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Ecuador

Country Reports on Human Rights Practices - [2005](#)

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Ecuador is a constitutional republic with a population of approximately 13 million. In 2002 voters elected Lucio Gutierrez president in generally free and fair elections. In April following large-scale protests in Quito and the public withdrawal of support by the military, Congress voted to remove President Gutierrez. Vice President Alfredo Palacio assumed the presidency to finish Gutierrez's term. Civilian authorities generally maintained effective control of the security forces.

While the government generally respected the human rights of its citizens, there were serious problems in some areas. The following human rights problems were reported:

- unlawful killings and use of excessive force by security forces
- torture, abuse, and killing of suspects and prisoners by security forces, often with impunity
- poor prison conditions
- arbitrary arrest
- high number of pretrial detainees
- corruption and denial of due process within the judicial system
- attacks on those publicly critical of former President Gutierrez
- violence against women
- pervasive discrimination against women, indigenous people, Afro-Ecuadorians, and homosexuals
- trafficking in persons and sexual exploitation of minors
- widespread child labor

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including

Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Although the government or its agents did not commit any politically motivated killings, there continued to be credible reports that security forces used excessive force and committed unlawful killings.

On August 5, police arrested Washington Enrique Vilela Barra and Luis Antonio Cevallos Barre. The bodies of the two detainees were found the following day. A police court judge ordered the detention of police officer Freddy Abel Rizzo Barzola and a case against him in the police courts continued. Another officer involved remained a fugitive at year's end.

On September 13, media outlets and the Ecumenical Human Rights Commission (CEDHU) reported that military officers patrolling the northern province of Sucumbios opened fire with no warning on a vehicle, killing Servio Pena Jimenez and seriously injuring Ramon Zamora Zamora. The district attorney charged four army officers in the case: Angel Chuya, Carlos Badillo, Benito Tangamashi and Jorge Zamora. Military authorities detained the four officers and the Sucumbios attorney general initiated the formal investigation.

There were no developments in the March 2004 killing of Luis Alfonso Ortiz Rodriguez. The policeman who killed Ortiz while investigating a domestic dispute remained in prison pending an investigation to determine whether the killing was accidental.

There were no developments in the July 2004 investigation of the alleged police killing of Erik Fabricio Lopez Yanez. The policeman and his brother remained in jail pending the outcome of the investigation.

In the 2003 Fybeca case in which police shot and killed eight persons in a drugstore in Guayaquil and subsequently arrested three persons who disappeared, a police court absolved police Sergeant Sergio Gaybor of guilt in February (see section 1.b.).

There were reports that prison guards killed inmates during the year (see section 1.c.).

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, CEDHU reported that there were fewer incidents of mob violence than in years past.

b. Disappearance

There were no reports of politically motivated disappearances.

In 2003 Jhonny Gomez, Cesar Mata, and Edwin Vivar disappeared after police detained them during a robbery of a Fybeca drugstore 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 2004 the widows of the three and a local journalist were threatened. Police courts acquitted all 21 suspects, including police sergeant Sergio Gaybor in February (see section 1.a.).

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. By year's end police registered 92 individuals arrested for kidnapping; 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

While the law prohibits torture and similar forms of intimidation and punishment, some police continued to torture and abuse suspects and prisoners, often with impunity.

In November the UN Committee Against Torture announced that the country's laws on torture do not meet standards set within the UN's Convention Against Torture. The UN reported that violators of human rights often were penalized with a fine, rather than incarceration.

Through December CEDHU registered alleged cases of torture by security forces 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 and threatened them.

On March 25, transit police arrested and detained Roland Montoya Chavez for not carrying his driver's license while driving. According to a credible nongovernmental organization (NGO), police beat Montoya on March 25 and 26 in front of other prisoners who signed a statement that they witnessed the abuse. Police authorities detained officer Christian Duque for 24 hours as stipulated under police regulations.

Police academy students accused police lieutenants Javier Proano and Javier Torres of beating, insulting, and inflicting other physical injury on up to 160 police academy students since March. Police authorities decided the accusations against the two officers were false after an investigation in which no students testified.

