INTERNAL AUDITING COMMISSON FOR PUBLIC CREDIT OF ECUADOR

Attached to the Ministry of Economy and Finances
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Executive Decree 472

FINAL REPORT
OF THE INTEGRAL AUDITING OF THE ECUADORIAN DEBT

EXECUTIVE SUMMARY

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CONTENTS

PRESENTATION…… 3

ACRONYMS……4

I. GENERAL CONSIDERATIONS……6
The burden of indebtedness an auditing ……...6
Presidential decision and enacting of Executive Decree to create CAIC
Legal basis, Objectives and Scope of Audit……11

II. AUDIT RESULTS BY DEBT SECTIONS……13
SECTION I
COMMERCIAL DEBT……13
SECTION II
JURIDICAL ANALYSIS OF THE COMMERCIAL DEBT……43
SECTION III
MULTILATERAL DEBT ……59
Credits for debt reduction (Plan Brady)
and modernization / privatization……62
Credits for sectorial programs……68
Credits utilized in the multipurpose project
"JAIME ROLDÓS AGUILERA" implemented by CEDEGE……90
SECTION IV
BILATERAL DEBT……100
PARIS CLUB……119
SECTION V
INTERNAL PUBLIC DEBT……123

III. CONCLUSIONS AND RECOMMENDATIONS……137

ANNEX 1 (EXECUTIVE DECREE No. 472) ……148

ANNEX 2
SECTORIAL CREDITS AUDITED: OBJECTIVES AND RESULTS……206

ANNEX 3……153
PERSONNEL AND AGENCIES THAT WORKED ON THE AUDIT PROCESS

PRESENTATION

The incalculable damage caused to the country's economy and the people of Ecuador by public borrowing, omnipresent as a pressure-submission system, and the consequent commitment of public resources to deliver its service, whether or not available, prompted the national government to adopt the first decision and so far unique in Latin America to create an audit to establish the legitimacy, legality and relevance of the loans, negotiations and renegotiations, which also brought responsibilities and shared responsibility of lenders, social impacts, economic and environmental impacts, and, above all, allowing the accumulation and weight of fundamentals for the country to initiate and sovereign and remedial actions regarding all payments made and future payments as well.

In that context, the Constitutional President of the Republic, Economist Rafael Correa Delgado, ordered the creation of the Audit Commission for Integrated Public Credit (CAIC), with the involvement of domestic and foreign social organizations, universities and research institutions and development.

After a year of hard preparatory work, which involved difficulties in gathering information especially given the period of thirty years due to cover the audit, the CAIC herewith presents an Executive Summary of the final report prepared after thorough examination by its members and teams of professionals formed for the purpose

The substantive part of the audit lies in the results that contain evidence in each section of the Ecuadorian debt, structured as follows:

- The commercial debt, which analyzes the entirety of borrowing by public entities of Ecuador with international private banking, in its evolution, since 1976.

- The multilateral debt granted by international financial organizations, which in this work relates to credits selected as priorities and assumptions of illegitimacy.

- Bilateral debt, which includes loans from governments or government agencies from nine countries. They all have been audited, especially those pertaining to the greater credits: Spain and Brazil, and those that make up the Paris Club.

- Loans granted to the Commission on Guayas River Basin Development (CEDEGE) for the implementation of Multipurpose Project Jaime Roldós Aguilera, corresponding to bilateral and multilateral groups.

- The domestic debt, section which includes numerous State Bond issues, State Stabilization Bonds and AGD Bonds.

- The Commission's report is a first result of what must be an ongoing process –the audit- and suggests that both government authorities and society at large be aware of the truth about the way it has conducted the public debt which undoubtedly has resulted in the brake imposed on the development and the disillusionment of Ecuadorians, whose reality is far from the basic conditions for good life.

