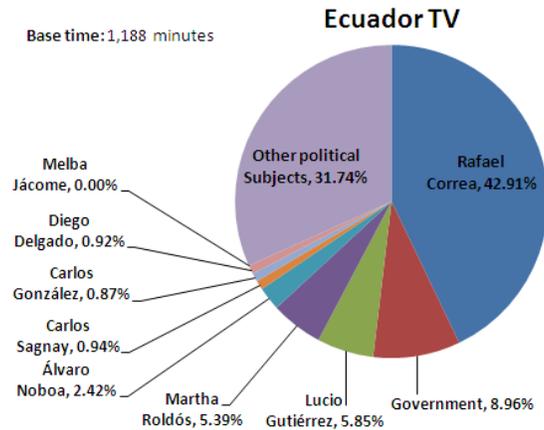
The State owned *Ecuador TV* and *Radio Pública de Ecuador* were characterized by a widespread use of “institutional propaganda”, while candidates seemed to prefer not to place their electoral spots on the State TV, because of its poor ratings.

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<sup>49</sup> *Ecuavisa, Gama TV, TC TV, Teleamazonas* and the State-owned *Ecuador TV*.

<sup>50</sup> *Radio Vision, Sonorama, Radio Caravana, CRE* and *Radio Pública de Ecuador* (RPE, State-owned).

<sup>51</sup> *El Comercio, El Universo, Hoy, El Mercurio* and the State-owned *El Telégrafo*.



The State media gave extensive coverage of the activities and statements of the incumbent President and his Ministers through a compulsory broadcast known as *Cadena Nacional*<sup>52</sup> and Correa's addresses to the nation known as *Informe Sabatino*<sup>53</sup>. These programs were a privilege of the President and his cabinet to inform citizens on governmental activities. The opposition parties and movements protested strongly as they considered that they had been used for electoral campaigning.

In addition to the above mentioned programs, the TV state channel initiated on 12 April a new programme called "*El Ciudadano TV*," which was broadcast by 600 radio and 50 television channels during prime-time hours. The program launched by the President was intended to provide information on the government's administration. Significantly, on 12 April "*El Ciudadano TV*" was advertised in the print media by *MPaís* using its NEC-financed campaign budget<sup>54</sup>.

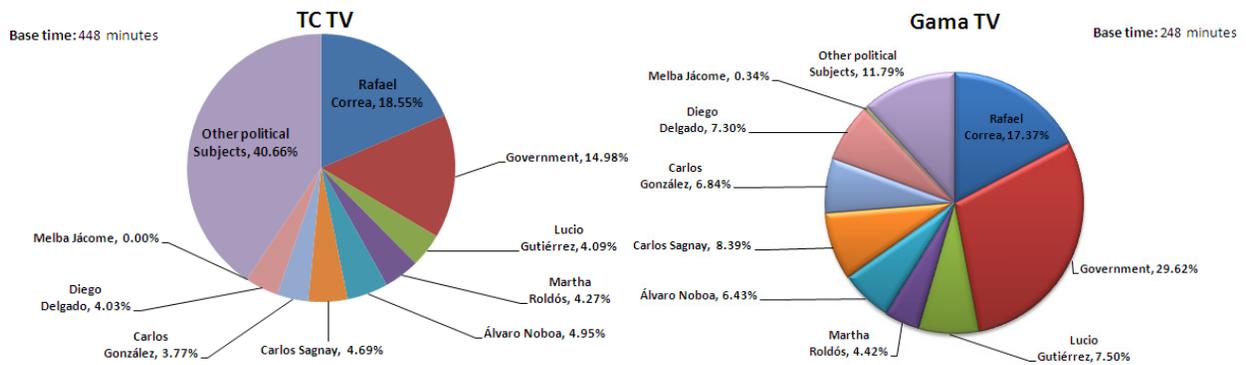
EU EOM monitoring showed that State TV devoted 43 per cent of the news coverage to Rafael Correa, 6 per cent to Lucio Gutiérrez (mainly portrayed in negative tone) and 3 per cent to Álvaro Noboa. *TC TV* and *Gama TV* also dedicated a significant portion of their coverage to the activities of President Rafael Correa (19 and 17 per cent respectively). In comparison, the other seven candidates received very little coverage. The coverage was exclusively positive or neutral in tone.

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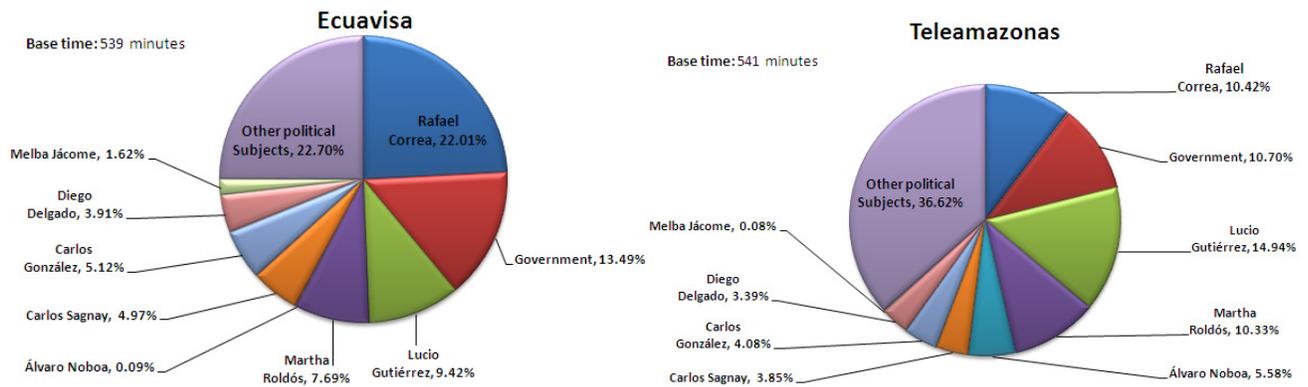
<sup>52</sup> Article 59 of the Radio and Television Law established that public and private radio and TV stations were bound to spread compulsory and simultaneous broadcasts ( *cadena nacionales*) by the President of the Republic as well as by ministers and other high ranking public officials. According to the law, the *cadena nacionales* could only be used for informing about the activities carried out by the aforementioned authorities. The time limit for these *cadena nacionales* was set at ten minutes, with a maximum frequency of once a month (Article 66 of General Rules of Radio and Television Law), except for the President, whose broadcasting is not restrained in time or frequency.

<sup>53</sup> There are no legal requirements that forced the media to broadcast the program *Informe Sabatino*. However, State media broadcast the two hour program every Saturday with its re-run on Sunday.

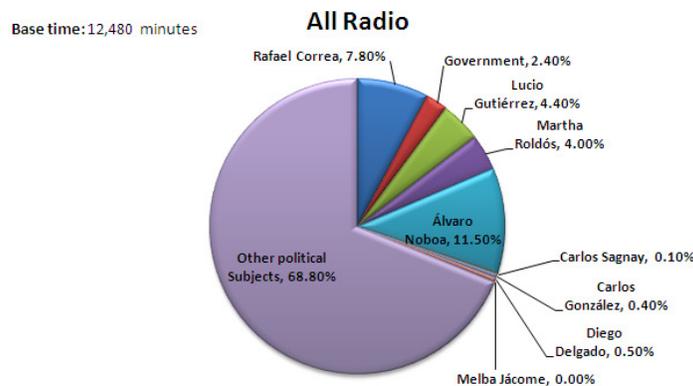
<sup>54</sup> EU EOM brought immediately this case to the attention of NEC for its analysis and to gather its opinion. NEC answered to the letter on 28 May, together with several other cases brought by EU EOM. With all due respect, the answers provided by NEC regarding the publicity of the programme and the programme itself were not conducive to guarantee the equity of candidates during the campaign period.



Private television stations *Ecuavisa* and *Telamazonas* devoted a significant portion of their news coverage to the incumbent President Rafael Correa (22 and 10 per cent respectively). In both stations he was often criticized and *Teleamazonas*, in particular, portrayed him in a negative tone.

