

# **Evidence-Based Governance in the Electronic Age**

## **Case Study**

# **Legal and Judicial Records and Information Systems in Ecuador**

*This case study has been prepared by the International Records Management Trust and does not reflect the views of the World Bank nor the Government of Ecuador.*



*A World Bank/International Records Management Trust  
Partnership Project*

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## INTRODUCTION

- 1 *Evidence-Based Governance in the Electronic Age* is a three-year project delivered in partnership between the World Bank and the International Records Management Trust. It involves coordinating a global network of institutions and organisations to facilitate the modernisation of information and records systems.
- 2 Records, and the information they contain, are a valuable asset that must be managed and protected. Records provide the essential evidence that a particular action or transaction took place or that a particular decision was made. Records support all business functions and are critical to the assessment of policies and programmes, and to the analysis of individual and organisational performance. Without reliable records, government cannot administer justice and cannot manage the state's resources, its revenue or its civil service. It cannot deliver services such as education and health care. Without accurate and reliable records, and effective systems to manage them, governments cannot be held accountable for their decisions and actions, and the rights and obligations of citizens and corporate bodies cannot be upheld.
- 3 New technologies provide great potential to improve services and efficiency, but the evidence base upon which governments depend must continue to be protected and preserved. For initiatives such as e-government and e-commerce to be successful, governments must have access to information that possesses certain crucial characteristics: the information must be available, accurate, relevant, complete, authoritative, authentic and secure.
- 4 The aim of the *Evidence-Based Governance* project is to make records management a cornerstone of the global development agenda. The challenge is to rebuild and modernise information and records management systems in parallel with complementary measures to improve the broader environment for public sector management. The project represents a major opportunity to integrate records management into global strategies for good governance, economic development and poverty reduction.
- 5 During the first phase of the project, studies were carried out within the World Bank and in a range of countries to explore the requirements for managing personnel, financial and judicial records in a hybrid, electronic/paper environment. This report is one of thirteen case studies that illustrate the issues involved. The studies have been supplemented by findings derived by a global discussion forum involving senior officials and records and archives professionals. The knowledge gathered through these means is providing the basis for the development of assessment tools to measure the quality of records and information systems in relation to clearly defined functional requirements and benchmarks. The project will develop tools for use in the three areas of study: personnel, financial and judicial records systems. Ultimately, the information gathered will also help to define the requirements for global capacity building for managing electronic records.

- 6 The case studies have been chosen to represent differences in geographic regions, administrative structures and resource environments. The management of legal and judicial records has been examined in Argentina, Ecuador, The Gambia, Singapore and South Africa. These countries give a broad geographical spread and represent different degrees of development in financial reform and the use of electronic records.

## **Terms of Reference and Methodology**

- 7 This report covers a visit to Ecuador by Andrew Griffin and Kelly Mannix from 8 to 12 April 2002. The purpose of the visit was to examine improvements to records and information systems that are being undertaken in the judicial area. A secondary purpose was to test the prototype of an assessment tool for legal and judicial records and information systems. Findings from the case study are being used to develop the assessment tool. The assessment tool will be published separately from this report.
- 8 The case study represents a snapshot in time. The observations it contains were current as of April 2002. Since then, new developments and improvements have taken place on a regular basis and therefore the case study does not represent the situation at present. It is hoped that the findings in this report will highlight issues that will continue to arise in many other situations.
- 9 The case study represents a snapshot in time. The observations it contains were current as of April 2002. Since then, new developments and improvements have taken place on a regular basis and therefore the case study does not represent the situation at present. It is hoped that the findings in this report will highlight issues that will continue to arise in many other situations.

## **Acknowledgements**

- 10 Grateful thanks are extended to Dr Gustavo Jalkh of ProJusticia for his interest in the case study. Dra Alicia Arias Salgado of ProJusticia gave invaluable help to the consultants, arranging interviews, acting as interpreter and providing information and advice through the case study. Particular thanks are extended to her. Dr Franco Sanchez, consultant, also accompanied the consultants during the case study and provided much valuable information and assistance. A full list of people consulted is at Appendix A.

## **EXECUTIVE SUMMARY**

- 11 The legal system of Ecuador is based on civil law. The Judiciary comprises the Supreme Court, Superior Courts, Administrative and Tax Courts, Tribunals, First Instance Courts (*Juzgados*) and the National Judicial Council (*Consejo Nacional de la Judicatura*), which is responsible for administration of the Judicial Branch. In addition to these institutions, ProJusticia, an office of the President of the Supreme Court, supports the national programme of judicial reform. (paras 52 to 57)

- 12 Recent changes to the criminal law are enabling the Judiciary to move from an inquisitorial to an adversarial system. Under the new code, prosecutors conduct investigations and present a judge with information about a case to enable the judge to take a decision. The move to 'oral' procedures, as opposed to processes conducted purely by documents, is expected to reduce delays. Traditionally, almost every case has been appealed. Civil cases in particular commonly take many years to reach resolution. (paras 58 to 61)
- 13 A number of reforms took place between 1992 and 1995 to improve the structure and accountability of the Judiciary. Despite these efforts, the Judiciary lacked the necessary infrastructure and resources to meet the needs of the public and the private sector, and there remained a problem of poor quality information about cases. (paras 62 to 66)
- 14 To address these issues, a judicial reform project, supported by the World Bank, commenced in 1996 with the aim of providing support in four areas: (paras 67 to 75)
- infrastructure
  - case administration and information
  - alternative dispute resolution mechanisms
  - a programme for law and justice (including, professional development and legal education).
- 15 The case administration and information component was planned to include: (paras 76 to 77)
- a case flow management and delay reduction programme
  - improved access to information about cases
  - improved records management
  - standardised legal forms and practices
  - performance standards
  - operational manuals
  - a management information system.
- 16 To improve records management, guidelines and procedures are to be developed for each stage of the records life cycle. Activities will include the provision of new equipment and storage facilities, revised records retention and disposal schedules, and systematic removal of closed or non-actionable records from current systems. (paras 78 to 79)

- 17 New technology is to be used to improve the efficiency of court functions, such as case management and tracking, and to enable information sharing, public access to case information, and the generation of statistics. (para 80)
- 18 The Judiciary is reconsidering its role as a service provider. This in turn will change the way users view the Judiciary. Cuenca, which was said to be the most corrupt city in Ecuador 20 years ago, is now proud of its courts and judicial system. However, the Judiciary is still very centralised, with a bureaucratic control of finance. (paras 81 to 84)
- 19 The National Judicial Council and the Office of President of Supreme Court have important roles to play in supporting and encouraging change. The continued existence of ProJusticia, as the coordinator of the Judicial Reform Project, is seen as key to achieving reform objectives and ensuring that the achievements to date will be sustained and extended. (paras 85 to 88)
- 20 The major changes in the operation of the courts and the move towards an adversarial system have implications for recordkeeping, and the change in culture will take time. Recording and transcribing proceedings will be needed for some cases. Some feel that there is insufficient preparation and training for the change. Lawyers commented on a lack of commitment of some court staff and some feel that there are areas in which the service to lawyers and their clients is not as efficient as it was. In some cases the problems arise from inadequate communications. (paras 89 to 95)
- 21 The creation of cooperative courts is a major objective, with cases handled by a pool of judges, secretaries and clerks. In combination with a computerised case management system, the efficiency of the court and case management can be considerably improved. The cooperative system is also intended to reduce the potential for collusion between lawyers and clerks/judges. (para 96)
- 22 By the year 2000, co-operative trial courts had been established, with computerised case tracking, dedicated file rooms, work stations and public counters where information about cases and access to files could be provided. Large numbers of closed or non-actionable files had been 'purged' from current file systems. (para 97)
- 23 In pilot civil and criminal courts in Guayaquil, average monthly terminations of cases had increased by 91% and 127% respectively in the period January to September 2000. It is anticipated that within one year all 45 first-level courts in Quito, Cuenca and Guayaquil will be cooperative. (paras 98 to 101)
- 24 Initially, lawyers opposed the new system and there is still resistance, particularly in Quito. There is also resistance from some judges. However, other judges and court officials are strong advocates for the cooperative court system. They see it as more efficient, providing a better infrastructure and improved case management and quality of information (such as case histories) and also as a way of promoting teamwork. There are now standardised document formats. The disposal of cases has speeded up. However, rules are needed for 'office practices' so that the new system becomes more institutionalised. (paras 102 to 105)

