



International Bar Association
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Ecuador: Strengthening of the Judiciary

Executive Summary

This is the summary of the report of an investigative mission carried out to the Republic of Ecuador by the Human Rights Institute (HRI) of the International Bar Association (IBA) from 4-8 April 2005. The mission was motivated by growing concern at reports of a serious institutional crisis within the administration of justice.

High-level experts from Argentina, Peru and Colombia took part in this mission. The delegation held meetings with officials of the justice system at all levels, former judges and former members of the Supreme Court of Justice and the Constitutional Court, current judges of the Supreme Court and magistrates' courts, members of civil society, representatives of non-governmental organisations, practising lawyers and representatives of the Church and Ombudsmen.

The members of the delegation wish to express their deep gratitude to all those that made themselves available, contributing their time, knowledge and opinions to the delegation.

The mission was organised by the HRI and was financed by the Foundation Open Society Institute (FOSI). The following were the terms of reference of the mission:

- (a) To analyse the legal situation and, specifically, the independence of the judiciary and the legal profession in the course of carrying out their duties.
- (b) To examine any impediment, *de facto* or *de jure*, that may place limitations on or jeopardise the administration of justice.
- (c) To verify the legal guarantees aimed at the effective functioning of the judicial system, and whether these guarantees are respected in practice.
- (d) To make any recommendations required with respect to all of the above.

The current situation

Various events have preceded the crisis in Ecuador. The dismissal of members of the Constitutional and Electoral Court and of judges of the Supreme Court of Justice, and the handling of key criminal cases concerning two former Presidents and a former Vice-President, have had a negative impact on the independence of the judiciary. The weakened judiciary and infrastructure have generated a chain reaction elsewhere, resulting in civil unrest and violence, demonstrations and strikes in various legal institutions. In general, there was growing discontent with the then administration, led by Colonel Lucio Gutiérrez. There were growing calls for a restructuring of all sections of public power.

Summary of conclusions

- The serious institutional crisis that Ecuador is experiencing cannot simply be defined as a problem arising solely from the current political instability, or a problem exclusive to this Government. The delegation shares the opinion of the majority of those interviewed – that the current crisis is only ‘the tip of the iceberg’. It is clear that the major obstacles currently blocking the independent administration of justice are the culmination of a long chain of events and interference in the system – features that have been present throughout Ecuador’s history.

- Despite the fact that Ecuador has enshrined the independence of the judiciary in its law, the IBA delegation considers that in many cases no effective independence exists and that on the contrary, there is a serious politicisation of the judiciary.
- The politicisation of the Attorney General's office has led to a dangerous concentration of powers in the hands of one person, placing the independence of the institution at risk. The HRI noted with particular concern the current failure to appoint the Attorney General, and the lack of investigation in the cases of violence that have been reported as a result of the current crisis.
- Although no official figures were available, the information received confirmed the perception that a high level of corruption pervades the system and prevents the full independence of the profession.
- Ecuador has laws that guarantee the independence of the profession and due process. Despite this, some failings exist in the application of these standards.

In some cases, the appropriate legal and constitutional avenues are not used to redress injustices, such as dismissal processes, disciplinary proceedings before the National Council of Judiciary (*Consejo Nacional de la Judicatura*) and regional mechanisms before the Inter-American System.

- No adequate controls exist regarding 'conflicts of interest', and this has led to violation of due process, as well as simultaneously creating the possibility of holding posts. This, of course, compromises the independence of the judicial system, to the detriment of all citizens of Ecuador.
- Access to justice is limited to the more affluent sectors of society. Deficiencies in the system mean that a good part of the Ecuadorian population is unprotected, affecting especially vulnerable sections of the population such as children, women and indigenous groups. Among the most critical aspects is the absence of a programme of defence lawyers or '*defensores*' for those with few resources.

There is little or no legal aid and the high fees remain beyond the reach of the majority of the population. This is exacerbated by the scarcity of courts in rural areas, the exclusive use of the Spanish language in judicial procedures and the lack of information and media communication of such information concerning the rights of individuals.