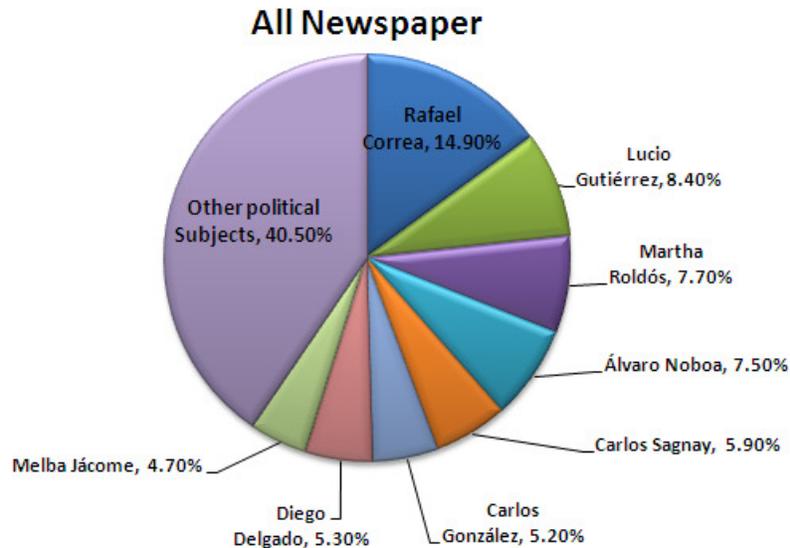


Private Radios focused their political and election news reporting on local candidates' activities and statements. In the monitored period, only a few Presidential candidates had been interviewed<sup>55</sup> and participated in special programs dedicated to elections. As on Private TV, the coverage received by the incumbent President on private radios was rather critical and negative in tone.



<sup>55</sup> Only Presidential candidates Carlos Gonzales and Álvaro Noboa released an interview on Radio Caravana and Radio CRE respectively.

The monitored newspapers provided a range of views and covered the major events organized by the parties, although they focused their coverage on the incumbent President Rafael Correa. Through NEC-financed budget, a print version of *franjitas* was published in all monitored print media during the last week of the campaign. While the overall tone of coverage remained predominately neutral, a private newspaper, *El Universo*, reserved for President Correa the most critical tone.



The NGO *Participación Ciudadana* conducted media monitoring the results of which were regularly published on its website<sup>56</sup>. NEC also conducted qualitative and quantitative media monitoring<sup>57</sup> with the objective to detect violations of campaign regulations.

## IX. PARTICIPATION OF WOMEN

Political and social life in Ecuador has historically been characterized by inequalities between men and women. Women are still structurally disadvantaged with lower socio-economic indicators, a higher rate of illiteracy<sup>58</sup> and poor levels of representation especially in decision-making processes of the executive, as well as in the judiciary. Recently, governmental policy has generally been favourable to include women in the political scene<sup>59</sup>, the promotion of women's rights and strong women's organizations<sup>60</sup>.

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<sup>56</sup> *Participación Ciudadana* achieved similar conclusions as the EU EOM monitoring.

<sup>57</sup> The media monitoring of NEC was conducted by the agency *Mercados y Proyectos*. At the time of this report, NEC had not published them.

<sup>58</sup> Ecuador's state report, submitted to CEDAW in 2007. For instance, 58 per cent of the illiterate persons are women.

<sup>59</sup> The Cabinet of President Correa included 13 women among the 34 ministerial posts (38.2 per cent).

<sup>60</sup> *Coordinadora Política de las Mujeres Ecuatorianas* is one of the most important NGO achieving a comprehensive recognition of women's rights at legal level, especially in the 2008 Constitution.

Ecuador has ratified the 1979 CEDAW and the 2008 Constitution established extensive protection for women's political rights, providing for an alternating and sequential gender balance for presenting nominees in the pluri-nominal candidates' lists<sup>61</sup> and the necessary equal representation of women and men in State administration, especially in decision-making areas. This obligation was particularly emphasized with regard to the composition of EDT and NEC.<sup>62</sup>

In compliance with constitutional requirements, two out of five NEC members were women; furthermore three of EDT judges were women, including the President and the Vice-President. NEC regulations also established the parity of men and women at the lower levels of the election administration. Although this provision was generally respected, only 25 per cent of the Presidents of the PEBs were women. Due to the fact that the polling stations were divided by gender, over half of the polling stations observed were presided over by women.

Voting is obligatory in Ecuador and the Voter Register is elaborated with data drawn from the Civil Registry. Since the percentage of women within the population is slightly higher than that of men, this was reflected in the percentage of women registered<sup>63</sup> for these elections and in their participation as voters.<sup>64</sup> There is no significant difference on blank and null ballots between the male and female electorate.

Ecuador has been highly rated in terms of female representation by the Inter-Parliamentary Union's ranking of Parliaments<sup>65</sup>, with 27.6 per cent of women represented in the Transitional Legislative Commission. This encouraging trend is also reflected in the number of female Presidential candidates who nominated themselves for election. The two female candidates ended up in 4<sup>th</sup> and 6<sup>th</sup> position. However, they gained only 4.33 per cent and 1.35 per cent respectively of the total number of votes. With regard to open lists, women are not generally favoured; however provisional results indicated that 33.87 per cent of women candidates had been elected to the National Assembly. This is a slight improvement if compared with the female representation in the Transitional Legislative Commission and in the Constituent Assembly<sup>66</sup>. This positive outcome is a result of firstly, the aforementioned alternation of women and men in the candidates' list, and, secondly, the fact that 45 per cent of the electorate voted in the national ballot of the National Assembly contest for all the candidates in one given list.

Nevertheless, results at the level of local elections are not as optimistic. Elections at prefect level resulted in a decrease in the number of women being elected, with two women candidates now

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<sup>61</sup> Article. 4 of the *Transitional Regime*: "lists will alternate male-female or female-male candidates until its total completion".

<sup>62</sup> See also Article 108 Const. which stipulates that women must be equally represented in the decision making instances of political parties and movements/organizations.

<sup>63</sup> 5,275,287 women (50.09 per cent) and 5,256,947 men (49.91 per cent). Source: NEC.

<sup>64</sup> 4,052,920 (51.11per cent) of women and 3,876,685 (48.89per cent) of men voted in the elections of 26 April 2009

<sup>65</sup> Ecuador is currently rated 29 in the world classification for the number of women in the parliament. Source <http://www.ipu.org/wmn-e/classif.htm>

<sup>66</sup> There is a 30.26 per cent of female representation in the current Transitional Legislative Commission. On the 2007 election, the Constituent Assembly had a 33.84 per cent of female representation.

being elected as prefects, out of a total of 23.<sup>67</sup> Despite the fact that an overwhelming number of female candidates for mayor was not elected, a total of 14 candidates were elected out of a possible 142 candidates nationwide, resulting this in a positive increase of 6 elected candidates as compared to the previous elections.

Most political parties and/or movements (apart from *MPaís*) informed the EU EOM that they often encountered difficulties finding the required 50 per cent women candidates. In fact, only 13.41 per cent of the (provincial and national) lists presented for the National Assembly elections were headed by women. Three women (two Afro-descendants, one indigenous)<sup>68</sup> were heads of the total of 18 national lists presented. The Eastern region had the highest percentage of females as heads of list, with 16.22 per cent, followed by the Coast (13.68 per cent) and the Sierra (11.46 per cent).

While some NGOs, such as *Ágora Democrática*, conducted women-candidates empowerment training, generally little effort was paid toward providing to female candidates the necessary skills to conduct an effective campaign. Likewise, women's rights or issues were rarely addressed in the campaign. The EU media monitoring revealed that only 0.13 per cent of the candidates' campaign topics focused on gender issues.

## **X. PARTICIPATION OF INDIGENOUS AND AFRO-ECUADORIAN PEOPLES**

There are 14 officially recognized indigenous nationalities in Ecuador. According to the 2001 Census, 6.8 percent and five percent of the population identified themselves as indigenous and Afro-Ecuadorian respectively. However, the indigenous population represents more than 30 per cent of the total population, according to various estimates. Traditionally, these peoples had suffered from marginalization, weak socio-economic indicators as well as a low level of participation in political life.

On a positive note, the 2008 Constitution<sup>69</sup> recognized the rights of indigenous and afro-Ecuadorian peoples by stipulating, among others, the right to create and maintain their own organizations, as well as by providing for the possibility of establishing autonomous entities in areas where indigenous or afro-Ecuadorian people are the majority. In addition, the Constitution established the commitment of the Ecuadorian State to take affirmative action measures to guarantee the participation of discriminated sectors of the population.

In the context of Ecuador's geographical and communicational challenges, cases of under-registration in indigenous populated areas were reported, especially in the Eastern region (i.e., the Amazon region) and in the North of Esmeraldas province. While the Civil Registry used mobile teams for the purposes of registering these communities, this task faced structural, logistical and financial constraints. A major problem encountered by indigenous rural population

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<sup>67</sup> In the previous term there were four female elected prefects out of a total of 24. Article 258 of the 2008 Constitution established a special regime for Galapagos province, where there will be no prefect. .

<sup>68</sup> The national lists headed by women were presented by *MANA*, *RED-Polo Democrático* and *MCND*.

