

Document of
The World Bank

Report No. 15385-EC

STAFF APPRAISAL REPORT

ECUADOR

JUDICIAL REFORM PROJECT

June 24, 1996

**Public Sector Management and
Private Sector Development Division
Country Department III
Latin America and the Caribbean Region**

CURRENCY EQUIVALENTS

Currency Unit: Sucres (S/)
US\$1 = 3126 as of June 18, 1996
S/1 = US\$ 0.0003 as of June 18, 1996

FISCAL YEAR

January 1 - December 31

Abbreviations

ADR	-	Alternative Dispute Resolution
CONAM	-	National Council for the Modernization of the State
Fiscalia General	-	Chief Prosecutor
FONAPRE	-	National Preinvestment Fund (Fondo Nacional de Preinversion)
ICB	-	International Competitive Bidding
IDB	-	InterAmerican Development Bank
IFC	-	International Finance Corporation
LOI	-	Letter of Invitation
LOPJ	-	Organic Law of the Judiciary (Ley Organica del Poder Judicial)
MOS	-	Modernization of the State Program
NCB	-	National Competitive Bidding
NGO	-	Non-Governmental Organization
PCU	-	Project Coordination Unit
Procuraduria General del Estado	-	Solicitor General
SOE	-	Statement of Expenditure
UNDP	-	United Nations Development Program
USAID	-	United States Agency for International Development

ECUADOR STAFF APPRAISAL REPORT JUDICIAL REFORM

Table of Contents

	<u>Page</u>
1. BACKGROUND.....	1
2. JUDICIAL SECTOR.....	4
A. STRUCTURE OF THE JUDICIARY.....	4
B. RECENT REFORMS.....	5
C. BUDGET REFORMS.....	6
D. ISSUES.....	9
1. Crisis in the Judiciary.....	9
2. Delays in the Judiciary.....	10
3. Court and Case Administration.....	12
4. Infrastructure.....	13
5. Alternative Dispute Resolution Mechanisms.....	13
6. Access to Justice.....	14
7. Legal Profession.....	15
8. Legal Education.....	15
9. Judicial Training.....	16
10. Disciplinary System.....	17
3. JUDICIAL REFORM PROGRAM.....	18
A. GOVERNMENT'S REFORM STRATEGY AND PROGRAM.....	18
B. RATIONALE FOR BANK INVOLVEMENT.....	18
C. LESSONS LEARNED FROM PREVIOUS BANK EXPERIENCE.....	19
4. THE PROJECT.....	21
A. PROJECT DESCRIPTION.....	21
B. PROJECT COMPONENTS.....	21
1. Component I: Case Administration and Information Support.....	22
2. Component II: Court-Annexed Alternative Dispute Resolution Mechanisms.....	22
3. Component III: Program for Law and Justice.....	23
4. Component IV: Infrastructure.....	24
C. PROJECT COSTS AND FINANCING PLAN.....	25
5. PROJECT IMPLEMENTATION.....	27
A. INSTITUTIONAL ARRANGEMENTS.....	27
B. IMPLEMENTATION ARRANGEMENTS.....	27
C. PROCUREMENT ARRANGEMENTS.....	28
D. DISBURSEMENTS.....	30
E. ACCOUNTING AND AUDIT ARRANGEMENTS.....	32
6. ENVIRONMENTAL REQUIREMENTS.....	32
7. BENEFITS AND RISKS.....	33
A. EXPECTED OUTCOMES.....	34
B. PROJECT SUSTAINABILITY.....	34
8. SUMMARY OF AGREEMENTS TO BE REACHED AND RECOMMENDATION.....	35

	<u>Page</u>
9. APPENDICES	36
ANNEX 1: TERMS OF REFERENCE FOR THE CASE ADMINISTRATION AND INFORMATION SUPPORT COMPONENT	36
ANNEX 2: TERMS OF REFERENCE FOR ACQUIRING THE TECHNICAL ASSISTANCE TO THE INFORMATION SYSTEMS SUBCOMPONENT	52
ANNEX 3: TERMS OF REFERENCE - OFFICIAL COURT ADMINISTRATOR	56
ANNEX 4: TERMS OF REFERENCE FOR THE ALTERNATIVE DISPUTE RESOLUTION COMPONENT	57
ANNEX 5: TERMS OF REFERENCE FOR THE ALTERNATIVE DISPUTE RESOLUTION COMPONENT --GUAYAQUIL AND QUITO	66
ANNEX 6: TERMS OF REFERENCE FOR THE PROGRAM FOR LAW AND JUSTICE COMPONENT	73
ANNEX 7: TERMS OF REFERENCE FOR THE SPECIAL FUND SUBCOMPONENT FOR THE PROGRAM FOR LAW AND JUSTICE	77
ANNEX 8: TERMS OF REFERENCE FOR THE PROPERTY RIGHTS - IMMOVABLE AND MOVABLE REGISTRIES MODERNIZATION SUBCOMPONENT FOR THE PROGRAM FOR LAW AND JUSTICE	84
ANNEX 9: TERMS OF REFERENCE FOR THE PROFESSIONAL DEVELOPMENT PROGRAM SUBCOMPONENT FOR THE PROGRAM FOR LAW AND JUSTICE	88
ANNEX 10: TERMS OF REFERENCE FOR THE STATE OF LEGAL EDUCATION SUBCOMPONENT FOR THE PROGRAM FOR LAW AND JUSTICE	92
ANNEX 11: LEGAL SERVICES PILOTS -- LEGAL SERVICES FOR INDIGENT WOMEN	97
ANNEX 12: IMPROVEMENT OF THE PHYSICAL FACILITIES AND INFRASTRUCTURE COMPONENTS	101
ANNEX 13: PRESIDENTIAL DECREE AUTHORIZING THE CREATION OF A PCU	106
ANNEX 14: MATRIX OF KEY PROJECT ACTIVITIES	107
ANNEX 15: PROJECT PERFORMANCE INDICATORS	119
ANNEX 16: SUMMARY OF COST TABLES	122

Documents in Project Files

1. Report on Civil Courts in Quito
2. Infrastructure Analysis
3. Judicial Sector Assessment - World Bank (1994)
4. Government's Judicial Reform Program

This report is based on the findings of a World Bank pre-appraisal mission that visited Ecuador in July 1995. The mission consisted of Maria Dakolias (mission leader), David Varela (LEGLA), Neil Gold (consultant), Leaing-hong Ding (LA1HR), and Valerie Helbronner (consultant). Preparation missions that visited Ecuador in April and June 1995 consisted of Maria Dakolias (mission leader), Ping-Cheung Loh (LACVP), Neil Gold (consultant), Robert Page (consultant), Mary Gold (consultant), Leain-Hong Ding (LA1DR), Marcel Storme (consultant), Roberto MacLean (LEGPS), Dawn Martin (consultant), Elena Panaritis (LA3PS) and Richard Moore (LA3PS). Appraisal mission that visited Ecuador in January 1996 consisted of Maria Dakolias (mission leader), David Varela (LEGLA), Robert Page (consultant), Neil Gold (consultant), Richard Moore (consultant), and Ed Buscaglia (consultant). Mr. John Panzer, Resident Representative in Ecuador provided continued support during the process. Messrs. Y. Abe and P. Isenman and K. Challa were Department Director and Division Chief, respectively.

Ecuador
Judicial Reform Project
Loan and Project Summary

Borrower:	Republic of Ecuador
Implementing Agency:	Project Coordination Unit
Beneficiary:	Judicial Branch and Civil Society
Poverty:	Not Applicable
Amount:	US\$10.7 million
Terms:	20 year Amortization period, five years grace period, standard variable interest rate for LIBOR-based U.S. dollar single currency loans.
Commitment Fee:	0.75% on undisbursed loan balances, beginning 60 days after signing, less any waiver
Financing Plan:	see para. 4.25
Net Present Value:	Not Applicable
Staff Appraisal Report:	15385-EC
Map:	IBRD 28022
Project Identification Number:	36056

ECUADOR

STAFF APPRAISAL REPORT

JUDICIAL REFORM PROJECT

1. BACKGROUND

1.1 Together with a comprehensive stabilization package, the administration of President Duran-Ballen in September 1992 announced a reform agenda aimed at redefining the role of the State in the economy. Reflecting the Government's priority for controlling expenditures, a new Public Budgets Law was approved in December 1992. This law provides an important instrument to improve economic management and restructure public accounting and control by incorporating all public agencies into a new unified budget review and approval process, reducing earmarking, and giving the Finance Ministry greater authority over resource allocation. To maintain revenue flows the Government aims to sustain the sharp reduction in subsidies for publicly provided services and to increase tax collections. Moreover, the Hydrocarbons Law has been amended to allow domestic oil prices to reflect international opportunity costs. In addition, the Government's Modernization of the State (MOS) Program- reflected in a law approved in December 1993- provides a framework for an incentives-based reform of the management of public entities, decentralization of administrative activities, and privatization of public services. Downsizing of the public sector to eliminate excessive personnel, consolidate overlapping programs and expand efficiency is a key aspect of the program. The MOS Law also established the National Council for the Modernization of the State (CONAM) as the agency charged with managing the Government's modernization program.

1.2 As part of the poverty alleviation strategy, the Government of Ecuador has developed a number of social programs that seek to improve the quality and access to basic services. With thirty-five percent of the population living in poverty and another seventeen percent only marginally above the poverty line, most of the recent programs have explicitly aimed at reaching the poor. Macroeconomic constraints on public spending have made it all the more important that scarce resources be spent efficiently and with the greatest impact on the poor. However, lack of strong economic growth and weak institutions have limited the ability to improve social conditions.

1.3 During the 1980's excessive demands on the budget, including growing subsidies, coupled with a fall in oil prices caused persistent fiscal imbalances and rising inflation. Periodic stabilization efforts led to cuts in real wages of public employees, reduction in public investments and sporadic withholding of payments and wages. Unfortunately, these efforts were not anchored by structural reforms to reduce permanently the size of the public

sector or lower subsidies to levels compatible with non-inflationary financing¹. These short term efforts have not been sustained and there has been a marked deterioration in the delivery of essential public services including the judiciary.