- 25 There are differing views on the issue of access to judges and case records. Previously, lawyers had almost unlimited access. Now only people involved in the case are allowed to see the judge and staff. This is seen by some as engendering respect for the Judiciary and improving the quality of contacts and by others as a reduction in access to justice. Extended hours of access or an appointment system may be a solution. (paras 106 to 108)
- 26 Response times to requests for information are in many cases much faster in the new system than in the old, but there were some adverse comments about delays. (para 109)
- 27 Some ad hoc procedures are observed in the cooperative courts, for example in the numbering of files. The law still requires files to be stitched together, however, in some courts metal clips are used. Typewriters are still used in some secretaries' offices. A court secretary in Quito reported that he was not using the system to assign work but was distributing cases according to his own manual system. (paras 110 to 113)
- 28 Under the cooperative court system, active case files are now kept in file rooms or 'archives'. Pending files are also kept there in bundles. A project objective is to maintain a standard for shelving, case folders and 'out' cards. The intention is to establish a common file room facility to serve all the courts in a cooperative unit. In practice each court is provided with its own file room or archives, and dedicated clerk. Many file rooms are staffed with temporary interns. (paras 114 to 116)
- 29 As part of the project, inactive files are 'purged', or removed from current storage. Cases more than three years old but less than eight years old are transferred to intermediate storage. For cases more than eight years old (ten years for Cuenca) a closing order is signed by a judge. In Quito, these files are transferred to the Judicial Archives. (paras 117 to 120)
- 30 It is estimated that there are 2.5 million files in the Judicial Central Archives in Quito. There is no legal requirement or authority to destroy judicial 'archives'. No lists of transferred records are held by the Central Archives. File retrieval depends on the knowledge and memory of the Director of the Archives. There is a need to introduce more formal storage and location tracking procedures. (paras 121 to 124)
- 31 There is no formal connection between the Judiciary and the National Archives. The Ecuador Archives Law (No 92 of 1982) requires that permanent archives must be transferred to the National Archives, but it does not assign the National Archives responsibility for ensuring that records of permanent value to the nation are selected and preserved. This issue needs to be addressed. (para 125)
- 32 Until 2000, all judicial files were either in the courtrooms or in the Judiciary's Central Archives. As a result of the project, some 80% of files previously kept in the courtrooms have been 'purged' and removed to the Central Archives. Files for the previous 50 years, formerly kept in the Central Archives, have been removed to another building. Without a realistic disposal policy that recognises that most files have no permanent value, large quantities of files will continue to accumulate. (paras 126 to 127)

- 33 The case flow management system has been designed to address the problems of loss of documents and files, the inability to find or access information, the variety of registration systems and control books in use, and the lack of uniformity of process. (para 128)
- 34 A first prototype was difficult to implement because each court followed its own interpretation of codes and procedures. A second prototype was then designed to allow for a minimum level of data capture. Instead of pre-defined rules, the user was able to enter data from options offered through menus. The result was a simplified screen and greater flexibility. The system provides for a hierarchy of access, is flexible for queries and reports, and is supported by complete documentation. (paras 129 to 134)
- 35 The case flow management system contains a record of all cases since 1995. Pre-1995 case files continue to be managed by a paper docket system. (para 135)
- 36 The system is being implemented in Quito, Cuenca and Guayaquil. In the Quito courts, 14 out of 16 civil courts and seven of 11 criminal courts are linked to the system. All users and potential users have received training. (paras 136 to 137)
- 37 The current version of the system does not yet link the three centres in a common network. It is understood that a new version, which is being designed by court ‘technicians’ in Quito, will distinguish between the location of the case and its type, and will include other improvements and add new features, such as the automatic assignment of cases. (paras 138 to 142)
- 38 Users are able to search for information by case, judge, lawyer or court. Each system user is assigned a unique ID and password. There are different levels of access privilege. In Cuenca public users are able to access the system via a work station located in the information request area, using a touch screen. This facility has been developed locally by a technician. (paras 143 to 145)
- 39 The case management system enables standard reports to be run to generate statistics. New statistical tools are being developed in-house. Standard commercial packages (such as Microsoft Office) are used to support office and information systems. System maintenance is the responsibility of ProJusticia, acting under the authority of the National Judicial Council. (paras 146 to 148)
- 40 Each center (Quito, Cuenca and Guayaquil) has an engineer, contracted by ProJusticia, to oversee the maintenance of the system user support. Two technicians work with each engineer. As a Microsoft-based system, technical support is ‘platinum-level’. Under the pilot project, training is provided in the case management system and in basic productivity software such as Microsoft Word and Excel. Each system user receives 80 hours of training. Post-implementation training is available from the technical team as required. (paras 149 to 153)
- 41 An example of workflow in the new system is provided. (paras 154 to 160)

- 42 The use of alternative dispute resolution mechanisms, such as mediation, is an objective of the Judicial Reform Project. The mediation process itself is not recorded, though records are created by the two mediation centres visited in Quito and Cuenca. Indeed, the centres maintain their own record-keeping systems independently of the courts. There is no electronic connection between mediation records and the case management system. A database is needed for cases handled by the mediation service and should be capable of interfacing with the courts' case management system. (paras 161 to 167)
- 43 A central authority such as the National Judicial Council needs to ensure that records management standards and procedures are formally adopted, for example, as *reglamentos*. Within the courts, the coordinators/administrators are the 'champions' of records management. In practice, the court secretaries need to assume oversight of records management because of their responsibility for court records. With no professionally trained or recognised records manager of sufficient authority in the Judiciary and with limited availability of professional advice within the country, there is a danger that good practice in records management will not be sustained. (paras 168 to 170)
- 44 The practice of assigning accountability for the safekeeping of records to court secretaries and clerks is commendable. There is also some evidence that oversight of the records management policy is being carried out by the committees of judges. (paras 171 to 172)
- 45 The case flow management system is intended to reduce the scope for corruption rather than improve record-keeping. However, the result seems to be that accurate, authentic, secure and accessible records are being maintained. Paper records are still regarded as the 'legal' copy of the record for purposes of evidence and authenticity. There is still no legislation to provide for the admissibility of electronic records. (paras 173 to 174)
- 46 The use of unpaid interns or temporary staff to manage the file rooms or 'archives' annexed to the cooperative courts and to retrieve and replace files, presents a risk to good records management. (para 175)
- 47 There are no formal policies or procedures for managing records at the end of their lifecycle. The destruction of records of no permanent value is not yet been a focus of project activity. Retention and disposal schedules are an essential component of records management. Ideally, the National Archives should be involved in drawing up such schedules. The National Judicial Council is an appropriate body to issue them. (para 176)
- 48 The project has recognised the need to institutionalise the process of purging, that is, of transferring time-expired and closed records to a records store. (para 177)
- 49 Little consideration has been paid to long-term record-keeping requirements for electronic records. Safeguards are needed to preserve the reliability, security, authenticity and accessibility of electronic records over time if they are to be used as the evidence of actions and decisions. Electronic records that originate from templates and are held on hard disks appear to be particularly vulnerable.

Furthermore, if users are to be able to dial into the system in future, a ‘firewall’ is essential. (paras 178 to 181)

- 50 Local courts should be able to use their own funds, generated by fees, to invest in records management to encourage continued improvement. (para 182)

## **JUDICIAL SYSTEM AND INSTITUTIONS**

- 51 A country of almost 13 million people straddling the equator, Ecuador has a diversity of cultures and ecology. Spanish, Quichua, Quechua and other indigenous languages are spoken. Ecuador is a presidential unitary republic with a national assembly.

