

ECUADOR¹

General Information

Ecuador is a unitary state composed of twenty-two provinces and covering 253,370 sq. km. It has a total population of 13,572,000, and 65.8% of its inhabitants live in urban areas. Average population density is 53.5 people per sq. km.; between 2001 and 2005 the population grew at a rate of 1.7%. Those under the age of fourteen accounted for 33.8% of the total population in 2000, while that same year those over fifteen had an illiteracy rate of 8.4%, 4% less than in 1990. Average life expectancy at birth from 2000 to 2005 was 70.8 years.² The rate of households living in poverty dropped to 49% in 2002, significantly lower than the 64% registered in 1999. A similar decrease was observed in the extreme poverty rate, which dropped from 31.3% in 1999 to 19.4% in 2002.³ In regard to economic indicators, the World Bank reported steady growth in Ecuador's GDP—3% in 2002 and in 2003—while per capita GDP rose from US\$1,490 in 2002 to US\$1,790 in 2003 with a purchasing power parity of US\$3,440. In 2002, the urban unemployment rate was 8.6%.

Judicial System Highlights

- On December 8, 2004 Congress interpreted the Twenty-fifth Temporary Disposition of the Constitution of 1998 and dismissed all thirty-one Supreme Court justices. However, it then immediately proceeded to confirm three of them and elect the remaining twenty-eight.
- In April of 2005 –following various days of protests– President Lucio Gutiérrez removed the thirty-one recently nominated justices after they annulled the corruption trials that were being held against former President Abdalá Bucaram.
- The Supreme Court Justice Evaluation Committee –which was recently created by Congress– is selecting thirty-one new justices. Eleven will come from the judicial career, ten will be university professors and ten will be in free practice.
- In 2003 Ecuador had 831 judges, or a rate of 6.1 per 100,000 inhabitants. In 2004 there were 2.4 prosecutors per 100,000 inhabitants.
- The justice sector budget for 2005 is equal to 1.97% of the total fiscal budget.
- In 2004 the country had 233.4 police per 100,000 inhabitants.
- On July 1, 2004 the Labor Code Reform Law entered into force, in accordance with a constitutional mandate that called for Congress to implement an oral judicial system.
- On January 8, 2003 the Commission to Apply the Criminal Procedure Reform (*Comisión de Aplicación de la Reforma Procesal Penal*) was formed to coordinate the implementation of that reform among all judicial system operators.
- In 2003 judges faced an average caseload of 4,033 cases. The average clearance rate was 16%.
- Also in 2003, there were 72.7 inmates per 100,000 inhabitants and the overcrowding rate was 69.2%. 62.5% of inmates were in preventive custody.

1 Institutions

The Judicial Branch, called the *Función Judicial*, is composed of the Supreme Court, the National Judicial Council, the High Courts, the tribunals and the lower courts.

Judicial Branch

The Supreme Court is the highest instance of the Judicial Branch and is composed of ten specialized chambers: two criminal, three civil and commercial, three labor and social, one contentious-administrative, and one fiscal (government/taxation). The Court has thirty-one justices, called *ministros*, and its main role is to act as a final

¹ This chapter is based on information submitted by the *Consejo Nacional de la Judicatura*, the *Corte Suprema de Justicia* and the *Policía Nacional de Ecuador*, among other public institutions, and the collaboration of the Fundación Esquel. To complement this information, the authors referred to the *Guía de la Función Judicial Ecuatoriana*, reports from the World Bank, and institutional and civil society websites.

Table 1
Number of Courts by Subject Matter and Instance

Subject Matter	First Instance	Second Instance	High Court or Supreme Court
Civil and Commercial	246 civil courts	Exist in High Court, but no numbers are available	Three Supreme Court Civil and Commercial Chambers
Criminal	153 criminal courts	43 Criminal Tribunals (for certain types of cases)	Two Supreme Court Criminal Chambers
Traffic	50 traffic courts	No second instance for these matters	No high instance for these matters
Contentious- Administrative	Exist, but no numbers are available	High Court chambers exist, but no numbers are available.	One Supreme Court Contentious-Administrative Chamber
Labor - Social	31 labor courts	High Courts exist, but no numbers are available	Three Supreme Court Labor-Social Chambers
Juvenile	Exist, but no numbers are available	High Courts exist, but no numbers are available.	Heard in the Labor-Social Chamber
Fiscal /Taxation	5 fiscal courts	4 fiscal tribunals	1 Supreme Court Fiscal Chamber

instance through these chambers. The Supreme Court hears in first and second instance all criminal cases brought against the President of the Republic; his representatives; Ministers; legislators and their delegates; members of the Legislative Commission, Constitutional Tribunal and Supreme Electoral Tribunal; fiscal or contentious-administrative court judges; the Attorney General; the General Auditor; the Superintendent of Banks; the Superintendent of Companies; the President of the National Economic Planning and Coordination Authority; the President of the National Housing Authority; and Ministers of the High Courts according to the Constitution and the law. In addition, it is responsible for appointing and removing High Court judges and removing judges and Judicial Branch officials and employees for misconduct or serious breaches of duty, or for an absence of more than eight days.⁴

In the second instance, Ecuador has twenty High Courts, one in each provincial capital (with the exception of Galápagos and Orellana provinces). Each High Court is divided into specialized chambers, determined by caseload. For example, the Quito High Court has two chambers specializing in civil, commercial, tenancy and residuary matters; three specializing in criminal, collusive and traffic matters; and three specializing in labor and juvenile matters.

