



Ecuador

Country Reports on Human Rights Practices - [2004](#)

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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 4 major parties, 5 minor parties, and 13 coalitions and 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, 2003. The judiciary is constitutionally independent but, in practice, was inefficient and susceptible to outside pressure.

The Ministry of Government is in charge of the National Police, which is responsible for domestic law enforcement and maintenance of internal order. 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 civilian authorities generally maintained effective control of the security forces, although the military continued to receive independent revenues generated from civil aviation, shipping, and other commercial sectors.

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 12.8 million. 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, and the country employs the U.S. dollar as currency. 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 2.7 percent, and inflation was 1.9 percent.

The Government generally respected the human rights of its citizens; however, there were serious problems in some areas. There were credible reports that security forces committed killings using excessive force. Members of the security forces faced prosecution and prison sentences for some violations. 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. The judiciary was susceptible to outside pressure and corruption, and authorities often did not observe due process rights for criminal defendants. More than 70 percent 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. Violence and pervasive discrimination against women, indigenous people, and Afro-Ecuadorians remained problems. Trafficking in persons, sexual exploitation of minors, and child labor were problems.

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 politically motivated killings by the Government or its agents; 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 21 killings by security forces using unwarranted force.

In February, military security forces shot and killed a protester at a demonstration (see Sections 2.b. and 5).

On March 7, while investigating a domestic dispute, a policeman killed Luis Alfonso Ortiz Rodriguez. The policeman was imprisoned pending an investigation to determine whether the killing was accidental, and there was no further information at year's end.

On July 19, Erik Fabricio Lopez Yanez was shot and killed. The victim's relatives claimed that an intoxicated off-duty policeman fired several gunshots from his apartment at a group of local youths. The policeman and his brother were jailed pending the outcome of the investigation, and no further information was available at year's end.

In the November 2003 case in which police shot and killed eight people in a drugstore in Guayaquil, a police court absolved all officers involved except police sergeant Sergio Gaybor. On December 7, the judge called for a hearing in a criminal court for Gaybor, who was charged with disappearance (see Section 1.b).

In February, Maria Doraliza Lalbay died of a gunshot injury sustained during a demonstration and confrontation with the military. In December, a military court decided not to charge Major Jaime Serpa on the grounds that he acted in a situation where the victim disrupted public order.

On May 31, a provincial superior court in Los Rios Province acquitted 12 members of the military charged in the June 2003 killing of Julio Cesar Habil and the alleged torture of 3 of Habil's companions.

In March, a police court ruled on an appeal in the 2002 killings of David Delgado and Carlos Luna and found the policemen guilty. However, the policemen were released from prison when the appeal process began, and they were not detained again to serve their sentence.

There were no developments and none were expected in the case of the 2002 killings of Damian Pena and Luis Pachacama, during demonstrations.

The case of the 2002 killing of Marcelo Zambrano remained in the court system. Six policemen were charged and imprisoned; their trial has not begun pending a decision on their appeal of the call for a trial. Another 11 policemen were not charged, a decision that Zambrano's family appealed. Both appeals remained pending at year's end.

There were no known developments in the case of Fausto Bosquez, the policeman who escaped custody while being tried for the 2002 killing of Congressman Eduardo Vasconez or in the case against a policeman charged with the 2002 killing of Klever Abad.

A Supreme Court decision on the appeal of the conviction of four policemen for the 2001 killing of Elias Elint Lopez Pita and of the conviction of three policemen for the related killing of Luis Alberto Shinin Lazo remained pending at year's end. On February 4, the Attorney General recommended that the court find the policemen guilty.

There were cases of mob violence against suspected criminals, which occurred particularly in indigenous communities and poor neighborhoods of major cities, where there was little police presence (see Section 1.e.). However, Amnesty International (AI) reported that incidents of mob violence had decreased. There were no known arrests or developments and none were expected in the cases against those involved in lynching deaths in 2002.

b. Disappearance

There were no reports of politically motivated disappearances.

Three persons allegedly disappeared while in police custody (see Section 1.b.). In November 2003, three men, Jhonny Gomez, Cesar Mata, and Edwin Vivar, disappeared 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. In April and May, the widows of the three and a local journalist were threatened. A police court acquitted all but one of the 21 suspects.