<sup>69</sup> Ecuador has ratified the 1966 CERD as well as the 1989 ILO Convention No 169, with the latter providing for the free participation of the respective indigenous peoples in the elected institutions of their countries.

was the general lack of civic and voter education provided in their native languages. Although some civic and voter education activities were conducted by local radios, these proved to be insufficient. The higher number of blank and null ballots in these areas is an indicator of the need for more and better targeted voter education.<sup>70</sup>

Apart from the traditional *Pachakutik* representation of indigenous interests, diversification of representation was observed, since indigenous concerns were also taken into account by other parties, such as *MPaís* or, more specifically, *ALICAM* in Orellana province. Indigenous candidates were present in other lists, such as the *RED* national list, where an indigenous woman was heading the list, and *MANA* and *MCND* where two Afro-Ecuadorian women were heading candidates' lists. Indigenous languages were seldom used for campaign activities. Indigenous and Afro-Ecuadorian rights and issues were barely raised in the campaign conducted in the national media.

While one indigenous and one afro-Ecuadorian woman were members of NEC, their level of participation in other levels of election administration was reported as low, even in areas with a majority from the indigenous population. In the PEDs/PEBs of indigenous populated provinces of Orellana and Sucumbíos, only one indigenous woman was working at senior staff level; in Chimborazo one member identified herself as indigenous. No systematic criteria were applied by NEC regarding the inclusion of indigenous and Afro-Ecuadorian peoples in the polling stations. In addition, some training of polling staff and some education material were available in Kichwa, although these activities did not reach all communities. Also, in some areas, materials were distributed in the wrong language (i.e., materials in Kichwa in Shuar speaking areas or *viceversa*).

Significantly, absenteeism in some indigenous areas reached almost 40 per cent of the electorate, as compared to the 25 per cent of national average.<sup>71</sup> Despite NEC's increase in the number of polling stations, some of them were situated far away from the communities, requiring long and costly travel for indigenous people. This could explain this large absenteeism, along with the large emigration from those areas. Furthermore, EU EOM observers reported that the small indigenous representation in the polling stations resulted in a situation where, at times, their members were unable to explain to indigenous voters the voting procedures in their own language. On a positive note, only a few isolated cases of discrimination against voters in the Polling Stations were reported by EU EOM observers.

## **XI. DOMESTIC AND INTERNATIONAL OBSERVERS**

The legal framework for domestic and international observation is generally in line with international standards. The registration of observers was inclusive, more than 40 domestic observation organisations and 51 observation groups from Latin American electoral management bodies and civil society organisations were accredited by NEC. *Participación Ciudadana* (PA), a

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<sup>70</sup> In Cañar, the percentage of blank votes reached 18.6 per cent, those of null votes 10 per cent for the national list; in Chimborazo those of blank votes 10.1 per cent; those of null votes 7.65 per cent. Source: NEC

<sup>71</sup> In Cañar 49 per cent of men and 35 per cent of women did not vote in the Presidential elections; in Morona Santiago 36.5 per cent of men and 28 per cent of women. Source: NEC

well-respected Ecuadorian civil society organisation, conducted long-term comprehensive observation of the process, deployed around 8,000 election-day observers and conducted a quick-count survey. These efforts represented the largest domestic observation of the 2009 elections. In addition, parties and movements fielded authorised representatives, who were present in 15 per cent of polling stations visited on Election Day. The elections were also observed by some international organisations, including the Organization of American States (OAS), which deployed around 80 election observers on Election Day and the post electoral period. The International Organisation for Migration (IOM) monitored the out-of-country voting.

## **XII. COMPLAINTS AND APPEALS**

### ***A. Complaints and Appeals***

The legal framework regarding complaints and appeals was generally adequate and broadly met international standards. The 2008 Constitution conferred the competence to handle complaints and appeals against decisions taken by NEC and the decentralized election administration to the newly created Election Disputes Tribunal (EDT). Furthermore, EDT was competent to sanction violations of election regulations such as those governing campaign financing, propaganda and election expenditure as well as to deal with electoral offences and internal disputes of political parties (e.g. concerning primaries).

The establishment of EDT was a positive contribution to the election process that could have led to an increased independence of the settlement of election disputes if adequately implemented. EDT's effective and timely handling of 80 complaints concerning the registration of candidatures was a positive contribution.<sup>72</sup> The tribunal made considerable organisational and administrative efforts to establish itself as a new institution against the background of the complex transitional situation, namely through a good webpage, the establishment of lines of jurisprudence, the publication of tables of cases and launching hotlines for concerned citizens for Election Day.

Regarding more politically sensitive election cases such as the adjudication of complaints and appeals related to campaign rules violations, EDT decisions have been problematic. Firstly, EDT's procedures and timelines did not prove to be effective<sup>73</sup> and contradicted the need for a speedy response to violations of campaign regulations that should have been decided prior to Election Day. Secondly, EDT judges seemed to focus on preliminary issues such as the procedures to be followed rather than dealing with the substantive issues of the cases, they exceeded deadlines even when the case did not seem to require such a long deliberation period. Such EDT action undermined both the timely enforcement of election rules and the confidence of election participants in an effective remedy. Finally, EDT's strong objection to NEC's competence to sanction campaign rule violations with monetary fines further emasculated effective reactions to such violations. Moreover, EDT could have used its powers conferred by the *Transitional Regime*<sup>74</sup> to fully implement the new constitutional order as to providing a new sanctionary framework. However, EDT believed this should have been done only by law and that

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<sup>72</sup> This figure include only the registration of candidates contesting the 26 April elections.

<sup>73</sup> 30 days with an additional 3 days for notification and 7 days of proof period. (Article 87 and 89 EDT Regulations).

<sup>74</sup> Article. 15 of the Transitional Regime.

it did not have the transitional exceptional powers to provide for an immediately applicable new framework.

The most striking example was the appeal lodged by *MPaís* on 12 March against a NEC decision related to a governmental spot where a *MPaís* slogan was displayed. This case was only decided on 16 April. While upholding the suspension of the governmental spot, EDT left without effect NEC's deduction of 650 USD of the *MPaís*' total of campaign expenditure, challenging NEC's competence to sanction. EDT's decision also raised other important aspects as to NEC's appealed decision, namely as to its publicity, motivation and due process. EDT's decisions, nonetheless, confirmed other NEC's measures as to suspend or forbid irregular broadcasts.

In two other cases concerning violations of campaign regulations<sup>75</sup>, EDT revealed unwillingness to decide expediently by returning the files to NEC on procedural grounds which did not seem to be relevant for the handling of the cases.

A further problem is the vague delimitation of competences between EDT and NEC in the 2008 Constitution, which resulted in continuous frictions between the two institutions.<sup>76</sup> This, as well as certain contradictions in EDT and NEC regulations, led to a lack of clarity regarding the competences of each institution and seemed to diminish the trust of political stakeholders in effective electoral justice.

Furthermore, as of 12 June, EDT had received a total of 37 complaints (*quejas*), out of which it had decided 25. 15 of them were rejected unfounded or inadmissible.<sup>77</sup> 12 complaints remained pending.<sup>78</sup>

Legal challenges, appeals and complaints can only be lodged by candidates, political parties and political movements. The electoral legal framework applicable to the 2009 elections did not allow voters, observers or other interested organizations to file election petitions; it merely established the possibility of Ecuadorian citizens to address specific and limited cases of electoral malpractice.<sup>79</sup> This may be criticized from the viewpoint of international good practices: appeals should be granted to all interested parties; they should be open to every voter

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<sup>75</sup> In the same case, of the broadcast of governmental publicity NEC not only made the deduction from the budget assigned for electoral promotion to *MPaís*, but also filed a case before EDT. This Challenger was rejected on the grounds that this issue was already dealt in the case of *MPaís v. NEC*. In another case EDT rejected the case against the mayor of Palora since the Zamora Chinchipe PEB did not provide with evidence

<sup>76</sup> The controversy between EDT and NEC was also exemplified in EDT's decisions: on 2 May EDT resolved an appeal by *MPaís* against NEC's decision to hold repeat elections in Jipijapa (Manabí/Manabí) on 3 May. Although EDT rejected the appeal and ratified NEC's decision, the tribunal strongly criticized NEC for not having complied with the timelines for the submission of the case file.

<sup>77</sup> Most complaints alleged the non-compliance with the law as regards inscription of candidatures.

<sup>78</sup> From these 12 pending complaints, 3 have been filed against Manabí PEB, resulting in some members removed from their positions on 3 June; another complaint was related with campaign activities of the Consul of Ecuador in New Jersey (USA); one was filed against NEC's president, due to NEC's role in an internal election of a syndicate, and another complaint was filed against all members of NEC, claiming that the counting and announcement procedures, the seat assignation method and the reinstatement of the tabulation public hearings were not conducted in accordance with the law. The other 6 complaints challenged the conduct of PEBs of: Loja, Santa Elena and Santo Domingo de los Tsáchilas. The Santo Domingo de los Tsáchilas PEB was also partially replaced on 3 June.