- 52 Ecuador’s legal system is based on civil law. The Judiciary is composed of the Supreme Court, Superior Courts, Administrative and Tax Courts, Tribunals, First Instance Courts (*Juzgados*) and the National Judicial Council (*Consejo Nacional de la Judicatura*), which is responsible for the administration of the Judicial Branch. In addition, there are separate *Juzgados* that have jurisdiction in special areas such as minors, hydrocarbons, water, land, mines, military and police. Each province has its own Judicial Council.

- 53 The Supreme Court is a court of cassation (having powers to quash decisions of lower courts) and only hears matters of law. It is comprised of a President and 31 justices organised into ten ‘Salas’ for Civil, Constitutional, Penal, Administrative, Labour and Fiscal Matters.

- 54 The Superior Courts have both appellate and original jurisdiction. Each province has a Superior Court, though some smaller provinces share their Superior Court with adjoining provinces. Tax and Administrative Courts are at the same level as the Superior Courts.

- 55 The First Instance Courts (*Juzgados*) deal with civil, criminal, landlord/tenant, labor, traffic, customs, administrative and tax cases. There are criminal and civil courts in all provinces, but not necessarily all other types of court.

- 56 In addition to these institutions, ProJusticia, an office of the President of the Supreme Court, exists to support the national programme of judicial reform in Ecuador. ProJusticia’s own statement of its role is, in summary:

- continuing to improve infrastructure - remodeling court houses and administrative offices
- continuing to introduce co-operative courts - it is anticipated that all 42 first level courts in Quito, Guayaquil and Cuenca will be remodeled by 2003
- developing mediation as a means of increasing citizen access to justice and decreasing the case backlog in the civil courts
- improving civil society’s access to justice - sponsoring projects by local NGOs and community organisations (primarily indigenous and women’s groups).

- 57 ProJusticia's offices and small central staff are located in Quito. There are co-coordinators working in Quito, Cuenca and Guayaquil overseeing all project work.
- 58 Recent changes to the criminal law are enabling the Judiciary to move from an inquisitorial to an adversarial system. This reflects a movement throughout Latin America. Under the new penal code, prosecutors conduct investigations and present a judge with information about a case in a file. The judge studies the case and takes a decision on the basis of the information.
- 59 The move to 'oral' procedures as opposed to processes conducted purely by documents, is expected to reduce delays: lawyers will no longer be able to delay procedures as certain issues previously dealt with on paper will be dealt with immediately in court during the proceedings. Congress is now working on an oral civil code.
- 60 Precedence is not yet an issue in Ecuador. Only Supreme Court cases change the law. Each case in the lower courts is treated anew, and there are known to be differences in the treatment of similar cases.
- 61 Traditionally, almost every case has been appealed, leading to long delays. Civil cases in particular commonly take many years to reach resolution (an average of four years was quoted). The conduct of all processes by documents contributes to this. Delays tend to be regarded as the fault of lawyers rather than the Judiciary. Under existing civil procedures, lawyers' cooperation is vital as they can cause delays, for example, by questioning procedures.

## **REFORM OBJECTIVES<sup>1</sup>**

- 62 A number of reforms took place between 1992 and 1995 to improve the structure and accountability of the Judiciary. These reforms included, for example, doubling the size of the Supreme Court and redefining its jurisdictional role, creating the Judicial Council, increasing the judicial budget and salaries, and taking steps to depoliticise the Judiciary and strengthen mechanisms to enforce civil liberties and legal rights. Despite these efforts, the Ecuadorian Judiciary continues to be regarded as being in a state of crisis, lacking the institutional framework and resources to meet the needs of the public and the private sectors.
- 63 A major problem that needed to be addressed in the Ecuador system was the poor quality of information about cases and inadequate information about the status of cases. People were unable to obtain information about their case, the next step required or the date of the next hearing. This lack of information meant not only that in some cases parties failed to take the required steps or missed the scheduled hearing, but it also acted as an encouragement to corruption as parties felt that they had to pay for information.

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<sup>1</sup> Much of the background information for this case study is taken from: *Staff Appraisal Report: Ecuador: Judicial Reform Project*, World Bank: Report No. 15385-EC, 24 June 1996; *Court Performance Around the World: a Comparative Perspective* by Maria Dakolias, World Bank Technical Paper No. 430, 1999; and *Initiatives in Legal and Judicial Reform*, World Bank, Washington DC, 2001.

- 64 A review by the World Bank, conducted in 1996, identified the major weaknesses which contributed to the deficiencies of the judicial system:
- lack of administrative organisation, management, professional staff and administrative procedures
  - an inadequate judicial infrastructure
  - inadequate alternative dispute resolution
  - impediments to access to justice for the poor
  - lack of legal training available to lawyers, judges and students.
- 65 Poor records management was also seen as a key issue. Record-keeping procedures were not clearly defined and did not adhere to any national standard. Huge accumulations of poorly managed files contributed to inefficiency and wasted resources. It was estimated that the judicial archives included approximately two million records in storage, 500,000 of which were on shelves and the rest were on the floor. Due to lack of space, an estimated further two million files of terminated cases were still held in the courts.
- 66 The issues that had consequences of particular relevance to this study were:
- delays in processing cases at every level of the system, especially in the two largest cities of Quito and Guayaquil, resulting in growing backlogs of cases. Since fewer cases were resolved in a year than the total entering the system, the backlog would only grow unless the speed of case processing could be increased
  - neglect of time limits, specified by law, for the different phases of a case to be completed
  - excessive centralisation of court administration, which created inefficiency and decreased access to justice. Judges exercised administrative as well as judicial responsibilities. For example, judges had to manage their own caseload so that they were unable to focus on their judicial functions
  - inadequate case management to facilitate tracking and monitoring throughout the judicial process from filing to disposition, leading to delays and inefficiencies
  - a lack of records management standards and procedures, particularly in relation to numbering systems, file maintenance, storage, access, security and disposal of records
  - a lack of management information systems, resulting in inaccurate, incomplete and unreliable statistics on which to base decisions about administration, case flow management and the allocation of personnel and resources

- difficulty for the public in accessing information about where a case is filed, the status of the case and other case information
- poor physical infrastructure, for example, a lack of up-to-date information technology and facilities for records storage
- public loss of confidence. This was illustrated, for example, by the belief that corrupt practices could adversely affect the outcome of a lawsuit and by reliance on extra-judicial methods of resolving disputes. Companies relied on arbitration or negotiation, rather than the judicial process.

### **World Bank Judicial Reform Project: Objectives**

- 67 To address these problems and strengthen the administration of justice in Ecuador, a World Bank-supported project commenced in 1996 with anticipated completion in December 2001, subsequently extended to June 2002.
- 68 Previous experience had shown that many judiciaries in Latin America share similar problems with Ecuador. Lessons learned from this experience included the importance of building consensus within the Judiciary, the commitment of the Supreme Court in supporting and implementing reforms, and the need for the Judiciary to be fully educated and informed about the objectives of reforms through study visits, workshops and pilot projects.
- 69 A study of Quito courts showed that the backlog of pending cases was growing. Though there was an increase in the number of cases handled, the number of cases filed increased at a faster rate, so that improved productivity alone was not sufficient to prevent the growth of the backlog. Budget increases were mainly taken up by inflation.
- 70 The interdependence of court records and court procedures was well recognised before the commencement of the project. Basic functions of the courts, such as the management and disposal of cases and financial and statistical reporting, rely on accurate and accessible records.
- 71 Initial analysis showed that each court had its own ‘archives’ or records room, for which a secretary was responsible. Though each court should have its own archives, in reality, files were managed by all functionaries with no single officer responsible.
- 72 Filing procedures were not consistent. Case records were stored by the year of opening, without any differentiation between active and inactive files, with the result that a search for active files was very more time-consuming. There was no agreed or common level of service to the public, for example, with regard to access to information.

