

GOVERNANCE, LEGAL AND JUDICIAL REFORM IN THREE ANDEAN COUNTRIES

GOVERNANCE

- 1. Country Background.** The three countries grouped under LCC6C (Bolivia, Ecuador and Peru) share a common political history and legal tradition as well as similar ethnic and geographic features. Democratic institutions have been systemically weak and until the early eighties military dictatorships were more the rule than the exception in the region; during the last two decades civilian rule has not assured the stability in Ecuador (where a rapid succession of presidents is a major indicator of serious governance issues) and Peru (where the Fujimori regime collapsed in the middle of serious allegations of corruption). Only Bolivia has developed a stable system of political parties and regular democratic transitions but ineffective Government policies continue to impair the credibility of democratic institutions.
- 2. Indigenous populations represent a substantial portion of the population** ¹ and the Andean Mountains divide the countries in distinct areas: Coast, Highlands and Amazon Jungle in Ecuador and Peru, Highlands and Plains in Bolivia. The geographic diversity is associated to some competition in the allocation of limited resources, in particular in Ecuador and Bolivia where the regional divide along geographic basis is stronger. In Peru, the enormous weight of Lima as the economic and political center of the country and the authoritarian rule of the last decade have exacerbated a centralized system highly resented by the other regions.
- 3. Year 2000: Transition in Ecuador and Peru, Turmoil in Bolivia.** Year 2000 started with the demise of the Mahuad administration in Ecuador as a result of popular opposition to radical economic measures; the role of the army in the crisis showed that the days of military intervention in political affairs are not completely over. With the support of the IMF and the Bank, the Noboa Administration was able to carry out the major policy reform included in the adjustment package: "dollarization" has been operational in Ecuador since last February and has showed its benefits in terms of price stabilization after a period of hyper-inflation ². Nevertheless, the inability of the Government to continue the reform process has delayed the disbursement of the first tranche of the major component of the Bank's assistance program, a structural adjustment loan for approximately US\$150 million (Credit No. 7024-EC).

¹ Not surprisingly, the Bank's portfolio in the three countries includes at least one project that directly addresses indigenous peoples issues.

² One LEG staff (Mr. Alepuz) was a key member of the Bank team that assisted the Ecuadorian Government in the preparation of the legislative package that implemented the reform.

4. In Peru, the first half of year 2000 was signaled by the Government's reelection maneuvers leading to an electoral process that did not meet international standards of fairness and transparency. Mr. Fujimori's third term was short-lived: less than two months after his inauguration, he shortened his mandate to a one year term after a video showing his main advisor bribing a Congressman was disseminated. The ensuing crisis did not allow him to finish even that term; new evidence about corruption of close associates (civilian and military) surfaced and Fujimori resigned while on an official trip to Japan. A Constitutional transition took place that converted the President of Congress, Mr. Paniagua (a highly respected lawyer), in the Interim President until a democratically elected Government takes office in July 2001. A new cabinet with prominent representatives of civil society was appointed, including the former head of major NGO specialized in human rights issues as Minister of Justice. The Bank received immediate requests from the new Government for assistance in anti-corruption and judicial reform matters.

5. The political capital of the Banzer Administration in Bolivia started to erode during his third year in office. The National Dialogue organized by the Government to rally support from political parties outside of the Government coalition and prominent groups in civil society ended with massive demonstrations by indigenous organizations protesting against the Government's economic policy. The Government and indigenous representatives reached an agreement around an ambitious agenda of social and land reforms that is now being discussed by Congress under threat of renewed turmoil if demands are not satisfied; a new Ministry of Indigenous Affairs was created and the first Minister was a prominent indigenous leader. The confidence crisis changed the priorities of the Government and certain key reforms sponsored under Bank-financed operations, like the Institutional Reform Project or the Judicial Reform Project have been delayed.

6. **Regional impact of *Plan Colombia*.** Throughout the three countries, *Plan Colombia* has generated major concerns. Local media report of Colombian affairs on daily basis, highlighting the risk that guerrilla and drug-traffic operations move into neighboring countries under a renewed pressure of the Colombian military supported by the U.S. Government. In the drug war, this process would revert the achievements of the past decade when under pressure by the Bolivian and Peruvian military, traffickers moved their coca plantations and processing laboratories into the Colombian jungle.

7. Part of the September-October turmoil in Bolivia was specifically associated to the coca crops eradication program carried out by the Government with USAID support. The demise of the Fujimori regime started with the scandal generated by an arms deal between members of the Peruvian military and Colombian guerrilla that uncovered a massive corruption network. Ecuador is believed to be the weakest of the three countries to face the challenge posed by guerrilla-trafficking activities and has initiated a campaign to make *Plan Colombia* a regional initiative that takes into account the costs and benefits of the drug war for neighboring countries.