1.4 In the 1990's, structural reforms have included an agenda to modernize the economy through private sector development, public sector reform as well as improve social conditions. One of the key objectives of the Government is to help create an enabling and competitive business environment for the private sector and attract foreign direct investment. On the critical path improving this environment is to strengthen the legal and judicial systems.² The legal principles supporting the prevailing economic system in Ecuador are based on the freedom to exercise individual rights and property rights. Protection of these rights requires clearly defined rules of law and effective mechanisms to enforce them. This would in turn provide the necessary foundation for a stable legal environment for economic decisions to be made in a predictable way. In an effort to promote socio-economic development, economic decisions should be based on economic criteria - market efficiency and the realization of the growth potential in the economy. Economic risk can be calculated, but uncertainties as to the legal framework and its enforcement should not enter into such calculations. Such legal uncertainties do, however, play a major role in economic decisions in Ecuador. The results of the 68 enterprises surveyed indicate that the judicial system is considered to be the sixth most significant constraint to private sector development.³ This environment affects the private sector as a whole.

1.5 The Government has included judicial reform as part of the modernization of the state agenda. Public sector management as well as institution building are considered to be priorities for Ecuador. The judicial reform program is consistent with the program to modernize the state. The Government of Ecuador established a Working Group on Judicial Reform which prepared an overall program for judicial reform encompassing all actors and institutions involved in the administration of justice. This is a long-term program which will take years to complete. However, the Government and specifically the Supreme Court has requested assistance from the World Bank to implement the first phase of the program.

1.6 A judicial sector review was completed by the Bank in order to assess the current state of the judicial system and provide recommendations for reform which were endorsed by the Supreme Court as well as the Executive Branch. The proposed project incorporates the main weaknesses identified in the sector review. To summarize, the judicial sector has four major weaknesses which contribute to the deficiencies of the judicial process: lack of administrative organization by the courts including the lack of appropriate management techniques, professional staff and administrative procedures; an inadequate judicial

¹ Ecuador: Country Assistance Strategy Report 1996.

² Private Sector Development and The World Bank Group, August 4, 1995 at 3.

³ According to the survey, the most significant constraints to private sector development were as follows: political instability, inflation and price instability, lack of skilled labor, lack of infrastructure, high level of taxation, functioning of the judicial system, regulatory constraints, access to credit, and lack of services. In May 1993, the LA4TF division conducted a questionnaire survey to determine the constraints to Ecuadorian private sector development.

infrastructure; inadequate availability of alternative dispute resolution; and impediments in access to justice for the poor and lack of legal training available to lawyers, judges, and students.

1.7 Historically, the judicial sector has suffered from a lack of financial resources, administrative inefficiencies and a growing case backlog. This situation has resulted in the sector's difficulty in meeting the needs of the private sector and the public at large. A well-functioning judicial system should be accessible to the public providing efficient and rational outcomes and providing adequate remedies. There is a widespread perception of the public that the judiciary in Ecuador falls far short of these standards.

2. JUDICIAL SECTOR

A. STRUCTURE OF THE JUDICIARY

2.1 The Ecuadorian judicial system is composed of the Supreme Court, Administrative and Tax Courts ("Tribunales Distritales"), Superior Courts, Tribunals, First Instance Courts ("Juzgados") and the National Judicial Council ("Consejo Nacional de la Judicatura").⁴ There are also separate Juzgados that have special jurisdiction in areas of minors, hydrocarbons, water, land, mines, military, and police which do not depend on the judiciary. There should be regional tax and administrative courts in every province. To date these courts function in only some provinces.⁵

2.2 The Supreme Court, located in Quito, is the court of national jurisdiction, and is comprised of thirty-one justices including its President, organized into ten "Salas" for Civil, Constitutional, Penal, Administrative, Labor, and Fiscal matters. As part of the constitutional reform of 1992, the Supreme Court became 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.⁶ This was done, in part, to reduce the caseload of the court. These reforms may have inadvertently compounded the problem of delay since there were five judges in each "Sala," a decision which before normally took about three months takes more than eight months after the reform. In order to correct this situation, the 1995 reforms brought back the number of judges in each "Sala" to three.

2.3 The Superior Courts have both appellate and original jurisdiction. In theory each province is supposed to have a Superior Court; however this is typically not the case because some provinces are so small that they must share a Superior Court with adjoining provinces; that is the case with four of the twenty-one Provinces. Tax and Administrative Tribunals are separate courts but are at the same level as the Superior Courts in the judicial hierarchy, and depend upon the Supreme Court for their budgets.

2.4 The First Instance Courts ("Juzgados") deal with civil, penal, landlord/tenant, labor, traffic, customs, administrative and tax cases. Every Province has a criminal and civil court, but may not necessarily have labor, landlord/tenant or traffic courts. The Supreme Court determines the number of judges and the territorial jurisdiction for the civil juzgados and criminal tribunals, whereas for labor, landlord/tenant, and traffic courts the Supreme Court delegates the Superior Court of that region to determine the number and territorial jurisdiction of the courts. There appears to be no correlation between the number of courts and the number of new case filings or population, however. For example, in Pichincha there

⁴ Tribunal Supremo Electoral is not under the judicial branch.

⁵ So far there are tax and administrative courts in a total of four provinces.

⁶ Ley de Casacion, Registro Oficial N. 192, May 18, 1993.

are twenty-one civil juzgados to serve over two million people whereas in Azuay there are eighteen for only 600,000 people. Azuay had over twelve thousand new cases in 1992 while Pichincha had about twenty-five thousand.

B. RECENT REFORMS

2.5 Ecuador has had more than eighteen constitutions since 1812, the most recent one in 1979. The 1979 Constitution underwent reforms in 1992 and 1995. In December 1992 the judicial system experienced a major structural change. Constitutional and statutory changes included doubling the size of the Supreme Court, creating a Judicial Council ("Consejo Nacional de la Judicatura"), redefining the jurisdictional role of the Supreme Court, creating a new mechanism for the selection of judges, and increasing the judicial budget as well as salaries. These changes were the first significant steps to address some of the systemic problems which have plagued the judiciary for years, and were aimed at creating a more accountable administrative structure capable of addressing the pressing problem of delay. In this way, the Ecuadorian reforms of 1992 mirrored similar efforts in Chile, Colombia, Costa Rica, Peru, and Venezuela.

2.6 In February 1995, additional reforms to the constitution were approved by Congress. These reforms were designed to depoliticize the judiciary and strengthen the mechanisms through which civil liberties and legal rights are enforced. These reforms included: (1) the replacement of a two-tiered constitutional control system, composed of a Court of Constitutional Guarantees and of a Constitutional Chamber within the Supreme Court, by a new, independent Constitutional Tribunal (2) the establishment of the "Fiscalía General de la Nación" (public prosecution agency) as an independent institution (3) the recognition of the right of citizens to receive injunctive relief against unconstitutional administrative acts which may cause serious or irreparable damage to them, and (4) the creation of the ombudsman figure ("Defensor del Pueblo"). Other constitutional provisions mandating decentralization of the judiciary and use of alternative dispute resolution mechanisms were passed by Congress in late 1995.

2.7 The appointment of the "Consejo Nacional de la Judicatura", responsible for the administration of the Judicial Branch, is still pending more precise legal definition regarding the method of appointment of its members and their responsibilities. The appointment of the Supreme Court Justices would either continue to be the responsibility of Congress or become the responsibility of the "Consejo." The "Consejo" would be responsible for and could set fees for certain judicial services.

2.8 Despite these initial reform efforts, there is widespread recognition in Ecuador that additional reforms are necessary to implement a complete modernization plan for the legal and judicial system. Accordingly, it will be necessary to reform the supporting secondary legislation. There have already been preliminary efforts to reform the Organic Law of the Judiciary to implement some of the recent constitutional reforms and to introduce other law aimed at resolving some of the judicial administration problems.

C. BUDGET REFORMS

2.9 A recent statute established that 2.5% of the current net income of the central government's budget (for the years 1994- 96) be available for the judiciary.⁷ Establishing a rule that the judicial budget will be a fixed percentage of the national budget is a method that has been utilized in number of Latin American countries, though it has been subject to some criticism. Although the increase in judicial sector spending appears to have been substantial, most of this increase simply reflects the rising rate of inflation during the 1970's and 1980's. If the annual budget for the judicial sector is computed in 1975 Sucres, expenditures increased modestly over the same period (1973-1989) from 121.4 million Sucres to 197.5 million Sucres. In addition, most of the increase in the judicial sector budget occurred during the period from 1973-1979 when the annual rate of increase was approximately 7.6 per cent. In contrast, from 1979 to 1989 judicial sector spending increased at an annual rate of less than 0.5 per cent.

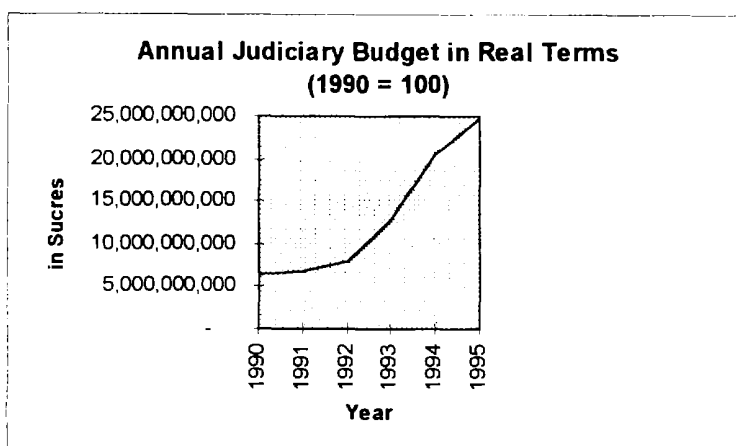
2.10 The slow growth in real resources for the judicial sector has occurred in a period of rising demands on the system. From 1982 to 1989, the number of cases entering the lower courts rose from 102,708 to 130,702 for an average annual rate of increase of 3.5 per cent. Over the seven year period real resources per case fell from 1,743 Sucres to 1,511 Sucres.⁸ While a decline in resources allocated per case might be an indication of increased efficiency in the judicial system, there is no evidence to support this interpretation. For example, the accumulated backlog of cases between 1982 and 1989 rose from 39,833 to 411,501. Thus, while the system accumulated more cases, it had fewer resources to devote to each case.

2.11 In each year between 1990-95, the Government has increased the Judicial budget.⁹ However, the increase in the budget did not necessarily increase efficiency in the courts, though it did provide needed resources to create new judicial positions, increase the salaries of the existing personnel, and finance limited capital improvements.

