



EUROPEAN PARLIAMENT

CONSTITUTIONAL REFERENDUM IN ECUADOR

ELECTION OBSERVATION DELEGATION

25 – 30 SEPTEMBER 2008

REPORT BY MRS RENATE WEBER

CHAIRPERSON OF THE DELEGATION

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During the joint press conference held on 30 September 2008 together with the European Union Election Observation Missions (EU EOM) the Chairperson of the EP Election Observation Delegation, Mrs Renate Weber stated that "Ecuador has set a democratic example, adopting for the first time by referendum a Constitution that opens the door to new times during which the country will face great challenges in achieving its stability. These challenges are impending, in the form of the presidential, parliamentary and local elections that will be held in the beginning of 2009".

Ecuador, Latin America's most unstable democracy for a decade, is, to quote the country's president, Rafael Correa, "**not in a period of change, but in a change of period**" -a statement generally agreed upon by analysts. For this reason, this report considers the political context surrounding the 28 September 2008 referendum and its prospects for the future.

- Since 1996 Ecuador has had eight presidents, three of them being ousted by Congress and street protests. Chronic instability has been linked to progressive undermining of the rule of law, and in spite of the many attempts at reform, including in 1998 the promulgation of the country's 19th Constitution since 1830, the political system had become largely dysfunctional. In addition, Ecuador has undergone one of the worse economic crises on the continent, with hyperinflation and the collapse of its banking sector in 1999. Ecuador is one of the poorest Latin American countries, with more than 60% of the population living under the poverty line and 30% in levels of absolute poverty. Today, 20% of the Ecuadorian population is living abroad.
- The victory of Rafael Correa's *Movimiento Alianza País* (Country Alliance Movement) in the November 2006 presidential elections with 57% of the vote, unleashed a process of social and political change in Ecuador. In November 2006, parliamentary elections (Congressional) were also held. However, Correa's *Alianza País* (AP) did not field any candidates, since Correa considered Congress to be a source of corruption, not legitimately representing the will of the people. For *Alianza País*, the formation of the Constituent Assembly and the adoption of a new Constitution represented one of the most important means of transforming the basic structures of the State and the economic, social and political framework of Ecuador.
- On 15 January 2007 President Correa signed an executive decree that called for the setting up and the election for a Constituent Assembly (CA), the body proposed to replace Congress. The Presidential decree gave to the Constituent Assembly widespread powers, including the power to dissolve the Congress. After serious political and institutional infighting, in April 2007, 82% of Ecuadorian voters backed by referendum the establishment of the CA under the provision of the January 2007 executive decree.
- On 30 September 2007, Ecuadorians elected 130 representatives for the Constituent Assembly. These elections, observed by a Mission of Election Observation of the European Union, established a completely new political landscape for Ecuador, as traditionally strong parties almost disappeared in favour of new political movements that previously were non-existent in

Congress. *Alianza País* and its allies confirmed their position as the strongest movement in the country, gaining in total 80 seats and 61,53% of the Constituent Assembly composition.

- The new CA began functioning on 29 November 2007 for a maximum period of 240 days. The first deadline established for the CA was set for May 2008, when a draft for the new Constitution had to be drawn up. This term was later extended by 60 days to 25 July, in accordance with the January 2007 executive decree. The draft text of the Constitution was approved on 24 July 2008. The 'Preamble and the Transitional Regime', also part of the draft Constitution, were treated and approved separately one day earlier, on 23 July 2008.
- In this context it is worth mentioning that the process of drafting the Constitution differed from what is considered usual practice: instead of a drafting by one commission, whose proposals could be debated by the public and voted on by the CA, 10 different commissions, each focussing on separate themes, took part in creating the new Constitution. As a result, although the members of the CA gathered almost 3500 contributing inputs from the many social groups represented, the outcome was a bulky text (containing 444 articles) with many redundancies and contradictions, making the work of the 'Special Editing Commission' very difficult.
- The adoption process of the draft Constitution led some opposition members to question its legitimacy. As this was directly linked to election observation, the EU EOM looked into the matter, and concluded that there could be no doubt as to the legal certainty of the object of the 28 September 2008 referendum.
- The 28 September 2008 Referendum was made official with its publication in the official journal, *Registro Oficial* on 12 August. The question in the ballot paper was the following: "Do you approve the text of the New Political Constitution of the Republic elaborated by the Constituent Assembly? Yes/No".

