



Ecuador

Country Reports on Human Rights Practices - [2003](#)

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Ecuador is a constitutional republic with a unicameral legislature that was chosen in free and fair elections in October 2002. The National Congress is composed of four major parties, six minor parties, and three independents spanning the spectrum from center-right to extreme left. In November 2002, voters elected Lucio Gutierrez President, and he assumed office on January 15. The judiciary is constitutionally independent but in practice was inefficient and susceptible to outside pressure.

The civilian authorities generally maintained effective control of the security forces; however, the military continued to receive independent revenues generated from civil aviation, shipping, and other commercial sectors. The civilian Ministry of Government is in charge of the National Police, which is responsible for domestic law enforcement and maintenance of internal order. Throughout the year, the military supplemented the police, in some cases forming joint street patrols as an anti-crime measure. Some members of the security forces committed serious human rights abuses.

The economy is based on private enterprise, although there continued to be significant government involvement in key sectors such as petroleum, utilities, and aviation. The country's population was estimated at 12.2 million. Following a severe economic crisis, the country adopted the U.S. dollar as its official currency in 2000. The principal exports were oil, bananas, shrimp, and cut flowers, which, together with emigrant remittances and tourism, were the country's leading sources of foreign income. Most citizens were employed in the urban informal sector or as rural agricultural workers; rural poverty was extensive, underemployment was high, and there was severe maldistribution of income. The annual real economic growth rate was 3 percent, and inflation was 6 percent. A U.N. Development Program report estimated that 71 percent of the citizens lived in poverty in 2001, of whom 30 percent were indigent, with an almost total lack of resources.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. There were credible reports that security forces committed killings using unwarranted lethal force; however, the number of killings by security forces declined significantly. Members of the security forces faced prosecution and prison sentences for some violations. Although there were reports of occasional mob violence, no vigilante killings were reported during the year. Police tortured and otherwise mistreated prisoners and detainees. Prison conditions remained poor. Persons were subject to arbitrary arrest, and prolonged detention was a problem. Once incarcerated, persons without lawyers may wait up to a year before being tried or released. Nearly half of the detainees in jail had not been sentenced formally. The Government prosecuted a few human rights abusers; however, in most cases there was no prosecution or punishment. There was some self-censorship in the media. The police used tear gas and other nonlethal methods to quell demonstrators. Violence and pervasive discrimination against women, indigenous people, and Afro-Ecuadorians remained problems. Child labor remained a problem.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no political killings; however, there continued to be credible reports that security forces used excessive force and committed killings. During the year, the Ecumenical Committee for Human Rights (CEDHU) reported 11

killings by security forces using unwarranted force, compared with 23 killings during 2002.

On June 7, 12 members of the military tortured 4 men, killing 1 of them, Julio Cesar Habil. The four men were detained on suspicion that they were involved in the robbery of a soldier's house. Habil's body showed evidence of torture, and he apparently died while submerged in a pool at a military base. The military turned the soldiers over to civilian authorities, and the soldiers were charged with killing Habil and held in prison.

On November 19, police shot and killed eight people in a drugstore in Guayaquil. Police responded to an attempted robbery of the drugstore and claimed they returned fire when robbers shot at them. However, the forensic report stated that the guns collected from the robbers had not been fired and that bullets from police guns had killed the eight victims.

Three persons allegedly disappeared while in police custody (see Section 1.b.). A preliminary internal police investigation stated that the police involved in the incident had not followed proper procedures and used excessive force. Twenty policemen and a former policeman remained in jail pending conclusion of the investigation. Three high-level officers who did not participate in the incident were replaced.

Security forces killed one person during demonstrations (see Section 2.b.).

In January, five policemen were found guilty in the January 2002 killing of David Delgado and Carlos Luna and sentenced to between 2 and 18 years of prison. The policemen appealed their case and, after spending more than a year in prison without a sentence, were released pending a hearing on their appeal.

There were no developments in the case of the January 2002 killing of Damian Pena during a demonstration. Prosecutors investigated the incident, but did not determine who was responsible for his death.

A policeman was charged in the February 2002 killing of Marcelo Zambrano during a demonstration, and the case remained in the court system.

There were no further developments in the case of Luis Pachacama, who according to one witness, was killed by security forces during demonstrations in 2002.

In August, Fausto Bosquez, a policeman who shot and killed Congressman Eduardo Vasconez in March 2002 during an altercation, escaped from custody. His trial had been in process prior to his escape. By the end of the year, there was a police investigation into his escape.

There were no new developments in the case of Rodrigo Ron, who died in prison in June 2002, and whose body showed evidence of a beating.

The case against a policeman for the July 2002 killing of Klever Abad remained in the police court system without a final decision.

There were no new developments in the case of the 2001 killing of Joffre Aroca.

In May, prosecutors filed charges against three military officers in the 2001 death of Lieutenant Julio Robles during a military hazing event. In December, a military court found the three guilty of involuntary homicide and sentenced them to between 6 months and 3 years in prison.

In September, an appeals court upheld the conviction of four policemen for illegal detention in the case of the 2001 killing of Elias Elint Lopez Pita. Lopez's family appealed the decision to the Supreme Court, where the case awaited a decision. In the related case of Luis Alberto Shinin Lazo, a separate court handed down prison sentences to three policemen. One received 16 years for the killing while the others received 8 years as accomplices. Five other defendants in the case fled, and the court did not sentence them. The three convicted policemen appealed their case to the Supreme Court and were released pending the appeal.

There were cases of mob violence against suspected criminals; however, there were no reports of deaths due to lynching (see Section 1.e.). These occurred particularly in indigenous communities and poor neighborhoods of major cities, where there was little police presence. In June, in a town near Quito, more than 100 policemen were summoned to prevent the lynching of 5 suspected criminals. There were no arrests or developments reported in the cases against those involved in lynching deaths in 2002.