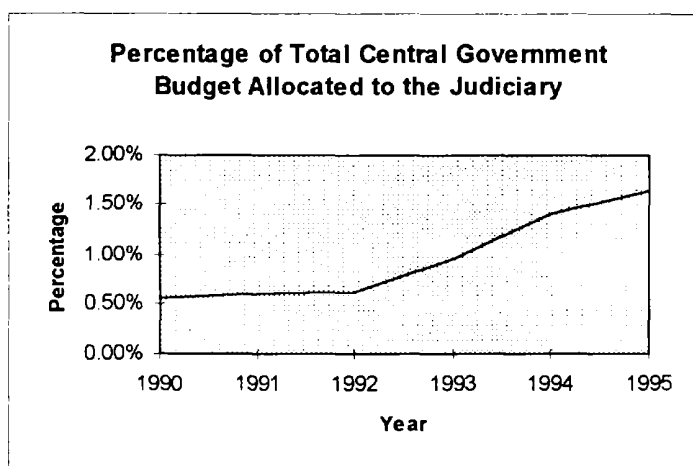
⁷ However, computation of this 2.5% has become a source of controversy within the Ministry of Finance which intends to charge the judiciary with an allocation of the total foreign debt. If the funds are measured in this manner, there will be less funds than before the constitutional reform.

⁸ This is a very rough measure, since the caseload figures are for the juzgados, while the expenditure figures are for the entire system. There is some evidence that the largest increase in caseload occurred before 1982 although data to confirm this are not available. In addition, all case load figures must be viewed with considerable skepticism.

⁹ Despite these increases, the judicial budget has not reached the required 2.5% of the overall budget.

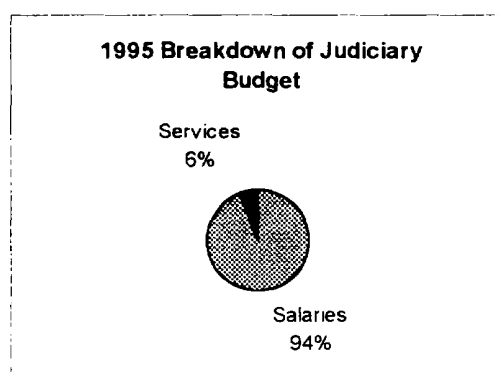


2.12 Moreover, the percentage of the Central Government's budget allocated to the judiciary has also increased in each of the years between 1990-95.



2.13 This reflects the commitment on the part of the Government to provide the minimum resources for funding the judiciary. Of the approved judicial budget for the years 1990-95, approximately 90% is used for compensation. In fact in some years, such as 1995, over 90% of the Judiciary budget is allocated to salaries and nothing is allocated to capital expenditures. This has created a more competitive environment to acquire judicial positions as well as improve the morale of the existing judges and court personnel. This is one way to address the issue of corrupt behavior.

2.14 In addition to the increase in the salaries and overall judicial budget, the Constitution now permits the judiciary to charge fees for its services which could supplement the existing budget. However this has not yet been implemented.

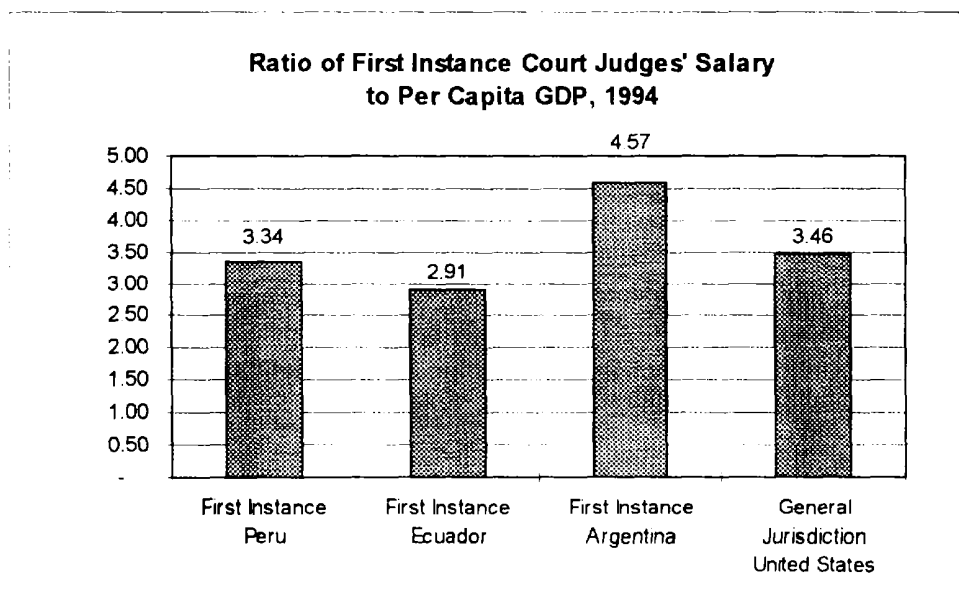
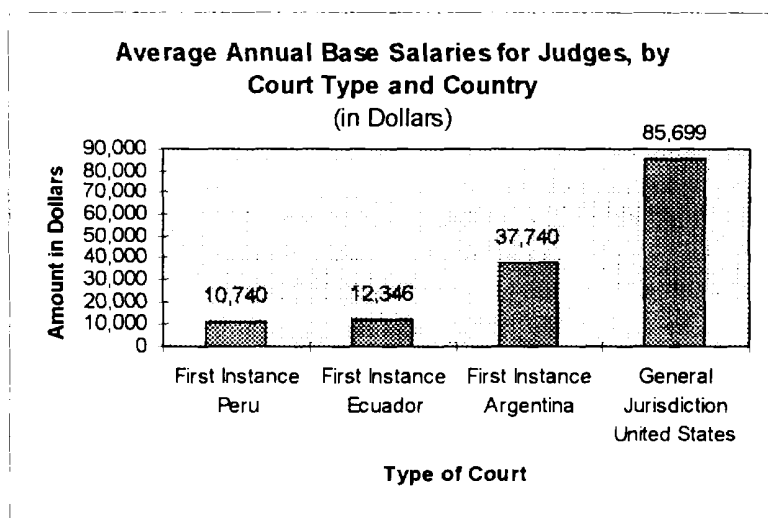


2.15 Compensation does not seem to be a

decisive factor in the delays of cases, and as such does not constitute an area of focus in the proposed project. Salaries have reached a level that seem at least competitive with comparable public sector salaries.

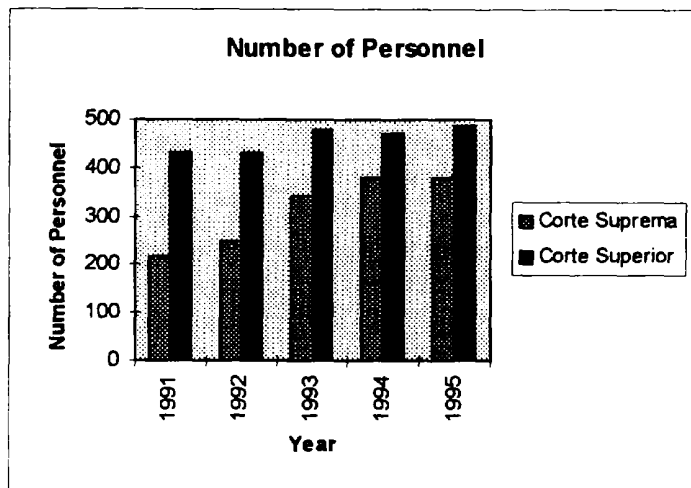
2.16 Juzgados of the First Instance Civil Courts receive a monthly salary. However, in addition, these judges receive a number of other types of remuneration throughout the year; these additional remuneration's result in significant increases to the effective yearly salaries of these judges.

2.17 Moreover, on an international scale, the salaries of judges taking into account the total remuneration are competitive with other countries in the region.¹⁰



¹⁰ See Dakolias, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, 1996.

2.18 Finally, the number of personnel in the Corte Suprema and the Corte Superior has increased in each of the years between 1990-95.



2.19 The increase in the number of personnel in the Supreme Court was due for the most part to the fact that the size of the Supreme Court doubled. These increases demonstrate the recognition by the Government of the importance of the judiciary and the commitment of the Government to support the improvement of the functioning of the judiciary.¹¹

D. ISSUES

1. Crisis in the Judiciary

2.20 The current Ecuadorian judiciary lacks modern institutional framework to ensure private agents clarity, predictability and enforceability of the legal and regulatory principles governing their activities. This inadequate institutional framework has placed constraints on the judiciary which has had an impact on the volume and efficiency of market transactions. One example is the reduced number of loans made by banks because of problems with debt collection through the courts. Moreover, the disincentive to invest in the judicial system in its current state adds to the perceived risks and costs of market transactions. Finally, foreign companies, which already encounter barriers to entry, are likely to be further discouraged given that the judicial system creates additional barriers to their operation in Ecuador. It has been found that commercial cases can be expected to take up to six years to be decided.¹²

¹¹ However, even with the increase in the budget and the number of personnel, the supply of court services has not improved. As a result, additional reforms are necessary to improve the efficiency of the judiciary. Buscaglia and Dakolias, Case Studies on time delay (1996).

¹² The median time to disposition, Id.

2.21 The problems in the judiciary also mean that the judicial sector cannot always assist the economic initiatives by providing an efficient and fair forum for the resolution of disputes. Frustration with the judicial system's slow rate of processing cases, coupled with a belief that corrupt practices could adversely affect the outcome of a law suit has lead to the public's loss of confidence in the administration of justice in Ecuador and has given rise to litigants' reliance on extra-judicial means to resolve their disputes. As the judiciary has proven itself incapable of meeting the demands and needs of the private sector, companies, both international and national, which have the resources, primarily rely upon negotiation or arbitration to avoid the inefficient judicial system. Negotiation enables parties to go to the heart of the conflict for speedy resolution. However, negotiation has its limitations. In many cases, parties avoid using the system to the point where they forgo legitimate claims and shoulder substantial losses rather than submit a dispute to judicial adjudication. When there is a necessity to execute a negotiated agreement or there are legal principles involved, the judicial process becomes essential to resolve these issues. Unfortunately, the judicial system, in its present state, is not the viable alternative that the public would like and need it to be.¹³

2.22 The current problems that face the judiciary may negatively affect equity and social welfare. This can indirectly produce bias toward new entrants such as small scale entrepreneurs and foreign investors. As a result, the judicial system, in its present state, can exacerbate the already existing social inequities in society. Litigants can also contribute to these inequities by attempting to create bias in favor of the wrongdoer, for whom the marginal benefit of influencing the judicial outcome is always higher.