ACRONYMS

AGD	AGD Deposit Guarantee Agency
AICP	Public Credit Integrated Audit
BCE	Central Bank of Ecuador
IDB	Anti-American Development Bank
IBRD	International Bank for Reconstruction and Development
WB	World Bank
BNDES	National Bank for Economic and Social Development of Brazil
BNF	National Development Bank
CAF	Andean Development Corporation
CAIC	Audit Committee of the Integrated Public Credit
CAS	Country Assistance Strategy
CEDEGE	Commission for Development Studies of the Guayas River Basin
CEIDEX	Special External Debt Investigation Committee
CEMEIN	Medicines and Medical Supplies Ecuadorian Center
ECLAC	Economic Commission for Latin America
CESCE	Spanish Export Credit Insurance Company
CETES	Treasury Certificates
IFC	International Financing Corporation
CFN	National Financial Corporation
CNRH	National Council on Water Resources
CODIGEM	Geology, Mining and Metallurgical Development and Research Corporation
COMEXI	Board of Foreign Trade and Investment
CONADE	National Development Council
CONAM	National Council for Modernization
ED	Executive Decree
DESC	Economic, Social and Cultural Rights
DINAGE	National Directorate of Geology
DINE	Industry Directorate of the Army
ECAPAG	Guayaquil Drinking Water District Enterprise
EMADE	State Fertilizers Company
EMSEMILLAS	Seed Company
ENAC	National Supplies and Marketing Enterprise
ENDES	National Semen Enterprise
ENPROVIT	National Vital Products Enterprise
EPAP-G	EPAP-G Provincial Water Company of Guayas
FERTISA	National Fertilizer Company
IFAD	International Fund for Agriculture Development
FINAGRO	Financial Agro
FISE	Emergency Social Investment Fund
FLAR	Latin American Reserve Fund
IMF	International Monetary Fund
ICO	Official Credit Institute of Spain
IERAC	Ecuadorian Institute of Colonization and Agrarian Reform
IESS	Ecuadorian Social Security Institute
IICA	Interamerican Institute of Agricultural Sciences
INDA	Institute of Agrarian Development

INECEL	Ecuadorian Institute for Electrification
INEN	Ecuadorian Standardization Institute
INERHI	Ecuadorian Institute of Hydraulic Resources
LEXI	Foreign Trade and Investment Law
LOAFYC	Organic Law on Financial Administration and Control
MAG	Ministry of Agriculture and Livestock
MEF	Ministry of Economy and Finance
MSP	Ministry of Public Health
OCIPSE	Complementary Works Infrastructure for the Santa Elena Peninsula
OAS	Organization of American States
ILO	International Labor Organization
PAHO	Pan American Health Organization
PHASE	Santa Elena Aqueduct Water Plan
PRAGUAS	Water and Sanitation Program for Small Towns and Rural Communities
PRONAMEC	National Mechanization Program
PRONASAR	Guayas River Rural Water and Sanitation National Program
SEC	Securities Exchange Commission
SIISE	Integrated Social and Economic Indicators System

I. GENERAL CONSIDERATIONS

The charge of the contracting debts and the audit

The resources originated from the external and internal debt have constituted one of the sources for that projects of economical and social development be financed by the Ecuadorian State.
Nevertheless, in the last decades this important instrument of economical politics has been used not precisely according to the sovereign interests of the country, but under pressures and conditions of the lenders. It has been characterized by a little transparent management that has derived into the predominance of the amortization, interest and commission payments in the budgetary expenditure; into the growing necessity of new credits; and, consequently, in the recurrent dependency of the State and the national economy originated from the public and private debt.

The high cost of contracting debt has been covered with State budget resources that with rigidity had to deliver huge amounts for the service of the debt, diminishing the financing of social investments and social programs and, consequently, limiting the attention necessities of priority of the Ecuadorian people.

In the process of contracting debt, that begins at the end of the 70's, even though its bigger increase is produced during the next two decades, it can be observed a structural continuity, developed with trifle in benefit of the creditors and affecting visibly the interests of the nation.
In the refinancing that were made with the not variable intervention of the creditor banks, that imposed their conditions, obliging the country to surrender from all its rights, the same arguments were used: the normalization of the relationships between Ecuador and the international financial markets and the possibilities of attracting foreign investment.

As the country could not afford the imposed obligations in the established terms, recurrent incessant new renegotiations were made, growingly onerous due to the financial conditions imposed by the markets, that raised the credits cost despite that the transferences made by Ecuador to serve the debt were increased every time more. That means, than as the more was paid, the more was due, by effect of perverse capitalization mechanisms and contractual clauses pernicious to the country.

This situation, that certainly does not concern only our country, has conduced to that social movements and national and international civil organizations plea their demands in front of the crisis of the debt and their impacts on the individual and collective life conditions.
The civil society is aware of the negative implications that have supposed the drama of the contractions of debts for the development of the country and, in frequent occasions, its organizations have manifested the reject for the creditor abuses that took advantage and made themselves richer through the impoverishment of the debtor nations, placing many times unnecessary credits.

The effort has been incessant, particularly since the beginning of this decade, through events, editorial media and any necessary convocation to get consciousness by the governors and the community.

On other side, in front of the recurrent and unfair asymmetry that has characterized the North-South contraction of debt, in the international scope voices of authors and movements that

support the recognition of the co responsibility in the debt, the annulations of the illegitimate obligations and the repairing of caused damages have surged.

In a concrete cases, Norwich, the combined demand of Ecuadorian social organizations with civil movements in the creditor country got that the credit conceded by that nation for the acquisition of four ships was condoned and the pending payments canceled.