- 73 There was a need to design a better system for case file management. Records management controls consisted of a system of files, books and registers. While new technology was regarded as a means of achieving greater efficiency, it was recognised that for some courts automation was not essential to improve case management.
- 74 Furthermore, while improvements in service and efficiency were commonly regarded as dependent upon the appointment of more judges and staff, and greater financial and technological resources, it was also recognised that there was a need to shift the focus to the needs of users and adopt a service and performance-oriented approach.
- 75 The Judicial Reform Project was planned to provide support in four areas:
- infrastructure
  - case administration and information support
  - alternative dispute resolution mechanisms
  - programme for law and justice (for example, professional development, legal education).
- 76 The case administration component is the primary focus of this study. However, the infrastructure component is also of interest by virtue of its close connection with court functions, the management of court procedures and processes, and records and information management. The aspects of the Judicial Reform Programme to be considered here include case management and information systems, records management and automation and technology.

### *Case Management and Information Systems*

- 77 The case management component was planned to include the following activities:
- introducing a case flow management and delay reduction programme (analysis of causes, development of methodology to redress problems, a pilot delay reduction programme)
  - introducing systems to improve access to information about cases for court users (officials, judges and the public)
  - improving records management, including ‘purging’ case files and examining options for recording oral proceedings
  - standardising legal forms and practices throughout the courts
  - introducing performance standards involving a shift of focus from the needs of officials to a service culture
  - developing operational manuals

- implementing of a management information system (MIS), including a judicial statistical system to assist in case tracking and analysing causes of delays.

### *Records Management*

78 To address the inadequate management of court records, the project included the following activities:

- producing guidelines for the management of records at each stage of the records life cycle
- agreeing disposition schedules and the steps necessary for adherence to legal requirements for records
- establishing procedures for the creation of each required record, such as case intake registers
- defining required registers and records series
- agreeing standards and the implementation of systems for ‘case storage’ and use of technology
- establishing procedures for transferring terminated cases to the central archive.

79 Four areas of activity were to be implemented in conjunction with the Supreme Court:

- establishing a records management system:
  - ◊ proposing standards for appropriate records equipment
  - ◊ installing new equipment
  - ◊ revising retention and disposition schedules
  - ◊ creating a standing records management committee to oversee these activities and a records management technical assistance team to assist local courts
  - ◊ surveying records retention requirements to determine if some inactive records could be destroyed
  - ◊ examining the storage of inactive records to determine if procedures could be modified
  - ◊ deciding whether the location of the central archives was adequate or whether regional archives were needed

- ◇ creating a manual to include: rules for numbering case files; ‘determination of the number and locale of registries on court actions’; methods for handling exhibits; standards for records security including access to records and environmental controls
- ◇ determining the need for legislative reform to ensure adherence to the new system
- systematically removing from current storage case files that are closed or no longer actionable
- improving records management equipment - after standards for equipment had been established an exercise to ‘purge’ files was completed
- adopting a method of maintaining a record of oral proceedings - as the oral process was so new in most of Latin America, there had been little consideration of the need for accurate records of proceedings for appeal purposes.

### *Automation and Technology*

80 The introduction of new technology in the courts was planned to be carried out in two phases:

- *phase one:* stand-alone computers provided for judges secretaries and case processing staff who would receive basic training; automation of court functions, such as case tracking, registers and calendar management programmes
- *phase two:* networks introduced to allow sharing of information and public access to information about the status of cases; links with central administration offices provided for reporting statistical information and for email.

## **REVIEW OF ACHIEVEMENTS OF THE JUDICIAL REFORM PROJECT**

### **Change Process and ‘Cultural’ Factors**

81 Initially there was much fear of change. The Judicial Reform Project has been a learning experience for all. Judges interviewed during the case study talked of the need for a change in ‘mentality’ or culture. Judges need to regard what they do as a service to users (lawyers, offenders, victims, etc). This in turn will change the way users view the Judiciary.

82 Cuenca, which was said to be the most corrupt city in Ecuador 20 years ago, is now proud of its courts and judicial system. Within the Judiciary, there is a sense of service to citizens and a desire to make the system work. Cuenca has funded more

court rooms from its own resources, indicating a strong level of ownership. However, there is concern about the future of the reform process after June 2002 when the current project is due to end.

- 83 The Judiciary is still very centralised, and control of finance is very bureaucratic. Requests to purchase equipment, supplies and services, for instance for records storage and management, have to go to Quito, and officials in Quito have to agree the contract. Painting walls in Cuenca has to be agreed by Quito. Cuenca argues that it earns revenue from fees, yet finance for its activities has to be approved by the centre.
- 84 The project has brought in trained people from outside, which has led to obvious ownership and 'customisation' difficulties. Contracted organizations could have been required to do a thorough needs analysis rather than importing systems from outside that subsequently have to be customised. ProJusticia appointed a coordinator in all cooperative courts to support the process of change.
- 85 It was reported that there are now good relations between the National Judicial Council (NJC) and Office of President of Supreme Court, but that there used to be friction. The new President of the Supreme Court is regarded as supportive of further reform. A committee of judges has been established to consider administrative and internal problems arising from the change process and to communicate with the NJC and Supreme Court. In Cuenca, two criminal judges spoke of the value of NJC support, but there was also a view that support by the Supreme Court and NJC could be greater. The instability of the staffing situation was given as an example of the need for greater intervention. There is a tendency to transfer staff who have been trained in the new system, resulting in wasted investment. Untrained, inexperienced personnel are then often transferred to work within the new system.
- 86 A Quito judge argued that since the Judicial Council has assumed greater responsibility for administrative, financial and personnel functions, the judges have felt that they have lost control. The intention in creating the NJC was to enable the Judiciary itself to focus more on the delivery of justice. This perception of the judges needs to be addressed.
- 87 The continued existence of ProJusticia, as the coordinator of the Judicial Reform Project, is seen as key to achieving reform objectives and ensuring that the achievements to date will be sustained and extended. A decision on the future of ProJusticia, which depends upon outside funding, is due to be made at end of project extension in June 2002.
- 88 A major objective of the Judicial Reform Project is to reduce the huge backlog of cases. This requires changes in systems and processes and in the way the judicial system handles cases and delivers justice, for example, the use of mediation. A lawyer interviewed in Quito felt that the law had yet to catch up with the process of change. In Cuenca, a judge gave the example of the need to change time limits so that they were more realistic.
- 89 The move towards 'oral' procedures, with cases conducted in court by opposing parties, rather than by a documentary process, has implications for record-keeping. For some proceedings, there will be a need for court reporters (stenographers) to be

appointed and the transcripts to be produced for judges to approve. Reports of cases will need to be published.

- 90 Two criminal judges interviewed in Cuenca suggested that hearings should be recorded by camera. If a case went to appeal, there would be an exact audio-visual record of the proceedings. Audio visual records are regarded as more secure and reliable than typed or word-processed court proceedings. It is understood that the new Penal Code will allow evidence to be recorded in digital form, though this needs to be confirmed.
- 91 As already noted, precedence is not an issue in Ecuador. Each case is treated anew and, for this reason, there is no need to keep case records beyond their business use, other than for their historical value. It is therefore inconsistent that the courts regard all records as permanent and that no case records are being destroyed.
- 92 Cases may now be initiated in the Prosecutor's Office. Now that the prosecutors carry out investigatory work, the judges should have more time to conduct cases. It was reported in Cuenca that prosecutors are less experienced and often did not work to the same standards as judges, for example when medical examinations were carried out. This is an aspect of reform that needs to be revisited. The Prosecutor's Office is under-funded, and is felt that the introduction of the new procedures is too quick. There is insufficient preparation and training, including for lawyers, and there is a need for the prosecutors, Judiciary and police to work together as a team.
- 93 The lack of commitment of some court staff was commented on by lawyers. However, all court secretaries are now required to have law degrees and some have legal training. Clerks are often very qualified, and some are required to have law degrees. The national association for clerks is strong and was able to influence the deployment of staff.
- 94 A lawyer in Quito claimed that the new system has failed in some areas to provide a good service to lawyers and the public. For example, lawyers have to queue at the Reception/Information Desk and Archives counters to ask for information about a case. If they have a number of cases to deal with, they have to queue several times. In front of them in the queue are people who seem to be wasting time and asking simple questions that could be answered more effectively elsewhere. Clerks answer queries by referring to the database on terminals behind the counter. Previously, lawyers had direct access to the clerks and to the file rooms which, for them, was a better service.
- 95 There is a need for better communications regarding services. Lawyers, as users, and court officials, as administrators, need a formal mechanism so that general information about the system can be passed both ways.