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. Through November, police registered 11 kidnappings; 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, some police continued to torture and abuse suspects and prisoners, often with impunity.

CEDHU published detailed accounts of suspects who reported being tortured by specific police officers or members of the military. During the year, CEDHU registered 48 alleged 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, which they claimed resulted from torture.

On June 22, members of the military allegedly tortured Carlos Brito Cortez, who claimed that a wet pillowcase filled with tear gas was held over his head and that he was given electric shocks because he stole medical equipment from the military hospital. He reported the crime to the Attorney General who did not open an investigation.

There were no new developments and none were expected in the case of Rodrigo Ron, who died in prison in 2002 and whose body showed evidence of a beating or in the investigation of four policemen for the torture of five persons in the city of Cuenca in 2002.

The Popular Combatants Group (GCP) and the Peoples' Revolutionary Militia continued to detonate small pamphlet bombs, principally in the major cities. The GCP claimed responsibility for 15 pamphlet bombs that were detonated in June during the General Assembly of the Organization of American States (OAS). There were no reported injuries.

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 10,203 prisoners nationwide in facilities built to hold 6,800. A number of prisons experienced serious outbreaks of disease, and medical care often was inadequate. The daily amount allocated for prison rations was \$0.75 per inmate.

There were no known developments, and none were expected, in the prosecutor's investigation of an April 2003 case of a man who was sexually abused by other prisoners.

As was the case last year, inmates in a number of prisons protested a change in the detention law, the length of their sentences, and prison conditions. In January, prisoners in Quito's Men's Social Rehabilitation Center and in the Quito and Guayaquil women's prisons temporarily blocked the departure of visitors to protest the detention law. In February, for the same reason, prisoners at Penal Garcia Moreno in Quito took control of the prison and held more than 400 visitors hostage. In April, there were also protests regarding poor prison conditions at Quito's women's prison, Penal Garcia Moreno, and Carcel 3.

In March, prison employees at the Litoral Prison went on strike to demand payment of back wages.

The NSRB reported that 58 prisoners died during the year, compared with 26 in 2003. Half of the deaths resulted from illness, and one-third were attributed killings by other prisoners.

Women prisoners, who constituted 8 percent of the prison population, 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. Pretrial detainees were not held separately from convicted prisoners.

The Government permitted prison visits by independent human rights observers in most instances; however, in some cases, human rights observers were not permitted to visit prisoners who had been placed in isolated cells after they allegedly had been beaten.

d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention; however, the authorities at times violated these prohibitions in practice.

The National Police are under the authority of the Ministry of Government. The effectiveness of the National Police was uneven, in part, due to its insufficient training, supervision, and resources. Some municipalities, such as Quito and Guayaquil, have their own metropolitan police forces in addition to the National Police. A police internal affairs office investigates complaints against police officers and can refer cases to the police courts. Nongovernmental organizations (NGOs) claimed that members of the metropolitan police occasionally used excessive force. Police corruption was sometimes a problem. The director of the National Police was under investigation for allegedly facilitating alien smuggling.

The National Police contracted with NGOs to provide human rights training. A 2003 AI report criticized 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. In November, AI issued a follow-up report, which concluded that there had been "no significant progress" on cases of serious human rights violations documented in 2003 and that there had been no apparent efforts to address the impunity issues identified in 2003.

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. In February, two policemen, Maximo Bustamente Santana and Jose Quintanilla Estrada, were held on charges of arresting three people in November 2003 without arrest orders. They were held for 2 days before paying a \$4 pre-sentencing release fine.

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 was not available, and the law prohibits it in cases of narcotics and major offenses (offenses that "affect or put at risk" the public, punishable by 3 to 35 years' imprisonment).

NGOs reported that the Government did not have an established practice to enforce the law's provision that criminal detainees are entitled to prompt access to lawyers and family members. Delays varied depending on the circumstances and officials' willingness to enforce the law; alleged narcotics traffickers commonly waited 24 to 48 hours for these visits. Detainees with sufficient resources often bribed prison officials to facilitate access.

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 24 hours for suspicion of committing a crime and establishes investigative detention of up to 6 months for minor offenses and 12 months for major offenses. However, the law permits prisoners to be held for an indefinite period after their trial has begun or indictments have been issued but before they have been convicted or sentenced. More than 70 percent of the detainees in jail had not been sentenced formally.