2.23 The judicial system is currently faced with a tremendous backlog of cases and excessive centralization of court administration; these create inefficiency and decrease access to justice by the public. This inefficiency is also caused by the lack of legal and judicial training and by the fact that some judges in the provinces do not even receive the official gazette that is published daily. Factors contributing to these problems include low employment standards and no incentive for court employees to move cases through the system efficiently.

2. Delays in the Judiciary

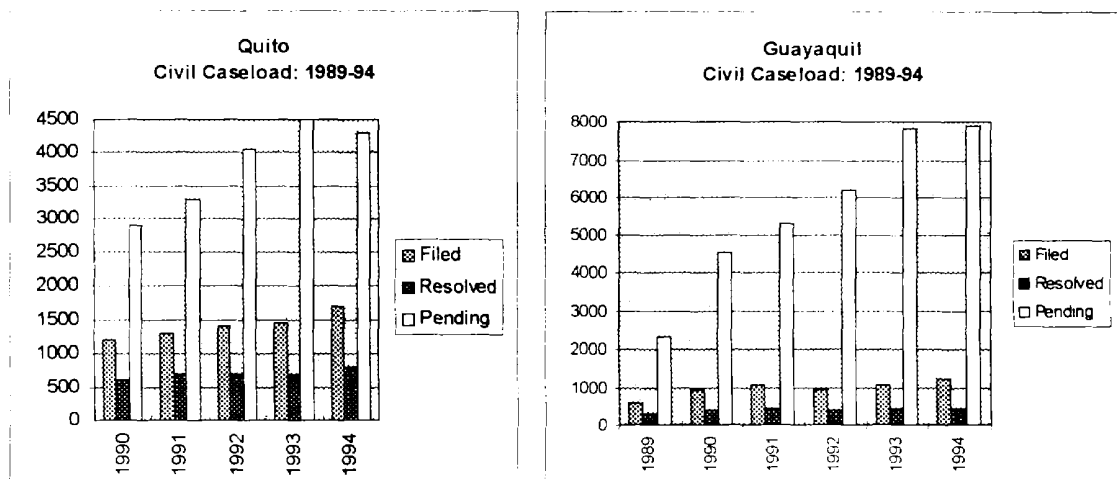
2.24 In Ecuador's two largest cities, Quito and Guayaquil, delays are by the worst in the country and at every level of the system, from the First Instance courts right up to the Supreme Court. Since the late 1970s, the populations in the cities of Quito and Guayaquil have doubled, and the number of case filings have similarly increased. By contrast, the number of civil and commercial judges in those cities did not increase until just recently. Moreover, delay in resolving cases has reached unprecedented times. Recent statistics indicate that the Supreme Court has a 12,000 case backlog, with 7,000 of those cases in the Civil Sala alone.¹⁴ Fewer cases are resolved in a year than the total number of cases that

¹³ Ecuador Judicial Sector Review, Gray Cover, 1995

¹⁴ Statistics form the Supreme Court as of September, 1993.

enter the system in that year. One source estimates that there are 500,022 cases backlogged in the whole judicial system.¹⁵

2.25 Although the number of cases filed in Quito and Guayaquil has increased, the number of cases resolved has not increased at the same rate. This situation causes the number of cases pending to increase exponentially.¹⁶



2.26 As the number of cases filed continues to increase, the productivity of judges does not always adjust to the increased load.¹⁷ Many of the civil cases involve family issues and specifically alimony. According to a delay study financed by the Bank, the median number of pending alimony cases and cases related to divorce per court were 1423 in Quito and 1815 in Guayaquil and the number of cases resolved were 164 and 276 respectively.¹⁸ This same study found that case management and information technology is significantly correlated to the time needed to resolve a case in Ecuador.

2.27 The sizable backlogs in the courts contribute to and will cause further delays in justice administration. Although the laws specify time limits for different phases of a trial to be completed, these time limitations are regularly ignored. In addition, parties have a tendency to appeal every case.¹⁹ These delays combined with the wide interpretation of and changes to the laws provides an incentive for corruptive behavior and leads to abuses of the system.

¹⁵ Concept paper for A Project to Strengthen the Administration of Justice in Ecuador for the United States Agency for International Development Mission to Ecuador by Development Associates Inc., March 1993, p.5. One must keep in mind that the backlog data include some cases which are filed and never move past the first filing.

¹⁶ Buscaglia and Dakolias, Case Studies on time delay (1996).

¹⁷ For example, the productivity of judges in the civil courts decreased in 1993 after there was increase in case filings. see Case Studies on time delay (1996).

¹⁸ This covers the period between 1990-1993 for Quito and 1989-1994 for Guayaquil. Id.

¹⁹ The Chief Justice of the Superior Court of Canar reported that 80% of the cases are appealed.

3. Court and Case Administration

2.28 At the national level, an important reason for the inefficient service provided by the judiciary is that the administration of the courts is overly centralized. Judges have administrative as well as judicial responsibilities which interfere with their role as judge: lack of adequate case management which contributes to delays; there is poor planning and budgetary management; the system provides for low employment standards, and no incentives for court employees to move cases through the system efficiently; and court personnel do not have access to adequate court procedures and technology to carry out their work in an efficient manner. In addition, the administration of cases is poor which prevents cases from being tracked through the process until disposition.

2.29 The lack of a well defined caseload management system in which cases are actively managed from filing to disposition is a serious problem in the Ecuadorian judiciary. The concept that judges are managers of their caseload as well as resolvers of disputes is not integrated into the management of the Ecuadorian system. There is a contradiction in this fact as, as managers of large staffs, the typical judge in the Ecuadorian system has significantly greater management responsibility than equivalent judicial authorities in the other systems.

2.30 Moreover, the records management system that is in place in Ecuador is not clearly defined and does not adhere to any national standards. In practice, each court uses its own numbering system and there is no standardization on critical issues such as control of access to files and disposition of records. Case files are usually maintained in the traditional Latin American manner of sewing the case files together and then sewing additional papers into the case file. The result is that case files are often lost and valuable space is taken up by dead records.

2.31 Ecuador lacks the management information system on which to base decisions related to both the administration of the system and the management of the flow of cases. Reports on filings and dispositions are not systematically kept by the courts as required by law. Even when the reports are submitted, they are not always reliable or complete. Moreover, there is no auditing to ensure that the information is accurate, nor is the information summarized into annual reports. Finally, the rules for maintaining the data are unclear and interpreted differently from court to court. As a result, there is little faith in the accuracy of the system and the statistical system is not used when decisions are made regarding the allocation of personnel and infrastructure. In reality, allocation of new courts and personnel is not based on rational criteria as with an analysis of workload.

2.32 Currently, most courts in Ecuador are not automated. Rather, caseload is managed manually. While there has been an effort to install some personal computers, the number of computers in the system as a whole is nominal. The information systems office in the national office consists of only six people and four of them have been lent to other departments of the court. Furthermore, no one in the Information Technology Department has a programming background. As a consequence, little management information on the judicial and administrative processes is available and the benefits of automation in

developing and maintaining tickler systems, calendars, and case histories are not available. However, the courts that have computers operate more efficiently.

2.33 A major problem for the public using the court system is the difficulty in accessing information about where the case is filed, status of cases and other vital case information. The project will focus on using modern technology to make case related information available to the public in a readily accessible manner.

2.34 In addition to the lack of automation, the judges and employees lack basic information necessary for their work. The courts no longer receive the official gazette ("Registro Oficial") which is basic to the work of which laws are in force. Ecuador has a LEXIS service which provides up to date information on the codes, but the courts do not have access to this service.

4. Infrastructure

2.35 The physical facilities of the judicial system are largely outdated and therefore unable to contribute to the effective administration of justice. The image of the judicial branch of government by the public, the judges and the functionaries, is greatly influenced by the condition of the buildings in which the branch functions. Besides a significant shortage of office space, there is a lack of modern office technology, telecommunications, printing services, and modern archiving. In Ecuador, increased caseloads, security issues, the movement toward oral hearings, and the decentralization of administrative functions is creating a series of design problems that must be addressed.

2.36 Because of several factors, capital investment in infrastructure has been low in recent years. There is an overall shortage of funds. In 1995, the Court requested US \$ 12.5 million for capital improvements and infrastructure equipment and did not receive any funding. Secondly, because of the expenditures in other sectors of the budget, namely salary increases, the funds that were approved for capital and infrastructure budgets were diverted to pay operating budget costs.

2.37 Currently, the Supreme Court is housed in cramped quarters that were not designed for a court of 31 magistrates. In fact, many of the juzgados for Quito are housed in commercial buildings throughout the city that were not even designed for judicial branch use. Many of the court facilities are housed in buildings which were not designed for court use and reflect the functioning of the judicial system in a lower volume, more symbolic era and do not work well in today's high volume, resolution oriented system.

5. Alternative Dispute Resolution Mechanisms

2.38 While alternative dispute resolution mechanisms (ADR) are available in Ecuador, these mechanisms are limited and are not widely used by the public thus forcing the parties into the formal system to resolve disputes if simple negotiation fails. At the moment ADR mechanisms are available in the judicial system under the Civil Procedural Code, and outside

the judicial system in the Chamber of Commerce²⁰ and in the Ministry of Labor. ADR in labor disputes has proven to be very successful and have assisted in decreasing the backlogs. There is no training for mediators or arbitrators nor any recognized professional standards. ADR can provide a speedy, informal and confidential way for parties to settle their disputes. Consequently, the expansion of ADR combined with the increased public awareness of and access to these mechanisms is another means to redress the inefficiencies in the judicial system and to secure the prompt and fair resolution of disputes in Ecuador.

6. Access to Justice

2.39 The current number of public defenders and legal aid programs is wholly inadequate to meet the demand for legal representation. While the Constitution under Article 107 provides public defenders in all types of cases for defendants who lack the economic means to hire an attorney on their own, there are only twenty-one public defenders in all of Ecuador.²¹ There are four public defenders in both Quito and Guayaquil where there are two million and three million people, respectively. Therefore, even if a defendant knows of his/her right to a public defender, one may not be available. In fact, there is a long waiting list for those requesting the assistance of a public defender. This situation creates great hardship on those who cannot obtain a public defender as well as huge caseloads for the public defenders themselves. This is exacerbated by the fact that thirty-five percent of the population in Ecuador lives in poverty.²²

2.40 Obviously the people who are not able to use a public defender because the supply is so inadequate are being denied access to justice. However, so too are the people who use a public defender and inevitably experience delays in the resolution of their case because of the public defender's overburdened caseload. The consequences of this shortfall are exacerbated by the fact that for cases to proceed to court, legal representation is required in Ecuador.