The Popular Combatants Group and the Peoples' Revolutionary Militia continued to detonate small pamphlet bombs, principally in the major cities. There were no reported serious injuries.

Prison and Detention Center Conditions

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 (CONAR), as of December 12,394 prisoners nationwide were held in facilities built to hold 7,463. A number of prisons experienced serious outbreaks of disease, and medical care often was inadequate. The daily amount allocated for prison rations was one dollar per inmate. Strikes by prisoners in various centers were frequent during the year.

CONAR reported that 45 prisoners died through December, compared with 58 in 2004. Thirteen resulted from illness, 17 resulted from serious injury, 4 were suicides, and 11 did not have causes attributed. According to a credible NGO, in September prison guards shot and killed inmates Johnny Garcia, Luis Mora, Juan Cajape, and Jaime Sanchez in the Guayaquil prison. While the guards accused the inmates of attempting to escape, other inmates refuted this account and testified that the guards had beaten the four inmates before killing them. An investigation initiated by the attorney general was ongoing at year's end.

Conditions were notably better in the women's prison in Quito than in men's facilities. Approximately 400 children of female inmates lived in prison with their mothers at year's end. Pretrial detainees were held with convicted prisoners.

Although the government permitted prison visits by independent human rights observers in most instances, 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

While the law prohibits arbitrary arrest and detention, the authorities at times violated these prohibitions in practice.

Role of the Police and Security Apparatus

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. NGOs claimed that members of the Quito and Guayaquil metropolitan police occasionally used excessive force. Police corruption was sometimes a problem. The former chief 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 2004 Amnesty International report continued to criticize the use of the police court system, which resulted in impunity for police officers who committed human rights violations.

Arrest and Detention

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. Within 48 hours of arrest, all detained persons may challenge the legality of their detention by petition to the senior elected official of the locality in which detention takes place. However, few such petitions were made in practice.

In the case of an illegal detention, mayors have the right to release the detainee. Otherwise, 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 without being tried 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).

Although the law entitles detainees 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.

There were no reports of political detainees.

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 law limits immediate detention to 24 hours for *in flagrante* crimes or to allow for investigative detention. Preventive detention is limited 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 indictments have been issued but before they have been convicted or sentenced. The majority of the accused remained in prison during the investigation phase. More than 60 percent of the detainees in jail had not been sentenced, and approximately 10 to 15 percent had been tried, but not sentenced.

e. Denial of Fair Public Trial

While the law provides for an independent judiciary, 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.

In February the Inter-American Commission on Human Rights held a general hearing on the appeal brought by 27 justices of the Supreme Court who were replaced by Congress in December 2004. The commission did not reach a decision on the petition's admissibility, and there were no further developments by year's end. President Gutierrez dissolved the court days before his ouster in April following the court's decision to drop corruption charges against two former vice presidents and former President Abdala Bucaram. In May Congress passed legislation to select a commission to designate a new court and in November the commission named a new Supreme Court in a process widely viewed as transparent. The Constitutional Tribunal has been dissolved since December 2004.

Trial Procedures

Despite ongoing 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. 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.).

There are 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 only 32 attorneys were available to defend the large number of impoverished suspects throughout the country.

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 impression that police were immune from prosecution. While the constitution places both police and military justice under the regular judicial system, the systems remained separate.

Although the law recognizes indigenous communities' right to exercise their own system of justice based on their traditions and customs, it does not specify its implementation. This parallel system raised questions of both jurisdiction and conformity to the right to a fair trial.

Political Prisoners

There were no reports of political prisoners, although some alleged that former President Gutierrez was being held in preventive detention as a political prisoner (see section 2.a.).

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

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Although wiretapping by the national police to investigate crimes is legal with a court order, there is no specific procedural guidance for obtaining such approval.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

While the law provides for freedom of speech and of the press, and the government generally respected these rights in practice, there were some significant exceptions. Some individuals who publicly criticized former President Gutierrez were violently attacked as a result, and in most cases, there were no arrests. Gutierrez also publicly vilified the media and called press freedoms excessive. Government relations with the media improved under President Palacio. There were no high profile cases of public figures bringing criminal charges against journalists during the year.