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 often did not pursue cases or announce verdicts and 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 systems were not yet integrated, although weak efforts to do so continued.

On December 8, a majority in Congress voted to replace 27 of the 31 Supreme Court justices, claiming they should have been replaced in January 2003 according to the new Constitution. Critics charged Congress with overstepping its constitutional authority. The outgoing justices appealed their dismissal to the Inter-American Court on Human Rights.

Despite continuing efforts to 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 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. He fled to Colombia but was returned to the country to face charges; at year's end, he was free on bail pending a judgment. In October, prosecutors initiated investigations into allegations that two other Supreme Court justices had not properly declared all of their assets.

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. The Chief Prosecutor's office investigates and prosecutes crimes. Prosecutors have wide discretion in deciding which cases proceed. The National Police conducted investigations under the direction of the judicial police. There were no juries in the justice system. Defendants are presumed innocent until proven guilty and 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 30 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 remained in prison during the investigation phase. 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.

The Constitution 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 actions, and the Government generally respected these prohibitions in practice.

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, sometimes 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. Public figures brought criminal charges of slander and libel against journalists and other public figures. The law criminalizes slander and libel and provides jail sentences for offenders.

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. Business and private interest pressures on the media sometimes constrained freedom of the press.

All 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. The Government invoked a law obliging the media to give it free space or broadcast time to require television and radio to broadcast government-produced programs, which featured the President and other top administration officials.

In August 2003, President Gutierrez filed 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, President Gutierrez's political party and the Armed Forces attempted to build support in Congress for a vote to lift Haro's immunity. On February 9, the President of the Supreme Court of Justice also began the process for a penal judgment against Haro, but no further steps were taken.

Newspaper columnist Rodrigo Fierro's appeal of a September 2003 court ruling that he had slandered former president Leon Febres Cordero was denied, but his sentence was waived due to his age and the delay in issuing judgment.

In January, the Supreme Court upheld Ricardo Noboa's 3-month sentence for slandering a politician in 2002, and a judge ordered that he be detained. However, CEDHU reported that Noba had filed a countercharge to delay the process.

In September, President Gutierrez requested the Public Ministry to conduct a formal inquiry into allegations by a prominent radio director Diego Oquendo that Gutierrez accepted money from a Colombian guerilla group. After an investigation, the Attorney General cleared Oquendo of charges of offending the President and putting national security at risk; however, the Public Ministry's inquiry remained open at year's end.

The Government did not restrict Internet access or academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of peaceful assembly and association, and the Government generally respected these rights in practice; however, security forces used force to quell some violent demonstrations, resulting in one death and several injuries. Public rallies require prior government permits, which generally were granted, although exceptions occurred.

Numerous labor, indigenous, and student demonstrations took place in the capital and the outlying regions during the year. In February, the military shot four protesters (one of whom later died) who were participating in a demonstration by indigenous people (see Section 5). The military claimed the protesters were armed.

Protesters often blocked roads. In general, the security forces intervened in demonstrations only when there was violence against bystanders or destruction of property.

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. Religious instruction was permitted in private but not in public schools. There were no restrictions on publishing religious materials in any language.

For a more detailed discussion, see the [2004 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. Protesters often blocked roads (see Section 2.b.). The Government requires all citizens to obtain permission to travel abroad, which was granted routinely. Military and minor applicants must comply with special requirements.

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

The law provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government granted refugee status or asylum. The Government cooperated with the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. The UNCHR also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention/1967 Protocol.

As of November 30, the Foreign Ministry reported 7,610 applications for refugee status, of which 3,393 were denied, 1,713 granted, and the remainder were pending. 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 the Colombian states of Narino and Cauca. Asylum seekers whose requests have been approved are eligible to work. A few asylum seekers were deported for working without authorization.

In May, the Government began requiring Colombian refugees to present judicial and police records upon entering the country, which resulted in a temporary sharp decrease in the number of applicants.