### **Pilot Cooperative Courts**

- 96 The 'cooperative court' concept has been successfully applied in other countries such as Spain, Costa Rica and Peru. The key feature is shared handling of cases by a pool of judges, secretaries and clerks, rather than each judge, secretary and team of clerks

controlling particular cases. Under the cooperative system, questions relating to a case can be answered by a number of court officials. In combination with a computerised case management system that can be queried by officials and the public, the cooperative system should enhance the efficiency of the courts and of case management. The system is also intended to reduce the potential for collusion between lawyers and clerks/judges. The allocation of cases to the courts is decided at random or by lottery.

- 97 The creation of cooperative courts has been a major objective of judicial reform in Ecuador. By the year 2000, cooperative trial courts had been established, with computerised case tracking, dedicated file rooms, work stations and public counters where information about cases and access to files could be provided. Procedures had been introduced to control the movement of files through their life cycle. Large numbers of inactive files had been purged from current case file systems. Lawyers and litigants were served at public counters where documents were received, information about cases was provided from the case tracking system and files were consulted under supervision.
- 98 The improvements in case management and disposal are illustrated by the pilot civil and criminal courts in Guayaquil, where average monthly terminations of cases increased by 91% and 127% respectively in the period January to September 2000. The percentages of inactive files removed from active systems were 74% (Quito), 13% (Cuenca) and 25% (Guayaquil).
- 99 Case files are now stored in purpose-designed file rooms or 'archives'. The intention had been to create a shared storage facility for all courts but, due to resistance from judges who fear loss of control, separate file rooms or storage areas have been established for each individual court.
- 100 As part of the cooperative court initiative, judges and secretaries now have their own offices, and the clerks work together in one common room. The expectation is that competition between teams will lead to improved productivity. A secretary commented that competition tends to be manifested in initiative-taking, rather than increased work output. Nevertheless, this demonstrates a degree of ownership and commitment.
- 101 Cooperative courts have been implemented in the first level courts in Quito, Cuenca and Guayaquil. In Quito, there are 11 remodeled court rooms for first-level courts or Juzgados, and a further 12 in Guayaquil and four in Cuenca. It is anticipated that within one year all 45 courts will be cooperative. Previously the courts or judges' 'chambers' (both civil and penal) have accommodated, usually in a single room or discrete area, the court staff of judges, secretaries, and clerks, as well as all the court's case files.
- 102 Initially, lawyers opposed the new system and there is still resistance, particularly in Quito. Lawyers dislike, for example, the idea of queuing at a window to have their queries answered, rather than going directly to a judge. Queuing is seen as undermining professional status. There is also resistance to cooperative courts from judges who are wary of the changes and do not trust the new system. Some judges

continue to keep case files in their offices rather than entrust them to storage, which they regard as beyond their control.

- 103 However, the criminal judges interviewed in Cuenca are strong advocates for the cooperative court system. They see the system as more efficient, providing a better infrastructure and improved case management, and also as promoting teamwork and a greater variety of activities for court staff. Another advantage is better security for court staff. One judge noted that in the old system, there was a greater risk of attack or abuse in dealings with dangerous or threatening people.
- 104 A Quito court secretary estimated that efficiency has increased threefold since the introduction of the system. Although the case management system is regarded as a tool and the processes relating to paper documents have largely not changed, this official was of the view that the quality of information has improved. (The case management system is discussed in more detail in paragraphs 128 to 153.) There are now standardised document formats. More significantly, case histories are readily available in the database, whereas previously it was necessary to search through the paper file to obtain the same information.
- 105 A Quito judge supported the belief that the case management system has increased efficiency. The disposal of cases has speeded up. However, rules are needed for 'office practices' so that the new system can be institutionalised and the improvements extended to all the courts. Two criminal judges interviewed in Cuenca were also positive about the advantages of the computerised system. It improved efficiency through faster processing and template forms, and it provided quicker access to information about cases. The system enabled users to check at a glance the status of a case, whether action should be taken and, if so, by when.
- 106 The issue of access to judges and to case records provokes widely differing reactions and provides a good example of the difficulties of introducing change. Previously, lawyers had almost unlimited access to judges and files. It was claimed that lawyers approached staff over trivial matters, wasting staff time. Now only those people involved in the case are allowed to see the judge and staff. With less contact, judges have more time to work. In Cuenca, there is a view that this engenders respect for the Judiciary and that the quality of contacts between lawyers and court staff has improved. By contrast, a Quito judge argued that he now has less contact with lawyers and litigants, and this could be viewed as a reduction in access to justice. He felt that the open space of the cooperative court had reduced security. Under the old system, case files were next to the judge, so security was easier to control.
- 107 It may be possible to regulate access so that it meet the needs of court users, judges and staff. In the Cuenca cooperative courts, for example, lawyers are allowed access to judges between 11.00 and 12.00. A judge suggested that this could be extended to two hours a day without unduly affecting his work and that, in any case, if there was an urgent matter to be dealt with, it should be possible to make an appointment to see a judge at short notice. As part of the new infrastructure in Quito, audience rooms have been created where parties and their representatives can meet with judges for pre-hearings, examination, conciliation and other matters requiring direct contact. However, whereas previously these procedures were open to the public, now access is strictly controlled.

- 108 It is of course important to maintain good working relations and trust between the Judiciary and lawyers. The closeness of the relationship between lawyers and the courts is illustrated by the comment that if records were found to be incomplete, copies of missing documents could be acquired from lawyers. The relationship must be sufficiently formalised so that it does not compromise the processes of justice. In Quito, the practice of issuing files to lawyers is still common. Lawyers are required to leave their identification as a security deposit for a loan period of up to 30 days.
- 109 Response times to requests for information are in many cases much faster in the new system than in the old, but there were some complaints about delays. A lawyer said that he had presented an application almost a month previously and had still not received an acknowledgement. Under the old system, when this happened, he simply contacted the court staff directly and the problem was solved. Delays such as this are compromising the justice system, for example in cases where assets need to be frozen. Similarly, it was possible previously to approach a secretary directly to get a document certified, whereas under the new system, this process takes two days. Valuable or important documents can be delayed in the system, and if the document is lost, there will be no way to prove it was received by the court. This suggests that documents should be certified at the Reception Desk. Senior clerks could also possibly perform the certification.
- 110 Some ad hoc procedures were observed in the cooperative courts. It was noted in a Cuenca criminal court that an appeal case had been given a new number. As well, prosecutors' files passed to the court were renumbered by the judge and given a case number. Some files have PRESO stamped on them, indicating that the person charged is in prison. This stamp enables judges to see at a glance where action was required in respect of people in prison. As the person responsible under the law, the judge cannot entrust this task to the clerks, but the process needs to be formalised.
- 111 The law still requires that files must be sewn, the common practice being to use a strong cotton threaded through four punched holes. This means that each time a document is added to the file, the thread has to be undone, the document placed on file and the thread retied. It provides for a secure system, but it is labour intensive. The same system was observed in a Cuenca criminal court. However, a Cuenca Prosecutor's Office file that had been passed to the criminal court (and, it may be noted, numbered in a separate file sequence) was not sewn but had metal clips to fasten documents to the file. Court files were also seen in Cuenca that used metal clips, rather than thread. Clearly, there is a lack of consistency which needs to be addressed in regulations or instructions providing technical support to users of the case management system.
- 112 The most difficult aspect of introducing and maintaining the systems is providing technical support to users of the case management system. Use of the system varies. Some users are more enthusiastic than others. Typewriters are still used in some secretaries' offices.
- 113 A court secretary in Quito reported that he was not using the system to assign work but was distributing cases according to his own manual system. This suggested that more training is required. The officer claimed that in any event, everything still has to

be done by hand as well as in the system because of legal requirements. He was also critical of the new court infrastructure and preferred a greater separation of teams. He felt that the physical layout of the cooperative court means that secretaries, many of whom now have their own offices, are too far removed from the judge. They are also separated from their clerks and therefore unable to exercise effective oversight. The secretary also felt that the identity of the court had been lost and that previously, there was greater control over resources and personnel.

