



### COUNTRIES AT THE CROSSROADS 2011: ECUADOR

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#### INTRODUCTION

In recent years, Ecuador has experienced a period of near-constant political campaigning. Voters have gone to the polls on five separate occasions since President Rafael Correa assumed power in January 2007, leading to the description of Correa's political style as the "permanent campaign"<sup>1</sup> and a "plebiscitary presidency."<sup>2</sup> During the first two years of his administration, voters were asked to approve the convening of a constituent assembly to rewrite the national charter (which they did overwhelmingly in April 2007), elect delegates to the assembly (September 2007), and ratify the new constitution (September 2008). Under the rules of the new constitution, Correa was reelected in April 2009 and voters chose members of the National Assembly. Finally, in May 2011 a referendum was held on a set of ten questions ranging from the legality of bullfighting to a potential revamping of the judicial system.

This wave of voting follows on the heels of a decade of political instability in which Ecuador experienced the extraconstitutional removal of three sitting presidents: Abdalá Bucaram in 1997, Jamil Mahuad in 2000, and Lucio Gutiérrez in 2005. Correa has managed to reestablish a modicum of order in Ecuador's chaotic political environment, and his administration has implemented important changes in some spheres. However, order has often come at the expense of respect for democratic institutions, civil liberties, and political pluralism. Propitious economic conditions—particularly the high price of oil, Ecuador's dominant export and hard currency earner—have enabled a surge in public spending that has bolstered the government's popularity, which has been above 50 percent for most of Correa's four years in office. The concentration of power in the executive branch has enabled the president to overshadow other institutions of government. This power has on occasion been used to further laudable democratic goals, such as weakening the control of unelected elites in various economic sectors. Nonetheless, it has also been used to hush opponents and reward political allies. Such hyper-presidentialism itself represents a potential threat to the long-term viability of democracy.

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## COUNTRIES AT THE CROSSROADS

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As of spring 2011, policies that affect significant aspects of democratic governance, such as press freedom and rule of law, remain in flux. A multiyear debate in the National Assembly over a proposed media law that could potentially result in significant restrictions on journalists appeared to be moving toward resolution. More dramatically, a police revolt in September, 2010 brought into question civilian authorities' ability of to control and discipline state security forces (see Editor's Note). Given the role of Ecuador's military in the removal of sitting presidents over the past 15 years, the degree of democratic control over the security forces is clearly relevant to the vibrancy and stability of Ecuadorian democracy.

Many of the new institutions and rules created by the 2008 constitution have the potential to greatly improve democratic governance in Ecuador. The recognition of specific rights for previously marginalized citizens (such as women, indigenous peoples, and Afro-Ecuadorians) represents a significant improvement over the previous constitution. However, these rights and other innovations can only be meaningfully implemented when power is shared equally across branches of government and opposing opinions are treated as legitimate. The aspirational nature of the constitution is a potential source of political motivation but also a real source of legal and political conflict, as the state will inevitably violate many of its more utopian provisions, such as constitutional guarantees of *sumak kawsay* (a good life). An important segment of Ecuadorian society believes Correa's conduct to have already rendered the constitution devoid of meaning. While a majority continues to support the president, Ecuador is undoubtedly in a period of great uncertainty regarding both the stability and quality of its democratic institutions.

### ACCOUNTABILITY AND PUBLIC VOICE

Ecuadorian democracy looked more uncertain than ever in April 2007, when newly-elected president Rafael Correa called a plebiscite asking voters to demand the constituent assembly that had been a central part of his campaign platform. Correa had deliberately refrained from having his new political movement, Country Alliance (AP), field candidates for a parliament he accused, not without reason, of being corrupt, inefficient, and beholden to a small number of political bosses. Under the banner of leading a "citizens' revolution," Correa's goal was nothing short of the complete restructuring of Ecuador's political system and a reorientation of Ecuador's economy along more nationalist lines. Nonetheless, the previous constitution had been in place for barely eight years; although Correa was certainly reflecting a profound popular disgust with the political status quo, drafting the twentieth charter in Ecuador's 180-year history demonstrated a profound weakness in the underlying institutions of political authority. Indeed, the genuine deficiencies of the 1998 constitution notwithstanding, the choice of rewriting the charter further feeds a political culture of overhauling the rules when powerful actors find the existing ones politically inconvenient.

Although 81 percent of voters approved the convening of the assembly, Correa made post hoc adjustments to the body's statute that gave it full powers to rewrite (rather than merely revise) the constitution and, more importantly in the short term, assume the legislative functions previously held by congress. Given Correa's lack of partisan support in the legislature and his significant majority in the new assembly, the result was a significant concentration of power in the hands of the president.