<sup>79</sup> See "electoral offences" section.

in the constituency, even though a reasonable quorum may be imposed for appeals by voters on the results of the elections.<sup>80</sup>

### ***B. Petitions seeking redress for possible violations of constitutionally guaranteed rights***

The competence of judges to review decisions by electoral authorities (NEC and EDT) as to their conformity with constitutionally guaranteed rights proved controversial during these elections. As explained above, EDT decided to remove a provincial judge which had admitted a petition (*Acción de Protección*)<sup>81</sup> that ordered the registration of a candidate, against a decision of the PEB. Although it seems reasonable to safeguard the functioning of the electoral power against outside interference, the removal of a judge may be criticized as a disproportionate sanction.

A further question was raised as regards the competence of the Constitutional Court (CC) to review EDT's decisions for violations of constitutional rights<sup>82</sup>, with EDT strongly contesting this competence. A handful of cases challenging the constitutionality of EDT's decisions were brought before the CC. Three cases had been decided as of 12 June 2009, two of them were 1 declared inadmissible, either for being brought before the wrong forum or because they concerned electoral issues rather than violations of constitutional rights. The third case was rejected for lack of violation of due process guarantees and fundamental/constitutionally guaranteed rights. The CC, thus, positively, distinguished between its role of safeguarding constitutional fundamental rights and the competence of the electoral power (EDT).<sup>83</sup>

### ***C. Electoral Offences***

EDT has the mandate to sanction electoral offences as provided in the 2000 Election Law.<sup>84</sup> These include interference with the functioning of the electoral institutions, certain fraudulent acts regarding the electoral process (e.g., falsification of signatures in the voting rolls), campaigning on election day, publishing opinion polls 20 days preceding the election, and selling and consuming alcoholic drinks on e-day, 36 hours before and 12 afterwards. Sanctions included fines, the suspension of political rights and imprisonment for up to three years. Any Ecuadorian citizen can bring an electoral offence to the attention of EDT.<sup>85</sup>

In contrast to previous elections, EDT made a decision that the perpetrators of minor offenses on Election Day would not be detained, but investigated by the police/military and possibly sanctioned by EDT. As of 12 June 2009, a total of 299 offences were brought before EDT; most of them related to violations of the alcohol prohibition and the prohibition against campaigning

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<sup>80</sup> See Venice Commission, Code of Good Practice in Electoral Matters, 2002, p. 31.

<sup>81</sup> Article 88 of the 2008 Constitution. This petition (*Acción de Protección*) can be brought in cases of alleged violations of constitutionally guaranteed rights by public authorities with the exception of the judiciary.

<sup>82</sup> Article 94 of the 2008 Constitution. Extraordinary Appeals (*Recurso Extraordinario de Protección*) can be brought in cases of alleged violations of constitutional rights by last instance judgments.

<sup>83</sup> Also the wording and conception of the Constitution favours this interpretation.

<sup>84</sup> Articles 133-140, 153-163 of the Election law.

<sup>85</sup> Article 141 Election Law. In fact, on the hotline established by EDT on election day for concerned citizens to inform themselves and denounce electoral offences, EDT received a total of 183 calls: out of these 51 concerned violations of the prohibition to sell and consume alcohol and Electoral Proselytism; 55 abuses of authority by JRVs; eight the carrying of arms by authorities; and 69 other kinds of electoral problems.

on Election Day<sup>86</sup>. While EDT is currently considering the most urgent/severe cases,<sup>87</sup> other cases will not be adjudicated until August or September 2009. EDT's decision entailed a welcome reduction to the number of detained persons.<sup>88</sup>

Furthermore, the Ecuadorian Penal Code deals with offences concerning voting procedures.<sup>89</sup> The respective offences are within the responsibility of penal judges. Offences include falsification and fraud by members of the polling committees which are sanctioned with imprisonment of up to 5 years and the falsification of ballots or fraud by voters which is sanctioned with imprisonment of up to 1 year. Acts of vandalism (burning of ballot papers etc) which resulted in repeat elections on 3 May in Manabí (Flavio Alfaro and Jipijapa), Loja (Zapotillo), Guayas (Balzar) and Zamora Chinchipe (Palanda); as of 12 June, were being investigated by the General Prosecutor.

#### ***D. Legal Challenges concerning the election results***

Legal challenges concerning the results of the Presidential elections and the national lists for the National Assembly elections can be brought before NEC within 24 hours after notification of the results. PEBs are responsible for dealing with legal challenges concerning the provincial lists. Appeals against the decisions of NEC and PEBs can be filed before EDT.<sup>90</sup> Although formal legal challenges can be brought only after the formal notification of the results, the presidential candidate Lucio Gutiérrez already raised fraud allegations and formally objected to the results posted in NEC's website.<sup>91</sup> Specifically, he alleged the manipulation of NEC's informatics system (he claimed that the number of his votes on NEC's webpage had decreased by 177,342 votes at a certain moment) and the unlawful alteration of results of the polling stations' protocols. Gutierrez also brought these allegations to the attention of the EU EOM. However, the evidence presented to the EU EOM seemed to be based rather on isolated cases (protocols of 10 polling stations), than on substantial evidence.

At the time of this writing, there were no data on the exact number of challenges against the National Assembly contest results filed before NEC. EDT only received one challenge concerning the results for provincial assemblies. There was no final timeline for the end of the challenging process to the National Assembly results, either for the national or provincial ballot, Presidential results were announced on 30 May and there were no legal challenges to these results.

A relatively low number of formal complaints challenging the results were lodged so far, as compared to the numerous informal complaints which have been brought to the attention of the EU EOM. Among the reasons given to the EU EOM by numerous parties and movements, representatives of the civil society and national experts, was the lack of trust in the available

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<sup>86</sup> According to EDT, the number of infractions could raise until 500 once all PEBs have referred the cases to EDT.

<sup>87</sup> E.g. isolated complaints alleging the nullities of elections for electoral fraud were brought for instance by a *PRIAN* candidate in Guayas. 243 cases regarding electoral offences remained pending as of 12 June.

<sup>88</sup> 199 as compared to 830 in 2008 as announced by EDT President in a press conference on 27 April 2009.

<sup>89</sup> Articles 167-172 of the Penal Code.

<sup>90</sup> The PEBs' decisions have to be dealt with by NEC in second instance before they can be appealed before EDT.

<sup>91</sup> Gutierrez requested an audit of the informatics system and an integral audit of the results protocols.

legal mechanisms and a lack of confidence that the respective institutions would deal with the complaint appropriately. Furthermore, according to EU EOM's assessment, many of the allegations were based on unfounded evidence and lacked legal grounds. Further reasons may be the insufficient legal knowledge of some political actors about how to lodge a complaint or an appeal.

### **XIII. ELECTION DAY**

Election Day generally went smoothly and the atmosphere was largely calm. All over the country, Ecuadorian citizens in general went to vote in large numbers and in a peaceful atmosphere. Overall, voting was conducted in an orderly manner throughout the 1,049 polling stations visited during Election Day. EU EOM observers largely assessed the opening and voting processes as positive. Nonetheless, some sporadic incidents of electoral violence occurred in some provinces, resulting in one canton of Manabí suspending the voting and rescheduling elections in some cantons, after 22 polling stations were attacked and materials were set on fire, amongst other incidents. Other incidents of electoral violence occurred in various cantons within the same province and in the provinces of Los Ríos, Loja and Zamora Chinchipe. Repeat elections were held in one canton in each of the latter two provinces, as well as two cantons in Manabí and one in Guayas.

The incumbent President decided to abstain from attending the opening ceremony of the elections inaugurated by NEC and from delivering a speech therein. His abstention set a positive precedent for the future and avoided possible criticism for violating the moratorium on E-Day. On the contrary, other presidential candidates were observed making proselytism inside the polling centres while casting their votes and, in some cases, even displaying their ballots, illustrating for whom they had voted. This was namely the case with Lucio Gutiérrez, Álvaro Noboa and Martha Roldós. Such behaviour could be interpreted as breaking the silence period and campaigning inside voting precincts, in breach of campaign regulations.

Polling generally opened on time or within 30 minutes of the scheduled time. However, in 14 per cent of cases, voting commenced more than one hour late. Essential material, such as ballots, voter lists, voting certificates and ballot boxes, were in place in the majority of the polling stations.

Despite an overall positive assessment of the voting procedures in 94 per cent of the visited polling stations, EU EOM observers noted a number of shortcomings. The most widespread concern, in 16 per cent of cases, was that the size of the polling booth did not always completely safeguard the secrecy of the vote. In 93 per cent of stations observed, voters were unable to access information on how to cast their ballot, as no indication was available. Party delegates, mainly representing *MPaís*, were monitoring the process in 78 per cent of polling stations observed by the EU EOM. Domestic observers accounted for 15 per cent of the stations visited.