On January 26, persons active in the University Leftist Revolutionary Front, an armed group with ties to the MPD political party, violently attacked former vice president Leon Roldos Aguilera while he was giving a speech at the Central University. While an initial investigation identified the planners of the attack and initiated an indictment, the Criminal Court had yet to decide the case by year's end.

On February 4, a dynamite attack on the Radio Canela radio station in Macas resulted in substantial property damage. Station owner Wilson Cabrera claimed the attacks were the result of his station's criticism of the government. While there were no arrests in this case by year's end, a preliminary investigation continued.

On March 7, 80 members of the pro-Gutierrez movement "Zero Corruption" invaded and vandalized the offices of the NGO Citizen Participation. The prosecutor decided not to proceed with the case and there were no arrests as of year's end. Citizen Participation appealed to a local criminal judge, and a public hearing was pending.

On March 22, Oswaldo Gallo, a reported member of "Zero Corruption" attacked president of the Federation of Judicial Workers Luis Munoz. Despite the initiation of a penal process against Gallo, the head of the Supreme Court at the time ordered that Gallo be freed, and the investigation was discontinued.

Civil liberties were suspended on several occasions by the government in declarations of emergency targeting specific regions. President Gutierrez declared a state of emergency in Quito on April 15 lasting less than 24 hours, which included suspension of certain civil rights, including freedom of speech and expression. On August 17, President Palacio decreed a state of emergency in the northeastern provinces of Sucumbios and Orellana (see section 2.b.). The decree's measures included suspension of freedom of expression and association, which largely were not enforced.

Following former President Gutierrez's ouster in April, he made statements abroad claiming to be the country's legitimate leader. Because of these statements, authorities charged him with undermining the security of the state. Upon his return to the country in October, Gutierrez was placed in preventive detention where he remained at year's end.

Government censorship and self-censorship occurred in both the print and broadcast media, particularly with respect to politically sensitive

issues or stories about the military and industries connected with the military.

Most elements of the media also 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.

The government invoked a law obliging the print media to provide it free space and requiring television and radio to broadcast government-produced programs featuring the president and other top administration officials.

There were no developments in the September 2004 case concerning President Gutierrez's request that the Public Ministry conduct a formal inquiry into allegations by prominent radio director Diego Oquendo that Gutierrez accepted money from a Colombian guerilla group.

There were no government restrictions on the Internet or academic freedom.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

Although the law provides for freedom of peaceful assembly, and the government generally respected this right in practice, security forces used force and tear gas 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.

During the year numerous labor, indigenous, and student demonstrations took place in the capital and the outlying regions.

On March 10, police entered the Amazonas School in Quito and shot tear gas at protesting students. According to a credible NGO, one tear gas canister hit the face of 17-year-old Kirmar Cantuna and entered his skull, causing serious injury. Cantuna's family reached an out of court settlement with the Ministry of Government and did not press charges.

On March 11, police entered the Jorge Mantilla Ortega School in Quito to break up a protest. According to a credible NGO, the police pushed Sandra Chica from a second story window, and she sustained serious injuries. An initial investigation by the attorney general was underway at year's end.

In April large-scale protests in Quito led to the ouster of President Gutierrez. The Red Cross reported that 417 persons were injured during these protests, mainly due to inhalation of tear gas. In August there were also widespread protests in the Amazonian provinces of Orellana and Sucumbios.

On April 13, Congressional guards placed Roberto Navas and other student protesters in a police van where they beat the students, according to a credible NGO. The police also reportedly sprayed tear gas in the students' faces and mouths and threatened to rape them. After intervention from CEDHU, the officials released the students. There was no formal complaint filed and no investigation of this case.

On April 19, Chilean journalist Julio Garcia Romero, who was covering the anti-Gutierrez protests, had a heart attack after being exposed to tear gas. The case remained under investigation at year's end.