The international support has also been canalized from wide transcendence events, as the International Lawyers Meeting about the external and audit debt issue, in Quito, on July 8th and 9th 2008, that included the following final declaration: "Lets support the sovereign acts of the States, that founded in the Lawful, will declare the nullity of illicit and illegitimate public debt instruments including the suspension of the payments.

THE PRESIDENTIAL DECISION, THE EXECUTIVE DECREE ENACTING AND THE CAIC CREATION

Under the patriotic enunciation that "Our only debt is with the people" and the questioning of the international economic order created and sustained by the multilateral credit organisms, since the electoral campaign, the President Rafael Correa proposed, as a starting point for the state of being in force of a public sovereign politics of debts contraction, the making of an independent audit that could allow to identify the legitimate and illegitimate debts, to establish the co responsibility of the creditors and to set up precedents for a fair and responsible management of any new debt contraction.

In consequence, he disposed and supported the necessary preparation of the legal and administrative instruments, and facilitated the participation of the universities, social and environmental organizations engaged with the cause for, in act of important transcendence, dictating the Executive Decree No 472 of July 9th 2007, that creates the Commission for the Integral Audit of the Public Credit (CAIC), as adscript unit of the Economy and Finances Ministry.

The Executive Decree was published on the Official Register 131 of July 20th 2007. Its mandate contemplates to audit public debts contractions process with the objective of determining its legitimacy, legality, transparence, quality, efficacy and efficiency, considering legal and financial aspects, economical, social, gender, ecological and over the nationalities and people's impacts.
Since August 1st of that year the CAIC concreted its functioning and organization. With foreign and national participants Sub commissions by pieces of the debt were constituted: multilateral, bilateral, commercial and of the internal debt, and also the Subcommisions of transversal scope: the Social, Environmental, Gender and Peoples Impacts; the Juridical; and the special groups for the credits of bigger significance used by CEDEGE.

The administrative organization was lead by the Executive Coordination that developed the complex task of obtaining and administrating the assigned resources for the functioning of the CAIC, facilitating the accomplishment of the work in all the technical and operative fields, and to provide the necessary logistics for its local and international performance.

The different Sub comissions counted with the participation of professional teams of the audit and research areas. Several integrants of the reams were functionaries of institutions that worked in the services commission, particular fact that meant an important contribution of experiences and methodological knowledge at a least economical cost.

Final Audit reports were presented for each of the audited pieces of the debt – Commercial, Multilateral, CEDEGE, Bilateral, and Internal- along with the correspondent supporting documentation, which will pass to the custody of the System of National Archives.

THE DEBT CONTRACTION OF THE COUNTRY DURING THE PERIOD 1976-2006

Paradoxically, the trend of using the credit in the public financing increased when the country already disposed of resources that were considered capable of granting a considerable ease to the economy, as those which came from the oil exploitation.

The valid explanation is that the international financial offers sought precisely fund receptors with favorable economical perspective to ensure the devolution. Also, the national authorities saw an excellent option in the captation of anticipated resources with charge to the oil rent, on apparently soft conditions. So they proceed, but suddenly the obligation of serving the received credits grew so much, by the manipulation of the creditors, that became the noose of the Ecuadorian economy, ready to be tightened when payment difficulties were observed.

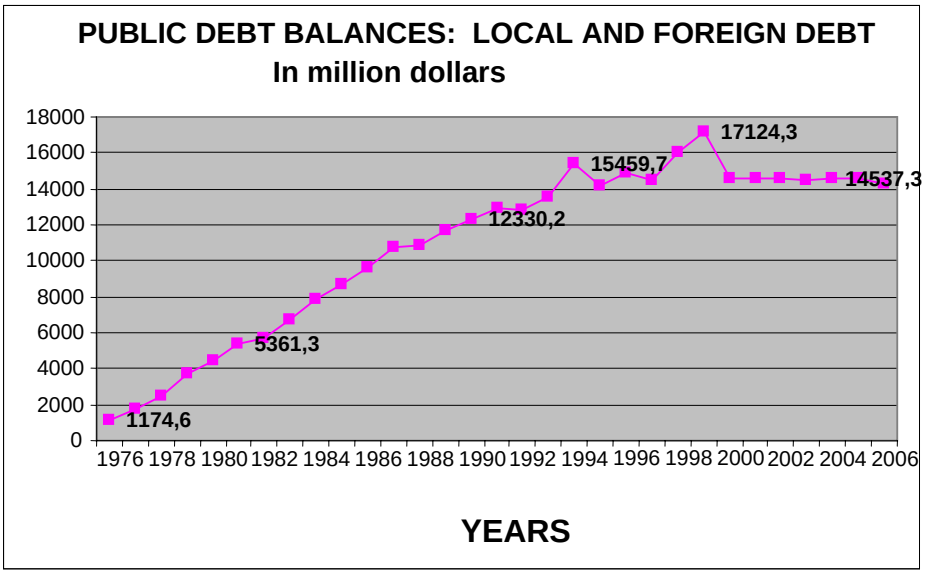
In the numbers of the public debt it is observed that the annual balances of the internal and external debt summed, grow since 1978, epoch where an "aggressive contraction of debts" politic was managed, as the Finances Ministry of that epoch expressed.