For the first time, members of the Police, the Armed Forces and non-convicted prisoners could vote. EU EOM observers reported that members of the Army could not vote in a significant number of visited polling centres, as they were not included in the voter lists of the polling station where they were supposed to vote. Nevertheless, it seemed apparent that police were

indeed included on said lists and therefore were able to vote in more significant numbers. The voting of non-convicted prisoners took place on 24 April in prisons in an orderly manner and without incident.

The counting was assessed as negative in 45 per cent of the polling stations observed. In 69 per cent of cases, polling staff did not follow the order of counting as established, which led to delays in the delivery of the result protocols to the tabulation centres. Determination of the validity of the ballots was carried out in a consistent manner in the majority of the observed polling stations; still, observers noted that, due to the complexity of the results tally, involuntary mistakes were made mostly in the pluripersonal elections. Party agents were present during the counting in 99 per cent of the polling stations.

Most of the major important problems and shortcomings relating to E-Day derived from the fact that five elections were held on the same day, with six different ballot papers and, moreover, a complex voting and tabulation system for the two pluri-personal elections. This increased pressure and stress upon a system with limited resources, proved to be overwhelming, at different stages of the process.

## **XIV. RESULTS**

### **A. *Tabulation of election results***

NEC established 60 tabulation centres throughout the country in order to provide the public with swift preliminary results from 44,781 polling stations in the country. These centres were places for tabulation with no legal status for adjudicating complaints but could decide on the validity of the protocols. The results given by the tabulation centres could be considered as official results, since they were based on protocols. Access to the tabulation centres was granted to party agents and observers. As NEC approved the establishment and functions of the tabulation centres only one month before the elections, several opposition parties and candidates believed that these centres, being a novelty from previous elections, did not serve to add transparency to the process.

The tabulation centres started to operate at 18:00 on Election Day. NEC established clear procedures to tabulate the data. The protocols were first scanned and then examined in order to identify discrepancies or missing of signatures<sup>92</sup>. Once the audit was made, and if the protocols did not show any discrepancies or missing signatures, they were processed and their results were made public both at the tabulation centre and on NEC website. In the cases where protocols revealed arithmetic inconsistencies, the data included in them was not aggregated to the database. The correct functioning of the tabulation centres relied on three premises: first, an orderly and expeditious arrival of protocols from the polling stations; secondly, that the results protocols of the presidential elections be tabulated first, as they were the only ones to include the

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<sup>92</sup> Protocols were deemed to be valid provided that they were signed by the president and the secretary of the polling station.

number of voters in the respective polling station<sup>93</sup>; and, thirdly, a swift transmission of the tabulated results to NEC.

Tabulation was followed at around 50 tabulation centres by EU EOM observers who, overall, rated the process as good. Although the majority of tabulation teams attempted to carry out their duties in a professional manner, major shortcomings affected their functioning and the delivery of quick election results, as planned by NEC<sup>94</sup>. First, the polling station staff did not follow the stipulated order for counting<sup>95</sup>. As a consequence of this, results protocols from elections other than presidential ones were arriving at the centres but could not be tabulated. Secondly, the procedures established for the collection and delivery of protocols from the polling stations proved not to be timely and effective. Thirdly, results could not be entered completely in the database as a significant number of protocols showed evident arithmetic inconsistencies. These inconsistencies were due to discrepancies regarding the number of votes, which in a large number of cases was significantly higher than the number of participating voters (i.e., those that signed the voter lists). Finally, the data transmission system from the tabulation centres to NEC suffered frequent failures and blackouts during election night and the following days, which influenced and delayed the posting of the protocols and the publication of election results.

Political parties and candidates, including *MPaís*, severely criticised the functioning of the tabulation centres and blamed NEC for improvisation. This criticism also fuelled allegations of wrongdoing by several candidates and parties. The most striking case was presidential candidate Lucio Gutiérrez, who claimed irregularities and discrepancies between the protocols given to the party delegates at the polling stations and those processed by the tabulation centres in Guayaquil.

The EU EOM considers that the shortcomings that affected the tabulation process did not reveal any pattern that might raise suspicions of fraud, and were probably a consequence of the long hours of work during election day and the following days, unrealistic procedures put in place by NEC, pressure of time and, in some cases, the low educational level of the polling station members in more remote areas. All these circumstances delayed the posting of the protocols, the publication of election results in NEC website and the announcement of final results.

## ***B. Recounts at the Provincial Election Boards***

The 24 Provincial Election Boards met in permanent session from the night of elections to receive results protocols from the tabulation centres and to tabulate results protocols that were directly delivered to them. PEBs were also in charge of reviewing those protocols declared invalid or inconsistent by the tabulation centres and of ordering recounts of ballot papers.

The *General Norms* provide grounds for recounts of ballot papers by the Provincial Election Boards if the results protocols revealed numeric inconsistencies and if the signatures of the PEBs

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<sup>93</sup> This data was essential for the determination of inconsistencies between the number of votes cast and the number of voters in the results protocols of the remaining elections.

<sup>94</sup> NEC president indicated that preliminary results for the presidential elections would be announced on the night of elections.

<sup>95</sup> Presidential elections, National Assembly, Prefect, Mayors and Counsellors.

authorities are missing. Furthermore, on 1 May, NEC issued a resolution, which included criteria to be used in case of discrepancies of 2 per cent or greater between the votes cast and the number of voters. The criteria specified that these inconsistencies would not be considered and, therefore, no recounts would be made in these cases. This resolution aimed at decreasing the number of recounts to be conducted.

NEC estimated<sup>96</sup> that around 30 per cent of the results protocols at all levels of elections showed evident inconsistencies, leading to recounts<sup>97</sup>. EU EOM observers reported that this percentage was even higher as observed in provinces such as Tungurahua (53 percent) and Guayas (49 percent). The percentage of inconsistent protocols from uni-personal ballots was lower than in those for National Assembly and Counsellors, as the counting process and filling of results protocols was significantly easier.

The re counts mostly followed the same procedural pattern in all provinces. While the process was open, its organisation and the layout of the premises, in some cases, did not facilitate transparency of the recounts, making it very difficult for observers and party delegates to follow the process. For instance, there was no information publicly displayed as to the origin of the ballots while they were recounted. Also, results of the recounts were not publicly announced by the PEB members, and party delegates had to check the results on NEC's website. In some provinces such as Manabí, procedures for dealing with the surplus of ballots papers were not always properly followed. The presence of candidates in some problematic recounts, such as the one conducted by the Esmeraldas PEB, contributed to rising tensions and a more contentious atmosphere. In addition, observers also noted a higher number of party observers than allowed by the election regulations.

In Orellana province, subsequent to a EDT's decision, the tabulation was repeated since the signature of the PEB president was lacking in the final provincial protocol. The recount was conducted by NEC and it confirmed the re-election of the incumbent prefect, Guadalupe Llori, who had feared a fraudulent defeat. Furthermore, NEC authorised PEBs to conduct recounts with the assistance of high school students<sup>98</sup>, a group which can be highly vulnerable to manipulation and undue pressure, as observed by EU EOM in Manabí. The Police and the Army performed their duties in a professional manner. They were able to maintain order under circumstances that were at times difficult, and their involvement was called upon only when tensions resulted in incidents between supporters of different local candidates, as was the case in Manabí and Los Ríos provinces.

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<sup>96</sup> NEC and PEBs were not able to provide the total number of invalid and inconsistent protocols, although, the tabulation centres submitted a protocol of closing of activities to their respective PEBs with all the processed results protocols sorted out by valid, invalid and inconsistent.

<sup>97</sup> This estimation is generally consistent with the reports of the EU observers: in Morona-Santiago, 39 per cent; 30 per cent in Carchi and Imbabura. Similar percentages for the National Assembly elections were reported from Santa Elena, Azuay and Cañar Provinces.

<sup>98</sup> The EU EOM assessed whether the use of high school students for recounts or other electoral-related activities is in line with national and international laws. No final conclusion could yet be reached, but it seems inappropriate to use underage minors in electoral processes. In addition, it seems that this practice could violate the Ecuadorian Code for Children and Teenagers since firstly the children were not contracted nor paid and it is highly questionable that these activities contributed in any way in their educational development.