On August 15, residents and civic leaders of Sucumbios and Orellana began a strike to demand that oil revenues from the region be dedicated to domestic infrastructure, higher wages, and new jobs. The strikes prompted President Palacio to decree a state of emergency on August 17, allowing the suspension of constitutional rights in the two provinces and ordering soldiers into the region. Police and army forces used tear gas, water cannons, and mass arrests to quell demonstrations in Nueva Loja and injured several persons. Soldiers also detained between 40 and 50 protesters who were attempting to seize a Petroecuador station (see sections 2.a. and 6.a.).

In October and November members of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) demonstrated in Quito. Police used tear gas, detained protesters, and prevented buses carrying additional protesters from entering the city (see section 5).

There were no new developments in the February 2004 case in which the military shot four protesters (one of whom later died) who were participating in a demonstration by indigenous people (see sections 1.a. and 5).

Protesters often blocked roads. Security forces generally intervened in demonstrations only when there was violence against bystanders or destruction of property.

Freedom of Association

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

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

The country had a small Jewish population. There were no reports of societal abuses or discrimination, including anti-Semitic acts, during the year.

For a more detailed discussion, see the [2005 International Religious Freedom Report](#)

d. Freedom of Movement Within the Country, Foreign

Travel, Emigration, and Repatriation

The law provides for these rights, and the government generally respected them in practice. Protesters often blocked roads (see section 2.b.). Men must show proof of having completed military service or pay a fine to leave the country. Children must have a notarized letter from a parent to travel unaccompanied.

The law prohibits forced exile, and the government did not use it.

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and 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 UN High Commissioner for Refugees (UNHCR) also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention/1967 Protocol. The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers.

Approximately 97 percent of refugee applicants were Colombians. According to the UNHCR, the majority of displaced Colombians were poor farmers or businesspersons with minimal education fleeing fighting in Colombia. The law allowed persons granted refugee status to work. The Foreign Ministry changed the format of new IDs issued to asylum seekers so that they no longer explicitly prohibited work.

UNHCR officials noted that growing anti-Colombian sentiment discouraged many Colombian refugees from formally seeking asylum. UNHCR began training police officials to refer such cases to the foreign ministry.

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

The law 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.

Elections and Political Participation

In 2002 voters selected Lucio Gutierrez in the second-round presidential election. Election observers from the OAS, the European Union, the local NGO Citizen Participation, and other international groups termed the elections generally peaceful, free, and fair. In April following large-scale protests in Quito and the public withdrawal of support by the military and the national police leadership, Congress voted to remove President Gutierrez. Vice President Alfredo Palacio assumed the presidency to finish Gutierrez's term. Upon his return to the country in October, Gutierrez was placed in preventive detention for "undermining the security of the state" for statements he made while abroad claiming to be the country's legitimate leader.

There were 15 women in the 100-seat Congress and 3 women in the cabinet. There was 1 Afro-Ecuadorian member in the 100-seat Congress.

The pro-indigenous Pachakutik political movement had 10 members in Congress and was associated closely with the politically active Confederation of Ecuadorian Indian Nationalities (CONAIE). There was one indigenous member of the cabinet.

Government Corruption and Transparency

There was a widespread public perception of corruption in all areas of the government. Transparency International's annual Corruption Perceptions Index indicated that corruption was a "severe" problem, although slightly improved compared with the previous year.

According to newspaper reports, approximately four thousand Chinese immigrants obtained Ecuadorian visas in 2004 and during the year by bribing government officials. Investigations in June targeted President Gutierrez's brother Gilmar Gutierrez. Although there were no arrests in these cases, Gilmar Gutierrez was removed from Congress over a scandal involving misuse of sporting goods donated by China.

In August President Palacio suspended some of his personal advisors to investigate a forgery and position-selling scandal. The advisors allegedly forged the president's signature on documents granting government positions, which were sold to individuals for personal gain. The case remained under investigation at year's end.

