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# Final Report

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## EXECUTIVE SUMMARY

The European Union established an Election Observation Mission (EU EOM) for the 30 September Constituent Assembly elections. Over a period of two months, in accordance with international standards for election observation, the EU EOM undertook a comprehensive assessment of the different phases of the electoral process, including the electoral legal framework, the conduct and activities of the Supreme Electoral Tribunal (TSE), campaigning, Election Day, the vote tabulation process as well as complaints and appeals issues. Observers from the EU EOM liaised closely with candidates, political parties and movements, civil society groups, political and electoral authorities, other observer groups as well as international agencies.

The 30 September Constituent Assembly elections were legitimate and democratic. They were generally well administered and inclusive. The voters for the Constituent Assembly benefited from a wide range of options and candidates enjoyed a notable degree of freedom to assemble and to express their views. These significant and positive developments, however, must be weighed against a series of fundamental weaknesses within Ecuador's legal framework and administrative structures that affected key aspects of the electoral process. Issues to be addressed include: the confusion surrounding the electoral system and voting procedures; the ample powers of the TSE and the inadequate sanctions established in the law; the inappropriate use of public resources by incumbents, which raised questions regarding legality and the balance of the playing field; and the delay in the proclamation of results to the extent that official final results were only available almost two months after election day.

It is essential that these shortcomings be addressed for future elections in order to achieve further progress in the Ecuadorian democratic system. The overwhelming majority received by *Movimiento País (MPAIS)* did not give grounds for any serious doubts or disputes. However, the EU EOM believes that, in the case of a close election, the system would not be equipped with the characteristics to give a satisfactory and clear response. This represents a danger and a risk that should be avoided in the future. Importantly, steps will need to be taken in order to strengthen public awareness of the electoral process through civic and voter education as well as legal reform and institutional capacity development of the TSE.

The Ecuadorian legal framework and election legislation are generally in accordance with international standards and include some improvements in comparison to previous elections, such as an equal publicity financing scheme for advertising in the media, out of country representation in the Constituent Assembly and gender balance on the ballot. However, issues relating to the extent of powers provided to the TSE, and inadequate sanctions for violations of election legislation, are problematic.

The method of vote consolidation introduced by Congress in 2006, known as the "*factor ponderador exacto*" (translated to *exact average weight factor*), poses a concern since it may be deemed as challenging the equality of voting rights and/or of voting power. The EU EOM would suggest a further assessment of its impact on the principle of one person one vote, equality of voting power and its alignment with international

standards. The un-proportional distribution of seats among the electoral constituencies is also a matter for concern, according to the relevant international standards.

The system of electoral complaints and appeals proved to be largely adequate. Most complaints and appeals lodged since the calling of the elections dealt with the denial of registration of candidates. Another set of cases concern the alleged violation of campaign regulations. The disproportionate sanctions, which were inappropriate for most violations of the electoral laws, and the lack of timelines to resolve on possible disqualifications of candidacies, are a matter of concern.

The TSE, as an institution, has ample experience with the organization of elections and enjoys general trust in the ability of its technical and operational body. Furthermore, the TSE operated in a mostly transparent manner and EU EOM observers were granted access to almost all the plenary sessions. Election officials tended to work cooperatively and with a fair degree of openness. Nevertheless, a number of issues left cause for concern: the lack of consistency in decisions, such as those related to exit polls and quick counts and the sanctions applied and subsequently suspended to the Governor of Guayas Both decisions affected public confidence.

Logistical preparations and deadlines were met in due time for Election Day. Regrettably, legal deadlines for the tabulation and official announcement of results were not respected. While training was generally well organised, as assessed by the EU observers, it failed to reach all polling station committee members. This fact had clear consequences during the counting of the ballots and the tabulation of results, as a significant number of recounts had to be undertaken due to mistakes in the results protocols.

The Ecuadorian Constitution prohibits active members of the security forces (army and national police) from voting. The Ecuadorian army played a significant role in the logistical preparation for the elections. The involvement of the army in the elections was not considered as interference in the process. On the contrary, the army was perceived by political actors and the public in general as a guarantor of order, efficiency and neutrality.

The Ecuadorian voter register can be regarded as universally inclusive and enjoyed the confidence of political parties and movements. A total of 9,371,232 electors were included in the voter register. A number of problems concerning the register revealed themselves, including coordination between the voter register and the civil register, the ability of individuals to update their status after the call for elections, the inclusion of deceased and migrant voters, and the under-registration of voters in indigenous and rural areas. For the Constituent Assembly Elections, 6,857,466 electors voted, which accounts for the 73.18% of the voter register<sup>1</sup>.

Voters for the Constituent Assembly were presented with a wide range of options. The inclusiveness of the registration system allowed for 3,224 candidates representing 497 registered lists at the provincial, national and out of country levels. The campaign was generally low-key, calm, and free of violence and provided opportunities for candidates

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<sup>1</sup> Figures respect to national vote for the national ballot. Source: TSE.

to promote their ideas and platforms. The campaign was largely held in the media or through “*caravanas*”<sup>2</sup> and door-to-door visits where candidates could meet voters and distribute leaflets. Freedom of expression and assembly were widely respected.

Most of the campaign focused on issues with little connection to the objectives of the Constituent Assembly. The political landscape was marked on the one hand by a generally fragmented opposition and on the other hand by the dominating presence of a President with very high popularity ratings. There was a blurring between the role of the President in his official capacity and his supporting and promoting *MPAIS*. If the leadership of the political movement can by no means be questioned, the inappropriate use of public resources and of official acts raised questions regarding legality and the balance of the playing field.

The TSE organised a professional voter education campaign on the provincial and national levels and abroad. Nonetheless, the campaign did not entirely respond to the needs of the electorate in understanding key issues of the Constituent Assembly and the electoral process. The actions undertaken by the TSE were complemented by active voter education involvement of the media in disseminating information about candidates, programmes of the competing parties, issues of the Constituent Assembly and voting procedures. The NGO *Participación Ciudadana* played an important role in educating the electorate through a parallel “how to vote responsibly” campaign.

The media has undertaken its informative task within the framework of the freedom of expression guaranteed by the Constitution and the Ecuadorian laws which conform to international standards. Television, print, and radio media played an important role in informing voters about the objectives of the Constituent Assembly, candidates and proposals. Furthermore, the Ecuadorian media outlets made great efforts to educate voters of proper voting procedures and changes from previous elections.

The newly developed publicity financing scheme for advertising in the media (called *franjitas*) was a positive initiative designed to provide basic and equal media access to all lists. Nevertheless, the system generated criticism from numerous political actors as a result of insufficient control in the distribution of the ads. Many political parties and movements felt limited by the restrictions placed on them by the prohibition of privately paid political advertising in the media.

Women played a very active role in the Constituent Assembly elections. For the first time in Ecuador’s democratic history, the TSE required candidates to be ordered alternatively by gender on the ballot paper. This led to greater female representation in the electoral process. While women represented over 50% of the election administration at the Polling Station level, they only represented 11 % of the TPE members and only one woman is a member of the TSE.

Indigenous and Afro-Ecuadorian peoples were sufficiently visible in a number of lists. However, numerous problems were observed in their participation as voters, such as frequent examples of under-registration in indigenous populated areas. Furthermore,

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<sup>2</sup> Motorcades.

there were few campaign activities in indigenous languages and Indigenous and Afro-Ecuadorian issues were rarely discussed or debated in the campaign.

Election Day polling took place in a calm manner with procedures properly followed in 92% of the polling stations observed, despite the complex election system. The attendance of delegates from the political parties and movements was very low: they were present in less than half of the polling stations observed, and represented only a few parties and movements. Moreover, those present were covering several polling stations at a time. Domestic observers were visible in approximately 10% of the polling stations visited. The secrecy of the vote was not always ensured, notably due to an inadequate layout of most polling stations and the large format of the ballot. Although the counting and tabulation processes generally took place in accordance with the law, the intricacy of the system caused many human errors and widespread confusion. This resulted in very serious consequences including an unacceptably large number of recounts and considerable delays in the announcement of the results.

Along with the Presidential elections of November 2006 and the April 15<sup>th</sup> referendum, where 82% voted for the constituent elections to be held, in the 30 September Constituent Assembly elections Ecuadorians have overwhelmingly expressed their desire for change and the need to bring an end to ten years of political, social and economic instability. The task of fulfilling these hopes and aspirations now rests with the 130 assembly representatives elected for the purpose of developing a new constitutional framework.

The Constituent Assembly elections represent an important opportunity for political reform and to bring an end to years of political instability. Maintaining democratic plurality and the rule of law are among the objectives that should motivate the Constituent Assembly in its work.



## INTRODUCTION

Elections for the Constituent Assembly in Ecuador were held on 30 September. Following an invitation from the Supreme Electoral Tribunal and the Ecuadorian authorities, the European Union established an Election Observation Mission in Ecuador. The Mission was led by Chief Observer Mr. José Ribeiro e Castro, Member of the European Parliament (MEP). The EU EOM has assessed the conduct of the election in accordance with international standards for genuine democratic elections and adhered to the “Declaration of Principles for International Election Observation” commemorated at the United Nations in October 2005. The European Union Election Observation Mission was established on 22 August 2007. The EU EOM deployed 104 observers from 22 EU Member States throughout the country. On Election Day, EU observers visited over 700 polling stations in 21 of 22 provinces<sup>3</sup>. The EU EOM issued its statement of preliminary findings and conclusions on 2 October. Upon the conclusion of the election process and the publication of the final results on 19 November, the EU EOM closes its operations on 22 November 2007, three months after its establishment.

This report is issued on 20 November 2007.

The EU EOM wishes to express its appreciation for the cooperation, coordination and assistance received throughout the course of its work from the Supreme Electoral Tribunal and the Provincial Electoral Tribunals; the Ecuadorian Government; representatives of Ecuadorian civil society and national experts from universities and research centres; representatives of all political parties and movements; representatives of the media; the Delegation of the European Commission in Ecuador; the International Organization for Migration, the United Nations; local representatives of EU Member States; domestic and international observer colleagues, in particular *Participación Ciudadana*, the Carter Centre and the Organization of American States.

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<sup>3</sup> Polling stations in the province of Galapagos were not observed.

## POLITICAL BACKGROUND

### A. POLITICAL CONTEXT

Following Ecuador's return to democratic government in 1979, after many years of military regimes, the country has suffered from chronic political instability. Since Sixto Durán completed his mandate in 1996, no elected president of Ecuador has completed a term in office; Rafael Correa is the eighth president in the last ten years; there have been nineteen constitutions since Independence (1830). This instability and the lack of meaningful reforms contributed to the widespread public dissatisfaction with the political system and institutions<sup>4</sup>, with Ecuadorian institutions and the political parties reported as having some of the worst scores of perceived corruption in Latin America<sup>5</sup>.

Rafael Correa, backed by his newly formed movement *Alianza País*<sup>6</sup>, was elected in the second round of Presidential Elections with 57% of the vote in November 2006. Correa proposed sweeping economic, social and political reforms along with a "citizen's revolution" through a Constituent Assembly that would transform the institutional framework of the country by adopting a new Constitution. A new Congress was elected in November 2006, but Correa's *Alianza País* movement did not field any candidates for it, since 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 then marked by the tense relationship between the Congress and the President.

To convoke a Constituent Assembly was a high priority on President Correa's agenda. On 15 January 2007 he signed an executive decree asking the TSE to organize a referendum on whether or not to convene a Constituent Assembly for the purpose of writing a new constitution.

The path to the establishment of the Constituent Assembly produced serious institutional confrontations. The President's decree gave the Constituent Assembly widespread powers, including the power to dissolve Congress or other elected bodies. This created a stand-off with Congress resulting in Congress's attempt to replace the President of the TSE. The TSE reacted by replacing the majority of the Congress (57/100 members) with their designated alternates for having "interfered with the electoral process". The dismissed Congressmen had their political rights suspended for a year and as such could not stand as candidates for the Constituent Assembly or vote in

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<sup>4</sup> In August 2007, an opinion poll released a report showing that the three most credible institutions were, in order of importance, "the church" (21.4%), "the media" (8.8%), and, finally, the government with only 7.1%, "none" (41%). Source: CEDATOS, August 2007, poll realized in Pichincha and in Guayas, error margin of 3%, level of trust of 95%.

<sup>5</sup> The Transparency International Global Corruption Barometer 2005 shows that Ecuadorians ranked political parties and Congress as the most corrupt institutions, with worse scores than anywhere else in Latin America. See [www.transparency.org](http://www.transparency.org).

<sup>6</sup> President Correa's presidential bid was supported by his movement "*Alianza País*". The entity which contested the Constituent Assembly elections was "*Movimiento País*".

the election. When the Constitutional Tribunal (TC) ruled that the dismissed Congress members should be reinstated, this resulted in the Congress, recomposed with the alternates, dismissing the Constitutional Tribunal.

Some of the 57 opposition congressmen who were removed by the TSE did not take part in the controversial vote in Congress that triggered the conflict with the TSE, while others that did participate were omitted from the TSE's decision. The 57 dismissed congressmen, according to the new Constitutional Tribunal, could not regain their seats or their political rights. A few opposition parties<sup>7</sup> told the EUEOM that having some of their leading provincial or national political figures deprived of their right to contest the elections resulted in a real disadvantage for the whole party strategy and campaign for the Constituent Assembly election.

After weeks of political turmoil, the referendum to convene a Constituent Assembly was held on 15 April 2007. The 2007 Statute for the Election, Installation and Functioning of the Constituent Assembly was also approved in the 15 April referendum. A total of 82% of the electorate voted in favour. On 4 May the TSE called for the Constituent Assembly elections.

## **B. POLITICAL PARTIES AND MOVEMENTS**

The political spectrum is very diverse and gave voters a wide range of options: nine political parties, 104 political movements and 23 citizens' movements participated in the elections<sup>8</sup>. Candidates could run within political parties, political movements or citizens' movements' lists. Each political entity could run alone or within alliances, and alliances could be at the national and/or provincial level. The 2006 Congressional and Presidential elections produced great changes in terms of voting patterns, thus representing a sign of a deep crisis for traditional parties. This allowed for new parties and movements such as *MPAIS* to emerge. Very few political parties or movements can claim to rely on a stable electorate or membership.

Although it is difficult to find a clear divide in terms of ideology, the political party spectrum, from left to right, in broad terms, includes the following established political parties: *Partido Movimiento Popular Democrático* (MPD), *Partido Socialista* (PS), *Izquierda Democrática* (ID), *Partido Roldosista Ecuatoriano* (PRE), *Partido Libertad* (PL), *Partido Sociedad Patriótica* (PSP), *Partido Social Cristiano* (PSC), *Partido Unión Demócrata Cristiana* (UDC) and *Partido Renovador Institucional Acción Nacional* (PRIAN).

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<sup>7</sup> The 57 deputies were 24 PRIAN, 22 PSP, 10 PSC, 1 UDC.

<sup>8</sup> Of which 6 parties (PSP, PSC, PRIAN, MPD, PRE and ID), 6 political movements (RED, MPAIS, MHNACIONAL, UNO, FUTURO YA and PACHAKUTIK) and 10 alliances that include many of these parties and movements (PSP/RED, ID/MPC, ID/MPD/PS-FA/MUPP-NP, MUPP-NP/MPD, MUPP-NP/MNPNS/MOPIN, MPAIS/PS-FA, MPAIS/MIP, MPAIS/MIFA, MPD/MPAIS and MPAIS/MOP.MUSHUK INTI/ALIANZA AMAZONICA) won a seat at the CA. Sources: TSE.

In the last two years there has been a proliferation of political movements and citizens' movements<sup>9</sup> created in response to the public's dissatisfaction with traditional parties and politics. Some of the main political movements contesting the election were: *Movimiento País* (MPAIS); *Movimiento Pachakutik*; *Movimiento Red Ética y Democracia* (RED), *Movimiento UNO*.

Selection of candidates has been very different from list to list, but, in general, the process has not been very transparent. Most parties and movements are not well structured, nor do they function in a democratic manner. Candidates within lists were selected by the organizational hierarchy according to their capacity to attract votes, their ability to mobilize financial resources, and their position within the party or political movement.

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<sup>9</sup> Citizens' movements can be considered as independent lists. See also part on "*Registration of Candidates and Party lists*". It is easier to form a movement than a political party, since movements need less requirements to register. In the text of this report, political and citizens' movement will be called "political movements".

## LEGAL ISSUES

### A. LEGAL FRAMEWORK

The legal framework governing these elections includes the 1998 Constitution, the 2000 “*Election Law*”<sup>10</sup>, the 2007 “*Statute for the Election, Establishment and Functioning of the Constituent Assembly*” (hereinafter: 2007 Statute), the 2000 “*Law on Political Parties*”, the 2000 “*Law Governing Expenditures and Electoral Publicity*” and the 2002 “*Law Concerning the Voting of Ecuadorians Abroad*”. These laws are complemented by a number of detailed regulations and resolutions (e.g. the 2001 “*General Regulation of the Election Law*”, the 2007 “*Regulation for the Assignment of Seats in the Election of Candidates in the Constituent Assembly*”) which have been issued by the TSE in accordance with the Election Law.<sup>11</sup>

#### *The Constitution*

The Constitution defines Ecuador as a Presidential Republic,<sup>12</sup> with the President as the head of the Executive Power (State and Government)<sup>13</sup> and the Supreme Commander of the security forces (army and national police).<sup>14</sup> The legislative power resides in the single chamber National Congress, composed of 100 members who are elected in an open list proportional representation system in 22 provincial constituencies.<sup>15</sup> The judiciary is organized in a three-tiered structure with the Supreme Court of Justice as the maximum authority.<sup>16</sup> The Constitutional Tribunal guarantees the supremacy of the Constitution.<sup>17</sup> Administratively, Ecuador is divided into 22 provinces<sup>18</sup>. Below the provincial level, there are 221 cantons and municipalities, which are again subdivided into parishes as the smallest unit<sup>19</sup>.

The Ecuadorian Constitution provides for the basic principles regulating genuine and democratic elections, stipulating the principle of universal, equal, direct and secret suffrage in Article 27. In addition, the Constitution contains civil rights guarantees

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<sup>10</sup> The Election Law has been amended on several occasions since then; most significantly in 2006, when the *exact average weight factor* was introduced.

<sup>11</sup> Articles 20, 186, 190 and 191 of the Election Law.

<sup>12</sup> See Art. 1 of the Ecuadorian Constitution.

<sup>13</sup> Art. 164 of the Ecuadorian Constitution.

<sup>14</sup> Articles 171 and 184 of the Ecuadorian Constitution.

<sup>15</sup> Art.126 of the Ecuadorian Constitution. The number of members to be elected per province is defined according to the number of inhabitants; with a minimum of 2 (e.g. 18 in Guayas, 14 in Pichincha, 2 in Galapagos).

<sup>16</sup> E.g. Art.198 of the Ecuadorian Constitution.

<sup>17</sup> Articles 275-279 of the Ecuadorian Constitution.

<sup>18</sup> The establishment of two additional provinces was approved by the Congress after the 30 September elections.

<sup>19</sup> Furthermore, indigenous and afro-Ecuadorian territorial constituencies are mentioned in Art. 224 of the Ecuadorian Constitution. For further information see also: <http://www.ame.gov.ec/directorio/frontend/main.php>.

which are necessary preconditions for the exercise of the right to political participation: the right to freedom of expression, the right to communication and to establish media, the right to freedom of association and assembly<sup>20</sup>. The Constitution also deals with the electoral organisation<sup>21</sup> and, more in particular, the powers, composition and functions of the TSE.

### ***Universal and Regional Standards***

The human rights treaties Ecuador has ratified<sup>22</sup> are, among others, 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 mentioned human rights instruments guarantee the equal right of all citizens to political participation<sup>23</sup>. They also stipulate other essential preconditions for the exercise of political rights, such as the right to freedom of expression, assembly and association.

### ***Other applicable Election legislation***

The laws governing the electoral process<sup>24</sup> require the absolute majority of the members of the Congress for their reform.<sup>25</sup> The 2007 Statute was approved in the referendum of 15 April 2007 and details relevant issues with respect to the Constituent Assembly election, such as the composition of the Constituent Assembly, the requirements to run for the election and campaign regulations.<sup>26</sup> The 2007 Statute applies only to these elections and establishes the priority of the Statute vis-à-vis other legislation.<sup>27</sup>

The 2007 Statute was meant to deal with a number of legal issues not covered by the existing regulations; however the statute does not provide for appropriate regulation on

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<sup>20</sup> Art.23 of the Ecuadorian Constitution.

<sup>21</sup> According to the Ecuadorian constitutional doctrine, the electoral function may be regarded as the fourth power of the State.

<sup>22</sup> According to Art. 163 of the Ecuadorian Constitution, international treaties ratified by Ecuador are part of the Ecuadorian legal framework and have a higher rank than the rest of the laws of the country with exception of the Constitution. Most of the human rights obligations accepted by Ecuador are held to be “self-executing”, and considered as directly applicable.

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

<sup>24</sup> The 2000 “*Election Law*”, the 2000 “*Law on Political Parties*” and the 2000 “*Law Governing Expenditures and Electoral Publicity*”

<sup>25</sup> The laws governing the electoral process have specific status which is of a higher rank than the rest of the laws of the country (*leyes orgánicas*) in accordance with Articles 142 and 143 of the Ecuadorian Constitution.

<sup>26</sup> See Articles 3, 13 and 17-19 of the 2007 Statute.

<sup>27</sup> The final disposition of the 2007 Statute states that the 2000 Electoral Law and the legal framework for elections remain applicable in so far as they are not incompatible with the spirit and the objective of the Statute.

a number of issues including the features of the system of state sponsored publicity spots in the media (*franjas*)<sup>28</sup>. The Election Law confers the powers to the TSE to specify and apply the Election Law, to fill its gaps with respect to voting proceedings and to resolve controversial cases of application.<sup>29</sup> The TSE filled most gaps of the electoral framework by *ad hoc* regulations.<sup>30</sup>

The Ecuadorian Election legislation provides for a generally adequate framework for the conduct of the Constituent Assembly elections. The legal framework applicable to these elections contains several improvements in comparison with the 2006 elections.

1. Improvements include the establishment of an equitable publicity financing scheme for advertising in the media (*franjas*), as provided for in Article 18 of the 2007 Statute. In fact, the establishment of a system of state funded publicity was an attempt to level the playing field of the candidates and to provide an opportunity in particular for smaller and less wealthy lists to diffuse their messages amongst the electorate. The scheme was hampered, however, by problems regarding its implementation.<sup>31</sup>

2. A further improvement concerns the representation in the Constituent Assembly of Ecuadorian migrants living abroad: for the first time, Ecuadorian migrants were able to elect their own representatives (a total of 6) to the Constituent Assembly.<sup>32</sup>

3. Finally, the strengthening of the participation of women in the political process is positive. In May 2007, the TSE introduced a so-called zipper system which imposed an alternate placement of women and men on the lists.<sup>33</sup> By doing so, the TSE gave full effect to the provisions contained in the 2000 reform of the Election Law which initially outlined the zipper system.

Still, there are a number of issues that give reasons for concern:

1. First, the method of vote consolidation adopted by Congress in 2006 and applied already in the October 2006 elections, referred to as the “*factor ponderador exacto*”/exact average weight factor<sup>34</sup>, may be deemed as challenging the principle of one citizen one vote as well as the equality of voting power. Other concerns regarding the electoral system and international standards include the un-proportional distribution of seats among the electoral constituencies (see “*The Electoral System*” section).

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<sup>28</sup> See e.g. the TSE *Regulation for the diffusion of electoral publicity spots (franjas)*. See section “*Media and Elections*”.

<sup>29</sup> Articles 186, 190 and 191 of the Election Law.

<sup>30</sup> See e.g. TSE Resolution PLE-TSE-16-14-6-2007, “2007 Regulation for the Assignment of Seats in the Election of Candidates in the Constituent Assembly”, TSE Resolution on the maximum expenditure of lists running for the elections to the Constituent Assembly, PLE-TSE-10-10-5-2007, 10 May 2007; or TSE Regulation for the diffusion of electoral propaganda in publicity spots (*franjas*) of the lists running for the elections to the Constituent Assembly, PLE-TSE-3-12-6-2007, 12 June 2007.

<sup>31</sup> See the section “*Media and Elections*”

<sup>32</sup> See Articles 3 and 4 of the 2007 Statute.

<sup>33</sup> TSE Resolution, PLE-TSE-7-23-5-2007, 23 May 2007.

<sup>34</sup> See Annex 9: *The “exact average weight factor” in the Ecuadorian electoral system. Effects on the distortion of electoral results and on the inequality of votes.*

2. A second concern relates to the sweeping powers of the TSE (and of the TPEs in their respective area of jurisdiction). The 2007 Statute as well as the Law Governing Expenditures and Electoral Publicity establish the power of the TSE (and of the TPEs) to disqualify candidates for violations of campaign expenditure provisions<sup>35</sup> and to dismiss public officials who use public funds for campaign purposes<sup>36</sup> or interfere in the functioning of the electoral institutions.<sup>37</sup> Furthermore, the TSE has the ability to imprison individuals<sup>38</sup> and to suspend citizens' political rights. Although the TSE is called a "tribunal", it does not have the attributes of an independent and impartial tribunal but is rather an administrative institution. Its extensive powers are problematic in view of some of the human rights guarantees which Ecuador has accepted. In particular due process guarantees<sup>39</sup> are jeopardized.

Cases of relevance for these elections concern the dismissal and the suspension of the political rights of the 57 Congress members in March 2007 for interfering with the functioning of the electoral institutions.<sup>40</sup> This challenges international standards, according to which a deprivation of political rights is only admissible if it is based on a criminal conviction for a serious offence and is in conformity with the principle of proportionality.<sup>41</sup> Another problem is that, in Ecuador, the suspension of political rights is not determined by the case's own merits, but is applied automatically as an accessory sanction to another sanction. In this case, the primary sanction is the dismissal. This is deemed to be in breach of fundamental human rights.<sup>42</sup>

The TSE resolved also to dismiss the lower court judge, who had ruled that the dismissal of the 57 Congress members was unconstitutional for violation of due process guarantees<sup>43</sup>, therefore jeopardizing the independence of the judiciary.<sup>44</sup> These decisions also raised concerns from the viewpoint of the doctrine of separation of powers.

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<sup>35</sup> Art. 19 of the 2007 Statute.

<sup>36</sup> Art. 21 para 4 of the Law Governing Expenditures and Electoral Publicity.

<sup>37</sup> Art. 155 e of the Election Law. The decision of the TSE (and TPEs) has to be ratified by the respective institution in which the official is working (e.g. in the case of a judge, this would be the Human Resources Unit of the National Judicial Council). In practice, the tribunals' decisions were ratified. This provision was applied to the 57 Parliamentarians who were dismissed by the TSE in March 2007.

<sup>38</sup> Procedurally, the imprisonment is effectuated by order of a penal judge (Articles 147 and 152 of the Election Law).

<sup>39</sup> See the right to fair trial as established in Articles 9 and 14 of the CCCPR; Art 25 ACHR.

<sup>40</sup> TSE Resolution, PLE-TSE-2-7-3-2007, 7 March 2007.

<sup>41</sup> See Venice Commission, Code of Good Practice in Electoral Matters, 2002, p 15. (While the Venice Commission is responsible for standard setting in the framework of the Council of Europe, its findings can also be taken as best practices outside the "Council of Europe" States). See furthermore UN Human Rights Committee, General Comment No 25, 1996, paras 4 and 14: "...*The exercise of these rights [stipulated in Art. 25 CCPR] by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. ...*"

<sup>42</sup> The case of the 57 Parliamentarians was brought before the Inter-American Human Rights Commission in mid-October. The alleged violations include violations of due process guarantees as well as of the Parliamentarians' political rights.

<sup>43</sup> Resolution of 28 March 2007. The TSE's decision was ratified by the Human Resources Commission of the National Judicial Council on 4 April 2007.



The Tribunals made very limited use of the power to dismiss public officials for the use of public funds during the campaign period.<sup>45</sup> Nevertheless the negative effects of their ample powers were felt during the campaign. For example, a letter written by the TSE, which merely reminded mayors not to use public funds for campaign purposes, was interpreted by some mayors as intended to intimidate them.

3. Third, those sanctions provided by the laws<sup>46</sup> often lacked an appropriate scale of disciplinary action and were in most cases not adequate since they proved to be disproportionate in comparison to the seriousness of the violation. Accordingly, the TSE and the Provincial Electoral Tribunals, in most of the cases, limited themselves to calling upon the candidates/lists to respect the regulations<sup>47</sup> in order to avoid applying the established sanction. In addition, the respective laws failed to specify the relevant procedures for disqualification or dismissal. Accordingly, there were no procedural guarantees (*e.g.* no details on the right to defence, no right to appeal<sup>48</sup>) and no timelines established in the law.

4. A fourth concern is related to particular aspects of e-day regulations; the prohibition on voting of those citizens who are in the queue at 5 pm but have not yet voted<sup>49</sup> challenges international best practices.<sup>50</sup> While the EU EOM recommended already in 2002 a change of this regulation, it remained in force for these elections. The suspension of political rights of prisoners with minor convictions and the lack of mechanism to give prisoners without convictions the right to vote violates international standards.<sup>51</sup> While the TSE Plenary dealt with the issue on 11 September 2007, with a report of its Legal Commission recommending the implementation of their right to vote, the plenary of the TSE decided that time and logistical/infrastructural constraints made it impossible for prisoners without conviction to vote for the Constituent Assembly elections.

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<sup>44</sup> The suspension of political rights has not been limited to these Congressmen. An unrelated case involving former President Lucio Gutiérrez, the central figure of the PSP, was also brought to the EOM's attention. Gutierrez is still under a two year suspension of his political rights.

<sup>45</sup> Only one case is reported from Chimborazo where the TPE asked the governor to destitute a civil servant for the use of public funds and advocacy in favour of *Lista 35*.

<sup>46</sup> To disqualify candidates for violations of campaign expenditure provisions and to dismiss public officials who used public funds for campaign purposes or who interfere in the functioning of the electoral institutions.

<sup>47</sup> For instance, alleged violations of campaign regulations could have lead to a disqualification of candidates in the last days before the elections. In the end, the TSE merely reprimanded the candidates concerned. (See "complaints and appeals" section.)

<sup>48</sup> According to constitutional experts, the legal basis for a general right to challenge an adverse decision can be found in Art. 23 para. 15 of the Ecuadorian Constitution which establishes the right to direct complaints and petitions to the authorities concerned.

<sup>49</sup> Art. 35 (d) of the Election Law prohibits members of the Polling Station Committees from allowing voters to vote before 7 am and after 5 pm. Art. 81 of the 2001 Regulation specifies that voters who are in the queue at 5 pm will not be able to vote but will receive a certificate of presentation nevertheless.

<sup>50</sup> *E.g.* the principle of universality as stipulated in Art. 25 CCPR and Art. 23 ACHR.

<sup>51</sup> As stated in the General Comment No 25 of the UN Human Rights Committee: "Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote." (UN Human Rights Committee, General Comment No 25, 1996, para 14.)

Approximately 13,700 persons are currently in prison without conviction.<sup>52</sup> In addition, Art. 27 of the Ecuadorian Constitution prohibits active members of the security forces (army and national police) from voting.

5. Some fundamental aspects of the electoral process, such as details on the distribution of seats within the Constituent Assembly<sup>53</sup>, were not regulated in the 2007 Statute. They were only established in *ad hoc* regulations issued by the TSE, which compromised the possibility of a comprehensive and stable regulatory framework. This was particularly the case given the fact that the TSE easily changed its decisions<sup>54</sup> and adopted some of its resolutions within weeks and even days before the elections. This caused legal uncertainty concerning the “rules of the game” until immediately before the elections.<sup>55</sup>

## **B. COMPLAINTS AND APPEALS PROCEDURES**

The legal framework regarding complaints and appeals is generally adequate and broadly meets international standards. The procedures for lodging and handling complaints and appeals are clearly regulated in the law. In general, the timelines within which the tribunals have to deal with a case are adequately established; however the law lacks appropriate timelines for the possible disqualification of candidacies. As a result, on e-day there were still some cases pending, which caused uncertainty about the final list of candidates. Likewise, limitations regarding the legal standing of interested parties (*e.g.* of voters) to bring complaints and appeals before the tribunals are problematic. The institutions responsible for resolving complaints and appeals are the TPEs, the TSE and – exceptionally – the Constitutional Tribunal. In general, the tribunals handled complaints and appeals adequately

The Ecuadorian legal framework establishes three main categories of complaints and appeals which are of relevance in this electoral process: legal challenges/*impugnaciones*, appeals/*apelaciones* and complaints/*quejas*.<sup>56</sup>

The most important legal challenges concern the registration of candidatures and lists (the TPE being responsible for the registration of provincial lists, the TSE being responsible for national lists) and the election results (provincial and national polling

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<sup>52</sup> Number given by the TSE in the Plenary on 11 September 2007, when the issue was discussed.

<sup>53</sup> Art. 5 of the 2007 Statute only refers to the distribution of seats in very general terms; the rest is regulated by the TSE in the 2007 Regulation for the Assigination of Seats in the Election of Candidates in the Constituent Assembly.

<sup>54</sup> See for instance the TSE Resolution (PLE-TSE-6-6-9-2007) of 7 September 2007, which prohibited publicity spots with pictures of children and adolescents, the use of patriotic symbols for campaign purposes and electoral offences regarding candidates; see also the prohibition of exit polls and quick counts by the TSE on September, 20, and the reversal of the decision on 23 September.

<sup>55</sup> See *e.g.* Venice Commission, Code of Good Practice in Electoral Matters, 2002, Regulatory levels and stability of electoral law, p. 26, para 63.

<sup>56</sup> See Articles 66, 94-97 of the 2000 Election Law; see also Articles 52, 58, 100, 104, 105, 121-129 of the 2001 Regulation of the 2000 Election Law. Possible complaints procedures are also established in other laws such as the 2000 Law on Political Parties (Article 15).

results before the TPE, lists from abroad before the TSE).<sup>57</sup> Legal challenges must be resolved within 4 days with respect to the candidatures and within 2 days for election results<sup>58</sup>.

Appeals against decisions made by the TPEs are dealt with by the TSE; appeals can be brought against decisions concerning the registration of candidatures and lists; the nullification of the election in the respective polling station; the nullification or validation of the results and the adjudication of seats<sup>59</sup>. The TC only hears appeals against decisions made by the TSE related to the registration of national lists. The resolution of appeals must be completed within 5 days for the TSE and within 10 days for the TC<sup>60</sup>.

