



**Ecuador:**  
**Citizenship, Asylum, and the**  
**2008 Constitution:**  
**Selected Issues**

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**ECUADOR**

**CITIZENSHIP AND ASYLUM PROVISIONS IN THE 2008 CONSTITUTION**

**I. Introduction**

On October 20, 2008, Ecuador adopted a new Constitution (CRE) upon the initiative of President Correa.<sup>1</sup> The new text was passed by a Constitutional Assembly, has 444 articles and was approved in a Referendum on September 28, 2008. The new charter strengthens the powers of the president, specially in economic matters. Under the new text it is the Executive power that is in charge of formulating economic, financial and monetary policy, which under the old Constitution was within the Central Bank's authority. It also allows the reelection of the president for two consecutive terms of four years and allows him to dissolve the parliament if it hinders the execution of the National Development Plan. In addition, the new Constitution gives the government more control of strategic sectors, such as energy, mining, telecommunications, and water.

**II. Constitutional and Statutory Provisions on Citizenship**

The 2008 Constitution provides that Ecuadoran nationality is the political and juridical relationship between the people and the State.<sup>2</sup> Ecuadoran nationality may be acquired by naturalization.<sup>3</sup> Requirements for naturalization are provided by the Law on Naturalization (LN) and include: legal capacity; assets ownership or being employed; uninterrupted residence in Ecuador for three years; good behavior while residing in Ecuador; and the ability to speak and write in Spanish as well as knowledge of the history and geography of Ecuador.<sup>4</sup>

An innovation of the 2008 Constitution includes the naturalization by marriage to an Ecuadoran national and to those who have rendered relevant services to the Ecuadoran nation.<sup>5</sup>

Under the LN, naturalization may be denied to anyone who has a criminal conviction for a common crime or has been indicted and the process has not been concluded with an acquittal or dismissal, among other grounds.<sup>6</sup>

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<sup>1</sup> CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CRE], available at <http://www.eluniverso.com/2008/07/24/1212/1217/E8C064BD52EF420CAECDB655555BF60C.html> (last visited May 24, 2010).

<sup>2</sup> *Id.* art. 6.

<sup>3</sup> *Id.*

<sup>4</sup> LEY DE NATURALIZACIÓN [LN] No. 276 of Apr. 2, 1976, art. 4, Registro Oficial [R.O.], Apr. 5, 1976.

<sup>5</sup> CRE arts. 8.d, 8.e.

<sup>6</sup> LN art. 7.1.

The 2008 Constitution recognizes a new set of rights under the title “human mobility,”<sup>7</sup> which is basically the right of individuals to migrate, in line with President Correa’s concept of “universal citizenship,”<sup>8</sup> to promote the free movement of people and the eventual end of the status of foreigners.<sup>9</sup> These are ideals that will be very difficult to make a reality, even in Ecuador, according to Professor Farith Simon Campana, as illustrated by the country’s experience with Colombian immigrants in Ecuador that are seeking refuge as displaced people due to the internal guerrilla war.<sup>10</sup>

The CRE also provides that no individual may be singled out as illegal based on his or her immigration status.<sup>11</sup>

However, the Law on Migration provides that individuals who have been excluded or deported from any country for nonpolitical reasons may be excluded from admission.<sup>12</sup> It also provides for the deportation of a foreigner who is convicted in Ecuador for a crime under the laws of Ecuador, once the sentence and punishment are completed or the foreigner is pardoned.<sup>13</sup> A foreigner who committed a crime that cannot be prosecuted in Ecuador for lack of jurisdiction is subject to deportation.<sup>14</sup>

### III. Constitutional and Statutory Provisions on Asylum

The 2008 CRE recognizes for the first time at a constitutional level the rights of asylum and refuge, according to the law and international human rights instruments. It proclaims the special protection of refugees that would guarantee the full exercise of their rights.<sup>15</sup> The 2008 CRE<sup>16</sup> and the Regulation for the Application in Ecuador of the Norms of the 1951 Convention on the Status of Refugees<sup>17</sup> guarantees the principle of no expulsion or return of refugees to their

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<sup>7</sup> CRE arts. 40-42.

<sup>8</sup> *Ecuador Lleva a la OEA Su Propuesta de Ciudadanía Universal*, TRIBUNALATINA.COM, Feb. 15, 2010, available at [http://www.tribunalatina.com/es/notices/ecuador\\_lleva\\_a\\_la\\_oea\\_su\\_propuesta\\_de\\_ciudadania\\_universal\\_23603.php](http://www.tribunalatina.com/es/notices/ecuador_lleva_a_la_oea_su_propuesta_de_ciudadania_universal_23603.php).

<sup>9</sup> F.S.CAMPANA, *LA CONSTITUCIÓN CIUDADANA* 223 (Taurus, Quito, 2009).

<sup>10</sup> *Id.* at 223.

<sup>11</sup> CRE art. 40.

<sup>12</sup> LEY DE MIGRACIÓN [LM] DECRETO SUPREMO 1899, art. 9.1 of Dec. 27, 1971, R.O., Dec. 30, 1971.

<sup>13</sup> *Id.* art. 19.III.

<sup>14</sup> *Id.* art. 19.IV.

<sup>15</sup> CRE art. 41.

<sup>16</sup> *Id.*

<sup>17</sup> Reglamento para la Aplicación en el Ecuador de las Normas contenidas en la Convención de 1951 sobre el Estatuto de los Refugiados y en su Protocolo de 1967, of Sept. 30, 1987, arts. 18-19, available at <http://www.acnur.org/biblioteca/pdf/0066.pdf>.

countries if their lives or freedom would be threatened based on their race, religion, nationality, membership in a group, or political opinion.<sup>18</sup>

The CRE further provides that those seeking asylum or refugee status are not subject to any criminal sanction because of their irregular entry or stay in the country.<sup>19</sup> Additionally, the new constitutional provision against discrimination provides that no one should be discriminated against based on his or her “judicial background” or “background clearance.”<sup>20</sup>

The statutory framework for immigration and refugees currently in force is considered to need an amendment to adapt and implement the principles established by the new Constitution. To this end, Congressman Eduardo Zambrano Cabanilla has proposed that the Commission on Sovereignty, Integration, International Relations and Integral Security of the National Assembly begin the process of drafting a bill on human mobility.<sup>21</sup>

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<sup>18</sup> CRE art. 41.

<sup>19</sup> *Id.* art. 40, para 2.

<sup>20</sup> *Id.* art. 11.2.

<sup>21</sup> Letter No. 047-2009-EZC-AN from Congressman Zambrano to the National Assembly (Oct. 21, 2009), discussing the Draft Law on Human Mobility, available at [http://asambleanacional.gov.ec/blogs/eduardo\\_zambrano/2009/11/09/la-movilidad-humana/](http://asambleanacional.gov.ec/blogs/eduardo_zambrano/2009/11/09/la-movilidad-humana/) (last visited May 26, 2010).