The High Courts are also district courts and have fiscal, contentious-administrative and criminal jurisdictions. The Supreme Court selects the judges that serve in these instances from a shortlist of three candidates recommended by the National Judicial Council.

The Constitutional Tribunal has autonomy over matters of constitutionality, and is not part of the Judicial Branch.

National Judicial Council⁵

The National Judicial Council is the Judicial Branch's governing, administrative and disciplinary body.⁶ It has public legal status and administrative and financial autonomy. The Council is based in the capital of Quito, but has authority nationwide in matters provided for in the Constitution, laws and their respective regulations.⁷

The Supreme Court Chief Justice, or his delegate, who may or may not be a member of the Court, presides over the Council. The Supreme Court plenary chooses seven other members (*vocales*) from nominations put forward by Judicial Branch members and the judicial community in general.⁸

The Council is organized into the following entities:⁹

- a) Council Plenary
- b) Chief Justice
- c) Administration-Finance and Human Resources divisions
- d) Executive Director

Its main functions are:¹⁰

- To apply the general strategy approved by the Supreme Court in administrative, economic, human resources and disciplinary matters.

- To hear and resolve administrative appeals for removal, incapacity or inability; for disciplinary sanctions involving the dismissal or removal of high court or local tribunal judges, members of criminal tribunals, judges, court registrars, notaries and other employees of the judicial branch.
- To create tribunals and courts, or abolish or modify those in operation, when the administrative needs of the justice system so require.
- To establish and modify jurisdiction, territorially or by subject matter, and determine the location of tribunals, chambers and courts as established above.

There were 831 judges in the Judicial Branch,¹¹ or 6.1 per 100,000 inhabitants, in 2003. The same year the National Judicial Council reported a total of 1,634 computers distributed among Judicial Branch courts, including the Supreme Court.

Budget

The Undersecretary of Budgets of the Ministry of Economy and Finance prepares the General Fiscal Budget. Budget allocations consider the justice sector to include the Supreme Court, the tribunals and courts, the Martial Court and the Police Court.

Table 2
Justice Sector Budget, 2004-2005 (in current U.S. dollars)
Source: Subsecretaría de Presupuestos, Ministerio de Economía y Finanzas

Item	2005	2004
Total Fiscal Budget	7,343,471,883.84	6,950,837,468.61
Justice Sector Budget	145,279,510.86	139,799,218.31

In 2005 the General Fiscal Budget increased by 6% and the amount allocated to the justice sector rose by 4%. Ecuador allocated 1.97% of its total fiscal budget to the justice sector in 2005. In 2003, 4% of the Judicial Branch budget derived from court fees, which amounted to approximately US\$5 million that year, with preliminary estimates for 2004 standing at US\$5.2 million. Court fees are paid by the individual responsible for carrying out the procedure. The system applies to all subject matters, except for criminal, labor, child support and minors cases.¹²

Constitutional Tribunal¹³

The Constitutional Tribunal is Ecuador's supreme constitutional body.¹⁴ It is independent and enjoys public legal status and administrative and budgetary autonomy. The institution's headquarters are in Quito and its jurisdiction covers the whole country.

The Tribunal has nine members and their respective deputies; the members are elected by Congress from shortlists provided by:¹⁵

- Mayors and provincial prefects
- Central workers unions and legally recognized indigenous and rural workers organizations
- Manufacturing associations
- The President of the Republic
- The National Congress
- The Supreme Court of Justice

The Tribunal has the following faculties:¹⁶

- To hear and resolve cases of unconstitutionality of the form and substance of the laws, legal decrees, decrees, regulations and ordinances; and to completely or partially suspend their effects if they are found to be unconstitutional.
- To hear and resolve charges of unconstitutionality of administrative acts of any and all public authorities, and if such is the case, to annul their effects. The administrative body should adopt all necessary measures to avoid any further Constitutional infringement.
- To hear and resolve rulings denying habeas corpus, habeas data and protection (*amparo*); to hear procedural writs for protection submitted from a lower court.
- To rule on charges of unconstitutionality brought by the President of the Republic in the drafting of laws
- To settle disputes over jurisdiction or faculties established in the Constitution
- To rule on opinions issued on matters of unconstitutionality by any Supreme Court chamber or other final instance court; to issue rulings having general binding force on the inapplicability of legal provisions found to infringe on the Constitution; such rulings shall have no effect on the original sentence.

During the first eleven months of 2004, 1,357 cases went before the Constitutional Tribunal, joining 356 pending cases. In 2003 1,081 were submitted and 353 were pending.¹⁷

Public Prosecutor's Office

The *Ministerio Público* is charged with the prosecution of crime. Under the Constitution of 1998, this agency is independent of government branches; legislation also guarantees its administrative and financial autonomy.