On Referendum day, the EP Delegation split into four groups, and observed that voting, counting and tabulation were conducted in an orderly manner in all observed polling stations from various districts of the capital Quito, and surrounding rural and suburban areas. The delegation met few representatives from political parties. However, this did not give rise to attempts at electoral fraud in the observed polling stations. The Ecuadorian people once again showed strong democratic character. The army supervised the electoral process. The Delegation's teams witnessed the effectiveness of measures adopted by civil society (e.g. *Taxis Solidarios* - a free taxi service) or polling stations' staff to give people with disabilities access to voting. From the Delegation's point of view, a less positive note was the situation of polling station staff who did not receive the 5 USD promised to them for their significant work, and the contrast of this with coordinators of the Supreme Electoral Court (TSE), who were receiving 200 USD for 5 days of work.

The referendum resulted in a clear victory for the adoption of the country's new Constitution (YES 63,93%; NO 28,10%; VOID 7,23%; BLANK 0,75%)¹. Leading opposition figures, such as the Mayor of Guayaquil, promptly accepted the electoral results. All international observers present concluded that the process was transparent, with no irregularities.

A complicated stage of transition follows the approval of the new Constitution, which, along with its 444 articles, includes a supplementary 'Transitional Regime' of 29 additional clauses, that will ensure the organisation of further presidential, parliamentary and local elections, likely to take place in either February or March of 2009. This Transitional Regime gives to the Executive until the 2009 elections, the power to nominate members of State bodies and institutions.

- Five days after the official announcement of the Referendum's result, the CA met to establish a Legislative Commission (the *Congresillo*) that will serve as the acting Parliament until the election of new members of the CA.
- The *Congresillo* will dissolve the Congress, which has been in recess since the CA began its work in November 2007, and will act in its place until the 2009 elections, whose winners will form the structure of the new National Assembly, the replacement body for Congress.
- The *Congresillo* will legislate and supervise during the three to four months of the transition period, in addition to the tasks of forming the judicial and electoral institutions. The *Congresillo* will organize the *Corte Nacional Electoral* (CNE, the National Electoral Court) - the new name for the *Tribunal Supremo Electoral* (Supreme Electoral Tribunal), who will organise next year's general elections. The CNE will call for public nominations to choose members of the trimmed down *Corte Nacional de Justicia* (CNJ, the Supreme Court of Justice), which should be made up of 21 judges, chosen from the present 31. The *Corte Constitucional* (Constitutional Court) will be reorganized and will replace the *Tribunal Constitucional* (Constitutional Tribunal). The *Congresillo* will also supervise the formation of a new state organ in charge of overseeing and ensuring the transparency of State bodies' exercise of power, which will be known as the *Consejo de Participación Ciudadana y Control Social*.
- Political parties and movements will have to present to the *Consejo Nacional Electoral* (National Electoral Council) the support, in the form of signatures, of 1% of the registered electorate from the relevant constituency in order to be eligible for election. These conditions would have effectively eliminated several existing political parties, but it seems that they will not be applied to the 2009 elections because of the time constraints involved in meeting them.

¹ With an abstention of 25,58% (men) y de 22,82% (women).

Facing the elections of February or March of 2009, it will be essential to closely follow the transition stage, the response from the opposition, and the measures adopted by the Executive in this fundamental stage of Ecuador's stability.

Finally, the Delegation of the European Parliament, composed by Members of the main Political Groups of the European Parliament, reiterates its support for the conclusions and analysis of the EU Election Observation Mission, which were commendably presided over by Jose Ribeiro e Castro.

Annexes:

- A. List of participants**
- B. Programme**
- C. Statement of the EU Election Observation Mission**
- D. Press release of the EU Election Observation Mission**

EUROPEAN PARLIAMENT
REFERENDUM ELECTIONS IN ECUADOR
ELECTION OBSERVATION DELEGATION

23 September - 01 October 2008

List of participants

Members

Mrs Renate WEBER, ALDE, Romania, *Chairperson*
Mr Agustín DÍAZ de MERA GARCÍA CONSUEGRA, PPE-DE, Spain
Mrs Pilar AYUSO, PPE-DE, Spain
Mr Sergio MARQUES, PPE-DE, Portugal
Mr Manuel MEDINA ORTEGA, PSE, Spain
Mr Emilio MENÉNDEZ DEL VALLE, PSE, Spain

Secretariat

Mrs Emilia GALLEGO PERONA, Administrator
Mrs Laure ENCISO y BERGE, Administrator
Mr Francisco CABRAL, Assistant

Political Groups:

Mr Juan Manuel SALAFRANCA, PPE-DE,
Mrs Itziar MUNOA SALAVERRIA, ALDE

Abbreviations :