There was no update in the case against vigilantes for the 2001 killing of Patterson Manzano. The case remained stalled in the court system.

b. Disappearance

There were no reports of politically motivated disappearances.

On November 19, three men, Johnny Gomez, Cesar Mata, and Erwin Vivar, disappeared, according to their families, after being detained by police during a drugstore robbery in Guayaquil. Although police denied holding the men, newspaper photographs showed a policeman and a former policeman leading a man away from the scene with his face covered. Prosecutors requested a warrant for the arrest of the three missing men as suspected accomplices in the attempted robbery.

Criminal kidnapping for profit continued to be a problem throughout the country. There were also reports of extortion and threats of kidnapping of ranchers, farmers, and businessmen along the northern border with Colombia. Police registered 34 reported kidnappings during the year; however, there were no reliable estimates of the total number of such extortions or kidnappings--often attributed to Colombian armed gangs--since many victims did not report the crimes for fear of retribution.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and similar forms of intimidation and punishment; however, the police continued to torture and abuse suspects and prisoners, usually with impunity.

The CEDHU published detailed accounts of suspects who reported being tortured by specific police officers or members of the military. During the year, CEDHU registered 11 cases of torture involving 24 victims. In most cases, the security forces appeared to have abused such persons during investigations of ordinary street crime or because of a personal grudge. The victims reported that the security forces beat them, submerged them in cold water, applied electric shocks, or threatened them. In some cases the victims' bodies had bruises they claimed were the result of the torture.

There were no new developments in the investigation of four policemen for the torture of five persons in the city of Cuenca in May 2002.

There were no new developments in the 2001 alleged torture case of warehouse clerk Jose Ramires by members of the National Police and the Air Force Combat Command in Guayaquil.

In July, the press reported that a military conscript, Carlos Paredes, had been subjected to military hazing in 2002. Military officers forced him to carry a tire around his neck for several days and then box several other soldiers consecutively. Paredes suffered permanent head injuries. In August, the military reported they had penalized those responsible but did not make the penalties public.

Two groups, the Peoples' Revolutionary Militia and the Popular Combatant Group, claimed responsibility for several small pamphlet bombs during the year in both Quito and Guayaquil, causing minor damage to buildings and injuries to several people. Police arrested a university student for the March 18 pamphlet bombing of the Ministry of Agriculture office in Guayaquil. In December, a judge decided there was insufficient evidence to convict the suspect.

Conditions in prisons and detention centers generally were poor and tended to be worse in the tropical coastal areas than in the temperate highlands. Overcrowding was a chronic problem in most facilities. According to the National Social Rehabilitation Board (NSRB), during the year there were 13,045 prisoners nationwide in facilities built to hold 6,800. A number of prisons experienced serious outbreaks of disease, and medical care was often inadequate. The daily amount allocated for prison rations was \$0.75 per inmate.

Pretrial detainees were not held separately from convicted prisoners. There were no separate facilities for repeat offenders or dangerous criminals, nor were there effective rehabilitation programs. Women constituted 8 percent of the total prison population. Women were held separately from men, and conditions were notably better in the women's prison in Quito than in other facilities. Children of female inmates often lived in prison with their mothers. There also were separate facilities for juveniles. Children in these facilities often faced abuse, although the National Police Directorate Specializing in Children served as a monitoring group intended to prevent abuse of children in

prisons.

In December, the NSRB reported that 26 prisoners died during the year; however, these figures were preliminary and did not include all prisons. Eight of the deaths resulted from injuries, while the other deaths were attributed to illness or drug overdoses.

In a widely publicized case in April, a gang in prison repeatedly sexually abused a 20-year-old man who was arrested on robbery charges. The man was released and received medical and psychiatric treatment. Prosecutors began an investigation, but there were no further developments in the case at year's end.

During the year, inmates in a number of prisons protested the new detention law, the length of their sentences, and prison conditions. In April and July, inmates at the Litoral prison in Guayaquil, the largest prison in the country, clashed with guards and police and staged hunger strikes. In April, the prison had its water supply reduced by half because the prison owed the water company approximately \$1 million.

In December, prison workers went on strike for 2 days to demand payment of back wages and increased government funding of infrastructure and worker training.

The Government permitted prison visits by independent human rights observers.

d. Arbitrary Arrest, Detention, or Exile

The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions; however, the authorities often violated these legal protections in practice. Arbitrary arrest and detention remained problems.

The National Police are under the authority of the Ministry of Government. The effectiveness of the National Police was uneven, in part due to insufficient resources to deal with a high crime rate in many parts of the country. Some municipalities, such as Quito and Guayaquil, have their own metropolitan police forces in addition to the National Police. Some human rights nongovernmental organizations (NGOs) argued that the metropolitan police had no constitutional authority to carry guns or detain suspects. The police have an office that investigates complaints against police officers and can refer cases to the police courts. In October, NGOs claimed that members of the metropolitan police used excessive force and arbitrary detentions in recent years. Police corruption was sometimes a problem. In July, a court sentenced four policemen to 25 years in prison for drug trafficking.

The National Police contracted with NGOs to provide human rights training. In October, Amnesty International (AI) issued a report criticizing the use of the police court system in cases involving possible human rights violations by police. AI argued that the design of the police court system and the appointment of active and retired police officials as judges prevented the courts from acting impartially and independently and resulted in impunity for police officers who commit human rights violations.