While the objective of legal challenges and appeals is to reverse a decision (e.g. the revocation of the non-registration of a candidature), complaints/*quejas* are a means by which to complain against officials who fail to comply with the law. Accordingly, complaints can be put forward when the respective tribunal (or one of its members) does not follow the correct procedures or exceeds the timelines established by law. Complaints against TPE officials are submitted before the respective TPE; complaints against members of a TPE are lodged before the TSE; complaints against members of the TSE are filed before the TC.<sup>61</sup> The respective tribunals have 15 days from the moment the complaint has been lodged to resolve the issue<sup>62</sup>. As of 18 October, only one complaint (*queja*) had been lodged by a member of MPAIS against the TPE in Carchi with respect to these elections.<sup>63</sup>

Legal challenges, appeals and complaints can only be lodged by candidates, political parties, and political movements. The electoral legal framework does not allow voters, domestic observers or other interested organisations to file election petitions; it merely establishes the possibility of Ecuadorian citizens to address specific and limited cases of electoral malpractice.<sup>64</sup> This may be criticized from the viewpoint of international good practices: appeals should be granted to all interested parties; it should be open to every elector in the constituency, even though a reasonable quorum may be imposed for appeals by voters on the results of the elections.<sup>65</sup>

A relatively low number of formal complaints (approx. 100) related to candidacies and violations of campaign regulations were lodged, 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

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<sup>57</sup> Articles 66, 94 and 95 of the Election Law.

<sup>58</sup> Art. 95 of the Election Law.

<sup>59</sup> Art. 96 of the Election Law.

<sup>60</sup> Art. 96 of the Election Law.

<sup>61</sup> Art. 97 of the Election Law.

<sup>62</sup> Art. 97 of the Election Law.

<sup>63</sup> Information provided by the respective TPEs, the *Secretario General* of the TSE and the *Registro Oficial* of the TC.

<sup>64</sup> See “*Electoral offences*” section.

<sup>65</sup> See Venice Commission, Code of Good Practice in Electoral Matters, 2002, p. 31.

the civil society and national experts, is the lack of trust in the available legal mechanisms and a lack of confidence that the respective institutions will deal with the complaint appropriately. Another reason mentioned was the clear victory of *MPAIS* which meant that legal challenges and appeals were in many cases not expected to affect the final results. Further reasons for the relatively few complaints included the difficulty in obtaining evidence and the insufficient legal knowledge of some political actors about how to lodge a complaint or an appeal.

### ***Recursos de Amparo and Unconstitutionality Claims***

The *Recurso de Amparo* is a mechanism to claim alleged violations of constitutional rights before the Constitutional Tribunal. The *Amparo* may be considered as an extraordinary recourse with the objective of ensuring the guarantee of constitutionally established rights (*i.e.* in most of the cases constitutionally established human rights guarantees).<sup>66</sup> Unconstitutionality claims allege the unconstitutionality of a law or an administrative act.<sup>67</sup> One *Amparo* and three unconstitutionality claims were lodged in the context of these elections.

The *Amparo*<sup>68</sup> was presented by 49 of the 57 congress members, who claimed that their dismissal and the suspension of their political rights violated the Constitution.<sup>69</sup> In a first decision taken in April 2007, the TC found a violation of the rights of the Congressmen.<sup>70</sup> After the newly formed Congress had changed the members of the TC, the new TC re-opened the case on procedural grounds and rejected it without taking a close look at the merits.<sup>71</sup> In addition, an unconstitutionality claim, challenging the constitutionality of the TSE Resolution dismissing the congress members, was rejected by the TC on the grounds that the TSE Resolution was not an administrative act but an electoral decision, which could not be challenged in any way, as the TSE has sole

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<sup>66</sup> Also guarantees contained in relevant international treaties can be brought before the Constitutional Tribunal in accordance with Art. 95 of the Ecuadorian Constitution.

<sup>67</sup> Articles 276- 278 of the Ecuadorian Constitution.

<sup>68</sup> The *Amparos* brought by the dismissed Congress members before the courts of Rocafuerte (Manabí) and Guayas and subsequently decided by the TC are considered as one *Amparo* as they concern the same facts.

<sup>69</sup> The Congressmen claimed an alleged violation of due process guarantees as established in Art. 24 of the Ecuadorian Constitution, more in particular the right of defense and the right to a competent judge as also guaranteed in Art. 8 para 2 of the ACHR.

<sup>70</sup> Case 0448-07-RA, Decision of 23 April 2007. The Tribunal found a violation of due process guarantees (Art.24 of the Constitution), more in particular a violation of the right to defense and the right to a competent judge as also guaranteed in Art. 8 para 2 of the ACHR.

<sup>71</sup> Case 0448-07-RA, Decision of 24 July 2007. The Tribunal argued for instance, that the effects of the dismissal concerned only the territory of Quito and that, accordingly, the *Amparo* had been presented before judges of first instance (in Rocafuerte and Guayas) who lacked jurisdiction (para 4). The TC argued furthermore, that more than one *Amparo* was presented by the same person before first instance tribunals, which was inadmissible according to Art. 57 of the Law on Constitutional Control (para 8). The reasoning of the Tribunal may be considered as extremely doubtful if one considers, for instance, that effects of dismissals of Parliamentarians take effect in all Ecuador and not only in Quito.

jurisdiction and each decision is final and conclusive.<sup>72</sup> This is problematic since, according to the TC's argumentation, TSE decisions cannot be appealed.

The second unconstitutionality claim concerned the prohibition of exit polls and quick counts by the TSE<sup>73</sup>. It was lodged by Santiago Rivadeneira, candidate of Movimiento UNO, in Pichincha. Further to the TSE reversing its prohibition, the case was archived by the TC.

The third unconstitutionality claim stated<sup>74</sup> that some aspects of the vote consolidation and the allocation of seats<sup>75</sup> violated the principle of equality of votes.<sup>76</sup> At the time of this report, this case was not resolved. As unconstitutionality claims do not have retroactive effect,<sup>77</sup> any decision will have no consequences for these elections.

### C. ELECTORAL OFFENCES

Electoral offences as established in the Election Law include interference with the functioning of the electoral institutions; certain fraudulent acts regarding the electoral process (e.g. the falsification of signatures); violations of the campaign publicity regulations; the prohibition to publish opinion polls in the media during the 20 days before the election; and the prohibition to sell and consume alcoholic drinks on e-day, 36 hours before and 12 afterwards (commonly known as *Ley Seca*).<sup>78</sup> The institutions responsible for dealing with electoral offences are the Supreme Court (responsible for violations of the election law by members of the TSE), the TSE and the TPEs in their respective jurisdiction. Sanctions include 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 the electoral tribunals<sup>79</sup>. Furthermore, the Ecuadorian Penal Code deals with offences concerning voting procedures<sup>80</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.

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<sup>72</sup> See TC Resolution 006-2007-AA.

<sup>73</sup> For details, see section on "*Enforcement of legal provisions by the Election Administration*".

<sup>74</sup> The claim for unconstitutionality was presented on 27 September 2007 by the Ombudsman on the initiative of private individuals with the *Polo Democrático* movement joining the suit.

<sup>75</sup> See Art .105 para 3 of the Election Law and Articles 4, 5 and 6 of the TSE Regulation for the Assignment of Seats in the Election of Candidates in the Constituent Assembly.

<sup>76</sup> More in particular, Articles 27, 99 and 126 of the Constitution.

<sup>77</sup> Art. 278 of the Ecuadorian Constitution.

<sup>78</sup> Art. 133-140, 153-163 of the Election Law.

<sup>79</sup> Art. 141 of the Election Law.

<sup>80</sup> Art. 167-172 of the Penal Code.

While in general the sanctions are well defined and proportional, the lack of clear definition of the respective procedures<sup>81</sup> is of concern along with the excessive powers of the electoral tribunals as already mentioned.

#### **D. ENFORCEMENT OF LEGAL PROVISIONS BY THE ELECTION ADMINISTRATION**

Most of the TSE resolutions were adequate and also filled important gaps in the electoral legislation<sup>82</sup>. However, the legislation dealing with the competencies of the TSE to issue regulations necessary for the correct execution and application of the Election Law, to fill gaps in the Election Law with respect to the voting procedures and to resolve doubts on controversies in the application of the Election Law<sup>83</sup>, was too vague and imprecise. As a result they did not qualify as a strong legal basis. The TSE often exercises its regulatory competence as if having *de facto* legislative powers. Some TSE resolutions were doubtful<sup>84</sup> as the TSE exceeded its powers as established in the Election Law<sup>85</sup>. Some particular decisions gave reason for concern.

On 20 September 2007, the TSE unexpectedly banned exit polls and quick counts.<sup>86</sup> The TSE based its decision on the assumption that contradictory results might create confusion and unrest among the population. Following a public outcry, this decision was reversed by the TSE on 23 September. In both cases the TSE failed to clearly explain the motivation behind the decisions. This excess of powers is problematic as it concerned sensitive topics affecting individual rights (*e.g.* the right to freedom of expression). Likewise, on 7 September 2007, in the middle of the election campaign, the TSE prohibited the use of patriotic symbols and presence of children in publicity spots for campaign purposes.<sup>87</sup>

On 29 August 2007 the TSE sanctioned the Governor of Guayas, prohibiting him to occupy any political office for the next two mandates<sup>88</sup> on the basis that, as treasurer of *Alianza País*, he had failed to present all information regarding the campaign's expenditure for the 2006 elections. One week later, the TSE accepted the governor's

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<sup>81</sup> *E.g.* the distribution of jurisdiction between penal judges and the electoral tribunals lacks a clear definition.

<sup>82</sup> See "Other applicable Election Legislation" section.

<sup>83</sup> Articles 186, 190 and 191 of the Election Law. Mention has to be made of the different interpretations of "voting proceedings" given: eminent members of the TSE interpreted it in a large sense: according to them, also the prohibition of quick count would be legitimate. See *e.g.* Venice Commission, Code of Good Practice in Electoral Matters, 2002, Regulatory levels and stability of electoral law, p. 26, para 63.

<sup>84</sup> See "Election Administration" section.

<sup>85</sup> See *e.g.* Venice Commission, Code of Good Practice in Electoral Matters, 2002, Regulatory levels and stability of electoral law, p. 26, para 63.

<sup>86</sup> PLE-TSE-9-20-9-2007.

<sup>87</sup> PLE-TSE-6-6-9-2007. In this respect, the concern of EU EOM is not with the content of the decision, but as to the possibility of taking new decisions on such matters, outside a proper regulatory procedure and during the electoral campaign.

<sup>88</sup> PLE-TSE-5-29-8-2007, 29 August 2007.

legal challenge and suspended its Resolution.<sup>89</sup> Although a re-examination of the case by the TSE's Unit for Campaign Expenditure and Publicity (UCEP) found even more incriminating evidence, including the use of illicit funds, the TSE did not consider this as a basis for a new resolution. On the contrary, the TSE sent the case back to UCEP to produce another report<sup>90</sup>. The UCEP requested that an external audit of *Alianza País* finances be made. At the time of this report the case remained pending. The lack of explanations for both these resolutions by the tribunal led many to speculate about political motivations, thus affecting the public confidence in the TSE.

### ***E. ELECTORAL SYSTEM***

In the Constituent Assembly elections, Ecuadorians chose 130 representatives: 100 seats were elected by 22 provincial constituencies with between 2 and 18 seats per province according to population in an open list proportional representation system<sup>91</sup>. 24 seats were elected from a national constituency. 6 seats were elected by Ecuadorian migrants in 3 overseas constituencies. Hence, voters were given two ballots, one which corresponded to the national constituency and another which corresponded to the voter's provincial or out of country constituency. Voters could choose to concentrate their vote in one list or distribute their votes in different lists, selecting nominally up to as many candidates as seats to be elected in the respective constituency. Although the electoral system gave the voter the maximum of choice, it may have been too complex for many voters to be able to participate meaningfully. Furthermore, the complexity of the system caused confusion, frequent human errors and significant delays in the counting and tabulation processes. The overwhelming majority received by *MPAIS* did not give grounds for any doubts or disputes. However EU EOM believes that, in the case of a close election, the system was not equipped with the characteristics to give a satisfactory and clear response. If the results had been more tied among political parties and movements the problems of the electoral system would have been more striking and they could lead to harsh discussion and disputes, resulting in a larger number of legal challenges among the contesting parties, movements and candidates, some possibly difficult to decide in a democratically satisfying manner. This is a danger and a risk that should be avoided in the future.

As shown in Annex 1, there were significant discrepancies in the design of constituencies<sup>92</sup>. For example, the province of Imbabura has one representative for every 90,596 registered voters whereas the province of Carchi has one representative for every 39,891 registered voters; both have a total of 3 representatives. Another striking

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<sup>89</sup> PLE-TSE-3-4-9-2007, 4 September 2007.

<sup>90</sup> TSE Resolution of 6 October.

<sup>91</sup> The electoral system is governed, as mentioned, by the *1998 Ecuadorian Constitution* (namely Art. 27 and Art. 97 to 102), the *2000 Electoral Law*, the *2007 Statute*, and the *2007 Regulation for the Assignment of Seats in the Election of Candidates in the Constituent Assembly* adopted by the TSE (hereafter, the *2007 Regulation*).

<sup>92</sup> Art.,126 of the Constitution establishes that each province must have at least two representatives with an additional representative for every 200,000 inhabitants or any fraction above 150.000.

example is the comparison between Imbabura and Cotopaxi: the province of Cotopaxi with less registered voters (270,159) elects one more representative than the constituency of Imbabura (271,788 registered voters). Another example: each one of the 18 Guayas' representatives corresponds to as much as 133,857 registered voters, 235.6% more than the number corresponding to each one of Carchi's representatives<sup>93</sup>. This could be deemed as challenging the principle of "equality of voting power" since the number of registered voters per constituency needed to elect a representative varies by more than 10-15%, as required by international best practices<sup>94</sup>. The discrepancies are quite widespread and don't refer only to the overseas constituencies or to less populated provinces, where exceptions could be possibly accepted, in order to assure a minimum representation.

The proportional method established in the Election Law to allocate seats is, in general, the D'Hondt method<sup>95</sup>. However, for the election of the Constituent Assembly, the TSE established specifically, through its *2007 Regulation*, the Hare Quota method, which comparatively favours less voted lists in the distribution of seats<sup>96</sup>. The Hare quota proportional system was only applied for the national ballot and in 15 provinces. In the seven provinces where only two seats were to be elected, the second seat is allocated to the list receiving the second highest number of votes if it achieves 25% of the votes of the winning list. As to the three constituencies abroad, the system follows a simple majority rule, applying also a different vote consolidation method. The fact that three different methods for the allocation of seats were applied in the same election could be regarded as breaching the principle of "*equality of chances*"<sup>97</sup>.

Following a ruling by the Constitutional Tribunal in 2004, the Congress modified in 2006 the way by which votes are consolidated in multi-personal elections, prior to the allocation of seats to the different lists and candidates. The Congress then introduced the "*factor ponderador exacto*"/*exact average weight factor*, as a means to convert nominal votes into votes for the corresponding list, before adding these to the votes cast for the entire list (see Annexes 2 and 3). This factor inevitably introduced inequalities between the ballot papers of voters that voted nominally and the ballots with votes for an entire list. While a ballot with a vote for an entire list always has the value of "1", a ballot with nominal votes can weigh less or more than "1" depending on the number of nominal votes cast per ballot and the specific *exact average weight factor* determined in each

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<sup>93</sup> This means, in other terms, that the Guayas' *voting power* corresponds to around 2/7 or to less 3.36 times than the Carchi's *voting power*. For a more detailed analysis, see Annex 3.

<sup>94</sup> Equality in voting power commonly refers to the drawing of the boundaries of electoral constituencies. The maximum deviation between the effect given to the votes should not exceed 10 to 15%. (See Venice Commission, Code of Good Practice in Electoral Matters, 2002, p. 17; see HRC, General Comment No 25, 1996, para 2.1; see furthermore OSCE/ODIHR, Existing Commitments for Democratic Elections in OSCE Participating States, 2003, page 13-14).

<sup>95</sup> It was declared unconstitutional by the TC in 2004 and the law, then, revised in 2006. However, after this revision, the same D'Hondt method stayed in place, although under a different name: *method of continuous dividers* – see Art. 105, section 4 of the *2000 Election Law*, revised.

<sup>96</sup> See Art. 5, indents c. to e., of the *2007 Regulation*.

<sup>97</sup> See Guidelines on Elections, Explanatory Report, Venice Commission 2002, page 17, paragraph 2. §10.



constituency at the moment of counting<sup>98</sup>. This led, for instance, to the absurd consequence that a series of nominal votes for one party or movement could create a net value that is worth more than a vote for all the candidates within the same list<sup>99</sup>. Therefore, as a result, the voter who voted nominally could not know the real value of his/her vote before voting.

The effects of the *exact average weight factor* caused broad confusion in the general public and among political actors. Electors seldom realised that the *exact average weight factor* existed and how it really operated. It became a topic of public debate and, in turn, led to further confusion regarding how to best utilize one's vote to its maximum potential by trying to take advantage of strategic voting patterns. However, strategic voting could not lead to manipulation of the factor since it was only determined after all votes had been cast and counted. At the same time, voters could attempt to vote strategically in order to give a more powerful effect to their votes. In conclusion, the *average weight factor* is a mathematical procedure that operates in the vote consolidation phase in a way that may be deemed as challenging the international standards on the principles of *one citizen one vote* and the *equality of voting power*<sup>100</sup> (see Annex 9). The EU EOM strongly recommends studying how to improve the system for future elections.

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<sup>98</sup> The *exact average weight factor* was determined per constituency (or at the national level, regarding the national ballot), at the final counting of the votes, by dividing the total of ballots containing nominal votes by the total sum of nominal votes casts. This factor was then multiplied by the sum of the nominal votes received by each list. Lastly, this product was added to the total of votes for the entire list received by the same list. This sum corresponds to the final votes (consolidated votes) attributed to that list. See article 105, section 3 of the *2000 Electoral Law*, revised.

<sup>99</sup> EU EOM observed that some voters tried to take advantage of this abnormality but this occurred on a limited scale that did not meaningfully affect the results.

<sup>100</sup> Guidelines on Elections, Explanatory Report, Venice Commission 2002, pages 16-17, paragraph 2, Equal suffrage.

## ELECTION ADMINISTRATION

### A. STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION

The Ecuadorian election administration is made up of the TSE, 22 TPEs and 37,656 Polling Station Committees. The election administration in Ecuador is controlled by the Supreme Electoral Tribunal. The TSE is an autonomous permanent body in charge of “organizing, supervising and directing the election processes”. Its functions, organization and composition are regulated by the 1998 Constitution and the 2000 Election Law.

The TSE is composed of seven members, appointed by the Congress from short-lists submitted by the political parties that obtained the highest number of votes in the last Congressional elections, held in October 2006. The current TSE members were appointed on 20 January 2007 for a period of four years. The main seven Ecuadorian political parties in the Congress are represented: *PSP*, *PSC*, *UDC*, *PRE*, *PS*, *PRIAN* and *ID*<sup>101</sup>. Since *Alianza País* did not contest the Congressional elections, it is not represented in the TSE. According to Articles 18 and 19 of the Election Law, TSE members must be Ecuadorian citizens by birth, be over 35 years old and in possession of their political rights. The TSE members can not be public employees, judges or other members of the Judiciary. There are no specific professional requirements and no previous election experience is needed. TSE decisions are taken in plenary sessions by majority, four members being the minimum quorum for legally holding the sessions.

At the central level, the TSE has one Secretariat and three permanent commissions: legal, economic and technical, and a fourth temporary commission: training. Each commission is made up of three TSE members and headed by one of them, contributing to a system of political checks and balances among the 7 represented parties. The commissions oversee the work of the general directorates and units, which are in charge of the operational and technical components of the process. Under this *de facto* power-sharing system, each member is allowed to appoint partisans in the different technical departments. Parties and movements not represented do not have the same means to oversee the functioning of the election administration. Therefore, those without representation in the TSE tended to distrust the impartiality of the institution.

The TSE operates throughout the country through decentralized bodies, namely, the 22 TPEs, one in each of Ecuador’s provinces. The TPEs are also composed of seven members, appointed by the TSE for a period of two years mainly from short-lists submitted by the political parties. These appointments should respect, according to article 22 of the Election Law, the different political trends in the country, and do not necessarily reflect the same composition of the TSE. The Election Law does not specify

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<sup>101</sup> The seven members of the TSE are: Jorge Acosta (PSP) president; René Mauge (ID) vice-president; Elsa Bucaram (PRE), Andrés León (UDC), Pedro Valverde (PSC), Andrés Luque, (PRIAN), and Hernán Ribadeneira (PS).

how to measure these trends, nor that the TPE composition should respect the provincial political majorities. In reality, the TSE members appoint the members of the TPEs, taking into account the political configuration in the provinces. The TPE members were in charge of different cantons within the provinces and dealt with all aspects of the election preparations in their areas of responsibility: appointment of polling station staff, training, polling centres, etc. At organizational and operational levels, the TPEs repeat the TSE structures with commissions, directorates and units.

The different balance of political tendencies represented in the TPEs and the TSE had implications in how they reacted to perceived violations. The Pichincha TPE, for instance, showed a strong determination to speak out against governmental involvement in the election campaign. On 24 September all Pichincha TPE members signed a letter requesting the TSE to take action against the holding of a meeting of Correa's "travelling cabinet"<sup>102</sup> in the province during the campaign reflection period. The President accepted these requests, postponed the "travelling cabinet" and cancelled the radio address. The EU EOM welcomed this as a positive move, showing respect for the three day reflection period prior to Election Day. Given this fact, after two days, the TSE decided to release a press statement reminding also that all publicity, including official Government publicity, is forbidden during the reflection period. This TSE's order was not duly enforced.

The 37,656 polling station committees formed the lowest level of the election administration. Contrary to the TSE and TPE, they are not permanent. Committees were established 45 day before the elections<sup>103</sup> and were separated by gender, with a maximum of 300 electors in each<sup>104</sup>. The article 62 of the Election Law establishes that the polling station committees should be composed of five members and two substitutes, appointed by the TPEs from short-lists of citizens submitted by the political parties. However, for the Constituent Assembly, the appointment of polling station members was regulated by an *ad hoc* TSE directive<sup>105</sup>. This regulation stated that polling station committee members had to be selected according to the following criteria: three members had to be secondary school students, while the remaining four had to be university or school teachers, educational institution employees, public employees and private sector employees. On the one hand, this regulation allowed the appointment of individuals from outside the political sphere which has contributed to creating a more impartial management of the election. On the other hand, it also meant that most of the staff had no previous experience in elections.

There was no intermediate election administration body between the 22 TPEs and the 37,656 polling stations committees. Instead, election coordinators worked as a bridge between the provincial tribunals and the polling station committees. Coordinators were appointed by the TPEs on the basis of at the least one for every 30 polling stations. The coordinators were tasked with the organization of the elections in their assigned polling

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<sup>102</sup> See "Overview of the Election Campaign" section.

<sup>103</sup> Art. 31 of the Election Law.

<sup>104</sup> 200 electors per polling station in Quito and Guayaquil.

<sup>105</sup> Regulation for the Appointment of Polling Station Committee Members for the Constituent Assembly Elections, 18 July 2007.

stations, delivering the appointments to the polling station committee members and receiving the election results protocols from the committees in order to take them to the TPEs, amongst other activities. Coordinators played an essential role during the elections, as they supported the polling station committee members and helped them understand the complexities of the process; nevertheless, their numbers appeared to be insufficient to deal with all the shortcomings, especially during the counting process.

## ***B. ADMINISTRATION OF THE ELECTIONS***

The Constituent Assembly elections represent the second electoral process administered by this TSE in less than six months. Overall, the administration of the 2007 Constituent Assembly Elections was undertaken by the TSE in a technically proficient manner that ensured that arrangements for the Election Day were by and large well organised. For these elections, the Supreme Electoral Tribunal has administered a budget of 41,813,301.05 US Dollars<sup>106</sup>, excluding the TSE-funded publicity campaign.

The TSE, as an institution, enjoyed general public confidence in its technical ability to administer the election process. Some decisions from the TSE plenum, such as the ban on exit polls and quick counts, or the sanctions applied to the Governor of Guayas<sup>107</sup> and then suspended, affected public and political confidence in the TSE, since most of the political parties and movements perceived the decisions as politically motivated<sup>108</sup>. The reversal of the decision concerning exit polls and quick counts was a welcome move, as it brought the process more in line with international standards, notably the right to freedom of expression and to information.

Deadlines for training, appointment of polling station committee members, delivery of election materials and the registration of candidates, parties and movements were met. However, in what was one of the most negative consequences of the evident complexity of the system, the TSE and TPEs failed considerably to meet the legal deadlines for counting, tabulation, announcement and publication of the results<sup>109</sup>. In this regard the EU EOM regrets that the election authorities have been only able to produce official results almost two months after the Election Day.

Transparency was compromised by a number of factors. First, TSE and TPE plenary meetings are closed sessions<sup>110</sup>, except when otherwise requested by a majority of the members. Only sessions dealing with the tabulation of election results were public<sup>111</sup>. Secondly, TSE and TPEs decisions were not consistently and effectively communicated to the public. For instance, only political parties and movements contesting the elections

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<sup>106</sup> Source: TSE.

<sup>107</sup> Please refer to section Legal Issues, Para D “*Enforcement of Legal Provisions by the Election Administration*”.

<sup>108</sup> For details see “*Legal Framework*” section.

<sup>109</sup> See “*Results*” section.

<sup>110</sup> Art.15. Internal Regulation of the TSE and TPEs

<sup>111</sup> Art.16, Internal Regulation of the TSE and TPEs

were informed of the TSE and TPEs decisions through a system of election boxes where all communications were delivered, with no confirmation of receipt. In many cases, the decisions were delivered two or three days after being released. This system is not efficient in facilitating communication, and, moreover, gives an advantage to the parties that are represented in the TSE and TPEs.

Upon official request and in an open interpretation of the Memorandum of Understanding between the European Commission and the TSE, the EU observers were granted access to almost all TSE and TPE sessions. However, full observation was not allowed of three meetings where decisions with political implications were taken. The first occasion was on 23 September, when the TSE reversed the decision on banning exit polls and quick counts. The second took place in Cañar province, when the TPE dealt with a complaint lodged by the provincial Governor against TPE members that he accused of drinking during the tabulation of results. The third case, on 9 October in Azuay province, occurred when the provincial tribunal discussed a *MPAIS's* complaint on the results in 20 polling stations. In all other cases the TSE and the TPEs permitted full access to the EU observers.

Technical instructions from the TSE to the TPE were not always followed; also, some TSE departments had difficulties in receiving feedback concerning TPE activities. For example, it took more than one week for the TSE training Unit to obtain updated figures on the number of trained polling station committee members. While training was generally well organised, as assessed by the EU observers, it failed to reach all polling station committee members. This fact had clear consequences during the counting of the ballots and the tabulation of results, as a significant number of recounts had to be undertaken due to mistakes in the results protocols.

The Ecuadorian army played a significant role in the logistical preparation for the elections. The army printed the ballot papers, Election Day protocols and voters lists. It distributed all election materials to the polling stations and returned them to the TPEs after the counting process. Its role in the election process was established under different agreements with the TSE. The involvement of the army in the elections was not considered as interference in the process. On the contrary, the army was perceived by political actors and the public in general as a guarantor of order, efficiency and neutrality.

## VOTER REGISTRATION

### *A. THE RIGHT TO VOTE*

The right to vote is granted to all Ecuadorian citizens at the age of 18 and in possession of their political rights. Voting is mandatory for all persons between 18 and 65, except for illiterate individuals as well as Ecuadorian voters registered in overseas constituencies. According to article 27 of the Constitution, personnel of the Army and Police Forces, while in active service, are excluded from voting.

### *B. VOTER REGISTRATION PROCEDURES*

A total of 9,371,232 electors were included in the voter register (see Annex 4). The country has a passive registration system with data drawn from the Civil Register. Citizens turning 18 are automatically included in the voter register. While the TSE has responsibility over the Voter Register, the Civil Registry, which is administered by the Vice-presidency of the Republic, is responsible for the Civil Register. The relationship between the TSE and the Civil Registry is regulated under Articles 39, 41 and 43 of the Election Law, as well as in agreements to implement these articles.

The voter register can be regarded as inclusive and enjoyed the confidence of political parties and movements. In this regard, the EU EOM did not receive major complaints from any political actors and electors of relevant inaccuracies in the register that would have affected the election process.

Nevertheless, a number of shortcomings in the voter register were identified, which are to an extent linked to insufficiencies within the civil registry system.

Updates to the voter register can be made at any moment. However, in order for the updates to be included for the 30 September elections, changes had to be made before the cut-off date<sup>112</sup> (3 May), as the Election Law<sup>113</sup> states that changes and updates could not be made to the voter lists after the official call for elections<sup>114</sup>. For these elections, the five months timeframe between the cut-off date and the Election Day can be considered long<sup>115</sup> since it led to inaccuracies that disenfranchised a number of voters. Likewise, electors who turned 18 between 3 May and Election Day were not included in

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<sup>112</sup> According to Art. 3 of the 2007 Statute, the Register of Voters could be updated until one day before the official call for the elections. As the Constituent Assembly elections were called for on 4 May, the cut-off date was 3 May.

<sup>113</sup> Art. 40 of the Election Law.

<sup>114</sup> Art. 45 of the Election Law states that the call for the must be made at least 90 days before Election Day.

<sup>115</sup> According to the Code of Good Practice in Electoral Matters: “The proper maintenance of voter registers is vital in guaranteeing universal suffrage”, Venice Commission.

the list of voters and were therefore excluded.

The channels of communication between both institutions did not work properly in certain respects. For instance, according to article 41 of the Election Law, the Civil Registry must deliver to the TSE daily lists of registered citizens in order to update the register of voters. However, no daily updates were delivered to the TSE by the Civil Registry. In addition, for the Constituent Assembly elections, the TSE received the final update of the citizens' register on 10 May, one week after the cut-off date.

The Voter Register was displayed in the Voter Information Centres, opened by the TPEs throughout the country at least 15 days before the elections. The voters could check their inclusion in the voter register, however this served the purpose of identifying one's assigned polling station but no changes to the register were possible.

On 28 August, one month before Election Day, the TSE received from the Civil Registry a list of 28,000 deceased persons that were included in the Register of Voters. As the list of voters for each of the Polling Stations was printed at that moment, there was no time to remove those names from the Register. However, according to article 39 of the Election Law, the list of deceased persons must be removed by the Civil Registry and reported to TSE at least 15 days before establishing the list of voters.

The Civil Registry estimates<sup>116</sup> that there are at least 1,500,000 non-registered citizens which accounts for more than 10% of the population. Around a third of this number, 500,000, is of voting age. This population is located in remote, non-accessible areas along the borders with Peru and Colombia, as well as in certain areas of the coastal provinces. Under-registration affects mainly the indigenous population in Amazonian provinces, and in some areas can reach 20% of the canton population, according to the Civil Registry. The percentage of non-registered indigenous population has been reported as being as high as 40% by EU observers in areas of Morona-Santiago province<sup>117</sup>. Similar figures are found in other indigenous and rural areas of Ecuador's Highlands<sup>118</sup>.

Since the Civil Registry offices are located in provincial and cantonal capitals, citizens living in rural and remote areas have fewer possibilities to register. As sectors of population in rural and indigenous areas were not registered, some efforts were made before the elections to have a more inclusive civil register and, subsequently, voter register. In this regard, the Civil Registry undertook a registration campaign project in targeted areas and has already registered approximately 350,000 citizens since last year. The civil register is self-financed<sup>119</sup>. Therefore, another barrier to registration is that

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<sup>116</sup> The Civil Registry General Director admitted this figure to the EU EOM.

<sup>117</sup> Information received from different government sources and reported by EU EOM Long Term Observers (LTOs). For more details see the section on participation of indigenous and afro-Ecuadorian peoples.

<sup>118</sup> Observers in Pichincha noted a significant number of non-registered people in rural indigenous areas of the province.

<sup>119</sup> The Civil Registry does not receive money from the State budget. In order to finance its projects, including the registration of citizens, it has to raise funds from various national and international donors.

citizens have to pay two dollars for an ID card<sup>120</sup> even though 37% of the population<sup>121</sup> lives on two US dollar per day. In Guayaquil, where the Civil Registry is run by a Foundation linked to the Municipality, an ID card costs 10 dollars.

For the Constituent Assembly Elections, 6,857,466 electors voted, which accounts for the 73.18% of the voter register<sup>122</sup>. This may be considered as a low turnout in a context of a compulsory vote system. According to the TSE this turnout is due to Ecuadorian migrants not updating the civil registry to show that they reside abroad. Currently neither the TSE nor the Civil Registry have a mechanism to verify which citizens are abroad.

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The current registration campaign is financed by some Ministries and State agencies, as well as the UNHCR and UNICEF.

<sup>120</sup> The ID card (*Cédula de Ciudadanía* in Spanish) is the only document required for voting in country.

<sup>121</sup> Source: PNUD, 2006 Report on Human Development.

<sup>122</sup> Source: TSE, results for the national ballot.



## OUT OF COUNTRY VOTING

The 2007 Statute of the Constituent Assembly provided Ecuadorians residing abroad with the right to choose their own representatives to a Parliament-like institution<sup>123</sup> for the first time. The same campaign rules for the in-country voting were applied for candidates and lists overseas. The equitable publicity financing scheme for advertising in the media was also in place in Ecuadorian TV stations that broadcast abroad as well as in print media outlets.

Around 2,500,000 Ecuadorians of voting age<sup>124</sup> reside abroad, the majority in Spain, Italy and the United States. Six seats divided into three constituencies were reserved for Ecuadorian citizens residing abroad. The constituencies consisting of two seats each were: Europe, Latin America and United States-Canada. Migrants had the right to vote for the national constituency and for the constituency they reside in.

The voter register for the three overseas constituencies had a total of 152,180 electors: 121,662<sup>125</sup> in Europe; 20,307 in United States and Canada; and 10,211 in Latin America. Once registered, those electors were placed in the out of country constituency list and removed from their constituency of origin. The low number of registered voters, only 152,180 electors out of an estimated 2,824,082 migrants, was considered by political parties and election officials to demonstrate a high degree of disinterest in the process. Another contributing factor was that registration and voting were not compulsory for emigrants. Lastly, numerous sources have reported that Ecuadorian migrants abroad were afraid that registering in the consulates might have consequences in their status in host countries.