The trend that shows the balances of the public debt allows deducing the increasing dependency of the state financing, during several decades, as it is appreciated in the numbers following table and graphic

BALANCE OF LOCAL AND FOREIGN PUBLIC DEBT
Values in million dollars

YEARS	VALUE	YEARS	VALUE	YEARS	VALUE	YEARS	VALUE	YEARS	VALUE
1976	1,175	1983	6,699	1990	12,330	1997	14,517	2004	14,551
1977	1,796	1984	7,865	1991	12,953	1998	15,996	2005	14,537
1978	2,431	1985	8,643	1992	12,794	1999	17,124	2006	14,246
1979	3,686	1986	9,594	1993	13,558	2000	14,537		
1980	4,429	1987	10,762	1994	15,460	2001	14,582		
1981	5,361	1988	10,912	1995	14,146	2002	14,569		
1982	5,682	1989	11,664	1996	14,853	2003	14,509		

Source: Central Bank of Ecuador

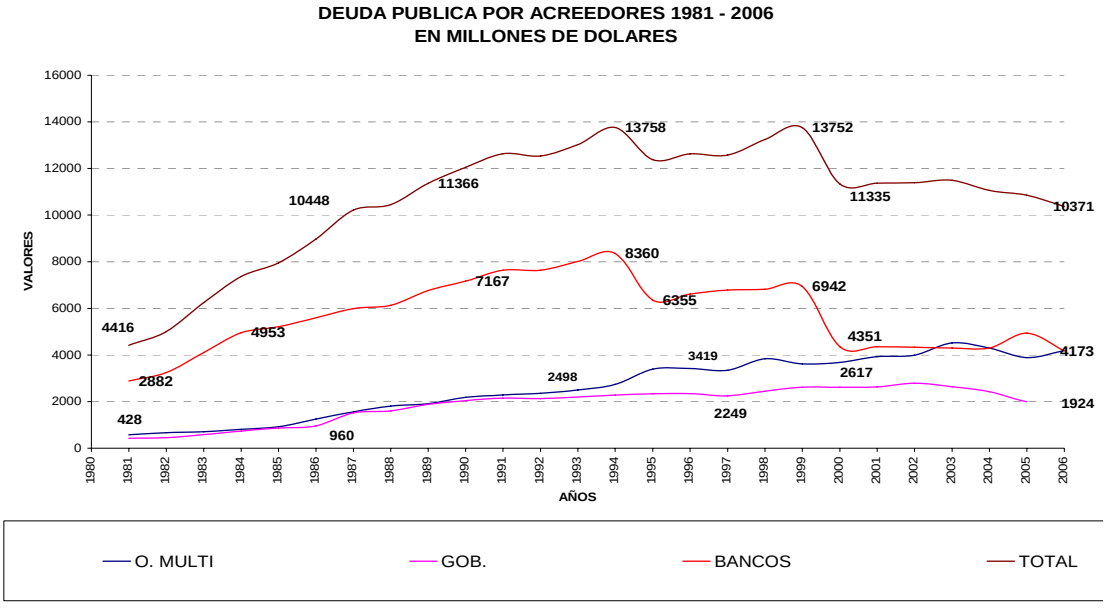


Source: Central Bank of Ecuador

In the evolution of the external debt by pieces, the commercial debt (represented by banks) had a considerable weight between 1980 and 1999, product of several internal and external events that are analyzed in this audit. It stands out: the growth of interest rates, the negotiations and refinancing, the capitalization of interests and other circumstances that are mentioned in the pertinent section.