2.41 Although the constitutional reform allows the courts to charge filing fees, there are currently no official charges of any kind for using the judicial system.²³ On this level, justice is theoretically accessible to everyone. However, this 'free' justice system also contributes in part to the problems of inefficiency, poor quality of the judiciary and access to justice in Ecuador. The current system creates incentives for court employees and judges to charge unauthorized fees to parties.

²⁰ Although mediation is available in the Chamber of Commerce, there have only been approximately six cases in Quito and there is not much information about the success of the system.

²¹ There are four public defenders in Quito, four in Guayaquil, one in each of Azuay, Bolivar, Canar, Carchi, Chimborazo, Cotopaxi, El Oro, Esmeraldas, Imbabura, Loja, Los Rios, Manabi and Tungurahua.

²² Ecuador, Poverty Report, Gray Cover, 1995.

²³ However, criminal, labor, alimony and child support and public interest cases would remain free. The following is from the Judicial Sector Assessment.

2.42 The administration of justice is a valued service for which people are willing to pay. Since there are no formal fees, there is the temptation to expropriate the value by improper means. This may lead to less transparency and inefficiency, and foster corruption and favoritism where the quality of service depends on the price one is willing to pay.

7. Legal Profession

2.43 Each Province in Ecuador has a 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 the ethical standards.²⁴ There are 17,800 lawyers registered in Ecuador.²⁵ It is obligatory for all new law graduates to register with a bar association. In addition to registration, lawyers are required to pay annual dues to the association.²⁶ Law students must register his or her law school degree with the Bar Association to practice law, but there are no other requirements such as a bar examination, a period of internship or practical training course.

2.44 The lack of effective standards of conduct for the legal profession contributes to the overall poor reputation of the profession. It has been suggested that standards and disciplinary mechanisms are not sufficient to deter unethical behavior of lawyers. The bar association is not even enforcing the standards that are in place currently. Each bar association has a disciplinary system which includes a Tribunal de Honor. In Quito the Tribunal receives about 120 complaints per year.²⁷ There are no statistics to show how many cases result in sanctions.²⁸ The main problem is that the ethical standards used to review complaints are inadequate. The Tribunal applies the ethical standards included in the Law of the National Federation of Lawyers which do not provide effective guidance to lawyers on how to govern their conduct.²⁹

8. Legal Education

2.45 There are eleven law schools in Ecuador³⁰ and each has its own curriculum. While there are no entrance requirements at the public universities, each private institution has its

²⁴ The ethical standards to be observed by lawyers are contained in the Ley de Federacion de Abogados, Capitulo II, Art. 23.

²⁵ In Quito there are 3,871 lawyers registered and in Cuenca there about 2,000.

²⁶ However, in Quito only 500 lawyers pay their annual dues every year.

²⁷ For example, according to the Bar Association in Quito, in 1995 there were 20 cases of persons misrepresenting themselves to be lawyers. There are also instances where lawyers are paid to sign pleadings in cases where nonlawyers are representing the clients.

²⁸ However, it is known that no lawyer in the Guayas bar has been suspended from practice since 1981.

²⁹ Ley de Federacion de Abogados, Capitulo II, Art. 23.

³⁰ Two in Quito, three in Guayaquil, one in Manta, one in Portoviejo and one in Loja. see Ecuador Judicial Sector Assessment, Gray Cover, 1994.

own requirements. The course of study ranges from four to six years in length if pursued on a full-time basis. However, because most students work while they attend school, very few are full-time students. At the University of Central in Quito where enrollment is approximately 6,000 only 400 students a year complete the course work and only 80 complete the thesis to obtain the degree of "Doctor". However, there are no national statistical records that provide a basis for preliminary assessments or comparisons. Absent these data, minimum standards for operations or graduates' capabilities cannot realistically be established, thus permitting the doubt about the quality to continue.

2.46 The curriculum does not concentrate on teaching skills, including analytical skills as well as such practical skills as research, writing, negotiation, investigation and fact-finding. In addition, the curriculum does not include any course in ADR, intellectual property rights, economics etc. Furthermore, ethics even though is a required course at many law schools, is taught in the religious or moral sense. As a consequence, judges are inadequately prepared for the bench.

2.47 Although legal clinics do exist at which students may work, there are no adequate, well-supervised clinical programs which provide on-the-job training for law students and which are organized so that the learning process progresses through the stages of the student's professional development.

2.48 In addition, the law professors have either not kept up to date with changes in the law or use outdated teaching methods. Salaries for law professors are very low where a full-time professor may earn on average \$100.00. It is not surprising, therefore, that most professors consider teaching to be a pro-bono activity. The professors are committed and talented amateurs who contribute to their profession and the public through the sharing of learning. Such persons cannot of course be expected to be educated in the principles and practices of adult higher learning.

9. Judicial Training

2.49 New judges that are appointed are not well-prepared for the job on the bench, and experienced judges have little access to training to enhance their skills. For instance, many judges have difficulties understanding or adequately preparing to handle complex intellectual property cases and cases involving economic issues.³¹

2.50 The fact that the salaries of judges have historically been extremely low has made it difficult for the judiciary to attract judges from the ranks of lawyers. Although the Constitution recognizes the notion of judicial careers, the laws that regulate these careers are only followed when convenient. The Supreme Court issued regulations that establish a formal judicial career in 1990.³² These regulations established the National Judicial Career Commission which consists of the President of the Supreme Court, a Supreme Court Justice, a Superior Court Judge, and the President of the National Federation of Judicial

³¹ Id.

³² Registro Oficial N. 564, November 16, 1990, Titulo IV, Art. 158.

Employees. The Commission is expected to establish personnel policies and guidelines, but it has not set up or implemented any such guidelines.

2.51 Continuing legal education for lawyers and judges is very limited. With new judges coming from private practice and with sometimes limited experience, it is essential to have continuing legal training. Lawyers also need continuing legal education because the laws often change and it is difficult for lawyers to keep abreast of the changes.

10. Disciplinary System

2.52 The system by which judges are removed from the bench is not centralized and does not offer the transparency and consistency needed in the process. Presently there are two ways to file complaints about a lower court judge.³³ One is with the Comisión de Quejas and Reclamos³⁴ (a Complaint Commission) and the other is with a Commission in the Superior Court. The disciplinary authority was transferred from these Commissions to the Judicial Council in the Constitutional reform of 1992. Once operational the Judicial Council will become the only body which would receive complaints about judges at the Superior Court level and below.

³³ With regard to Supreme Court Justices, they are removed only by Congress.

³⁴ Chapter XII, Article 73 of the Judicial Career Regulation

3. JUDICIAL REFORM PROGRAM

A. GOVERNMENT'S REFORM STRATEGY AND PROGRAM

3.1 In August 1994, the Bank, at the invitation of the Government prepared a Judicial Sector Review which analyzed the current state of the judicial system in Ecuador. With the collaboration of the Government and the Judiciary, the report made specific recommendations for reform.

3.2 In January 1995, a Judicial Reform Working Group headed by a Supreme Court Justice as the representative of the judiciary and composed of members of the Executive, Procurador General del Estado and Fiscalía de la Nación developed an expansive judicial reform program which included reforms in the judiciary, the Procuraduría, Fiscalía, Ministerio Público, Police, and bar associations, law schools, secondary schools, and Chambers of Commerce. This Group prepared a document in May 1995 which outlined an overall program to be carried out by the Government over the next decade by the various actors in judicial reform. The program aims to increase the efficiency of and access to dispute resolution as well as strengthen the independence of the judiciary. The group recommended the creation of a project coordination unit to manage the implementation of the program as well as the Bank's project. The program was disseminated among the Executive, Judiciary and representatives of the Legislative branches as well as in the NGO community. Consensus was reached about the areas for reform. This document was presented by the President of the Supreme Court and the Executive and provides the basis for the proposed Bank project.

3.3 The Judicial Reform Program is the product of a unique collaborative effort between the Supreme Court and the Executive. The ultimate goal of the Judicial Reform Program is to create a judicial system that contributes to economic growth by facilitating private sector activity and to social welfare by guaranteeing the basic rights of all citizens.

B. RATIONALE FOR BANK INVOLVEMENT

3.4 The project is substantially consistent with the 1993 Country Assistance Strategy. In particular, the project would assist in the process of modernization of the state, improve public sector management in support of growth, assist in poverty alleviation and provide conflict resolution mechanisms for the private sector. With the overall work of the Bank in public administration reform, and a background in ESW of the judiciary, it is perceived by the Government that the Bank has a comparative advantage to assist in this area. Currently, there is momentum in Ecuador for making changes in the judicial system (as seen above). However, outside help is important to support these reforms. The Bank's participation is critical in initiating and supporting a complex modernization effort involving wide-ranging organizational and procedural changes, institution building, management skills and tools, and legal training. The Bank and IDB projects are complementary and both are important to

support the Government and specifically the judiciary during this reform process as the judiciary both provides an essential public service and can have a strong impact on economic performance. The quality of governance is directly affected by the judiciary's performance. An efficient and transparent judiciary is essential for the enforcement of law and the assurance of accountability in other branches of Government.

3.5 The Judicial Reform Program is an overall judicial reform to take place over a period of many years and is divided into several phases. The Judiciary and the Executive together with the World Bank, IDB and other agencies (e.g. USAID) have developed a strategy to implement the reform program. The proposed Bank loan would cover the first phase of the judicial reform and involves only those areas which the Government itself has earmarked as priorities. While the components of the Bank project are an integral part of the overall Judicial Reform Program, they are limited enough in scope to allow the project to be focused and to respond to the implementation capacity of the judiciary

3.6 Moreover, the Bank project would complement the reform efforts of the IDB and USAID. Although the Bank project includes well rounded components, many of the reforms outlined in the Judicial Reform Program will be conducted under a program financed by the IDB. The reform efforts under the IDB project are directed at the judiciary, the Ministerio Público, the Colegio de Abogados, various NGO's and the private sector. These reform efforts will include a restructuring of the central court administration, improvement of the Judicial Council and specific legislative reforms. The proposed Bank project would also balance the on-going USAID project which is focused on the criminal justice system.

