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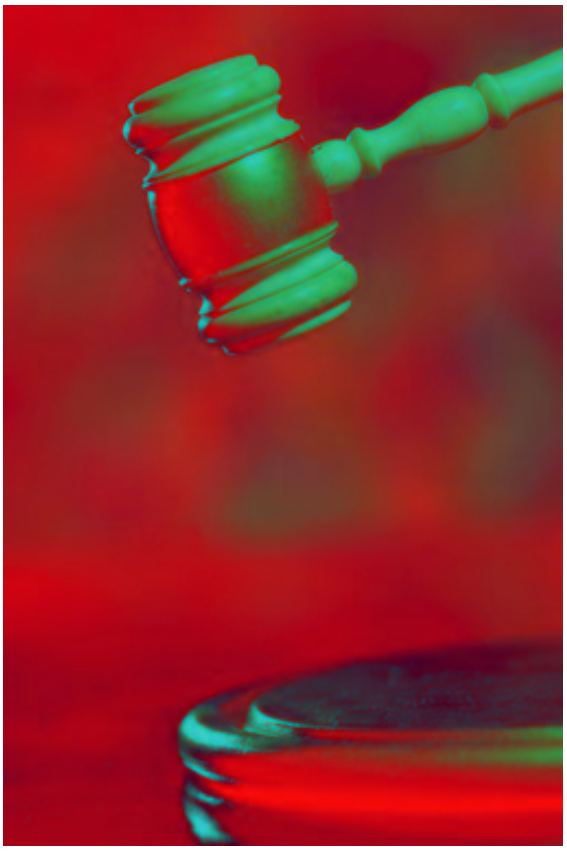

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Foreword

Legal and judicial reform constitutes one of the main pillars of the World Bank's Comprehensive Development Framework (CDF) to promote economic growth and alleviate poverty. Consistent with the CDF philosophy, legal and judicial reform requires working on several levels – changing the laws, improving institutions and their capacity, and integrating efforts into the overall country strategy. A critical element of the World Bank's approach is to conduct country-specific sector assessments. The outcomes of these assessments are used as a starting point to identify challenges and priorities; they also facilitate discussions with governments to define objectives, design activities, and sequence individual lending operations. In tandem, other assessments review the impact of a country's legal framework, policies and regulations on a wider spectrum of society, including social, gender and environment. As legal and judicial reform is a long term process, requiring full commitment by key stakeholders, dissemination of information on the sector is a *sine qua non* for the country to reach consensus and action plans for future reforms.

Since the return to democracy in 1979, Ecuador has experienced oil price volatility, extreme fluctuations in capital flow, and natural disasters combined with macroeconomic imbalances resulting in negative growth and uneven social development. The most recent crisis in 1998-99 had a devastating effect on the level of employment, poverty and income distribution. Infant mortality, malnutrition, school drop-out and crime rates also increased during the same period. One critical way to mitigate the economic crises and address these inequalities is to ensure that the marginalized have the opportunity to enforce their individual and property rights through effective dispute resolution mechanisms.

In 1994, based on a dialogue initiated by the World Bank's first Justice Sector Assessment, the Government of Ecuador developed a reform plan (*Plan Integral de Reforma)* to improve the legal and judicial sector following key legal reforms initiated in 1992. In 2002, the World Bank began a new dialogue with the Ecuadorian Government on legal and judicial reform issues in an effort to update the 1994 assessment which was discussed in a series of public meetings with stakeholders to build consensus for further reforms.

Although Ecuador has undertaken many reforms in recent years, further changes must be made to the current system. This new assessment of Ecuador's legal and judicial sector provides an overview of the sector, and looks at the courts as well as access to justice and legal education. As the Ecuadorian Government continues its efforts in economic and social development, a dialogue on legal and judicial reform will be critical to consolidate support for key reforms affecting all segments of society.

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Executive Summary

1. According to a recent survey of businessmen and households on the administration of justice, unpredictable decisions, delay and inefficiency, are perceived to have had a negative impact on Ecuador's economic growth. Unpredictability is linked to scarce professional training for law students, lawyers, and the judiciary, as well as political interference and corruption. Inefficiency is associated with limited resources and the use of inadequate models of court administration and case management.

2. In order to address these problems, constitutional reforms were introduced in 1992, 1995, 1997, and 1998. Additional legislation has also been either drafted or partially reformed. Concurrently, institutions working in the sector defined objectives and priorities in a reform plan (*Plan Integral de Reformas)* approved in 1996, and revised in 1998 and 2001. The Plan received international assistance for its partial implementation.

3. Legal and judicial reform is an ongoing process that has recently completed an initial phase designed to prepare the system for future broader changes. The introduction of a system to allow the Supreme Court to fill its own vacancies should be complemented along with measures to ensure transparency and independence in the selection process. The changes introduced through pilot courts to improve caseload management have reduced backlogs and increased the rate of disposition; they should be extended throughout the judicial system.

4. The judiciary, the private sector, and civil society share the perception that there should be additional reforms designed to improve public trust. The main goals of such reforms should be to improve the professionalism of judges, strengthen their independence, fight against corruption, improve caseload management systems, and improve access to justice.

5. All of these efforts will contribute to a stronger, more predictable, and more efficient legal and judicial sector in Ecuador.

Ecuador: Legal and Judicial Sector Assessment

Introduction

6. Ecuador's recent history has been characterized by political instability and poverty. Since the return to democracy in 1979, oil price volatility, extreme fluctuations in capital flow, and natural disasters have combined with macroeconomic imbalances and resulted in negative growth and uneven social development. During this period the country withstood four severe recessions: 1982-83, 1987, 1989, and 1999-2000, three hyperinflationary periods: 1983, 1988-93 and 1999-2000, and a high external debt accompanied by several payment suspensions. The currency exchange and bank crisis of 1999 caused twenty banks to fail and affected more than 40 percent of bank deposits. In the last five years, Ecuador has had five presidents while the average term in office for the Ministry of Finance has been only ten months during the past twenty years. The last crisis (1998-99) had a devastating effect on the level of employment, poverty and income distribution. While the formal unemployment rate increased by 10 percent to almost 15 percent, the level of poverty increased from 34 to 56 percent between 1995 and 1999, increasing the number of the poor by two million. The effects were felt mostly by the indigenous population and the general rural population of the Sierra region where the poverty rate increased 7 percent in two years (1998-1999). Half a million people emigrated while the same number migrated to the outskirts of city boundaries. Infant mortality, malnutrition, school drop-out and crime rates also increased.

7. The instability resulting from the economic crises and increased social conflict has led to a progressive loss of public support for representative democracy. Public protests are frequent, and have completely paralyzed the country seven times in the past five years. Political decision-making is characterized by extreme position-taking, making consensus impossible. Nineteen legally recognized, but weak, political parties are unable to moderate extremist factions. The parties themselves are divided by regional rivalries and internal power struggles. Rather than working as channels of democratic representation, political parties serve as pressure groups working to obtain benefits for their supporters through the distribution of public funds.

8. The perception of corruption continues to be very high. Ecuador is the Latin American country perceived to have the lowest performance controlling corruption, and this perception worsened between 1998 and 2002.[1] Preliminary findings in a survey conducted by the World Bank Institute, highlight corruption as the most important governance challenge facing the country. Based on results from more than 160 countries, Ecuador

[1] Mitchell A. Seligson, Daniel H. Wallace and Francesca Recanatini, "Gobernabilidad y corrupción", Ecuador: Notas de políticas, Una propuesta para el despegue económico y social, unpublished paper, World Bank, Quito, 2003, p. 291 (Hereinafter "Gobernabilidad y corrupción").

ranks low in rule of law, government effectiveness, and political stability.[2] Given this context, lack of trust in a legal and judicial sector is not uncommon. Public trust in Ecuadorian institutions is low. According to a recent study, only the Congress (25%) and political parties (21%) demonstrated a lower level of trust by citizens than the Supreme Court (29%)[3] This perception strongly contrasts with levels of trust attained by the Church (67%), Armed Forces (63%) and the press (59%).[4]

9. This report updates the legal and judicial reform sector assessment prepared in 1994 and analyzes the main issues and challenges facing the sector.

[2] The World Bank Institute, Ecuador: Governance & Anticorruption Empirical Diagnostic Study, Preliminary Draft Report, unpublished, Washington, DC, April 2000 (Hereinafter "Governance & Anticorruption").
[3] Mitchell A. Seligson, Agustín Grijalva, Polivio Córdova, Auditoría de la Democracia, CEDATOS, Quito, 2002, p. 36 (Hereinafter "Auditoría de la Democracia").
[4] See Annex III, p. 69.

The Legal and Judicial Sector

Overview

10. The legal principles supporting Ecuador's economic system are based on the freedom to exercise individual and property rights. Protecting these rights requires clearly defined laws and effective enforcement mechanisms. In short, legal framework and enforcement uncertainties should not enter into calculations of economic risk. Economic decisions should be based on economic criteria, market efficiency, and realization of the economy's growth potential.

11. Under Ecuador's existing judicial system, however, some laws are unclear; and their application by the courts is uncertain. Court decisions are not always based upon sound legal reasoning, there are delays resolving cases, and litigation costs are high. An unreliable legal system and a law subject to varying interpretations create an environment conducive to corruption.

12. The judicial sector's performance has also been impeded by the perception that political influence is selectively exercised in critical cases, despite the Constitution's guarantee of judicial independence.[5]

Recent Reforms

13. Over the past ten years, Ecuador introduced more changes to its judicial sector through constitutional modifications than during the years 1812 to 1992. The Constitution of 1979, the country's eighteenth, was reformed, either directly or by referendum, in 1992, 1995, 1997 and 1998, each time introducing more structural change to the judicial sector. The 1992 reforms established the Judicial Council, introduced a cassation system to redefine the jurisdictional role of the Supreme Court, created a new mechanism for the selection of judges, and increased the judicial budget and judges' salaries. The 1995 constitutional reforms included: modifications related to the composition and powers of the Constitutional Court; independence of the Public Ministry; creation of the Office of the Ombudsman (*Defensoría del Pueblo*); decentralization of judicial services; recognition of alternative dispute resolution mechanisms; and expansion of the jurisdiction of the National Judicial Council to establish judicial service fees.

[5] Articles 118 (1), 119, 130, 164 and 191 of the Constitution.

14. Two important reforms were added to the Constitution through a 1997 referendum. Congress' ability to impeach Supreme Court judges was revoked and fixed-term appointments abolished. Moreover, this constitutional reform eliminated Congress' ability to appoint judges. Indefinite appointment, viewed by many as a life appointment, seeks to guarantee the stability of judges in the judicial branch. The 1998 reforms also introduced oral procedures; the principle of *inmediación,* where judges must preside over all proceedings; the principles of "expediency" and "publicity" as backbones of the procedural system; the application of customary law for indigenous parties; and the establishment of a judicial career that includes a competitive process to appoint judges and court employees.

15. In addition to these constitutional and legislative changes, the judicial sector has undergone a reform process. Based on the dialogue initiated by the Judicial Sector Assessment conducted in 1994, the government started a reform process which resulted in the approval of a reform plan (*Plan Integral de Reforma*).[6] This plan identified judicial sector reform objectives and priorities, together with suggested areas of cooperation with international financial institutions and donors. The plan covers three areas: *institutional,* including the judicial branch, the Public Ministry and the police; *operational,* encompassing activities to ease the access to justice, to improve the infrastructure, to prepare and approve new legislation regarding civil and criminal procedures, judicial structure and the Public Ministry's organization, and improving court administration and case management systems; and *human resources,* to improve the capacity of judges, strengthen the judicial career and improve legal education.

16. The reforms to the constitutional framework resulted in new legislation related to the administration of justice including: the Organic Law of the Public Ministry, the Cassation Law (1993), the Constitutional Control or Oversight Law (1997), the Arbitration and Mediation Law (1997) and the Organic Law of the Judicial Council (1997). Some legislation seeking to reform the sector has proven inadequate and other vital reforms, such as an Organic Law and the Civil Procedure Code, have experienced implementation delays. New efforts to reform should include revising the procedural codes to include oral processes, simplifying procedures in administrative agencies, increasing the use of arbitration and mediation, improving the administration of justice, strengthening the independence of the Constitutional Court and the Public Ministry, creating a continuing legal education program for lawyers and judges, improving the legal education system, establishing small claims courts, increasing the number of public defenders, and improving the judiciary's infrastructure.

17. Generally, changing a legal framework requires a significant level of consensus among those directly affected. Ecuador has proven to be no exception. A lack of consensus has impeded the law reform process, and has limited its scope and results. It is clear that the process of legal and judicial reform would benefit greatly from consensus building on the future reform program and increased public education on the potential impact of such changes.

[6] "La Administración de Justicia en Ecuador: Plan Integral de Reformas," Quito, 1995.

Donor support for the government's Legal and Judicial Reform Plan

18. In February 1996, the Supreme Court approved the final legal and judicial reform plan and led the reform process. International agencies such as the World Bank[7] and the Inter-American Development Bank[8] provided financial assistance for the plan's implementation. In this regard, donor coordination has been particularly effective in Ecuador, contributing to closer cooperation and more efficient use of resources.

19. The World Bank Judicial Reform Project,[9] which was recently completed, was comprised of three components. The first, court reform, included case administration, information support, judicial training and infrastructure. This component piloted new case administration and information systems in twenty-eight courts in the first stage and in the second stage forty-three courts in Quito, Guayaquil, and Cuenca.[10] The second component, court annexed alternative dispute resolution mechanisms, piloted mediation centers and training in Quito, Guayaquil, and Cuenca. The third component, the Program for Law and Justice, supported activities initiated by civil society and innovations undertaken by the courts, a professional development program for law professors, a study on the state of legal education, and research and evaluation of pilot mediation centers and legal aid centers for poor women. A special fund, the Fund for Law and Justice, financed twenty-four grants to support poor women, children, indigenous populations, legal NGOs and law faculties.