The period preceding the constituent assembly revealed stark deficiencies in Ecuador's system of checks and balances. Opposition parties in congress attempted to block the referendum

## COUNTRIES AT THE CROSSROADS

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by impeaching the president of the electoral tribunal; the tribunal responded by removing from office the 57 legislators who voted in favor of impeachment on the grounds that they had attempted to intervene illegally in the electoral process. Correa sided with the tribunal, which had approved his referendum, and the conflict escalated to a full-blown constitutional crisis between the executive and legislative branches. Following voter approval of the assembly, the Constitutional Tribunal (TC) reinstated 51 of the 57 deposed lawmakers, arguing that their removal had been illegal. Before these 51 could resume their positions, however, the remaining members of congress voted to fire the nine TC justices for “unconstitutional actions.”<sup>3</sup> The entire episode served as a microcosm of the perverse form of checks and balances that had taken hold in Ecuador, with partisan obstruction replacing legitimate oversight and accountability.

Electoral processes both before and after Correa assumed power have been reasonably free and transparent. Under the new constitution, the primary electoral authority is the National Electoral Council (CNE), and disputes regarding electoral rules and oversight of the CNE are resolved by the Electoral Disputes Tribunal (TCE). Both organisms are composed of five members to be selected by the Council on Citizen Participation and Social Control (CPCCS), a new branch of government established by the 2008 constitution. Candidates representing all political parties are able to campaign without undue hindrance; however, President Correa, like his predecessors, has used his privileged access to local and national media to effectively drown out competing voices. There are provisions for public campaign funding and restrictions on the amount of privately-raised money candidates may spend. However, these provisions are poorly enforced and candidates routinely overspend with impunity.

Ecuador’s most recent presidential and parliamentary elections were held in April 2009. The political environment was highly polarized, yet the election itself was generally peaceful and occurred without major incident. President Correa won 52 percent of the vote, obviating the need for a second round runoff. Former president Lucio Gutiérrez came in a distant second with 28 percent of the vote. On the parliamentary side, Correa’s Proud and Sovereign Fatherland (PAIS) party came in first, gaining 59 of the 124 seats. Gutiérrez’s Patriotic Society Party (PSP) came in second, with 19 seats, and the conservative Social Christian Party (PSC) was third, with 11; the remainder of seats, including enough representatives of groups sympathetic to PAIS to assure Correa a governing majority, went to smaller parties across the ideological spectrum.

Despite legal gaps caused by the fact that new electoral laws approved in 2009 had not yet gone into full effect, campaigns for both national and provincial offices were generally peaceful. The contest featured improvements from previous elections, particularly by incorporating elements of the 2008 constitution that extended voting rights to previously excluded groups. Candidates were able to campaign freely, but EU election observers characterized the electoral environment as lacking “robust competition and lively political discourse.”<sup>4</sup> Most contests were personality driven rather than focused on specific programs and policy discussions. Campaign finance rules theoretically granted all presidential candidates equal opportunity to reach voters through national television. However, the time allocated was generally insufficient and, outside of these specific campaign advertisements, coverage of Correa dominated the airwaves—with positive coverage on public channels being countered by unflattering treatment by the private media. The 2009 law addressed many of the shortcomings of previous elections, especially regarding weak sanctions for campaign finance violations. Adequate enforcement in future elections could play a large role in leveling the electoral playing field.

## COUNTRIES AT THE CROSSROADS

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The elections were monitored by both domestic and international observers, and there were few legal challenges lodged with electoral authorities. However, the weakest link in the electoral process was the TCE's slow, overly bureaucratic settlement of disputes over campaign rule violations.<sup>5</sup> In addition, the slow, error-prone tabulation process created tension in some regions, though the basic results were never under any doubt. Similarly, although official exit polls proclaiming an easy government win in the May 2011 referendum proved wildly off the mark, the final results, in which some of government-promoted positions barely triumphed, were generally acknowledged by the opposition.

Despite frequent opposition talk of Correa's authoritarianism, the relative integrity of Ecuador's electoral institutions and the narrowness of the government's victory in the 2011 referendum suggest that Ecuadorian politics retain some dynamism. The lack of a well-articulated opposition, along with Correa's consistently high approval rating, which aids PAIS candidates, means that the system's openness to a democratic rotation of power at the national level has not been tested in recent years. Under the new constitution's terms, President Correa could legally remain in power through 2017. Opposition parties have preserved some bastions of power at the local level. In Guayaquil (Ecuador's largest city and economic hub), for example, the Social Christian Party (PSC) has held a virtual monopoly on important political offices for the past two decades and looks unlikely to relinquish its hold on power.