The law requires authorities to issue specific written arrest orders within 24 hours of detention, and authorities must charge the suspect with a specific criminal offense within 48 hours of arrest. All detained persons may challenge the legality of their detention by petition within 48 hours of their arrest, but in practice few such petitions were brought forward. The senior elected official (usually the mayor) of the locality in which the suspect is held reviews any such petitions. Regardless of the legality of a detention, a prisoner may be released only by court order. In some cases, detainees who are unaware of this provision, or who do not have the funds to hire a lawyer, may remain in prison for an extended period before being released. Bail generally is not available, and the law prohibits it in cases of narcotics and major offenses (i.e., offenses that "affect or put at risk" the public, punishable by 3 to 35 years' imprisonment). Indigenous leader Humberto Cholango was briefly, but arbitrarily, arrested in December for his public criticisms of President Gutierrez (see Section 2.a.).

Although the law prohibits incommunicado detention, human rights organizations continued to report occasional violations. Even when police obtained a written arrest order, those charged with determining the validity of detention often allowed frivolous charges to be brought, either because they were overworked or because the accuser bribed them. The system frequently was used as a means of harassment in civil cases in which one party sought to have the other arrested on criminal charges. Investigative detention up to and including trial is legal if a judge determines that it is necessary and if evidence that a crime has been committed is presented. The Criminal Procedures Code limits immediate detention to 48 hours for suspicion of committing a crime and establishes investigative detention of 6 months for minor offenses and 12 months for major offenses. However, in January, Congress passed a law that allows prisoners to be held for an indefinite period after their trial has begun, but

before they have been sentenced.

The Constitution prohibits forced exile, and the Government did not use it.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice the judiciary was susceptible to outside pressure and corruption.

The judiciary is composed of the Supreme Court, superior circuit courts, other courts and tribunals that hear cases in accordance with the Constitution and other laws, and the Judicature Council, which is charged with administering the court system and disciplining judges. There also are military and police tribunals that have the same status as circuit courts, as well as criminal, provincial, and cantonal (county) courts. The Supreme Court supervised the selection by open competition of all appellate judges.

The regular court system tries most nonmilitary defendants, although some indigenous groups try members independently for violations of tribal rules. The law permits police or military courts to try police officers and military defendants in closed sessions in accordance with the respective military and police court martial manuals. Only the Supreme Court may try cases involving flag-rank officers. The police court did not always announce verdicts or punishments, reinforcing the strong impression that police were immune from prosecution. The Constitution places both police and military justice under the regular judicial system. However, the three systems have not yet been integrated, although weak efforts to do so continued.

Despite continuing efforts to depoliticize and modernize the court system, the judiciary continued to operate slowly and inconsistently. There were lengthy delays before most cases came to trial. Judges reportedly rendered decisions more quickly or more slowly as a result of political pressure, or in some cases, the payment of bribes. In June and again in December, the President of the Supreme Court publicly denounced political pressure on the court and threats against himself. In July, the Government began a corruption investigation of Supreme Court Justice Olmedo Bermeo, who had allegedly acquired more than \$1 million worth of property since being appointed to the court. In October, prosecutors initiated investigations into allegations that two other Supreme Court justices had not properly declared all of their assets.

There are more than 55,000 laws and regulations in force. Many of these are conflicting, and judges have been known to pick and choose from archaic legislation in an arbitrary or capricious manner. The resulting lack of clear rules contributed to what widely was referred to as "juridical uncertainty."

The failures of the justice system contributed to cases in which communities took the law into their own hands, such as mob violence against suspected criminals (see Section 1.a.).

The law provides due process rights for criminal defendants, but the authorities, including the Chief Prosecutor's office, often did not observe these rights in practice. By law, the accused is presumed innocent until proven guilty, and defendants have the right to a public trial, defense attorneys, and appeal. They may present evidence, refuse to testify against themselves, and confront and cross-examine witnesses. Although a public defender system exists, in practice there were only 32 attorneys available to defend the large number of impoverished suspects.

Investigation of crimes is supposed to begin within 90 days of the initial arrest of a suspect. The investigation phase can take up to 2 years before the initiation of a trial. The majority of the accused were in prison while the investigation phase took place. Nearly half of all incarcerated persons had not been tried and sentenced. Accused narcotics traffickers and suspects in major crimes cannot obtain bail or be released on their own recognizance.

In 2001, a new Criminal Procedures Code went into effect and fundamentally changed the criminal justice system from an inquisitorial system to an accusatorial system. Under the new system, the Chief Prosecutor's office is to investigate and prosecute crimes, while the role of judges is to become neutral arbiters presiding over oral trials. Prosecutors have wide discretion in deciding which cases can proceed. The National Police continued to work as investigators under the direction of the judicial police. There were no juries in the justice system. The new code was intended to strengthen the justice system by improving due process and enhancing the rights of the accused through measures such as habeas corpus and limits on preventive detention (see Section 1.d.). In January, the Government created an organizing committee headed by the President of the Supreme Court to coordinate implementation of the abrupt change in roles, functioning, and procedures for the criminal justice system. This committee met regularly and continued to develop a national plan to improve the implementation of the reform measures. The supplies and training available remained inadequate to meet the newly expanded role of the

prosecutor's office.

The Constitution also explicitly recognizes the indigenous communities' right to exercise their own system of justice, based on their traditions and customs. However, the law does not yet specify how this is to work in practice. This parallel system raised questions of both jurisdiction and conformity to the right to a fair trial.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices, government authorities generally respected these prohibitions, and violations were subject to effective legal sanctions. Wiretapping by the national police to investigate crimes is legal with a court order; however, there is no specific procedural guidance for obtaining such approval. Therefore, when members of the police did conduct wiretapping in the course of criminal investigations, it was not officially sanctioned.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice; however, there were some significant exceptions. There were criminal charges of slander and libel brought by public figures against journalists and other public figures. The law criminalizes slander and libel, and defendants who are found guilty could serve jail sentences for their public comments.