EPP-ED	European People's Party/European Democrats	GUE/NGL	European United Left/Nordic Green Left
PSE	Party of European Socialists	UEN	Union for Europe of the Nations Group
ALDE	Alliance of Liberal and Democrats for Europe	I-D	Independence/Democracy
Verts/ALE	Greens/European Free Alliance	NI	Non-attached

EUROPEAN PARLIAMENT
DELEGATION TO OBSERVE THE
REFERENDUM IN ECUADOR

PROGRAMME

Thursday 25 September 2008

<i>09h00</i>	Meeting with the EU Mission of Electoral Observation
<i>19h00</i>	Briefing of the EP Delegation

Friday 26 September 2008

<i>09h00</i>	Meeting with Core team - misión de observación electoral de la UE
<i>10h15</i>	Meeting with Ruth Hidalgo , Participación Ciudadana
<i>11h30</i>	Meeting with the EC Delegation and the EU Ambassadors
<i>15h30</i>	Meeting with Alessandro Parziale , Core Team, Coordinador de los Observadores y experto de operaciones
<i>17h00</i>	Meeting with María Isabel Salvador Crespo , Ministra de relaciones exteriores, comercio e integración
<i>19h00</i>	Cocktail with Dr. Jorge Acosta , Presidente del Tribunal Supremo Electoral (TSE)
<i>19h30</i>	Exchange of views with the Chief Observer, Mr Ribeiro e Castro and the EU-EOM followed by a diner Place: Residence of the French Ambassador

Saturday 27 September 2008

<i>9h00</i>	Meeting with Rafael Correa , Presidente de la Republica de Ecuador Place: Palacio Presidencial, salón de gabinete del Presidente
<i>11h30</i>	Meeting with María Paula Romo , Ex-Asambleísta por Movimiento Alianza País
<i>15h00</i>	Meeting with Cesar Montufar , Democrática Nacional (por el “NO”)
<i>17h00</i>	Meeting with Enrique Correa , OEA
<i>18h00</i>	Meeting with Carlos Vera , ECUAVISA

Sunday, 28 September 2008

<i>6h30</i>	Elections observation
<i>19h30</i>	Briefing of the EP Delegation

Monday 29 September 2008

<i>9h00</i>	Meeting with, Mr Ribeiro e Castro Chief Observer of the EU-EOM
<i>13h00</i>	Lunch of the EP Delegation with Alberto
<i>20h00</i>	Cocktail hosted by the EP Election Observation Delegation

Tuesday 30 September 2008

<i>10h30</i>	Joint Press Conference, Ms Renate Weber, Chairwoman of the EP Delegation and Mr José Ribeiro e Castro, Chief Observer of the EU-EOM
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Wednesday, 1 October 2008

<i>7h00</i>	Departure of Ms Renate Weber, Chairwoman of the EP Delegation
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**EUROPEAN UNION
ELECTION OBSERVATION MISSION
ECUADOR, CONSTITUTIONAL REFERENDUM, 28 SEPTEMBER 2008**

PRELIMINARY STATEMENT

Referendum concludes a long participatory constitutional process marked by a peaceful polling day and a clear outcome. The silence period was not respected and the campaign would have benefited from a level playing field

Quito, 30 September 2008

The European Union Election Observation Mission (EU EOM) has been present in Ecuador since 6 September 2008, following an invitation from the Supreme Electoral Tribunal (TSE) and the Ecuadorian authorities. The Mission is led by Chief Observer Mr. José Ribeiro e Castro, Member of the European Parliament (MEP). The EU EOM has assessed the conduct of the referendum in accordance with international standards for democratic elections and adhered to the Declaration of Principles for International Election Observation commemorated at the United Nations in October 2005. On referendum day, the EU EOM deployed 33 observers, from 14 EU Member States throughout the country.

The EU EOM was joined by a six-member delegation from the European Parliament, led by Ms. Renata Weber, Member of the European Parliament, who endorses the views expressed in this document. The EU EOM is currently observing the tabulation of the results and will remain in the country to observe all remaining aspects of the referendum process. The final assessment of the report will be published following the completion of the entire referendum process. The EU EOM is independent in its findings and conclusions from EU Member States, the European Parliament and the European Commission.

Main Findings

- The 28 September 2008 Constitutional Referendum of the Republic of Ecuador has so far been generally well administered and provided citizens with an opportunity to determine the future of Ecuador. For the first time, a participatory mechanism to change the Constitution was introduced.
- Overall, the referendum generally met universal and regional standards related to democratic electoral processes. This being said, the referendum would have

This preliminary statement is available in English and Spanish but only the English version is official.