C. LESSONS LEARNED FROM PREVIOUS BANK EXPERIENCE

3.7 Since this project would represent the Bank's first operation in support of justice reform in Ecuador, no lessons of sectoral experience are available. Moreover, given the recent genesis of judicial reform projects by the Bank, there has not been much experience in the area from which to draw lessons. However, there have been some initiatives in other countries including Argentina, Bolivia, Venezuela and Peru. The research studies completed indicate that many of the judiciaries in Latin America are facing similar problems as Ecuador, including the inefficiency of court administration, insufficient legal training and insufficient access to justice. The preparation of the Bolivia project demonstrated the importance for consensus building within the judiciary. Important lessons learned from the Venezuela project include ensuring a commitment from the Supreme Court in supporting and implementing the reforms. It is important for the judiciary to be fully educated and informed about the objectives of the reforms through study tours, workshops and pilot projects. In addition, there is a need to establish clear coordination responsibilities between the Executive and Judicial Powers.

3.8 Other projects which are not specifically judicial reform projects reveal that project implementation is crucial. It is essential that there be an experienced, highly skilled and politically independent project coordination .

3.9 The present proposal accounts for these points by: (i) holding workshops and seminars for judges and the legal community, working with the Advisory Committee in order to ensure commitment and build consensus among the judiciary and informing NGOs and the public about the reform program; and (ii) establishing a highly-skilled Project Coordination Unit. In Ecuador, the weakness of the public sector managerial and administrative capacity is reflected in the active loan portfolio, which, as of March 1994, numbered 14 approved projects (totaling US\$723.9 million in commitments), of which 11 have explicit institution-building components. Recognizing the persistent weakness of the Ecuadorian public sector, institution building has been a major objective of the Bank's lending strategy: of the 7 projects in the proposed FY 94-96 lending program (totaling US\$243.6 million), 5 are for technical assistance.

4. THE PROJECT

4.1 The Judicial Reform Program itself will take place over several phases and will require international as well as local assistance (See Government's Judicial Reform Program). The proposed loan is designed to achieve the overall goals of the reform program of improving the efficiency and access to disputes resolution and will represent the first phase which will last 5 years. The project will focus on establishing the institutional capability for proceeding with the larger scale reform program.

4.2 The overarching goal of the Bank project would be to improve the capacity of the judicial system by strengthening the administration of justice. Specifically, the proposed project aims at: increasing efficiency, effectiveness and transparency in the judicial process by improving case administration procedures; improving the infrastructure; expanding the use of alternative dispute resolution mechanisms within the court system; improving the access to justice by the public and women in particular; and improving court reform and research and legal education.

4.3 The project will concentrate on the courts located in Quito and Guayaquil as these two cities have the greatest delays in case processing. This geographical concentration of the project represents another effort to keep the project focused and well defined. All reforms introduced in Quito and Guayaquil will be done with a view to developing reform strategies which can be expanded later throughout the country either through a separate project or by Ecuador itself.

A. PROJECT DESCRIPTION

4.4 The project would aim at strengthening the judiciary in the processing of cases in an efficient and fair manner-- that is, providing judges and court personnel with new case management techniques, information technology and mediation procedures which will allow cases to be resolved in an efficient and effective manner as well as improving access to justice and the quality of judicial training. Through these components, the judiciary should experience efficiency gains and improvements in the quality of service delivered to the public- both of which are elements contributing to the independence of the judiciary.

B. PROJECT COMPONENTS

4.5 The World Bank project would finance consulting services, training, equipment, and *building and office renovation* through the following components and their respective base costs: a Case Administration and Information Support program, US \$4.5 million; a Court-Annexed Alternative Dispute Resolution program, US \$1.4 million; a Program for Law and Justice, US \$3.5 million; and an Infrastructure program, US \$2.8 million. Total project costs are estimated to be \$14.3 million. (See summary cost tables Annex 16)

1. Component I: Case Administration and Information Support

4.6 Case Administration and Information Support courts so that they are disposed of in a timely, just and efficient manner.

4.7 The Case Administration and Information Support component is a fundamental element in the overall goal of improving the capacity of the courts. The goal of the component itself would be to improve the management of cases filed in Quito and Guayaquil. There are nine subcomponents of the case administration and information support component:

- caseload management and a specific delay reduction program to analyze the causes of delay and develop recommendations to address those issues- this program will include a national conference on delay reduction which will be followed by the establishment of delay reduction pilot projects in the First Instance Courts in Quito and Guayaquil
- establishment of systems to improve access to information regarding cases by the users of the judicial branch
- establishment of a records management system including purging case files and experimenting with an appropriate system for maintaining and recording oral proceedings
- development of standardization of legal forms
- establishing trial court performance standards to respond to the need to adopt a service and performance oriented mentality, thereby shifting the focus to the needs of the users of the system, and allowing the judiciary to monitor the service it provides.
- development of operational manuals
- development of training programs for current First Instance Court judges in Quito and Guayaquil on case administration (since the other areas of judicial training will be covered under the proposed IDB project)
- automating the trial courts
- development and improvement of management information system including the judicial statistical system which, in part, will assist in case tracking systems and in analyzing the causes of delay. (see Annex 2)

2. Component II: Court-Annexed Alternative Dispute Resolution Mechanisms

4.8 Subcomponent 1: Court-Annexed Pilot Mediation Programs. The main objective of this subcomponent is to address some of the principal problems of the Ecuadorian judiciary, including backlogs, costs of litigation, fairness and effectiveness through mediation programs. Pilot mediation programs will be established in Quito and Guayaquil and would permit the public to go directly to mediation unit as well as the juzgados to refer cases to the court-annexed mediation unit for mediation services. As discussed below, an in-depth ADR study is envisaged under the Special Fund. Working Groups have been established in both Quito and Guayaquil. These Working Groups will assist in monitoring the pilot programs and provide advice as needed. (see Annex 4)

4.9 Subcomponent 2: ADR training. ADR education will be required to train those who will act as mediators in the pilot mediation programs in Quito and Guayaquil, disseminate information to the public; provide general information to professionals interested in the topic; and enrich the legal education system. Programs will be developed to train judges selected to refer cases to mediation and for professional and administrative mediation staff. If one or both of the pilot programs opt to use the services of volunteer mediators, a training program will also be designed for that purpose. (see Annex 5)

3. Component III: Program for Law and Justice

4.10 The above three components of the project represent specific priorities that have been identified and tackle specific shortcomings in the current Ecuadorian judiciary specifically in Quito and Guayaquil. Consequently, these components are the result of a top-down planning process. However, the project is intended to provide a mechanism to research and implement certain activities that are needed to prepare the way for the Government's overall judicial reform program throughout the country. Activities will include a Special Fund for Law and Justice which will provide for demand driven solutions to the many issues facing the administration of justice, professional development program for judicial training, an empirical study on the state of legal education, and a study on property right registration. (see Annex 6)

4.11 Subcomponent 1: Special Fund for Law and Justice. In particular, a demand driven Special Fund will be established in two parts to promote increased participation in the reform and support the advancement of four critical areas: legal education and information; access to justice; law reform and research and, court reform focused on modernization and decentralization for the improvement of the administration of justice. The proposed projects would be non- profit and items eligible for financing would be specific investments (goods or civil works) or technical assistance activities. The proposed project would finance technical assistance to approve and supervise subprojects.

4.12 The Special Fund will be managed by the Project Coordination Unit through two advisory panels, one panel for the following areas: legal education and information, access to justice, and law reform and research, and another panel for court reform focused on modernization and decentralization for the improvement of the administration of justice. Courts, public agencies involved in the judicial sector, non-governmental organizations and individuals will be able to apply directly to the Special Fund through the Panels for grants to support research and service activities in one of the above four areas. Panels will evaluate grant proposals according to a set of criteria which would be included in the operational manual. Successful projects would be evaluated upon completion to assess their replicability. (see Operational Framework Annex 7)

4.13 Subcomponent 2: Program for modernization of Property Registration. A well-functioning registry system within judiciary for immovable (real property) and movable (commercial) property formalizes property ownership, provides certainty for the registrants themselves and facilitates an efficient market for real and personal property. The loan would finance technical assistance to carry out this study. (see Annex 8)

4.14 Subcomponent 3: Professional Development Program. Judicial training is essential if the legal profession is to be respected and if there are to be competent judges. The main objectives of this subcomponent would be to improve judicial training and enhance the access to and development of legal information. The Project would finance technical assistance as well as goods to carry out this program. (see Annex 9)

4.15 Subcomponent 4: Study on the State of Legal Education. This study would establish base-line statistics that can be maintained and reviewed on a regular basis with a view to using them to formulate minimum acceptable standards for legal education in Ecuador and fostering international cooperation for legal and judicial training programs. The Project would finance technical assistance in carrying this study and would be in consultation with a Committee on Legal Education. (see Annex 10)

4.16 Subcomponent 5: Research and Evaluation of Pilot Programs. Prior to the implementation of the pilot programs in Quito and Guayaquil, a baseline study will be conducted on the use of mediation in the two jurisdictions and on the characteristics of cases in these jurisdictions.(see Annex 5)

4.17 Subcomponent 6: Legal Services Pilots. (see Annex 11). These pilots will provide legal and complementary services to qualified women and their children so as to enable them to obtain and secure their legal entitlements and begin to take action that will improve their socio-economic positions.

4. Component IV: Infrastructure

4.18 The main objective of this component of the project will be to begin to improve the infrastructure of the courts in Ecuador, which in its current state is a serious impediment to the effective administration of justice, both from the perspective that the condition of the facilities impedes the efficient administration of justice and that the designs for basic judicial functions such as clerks offices and judges chambers do not reflect principles of modern and efficient administration of justice.

4.19 Facilities (see Annex 12). The proposed project activities in the area of improving judicial facilities involve the following elements.

4.20 (i) Development of a national strategy for courthouse facility development including a five year facilities plan, national courthouse design standards with model layouts and minimum infrastructure requirements defined.