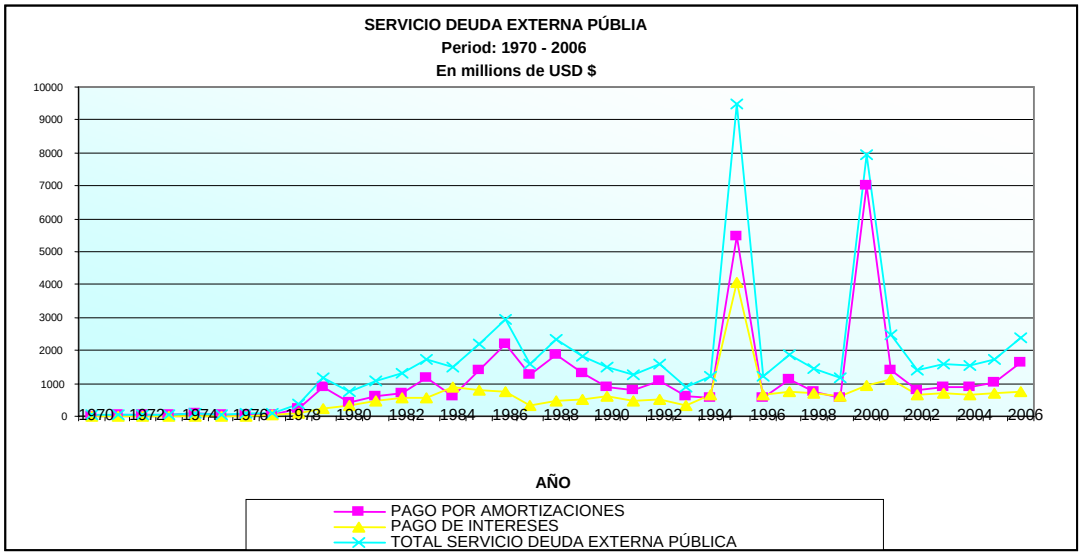
At the present, the trend is to take a similar proportion of the balances, still significant, of the commercial debt with those of the multilateral debt, around US$ 4.000 million each one of these pieces. The bilateral credits, that means the ones made from government to government, generally with the intervention of the state lender banks, are maintained in almost two decades in about $ US. 2000 million.

PUBLIC DEBT BY CREDITORS 1981-2006
In million dollars



In connection with the service of the credit in the period 1979-2006, in the series represented in the following graphics, a moderated expansion behavior in the first years is seen, to grow considerably since 1978, in obvious consequence with the growth of the contracts of credits already mentioned.

In 1986, the increasing on the amortization corresponds to the acquired compromises in virtue of the refinancing agreements initiated in 1983; afterwards, in 1994-1995, appears a total service (amortization and interest) near to US$ 10.000, that obeys mainly to the substitution of bonds of the commercial debt in the Brady negotiation; and, something similar but for a smaller amount (inferior to US$ 8.000), in 2000 with the swap from Brady to Global Bonds. This payment increase is explained because in the substitution of operations or swap, the previous debt is cancelled (amortizations) and the new values are registered as disbursements (fund entrance), credit modality that enters into force with new financial conditions.



The continual flow of payments shows that the public contraction of debts has not served as a financial source, but it has been a tool of resources pillage and submission to politics imposed by the multilateral organisms, under the pretext of managing issues related with the credit consecution.

LEGAL BASE, OBJECTIVES AND AUDIT SCOPE

Legal Base

The legal basis for the exercise of the Public Credit Integral Audit Commission (CAIC) is the Executive Decree No 472 expedited by the Constitutional President of the Republic, Rafael Delgado, on July 9th 2007, through which the Commission for the Integral Audit of the Public Credit is created and functions and attributions are established to accomplish with the assigned responsibility.
It is necessary to take notice that this audit does substitute the function of the States' General Controller Office that is its competence in conformity with its Organic Law. On the contrary, the CAIC proposes the intervention of the Controller's Office in the indication of illegality and irregularities that are noticed in this report, for that, according with the pertinent norms, be

submitted to the vigilance and control formal process and be established the responsibilities of the case.

Objectives

The fundamental purpose of the audit is to respond to the Ecuadorian society expectations, transmitted by citizen movements of the country, to get to know the magnitude, the conditions, circumstances and responsibilities that supposed the huge contraction of debts. It intends, as well, to contribute to the debate that develops in the international circles to identify the co responsibility of the creditors and to promote possible actions tending to repair the impacts of the unfair problem of the debt.

In which concerns to the Integral Audit it is expected to:

1. To determine the precontractual and contractual conditionalities, the renegotiations, the execution and the closure of the public credit, as well as the interferences and alterations in the legislation and juridical order of the nation, in the State's organization, in their financial availabilities and in the life conditions of the population.

2. To verify if the loans resources were destined to the finality for which they were contracted, as well as their efficient and economical usage.

3. To determine the social, ecological, economical and over nationalities and peoples impacts, generated by the projects financed with debt.

4. To identify institutions and national and international actors responsible of eventual irregularities in these process.

5. To present objective and documented evidences that will permit to the President of the Republic and others national authorities to demand the eventual nullity of the obligations derived of the debts declared, illegitimate and/or illegal as well as other corresponding actions.