Individuals generally criticized the Government publicly and privately without fear of reprisal. The most notable exception during the year was the December arrest and detention of indigenous leader Humberto Cholango for his public criticism of President Gutierrez. Cholango was released after less than 24 hours. His arrest was widely criticized by human rights groups and in numerous editorials. The government official who reportedly ordered his arrest was later forced to resign.

There was a free and vigorous press. Ownership of the media was broadly based, and editorials represented a wide range of political views and often criticized the Government. However, some degree of self-censorship in the print media occurred, particularly with respect to politically sensitive issues or stories about the military and its related industries. In addition, most elements of the media were influenced by economic considerations and tended to reflect the narrow, regional interests of their owners.

All of the major media organs--newspapers, radio, and television--were locally and privately owned, except for one government-owned national radio station. The law limits foreign investment in broadcast media. Using a law promulgated by the last military regime that requires the media to give the Government free space or broadcast time, the Government required television and radio to broadcast programs produced by the Government featuring the President and other top administration officials.

In August, President Gutierrez went to the Supreme Court, accompanied by cabinet members and military and police commanders, to file slander charges against Guillermo Haro, a member of Congress who had accused the President and members of the military of corruption. Traditionally, the speech and activities of members of Congress have been protected by parliamentary immunity. However, at year's end, President Gutierrez's political party and the Armed Forces attempted to build support in Congress for a vote to lift Haro's immunity.

In September, a judge ruled that a newspaper columnist, Rodrigo Fierro, had slandered former president Leon Febres Cordero in a column published in one of the country's largest newspapers. The judge sentenced Fierro to 6 months in prison, and Fierro's lawyer appealed the decision. The judge's decision led to domestic and international criticism. In December, an appeals court reduced the sentence to 1 month in prison and a \$6 fine. Fierro's lawyer again appealed the decision, and the case remained unresolved at the end of the year.

Also in September, the Supreme Court sentenced Ricardo Noboa, former head of the National Modernization Council, to 3 months in prison for slandering a politician in 2002.

The Government did not restrict Internet access.

The Government did not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of free assembly for peaceful purposes, and the Government generally respected this right in practice; however, there were some limits, and security forces used force to quell some violent demonstrations, resulting in one death and several injuries (see Section 1.a.). Public rallies require prior government permits, which generally were granted, although exceptions occurred.

On January 6, demonstrators in an area outside of Quito protested the location of a trash dump. Security forces killed Jose Tonguino during a confrontation with the demonstrators. No member of the security forces was charged with the killing.

Numerous labor, indigenous, and student demonstrations took place without major incident in the capital and the outlying regions during the year. Protesters often blocked roads (see Section 2.d.). In general, the security forces intervened in demonstrations only when there was violence against bystanders or destruction of property.

The Constitution provides for freedom of association, and the Government generally respected this right in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice. The Government did not require religious groups to be licensed or registered unless they engaged in commercial activity.

The majority of the population considered themselves to be Roman Catholic, although many citizens either did not regularly practice the religion or followed a syncretistic version that combines indigenous beliefs with orthodox Catholic doctrine. The Government allowed missionary activity and religious demonstrations by all religions. The Government did not permit religious instruction in public schools; private schools were permitted to teach religion, as are parents in the home. There were no restrictions on publishing religious materials in any language.

For a more detailed discussion, see the [2003 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice; however, frequent military and police roadblocks often presented problems for travelers using public transportation, especially at night. Protesters often blocked roads (see Section 2.b.). The Government requires all citizens to obtain permission to leave when traveling abroad, which was granted routinely. Military and minor applicants must comply with special requirements.

The law provides for granting refugee and asylum status to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement and granted refugee status or asylum. The Government cooperated with the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees.

During the year, the Foreign Ministry reported that there were 11,463 applications for refugee status. By year's end, the authorities denied 4,392 applications, granted 3,270, and had yet to process the remainder. During the year, 99 percent of the refugee applicants were Colombians; according to the UNHCR, the majority of displaced Colombians were impoverished peasants fleeing fighting, but some were adolescents escaping forced recruitment by illegal armed groups in Narino and Caqueta.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. In October 2002, a new Congress was elected, and, in November 2002, voters selected Lucio Gutierrez in the second-round presidential election. Election observers from the Organization of American States, the European Union, the NGO

Citizen Participation, and other international groups termed the elections peaceful, free, and fair. On January 15, President Gutierrez assumed office, succeeding Gustavo Noboa. The President's term is 4 years, and the President may not serve consecutive terms.

Deputies are elected to Congress for 4-year terms. Several parties were represented in the 100-member Congress, and no party dominated. The Social Christian Party had the most seats (26). There were also three other major parties and six smaller parties represented in Congress. Eighteen members of Congress ran on an alliance of two or more parties.

Voting is mandatory for literate citizens over 18 years of age and voluntary for illiterate citizens. The law does not permit active duty members of the military to vote. The Constitution bars members of the clergy and active duty military personnel from election to Congress, the presidency, or the vice presidency. The Constitution provides that if a political party fails to garner a minimum of 5 percent of the votes in two open elections, it must be eliminated from the electoral registry. In July, the Electoral Court eliminated 9 of 21 registered political parties. Six of those parties failed to win the minimum 5 percent of votes. The other 3 parties failed to field candidates in a minimum of 10 provinces.

In August, former president Gustavo Noboa voluntarily fled the country and obtained asylum in the Dominican Republic. A prosecutor filed charges against Noboa related to his renegotiation of debt while president. Government auditors cleared Noboa of wrongdoing, leading some observers to believe that the prosecutor's actions were politically motivated and instigated by Noboa's opponents. The charges were still pending at year's end.