## **Records Management**

114 The records and information management component of the project focused on the following areas:

- creating common file rooms with a member of court staff assigned to the management of files
- introducing records management control procedures for case files, for example a system of assigning unique numbers and controls for the movement of files
- purging inactive files from active file systems
- creating an intermediate storage area for inactive cases which were not yet closed/abandoned
- providing standard equipment, such as shelving, file cabinets and containers for the storage and management of case files
- designing new common forms/standard documentation (79 penal and 44 civil forms were introduced by 2000 across the Judiciary)
- introducing an operations manual documenting the organisation, functions and procedures of the courts and covering areas such as the judicial processes, public services, assignment of work, administrative support, creation of case files and lending of files.

### *File Rooms/Archives*

115 Under the cooperative court system, active case files are kept in file rooms or 'archives'. Pending files are also kept there in bundles. Files are kept by number and year. Shelving in different file rooms appear to be of a similar standard. A project objective is to maintain a standard for shelving, case folders and 'out' cards, not only to achieve consistency and good practice, but also to allow for economies of scale when purchasing supplies and equipment.

116 The intention was to establish a common file room facility to serve all the courts in a cooperative unit, but the decision has been made to provide each court with its file room or archives and dedicated clerk. It is argued that this system allows for more effective file control and improved court staff and public access. However, many file

rooms are staffed with temporary interns. A Quito secretary observed that security of case files was better under the old system when fewer people were involved. Clearly, permanent and trained clerical staff are needed in the file rooms.

- 117 As part of the project, an exercise has been conducted to purge the courts of inactive files. Final year law school students took a census of all case files for the last ten years in Cuenca, and eight years for Quito and Guayaquil<sup>2</sup>. As a result of the exercise, cases more than three years old but less than eight years old have been transferred to intermediate storage where they remain accessible to the courts but do not congest active file rooms. For cases more than eight years old (ten years for Cuenca) a closing order is signed by a judge. In Quito, these files are transferred to the Judicial Archives. The reason that the purging rate was much greater in Quito than in Guayaquil and Cuenca is that in Cuenca only those cases officially closed have been included in the statistics. In reality, larger quantities were closed and transferred.
- 118 Cases remain ‘active’ for eight years and files can be reactivated during this period. If no action has been taken after eight years, then the case is abandoned or closed. However, a case can be closed after three years of inactivity if a request is made by a lawyer and the court agrees.
- 119 In Quito, the Archives counter is open for enquiries from 8.00-11.00am and 2.30-5.30pm. Lawyers (and litigants) are able to obtain copies of documents at a cost of 5c per copy on production of identification. The counter is located near the file rooms where files or documents are retrieved.
- 120 A number of staff interviewed reported that there is a need to improve the security of the courtroom archives. Bar coding of files was mentioned as an option.

### *Judicial Central Archives*

- 121 There are about 2.5 million files in the Judicial Central Archives in Quito. By comparison, the National Archives holds approximately 200,000 files. No-one interviewed had given real thought to the need to destroy court records of no further value. The understanding is that none of the files could be destroyed because there is no legal requirement or authority to destroy judicial ‘archives’. It is claimed that cases can be reactivated after many years, and also that there may be other reasons for reactivating files. For example, information about divorces has to be kept for the lifetime of the parties. In addition, recent legislation allowed certain cases involving the banking system to be revived without limit of time. There is clearly a need to agree and introduce systematic retention and disposal procedures based on the requirements of users and potential users within the Judiciary, the public and society at large.
- 122 The Judicial Central Archives does not hold lists of transferred records, although some courtrooms list their files before transferring them. There are also no shelf lists. Files are kept on open shelves in tied bundles which are labeled by court, year and

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<sup>2</sup> The significance of eight years is that the law states that if there has been no activity in a case for this period, the case can be dismissed.

case number range. File retrieval depends on the knowledge and memory of the Director of the Archives. However, court registers (*Inventarios*) list cases and could be used to help locate files by their year and number.

- 123 There is a need to introduce more formal storage and location tracking procedures in the Central Archives.
- 124 The current Director of the Judicial Archives has been in the post for many years. He reports to the Secretary of the Supreme Court, but the Secretary has never visited the Archives. The Director sits on the National Archives Council. The Judicial Archives has been visited on occasion by the National Archives Inspectorate. However, there seems to be little, if any, practical results from these contacts. The National Archives is the repository of the nation's archives, but no transfers are made from the Judicial Archives. Those judicial archives held by the National Archives appear to have ended up there by default or fortuitous survival.
- 125 There is no connection between the Judiciary and the National Archives in any structured sense. If a court finds that it has a large accumulation of old records that it no longer requires, the records can be offered to the National Archives simply as a means of getting rid of them. The concept of selecting records for permanent preservation and destroying those of no continuing value does not operate. The Ecuador Archives Law (No 92 of 1982), which requires that permanent archives must be transferred to the National Archives (if the National Executive Archival Committee so decides) does not assign the National Archives responsibility for ensuring that records of permanent value to the nation are selected, safeguarded and preserved. This is an issue that needs to be addressed.
- 126 Until two years ago, all judicial files were either in the courtrooms or in the Judicial Central Archives. As a result of the project, some 80% of files previously kept in the courtrooms have been 'purged' and removed to the Central Archives. These files date from the previous ten years. Files for the prior 50 years, that were formerly kept in the Central Archives, have been removed to another building. This rented building holds twice the quantity of files kept in the main Central Archives. It is understood that the project has rented additional storage in Cuenca for purged files and has also created a new storage area in Guayaquil for purged files.
- 127 As noted, improved storage and location tracking procedures are needed in the Central Archives. Linked to a realistic disposal policy that recognises that most files have no permanent value, access to information of continuing value could be improved and storage overheads reduced. If large quantities of files are allowed to accumulate indefinitely, more and more storage buildings will be required. A risk analysis would suggest that the cost of storage is too high to justify the permanent retention of most case records.

## **Case Management and Information System**

- 128 The case flow management system was designed to address the problems of loss of documents and files, the inability to find or access information, the variety of registration systems and control books in use, and the lack of uniformity of process.

- 129 DPK Consulting was contracted to build a case flow management system for the Ecuador first level courts (*Juzgados*). DPK conducted an assessment to determine the best case flow management software to meet the needs of the Ecuador first level civil and penal courts. Initially it intended to use a single software package, but the applications considered were not able to meet all requirements. Therefore, the decision was taken to use three tools in designing the case management system:
- WORKFLOW – front end capture of data
  - OLAP – statistical processing
  - SQL DBMS – data warehouse.
- 130 The first prototype (using WORKFLOW) was difficult to implement because each court followed its own interpretation of codes and procedures. The system was prescriptive, required detailed and time-consuming data entry, and met with resistance. Without uniformity of procedures and enforcement, it could not work. In addition, the licensing was considered too expensive.
- 131 The second prototype was designed to allow for a minimum level of data capture. Instead of pre-defined rules, the user was able to enter data from options offered through menus. The result was a simplified screen and greater flexibility in allowing the operator to decide the type and extent of data required.
- 132 The case management system used Chilean software (Xnear), a database written in an open standard (SQL) with a web-based user interface, held on a Windows operating system. The system was simple to use and adaptable. It provided for a hierarchy of access, was flexible for queries and reports and was supported by complete documentation. Four user manuals were provided for data input, consulting cases and querying the system, civil case file tracking and criminal case file tracking.
- 133 The system is able to deduce the status of a particular case and define the procedural stage it has reached. The following examples provide an indication of the kind of information or use the system provides for different categories of users:

#### **Judge**

- What cases are active?
- What stage has a case reached?
- What 1998 cases are in citation?
- How many divorce cases were entered in 1999 and how many did I resolve?
- How many cases have been inactive for 700 days or more?
- How many persons are in prison?