The institution's main functions are:

- To bring cases to trial, to direct and promote investigation before and during criminal procedures; to bring charges before the respective judges and courts where so merited, and to prosecute those charged with crimes.
- To monitor the operation of the prison system and rehabilitation of offenders.
- To protect victims, witnesses and others who participate in the criminal process
- To coordinate and direct the fight against corruption, with the assistance of all other bodies responsible for doing so, within their scope.
- To assist with public legal representation to uphold the Constitution and rule of law.

The Prosecutor General (*Ministro Fiscal General*) directs a specialized police force and a medical examiner's office to assist in the fulfillment of the institution's tasks. He or she is chosen by Congress by a majority of all members, from a shortlist presented by the National Judiciary Council. The appointment is for six years with no opportunity for reelection. The Public Prosecutor's Office consists of district prosecutors (*ministros fiscales distritales*), prosecutors (*agentes fiscales*), the National Director of Legal Counsel (*Director Nacional de Asesoría Jurídica*) and a Secretary General, and other staff.

Budget

Table 3
Budget and Resources of the Public Prosecutor's Office

Source: Ministerio Público de Ecuador

Item	2004	2003	2002
Public Prosecutor's Office budget (in current U.S. dollars)	31,948,098.85	27,730,789.64	17,459,262.59
Number of Computers	435	289	89
Number of Computers with Internet connectivity	24	4	4
Total number of prosecutors	323	310	318
Total number of assistant prosecutors (<i>letrados adjuntos</i>)	0	18	9
Number of other staff	718	580	530

The office has twenty district prosecutors, each with authority in one province.¹⁸ Between 2002 and 2004 the number of prosecutors rose by 2%, while the number of other staff increased by 35%. The rate of prosecutors in Ecuador is 2.4 per 100,000 inhabitants.

The Public Prosecutor's Office has an allocated budget for 2005 of \$32,792,580.41, representing an 88% rise over the 2002 amount, with an average annual increase of 26%.

Public Defense

Ecuador does not yet have a national Public Defender's Office. However, in 2004 the Commission to Apply the Criminal Procedure Reform was instrumental in presenting the National Public Defense Bill of Law to the President of the Republic, with the idea that he present it to Congress himself, as provided for in the Constitution.¹⁹ The President presented the bill in the second quarter of 2004, and the first report has been issued and will be discussed by the Congressional Civil and Criminal Commission.

Ombudsman's Office

The Ombudsman's Office is a public body with functional, financial and administrative autonomy with national jurisdiction.

The institution's maximum authority is the Ombudsman, who is assisted by two staff members. There is a commissioner who represents the office in each province and specialized offices that focus on children, gender and indigenous affairs, among others.

The main functions of the Ombudsman are:

- To promote and support habeas corpus, habeas data and legal protection (*amparo*) applications for those who so require.
- To defend and promote, on their own initiative or in response to a request, where appropriate, respect for the individual and collective basic rights that are guaranteed in the Constitution of the Republic, the laws, international conventions and treaties ratified by the Ecuadorian State.
- To exercise all other functions conferred by law.

In 2005 the allocated budget for the Ombudsman's Office is US\$7,316,498.83.

National Police²⁰

The country's law enforcement agencies are the National Police and the Armed Forces. Their main purpose is to defend sovereignty and guarantee internal order, individual and collective safety through prevention, discouragement and repression by upholding and enforcing the laws and legal norms and fostering the development of the State. The entity also has tasks and responsibilities related to maintaining the public peace, the security of people and property, and preserving the public morals, apprehending criminals, and controlling traffic, land transport and migration in the country. The institution is part of the Ministry of Government and Police, and also includes the Undersecretary of Police.

The Judicial Police is a branch of the National Police that works with the Public Prosecutor's Office supporting criminal investigations.

Table 4
National Police of Ecuador

Source: Sistema de Información – Centro de Computo D.G.P. and Departamento de presupuesto de la Policía Nacional

Item	2004	2003	2002
Police Officers	31,150	31,713	24,011
Budget (in current U.S. dollars)	361,951,546.00	350,550,949.00	254,533,314.00

In 2004 there were 31,150 police officers in Ecuador, 30% more than in 2002, giving a rate of 233.4 police per 100,000 inhabitants.

In regard to the budget, the amount allocated in 2004 was 42% greater than that received in 2002, with a 20% annual increase for the period.

Important Recent Legal and Institutional Changes

The Labor Code Reform Law entered into force on July 1, 2004, fulfilling a Constitutional mandate (in the 27th transitory clause) that Congress implement an oral judicial system. Upon its entry into force, judges in the labor jurisdiction must hear cases under oral procedure, which implies a radical change in the administration of justice for labor matters. Hearing rooms were refitted to facilitate the reform and transitory judges appointed to clear up cases pending under the old written system.