No specific laws prevented women or minorities from attaining leadership positions in government. However, few women, indigenous persons, or Afro-Ecuadorians occupied senior positions in government. A 1998 law required that at least 30 percent of the candidates for Congress and some local positions in 2000 be women, and that in each subsequent election an additional 5 percent of the candidates be women (for example, 35 percent in 2002), until 2008, when 50 percent of the candidates are to be women. During the 2002 elections, the method used to calculate the percentage of women candidates created some controversy, but the election lists appeared generally to follow the law. Women held 17 of 100 seats in Congress, the largest proportion in the country's history. President Gutierrez initially named four female cabinet ministers, including the first female Minister of Foreign Affairs. At year's end, there were two female cabinet ministers, following turnover in the cabinet.

The indigenous movement formed the Pachakutik electoral movement and has run candidates for national, provincial, and local office in all elections. In the 2002 elections, Pachakutik formed an alliance with President Gutierrez and participated as a partner in his government until ending the alliance in August. Pachakutik had 10 members in Congress and was associated closely with the politically active Confederation of Ecuadorian Indian Nationalities (CONAIE). Indigenous leader Humberto Cholango was arrested and detained for less than 24 hours in December for public criticism of President Gutierrez (see Section 2.a.). Indigenous members of the National Constituent Assembly and their supporters won important constitutional protections for indigenous rights in the 1998 Constitution. The Cabinet initially included two indigenous cabinet members--the ministers of foreign affairs and agriculture; however, both ministers resigned when Pachakutik's alliance with the Government ended.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups operated without restriction, investigating and publishing their findings on human rights cases. Domestic human rights groups, such as the CEDHU and the regional Latin American Human Rights Association (ALDHU), were outspoken in their criticism of the Government's record on specific cases. The Government has contracted with the ALDHU to provide mandatory human rights training to the military and the police.

In the case of the three human rights groups' offices that were broken into in 2002, police investigations appeared to be superficial, and no arrests were made.

The office of the Ombudsman ("Defensor del Pueblo") was created in 1998 to ensure attention to human rights problems; however, some observers criticized its lack of independence in practice. Claudio Mueckay continued as acting Ombudsman.

In 1998, the Government decreed an ambitious National Human Rights Plan with the goal of preventing, penalizing, and eradicating human rights violations in the country. The three branches of government, as well as

the independent Ombudsmen's office and a number of NGOs, contributed to development of this plan, and the U.N. contributed funds to support it. In 2002, the Government released its "Human Rights Operative Plan" that described possible mechanisms for implementing the National Human Rights Plan. The Gutierrez Government continued to implement various aspects of the National Human Rights Plan, including training of the Congress on human rights matters, seminars, publication of documents, and a contingency plan for refugees. Several prominent human rights NGOs publicly criticized the Government's lack of progress in implementing the plan.

Congress has a seven-member human rights committee. The committee met infrequently, and local human rights organizations did not consider the committee's role particularly significant.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution prohibits discrimination based on race, sex, or social status. In addition, the 1998 constitutional reforms explicitly increased the rights of women, children, and minorities, and required Congress to pass legislation implementing these rights promptly. Congress has been only partially successful in carrying out this mandate. Women, indigenous people, and Afro-Ecuadorians continued to face significant discrimination.

Women

Although the law prohibits violence against women, including within marriage, abuses were widespread. The Law Against Violence Affecting Women and Children criminalizes spousal abuse, including physical, sexual, and psychological abuse; creates family courts; and reforms the Penal Code to give courts the power to remove an abusive spouse from the home. The law also provides legal support to the Government's Women's Bureau in cases of sexual harassment in the workplace.

The Office of Gender, in the Ministry of Government, reported 28,131 cases of sexual, psychological, or physical mistreatment of women in 2002, although the numbers were not complete for all provinces. Women may file complaints against a rapist or an abusive spouse or companion only if they produce a witness. Some communities have established their own centers for counseling and legal support of abused women. The Government addressed such problems through its Women's Bureau; however, although the Bureau can accept complaints about abuse of women, it has no authority to act on the complaints but refers cases to the prosecutor's office. The Women's Bureau had projects in all provinces.

Many rapes were not reported due to the victims' reluctance to confront the perpetrators. The penalty for rape is up to 25 years in prison. In cases of statutory rape involving "amorous" sex with a minor, if the rapist marries the victim, the charges against him, or anyone else who took part in the rape, cannot be pursued unless the marriage subsequently is annulled. In 2001, Congress increased the penalty for rape where death occurred to 35 years in prison.

Women's rights organizations described sexual harassment in the workplace as common. However, cases of sexual harassment did not appear in the press during the year.

Adult prostitution is legal so long as the businesses are registered with the Government and follow health regulations.

Discrimination against women was pervasive in society, particularly with respect to educational and economic opportunities for those in the lower economic strata. The increasingly active women's movement alleged that culture and tradition inhibited achievement of full equality for women. There were fewer women than men employed in professional work and skilled trades, and pay discrimination against women was common.

The Ecuadorian Women's Permanent National Forum included more than 320 women's organizations and promoted social, economic, and cultural change through various methods, including increasing political participation by women. In addition, the National Women's Council provided support for approximately 500 women's organizations, many of which promoted social consciousness and greater participation by women in the political process. The Women's Political Coordinator, an NGO that operated in 22 provinces, promoted similar themes relating to women's rights, with emphases on political participation and human rights. It also focused on young women and Afro-Ecuadorian women.

Children

The Government did not take effective steps to provide for the welfare of children. The Constitution requires that children achieve "a basic level of education," defined as 9 years of school; however, due to the lack of schools in many rural communities, the Government's failure to provide adequate resources, and the economic needs of families, the Government rarely enforced this requirement in practice. The National Statistics Institute reported in 2001 that one out of six citizens between the ages of 13 and 20 had not completed the sixth grade. Education was free. The Constitution provides that 30 percent of the public budget must be devoted to education; however, in practice only half of that amount was spent. The Government has programs that provided families with educational subsidies as an incentive to keep children in school, which assisted approximately 50,000 children. In rural areas, many children attended school only sporadically after 10 years of age because they needed to contribute to household income, primarily as farm laborers (see Section 6.d.).