4.21 (ii) Remodeling of the building purchased by the judicial branch to house judicial offices currently located at the judicial center e.g. administrative offices, the new Consejo de la Judicatura Nacional, or some trial courts, and remodeling of the space vacated by these judicial offices in the central court building to create a Center of Justice for the courts of Quito. As part of the project, the recently purchased Nacional Fund for Preinvestment (FONAPRE) building in Quito, containing approximately 3,000 m², will be remodeled to house judicial offices at a cost of about US\$1.1 million. This was the least cost alternative

to upgrade the infrastructure of the courts. The public works will be expected to take about twelve months.

4.22 (iii) When the remodeling of FONAPRE is completed, approximately 1,500 m² of space vacated will be remodeled for the first and second instance courts in Quito. The creation of this space will allow the judicial branch to bring courts currently located in substandard conditions in rented space outside the judicial center into the court complex. The remodeling also will allow for the possible introduction of new organizations and designs such as centralized clerical functions. Similar remodeling of the judicial center in Guayaquil will be carried out to bring what is a substandard building to more functional levels. Full execution of the latter works would be provided for through project financing.

4.23 (iv) Pilot decentralized judicial facilities will be created in Guayaquil and Quito using the design standards adopted and incorporating modern case management techniques. The decentralized courthouses will fulfill the mandate of the recent Constitutional Reform for Government decentralization. The centers developed through Bank financing will serve as a model for other decentralized courthouses throughout the country. These judicial centers will be housed in remodeled buildings.

C. PROJECT COSTS AND FINANCING PLAN

4.24 Total project costs are estimated at US\$14.3 million equivalent, with a foreign exchange component of US\$3.2 million, or 22% of project costs. Project costs include US\$968,000 for physical (\$378,000) and price (\$590,000) contingencies. The proposed loan of US\$10.7 million equivalent covers about 75% of total project costs, net of taxes and duties. The loan would finance 100% of the foreign exchange and 75% of the local currency costs of about 1,430 staff months of consultants' services, of which 35 are expected to be internationally recruited. The balance, US\$3.6 million equivalent, or 25% of the project costs, would be financed by the Government of Ecuador through budgetary appropriations. The Ministry of Finance has agreed that 100% of the loan proceeds would be transferred to the PCU on an agreed, timely basis by means of an implementation arrangement containing terms and conditions satisfactory to the Bank. A PHRD grant from Japan is financing pre-identified project preparation activities in the amount of Yen 70,000,000, equivalent to approximately US\$667,000.

TABLE 1: ESTIMATED PROJECT COSTS

(US\$'000 equivalent)

<i>Item</i>	<i>Local Costs</i>	<i>Foreign Costs</i>	<i>Total</i>	<i>% Foreign Exchange</i>	<i>% Total Base Costs</i>
A. Case Administration and Information Support	2,359.8	2,163.2	4,523.0	48	34
A.1 Caseload Management a/	189.8	95.2	285.0	33	2
A.2 Improve Public Access to information	135.0	215.0	350.0	61	3
A.3 Records Management	536.0	263.0	799.0	33	6
A.4 Standardized Forms	100.0	20.0	120.0	17	1
A.5 Establish Trial Court Performance Standard	20.0	20.0	40.0	50	0
A.6 Operational Manuals	50.0	20.0	70.0	29	1
A.7 Training on Case Administration	180.0	20.0	200.0	10	1
A.8 Technology Implementation	969.0	1,490.0	2,459.0	61	18
A.9 Management Information/Judicial Statistics	180.0	20.0	200.0	10	1
B. Alternative Dispute Resolution Mechanism	1,071.9	285.1	1,357.0	21	10
B.1 Pilot Projects a/	960.9	165.1	1,126.0	15	8
B.2 ADR Training	111.0	120.0	231.0	52	2
C. Program for Law and Justice	3,496.7	53.3	3,550.0	2	27
C.1 Special Fund for Law and Justice (incl. Decentralization - infrastructure and technology)	2,400.0	0.0	2,400.0	0	18
C.2 Registry Study	500.0	0.0	500.0	0	4
C.3 Legal Services Fund	300.0	0.0	300.0	0	2
C.4 Professional Development Program	207.3	10.7	218.0	5	2
C.5 ADR Study	47.4	42.6	90.0	47	1
C.6 Study on the State of Legal Education	42.0	0.0	42.0	0	0
D. Infrastructure - Remodelling Works	2,380.0	420.0	2,800.0	15	21
E. Project Coordination Unit and Fund Management a	1,105.9	7.1	1,113.0	1	8
Total Base Costs	10,414.3	2,928.7	13,343.0	22	100
Physical Contingencies	261.8	116.6	378.4	31	3
Price Contingencies	445.2	144.7	589.9	25	4
TOTAL PROJECT COSTS a/	11,121.3	3,190.0	14,311.3	22	107

Note a/ Pre-identified preparation activities to be funded by the Japanese grant are not included in these figures.

TABLE 2: PROJECT FINANCING PLAN

(US\$'000 equivalent)

<i>Source of Financing</i>	<i>Local Costs</i>	<i>Foreign Costs</i>	<i>Total</i>
Government	3,611.3	0.0	3,611.3
IBRD	7,510.0	3,190.0	10,700.0
TOTALs	11,121.3	3,190.0	14,311.3

5. PROJECT IMPLEMENTATION

A. INSTITUTIONAL ARRANGEMENTS

5.1 The proposed project will have one executing agency: The Project Coordination Unit. The President of Ecuador has issued a Decree to establish the PCU. As experience of judicial reform activities is very limited in Ecuador and since the proposed project is not solely focused on the judiciary, the Executive Branch (Presidency since there is no Ministry of Justice) together with the Supreme Court established a project office that is headed by the appointed Coordinator. This office will have direct responsibility for implementation of the project. A Project Coordinator has been hired who will have primary responsibility for implementation of the project. The Project Coordinator will also monitor the project execution, including administrative aspects, and advise the Advisory Committee on project implementation and work closely with the judiciary. The Advisory Committee established by Presidential Decree will be composed of representatives of the President of the Supreme Court, President of the Republic, Congress, Fiscalía and Procuraduría. A legal affairs director, and administrative director have also been hired under the PCU. (see Annex 13)

B. IMPLEMENTATION ARRANGEMENTS

5.2 Implementation will be paced to match a gradual build-up of institutional capacity. Interventions related to case management, alternative dispute resolution mechanisms, and other projects will be implemented on a pilot basis in order to build gradually the experience of managing projects. The pilots will be concentrated in first instance civil courts in both Quito and Guayaquil. (see attached matrix, Annex 14)

5.3 Design of the pilot ADR programs, case selection methodology, and case and staff selection criteria have all been considered by several working groups, which have been established in Quito and Guayaquil.³⁵

5.4 In addition performance indicators for the project have been developed. The time delay study conducted by the Bank provides performance indicators for the pilot first instance courts. (see Annex 15).

5.5 An operational manual that will guide the PCU and the Program for Law and Justice is a condition for effectiveness. The operational manual will also include the performance indicators that have been developed, the operational framework for the Special Fund as well as all the terms of reference that have been developed and agreed to.

³⁵ These working groups are comprised of judges (of all courts in each jurisdiction), lawyers, university professors and administrators and representatives of non-governmental organizations involved in ADR projects. Group members were selected on the basis of their commitment to ADR and their reputations for excellence and diligence in their respective fields.

C. PROCUREMENT ARRANGEMENTS

5.6 The PCU will be responsible for all procurement. In order to strengthen the capacity of carrying out procurement activities, key staff in the PCU would be trained and be familiarized with the Bank's requirements. Consultants financed under the loan would be selected and hired by the PCU in accordance with procedures and criteria set forth in the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981. The PCU will use Bank-issued standard forms of contract and model letters of invitation (LOI) when hiring consultants for the project.

5.7 Procurement for goods and works would follow the Bank Procurement Guidelines as published in January 1995 and revised in January 1996. Existing Ecuadorian legislation contains various procurement provisions that are incompatible with Bank guidelines; therefore, special provisions dealing with points of differences, either in substance or in interpretation, between Bank guidelines--for procurement and for the use of consultants--and Ecuadorian legislation are included in the Loan Agreement. Bank-issued standard bidding documents (SBDs) will be used for all ICBs (international competitive bidding); Bank's SBD, appropriately modified and acceptable to the Bank, would be used for all NCBs (national competitive bidding).

5.8 Goods. The software, hardware, training, and maintenance service contracts for the technology implementation of the Case Administration Component, together with other similar computers needed in other components would be packaged and procured together, to the extent feasible, using ICB, costing US\$250,000 or more per contract. Other isolated computers and office/specialized equipment needed would be procured: (a) using LIB among suppliers with service and maintenance facilities in Ecuador, for contracts with estimated values between \$100,000 and \$250,000 up to an aggregate limit of \$400,000 and (b) using shopping procedures, requiring at least three quotations from eligible suppliers, for the individual contracts of less than \$50,000 each, up to an aggregate limit of \$400,000.

5.9 Works. Court remodeling work under the Infrastructure Component, estimated to cost over US\$250,000 per contract, would be procured through NCBs. Since the individual civil work package is not expected to exceed US\$3.0 million equivalent, and thus is unlikely to interest foreign contractors, no ICB is anticipated for the procurement of civil works. Other small works including minor infrastructure works (each costing less than US\$250,000 equivalent per contract) up to an aggregate limit of US\$400,000, will be procured under lump sum, fixed price contracts awarded on the basis of quotations obtained from three qualified contractors in response to a written invitation, in accordance with procedures acceptable to the Bank.

5.10 Special Funds. The Special Fund activities will be grouped into two separate subcomponents: research activities (involving the procurement of consulting services) and non-research activities (involving the procurement of goods and works) with a maximum grant amount of \$100,000 per proposal with the possibility of multiple applications. Grants for \$10,000 or less will have simplified procedures. All consulting services, goods and works financed by the Special Funds will be procured in accordance with the Bank

Guidelines. All contracts under the Special Funds are expected to be small. Goods and works will be procured using methods determined in accordance with the threshold established in paragraphs 5.8 and 5.9 above and the aggregate limits established above for the each method will also apply to purchases under the Special Funds.