Scope

The decree 472 establishes that the audit will attain the "agreements, contracts and other forms or modalities for the acquisition of credits by the public sector of Ecuador, originated of governments, institutions of the multilateral financial system or the banks and the private sector, foreign and national, since 1976 until 2006.

Preliminary studies and information that surged in the process of collection and analyze of the existing data system about the contraction of debts permitted to identify those credits of bigger incidence on the Ecuadorian economy and on the population life conditions.

In this general context, the CAIC established the universe of credits to be examined and determined, on this basis, the criteria to establish priorities in the execution.

During the process, aspects of origin, form and destiny of the resources of each one of the agreements of the analyzed credits were considered, identifying the circumstances of the

contract, the behavior of the creditors, the contractual dispositions, the destiny of the funds and the state of service of the debt at the date of cut.

RESULTS OF THE AUDIT BY PIECES OF THE DEBT

INTRODUCTION

The present report corresponds to the audit of the "Ecuadorian external public debt with the international private banking[1]" on the period 1976-2006, performed by the Sub commission of the Commercial Debt of the CAIC, according with what was established in the Executive Decree No 472, on July 9th 2007.

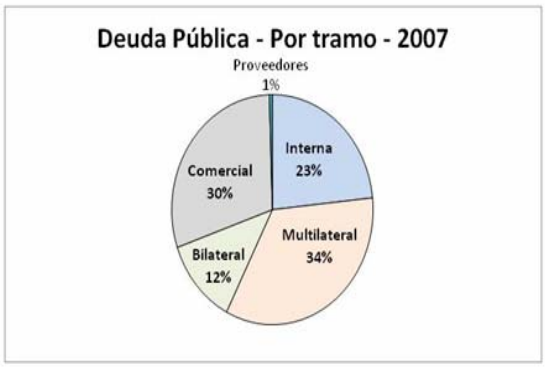
According with this Decree, *"in the last decades the public credits, far away from contributing to the development of the country, have been submitted to a model where prevail the conditionalities and interests of the lenders and a management with lack of transparency, until the point of converting the contraction of debts in system of international financial servitude".* The Decree defines the Integral Audit as

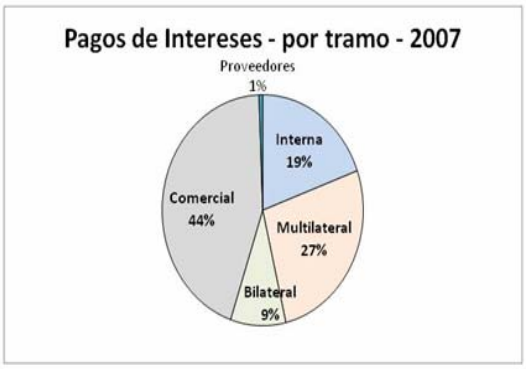
«the act of fault-finding directed to examine and asses the contracting process and/or renegotiation of the public debt, the origin and destiny of theses resources, and the execution of the programs and projects that will be financed with internal and external debt, with the objective of determining its legitimacy, legality, transparence, quality, efficacy and efficiency, considering the legal and financial aspects, the economical, social, gender; regional, ecological and over nationalities and peoples impacts»

To accomplish with the functions delegated by the president of the Republic, the CAIC proceeded to make the audit of the several process that conforms the commercial debt, since its origin until the current Global Bonds. The results are written down in detailed reports[2], in which irregularities and evidences of illegalities in the process are determined, that are resumed in the present report.

The audit reviewed contracted credits with the private international banking during the 30 years, verifying internal control deficiencies, as well as other difficulties in the files of the Finances Ministry and from the Central bank of Ecuador, that are noted in each one of the detailed reports.
The Commercial Debt corresponds to 30% of the total public debt of Ecuador. Nevertheless, it was responsible 44% of the interest payments in 2007, representing the more expensive piece of the debt, as it is revealed in the following graphics:

[1] Commonly named "Commercial Debt"
[2] "Origin of the Ecuadorian External Commercial Debt"; "Complementary Mechanism"; "Sucretization"; "80's Renegotiations"; "Tolling Agreement"; "Brady Bonds"; and Global Bonds.





Fuente: Ministerio de Economia y Finanzas

The interests of the current External Debts with the International private Bank (the Global Bonds) consume US$ 392 million per year.