20. As part of the reforms originally set forth in the 1998 Supreme Court plan, the World Bank is currently providing non-reimbursable grants for several legal and judicial sector reform initiatives. The first grant provides funds to improve public legal education and strengthen the commercial mediation capacity of the Solicitor General's office. The second grant provides funds to further expand alternative dispute resolution centers, develops a centralized clearinghouse to provide support for mediation in rural and marginal urban areas affected by violence, supports the integration of indigenous customary law and national ADR initiatives, and creates a program to support institutional working groups to study and develop a national public defender's service network.[11]

21. The IDB financed a "Program to Modernize the Judicial System" consisting of four components. The first component, Legislative Development, included reform of judicial careers, the National Judicial Council and the Judicial Branch Organic Law, as well as, research on the role of the Public Ministry in the Ecuadorian criminal system, and on public defense. The second component included training and disciplinary system reform, and the design of an institutionalized system of permanent training geared towards establishing a judicial career identifying the training needs of judges and court personnel;

[7] A loan of USD $10.7 million with a USD $3.6 million local counterpart.
[8] Two million dollars as technical cooperation and another USD $400,000 in local counterpart funds.
[9] The World Bank, Staff Appraisal Report, Ecuador Judicial Reform Project (Report N° 15385), 1996.
[10] The Pilot Courts included both civil and criminal courts.
[11] Institutional Development Fund (IDF) grant, "Ecuador Institutional Strengthening of the Solicitor General's Office" (USD $394,100) and Japanese Social Development Fund (JSDF) grant, Law and Justice for the Poor (USD $1,780,000).

implemented a training system and performance review of teaching activities; and evaluated and recommended changes to the disciplinary system. The third component, Administrative Strengthening of the Judicial Branch, included a design for a new administrative system allowing it to work closely with the National Judicial Council, encouraged decentralization and the adoption of new work methodologies, and sought to develop modern physical, financial and personnel planning systems, improve the information systems, including a computer and statistics system, and implement a training system. The fourth component, Access to Justice and Civil Society, replicated World Bank efforts by establishing a special fund to provide resources to organizations from civil society for the implementation of small projects to help attain access to justice.

22. Other international agencies have participated with specific activities on a much smaller scale. UNICEF for example, has promoted activities to reform legislation regarding children and adolescents and, with the support of the World Bank, through ProJusticia,[12] financed activities to raise awareness of children's rights. The European Union has organized meetings to promote discussions on legal and judicial reform, the Spanish Government has financed training of judges, and the French Cooperation Agency has organized a project to provide assistance in designing a school for prosecutors. USAID has concentrated its funding in the criminal justice area and the fight against corruption, primarily by financing NGOs in this field.

[12] ProJusticia is the acronym for "Programa Nacional de Apoyo a la Reforma de la Administración de Justicia del Ecuador" a coordinating body established by Executive Decree 3029 (08/30/95) and staffed by local consultants that implements legal and judicial reform projects.

Judicial Sector Institutions

Overview

23. For administrative matters, the country is divided into provinces. Each province is comprised of several *cantones* or municipalities. The judiciary has been established in such a way that every municipality has at least one civil and one criminal court. In the most populated regions there are also specialized courts for labor, transit, landlord/tenant and customs.[13] Theoretically, there is one Superior Court in each province which reviews the decisions of first instance courts.[14] For purposes of complaints against the public administration, the country has been organized by districts, each one with several provinces. There is an Administrative Tribunal and a Tax Tribunal in every district.[15] The decisions issued by Superior Courts and District Tribunals can be appealed to the Supreme Court on the basis of cassation (*casación).*[16] The courts described form part of the judicial branch, which is administered by the National Judicial Council.[17] By constitutional mandate, the Constitutional Court, the Electoral Tribunal and the Public Ministry are autonomous institutions, independent from the judicial branch. However, although the Constitution established the principle of jurisdictional unity, Juvenile Courts, Military Courts and Police Courts are still dependant on the Executive Power.[18]

24. The Supreme Court, located in Quito, is the national court, and is comprised of thirty-one justices, including the President of the Supreme Court. The Court is organized into ten chambers (*Salas*), comprised of three justices each. There are three chambers for civil cases, three for labor cases, two for criminal cases, one for administrative cases, and one chamber for tax cases. Since 1992, the Supreme Court has been a court of cassation and only hears cases on matters of law, much in the same manner as an appellate court under the Anglo-American common law system.[19] This jurisdiction was conceived, in part, to reduce the caseload of the court. Cases are, therefore, often concluded at the Superior Court

[13] The court number for each *cantón* is increased based on the population. Currently (December 2002) there are 246 civil judges; 152 criminal judges; 129 criminal tribunal judges (three for each of 43 Criminal Tribunals); 31 labor judges; 50 traffic judges; 16 landlord/tenant judges, and 5 customs judges.

[14] See Articles 21, 22, 23 of the Organic Law of the Judiciary. There are Superior Courts in Quito and Guayaquil, each with six Chambers (salas); Cuenca, with four Chambers (salas); Portoviejo and Loja, each with six Chambers (salas); Ambato, Ibarra, Machala, Riobamba, Babahoyo and Latacunga, each with two Chambers (salas); Macas, Puyo, Tena, Nueva Loja, Esmeraldas, Zamora, Guaranda, Azoques and Tulcán each with one sala. Galápagos is the only Province without a Superior Court.

[15] Resolution of the Supreme Court, Registro Oficial 310 November 5th 1993. There are District Administrative Courts in Quito, with two Chambers (salas); Guayaquil, Cuenca and Portoviejo, each with one sala. There are Fiscal Tribunals in Quito, with three Chambers (salas); Guayaquil, Cuenca, and Portoviejo, each with one sala.

[16] The repeal of an Appellate Court's decision made by the Supreme Court exclusively on substantive grounds of interpretation and application of the law.

[17] See Annex III for the number of courts and tribunals by province.

[18] Although some administrative agencies dependant upon the Executive Power still maintain decision-making authority on issues related to hydrocarbons, water, customs, land and mines, their decisions no longer have the weight of judicial decisions. According to Constitution Article 196, they are to be considered administrative resolutions which can be challenged before the Judiciary.

[19] Ley de Casación, Registro Oficial N. 192, May 18, 1993.

level without reaching the Supreme Court. As such, the Superior Court is a final instance court. If there are contradictory findings on a single point of law at the Superior Court level, the Supreme Court may issue a general resolution, which holds the power of law until a subsequent act of the legislature determines otherwise.

25. The Supreme Court determines the number of judges and territorial jurisdiction for the civil and criminal courts and tribunals. For labor, landlord/tenant, and traffic courts, the Supreme Court delegates to the Superior Court of each region the power to determine the number and territorial jurisdiction of the courts. Superior Court judges are selected by the Supreme Court from a list of three candidates presented by the Judicial Council. Judges for the remaining courts are nominated by the Superior Court from a list of three candidates also provided by the Judicial Council.

26. Since 1967, direct constitutional review has been delegated to the Constitutional Court, whose composition and responsibilities have frequently changed. By law, the Constitutional Court has always been independent of other branches of government. Appointments to the Court and its decisions are perceived as highly politicized. The Constitutional Court's mandate was strengthened considerably by the 1992 constitutional reforms, which recognized that its decisions preclude enforcement of laws that it declares unconstitutional, without an accompanying need for Congressional ratification. The Court hears claims regarding the constitutionality of laws, statutes, regulations, and administrative decisions, which it can partially or totally suspend or revoke. It also acts as an appellate court in cases dealing with the constitutional right of *habeas corpus*, which protects individuals from illegal detention or imprisonment; *habeas data*, which protects an individual's right to access documents, data and information about oneself; and *amparo*, a summary proceeding which serves to protect constitutional rights from imminent harm. The Constitutional Court is also entitled to issue binding opinions regarding the constitutionality of international treaties and covenants prior to their approval by Congress and to hear cases concerning conflicts of attributions conferred by the Constitution.[20]

27. The Constitutional Court is comprised of nine members selected by Congress to serve for a period of four years, with the possibility of reappointment. The candidates are selected from *ternas* (lists of three candidates) as follows: two from nominations sent by the President of the Republic; two from lists sent by the Chief Justice of the Supreme Court; two from the Congress itself; one from a list sent by mayors and provincial *prefectos* (provincial chief administrative officers); one from a list sent by the workers unions and indigenous and peasant organizations; and the final one from a list sent by legally recognized associations of producers known as *cámaras de la producción*. All candidates must have the same qualifications as Supreme Court judges.[21]

28. The combination of Congressional appointment of Constitutional Court judges and the simultaneous selection of all nine vacancies has resulted in an appointment process that is subject to political manipulation. Party interests or the personal and professional interests of influential political leaders have much to gain from controlling the selection process.

[20] Article 276 of the Constitution and Articles 3 and 4 of the Law for Constitutional Control.
[21] Article 275 of the Constitution.

Despite the importance of the Court and the numerous voices that have pleaded for reform, nothing has been done to reduce political influence over the Constitutional Court. This problem has grown in the wake of the constitutional reforms of 1995 and 1998 which considerably expanded the Constitutional Court's mandate.

29. The Solicitor General (*Procurador de la Nación*) is the sole legal representative of the State, and is appointed for a term of four years. The Solicitor General represents the State in civil matters to which the State is a party. With respect to cases brought against Ecuador under international conventions, the Solicitor General has frequently been designated as Ecuador's legal representative.

30. In criminal matters, the Public Ministry (*Ministerio Público*) represents the interests of the people. Since 1998, the Public Ministry has functioned as an independent body.[22] It is headed by a Prosecutor General who is appointed by Congress for a period of six years based on a *terna* presented by the National Judicial Council. The Prosecutor General must possess the same qualifications as a Supreme Court justice.[23]

31. The 1998 constitutional reforms also replaced the inquisitive system with an accusatory system**.** Under the new system, the Public Ministry directs all criminal investigations and presents charges against the accused. The new Criminal Procedure Code, in force since July 2001, confers upon the Public Ministry the power to press charges, based on the prosecutor's evaluation of the available evidence. This has produced a profound change in the role of judges, who previously had to direct criminal investigations. This reform has permitted judges to concentrate on adjudicating cases, and ensure that due process is respected while the Public Ministry and the Judicial Police carry out the investigation. The Public Ministry, however, does not have sufficient human, physical and technical resources to carry out these new responsibilities efficiently. As a result, the Ministry delegates legal responsibility to the judicial police, which raises a potential conflict of interest. The transfer of powers previously reserved for the police to the Public Ministry was opposed by the police force. As a result, the Organic Law established the Judicial Police as a specialized department of the National Police, subject to its regulations and hierarchy, but subordinate to the Public Ministry when it operates as an auxiliary of the judiciary during criminal investigations. The Public Ministry also oversees the protection of victims, witnesses and other participants involved in a criminal prosecution. The Ministry coordinates and directs the fight against corruption in collaboration with other appropriate entities. However, the establishment of the Commission for the Civic Control of Corruption as a permanent entity by the Constitution has generated a conflict regarding the roles and responsibilities of the Public Ministry

32. The Office of the Ombudsman (*Defensor del Pueblo*) was created in 1997. However, it has been slow to develop due to confusion over its constitutional mandate. The Constitution states that the Defensor del Pueblo is responsible for promoting *habeas corpus* and a*mparo* cases, defending fundamental rights, ensuring the quality of public services, and organizing

[22] Article 217 of the Constitution.
[23] Article 218 of the Constitution.

and maintaining the public defender's service.[24] The post has remained vacant since the impeachment of the Defensor in 1999.[25]

33. Family Tribunals were established by a reform introduced in September 1997. The law directed the Supreme Court to establish the number of Family Tribunals it deems necessary in each province, as well as to define the location and the territorial jurisdiction for each tribunal. The Supreme Court has not, however, exercised this mandate. A proposal presented to the Supreme Court in 1998 to transform various labor and landlord tenant courts into Family Courts in Quito, Guayaquil and Cuenca, without affecting the judicial budget, was not approved by the Supreme Court. Some of the justices insisted that the proposal not be limited to the three main cities and, for this reason, no agreement was reached. An internal Supreme Court Commission was asked to study the subject, but the matter has not been considered further by the Supreme Court.

34. Juvenile Tribunals are overseen by the executive branch, although there is a clear constitutional provision establishing "jurisdictional unity". A draft law has been prepared that authorizes the transfer of these tribunals, together with all the others overseen by the executive, including the military courts and police tribunals, to the judicial branch. To date, the draft has not been discussed in Congress and faces opposition from those employed by the Juvenile Tribunals, as well as from military officials and the police.

35. Notaries are considered by law to be government officials. A Notary Law, approved in 1986 and reformed in 1996 and 1998, regulates their mandate and functions, and articulates professional standards. The Supreme Court establishes the number of notaries in each canton, while the Superior Court, following a competitive process, names notaries for four-year terms. Once this four-year term expires, a competitive process to select candidates starts anew. The fixed number of notaries limits competition for notary services. Although notaries must be selected through this formal competitive process, they do not receive a government salary. Rather, notaries charge a fee for their services. Since 1998, the fee structure for notaries has been approved by the National Judicial Council. The 1996 reform grants notaries the ability to provide services in "voluntary jurisdiction acts", previously reserved for civil judges. In situations where no controversy exists, but where the law requires legal documentation such as sworn statements, authentication of signatures or service of summons, either a civil judge or notary can provide such a service. The difference lies in efficiency and price. Notaries are faster, taking only minutes to complete certain tasks, but more expensive due to the judicial fee and notary tax. Judges may take longer, but only the judicial fee is charged. In order to rectify an unequal distribution of labor, since 1996 all acts or contracts where one of the parties is a public institution is assigned to the notaries by lottery. In all other cases, the clients are free to choose their notary. The quality of notary services varies significantly, even across Quito, Guayaquil or Cuenca.

[24] Article 96 of the Constitution and Articles 3, 4, 5 of the Organic Law for People's Defense.

[25] The first Defensor del Pueblo (Ombudsman) appointed by Congress, declined the appointment. The second appointee was impeached and removed from office in 1999. Since then, the position has remained vacant.

36. Each canton has a property and commercial registrar. The property registrar oversees a registry that records all acts that affect real estate. The commercial registrar records certain acts and commercial contracts that the law states should be registered because they could affect third parties. These include the establishment of legal entities and modifications to certain types of contracts. Registrars are part of the judiciary and appointed by the Superior Courts following a competitive selection process. Registrars serve six year terms and, similar to notaries, receive no salary and instead rely on fees based on services rendered. Since 1998, the National Judicial Council approves registry fees. The quality of services provided by the registries varies greatly. In Quito and Guayaquil, the registry offices are well equipped, although the equipment, as well as the software, is often the registrars' personal property. In all the other cantons, the offices rely upon manual systems.