TABLE 3: PROCUREMENT ARRANGEMENTS
(US\$ million equivalent)

<i>Project Element</i>	<i>Procurement Method</i>			<i>Total Cost</i> (including contingencies)
	ICB	NCB	Other	
1. <u>Services</u>				
1.1 Technical Assistance			5.7 <u>a/</u> (5.2)	5.7 (5.2)
1.2 Training			0.2 <u>a/</u> (0.2)	0.2 (0.2)
2. <u>Goods and equipment</u>	2.9 (2.5)		0.8 <u>b/</u> (0.6)	3.7 (3.1)
3. <u>Civil works</u>		3.6 (1.8)	0.4 <u>c/</u> (0.2)	4.0 (2.0)
4. <u>Incremental Operating Costs</u>			0.7 (0.2)	0.7 (0.2)
Total	<u>2.9</u> (2.5)	<u>3.6</u> (1.8)	<u>7.8</u> (6.4)	<u>14.3</u> (10.7)

Note: Figures in parentheses are the respective amounts financed by the Bank loan.

a/ Services should be procured in accordance with *World Bank, Guidelines: Use of Consultants* by World Bank Borrower and by the World Bank as Executing Agency (Washington, D.C., August 1981).

b/ LIB and Shopping

c/ Three quotations: lump sum fixed price contract

5.11 Prior Review. In addition to reviewing the terms of reference for all consultant service contracts, service contracts, estimated to cost over US\$75,000 for firms and US\$30,000 for individuals, as well as all single-source consultant contracts and consultant contracts for assignments of a critical nature as reasonably determined by the Bank, will be subject to the Bank's prior review. Goods contracts costing over US\$50,000 and works contracts costing over US\$250,000 per contract are also required the Bank's prior review.

Furthermore, amendments to contracts raising their value above the respective thresholds as stated above would necessitate the Bank's prior review. These prior review arrangements will ensure ex-ante review by the Bank of about 85% of the total value of all Bank-financed contracts.

TABLE 4: BANK PRIOR REVIEW AND WITHDRAWAL DOCUMENTATION THRESHOLDS
(FIGURES IN US\$'000 EQUIVALENT)

<u>Category</u>	<u>Bank Prior</u>	<u>Withdrawals</u>	
	<u>Review Threshold</u>	<u>Full docum.</u>	<u>Under SOEs</u>
1. Consulting Service Contracts			
1.1 Firm	≥ 75	≥ 75	< 75
1.2 Individual	≥ 30	≥ 30	< 30
2. Goods	≥ 50	≥ 50	< 50
3. Works	≥ 250	≥ 250	< 250

D. DISBURSEMENTS

5.12 The proceeds of the proposed loan would be disbursed over a six year period, to cover: (i) 100% of expenditures (net of taxes) for international and local consultants' services (including studies, training, conference, workshop activities); (ii) 100% of foreign expenditures and 80% of local expenditures (net of taxes and duties) for purchases of goods and equipment; (iii) 50% of expenditures for Civil Works; and (iv) 20% of expenditures for incremental operating costs. The tables below show the initial arrangements of the allocation of loan proceeds and the estimated disbursement schedule. The project completion date will be December 31, 2001 and the closing date will be June 30, 2002.

TABLE 5: DISBURSEMENT ARRANGEMENTS

(US\$'000 equivalent)

<i>Category</i>	<i>Amount</i>	<i>Percentages</i>
1. Technical Assistance	4,600	100%, net of taxes
2. Goods and equipment	2,800	100% of foreign expenditure, and 80% of local expenditures, net of taxes and duties
3. Civil works	2,000	50%
4. Incremental Operating Costs	200	20%
5. Unallocated	1,100	
TOTAL	10,700	

Table 6: Estimated Project Disbursements

(US\$'000 equivalent)

<i>Fiscal Year</i>	<i>FY97</i>	<i>FY98</i>	<i>FY99</i>	<i>FY2000</i>	<i>FY2001</i>	<i>FY2002</i>
Annual	500	1,000	2,600	2,900	2,600	1,100
Cumulative	500	1,500	4,100	7,000	9,600	10,700

5.13 Documentation of expenditures. Withdrawal applications for goods costing over US\$50,000 and works costing over US\$250,000 per contract would be supported by full documentation; other contracts of lesser amount as well as all training and incremental operating costs would be made on the basis of Statement of Expenditure (SOE), for which supporting documents would be maintained by the PCU, and would be made available for Bank's selective review. Withdrawal applications for consulting firm contracts costing over US\$75,000 and individual consultant's contracts costing over US\$30,000 would be supported by full documentation.

5.14 Special account. A Special Account in US dollars would be opened at the Central Bank, or other commercial bank, with an initial deposit of US\$300,000 to facilitate project execution. A higher amount, corresponding to about four months of expected project expenditures, up to the limit of US\$750,000 equivalent, may be requested after cumulative disbursements have reached US\$1.5 million equivalent. The Bank would replenish the Special Account for the amount of the withdrawals on account of eligible expenditures at the request of the Borrower.

E. ACCOUNTING AND AUDIT ARRANGEMENTS

5.15 An audit of the financial status of the project would take place once a year. The audit would be carried out by an independent auditor acceptable to the Bank. The audit reports would be sent to the Bank not more than four months after the end of each calendar year. The report would include, inter alia, specific opinions on: (a) sources of proceeds and their use; (b) SOEs; and (c) implementation of contracting clauses, including the application of eligibility criteria, and compliance with procurement procedures and other financing conditions. The Special Account would also be similarly audited.

5.16 The PCU will prepare in accordance with terms of reference included in the Operational Manual on December 31 and June 30 of each year, a progress report on the activities carried out under the project for that period and plans for the next twelve months of activities.

6. ENVIRONMENTAL REQUIREMENTS

6.1 The proposed operation aims to improve the enforceability of legal and contractual rights through improved judicial administration and increased access to alternative dispute resolution mechanisms. As such, the project is not expected to adversely affect the environment. In the medium term, the project could have a positive impact on the environment as it reinforces the effectiveness of legal regulation over social and economic activities. An effective legal framework is a key instrument for deterring environmentally damaging activities or seeking remedies

7. BENEFITS AND RISKS

7.1 The principal benefits of the project would be a judicial process with improved efficiency and more rational decision-making. It is expected that the time it takes for cases to go through the system will decrease, and the percentage of cases disposed as a proportion of the number of filings in each court would increase, and the cost to process each case would decrease. This in turn would lead to an increase in public confidence in the judiciary and its role in enforcing the law as well as in the stability of government institutions in Ecuador. An effective and efficient judiciary would also contribute to both economic growth by facilitating private sector activity and to social welfare by guaranteeing the basic rights of all citizens. The beneficiaries from these reforms include the judiciary itself, the private sector and general public. In addition, the project is part of a far reaching Judicial Reform Program to be conducted by the Government and implemented by other international organizations.

7.2 The major risks to successful project implementation are: whether the judiciary has the institutional capacity to implement its components; whether the Advisory Committee can obtain the support of the Government and Non-governmental Agencies. Since this is the first experience with the Supreme Court, the project may experience some delays.

7.3 A pervasive issue in Ecuador is political fragmentation, coupled with the mandatory change in administration every four years. The latter suggests the need for short-term, tangible results to accompany longer-term objectives. The proposed project has been structured to address this need. Additional issues to consider include the requirement for focused identification of project components; the critical requisite for an active project leader; the need for close project supervision; and the possibility of diminishing official commitment as the electoral process approaches. Project design would also safeguard against the Project Coordination Unit eventually substituting for real and sustainable institution-building actions by ensuring that training and technology transfer take place during project implementation and are institutionalized.

7.4 Generally, changing the legal framework requires a significant level of consensus among those directly affected. In 1992 a new Criminal Procedure Code was presented in Congress after having been developed without any broad-based public participation. The Code did not pass into law because the affected legal community opposed it.³⁶ This example serves to illustrate that all envisioned changes need to originate from an extensive process of consensus-building. The participatory nature of the ideas for and implementation of the proposed project was designed specifically with this need in mind.

³⁶ The draft Criminal Code is now being revised with the support of Corporacion Latinoamericana Para el Desarrollo (CLD).

A. EXPECTED OUTCOMES

7.5 The project is expected to produce more efficient and effective results in the first instance courts. Performance indicators have been developed based on a time delay study conducted in 1995. The indicators developed are those that are commonly used by judicial sector to measure efficiency and effectiveness. These include time of filing to disposition and disposition per judges along with a economic indicator that measures cost of disposition. It is expected that the median time it takes for cases to go through the system will decrease five to eleven months depending on the type of case. It is also expected that the percentage of cases disposed as a proportion of the number of filings in each court would increase to 10-20% per year (see Annex 15). This will be monitored during project implementation. With the improved case administration and training of court personnel, judges would have more time to devote to judicial decision-making. In addition, improved training of judges would improve the quality of decisions based on sound legal reasoning, and, therefore, the number of cases appealed should be reduced as well.

B. PROJECT SUSTAINABILITY

7.6 As one part of a long term judicial reform process by the Government, the project is an integral element in the overhaul of the judiciary in Ecuador. The sustainability of the project will depend in part on the continued commitment of the Government to the Judicial Reform Program. The high degree of consultation at every stage of the project will assist in ensuring that these reform efforts are continued.

7.7 Preparation of the judicial reform program included the participation of the Judiciary, Executive, Procuraduría, and Fiscalía through the judicial reform working group. In addition, a workshop with the Government, NGO's and international organizations was held to develop an implementation strategy for the reforms. The participatory approach was also used in preparation of the Bank's project components which has contributed to the strong ownership of the project by the Government. In this way, the project enjoys wide support from all political parties and interest groups and, therefore, would transcend individual governments' interests. In addition, the project will not finance significant amounts of recurrent costs so that there will not be large financial burdens placed on the Government towards the end of its implementation.

7.8 One specific activity directly aimed at providing project-driven improvement is the establishment of the Advisory Committee which would guide the project and be composed of representatives from the Judiciary, Congress, Presidencia, Procuraduría and Fiscalía. In addition, the Special Fund for Law and Justice is directly aimed at providing demand driven improvement. It is envisaged that this Fund would be able to solicit outside funds in order to be sustainable beyond the life of the project. As previously explained Advisory Panels would be established to administer this fund. The Bank will closely follow the appointment of these members to ensure that well qualified professionals are chosen for the Panels and that transparency is inherent in the recruitment process.

8. SUMMARY OF AGREEMENTS TO BE REACHED AND RECOMMENDATION

8.9 Prior to Effectiveness. The project operational manual will be adopted by Projusticia.

8.10 Based on the above agreements and understandings the proposed project constitutes a suitable base for a loan to the Republic of Ecuador on standard variable interest rate for LIBOR-based U.S. dollar single currency loans.