

**PROJECT INFORMATION DOCUMENT (PID)
CONCEPT STAGE**

Report No.: AB1282

Project Name	Justice Services for Economic and Social Development
Region	LATIN AMERICA AND CARIBBEAN
Sector	General public administration sector (100%)
Project ID	P089810
Borrower(s)	GOVERNMENT OF ECUADOR
Implementing Agency	
	REPUBLIC OF ECUADOR Ecuador
	PRO JUSTICIA Ecuador
Environment Category	<input type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> FI <input checked="" type="checkbox"/> TBD (to be determined)
Safeguard Classification	<input type="checkbox"/> S ₁ <input type="checkbox"/> S ₂ <input type="checkbox"/> S ₃ <input type="checkbox"/> S _F <input type="checkbox"/> TBD (to be determined)
Date PID Prepared	December 10, 2004
Estimated Date of Appraisal Authorization	September 20, 2005
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1. Key development issues and rationale for Bank involvement

Despite recent reform and modernization efforts, Ecuador's justice system remains largely ineffective, inefficient, inaccessible and vulnerable to corruption. Poor administration of limited resources, low technical and professional standards of such key operators such as judges, administrative and court staff, and weak governance structures within the justice sector continue to affect the administration of justice. Despite the progress achieved with Bank assistance to date,¹ substantial improvements are still needed. Given public demands for improved governance, including social and economic indicators and the institutional challenges from Ecuador's pending free trade agreements, justice reform remains a high development priority. While the project seeks to build on the foundation established by previous efforts, it will also reflect the lessons learned from implementation experience and make necessary adjustments so as to deepen and expand their achievements.²

Based on existing diagnostics and identified weaknesses in the rule of law, the following is a brief description of fundamental service delivery issues in Ecuador's justice sector:

¹ See Annexes 1 and 2.

² Fretes Cibils, Giugale and López-Calix, "Ecuador: An Economic and Social Agenda in the New Millennium," World Bank, Washington D.C., pg. 516.

(a) *Inadequate Management Capacity.* Although the court management model developed under the Bank's first Judicial Reform Project has reduced delays in case processing in several courts, there is still considerable room for improvement and expansion. Moreover, Ecuador's legal system is also undergoing crucial reforms as a result of a new Civil Procedure Code and a Constitutional reform³ which requires the transition from a traditional, written system to one based on oral arguments. This change is critical not only for reasons of quality-control, but also to achieve greater transparency in judicial proceedings: oral argument provides direct access to evidence submitted as well as immediate discussion of its procedural significance and supports the rationale for the court's ruling. Moreover, the use of oral proceedings increases the speed of the judicial process by using a series of oral hearings (in addition to the trial) which can reduce the time-consuming exchange of pleadings, with clerical errors and exceptions being dealt within in one, timely proceeding. The actions of the judges and attorneys are also more open to public scrutiny. While the Judiciary is legally authorized to re-define the regulatory framework of court and case management, the challenge still lies in its ability to implement a modern management style and efficiently apply the tools required for a system of oral-argument procedures.

(b) *Barriers to Economic and Social Inclusion.* The lack of "legal security" or the predictability of judicial decisions (*seguridad jurídica*) is generally the most frequent complaint made by a broad array of stakeholders interested in issues such as civil and commercial justice and due process protections. Also, the improvement of judicial services to better respond to the needs of the poor remains a top priority in Ecuador. For example, the lack of adequate legal aid and public defender services, institutional corruption and wasted resources disproportionately affect the poor. Moreover, the lack of trust in judicial institutions, delay in the implementation of small claim courts, and family courts (which have been defined by territory but not made operational) all constitute significant barriers to inclusion in the justice sector.⁴

(c) *Lack of public information and outreach.* The achievements of reform programs which began in the 1990s have not been adequately disseminated, and public perception of the Judiciary remains largely negative. Before undertaking new investments, the Judiciary must design outreach programs to garner the support of users and potential users of its services, and request their active involvement in confirming the progress thus far achieved as well as in identifying areas for change. No permanent fora for dialogue between the Judiciary and civil society organizations (CSOs) exists, and, as a result, both suffer from this lack of substantive interaction to develop the sector's capacity. Citizen awareness and monitoring of justice sector issues will also help improve public perception, as well as provide effective external support for judicial independence. Certainly, public trust and confidence in the judicial system is critical for investment, but it also influences the political support of Government decision-makers within the context of the political economy of reform.