Judges

APPOINTMENT OF JUDGES

37. Judicial appointments are critical for an independent judiciary. Judges, as well as court personnel, should be appointed based on the highest standards of merit and personal integrity. Recruitment and compensation, based on merit, ensures that there is institutional competence. In addition, the terms and conditions of judicial appointments can play an important role by allowing judges to make decisions free from outside pressure.

38. There are specific mechanisms for appointing judges, depending on whether they serve in first instance courts, appellate courts, or the Supreme Court. Supreme Court vacancies are to be filled by the Court itself. Four out of the six vacancies since 1997 have been filled using this procedure. Two recent vacancies have not been filled due to internal disagreement, leaving candidates without the two-thirds majority required for their selection. The selection process, as such, should be reviewed. While the Constitution establishes a hierarchy of criteria to fill the vacancies by selecting candidates from the lower courts, universities, and practicing attorneys, sitting justices determine whether a certain candidate matches the prerequisites. If a person receives the necessary votes in order to be designated, he/she will be selected even if constitutional requirements have not been met. There is no opportunity for the public to hear about and comment upon the nominations. A mandatory retirement age limit for Supreme Court magistrates is being considered. This was not considered for inclusion in the Court's draft for the Organic Law, but its inclusion has strong support among lawyers and stakeholders.

39. Superior Court and tribunal judges are appointed by the Supreme Court, and first instance judges are appointed by the Superior Courts in the corresponding province. The appointments, though, are the result of a selection process carried out by the Judicial Council, which presents the nominating court with a list of candidates for each open position. Each candidate is tested by the Judicial Council which contributes to improved objectivity, precision and transparency in the selection process. First instance judges must have a minimum of two years experience, and Superior Court judges, a minimum of twelve years experience. Judges appointed to the first instance courts are usually already working in the judiciary; however, this is not always the case for Superior Court judges.

40. It is difficult to attract highly qualified lawyers to be judges given poor working conditions and the lack of career stability. Although the Constitution recognizes the concept of a judicial career, the associated regulatory laws are only followed when deemed convenient. This is an area where a lack of basic agreement has delayed the promulgation of the new Judicial Organic Law. The draft distinguishes between a judicial career applicable only to the judges and an administrative career. Another proposal generating debate states that a Judicial Council Commission should administer the judicial career and proposes a permanent performance evaluation that would, among other reforms, minimize the role seniority.

41. In accordance with the Constitution, the terms of Supreme Court are now indefinite. The Supreme Court has extended this principle to include all judges, except Constitutional Court judges. This decision has provided much needed stability to the judicial system, and has eliminated the preoccupation of lower court judges of finding support for their reappointment. This principle can strengthen the independence of the judiciary as life terms give judges security of tenure. At the same time, the problem of poorly performing judges and judges engaged in unlawful acts must also be resolved to improve the quality of justice through an effective and fair performance evaluation system.

REMOVAL OF JUDGES

42. Two changes have taken place in the judiciary's disciplinary and control systems to manage ethical violations and combat corruption. The first was the elimination of Congressional oversight. The second change was the transfer of powers from the Supreme Court's Complaints Commission (*Comisión de Quejas de la Corte Suprema*) to the Human Resources Commission of the National Judicial Council.

43. In 1996, Congress removed the Supreme Court President and two Supreme Court judges through an impeachment process that focused on discrepancies in the criteria used to decide cases. This action prompted concerns related to judicial independence. Constitutional reforms approved in 1997 eliminated the impeachment process and Congressional scrutiny over members of the Supreme Court. The Constitution did not, however, establish an alternative mechanism to monitor the Court, and there is currently no system to investigate Supreme Court judges for unlawful acts. This gap has created a *de facto* exception to the constitutional principle that no public authority is above the law.

44. The National Judicial Council's Human Resources Commission now exercises disciplinary control over lower court judges. The procedure involves charges being brought by the Human Resources Commission and an appeal to the Council's plenary (*Pleno*). Given that final decisions can not be appealed, the only avenue for additional hearings is the District Administrative Tribunals. Disciplinary penalties consist of a written notice, a fee up to 50 percent of the punished officer's basic salary, temporary removal for up to ninety days without pay, suspension, and removal. The Judicial Council has also adopted administrative norms that are effective to combat some corrupt practices. The most

obvious example governs the appointment of *peritos* (experts, specialists). The Council prohibited the appointment of judicial officials to serve as substitutes, and established the requirement that a specialized professional be appointed from a list compiled by the relevant professional association.

45. The Council has demonstrated its desire and ability to punish disciplinary and corruption cases. This clear message has resulted in a purported increase in the number of complaints and investigations against judges in the past four years. The Supreme Court President's 2003 annual report states that sanctions have been applied in more than one thousand cases over a four year period.[26]

Figure 1[27]
Complaints Against Judges

	1999	2000	2001	2002	
Warning	22	88	156	136	402
Fine	63	50	85	75	273
Suspension	17	25	100	66	208
Removal	27	19	54	36	136
Acquittal	246	413	659	813	2131
Filed or Expired	1633	1237	77	0	2947

46. There is currently no provision for sanctions against complainants filing false claims, a practice the Court is working to change.

47. Discharged judges have denounced the lack of due process. The use of disciplinary powers by the Human Resources Commission has been the subject of protests by the Judicial Services Federation (*Federación de Funcionarios Judiciales*), which has accused the Commission of failing to uphold due process guarantees. The Constitutional Court has occasionally suspended sanctions on due process grounds.

48. Equally important to disciplinary practices are the criteria used to evaluate the complaints received. The Organic Law (*Ley Orgánica*) includes general norms that are used as standards to determine whether a judge has violated his/her responsibilities.[28] However, the Organic Law does not provide formal standards of conduct nor does it provide adequate guidance for a judge. The absence of standards prevents the development of an administrative procedure capable of addressing corruption issues. The development of a code of ethics for judges and its implementation would be a positive step towards combating corruption within the judiciary.

[26] President of the Supreme Court's report to the National Congress, Statistical Annex, Quito, 2003. It should be noted that there are 822 judges and magistrates in Ecuador.
[27] President of the Supreme Court's report to the National Congress, Statistical Annex, Quito, 2002. (Hereinafter "Supreme Court Report")
[28] Ley Orgánica de la Función Judicial, Resoluciones y Reglamentos, February 1993.

QUALITY OF JUDGES

49. Judges are appointed without any previous special training. There is no review or evaluation of their performance, consequently, the only information the Council has regarding judges' professional capacity is their law school performance, any occasional course they have enrolled in (usually about substantive law), and any information about disciplinary proceedings against them.

50. Lack of predictability, frequently understood by the public to be corruption, is often the result of the limited professional training provided to lawyers and judges. Most lawyers and judges focus their analysis on the semantics of legal texts rather than a conceptual analysis, precedent or the development of the law.

51. The perception of some lawyers is that the quality of judges has declined in the past twenty years. Given that judges' salaries have historically been extremely low, it is difficult for the judiciary to attract judges from the ranks of lawyers. Also, a decrease in the quality of legal education and the lack of requirements for additional education prior to serving as judge undermines the competence of the judiciary. Also, in the absence of a permanent performance evaluation system, promotions are often based on political or personal influences.

52. Neither newly appointed judges nor experienced judges seeking additional education have access to regular training programs to enhance their skills. This explains why many judges have difficulty understanding or adequately preparing complex intellectual property cases or cases involving economic issues. Parties are often reluctant to have these types of cases heard by a judge for fear that the decision will be arbitrary. To address these concerns, the National Judicial Council has created a Judicial Training Division, and is in the process of establishing a permanent training program through a grant from the Judicial School of Spain. The program's objective is to train recently appointed and senior judges through a program designed to develop specific skills through hands-on teaching. USAID has provided financial resources to implement a new training program for criminal judges on the application of the new Criminal Procedure Code. The program offers a welcome and innovative change from the training typically offered by the judicial system. For example, the typical training program consisted of conferences and speeches related to new legislation or changes in legislation. In the new training programs, the judges' academic performance will be taken into consideration as part of their professional evaluation. While the judges were extremely positive about the training program, they were not comparably enthusiastic about having their academic performance in the trainings used for their performance evaluations.

53. Poorly trained judges within an overburdened legal system are susceptible to corruption and create an environment where the rule of law cannot be guaranteed. Households (67%) and enterprises (57%) perceive that unprofessional judges are among the most serious obstacles to using the courts[29] and civil trial attorneys (36.14%) recommend educational

[29] The World Bank Institute, Governance & Anticorruption, supra note 2, at 29.

programs and ongoing monitoring and evaluation of judicial performance as urgent means to improve the judicial system.[30]

JUDGES' SALARIES

54. In Ecuador, Judges' salaries have traditionally been very low in comparison to the salaries of other government officials. Since 1993, judges' salaries have increased consistently. Nevertheless, even with a 40 percent increase in 2002, they remain among the lowest paid in the region, particularly for lower and appellate court's judges.

Figure 2
Judges' Salaries (PPPD)[31]

	Lower	Appellate	Superior
Brazil	147,824	155,604	172,415
Chile	84,783	111,307	142,745
Colombia	85,533	163,563	298,316
Ecuador	65,214	94,000	179,738
Peru	33,168	43,955	122,238

55. There is a proposed draft law endorsed by the Executive Branch to incorporate judicial salaries into a unified public sector salary scale.

Court Administration

56. The National Judicial Council was established as the "administrative, governing and disciplinary organ of the Judicial Branch."[32] Although originally conceived in 1992, the Council was not established until 1998, following Congress' passage of the Organic Law. The delay in establishing the Council is the result of a disagreement over the profile of the new institution and the breadth of its powers. In the end, the Supreme Court's position prevailed, and the Council remains partially subject to it; the Supreme Court's president

[30] Farith Simon et al, Final report of a study conducted for the World Bank in October 2002 by a team led by the Foundation Esquel on the application of civil justice. (Hereinafter "Uso de la justicia"). This study was conducted as a component of a five country comparative study completed by Linn Hammergren, Uses of Empirical Research in Refocusing Judicial Reforms: Lessons From Five Countries, World Bank, 2002, unpublished paper, on file.

[31] Legal and Judicial Sector at a Glance: Worldwide Legal and Judicial Indicators (http://www.worldbank.org/ljr, 2003). The figures cited for salaries are calculated in Purchasing Power Parity Dollars (PPPD). PPPD is an indicator developed by the World Bank to ensure that any figures in US dollars (USD) are comparable among different countries. Salaries in PPPD were calculated by multiplying salaries in USD by the 2000 PPPD Unit Ratios. For the purposes of these particular statistics, the 2000 PPPD Unit Ratios are: Brazil (2.04), Chile (1.98), Colombia (3.0), Ecuador (2.42), and Peru (2.25).

[32] Article 206 of the Constitution.

also serves as the Judicial Council's president. The seven Council members are appointed by the Supreme Court. Of these, four must be chosen from candidates included on shortlists prepared by Superior Court judges, the National Federation of Judicial Employees, law school deans and the bar associations' presidents.

57. Despite its origins, the National Judicial Council found itself in conflict with the Supreme Court immediately after its establishment. An unclear constitutional definition of "governing functions", not explicitly mentioned in the Organic Law, caused the Supreme Court and the Council to disagree over which body had the power to select and appoint judges. The Court's opinion prevailed again, and the Council only retained responsibility for presenting shortlists to the Court, which would then select and appoint candidates. The functions of the National Judicial Council are administrative, disciplinary, and financial in nature. The Council attends to the material needs underpinning the administration of justice, selects judicial personnel, and designates administrative staff. The Council imposes sanctions for violations of the disciplinary code. Its financial mandate includes formulating and administering the budget, as well as establishing a system of court fees.

58. The Constitution requires lower courts to submit an annual report describing their activities and suggesting improvements for the judicial system to the Supreme Court. The Supreme Court is similarly required to submit an annual report to the National Congress. Although these reports are a resource to identify areas in which improvements can be made, they have been largely ineffective, given their they lack of specificity, failure to objectively consider problems, and Congress' lack of a formal procedure to consider and comment on these reports.

Budget

59. According to the Constitution, the judiciary is independent and manages the budget provided for in the national budget approved by Congress. A number of Latin American countries have set a fixed percentage of the national budget to be devoted to the judiciary. For example, Costa Rica and Paraguay set aside 6 percent of the total federal budget for the judiciary. Building on this trend, Ecuador established a norm allocating at least 2.5 percent of the national budget to the administration of justice. This rule, however, in addition to fixed percentages for specific budget line items, was eliminated from the Constitution in the 1998 reforms.

60. Budget is a critical factor in maintaining judicial independence. The budget must be sufficient to permit the judiciary to administer justice in an efficient and effective manner with qualified personnel.

61. The assigned budget for the administration of justice in Ecuador is the lowest in the Andean region in relation to its population.

Figure 3 Judicial Budget Per Capita in the Andean Region[33]			
Country	**Amount (US Dollars)**	**Population (in thousands)**	**Ratio**
Bolivia	64,166,666	7,773	8.3
Chile	155,339,806	14,622	10.6
Colombia	347,631,979	37,065	9.4
Ecuador	22,489,700	11,937	1.8
Perú	132,319,506	24,371	5.4
Venezuela	653,059,868	22,777	28.7

62. Due to the elimination of a minimum budgetary quota for the judiciary and the growing foreign debt, the judicial budget, even in the years it has grown in real numbers, has decreased as a percentage of the overall budget.

Figure 4 Judicial Budget (1995-2002)[34]		
Year	**Amount (US Dollars)**	**Percent of State Budget**
1995	54,768,400	1.51%
1996	68,578,900	1.72%
1997	78,101,400	1.52%
1998	74,621,100	1.39%
1999	57,115,800	1.04%
2000	22,489,700	0.62%
2001	40,249,700	0.82%

63. The creation of the judicial fee system has somewhat mitigated the reduction in the budget, and allows the Council to utilize resources flowing directly into the judicial treasury without going through the Central Government. The judicial fees make up only a small fraction of the judicial budget.[35]

64. Another aspect to be considered is the structure of the budget. Ninety percent of the total amount is allocated for operating expenses, usually salaries; as a result, the amount that available for capital investments is approximately 10 percent.

[33] Comisión Andina de Juristas, Indicadores Judiciales, 2000.
[34] Based on the President of the Supreme Court's report to the National Congress, Statistical Annex, Quito, 2002.
[35] Five percent of operational revenue.