In May 2004 the Charter Law on Transparency and Access to Public Information entered into force, guaranteeing the people's basic right to information in accordance with the guarantees established in the Constitution and applicable to all public agencies and entities and private agencies funded by or held

wholly or in part by the State. The enactment of this law allows oversight of the public administration and ensures protection of personal information in the hands of the public sector. Hence, all documents containing information in the public interest may be provided upon request. In judicial matters the law requires Judicial Branch institutions to publish the full and complete text of judicial rulings as well as reports generated in all jurisdictions. For this purpose the Branch is mandated to create a website and provide the means necessary to make this information available to the public.

On December 8, 2004 Congress interpreted the Twenty-fifth Temporary Disposition of the Constitution of 1998 and dismissed all thirty-one Supreme Court justices. However, it then immediately proceeded to confirm three of them and elect the remaining twenty-eight.

Created January 8, 2003, the Commission to Apply the Criminal Procedure Reform (*Comisión de Aplicación de la Reforma Procesal Penal*) was formed to coordinate the application of criminal procedure reform among all operators of the new system.

The Commission is composed of:

1. The Supreme Court Chief Justice, as Chair
2. The Prosecutor General, as Deputy Chair, taking the Chair in the absence of the Chief Justice
3. The Minister of Government or his/her delegate
4. The National Director of the Judicial Police
5. The Legal Undersecretary of the Presidency, acting as Secretary of the Commission
6. A representative of the National Public Defender's Office. As this last institution has not been created, a delegate representing public defenders participates on the commission.

It has the following functions:

1. To design general and specific policies for applying the new criminal procedure system.
2. To identify the financial, legal, technical, human, equipment, infrastructure and any other needs related to applying the new criminal procedure system, including encouraging and coordinating activities in those institutions responsible for meeting these needs.
3. To build consensus on the nature and content of the new criminal procedure system and in regard to personal and institutional roles involved in its application.

4. To promote collective training sessions for those who participate in the application of the current criminal procedure system.
5. To disseminate comprehensive information on the current criminal procedure system throughout the country.
6. All other functions required to fulfill its mission.

2. Procedures

*Criminal Cases*²¹

Prior to July 13, 2001, Ecuador's criminal procedure was inquisitorial; the judge moved the process along, conducted the investigation, requested and gathered evidence, opened and closed trial stages and issued sentences. On the date above the new Criminal Procedure Code came into effect, introducing an adversarial, oral and public model.

The stages of criminal proceedings are:

Initial enquiry (Indagatoria Previa). Before opening the official investigation assisted by the Judicial Police, the prosecutor investigates the supposed crime, regardless of how it was brought to his or her attention. This stage may last up to a year for crimes punishable with a short prison sentence and up to two years for crimes punishable by a longer sentence. There are three types of legal action that can be taken:

- Official, public legal action, which is actionable only by the prosecutor
- Public legal action in response to a complaint. Is carried forward by the prosecutor after the victim has filed an official complaint
- Private criminal action, which is actionable only by the victim.

Preliminary investigation: After receiving the accusation, the prosecutor initiates the investigation when he believes sufficient grounds exist to charge the person. In this stage the prosecutor's office has ninety days in which to investigate, during which time a judge must guarantee the rights of the defendant and the victim; authorize urgent procedures; issue personal and material precautionary measures; and where indicated, hear and rule on shortened proceedings. The judge may also intervene if the prosecutor has not declared the preliminary investigation completed within the time stipulated.

Intermediate stage - preliminary hearing: The Public Prosecutor's Office announces the charges to the defendant and the victim. The hearing opens with each party presenting pleadings on the existence of procedural requirements or issues related to prejudication, competency and procedure that might invalidate the proceedings, or pleadings concerning legal grounds of the prosecutor's decision and the private charges, where appropriate.

Trial: The judge issues the order to initiate the trial when he believes the prosecutor's preliminary investigation reveals probable cause of the existence of a crime or participation in a crime. The trial is conducted in a court with the participation of following individuals: the prosecutor, the victim, and the defendant, with their respective lawyers, experts, and witnesses. The trial is conducted before the Court President and other judges, who may question the victim, the defendant, witnesses, and experts. The Public Prosecutor's Office presents the grounds for the charges and describes the results of the investigation. Both parties intervene in arguments that ensue, presenting their respective pleadings. The judge then issues judgment.

Objections: After sentencing, parties wishing to contest the judgment may raise objections through legal motions. The party/parties that object to the ruling file an appeal before the corresponding higher court or high court judge.

In 2003 the implementation of Ecuador's Criminal Procedure Reform was evaluated in the JSCA's follow-up study of reform processes in the region.²² The authors concluded that one of the important problems observed is the limited use of the three available mechanisms for alternative dispute resolution to decongest the courts as provided for in Ecuador's criminal procedure reform legislation. These mechanisms are: dismissal (limited by law to those cases not constituting a crime); shortened proceedings; and conversion. Information from the Public Prosecutor's Office (*Consolidado Nacional del 2002*) indicates that the combined use of all three covers no more than 2% of cases, the same as in the *Consolidado del 2001*. In addition, no proper response is provided in a high percentage of cases—approximately 95%, according to data from 2002. Furthermore, though no official figures are available, the report states that a significant proportion of cases are abandoned or

archived *de facto*, which is in part attributed to the lack of legal options such as stay of proceedings, which would allow for a timely, official response where it is not possible to clarify the facts of the case. In regard to procedural duration, trial observations indicated that an average of 268 days passed between the crime and the oral trial, while an average of 239 days passed between the initial enquiry and the oral trial; and from the indictment to oral trial an average of 135 days. Oral trials lasted for an average of three hours.