There was no societal pattern of abuse against children.

Government resources to assist children traditionally have been limited. According to a study by the Government's Integrated System of Social Indicators in 2000, approximately 30 percent of children under the age of 5 were malnourished. In September, the Government unified its various nutrition programs in an attempt to better focus assistance on the poorest children. Government spending on education declined during the economic crisis of 1999-2000, but then increased in subsequent years.

More than 20 NGOs promoted child welfare. Several private organizations were very active in programs to assist street children, and UNICEF also ran a program in conjunction with the Central Bank. The children of the poor often experienced severe hardships, especially in urban areas.

Persons with Disabilities

There was no official discrimination against persons with disabilities in employment, education, or the provision of other state services. The Constitution recognizes the rights of persons with disabilities. In 2001, Congress passed legislation to promote the rights of persons with disabilities, including access to education, employment, transportation, and communication. However, the Government had few resources to ensure access to these services in practice.

Indigenous People

While at least 85 percent of all citizens claimed some indigenous heritage, estimates of those who maintained their indigenous cultural identity and lived in indigenous communities varied between 7 and 20 percent of the total population. The vast majority of indigenous citizens resided in rural areas, including the highlands and the Amazonian provinces, and most lived in varying degrees of poverty. A 2000 government study found that 79 percent of indigenous children lived under the poverty line. Land was scarce in the more heavily populated highland areas, where high infant mortality, malnutrition, and epidemic disease were common. Electricity and potable water often were unavailable. Although the rural education system was seriously deficient, many indigenous groups participated actively with the Ministry of Education in the development of the bilingual education program used in rural public schools.

The Constitution recognizes the rights of indigenous communities to hold property communally, to administer traditional community justice in certain cases, and to be consulted before natural resources are exploited in community territories. Indigenous people also have the same civil and political rights as other citizens. In the Amazon region, indigenous groups lobbied the Government, enlisted the help of foreign and domestic NGOs, and mounted protests, including kidnapping oil workers in past years, in attempts to win a share of oil revenues and a voice in natural resource and development decisions. The Government tended to consult indigenous communities on natural resource matters, although their wishes were not always met. Oil companies increased their efforts to minimize the environmental and social impact of their oil projects in the Amazon but continued to face criticism from indigenous groups that environmental damage continued.

The Ombudsman's office established ombudsman representatives in indigenous communities throughout the country. In August, these representatives were officially registered and assumed responsibility for promoting human and indigenous rights among indigenous communities, and providing specific advisory services to these groups.

Despite their growing political influence and the efforts of grassroots community groups, which were increasingly successful in pressuring the Government to assist them, indigenous people continued to suffer discrimination at many levels of society. With few exceptions, indigenous people were at the lowest end of the socioeconomic scale.

Indigenous leader Humberto Cholango was briefly but arbitrarily arrested in December for his public criticism of President Gutierrez (see Section 2.a.).

National/Racial/Ethnic Minorities

The population of the rural, northern coastal area included large numbers of Afro-Ecuadorian citizens. They suffered widespread poverty and pervasive discrimination, particularly with regard to educational and economic opportunity. There were no special government efforts to address these problems.

Five major Afro-Ecuadorian organizations were active in the country; the largest was the National Afro-Ecuadorian Confederation, with headquarters in Quito. It estimated that Afro-Ecuadorians accounted for more than 1 million persons, or approximately 9 percent of the total population. While the presence of Afro-Ecuadorians has grown in the fields of sports and culture, their educational opportunities continued to be limited.

The press focused on lingering racism among all strata of society. Afro-Ecuadorian organizations noted that, despite the absence of official discrimination, societal discrimination, including stereotyping, continued to affect them. For example, they asserted that the police stop Afro-Ecuadorians for document checks more frequently than they stop other citizens.

Section 6 Worker Rights

a. The Right of Association

The Constitution and Labor Code provide most workers with the right to form trade unions. Approximately 5 percent of the workforce was organized. The Labor Code explicitly prohibits employers from interfering in the establishment or functioning of worker organizations. The code also explicitly prohibits employers from dismissing workers while they are forming a union or negotiating a collective contract; however, the penalties for violations were relatively minor and not enforced in practice. Members of the police, the military, and most public sector employees are not free to form trade unions.

The 1991 Labor Code reforms set the number of workers required for an establishment to be unionized at 30, which the International Labor Organization's (ILO) Committee on Freedom of Association considers too stringent a limitation at the plant workers' council level. In 2002, the ILO again criticized the 30-worker minimum and called for the Government to take the necessary measures to amend the code. In its 2002 Annual Survey of Violations of Trade Union Rights, the International Confederation of Free Trade Unions reported that 60 percent of the enterprises in the country employed fewer than 30 workers, with approximately 1 million workers excluded from organizing a union.

Some companies have taken advantage of the law that prohibits unions from organizing at companies that have less than 30 employees by sub-contracting with several shell companies, each of which has less than 30 workers. Under the Labor Code, these subcontracted workers have no legal right to freedom of association or right to bargain collectively with the companies that ultimately benefit from their labor, nor do they have legal protection against anti-union discrimination.

Labor laws intended to protect workers' rights to freedom of association and to form and join trade unions were inadequate and failed to deter employers from retaliating against workers for organizing. Neither the Constitution nor the Labor Code requires reinstatement of workers fired for union activity. The Government's failure to enforce its labor laws and its lack of sufficient legal protection for worker rights allowed employers to violate workers' rights with impunity.

While employees of state-owned organizations enjoyed rights similar to those in the private sector, the law prevents the majority of public sector employees from joining unions or exercising collective bargaining rights. However, most public employees maintained membership in some labor organization.