### **Court Official**

- What cases do I have charge of?
- What cases are in proof stage, and how many days have they been there?
- I wish to:
  - ◊ find a particular case
  - ◊ check the history of a particular case
  - ◊ to process a case
  - ◊ print a standard document

### **External User**

- Am I involved in any suit?
- I wish to
  - ◊ find the number of a case and the court it has been assigned to
  - ◊ find the case number assigned to my suit
  - ◊ view the history of an individual suit
  - ◊ view all the judgments of a particular court entered in 1999

134 Contract staff were employed to enter data in the system for existing active cases up to 2000. From 2001, new data have been entered by court staff.

### *Functionality of Case Management System*

135 The case study, the case flow management system contains a record of all cases since 1995. Pre-1995 case files continue to be managed by a paper docket system.

136 The system is being implemented in Quito, Cuenca and Guayaquil. In the Quito courts, as of April 2002, there are 30,000 cases in the system, and 14 out of 16 civil courts are linked to the system. Of these 14 courts, the system is fully implemented in seven and is in the process of being implemented in seven others. Seven criminal court rooms out of a total of 11 are linked to the system. Other courts, for example, those for labor and traffic cases, are not yet linked. There are 128 work stations linked to a mainframe, though this number is expected to increase shortly to 160. All users and potential users have received training.

- 137 System implementation is being carried out according to the overall project plan designed by DPK Consulting. However, the National Judicial Council decides on priorities and select the units to be incorporated. Financial constraints are a determining factor in the expansion of the system.
- 138 The current version of the system does not link the three centres (Quito, Cuenca, and Guayaquil) in a common network. It is understood that a new version (using new software), to be implemented in Phase Two of the project, would enable the system to distinguish between the location of the case and its type.
- 139 The ‘unique’ case identifiers do not reflect location apart from court room number. Court case numbers are therefore only unique within their own geographic location. In practice, within the country as a whole, there will be three files with the same number, for example, the case number 2002/03/007 could exist in all three cities. The new system will use a unique identifier that can be applied to cases throughout the country. Concern was raised about migrating the cases from the separate systems to the common system. Measures will be required to ensure that cases from each district are not mixed up with cases from another and that new unique identifiers were assigned to cases that currently have the same number.
- 140 The new version, which is being designed by court ‘technicians’ in Quito, will include other improvements and add new features. Some of the system changes to be introduced are more standardised formats, better interface with users (such as improved links to document templates), easier training and the availability of relevant legislation on line.
- 141 The system automatically assigns each case a unique number. Cases are identified by the year, court number and case number. New sequences of numbers are begun each year. In the new version, a unique composite number will be used, representing first the state where the case was heard, whether it was penal or civil, the particular court, the year, and the serial number of the case. If a file is passed to an appeal court, the same number will be used.
- 142 Four hundred new cases are initiated in Quito each day. The random assignment of cases to judges, used to be done manually by a lottery system. The allocation is now semi-automated. This has resulted in a huge reduction of paper. The new version of the case management software will enable the assignment of cases to be done automatically.
- 143 Users are able to search for information by case, judge, lawyer, or court. Each system user is assigned a unique ID and password. There are different levels of access privilege according to user: court official, consultant, lawyer, data entry clerk and web. For example, judges cannot create an entry and can only see cases; secretaries are able to see all cases in their particular areas (and can therefore oversee the activities of their clerks); lawyers can access data but have read-only access. Total access to all system data is restricted to key system administrators and the Judicial Council.

- 144 As an example of a search, the system can list all the cases assigned to civil court number three. The user can further refine the search, for instance, by date or judge. The user can then select from the list of cases retrieved and view all the details of the case as per the following fields:
- unique identifier, comprising a case number generated sequentially by the system and the year
  - court room number (assigned court room)
  - appeal (a new case number assigned for appellate court cases)
  - judge assigned to case
  - lawyers assigned to case
  - parties (defendant, applicant, etc)
  - case history and audit trail: all actions on the case, including notification, answers (arguments submitted by parties) and acknowledgement by secretaries, and judge decisions.
- 145 In Cuenca users are able to access the case flow management system via a work station located in the information request area. The user interface, developed locally by a technician, requires minimal computer skills to operate. Records can be retrieved via touch screen by selecting the judge, lawyer, court or case number. Users are prompted to fill in the details (case number, judge, year etc) and the system will retrieve the relevant cases.
- 146 A series of standard reports are run to generate statistics on the number of cases processed, verdicts, judges, new cases entered and so on. Weekly reports can be generated for submission to the Judicial Council. In principle, it should be possible to conduct sophisticated statistical analysis: for example, types of cases, actions outstanding, or length of time prisoners have been in jail. New statistical tools are being developed in-house.
- 147 Standard commercial packages are used to support information systems. These include Microsoft Office, SILEC (a Spanish language equivalent of LEXIS NEXUS, available at workstations, which includes the Official Register for the last 100 years); and a case management system. The system is linked to a series of templates in Word/Excel to generate documents for the case file. Documents received as part of the judicial process are input in summary form in the case management system.
- 148 It is understood that maintenance of the system is the responsibility of ProJusticia, acting under the authority of the National Judicial Council.

## *Support for Users and Training*

- 149 Each district (Quito, Cuenca and Guayaquil) has an engineer to oversee the maintenance of the system user support. Two technicians work with each engineer. The engineers are contracted by ProJusticia and are not part of the Judiciary's establishment. Legal technical advice to judges and users is provided by an administrator who acts as an interface between the technology and the legal processes. The intention is that groups of courts will be overseen by an administrator.
- 150 The system is Microsoft-based. The contract includes 'platinum-level' support that includes 24-hours-a-day, seven-days-a-week technical support, software upgrades and the CD-ROMs required for back-up. A Windows-based on-line support or 'help' tool has been developed.
- 151 Under the pilot project, the project team (DPK Consulting) has carried out training in the case management system. Private contractors provide training in basic productivity software such as Microsoft Word and Excel.
- 152 Each system user receives 80 hours of training (two working weeks): this includes training provided prior to the acquisition of computers and training following acquisition, when there is continuous support from system staff. There is also an option for additional training via a self-paced course on a CD-ROM. A court secretary interviewed in Quito reported that training in the cooperative court system had been thorough.
- 153 Post-implementation training is available from the technical team as required.

## *Workflow*

- 154 The following processes illustrate work and information flow in the new system.
- 155 In the Quito Juzgados, complaints/applications (for example, divorce) are brought to the Lottery Office to be assigned to a court. The secretary receives notification of a new case and opens a new case file in the system, which assigns the case the next case number. Court clerks carry out the entry of case details. The clerk to whom the case is passed creates a manual case file. The clerk uses the case management system to create a notification, which is signed (certified) by the judge and secretary and sent to the parties, with a copy placed on the paper case file. (Every document or action in the process has to be certified and notified.) If the address of the respondent is known, the notification is sent to this address, otherwise the notification is published in the newspaper.
- 156 In Cuenca, secretaries distribute files to clerks by email instructions following a judge's decision on action.
- 157 The clerk is responsible for maintaining the paper file and the database record. File covers can be handwritten or typed; they are not yet produced by system. Documents on the file are foliated so that it can be determined if a document is missing. A clerk observed in the Quito Juzgados handles about 15-20 cases a day. He was trained by

DPK Consulting, and he claimed that it took him about four months to become proficient as a user of the system. In Quito, there are normally four clerks per court.