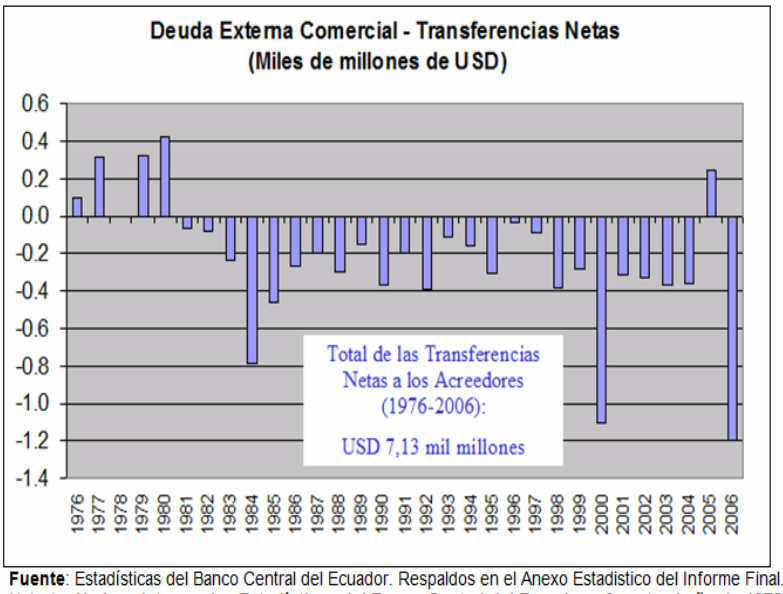
In 2007, the service of the total public external debt was US$ 1.756 million, according to BCE. This value is bigger the one previewed in the budget of 2008 for Health (US 738 million) Social Wellbeing (US$ 544 million). Urban Development and Housing (US$ 374 million). Environment (US$ 76 million), Education (US$ 1.586 million).

To finance the cost of contracting debts, the country has used resources of the State's Budget and acquired new obligations through the continual issue of internal and external debt.

The high cost of these debts has represented for the State strong expenditures of resources that had to be destined to cover the economical priorities of the Ecuadorian people. Before this reality, it may be mentioned the article 25 of the Universal Declaration of Human Rights, of December 10th 1948 that disposes:

> «Every person has the right to an appropriate level of life that will assure, as well as his/her family, health and wellbeing, specially nutrition, dress, housing, medical assistance and the necessary social services; he/she has as well, right to insurances in case of unemployment, illness, invalidity, widowhood, old age other cases of lost of subsistence by circumstances independent of his/her will».

According with what is written in the Final Report, the CAIC had the inedited opportunity of collecting documents and data that prove the illegality and illegitimacy of the Ecuadorian external debt with the international private banking. On its origin, this debt began to grow with the over contraction of debts of the public entities, followed of elevated issuing of "promissory notes", recurrent negotiations that meant prepayments abroad and conversions of private debts into State's debts, in process that generated numerous gains to the private banking, without any benefit to the country, and caused incalculable damages to the national economy and to the Ecuadorian people.



Fuente: Estadísticas del Banco Central del Ecuador. Respaldos en el Anexo Estadistico del Informe Final.
Nota 1: **No hay datos en las Estadisticas del Banco Central del Ecuador referente al año de 1978.**
Elaboración: CAIC/ **Rodrigo Avila – Auditoria Ciudadana de la Deuda de Brasil**

HISTORICAL SUMMARY OF THE COMMERCIAL DEBT: STATISTICS AND FINANCIAL FLOWS

On the basis of the statistics published by the Central Bank of Ecuador, the CAIC proceeded to make the quantitative and evolving analyze of the numbers and the financial flows of the Ecuadorian external debt with the international private banking in the period comprised between 1976 and 2006.

The statistical data evidence that since 1976 the Ecuadorian external debt with the international private banking – from an initial amount of US$ 115.7 million[3]-begins to increase since the government of the military dictatorship, until getting to an amount of US$ 4.163 million[4] in 2006. According with the data published in the Statistical Bulletins of Central Bank; the transferences of net resources to the international private banking, since 1976 until 2006, summed US$ 7.130 million. The data is obtained though comparison between the income of resources represented by Disbursements and the leaving of resources, constituted by the values of Amortizations and Interests.

The graphic shows that in all the years, since 1981 (except 2005), the net transferences from Ecuador to the international private banking were negatives, that means that the volume of resources that left the country for payment of interests and amortizations surpassed in US$ 7.130 million the resources that entered as loans. Nevertheless, the external debt with the banks has grown, in the same period, since 116 million to US 4.163 million. This proves that the commercial debt has not been a source of financing for the development of the country, but a perverse mechanism to pillage its limited resources.