Turnout in the overseas constituencies was very low, as only 26%<sup>126</sup> of the registered electors voted, accounting for an even lower number of effective voters: only 39,698 individuals cast a vote to elect 6 representatives to the Constituent Assembly.

The out-of-country voting was observed by the Office of the International Organization for Migration (IOM) in Ecuador upon invitation of the Ecuadorian Government.

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<sup>123</sup> Articles 3 and 4 of the 2007 Statute.

<sup>124</sup> Source: National Institute of Statistics and Census (INEC), 2005. According to the 2005 INEC statistics, a total of 2,824,082 Ecuadorians are migrants. More than one million Ecuadorians left the country in the last six years. Source: IOM.

<sup>125</sup> 92,315 only in Spain.

<sup>126</sup> Source: TSE.

## REGISTRATION OF CANDIDATES AND PARTY LISTS

### *A. REGISTRATION PROCEDURES*

The Constitution establishes the right of political parties to present and promote candidates as well as the possibility of independent candidates to run for elections<sup>127</sup>. The Law of Political Parties regulates the registration and financing of political parties. In order to register as such, political parties must comply with a number of requisites such as the publication of their declaration of ideological principals, the provision of its Statutes and symbols, a number of members which is at least 1.5 % of registered voters in the national voter register, and they also must have branches in at least 10 provinces with at least two of these provinces being amongst the three with the largest populations.<sup>128</sup> A political party may be de-registered if it does not obtain a minimum of 5% of valid votes in at least two multi-personal elections at the national level, or if it does not participate in a multi-personal election in at least 10 provinces.<sup>129</sup> The TSE is responsible for the registration and deregistration of political parties. Its decisions can be challenged within 15 days after publication with the TSE having to decide within the same timeframe.<sup>130</sup> The TSE decided not to apply the 5% threshold in these elections, thus allowing the parties and movements that did not achieve it to continue to operate. The Election Law describes the participation of independent candidates and organizations including movements. There is no permanent register of political movements; they must re-register for each election.

For these elections, the requirements for the registration of candidate lists were non-onerous. The 2007 Statute allowed for the participation of citizens' movements, political movements, and political parties (including previously established parties) with the only requirement being to collect signatures from 1% of the registered voters in the respective constituency<sup>131</sup>. These signatures had to be presented in both paper and electronic form, and the data gathered had to correspond in each. The lists had to alternate between men and women, with 50% of each gender represented. The inclusiveness of the registration system<sup>132</sup> allowed 3,224 candidates representing 497 registered lists at the provincial, national and out of country levels.

The lists were given until three days before the deadline for the registration to verify with the TSE that they had met the requirements. According to the Regulation on the Registration of Lists and Candidates, the TSE and the TPEs had to verify randomly at least 5% of the submitted signatures per list by cross-checking that the names and ID

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<sup>127</sup> Art. 98 of the Constitution.

<sup>128</sup> Articles 10 and 12 of the Law on Political Parties.

<sup>129</sup> Art. 35 c of the Law on Political Parties.

<sup>130</sup> Articles 15 and 16 of the Law on Political Parties.

<sup>131</sup> Art. 13 of the 2007 Statute.

<sup>132</sup> For details, see part on “*Registration of Candidates and Party Lists*” .

numbers of the undersigned were real and included in the voter register. The TSE did not publicly disclose details regarding how it carried out the verification.

In order to run, candidates had to be Ecuadorians by birth, over 20 years old and in possession of their political rights. Provincial candidates had to certify that they were born in or residents of the province for the past three years prior to the Election Day. Candidates running for overseas constituencies had to be registered in the relevant Ecuadorian consulate. They also had to accredit officially that they resided in the relevant overseas constituency during the two years prior to the Election Day.

### ***B. COMPLAINTS RELATED TO CANDIDATES REGISTRATION***

Given the high number of lists and candidates, the total number of 65 complaints and appeals that have been lodged before the TSE and the TC concerning the registration of candidatures and lists is rather low.<sup>133</sup> Most decisions (49) taken by the TSE have been related to appeals regarding the registration of candidatures and lists by TPEs. Most of these cases concerned the fulfilment of the minimum required signatures needed to register.<sup>134</sup> The TSE resolved favourably in 7 cases. In the other 42 cases, the denial of registration was upheld, as the lists were not able to prove that they had submitted the required number of signatures. 10 cases were decided by the TC on the denial of registration of national lists by the TSE. The TC decided twice in favour of the lists, with the denial of registration being upheld in the remaining 8 cases. In addition, a total of 6 legal challenges against candidatures were lodged before the TSE and rejected for not complying with the time limits established in the law, because the challenging person had no legal standing, or because the case was ill-founded. In general, complaints were handled in a competent and efficient manner.

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<sup>133</sup> In 3 cases (2 in Guayas, 1 in Pichincha) were not proceeded by the TPEs because they were presented out of time.

<sup>134</sup> Art.13 of the 2007 Statute establishes a minimum of 1% of the registered voters in the respective constituency as registration requirement.

## FINANCING OF POLITICAL PARTIES AND CAMPAIGN FINANCING

The Constitution provides, in Articles 98 and 114, for equal rights and treatment of political parties with respect to their activities. The Law on Political Parties<sup>135</sup> provides detailed rules for the public and private financing of political parties.

Public financing is provided in order to fund the political parties' permanent activities.<sup>136</sup> Additionally, political parties enjoy indirect public financing in the form of access to media (*franjas*), property tax concessions and an exemption on income tax on financial activities. The distribution of public funding for permanent activities is designed to protect the development of small political parties by distributing 60 per cent of the public funding on an equal basis among all political parties and movements that obtained more than 0.04% of the votes in the last parliamentary elections. The remaining 40% is distributed according to the strength of a party on the basis of the share of votes obtained in the previous parliamentary elections. Therefore, for the 2006 parliamentary elections, PRIAN received \$803,026.97; PSC \$528,812.84; PSP \$522,174.49; PRE \$238,830.62; ID \$191,907.46; UDC \$161,817.17; MPD \$137,357.78 and PS-FA \$134,042.67 for the funding of permanent activities.

The Electoral Law and the Law Governing Expenditures and Electoral Publicity regulate the private funding of political parties and limit parties to contributions of the members, contributions of supporters, donations, self-financing and income from investments. The legislation also establishes limits for the private contributions to the political parties.<sup>137</sup> In 2001, Congress gave TSE the authority to enforce regulations adopted by the elections administration relating to financing of political parties. The law required that each political party present an annual report, recording the source and amount of expenses incurred during the previous year as well as the expenditure. In the case of infractions, the TSE can impose sanctions that include fines, and a reduction or total withdrawal of public funds. In the event that a candidate has won an election, the candidate can be retroactively removed from his post, lose his political rights and, in serious cases, be tried by the Solicitor General.

### *Campaign Financing*

In an election year, political parties receive a variable amount according to the annual State Budget and which is distributed according to the strength of a party on the basis of the share of votes it obtained in the elections of Congressmen during the previous national elections. Political movements do not receive public financing.

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<sup>135</sup> Articles 57-62 of the Law of Political Parties.

<sup>136</sup> This amount is determined once a year according to a formula established by law, considering the voting patterns of the last elections.

<sup>137</sup> The law forbids contributions from persons or companies who maintain business contract with the State or foreign governments. In addition contributions from drug trafficking or any other illicit activities are illegal. Civil Servants, functionaries or public employees may not use state resources.

The Law Governing Expenditures and Electoral Publicity limits campaign spending both by an overall ceiling per party and per candidate for the different elections according to the number of registered voters in each constituency. For the 2007 assembly elections, the spending limit for a national candidate was fixed at \$2,795,637. For a provincial candidate in Guayas, the limit was approximately \$720,748; in Pichincha the amount was \$541,136, and for an overseas candidate in Europe the amount was \$35,418. In general, the expenditure limits as provided for in the Election Law are high and give ample possibility for campaigning.

By law, political parties have to disclose their financing of the campaign within 90 days of the end of the Election Day. This information will not be public until it is examined by the TSE's Unit for Campaign Expenditure which then produces a report that must be approved by the TSE. Nevertheless, the details of the campaign expenditures do not become public. A natural weakness in the election process is that expenditure during the pre-campaign period is obviously unregulated. However, for this election, the TSE responded to this shortcoming by considering expenditure during this period to be part of the campaign activities of political parties and movements. The TSE's Unit for Campaign Expenditure has adequately audited the expenses of the 2006 campaign. However, the TSE plenary has not always followed the recommendations made by the Unit for Campaign Expenditure.

## ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

### A. OVERVIEW OF THE ELECTION CAMPAIGN

The electoral campaign is regulated by the Election Law<sup>138</sup>, the Law Governing Expenditures and Electoral Publicity, the 2007 Statute<sup>139</sup> and by the TSE's relevant resolutions. These norms establish the general rules governing the campaign: For instance, the campaign period is limited to 45 days. Likewise, issues such as the ceiling of campaign expenditure, the establishment of a state sponsored publicity scheme in the media, the prohibition of privately funded publicity spots, as well as the use of public funds during the election campaign are regulated. The institutions responsible for monitoring possible violations of campaign regulations are the TSE and the TPEs in their respective areas of responsibility.

The campaign was generally low-key, calm and free of violence. It was largely held in the media or through “*caravanas*”<sup>140</sup> and door-to-door visits where candidates could meet voters and distribute leaflets. Very few rallies were held. Freedom of expression and assembly were widely respected. The political landscape was marked on the one hand by a generally fragmented opposition and on the other hand by the dominating presence of the President. Most of the campaign focused on issues with little connection to the objectives of the Constituent Assembly.

The majority of the political parties instructed their voters to vote for the whole list (“*en plancha*”) even if a strategic use of the vote (for instance, “all from the list but one”) would have resulted in a better score due to the way the *exact average weight factor* operates. In other words, most parties and movements preferred to send clear and simple instructions to their voters rather than trying to take advantage of a strategic voting pattern.

The activities of the government, and particularly those of the President, dominated the campaign. Throughout the campaign period, political contenders complained about the President's involvement. In particular, many political parties and movements objected to the President's presence in MPAIS publicity, arguing that he was not a candidate for the election. The EU EOM considers that the President supporting his candidates and his movement was justified by the fact that Rafael Correa is also the leader of MPAIS.

The case is different when the President was acting in his official capacity as was the case during his numerous trips within the country. Rafael Correa used the travelling cabinet (“*Gabinete itinerante*”) to promote and launch government activities, distribute welfare vouchers, and inaugurate public works; these occasions provided an opportunity

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<sup>138</sup> Art. 138 of the Election Law.

<sup>139</sup> Art. 17 of the 2007 Statute.

<sup>140</sup> Motorcades.

for campaign events in favour of *MPAIS*<sup>141</sup>. Both the President and the Vice-President were accused of taking advantage of their trips abroad to promote their movement in areas with large concentrations of Ecuadorian ex-pats<sup>142</sup>. There was a blurring between the role of the President in his official capacity and his supporting and promoting *MPAIS*. The presence of President Correa in *MPAIS* publicity and campaign related events can not be questioned since he is the leader of *Movimiento País*. However, the inappropriate use of public resources and of official acts raised questions concerning legality and the balance of the playing field. In addition, official government publicity used themes and slogans reflecting *MPAIS* publicity<sup>143</sup>. Other allegations of inappropriate use of state resources were made by some political parties and movements. EU observers witnessed cases of involvement of members of state and local administration in the campaign<sup>144</sup>. Furthermore, the mission received reports and also observed the use of social programmes for campaigning in favour of *MPAIS*<sup>145</sup>. The EU EOM believes that state activities and public administration acts should not be used as partisan platforms during the campaign. The TSE should have taken a clearer stance in dealing with these matters in line with the relevant legal framework.

## **B. COMPLAINTS RELATED TO THE CAMPAIGN PERIOD**

The 2007 Statute as well as the Law Governing Expenditures and Electoral Publicity regulate the sanctions for violations of campaign regulations.<sup>146</sup> The 2007 Statute establishes the disqualification of candidatures as a sanction in case of privately funded publicity spots in the media or illicit donations or gifts in contravention of Article 18 of the 2007 Statute<sup>147</sup>. The Law Governing Expenditures and Electoral Publicity, in cases of transgression of the campaign expenditure ceiling, establishes the possibility to fine

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<sup>141</sup> EU EOM Long Term Observers (LTOs) observed such campaign meetings of the President while in his official capacity in Los Rios on 15/09, in Orellana on 18/09, in La Libertad (Guayas) on 12/09, en Daule (Guayas) on 13/09, in Morona Santiago on 17/09. The same activities were promoted by the vice-president, Lenin Moreno for instance in Tena (Napo) on 11/09.

<sup>142</sup> Rafael Correa's official trip to the USA included only places with the higher number of voters: New Jersey, Miami and New York. In New York, he also participated to the UN General Assembly. Similarly, Lenin Moreno's trip to Europe focused on cities with the higher representation of Ecuadorians immigrants: Murcia, Madrid, Barcelona in Spain, and Milan in Italy.

<sup>143</sup> As an example, while the government slogan is "The country now belongs to everyone" (*La patria ya es de todos*), Rafael Correa's slogan in the Presidential campaign was "The country belongs to everyone" (*La patria es de todos*) and "Go ahead motherland" (*Dale Patria*); for these elections, some of *MPAIS* slogan were "Go ahead motherland, the Assembly is country" (*Dale patria: la Asamblea ya es País*) or "Go ahead motherland, it is already ours" (*Dale Patria, ya es de todos*).

<sup>144</sup> *Jefes politicos* and *tenientes politicos* and mayors.

<sup>145</sup> In Pastaza, LTOs noticed the presence of *MPAIS* propaganda during the daily distribution of the social welfare bonus at the local branch of the Ministry of Social Welfare.

<sup>146</sup> See for instance Art. 19 of the 2007 Statute; Articles 33 and 36 of the Law Governing Expenditures and Electoral Publicity. A sanction with respect to campaigning on e-day is foreseen in Article 160 of the Election Law: campaigning within the Polling centre is prohibited on Election Day and sanctioned with a fine and imprisonment of 2 to 15 days.

<sup>147</sup> See "Other Applicable Legislation" section

the candidate/list in question<sup>148</sup>. The TSE and the TPEs in their respective jurisdiction are competent to deal with complaints regarding campaign regulations.

The TSE reviewed a series of cases (as of 3 November, 21 in total) with respect to campaigning outside the designated period as well as in relation to violations of the 2006 Presidential election campaign expenditure provisions by candidates of national lists<sup>149</sup>. 14 cases were resolved in favour of the candidates, with their candidature being confirmed immediately before the election.<sup>150</sup> One case was pending on e-day.<sup>151</sup> After e-day 7 more files were opened due to the introduction of new evidence of violations of campaign regulations<sup>152</sup>. According to the interpretation given to the respective provisions of the 2007 Statute<sup>153</sup> by the President of the Commission of the TSE, the legal possibility exists that elected members of the Constituent Assembly may still be disqualified for violations of campaign regulations. Although legally possible, it is very unlikely that candidates will be disqualified<sup>154</sup>. Furthermore, the TSE also dealt with cases regarding the violation of campaign regulations where the TPE had declined jurisdiction because the alleged violation had been committed by a national list<sup>155</sup>.

At the level of the TPEs (*e.g.* Pichincha, Guayas, Tungurahua, Loja, Chimborazo), a number of cases were opened for violations of the campaign regulations of the 2007 Statute (for example failure to respect the campaign period, privately funded publicity in the media). While some cases were still pending on e-day,<sup>156</sup> only very few resulted in effective sanctions, such as in Chimborazo or Cotopaxi, where candidates were effectively disqualified. An appeal against the disqualification was lodged in the Cotopaxi case, with the disqualification being upheld by the TSE.

Cases of transgression of the campaign expenditure ceiling will be dealt with by the TSE (and the TPEs in their respective jurisdiction) after the elections, as the law establishes a timeline of 90 days counted from Election Day to report on the campaign expenditure incurred.<sup>157</sup>

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<sup>148</sup> Art. 36 of the Law Governing Expenditures and Electoral Publicity.

<sup>149</sup> Although these last cases applied to the previous election, they could still have implications for the candidacy for the Constituent Assembly elections.

<sup>150</sup> The most controversial was the case of Humberto Mata, candidate for the list 152, MFE. The Legal Commission of the TSE prepared a report recommending the disqualification of his candidature because of the seriousness of his violation of the prohibition of private campaign financing in the media. The Plenary of the TSE, however, decided against it: a disqualification of a candidate immediately before the election was considered as too problematic.

<sup>151</sup> The case against Ximena Bohorquez, candidate for list 27 (MHON) remained pending because new evidence was presented immediately before e-day.

<sup>152</sup> 5 cases concerned lists from abroad, 2 concerned a national list. (Information provided by the Legal Commission of the TSE.)

<sup>153</sup> Articles 18, 19 of the 2007 Statute.

<sup>154</sup> See interviews with various members of the TSE as well as of the TPEs. All members stated that they were not willing to disqualify elected members of the Assembly.

<sup>155</sup> For instance, there were two cases in Loja.

<sup>156</sup> Cases remained pending, for instance, before the TPEs in Pichincha and Guayas.

<sup>157</sup> Art.29 of the Law Governing Expenditures and Electoral Publicity.



The TSE also had to resolve on the case of Quinto Pazmiño, candidate in the Province of Manabí for the list 251, who had been imprisoned under the accusation of threatening and insulting (*injurias*) the President. The TSE resolved that according to the Election Law Pazmiño, as a candidate, should have been judged by the Supreme Court and not by a normal judge. However, the TSE declined Pazmiño's demand to destitute the prosecutor and the judge for not respecting this right. Pazmiño was released from prison one day before the elections<sup>158</sup>.

### C. VOTER EDUCATION

The legal framework defining the obligations of the TSE with regards to voter education complies with international standards<sup>159</sup>.

The TSE organized a voter education campaign between 7 and 29 September 2007 on a national, provincial, and, for the first time, out of country level. The campaign included TV and radio spots, ads in the print media as well as hand-outs and leaflets and was divided into 2 phases: an incentive campaign with a key message in Spanish, Quichua and Braille centred on the date of the election and the right to vote, followed by an informative voter education campaign centred on 6 key messages: 1) How to vote validly 2) Right to assisted vote for disabled and senior citizens 3) Requisites to exercise the right to vote 4) Motivation campaign for members of polling stations 5) Information about the counting process.

The TSE decentralized voter information centres throughout all provinces as of 15 September with information on where and how to vote, samples of the ballots and information about the voter register. The voter education campaign was focused on how to mark the ballot correctly but did not explain what would be an invalid vote. This was particularly relevant since the rules for marking ballots changed for these elections with respect to previous elections.

Given the complexity of the election process, the EU EOM was concerned about the lack of knowledge the electorate had regarding key issues of the Constituent Assembly, general voting procedures and changes regarding how to mark a vote for the whole list as compared to previous elections. The EU EOM suggested that the TSE clarify doubts about what would be considered an invalid vote. As a result<sup>160</sup>, the TSE disseminated printed information one day before the elections.

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<sup>158</sup> At the time of this report, his case was being heard by the Supreme Court.

<sup>159</sup> Declaration on Criteria for free and fair elections, art 4.1: "*States should take the necessary legislative steps and other measures to guarantee the rights for periodic and genuine, free and fair elections in accordance with their law. In particular, States should...initiate or facilitate national programmes of civic education to ensure that the population is familiar with election procedures and issues...*" Inter-Parliamentary Council, 26.3.1994. And Human Rights Committee, General Comment to Art. 25 CCPR, par. 11: "*...Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.*"

<sup>160</sup> TSE letter to the EU EOM on 28 September.

The EU EOM acknowledges the TSE's efforts, but considers that the TSE voter education campaign should have been implemented sooner at provincial level. Furthermore, a more decentralized campaign, adapted to socio-economic, educational and demographic specificities would have been relevant, especially for those provinces with large minority and rural populations<sup>161</sup>.

Civil society played an important role in informing the electorate about different aspects of the electoral process. The NGO *Participación Ciudadana* also conducted a parallel information campaign about how to vote responsibly ("*El voto responsable*"). The Catholic University of Ecuador, youth movements (*Juventudes en Acción*), student federations of various universities (Azuay), the National Federation for Disabled and the TV station TELEAMAZONAS in partnership with the provincial tribunals of Pichincha, Azuay and Carchi implemented an information campaign about the right of disabled individuals to vote ("*Tienen derecho a votar*") launched one week before election day. The campaign was carried out by a network of student volunteers and taxis (*taxi solidario*) with the aim of facilitating information for the disabled and to offer them transport to the polling stations on E-day.

In terms of the contents of the election process and key issues of the Constituent Assembly, the Ecuadorian media outlets have filled an informative gap and have acted as precursors and main suppliers of voter information. The media has disseminated essential information about key contenders, programs of the competing parties and movements, constitutional issues and voting procedures<sup>162</sup>.

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<sup>161</sup> For more information on voter education specifically regarding women, indigenous and Afro-Ecuadorians, see "*Participation of Women in the Electoral Process*" and "*Participation of Indigenous and Afro-Ecuadorian Peoples*"

<sup>162</sup> Almost all radio and TV stations emphasized political debates and had special features on the elections. It is interesting to note that of all the television channels monitored by the EU EOM, Telecentro (6,933 sec. on air dedicated to voter information) followed by Teleamazonas (4,827), Ecuavisa (4,643), Telerama (1,340) and Gamavisión (1,280) were those that offered the highest amount of editorial information to voters, with special features on the elections, news programmes and their own TV spots.

## MEDIA AND ELECTIONS

### A. MEDIA LANDSCAPE

Ecuador has a very diverse media landscape with seven national television channels, numerous daily newspapers at the national and the provincial level and more than thousand radio stations<sup>163</sup> all over the country. Ecuador does not have any state run media outlets. Ecuadorian media outlets are privately owned and generally respond to the editorial line established by the business conglomerates to which they belong.

In the last twenty years television has replaced radio as the most extensive form of media chosen by Ecuadorians for purpose of entertainment and information. Television is analogical, transmitted by free satellite service or through paid cable. Ecuador's domestic television channels include Ecuavisa, Gamavisión, Telerama, Telecentro, Telemazonas, RTS and Canal Uno.

The state has so far distributed 882 FM frequency concessions and 314 AM concessions<sup>164</sup>. Religious groups, trade unions and political figures are often the owners of these stations.

By order of the government, television and radio stations must air the “compulsory government address” (*cadena nacional*) which traditionally is broadcasted once a week (Mondays) for usually less than ten minutes. The “*cadena nacional*” reports on government activities, including public works, cabinet meetings and short interviews with the President.

The principal newspapers are *El Comercio* (Quito), *El Universo* (Guayaquil), *Hoy* (Quito), *Expreso* (Guayaquil), *La Hora* (Quito) and *El Mercurio* (Cuenca). The tabloid *Extra* has the largest circulation (180,000 daily copies from Tuesday to Saturday and 220,000 on Sunday and Monday).

The media has carried out its informative task within the framework of the freedom of expression guaranteed by the Constitution and the Ecuadorian laws which conform to international standards.

Since taking power in January 2007, President Rafael Correa has maintained a tense relationship with the media, which he accuses of protecting the financial interests of the economic elite. In the spring of 2007, President Correa sued the director of the newspaper *La Hora* for defamation and libel. This suit came as a reaction to an editorial published on the 7<sup>th</sup> of March which accused the President of governing through

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<sup>163</sup> VILLARRUEL ACOSTA, Marco A. (2006), Los grupos monopólicos de comunicación en el Ecuador (Ecuador's communication monopoly groups). *Textos y Contextos*. Año IV (5), pages 5-38. Facultad de Comunicación Social. Universidad Central de Ecuador.

<sup>164</sup> VILLAVICENCIO Fernando (2007), *La feria de las frecuencias de radio y televisión en Ecuador (The fair of the frequencies of radio and television in Ecuador)*. Centro de Medios Independientes de Ecuador.

“uproars, rocks and sticks”. The media has made itself one of the principal critical voices of President Correa and his project to bring about a Constituent Assembly.

## ***B. LEGAL FRAMEWORK FOR THE MEDIA AND ELECTIONS***

The legal framework concerning media activities is generally in line with international standards. The 1998 Constitution guarantees the right to access, receive and impart information, as well as the right to establish media.<sup>165</sup> The standards for television and broadcasting are contained in the Law of Broadcasting and Television of 1996. Furthermore, the work of journalists is regulated by the 1975 Law on the Professional Exercise of Journalism. Regarding non-binding rules, the National Federation of Ecuadorian Journalists adopted a code of conduct for journalists, which stipulates a commitment to maintain qualitative standards.

For the first time in Ecuador’s history, the 2007 Statute introduces for these elections an equitable publicity scheme for publicity spots in the media (*franjas*<sup>166</sup>), prohibiting all other forms of privately funded political publicity in the media. Political parties and Movements have in general welcomed this initiative which has allowed those with limited resources to have a presence in the different media outlets. At the same time, others complained that the prohibition on privately financed publicity infringes on their freedom of expression. Due to the newness of the system, those features of the *franjas* system not covered by the 2007 Statute are detailed in *ad hoc* regulations passed by the TSE.<sup>167</sup>

The control of compliance with broadcast and television rules in general was managed by the Superintendent of Telecommunications. On the other hand, the technical implementation of the *franjas* system was supervised by the TSE’s Unit for Campaign Expenditure and Publicity (UCEP) and the respective UCEPs at the provincial levels<sup>168</sup>; the TSE and the TPEs were responsible for imposing any sanctions merited by a violation of the Statute or the regulations.

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<sup>165</sup> Art.23 paras 9 and 10; Art. 81 of the Ecuadorian Constitution.

<sup>166</sup> In this way, Art. 18 of the 2007 Statute states that “The Supreme Electoral Tribunal will finance the publicity campaign in the print media, in radio and television media as well as the billboards for each of the electoral lists for the Constituent Assembly...”. For details see below, “Monitoring of Media coverage of the Elections” section.

<sup>167</sup> TSE Resolution, TSE Regulation for the diffusion of electoral publicity spots (*franjas*) of the lists running for the elections to the Constituent Assembly, PLE-TSE-3-12-6-2007, 12 June 2007; TSE Resolution, Technical Instructive for the handling of electoral publicity spots, PLE-TSE-4-12-6-2007, 13 June 2007.

<sup>168</sup> For details, see “Monitoring of Media coverage of the Elections” section.

### **C. MONITORING OF MEDIA COVERAGE OF THE ELECTIONS**

#### **Media monitoring results<sup>169</sup>**

The EU EOM has undertaken monitoring of 16 Ecuadorian media outlets from the 6<sup>th</sup> to the 26<sup>th</sup> of September (the end of the electoral campaign) with the objective of evaluating the coverage of the electoral campaign and the fulfillment of the *franjas* obligations and the election rules by the media outlets. The sample included five television channels (*Ecuavisa*, *Gamavisión*, *Telerama*, *Telecentro* and *Teleamazonas*), five radio stations (*Radio Quito*, *Sonorama*, *Radio La Luna*, *CRE Satelital* y *Radio Caravana*) and six newspapers (*El Comercio*, *El Universo*, *Expreso*, *La Hora*, *Hoy* y *El Mercurio*). The media outlets analyzed were chosen after taking into account criteria such as audience, geographic coverage, circulation (for the print media) and ratings. The electronic media was only analyzed during prime time<sup>170</sup>.

Radio, television and print media have given broad coverage to the Constituency Assembly issues and the electoral process. During the period analysed by the EU EOM, radio devoted an average of 40 minutes per day to these issues and television channels 32 minutes. Regarding print media, the newspapers allocated up to 26% of the political information to the Constituency Assembly and the electoral process. Almost all media coverage related to these issues tended to be neutral, although some media were rather critical, dealing with the Constituent Assembly elections as if they were a personal project of President Correa<sup>171</sup>.

#### **Publicity franjas**

The distribution of publicity *franjas* was established according to the results of the 3<sup>rd</sup> of August lottery undertaken by the TSE and the TPEs. The media outlets chosen at the national and provincial levels were proposed by the publicity agencies that won the contests to administer the *franjas*<sup>172</sup>. 65 television channels (14 national, 49 provincial

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<sup>169</sup> The graphs with the detailed statistical information are included in the Annex 5.

<sup>170</sup> The timetable observed was as follows. On television: *Ecuavisa* (Monday to Friday, from 5.45 to 8.00 and from 18.00 to 21.00; Sunday from 9.00 to 12.00 and from 19.00 to 21.30), *Gamavisión* (Monday to Friday, from 6.00 to 8.00, from 12.30 to 13.00 and from 18.00 to 20.30; Saturday from 23.00 to 24.00), *Telerama* (Monday to Friday, from 7.00 to 8.30, from 12.30 to 14.00 and from 19.00 to 20.00; Saturday from 7.00 to 8.00 and Sunday from 7.00 to 8.00 and from 19.00 to 20.00), *Telecentro* (Monday to Friday from 6.00 to 8.00, from 12.30 to 13.30, from 19.00 to 20.20 and from 22.30 to 23.00; Sunday from 15.00 to 17.00, from 19.00 to 20.00 and from 22.30 to 23.30) and *Teleamazonas* (Monday to Friday from 6.00 to 8.00, from 19.45 to 20.45 and from 22.00 to 24.00; Saturday from 21.30 to 22.00 and Sunday from 8.30 to 11.00). On radio: *Radio Quito* (Monday to Friday from 6.00 to 9.00 and Saturday from 8.00 to 9.00), *Sonorama* (Monday to Friday from 6.00 to 9.30 and Sunday from 8.00 to 11.30), *Radio La Luna* (Monday to Sunday from 5.45 to 9.30), *CRE Satelital* (Monday to Friday from 6.00 to 9.00 and from 11.00 to 13.00; Saturday and Sunday from 6.00 to 9.00) and *Radio Caravana* (Monday to Friday from 5.00 to 8.30, from 12.00 to 13.00 and from 17.00 to 18.00).

<sup>171</sup> *Radio Quito*, for example, gave up to 31% of its relevant information to this type of critical line,

<sup>172</sup> For television *Agencia Qualitat*, for radio *El J Publicidad* and for print media and billboards, *Publpoint*.

and 2 international), 288 radio stations, 53 newspapers and 2 magazines were contracted to print or broadcast *franjas*.

Accordingly, the budget of the state funded publicity scheme (30 million dollars) was to be distributed in the following way: 50% in television, 35% on the radio, 10% in the written press and 5% in billboards. The distribution of the different lists' publicity spots (*franjas*) was decided by means of a lottery.<sup>173</sup>

Besides radio, television and newspaper ads, the TSE rented 292 billboards and 494 signs throughout the country. Nevertheless, the TSE recognized certain inconveniences in obtaining billboard in various provinces in the Amazon region, in which case it installed signs<sup>174</sup>.

The EU EOM's monitoring undertaken from 6:00 to 23:00 demonstrated unbalanced treatment of the *franjas* of the different lists (See Annex 5). On television, the *Movimiento Fuerza Ecuador*, *Partido Libertad* and *Alianza Izquierda Democrática-Poder Ciudadano franjas* were broadcasted twice as much as those of *Alianza Partido Socialista Pachacutik* and *UDC*. A similar pattern was observed in the radio stations, where the commercials for *PRIAN* and *Polo Democrático* were aired twice as much as the ads for *Alianza Partido Socialista Pachacutik* or those of *Lista 23-C4*. The analysis of the print media reveals that the ads for *PRIAN* and *PSP* appeared three times as often as *Alianza Partido Socialista-Pachacutik* and *Lista 23-C4*.

The publicity spots appeared during the TSE's determined preferential time (from 6.00 to 23.00) and followed the stipulated time limit for radio (27 seconds) and television (30 seconds), although the EU EOM monitoring did register some exceptions. Such was the case with two 80 second *Lista 35-MPAIS* ads aired on *Radio La Luna*<sup>175</sup>.

With regards to the print media, the ads always appeared on preferential pages as was indicated by the rules of the *franjas* and occupied a quarter of the page. The ads generally appeared from Monday to Friday; despite official instructions including Saturday as well. The analysis of the print media reveals that the ads for *PRIAN* and *PSP* appeared three times as often as those for *Alianza Partido Socialista-Pachacutik* and *Lista 23-C4*.

In general, the EU EOM assesses the *franjas* system as a positive initiative as it allowed for smaller parties and movements with limited resources to have a presence in the different media outlets. The system was hampered, however, by problems regarding its implementation. For example, the *franjas* system generated criticism from different political figures that declaring it complex and lacking transparency with regards to the awarding of publicity space and the verification of the ad frequency.

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<sup>173</sup> The TSE distributed between the national parties and movements the publicity spots in the different media outlets according to coverage, rating and audience size. The TPEs performed the same function for candidates at the provincial level.

<sup>174</sup> According to the official TSE report concerning the fulfilment of the publicity *franjas* printed in *El Universo* on 28th September.

<sup>175</sup> During the 12th and 14th September broadcast.

The implementation problems may partly be explained by the newness of the system, the difficulty to create genuine equality of air time due to the multitude of candidates, and the TSE's centralized execution. The EU EOM listened also to criticism from the TPEs against the centralized scheme that was followed. Furthermore, the effectiveness of the monitoring undertaken by the company *Datamillennium* was hindered by irregularities in which the company failed to comply with its contractual obligations.<sup>176</sup>

### ***Editorial content***

The print media and the television stations reacted in large part with scepticism to the process of the Constituent Assembly elections, and criticized President Correa's role in the campaign. Specifically, the print media gave a large amount of space to the elections (11%), with most of the coverage being negative in tone. 28 % of radio and television's tone was critical as well. In news broadcasts, interviews, debates and opinion pieces about the electoral process totalled 8% of air time on the analyzed television stations and the tone was generally neutral.

As regards time allocated to news, interviews, debates and opinion, television focused as much attention to Government activities and *Lista 35-MPAIS* (20%) as to the three main political parties combined: *Lista 6-PSC* (8%), *Lista 7-PRIAN* (8%) and *Lista 3-PSP* (5%). *Teleamazonas* and *Telecentro* were more critical towards Correa's cabinet, while *Gamavisión*, *Telerama* and *Ecuavisa* reported in a more neutral manner. Radio stations gave more air time to Correa's cabinet and *Lista 35-MPAIS* (22%) as compared to *Lista 6-PSC* (8%), *Lista 7-PRIAN* and *Lista 3-PSP* (4% each). In general, radio reporting was neutral on political events. Radio Quito took a more critical stand towards government activities.