### ***C. Announcement and Political Overview of Election Results***

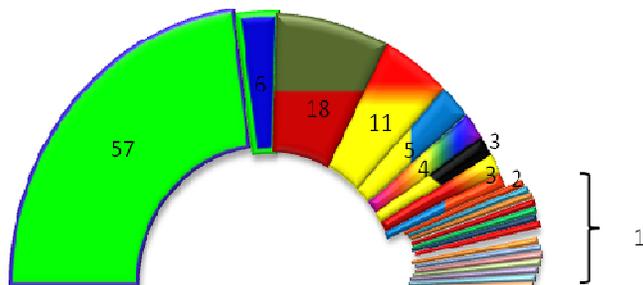
Official results for the Presidential Elections were announced on 30 May. NEC can only establish final results only after the resolution of all complaints and appeals. Since there were no challenges against the results, Rafael Correa, of *MPaís*, secured his victory in a first round with 51.99 per cent of the valid votes. Lucio Gutiérrez of *Partido Sociedad Patriótica (PSP)* obtained 28.24 per cent, while Alvaro Noboa of *PRIAN* achieved 11.41 per cent and Martha Roldós of alliance *RED-MIPD* 4.33 per cent. The remaining four candidates (Carlos Sagnay, *MTM*, Melba Jácome, *MTF*, Diego Delgado, *MITS*, and Carlos González, *MIJS*) attained a total of 4.04 per cent. According to the voter registry 10,532,234 electors were registered and 7,928,748 voted on 26 April. The abstention rate amounted to 24.71 per cent of the total of the electorate. 6.73 per cent accounted for blank votes (534,149) and 6.26 per cent invalid votes (496,687).

At the time of this report, NEC's website displayed a hundred percent of National Assembly numeric results. However, there were no official final results announced by NEC as there were some challenges of the results pending. Reported problems in the tabulation process led to significant delays in the transmission and publication of election results, far beyond the deadlines envisaged in the *General Norms*. In addition, the information made available to the public on NEC's website displayed the number of processed protocols but did not make any distinction between those processed and aggregated to the results database and those which were not added to the database because they were declared invalid or inconsistent. Subsequently, it was difficult to determine to which polling station the results posted on NEC website belonged. This created confusion among the public and the political parties.

According to provisional results, the total number of political parties and movements represented in the National Assembly (national list), is one movement out of the 10 and five political parties out of the 8 that respectively contested these elections: *MPaís* gained 7 seats, *PSP* 3, *PSC* 2 and *PRIAN*, *MPD* and *PRE*, obtained a seat each.

With reference to the 103 Provincial seats for the National Assembly, *MPaís* secured 45 seats (43.69 per cent), *PSP* 15 seats (14.56 per cent), *PSC* 9 seats (8.74 per cent), *PRIAN* 4 seats (3.88 per cent) and the remaining parties and movements have a combined total of 30 seats (29.12 per cent), some of them in alliances. These 30 provincial seats are divided up into: *MPD* 2 seats, *Movimiento Municipalista* 2 seats, *Pachakutik* 4 seats, *PRE* 2 seats, *Izquierda Democrática* 1 seat, and local alliances of many parties and movements as well as movements in some provinces obtaining the remaining 19 provincial seats. The other 6 seats for the out-of-country constituencies were assigned as follows: *MPaís* 5 seats and *PRIAN* 1 seat.

The political panorama in the National Assembly will be dominated by *MPaís* and leftist parties and alliances who gained a total of 73 seats (*MPaís*, 57 seats, *Pachakutik* 4, *MPD* 3, Indigenous movement *Amauta Yuyay* 1 seat, and several left-leaning alliances, 8 seats<sup>99</sup>) out of the total of 124 that constitute the National Assembly.



Possible composition of the 2009 National Assembly of Ecuador

Party/Movement	National seats	Provincial seats	Out of the country seats	Total seats
<i>MPaís</i>	7	45	5	57
<i>Alliances led by MPaís</i>	-	6	-	6
<i>PSP</i>	3	15	-	18
<i>PSC/M.Guerrero</i>	2	9	-	11
<i>PRIAN</i>	1	4	-	5
<i>Pachakutik</i>	-	4	-	4
<i>MPD</i>	1	2	-	3
<i>PRE</i>	1	2	-	3
<i>Municipalista Mov.</i>	-	2	-	2
<i>ID</i>	-	1	-	1
<i>MIOSA</i>	-	1	-	1
<i>Conservador Mov.</i>	-	1	-	1
<i>Amauta Yuyay</i>	-	1	-	1
<i>ARE/APLA</i>	-	1	-	1
<i>MIUP (Pastaza)</i>	-	1	-	1
<i>CND</i>	-	1	-	1
<i>CC</i>	-	1	-	1
<i>Municipalista/MGA</i>	-	1	-	1
<i>Municip./ID/MPD/FN</i>	-	1	-	1
<i>Municip./Manabí Pri.</i>	-	1	-	1
<i>Pachakutik/MPD</i>	-	1	-	1
<i>PSP/Mushuk Inti</i>	-	1	-	1
<i>PRIAN/MHE</i>	-	-	1	1
<i>MPD/MUC/MMCS</i>	-	1	-	1
<b>TOTAL</b>	<b>15</b>	<b>103</b>	<b>6</b>	<b>124</b>

<sup>99</sup> Left-led alliances: in Cañar, *MPD* with local movements; in Pastaza, *Pachakutik* with *MPD*; in Azuay, *MPaís* with local movement *MED* and in Tungurahua, *MPaís* along with *Democratic Left* and *Socialist Party*.

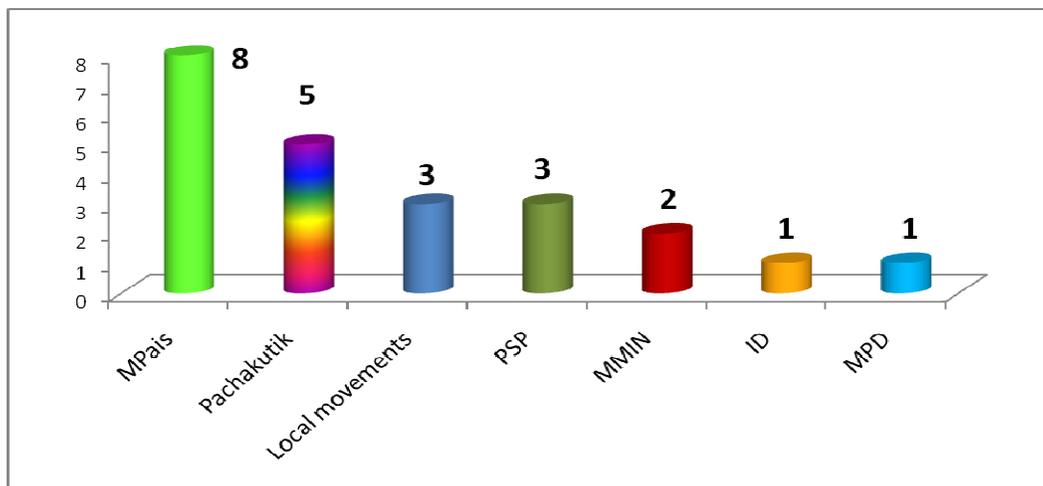
At local level, the political landscape did not quite mirror the results as national level. The fact that so many mayors and prefects stood for re-election, the smear campaign which prevailed in many parts of the country and the possibility of closely contested elections throughout Ecuador culminated in a tense and sometimes violent post electoral situation. The results were delayed in many provinces due to the sometimes high number of inconsistencies found in the results protocols.

At the time of this writing, of the 186 prefectural and mayoral candidates who stood for re-election, only 72 candidates (39 per cent) actually won. Nonetheless, there were 18 cases at mayoral level whereby the incumbent candidates lost with a very close margin behind the winning candidate.

The contested protocols especially at local level have resulted in much distrust by the political parties and movements. This has been further exacerbated by the fact that 32 mayors have won with a difference less than 5 per cent of the vote (in some cases there was only a difference of 23 votes).

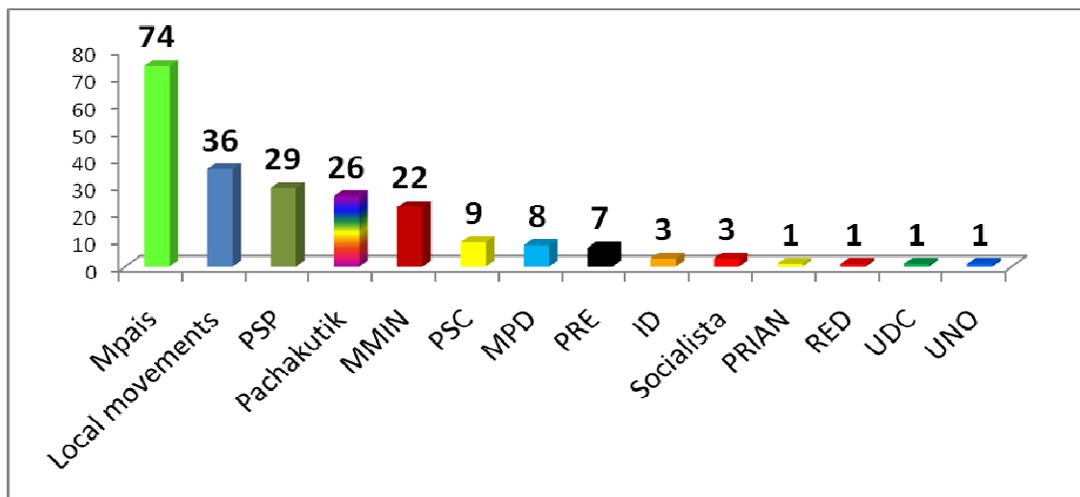
In terms of the 18 incumbent prefects who stood for re-election, a total of 12 maintained their seats.