In September authorities accused two members of the Civic Anti-Corruption Commission of leaking information about the commission's investigations. They were subsequently voted off the commission.

There were no developments in the September 2004 case involving the national police chief, several other police officials, and members of the army accused of collaborating with alien smugglers.

In January President Gutierrez issued regulations for the implementation of the Transparency and Access to Information Law, but the government did not provide funding to create a system by which journalists and others could readily access public files. In May President Palacio issued a reform to the law's regulations, limiting the inclusion of defense-related information within the public information covered by the law.

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

A number of domestic and international human rights groups generally operated without restriction, investigating and publishing their findings on human rights cases. Government officials cooperated with the groups but often did not act on their views.

There is an office of the ombudsman to focus on human rights problems; however, some observers criticized its lack of independence in practice. The office had adequate resources, but was not considered effective on human rights issues.

The Gutierrez and Palacio governments continued to implement various aspects of the National Human Rights Plan, 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

While the law prohibits discrimination based on race, gender, 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 provides penalties of up to \$28 or 7 days in prison, creates family courts, and gives courts the power to remove an abusive spouse from the home.

The Office of Gender, in the Ministry of Government, reported 21,861 cases of sexual, psychological, or physical mistreatment of women through November, 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. Thirty special Police Stations for Women and Families handled issues including domestic violence. 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.

The law criminalizes rape, including spousal rape, and provides a penalty of up to 25 years in prison. In cases of statutory rape involving "amorous" sex with a minor, the rapist may marry the victim, which cancels the charges unless the marriage subsequently is annulled. The penalty for rape where death occurred is 35 years in prison. By year's end there were 1,421 reported rapes, resulting in 487 persons charged; no information was available on the number of cases prosecuted. Many rapes were not reported due to the victims' reluctance to confront the perpetrators.

Prostitution is legal for persons over the age of 18 so long as the businesses are registered with the government and follow health regulations. Trafficking in persons for prostitution was a problem (see section 5, Trafficking).

Despite the legal prohibition of harassment, women's rights organizations described sexual harassment in the workplace as common.

The law also provides legal support to the government's Women's Bureau in cases of sexual harassment in the workplace.

Despite legal protections of women's rights in politics, the home, and employment, societal discrimination against women was pervasive, 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 approximately 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.

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. 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 NGO Women's Political Coordinator operated in 22 provinces and 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. The United Nations International Children's Emergency Fund (UNICEF) reported in 2004 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 law requires that children receive a minimum of 10 years of education; 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 for poor families of books and uniforms, the government rarely enforced this requirement in practice. The Ministry of Education reported that most children achieved a sixth grade education. The citizen movement Social Contract for Education estimated that during the year some 660 thousand children aged 6-17 (approximately 22 percent of school-age children) did not attend school. Education was free through high school, although there were various related fees that prevented many children and adolescents from attending school. The government operated programs that provided families with educational subsidies as an incentive to keep children in school, which assisted approximately 50 thousand 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.).

The government provided free medical care to children under six 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).

Child labor was a problem (see section 6.d.).

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

Trafficking in Persons

While the law prohibits trafficking in persons, there were reports that persons were trafficked within, to, from, and through the country. On June 23, the government enacted a law that criminalizes trafficking in persons and provides prison terms of 6 to 35 years. The law also provides penalties of 6 to 12 years in prison to companies and individuals who promote sexual tourism and child sex tourism. After the law went into effect, the government showed little progress in prosecuting traffickers. During the year there were at least two trafficking related cases resulting in four arrests and no prosecutions.

The police youth protection agency (DINAPEN) received antitrafficking training and conducted regular raids on nightclubs, bars, and brothels, but normally did not determine whether their underage workers and guests had been sexually exploited. In September a raid in Guayaquil led to the arrest of a 19-year-old man for prostituting a minor. The government appointed a special prosecutor to oversee trafficking cases in Quito. A specially vetted police unit designed to combat alien smuggling also worked with DINAPEN and judicial police to investigate trafficking cases. The government cooperated in international investigations of trafficking.