Next to the coverage of the electoral process, the activities of the government, the TSE, and three opposition parties (PSC, PRIAN and PSP) attracted most of the media attention in monitored outlets. The written press treated the government in a more critical way, as compared to the audiovisual media. ; 63% of their information had a critical tone towards the activities of the president. *El Universo*, *Hoy* and *Expreso* appeared to be the most dissenting newspapers.

The television channels which were monitored by the EU EOM gave the three above parties more than 20% of air time; their tone was mostly neutral (85%). The Government and *Lista 35-MPAIS*<sup>177</sup> received 14% of the total coverage (neutral tone in 58.5% and negative tone in 40% of the total time). In terms of the radio stations analyzed, the three main opposition parties had coverage of 15.4% (51% neutral and 31% positive tone) whereas the government and *Lista 35-MPAIS* had a higher coverage

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<sup>176</sup> The reports dated 16th and 24th August of the UCPE given to the plenary of the TSE show irregularities and faults in the monitoring services of the company. *Datamillennium* maintained a contractual relationship with the TSE in order to monitor the October 2006 presidential elections which resulted in negative reports due to failure to fulfil the contract.

<sup>177</sup> Excluding the national channel which increases the air time dedicated to the government by 34%. It is worth mentioning that the EU EOM monitoring recorded the airing of the compulsory government address (*cadena nacional*) on television at prime time (20.00) on the 24th, 25th and 26th September (three days before E-Day) lasting 6, 11 and 13 minutes respectively.

(22%); as regards the tone in radio broadcasts, this one was generally balanced (85%). For their part, the newspapers have dedicated more space to the executive and the Lista 35-MPAIS (19%) than the lists 6-PSC, 7-PRIAN and 3-PSP combined (aggregate 6%).



## PARTICIPATION OF WOMEN IN THE ELECTORAL PROCESS

There are no legal barriers to women's equal political participation. To the contrary: Ecuador has ratified the 1979 CEDAW and the 1998 Ecuadorian Constitution provides for the equal participation of women and men as candidates in electoral processes.<sup>178</sup> The 2000 Election Law reiterates the equal right of women to vote and to stand for elections<sup>179</sup>; at least 50% of the candidates proposed per list have to be women<sup>180</sup> who, in addition, have to be placed in alternate order with men.<sup>181</sup> Giving effect to this legal provision, in May 2007, the TSE introduced a so called zipper system and imposed an alternate placement of women and men on the lists.<sup>182</sup> However, in the six provinces<sup>183</sup> where the number of seats are odd (electing three or five congressmen), political parties chose to fill the list with more men than women.

The passive registration system facilitated women's participation in elections. Slightly more women than men were registered for these elections<sup>184</sup>. 51.33% of the voters for the National list were women. The EU EOM commends the TSE for disaggregating the information regarding voter registration and turnout by gender, which allows for the assessment of the level of women's participation as voters. Men and women vote in different Polling Stations.

Ecuador is highly rated in terms of female representation by the Inter-Parliamentary Union ranking of parliaments (25% in the Congress)<sup>185</sup>. For these elections, 45 women were elected out of 130 representatives, corresponding to 36.41% of the total number of seats. Open lists systems are generally not favourable to women. However, in Ecuador, two features positively influenced the outcome of the election for female candidates. Firstly, the above-mentioned zipper quota, and, secondly, the fact that 58.9% of voters voted for the whole list<sup>186</sup>. However, in only two out of seven provinces electing 2 seats, where a different electoral system operated, a woman was elected (See Annex 7).

Political parties told the EU EOM that they often found it difficult to find the required 50% women candidates. Only 14% of the lists have chosen women as head of their list. The regions with more female as head of list are respectively the coast and the "Oriente" (i.e. Amazon region) (See Annex 6). Of the national lists, only two out of the

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<sup>178</sup> Art. 102 of the Ecuadorian Constitution.

<sup>179</sup> Art. 8 of the Election Law.

<sup>180</sup> In fact, the 2000 law establishes a minimum quota of 30% which has to increase by 5 % for each voter process until reaching equal representation. For this election this signifies 50% must be women.

<sup>181</sup> Art. 58 of the Election Law.

<sup>182</sup> TSE Resolution, PLE-TSE-7-23-5-2007, 23 May 2007.

<sup>183</sup> Azuay, Bolívar, Cañar, Carchi, Imbabura and Los Ríos.

<sup>184</sup> 4,728,943 women and 4,642,289 men. Source: TSE.

<sup>185</sup> Inter-Parliamentary Union, see <http://www.ipu.org/wmn-e/classif.htm>

<sup>186</sup> Figures respecting to the national vote for the national ballot. Source: TSE.

five women who headed lists were elected; they both represent new political movements (*See Annex 7*).

While women's groups and lobbying priorities had been successful in making sure that the zipper quota was implemented, very little was realized in order to provide women candidates with the skills necessary to organize an effective campaign and to educate vulnerable women voters (in particular illiterate or rural women) on voting procedures. The higher level of blank (6.55%) and null ballots (10.38%) within the female electorate for the national list can be interpreted as an indicator of the need of more and better targeted voter education<sup>187</sup>.

The TSE did not provide voter education with a gender focus, as Art.170 of the Election Law prescribes. Besides isolated issues, the campaign did not show any particular focus on gender issues<sup>188</sup>.

While women represented over 50% of the election administration at the Polling Station level, they only represented 11 % of the TPE members and only one woman is a member of the TSE.

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<sup>187</sup> National statistics from the last census indicate that illiteracy is not equal among men and woman, as it is shared by 58% among women.

<sup>188</sup> On 7 and 8 June various women's organizations met in Riobamba under the auspices of the National Council of Women (CONAMU), in a "Women's Pre-Constituent Assembly" and agreed on a document "No step behind from the agreed and guaranteed rights in the 1998 Constitution"<sup>188</sup>. This document is meant to be introduced as a basis for discussion in the Constituent Assembly.

## PARTICIPATION OF INDIGENOUS AND AFRO-ECUADORIAN PEOPLES

There are 13 Nationalities and 14 Peoples of indigenous origin in Ecuador. In the 2001 census, 6.8% of the population identified itself as indigenous<sup>189</sup> and 5% per as Afro-descendant.

The Ecuadorian legal framework contains no legal barriers for the participation of indigenous and afro-Ecuadorian peoples.<sup>190</sup> Ecuador has ratified the 1966 CERD as well as the 1989 ILO Convention 169, with the latter providing for the free participation of the respective indigenous peoples in the elected institutions of their countries.<sup>191</sup> Ecuador has been an active promoter of the United Nations Declaration on the Rights of Indigenous People adopted by General Assembly on the 13<sup>th</sup> September 2007.

Article 1 of the Ecuadorian Constitution recognizes the pluri-cultural and multi-ethnic nature of the State. The Election law<sup>192</sup> requires for ethnically and culturally sensitive voter education. However, despite the general recognition of indigenous and afro-Ecuadorian peoples, no national legal provision provides for specific measures to increase the political participation of these peoples. No quota or affirmative action measures are foreseen by Ecuadorian laws.

### *Candidates and political representation*

Only one Afro-Ecuadorian, a woman, was the head of a national list, and no indigenous candidates headed any national list. There was no party claiming to represent specifically the afro-Ecuadorians or indigenous peoples. Even parties such as Pachakutik, which have traditionally had more indigenous representation in Congress, defined themselves as pluri-national and multi-cultural. The indigenous movements are currently going through a deep change with the way they relate to political parties representation; many indigenous leaders were representing different parties and movements.

### *Participation as voters*

In the context of Ecuador's geographical and communication challenges, numerous examples of under-registration in indigenous populated areas were reported by EU EOM observers<sup>193</sup>. The civil register uses mobile teams for the purpose of registering

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<sup>189</sup> Estimating the percentage of indigenous peoples is a complicated and debated task while self-identification produces the figure of 6.8%, indigenous groups state the percentage to be closer to 40%. Ayala Mora, Enrique "Ecuador: Patria de Todos" 2004.

<sup>190</sup> Art. 85 of the 1998 Constitution recognizes Afro-descendants as a people.

<sup>191</sup> Art. 6 of the ILO Convention 169.

<sup>192</sup> Art. 170 of the Election Law.

<sup>193</sup> Most significant example is in Morona Santiago province, where LONG TERM OBSERVERS (LTOS)s report data from the 2007 census of the province where 41.2% of the population is indigenous, Shuar in majority. From these 41.2%, between 30% - 40% are not registered, do not have an ID and

remote and non-sedentary populations. Mobile teams are however not sent on a systematic basis, but rather depend on the availability of funding and on the request of the Heads of the Parish<sup>194</sup> or the mayors. Regrettably, there is no coordination between the civil registry and the Council for the Development of Indigenous Nations and Peoples (CODENPE) on registering indigenous populations, whereas the CODENPE could provide the civil register with useful information.

The TSE generally did not provide voter education in native languages; this was partly done by local NGOs<sup>195</sup>. Campaign activities in indigenous languages were very rare<sup>196</sup>. Similarly, indigenous or afro-Ecuadorian issues and rights were not present in the campaign except within groups of candidates coming from these communities. Almost no training for Polling Station Committee members was provided in indigenous languages. On Election Day many EU EOM observers<sup>197</sup> reported that the Polling Stations were situated far away from the communities and required days of travelling for indigenous people to cast their vote. As mentioned before, absenteeism in some indigenous areas reached almost 40% of the electors<sup>198</sup>.

It was also reported that there was an insufficient representation of indigenous people in Polling Stations located within indigenous populated areas.<sup>199</sup> On a positive note, cases of discrimination against voters in the Polling Stations have not been reported by EU EOM observers.

From the upper levels of the election administration, only one TPE member defines himself as indigenous, and no member of the TSE is of indigenous origin.

The voting patterns in provinces with large indigenous populations tended to follow national trends and were mainly split between different parties.

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therefore do not appear on the VR. In Taisha, (the most inaccessible canton reachable only by air or river), 40% of the Shuar people are not registered; in this canton 98% of the population is Shuar. The population of Taisha is around 24,000 people, the voters registered are 6,935. Only around 3,000 usually cast their vote; the main reason for this is the distance they have to walk. The TPE member in charge of the canton is requesting to create new polling centres to avoid low turn out. Statistics provided by government officials in Morona Santiago Province.

<sup>194</sup> “*Jefe de Parroquia*” in Spanish.

<sup>195</sup> As reported by LTOs in Bolivar, Chimborazo, Napo, Pastaza provinces.

<sup>196</sup> Only one LTO team has actually seen a campaign activity in native language.

<sup>197</sup> Polling Centres in rural indigenous areas of Eastern Ecuador were located far from many communities. EU observers in Huamboya and Pablo VI cantons in Morona-Santiago province reported that voters had to walk for two days to reach their polling stations. Similar observations were reported in rural areas of Pichincha. In Morona-Santiago absenteeism reached 38.3% whereas the national average was 26.8%.

<sup>198</sup> This can have a negative impact on the turn out, as for example, in Morona Santiago results show the turnout was 61.7%, well below the national average (73.2%).

<sup>199</sup> In Bolivar, Sucumbíos, Imbabura, Morona Santiago and Cotopaxi, in most polling station committees no one could speak an indigenous language (i.e. was of indigenous origin).

## PARTICIPATION OF CIVIL SOCIETY

The Election Laws provides for an adequate framework to allow for the participation and accreditation of citizens to act as observers of the electoral process and allowed for levels of national independent observation that were a useful contribution towards the transparency of the electoral process. Although Ecuador has a healthy civil society throughout the country, only a few organizations engaged in activities related to the electoral process.

*Participación Ciudadana (PC)* organized a large-scale election observation project, including monitoring campaign spending and media coverage. PC also carried out wider work on state transparency and good governance. For the Constituent Assembly elections, PC deployed 800 volunteer observers, who worked on a mobile basis visiting a number of polling stations on Election Day. PC also carried out a Quick Count using official polling station results collected by 7,000 volunteers. The quick count carried out by PC was useful, particularly since it provided a reliable estimation of results the day after the E-Day, compensating for the lack of official information and delays in counting procedures. PC also played an important role in providing voter education initiatives, complementing TSE and media voter education activities

Other groups, including the Catholic University of Ecuador and the University of Cuenca, youth movements, indigenous-rights NGOs such as *Fundación Q'elkaj*, student federations of various universities and the National Federation for Disabled, launched voter education campaigns.

## ELECTION DAY: POLLING AND COUNTING

### A. OVERVIEW OF VOTING

On Election Day, the EU EOM deployed a total of 104 observers in all provinces, with the single exception of the Galapagos Islands. In total, the EU EOM observers visited 702 polling stations accounting for almost 2% of the total number of polling stations. Each team, which was made up of two observers, completed 47 Opening Forms, 608 Voting Forms and 47 Closing and Counting Forms. 21 TPEs were also observed during the early stages of tabulation.

EU observers rated the opening procedures as good or very good in 72%<sup>200</sup> of the visited polling stations. However, in the remaining 28%, procedures were considered as bad or very bad due to the absence of appointed staff in 40% of the observed polling stations and the late arrival of the designated members in the remaining ones. The missing staff was replaced in 83% of the cases by official substitutes, whereas in 17% of the cases, voters in the queue were taken as replacements<sup>201</sup>. Delays in starting at 07.00<sup>202</sup> were witnessed in 98% of the observed polling stations. However only 4% of polling stations opened after 08.00.

The Ecuadorian army delivered all election materials on time in 89% of the observed polling stations. In only one visited polling station ballot papers were missing. In 96% of the visited polling stations, observers reported that the role of the Army was not considered intrusive or obstructive.

Elections took place in a peaceful environment and with almost no violence<sup>203</sup>. In general, polling procedures were adequately followed and the EU observers rated the voting process as good or very good in 92% of the visited polling stations. This figure was significantly lower than the national average in Bolívar (72%), Chimborazo (73%), Tungurahua (80%) and Orellana (83%). On the contrary, in Pastaza, Cañar, Carchi, Cotopaxi, Imbabura, Los Ríos and Zamora Chinchipe, observers rated the process as good or very good in 100% of the visited polling stations.

In 21% of the visited Polling Stations, the layout of the premises did not favour the secrecy of vote. This percentage was significantly higher in Guayas province (43%) and

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<sup>200</sup> In Esmeraldas, however, opening procedures were rated as bad by the EU observers in 67% of the visited polling stations. All observed that polling stations during the opening in the province started late, as most of the polling station members were not aware of the procedures.

<sup>201</sup> Art. 32 and 33 of the Election Law provides for the replacement of missing polling staff by official substitutes or voters if the latter are not also present.

<sup>202</sup> The official polling time was from 07.00 to 17.00. The Election Law does not foresee extensions to the polling hours.

<sup>203</sup> In San Francisco del Cabo, Esmeraldas province, elections had to be suspended at 08.30 on Election Day as the master of the school where the polling stations were located set fire to the elections materials. The action was a protest against the lack of basic facilities and infrastructure in the village. A re-run took place on 7 October with no incidents.

Los Ríos (30%) due to the inadequate distribution of space. Observers reported overcrowded polling centres<sup>204</sup>, especially in Guayaquil and Quito, with polling stations located in corridors or very close to each other, with no adequate furniture and no room for privacy. Secrecy of voting was not well ensured, as the size of the booth did not match the large size of the ballot paper. Observers in Esmeraldas, Pichincha and Guayas witnessed polling booths facing outwards or at eyesight of the polling station members. Despite the inappropriate layout, the secrecy of vote was reported to have been respected in 90% of the visited polling stations<sup>205</sup>.

While the EU observers did not report active campaigning inside or outside the polling centres, election posters were seen outside the polling centres in 19% of the visits. In only 2% of the observed cases, polling centre coordinators ordered the removal of all campaign materials. Likewise, the fact that some relevant candidates (from *MPAIS País* in the majority of the cases) were accompanied to vote by cheering supporters has been perceived as indirect campaigning. These cases were reported in Esmeraldas (8% of the visited polling stations).

In 85% of the observed polling stations<sup>206</sup> there were no posters explaining the voting procedures, in spite of the TSE assurances to the EU EOM that there would be<sup>207</sup>. This might have contributed to a 9.71% of invalid ballots and 6.26% of blank ballots<sup>208</sup>. In 12% of the visited polling stations it was reported that the ballot box was not properly sealed<sup>209</sup>. While it seems that this was not done intentionally, it showed a lack of proper understanding of the election procedures.

EU observers reported that there were no party or movement agents during the opening and counting in 42% of the visited polling stations. In those stations with agents, almost half (45%) of them belonged to *MPAIS*, 11% to *PSP*, 10% to *PRIAN* and 9% to *Partido Socialista-Pachakutik*. Moreover, agents could be seen visiting different polling stations rather than staying in a particular one. While it is understandable that most of the lists were not able to appoint agents for 37,656 polling stations, the absence of party agents in a significant number of polling stations was due to difficulties in recruiting staff and the financial constraints of such an operation. Domestic observers were present in 6% of the polling stations observed;

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<sup>204</sup> In the Salvador Allende University in Guayaquil, there were eleven polling centres with 749 polling stations for a total of 149,800 electors. A Polling centre located in Quito's Salesiana University hosted 150 polling stations.

<sup>205</sup> Exceptions were witnessed by EU observers in Pichincha (27%) Bolívar (28%), Tungurahua (30%) and Carchi (50%).

<sup>206</sup> This percentage was higher in Bolivar (96%), Esmeraldas and Guayas (97%), Cotopaxi and Imbabura (100%). Exceptions were witnessed in Cañar, where EU observers reported that information on voting procedures was available in all visited centres. In Chimborazo 45% of the centres had that information available as well.

<sup>207</sup> On 28 September, letter from the President of the TSE to the EU EOM.

<sup>208</sup> Source: TSE – results for the national ballot.

<sup>209</sup> This percentage was significantly higher in Azuay (20%), Imbabura (23%), Orellana (25%), Manabí (26%), Morona-Santiago (27%), Cañar (32%) and Zamora-Chinchiipe (36%).

The army played an essential role on Election Day. Not only did it deliver all election materials to the polling stations but it was also in charge of the security inside the polling centres. Observers reported that the army was present in all visited polling stations. The role of the Armed Forces was stipulated in different agreements signed with the TSE. EU Observers informed that in a minimal percentage of the visited polling stations, the army exceeded its role by helping to set up the polling stations, guiding voters within the polling centres and, sometimes, even instructing the polling station staff on counting procedures<sup>210</sup>. No one, including voters, agents or polling station staff, complained to EU observers on what could be considered an intrusive role of the army. On the contrary, Ecuadorians trust the armed forces. In a few instances EU Observers reported that army officers were placed behind the polling booths, such as in Esmeraldas and El Oro provinces. The Police, for its part, was in charge of the security and traffic control outside the polling centres.

## **B. COUNTING**

At 17.00 polling finished. The Ecuadorian Election Law<sup>211</sup> does not provide for the extension of the voting hours, nor does it allow electors in the queue at closing time to vote, contrary to international election best practices<sup>212</sup>. EU observers reported that there were electors waiting to vote in only two of the visited polling stations. In one case, they were allowed to vote.

During counting, party/movement agents were present in all but 3 of the visited polling stations, but most lists were not represented and many agents present were moving from polling station to polling station, instead of following the entire counting in a single same post. The lists mostly represented were *MPAIS*, *PSP* and *PRIAN*. In rural areas of Morona-Santiago province, there were instances of electricity cuts during counting.

Counting was rated as good or very good in 83%, bad in 13% and very bad in 4% of the observed polling stations. Observers reported procedural shortcomings or lax adherence to the procedures. For instance, in polling stations visited in Bolívar, Imbabura, Esmeraldas, Guayas and Azuay provinces, the polling station staff did not read out the ballots. Also, in many cases staff divided themselves into two in order to count national and provincial ballots simultaneously, contrary to the instructions. In some visited polling stations, there was only one officer checking the ballots, determining its validity and counting the votes while the others were tallying the results. All these wrongdoings have contributed to an increase in the number of human errors in such a complex counting process. In Pichincha, for instance, EU observers reported, from direct observation, that an estimated 10% of the ballots were wrongly determined due to

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<sup>210</sup> The TSE provided training for the Army, Police, party agents and media on voting and counting procedures.

<sup>211</sup> Art. 82, Election Law. Art. 81 General Regulations of the Election Law.

<sup>212</sup> Refer to Section “*Legal Framework*”.



confusion between list and nominal votes and other ballot reading inaccuracies<sup>213</sup>. Moreover, as party/movement agents were not present during the counting at all times in the polling stations, there was no external mechanism to verify ballots.

The reconciliation count of the number of signatures in the voter list against the number of ballots was not made at the beginning of the process in the majority of visited polling stations; this was particularly the case in Guayaquil<sup>214</sup>. In 96% of the polling stations, staff followed the procedures to determine the validity of the ballots. However, in a number of observed cases where only one polling station member was responsible for counting ballots, some invalid ballots were considered valid<sup>215</sup>. The election results protocols did not contain data on the total number of ballots cast for the entire list nor the total number of ballots cast between lists. The polling station staff members had only to state the number of signatures in the voter list, the number of null and blank ballots and the number of votes obtained by each list and candidates. The lack of this kind of data disobeys the law<sup>216</sup> and made it impossible to undertake a proper reconciliation of ballots.

In 13% of the observed cases, election results protocols were signed beforehand, as an instruction on this regard had been reportedly given during the training sessions to the polling station committee members. While this was not a major issue in this election, the failure to follow procedures correctly could have led to negative allegations.

In 15% of the cases, the polling station staff did not put up a copy of the results protocol in a visible place. In a few cases party agents who did not receive a copy of the results took the one allocated for the polling station. Also, in 15% of the visited polling stations, party/movement agents addressed complaints mainly referring to procedural mistakes.

While these procedural mistakes were considered as relevant, EU Observers reported that there was no deliberate or systematic intention to skew the results. They rather reflected a lack of knowledge and rigour on election procedures by the polling station staff. However recounts at the provincial and national levels revealed a number of fraudulent acts from different actors at the local level, which were resolved according to the established legal procedures.

Polling station staff received a five-dollar compensation for their work. While some of them were paid soon after the completion of their duties, others had to go to the TPE offices to be paid. For some, the travel cost required for receiving payment were more than the compensation.

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<sup>213</sup> In Pichincha, there were two ballot papers. The national ballot (to elect 24 representatives) sized 86 cms by 44 cms, and included 26 lists and 624 candidates. The provincial ballot (to elect 14 representatives) sized 62.5 cms by 57 cms, and included 34 lists and 476 candidates.

<sup>214</sup> See “*Recounts*” Section.

<sup>215</sup> In Pichincha, this was observed in various polling stations. This was not interpreted to be intentional rather it was a product of the counters’ lack of attention due to the desire to finish as quickly as possible.

<sup>216</sup> See art. 105, 2 of the Election Law.

### **C. OFFENSES DURING THE ELECTION DAY**

Cases related to four categories of electoral offences were reported on Election Day: drunken behaviour on Election Day (violations of *Ley Seca*), refusal to integrate the Polling Station Committee and political proselytism (*i.e.* campaigning within the polling centre)<sup>217</sup>. These were handled by the electoral tribunals. Impersonation cases<sup>218</sup> were handled by penal judges.

The Ecuadorian national police detained 1,849 violators. The records were compiled by the General Directorate of the National Police affiliated to the Ministry of Government; the records regarding the infringements occurred on e-day, however, are not publicly accessible. The most common offence concerned drunken behaviour on e-day: a total of 1,818 persons were detained for violations of the *Ley Seca* by the police and released within 48 hours after detention. Other detentions by the police included 8 cases of impersonation during the voting process, 5 cases for refusing to integrate the polling station committee and 18 cases of political proselytism<sup>219</sup>. Another infraction was reported in Esmeraldas: the TPE ordered the detention of a school director who was considered guilty of burning the ballot papers on e-day. He was released within 48 hours.<sup>220</sup>

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<sup>217</sup> Art. 160 of the Election Law.

<sup>218</sup> Art. 239 of the Penal Code.

<sup>219</sup> See statistics of the General Directorate of the National Police, Ecuadorian Ministry of Government.

<sup>220</sup> See section “*Overview of voting*”.

## RESULTS

### A. TABULATION OF RESULTS

The tabulation of the election results were observed in 17 TPEs and in the TSE for the out-of-country voting. The Provincial Electoral Tribunals reviewed the results protocols and divided them into two main categories: valid and suspended. Suspension was based on inconsistencies found in the protocols. Most of these inconsistencies related to the fact that there were differences between the numerical and alphabetical figures or that the number of voters exceeded the maximum possible. Suspended protocols were left aside, pending a further decision on whether to open the election kit from the polling stations for recounting. A third category was the “late protocols”<sup>221</sup>, which were protocols that arrived at least 12 hours after the opening of the tabulation session. These protocols were reviewed at the end of the process.

Valid protocols were then sent to the computing department for data entry. Data entry was a lengthy process for three reasons: the need to divide list and nominal votes, the size of results protocols in provinces like Pichincha and Guayas (more than 100 pages in Guayas), and the insufficient number of computers at the TPEs.

For the first time, the TSE carried out a nationwide protocol-scanning project with the purpose at scanning all election protocols before being reviewed by the TPE members. This process enhanced the transparency of the tabulation process, as digitalized protocols were made available to party and movement agents as well as election observers.

While the EU Observers rated procedures as open and transparent in the majority of the provinces, they also highlighted the shortcomings and mistakes made by the Polling Station staff during the closing and counting. The numerical inconsistencies, missing information, and signatures in the protocols resulted in a large amount of recounts in many provinces (around 2,000 for the national list and 5,000 for the provincial list) and made it impossible to meet the legal 10-day deadline for the announcement of the results.

#### **Recounts**

The Election Law provides for the recounting of ballots<sup>222</sup>, and gives the TPE the right to order recounts if major discrepancies are found in the protocols. An estimated 9% of the protocols for both national and provincial contests showed evident errors that led to recounts of the ballots in the TPEs. Timely and accurate information concerning the recounts, such as the reasons for and the polling stations involved, was not always available.

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<sup>221</sup> *Actas rezagadas* in Spanish.

<sup>222</sup> The law gives the TPE the power to recount if there are legal challenges against the results in a given polling station and / or according to reasons for determination of suspended protocols.

In Bolivar, 21% of the protocols were suspended and ballots recounted. A similar number of recounts were made in El Oro (18%). The number of recounts of ballots was especially high in some provinces such as Esmeraldas with 37% of suspended acts, or in Napo, with 38% of suspended protocols in the national contest; all 217 provincial protocols were recounted. In Pichincha 13% of the national contest protocols were suspended, accounting for 1,100 recounts. In Guayas, the TPE rejected 782 national results protocols, while another 589 were rejected during the data entry process, accounting for around 13% of the total number of protocols. Recounts were also ordered in 527 out-of-country polling stations, accounting for 79% of the 667 overseas polling stations.

The recounts demonstrated that the determination of the validity of ballots during the counting at the Polling Stations was not undertaken in the whole country in a consistent manner. Also, it showed that many nominal ballots were considered as list votes and vice versa. In Pichincha, for example, the recount revealed that around 20% of the ballots were wrongly evaluated during counting at the polling stations<sup>223</sup>. While most of these mistakes can be considered as unintentional human errors, they demonstrate that polling station staff was not completely knowledgeable of the counting procedures.

On a positive note, the recounts demonstrated that the Ecuadorian election administration had the legal and technical capacity to overcome shortcomings, as it dealt with them swiftly and in a transparent manner. In this regard, recount of provincial results protocols in Guayas was suspended at 32% of the tabulation on 14 October after it was discovered that protocols were manipulated in favour of PSC and UDC at the Data Entry Department. In this regard, the chief of the Department was dismissed, and the TPE decided to start over again with the tabulation of the provincial protocols. They finally finished the tabulation process and announced the provisional results on 29 October.

On a negative note, in Los Ríos the TPE decided to finish the tabulation of provincial results when there were still 301 suspended provincial results protocols pending recount, accounting for 18% of the number of protocols. The TPE took this decision after it was discovered that two people stayed overnight on 14 October in the TPE warehouse, where the electoral kits containing ballot papers were kept. Changes in the results trends during the recounts raised suspicions of a possible manipulation. The alleged manipulation of the ballots was still under investigation by the prosecutor at the time of this report. The fact that these persons spent one night inside a closed warehouse with outside army surveillance, raised concerns among the TPE and the political parties that the manipulation did in fact occur. However, the decision of the TPE to finish the counting with only 82% of the protocols counted was made on a disputable legal basis<sup>224</sup>.

Also in Los Ríos, a very strict interpretation of the validity of vote during the recount

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<sup>223</sup> Due precisely to wrong determination of validity and confusion between nominal and list votes.

<sup>224</sup> The Los Ríos TPE based its decision on article 109 of the Election Law. This article states that nullification of voting can be ordered if it is proved that there has been a manipulation or forge of election protocols or that unofficial ballot papers have been used.

led to list vote ballots declared void by the TPE as the mark slightly exceeded the allocated space. This circumstance paved the way for suspicion of election irregularities in the province.

## ***B. ANNOUNCEMENT AND PUBLICATION OF RESULTS***

The final results were announced on 19 November 2007, more than seven weeks after the Election Day. The different provincial constituency results were released at different times by the corresponding TPEs, as well as the provisional results for the national ballot by the TSE. In larger provinces such as Guayas, Pichincha and Manabí, as well as in Los Ríos, Esmeraldas and the three out-of-country constituencies<sup>225</sup>, tabulation of provincial and national election results failed to meet the 10 day legal deadline<sup>226</sup>. In smaller provinces such as Napo, the high number of recounts caused the tabulation to last up to one week.

A positive initiative was the publication of the provisional numerical election results on the TSE website, broken down by provinces, cantons and parishes. Regrettably, results by polling stations were not published. This page was regularly updated with information on the number of protocols tabulated by constituency at national and provincial levels, votes obtained by lists and candidates, number of blank and null ballots. Likewise, numerical results were also available through information centres in the TPEs throughout the country and the TSE. The election administration did not produce, however, full provisional election results with allocation of seats. During the almost two months of counting and tabulation, Ecuador had to rely exclusively on the allocation of seats projected by the exit poll and quick counts on the Election Day or by the political parties and movements.

## ***C. COMPLAINTS RELATING TO THE ELECTION RESULTS***

Legal challenges regarding the election results can be brought before the respective TPE with respect to provincial and national polling results and before the TSE with respect to lists from abroad.<sup>227</sup> They must be resolved within 2 days<sup>228</sup>. Appeals against decisions of the TPEs are dealt with by the TSE.

The Election law<sup>229</sup> establishes in which cases TPEs and the TSE can nullify election in a polling station: these include cases where voting has taken place before 7 am or after 5 pm; if voting was conducted without the President and the Secretary of the respective

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<sup>225</sup> Latin America, United States/Canada and Europe.

<sup>226</sup> As established in Art. 102 of the Regulation of the Election Law for the proclamation of official results.

<sup>227</sup> Articles 66, 94 and 95 of the Election Law.

<sup>228</sup> Art. 95 of the Election Law.

<sup>229</sup> Art.109 of the Election Law.

Polling Station Committee; in cases of falsification of the voter register and in cases of alteration or falsification of the protocols; if the signatures of President or Secretary of the Polling Station Committee are missing on sensitive documents (*e.g.* protocols and envelopes); and if ballots were filled out without being administered by the TSE. The Election law also establishes on which grounds the TSE can annul the entire results as announced by a TPE<sup>230</sup> in a province: these include when the TPE does not have the necessary quorum; if the signature of its president and secretary are missing; if the falsity of a protocol can be proved. Appeals to this decision must be resolved within 5 days<sup>231</sup>.

Most legal challenges brought before the TPEs questioned the correctness of the numeric results of national as well as of provincial lists and asked for their rectification. For instance, legal challenges were made in Azuay and Imbabura. Both challenges were rejected by the respective TPEs on formal grounds. In El Oro, a complaint was accepted and resulted in the recounting of the ballots and the rectification of the results. In Los Ríos, the PRE appealed against the TPE's decision not to count 23 percent of suspended protocols<sup>232</sup> (see *Tabulation of Results*). The appeal was rejected by the TSE.

In Pichincha, four legal challenges were lodged against provincial results and one against national results on grounds of numerical errors in the results. All of them were rejected. As a result, MPAIS lodged an appeal before the TSE. The TSE accepted the appeal and ordered the re-count of 132 protocols. The recount of these protocols resulted in 10,200 votes more for the whole list of MPAIS than the first counting. The TSE decided then to further recount another 653 protocols. These recounts did not result in substantial changes compared to the previously announced provisional results with respect to the respective seats allocation. The TPE announced the final results on 19 November 2007.

In Bolívar, one legal challenge was lodged against provincial results; the challenge was accepted and 26 protocols were recounted. In Cotopaxi, two legal challenges were lodged against provincial results; one was accepted resulting in the recounting of the results from 35 polling stations; the other legal challenge was denied. In Esmeraldas, PRIAN lodged a legal challenge against provincial results; the case was rejected by the TPE and appealed to the TSE which also rejected it on grounds of lack of evidence.

In Guayas, two legal challenges were lodged against provincial results. Both legal challenges were rejected by the TPE and one of them were appealed before the TSE. The TSE rejected the appeal and the final results were announced on 19 November 2007.

In Azuay, Tungurahua, Loja, Cotopaxi, Galapagos, Zamora, Cañar, Morona Santiago, Pastaza, Orellana and Sucumbíos, no legal challenges or appeals were lodged. There were also no complaints lodged against the results of the out of country elections.

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<sup>230</sup> Art. 110 of the Election Law.

<sup>231</sup> Art. 96 of the Election Law.

<sup>232</sup> See section "*Tabulation of results*".

#### **D. POLITICAL OVERVIEW OF THE ELECTION RESULTS**

Although there are numerous shortcomings and areas which could be improved, the European Union's Election Observation Mission is satisfied that the elections were legitimate and democratic and have expressed the clear will of the Ecuadorian people. Those shortcomings need attentive consideration in the future in order to bring the process in line with the relevant international standards. Along with the Presidential elections of November 2006 and the April 15<sup>th</sup> referendum, Ecuadorians have overwhelmingly expressed in the Constituent Assembly elections their desire for change and the need to bring an end to ten years of political, social and economic instability. The task of fulfilling these hopes and aspirations now rests with the 130 assembly representatives elected for the purpose of developing a new constitutional framework.