8. **Human Rights.** Until late 2000, Peru remained the only country with major human rights issues. On dubious legal grounds the Fujimori Regime had tried to avoid the jurisdiction of the Inter-American Court of Human Rights after several judgments

declaring the responsibility of the Peruvian State for serious violations had been rendered. One of the first actions of the Interim Government was to introduce legislation ratifying the adherence of Peru to international human rights standards. Independent investigations are now being conducted to determine the responsibility of former Government officials; harsh sentences of Military Tribunals will be reviewed and President Paniagua has issued a number of pardons in cases where an independent commission found that innocent people had been condemned for terrorist activities.

LEGAL AND JUDICIAL REFORM

9. From the Resident Mission in Lima, LEG has had a privileged position to follow up closely the governance challenges of the three Andean Countries and identify opportunities for further work on legal and judicial reform. In close coordination with the CMU, PREM and WBI, LEG has started new work on judicial reform and anti-corruption in Peru, and continued supporting judicial reform activities in Bolivia ³. While no stand-alone legal reform projects are in the pipeline, certain projects include substantial legal reform work.

Legal systems

10. In private law matters, the three countries share a civil law tradition that inherited major codes from France or Spain, and has received continuous influence from Germany and Italy ⁴. After a long period of prevailing “conservatism” the seventies opened the gates for major reforms to basic statutes; most of the commercial and procedural codes now in force were passed during that decade. The growing forces of globalization have allowed the reception of some common law institutions in the areas of negotiable instruments, banking transactions and bankruptcy ⁵.

11. The interest in legal reform is growing. Traditional bastions of “conservatism” like law schools and bar associations have realized the need to put the country’s institutions in tune with World realities and regularly sponsor workshops or seminars to explore new opportunities. Legislatures have difficulty to cope with society’s pressures for change; typically they lack of the technical support required for the drafting and discussion of a modern statute and key proposals can spend years in Congress before a “champion” is able to carry them on.

³ LEG staff (Ms. Dakolias) also task manages the Judicial Reform Project in Ecuador (Loan No. 4066-EC). The Vice President and General Counsel visited Ecuador in November to participate in the supervision of that operation.

⁴ A strong centralist tradition has not allowed the development of a strong body of municipal or local law. Only in recent years statesmen have become more sensitive to the value of the traditional institutions and customs of indigenous peoples. The Constitutions of the three countries now recognize the full force and effect of indigenous law subject to certain restrictions and limitations.

⁵ A special report was prepared by LEG on the legal framework on corporate bankruptcy and recovery on collateral as a background paper for the joint IMF-Bank financial sector assessment mission (November 2000).

12. A common feature in the region is a certain degree of “legal fetichism” that leads politicians to articulate proposals for legal reform as the first step to address any societal demand. This attitude normally ignores that most of the problems to resolve arise from the non-compliance of existent legislation; typically, the legal system in the three Andean Countries reflect a bias for the normative side of the law with little or no consideration to the enforceability aspects. The weakness of Government or Judicial institutions is a natural outcome of this neglect.

13. The Bank is one of the major recipients of requests for assistance on the legal reform side. Most projects under implementation or preparation include at least a small component dealing with legal technical assistance, sometimes for minor legal studies on project-related issues and more often for the preparation of proposals to review the legal and regulatory framework of a particular sector.

14. Some ongoing projects have included substantial self-standing components. The Judicial Reform Project in Bolivia financed the preparation of substantive and procedural Codes. In Peru, the Urban Property Rights Project (designed by the Bank in partnership with Mr. Hernando de Soto’s NGO) has financed the provision of legal advisory services to conduct analytical studies, and drafting of necessary laws and regulations to: (a) enhance the accessibility to a property formalization process, and conflict resolution methods; and (b) enhance the market use of the property rights.

15. There is still room for improvement in the matter of coordination with other donors interested in providing technical assistance for legal reform (in the three Andean countries, the Spanish, German and Swedish cooperation agencies have taken the lead in specific fields). Even within the Bank, the lack of communication among different task teams have led to duplication of efforts with separate projects financing the preparation of alternative drafts for the same piece of legislation.

16. The local legal communities show different degrees of sophistication. In Lima and Quito, local lawyers that studied abroad and are fully bilingual have become more common; the “mega-law firm” concept has taken roots in Lima where at least three local firms list more than sixty lawyers (a significant number for the size of the local market). Only a few law firms in La Paz monopolize most of the legal work required for international transactions; individual practitioners are the most common choice as Bank-financed consultants as experts in specific areas.