In the National Assembly, the executive's dominance over the legislative agenda has caused significant strain within his alliance. The president has maximized his constitutional powers in two particularly provocative ways. First, he has threatened to use the so-called "*muerte cruzada*," in which the president dissolves parliament and rules (with limited powers) by decree until new elections for both parliament and the presidency can be called. Such threats have often been issued at times of ferment within the legislature, notably in the September 2010 period preceding the police mutiny. Second, he has wielded his line-item veto power with vigor, often striking provisions of laws that were agreed upon by PAIS legislators and members of other parties only through painstaking compromise. Again, this caused particular consternation in September 2010, when Correa made extensive revisions to both the Public Service Law and the Law on Superior Education. Although operating within his legal powers, the administration's persistent lack of interest in even mild conciliation has both weakened the legislature and alienated some of the president's early allies. Several prominent PAIS members, including Assemblywoman María Paula Romo and former constituent assembly head Alberto Acosta, have abandoned the bloc, although a coherent opposition movement to Correa from the left or center-left has yet to take shape.

The new constitution created the CPCCS as the fifth branch of government, in addition to the executive, legislative, judicial, and electoral branches. As of spring 2011, the CPCCS has yet to become fully functional. Among its many functions, the CPCCS is charged with investigating corruption and abuses of power and designating numerous important public officials, including the ombudsman, attorney general, inspector general, and CNE members. Along with these prerogatives, the CPCCS has broad information-gathering authority and extensive subpoena powers. With its broad constitutional mandate, the CPCCS is an illustrative example of a potentially positive reform that has languished due to an apparent lack of political will to implement it. In theory, its role in preserving checks and balances could lead to constraints on the sweeping powers of the presidency. In practice, however, the first major selection process conducted by the CPCCS, to select a new attorney general, was tarnished by persistent accusations of manipulation benefiting the government's favored (and victorious) candidate.

## COUNTRIES AT THE CROSSROADS

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Employment opportunities in the civil service continue to be driven largely by patronage calculations. However, improvements that had begun in previous years have not been reversed under Correa. Most notable is the functioning of the Internal Revenue Service (SRI), which in barely a decade has gone from being corrupt, inefficient, and unprofessional to being a competent body composed mostly of trained professionals. Accordingly, tax evasion rates have declined.<sup>6</sup> Correa also undertook a broad-based attempt to modernize and professionalize bureaucratic institutions—although Ecuador has a long history of similar rationalization attempts that were eventually aborted. Given the nepotistic abuses of recent governments, the effort to hire trained and competent professionals to staff important government institutions is laudable.

The wave of popular discontent that helped drive Correa to power in 2006 had been building for years within civil society organizations and nongovernmental organizations (NGOs). Since assuming power, Correa has generally respected the rights of civil society organizations and NGOs, although he has often used the bully pulpit of the presidency to publicly berate social movements and NGOs (both national and foreign) that diverge from his policy agenda. For example, Correa has repeatedly denigrated the indigenous movement and its leaders as well as environmental NGOs such as Acción Ecológica for their “childish environmentalism” when they have protested against mining and energy activities in indigenous territories.<sup>7</sup> Nonetheless, the government generally refrains from formally restricting the ability of civil society groups to organize, register, and disseminate their message.

The media environment has become significantly more complicated since 2007. In barely four years, the Ecuadorian government has gone from owning one media outlet (Ecuador National Radio) to controlling 19 outlets, ranging from television to radio and print media.<sup>8</sup> As part of ongoing corruption investigations, the government has seized several prominent television and radio stations, as well as newspapers. The most significant of these cases involved the seizure of two of Ecuador’s largest television stations (Gamavisión and TC Televisión), which the government asserted were owned by the Isafías family, fugitive financiers accused of various crimes connected with the banking crisis that devastated the country in the late 1990s. Although these and other assets were ostensibly seized with the purpose of reselling them in order to compensate those who lost money in the banking crisis, the stations remain under state control. Moreover, under the guidance of presidential chief of staff Vinicio Alvarado and his brother, Minister of Communications Fernando Alvarado, the government spends vigorously to distribute progovernment messages and promote government-approved candidates for office. The president’s weekly radio address, in which he routinely upbraids the private media, is broadcast throughout the country. The state also spends significant sums promoting itself in numerous privately-owned press outlets, thus giving the government financial leverage with the media.

In addition, the government is engaged in an open ongoing battle with several independent news organizations that the president accuses of being mediocre and corrupt coupmongers.<sup>9</sup> The Committee to Protect Journalists has repeatedly criticized the administration, particularly regarding its use (or threat of use) of ambiguous libel laws to punish and threaten the press.<sup>10</sup> The most-publicized case involves prominent Guayaquil journalist Emilio Palacio of newspaper *El Universo*, who received a three-year prison sentence in March 2010 (later rescinded) for referring to the president of a government-run financial institution “a thug.”<sup>11</sup>

Finally, the National Assembly has for several years been debating a law that would further regulate the press in ways that press watchdogs consider antithetical to the freedom of expression. While the proposed media law would take the positive step of explicitly prohibiting

## COUNTRIES AT THE CROSSROADS

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media monopolies and oligopolies, in its early 2011 iteration it would also condition free expression rights to ensure that information is “true, verified, opportune, contextualized, and plural.” While such qualities are certainly ideal, the vagueness of these conditions opens the door to censorship (or self-censorship) of information deemed controversial or prejudicial to governmental interests.<sup>12</sup> The government has made no efforts to restrict access to the internet or censor its content, but service remains expensive, thus limiting most of the poor from internet access.