The victory of *MPAIS* can be interpreted as due to the movement's ability to articulate a political discourse that responded to Ecuadorian's desire for change. Furthermore, it is clear that *MPAIS* was a political force that has, at least temporarily, profoundly transformed the Ecuadorian political spectrum; for example, in terms of ideology, *MPAIS* was able to absorb support conventionally dedicated to parties and movements that identified with Correa's ideology such as *Pachakutik*, *Partido Socialista*, *Izquierda Democrática*, etc, and strongly defeated them in their traditional strongholds. On the left wing of the political spectrum, MPD seemed to be the single party able to maintain its electorate and representation. At the same time, *MPAIS* was also successful in making gains against its opponents, even in the traditional regional strongholds of PRIAN and PSC. In conclusion, *Movimento País* proved to be a uniting force in a country traditionally marked by regional and ideological divisions.

In terms of the opposition, the parties which were most successful in these elections were those established around the personality of their leaders (Alvaro Noboa, PRIAN; Lucio/Gilmar Gutiérrez, PSP), rather than alternative visions of constitutional change or other programmatic platforms. In a welcome decision, the TSE decided not to apply the clause of the Organic Law of Political Parties which states that any party that obtains less than 5% support of the electorate must be dissolved. The TSE correctly based this ruling on the grounds that the only specific requirement for candidacy applied to the Constituent Assembly elections was the endorsement by signatures of 1% of registered voters. This decision will allow the parties who had poor showings in the Constituent Assembly elections to consider how to better reach the electorate in future elections. Nonetheless, as a result of their reduced influence, the country's various opposition forces will have to make greater efforts to re-connect with voters and fulfil the task of engaging in meaningful dialogue concerning the government's proposals.

A number of other issues concerning constitutionality such as the dismissals of Congressman and the interpretation of Article 1 of the Statute as to the "full powers" of the Constituent Assembly have produced controversy<sup>233</sup>.

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<sup>233</sup> The article 1 of the 2007 Statute, presented by Presidential decree and adopted by the 15 April popular referendum, has limited the "full powers": "*The Constituent Assembly is summoned by the Ecuadorian people and is attributed the full powers to alter the institutional frame of the State and to elaborate a new*

## RECOMMENDATIONS

The EU EOM, following the observation of the 30 September 2007 elections for the Constituent Assembly, kindly offers a number of recommendations for consideration of the competent Ecuadorian authorities, as follows:

### ***I. ENHANCING THE EFFICIENCY, TRANSPARENCY AND INDEPENDENCE OF THE ELECTION ADMINISTRATION***

1. A separation should take place within the electoral tribunal's structure in order to include an Election Commission (administrative branch) and an Electoral Tribunal (judicial branch). The Election Commission should be responsible for the technical administration of the elections; the Electoral Tribunal should be composed of judges with special training in electoral law and should be responsible for handling complaints and appeals. The Judicial branch should deal with all appeals against the decisions made by the administrative branch.
2. The appointment of the Election Commission members should be done in a pluralistic and inclusive manner; consideration should be given to candidates' merit and experience. Members of this commission could still be nominated by political parties and movements; however they should be encouraged to act independently in their functions.
3. The nomination of General Directors and Heads of Units of the Election Commissions (at national and provincial level) should be made through an open and competitive process based on merits and experience and not on party allegiances.
4. The appointment of polling station committee members should be made in a manner that guarantees their independence and neutrality from political parties and movements. The ad hoc TSE directive for the Constituent Assembly Elections on the criteria for the selection of the polling stations committee members, which included qualified teachers and civil servants amongst others, should be taken as an example for future election processes. Experience in previous elections should be one of the desirable requisites. The TSE should develop a more efficient means by which to pay committee members.
5. The role of the Election Coordinators should be reinforced and their numbers increased to strengthen/improve election preparations at polling station level. Furthermore, their role as a bridge between the Provincial Election Commissions and the Polling Station Committees should be defined and strengthened.

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*Constitution. The Constituent Assembly will respect, depending in its social and progressive content, the fundamental rights of the citizens. The text of the new Constitution will be approved by means of a Referendum. The alteration of the institutional framework of the State and the new Constitution will only enter into force following the approval of the referendum of the new Constitution."*



6. Sessions of the Election Commissions and the Electoral Tribunals should be open to all interested actors, such as political parties, movements, and election observers, amongst others, Agendas and minutes of their meetings and decisions should be made available to the general public in a timely manner (i.e. through publication on the web page).

7. The Election Commission and the Electoral Tribunal should create mechanisms to ensure that there is a clear information flow from the national to lower level of election administration and vice versa.

## ***II. THE ELECTION PREPARATION***

8. The Election Commission should implement clear and effective procedures to communicate appointments to the polling station committee members.

9. The Electoral Commissions should ensure that all appointed polling station committee members receive appropriate and quality training. Sufficiently in advance of the Election Day, training should pay special attention to counting procedures and to procedures to fill in the election protocols. For this purpose, a permanent pool of qualified electoral trainers should be established.

10. The Electoral Commissions should give clear and non-ambiguous instructions through directives on what constitutes a valid vote and a null vote, aiming at preventing mistakes and misunderstandings. These instructions should also refer to the different options for voting nominally and for an entire list.

11. The number of polling stations should be diminished, except when serving remote or isolated populations, thus reducing the number of polling station committee members needed. Simplified voting procedures and adequate training for all polling station committee members would make it possible for polling station committees to process a larger number of electors. In this regard, the maximum number of electors per polling station should be increased to 500, in accordance to article 36 of the Election Law.

12. At the same time, the election administration should make all efforts necessary in order to make polling centres and stations accessible to remote and isolated areas of the country.

13. The space provided to the polling station should increase and its perimeter should be clearly marked in order to avoid confusion and overcrowding on Election Day and secure the secrecy of the vote.

## ***III. VOTER REGISTRATION***

14. Greater attention should be paid to improving the relationship between the Civil Registry and the TSE. In particular, the Civil Registry should provide the TSE with daily lists of registered citizens, in accordance with article 40 of the Election Law.

15. The time span between the cut-off date and the Election Day should be shortened in order for voters to be able to make changes and updates closer to E-Day.

16. There should be a comprehensive verification period of the voter register well in advance of the Election Day. This period should not be used only for information, but also to make changes and correct possible mistakes. The Election Information Centres or cantonal and parishes offices should be used for this purposes.

17. After the verification period the TSE should undertake the necessary corrections and again display the voter register at cantonal or parish levels at least 15 days before the Election Day.

18. Measures should be taken in order to allow electors turning 18 years old between the cut-off date and the E-Day to vote.

19. The Civil Registry should be improved in order to fulfil its role and to ensure that all citizens are registered and provided with ID Cards, which is essential to the full registration of Ecuadorian citizens with voting rights. More mobile teams should be used to register Ecuadorians living in remote and less accessible areas.

#### ***IV. THE REGISTRATION OF POLITICAL PARTIES, MOVEMENTS AND CANDIDATES***

20. At the present moment too many laws and regulations deal with the registration of political parties and movements causing contradictions and confusion. Requirements for the registration of political parties and movements should be clearly outlined in and limited to the Law of Political Parties...

21. The legal requirement for political parties to win at least 5% of the valid vote in two consecutive national elections in order to maintain their registration should be eliminated,

22. Transparent and enforceable mechanisms of internal party democracy to select candidates within their respective party lists should be established.

23. Appropriate timelines for the disqualification of candidates should be outlined in the electoral legal framework.

#### ***V. THE OUT OF COUNTRY VOTING***

24. The election administration should consider new mechanisms in order to increase the number of eligible out-of-country voters. In this regard, the election administration should encourage participation of eligible out-of-country voters in the

elections with appropriate voter information and education campaigns and should make citizens abroad aware that registration in the Ecuadorian consulates will not have any impact on their status in the host countries. Other voting options such as postal voting should be explored.

## **VI. THE ELECTORAL SYSTEM**

25. As already recommended in the 2002 EOM mission report, a simplification and harmonization of the Ecuadorian electoral system (which includes open list system with panachage or preferential vote for candidates from different lists and, for the CA elections, had three different mechanisms of seat allocation) would be useful to enable voters to understand the system. The high number of invalid ballots indicates that the current systems may be too complex for many voters. A simplified system would also help reducing the number of human errors that took place in the counting process. And to adopt the same method to allocate seats in the same election is a means to ensure the “equality of chances”, regardless of constituencies, as international standards require.

26. If an open proportional list system is to be used in upcoming elections, the Election Administration must undertake comprehensive voter information and education campaigns in order to make the system understandable.

27. The system of vote consolidation, if it will still be needed<sup>234</sup>, must be changed in order to be in line with the international standards; namely it must not damage the equality of voting rights and the equality of voting power for all voters. In this regard, the exact average weight factor, as stipulated in the Election Law, should be repealed. The following principles should guide the review of the vote consolidation system: (i) if a ballot with one vote “en plancha” is worth “1”, the sum of the individual weight attributed to nominal votes cast in each ballot can never exceed that value of “1”; the nominal votes can either have (ii) a fixed value equivalent to the fraction corresponding to as many candidates to be elected in a given constituency, or (iii) a variable value where the total weight of nominal votes really marked by a given elector in his/her ballot paper always amounts to “1”.

28. The boundaries of electoral constituencies should be determined in such a way as to ensure that seats in multi-personal elections are equally distributed among the constituencies, in accordance with the distribution criterion established (e.g. number of inhabitants, number of registered voters, etc.) While maintaining minimum representation for the smaller provinces, the number of seats for most populated constituencies should be increased in order to give all electors balanced voting powers in line with international standards.

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<sup>234</sup> If Ecuador decided to change to any other more simple electoral system, where votes for lists don't concur with nominal votes, the operation of consolidation would not be needed anymore, since all votes would then be of the same kind.

29. The number of seats allocated to overseas constituencies and the respective delineation should be revised and adapted to the real number of out-of-country electors, bringing them closer to the national average.

### ***VII. ELECTION DAY PROCEDURES***

30. The election legislation should be revised to allow voters queuing at closing time to vote.

31. The Election Administration should ensure that the required number of properly trained polling station committee members is present in polling stations throughout the Election Day. 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.

32. The training of the polling station committee members should emphasize the accurate completion of the results protocols and the determination of the validity of the ballots.

33. Each member of the polling station committee should have a clearly defined role in order to ensure a cross checking mechanism. 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.

34. The publication of the election results protocols at the polling stations should be enforced. Results should be displayed outside and not inside the polling centres as soon as the polling station committee operations have finished.

35. Parties and movements should make an additional effort to appoint party/movement agents to oversee the election process. These party agents should receive proper training in order to understand their role in the process.

36. Election results protocols should contain data on the total number of ballots cast for a list or in between list. This data is essential for a proper reconciliation of ballots and would enhance the transparency of the counting and tabulation process.

37. The TSE should develop more efficient means to pay the members of the polling stations committees.

### ***VIII. THE TABULATION AND THE ANNOUNCEMENT OF THE RESULTS***

38. The election administration must ensure that all technical (i.e. computers) and human resources are available and functioning in order to meet the legal deadline for the tabulation to be completed.

39. Measures should be taken to increase the transparency during the tabulation process, such as the publication of election results protocols by polling station, and not only by provinces, cantons and parishes. Provisional results should also include the allocation of already decided seats, only leaving aside tied results or still undetermined seats by any other motive.

40. The simplification of the system is necessary in order to reduce risks of mistakes at different levels, speed up the counting operations and announcement of electoral results and, by doing so, increase the general trust from the public.

41. Clear and updated information should be available to political parties, observers and media on the number of and reasons for any recounts made during the tabulation process.

### ***IX. STRENGTHENING THE LEGAL FRAMEWORK***

42. Election legislation should be amended in order to incorporate fundamental aspects of the election process that are currently regulated in the 2007 Statute and resolutions issued by the TSE.

43. The regulatory power of the election administration should be limited to clarifying and interpreting already existing election legislation and not regulating issues which do not correspond to its established competencies.

44. The Election Law should be amended to ensure the voting rights of all disabled and institutionalised individuals, including those in hospitals as well as prisoners without conviction and prisoners convicted of minor offences.

45. Suspension of political rights should be handled differently, guaranteeing due process to defendants before independent and impartial courts. The suspension should be applied as a specific sanction and not as mere accessory sanction after an appropriate evaluation of the case.

46. 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.

### ***X. ADMINISTRATIVE AND JUDICIAL SANCTIONS***

47. Infringements of laws and regulations concerning the electoral campaign should be subject to effective and proportionate sanctions. In particular, an appropriate range of disciplinary action should be provided for by law.

48. Sanctions should follow clearly defined procedures and contain procedural guarantees including timelines and appeals.

49. The Election Commissions should be responsible for issuing administrative sanctions. The Electoral Tribunals should be responsible for dealing with penal sanctions. The responsibility of each of the branches should be clearly established by law.

### ***XI. HANDLING COMPLAINTS AND APPEALS***

50. An independent mechanism should be established for the resolution of electoral challenges and appeals. A separate branch of the Election administration (integrated by judges with specific knowledge of elections) or a specific section of the judiciary (i.e. by means of the establishment of a chamber competent for elections issues in the Supreme Court) should deal only with the resolution of challenges and appeals and the imposition of sanctions as provided for by law.

51. Efforts should be made to ensure that the complaints and appeals system is transparent and publicly accountable. A centralised record of all complaints and appeals, grounds for the complaints and appeals and their outcome should be developed and maintained. These records should be regularly made public.

52. All election related disputes (in particular those resulting in a possible disqualification of candidates) should be dealt with before those elected assume office.

53. Particular attention should be paid to establishing and enforcing appropriate mechanisms for challenges/appeals against decisions related to inaccuracies in the voter register.

54. 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 defend their electoral rights by submitting a complaint or appeal to a competent body.

### ***XII. STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY AND THE STABILITY OF THE INSTITUTIONS***

55. Safeguards should be introduced to ensure that electoral authorities do not interfere in the judicial process/the independency of the judiciary as established in the Constitution.

56. Institutions as well as political parties should be strengthened in order to achieve long term stability.

### ***XIII. THE ELECTORAL CAMPAIGN***

57. The TSE should promote the adoption of a code of conduct for all parties and candidates, including as well government and other officials, which would outline a formal agreement to obey to the established rules or regulations for the campaign period and Election Day.

58. The electoral act should be amended to include more detailed regulations prohibiting the abuse of State resources during the election period in combination with effective and proportionate sanctions.

59. All the information provided by political parties and movements to the TSE about their campaign expenditure should be made public. Moreover it would be positive to pass a common regulation regarding the financing of both parties and movements.

### ***XIV. INDIGENOUS AND AFRO-ECUADORIAN PEOPLES' PARTICIPATION***

60. The Constituent Assembly and the drafting of a new Constitution provide an opportunity for Ecuador to show its commitment to the 2007 UN Declaration on the Rights of Indigenous Peoples. Of more relevance for the electoral process are the provisions related to the political participation in national elections and also the use of indigenous languages.

61. The TSE should strengthen efforts to promote voter education in indigenous languages, including radio spots<sup>235</sup>. Similarly, electoral training should be given in indigenous languages for provinces and cantons where indigenous populations represent an important segment of the population. For this purpose increased cooperation with government institutions (CODENPE) and NGOs would be recommendable.

62. The election administration should include more members of indigenous communities.

63. Political parties should make more efforts to campaign in indigenous languages.

### ***XV. PARTICIPATION OF WOMEN***

64. The TSE could better coordinate with government institutions (CONAMU) and NGOs in order to achieve a better targeted voter education campaign.

65. Political parties should engage more in training women candidates and in nominating female members at the higher levels of the election administration.

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<sup>235</sup> As for Art.170 of the Election Law and as the 2007 UN Declaration on the rights of Indigenous Peoples (Art. 13.2).

## ***XVI. MEDIA IN ELECTIONS***

66. If the *franjas* system is to be applied in future elections, it would be advisable that the TSE improve its implementation by creating more transparency with regards to the distribution of publicity spaces, the selection of media outlets, and an effective system to control and monitor the frequency of the ads. Decentralizing the system and its management by directly involving the TPEs would be a positive move.

67. The national and provincial governments should take greater steps to suspend official publicity during the electoral campaign. By doing so the Ecuadorian government would be adhering to international best practices dealing with the subject as well as bringing an end to speculation regarding the abuse of state resources.

68. 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.



## ANNEXES

### *ANNEX 1: RATIO INHABITANTS AND VOTERS PER SEAT - PROVINCES*

#### SEATS AND INHABITANTS

Constituencies	Seats	Inhabitants	Ratio Inhabitants/Seat
Sucumbíos	2	128,995	64,498
Morona Santiago	2	115,412	57,706
Orellana	2	86,493	43,247
Napo	2	79,139	39,570
Zamora Chinchipe	2	76,601	38,301
Pastaza	2	61,779	30,890
Galápagos	2	18,640	9,320
Imbabura	3	344,044	114,681
Cañar	3	206,981	68,994
Bolívar	3	169,370	56,457
Carchi	3	152,939	50,980
El Oro	4	525,763	131,441
Tungurahua	4	441,034	110,259
Loja	4	404,835	101,209
Chimborazo	4	403,632	100,908
Esmeraldas	4	385,223	96,306
Cotopaxi	4	349,540	87,385
Los Ríos	5	650,178	130,036
Azuay	5	599,546	119,909
Manabí	8	1,186,025	148,253
Pichincha	14	2,388,817	170,630
Guayas	18	3,309,034	183,835
Total	100	12,084,020	

Source: Inhabitants data – INEC 2001

SEATS AND REGISTERED VOTERS

Constituencies	Seats	Registered voters	Ratio Registered voters /Seat
Sucumbíos	2	87,301	43,651
Morona Santiago	2	79,501	39,751
Orellana	2	57,775	28,888
Zamora Chinchipe	2	54,062	27,031
Napo	2	53,650	26,825
Pastaza	2	43,614	21,807
Galápagos	2	12,556	6,278
Imbabura	3	271,788	90,596
Cañar	3	180,750	60,250
Bolívar	3	138,485	46,162
Carchi	3	119,673	39,891
El Oro	4	392,970	98,243
Tungurahua	4	357,744	89,436
Chimborazo	4	333,741	83,435
Loja	4	310,721	77,680
Esmeraldas	4	288,301	72,075
Cotopaxi	4	270,159	67,540
Azuay	5	491,923	98,385
Los Ríos	5	487,372	97,474
Manabí	8	958,888	119,861
Pichincha	14	1,818,665	129,905
Guayas	18	2,409,433	133,857
Europe	2	121,662	60,831
USA	2	20,307	10,154
Latin America	2	10,211	5,106
National	24	9,371,252	390,469
Total	130		

Source: Registered voters – TSE

**ANNEX 2: EFFECTS OF THE "EXACT AVERAGE WEIGHT FACTOR"**

Elections   15 October 2006   National Congress				
Provincial constituencies	Number of seats ("n")	A	B	C
		<i>Exact average weight factor</i>	Voting weight of a ballot filled with "n" nominal votes	Value of one "voto en planchita" ("n"-1)
Azuay	5	0.30595681	1.53	1.22
Bolívar	3	0.47271447	1.42	0.95
Cañar	3	0.46048868	1.38	0.92
Carchi	3	0.45278346	1.36	0.91
Chimborazo	4	0.40370852	1.61	1.21
Cotopaxi	4	0.39332434	1.57	1.18
El Oro	4	0.36217279	1.45	1.09
Esmeraldas	4	0.4343027	1.74	1.30
Galápagos	2	0.59942005	1.20	0.60
Guayas	18	0.12030939	2.17	2.05
Imbabura	3	0.47716984	1.43	0.95
Loja	4	0.35035439	1.40	1.05
Los Ríos	5	0.38750455	1.94	1.55
Manabí	8	0.25801467	2.06	1.81
Morona Santiago	2	0.64976429	1.30	0.65
Napo	2	0.64125869	1.28	0.64
Orellana	2	0.70009815	1.40	0.70
Pastaza	2	0.59487345	1.19	0.59
Pichincha	14	0.16753535	2.35	2.18
Sucumbios	2	0.6820094	1.36	0.68
Tungurahua	4	0.3705546	1.48	1.11
Zamora Chinchipe	2	0.62361327	1.25	0.62

OBS: In the October 2006 elections, as a consequence of the *exact average weight factor*, a ballot with a *cross lists* vote filled with the totality of nominal votes was always worth more than "1" vote, sometimes more than the double. And a strategic "*voto en planchita*" (voting nominally for all candidates minus one on a given list) was worth more than voting for the entire list in the constituencies that elected more than 3 congressmen, and more than the double in Guayas and Pichincha. Source: for the *exact average weight factor*, the TSE.

Elections   30 September 2007   Constituent Assembly				
Provincial constituencies	Number of seats ("n")	A	B	C
		<i>Exact average weight factor</i>	Voting weight of a ballot filled with "n" nominal votes	Value of one " <i>voto en planchita</i> " ("n"- 1)
Azuay	5	0.28794304	1.44	1.15
Bolívar	3	0.4871515	1.46	0.97
Cañar	3	0.45482344	1.36	0.91
Carchi	3	0.4073097	1.22	0.81
Chimborazo	4	0.37567663	1.50	1.13
Cotopaxi	4	0.40098782	1.60	1.20
El Oro	4	0.33533971	1.34	1.01
Esmeraldas	4	0.36711784	1.47	1.10
Galápagos	2	0.55120694	1.10	0.55
Guayas	18	0.09385275	1.69	1.60
Imbabura	3	0.42982391	1.29	0.86
Loja	4	0.36441723	1.46	1.09
Los Ríos	5	0,78020342	3.90	3.12
Manabí	8	0.23232595	1.86	1.63
Morona Santiago	2	0.67606557	1.35	0.68
Napo	2	0.62654108	1.25	0.63
Orellana	2	0.67261274	1.35	0.67
Pastaza	2	0.59447659	1.19	0.59
Pichincha	14	0.09944882	1.39	1.29
Sucumbíos	2	0.67565751	1.35	0.68
Tungurahua	4	0.32861965	1.31	0.99
Zamora Chinchipe	2	0.63769859	1.28	0.64
<b>National</b>	<b>24</b>	<b>0.08241961</b>	<b>1.98</b>	<b>1.90</b>

OBS: In the September 2007 elections, as a consequence of the *exact average weight factor*, a ballot with a *cross lists* vote filled with the totality of nominal votes was always worth more than "1" vote. And a strategic "*voto en planchita*" (voting nominally for all candidates minus one on a given list) was worth more than voting for the entire list in the constituencies that elected more than 3 representatives, except for Tungurahua, and more than 3 times more in Los Rios. Source: for the *exact average weight factor*, the TSE.

**ANNEX 3: INEQUALITIES IN THE "VOTING POWER" OF THE DIFFERENT CONSTITUENCIES**

Constituencies	A Representatives elected	B Registered voters	C Voters per representative (current)	E Variation as compared to Carchi "voting power"	F Variation as compared to Guayas "voting power"
<b>Guayas</b>	18	2,409,433	<b>133,857</b>	235.6%	<b>0.0%</b>
Pichincha	14	1,818,665	129,905	225.6%	-3.0%
Manabí	8	958,888	119,861	200.5%	-10.5%
Azuay	5	491,923	98,385	146.6%	-26.5%
El Oro	4	392,970	98,243	146.3%	-26.6%
Los Ríos	5	487,372	97,474	144.4%	-27.2%
Imbabura	3	271,788	90,596	127.1%	-32.3%
Tungurahua	4	357,744	89,436	124.2%	-33.2%
Chimborazo	4	333,741	83,435	109.2%	-37.7%
Loja	4	310,721	77,680	94.7%	-42.0%
Esmeraldas	4	288,301	72,075	80.7%	-46.2%
Cotopaxi	4	270,159	67,540	69.3%	-49.5%
Cañar	3	180,750	60,250	51.0%	-55.0%
Bolívar	3	138,485	46,162	15.7%	-65.5%
Sucumbíos	2	87,301	43,651	9.4%	-67.4%
<b>Carchi</b>	3	119,673	<b>39,891</b>	<b>0.0%</b>	-70.2%
Morona Santiago	2	79,501	39,751	-0.4%	-70.3%
Orellana	2	57,755	28,878	-27.6%	-78.4%
Zamora Chinchipe	2	54,062	27,031	-32.2%	-79.8%
Napo	2	53,650	26,825	-32.8%	-80.0%
Pastaza	2	43,614	21,807	-45.3%	-83.7%
Galápagos	2	12,556	6,278	-84.3%	-95.3%
	<b>100</b>	9,219,052			
Latin America	2	10,211	5,106	-87.2%	-96.2%
USA/Canada	2	20,307	10,154	-74.5%	-92.4%
Europe	2	121,662	60,831	52.5%	-54.6%
	<b>106</b>	9,371,232			
National	24				
	<b>130</b>				

EQUAL "VOTING POWER" BETWEEN CONSTITUENCIES

Hypothesis of a seats' distribution based on Carchi "voting power"

Constituencies	15% variation from the lowest above 2 representatives (Carchi)	Representatives to elect	Voters per representative (new)	Variation in seats
Sucumbíos		2	43,651	0
Chimborazo		8	41,718	4
Esmeraldas		7	41,186	3
Azuay		12	40,994	7
Los Ríos		12	40,614	7
Pichincha		45	40,415	31
Guayas		60	40,157	42
Manabí	<b>+15% = 45,874</b>	24	39,954	16
<b>Carchi</b>		<b>3</b>	<b>39,891</b>	0
Morona Santiago	<b>-15% = 33.907</b>	2	39,751	0
Tungurahua		9	39,749	5
El Oro		10	39,297	6
Loja		8	38,840	4
Imbabura		7	38,827	4
Cotopaxi		7	38,594	3
Cañar		5	36,150	2
Bolívar		4	34,621	1
Orellana		2	28,878	0
Zamora Chinchipe		2	27,031	0
Napo		2	26,825	0
Pastaza		2	21,807	0
Galápagos		2	6,278	0
		<b>235</b>		<b>135</b>
Europe		3	40,554	1
USA/Canada		2	10,154	0
Latin America		2	5,106	0
		<b>242</b>		<b>136</b>
National		24		0
		<b>266</b>		<b>136</b>

OBS: In this hypothesis, it is admitted that constituencies with less registered voters would always keep a minimum of 2 representatives each. The simulation shows that the Assembly should have as much as 266 representatives if: (1<sup>st</sup>) we would accept a minimum representation of 2 per constituency; (2<sup>nd</sup>) we would adopt Carchi province as the reference, being the one above 2 representatives with the lowest number of registered voters; (3<sup>rd</sup>) we would follow that ratio, respecting the maximum variation of 15% established in the international standards. Of course any other calculations may be made, starting from an average sized constituency or establishing a different common ratio.

EQUAL "VOTING POWER" BETWEEN CONSTITUENCIES

Hypothesis of a seats' distribution based on Guayas "voting power"

Constituencies	15% variation from the highest (Guayas)	Representatives to elect	Voters per representative (new)	Variation in seats
Chimborazo	+15% = 153,936  -15% = 113,779	2	166,871	-2
Loja		2	155,361	-2
Esmeraldas		2	144,151	-2
Manabí		7	136,984	-1
Imbabura		2	135,894	-1
Cotopaxi		2	135,080	-2
<b>Guayas</b>		<b>18</b>	<b>133,857</b>	0
El Oro		3	130,990	-1
Pichincha		14	129,905	0
Azuay		4	122,981	-1
Los Ríos		4	121,843	-1
Tungurahua		3	119,248	-1
Cañar		2	90,375	-1
Bolívar		2	69,243	-1
Carchi		2	59,837	-1
Sucumbíos		2	43,651	0
Morona Santiago		2	39,751	0
Orellana		2	28,878	0
Zamora Chinchipe		2	27,031	0
Napo	2	26,825	0	
Pastaza	2	21,807	0	
Galápagos	2	6,278	0	
		<b>83</b>		<b>-17</b>
Latin America		2	5,106	0
USA/Canada		2	10,154	0
Europe		2	60,831	0
		<b>89</b>		<b>-17</b>
National		24		0
		<b>113</b>		<b>-17</b>

OBS: In this hypothesis, it is admitted that constituencies with less registered voters would always keep a minimum of 2 representatives each. The simulation shows that the Assembly should have not more than 113 representatives if: (1<sup>st</sup>) we would accept a minimum representation of 2 per constituency; (2<sup>nd</sup>) we would adopt Guayas province as the reference, being the one with the highest number of registered voters; (3<sup>rd</sup>) we would follow that ratio, respecting the maximum variation of 15% established in the international standards. The case of Chimborazo and Loja is due to the fact that they wouldn't have yet the number of voters sufficient to get an extra seat above the minimum of 2. Of course any other calculations may be made, starting from an average sized constituency or establishing a different common ratio.

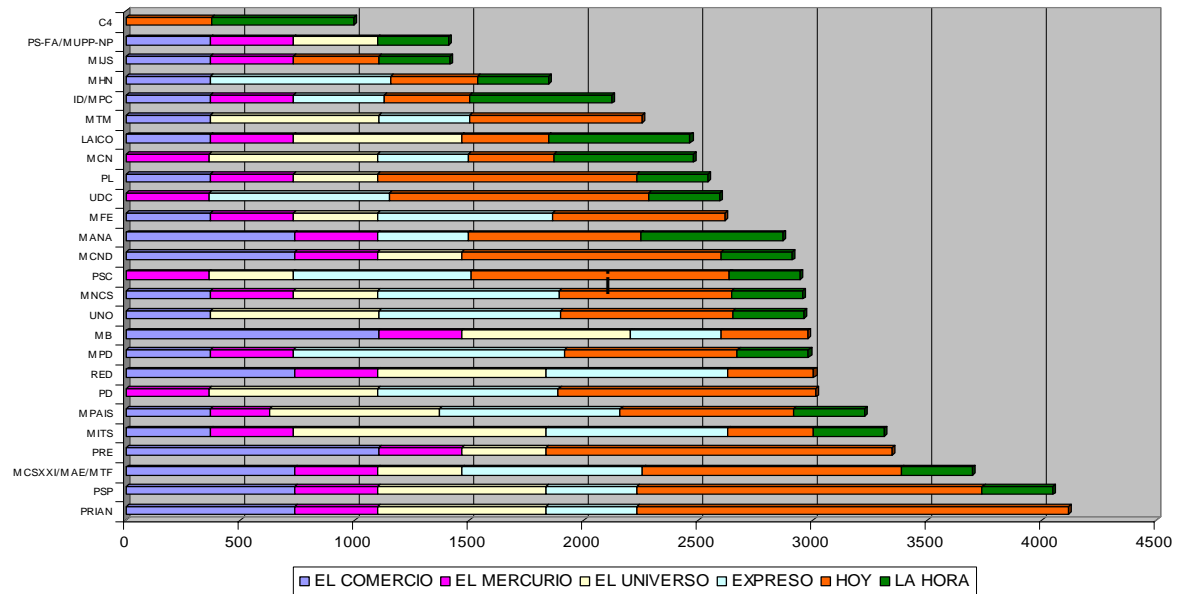
**ANNEX 4: VOTER REGISTER UPDATED AT 3 JUNE 2007**

Constituencies	Voters	Men	Women	Total Polling Stations	Polling Stations Men	Polling Stations Women
<i>Azuay</i>	491,923	238,255	253,668	1,752	854	898
<i>Bolívar</i>	138,485	67,962	70,523	506	248	258
<i>Cañar</i>	180,750	89,119	91,631	643	318	325
<i>Carchi</i>	119,673	59,305	60,368	432	216	216
<i>Chimborazo</i>	333,741	159,241	174,500	1,167	558	609
<i>Cotopaxi</i>	270,159	129,560	140,599	951	459	492
<i>El Oro</i>	392,970	200,681	192,289	1,397	714	683
<i>Esmeraldas</i>	288,301	148,320	139,981	1,060	542	518
<i>Galápagos</i>	12,556	6,698	5,858	54	28	26
<i>Guayas</i>	2,409,433	1,191,634	1,217,799	10,622	5,223	5,399
<i>Imbabura</i>	271,788	131,521	140,267	970	472	498
<i>Loja</i>	310,721	152,290	158,431	1,135	556	579
<i>Los Ríos</i>	487,372	251,205	236,167	1,681	863	818
<i>Manabí</i>	958,888	488,848	470,040	3,274	1,669	1,605
<i>Morona Santiago</i>	79,501	41,294	38,207	396	202	194
<i>Napo</i>	53,650	27,248	26,402	217	110	107
<i>Orellana</i>	57,775	32,087	25,668	251	138	113
<i>Pastaza</i>	43,614	22,174	21,440	182	92	90
<i>Pichincha</i>	1,818,665	881,489	937,176	8,467	4,093	4,374
<i>Sucumbíos</i>	87,301	48,853	38,448	334	181	153
<i>Tungurahua</i>	357,744	174,069	183,675	1,234	602	632
<i>Zamora Chinchipe</i>	54,062	28,373	25,689	264	135	129
<i>Out of country voting</i>	152,180	72,063	80,117	667	315	352
<b>Total</b>	<b>9,371,252</b>	<b>4,642,289</b>	<b>4,728,943</b>	<b>37,656</b>	<b>18,588</b>	<b>19,068</b>