Legal Reform in Bolivia⁶

17. Most of the new operations processed by the CMU with the assistance of LEG during the second half of year 2000 involved substantial legal reforms. The Programmatic Structural Adjustment Credit for Decentralization in Bolivia will require a major overhaul of the roles and responsibilities of the national, departmental and municipal levels of government, as well as inter-governmental fiscal transfers. To that end, major amendments to the Popular Participation Law, the Decentralization Law, the

⁶ The following summary only includes projects that have been under preparation after August 2000.

Financial Administration and Control Law, and the Municipalities Law are envisaged. As part of Project preparation, LEG staff reviewed that legislation with the assistance of local counsel and Government counterparts, and prepared a detailed report whose conclusions and recommendations were reflected in Project design.

18. The Sustainability of the National System of Protected Areas Project will support the development of a new legal framework for biodiversity and protected areas in the country. LEG staff prepared a detailed review of the current legal framework in the areas of environmental protection, land administration, natural resources and indigenous rights in order to ascertain the consistency of the proposed operation with local laws and identify areas for reform.

19. The Indigenous Peoples Development Project was prepared in close consultation with indigenous organizations and finalized after the conclusions of the national dialogue were materialized in appropriate legal instruments. Project objectives and components reflect the Government's commitment to foster the participatory development of marginal communities.

Legal Reform in Ecuador⁷

20. The Poverty Reduction and Local Development Project will include a stand-alone component to strengthen the human capital of local governments and promote democratic processes in the areas of environmental regulations, civil rights and collective responsibilities. Special incentives will be provided to local government that satisfactorily complete an institutional strengthening program.

21. The Public Enterprises Reform and Privatization Technical Assistance Loan will assist the Government with a long-delayed privatization effort in the electricity sector. During project preparation the institutional and regulatory arrangements for rural electrification and energy efficiency will be defined. Social and environmental regulations will be developed to strengthen the institutional capacity to monitor and enforce such regulations with participation of local communities.

22. For the preparation of the Rural Roads Project studies will be conducted on local government institutional strengthening to assess the institutional and financial capacity of such governments and supporting institutions involved in rural road administration. At the national level a diagnostic of cost recovery mechanisms in the road sector will lead to the rationalization of the Recipient's inter-governmental transfers and road user charges through the appropriate regulatory reforms.

⁷ Major legal reforms required as conditionality of the Structural Adjustment Loan signed in August 2000 remain pending and will be developed during the upcoming months: substantial amendments to the legislation dealing with income tax, value added tax, excise tax and foreign trade taxes; passage of the Telecommunications Law, the Fiscal Control and Auditing Law, and the Public Financial Management Law.

Legal Reform in Peru

23. The Social Sector Adjustment Loan will support major legal reforms to protect vulnerable groups of mothers and children in Peru and to make consistent local legislation with international treaties sponsored by ILO on labor standards (youth and child labor, social benefits, social insurance).

24. The Indigenous Management of Protected Areas requires the strengthening of the legal framework for the establishment and recategorization of protected areas in consultation with local populations. As a result of research conducted by LEG staff ⁸ issues related to land titling, as well as limitation to the access to, or use of, natural resources in such areas were identified and appropriate safeguards included in the legal documents.

25. The Health Sector Reform Project involves the provision of technical assistance for the redefinition of the role of the Ministry of Health in the areas of formulation of health norms and supervision of their implementation by public and private health providers that may involve substantial reforms to the applicable legal and regulatory framework.

Judicial Systems

26. Andean countries have preserved the tradition of a three-tiered court system: a Supreme Court with jurisdiction over the whole country; appeal courts sitting in major departmental or provincial capitals with jurisdiction limited to such regions; and first instance courts in cities or towns. In these sparsely populated countries geography has put major barriers for access to justice; residents in small towns, indigenous and peasant communities have to travel long hours to claim the protection of State authorities.

27. Only in Peru, a strong tradition of “Peace Judges” has kept laymen involved in the administration of justice. The State court system in the three countries is the monopoly of lawyers: as judges, judicial officials and litigants; for practical purposes, almost every legal claim requires the assistance of an attorney. Professionals of other disciplines are only allowed as “expert witnesses” or “Court advisers” in a system that forces the individual judge to deal with all types of cases within a few specialties (labor, criminal, family).

28. Starting in the Sixties, a long succession of judicial reform efforts have proved disappointing. General criticism about inefficiency and corruption have justified periodic purges in Peru and a number of amendments to the Constitution in Ecuador. Inspired in European models the three countries have modified the institutional setting of the Judiciary from a “single pyramid” structure into a multi-headed Judiciary where in addition to the Supreme Court, a Constitutional Tribunal and a Judicial Council operate not always in harmony; some observers refer to this process as the “balkanization” of justice systems in the region. Few concrete results in terms of service delivery and user satisfaction have materialized.