(d) *Unbalanced Sector Development.* Although some targeted civil courts have benefited from performance improvements, other key judicial services lag behind: (i) the administrative courts (*contencioso administrativo*) which review decisions of the Executive

³ In 1998, through a referendum, the Constitution of Ecuador was revised to include oral procedures as well as greater contact between judges and the parties in dispute. See Article 192 of the Constitution of the Republic of Ecuador (1998).

⁴ See "Foundations for Institutional Reform in Ecuador," page 38; The World Bank (June 2004); and Seligson, "Democracy Audit: Ecuador 2004, University of Pittsburgh Latin American Public Opinion Project," page 112, (May 2004).

Branch, in such areas as public contracts and expenditures, and (ii) the tax courts (*Tribunales Fiscales*) which adjudicate disputes between the Internal Revenue or Customs Services and taxpayers (both corporate entities and individuals) are among the examples of courts requiring improvements in performance management.⁵ Moreover, the complexity of certain civil cases with economic and social repercussions often overwhelms the capacity of civil courts (e.g. matters related to intellectual property, insolvency and bankruptcy, antitrust, consumer protection and environmental degradation). The traditional resources and capacity of a civil court are clearly inadequate to meet current and future demands. Although the Judiciary's Organic Law permits the creation of specialized courts for the more rapid adjudication of such cases, this authority has not been fully exercised and could be extended to new areas with enhanced economic and social impact. Finally, regulations on market entry and exit fall short of offering a competitive environment to attract foreign and enhanced domestic investment, particularly in the area of bankruptcy.⁶

(e) *Poor Technical and Professional Development.* Although the Judiciary does have the authority power to fill vacancies directly, effective rules to ensure transparency and the participation of civil society are non-existent in the process. In spite of some recent progress and limited civil society consultations, no effective, permanent systems are in place for the selection, performance evaluation, and training of judicial staff. Objective criteria for the appointment, promotion, and removal of staff are also absent. Further, Ecuador lacks modern human resources management tools which could provide the foundation for promoting a 'judicial career' system, based on merit rather than seniority.

(f) *Weak Accountability Mechanisms.* The Ecuadorian justice system provides extreme examples of accountability mechanisms. While some agencies are immune from congressional oversight, others are exposed to impeachment by a politically-motivated majority. In sum, Ecuador's justice sector sorely lacks a transparent system of internal checks and balances, which can then be reinforced by external oversight and applied to the investigation of corruption charges. Other areas which require greater transparency include the public disclosure of information on judicial performance, including case distribution, the rationale of decisions, compensation levels, attendance records, itemized expenditures, etc.

2. Proposed objective(s)

The main objective of the proposed Justice Services for Economic and Social Development Project (the "Project") is to improve the provision of services and access to justice in target areas critical to Ecuador's development, including enhancing the overall "legal security" or predictability of judicial decisions.

3. Preliminary description

The Project's design will build on ESW and other Bank diagnostic work, lessons from previously approved projects, including on-going JSDF and IDF grants. It will also reflect collaboration with other donors, such as the Inter-American Development Bank (IDB), the

⁵ Located in Quito, Guayaquil, Cuenca and Portoviejo.