### CIVIL LIBERTIES

In contrast to the areas of accountability and rule of law, the situation of civil liberties in Ecuador has changed relatively little in recent years. In general, civil liberties are formally protected but often violated in practice. This reflects both the hyper-presidential nature of the current regime and the general weakness of the Ecuadorian state, which makes it difficult for civilian leaders to control and punish both security force members who violate civil liberties and criminal networks that evade state control.

A May 2010 visit by the Inter-American Commission on Human Rights (IACHR) documented significant improvements in some parts of the prison system, included diminished overcrowding, greater availability of public defenders, enhanced upkeep and staffing of childcare centers at women’s prisons in Quito and Guayaquil, and an overall reduction in violence at men’s prisons. On the negative side, it documented inadequate prisoner nourishment (the daily budget is approximately one dollar per prisoner per day), inadequate medical care, unsanitary conditions, and the mixing of accused criminals with convicted ones.<sup>13</sup> The positive achievements, however, have been undermined by the constant shuffle of top prison authorities and the transfer of responsibility for the country’s prisons to the Ministry of Justice, a switch that should eventually lead to positive changes but created substantial uncertainty in the interim. Another ongoing problem is the high percentage of prisoners in pretrial detention, estimated at over 50 percent of the prison population as of mid-2010.<sup>14</sup> To ease prison overcrowding authorities have released thousands of detainees, which became a hot button political issue in 2010 as citizens perceived the releases to have fed a rise in crime.

Under the 2008 constitution as well as previous ones, an ombudsman’s office has a mandate to defend citizens from arbitrary arrest and detention along with other rights abuses. The office lacks prosecutorial or other sanctioning power, however, and enforcement remains patchy. A positive development in the search for redress, however, was the 2010 publication of Ecuador’s Truth Commission Report. Although the commission lacked the authority to bring formal charges, it documented 456 human rights violations committed since 1984.<sup>15</sup> Although the level of human rights violations in Ecuador never rose to the level of those in other parts of Latin America, the thorough attempt to document abuses is an important step in moving away from a culture of impunity for violators of basic human rights.

Nonetheless, particularly outside major urban centers—where effective oversight can be exercised by interested civil society organizations—arbitrary arrest and detention, along with political intimidation, continue to be problematic. In the rural southeastern province of Morona Santiago, human rights activists connected to the National Coordinating Body for the Defense of Life and Sovereignty (CNDVS) received death threats in 2009 from local authorities for protesting a meeting between local officials and a Canadian mining company that was operating

## COUNTRIES AT THE CROSSROADS

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with an expired license.<sup>16</sup> In addition, several citizens have been detained following incidents in which vulgarity was directed toward Correa.<sup>17</sup>

Beyond state violations of civil liberties, the state has frequently proven incapable of defending citizens' liberties from nonstate actors such as criminal networks, human traffickers, and guerrilla and paramilitary combatants (mostly from neighboring Colombia). Some portions of Ecuadorian territory are effectively beyond government control. This is particularly true along the northern border with Colombia, where citizens are often caught in the crossfire between drug traffickers, guerrilla movements, and the militaries of each country.

A July 2010 visit by UN Special Rapporteur on Extrajudicial Executions Philip Alston concluded with a discussion of the challenges facing Ecuador's criminal justice system. Particularly in rural areas, impunity is the norm, with less than 1 percent of all murders ending in a conviction.<sup>18</sup> Such impunity (and the fact that some media outlets thrive on sensationalist reporting of heinous crimes) coincides with increased murder rates throughout the country, with highly visible violence such as contract killings in Quito and Guayaquil contributing to a broad perception of pervasive criminality.

In places where the state effectively enforces its writ, the government officially recognizes gender equity, and the Correa administration has taken meaningful steps to ensure that women are represented within institutions of government. The 2008 constitution guarantees equal representation of men and women on party lists for national elections, although this provision has not been strictly enforced. The constitution, however, contains contradictory articles specifically related to women's reproductive rights. While article 46 guarantees the right to life "from conception," article 67 provides broad guarantees regarding women's right to control their own sexual and reproductive decisions, including "the right to make free, responsible, informed decisions about their health and reproductive lives and to decide when and how many children to have."<sup>19</sup> The contradictory language appears to be an attempt by the Constitutional Assembly to placate both women's rights activists and the Catholic Church. The result is legal uncertainty that has yet to be resolved. Despite government campaigns to spread awareness, an extremely high rate of domestic violence continues to impinge on the rights of many Ecuadorian women.