Figure 5 Budget Allocation in 2001[36]	
Salaries	83.53%
Services	5.21%
Materials and Supplies	1.56%
Capital Expenses	**9.69%**

65. The budget is prepared by the Judicial Council's Planning Division on the basis of information gathered through court visits. Despite the decentralization of authority, the Judicial Council's regional offices are not sufficiently equipped to manage funds. In particular, staff members are not adequately trained to manage available funds. There is, as a result, a need for specific training and skills in budget preparation and management.

Planning

66. Since the Judicial Council was established, its Administrative and Financial Commission "plans, organizes, and controls the material and financial resources of the Judicial Branch."[37] Thus, planning tasks which had been carried out by the Planning Commission - established by the Supreme Court in 1990- were transferred to the Judicial Council. These tasks include maintaining statistics, undertaking studies related to the court system's development, conducting evaluations of judicial system operations, and overseeing construction projects. This analytical capacity is essential to address problems of delay and to develop new legal reform proposals. Since the same Commission oversees budget development and its administration, any communication and exchange of information problems that could arise have been eliminated.

67. A statistical system to track cases was established approximately fifteen years ago which replaced an earlier system established in the 1950s. Each court is required to submit quarterly statistical reports, including the number of new case filings, the number of cases resolved, and the number of cases pending at the end of each quarter. The system was technologically upgraded after it was transferred to the Judicial Council. Computers have been introduced, as well as software which permits simultaneous data updates with changes in the system. Pilot courts keep up-to-date and more reliable data, but this system is not in widespread use and most courts still rely on manual means to gather data. There is almost no public distribution of such information. Even the annual reports submitted to Congress present data in a limited form.

68. Case files and other documents are being retained indefinitely in the courts even though the law sets out a specific retention period. File storage areas are inundated, making research

[36] Supreme Court Report, supra note 27.
[37] Article 16 (a) Organic Law of the Judicial Council.

for pertinent records difficult, if not impossible. The manner in which such records are kept constitutes a safety hazard, and they are at risk of loss from fires and damage. In Quito, inactive files are transferred to the Judicial Central Archives. The accepted view was that files could not be destroyed because the law says nothing about destroying archives. Storage space will inevitably disappear. Compounding the problem, there is no systematic listing of files transferred to the Archives. Finding files depends on the memory of the long-serving director of the Archives. Unfortunately, there is no practical link between the National Archives of Ecuador and the judiciary, and there is no mechanism in Ecuador for ensuring that case records of enduring value are transferred to proper storage ultimately made accessible under regulated conditions. If the National Archives is not in a position to take the lead or offer advice, the judiciary should take the initiative. A large quantity of files of no value is accumulating and, to date, there has only been one clearing of files in the pilot courts financed by the World Bank, which was designed to update the caseload management systems.

Human Resources

69. A Human Resource Division was created in 1979 to handle personnel matters for all judicial employees.[38] This office is also part of the Judicial Council. A computerized management system was established for administration, including salary payment. Nonetheless, without an evaluation system, there is no data upon which to establish a merit-based personnel policy. As a result, salary increases and promotions are awarded primarily based on years served rather than performance. Despite experience gained through the new merit-based judicial selection process, such a process has not been adopted for court staff.

Information Management and Technology

70. Access to information technology is essential for a fair and impartial judicial process and to improve court capacity, administration, personnel management, and case statistics. There is, however, insufficient technology in Ecuador's judicial system to support such efforts. Although there has been an effort to install personal computers in all the administrative offices of the Judicial Council and the courts, the number is not sufficient to have a broad effect. Information management and technology is an area of administrative infrastructure that needs to be developed so that the entire judicial system can begin to develop effectively.

71. The Division of Information Management is in need of a comprehensive assessment. In recent years, rather than establish a long-term strategic plan or vision to modernize the Division, efforts were made to respond primarily to short-term and/or immediate needs.

[38] See Annex V for the number of judicial personnel listed by province.

As a result, the Division has not been able to address the judicial sector's rapid organizational and procedural changes.

72. Access to a database is also a vital step toward improving the capacity of the judicial system. The development of a case law and legislation database increases the accountability of the entire legal process. There has been a considerable gain in this area following the installation of the SILEC and FIEL information systems which allow judges to have direct access to up-to-date legislation and precedents. Nevertheless, its access is limited to the main cities of Quito, Guayaquil and Cuenca. Access to information is also necessary to make rights meaningful. By increasing the public's and the legal community's access to information, there is a greater likelihood that expectations and incentives of economic decision-makers can be affected by the legal and judicial sector.

Infrastructure

73. Existing court facilities are often unable to accommodate all employees and the conditions are sometimes barely habitable. Some courts require renovation and others require new buildings. However, the buildings need only be one or two floors in order to accommodate between five and twelve people. The existing infrastructure, even where remodeled in recent years, requires further changes to accommodate the oral system that was constitutionally mandated to take effect in August 2002. New design standards were prepared and several courts were remodeled to accommodate the reforms undertaken in the pilot courts**,** which included developing a courtroom to accommodate the oral procedural system and a broader distribution of judges' work to court staff. Improving the physical infrastructure should be a priority during the reform effort, but only as a complement to other reforms. It is necessary to have adequate infrastructure in order to implement the overall reforms contemplated in this report. In addition, while technology currently available in the pilot courts is adequate, the rest of the country operates without such technology.

Efficiency

LOWER COURTS

74. One of the major challenges for the judiciary is a mechanism to address the enormous backlog and caseloads handled by first instance judges. The system's capacity to efficiently handle its cases is inadequate. The productivity of lower level judges must be increased.

75. In 1995, each judge, on a national average, disposed of 986 cases.[39] By 2001 in the major cities the average appeared to have decreased.[40]

Figure 6 Average Number of Civil Cases Disposed per Judge (2001)[41]	
Quito	539
Cuenca	735
Guayaquil	636

76. If the number of cases disposed is lower than the number of filed cases for the year, this usually results in backlogs accumulating in subsequent years. This was the case for many years in both large urban centers (Quito, Guayaquil, Cuenca), and predominantly rural areas. (Azoques, Loja, Portoviejo). Since 2001, however, this trend has been reversed and in many cities, the number of cases disposed is higher than the number of filed cases.

Figure 7 Civil Courts: Annual Data From Six Districts[42]								
District	**1998**				**2001**			
	Number of Courts	**Incoming Cases**	**Cases Disposed**	**Percent**	**Number of Courts**	**Incoming Cases**	**Cases Disposed**	**Percent**
Quito	22	33725	13576	**40.25**	23	21539	12416	**57.64**
Cuenca	19	15195	12693	**83.53**	20	8201	14712	**179.39**
Azoques	9	4298	3324	**77.33**	9	2669	4334	**162.38**
Portoviejo	24	11144	4778	**42.87**	24	6838	7444	**108.86**
Babahoyo	14	3881	2231	**57.48**	14	3614	1888	**47.75**
Guayaquil	30	24338	8207	**33.72**	30	15979	19089	**119.46**

[39] Maria Dakolias, Court Performance Around the World, A Comparative Perspective, World Bank Technical Paper N° 430, Washington, 1999, (Hereinafter "Court Performance") p. 12. Dakolias presents the following data: Panama, 693; Peru, 1,408; Colombia, 1512; Chile, 4,809

[40] There is a lower average in small cities: Portoviejo, 310; Babahoyo, 134; Azoques, 481.

[41] Supreme Court Report, supra note 27.

[42] Id.

77. Quito is a notable exception to this trend. Given that fewer new cases were filed in 2001, the percentage of cases disposed increased. Nevertheless, the total number of cases disposed remained lower despite the fact that the number of courts increased.

Figure 8
Quito District Civil Courts Case Flow[43]

Year	Number of Courts	Incoming Cases	Cases Disposed
1998	21	33,725	13,576
1999	25	31,278	13,020
2000	25	25,266	12,930
2001	25	21,539	12,416

78. Even though the number of cases filed has decreased, and the number of judges has increased, the backlog is still significant. Data encompassing the entire judicial system demonstrates that even though there is an increase in the number of cases disposed per year, the case backlog has not significantly decreased. By December 2001, the three major districts had almost 450,000 backlogged cases, while the cumulative backlog in civil courts nationwide reached 778,437 cases.

Figure 9
Civil Courts Backlog (2001)[44]

District	Incoming Cases	Cases Disposed	Backlog
Pichincha	21,629	12,948	195,199
Guayas	15,964	19,134	194,588
Azuay	9,201	14,622	51,151
Total	**46,794**	**46,704**	**440,938**

79. A recent study shows that in Quito, only 39 percent of the cases filed in 1998 to decide a legal issue, called *procesos de conocimiento* (as opposed to *juicios ejecutivos*[45]) had been disposed by 2002. The majority of those not disposed were still in their initial stage (i.e. filing the complaint, notifying the defendant or the defendant answering the complaint). The same pattern can be observed in the *juicios ejecutivos* where only 31 percent of the cases filed in 1998 were disposed by 2002. Again, the majority of the cases not disposed were in the initial stage: 46 percent *calificar la demanda;*[46] 13 percent "notify" the

[43] Farith Simon et al., Uso de la Justicia, supra note 30.
[44] Supreme Court Report, supra note 27.
[45] Summary proceedings to satisfy an obligation based on documents that grant the right to execute against property.
[46] A preliminary declaration made by the judge, that admits the complaint and that fulfills formal legal requirements.

defendant; 7 percent awaiting defendant's answer to the complaint.[47] The high percentage of cases where the filed complaint has not been "*calificada"* demonstrates that the plaintiff has perhaps lost interest in the case or the conflict has been resolved.

80. By law, civil cases are processed through the system by the parties rather than by the judge. If the parties fail to pursue a case for some period of time, the judge may dismiss it. However, judges are usually very lenient, unless there is a special request by one of the parties. For this reason, many cases are listed as pending for years.

81. The average 383 days to finish a *proceso de conocimiento* (proceeding to decide a legal issue) and 405 days for the *juicios ejecutivos* has no relation to what the law states. The failure of judges to observe the mandated time limits is caused, or at least exacerbated, by what many judges believe to be unrealistic deadlines set by the codes. The codes fail to incorporate the impact of the number of cases filed on a daily basis. This perception persists despite recent reforms which have eliminated certain responsibilities of judges, including administrative duties, and, in some cases, investigation.

82. Judicial enforcement of some constitutional guarantees has been problematic. First instance judges whose regular jurisdiction extends only to civil and criminal cases tend to perceive *amparo*[48] cases as an interference with their regular duties. Empirical evidence does not support such perceptions.[49]

83. The Civil Procedure Code is outdated, and grants little authority to the judge to manage the proceedings. The timeframes allotted for each stage of the proceeding do not respond to what actually occurs. Especially in the heavily populated cities, judges have little control over the development of a case which is usually handled by an assistant. All these aspects affect efficiency and the productivity levels. The imminent reform of the procedural laws will allow the constitutional possibility of introducing oral proceedings. While this may aid in resolving these challenges, management problems persist.

84. Part of the management problems result from a lack of technical staff for administrative support. In an attempt to address this particular problem, the Constitution stipulates that unjustifiable delays in the administration of justice are prohibited by law. The Constitution further stipulates that judges may be removed or held liable for damages and injuries sustained by parties as a result of delay. This provision, however, is rarely enforced.

[47] Farith Simon et al., Uso de la justicia, supra note 30.
[48] Every person entitled to a right guaranteed by the Constitution which is subsequently threatened by the actions of a public entity, the result of which is serious harm or the threat of serious harm, may present an *amparo* petition to any first instance judge demanding that the actions be halted. Every person also has the right to submit a *Habeas Data* request to a first instance judge to gain access to his or her files held by government authorities. The right to due process is guaranteed by the State to every individual.
[49] See below Fig. 18.

85. Even if settlement conferences were introduced as part of a case management process, judges do not have the power to compel attendance. This restricts the judge's and the court's ability to minimize delays. A program to establish mediation services annexed to first instance courts financed by the World Bank has begun to show positive results, and provides an example for lawyers and judges of the benefits and advantages of a settlement.[50]

SUPERIOR COURTS

86. In appellate courts, total backlog has been increasing, mainly due to an increase in criminal cases.

Figure 10
Superior Courts Backlog[51]

	1994	1998	2001
Civil Cases	17,833 **41.68%**	25,610 **39.93%**	21,382 **29.14%**
Criminal Cases	24,788 **58.19%**	38,536 **60.07%**	51,983 **70.85%**
Total	**42,621**	**64,146**	**73,365**

87. The decreasing backlog in civil cases is a result of the courts' improved decision-making processes.

Figure 11
Civil Cases: Superior Courts (2001)[52]

District	Number of Chambers	Filed Cases	Cases Disposed	Average of Cases disposed per Chamber	Clearance Rate
Quito	6	4,986	4,867	811	97.61
Cuenca	4	2,800	2,842	710	101.5
Azoques	1	1,220	1,374	1,374	112.66
Portoviejo	3	2,341	2,840	947	121.31
Babahoyo	2	1,207	1,264	632	104.72
Guayaquil	6	6,183	4,964	827	80.28

[50] Offices have been installed in Quito, Guayaquil and Cuenca. Conciliation sessions have taken place in 73 percent of the cases derived from judges, and agreements have been reached in 32 percent of the cases.
[51] The President of the Supreme Court's report to the National Judicial Council, Statistical Annex, Quito, 2002.
[52] Id.

88. It is also interesting to note that Azoques and Portoviejo have higher caseloads per chamber than Quito; nonetheless, they disposed of more cases and their clearance rates are higher than Quito's.[53]

SUPREME COURT

89. The overall Supreme Court backlog has decreased. By 1993, when the Court became a cassation tribunal, there was an estimated 12,000 case backlog, with 7,000 of those located in the civil chamber alone.[54] The adoption of the cassation system and the creation of temporary chambers to handle the civil case backlog, has contributed to a decrease in the total backlog. Although the Supreme Court has decreased the civil case backlog by 56.14 percent between 1998 and 2001, the criminal case backlog has increased.

Figure 12
Backlog in the Supreme Court[55]

Chamber	**1998**	**2000**	**2001**
Administrative	203	246	289
Tax	144	369	276
Criminal	668	1,079	1,214
Labor	100	319	318
Civil	1,594	903	699
Total	**2,709**	**2,916**	**2,796**

[53] See Annex VI.
[54] Maria Dakolias, Court Performance, supra note 39.
[55] Supreme Court Report, supra note 27.