⁶ See "Doing Business in 2005, Removing Obstacles to Growth." World Bank. (2005)

United Nations Development Programme (UNDP) and civil society. The Project will not be able to address all of the sector's deficiencies, but rather seeks to define and narrow its scope to those areas with the greatest need for Bank assistance and those most likely to result in measurable impact.

The following is a preliminary description of the Project's components thus far:

(1) Justice Sector Management Component: Based on performance assessments of model systems piloted in various cities, the Project will assist the Judiciary in scaling-up the National Court Management System. This measure will ensure optimal court productivity while protecting due process guarantees. Furthermore, the component includes a thorough review of internal policies and procedures to identify opportunities for possible reorganization and redistribution of functions and responsibilities, and an overall process re-engineering. A major contribution of integrated management system will be the creation and maintenance of statistical information generated by judicial districts and specific court offices. This information would then be appropriately collected, analyzed, and disseminated. This component will also include the development of an IT plan and other management tools for the justice sector, court performance monitoring and evaluation indicators, and the preparation of user profiles.

(2) Human Resources Management Component: The Project will assist the Judicial Council and the Judiciary to recruit and retain quality personnel and provide them with appropriate professional development, including the application of such modern human resource concepts as planning, performance, and the successful use of incentives. This component will also strengthen the justice sectors ability to enhance its capacity in the areas of budget preparation and expenditure management. Additionally, this component will also include support for the newly established Judicial Training Unit to be able to develop a focus different from traditional judicial education programs to include modern training techniques. The Training Unit would also include a focus on training judges on oral proceedings, and it would coordinate with other entities to address the training of lawyers and court personnel in these proceedings. Local realities and the preferences of judges and court staff will be taken into account through participatory consultations, and economic and social issues will be given preference over traditional legal topics. The possibility of outsourcing training services will be considered as will partnerships with public and private universities and law schools. Finally, to address issues of accountability and integrity, the Project will include both internal and external interventions to strengthen the capacity of the Judiciary to sanction cases of corruption by ensuring that internal disciplinary bodies are equipped with effective investigative tools, as well as establish coordination mechanisms with civil society, including the Citizens Anti-Corruption Commission (*Comisión de Control Cívico de la Corrupción*).

(3) Economic Development Component: This component will focus on strengthening the capacity of the Judiciary, the Judicial Council and the practicing Bar to conduct complex cases relevant to economic development. It is expected that “legal security” and the predictability of judicial performance will be beneficial for foreign and domestic investment. The Project will target selected administrative, fiscal, labor and civil courts that are responsible for processing complex cases, including such market-oriented laws as intellectual property, antitrust, insolvency and bankruptcy, consumer protection, and environmental degradation. Due to varying levels of preparedness in terms of experience with prior reforms and priorities of local judicial staff and users, this component will likely be structured as a “menu” of potential investments. The Project will use annual work programs to determine the amount and sequencing of such investments, which may include minor infrastructure (rehabilitation of common service areas) and computer equipment (hardware and software for the operation of networks and workstations).

(4) Social Inclusion Component: In order to meet the particular needs of poor families, youth and marginalized groups in Ecuador, the Project will seek to address the obstacles these groups face in accessing justice services. This includes support to the courts which deal with the types of cases which often affect poor families, such as tenancy disputes, community conflicts, consumer protection, and ensuring operational small claims and family courts. These activities will take into account existing grant activities financed under a JSDF and PROPEDINE II's progress in the area of indigenous justice systems. In addition to improving the quantity and quality of justice services available, the Project will support making basic information about the functioning of the sector and its diverse institutions available to the public so as to enhance transparency, better inform citizens, and provide opportunities for public participation in the overall reform of the justice sector.

4. Safeguard policies that might apply

[Guideline: Refer to section 5 of the PCN. Which safeguard policies might apply to the project and in what ways? What actions might be needed during project preparation to assess safeguard issues and prepare to mitigate them?]

5. Tentative financing

Source:	(\$m.)
BORROWER	0
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT	20
Total	20

6. Contact point

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