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 OAS, the European Union, the NGO Citizen Participation, and other international groups termed the elections peaceful, free, and fair. On January 15, 2003, President Gutierrez assumed office. The President's term is 4 years, and the President may not serve consecutive terms. On October 17, voters elected provincial and municipal officials in elections that the OAS characterized as "free and transparent." On November 9, an opposition effort to create a special congressional commission to impeach the President failed.

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). Three other major parties and six smaller parties also were represented in Congress. 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.

There was a widespread public perception of corruption in all areas of the Government. In September, the National Police chief, several other police officials, and members of the army were accused of assisting alien smugglers. The Attorney General was investigating, and no charges have been filed. On November 17, Congress formally censured the Minister of Social Welfare on charges of misuse of public funds. In August 2003, former president Gustavo Noboa fled the country and obtained asylum in the Dominican Republic after a prosecutor filed charges against him related to his renegotiation of debt while President. Although government auditors cleared Noboa of wrongdoing, the charges remained pending at year's end.

In May, the Government enacted the country's first freedom of information legislation, the Transparency and Access to Information Law; however, the law cannot be fully enforced until the President issues regulations for its implementation. The law envisions freedom of information web pages for each government institution and declassifies all government information older than 15 years.

Although no laws prevented women or minorities from attaining leadership positions in government, few women, indigenous persons, or Afro-Ecuadorians occupied such positions. 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, 40 percent in 2004) until 2008, when 50 percent of the candidates are to be women. During the year's elections, the method used to calculate the percentage of women candidates created some controversy, but the election lists generally appeared to follow the law. There were 17 women in the 100-seat Congress, and there were two women in the cabinet.

The indigenous movement formed the Pachakutik electoral movement and has run candidates for national, provincial, and local office in all elections. Pachakutik had 10 members in Congress and was associated closely with the politically active Confederation of Ecuadorian Indian Nationalities (CONAIE). There is one indigenous member of the cabinet.

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. Government officials were cooperative with the groups but often did not act on their views. 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.

There is an office of the Ombudsman (Defensor del Pueblo) to focus on human rights problems; however, some observers criticized its lack of independence in practice. Claudio Mueckay has led the office on an acting basis for more than 4 years.

The Gutierrez Government continued to implement various aspects of the National Human Rights Plan, first decreed in 1998, including human rights training for the Congress, 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, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination based on race, sex, or social status. 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; provides penalties of up to \$25 or 7 days in prison; creates family courts; and gives 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 10,877 cases of sexual, psychological, or physical mistreatment of women for the first half of the year, 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's National Commission on Women (CONAMU) may accept complaints about abuse of women but must refer cases to the prosecutor's office for action. CONAMU had projects in all provinces, focusing primarily on equal opportunities, public policy programs toward women, and lines of credit for women's businesses. CONAMU also offered legal and psychological services to victims of violence in most provinces. In some police stations, social workers employed by city governments or NGOs assisted victims.

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. The penalty for rape where death occurred is 35 years in prison. During the year, 3,083 rapes were reported; 656 persons were charged with rape; and 118 cases were prosecuted.

Prostitution is legal for persons over the age of 14 so long as the businesses are registered with the Government and follow health regulations.

Despite the legal prohibition of harassment, women's rights organizations described sexual harassment in the workplace as common. However, reports of sexual harassment did not appear in the press during the year.

Discrimination against women was pervasive in society, particularly with respect to educational and economic opportunities for those in the lower economic strata. Although women enjoy the same legal status as men, the Office of Gender reported that women often did not receive equal rights in practice. According to the Government, women received 65 percent of the pay

received by men for equal work. The 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 was committed to children's rights and welfare and has increased funding for child health and education; however, those steps were not fully effective. UNICEF reported that approximately 65 percent of the country's 4.8 million children lived in poverty and that malnutrition affected 15 percent of children under age 5.

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, the economic needs of families, and the comparatively high cost of books and uniforms for poor families, the Government rarely enforced this requirement in practice. The Ministry of Education reported that most children achieved a sixth grade education. 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 and that 90 percent of school-age children attended school. Education was free through high school. 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, although government spending on education increased by 9 percent during the year. The Government has programs that provided families with educational subsidies as an incentive to keep children in school, which assisted approximately 50,000 children. Boys and girls had equal access to education. 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.).

The Government provided free medical care to children under 6 years of age. Boys and girls received equal access.