⁸ Ms. Molaes-Halberg.

29. The international cooperation is very active in the Region. The IDB has financed judicial reform projects in Ecuador and Peru; USAID is active in Bolivia and Ecuador, mostly on the criminal side. Bilateral donors (Spain and Germany) have sponsored small capacity-building initiatives. The efforts to develop a broad-based support program have not been fully successful: coordination remains in place until the internal priorities of each donor change.

Judicial Reform in Bolivia

30. The first Judicial Reform Project (Credit No. 2705-BO) was completed during year 2000. LEG prepared and circulated the ICR for this operation that contains the first lessons learned from experience in LCR. The report identified the shortcomings of the traditional investment lending approach to judicial reform and recommended exploring other instruments to provide assistance in the sector.

31. A follow-up Second Judicial Reform Project was prepared in parallel. The inability of the Judicial Council and the Supreme Court to reach an agreement on implementation arrangements delayed the appraisal of the proposed project until September when the Government and the Bank came to the conclusion that the institutional weakness of the two agencies and other portfolio priorities made advisable to postpone the operation until FY 2002.

32. The appointment of a new Minister of Justice in October opened a window of opportunity for priority legal reforms connected with the administration of justice to take place in anticipation of a full-fledged judicial reform initiative (Civil Procedure Code, Judicial Organization Law, Administrative Procedures Law). The possibility of a LIL or an IDF Grant is now being explored to respond to the Government's requests.

Judicial Reform in Peru

33. Upon request of the Secretary-General of the OAS, the Bank agreed to finance a short-term consultant to support the OAS-sponsored Dialogue Table on justice issues. The consultant worked under the supervision of LEG staff in Lima and prepared several reports on the issues and options for judicial reform during a transition to democracy. Such reports will become major inputs for the upcoming institutional and governance review (IGR) to be conducted by PREM.

34. The transition process led to the abrogation of the laws that limited the independence of the Judiciary during the Fujimori regime; in 1998, the Bank had canceled a US\$22 million Judicial Reform Project because laws passed by the Peruvian Congress had restricted the powers of the National Judicial Council to remove judges.

35. Nevertheless, major challenges remain ahead: about 70% of the Peruvian Judges are non-tenured, i.e. selected on ad-hoc basis outside of the rules of a regular judicial career. The failed judicial reform efforts of the 90s, characterized by substantial investments in infrastructure and computer technology, require a careful evaluation. The internal governance of judicial bodies (non-hierarchical, collegial in nature) will be reviewed by a commission that is preparing a draft Judicial Organization Law.

36. The Bank and other donors have agreed that any judicial reform initiative will have to wait until major policy decisions are taken to ensure independence, transparency and efficiency in the administration of judicial affairs. Nevertheless, in consideration to the Government and Judiciary's request for assistance during the transition period, LEG has prepared a PHRD proposal to finance the preparation of a Justice Services Modernization Project (most likely to be structured as a LIL) and an IDF proposal to support accountability in judicial affairs through close involvement of civil society organizations.

Anti-corruption in Peru

37. The collapse of the Fujimori Administration in the middle of corruption scandals raised awareness about the need for a long-term anti-corruption strategy.⁹ Previous reports on the status of corruption in LCR countries have ranked Peru as one of the countries where pervasive corruption was not a major issue. The Minister of Justice was appointed by President Paniagua as the head of the task force in charge of designing such strategy and immediately requested the Bank's assistance. With the support of LEG and WBI, the Ministry organized a workshop with representatives of major agencies in charge of the fight against corruption and a public event that signaled the initiation of a Bank-sponsored diagnostic of corruption in Peru.

38. The diagnostic will be structured around surveys of Government officials, business people and citizens. A local firm will be in charge of the fieldwork and WBI will analyze and present the results during a national event scheduled for the middle of March, before the first round of the Presidential election. It is expected that as result of the diagnostic a national agenda for anti-corruption will emerge that can be endorsed by the democratically elected Government.

39. The Interim Government has been very respectful of the independence of the Congressional and Judicial anti-corruption investigations and carefully avoided any measure that could be interpreted as "witch-hunting". The Special Prosecutor in charge of anti-corruption investigations requested the Bank's technical assistance on the international aspects of anti-corruption investigations. LEG staff noted that the Bank's mandate in the fight against corruption does not include assistance with specific investigations and deferred the matter to the consideration of the Corporate Committee of Fraud and Corruption.

⁹ Previous reports on the status of corruption in LCR countries had ranked Peru as one of the countries where pervasive corruption was not a major issue.

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