90. Despite considerable differences among the Court's chambers, there has been an increase in the number of cases disposed per year:

Figure 13
Cases Disposed by the Supreme Court[56]

Chamber	1994	1998	2001
Administrative (1)	80	256	358
Tax (1)	18	99	209
Criminal (2)	848	990	846
Labor (3)	318	1,029	1,149
Civil (3)	154	1,827	1,211
Total	**1,418**	**4,201**	**3,773**

91. One reason for the continued backlogs in both the Supreme Court and in the Superior Courts seems to be related to a law which states that each case must be presented and discussed among all the court members. The written proceedings are forwarded to a judge's office which prepares a sentencing draft and forwards it to the other judges, who then review the content to check the complaint's legal basis. Each judge, therefore, reads the file. This process is repeated if one of the judges makes any changes to the draft. This observation is backed by the statistic that in 1994, when there were five judges in each chamber, the annual number of cases disposed was only 1,418; while in 1998, when there were three judges per chamber, cases disposed rose to 4,201.

[56] Id.

PILOT COURTS

92. The problem of delay and backlog is being successfully addressed through the implementation of a new case management system. Taking into consideration the experience of all pilot courts, including the less successful results recorded in Quito, the pilot courts have nonetheless accounted for an 85 percent reduction in the average duration of a case.

Figure 14
Average Duration of a Civil Case in Quito[57]

Court	Previous Average	Average in the pilot stage
First	1,185 days	266 days
Second	1,207	175
Third	1,732	332
Fourth	1,260	297
Fifth	1,096	204
Eleventh	1,717	422
Twelfth	840	236

93. At the same time, the clearance rate has increased, for example, to 135 percent in Cuenca.

Figure 15
Clearance Rate in Pilot Courts[58]

City	Percent in 2000	Percent in 2001
Quito	8.56	27.38
Guayaquil	19.1	54.29
Cuenca	44.0	134.66

94. While this is a positive step, delay reduction strategies also require an administrative infrastructure within the judiciary which does not presently exist. Such an infrastructure must be capable of managing both its resources and the flow of cases. The development of these capacities in trial courts during the pilot phase must be combined with the development of similar capacities in Superior Courts and in the Supreme Court. While the

[57] Farith Simon et al., Uso de la Justicia, supra note 30.
[58] Supreme Court Report, supra note 27.

objective is to establish efficient case processing systems, efficiency must be measured by effectiveness. Slow case processing may prevent a party from recovering the actual value of damages associated with a case. Efficient case processing is essential to conserve the costs to litigants and the public, as well as for the effective delivery of justice. The ongoing reform processes have significantly increased the efficiency of courts in which they have been applied.[59] For example, the annual rate of adjudicated cases has increased dramatically in the pilot courts (*juzgados piloto*) and the average duration of adjudication has decreased.

Recommendations

95. Strengthening court capacity should be Ecuador's first priority. Overall management and administrative capability should be improved and administrative decentralization supported. Specifically, support should be provided in: strengthening the Judicial Council's administrative divisions and establishing administrative positions in all provinces; improving budget management; identifying the sources of delay in judicial decision-making; revising court procedures; training court personnel; installing information systems to enhance the efficient processing of cases; improving the judiciary's infrastructure; developing selection and disciplinary procedures for judges; and strengthening the Judicial Ethics Code. These reforms should improve transparency, promote independence, and ensure the accountability of judges; all of which are essential to ensure that the public has confidence in the judiciary.

[59] Initially, in its pilot phase, the program included 26 first instance courts in Quito, Guayaquil and Cuenca. As of this writing, 45 new first instance courts have been incorporated in the replication phase.

Legal Education

Law Schools

96. Education in Ecuador is in great need of reform, and legal education is no exception. While the student population continues to increase, the economic crisis has prevented any increase in resources available to academic institutions.

97. Legal education consists of five to six years of instruction at one of the seventeen law schools in Ecuador. The entrance requirements vary depending upon whether the school is public or private. Public universities have no entrance requirements, but private universities have their own entrance exams. As a result, one private university in Quito has about 600 law students while the Central University has over 6,000 students.[60] Irrespective of the school, generally all students work while enrolled in a university. Very few are full-time, except for one private university in Quito, where all students attend full time.

98. Each law school has its own graduation requirements and its own curriculum. The Association of Law Faculties, a national body comprised of sixteen law school deans, has been developing a uniform legal education plan with the support of the World Bank. In order to implement the plan, the Association is organizing working groups led by specialists to prepare new curricula and teaching methodologies. The Association is also preparing standard class materials to be used throughout the nation's universities. A constitutional law course is serving as the Association's pilot effort. Although the curriculum has been used by most private universities, it has not been in public universities.

99. Despite the new Law on Higher Education, which standardizes graduation requirements, implementation has been uneven and the education received from the different law schools has consequently also been uneven. There are two law degrees offered in Ecuador, *abogado* and *juris doctor*,[61] but not all schools offer both. An *abogado* degree requires between five and six years of education, and permits a graduate to practice law and to potentially serve as a Superior Court judge. According to the recently passed University Law, the degree of *juris doctor* requires at least an additional two years of study, advanced research and writing, and the completion of a doctoral thesis. The degree of *juris doctor* is required to serve as a Supreme Court judge. Graduates must register their degree with the Bar Association, which is the only requirement to begin practicing law. There is presently no examination requirement to enter the practice of law.

[60] While 1,400 students entered their first year at the University Central in 1993, it is expected that about 500-600 actually will finish on time. The remaining students either attend irregularly or eventually drop out.
[61] Ley Orgánica de la Función Jurisdiccional, Section II, Art. 146.

100. Law professors are generally full-time practicing lawyers and teach only part-time. Although public universities do have full-time professors, this designation refers to the number of classes taught per week and not to whether professors are full time faculty members. By contrast, private universities have increased the number of full time professors and simultaneously scaled back on the number of classes, allowing professors to devote more time to teaching and research. Part-time professors do offer the advantage to students of being taught by practicing lawyers. Because of the demands on their time, however, part-time professors are unable to give much attention to research and writing. Unfortunately, given the budget constraints of public universities, many professors view teaching as a *pro bono* service.

101. Law school facilities are also inadequate. For instance, the Central University is housed in a building constructed in 1953 for a small student body. The number of students has increased from 300 in 1970 to over 6,000 today, all of whom must be accommodated in the original building. There have been no efforts to renovate or expand the facilities. The library possesses only 10,000, mostly out-dated, texts, a woefully insufficient number to provide the resources needed for researching required graduate theses. The situation is similar in other public, as well as in some private universities. The Catholic University in Quito had the best law library in the 1980's, but it has not made any significant acquisitions in the intervening years.

102. Bar associations have recently expressed concern regarding the quality of legal education. Higher education reform has eliminated the need to obtain approval from the University Council in order to establish new private universities. As a result, some newly created universities subsequently awarded degrees that did not meet academic standards. Although some deans have promoted the implementation of an accreditation system, the idea has not been well received by the National Association of the Law Schools.

Continuing Legal Education

103. Continuing legal education for lawyers and judges does not exist. Since new judges come from private practice, often with limited experience, it is essential that there be some form of continuing legal training. Lawyers would also benefit as it is difficult to stay abreast of changes in the law.

104. As mentioned earlier, there is currently no judicial school in Ecuador. The Central University began a limited program to offer some coursework, but has done so without any formal mandate or collaboration with the judiciary. ProJusticia, the coordinating body for legal and judicial reform, has prepared a training plan and the Judicial Council created a small technical unit to implement a training program. This technical unit should be strengthened and a judicial school should be established to train judges and help them identify weaknesses in the judicial system and to define possible solutions. Assisting judges to focus on structural weaknesses will provide an important source of information to improve internal administrative capacities.

105. Although there is no formal continuing legal education in Ecuador, the bar association does hold occasional seminars. The courses are not regularly available and attendance is not mandatory. Seminars should be organized to update lawyers about changes in the law and in their specific practice areas.

106. Procedural changes and the use of adversarial trials will require a substantial training program for lawyers and judges. Although criminal procedure reforms have come into effect, there have not been extensive training programs for lawyers on the implications of the new law. Private organizations partially funded by USAID have been the only source of training on criminal procedure reform.

Recommendations

107. Appropriate legal education is an essential component of maintaining the profession's reputation and ensuring an adequate supply of competent lawyers and judges. It is essential that legal education be improved. Accordingly, law school curricula and admissions and graduation requirements should continue to be reviewed, graduate programs in law should be established, and law libraries in both law schools and the courts should be improved. Continuing legal education should be established for both lawyers and judges and the judicial counsel's efforts to establish a permanent judicial training program should be supported.

Bar Associations

Organization

108. Each of Ecuador's twenty-two provinces has its own bar association. There is also a Federation of Bar Association Presidents. The primary role of the bar associations is to maintain a list of lawyers who have officially graduated from law school and to discipline those who have violated ethical standards.[62] There are 19,716 lawyers registered in Quito, Guayaquil, and Cuenca. It is required that all new law graduates register with a bar association, membership in which requires the payment of annual dues.[63] Registration is premised on the completion of a university degree. Many of the lawyers in the registry are not practicing attorneys.

109. Overall, bar associations have acted more as labor unions that defend the immediate needs of its members rather than focus on ways to improve the legal system and the legal profession. In recent years, the bar associations have generally opposed changes on a broad array of issues, including criminal procedure reform, the use of judicial fees, and the implementation of pilot courts as a tool to improve efficiency, effectiveness and transparency. The bars' recalcitrance was not shared by more influential and prestigious lawyers and, as a result, the proposed changes have nonetheless been implemented. The bars' reluctance to endorse reform has prompted lawyers from prominent law firms to run for staff positions in recent bar elections, motivated by a desire to articulate more balanced and positive views. It is vital, in this regard, to have an active bar association which supports the judicial system's independence.

Disciplinary System for Lawyers

110. Each bar association has its own disciplinary system which is overseen by a Tribunal of Honor (*Tribunal de Honor)*. Three Tribunal members are elected by each bar. Each member must have at least ten years of experience and may not be currently serving in the judiciary. Unfortunately, the ethical standards used to review complaints are inadequate, undermining the function of the Tribunal. Additionally, the decisions of local Tribunals may be appealed to the Federation of Bar Association Presidents. Since the Association meets only once a year, it is often unable to resolve all appeals and, as a result, many decisions remain suspended or are not enforced.

111. The Tribunal of Honor applies the ethical standards of the Law of the National Federation of Lawyers. Unfortunately, the law does not provide effective guidance to lawyers with respect to their professional conduct.[64] For instance, Article 32 states that a lawyer must contribute to the overall legal profession through conduct that is in accordance with the rules of professional ethics. There is, however, no detail as to what constitutes appropriate

[62] The ethical standards to be observed by lawyers are contained in the Ley de Federación de Abogados, Capítulo II, Art. 23.
[63] However, in Quito only 730 lawyers pay their annual dues every year.
[64] Ley de Federación de Abogados, Capítulo II, Art. 23.

conduct. Some specific standards are included in Article 28, though there are no accompanying criteria. The Tribunal of Honor may sanction a lawyer under Article 28 for faults committed in the handling of matters entrusted to the lawyer, negligence in carrying out the obligations of a lawyer in judicial proceedings, disregarding the laws that apply to a lawyer, illegal practice of law, violation of the attorney-client privilege, defaming a lawyer affiliated with the bar association, or violating any norm of the bar's ethical code.

112. Under Article 25, if the Tribunal finds a lawyer to have violated any section of the ethical code, it may take the following actions: issue a written warning; impose a fine commensurate with the violations' severity; issue a reprimand for unprofessional conduct; temporarily suspend the privileges and rights associated with bar membership; and suspend the attorney from practice for three months. These sanctions do not adequately deter unethical behavior nor can they be used to adequately enforce the ethical code. Some highly regarded lawyers have served on the Tribunal and have assisted in reforming its internal regulations to make the system more efficient. As a result, the sanctions imposed by the Tribunal during this period are more serious than those applied during the last decade.

113. The Organic Law also includes general prohibitions for lawyers under Title III, Section II, Article 151, which states that a lawyer: must not reveal information discussed in the context of the attorney-client relationship, including documents; must not withdraw from representing a client without a just reason; must provide zealous representation on behalf of the client; must not defend an opposing party of a current client after finishing representation of the current client; must not authorize pleadings made by another person; must not act as counsel for a case in which the lawyer will serve as the judge; and must not intervene in proceedings in such a manner as to trigger judges to recuse themselves.

114. Suspension from legal practice for a period that exceeds three months can only be imposed by the Supreme Court. The regulation was established by the Court and has been in force since 1987, but its application has been limited. Stronger sanctions as well as clearer definitions of what constitutes unethical behavior are needed. Defining acceptable conduct and enforcing an ethics code is an important means of establishing confidence and trust in the legal and judicial system.

Recommendations

115. Support is needed to improve the role of the bar association, in particular with respect to continuing legal education programs for lawyers. Support should also be provided to establish public defense programs for the indigent and programs to encourage public education. An active bar association is important to ensure that adequate legal services are provided by independent lawyers. The bar should review admission requirements, standards of professional conduct, and disciplinary procedures. The legal profession should remain largely self-governing under court supervision given that self-regulation helps to preserve the legal profession's independence and is an important force in strengthening the rule of law and challenging abuse of authority.

Access to Justice

Overview

116. The courts must be accessible to those with a legitimate need. Accessibility is determined by the time and money required to utilize a justice system, as well as the transparency of the procedures which guide its operation.

117. The first statistic to consider when reviewing access to justice is the decrease in the number of lawsuits presented to the judicial system. Since 1999 the number of civil lawsuits presented in Ecuador has decreased consistently. One would expect that this decrease would permit greater efficiency and promote greater access.

118. However, frustration with the judiciary's inefficiency, coupled with a perception that corrupt practices adversely affect the outcome of lawsuits, has encouraged litigants to rely upon negotiation and settlement as the primary means to resolve disputes. There is a tendency to avoid litigation, even if that means renouncing certain rights or accepting a disadvantageous settlement. The poor seldom use the judicial system, except in limited numbers, to solve family issues.

Figure 16
Annual Number of Civil Cases Registered[65]

1998	1999	2000	2001
139,354	125,057	106,659	92,427

119. The private sector's low confidence in the judiciary should be considered to be a serious obstacle to access. However, the lack of confidence should not be taken as the sole reason for the recent decrease in civil cases registered, which may also result from economic conditions.