The rights of indigenous Ecuadorians, who comprise approximately 10-20 percent of the Ecuadorian population (estimates vary widely, from as little as 7 percent to more than 40 percent) are explicitly recognized in the constitution, which recognizes Ecuador as an intercultural and plurinational state. In practice, however, the Correa government has alienated many indigenous groups that initially supported him, particularly antagonizing leaders of social movements like the Confederation of Indigenous Nationalities of Ecuador (CONAIE) by permitting mining and oil drilling in indigenous territories and excluding indigenous representatives from the highest levels of government decision making. However, many groups within the indigenous community have split, weakening their ability to mobilize against the government.

Employment discrimination against women, ethnic minorities, and the disabled is outlawed, yet continues to be widely practiced. The legal and working environment for disabled people has improved significantly, however, due in part to the public pressure applied to businesses and local officials by Vice President Lenín Moreno, who has used a wheelchair since being injured in a robbery in 1998.

Freedom of conscience and belief are generally respected. Although a large majority of Ecuadorians are Roman Catholic, the state is explicitly secular. In practice, government officials

## COUNTRIES AT THE CROSSROADS

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neither promote nor hinder the free practice of religion. At the societal level, social discrimination remains a problem for non-Catholics, most of whom are evangelical Christians.

The state formally recognizes the right of all citizens to organize and form associations, and the right to organize is widely respected. Ecuador has a vibrant associational environment, with a variety of complementary and competing associations representing nearly all segments of society. Trade union rights are generally respected; labor groups are not a major political or social force due to the large size of the informal sector. Relations between the government and public sector workers are subject to occasional tensions, as during the debate over the new Public Service Law in September 2010.<sup>20</sup>

Demonstrations and protests are regular occurrences and, although they are often met with official indifference, are generally tolerated. There have been cases, however, of human rights violations by security forces (both public and private) against demonstrators as well as attacks on social movement organizations' offices and leaders. The Correa government has made ample use of broad and vaguely defined laws against "terrorism and sabotage" to prosecute and harass protest leaders, especially indigenous and environmental activists. Ecuador's criminal code defines terrorism and sabotage as "crimes against the common security of people or human groups of whatever kind, or against their property,"... by individuals or groups "whether armed or not." Conviction carries a possible prison sentence of up to eight years.<sup>21</sup> In June 2010 several indigenous activists, including CONAIE president Marlon Santi, were placed under criminal investigation for terrorism and sabotage for their involvement in protests during a meeting of the Bolivarian Alternative for the Americas (ALBA) in Otavalo attended by President Correa and other Latin American leaders. Terrorism laws have also been used against journalists. In August 2010 Juan Alcívar of *La Hora* newspaper was charged with terrorism following a demonstration in La Concordia where he allegedly threw a tear gas canister at President Correa. He was released from preventive detention but still faces terrorism charges.<sup>22</sup>

### RULE OF LAW

Ecuador's 2008 constitution, like its predecessor, provides for the formal separation of powers and for a judicial system that guarantees the rights of all Ecuadorian citizens, including special recognition of indigenous legal practices in majority indigenous zones. However, also like its predecessor, these provisions are often recognized in the breach. Under the new constitution, the key judicial entities are the Judiciary Council (CJ), a nine-member body selected through a competitive process with citizen oversight, a 21-member National Court of Justice selected by the CJ following open competition, and a nine-member Constitutional Court selected through competitive processes overseen by representatives of the other branches. The conformation of the current CNJ was the topic of considerable controversy, as the previous, 31-member Supreme Court of Justice was winnowed down by lottery, a mechanism that drew vocal objections from many jurists. Following the publication of the results of the May 2011 referendum, the CJ was disbanded in favor of an 18-month interim CJ charged with restructuring the justice system.<sup>23</sup> The CJ also appoints and dismisses lower court justices.

Cases involving average citizens continue to languish in courts, while accusations that bribery is used to move cases more rapidly and influence judicial outcomes are common. The more serious problem for democratic governance remains the ability of powerful interests to use the judicial system to further political and economic agendas. The Correa administration has

## COUNTRIES AT THE CROSSROADS

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politicized high-profile cases to attack political enemies. For example, in 2008 prominent businessman (and outspoken government critic) Mauricio Pinto was sentenced to preventive detention while he was investigated for tax fraud related to the importation of two airplanes in 1997. Although the detention order was dropped, the timing of the charges—more than a decade after the alleged crime, but in the heat of the campaign to approve the new constitution, which Pinto had criticized—suggested that politics, as much as justice, was a motivating factor.<sup>24</sup>