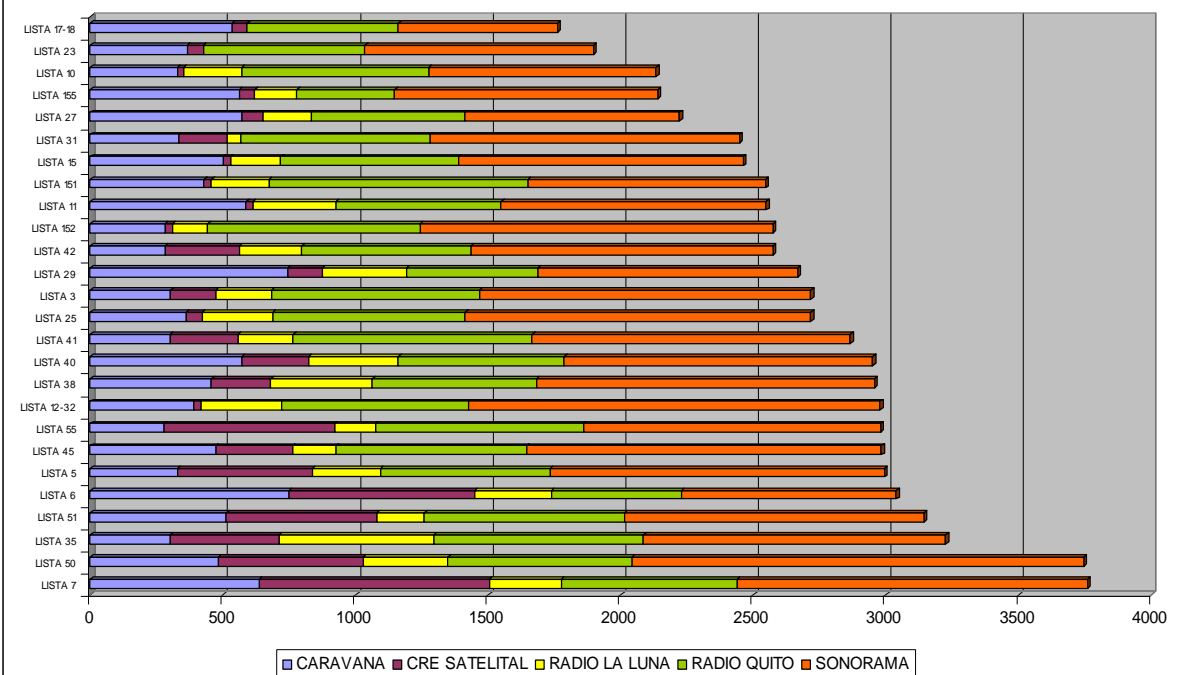


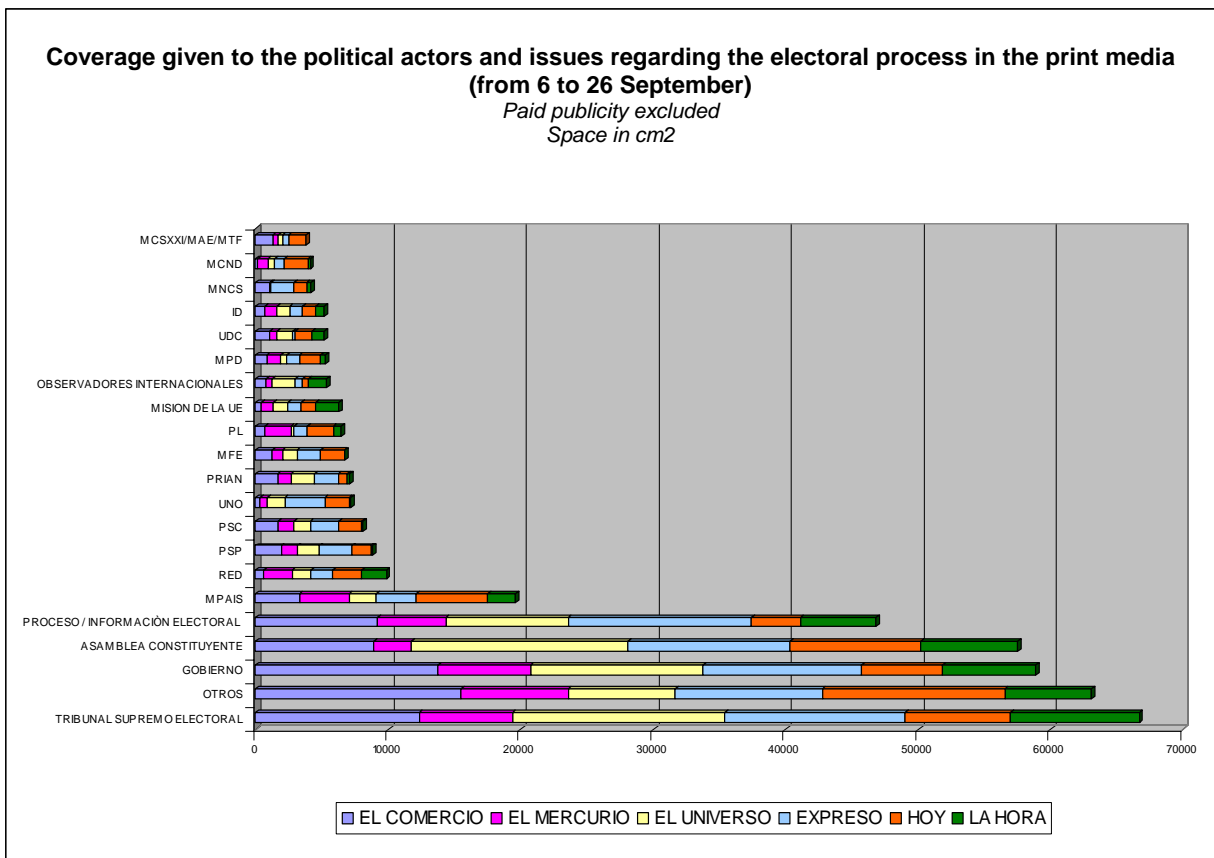
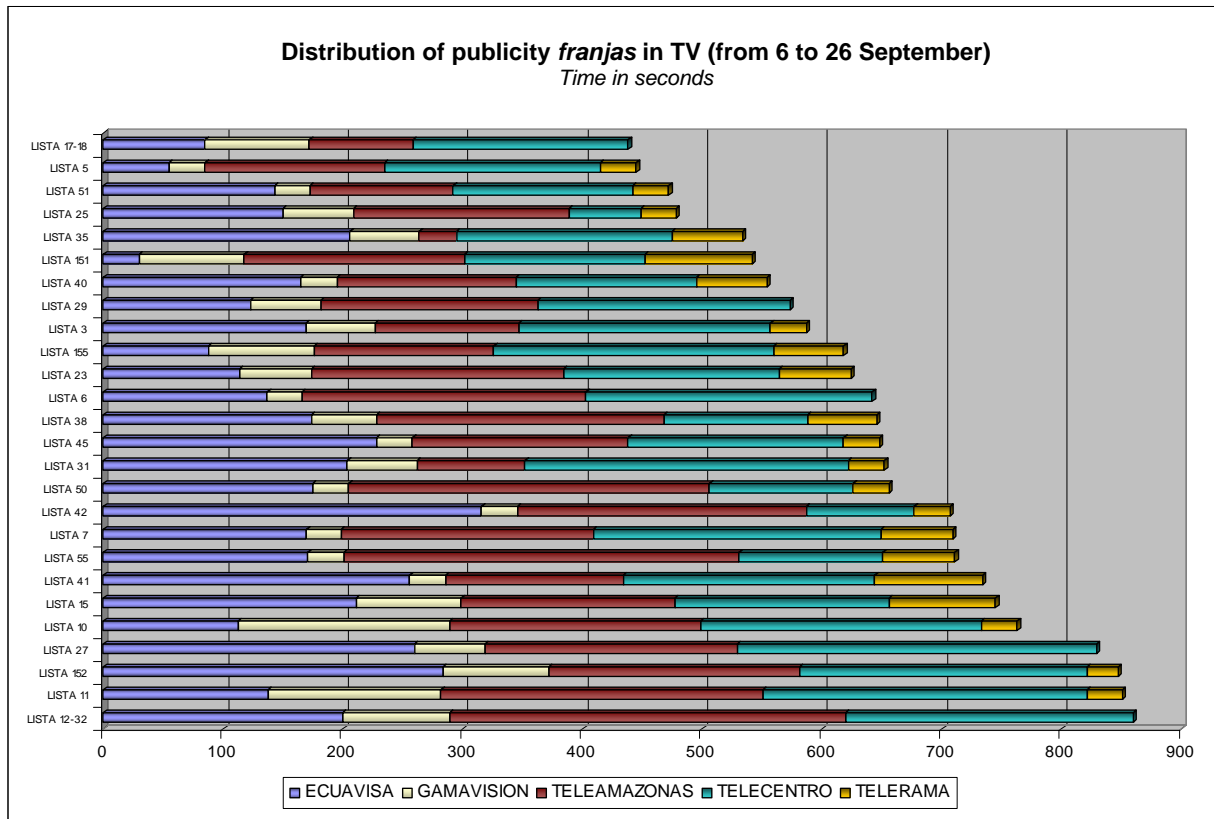
**ANNEX 5: MEDIA**

**Distribution of publicity *franjas* in the print media (from 6 to 26 September)**  
*Space in cm2*



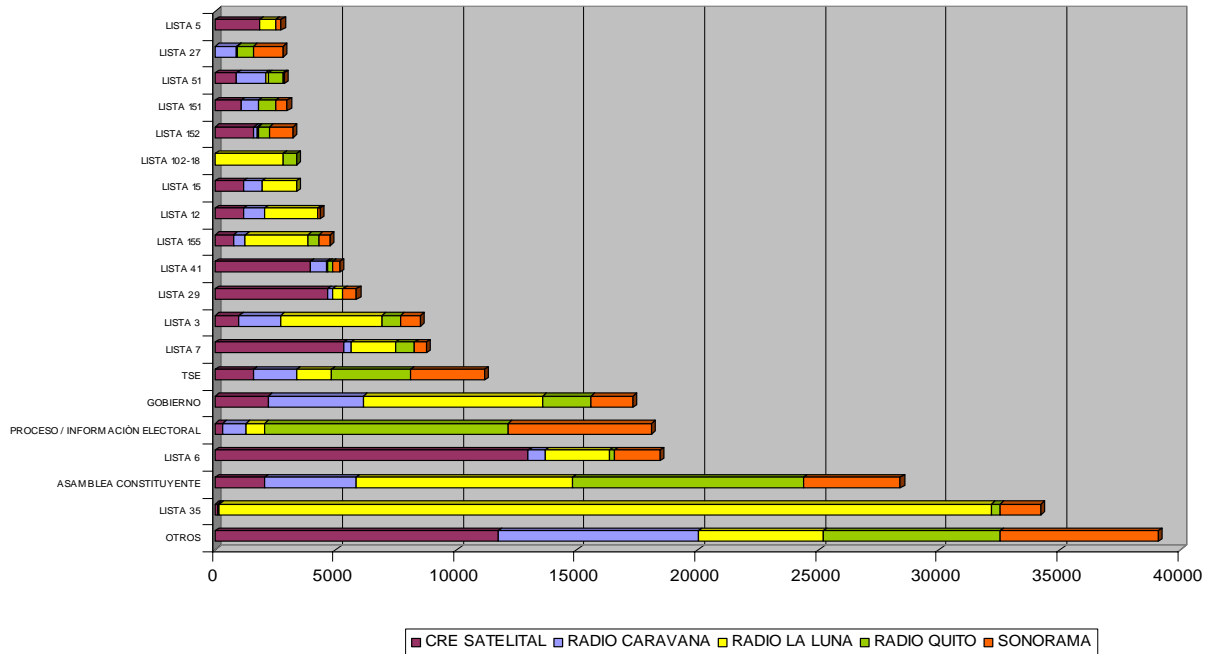
**Distribution of publicity *franjas* in the Radio (from 6 to 26 September)**  
*Time in seconds*





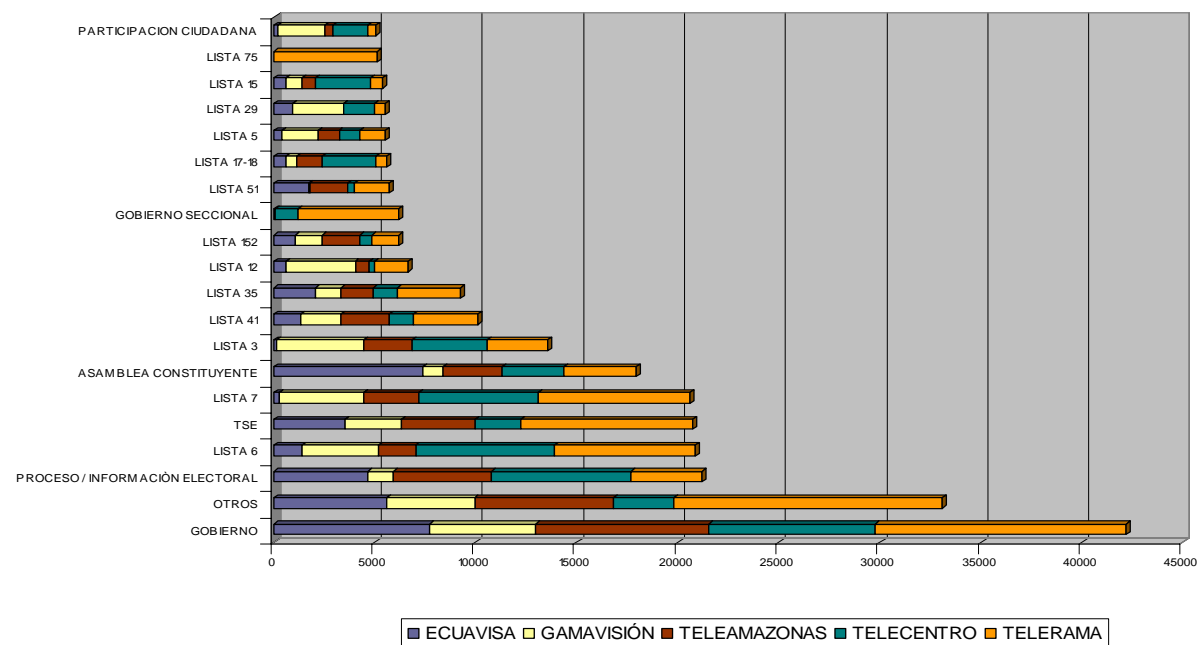
**Coverage given to the political actors and issues regarding the electoral process in the Radio**  
 (from 6 to 26 September)

*Paid publicity excluded - Time in seconds  
 tiempo en segundos*



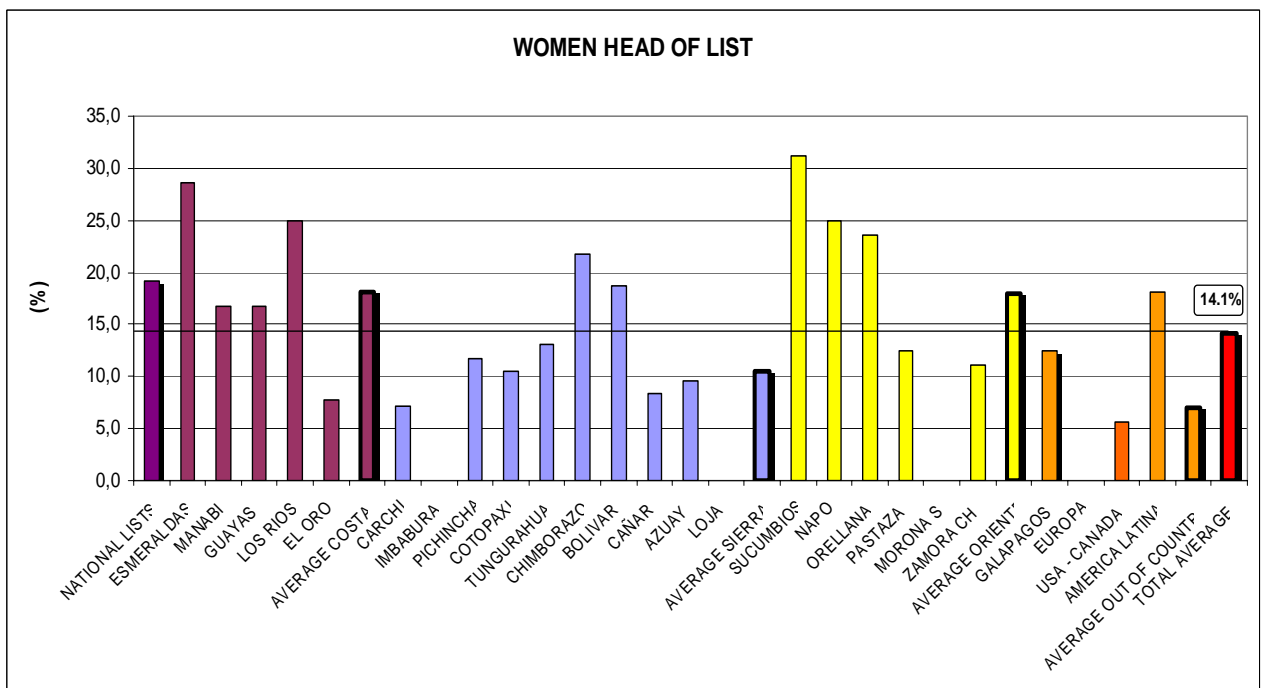
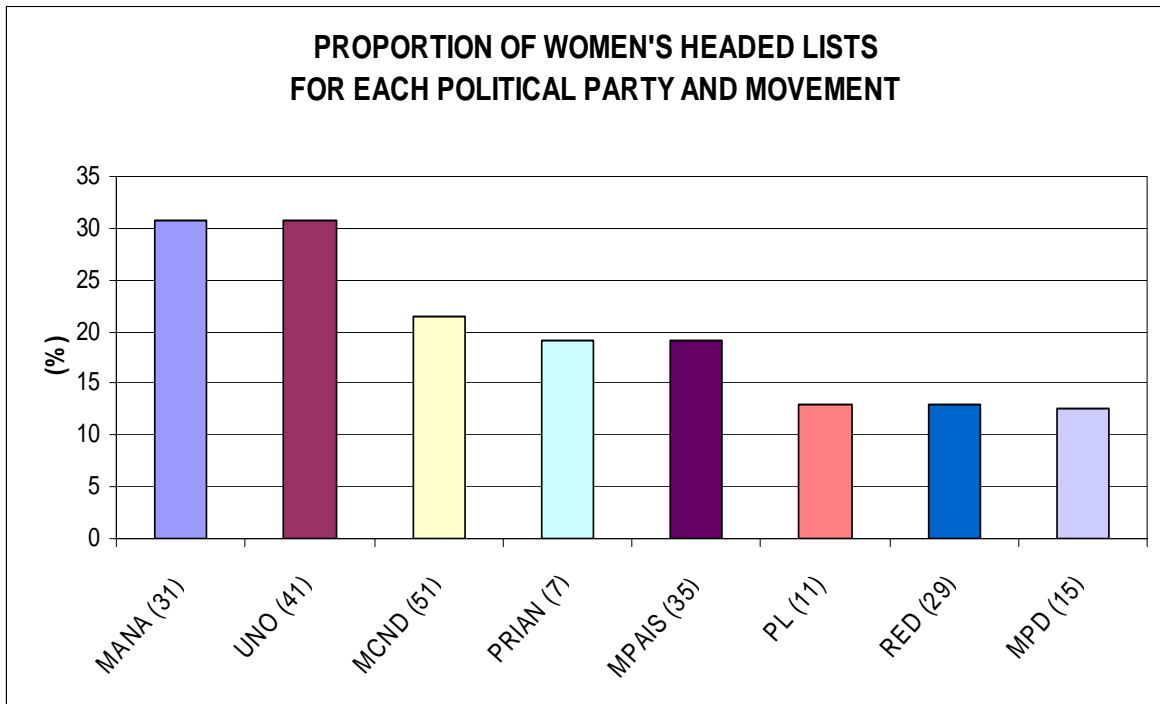
**Coverage given to the political actors and issues regarding the electoral process in the TV**  
 (from 6 to 26 September).

*Paid publicity excluded - Time in seconds*



**ANNEX 6: WOMEN HEAD OF LIST**

	Total number of lists	Number of Representatives to be elected	Number of head of lists' women	% with respect to the total number of lists
EL ORO	26	4	2	7.7
ESMERALDAS	21	4	6	28.6
GUAYAS	36	18	6	16.7
LOS RIOS	24	5	6	25.0
MANABI	36	8	6	16.7
<b>AVERAGE COSTA</b>	<b>143</b>		<b>26</b>	<b>18.2</b>
AZUAY	21	5	2	9.5
BOLIVAR	16	3	3	18.8
CAÑAR	12	3	1	8.3
CARCHI	14	3	1	7.1
CHIMBORAZO	23	4	5	21.7
COTOPAXI	19	4	2	10.5
IMBABURA	17	3	0	0.0
LOJA	20	4	0	0.0
PICHINCHA	34	14	4	11.8
TUNGURAHUA	23	4	3	13.0
<b>AVERAGE SIERRA</b>	<b>199</b>		<b>21</b>	<b>10.6</b>
MORONA SANTIAGO	12	2	0	0.0
NAPO	8	2	2	25.0
ORELLANA	17	2	4	23.5
PASTAZA	16	2	2	12.5
SUCUMBIOS	16	2	5	31.3
ZAMORA CHINCHIPE	9	2	1	11.1
<b>AVERAGE ORIENTE</b>	<b>78</b>		<b>14</b>	<b>17.9</b>
GALAPAGOS	8	2	1	12.5
LATIN AMERICA	11	2	2	18.2
USA - CANADA	18	2	1	5.6
EUROPE	14	2	0	0.0
<b>AVERAGE OUT OF COUNTRY</b>	<b>43</b>		<b>3</b>	<b>7.0</b>
<b>NATIONAL LISTS</b>	<b>26</b>	<b>24</b>	<b>5</b>	<b>19.2</b>
<b>TOTAL AVERAGE</b>	<b>497</b>		<b>70</b>	<b>14.1</b>



**ANNEX 7: ELECTED WOMEN**

Constituciones	Seats	Party/Movement	Elected Women
<i>Azuay</i>	5	MPAIS	2
<i>Bolívar</i>	3	MPAIS-PS FA	1
<i>Cañar</i>	3	MPAIS	1
<i>Carchi</i>	3	-	-
<i>Chimborazo</i>	4	MPAIS	1
<i>Cotopaxi</i>	4	MPAIS	1
<i>El Oro</i>	4	MPAIS	1
<i>Esmeraldas</i>	4	-	-
<i>Galápagos</i>	2	-	-
<i>Guayas</i>	18	MPAIS PSC PRIAN RED	5 2 1 1
<i>Imbabura</i>	3	MPAIS-PS FA	1
<i>Loja</i>	4	MPAIS	1
<i>Los Ríos</i>	5	MPAIS PRIAN	2 1
<i>Manabí</i>	8	MPAIS	2
<i>Morona Santiago</i>	2	-	-
<i>Napo</i>	2	-	-
<i>Orellana</i>	2	PSP	1
<i>Pastaza</i>	2	MPAIS-MPD	1
<i>Pichincha</i>	14	MPAIS	5
<i>Sucumbíos</i>	2	MPAIS MOV MUCGUK ALIANZA AMAZÓNICA	1
<i>Tungurahua</i>	4	MPAIS	1
<i>Zamora Chinchipe</i>	2		
<i>Latin America</i>	2	MPAIS	1
<i>USA/Canada</i>	2	MPAIS	1
<i>Europe</i>	2	MPAIS	1
<i>National</i>	24	MPAIS PSP UNO HonNacional	7 1 1 1
<b>Total</b>	<b>130</b>		<b>45</b>

**ANNEX 8: ELECTION RESULTS**

Constituciones	PSP	Alianza FSP/RED	FSC	FRIAN	FRE	ID	Alianza IDMFC	Alianza IDMDFS- FAMUFP- NP	Movimiento Unidad Plurinacional Pachacutik	Alianza MUFF	Alianza MUFF- NPM/NPN SIMOPIN	RED	MPD	MPAS	Alianza MPASP SFA
Azuay	1	-	-	-	-	-	-	-	-	-	-	-	-	4	-
Bolívar	1	-	-	-	-	-	-	-	-	1	-	-	-	-	1
Cañar	1	-	-	-	-	-	-	-	-	-	-	-	-	2	-
Carchi	-	-	-	-	-	1	-	-	-	-	-	-	-	2	-
Chimborazo	1	-	-	-	-	-	-	1	-	-	-	-	-	2	-
Cotacachi	1	-	-	-	-	-	-	-	1	-	-	-	-	2	-
El Oro	-	-	1	-	-	-	-	-	-	-	-	-	-	3	-
Esmeraldas	-	-	-	-	1	-	-	-	-	-	-	-	1	2	-
Galápagos	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Guayas	1	-	2	2	-	-	-	-	-	-	-	1	1	10	-
Imbabura	-	-	-	1	-	-	-	-	-	-	-	-	-	-	2
Loja	1	-	-	-	-	-	-	-	-	-	-	-	-	3	-
Los Ríos	1	-	-	1	-	-	-	-	-	-	-	-	-	3	-
Manabí	1	-	1	1	-	-	-	-	-	-	-	-	-	5	-
Morona Santiago	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Napo	1	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Orellana	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Pastaza	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pichincha	1	-	-	1	-	-	1	-	-	-	-	1	-	9	-
Sucumbios	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tungurahua	1	-	-	-	-	-	-	-	-	-	-	-	-	3	-
Zamora Chinchipe	-	-	-	-	-	-	-	-	1	-	-	-	-	1	-
Latin America	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-
USA/Canada	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-
Europe	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-
National	2	-	1	2	-	-	-	-	-	-	-	1	1	15	-
<b>Total</b>	<b>18</b>	<b>1</b>	<b>5</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>73</b>	<b>3</b>

<b>Constituencies</b>	<b>N. votes</b>	<b>Valid votes</b>	<b>Blank</b>	<b>Percentage</b>	<b>Null</b>	<b>Percentage</b>
<i>Azuay</i>	326,067	277,650	14,830	4.55	33,587	10.30
<i>Bolívar</i>	100,943	74,761	5,830	5.78	20,352	20.16
<i>Cañar</i>	99,601	82,696	3,913	3.93	12,992	13.04
<i>Carchi</i>	92,557	78,833	2,747	2.97	10,977	11.86
<i>Chimborazo</i>	239,518	186,991	12,462	5.20	40,065	16.73
<i>Cotopaxi</i>	214,874	166,933	10,090	4.70	37,851	17.62
<i>El Oro</i>	286,690	246,429	10,885	3.80	29,376	10.25
<i>Esmeraldas</i>	190,583	146,436	11,167	5.86	32,980	17.30
<i>Galápagos</i>	9,292	8,308	105	1.13	879	9.46
<i>Guayas</i>	1,816,650	1,494,252	110,205	6.07	212,193	11.68
<i>Imbabura</i>	206,786	169,640	9,324	4.51	27,822	13.45
<i>Loja</i>	208,702	175,144	9,984	4.78	23,574	11.30
<i>Los Ríos</i>	376,420	310,011	22,736	6.04	43,673	11.60
<i>Manabí</i>	713,938	545,861	53,985	7.56	114,092	15.98
<i>Morona Santiago</i>	49,062	39,148	2,264	4.61	7,650	15.59
<i>Napo</i>	42,794	37,659	610	1.43	4,525	10.57
<i>Orellana</i>	45,903	37,211	1,792	3.90	6,900	15.03
<i>Pastaza</i>	32,288	27,153	1,069	3.31	4,066	12.59
<i>Pichincha</i>	1,389,155	1,180,096	56,830	4.09	152,229	10.96
<i>Sucumbíos</i>	64,765	50,687	3,797	5.86	10,281	15.87
<i>Tungurahua</i>	274,264	226,373	9,620	3.51	38,271	13.95
<i>Zamora Chinchipe</i>	36,916	31,547	1,135	3.07	4,234	11.47
<i>Latin America</i>	10,211	9,364	194	1.90	653	6.40
<i>USA/Canada</i>	20,307	19,557	196	0.97	554	2.73
<i>Europe</i>	121,662	113,025	2,286	1.88	6,351	5.22
<b>Total</b>	<b>6,969,948</b>	<b>5,735,765</b>	<b>358,056</b>	<b>5.14</b>	<b>876,127</b>	<b>12.57</b>
<i>National</i>	6,857,466	5,762,570	429,120	6.26	665,776	9.71



## **ANNEX 9: STUDY ON THE EXACT AVERAGE WEIGHT FACTOR**

### **The “*exact average weight factor*” in the Ecuadorian electoral system. Effects on the distortion of electoral results and on the inequality of votes.<sup>236</sup>**

José Ribeiro e Castro  
Head of the EOM-EU Ecuador 2007

#### **1. EQUALITY AND PERSONAL NATURE OF VOTE IN ECUADORIAN ELECTORAL LAW.**

The Constitution and the relevant laws in the Ecuadorian electoral system, like in so many other countries in the world and in accordance with international standards, establish the **personal nature** and the **guarantee of equality** of voting rights and their exercise.

The *Constitution of the Republic of Ecuador* (1998) defines it:

“Article 27. The popular vote will be universal, **equal**, direct and secret; (...).”

The *Organic Law of Elections* states:

“Article 1. – Suffrage is the right and duty of all Ecuadorian citizens, in accordance with the Constitution and the law. Through the vote citizens make effective their participation in the life of the State.”

“Article 2. – The vote is a **personal act**, mandatory and secret.”

The *General Regulation of the Organic Law of Elections* guarantees that:

“Article 1 – Suffrage is the right and duty of all Ecuadorians that enjoy political rights. Through suffrage citizens make effective their participation in the life of the State.”  
The vote is universal, **equal** and direct. Its exercise is **personal**, mandatory and secret (...).

Amongst the *International Human Rights Conventions* that Ecuador has ratified and which stipulate relevant rights for electoral processes, the following must be highlighted:

- The 1966 *International Covenant on Civil and Political Rights* (ICCPR) and its optional protocol;

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<sup>236</sup> This study, included as the Annex 9, was written on September 2007 by the Chief Observer of the EU EOM before the E-Day, as part of the preparatory works of EU observers to follow the E-Day and the subsequent counting and tabulation.

- The 1969 *American Convention on Human Rights*.

The ICCPR regulates the right to political participation in its Article 25<sup>237</sup>; The American Convention in Article 23<sup>238</sup>. Both conventions establish as basic principles the equality of suffrage and the free expression of the will of the electorate.

According to the *Ecuadorian Constitution* (Art. 163), the international conventions ratified by Ecuador are part of the legal system of the Republic and prevail over laws and other norms of lesser importance. Besides, the Conventions with respect to human rights are self-executing, as is also ruled by the Constitution (Art. 18).

Nevertheless, there exists **an element** in the Ecuadorian electoral system **that puts into question the equality of the vote and its strictly personal nature**.

This occurs in **multi-person elections**, like those that took place for the National Congress on October 15, 2006 and those that are taking place now on September 30 for the Constituent Assembly.

It corresponds to a mathematical element that, in reality, operates in such a way that may create profound inequalities in the vote of Ecuadorians and in its relative weight once counted. It depends, first, on voters having voted for an *entire list* (or *closed list*, a type of vote known as *voto en plancha*) or nominally (*open list* or, to simplify, *between lists* or *cross-lists*, a vote known as *voto entre listas*<sup>239</sup>); and depending, secondly, on the number of candidates each voter has chosen to indicate.

The precise effects of this mathematical formula vary and cannot be guessed in advance.

In particular, its effects will depend on the voting patterns of the electorate on the elections day: the relative weight of the votes for an *entire list* (*en plancha*) or nominal votes (*entre listas*); and the average candidates indicated by those voters who have voted nominally. This will be explained in depth later in this report.

Nevertheless, the fact is that inequality is produced consistently and clearly. And this can have a determining influence on the results of elections by distorting the true expression of the will of the electorate.

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<sup>237</sup> Article 25: “All citizens shall enjoy, without any of the distinctions mentioned in Article 2, and without any other improper restrictions, the following rights and opportunities: a.) the right to participate in the management of public issues, directly or through freely-chosen representatives, b.) **to vote and be chosen in authentic periodic elections undertaken through universal suffrage and by means of an equal and secret vote that guarantees the free expression of the will of the electorate**. C.) to have access, in general conditions of equality, to the public functions of his/her country.”

<sup>238</sup> Article 23, Political Rights: “All citizens should enjoy the following rights and opportunities: ... b.) to vote and be chosen in period authentic elections, **undertaken through universal suffrage in an equal and secret vote that guarantees the free expression of all the voters, and ...**”

<sup>239</sup> In the strict sense of the word, not all nominal votes are *votos entre listas*, in English votes *between lists* or *cross-lists* votes; any voter can also vote nominally choosing from a single list, provided that the voter has not chosen all of the candidates in that list. If all the candidates in a list are marked by the voter, the vote is obviously interpreted as a vote for the *entire list* (*voto en plancha*).

## 2. THE INTRODUCTION OF THE “EXACT AVERAGE WEIGHT FACTOR” IN THE ECUADORIAN ELECTORAL SYSTEM.

This mathematical element was introduced in 2006 and is called the *factor ponderador exacto*, translated in English to “*exact average weight factor*”.

It is established by current Article 105, paragraphs 1 to 3, of the *Organic Law of Elections*, like this:

*Article 105. – In order to assign seats in multi-person elections, the following procedures will be applied:*

1. *On the electoral ballot the possibility for the voter to select the candidates of his choice from a list or from between two or more lists will be clearly established.*
2. *The counting process should produce the results of, amongst other data, the number of participating voters, the number of voters that annulled their vote or chose no candidates, the number of voters who voted validly, distinguishing separately those who voted for one list from those who voted between lists. For each list it is necessary to determine the number of votes obtained through voters choosing a single list and the number of votes obtained for individual candidates through cross-list voting.*
3. *Before proceeding to the allocation of seats, the consolidated vote for each list will be calculated, which consists in transforming the votes in open lists or cross-lists votes into votes for the list or closed list and by adding these votes to the number of votes received by each list, going through the following procedure:*
  - a.) *It will be established, with respect to each list, the total of cross-lists votes, which is the sum of the nominal or individual votes obtained by the candidates of that list in the cross-lists ballots;*
  - b.) *The sum of the cross-lists votes of all the participating lists corresponds to the overall of the cross-lists votes;*
  - c.) *An **exact average weight factor** will be calculated, which is the result of dividing the total number of voters who voted between lists by the total of cross-lists votes;*
  - d.) *For each list the average weight cross-list voting it will be calculated by multiplying its respective cross-lists votes by the **exact average weight factor** obtained as described in the previous point;*
  - e.) *For each list, the **consolidated voting** will be determined by adding their votes for the entire list to the average weight cross-lists voting of the same list; and (...).”*

## 3. VOTING “CONSOLIDATION” IN MULTI-PERSONAL ELECTIONS IN ECUADOR.

Because such a complex system of voting, counting, tabulation and allocating seats is difficult to understand and caused a generalised confusion, it is very common to hear that the problem is in the system of seats’ allocation. It is also frequent to listen that the Constitutional Tribunal has declared unconstitutional the *D’Hondt method*, and that all that derived from such decision.

To be precise, this is not exactly the truth.