120. A system regulating court fees was established in order to eliminate illegal "fees" levied on unsuspecting individuals and to minimize the requirement of payment for judicial services. Following the Judicial Council's establishment of court fees, the number of cases has decreased. Compounding the cost of litigation is the requirement that parties be represented by lawyers. The law does not permit *pro se* representation regardless of whether a party is able to afford an attorney. This effectively denies access based on economic status. Accessibility also implies that people must have physical access to the courts so courthouses should accommodate the disabled. Additionally, translators should be provided for those who do not speak Spanish, the official language of court proceedings, which is often a significant issue for the indigenous population. Despite many of these concerns, citizens, the private sector, as well as many organizations representing various

[65] Farith Simon et al., Uso de la Justicia, supra note 30.

social causes, have often found the judicial system to be a channel through which their conflicts can be resolved. The majority of complaints in the civil courts arise out of "patrimonial" issues or those in which all assets and liabilities are capable of being evaluated. Nonetheless, the number of family related cases is also significant:[66]

Figure 17 Civil Cases by Subject Matter Quito 1998[67]			
Subject matter		**Percentage**	
"Patrimonial"	Debts	28.3	**46.3**
	Contracts	8.5	
	Real Estate	6.5	
	Inheritance	3.3	
Family		32.8	
Constitutional rights		1.8	
Others		19.1	

Legal Aid

121. One way to provide better access to justice is through a system of legal aid. Presently, there is no systematic provision for legal aid in Ecuador. Current efforts are limited to law faculties sponsoring groups of students to provide defense counsel for those persons accused of a crime and being held in prison. However, since these volunteers are students with little or no practical experience, the representation that is provided is far from adequate. Nonetheless, while law schools cannot, and should not, be major providers of services to low income clients, they could provide clinical programs for training and experience in poverty law issues. Research centers could also be developed in schools to contribute to policy discussions on improving the delivery of legal services to the poor. Through the *"Law and Justice Fund"* financed by the World Bank, twelve legal aid centers for the economically disadvantaged were developed in the cities of Ambato, Cuenca, and Guayaquil. These centers have handled more than 15,000 cases. In addition, as legal awareness is crucial to produce impetus for reform, these centers promote legal awareness through workshops organized in conjunction with law schools and NGOs.

122. There are a few other groups that provide free legal services to the public and have organized themselves into the Justice Network (*Red de Justicia*). The network is composed of human rights organizations, NGOs, social service groups linked to the Catholic Church, and private institutions, including law firms. The absence of a national public defender's program has shifted responsibility for indigent representation to private organizations which handle cases on a *pro bono* basis, devoting only limited resources. NGOs financed through the World Bank provide legal aid and counseling for poor women in five cities, assist families of prisoners in Quito, and provide training and legal support to families in the cities of Tungurahua, Esmeraldas, Chimborazo and Manabi.

[66] Id.
[67] Id.

123. Given that under the law legal representation is required in order to use the judicial system, there must be alternatives provided for the poor. Extreme disparities in income frequently ensure that those seeking to resolve their problems inside the courts find that wealth and power, not justice, decide their case.

Public Defenders

124. Article 24 (10) of the Constitution provides that public defenders should be available to defendants who lack the economic resources to hire an attorney. The new Criminal Procedure Code also establishes a National Public Defense system[68] whose organization and activities will be articulated in a law which has yet to be promulgated.

125. Currently, there is no public defense system. Those appointed to be legal defenders are given broader tasks than those stated in the penal procedure legislation because they intervene in all cases providing legal assistance to indigent clients. These lawyers are expected to provide free legal services to indigents in criminal, civil, family, commercial, labor, traffic, and landlord/tenant cases. Currently, there are only thirty-four public defenders in Ecuador. There are four public defenders in both Quito and Guayaquil, where there are approximately one and a half million and two million people, respectively. As a result, the already small number of public defenders is further burdened with an enormous caseload. Even if defendants were aware of their rights to a public defender, one may not be available. There is a long waiting list for those requesting the assistance of a public defender. This situation creates great hardship on those who cannot afford an attorney and yet are unable to secure legal representation. See Annex V for the number of public defenders by province.

126. In addition to increasing the number of public defenders, there is a need for regulations to provide guidance as to what cases the public defenders should handle. The public defenders in Quito report that they spend approximately 80 percent of their time on criminal matters, not including drug cases, of which there are too many to handle. Although it would be ideal to have public defenders for all types of cases, this may be unrealistic. It is essential to have public defenders for criminal cases, but it may be necessary to review whether public defenders should take other cases as well. If a legal aid service were established, this could help alleviate the non-criminal caseload of public defenders. There is also a need to establish economic criteria to determine whether a defendant is entitled to a public defender.

127. Although ProJusticia has prepared a draft law to regulate the public defender system, it has not been presented to Congress.[69] Given that all new laws require strategies for possible financing, the draft remains the subject of further study and preparation.

[68] Articles 74 – 78.
[69] The Inter-American Development Bank has provided grant funding for this activity.

Court Costs

128. The Constitution recognizes the possibility of establishing a fee schedule for judicial services, particularly in civil and commercial cases. The Judicial Council is responsible for developing the schedule, based on a November 2001 framework set out by Congress. The current fee schedule is the result of this new legal framework. The system, though, has not fully achieved the objectives for which it was created. First, its application is limited because the Constitution states that fees should not be applied to certain subject areas, such as labor cases. Second, certain fees apply to procedural acts, such as the filing of a complaint or participation in proceedings that take place outside the courtroom setting. However, if a party wins the case, it is not possible to receive reimbursement for expenditures on the associated fees. Lastly, according to a number of bar associations, fees are excessive given the country's economic situation. Judicial fees have been an important factor in the decrease of the number of lawsuits filed, especially in civil cases.

Recommendations

129. It is essential that Ecuador develop legal services that make the justice system as accessible as the Constitution requires. Accordingly, the mandate of public defenders should be revised and their numbers increased. In addition, legal aid programs should be established nationwide. Official court fees and the waiver system should also be reviewed with the participation of the private sector to assist in sustainability, as sustainability has been found to be one of the most challenging issues related to legal aid.

Alternative Dispute Resolution (ADR) Mechanisms and Small Claims Courts

Overview

130. In an effort to ease the workload of courts and provide the public with a more rapid form of dispute resolution, a Conciliation and Arbitration Law was drafted. In addition, Justices of the Peace were created and the leaders of indigenous communities were given the legal right to solve internal conflicts.

131. Alternative dispute resolution mechanisms (ADR) are available on a limited basis inside and outside of the Ecuadorian judicial system. Where it is available, clients appear to be satisfied with the results. ADR methods should be expanded and introduced more extensively into the system since ADR mechanisms can provide prompt and fair dispute resolution, and assist in promoting an effective and efficient judiciary.

Use of ADR outside the Court System

132. The Constitution acknowledges the use of alternative dispute resolution, which led to the promulgation of the Arbitration and Mediation Law.[70] This law eliminated restrictions in previous legislation and allowed alternative means for dispute resolution to be agreed upon at any time by the parties, including prior to the emergence of conflict. Additionally, this law regulates the establishment of arbitration and mediation centers and procedures that apply in arbitration. Prior to the law's promulgation, legislation required that the agreements between parties state the nature of the issue in controversy. The new law specifies that when this clause is found in a contract, the courts should not hear the case unless it has first been heard by an arbitration tribunal. The conflicts arising from competing jurisdiction between the courts and arbitration tribunals have lessened, due in large part to Supreme Court decisions which have endorsed the law and transferred cases to the arbitration tribunal for a first hearing.

133. Arbitration decisions are enforced by the court system. Even where the parties have made the effort to resolve their disputes outside the judicial system, they may still be forced into the court system for enforcement. Falling back on the court system can cause great delay in the enforcement process and defeat the original purpose of using arbitration.

134. The law makes provision for the establishment of private conciliation and arbitration centers. There are thirty conciliation centers nationwide. The conciliation and arbitration centers of the Chambers of Commerce in Quito and Guayaquil have increased their services, and are available to parties outside the business sector. The Chamber of Construction in Quito has a very active center that specializes in conflicts between builders and their clients or suppliers, and is extremely useful when the issue in controversy is of a technical nature. The Solicitor General has also established a mediation center for conflicts that involve public sector institutions. The center operates with external mediators who

[70] Registro Oficial 145, 09-04-97.

receive an honorarium for each of the cases they handle. The center is largely self-supporting through fees paid by participating parties. To date, agreement has been reached in 68 percent of the cases, with conflicts customarily resolved within four sessions.

135. The Catholic Universities of Quito and Guayaquil have established centers to handle mediation cases for low-income individuals. In Guayaquil, the center has resolved 839 agreements out of a total of 1694 cases handled. Under technical supervision of the Center for Law and Society (CIDES), Guayaquil has established a community mediation center in one of the poor neighborhoods. The center generally handles conflicts between neighbors and amongst family members. CIDES has also fostered community mediation (*organizaciones populares)* to help grassroots organizations develop the means to resolve conflict. Mediation has also efficiently been used by indigenous communities.

Use of ADR in the Court System

136. At any stage of a legal proceeding, parties can meet to amicably resolve their differences through a direct agreement. The judiciary has organized a court-annexed mediation system for this purpose. The mediators have been trained, and the program encourages, judges, if the parties involved agree, to transfer cases that are suitable for resolution through mediation. Cases may be referred to mediation by judges, attorneys and the parties themselves. Possible outcomes include: a full agreement, a partial agreement, no agreement, or an agreement for which an outcome cannot be recorded. In its pilot stage, the program has established offices in Quito, Guayaquil, Cuenca, and Loja and is working with judges to promote the mediation process. Mediators from the centers have received 100 hours of formal training, which exceeds comparable training in the United States by sixty hours. In Quito, the mediation center holds four to five mediation sessions per day, with case claims ranging from small amounts to over USD $300,000. The mediation centers now receive approximately fifty or sixty cases per month. The number of cases referred in which all the parties agree to mediate has increased to over 70 percent. In Quito, in 35 percent of the cases where mediation has been used, a mutually agreed upon solution has been reached. Although this is a voluntary court annexed system, it has demonstrated that once the system is fully operational it can make significant contributions to alleviating case backlog.

137. The application of alternative dispute resolution (ADR) in private centers and as an annex to the court system still has two great limitations. First, there are still some attorneys who do not fully understand nor trust the mediation process. They lack an understanding of the advantages associated with ADR and its techniques. Second, there are legal limitations on the subjects that may be addressed by mediation or arbitration. The law limits the use of mediation and/or arbitration to controversies involving rights that can be renounced, and therefore excludes contractual disputes between governmental bodies, some family cases, and criminal cases. In criminal cases, the new Code of Criminal Procedures has introduced the possibility of resolving minor property crimes involving sentences of less than five years and other minor infractions through mutual agreement.

Justices of the Peace and Indigenous Justice

138. The constitutional reforms of 1998 included the establishment of a Justice of the Peace whose jurisdiction consists of resolving individual, community or neighborhood conflicts. The legal norms that establish these powers, the selection process for justices of the peace, and the way to handle their integration in the justice sector have not yet been addressed.

139. The 1998 constitutional reforms also recognized the role of indigenous communities in exercising a judicial function. Article 191 makes reference to the "traditional norms and procedures applicable for the solution of internal conflicts, in conformity with their customs or customary law, if they are not contrary to the Constitution and the law". This principle has not yet been developed in subsequent legislation, but there is a draft law prepared by organizations working with the indigenous community. Additional work on the draft has been delayed for two reasons. First, the Constitution limits the use of customary law to internal conflict, while the draft law widens its scope to include application to acts stemming from community life. As a result, a non-indigenous person could be subject to the jurisdiction of the indigenous authorities and customary law norms. Second, indigenous sanctions, usually physical punishment, do not conform to international human rights standards. The *Law and Justice Fund* financed training in the application of customary law in indigenous communities and promoted the use of traditional dispute resolution mechanisms in Imbabura, Chimborazo, Tungurahua, and Napo, the four provinces with highest populations of indigenous peoples, with non-violent sanctions.

Recommendations

140. Mediation centers should continue to be promoted, additional mediators and arbiters should be trained, and consideration should be given to whether ADR should be made mandatory for certain cases regulated by the Civil Procedure Code. The court-annexed mediation centers should be expanded nationwide and provided with adequate funds to ensure their institutionalization. Additionally, an ADR network should be created to ensure that indicators and key data are systematically collected and lessons learned are generated. ADR should be developed in such a way as to provide parties a speedy, informal, and confidential way to settle disputes. The establishment of small claims courts should be considered as a venue to improve access to justice for those people involved in disputes with modest amounts at stake, as well as a tool to reduce caseloads in other courts. Most importantly, efforts should be taken to strengthen the culture of mediation by incorporating programs in schools, universities and colleges that report on the current successes of mediation in Ecuador and work to develop a cadre of mediation supporters.

Civil Society

141. Ecuadorian Civil Society organizations have played an important role promoting legal and judicial reform. The creation of a linkage between the administration of justice, the democratic system, improved levels of investment, and economic development on the public agenda is largely the result of the work of civil society groups. For example, the Chambers of Commerce and Industry have a network of arbitration tribunals and mediation centers in Ecuador, and have established programs to train attorneys in the areas of negotiation and conflict management resolution. Women's organizations,[71] human rights groups, [72] and youth groups, [73] have also established legal services and oversee the work of the minor's tribunals.

142. Civil Society organizations that specialize in the design and implementation of legal and judicial reform programs are another group that facilitates administration of justice reform.[74] These organizations have been the source of the most significant efforts to provide the initial demand for reform, as well as providing some of the best proposals for constitutional and legal reform. In addition, they have recently formed the Coalition for Justice (*Coalición por la Justicia*) to seek a common agenda for improving the quality of the administration of justice and strengthening the independence of the judiciary.[75]

Recommendations

147. Citizen participation through civil society organizations is a useful mechanism to contribute to legal and judicial reform. Mechanisms to provide timely information to the public related to judicial nominations, and the opportunity to receive information and opinions from the public for consideration during an appointment process, should be established. Additionally, information concerning both judicial performance and salaries should be publicly available. In order to generate interest within civil society regarding the objectives of justice sector reform, to promote consensus on central issues, and to facilitate citizen participation, civic education programs should be initiated to promote values related to the rule of law and understanding of the legal system to resolve conflicts and protect rights.

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[73] DNI, INFA.

[74] CLD, CIDES, PROIURIS.