The country was a source, transit, and destination country for persons trafficked for sexual exploitation and forced labor. The most recent statistics, from a 2002 International Labor Organization report, estimated 5,200 minors were engaged in prostitution. Ecuadorians were trafficked to Western Europe, primarily Italy and Spain, and other Latin American countries. Some Colombians were trafficked into prostitution in the country. Internally, adults and children were trafficked into prostitution. Anecdotal evidence showed that traffickers lured young victims romantically or with promises of dignified employment and then forced them into prostitution. Some poverty-stricken parents also sold their children, wittingly or unwittingly, into prostitution or forced labor in agriculture, including banana plantations, or mines.

Anecdotal evidence indicated that some of those willing to pay up to \$12 thousand to be smuggled out of the country were also victims of trafficking, and women were susceptible to sexual abuse by smugglers. There were numerous allegations of official corruption related to migrant smuggling, but no resulting arrests or convictions. Falsification of civil registry documents to disguise the nationalities of trafficking victims and the ages of juveniles was a problem.

Minors discovered engaging in prostitution were returned to their families or to NGOs without being detained. Crime witnesses are provided protection in several shelters that have standing agreements with the Public Ministry. NGOs worked with local governments to provide limited preventive education and victims' assistance, including counseling, medical attention, self-esteem building, and legal assistance.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in employment, education, access to health care, and the provision of other state services, and the government effectively enforced the law. The interagency National Council on Disabilities oversees government policies regarding persons with disabilities. Although the law mandates access to buildings for persons with disabilities, the government did not enforce it.

In December the law was amended to require the hiring of persons with disabilities in all public and private enterprises with more than 25 employees.

National/Racial/Ethnic Minorities

The estimated 1.1 million Afro-Ecuadorian citizens suffered widespread poverty and pervasive discrimination, particularly with regard to educational and economic opportunity.

The Afro-Ecuadorian Cultural Center estimated that 70 percent of Afro-Ecuadorians lived in poverty. 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 employers often would not interview persons whose job applications carried Afro-Ecuadorian photos. There were no special government efforts to address these problems.

Indigenous People

Estimates of those who maintained their indigenous cultural identity and lived in indigenous communities varied between 7 and 20 percent of the 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.

Arable 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 law 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, particularly deforestation, continued. Indigenous efforts to manage the flow of illegal lumber were undermined by corrupt local officials, a lack of political will, and divisions among and within indigenous communities.

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.

Police used force to suppress CONAIE demonstrations in Quito in October and November (see section 2.b.).

There were no developments in the February 2004 case in which two unidentified individuals shot at Leonidas Iza, president of CONAIE, or in the killing of Maria Lalbai by members of the military during a February 2004 protest.

Other Societal Abuses and Discrimination

Although the law prohibits discrimination based on sexual orientation, homosexuals, transsexuals, and transvestites continued to suffer discrimination from both public and private bodies. In April the ombudsman office opened an investigation into the extent of discrimination suffered by sexual minorities.

On July 20, the homosexual rights group Friends for Life Foundation charged Guayaquil State University with requiring incoming medical students to be tested for HIV/AIDS. The group claimed that one medical school applicant who refused to submit to testing initially was denied admittance. The applicant later was admitted following a constitutional writ.

According to a credible NGO, a July police operation in Guayaquil known as "Pink Gentleman" aimed to remove transvestite and transsexual sex workers from certain upscale neighborhoods in Guayaquil. Another NGO claimed that police routinely arrested transvestites visible in these areas. The group stated that in a series of operations in July and September, 41 homosexual, transsexual, or transvestite persons had

been arrested, held for 24 hours, and then released upon payment of bail. Police officials confirmed that not only prostitutes, but homosexuals who were not prostitutes, were arrested and detained for 24 hours. In response to similar complaints, the ombudsman's office opened an investigation into the September events.