There was no societal pattern of abuse against children.

Commercial sexual exploitation of minors was a problem (see Section 5, Trafficking).

More than 20 NGOs promoted child welfare. UNICEF and several private organizations were very active in programs to assist street children. The children of the poor often experienced severe hardships, especially in urban areas.

Trafficking in Persons

The Constitution prohibits slavery and trafficking in persons in all forms; however, there are no anti-trafficking criminal laws that support the constitutional prohibition, and there were reports that persons were trafficked within, to, from, and through the country. The Code of Children and Adolescents criminalizes the use of violence, abuse, or fraud to coerce a minor into prostitution and the exploitation of a minor's earnings from prostitution, but the Code does not establish penalties. Laws prohibiting alien smuggling and other laws dealing with kidnapping, labor, occupational safety, and slavery apply to and provide some sanctions for trafficking in persons.

On August 18, President Gutierrez appointed the Minister of Government as the country's coordinator of programs to combat trafficking in persons. The National Police Unit for Children (DINAPEN) has responsibility for responding to mistreatment and abuse of minors. The immigration police, a division of the National Police, are charged with combating alien smuggling. On August 5 and October 25, a couple was convicted on four counts of trafficking-related charges of child pornography and rape with sentences of 12 to 25 years.

There was no reliable estimate of the extent of the trafficking problem in the country. A 2002 International Labor Organization (ILO) report estimated that 5,200 minors were engaged in prostitution. During the second half of the year, DINAPEN conducted almost 450 raids on bars, brothels, and nightclubs and rescued 335 children, many of whom were believed to have engaged in prostitution. In past years, trafficking victims from the country had been identified in Spain, Guatemala, Uruguay, Venezuela, Belgium, and the United Kingdom.

The country had a high rate of emigration, with a significant flow bound for illegal entry to the United States and Spain. 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, emigrants were vulnerable to traffickers, and women were susceptible to sexual abuse by smugglers.

Many of the victims of trafficking were child prostitutes trafficked within the country. Some trafficking to Spain may have

occurred, but investigations were not conclusive.

On August 18, the President signed a decree establishing a national committee to develop a national plan to fight trafficking, provide social service to victims, and reform the Penal Code to raise the age of a child to someone under 18 and criminalize trafficking in persons. The committee had not met by year's end.

Persons with Disabilities

The Constitution recognizes the rights of persons with disabilities, and there was no official discrimination against persons with disabilities in employment, education, access to health care, or the provision of other state services. Although the law mandates access to buildings for persons with disabilities, the Government did not generally enforce it.

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 Afro-Ecuadorian Cultural Center, with headquarters in Quito, which estimated that Afro-Ecuadorians accounted for more than 1.1 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 stopped Afro-Ecuadorians for document checks more frequently than they stopped other citizens and that underemployment was a large problem, as employers would not interview persons whose job applications carried Afro-Ecuadorian photos.

Indigenous People

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. 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.

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 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. Oil companies increased their efforts to minimize the environmental and social impact of their oil projects in the Amazon but faced criticism from indigenous groups that environmental damage continued.

The Ombudsman's office established ombudsman representatives in indigenous communities throughout the country. These had responsibility for promoting human and indigenous rights among indigenous communities and providing specific advisory services to these groups.

On February 1, two unidentified individuals shot at Leonidas Iza, president of CONAIE, the Confederation of Indigenous Nationalities of Ecuador, soon after he returned from Cuba where he attended a meeting against the Free Trade Agreement of the Americas. Iza was not injured, but his son, brother, and nephew received bullet wounds during the attack and the assailants struck Iza's wife, Josefina Aguisaca in the face. Iza and leaders of other indigenous groups described the attack as politically motivated. Police have not arrested anyone in connection with the attacks.

During subsequent demonstrations called by CONAIE, the military shot four protesters, one of which, a 63-year-old woman, Maria Laibai, later died. The military claimed that the protesters were armed.

Section 6 Worker Rights

a. The Right of Association

The Constitution and Labor Code provide most workers with the right to form and join trade unions of their choice; however, legal protections of these rights were inadequate, sometimes failing to deter employers from retaliating against workers for organizing.

Approximately 2 to 3 percent of the workforce was organized. Members of the police, the military, and most public sector employees were not free to form trade unions.