[75] These activities have been supported by two funds that promote civil society initiatives to modernize the sector: the Justice and Society Fund (*Justicia y Sociedad*), established through an agreement between USAID and the Fundación Esquel, which is modeled after ProJusticia's Law and Justice Fund (*Fondo Derecho y Justicia*) under the Judicial Reform Project financed by the World Bank.

Corruption

143. Recent surveys indicate that the judiciary is one of Ecuador's most discredited institutions. Enterprises (81%), as well as households (66%), perceive the judiciary to be dependent on economic pressures; and almost 65 percent, in both cases, considered that the judicial system does not deserve any trust.[76] Nonetheless, this perception as explained by a recent study[77] has more to do with the frequency of impunity than with concrete cases of corruption.

144. According to this study, there is greater trust in the police (44%) and lower level courts (33%) than in the Supreme Court (29%). Even when the same survey explores real corruption cases, it records the police in first place with 43 percent followed by the health services and the Executive Branch employees. Lower courts, with 27 percent are in the middle of the scale, and the Supreme Court is not even considered given that none of the individuals surveyed had ever been party to a Supreme Court case. According to this study, the lack of institutional trust in the Supreme Court registered by the public opinion has more to do with its perceived inability to restrain corruption.

145. Nonetheless, corruption within the judiciary, according to existent data, should raise concerns. Between one-third and one-half of enterprises that used the judiciary received an indication that they should make extra payments to court officials in order to obtain a favorable decision,[78] and almost 60 percent of individuals using the system in lower courts, have personal knowledge of judicial corruption acts. Surveyed civil trial attorneys in Quito are aware that corruption is one of the greatest problems affecting the Judicial Branch, but with lower incidence (17.08%) than inefficiency (23.61%) and lack of professional training of judges (21.60%).[79]

146. Judicial corruption is difficult to uncover. Unfortunately, patterns of behavior in the Ecuadorian judiciary continue to create an environment favorable for corruption. Decisions take into consideration information that only the parties and the judge know in detail. Given that there is no systematic performance monitoring of judges, few trustworthy statistics, and only occasional review of rulings and opinions by law professionals, the identification of judicial misconduct is hindered. A similar situation is seen in the Public Ministry, which prosecutes criminal cases. The Judicial Branch requires a Public Ministry willing and able to punish corruption cases successfully. Unfortunately, the Public Ministry also lacks a performance monitoring system and an internal policy geared to prevent acts of corruption. When combined, all of these factors contribute to the weak performance of the judicial sector's mechanisms to combat corruption.

147. The Constitution provides for various control and oversight bodies, and explicitly assigns to them the task of combating corruption. The General Comptrollers Office oversees the

[76] The World Bank Institute, Governance & Anticorruption, supra note 2.
[77] Seligson, et al, Auditoría de la Democracia, p.124.
[78] The World Bank Institute, Governance & Anticorruption, supra note 2. Since such indications have to be given by their own lawyers, this data should be regarded as one that is also showing a perception.
[79] Farith Simon et al., Uso de la Justicia, supra note 30.

proper collection and use of public funds. The Public Ministry investigates and prosecutes corruption practices, and coordinates initiatives and programs to fight corruption. In addition to these institutions, the 1998 constitutional reforms established the Civic Commission for the Control of Corruption (*Comisión de Control Cívico de la Corrupción*). The Commission is comprised of representatives chosen from a list of candidates presented by professional and labor organizations, and its mandate is to investigate corruption and inform the Pubic Ministry of its findings.

148. Unfortunately, these two bodies have not coordinated their work. To the contrary, they have engaged in regular public confrontations. The limited technical capacity of the Anticorruption Commission has meant that its work consists primarily of publicizing allegations. For its part, the Public Ministry complains that the Commission sends its formal petitions only after public disclosure and without having carried out the necessary investigation. Even with this limitation, the Commission has helped clarify certain judicial corruption cases.

149. Ecuador signed the Inter-American Convention against Corruption in 1996 and ratified it in May 1997. Nonetheless, national legislation has not been modified in accordance with the Convention's terms. Standards of conduct for public functions clearly identifying situations where conflicts of interests can arise have not been prepared, and there are no safeguards in place for those who, in good faith, report acts of corruption.

150. The National Judicial Council has a Complaints Commission whose structure and management are being reformed.[80] The justice sector has not defined an anti-corruption policy. There is no prevention plan or means to conduct an efficient investigation. Neither the Judicial Branch nor the Public Ministry has any internal monitoring system that would identify corruption cases. If facts are discovered, the problem is dealt with on a case by case basis.

151. Corruption cannot be fought focusing solely on judges and court staff. Lawyers' behavior also plays an important role in any transparent and effective legal and judicial scheme. The absence of a code of professional ethics for lawyers combined with an irregular and unpredictable sanctioning system merits some of the blame. The present sanctioning system is handled by the local bar associations and focuses mainly on such issues such as unfair competition among attorneys, lack of solidarity and courteous relations between attorneys.

152. Judicial independence is an element of utmost importance in order to achieve a fair and impartial justice. No reform program can succeed unless it can ensure that decisions correspond to the merits of the case based on the evidence presented and relevant laws, and not on political influence.[81] The political class has an obvious interest in the administration of justice. This is not solely a bureaucratic interest in terms of finding employment slots for political supporters, but also a practical interest that includes the use of the judicial process as an instrument that has been recently called "*judicialización*" of politics. This

[80] A project implemented by the Andean Commission of Jurists (*Comisión Andina de Juristas*) and funded by USAID.
[81] The World Bank, Initiatives in Legal and Judicial Reform, Legal Vice Presidency, 2002.

term is used when the system prosecutes someone or avoids prosecuting someone as a tool to achieve certain political benefits. For this reason, the criminal justice system has been highlighted as the environment where political influence is mostly exerted. This influence is exerted in a selective manner, in cases where the parties, the subject matter, and the public or political consequences of the case are highly visible.

Recommendations

153. To address both the perception as well as the challenge associated with combating corruption, codes of ethical conduct for judges and attorneys should be developed and an anti-corruption plan geared towards preventing and eliminating opportunities for corruption should be designed and implemented. The anti-corruption plan should include improved disciplinary systems and sanctions for ethical misconduct involving judges and attorneys. Lastly, the system should establish a program to protect witnesses and offer legal benefits to those who assist the legal system identify acts of corruption.

Legal Reforms

Civil Procedure Reform

154. The Civil Procedure Code is archaic and in need of review and revision. Moreover, there is a constitutional provision stating that the oral system should be adopted for disputes in all subject areas starting in August 2002. This date marks the conclusion of a four-year period during which legal reform and infrastructure adjustment should have been carried out to support the oral system. Unfortunately, the legal reforms have not yet been promulgated.

155. A Supreme Court Commission is preparing a new Civil Procedure Code that will comply with the constitutional provision for the introduction of an oral system, while at the same time simplifying applicable procedures and strengthening the ability of a judge to maintain overall control of the case. To achieve this level of control, the court must have the internal capacity to maintain good records and communicate clearly with the lawyers involved. Judges must also be willing to play an active role.

Criminal Procedure Reform

156. The Criminal Procedure Code was promulgated in January 2000, and was followed by an eighteen-month period during which time necessary legal measures were to be adopted. The Code took effect in July 2001. On the whole, the legal adoption process has been problematic. Measures were adopted late, prosecutors received inadequate training, appellate level judges received no training, and lawyers, it seems, did not review the contents of the new code until after it came into effect. In addition, the offices, courtrooms and recording equipment necessary for judges and prosecutors to carry out their roles do not exist in the majority of the buildings.

157. The new Criminal Procedure Code includes substantial innovations, including the use of oral proceedings during each trial stage, granting the Public Ministry accusatory and investigative powers, the revision of criminal procedures, and the requirement that judges, rather than administrative officials dependent on the executive branch, adjudicate misdemeanors. The new system separates activities related to a criminal investigation, which now rest with the Public Ministry, and those activities which are judicial in nature. The litigation phase will take place before three judges.

Organic Law of the Judiciary

158. The Organic Law of the Judicial Branch has been superceded and rendered obsolete by constitutional and legal changes. A Supreme Court Commission has been working for three years preparing different versions of a new draft organic law governing the judicial branch. The slow pace reflects the struggle to incorporate interests of legislators, judicial employees, and bar associations. The Supreme Court Commission and a Legislative Commission hold periodic working sessions to reconcile the varying drafts on the

remaining controversial issues which include the organization of the judicial career and the Judicial Council's sanctions authority. Nevertheless, this law reform offers a unique opportunity to solve some of the persistent problems that have plagued the judiciary for years, particularly those related to regulations that facilitate transparency during the selection and appointment of Supreme Court judges; an age limit for judges; the disciplinary system for lawyers; and standards regulating the practice of law.

Gender Issues

159. The constitutional principle of equality was extended to women in 1929, but legislation and cultural patterns maintained discriminatory practices. Reforms introduced to the Civil Code in 1971 and 1992, established equal rights between spouses, and eliminated the legal inequalities of married women. Reforms to labor laws increased the period of maternity leave from eight to twelve weeks, and reinforced the inability to terminate a pregnant woman's labor contract. These reforms also required that companies with more than thirty-five female workers to establish a day care center.

160. A law against domestic violence was approved in 1995.[82] This law aims to establish the principle of equality and to protect the physical, mental and sexual freedom of women and their family members by preventing and punishing such violence. The law creates special facilities staffed by women and dedicated exclusively to deal with intra familial violence. These facilities, the *Comisarías de la Mujer,* are authorized to receive complaints and order that safety measures be taken in cases involving physical, psychological or sexual violence. These measures could include removing an abusive spouse from the home, restricting access to the home, awarding custody of children, or ordering a home search. Although the *Comisarías* offer an important service for women, studies have noted that they have limited staff and because of their limited jurisdiction, many women who suffer from violence are turned away.[83]

161. Other reforms include that in 1999, sexual harassment was made a crime, and the electoral law reforms established a quota whereby women must represent 30 percent of all the candidate lists. This percentage must be increased by 5 percent each electoral period until women have the same amount of representatives as their male counterparts. Nevertheless, there are still some outdated laws. For example, women who are victims of certain sexual offenses are still required to be "honest" in order for such offenses to be considered a crime.

162. Under the labor law, women are prohibited from certain jobs considered dangerous for women and minors. However, the law forbids unequal salaries for men and women. Nevertheless, government authorities recognize that, in practice, women receive lower salaries than males who perform the same jobs.

163. According to the Inter-American Commission on Human Rights, women and children carry a disproportionate burden of the effects of poverty. While the rate of illiteracy is lower

[82] Ley 839 contra la Violencia a la Mujer y a la Familia.

[83] Marcela Rodríguez, Empowering Women: An Assessment of Legal Aid Under Ecuador's Judicial Reform Project, The World Bank, Washington DC, 2000, (Hereinafter "Empowering Women"), p. 7.

among women, they account for 53.3 percent of the university student body in Ecuador, the rate decreases for graduates and in the job market. The number of women employed as judges has increased in recent years, but remains very low. Few women serve as appellate court judges, and currently there are no women judges on the Supreme Court.

164. Although the laws are not discriminatory, discriminatory practices occur in their application. Potentially discriminatory application of the law arises in the area of divorce, where the law stipulates that a spouse may seek a divorce for grave injury caused by one's spouse. Judges do not always accept domestic violence as sufficient evidence of a grave injury. Fear of a spouse's physical strength is not considered by the court. In order for a woman to obtain a divorce in such a case, she must find an "acceptable" reason, which may encourage women to rely on false witnesses or other deceptive practices to meet the evidentiary standard for grave injury demanded by the court. Lastly, there is no legal provision for spousal support following divorce. Although a woman may receive a part of the marital property, she has no right to monthly support. Additionally, although children of divorced parents have a right to financial support, judges have discretion to determine the amount to be paid by the non-custodial parent. As a result, judges often award an amount that is inappropriate for the needs of children.[84] Given that women are granted custody of children in the majority of cases, this creates an inequitable hardship for women.

Recommendations

169. Ecuador's legal framework should be reviewed, revised and updated in order to fully incorporate oral procedures into both civil and criminal law proceedings. As this process continues, training should be provided to ensure that new processes and procedures are fully understood by all legal and judicial sector actors, and sufficient resources provided to ensure that the procedures can be implemented effectively. The Organic Law of the Judicial Branch should also be completed. As Ecuador's legal framework develops further and the implementation of the constitutional principle of gender equality strengthens, a greater emphasis should be placed on protecting the rights of women. Training programs for judges should include a gender focus in order to encourage the non-discriminatory application of the legal framework. Additionally, in coordination with specialized civil society organizations, legal assistance programs for women should be supplemented with adequate resources to protect and enforce the rights and responsibilities of women.

[84] According to a recent study, the median amount for actual transfer of child support is 12.50 dollars per month per child. However, child support awards and actual transfers are more frequent and probably higher among women who have received legal aid. Maria Dakolias, Bruce Owen et al., Impact of Legal Aid: Ecuador, The World Bank, February, 2003, p. 30, 38.

Conclusion

169. The legal and judicial reform process has already begun and, most importantly, it has been initiated and driven by Ecuador. Despite the progress to date, continued efforts are necessary. Several steps would greatly support Ecuador's efforts to reform its legal and judicial sector. First, measures to eliminate opportunities for corruption as well as prosecution of corrupt behavior are needed. The standards for professional responsibility and conduct for judges and lawyers should be improved, with a particular focus on judicial ethics code and the accompanying disciplinary system. The procedures for the selection of judges should be reviewed. Procedures that do not sacrifice judicial independence are needed to improve the accountability of Supreme Court judges and Judicial Council members. In addition, disciplinary procedures for lawyers should be improved. Second, an evaluation system for the assessment of judicial performance is needed. Professional training for judges should be provided, as well as continuing legal education for judges and lawyers. Third, the legal system should be made more accessible to the public. Components should include restructuring the public defenders system, supporting programs for legal aid, and reviewing court fees. In addition, the establishment of court annexed mediation centers should be expanded to permit greater use of alternative dispute resolution methods. Fourth, the capacity of the courts must be improved through the expansion of the case management system, including case administration and information support programs now completed in a pilot stage, and strengthening the National Judicial Council's administrative capacity. Fifth, reforms to the organic law and civil procedure laws are necessary to respond to the new constitutional structure, including preparation for oral proceedings in civil trials. Finally, the independence of the Judiciary, the Constitutional Court, and the Public Ministry should be supported.