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benefited from more specific guidelines related to the conduct of referenda. The electoral process included a number of improvements as compared to the 2007 Constituent Assembly elections notably in the area of voter registration and the legal framework for the appointment of polling station members and election coordinators. The referendum was however also marked by an abuse of public resources for campaigning.

- The Constituent Assembly was broad-based and inclusive. However, there were several shortcomings with respect to the procedures followed by the Constituent Assembly mainly in the last stages of the debates and final votes. The timelines established for the drafting of the Constitution by the Constituent Assembly proved insufficient. This caused a few procedural deficiencies, mostly due to the need for editing and processing a broad text within a very short timeframe. The EU EOM does not comment on the deliberations of the Constituent Assembly. Nonetheless, there is no doubt as to the legal certainty of the object of the 28 September referendum: the text officially published in the *Gaceta Constituyente* (Tome III).
- The legal framework for the referendum provided an adequate basis for the conduct of a referendum that respects fundamental democratic rights and, in general, meets international standards. There remain a number of key areas where specific legislation governing referenda should be developed. These include: the conduct of the campaign; the financing of campaign expenses; its coverage by the media; access to free broadcasting time in the media; provisions that guarantee cross-party participation and enable both sides to compete on an even playing field; explicit, clear and enforceable restrictions on the role of State bodies and public officials.
- The Supreme Electoral Tribunal (TSE) and the 24 Provincial Electoral Tribunals generally functioned in an effective and transparent manner. The TSE implemented a number of technical improvements since the 2007 elections. These measures enhanced transparency and confidence in the process. However, the nomination of members for the provincial electoral bodies and the polling station committees remain an issue of concern.
- The voter register can be regarded as inclusive and enjoyed the confidence of political parties and movements. A total of 9,754,883 Ecuadorians were registered to vote in the 28 September Referendum, 4 % more than in the Constituent Assembly elections. However, shortcomings have been detected, mostly related to the inaccurate updating of the civil registry. One of the main problems identified in the voter register is still the significant amount of unregistered Ecuadorians.
- The campaign went on with no serious incidents. There were no reports of restrictions of the fundamental civil and political rights associated with the campaign. Some advertisements aired in the media contained cases of negative campaigning. Also and importantly, the silence period in the media after the end of the campaign period was not respected by political actors from the “Yes” and “No” sides, including on voting day.

- The campaign conducted by some relevant actors was initially focused on moral topics as well as procedural issues related to the approval of the draft Constitution by the Constituent Assembly. The political debate became richer in the last weeks of the campaign, covering a broader range of constitutional issues. The media played an important role in broadening the scope of the debates.
- The lack of enforcement of the prohibition of publicity of public works or governmental projects during the campaign, as well as of the use of public resources while campaigning, favoured the “Yes” option. Similar critics apply to some local authorities in both the “Yes” and “No” sides. Violations of the law should be more detailed and subject to effective sanctions, proportional to the infringements. The actions of the TSE could have been more effective in that regard.
- The voter education campaign was mainly focused on disseminating the draft Constitution in the media and a wide distribution of copies of the draft. While the TSE education campaign was done impartially, the information campaign run by the government using public funds was severely criticized by the opposition, since it was perceived as supportive of the “Yes” campaign.
- All media gave broad coverage to the issues underlying the referendum, making the constitutional debate accessible to the general public. The Ecuadorian State-owned media, however, did not ensure impartiality in accordance with international commitments and best practices. The future regulation of State media, in the framework of public service and citizens’ participation, could lead to an improvement of the situation.
- Referendum day generally went smoothly and the environment was calm. Voting, counting and tabulation were in general conducted in an orderly manner in the observed polling stations. Ecuador’s people showed again a high democratic character. The EU EOM did not receive reports of major incidents. Polling staff proved to be committed and efficient in most polling stations visited and operated with a high sense of civic responsibility and good spirit. A civil society independent initiative (*Taxi Solidario*) provided for free transportation and assistance to handicapped voters in many cities.
- The referendum resulted in a clear victory of the “Yes” vote, by which the Ecuadorian people directly adopted the country’s new Constitution. Main opposition figures, such as the Mayor of Guayaquil, promptly accepted the electoral results.