*Civil Suits*²³

Like criminal procedure here, ordinary civil procedure in Ecuador²⁴ is based on Roman legal tradition, also called the European continental written or civil tradition.

The system is primarily written, although some stages of the process are oral. The Constitution of 1998 mandated oral procedure in all areas, and a transitory provision set August 2002 as the deadline for introducing the new system. As of August 2003, the oral provision had been implemented (legally) only in criminal and labor procedure and juvenile courts. The main procedural stages are:

- *Suit*: The plaintiff has the primary role at this stage, which is to initiate proceedings. Court clerks are also important actors, receiving the complaint and conducting all procedures until presentation of the complaint to a judge. The judge determines the nature of the suit and responsibilities. Judicial officials issue citations and summons. The defendant answers the plaintiff's charges. Parties present objections, modifications to the complaint, and counterclaims, nearly always in writing.
- *Settlement hearing*: The settlement hearing is oral with intervention from the parties, the judge and court clerks.
- *Evidentiary stage*: Evidence referred to at the initiation of proceedings, in the complaint and in the response is presented. The judge only sets the date for presenting evidence and the parties must present. Witnesses and experts also participate at this stage.
- *Pleadings*: Parties may present written pleadings but this stage is not vital to the case.
- *Sentence*: After evaluating elements of proof and listening to the parties, the judge issues sentence.

- *Challenges*: Depending on the kind of motion or appeal filed, either the judge who issued the sentence or the first appeal judge will intervene. The party that contests the sentence files the challenge.

3. Case Volume and Movement

Table 5
Cases Filed in the First Instance Courts

Jurisdiction	2003	% of yearly total
Civil	755,411	62%
Criminal	315,401	26%
Labor-Social	31,594	3%
Juvenile	39,833	3%
Tenancy	35,214	3%
Traffic	38,668	3%
Total	1,216,121	100%

More cases are filed in the civil ambit than any other in Ecuador, with judges facing an average caseload of 5,819 each.

Table 6
Caseload, 2003

Jurisdiction	Filed in 2003	Pending at start of 2003	No. judges	Caseload per judge
Civil	755,411	664,445	244	5,819
Criminal	315,401	283,936	192	3,122
Labor-Social	31,594	59,231	31	2,930
Juvenile	39,833	18,085	32	1,810
Tenancy	35,214	25,689	16	3,806
Traffic	38,668	27,771	54	1,230
Total	1,216,121	1,079,157	569	4,034

As the table above indicates, average caseload per judge overall is 4,033 cases.

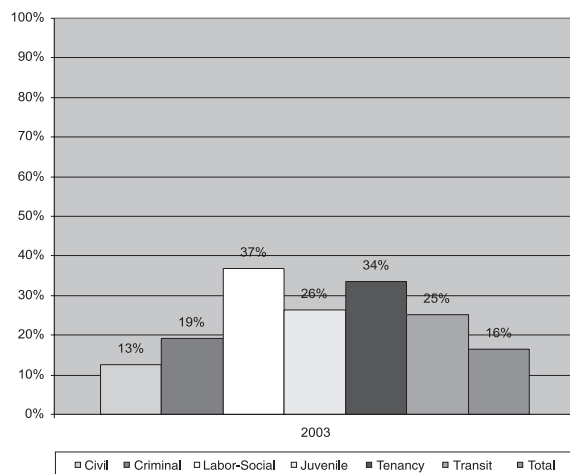
Table 7
Cases Resolved in the First Instance, 2003

Jurisdiction	2003	% of the total
Civil	95,007	48%
Criminal	60,307	30%
Labor-Social	11,654	6%
Juvenile	10,478	5%
Tenancy	11,827	6%
Traffic	9,782	5%
Total	199,055	100%

Table 8
Criminal Cases Resolved by Type of Crime, 2004
 Source: Consejo Nacional de la Judicatura,
 Departamento de Registro y Control

Type of Crime	Cases Resolved	Percentage
Against Property	4,831	34%
Drug Trafficking	4,714	33%
Against Persons	2,130	15%
Sex Offenses	978	7%
Illegal Weapons Possession	371	3%
Against Public Security	281	2%
Against Public Trust	214	1%
Against Constitutional Guarantees	141	1%
Traffic Offenses	104	1%
Against the Public Administration	90	1%
Against National Security	51	0%
Misdemeanors	28	0%
Against Public Morals	8	0%
Against Honor	6	0%
Not Available	290	2%
Total	14,237	100%

Figure 1
Clearance Rate



In 2003, the system's average clearance rate was 16%, indicating serious backlogs from cases pending for the following year. No court's clearance rate surpassed 50%.