Annex I: Main Goals

Objective	Goal	Actions
Strengthen judicial independence	Ensure transparency and promote civil society participation during the Supreme Court selection process, as well as in all judicial appointments.	Prepare and promulgate the new Organic Law of the Judiciary with provisions to fulfill desired objectives.
	Ensure that appointment mechanisms established follow the constitutional requirements regarding a diverse body of judges culled from either the best of the judiciary, or academia, or the legal profession.	
	Establish a mandatory retirement age for judges.	
	Strengthen merit based appointments by filling vacancies as they arise in order to avoid simultaneous multiple selection and appointment processes in the Supreme Court, Superior Courts, and the National Judicial Council.	
	Adopt procedures which do not threaten judicial independence but which support accountability standards for Supreme Court Justices and members of the Judicial Council.	
	Extend the same selection process and requirements to judges in the Constitutional Court and to the Attorney General.	Introduce the necessary reforms to extend the same selection process and requirements to judges in the Constitutional Court and to the Attorney General.
Improve professional quality within the judiciary.	Establish a permanent training program to ensure that the performance of judicial functions is entrusted only to those who have satisfied the requirements of professional training. Participation should be considered for promotions within the judiciary.	Adopt regulations for the judicial career which require professional training, continuing education, performance assessment, and provide appropriate incentives and disciplinary sanctions.

Objective	Goal	Actions
	Establish a performance evaluation system based on an integrated assessment.	Adopt administrative adjustments and measures to implement the judicial training system as well as the evaluation system.
Fight corruption	Develop adequate tools to address corrupt behavior.	Introduce the reforms necessary to bring national legislation into conformity with the requirements of the Inter-American Convention against Corruption.
		Establish codes of conduct and codes of ethics for lawyers in professional practice and for judicial staff.
	Design and implement an anti- corruption plan for the justice sector, not only to enforce sanctions, but also to eliminate opportunities for corrupt behavior.	Improve disciplinary systems and standards for responsibility in professional practice.
		Establish guidelines and legal protection for those who collaborate with the justice system to uncover corruption
Improve professionalism and strengthen the Public Ministry	Select and train prosecutors following the same criteria for judges.	Establish regulations consistent with the Organic Law of the Public Ministry. Adopt administrative regulations and measures to implement a training system as well as the evaluation system.
	Adopt a system to evaluate the performance of prosecutors.	
	Adopt a system of case management.	Design a new management system and re-model infrastructure.
		Provide personnel, equipment, and technical training so the Public Ministry can implement the responsibilities given by procedural reforms.
Improve the quality of legal education	Improve the legal education system	Modernize legal education through the widespread use of educational programs and methods to develop professional abilities and skills.

Objective	Goal	Actions
	Establish mandatory periodic professional training as well as programs urgently needed to train lawyers in oral litigation techniques	Establish uniform standards for law school degrees and introduce an accreditation system for law schools that grant legal degrees.
Extend oral proceedings as stated in the Constitution	Reform the procedures and improve case management systems	Introduce legal reforms necessary to adopt the oral system in all subject matters, as required by the Constitution.
		Extend to the entire justice sector the new case management systems tested in the pilot programs.
		Improve the National Judicial Council's management capacity for decentralized budget management and planning.
		Provide the courts, as well as the Public Ministry, with tools and modern registry systems in order to adopt oral procedures.
		Upgrade the judicial infrastructure and nationwide offices of the Public Ministry to accommodate the new oral procedural requirements.
Improve access to justice	Create and implement a public defense system that will provide assistance nationally with adequate legal representation.	Promote the consideration and passage of the Public Defense Organic Law and implement the Public Defense service.
	Establish special legal procedures to enable individuals in rural and marginal zones for cases involving small claims.	Introduce the necessary provisions prepared by the Supreme Court into the Civil Procedure Code.
		Take the necessary steps to establish Justices of the Peace and family judges**.**
	Revise the judicial fee system and the rules regarding payment of judicial expenses.	Revise the judicial fee system
	Expand the application of alternative dispute resolution techniques.	Strengthen and expand court annexed mediation centers
		Review subject matter criteria in order to evaluate possible expansion of the use of mediation.

Objective	Goal	Actions
		Incorporate alternative dispute resolution training into law school and judges training curricula.
		Expand efforts to promote a culture of alternative dispute resolution in the legal community and civil society.
Gender	Promote adherence to the constitutional principle of gender equality and the protection of women.	Establish training programs with a gender focus in order to facilitate the implementation of the constitutional principle of gender equality and to encourage the non-discriminatory application of the developing legal framework protecting the rights of women.
		Promote, strengthen, and encourage the development of legal assistance programs for women in coordination with specialized civil society organizations.
Citizen participation	Promote citizens' participation as a mechanism to monitor the administration of justice.	Establish mechanisms within the new Organic Law to provide timely information to the public on judicial nominations, and the opportunity for the public to comment on the nominations.
		Make information related to judicial performance and salaries publicly available.
		Educate civil society on the objectives of legal and judicial reform.
		Establish civic education programs to promote understanding of the rule of law, and the use of the legal system to resolve conflicts and protect rights.

Objective	Goal	Actions
		Strengthen civil society organizations that facilitate citizen participation, coordinate initiatives to encourage participation, and support the implementation of citizen participation programs.

Annex II : Recommendations

Effectiveness of the Courts	Strengthening court capacity should be Ecuador's first priority. Overall management and administrative capability should be improved and administrative decentralization supported. Specifically, support should be provided in: strengthening the Judicial Council's administrative divisions and establishing administrative positions in all provinces; improving budget management; identifying the sources of delay in judicial decision-making; revising court procedures; training court personnel; installing information systems to enhance the efficient processing of cases; improving the judiciary's infrastructure; developing selection and disciplinary procedures for judges; and strengthening the Judicial Ethics Code. These reforms should improve transparency, promote independence, and ensure the accountability of judges; all of which are essential to ensure that the public has confidence in the judiciary.
Legal Education	Appropriate legal education is an essential component of maintaining the profession's reputation and ensuring an adequate supply of competent lawyers and judges. It is essential that legal education be improved. Accordingly, law school curricula and admissions and graduation requirements should continue to be reviewed, graduate programs in law should be established, and law libraries in both law schools and the courts should be improved. Continuing legal education should be established for both lawyers and judges and the judicial counsel's efforts to establish a permanent judicial training program should be supported.
Bar Association	Support is needed to improve the role of the bar association, in particular with respect to continuing legal education programs for lawyers. Support should also be provided to establish programs on public defense for the indigent and programs to encourage public education. An active bar association is important to ensure that adequate legal services are provided by independent lawyers. The bar should review admission requirements, standards of professional conduct, and disciplinary procedures. The legal profession should remain largely self-governing under court supervision given that self-regulation helps to preserve the legal profession's independence and is an important force in strengthening the rule of law and challenging abuse of authority.
Access to Justice	It is essential that Ecuador develop legal services that make the justice system as accessible as the Constitution requires. Accordingly, the mandate of public defenders should be revised and their numbers increased. In addition, legal aid programs should be established nationwide. Official court fees and the waiver system should also be reviewed with the participation of the private sector to assist in sustainability, as sustainability has been found to be one of the most challenging issues related to legal aid.
Alternative Dispute Resolution (ADR)	Mediation centers should continue to be promoted, additional mediators and arbiters should be trained, and consideration should be given to whether ADR should be made mandatory for certain cases regulated by the Civil Procedure

	Code. The court annexed mediation centers should be expanded nationwide and provided with adequate funds to ensure their institutionalization. Additionally, an ADR network should be created to ensure that indicators and key data are systematically collected and lessons learned are generated. ADR should be developed in such a way as to provide parties a speedy, informal, and confidential way to settle disputes. The establishment of small claims courts should be considered as a venue to improve access to justice for those people involved in disputes with modest amounts at stake, as well as a tool to reduce caseloads in other courts. Most importantly, efforts should be taken to strengthen the culture of mediation by incorporating programs in schools, universities and colleges that report on the current successes of mediation in Ecuador and work to develop a cadre of mediation supporters.
Civil Society	Citizen participation through civil society organizations is a useful mechanism to contribute to legal and judicial reform. Mechanisms to provide timely information to the public related to judicial nominations, and the opportunity to receive information and opinions from the public for consideration during an appointment process, should be established. Additionally, information concerning both judicial performance and salaries should be publicly available. In order to generate interest within civil society regarding the objectives of justice sector reform, to promote consensus on central issues, and to facilitate citizen participation, civic education programs should be initiated to promote values related to the rule of law and understanding of the legal system to resolve conflicts and protect rights.
Corruption	To address both the perception as well as the challenge associated with combating corruption, codes of ethical conduct for judges and attorneys should be developed and an anti-corruption plan geared towards preventing and eliminating opportunities for corruption should be designed and implemented. The anti-corruption plan should include improved disciplinary systems and sanctions for ethical misconduct involving judges and attorneys. Lastly, the system should establish a program to protect witnesses and offer legal benefits to those who assist the legal system identify acts of corruption.
Legal Reforms	Ecuador's legal framework should be reviewed, revised and updated in order to fully incorporate oral procedures into both civil and criminal law proceedings. As this process continues, training should be provided to ensure that new processes and procedures are fully understood by all legal and judicial sector actors, and sufficient resources provided to ensure that the procedures can be effectively implemented. The Organic Law of the Judicial Branch should also be completed. As Ecuador's legal framework develops further and the implementation of the constitutional principle of gender equality strengthens, a greater emphasis should be placed on protecting the rights of women. Training programs for judges should include a gender focus in order to encourage the non-discriminatory application of the legal framework. Additionally, in coordination with specialized civil society organizations, legal assistance programs for women should be supplemented with adequate resources to protect and enforce the rights and responsibilities of women.

Annex III: Perceptions of Public Trust[85]

Institution	Percent
Catholic Church	67
Armed Forces	63
Mass Media	59
Electoral System	48
Indigenous organizations	47
Municipality	47
Police	44
Constitutional Court	40
Labor Unions	35
Lower Courts	33
Solicitor General	31
Executive Branch	31
Attorney General	30
Supreme Court	29
Congress	25
Political parties	21

[85] Mitchel A. Seligson, Agustín Grijalva, and Polivio Córdoba. "Auditoría de la Democracia", Sedatos: Quito, 2002, p. 36.

Annex IV: Number of Courts and Tribunals in Each Province[86]

Province	*Administrative Tribunals*	*Tax Tribunals*	*Criminal Tribunals*	*Criminal Courts*	*Civil Courts*	*Labor Courts*	*Landlord Tenant Courts*	*Transit Courts*	*Customs Courts*
Pichincha	2	3	5	20	25	5	3	7	1
Azuay	1	1	3	8	20	2	1	3	1
Bolívar	---	---	1	6	9	1	---	1	---
Cañar	---	---	2	7	9	1	---	4	---
Carchi	---	---	1	4	8	1	---	1	---
Cotopaxi	---	---	1	4	9	1	---	2	---
Chimborazo	---	---	3	6	13	1	1	2	---
El Oro	---	---	2	8	16	2	1	3	---
Esmeraldas	---	---	2	6	6	2	---	2	---
Guayas	1	1	5	24	30	6	5	9	1
Imbabura	---	---	1	5	10	1	1	1	---
Loja	---	---	3	9	20	2	1	2	1
Los Ríos	---	---	2	7	14	2	1	2	---
Manabí	1	1	6	4	5	2	1	4	1
Morona S.	---	---	1	4	5	---	---	1	---
Napo	---	---	1	1	2	---	---	1	---
Pastaza	---	---	1	2	2	-	---	---	---
Sucumbíos	---	---	---	3	3	---	---	1	---
Tungurahua	---	---	2	5	1	2	1	2	---
Zamora Ch.	---	---	1	4	4	---	---	1	---
Galápagos	---	---	---	3	2	---	-	---	---
Orellana	---	---	---	2	3	---	---	1	---
Total	**5**	**6**	**43**	**152**	**246**	**31**	**16**	**50**	**5**

[86] The President of the Supreme Court's report to the National Judicial Council, Statistical Annex, Quito, 2002.

Annex V: Number of Judicial Personnel in Each Province[87]

Province	Number
Pichincha	564
Azuay	276
Bolívar	111
Cañar	134
Carchi	85
Cotopaxi	104
Chimborazo	148
El Oro	179
Esmeraldas	100
Guayas	630
Imbabura	112
Loja	216
Los Ríos	161
Manabí	335
Morona S.	53
Napo	34
Pastaza	33
Sucumbíos	36
Tungurahua	148
Zamora Ch.	51
Galápagos	25
Orellana	17
CSJ y CNJ	402
Total	**3954**

[87] Id.

Annex VI: Superior Court Case Statistics[88]

SUPERIOR COURT Case flows - 2001					
District	**Number of Chambers**	**Cases Filed**	**Cases Disposed**	**Cases Disposed per Chamber (Average)**	**Clearance Rate (Percent)**
Tulcán	1	1473	996	996	67.61
Ibarra	2	2478	2161	1080	87.20
Quito	6	4986	4867	811	97.61
Latacunga	2	1386	1390	695	100.28
Ambato	2	2542	1797	898	70.69
Guaranda	1	863	612	612	70.91
Riobamba	2	1598	1663	831	104.06
Azoques	1	1220	1374	1374	112.62
Cuenca	4	2800	2842	710	101.5
Loja	3	6113	3732	1244	61.05
Esmeraldas	1	2606	1309	1309	50.23
Portoviejo	3	2341	2840	947	121.31
Babahoyo	2	1207	1264	632	104.72
Guayaquil	6	6183	4964	827	80.28
Machala	2	2030	2867	1433	141.23
Nueva Loja	1	409	343	409	83.86
Tena	1	272	301	301	110.66
Puyo	1	446	364	364	81.61
Morona	1	393	398	398	101.27
Zamora	1	621	618	618	99.51
Total	**43**	**41967**	**36702**	**854**	**87.45**

[88] Id.

Annex VII: Public Defenders by Province (2002)[89]

Province	Number
Pichincha	4
Azuay	1
Bolívar	1
Cañar	2
Carchi	1
Cotopaxi	2
Chimborazo	2
El Oro	2
Esmeraldas	2
Guayas	4
Imbabura	2
Loja	2
Los Ríos	1
Manabí	1
Morona S.	---
Napo	---
Pastaza	1
Sucumbíos	1
Tungurahua	1
Zamora Ch.	1
Galápagos	---
Orellana	---
Total	**31**

[89] Id.