Most judges have adequate training to carry out their job, but the political environment of the past decade has subjected them to intense political pressures. Under these conditions it is not surprising that even competent and honest judges seek to avoid offending powerful state officials. Nearly all recent presidents (including Correa) have meddled in the judicial system to an extent that judicial officials generally do not feel secure in their positions. In May 2011, Minister of Interior José Serrano reacted to an innocent verdict in the case of César Carrión, a police colonel accused of attempted murder in relation to the September 2010 police mutiny (see Editor's Note below), by threatening to bring charges against the judges who exculpated him. In another notable case, the government appeared to benefit from judicial ambivalence when José Chauvín, a close collaborator of several high administration officials, was found innocent of drug trafficking in May 2010. Chauvín had acknowledged meeting with leaders of the Revolutionary Armed Forces of Colombia (FARC) in Ecuadorian territory shortly before the Colombian military crossed the Ecuadorian border to destroy a FARC camp in March 2008.<sup>25</sup> Despite evidence gathered from a dead FARC leader's laptop that money from the FARC had entered Correa's campaign coffers (with or without the president's knowledge), no charges were brought against other government officials.

In criminal proceedings the law offers the presumption of innocence. However, defendants without resources to hire a private attorney find themselves at a distinct disadvantage within the legal system. Public defenders generally carry heavy caseloads and lack the time or resources to offer an adequate defense for many of their clients (although this situation has improved slightly in recent years). As in most countries, those with wealth or political connections are much more likely to benefit from competent legal defense than those who lack resources and connections.

Prosecutors are formally independent from political influence. The top prosecutor, the attorney general, was designated by the National Congress under the previous constitution, but is now selected through a process overseen by the CPCCS. Lower-level prosecutors are selected through competitive processes. The attorney general until July 2011, Washington Pesántez, invited controversy both by defending President Correa and his allies from formal investigation and for appearing to use his position to protect himself and his family. One particularly significant complaint against Pesántez stemmed from a traffic accident in which his wife allegedly killed a woman while driving a vehicle belonging to the prosecutor's office. Despite numerous witnesses testifying that the vehicle was driven by a woman, prosecutors charged a male police officer with the offense.<sup>26</sup> Attempts to impeach Pesántez based on this and other allegations have been repeatedly rebuffed and contributed to the split within PAIS. Pesántez has reportedly used his power as prosecutor to harass PAIS members who have attempted to hold him accountable. Most recently his office initiated tax fraud investigations against PAIS assemblywoman María Paula Romo and her parents, apparently in retaliation for her leadership of efforts to impeach him.<sup>27</sup>

The institutionalization of the rule of law requires that national and local security forces operate under democratic civilian control. Given that the military played a direct or indirect role

## COUNTRIES AT THE CROSSROADS

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in the removal of the last three elected presidents prior to Correa, the subordination of military leaders to elected civilians is questionable at best. At present, the president appears to have the loyalty of the military, but this loyalty is conditional. While the military ultimately came to the president's defense when the president was held captive by mutinous police officers in September 2010 (see Editor's Note below), their loyalty to the democratic process remains an open question. There is concern that Correa has essentially purchased the loyalty of the military through increased salary and benefits packages. In addition, the military has been handed control of key economic assets such as Petroecuador, the state-owned oil company that was controlled by the Navy from 2007 to early 2010, ostensibly for the purpose of rooting out corruption and inefficiencies.<sup>28</sup> Beyond Petroecuador, various branches of the armed forces control significant industries in the tourism, manufacturing, agriculture, and natural resource sectors with minimal transparency or oversight.

Economic and property rights have continued to erode under the Correa administration. This is due both to the overall weakness of the rule of law and to efforts by the Correa administration to assert a greater role for the state in economic activity. In addition, the state has taken several actions that have led large investors (both domestic and foreign) to question the security of their property rights in Ecuador. The most prominent international case involves the Ecuadorian government's decade-long prosecution of Chevron for environmental damages dating back to the 1970s, with both sides engaged in dubious legal maneuvers.<sup>29</sup> The seizure of assets believed (by the government) to be tied to fugitive business and political leaders (such as the Isaías brothers—see Accountability and Public Voice) generated doubts about the government's willingness to respect property rights and the legal process for seizing assets tied to criminal activity. A prominent case was the seizure of Industrias Lácteas Toni (a large producer of various dairy products) in 2008 based on accusations that the company was actually owned by the Isaías brothers and thus subject to expropriation.<sup>30</sup> The government's attempt to prove the Isaías's ownership has been slow and sloppy, making it difficult to separate the legal case from the government's political goals.