The Labor Code sets the number of workers required for an establishment to be unionized at 30, which the ILO's Committee on Freedom of Association considered too stringent a limitation at the plant workers' council level.

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.

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.

b. The Right to Organize and Bargain Collectively

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. 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. The law allows businesses to hire workers on individual contracts.

The Labor Code requires workers in state enterprises to be represented by only one labor union. The law does not require reinstatement of workers fired for anti-union activity but does require compensation and fines. Workers were not protected against anti-union discrimination in hiring under the Labor Code.

Employees also worked on temporary contracts, particularly 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 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 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 the majority of public workers (those who fall under the Civil Service Law) 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, including by public school teachers and health workers. Public workers under the Civil Service Law are not covered by the Labor Code and were prohibited from bargaining collectively.

In August, the Supreme Court upheld a January appeals court decision in favor of more than 50 employees of the public petroleum company, whom the Government had fired for going on strike in June 2003. While several of the workers filed claims for indemnification, some continued to pursue reinstatement.

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 Compulsory Labor

The Constitution and the Labor Code prohibit forced or compulsory labor, including by children; however, there were reports that children were trafficked for labor (see Section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

There are laws to protect children from exploitation in the workplace and policies regarding acceptable working conditions; however, the Government did not effectively implement these laws and policies in practice, and child labor remained a problem.

The law sets the minimum working age for minors at 15 for all types of labor and the maximum hours a minor may work at 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. Penalties for violations of the child labor laws include fines of \$50 to \$300 for parents or guardians and \$200 to \$1,000 for employers. In cases of repeated infractions, the employer's business can be closed.

The Ministry of Labor and the Minors' Tribunals failed to enforce child labor laws, and child labor was prevalent. The Ministry estimated that there were 300 thousand child laborers; however, a UNICEF study released in March estimated that approximately 756 thousand children worked full-time, 39 percent of whom did not attend school. UNICEF estimated that 44 percent of these children began working between ages 10 and 14 and that 70 percent did not reach secondary school.

More than 40 percent of all children lived in rural areas, and many left school at an early age to do unpaid agricultural work for their families.

A report completed by the ILO in 2002 estimated that there were 5,200 minors engaged in prostitution (see Section 5).

In July, the Ministry of Labor created a three-officer Division for Child Labor, which meets monthly with the Ministry of Labor and the National Committee for the Progressive Eradication of Child Labor, which includes government agencies, business, and labor organizations. The Division of Child Labor planned and implemented the national system of child labor inspections. It created and broadcast two television spots to raise awareness of child labor issues. It also played a key role in forming the Banana Social Forum in Guayaquil, which brings together various sectors including business, labor, and NGOs to find solutions to the child labor issue. In addition, it held workshops among the flower business community to raise awareness of child labor issues.

In 2003, the Ministry of Labor, working with UNICEF, began a program of systematic child labor inspections of banana and flower plantations. As of December, the Ministry of Labor employed 16 child labor inspectors. The Ministry of Labor stated that child labor inspectors conducted 800 inspections, 10 of which resulted in fines. It found 120 children under age 15 and 780 adolescents age 15-18 working. The Ministry worked to regulate the employment of the adolescents found. On some occasions, large banana plantations reportedly fired child workers when they received notice that labor inspectors were arriving.

The Ministry of Labor designated a "Social Service Directorate" to monitor and control child labor in businesses such as factories; however, enforcement in most sectors of the economy remained limited. In urban areas, many children under age 15 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, spent approximately \$3.5 million per year on the Program for the Schooling and Protection of Child Workers. The Child Worker Program run by the Central Bank with a fund of \$275,600, supplemented by private support, developed a workshop program in five cities to work with families and schools on the issue of child labor; the Program also administered a \$40 thousand scholarship program for child laborers.

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 December, the minimum wage plus mandated bonuses provided a gross monthly compensation of approximately \$166, or \$0.95 per hour, in the case of contract workers. The statutory minimum wage did not 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 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. Employers are required to give workers 2 consecutive days of rest per week. If required to work beyond the standard work week, workers must be paid overtime. A higher overtime rate is set for working at night. The Ministry of Labor did not deploy sufficient resources to enforce labor laws.

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.