The Labor Code provides for resolution of labor conflicts through an arbitration and conciliation board that consists of one representative of the Ministry of Labor, two from the union, and two from management.

Under the law, unions may join federations or confederations, and three of the large labor centrals maintained international affiliations.

b. The Right to Organize and Bargain Collectively

The labor market was highly segmented, with a minority of workers in skilled, usually unionized, positions in state-run enterprises or in medium-to-large industries. Most of the economically active population was employed in the agricultural sector or the urban informal sector; the vast majority of these workers were not organized.

Although the labor confederations were politically independent, the two largest single labor unions, the National Union of Educators and the Union of Social Security Workers, were allied with the Democratic Political Movement, a far-left party. There were five large labor confederations or centrals; no central was connected firmly to any one political party. President Gutierrez appointed the former president of the largest labor confederation as an official presidential advisor.

The Labor Code requires that all private employers with 30 or more workers belonging to a union must negotiate collectively when the union so requests; however, collective bargaining agreements covered only one-quarter of the work force that was organized. A 2000 labor law allows businesses to hire workers on "individual contracts."

The Labor Code streamlined the bargaining process in state enterprises by requiring workers to be represented by only one labor union. It prohibits discrimination against unions and requires that employers provide space for union activities upon the union's request. If the Ministry of Labor rules that a dismissal of an employee is unjustified, it can require the employer to pay indemnities or separation payments to the worker of 125 percent of a month's salary for each year worked, although the reforms set a cap on such payments. These payments were relatively low for workers earning the minimum wage (i.e., payments of \$400 or less), and the law does not require reinstatement of workers fired for anti-union activity. Workers generally were protected against anti-union discrimination only by pressure from the union. The ILO Committee of Experts found that the imposition of a fine "provided for by law in all cases of unjustified dismissal, when the real motive is...trade union membership or activity" was an inadequate protection against anti-union discrimination.

Employees also worked on temporary contracts, especially in the agricultural sector. While the Labor Code establishes a cap of 180 consecutive days for each contract, it does not prohibit the use of consecutive 180-day contracts. Some "temporary" workers may work for the same company (often for different sub-contractors of the same company) for an extended period of time under a series of short-term contracts. In practice, it was difficult to organize temporary employees on short-term contracts. Since the Labor Code does not recognize temporary workers, they do not enjoy the same level of protection offered to other workers.

There are few restrictions on the right of workers to strike, although a 10-day cooling-off period is required before a strike can be declared. The Labor Code limits solidarity strikes or boycotts to 3 days, provided that the Labor Ministry approves them. In some industries, during a legal strike, workers may take possession of the factory or workplace (thus ending production at the site) and receive police protection during the takeover. However, in other industries, such as agriculture, the law requires a 20-day waiting period from the day the strike is called. During this time, workers and employers must agree on how many workers are needed to ensure a minimum level of service, and at least 20 percent of the workforce must continue to work in order to provide essential services. The Labor Code provides that "the employer may contract substitute personnel" only when striking workers refuse to send the number of workers to provide the minimum necessary services. The Labor Code prohibits an employer from contracting substitute workers during a strike, although in practice this law was not enforced. The law does not explicitly prohibit the hiring of strikebreakers by subcontractors or other third parties that are not legally the striking workers' employer. The employer must pay all salaries and benefits during a legal strike; the Labor Code protects strikers and their leaders from retaliation.

The law does not provide public workers with the right to strike and includes a provision that striking public sector workers are liable to between 2 and 5 years in prison; however, there were frequent "illegal" strikes. In September, Congress passed a civil service reform law that creates a unified salary structure for some public workers (it excludes the police, military, teachers, and healthcare workers). The law reiterates the prohibition against strikes by most civil service employees.

In June, employees of the public petroleum company went on strike for 8 days. The strike was illegal, and the Government ordered striking employees back to work and fired several union leaders. The union leaders claimed the process of their firing was illegal and filed suit to regain their jobs. The Government claimed the firings were legal, because the union leaders had led an illegal strike and had been absent from work for more than 3 days without approval. The employees' legal suit had not been decided by the end of the year.

An appeals court dismissed the prosecution of those who allegedly committed violence against workers at the Los Alamos banana plantation in May 2002. In June, approximately 70 unionized workers at the Los Alamos plantation requested negotiation of a collective contract and were fired by the three subcontracting companies that employed them. The Government requested that the companies rehire the workers, but the companies refused. The workers settled with the companies for severance pay.

Public school teachers went on strike four times during the year, including for 5 weeks in May and June and 6 weeks in November and December. Teachers returned to work in June after the Government agreed to pay salary increases. A government commission later postponed the salary increase, and the teachers went on strike again in November. At the end of December, the teachers accepted the Government's new offer. In July, August, October, and December, public health workers, including doctors and nurses, went on strike to demand higher wages. At the end of the year, the labor dispute remained unresolved.

The law permits the hiring of temporary workers for the maquila (in-bond processing for export) industries. The maquila system allows a company and its property to become an export-processing zone wherever it is located. There were no unions or labor associations in the maquilas. Most workers were hired on temporary contracts by the employer to complete a specific order. Many such "zones" have been established; most were relatively small and were dedicated to textiles and fish processing.

c. Prohibition of Forced or Bonded Labor

The Constitution and the Labor Code prohibit forced or bonded labor, including by children; however, there were reports that children were trafficked for labor (see Section 6.f.).

d. Status of Child Labor Practices and Minimum Age for Employment

In July, a new law went into force that includes a section on child labor; however, child labor remained a problem. The new law raises the minimum working age for minors from 14 to 15 for all types of labor and reduces the maximum hours a minor may work to 6 hours per day and 5 days per week. The law prohibits minors from working in hazardous conditions, including in mines, with toxic or dangerous substances or with dangerous machinery. Employers are required to pay minors at least 80 percent of the wages received by adults for the same type of employment. The law also increases the penalties for illegal child labor. The parents or guardians can be fined \$50 to \$300 and the employers \$200 to \$1,000 for participating in child labor. In cases of repeated infractions, the employer's business can be closed.