The Ecuadorian economy remains heavily state-centered. The Heritage Foundation, a conservative think tank that produces an economic freedom index, rated the Ecuadorian economy as "repressed," its lowest possible designation, and ranked the country 158 out of 179 countries in its 2010 survey, ahead of only Venezuela and Cuba within Latin America.<sup>31</sup> The aforementioned seizures of economic assets and the president's populist rhetoric, which frequently vilifies business "oligarchs," was described by the group as creating further uncertainty surrounding the legal protection of property rights.

### **[EDITOR'S NOTE: SEPTEMBER 30, 2010: POLICE MUTINY OR COUP D'ÉTAT?]**

For several tense hours on September 30, 2010, Ecuador's democracy appeared to be on the edge of collapse as President Rafael Correa was trapped in a police hospital by a group of police officers in Quito. The incident unfolded following the initiation of protests by police officers across the country in reaction to a policy shift whereby the police would be folded into the general civil service for purposes of calculating salaries and bonuses. Although there was little evidence that it represented a salary cut, many officers perceived the change as a threat to their accustomed system of bonuses and other perks.

## COUNTRIES AT THE CROSSROADS

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The drama involving the president occurred when Correa attempted to explain the policy change to a group of protesting officers. Rather than calming the scene, his presence only heightened tensions, due in part to a characteristically confrontational performance that included ripping open his shirt and yelling "if you want to kill the president, here I am, kill me if that's what you want!"<sup>32</sup> During the altercation that occurred when police blocked Correa's exit, the president was injured and taken to a nearby police hospital, where he declared a state of emergency across the country, including a government takeover of all broadcasting frequencies for six hours. The tumult further entrenched the standoff between the police units that had isolated Correa in the hospital and the army forces that arrived to free the president. As police around the country abandoned their posts in support of their colleagues in Quito, the country was plunged into both political uncertainty and personal insecurity, with widespread looting and general lawlessness, particularly in Guayaquil, Ecuador's largest city. Isolated units of the military acted in solidarity with the police; the Air Force, for example, blocked the runway at Quito's primary airport and seized the presidential airplane and helicopter in order to prohibit the president from leaving the country.<sup>33</sup>

By early evening the decision was made to free the president by force. In the fighting that ensued to attempt to free the president, five people were killed and dozens more injured; the toll for the day throughout the country reached at least 10 dead and over 250 wounded. Following his liberation, Correa declared the event an attempted coup d'état, a position also taken by the OAS and the Union of South American Nations. While there clearly was substantial coordination within the police as well as with parts of the military, no alternative leader stepped forward to seize power, and most of the military remained loyal to the president. President Correa emerged strengthened from the ordeal in the short term, but the flagrant act of police insubordination set a dangerous precedent in a country where the security forces have long played a prominent role in national politics.<sup>34</sup>

The episode reflected several underlying weaknesses in Ecuador's political system. Most obviously, the loyalty of a significant part of the security forces is conditional, as demonstrated by the several-hour lag between the eruption of chaos and the military's clear statement backing the constitutional order. Second, although President Correa was able to resume his duties, he was apparently forced to backtrack on his proposals to streamline the system of granting raises and promotions, effectively handing victory to the police that rose up against him. Third, although many analysts disputed the government's decision to label the event an attempted coup d'état, Correa used the crisis as an opportunity to single out his political rivals—especially Gutiérrez's PSP—as antidemocratic coup-mongers, illustrating his ongoing preference for confrontation over conciliation. As of the spring of 2011, nearly 300 police and soldiers had been charged or were under investigation, with many more reassigned. Although then Secretary of the Interior Gustavo Jalkh promised to insulate and protect judges and prosecutors involved in the investigations,<sup>35</sup> early judicial processes resulted in mixed verdicts, angering the government and leading to threats of retribution (see Rule of Law). Overall, while Ecuador's political system showed resilience on September 30, the balance of the strengths and weaknesses revealed that day will only be clear over the next few years.]

### ANTICORRUPTION AND TRANSPARENCY

## COUNTRIES AT THE CROSSROADS

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Ecuador has long struggled with endemic corruption and weak government transparency. This has not changed significantly in recent years, although the government has set up institutions that have the potential to perform important oversight functions. According to Transparency International's 2010 Corruption Perceptions Index (CPI), Ecuador scored 2.5 out of 10, ranking it 127 out of 178 countries surveyed.<sup>36</sup> Ecuador's ranking has improved slightly in recent years, but as the CPI is based on perceptions rather than direct measurement, the gains are likely to be as much an artifact of the perception of boundless corruption of the late 1990s and early 2000s as an endorsement of the integrity of current public officials.