In a somewhat curious decision, the Constitutional Tribunal has declared unconstitutional the *D'Hondt method*<sup>240</sup>, but the reform of the law, adopted by the National Congress as a consequence, maintained *D'Hondt method* (with a different name) and decided to change, yes, the manner previously used in order to consolidate<sup>241</sup> the votes on a same common basis.

In fact, the *D'Hondt method* continues to be applied by the Ecuadorian electoral legislation. This is what is clearly regulated by the reformed and current Article 105, paragraph 4, of the *Organic Law of Elections*:

*Article 105: In order to assign seats in multi-person elections, the following procedures will be applied:*

1. (...)
2. (...)
3. (...); and,
4. *Once obtained the global results for each list through the previous procedure, a method of **continuous dividers**<sup>242</sup> will be applied in order to allocate the seats, as follows:*
  - a.) *The consolidated voting obtained for each list will be divided by 1, 2, 3, 4, 5, and so on, using all the necessary natural numbers until achieving for each one a quotient equal to the number of candidates to be elected as principals;*
  - b.) *Once the quotients are obtained and ordered from the highest to the lowest, the highest will be chosen first in a number equal to the candidates to be*

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<sup>240</sup> This decision declaring unconstitutional the *D'Hondt method* is very surprising, since this is a well known proportional representation method, experimented in many parts of the world. The content of the *Constitutional Tribunal Resolution No. 025-2003-TC*, published in the *Registro Oficial*, Supplement 282 on March 1, 2004, is very controversial. The case was presented in 2003, based upon a specific example taken from the previous congressional elections, in the voting expressed in the Guayas province. The case was wrongly based, as it was well demonstrated in the response presented by the President of the Supreme Electoral Tribunal. Nonetheless, by a majority of five votes against four, the Constitutional Tribunal decided for the unconstitutionality, based on new arguments, different from the petition. Moreover, one of the five judges followed a totally different line of reasoning. The dissenting opinion presented by the other four judges directly criticizes, among others, these two aspects of the decision.

<sup>241</sup> We can confirm it by comparing the older text of the *Organic Law of Elections* with the new one introduced by *Law 2006-45* (RO 268: May 11, 2006). By this law from 2006, Articles 104 to 106 of the *Organic Law of Elections* have been modified. The Constitutional Tribunal had declared Articles 105 and 106 unconstitutional. The new law modified Articles 104 and 105 and suspended Article 106. The same happened concurrently to the *General Regulation of the Organic Law of Elections* with respect to which the *Resolution of the Supreme Electoral Tribunal* (RO 387: Oct 31, 2006) adopted a new Article 110. The cited decision of the Constitutional Tribunal had declared unconstitutional Article 111 of the Regulation. The Supreme Electoral Tribunal approved a complete and very large reform of Article 110, coherent with the new system of *voting consolidation* introduced by the reform law passed by the Congress, suspended Article 111 and revoked Article 112 of the Regulation. Further in this report, we will explain to what this term *consolidation* corresponds.

<sup>242</sup> [English text footnote] "*Divisores continuos*", in the original Spanish text. It corresponds to one of the "*highest average*" methods.

*elected as principals, and each list will be assigned the seats that correspond to it. In the event of a tie for the last seats, the winner will be chosen by draw; and,*

- c.) The allocation of the principal seats to a list will correspond to the candidates from that list with the highest voting scores until completing the total number of representatives that correspond to that list. In the event of a tie for the last seats, the winner will be chosen by draw.”*

*A method of continuous dividers like the one described here is nothing else than the D’Hondt method.*

In previous years, for this strict allocation of the seats, Articles 105 and 106 of the Organic Law of Elections stated:

*“Article 105 – In multi-person elections and for the distribution of seats between the lists, the formula of proportional representation known as the **D’Hondt method** will be applied, which is a calculation procedure used to convert votes into seats through the division of votes gained by parties or political organizations by a series of dividers through which quotients are obtained; and the seats are then distributed according to the highest quotients. This method will be applied according to what is ruled in the following articles.*

*Article 106 – Regarding multi-person elections, procedures will be as follows:*

- 1.) The global sum of the nominal votes received by all the candidates from each list is the figure to which the **D’Hondt formula or of continuous dividers**<sup>243</sup> will be applied:*
- 2.) The total of the votes obtained by each list will be divided by 1, 2, 3, 4, 5, and so on, until reaching for each one a number of quotients equal to the number of candidates to be elected as principals;*
- 3.) Once the quotients are obtained, they will be ordered from the highest to the lowest, and each list will be given the positions that corresponds to it in accordance with the highest quotients; and,*
- 4.) Once the D’Hondt method has been applied, the allocation of seats will correspond to the candidates with the highest voting scores in each list until completing the total corresponding number of representatives.*

*In the event of a tie for the last seat, decision will be taken by draw.*

*In the event of decimals, the closest whole number will be taken; and in the event of equal halves, the number will be rounded upwards.”*

It is easy to confirm that this method for the assignment of seats, established in 2000, does not differ from the method currently in use<sup>244</sup>, although, since the 2006 reform, written differently.

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<sup>243</sup> [English text footnote] See previous footnote 6.

<sup>244</sup> This law continues in effect for congressional and other multi-person elections. For the Constituent Assembly, as will later be explained, the Supreme Electoral Tribunal approved a new method to allocate seats, known as the *Hare quota*. Nevertheless, if it does affect the norms that, in the general law, establish the *D’Hondt method*, the Supreme Electoral Tribunal has not modified those other provisions which refer to the “*exact average weight factor*”. These will be equally applied in the same fashion to the September 30 elections, exactly in the same way as they were established by the 2006 reform.

Therefore, what has, in fact changed was not the method to allocate seats, but instead the so-called *consolidation* of the vote.

Before the Constitutional Tribunal's 2004 decision, it was declared – let us remember – by Article 106 of the *Organic Law of Elections*:

*“Article 106 – Regarding multi-person elections, procedures will be as follows:*

- 1.) The global sum of the nominal votes received by all the candidates from each list is the figure to which the D'Hondt formula or of continuous dividers will be applied;”*

It has been this formula for *consolidating* the vote – or, then, in other words, of second reading of the results – that has been replaced by the “*exact average weight factor*”, introduced by new Article 105, paragraphs 1 through 3, adopted by the 2006 reformed law, as already transcribed above.

What happens in the Ecuadorian electoral system that determines the need for this *consolidation*, and in what does it consist?

In multi-person elections, like the 2006 congressional elections and the current elections for the Constituent Assembly, Ecuadorian citizens can choose between different lists and different candidates.

This comes directly from the *Ecuadorian Constitution*:

*“Article 99. – In multi-person elections the citizens may select the candidates of their preference from one list or from between lists. The law will conciliate this principle with the principle of proportional representation of minorities.”*

Therefore, the voting ballots show:

- A. The lists that present themselves to the elections, and
- B. Individually, the candidates that belong to each of the lists.<sup>245</sup>

And, on their turn, the electors can:

- (i) Vote for a single list or all the candidates from a single list – *votos en plancha* (*entire list* votes or *closed list* votes);
- (ii) Select nominally, by *panachage*, some candidates from one list or different candidates from different lists, up to the number of candidates to be elected for the respective constituency – *nominal votes*, *open-list* votes or, to simplify *votos entre listas* (*votes between lists* or *cross-lists* votes).

Since the first scrutinizing operation necessarily consists in finding how many votes were obtained by the different lists (in order to determine their percentage and total vote); and, only after concluding this counting, how many seats will correspond to each

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<sup>245</sup> For this reason, some of the voting ballots in these coming elections in Ecuador are enormous.

list – the system requires a *consolidating* formula: a means by which to convert into a lists' basis the votes that were expressed nominally (or vice versa<sup>246</sup>) and that each voter distributed between lists.

Before the 2006 reform this formula was defined in Article 106, paragraph 1 of the law: all the votes obtained by each list were summed (as if all of them were nominal votes<sup>247</sup>) and, after this, the *D'Hondt method* was applied to this new total. One can imagine how a system of *consolidation* defined as described here could disproportionately favour the most voted lists. Perhaps pushed by some debate under this perspective, the Constitutional Tribunal declared unconstitutional the system that was in place in 2004.

Now, as a consequence, the *exact average weight factor* has been adopted.

#### 4. THE CONSOLIDATION AS A PREVIOUS OPERATION WITH REGARD TO THE ALLOCATION OF SEATS.

It is important to underline that the *consolidation* of the vote is different from the distribution of seats. It corresponds to an indispensable operation that must be undertaken before assigning seats, and it refers directly to the votes themselves (some *en plancha*, for the *entire list*, other *entre listas*, *cross-lists* votes). It is an attempt to convert the whole of the votes cast into a common and uniform basis.

Let us remember as current Article 105, paragraph 3, of the *Organic Law of Elections*, writes it down quite clearly:

*“Article 105 – In order to assign seats in multi-person elections, the following procedures will be applied:*

1. (...)
2. (...)
3. ***Before proceeding to the allocation of seats, for each list its consolidated vote will be calculated, which consists in transforming the votes in open lists or cross-lists votes into votes for the list or closed list and by adding these votes to the number of votes received by each list, going through the following procedure:***<sup>248</sup>

The operation to establish the electoral results consists, in reality, of two fundamental moments that each unfold into two other steps:

1. The *consolidation of the vote*, converting nominal votes into list votes. This is done by two operations:

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<sup>246</sup> Just like it occurred before the 2004 Constitutional Tribunal's decision and before the 2006 reform law.

<sup>247</sup> One vote for a list, *entire list* or *closed list*, or *voto en plancha* was, then, worth as many nominal votes as the total number of candidates to be elected in the respective constituencies. Curiously, this same system is revived to be applied in the 30 September constituent elections to the three constituencies for the Ecuadorian emigrants.

<sup>248</sup> The procedures for the assigning of seats are described in point #4 of the same Article 105.

- (i) The first, in which the sum of the nominal votes obtained by each list is multiplied by the *exact average weight factor* that has been found;
- (ii) And a second operation, in which, for each list, this average weight subtotal (the *net worth* of nominal votes) is added to the votes for the *entire list (votos en plancha)*, received by the same list. This sum is the *consolidated vote* for each list. Then, only after having finalized this operation globally for all the lists, can one proceed to:
  2. The **allocations of seats**, which is also completed through two steps:
    - (iii) The first, in order to apply to the consolidated vote of the different lists the proportional distribution method that corresponds to the election<sup>249</sup>, in order to determine how many seats correspond to each list;
    - (iv) And, finally, the **concrete allocation of the seats**, by individually attributing them to the candidates with the highest scores within each list.

## 5. EFFECTS OF THE *EXACT AVERAGE WEIGHT FACTOR*.

The *exact average weight factor* interferes solely in the first step, being irrelevant to it what may happen afterwards in the phase of seats' allocation, being it through the *D'Hondt method* or the *Hare quota*. Nonetheless, the *exact average weight factor* has a determining effect on the vote "*net results*", to put it in these words, and, as it has been said from the beginning, it operates in such a way that it damages the equality of the vote between electors and can profoundly distort the authenticity of each election.

In truth, the new *Hare quota* method adopted by the Supreme Electoral Tribunal for the upcoming Constituent Assembly elections is a method of proportional distribution that, within a spectrum of reasonable proportionality, favours lists with small voting shares than the *D'Hondt method*. Nonetheless, the so called *exact average weight factor*, which remained, provokes an absolute uncertainty and is potentially disturbing, in such a way that no-one can guarantee whether it will harm minorities or majorities or, instead, will benefit ones or the others.<sup>250</sup>

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<sup>249</sup> In general, as we have seen, this is the *D'Hondt method*. For the Constituent Assembly, it is the *Hare quota* for most constituencies: the national ballot and 15 of the 22 provincial constituencies.

<sup>250</sup> The Supreme Electoral Tribunal made clear in its new *Regulation for the assignment of seats in the election of representatives for the Constituent Assembly*, approved specifically for this purpose, that the new seats' allocation method – known as the *Hare quota* – will be applied after concluding the *consolidation* of the votes, done according to the method adopted by the 2006 reform: the *exact average weight factor*. In fact, the corresponding text of the Regulation states:

“Article 5 – In order to assign the seats in the national and provincial constituencies, the procedure will be as follows:



The *exact average weight factor* is an **indeterminate mathematical factor, which cannot be determined beforehand**, that operates like an *exchange rate* between different currencies, for example between dollars and euros. Therefore, as it will be shown, its value and its effects will depend on the *exchange rate of the day*, that is, on the concrete voting patterns of the whole electorate on the elections' day, at the moment the votes were cast.

Some might think that this uncertainty and indeterminable nature could be positive, since nobody could manipulate it.

This is not the case.

First, this violates another sacred right of all voters: to know beforehand how to vote and how to express one's preference; and to have absolute certainty that one's vote will be interpreted and valued exactly as one has wanted to express it.

Second, a **better informed and attentive political sector can always try to manipulate the system beforehand**, by inciting a strategic vote, as it will be explained further, although doing so with the uncertainty that always arises from aleatory gambling, or in a casino.

And, third, the injustices and inequalities deriving from this operation cannot be erased and should not be underestimated.

So, how exactly does the *exact average weight factor* work?

As is established by Article 105, paragraph 3, clause c.), the factor is determined, constituency by constituency, by "*dividing the total number of voters who voted between lists by the total of cross-lists votes*".

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- a. The **consolidated vote for each list** will be determined, according to what is established by Article 105, paragraphs 1, 2 and 3, of the Organic Law of Elections.
  - b. Once the consolidated vote is obtained in conformity with the procedure determined by the previous clause, all of the valid votes received by each list will be summed;
  - c. The total sum of the valid votes will be divided by the number of seats to be assigned in each constituency, so obtaining the seats' **distributing quotient or quota**;
  - d. Each list will be assigned the number of seats that corresponds to it, according to how many times the list reaches the distributing quotient within its total of valid votes; to determine this, we will divide the total sum of valid votes by the distributing quotient;
  - e. The seats that remain to be assigned will correspond to the lists that reached the highest approximate decimals to the quotient obtained through the operation in the previous clause, taking into account four figures; in this comparison, will be included the lists that had already been assigned any seat by whole numbers; and
  - f. Once the seats have been distributed, it will be determined to which candidate from each list corresponds that seat, which must be assigned to the candidate that received the highest nominal votes within each list. If one list has won various seats, they will be assigned to the candidates with the highest nominal votes, in a descending order. In the event of a tie between two or more candidates and if there is only one seat left to be assigned, one must proceed to a draw between the candidates with equal number of votes."

Let's take as an example the concrete case<sup>251</sup> of what occurred in the congressional elections on October 15, 2006 in the central province of Pichincha, which elects 14 congresspersons<sup>252</sup>. The results were:

**Table I**  
 Electoral Results from the province of Pichincha  
 Provincial Total - Oct 15, 2006

Total number of registered voters:	1,771,003
Total number of voters that voted:	1,324,044
Blank ballots:	142,757
Annulled ballots:	436,462
Voters who voted for an entire list ( <i>en plancha</i> ):	542,770
Voters who voted between lists ( <i>entre listas</i> ) <sup>253</sup> :	202,055
Total votes:	1,206,044
<b>Exact average weight factor</b>	<b>0.16753535</b>

The *exact average weight factor* found (0.16753535) in the 2006 congressional elections, in the province of Pichincha, was obtained by dividing the total number of voters that voted nominally (*dividing* = 202,055) by the sum of the nominal votes cast (*divider* = 1,206,044).

In the first place, following the established rules, it was this *exact average weight factor* that, acting as if it were an exchange rate, was multiplied by the sum of the nominal votes received by each list (within the ballots with votes *entre listas*, *cross-lists* votes).

And, after this, as if establishing the “*net worth*” of the nominal votes (*entre listas*) by determining a corresponding value on a common basis of lists, the figure obtained in

<sup>251</sup> This concrete example of the congressional elections in Pichincha, October 2006, will be used throughout this report.

<sup>252</sup> This is what happened in 2006. Now, for the Constituent Assembly, the voters in Pichincha will also choose 14 assembly representatives. The *Statute for the election, installation and functioning of the Constituent Assembly*, approved through last April's referendum, did not modify the number of assembly representatives to be chosen in each province, compared to the corresponding number of congresspersons in the National Congress. The *Statute* adopted the same total of 100 and its distribution to represent the different provinces, adding to that another 24 for a national constituency and 6 more to represent Ecuadorians living abroad. In total, 130 assembly representatives (*asambleístas*) will be elected.

<sup>253</sup> This number – for the effect of calculating the *exact average weight factor*, the “*dividing*”: 202,055 voters *entre listas* (cross-lists votes) – is not presented in the official published results. It also seems that it is missing from the original *actas* from each of the different polling stations (*juntas receptoras del voto*). In Ecuador, this number is obtained by difference, taking away the total number of blank ballots, annulled votes and votes *en plancha* (votes for an entire list). Like this: 1,324,044 – 142,757 – 436,462 – 542,770 = 202,055. In truth, according to the electoral counting best practices and also to the exact text of Art. 105, 2 of the *Organic Law of Elections*, the number of votes *entre listas* (voters that voted nominally) should be directly available from the *actas* coming out from each polling station, so that the partial results were summed in the end, just like what happens with the votes *en plancha* (votes for an entire list). The operation of subtracting should serve only as a counterproof, in order to verify the total and subtotals and, if it were to be necessary, to recount the ballots.

that first operation for each list was summed, in second place, to the subtotal number of votes for the *entire list (en plancha)* cast by the same list.

This value is named the *consolidated vote* of each list; and it is to this figure that, finally, the proportional method used for the allocation of seats is applied.

In Pichincha, things occurred as follows, for the six lists that won seats<sup>254</sup>:

**Table II**  
 Electoral Results in the Province of Pichincha  
 Total votes for the six most-voted lists - Oct 15, 2006

<b>ID/RED - Izquierda Democrática/Red Ética y Democracia</b> <b>Democratic Left/Ethical and Democracy Network</b>	
Votes for the entire list:	<b>133,309</b>
Nominal votes:	324,639
<i>(324,639 x 0.167535) "Net worth" of nominal votes:</i>	<b>54,388.51</b>
<b>Consolidated vote:</b>	<b>187,697.51</b>
<b>PRIAN – Partido Renovador Institucional Acción Nacional</b> <b>Institutional Renewal National Action Party</b>	
Votes for the entire list:	<b>129,691</b>
Nominal votes:	125,681
<i>(125,681 x 0.167535) "Net worth" of nominal votes:</i>	<b>21,056.01</b>
<b>Consolidated vote:</b>	<b>150,747.01</b>
<b>PSP - Partido Sociedad Patriótica</b> <b>Patriotic Society Party</b>	
Votes for the entire list:	<b>87,096</b>
Nominal votes:	107,207
<i>(107,207 x 0.167535) "Net worth" of nominal votes:</i>	<b>17,960.96</b>
<b>Consolidated vote:</b>	<b>105,056.96</b>
<b>PSC - Partido Social Cristiano</b> <b>Social Christian Party</b>	
Votes for the entire list:	<b>42,202</b>
Nominal votes:	92,404
<i>(92,404 x 0.167535) "Net worth" of nominal votes:</i>	<b>15,480.94</b>
<b>Consolidated vote:</b>	<b>57,682.94</b>
<b>UDC - Unión Demócrata Cristiana</b> <b>Democratic Christian Union</b>	
Votes for the entire list:	<b>23,043</b>

<sup>254</sup> In this case, it was the *D'Hondt method* that was applied, according to the provisions of the *Organic Law of Elections*, art. 105, 4, already reformed in the year 2006. See also the new Article 110 of the *General Regulation of the Organic Law of Elections*, reformed by the Supreme Electoral Tribunal also in 2006.

Nominal votes:	131,499
$(131,499 \times 0.167535)$ “Net worth” of nominal votes:	<b>22,030.73</b>
<b>Consolidated vote:</b>	<b>45,073.73</b>
<b>MPD - Movimiento Popular Democrático</b>	
<b>Popular Democratic Movement</b>	
Votes for the entire list:	<b>27,180</b>
Nominal votes:	57,479
$(57,479 \times 0.167535)$ “Net worth” of nominal votes:	<b>9,629.76</b>
<b>Consolidated vote:</b>	<b>36,809.76</b>

If one examines the global results in the table above, it looks like apparently that everything went well, especially when considering the large figures, since that’s the way mathematics operate: the sum of the different subtotals in the *consolidation process* (the different “*net worth*” partials) is precisely equal to the total number of voters that voted *between lists* (or nominally).

However, **this operation altered, in reality, the meaning of the vote from each voter *between lists* (*entre listas*) and introduced profound discrepancies in the relative value of votes.**

One may not easily realize this at first, once the *consolidation* operation is performed by package, at the provincial level, taking into account the subtotals, list by list, and, then, converting to a *net value* their respective nominal votes, instead of performing it vote by vote, ballot by ballot<sup>255</sup>.

The vote is a **personal act** – as it is guaranteed by the Constitution and laws of Ecuador, consistent with the international standards. However, in reality, **that *average weight factor*, so-called *exact*, forgets, hides and ignores the personal nature of each vote in its respective ballot paper; and proceeds more in the way of a statistical operation than of an accurate electoral counting process** – any elections’ counting process is basically the sum of individual votes, not a statistical of average values.

Let us examine this in more detail.

The *exact average weight factor* found – the above mentioned 0.16753535 – means that, seen from another perspective, each voter in Pichincha that voted *between lists* has chosen in his/her ballot paper almost 6 nominal candidates – 5.97 to be exact.<sup>256</sup>

<sup>255</sup> It is not possible to know the degree by which the parties have reciprocally benefited or been harmed in 2006 because of the application of this method of voting *consolidation*. It is not recorded, by each voter *entre listas*, for how many lists he/she distributed the votes, that is to say, for how many candidates and from what lists did he/she vote in his/her ballot paper. Therefore, as we shall understand at the end of this report, the information has been erased that might allow the application of distinct criteria to consolidate voting based on the real and effective votes cast by each elector.

<sup>256</sup> Changing the divider into the dividing and the dividing into the divider, it can be verified very easily. In fact, 1,206,055 nominal votes divided by 202,055 voters that voted *between lists* correspond to an average of 5.97 candidates chosen by voters who voted nominally.

Nevertheless, the truth is that those voters did not vote all in that same way; in fact, each voter voted distinctly: one voted for 1 single candidate, others for 2, others for 3, ... and so on and on, successively, until one that voted nominally for 14 candidates in different lists<sup>257</sup>.

The *average weight factor*, so-called *exact*, once it applies the same “*exchange rate*” to the whole cross-lists votes (*entre listas*), has the effect of distorting, implicitly, their electoral truth and introduces, concurrently, differences, which can be very significant, in the relative weight of the votes cast by electors.

To summarize, we can conclude the following **four electoral consequences** deriving from the so-called *exact average weight factor*:

- 1<sup>st</sup>. - **The difference in value between the cross-lists votes (*entre listas*) is equal to the number of seats that are being contested in each constituency.** The rule is not written that way; but it results like that as a direct consequence of the *factor* as ruled: by applying to all nominal votes the same average weight (*exact average weight factor* =  $y$ ), the outcome is that the weight of a vote of an elector that only chose 1 individual candidate (this ballot is worth 1 times  $y$ ) is necessarily equal to  $1/14^{\text{th}}$  of the vote of another elector that chose 14 candidates individually (this ballot is worth 14 times  $y$ ).<sup>258</sup>
- 2<sup>nd</sup>. - **The ballots with nominal votes are worth so much more or so much less than votes for an entire list (*en plancha*), according to whether each voter has chosen above or below the average number of candidates marked by cross-lists voters when casting their voting,** as determined in the moment of final counting (See Table III below). We have seen that, in 2006, the average number of candidates marked by voters voting nominally in Pichincha was 5.97 votes per ballot of *cross-lists* votes. Therefore, the voters who voted nominally for 5 or less candidates had the weight of their vote lessened in comparison with the vote for the *entire list* (whose value is the unit = 1). On the other hand, the electors who voted nominally for 6 or more candidates managed to augment the weight of their vote in comparison to a vote for an *entire list*. To be precise, in the extremes of the verified variation, one can detect that in Pichincha, in October 2006, one vote *between lists* with only one candidate marked was worth less than 20% of the vote for the *entire list* (0.17),

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<sup>257</sup> If one votes nominally for all of the candidates in a single list (in Pichincha, individually marking all the 14 candidates), then that is considered as a vote *en plancha*, for the entire list or closed list. This is how it is correctly interpreted by the Supreme Electoral Tribunal. See Article 74., clause b.), of the *Organic Law of Elections*: “*In the elections for congresspersons, provincial councillors elected by popular vote, municipal councillors and members of rural parish committees, one must mark the proper box that corresponds to an individual candidate in a single list or between lists, until reaching the maximum representation at their provincial, cantonal or parish level that is to be elected. Nevertheless, if one wishes to express a vote for the whole candidates in a single list, he/she can do so by marking the correct box that identifies the entire list. If, besides the corresponding mark there was another that marks candidates in the same list, this vote will be understood as a vote for the entire list.*”

<sup>258</sup> The weight difference among the *cross-lists votes* (*votos entre listas*), in Pichincha, varies from 1 to 14 times; in Guayas, from 1 to 18; in Manabí, from 1 to 8; in the national list, from 1 to 24; and so forth. This specific fact could not be a problem by itself, if it was the only problem in the system and provided that the voters were duly informed and fully aware of this fact.

while another voter who picked 14 candidates nominally increased the weight of his/her vote by 2.34 – and, if he/she had the intelligence and clairvoyance to vote strategically by concentrating 13 nominal votes on a single list<sup>259</sup>, he/she managed to more than double his/her vote for that list compared to if he/she had voted entirely (*en plancha*) in that same list: to be specific, his/her vote for that list was worth 2.18 votes *en plancha* (such is the result of 13 nominal votes multiplied by the *exact average weight factor* of 0.167).

- 3<sup>rd</sup>. - **The ballots with nominal votes could be worth extraordinarily more or less than a vote for an entire list** (unit = 1), **varying as the average number per ballot of candidates voted nominally, in each election and in each constituency, is either higher or lower** (See Table III below). If the found average is higher (for example, almost all the voters in Pichincha chose almost the 14 candidates = a 13.31 average) and, therefore, the *exact average weight factor* found (0.075) is the farthest from the unit = 1, the maximum distortion of the value of a complete *cross-lists* vote (that is, with 14 marked candidates) can be almost insignificant – in this example, it would not go further than 1.05 per vote compared to a vote for an *entire list* (equal to 14 times 0.075)<sup>260</sup>. On the contrary, if the average was lower (for example, almost all voters in Pichincha chose only 1 candidate = an average of 1.11) and, as a consequence, the *exact average weight factor* found (0.901) is the closest to the unit, the maximum distortion of the value of one complete *cross-lists* ballot (that is, with 14 chosen candidates) can be enormous. In this example, the distortion could reach as high as 12.61 compared to a vote for an *entire list* (equal to 14 times 0.901), meaning this that, in those given constituencies, there could be voters smart enough or lucky enough to multiply by 13 the *net value* of their ballots<sup>261</sup>; and if, strategically, electors had voted for an *entire list minus one* (ironically speaking, *voto en planchita*), they could manage to multiply by almost 12 their vote for the list of their preference.
- 4<sup>th</sup>. - As a consequence, **the benefits for some voters, as a detriment to others**, due to the so-called *exact average weight factor*, **are potentially erased, if all of the voters find out how the system operates**, because, in this case, all of the voters would tend to exhaust the possibilities of voting nominally – for example, voting nominally for 14 candidates in Pichincha. But, on the contrary, the benefits for some and the damages to others can grow to the highest levels, in the event that only some realize how the *average weight factor* works – and, for example, while almost everybody does not figure out how the system works, they would vote strategically

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<sup>259</sup> I call this strategic vote *voto en planchita* (all candidates minus one). [English text note]: *planchita* as a diminutive from *plancha*, referring to *voto en plancha* (vote for the entire list).

<sup>260</sup> Yet the distortions in the value of the votes *between lists* stay without change, always in a ratio of 1 to 14: one *cross-lists* vote with only 1 single candidate marked is always worth 14 times less than another ballot with all the 14 candidates marked; and vice-versa, this last one will always be worth 14 times more than the first one. As already said in a previous footnote, this specific fact could not be a problem by itself, if it was the single problem in the system and provided that the voters were duly informed and fully aware of this fact.

<sup>261</sup> In the September 30 elections, in the national constituency, with 24 candidates to be chosen, the same phenomenon can rise to multiplying the value of a single ballot by 22 or up to 23 times the unit.

for an *entire list minus one*; or, even not knowing the details, they had left everything to chance and it turned around well.

## 6. PRACTICAL EXAMPLES OF THE DISTORTIONS CAUSED BY THE SO CALLED *EXACT AVERAGE WEIGHT FACTOR*.

In Table III, presented as follows, one can analyze and comprehend the above mentioned variations in the weight of each vote and the inequalities that, as an effect, are produced among *cross-lists* voters and, in their turn, between these and those that vote for an *entire list*<sup>262</sup>.

**Table III**  
 Simulation of the average weight factor in the province of Pichincha  
*Hypothesis high and low in comparison to 2006 congressional elections*

<i>Cross-lists</i> voters	202,055	<b>202,055</b>	202,055
Nominal Votes	224,395	<b>1,206,044</b>	2,689,271
<b>Exact average weight factor</b>	<b>0.90044341</b>	<b>0.16753535</b>	<b>0.07513374</b>
Average number of candidates chosen per <i>cross-lists</i> ballot:	1.11	<b>5.97</b>	13.31

### Relative weight of the *cross-lists* votes

according to the number of candidates marked nominally on each ballot

	Hypothesis A: Average of few candidates marked	Case of 2006 Oct 15, 2006	Hypothesis B: Average of many candidates marked
<b>Voter Type A:</b> 1 nominal	0.90044341	<b>0.16753535</b>	0.07513374
<b>Voter Type B:</b> 2 nominal	1.80088683	<b>0.33507069</b>	0.15026749
<b>Voter Type C:</b> 3 nominal	2.70133024	<b>0.50260604</b>	0.22540123
<b>Voter Type D:</b> 4 nominal	3.60177366	<b>0.67014139</b>	0.30053498
<b>Voter Type E:</b> 5 nominal	4.50221707	<b>0.83767673</b>	0.37566872
<b>Voter Type F:</b> 6 nominal	5.40266049	<b>1.00521208</b>	0.45080247
<b>Voter Type G:</b> 7 nominal	6.30310390	<b>1.17274743</b>	0.52593621
<b>Voter Type H:</b> 8 nominal	7.20354732	<b>1.34028278</b>	0.60106996
<b>Voter Type I:</b> 9 nominal	8.10399073	<b>1.50781812</b>	0.67620370
<b>Voter Type J:</b> 10 nominal	9.00443415	<b>1.67535347</b>	0.75133744
<b>Voter Type L:</b> 11 nominal	9.90487756	<b>1.84288882</b>	0.82647119
<b>Voter Type M:</b> 12 nominal	10.80532097	<b>2.01042416</b>	0.90160493
<b>Voter Type N:</b> 13 nominal	11.70576439	<b>2.17795951</b>	0.97673868
<b>Voter Type O:</b> 14 nominal	12.60620780	<b>2.34549486</b>	1.05187242
<b>Value difference among <i>cross-lists</i> votes (nominal)</b>	14	14	14
<b>Maximum value difference between <i>cross-lists</i> votes and one vote for the <i>entire list</i></b>	12.6	2.3	1.1

<sup>262</sup> We have to take into consideration that, during the counting, at the moment of consolidating the vote, each vote for an *entire list* is the unit = "1".

Table IV, that follows, illustrates and helps, in turn, to understand what could really have occurred to the voters who chose *between lists* (or *cross-lists*) in the 2006 congressional elections in Pichincha.

The sum of the *consolidation* (202,055) is apparently equal to the sum of the *cross-lists* votes (202,055) – and, truthfully, that is what it is. However, internally, profound inequalities derived to the relative value of the respective votes:

- In this simulation of a possible distribution of nominal votes, for the 81,001 voters that have only marked 1 candidate individually, their vote was not worth more than 0.17 *net* votes – less than 20% of a vote for *an entire list* -, while the 39,000 voters (that, by hypothesis, nominally chose 13 candidates) and the 1,000 voters (that, by hypothesis, marked 14 nominal votes from different lists) were worth, respectively, 13 and 14 times more than that first group of voters;
- At the same time, those 39,000 and those 1,000 voters managed to multiply by 2.18 and 2.35, respectively, the *net value* of their ballot in comparison with the value of one vote for *an entire list*: the normal weight of a vote, the unit = 1; and,
- Lastly, if by any chance there was a deliberate strategic vote, 40,000 voters, in which some 39,000 voted an *entire list minus one* (*voto en planchita*) – that is to say, 13 nominal votes concentrated in their list of preference – and another 1,000 voted for 13 + 1 (13 nominal votes in the list of their preference and 1 more in an allied list), those voters would have succeeded in multiplying by 2.18 the impact of their vote on their preferred list and 1,000 among them had managed to take advantage of a remaining 0.17 more to benefit another political ally.

To summarize, one can conclude, following this simulation of the distribution of nominal votes, that, in variable terms, 114,001 *cross-lists* voters would have suffered *losses*: all those that chose below the average of 5.97 candidates per ballot *between lists*. While, at the same time, 88,054 would have taken *gains*: all those that chose above the average of 5.97 candidates per ballot *between lists*. In this way, from a different perspective, many (around 100,000) would have seen the value of their vote cut by half or even to less than half, while others (some 70,000) would have managed to more than double the value of their vote.