4. Crime Rates

In 2002 there were 122,180 criminal complaints in the country's three main cities, 71% of which were for crimes against property, and 13.6% for crimes against life.²⁵

5. Prison Population

The Office of Social Rehabilitation (*Dirección Nacional de Rehabilitación Social*), which reports to the National Social Rehabilitation Council (*Consejo Nacional de Rehabilitación Social*), is responsible for prison administration in Ecuador. The Council is chaired by the Minister of Government, and includes the Supreme Court Chief Justice as Deputy Chair, the Director of the Universidad Central del Ecuador Criminology Institute as coordinator, and the National Director of the Office of Social Rehabilitation as executive secretary.

Prison administration is public; the office has national jurisdiction and is headquartered in Quito.

Details of Ecuador's prison population in 2003 are displayed in the table below.

Table 9
Prison Population 2003

Total Holding Capacity	6,831
Inmates	9,866
Convicted	3,429
Awaiting Sentencing	6,437
Total Male Population	8,862
Total Indigenous Population	556
Total Afro-Caribbean Population	1,453

Ecuador had a rate of 74 inmates per 100,000 inhabitants in 2003, and an overcrowding rate of 69.2%; furthermore, 65.2% of all inmates were awaiting sentencing.

6. Related Areas

Alternative Dispute Resolution

Ecuador's *Ley de Arbitraje y Mediación* establishes mediation as a dispute resolution procedure in which conflicting parties work with an impartial third party, a mediator, to settle the dispute through a voluntary, out-of-court agreement that is deemed final. The arbitration and mediation law allows public or private legal entities or individuals to employ medication.

The Ombudsman's Charter Law recognizes mediation as a valid and useful procedure for resolving disputes among social groups and the State. To initiate the process, either of the parties or the Ombudsman's representative may present a request for mediation, in writing, to the Ombudsman requesting intervention to reach a legal agreement to the dispute. Second Assistant

Public Defenders take on the role of mediator in Ecuador's provinces.

Figures from the National Judicial Council reported fifty mediation centers in operation nationwide in 2003.²⁶

Ecuador is not the only country in the region to introduce legislation governing mediation for judicial disputes; however, most of these experiences have covered a very low percentage of the total number of disputes before the courts, and/or have been limited to pilot projects.²⁷

Gender and the Administration of Justice

The Law on Violence against Women and the Family, enacted in December 1995, considers domestic violence to be a misdemeanor (*contravención*) and not a serious crime. This law introduced a special procedure for family violence as well as a series of precautionary measures. Other recent legal reforms have established sex offenses to be crimes against bodily integrity, security and sexual freedom, and prosecutors have been trained as specialists in these types of crimes.

Statistics for 2003 indicate that 3.75% of all complaints received in the Public Prosecutor's Office correspond to sex offenses.

Despite the reforms, there is little hard data available on (non-sexual) violence against women, and family violence cases are channeled to the civil and misdemeanor courts.²⁸

Legal Profession

Ecuador has a national Federation of Bar Associations, as well as bar associations in each province. Their purpose is to maintain a list of qualified attorneys and apply disciplinary sanctions to members where necessary. There are 19,716 attorneys registered in Quito, Guayaquil and Cuenca alone. All those wishing to practice law must register with a bar association, though many of those registered are not currently practicing.²⁹

7. Judicial Reform and International Cooperation Projects Underway

Table 10
Judicial Reform Projects Underway
Source: Fundación Esquel

Name of Project or Program	Description	Funding source and amount (where available)	Implementing Agency	References
PROJUSTICIA, National Program to Support the Justice Administration Reform in Ecuador (<i>Programa Nacional de Apoyo a la Reforma de la Administración de Justicia en el Ecuador</i>)	The project's aim is to increase the efficiency, effectiveness and transparency of the judicial process, enhancing procedures, improving infrastructure, broadening alternative dispute resolution mechanisms, and increasing access to justice, among others.	IBRD Agreement 4066-EC with the World Bank signed in 1996 for a six-year period and valued at US\$10.7 million; Technical Cooperation Agreement ATN/SF 5687 was also signed with IDB in 1998 for four more years. USAID, UNICEF and the Pariso Cassation Court also funded smaller related projects.	Unidad de Coordinación para la Reforma de la Administración de Justicia en el Ecuador (Projusticia), part of the Office of the President.	Contact: Néstor Arbito Chica, Director Ejecutivo de Projusticia. www.projusticia.org.ec
FONDO JUSTICIA Y SOCIEDAD (Justice and Society Fund)	This program aims to strengthen the rule of law, especially in regard to the new criminal procedure system, improve access to justice through implementation of a public defense system and the provision of legal aid by civil society organizations. Focal areas include: implementation of the new criminal procedure system; strengthening access to criminal justice; fighting corruption with public participation and strengthening democracy and human rights.	Agreement CA 518-A-00-98-00-00187-00, between USAID and the Fundación Esquel.		

ProJusticia is currently implementing the Law and Justice for the Poor (*Proyecto Justicia y Derecho para los Pobres*) project through a grant agreement between the World Bank and the Government of Ecuador and funded by the Government of Japan.

The project generally aims to provide broader access to justice to vulnerable sectors of the population by working in four basic focal areas: legal education, indigenous dispute resolution, legal services for the poor, and alternative mechanisms to resolve disputes.