- The attention paid to groups with a higher degree of vulnerability, such as women, is always positive. It is worth highlighting the existence of '*Comisarías de la Mujer*', which have had a positive impact on the attention paid to problems that directly affect women, such as domestic violence. However, the delegation would recommend further strengthening of such groups and that investment should be made in areas such as protection of women and minority groups.
- Ecuador has signed and ratified the most important human rights treaties, although its compliance with the standards embodied in these treaties is not acceptable. One example of this failure to comply with these instruments is the finding of the Inter-American Court of Human Rights with respect to the adoption of precautionary measures. The failure to observe these measures has meant that there has been at least one case in which an Ecuadorian citizen, who had been protected under this framework, was physically attacked.
- Human rights organisations have found themselves threatened as a direct result of criticising the authorities for human rights abuses. The attacks they suffer undermines their ability to carry out their function as defenders of human rights.

Summary of recommendations

- The delegation calls on the authorities to look for means to fulfil its regional and international obligations in these issues, formulating policies in agreement with the commitments made.

- Urgent reform is required of those rules that currently undermine due process and allow interference in judicial matters by external forces. Reforms are also needed to establish more control over those responsible for the setting-up and maintenance of the justice systems.
- The issue of the appointment of the Attorney-General must be resolved as a matter of urgency. The appointment must be made in an independent and just fashion.
- The Attorney-General must guarantee that all those situations that represent a breach of law are effectively investigated. In this regard, regulations should exist that control the Attorney-General with respect to ensuring the fulfilment of his/her duties and compliance with standards of ethics and independence. In particular, but not limited to this, the delegation considers it essential that the Attorney-General takes those measures required to initiate investigations into recent cases of violence. Such cases should be investigated and taken in conjunction with the full legal system to ensure that both criminal and political cases are taken in a transparent, equitable and just manner, in accordance with the laws governing the country.
- A better system for appointments should exist for the National Council of Judiciary (*Consejo Nacional de la Judicatura*), as well as respect for the system of appointments based on qualifications and merits within the legal profession. There should be more adequate regulation of the ‘co-opting’ mechanism.
- The Ecuadorian Legislature must concentrate its efforts on the development of better regulations and codes of conduct, as well as adequate regulatory mechanisms that will curtail and prevent any intervention in, or manipulation of, judicial power.

- An internal restructuring of the justice system should be carried out in order to: make it duly independent; to provide it with a bigger budget; to ensure a greater number of defence lawyers; to extend the judicial system further into rural areas; to examine the reduction of legal fees and systems of legal aid; and also to promote the use of interpreters or legal functionaries that are able to use native languages. At the same time, greater support should be provided for programmes and initiatives directed towards the modernisation and improvement of the administration of justice and to media campaigns to spread awareness of the rights of individuals and the mechanisms available to citizens to demand fulfilment of those rights.
- Mechanisms for the control of corruption must be redrawn and educational campaigns carried out, so that all persons can contribute by reporting cases of corruption.
- Measures must be taken with the aim of ensuring better access to justice for the more vulnerable members of the population such as children, women and indigenous groups. As part of these initiatives, a review should be made of the function that is fulfilled by the *Comisariías de la Mujer*, equipping them with the tools that they lack and in general adopting perhaps more corrective actions in the area of protection of women.
- The use of Justices of the Peace presents an effective mechanism, which could increase the reach of the justice system. However, there would need to be careful regulation and administration in Ecuador of such a system to ensure their effective and independent operation.
- The delegation urges the authorities to draw up and carry out public campaigns to increase awareness of the rights of all citizens, and of the importance of having a strengthened and independent judicial system available to them. Within the judicial system, it is necessary to create a system of training for officials working

in the administration of justice, which should be extended to include their employees and subordinates.

- A review process of the workings of the union is necessary. It is important to analyse factors such as the duration of the period of leadership of the union and the decision-making mechanisms.
- The work of the Ombudsman as defender of human rights could be even more effective if it adopted a more active and definitive role in the protection of the rights of Ecuadorian citizens.

The HRI wishes to express its thanks to the members of the delegation who accepted the invitation to take part in this mission. The members of the IBA delegation were:

- **Ambassador Emilio Cárdenas**, Co-Chair of the IBA's Human Rights Institute, previously President of the IBA, Argentina.
- **Judge Antonia Saquicuray**, Judge of the Fifth Special Criminal Court (Anti-Corruption) of the higher Court of Justice in Lima, who has been investigating the cases of corruption in the current Government and those of Fujimori and Montesinos, Member of the Association of Judges for Justice and Democracy, Peru.
- **Diana Morales Lourido**, Lawyer and expert in international law and human rights law, Colombia.