This Preliminary Statement reflects the EU EOM Report (first assessment) on the 28 September Ecuador's referendum, whose full text is delivered to the Ecuadorian authorities, the EC Delegation and EU member States missions in Ecuador and to national and international observers. It is also accessible and may be downloaded from the EU EOM website: www.eueomecuador.org

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; Ecuadorian local authorities and National Police; leaders of national civil society organisations and churches; Ecuadorian experts from universities and research centres; representatives of political parties and movements; representatives of the media; the Delegation of the European Commission in Ecuador; the International Organisation for Migration; local representatives of EU Member States; domestic and international observer colleagues, in particular "Participación Ciudadana", the Carter Center and the Organisation of American States.



UNIÓN EUROPEA
Misión de Observación Electoral
Ecuador 2008



Comunicado de prensa de la MOE-UE Ecuador 2008
Quito, 30 de septiembre de 2008

La Misión de Observación Electoral de la Unión Europea subraya la participación pacífica y el claro resultado de las elecciones, aunque señala el irrespeto del silencio electoral y la inexistencia de condiciones equitativas en la campaña

La Misión de Observación Electoral de la Unión Europea (MOE-UE), que se estableció en Ecuador el 6 de septiembre de 2008 por invitación del Tribunal Supremo Electoral (TSE) y del Gobierno de la República del Ecuador, hizo público hoy su informe sobre el Referéndum Constitucional del 28 de septiembre 2008.

El informe se basa en las observaciones de más de 30 observadores que fueron desplegados en el país, con responsabilidades en sus 24 provincias, para acompañar y analizar el proceso electoral a la luz de los estándares internacionales para elecciones democráticas y de acuerdo con la metodología de observación de largo plazo de la Unión Europea.

El Jefe de Misión y Miembro del Parlamento europeo, Sr. José Ribeiro e Castro, leyó las conclusiones preliminares del informe de la MOE-UE y saludó al pueblo ecuatoriano “por la manera pacífica, tranquila, con profundo carácter cívico y democrático, con la que acudió a las urnas el domingo pasado”.

El informe de la MOE-UE destaca la participación pacífica y el resultado claro y ampliamente aceptado de las elecciones, aunque señaló que el silencio electoral no fue respetado por actores de ambos lados del espectro político del proceso y que podrían haberse dado condiciones más equitativas durante la campaña electoral.

En su discurso de presentación del informe, Ribeiro e Castro añadió: “Ahora empieza la prueba más difícil y decisiva: la durabilidad de la Constitución, su incorporación al espíritu profundo de la Nación, la capacidad de comprender, de acoger, de incluir, de agregar y, así, de generar una institucionalidad sólida, de la que toda la gente se sienta parte y quiera ser parte.”

Para Ribeiro e Castro, “En Europa aprendimos que una Constitución no corresponde a las puertas del Paraíso, ni tiene poderes mágicos, sino que no es más que un punto de partida. Un punto de partida de un camino interminable que hay que caminar todos los días con toda la gente. Y aprendemos también que una Constitución no es un martillo, sino una sala de reunión. Las que lo han conseguido, las que lo lograron, ahí siguen, muchos, muchísimos años después, quizás con algunas reformas puntuales y habiendo conocido gobiernos muy distintos en su propia alternancia democrática. Pero consolidando siempre y habiendo capitalizado para beneficio de la Nación los beneficios y avances fundamentales de sus días fundadores.”

“Sé que después de demasiados años de inestabilidad política y de crisis frecuentes, el pueblo de Ecuador aspira a aquella misma institucionalidad. Una institucionalidad capaz de proporcionar la estabilidad indispensable para que la democracia no sea solamente discusión, sino también y, sobre todo, obra. Y así, capaz de proporcionar desarrollo económico y social, progreso, modernización y bienestar. Les deseo, por eso, a todas y a todos, la mejor suerte y ese mismo futuro de institucionalidad, de Estado de derecho y de fecunda democracia.”

Por su parte, Renate Weber, jefa de la delegación de parlamentarios europeos que asistieron a la observación del referéndum, respaldó las conclusiones y el análisis de la MOE-UE, añadiendo: “Ecuador ha sido un ejemplo democrático al aprobar por primera vez mediante referéndum una Constitución que abre la puerta a una nueva época en la que tendrá que hacer frente a grandes retos que ya tienen citas muy cercanas, como serán las elecciones presidenciales, generales y locales que se celebrarán en 2009”.

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Ecuador 2008



La MOE-UE continuará observando la tabulación de los resultados electorales hasta su conclusión y permanecerá en el país hasta finales de octubre para seguir el período de quejas y recursos, y la publicación oficial de resultados.

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