ProJusticia is also conducting the project on Institutional Strengthening of the Attorney General's Office (*Proyecto Fortalecimiento Institucional de la Procuraduría General del Estado*), with financing from the Government of Japan.

The *Fondo Justicia y Sociedad* project has achieved some positive outcomes, with the following initiatives carried out in the implementation of the criminal procedure reform:

- Preparation and subsequent adoption of the Criminal Procedure System Adjustment Plan, a document identifying activities to be undertaken to adjust and improve the system for the reform
- Promotion of the Public Defender's Office Charter Law in the National Congress
- A document outlining a package of reforms to the Criminal Procedure Code, agreed to by all justice system operators, which was presented to the President for his presentation to Congress
- Training of justice system operators, including judges (437), prosecutors (179), and defenders (53), in skills and capacities required for the application of the criminal procedure reform. Ten operators have also been trained as trainers for the criminal procedure reform.

Also, as a means to strengthen access to criminal justice, eight civil society organizations providing public defense services to low-income individuals have been created and strengthened, and have assisted 4,374 individuals with problems in this area to date. Different models have also been studied for managing the area focused on Fighting Corruption and Strengthening Democracy and Human Rights.³⁰

8. Websites

Public Prosecutor's Office (*Ministerio Público*)

<http://www.fiscalia.gov.ec>

The *Ministerio Público* website contains institutional information, a directory of district prosecutor offices, and pre-trial statistics according to type of crime. It also offers a training module for prosecutors. Spanish-language only.

Judicial Branch (*Función Judicial del Ecuador*)

<http://www.justiciaecuador.gov.ec>

This site includes information on the Supreme Court and National Judiciary Council, and a directory for both institutions. Users may download legislation and access links to district judicial branch web pages of Guayas, Azuay, Pichincha. Spanish-language only.

Constitutional Tribunal (*Tribunal Constitucional*)

www.tribunalconstitucional.gov.ec

This site provides institutional information, laws, news and a directory. A search engine for rulings is under construction. Spanish-language only.

Attorney General's Office (*Procuraduría General del Estado*)

www.pge.gov.ec

This web page offers institutional information, bulletins from mediation centers, human rights information, Ecuadorian judicial system references, and a database of current legislation. Spanish-language only.

Fundación Esquel

<http://www.esquel.org.ec>

With ten years' experience in creating civil society networks and co-funding human development projects, the *Fundacion Grupo Esquel* of Ecuador has supported an estimated 300 initiatives related to cooperation among NGOs, private and public firms, and community organizations in every region of Ecuador. This private non-profit foundation administers the Justice and Society Fund (*Fondo Justicia y Sociedad*), which fosters and supports civil society participation in justice reform programs (www.fondodemocracia.org).

9. Basic Directory

Corte Suprema de Justicia

Address: Av. Amazonas Nro. 37-101 y Calle UNP
Presidencia – Piso 5
Quito, Ecuador
Phone: +593-2- 2461882
Website: www.justiciaecuador.gov.ec

Consejo Nacional de la Judicatura

Address: Jorge Washington, entre Juan León Mera y Av. Amazonas
Quito, Ecuador
Phone: +593-2-2506240
Fax: +593-2-2905024
Website: www.justiciaecuador.gov.ec

Ministerio Público

Address: Av. Eloy Alfaro N32-240 y Av. República
Quito, Ecuador
Phone: +593-2-222-2766
Fax: +593-2-222-2816
Website: www.fiscalia.gov.ec

Tribunal Constitucional

Address: Av. 12 de Octubre N16-114 y Pasaje Nicolás Jiménez
Quito, Ecuador
Phone: +593-2-2565177
Fax: +593-2-2569861
Website: www.tribunalconstitucional.gov.ec

Procuraduría General del Estado

Address: Robles 731 y Amazonas
Quito, Ecuador
Phone: +593-2- 2562080
Website: www.pge.gov.ec

Centro de Mediación PGR

Address: Robles 731 y Amazonas,
Quito, Ecuador
Phone: +593-2-2562080
Fax: +593-2-2559308
Email: cenmedia@pge.gov.ec

Defensoría del Pueblo del Ecuador

Address: Av. Colón E6-42, entre Juan León Mera y Reina Victoria
Quito, Ecuador
Phone: +593-2-2545062
Website: <http://www.dlh.lahora.com.ec/paginas/judicial/paginas/Defensoria.base.htm>

Programa Nacional de Apoyo a la Reforma de la Administración de Justicia - PROJUSTICIA

Address: Av. Amazonas Nro. 37-101 y Calle UNP
Presidencia – Piso 5
Quito, Ecuador
Phone: +593-2- 2461882

Corporación Latinoamericana para el Desarrollo - CLD

Address: Juan Ramírez 102 y Germán Alemán
Quito, Ecuador
P Box: 17-12-00609
Phone: +593-2441655
Fax: +593-2468229
Email: cld@cld.org.ec
Website: <http://www.cld.org.ec>