#### *Provincial Prefects elected on 2009*



*MMIN* who believed they were going to sweep the board, ended up only keeping 32 per cent of the seats (18 cantons) and gaining a further four seats in Manabí and Napo for mayors. This result could have been due to a low key campaign conducted in the majority of provinces and the fact that much of the local elections were based on local personalities, and much of the electorate had tired of the incumbent mayors and other parties/movements had proposed candidates who were already known in politics. At prefect level, *MMIN* maintained its seat in Manabí and gained a further seat in Santa Elena.

*City Mayors elected on 2009*



In terms of the local power held by *MPaís*, the political panorama is little more firm, than that of *MMIN* but does not reflect their success gained at national level. *MPaís* maintained 55 per cent (20 out of a possible 36) of its mayor offices and gained a further 54 municipalities giving them a total of 33 per cent of the local power at mayoral level. At prefect level, out of the 23 seats, they maintained 3 seats and gained a further 8 (losing only 1 seat in Santa Elena in favour of *MMIN*). Other parties/movements such as *Pachakutik*, did not fair too badly. At prefect level, they lost one seat, and gained one more seat in Morona-Santiago. In terms of mayors, they lost 8 and maintained 4, but gained a further 22 seats in mainly indigenous areas. *PSP* lost 3 seats, maintained 5 and obtained a further 24 seats in 11 different provinces for the office of mayor. At prefect level they obtained 3 in Guayas, Napo and Sucumbíos, almost mirroring the national results which put Lucio Gutiérrez (*PSP*) ahead in Napo and only losing by 3 per cent in Sucumbíos. *PSC* maintained 6 mayoral seats, lost 7 seats and attained a further 3 in Guayas and El Oro at the level of Mayor. *PSC* did not gain any posts at prefect level.

The rate of absenteeism and the total number of valid, null and blank votes across the elections does not follow a specific pattern and differs across the provinces and the type of election. In some of the provinces, it would seem that less people voted for mayors and prefects. Nonetheless, in more indigenous populated areas such as Cañar, Chimborazo, Imbabura, Morona-Santiago and Zamora-Chinchiipe amongst others, there tended to be more absenteeism for the Presidential elections. Valid votes differed across the elections, and more valid votes tended to be awarded for Presidential elections and the lowest for the national list in the National Assembly election. Blank votes also tended to be much higher for the national list in the National Assembly election, often followed by either provincial list for the National Assembly or Prefects depending on the province. Null votes also featured highest amongst the national list for the National Assembly in almost all provinces. Void votes were particularly high amongst the provincial lists for the National Assembly in many provinces; nevertheless, prefects in some provinces also had a high number of null votes despite the simplicity of the ballot paper.

## XV. RECOMMENDATIONS

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
<b>LEGAL FRAMEWORK</b>	A law on Referenda or a comprehensive chapter on the matter should be introduced in the new election law. This should include specificities of referenda processes.		National Assembly  NEC	The new law should endeavor to include: <ul style="list-style-type: none"> <li>- Provision on equal financial and broadcasting support to political parties.</li> <li>- The principle of equality of opportunity should be guaranteed.</li> <li>- Clarify the role of the State in taking part in providing voter information.</li> <li>- Provisions for the authorities to provide objective information.</li> <li>- Provisions on the questions in order to respect the unity of form, of content, of hierarchical level.</li> </ul>	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least one year before the next referendum.
	The law should provide for independent candidates to run for elections.		National Assembly	Amendment to the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle.
<b>ELECTION ADMINISTRATION</b>	NEC should be able to apply administrative sanctions such as fines and suspension of illegal publicity. This would considerably increase efficiency and celerity.		National Assembly	Amendment to the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle.
	Clear procedures for nomination and appointment of electoral delegates, provincial board members based on merit and experience.		NEC	Elaboration of Regulations to the Electoral Law establishing qualifications and procedures for electoral delegates and provincial board members and applying the Law on Public Service for the rest of election staff.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	Following the appointment of the new NEC.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	Clear and transparent information policy about tabulation, inconsistencies and recounting process, both on PEB and on NEC level (website).	NEC should improve the level of institutional communication with the general public, media and political organisations in order to avoid controversies and miss-information and strengthen public trust on a long term basis.	NEC	- NEC could have an adequate professional press room as well as more manpower in order to enhance transparency through a more proactive dialogue with electoral stakeholders. - A closer synergy between the departments of Communication, Electoral Promotion and Civic Education could optimize information strategy.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	In time for next electoral cycle.
<b>ELECTION PREPARATION</b>		Polling station members should be selected one month before e-day.  Implementation of effective procedures to communicate appointments to the polling station committee members.	NEC		EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	In time for next electoral cycle.
	Appropriate and timely training to all election staff. Training to Polling station members should emphasize on accurate completion of the results protocols and the determination of the validity of the ballots.		NEC	Establishment of a permanent pool of electoral trainers.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	In time for next electoral cycle.
	Specific training for polling centres Coordinators on E-day procedures and transmission of results to the next level should be foreseen for the next electoral cycle.		NEC	Improve the selection of polling centre Coordinators based on their qualification.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	<p>The number of members of the National Assembly per constituency should be determined taking into account the number of registered voters (as the relevant electoral part of the population) and be regularly updated in order to give all electors balanced voting powers in line with international standards.</p>		<p>National Assembly</p> <p>NEC</p>	<p>Amendment to the Election Law.</p> <p>Regular update by NEC resolution three to six months before the election,</p>	<p>EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.</p>	<p>At least two years before the next electoral cycle.</p> <p>In time for next electoral cycle.</p>
<b>VOTER REGISTRATION</b>	<p>Establishment of a detailed calendar for the verification/update/information period of the voter register by electors well in advance of Election Day. This would allow voters to make addition and changes after the official call for the elections. After the verification period the new NEC should undertake the necessary corrections and display the voter register again at cantonal or parish levels at least 15 days prior to Election Day.</p>		<p>National Assembly</p> <p>NEC</p>	<p>Amendment to the Election Law.</p>	<p>EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.</p>	<p>At least two years before the next electoral cycle.</p>
	<p>The Civil Registry should be improved to ensure all citizens are registered and provided with ID Cards.</p>		<p>Civil Registry</p> <p>Army</p>	<ul style="list-style-type: none"> <li>- More mobile teams should be used to register Ecuadorians living in remote and less accessible areas especially in the Amazonian region and in the Northern part of Esmeraldas.</li> <li>- More accurate information should be provided regarding where the army personnel will be stationed during E-day.</li> </ul>		<p>In time for next electoral cycle.</p>