The increasing activity of the state in the economy has created new opportunities for various types of graft. This was demonstrated most vividly early in the Correa administration by a scandal involving lucrative state contracts awarded to the president's brother, Fabricio Correa. During President Correa's first two years in office, his brother's firm won contracts worth approximately \$167 million, mostly in the area of infrastructure building, despite legal provisions barring a president's family members from doing business with the state.<sup>37</sup> Fabricio Correa used a technicality exempting holding companies from these anti-nepotism rules to his advantage; the president was apparently unaware of this obvious conflict of interest until it was reported in the press, suggesting that there is insufficient oversight in the awarding of government contracts. The two brothers subsequently experienced a major falling out, with Fabricio accusing presidential aides of corruption and vociferously denouncing his brother's politics.

The battle against corruption has been a common campaign theme for candidates across the political spectrum, and a common ingredient in the downfall of presidents Bucaram, Mahuad, and Gutiérrez. Accordingly, the government has created a number of anticorruption bodies to help fight graft. The comptroller and attorney general's office both have departments dedicated to weeding out corruption, and the Correa government created a new institution, the National Anticorruption Secretariat, to coordinate and oversee the battle against corruption in both the public and private sectors.

Public officials are required to file a notarized declaration of all assets upon entering office and again upon leaving the public sector. These declarations have enabled the independent media to be more vigilant of public officials. Indeed, the media has been a vigilant watchdog of government corruption, although both pro- and antigovernment accusations are sometimes politicized. Government interference in the media and lawsuits, such as the \$10 million suit initiated by President Correa against the authors of a book examining the Fabricio Correa episode,<sup>38</sup> has likely led to self-censorship by journalists afraid of running afoul of powerful government figures.

Arguably the area of greatest improvement in the area of anticorruption and transparency is in revenue collection. Well into the 1990s, the Internal Revenue Service (SRI) was dysfunctional, corrupt, and unable to effectively enforce Ecuador's tax laws, particularly on the wealthy, many of whom routinely evaded huge tax bills with impunity. The SRI has upgraded its technology and record-keeping ability, increased the professional credentials of its staff, and become an island of bureaucratic competence.<sup>39</sup> Since 2009 the SRI has been in charge of collecting assets declarations (*declaración patrimonial*) from all Ecuadorians with assets over \$200,000. Government officials hope that this will help further rationalize the tax system, by clarifying what assets are held where and by whom.<sup>40</sup>

Within the current government, the concentration of power in the hands of the president and his party has led to a severe lack of transparency. Although the National Assembly has

## COUNTRIES AT THE CROSSROADS

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important and powerful legal tools for promoting transparency and accountability, these tools are rarely used, and the party exercises little effective oversight in the areas of budgeting and procurement. There is, therefore, ample room for corruption and influence peddling. Without effective oversight, however, it is difficult to know with any certainty the degree of corruption.

Petty corruption by local officials, many of whom ignore conflicts of interest while carrying out their functions, and police officers are particular problems. Corruption within the education system is also a problem, particularly in rural areas where educational opportunities are scarce and media coverage is weak. Formal protections for whistleblowers exist, though instances of whistleblowing leading to investigations and prosecutions are rare. In theory, the CPCSS will have an important role to play in limiting corruption and providing redress to victims, but this institution has yet to prove its worth in this sphere.

In general, constitutional and legal provisions are in place to ensure government transparency and public access to information. In practice, however, such access is difficult for normal citizens. Although further progress is necessary, budgeting and expenditure accounting processes have become more transparent following numerous corruption scandals during the 1990s and early 2000s. The scandal surrounding Fabricio Correa's government contracts illustrate both the challenges and improvements in this area: the fact that the contracts were ever signed indicates a lack of transparency and oversight in contracting processes, but the fact that the problem was caught and largely corrected suggests some responsiveness within the system.

Overall, government transparency seems to have improved somewhat in the past four years. This owes in part to the return of some degree of political stability under Correa's leadership. During the decade from 1996 to 2005, when three presidents were removed, constant political turmoil, institutional changes, and legal maneuvering made transparency nearly impossible. Although the current situation leaves substantial room for improvement, the return of some semblance of political order makes it possible to investigate abuses of power even when government officials are not forthcoming, offering hope for some institutional consolidation even within an atmosphere of political polarization.

### RECOMMENDATIONS

- The government should immediately halt political harassment and intimidation of journalists, and enact legislation to change libel, defamation, and insult-related legal violations from criminal to civil offenses.
- The government should formulate a plan for the orderly divestiture of assets seized as a result of corruption and other criminal investigations. This is particularly important where the assets are politically important, such as media outlets.
- The government should refrain from any interfering or applying any political pressure during the CPCSS selection processes for positions including attorney general, ombudsman, and CNE members.
- The government should fully investigate actions that occurred during the September 2010 police mutiny and punish those involved in order to consolidate civilian control over security forces.

## COUNTRIES AT THE CROSSROADS

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- In order to bring stability and improvements to the prison system, efforts to bring the prisons under the full control of the Ministry of Justice should continue expeditiously.

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