Fundación Esquel – Ecuador

Address: Av. Colón 1346
Mz. Oficina 12
Quito
Phone: +593-2520001
Fax: +593-2520001 ext 300
Website: <http://www.esquel.org.ec>
Email: fondodemocracia@esquel.org.ec

Notes

- ² ECLAC, *Statistical Yearbook for Latin America and the Caribbean*.
- ³ ECLAC, *Social Panorama of Latin America 2004*.
- ⁴ JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- ⁵ JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- ⁶ Constitución Política de la República (hereafter the Constitution), Article 206.
- ⁷ *Ley Orgánica del Consejo Nacional de la Judicatura* (hereafter National Judicial Council Charter Law), Article 1.
- ⁸ National Judicial Council Charter Law, Article 2.
- ⁹ National Judicial Council Charter Law, Article 10.
- ¹⁰ National Judicial Council Charter Law, Article 11.
- ¹¹ Data obtained from the *Guía de la Función Judicial Ecuatoriana*.
- ¹² For more complete information, see Vargas Viancos, Juan Enrique, “Financiamiento de la Justicia: Las Tasas Judiciales,” JSCA, 2004. See <http://www.cejamerica.org/doc/documentos/jev-tasas-judiciales.pdf>.
- ¹³ JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- ¹⁴ Constitution, Articles 275 ff.
- ¹⁵ Source: Fundación Esquel.
- ¹⁶ Constitution, Article 276 and the *Ley Orgánica de Control Constitucional*, Article 12.
- ¹⁷ Statistics published on the Constitutional Tribunal website: <http://www.tribunalconstitucional.gov.ec/actividades.asp?ss=9>.
- ¹⁸ Except for the Guayas district prosecutor, who also has jurisdiction in Galápagos. *La Evaluación del Sistema Procesal Penal en el Ecuador*, Fondo de Justicia y Sociedad, Fundación Esquel.
- ¹⁹ Any legislative bill that implies changes in the General Fiscal Budget must be presented to Congress by the President of the Republic.
- ²⁰ Policing in Ecuador is carried out by the National Police and the Armed Forces.
- ²¹ JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- ²² *Judicial Systems Journal*, No. 5. Available online at www.judicialsystems.org.
- ²³ JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- ²⁴ However, civil procedure provides for three different types of proceedings: ordinary, summary, and executive, as well as a large number of special proceedings.
- ²⁵ Fondo de Justicia y Sociedad, Fundación Esquel and USAID, *La Evaluación del Sistema Procesal Penal en el Ecuador*. Figures are from a study conducted in the country's three main cities (Quito, Guayaquil and Cuenca).
- ²⁶ Consejo Nacional de la Judicatura, *Cinco años de labores 1998-2003*.
- ²⁷ For more information see: Vargas Viancos, Juan Enrique, “Problemas de los Sistemas Alternos de Resolución de Conflictos como alternativa de Política Pública en el Sector

Judicial.” JSCA. Available at: http://www.cejamericas.org/doc/documentos/art_juan_e_vargas.pdf.

²⁸ For more information see the *Comparative Report of the Evaluation of the Criminal Justice Reform from a Gender Perspective*, Simon, Farith, JSCA, 2004. Available at: <http://www.cejamericas.org/doc/proyectos/ceja-comparativo-genero3.pdf>.

²⁹ World Bank, *Ecuador, Legal and Judicial Sector Assessment 2002*.

³⁰ In the fight against corruption some transparency models have been implemented within local governments in places such as Rumiñahui, Cotacachi, Guamate and Otavalo. Today, the Fondo Justicia y Sociedad, with the assistance of the Metropolitan Commission to Fight Corruption (*Comisión Metropolitana de Lucha contra la Corrupción*), is promoting the implementation of a project to prevent corruption in the municipality of Quito. One output of the project has been the design of a Code of Ethics for municipal employees, which involved the participation of staff. Other municipal agencies have also been identified for implementation of different public monitoring mechanisms including the potable water and sewage company, the public works company and the *Fondo de Salvamento* with the aim of promoting public participation in citizen monitoring. In the area of

strengthening democracy and human rights, specifically the promotion of the Charter Law on Transparency and Access to Public Information. In addition, an Observatory for the Right of Women and Girls to a Life Free of Violence (*Observatorio por el Derecho de la Mujeres y la Niñas a una vida libre de Violencia*) and the Public Safety Observatory (*Observatorio de Seguridad Ciudadana*). Work has also been undertaken with indigenous groups to support the creation of a Network of Indigenous Defenders from around twenty Ecuadorian communities.

A system for evaluation of judges was also created and implemented, including both quantitative factors (output), and qualitative ones (quality of work), in regard to current constitutional, legal and regulatory aspects, as well as institutional conditions that allow for its continuance. In its pilot implementation phase, 64 criminal court judges and alternates were evaluated in the province of Pichincha, 71 in Guayas, and a total of 39 Supreme Court Justices from both provinces. The evaluation was carried out from January to November 2003, and in August 2004 overall results were available for judicial evaluations nationwide. In the same sphere, the *Fondo Justicia y Sociedad* has worked in strengthening the National Judicial Academy's Complaints Office.