Section 6 Worker Rights

a. The Right of Association

While the law provides most workers with the right to form and join trade unions of their choice, legal protections of these rights were inadequate, sometimes failing to deter employers from retaliating against workers for organizing. Members of the police, the military, and most public sector employees were not free to form trade unions. A June report from the International Confederation of Free Trade Unions found that public and private sector employees faced many obstacles to organizing. Approximately 2 to 3 percent of the workforce was organized.

The law 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 took advantage of this law by subcontracting with several shell companies, each of which has less than 30 workers. Subcontracted workers have no legal right to freedom of association, no right to bargain collectively, and no legal protection against antiunion 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 sector association which is not allowed to strike or bargain collectively (see section 6.b.).

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 antiunion activity but does require compensation and fines. The law does not protect workers against antiunion discrimination in hiring. There were several cases during the year of workers in the flower and banana industries forming associations or unions and subsequently being fired or prohibited from entering the workplace.

a. The Right to Organize and Bargain Collectively

The law requires that all private employers with 30 or more workers belonging to a union must negotiate collectively when the union so requests. Collective bargaining agreements covered 25 percent of the organized workforce. 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.

Newly hired employees, particularly in the agricultural sector, worked on temporary 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 private-sector workers to strike, although a 10-day period is required before a strike can be declared. The law allows solidarity strikes or boycotts of three days if the Ministry of Labor 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 law 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, although in practice this law was not enforced. The law 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 two and five years in prison; however, there were frequent "illegal" strikes, including by public school teachers and health workers. Public workers are prohibited from bargaining collectively.

In July 50 employees of the public petroleum company fired by the government in 2003 were reinstated.

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.

c. Prohibition of Forced or Compulsory Labor

While the law prohibits forced or compulsory labor, including by children, there were reports that children were trafficked for labor (see section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

Although the law protects children from exploitation in the workplace and defines acceptable working conditions, the government did not

effectively implement the law, 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 inter-agency National Committee for the Eradication of Child Labor (CONEPTI) developed a National Plan for the Eradication of Child Labor, which the minister of labor approved on September 21. The government began implementing awareness campaigns on child labor and hired 23 child labor inspectors.

The Ministry of Labor and the Minors' Tribunals failed to enforce child labor laws, and child labor was prevalent. A 2004 study by the Ministry of Labor, the Institute for the Child and Family, and the National Committee for the Progressive Eradication of Child Labor found that 465,770 children between ages 5 and 14 (approximately 15 percent of children in this age group) were engaged in labor not permitted by law, primarily in rural areas.

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.

The Ministry of Labor has a three-officer Division for Child Labor, which meets monthly with other divisions in the Ministry of Labor and the National Committee for the Progressive Eradication of Child Labor, which includes government agencies, businesses, and labor organizations. The Division of Child Labor planned and implemented the national system of child labor inspections. It also played a key role in forming the Banana Social Forum in 2004 and the Flower Social Forum during the year. The ILO worked with the forums to remove 45 children from work and prevent 1,250 children from entering work in those sectors.

The Ministry of Labor's 23 child labor inspectors conducted approximately 1,500 child labor inspections from January to July, which found approximately 1,050 adolescents working and approximately 230 children under age 15 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. Reports also indicated that inspectors mainly targeted large banana plantations.

While the Ministry of Labor's Social Service Directorate monitored child labor in businesses such as factories, 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 five or six often sold newspapers or candy on the street to support themselves or to augment family income.

The government supported the Program for the Schooling and Protection of Child Workers. The Child Worker Program implemented a workshop program in six cities to work with families and schools on the problem of child labor. The program also administered a 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 obtaining the minimum wage or legally mandated benefits.

The law provides for a 40-hour workweek and 2 consecutive days of rest per week. If required to work beyond the standard workweek, workers must be paid overtime. A higher overtime rate is set for working at night. The maximum number of hours of overtime was 12 hours per week, which generally was respected, except in subcontracting companies where workers sometimes were required to work up to 28 hours of overtime per week. The Ministry of Labor did not deploy sufficient resources to enforce labor laws.

The law 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 confirm a workplace 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 is responsible for enforcing 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 enterprises in the mining sector.

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