The Government formed the National Committee for the Progressive Eradication of Child Labor in 1997, with a membership including government agencies, business, and labor organizations. The Committee formulated a national plan for 2003 to 2006. In practice, the Ministry of Labor and the Minors' Tribunals failed to enforce child labor laws, and child labor was prevalent. However, in August, the Ministry of Labor, working with UNICEF, began a program of systematic child labor inspections of banana and flower plantations. Urban child labor increased with the migration of the rural poor to the cities. A 2000 UNICEF report estimated that almost half of the children between the ages of 10 and 17 worked. The National Statistics Institute (INEC) reported that in 2001 more than 130,000 children aged 14 years or younger worked. A separate INEC study in 2001 reported that 455,000 children under the age of 15 worked.

In rural areas, young children often left school at an early age to assist on the family's plot of land. More than 40 percent of all children lived in rural areas, and many did unpaid agricultural work for their families.

A report commissioned by the ILO estimated that there were 5,200 minors engaged in prostitution (see Section 6.f.).

The Ministry of Labor designated a "Social Service Directorate" to monitor and control child labor in formal sector businesses such as factories; however, enforcement in most sectors of the economy remained limited. In urban areas, many children under 15 years of age worked in family-owned businesses in the informal sector, shining shoes, collecting and recycling garbage, or as street peddlers. Other children were employed in commerce, messenger services, domestic services, and begging. Children as young as 5 or 6 years often sold newspapers or candy on the street to support themselves or to augment family income.

The Government, through the National Children's and Family Institute (INNFA), spends approximately \$3.5 million per year on the Program for the Schooling and Protection of Child Workers. The Ministry of Social Welfare provided a "school bonus" of \$6 per month to poor families for school entry fees, books, supplies, and other school costs.

The program covered approximately 50,000 students in 2002. The Central Bank ran the Child Worker Program with funds of approximately \$255,000 per year, supplemented by private funds.

e. Acceptable Conditions of Work

The Ministry of Labor periodically sets the minimum wage in consultation with the Commission on Salaries, but Congress also may adjust the minimum wage. As of September, the minimum wage plus mandated bonuses provided a gross monthly compensation of approximately \$157, or \$0.85 per hour in the case of contract workers. The statutory minimum wage was not adequate to provide a decent standard of living for a worker and family. Most organized workers in state industries and formal sector private enterprises earned substantially more than the minimum wage and also received other significant benefits through collective bargaining agreements. However, the majority of workers worked in the large informal and rural sector without recourse to the minimum wage or to legally mandated benefits.

The Ministry of Labor did not deploy sufficient resources to enforce labor laws. The Labor Code provides for a 40-hour workweek, a 15-day annual vacation, a minimum wage, and other employer-provided benefits, such as uniforms and training opportunities.

The Labor Code also provides general protection for workers' health and safety on the job. However, a worker may not leave the workplace for health reasons, even if there is a hazardous situation. A worker is allowed to request that an inspector from the Ministry of Labor come to the workplace and confirm the hazard; that inspector then may close down the workplace. Response time for inspectors ranged from a few days in major cities to much longer in the countryside.

The Social Security Institute enforces health and safety standards and regulations. In the formal sector, occupational health and safety was not a significant problem. However, there were no specific regulations governing health and safety standards in the agricultural sector, and in practice there was no enforcement of safety rules in the small mines that make up the vast majority of the mining sector.

f. Trafficking in Persons

The Constitution prohibits slavery and trafficking in persons in all forms; however, there are no anti-trafficking penal laws that support the constitutional prohibition, and there were reports that citizens were trafficked out of the country. A misdemeanor law addresses alien smuggling. While this and other laws could be used to prosecute traffickers, they have yet to be applied.

A report commissioned by the ILO estimated that there were 5,200 minors engaged in prostitution. The Government did not have adequate programs to address this problem.

The law prohibits alien smuggling, including creating or selling fraudulent documents. Alien smugglers or traffickers can receive sentences from 3 to 6 years imprisonment; the penalties range from 6 to 9 years if victims are injured, and up to 12 years if a death occurs. The law specifically exempts smuggling victims from prosecution. Other laws dealing with kidnapping, labor, occupational safety, and slavery apply to and provide sanctions for trafficking in persons. The immigration police, a division of the National Police, are charged with combating alien smuggling. At year's end, no case had yet reached a verdict under these laws.

There was no reliable estimate of the extent of the trafficking problem in the country. Two specific cases were reported during the year. In March, three indigenous minors were reportedly returned to the country after having worked in Colombia as domestic servants. In March, Spanish authorities arrested six Ecuadorians for allegedly mistreating five Ecuadorian minors and requiring them to work long hours making craft items. In past years, trafficking victims had been identified in Spain, Guatemala, Uruguay, Venezuela, and the United Kingdom. Although there were credible allegations that some government officials were involved in alien smuggling, there was no evidence that such officials facilitated or condoned trafficking in persons. There were no specific government programs aimed at assisting trafficking victims.

Since the beginning of its economic crisis in 1999, the country has had a high rate of emigration: Between January 2000 and April, the country registered a net emigration of approximately 500,000 persons. Citizens emigrated primarily to the United States and Spain, most of them illegally. Illegal emigrants paid between \$8,000 and \$12,000 per person to criminal organizations to be taken to the United States, usually through Central America. Due to the extreme poverty of most of the emigrants and the high cost of such trips, some emigrants were vulnerable to traffickers.