- 158 The case management system was designed to inform the clerk of the next action through its menus. Each action is captured in the case's 'history' field. Templates in Microsoft Word can be accessed to create documentation required at each stage of the judicial process (notifications, answers/written arguments and acknowledgements). The clerk creates and prints the documents, which will be sent to the secretary for signing. The Word documents are saved on the hard disk of the system. In the case of an original document received from one of the parties, for example a complaint or application, the system prints the notification on the back of the document. Documents are filed and sent to the secretary for signing at the end of the day. After the documents are signed, the files are transferred to the archives.
- 159 When a lawyer asks for a hearing, the clerk uses the system to provide the date. The system subsequently warns the clerk before the date of the hearing so that the file can be retrieved. When a lawyer requests an action or provides a document, the court (according to the law) has three days to respond. However, in practice this time limit is often breached.
- 160 Since the paper files are still used and the case flow management system is essentially a finding aid and audit trail, the court clerks continue to type all relevant information on the docket containing the documents in the case (the case file).

## **Mediation**

- 161 The use of alternative dispute resolution mechanisms, such as mediation, is an objective of the Judicial Reform Project. Mediation services enable courts to concentrate on cases that need to be dealt with by the courts. Mediation is quicker, less costly in terms of the resources it requires and less stressful for the parties involved, although mediation centres may advise parties to go to court if it is thought that the case cannot be resolved by mediation.
- 162 The Centre in Cuenca, which dealt with 600 cases between January 2001 and April 2002, handles four or five cases a day. The mediation process itself is not recorded, although records are created by the two mediation centres visited in Quito and Cuenca. Indeed, the centres maintain their own record-keeping systems independently of the courts. Though the mediation process is controlled by legislation, the legislation does not stipulate how long records should be kept. The Quito Mediation Centre recommends that its case records should be kept for five years.
- 163 Mediation staff complete a report that is sent to the judge to decide if the case should go to mediation. A formal explanation is required if the judge rejects mediation. A record of the judge's decision is kept by the centre in the mediation register.
- 164 Alternatively, the parties involved can request mediation. If a judge decides to bring a case to mediation, a letter is sent to the mediation centre and the mediator is required to go to the relevant court to study the case file.

- 165 The Mediation Centre in Quito maintains its own case files. The file includes general information, arrangements for hearings, results of hearings, and forms of agreement. The files are regarded as highly confidential, but lawyers are allowed access to them.
- 166 At the end of mediation, when agreement is reached, a document of agreement is signed by the parties and certified. Copies are provided to the parties, the judge (for the case file) and the mediation centre.
- 167 There is no electronic connection between mediation records and the case management system, although the outcome of mediation might be recorded in the system. The mediation records are maintained manually, though computers are used to prepare Excel spreadsheets containing statistics. A database is needed for cases handled by the mediation service. This should be capable of interfacing with the courts' case management system.

## **RECORDS AND INFORMATION MANAGEMENT: KEY ISSUES**

- 168 As yet there is no clear champion of records management in the courts. If the reforms are to be institutionalised and extended, a central authority such as the National Judicial Council will need to take on a more assertive role, by ensuring that standards and procedures, as documented in operational manuals, are adopted as *reglamentos*. Though *reglamentos* have been drafted they have yet to be officially adopted.
- 169 At the local level, the champions of records management are the coordinators/administrators, a post established to take on more of the courts' administrative functions, leaving judges to focus on judicial work. Whether these officers have sufficient expertise, time, interest or influence to promote good practice in records management has yet to be determined. In practice, the court secretaries need to assume oversight of records management because of their responsibility under the law for the court records in their areas.
- 170 There are no professionally trained or recognised specialists in records management in the Judiciary. This lack of a senior-level records manager within the Judiciary is an impediment to sustainability of reforms. There is no source of professional advice other than that provided by the National Archives, the resources and capacity of which are known to be limited; records management has not yet developed as a profession within the country. There is a need for an officer of sufficient authority and capability to take responsibility for records and information management in the Judiciary and to ensure that procedures and standards are followed and developed in support of its overall objectives. Secretaries and judges recognise that the lack of professionalism and training results in poor record-keeping, which in turn undermines the quality and effectiveness of the justice system.
- 171 It is commendable that court secretaries and clerks are assigned accountability for the safekeeping of records. These personnel have to sign a caution making them legally liable for the records they manage. If records for which they are responsible cannot be located, this is regarded as a serious misdemeanor and can result in job loss.

- 172 There is some evidence that oversight of the records management policy is being carried out by the committees of judges. It was reported that some committees have adopted new policies such as setting time limits for lawyers to receive attention when requesting information or documents.
- 173 In building requirements into the case flow management system, the intention has been to reduce the scope for corruption rather than to improve record-keeping. The result seems to be that accurate, authentic, secure and accessible records are being maintained. Details of each case file since 1995 are held by the case management system, and all actions are recorded in the case history field. Judges, secretaries and clerks have confidence in the system and feel that it is secure.
- 174 Paper records continue to be the ‘legal’ copy for purposes of evidence and authenticity. Legislation does not yet provide for the admissibility of electronic records. In future, electronic records may be regarded as the evidentiary record, but current reliance on the paper records is demonstrated by work practices. For example, a criminal judge in Cuenca (who has provided his office with a computer from his own resources) still maintains his own manual registers of cases. He uses the registers regularly to find out whether a person has a criminal record and intends to continue maintaining them even when the new computer system is implemented in his court. New legislation on the admissibility of electronic records will not by itself change the cultural reliance on paper.
- 175 The use of unpaid interns or temporary staff to manage the file rooms or ‘archives’ annexed to the cooperative courts and to retrieve and replace files, presents a risk to good records management. These staff constantly change, are not subject to professional codes and are not required to sign cautions. They are blamed for the misplacement of files and also for perpetuating a system whereby lawyers are able to take away files on loan, leaving their identification as a deposit. All those interviewed stressed the need for trained permanent clerical staff to manage the file rooms.
- 176 There are no formal policies or procedures in place to manage records at the end of their lifecycle. The issue of destroying records of no permanent value had not yet been a focus of project activity. Records are transferred (often without an official transfer form to document the process) to the Judicial Archives where they are held indefinitely. There is no system of appraisal and there are no disposal instructions governing destruction or transfer to an established archives for permanent preservation despite the fact that this was identified as an aspect of the Judicial Reform Project.
- 177 Retention and disposal schedules are an essential component of records management. Without authorised instructions setting out which records that may be destroyed and which must be kept, huge quantities of records will continue to be kept unnecessarily, placing extra demands on limited resources. Ideally, the National Archives should be involved in drawing up such instructions. The National Judicial Council (NJC) is the appropriate body to approve retention and disposal instructions and arrange for their formal issue. However, implementing the instructions will probably require a code revision.

- 178 There is a need to institutionalise the process of purging, that is, of transferring time-expired and closed records to a records store. In future, the continuous process of purging should be incorporated in job descriptions to ensure that it is carried out. Responsibility for ensuring compliance with process will also need to be assigned. In some countries, this is regarded as a function of the National Archives.
- 179 Little consideration has been paid to the long-term record-keeping requirements of electronic records. There is a need to raise awareness in the Judiciary of the risks to the security and long-term preservation of electronic information. Safeguards are needed to preserve the reliability, security, authenticity and accessibility of electronic data over time if it is to be used as the evidence of actions and decisions.
- 180 Electronic records that originate from templates and are held on individual hard disks appeared to be particularly vulnerable. Access to these records is not sufficiently controlled, and court clerks are able to access documents other than their own. This lack of security is due in part to the designation of the paper copy as the ‘original’ or record copy.
- 181 It was reported that users in the next phase of the project will be able to dial into the system to access the court records from their homes. Work has begun on a proxy server, but it is apparent that little attention has been paid to the security of the records via online access. The absence of a firewall is of concern to the technicians. If case records can be accessed over the Internet, measures need to be in place to protect their integrity, authenticity, accuracy and security.
- 182 Local courts should be able to invest in records management to encourage continued improvement. The courts generate funds from fees charged for filings and other court processes and could supplement the national budget for records management equipment and for local priorities or unforeseen circumstances.

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