**Table IV**

Simulation of the *exact average weight factor* in the Province of Pichincha  
 Simulation of a possible distribution of cross-lists votes using as a base the results of the 2006 Congressional elections

Cross-lists voters	202,055
Nominal Votes	1,206,044
<b>Exact average weight factor: 0.16753535</b>	
Average number of candidates chosen per cross-lists ballot: 5.97	

	I Voters between lists	II Candidates chosen in each ballot	III Nominal Votes	IV Average weight factor	V Relative weight of each cross- lists ballot	VI Consolidation
<b>Voter Type A:</b>	<b>81,001</b>	1	81,001	0.16753535	<b>0.17</b>	<b>13,570.53</b>
<b>Voter Type B:</b>	<b>29,000</b>	2	58,000	0.16753535	0.34	<b>9,717.05</b>
<b>Voter Type C:</b>	<b>1,500</b>	3	4,500	0.16753535	0.50	<b>753.91</b>
<b>Voter Type D:</b>	<b>1,500</b>	4	6,000	0.16753535	0.67	<b>1,005.21</b>
<b>Voter Type E:</b>	<b>1,000</b>	5	5,000	0.16753535	0.84	<b>837.68</b>
<b>Voter Type F:</b>	<b>1,000</b>	6	6,000	0.16753535	1.01	<b>1,005.21</b>
<b>Voter Type G:</b>	<b>999</b>	7	6,993	0.16753535	1.17	<b>1,171.57</b>
<b>Voter Type H:</b>	<b>2,000</b>	8	16,000	0.16753535	1.34	<b>2,680.57</b>
<b>Voter Type I:</b>	<b>4,000</b>	9	36,000	0.16753535	1.51	<b>6,031.27</b>
<b>Voter Type J:</b>	<b>5,055</b>	10	50,550	0.16753535	1.68	<b>8,468.91</b>
<b>Voter Type L:</b>	<b>5,000</b>	11	55,000	0.16753535	1.84	<b>9,214.44</b>
<b>Voter Type M:</b>	<b>30,000</b>	12	360,000	0.16753535	2.01	<b>60,312.72</b>
<b>Voter Type N:</b>	<b>39,000</b>	13	507,000	0.16753535	<b>2.18</b>	<b>84,940.42</b>
<b>Voter Type O:</b>	<b>1,000</b>	14	14,000	0.16753535	<b>2.35</b>	<b>2,345.49</b>
	<b>202,055</b>		<b>1,206,044</b>			<b>202,055</b>

<b>Voters with losses:</b>	114,001
<b>Voters with gains:</b>	88,054

Finally, the following Table V illustrates and helps us to understand how, although in limited cases, these discrepancies between voters can be even greater, based on a scenario where the *exact average weight factor* results very close to the unit, because there had been a predominant voting pattern where *cross-lists* voters had chosen only 1 candidate or very close to this average.

Here, in this hypothetical simulation of the distribution of nominal votes, the 199,140 who suffered *losses* for having only chosen 1 candidate, would only have seen their vote devalued to 0.9 *net* vote; however, 1,760 voters that marked 13 candidates or 14 nominally from different lists, would have multiplied the value of their vote by around 12 times the common value of one vote for an *entire list*. **A few could benefit a lot from small losses suffered by many.**

**Table V**

Simulation of the *exact average weight factor* in the province of Pichincha

*Simulation of a possible distribution of cross-lists votes referred to Hypothesis A: average of few candidates marked*

		Cross-lists voters		202,055		
		Nominal Votes		224,395		
		<b>Exact average weight factor</b>		<b>0.90044341</b>		
		Average number of candidates chosen per cross-lists ballot:		1.11		
	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>	<b>VI</b>
	Voters between lists	Candidates chosen in each ballot	Nominal Votes	Average weight factor	Relative weight of each cross-lists ballot	Consolidation
<b>Voter Type A:</b>	<b>199,140</b>	1	199,140	0.90044341	<b>0.90</b>	<b>179,314.30</b>
<b>Voter Type B:</b>	<b>1,100</b>	2	2,200	0.90044341	1.80	<b>1,980.98</b>
<b>Voter Type C:</b>	<b>55</b>	3	165	0.90044341	2.70	<b>148.57</b>
<b>Voter Type N:</b>	<b>1,750</b>	13	22,750	0.90044341	<b>11.71</b>	<b>20,485.09</b>
<b>Voter Type O:</b>	<b>10</b>	14	140	0.90044341	<b>12.61</b>	<b>126.06</b>
	<u>202,055</u>		<u>224,395</u>			<u>202,055</u>
					<b>Voters with losses:</b>	199,140
					<b>Voters with gains:</b>	2,915

## 7. CONTRADICTION BETWEEN THE EXACT AVERAGE WEIGHT FACTOR AND THE GUARANTEE OF EQUAL AND PERSONAL VOTE.

The truth is that, as it can be verified, **this system does not respect the principle of “one citizen, one vote”**, because it introduces profound disparities in the value of the votes at the moment of counting them – or, better said, at the moment of *consolidating* them.

At a glance, one can understand that the *exact average weight factor* destroys the constitutional principle that all votes are equal, according to international standards.

It does this because the system is designed in such a way that, in its application, it does not respect the eminently personal nature of each vote<sup>263</sup>, as it is also written in the Constitution and in the general norms of the Electoral Law and Regulation, and, therefore, should be guaranteed.

<sup>263</sup> The question as to the *exact average weight factor* is that it treats the *cross lists* voters (those that voted choosing candidates uninominaly) as they were a homogeneous collective group of voters, extracting an average factor. This may be considered as disregarding also the strictly personal nature of each individual vote.

The “defect” of the system corresponds to the fact that, at the crucial and determining moment of *consolidating* the votes<sup>264</sup>, it does not perform a counting operation in the proper sense: looking to each ballot *per se* and interpreting its exact content; and always adding and adding, during the counting procedures in order to determine the total votes.

Rather, what happens is an operation of calculated averages applied to *cross-lists* votes, which is an operation that belongs more to the field of statistics than to an election vote-counting. For this reason, as it is common in statistics, the formula appears with round results in the end, but with many real inequalities, hidden in its different elements.

To summarize, the problem resides in the fact that **the average weight factor, so-called exact, is not in fact exact at all**. It would only be exact if it interpreted rigorously the vote of each voter, ballot by ballot, instead of trying to simplify the will of the electorate with a mathematical operation, as if voters were a uniform collective and not distinct individuals with distinct preferences and distinct ways of expressing them.

With such a complicated and unusual system, mathematically obscure for the general public, **educating voters on how to vote becomes not only difficult, but almost impossible**. And, in fact, today in Ecuador, almost no-one has understood how the system really operates.

If everyone understood how the system worked, it would result that, as a means of self-defence, maybe the great majority or possibly even the totality of *cross-list* voters would be voting for the total number of seats to be elected. For instance, in Pichincha, they might vote for “13 + 1” or for 13 candidates, *an entire list minus one*; and, in this way, they could erase practically in its entirety, with respect to themselves and in global terms, the unequal effects of the formula, as it has been illustrated in Hypothesis B, of Table III.

Nevertheless, that is not what occurred in the Congressional elections of 2006.

And it is also not the situation we can observe today for the upcoming Constituent Assembly elections: **the level of unfamiliarity of the general public with the mathematical peculiarities of the exact average weight factor is practically generalized**; and, in the few debates about the characteristics of the system, **there is a great deal of confusion surrounding the way it works and its net effects** upon the final presentation of the total votes and the percentages that will be used to allocate the seats.

It could be put in doubt however, mainly if we refer to the international standards, that the distort effects of the Ecuadorian *exact average weight factor* could be relevant *per se*, once it would be said that all electoral systems have to a certain extent “unequal” elements when considering the relative relevance of votes to distribute the seats. But that parallel does not apply.

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<sup>264</sup> The system acts upon these votes themselves and their relative value – and this is precisely the “mistake.” It is not limited, as other systems are, to act upon the mere allocation of seats, after the total of the votes has been found through summing. For this reason, the system harms the equality of votes as such and the voters’ equality.

It is a well-known fact that all electoral systems contain, in fact, “inequality” elements when it comes to the allocation of seats. It is so with the majority systems: some votes “count”, because, being part of the resulting majority, they elect; while others are “worthless”, because they elect no one. It is also true in systems requiring a minimum threshold to elect any representative: all votes below that threshold would be “worthless”. And this is true also in any proportional system, no matter what specific method it follows. As much as we try to make proportional systems “perfect”, there are always “lost votes” or “useless votes”: votes that elect no one, because they correspond either to remaining votes after the proportion has been applied and seats gained or because they were cast for lists or candidates that didn’t get enough votes to elect or to be elected.

Regarding the *exact average weight factor* we are not speaking of this kind of “inequality”, which, by the way, is no inequality at all, rather a normal element of political democratic competition in itself.

Clarifying again confusion quite current in Ecuador, the *exact average weight factor* doesn’t apply to the allocation of seats’ operation, but it is rather an essential element within the prior vote counting. We get it quite clearly through an attentive reading of the law and following step by step the operations as they happen. In the Ecuadorian electoral system, the counting of the votes per list only ends after applying the *exact average weight factor* and cannot be concluded without going through the *exact average weight factor*. We must remember again that, once there are cast votes of two kinds and the unit (“1” vote) corresponds to a vote for an entire list, the *exact average weight factor* operates as an exchange rate and is used to convert the nominal votes to a corresponding list’s net value. Then, they are summed. And that sum (the votes for the list added to the converted nominal votes in the same list) is the final vote count of that list.

Therefore, the *exact average weight factor* doesn’t affect solely, and not even directly, the allocation of seats. It affects the number of votes (consolidated votes) officially declared and published for each competing list. It affects in its very core the result of the election: in terms of votes; and not only of seats distributed, or of winners and losers. Through the application of the *exact average weight factor*, some lists will receive gains and others losses, not just in seats, but in the votes artificially attributed to them. That is why absolutely no parallel can be drawn and, to my knowledge, there is no such thing in the world as the Ecuadorian *exact average weight factor*.

Another angle to dispute the assertion that the *exact average weight factor* may challenge the relevant international standards would be to call the *before* and *after* equality question. It would be said that the inequality would only be relevant if it affected the voters’ rights *before* the elections; and, as with the *exact average weight factor* it only affects the results *after* the elections, it wouldn’t be so much a matter of equal rights, but a question of different choices.

I do not think this to be a decisive topic.

To a certain extent, any possible question we may think about equality in elections always has to do with elements established before the election and manifesting their

effects after. For example, if a system said that women would have 2 votes each and men 1 vote, affecting voting rights, this could be regarded as before the elections (the written rule), during the elections (the moment of casting the vote) or after the elections (the results tarnished by that inequality). Another example: if a system consists of very unbalanced constituencies, affecting electors' voting power according to their residence, this too can be looked at before, during or after. The reality is that the controversial element, whatever it may be, always exists and is established before, manifests itself during, and affects results after.

What seems to be the relevant aspect and the key decisive question for the international standards is a judgement of fairness and unfairness and an evaluation on considering justified or unjustified the raised "inequality". We can never escape or evade this crucial discussion on fairness and justification: if it is deemed fair and justified, it doesn't contend with equal rights and equal power; if on the contrary it is considered as unfair and unjustifiable, then it is in breach of equal rights and/or equal power.

And so, what about the exact average weight factor? Is it fair? No, it isn't. Is it justified? No, absolutely not. The exact average weight factor (1<sup>st</sup>) results in unfair distortion and (2<sup>nd</sup>) cannot be justified by reasonable arguments.

To conclude this section, we must draw attention to two relevant aspects in the *exact average weight factor* analysis.

First, the improper way the *exact average weight factor* operates in terms of basic arithmetic applied to elections in the vote counting stage.

When we are counting votes, we sum. When we are allocating seats, we divide.

What happens then with the *exact average weight factor*? In the midst of the vote counting, for the purpose of consolidation, the *exact average weight factor* starts dividing, establishing ratios and then multiplying a certain kind of votes: the nominal votes cast. So, what is the obvious result of this? What is the result of dividing, establishing ratios and multiplying, while counting? We change the very value of the votes cast, the value of the ballots.

And, secondly, the *exact average weight factor* corresponds to an incoherent response given by the same system to a basic and crucial question: What is a vote? What is one vote?

In an open list voting system as in Ecuador, where two kinds of votes may concur (votes for the list, *en plancha*, and votes for individual candidates, *uninominales*), this question must be answered: What values "1"? Is the vote the whole ballot paper? Or is the vote each nominal mark for each single candidate? Theoretically, the question may be answered either way. But it has to be answered the same way in the same system and in the same constituency; it cannot be answered both ways at the same time pointing to different directions.

That is precisely the problem with the *exact average weight factor*: it corresponds to give different answers, and indeed variable answers, to that same question. In Ecuadorian multi-person elections, currently, the unit ("1" vote) is the ballot paper: that

accounts for ballots containing a vote for an entire list. But, when we come to nominal votes, the votes do not correspond anymore to the ballot paper, but to a variable, not guessable and undetermined ratio and corresponding product. And, thus, in the same election, in the same constituency, in the same polling station, some ballots will account for “1” vote, while other ballots will really account for more or for less than “1” vote, according to the number of nominal votes per ballot and to the concrete *exact average weight factor* that will be found.

Can it be? No, it can't. If the ballot is the vote, if the ballot is “1”, then it must always be “1” no matter what.

## 8. SPECIAL RULES IN SOME OF ECUADOR'S CONSTITUENCIES.

What has been said so far applies in general to the majority of Ecuador's constituencies, but not all.

In fact, there are special rules that will apply in two specific situations:

1. The **constituencies**, in national territory, where **only 2 congresspersons** (*diputados*) **or 2 assembly representatives** (*asambleístas*) are chosen;
2. The **constituencies** for the election of assembly representatives on behalf of Ecuadorians living abroad.

The first corresponds to 7 out of the 22 provinces, specifically: Galápagos, Morona Santiago, Napo, Orellana, Pastaza, Sucumbíos and Zamora Chinchipe – all of these provinces chose only 2 congresspersons and, now, will choose only 2 assembly representatives.

The second corresponds to the 3 constituencies created especially for the representation of migrant Ecuadorians in the Constituent Assembly: Europe, USA/Canada, and Latin America – each will choose 2 assembly representatives under new special rules.

As for the provinces with only 2 representatives, the *exact average weight factor* will be applied in the same fashion, even though the method used for the final allocation of the seats is different: neither the *D'Hondt method* generally established, nor the *Hare quota* ruled for the election of the Constituent Assembly, are applied.

Article 104 of the *Organic Law of Elections* states (current text)<sup>265</sup> :

*“Article 104: In the case of elections in which only two seats will be assigned, each one of the two lists that receives the **highest consolidated vote** will receive one seat, except*

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<sup>265</sup> Previously to the reform introduced by *Law 2006-45 (RO 268: 11 of May 2006)*, this Article 104 ruled instead: *“In the elections in which two representatives are to be elected, the first seat will correspond to the candidate who obtained the highest number of votes and the second to the one with the highest score in the list that follows in the amount of votes received, whenever he/she has obtained more than the sixty percent (60%) of the votes of the first seat. If this is not the case, both seats will go to the first list.”*

*in the case that the first list has more than the double of the consolidated votes of the second, in which case the list with the **highest consolidated vote** will be assigned both seats.*

Furthermore, specifically for the Constituent Assembly, the Regulation for the assignment of seats for the selection of Constituent Assembly Representatives has ruled:

*“Article 6 – In the case of the provinces in which only two seats are assigned, the first will be assigned to the list with the highest voting score, and the second to the list that follows in the amount of votes, whenever this second list has received at least twenty five percent (25%) of the total amount of votes of the winning list; in the event this is not the case, both seats will be assigned to the list that has achieved the highest amount of votes.”*

This article in the Regulation does not say it explicitly, yet it is clear that, whenever it speaks of *the list with the highest voting score* and of *votes*, it is referring to the *consolidated vote* determined through the use of the *exact average weight factor*. We can assert it quite clearly from a close and sequential reading of Articles 5 and 6 in said Regulation: are the *consolidated votes* of different lists that are taken into account for the distribution of seats.

The only exception is the constituencies designed for emigrants, where the *exact average factor* does not always prevail for a simple reason: since for the emigrant constituencies the proportional system does not apply, in each of these three constituencies the seats are directly awarded to the 2 candidates with the highest amount of votes. There is no reason to apply the *exact average weight factor*.<sup>266</sup>

## **9. THE EXACT AVERAGE WEIGHT FACTOR AND THE INTERNATIONAL STANDARDS.**

When we consult the current documents<sup>267</sup> to which we usually refer to assert our international standards, we may possibly find ourselves on difficult grounds, since we cannot find a specific similar precedent in the current international standards. But that is only because, from what I know and from all that I have read and heard, this *exact average weight factor* (or anything of the kind) has never applied before, anytime, anywhere. It is more than natural therefore that the international standards, as they are currently drafted, have no similar example, nor any specific remark that could directly apply, because there was never any such thing as the *exact average weight factor*.

And, thus, we must be able to draw our own conclusions from the established principles and raise the case as challenging the international standards. Furthermore, we are the

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<sup>266</sup> Looking attentively, we find that, in these three constituencies for the expatriate Ecuadorians, the *consolidation* is made in the “old fashioned way”: all the votes are converted to a common basis of nominal individual votes.

<sup>267</sup> “Existing Commitments for Democratic Elections in OSCE Participating States” (hereafter, *Commitments OSCE/ODIHR*) and “European Commission for Democracy Through Law (Venice Commission) – Code of Good Practice in Electoral Matters and Guidelines and Explanatory Report – July and October, 2002” (hereafter, *Guidelines 2002 Venice Commission*),

first international Electoral Observation Mission to be faced with such a unique *exact average weight factor* and to be fully aware of its obscure technicalities and distort effects.

There is, in fact, as we shall see, a lot of ground to raise these questions.

### **Commitments OSCE/ODIHR**

Paragraph 2.4 (page 13): “*The system for direct election of legislators and other public officials is a matter for national determination, provided the system operates transparently; is based on universal and equal suffrage of voters;*”

Paragraph 5.1 (page 15): “*To ensure that the will of the people serves as the basis of the authority of government, the participating States will guarantee universal and equal suffrage of adult citizens.*”

In what regards the *exact average weight factor*, may we say that “*the system operates transparently*”? No, we may not. In reality the system is very obscure, which is aggravated by the lack of proper voter education in respect to the *exact average weight factor* effects, but which derives from its inner complexity and operative mode.

A quite accurate statement would be to say that, because of the *exact average weight factor*, a relevant part of the Ecuadorian electoral system operates in a *transparently obscure manner*: from the very first moment of vote counting in polling stations, we can see it, but we can't get it.

It is obscure before the elections, because no one can determine it beforehand. And it also becomes so obscure after the elections that we know that it distorted somehow the results and the relative value of ballot papers, but we can never determine exactly where and to what extent. Because of the way the counting proceeds, the *exact average weight factor* leaves no trace behind... concerning the ballots from where the nominal votes were taken from.

And can we say that the system, in what regards the *exact average weight factor*, is “*based on equal suffrage*”? And that equal suffrage is “*guaranteed*”? No, we cannot assure this 100 per cent. Instead, it may be hardly disputed.

### **Commitments OSCE/ODIHR**

Section C. Equality (...) (page 55 – fourth paragraph): “*Elections conducted on the basis require equality of voting power. In principle, no vote should carry proportionally more weight than another (...).*”

We have already seen how the effect of the *exact average weight factor* is to change the relative weight of votes and ballots. So, doesn't it contend with this basic principle? I think it does.

I am fully aware that the quoted text is referring to constituencies and districts. But, being the *exact average weight factor* a total new thing, I believe that the



same principle and considerations apply to it, because of the exact same reason, and even with a stronger justification.

If the international standards are violated in a situation where the vote weight differs significantly from constituency to constituency in its capacity to elect someone, then the same has obviously to apply where the vote weight differences are introduced within the same constituency and affecting not only the allocation of seats, but what is more the vote counting itself.

In page 56 of *Commitments OSCE/ODIHR*<sup>268</sup>, a few questions are presented, concluding with the sentence: “*Either case raises the possibility of a violation of international law or standards*”. If we follow all the text there, it seems obvious that, side by side with the question “*does the unequal division unfairly affect the outcome of an election?*” we could add this one with respect to the *exact average weight factor*: “*does the variation in the weight attributed to different kinds of voting unfairly affect the outcome of an election?*” And the conclusion should be exactly the same: it “*raises the possibility of a violation of international law or standards*”.

### **Guidelines 2002 Venice Commission**

2. *Equal suffrage* (page 6) *This entails: 2.1. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.*

2. *Equal suffrage* (page 16): 10. *Equality in electoral matters comprises a variety of aspects. (...) The principles to be respected in all cases are **numerical vote equality, equality in terms of electoral strength** and equality of chances.”*

2.1 *Equal voting rights* (page 17): 11. *Equality in voting rights requires **each voter to be normally entitled to one vote, and to one vote only**. (...) 12. In some electoral systems, the elector nonetheless has more than one vote. In, for example, a system that allows **split voting** (voting for candidates chosen from more than one list), the elector may have one vote per seat to be filled (...). In this case, equal voting rights mean that **all electors should have the same number of votes**.*

The *exact average weight factor* is clearly in breach of these rules and principles. In Ecuador, because of the *exact average weight factor*, voters do not have the same number of votes, depending on the way they choose to vote. It is not just a question of a voter, who had a certain number of votes to use, choosing to cast them only partially, which would raise no special problem if that was the result of his/her free and informed choice. The case in Ecuador is totally different, in so far as the *exact average weight factor* is concerned: the relative weight of votes is completely unclear beforehand, and each elector has at his/her

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<sup>268</sup> See second paragraph in the page 56 of the *Commitments OSCE/ODIHR*.

disposal two different kinds of votes (for one list or for candidates nominally), whose values vary and don't match at all<sup>269</sup>.

It is true that all the voters have in abstract the same chances: any voter may choose from the two kinds of votes available, the one he/she wants to follow; and if voters choose to vote nominally, they may choose to vote for as many candidates they want to within the legally valid limit. So, we could think that voters' equal rights are not affected.

However, even disregarding now the very obscure nature of the *exact average weight factor* system, there is always a central problem. Yes, voters can choose equally either way. But, once the two kinds of votes available to voters don't have the same value and don't account each kind for "1" vote (or exact fractions of "1"), voters incur automatically in inequality the very moment they cast their ballot.

The case of the *exact average weight factor* is new and we may indeed face some difficulties to fit it exactly in the examples described in the relevant international standard documents. From one perspective, the *exact average weight factor* seems to clearly contradict the *equal voting rights* principles. But, once it can be argued that the "rights" as such could be not affected, since each voter, if well informed, has the possibility to choose the way he prefers to go, then it seems that the *exact average weight factor* contradicts more the *equal voting power* rules, although the inequality doesn't refer to external districting or to constituencies' engineering, rather it results from an internal built-in element inside voting procedures and vote counting.

Anyhow, it is clear that the *exact average weight factor* directly affects the *numerical vote equality* and the *equality in terms of electoral strength*. And that is enough, in my view, to deem it irregular and not recommendable, according to the international standards.

Yes, it is new. But the principles are clearly violated. Therefore it has to be raised, bearing also in mind that the relevant international standards in equal suffrage are not to be applied only to a certain number of already given examples, but, as the Venice Commission clearly puts it, to a variety of cases: "*Equality in electoral matters comprises a variety of aspects.*"

Definitely, the relevant point is that the Ecuadorian *exact average weight factor* truly affects equality in voting and in the counting of votes.

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<sup>269</sup> To be more precise: with the *exact average weight factor*, the values of the two kinds of votes would only match in one single (and most improbable) circumstance: if all voters that had cast nominal votes had exhausted and used all their possible nominal votes, as I already pointed out in the text.

## 10. POSSIBLE ALTERNATIVES.

It is not the role of an individual foreigner to give normative suggestions to a sovereign country. Each country knows how to adopt the solutions that seem the most appropriate in order to assure the equality of votes and to respect its personal nature.

The *Statute for the election, installation and functioning of the Constituent Assembly*, adopted through the April 2007 Popular Consultation (referendum), describes the citizens' votes with different words:

*“Article 4: As to the form of the election. (...) Each voter will have as many votes as there are Assembly representatives to be elected in each constituency, (...)”*

And the *Regulation for the allocation of seats in the election of the Constituent Assembly*, adopted by the Supreme Electoral Tribunal as a consequence, repeats the same idea:

*“Article 3: Each voter will have as many votes as there are Assembly representatives to be elected in each constituency, and he/she may choose the candidates of his/her preference from one list or between different lists. (...)”*

This could open, in the abstract, another solution for averaging and consolidating the vote: attribute to each vote – that, by definition, in this literal reading of the *Statute* and the *Regulation*, would correspond to an individual candidate – a value corresponding to the exact fraction of candidates to be elected in the constituency of each voter.

In this way, if you consider that a vote for *an entire list* would be worth “1” at the moment of consolidating all votes on a uniform and common basis, then, for example in Pichincha, each nominal vote would be worth 1/14. And each vote for an *entire list* would have the value of “1”, equivalent to 14 times 1/14.

Through this method still inequalities could be found in the relative value of each ballot at the moment of *consolidating* the vote: for example, in Pichincha, a ballot with 3 nominal votes for a single list would be worth 3/14 the whole ballot and the same 3/14 for that list; a ballot with 2 nominal votes for one list, 5 nominal votes for a different list and 3 more for another list, would be worth 10/14 the whole ballot, and, on its turn, 2/14 would be given to the first list, 5/14 to the second list, and 3/14 to the third; and so on.

Yet, on the one hand, one could not say that this system did not respect the equality of the vote, once the votes would be legally interpreted as referring to the chosen candidates (by list or nominally) and not to the ballots as a whole. Everyone would have had the exact same number of votes (14 votes per voter in Pichincha); and, formally, for those who decided not to use the totality of their given votes, by not voting for *an entire list* or not exhausting the totality of equivalent nominal votes, it would be said that they had used some votes and voted blank for the rest.

On the other hand, neither could one say that this method did not respect the personal nature of the vote: each voter would have chosen however he/she wished, and his/her votes would have been interpreted exactly as they had been expressed; and everyone could know beforehand the exact value of his/her vote. In such a system, if a voter who has the choice to cast 14 nominal votes, only casts 1, or 2, or 3, and so on, so much

worse for him/her. It had been his/her choice, it had been his/her decision, and it had been his/her vote. The resulting “inequality” would be more a false impression than real, since, first, all voters would have had exactly the same chances and choices and, secondly, the weight differences between counted ballots would have operated strictly in the same fixed and predetermined way: 1/14 per each nominal vote.

There would also not be, in the consolidation process, ballots that would be worth more than the apparent maximum (one vote for *an entire list*, the unit = “1”). There would be ballots that would be worth less, because the respective voters choose not to utilize the respective totality of possible nominal votes, but obviously no ballot could be worth more than any other, since  $14/14 = 1$ .

Nevertheless, one of the problems in Ecuador in these elections still is that no one, or almost no one, is really aware of such a difference in the weight of ballot papers with nominal votes. And, therefore, no one, or almost no one, will guide his/her decision and his/her vote bearing that in mind. I am sure that many voters in Ecuador who will cast only 1 or 2 nominal votes believe that, by doing so, they will be increasing the chances of their preferred candidates to get elected; and, indeed, it will work completely the other way around, as it would happen in any system as such.

Nevertheless, the interpretation and application could probably be considered unconstitutional, as it was the case with *Constitutional Tribunal Resolution No. 025-2003-TC*.<sup>270</sup>

In fact, if one considers that each vote refers to one candidate and is equal to a fraction (1/14 in the case of Pichincha), and all of the fractions<sup>271</sup> in each list are to be summed in order to obtain that list’s *consolidated vote*, than this is exactly the same as doing the same operation, considering now that each nominal vote is equal to the unit (“1”) and that each vote for *an entire list* is equal to the sum of all the candidates in that list (14 in Pichincha).

It is worth remembering that it was this last system that had to be substituted, following the decision of the Constitutional Tribunal in 2004 and through the reform introduced by *Law 2006-45* (RO 268: May 11, 2006). Previously, in fact, as it has already been cited, the *Organic Law of Elections* stated:

“Article 106 – Regarding multi-person elections, procedures will be as follows:

- 1.) ***The global sum of the nominal votes received by all the candidates from each list is the figure to which the D’Hondt formula or of continuous dividers will be applied;***”

But there is another mode to *consolidate* on a common and uniform basis the distinct votes – for an *entire list* and nominal votes – and, at the same time:

- 1<sup>st</sup> - Respect the personal nature of each vote;

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<sup>270</sup> Published in the *Registro Oficial*, Supplement 282, on March 1, 2004.

<sup>271</sup> I repeat: one vote for an *entire list* would have the value of 1, because  $14 * 1/14=1$

2<sup>nd</sup> - Respect that all voters and all votes are equal;

3<sup>rd</sup> - Allow the broadest liberty of election, either for an *entire list* or nominal votes;

4<sup>th</sup> - Establish the *net worth* of the votes on an equal basis, according to the will and effective preferences of each voter;

5<sup>th</sup> - Respect the Ecuadorian Constitution, as it has been interpreted by the Constitutional Tribunal.

This mode corresponds to consider exactly the reality, that is to say, to consider that:

- each ballot has a value for lists equal to “1”; and
- a value for candidates equal to as many candidates the voter has marked, directly or indirectly.<sup>272</sup>

This is no great secret. Instead, it would be a way, within the complex Ecuadorian system and its multiple voting hypotheses, of reading, vote by vote, ballot by ballot, what really each voter manifested and of interpreting the vote exactly in its content.

For example, returning to the example of Pichincha:

- a.) Did the voter vote for an *entire list*? His/her vote is consolidated as 1 vote for the list.
- b.) Did the voter choose 13 candidates from the same list? His/her vote is consolidated as 1 vote for the list (he/she concentrated all his/her votes in a single list) and 13 nominal votes are left for each one of the 13 candidates marked, for the very final operation of individual allocation of the seats.
- c.) Did the voter only choose one candidate in one single list? His/her vote is consolidated in the list as 1 (he/she concentrated, equally, his/her votes in one single list) and 1 nominal vote is left for the chosen candidate, for the very final operation of individual allocation of the seats.
- d.) Did the elector vote for 3 candidates in one list and 5 in another? His/her vote is consolidated as 2/7 or 0.29 for the first list and 5/7 or 0.71 for the second list (he/she distributed his/her votes between two lists in a ratio of 2 to 5) and 7 nominal votes are left for each one of the 7 candidates marked, for the very final operation.
- e.) Did the voter choose 3 candidates from one list, 7 from another and 4 from another one? His/her vote is consolidated as 3/14 or 0.21 votes for the first list, 7/14 or 0.5 for the second, and 4/14 or 0.29 for the third (his/her vote was divided between 3 lists, in a ratio of 3 parts to 7 and 4), and 14 nominal votes are left for each one of the 14 candidates marked, for the very final operation.

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<sup>272</sup> One has chosen candidates directly, if one votes nominally. One has chosen candidates indirectly, if one has voted for an *entire list*: indirectly all of the candidates in that list were voted.

Each voter has one vote and can use it and split it, as he/she wishes. The counting, as it should be, will interpret the vote exactly as it was expressed, respecting the personal preferences of the voter.

It might be said that this system is complicated and perhaps very slow-going. This is true. Yet the complexity does not pertain to this system of consolidating the votes on a common and uniform basis, rather to the specific multi-person elections system used in Ecuador, which is very open: votes for *entire lists* together with nominal votes and the possibility of presenting innumerable candidatures.

Voting systems like the one currently in use in Ecuador have to develop counting methods appropriate to their complexity. The idea of simplifying what, in truth, is complex serves to hurt or to overrun fundamental elements. This is precisely, after all, what happens with the *exact average weight factor*: in its attempt to simplify, it ends up damaging the equality and personal nature of the vote, as it has been shown.

If one would argue that this type of *consolidation* of nominal votes into a list basis – this one, indeed, an *exact consolidation* – could not be done in each polling station<sup>273</sup>, this would not be a big problem: it could be done at the provincial level, in the respective Provincial Electoral Tribunal. In Ireland, for example, which also has a very complex electoral system and of difficult counting<sup>274</sup>, it is also done in this way: the counting and tabulation of the vote is not done in each polling station, but instead in the headquarters of each electoral constituency.

I will conclude by commenting on the case of point c.) above: **a voter that voted only for one candidate in a single list.** Perhaps, someone else supportive of the current so-called *exact average weight factor* might question: How can it be that one person's vote who voted for only one candidate has the same value of the vote of another person who voted for *an entire list* (this is, in Pichincha, 14 candidates)?

This is exactly the issue that matters; and it is in this question that one can identify the most flagrant injustices caused by the *exact average weight factor* at the individual level of each concerned voter. Let's look closely to the reality.

Each voter has one vote and can use it in an equal manner: in each counting operation, including the consolidation, it cannot be different.

In the systems in which the voters can vote for lists or nominally for candidates, a voter, when indicating his/her preferred candidate(s), does so because he/she wants to increase the chances of his/her preferred candidate(s) to get elected; and not because he/she wants to lower those possibilities.

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<sup>273</sup> This is disputable however. Although apparently complicated, the suggested operation, ballot by ballot, is basic arithmetic. The Supreme Electoral Tribunal already defined for the 30 September elections some education requisites for the members appointed to the polling stations committees. The improvement of this appointment rules, together with proper training before elections, could make it quite easy for every polling station to perform correctly the necessary counting operations.

<sup>274</sup> Ireland uses a system of multiple preferences or *single transferable vote*, which also follows the *Hare quota* in order to allocate the seats.

For this reason, when a voter, in a system like the one used in Ecuador, nominally indicates only 1 candidate in one single list, it is because the voter likes that candidate a lot, preferring him/her much more than all the rest; and he/she prefers him/her so much that, although having the possibly of marking for more, decides not to. He/she doesn't choose anyone else. As a result, he/she concentrates, tries to concentrate, the totality of his/her electoral strength in that particular candidate.

This is the rational logic that is inherent to such a voting system. Furthermore, that is, above all else, the natural belief of any common voter that knows nothing about law, or mathematics, nor is he/she an expert in political science or electoral systems: *“If I vote for only one candidate, I am going to reinforce his/her electoral possibilities.”*

The system of the *exact average weight factor* however acts exactly the opposite way, as already said<sup>275</sup>... If a citizen from Ecuador votes for a single candidate, he is probably thinking in the aforementioned manner; but, with the actual *modus operandi* of the system, he/she is tremendously in the wrong: *average weight factor*, so-called *exact*, will lower to the minimum the weight of that vote and will reduce the possibilities of his/her preferred candidate getting elected!

The other system indicated above, consisting in reading vote by vote, ballot by ballot, for its own merit and exact content, and taking into account the concrete will of each single voter, would correct this patent misinterpretation of any common voter's intention. At the same time, it would reinstate the plain truth to all the counting operations, starting with a truly *exact* and rigorous *consolidation* of whole the votes expressed in the polling stations.

*Quito, September 15, 2007: This study, included as Annex 9, was written by the Chief Observer of the EU EOM before the E-Day, as part of the preparatory works of EU observers to follow the E-Day and the subsequent counting and tabulation*

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<sup>275</sup> Refer to what happened in the scenarios shown in [Table III](#). A vote for a nominal candidate would have a net value of between 0.075 and 0.9. In Pichincha, it would not be worth more than 0.168.