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
<b>CIVIC &amp; VOTER EDUCATION</b>	Voter education campaign should be implemented sooner. An increased degree of outsourcing or network with public institutions and civil society organizations could enhance the process.		NEC	According to international standards, voter education campaigns are necessary to ensure the effective exercise by an informed community on their electoral rights. A best international practice is to undertake widespread voter education campaigns with the support of government and civil society.	EC should be ready to offer public information and civic education expertise if requested by Ecuadorian authorities, or support local NGOs involved in these activities.	In time for next electoral cycle.
		NGOs and Government Institutions during the entire campaign period should increase their efforts to promote voter information and civic education features, both in Ecuador and in host countries with important Ecuadorian diaspora (OCV).	NGOs  Government institutions.	Elaborate a well planned action plan, involving more local NGOs and associations, adapt local action plans with PEBs according to regional necessities, diversify communication tools, use indigenous languages, optimize timeline of voter education campaign for the young (16 – 18) according to school holidays in order to increase outreach.  Out-of-country voting: Give more importance and emphasis to out-of-country electorate and their information needs. Encourage participation by informing them that their participation will have no consequence on their status in host country. (Confidentiality of personal data).	EC should be ready to offer public information and civic education expertise if requested by Ecuadorian authorities, or support local NGO's involved in these activities.	In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
		Voter education should include information about the complex election procedures and the weight of their vote in terms of seat allocation.	NEC		EC should be ready to offer public information and civic education expertise if requested by Ecuadorian authorities or support local NGOs involved in these activities.	In time for next electoral cycle.
<b>CAMPAIGN ENVIRONMENT/ FINANCING</b>	Exit polls and quick counts should be clearly regulated by law in order to strengthen its legal basis. By doing so, arbitrary measures taken on the matter by the election administration could be avoided.		National Assembly  NEC	Amendment to the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle.  .
	In line with the provisions of the 2008 Constitution (article 115) and the 2009 Election Law (article 207) that forbid state institutions to advertise for electoral campaigning, it would be advisable that the Election Law would define exactly what is considered campaigning during an electoral period.		National Assembly  NEC  EDT	Amendment to the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle.
	Legislation on the campaign, especially those preventing the abuse of office, should be strictly enforced and the pertinent authorities should apply adequate sanctions against violators.		NEC  EDT	This should include the development and implementation of more effective measures for monitoring and dealing with abuse of public resources.		In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	<p>A clear distinction must be drawn between the state and its activities on one hand, and the election contenders and their campaign on the other. This distinction must be fully observed in the conduct of the campaign in order to avoid the violation of equality of opportunities among the contestants.</p>		Incumbent Candidates			In time for next electoral cycle.
		<p>Whilst being so short, electoral promotion tv spots all ended with large NEC corporate logo, which monopolized the spectator's final attention. NEC identification in electoral promotion should be present, but less dominant in order to draw attention to the candidate or party.</p>	NEC			In time for next electoral cycle.
	<p>The NEC should ensure from the beginning of the campaign sufficient use of free airtime among candidates to allow them to accurately communicate their political program to the electorate. The innovation of the new <i>franjás electorales</i> could be enlarged to cover all the campaign period.</p>		NEC	NEC regulation	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
<b>POLITICAL PARTIES</b>	The information provided by political parties and movements to the Election Administration about their campaign expenditure should be made public..		NEC			In time for next electoral cycle
		Political parties should develop their internal capacity and structures to stimulate the establishment of their political platforms.	Political Subjects			In time for next electoral cycle
		Political parties and candidates' agents should receive training in key legal aspects of the election such as how to file complaints properly.	Political Subjects			In time for next electoral cycle
<b>WOMEN</b>		Voter education campaigns targeting especially rural and illiterate women should be conducted.	NEC		EC should be ready to offer finance to NGOs .	In time for next electoral cycle.
		Training/ capacity building of women's candidates should be increased.	NEC		EC should be ready to offer finance to NGOs .	In time for next electoral cycle.
		More efforts should be made to address women's rights and issues as campaign topics.	Political Subjects			In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
		More efforts should be made to include more women in the lower levels of election administration.	NEC			In time for next electoral cycle.
<b>INDIGENOUS AND AFROECUADORIAN</b>		More efforts should be made to address indigenous and afro-Ecuadorian's rights and issues as campaign topics.	Political Subjects			In time for next electoral cycle.
		More efforts should be made to include more indigenous and afro-Ecuadorians in the lower levels of election administration.	NEC			In time for next electoral cycle.
	Voter education campaign should be conducted in indigenous languages, and adapt to local necessities in order to reach rural and minority population.		NEC	For this purpose increased cooperation with institutions such as CODENPE and NGOs would be recommendable.	EC should be ready to offer finance to NGOs .	In time for next electoral cycle.
<b>MEDIA</b>	Ecuador's different media outlets should make efforts to be impartial in their coverage during campaign, abiding by professional standards, avoiding biased reporting and assuring pluralistic and open debate.		Media	During election campaign all media outlets should be more active in organizing special election programs such as face to face debates and panel discussion with candidates.		In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	A new law should regulate the new State-owned media in order to ensure a strict impartial coverage of electoral campaign and equal access to all candidates refraining from giving any unfair advantage to the incumbent. Furthermore new instruments should be introduced setting out the mandate and responsibilities of state owned broadcasters, and their independence from the authorities.		National Assembly	To harmonize the new constitutional prohibition of all forms of privately financed publicity in electoral campaigns with the respect of freedom of expression.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	Wishfully in one-year time, in the framework of the implementation of the new 2008 Constitution,
	The Radio and Television Law should be amended in order to regulate the use of " <i>cadena nacionales</i> " clarifying their purpose and setting the limits of time and frequency for all the authorities. During the election period limits should be set to avoid its use for institutional propaganda.		National Assembly	Revision of Radio and Television Law and revocation of the current law on " <i>cadena nacionales</i> " that still dates from the dictatorship era.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	Wishfully in one-year time, in the framework of the implementation of the new 2008 Constitution.
<b>POLLING</b>	Allow polling station committee members and election co-ordinators to vote in the polling station they work in.		NEC	NEC regulation.		In time for next electoral cycle
	Results should be displayed outside of the polling centres.		National Assembly  NEC	Amendment to the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle
	Make polling stations accessible to remote and isolated areas		NEC	For this purpose increased cooperation with government institutions (CODENPE) and NGOs would be recommendable.		In time for next electoral cycle

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	Facilitate the access to polling stations to handicapped citizens.		NEC	The provisions of ground floor stations, where possible, and facilitate transportation for disabled voters, the infirm, elderly and pregnant women. Support civil society initiatives ie. <i>Taxi Solidario</i> in order to reach all provinces.		In time for next electoral cycle
		Political subjects should make an additional effort to appoint agents to oversee the election process. These agents should receive proper training in order to fully understand their role in the process.	Political Subjects			In time for next electoral cycle
		CNE should develop more efficient means to pay the members of the polling stations committees	NEC	For example making the payment available on polling day.  If Polling Station members are provided a per diem, those who have to travel distances or those who have other responsibilities will be provided a greater motivation to attend training sessions and carry out their duties on election day.		In time for next electoral cycle.
	Less number of polling stations except when serving remote or isolated populations.		NEC	In this regard, the minimum number of electors per polling station should be increased to 400 or, if deemed feasible, to 500.		In time for next electoral cycle.
		The layout of the polling station should ensure the secrecy of vote.	NEC			In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
		Electors in the queue should be allowed to vote after the closing of the votes.	National Assembly  NEC	Amendment of the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least one year before the next electoral cycle
	Previously trained polling station committee members substitutes should not be released from their obligations if there is no need for a replacement during the opening of the polling. On the contrary, they can be used as fresh staff during the counting.		NEC			In time for next electoral cycle.
<b>COUNTING</b>		To better define the role of members of Polling Stations. At least two members should be involved in the process of counting the ballots, while at least two members should fill in each of the tally sheets.	NEC	Appointment of dedicated polling station staff for counting and filling in of the election protocols could be an option.		In time for next electoral cycle
		To provide with clear and non-ambiguous instructions on what constitutes a valid vote and a null vote.	NEC			In time for next electoral cycle.
<b>TABULATION AND ANNOUNCEMENT OF RESULTS</b>	NEC should enhance the accessibility and transparency of the recounting and tabulation process through an orderly and transparent workflow, easy to observe for party agents.			Standardized webcams, observing rooms, Web TV screens can help.		In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
		Avoid the use of minors and other vulnerable groups in sensitive procedures such as recounts.	NEC			In time for next electoral cycle.
	The legal framework should establish specific and realistic deadlines for the announcement of provisional and final results. Sanctions should be provided for the non-compliance with these deadlines.		National Assembly  NEC	Amendment of the Election Law.	EC should be ready to offer legal and electoral expertise if requested by Ecuadorian authorities.	At least two years before the next electoral cycle.
	As a matter of urgency, NEC should take all necessary measures to substantially decrease the number of protocols with numeric inconsistencies.		NEC	NEC should ensure that all technical (i.e. computers) and human resources are available and functioning in order to achieve this goal.		In time for next electoral cycle.
<b>COMPLAINTS AND APPEALS</b>	The legal concept of interested persons should be extended in a way that not only political parties, movements and candidates but also voters and domestic observers are able, under specific terms and conditions, to submit complaints or appeals to competent bodies.		National Assembly  NEC  EDT	Improved with 2009 electoral law but somehow ambiguous provisions (Art 244; vs Art 269 et al.)  Amendment of the Election Law.		At least two years before the next electoral cycle.
	More detailed procedures should be established with respect to the adjudication of electoral offences.		National Assembly	The 2009 electoral law merely establishes a prescription/ limitation line of 2 years (Art 304) which is insufficient.		In time for next electoral cycle.

EU EOM RECOMMENDATIONS	ESSENTIAL	DESIRABLE	ADDRESSED TO	POSSIBLE IMPROVEMENTS SUGGESTED	EC SUPPORT/PROJECTS	TIMELINE
	Training of relevant stakeholders on relevant complaints and appeals procedures should be undertaken and information provided accordingly.		NEC EDT			In time for next electoral cycle.