[3] It constitutes the total amount of the external debt with Banks, including USD 56,2 million of private debt and US$ 59,5 million of public debt, totalizing US$ 115,7 million in January 1976.
[4] Constitutes the total amount of the external debt with Banks, including the Global Bonds (2030 US$ 2.700MM; 2012 US$510MM, 2015 US$650MM, Brady Bonds (124,4MM)

I should be noted that these statistical data do not include other relevant costs, inherent to the contraction of debts: agency commission, engagement commission, of conversion, of extension and fees of the private banking that has been paid by Ecuador.

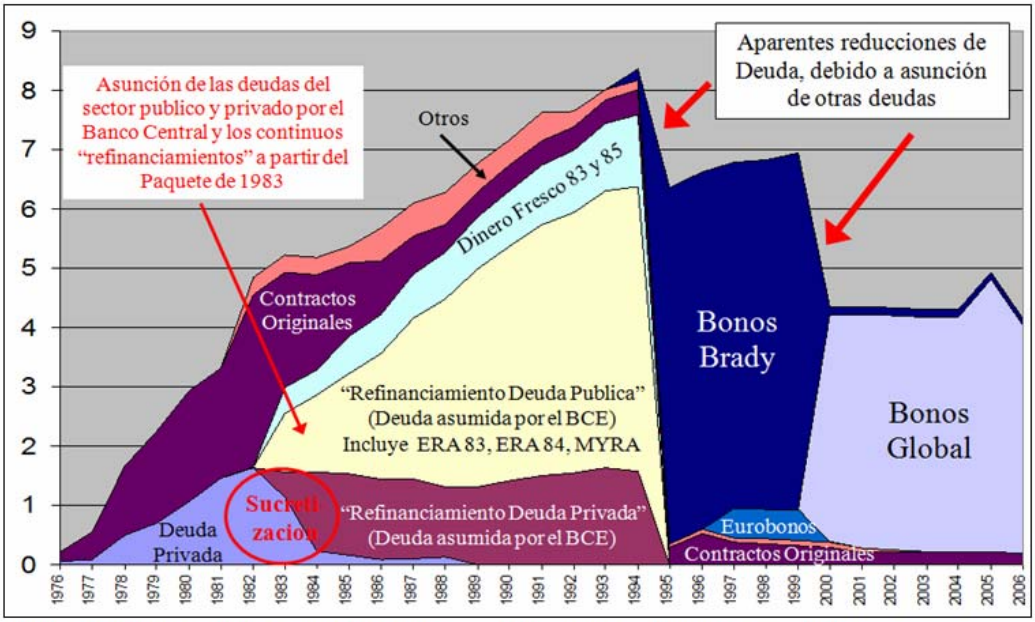
On the basis of the statistical data, id could be evidenced, as it is demonstrated in the following graphic, the continuous and accelerated growth of the commercial external debt with the international private banking, contracted through successive process of conversion and swaps occurred since 1983, after the crisis provoked by the over dimensioned increase of the interest rates.

The apparent reductions reflected in the graphic for the year 1995 (when the swap is made for Brady Bonds) and 2000 (when is made another swap of Brady and Eurobonds for Global Bonds) meant the prepayment of debts at nominal value, in negotiations that did not consider the low value of the debt in the stock market and imposed conditions each time more onerous and exigent of liquidness.

Besides, in the case of the Brady Bonds, it was demanded the buying of collateral guarantees sustained on new multilateral and bilateral loans that meant a high political and economical cost for the country. It can be also seen on the graphic the condemnable process of sucretization, though which private debts were transferred to the Central Bank that assumed their payment, causing great losses to the State.

At the same time, the graphic shows clearly that the current debt of Global Bonds is originated in the Brady Bonds that, in the same time, begins with the debt of the 80's, increased by the illegal rise of the interest rates fixed by the Federal Reserve of the United States ant the end of the 70's.

Saldo de Deuda Externa Publica del Ecuador con los bancos privados
(miles de millones de USD)



Fuente: Estadísticas del Banco Central del Ecuador. Respaldos en el Anexo Estadistico de esto Informe.
Nota 1: **No hay datos en las Estadísticas del Banco Central del Ecuador referente al año de 1978.**
Elaboración: CAIC/ Rodrigo Ávila – Auditoría Ciudadana de la Deuda de Brasil

ORIGIN OF THE COMMERCIAL EXTERNAL DEBT WITH THE INTERNATIONAL PRIVATE BANKING

The analysis of the origin of the Ecuadorian commercial external debt is founded on information provided by the Sub Secretary of Public Credit of the Finances Ministry in the final stage of the work of the CAIC. The Commission verified also the two volumes of the *Book of Contracts of the External Public Debt* that stays in that Ministry and which copies bounded in stiff cover constitutes the primordial document delivered by the Audit of the Commercial Debt, which will facilitate the access to information about the Ecuadorian process of contracting debts. The Central Debts did not present to the CAIC the registers of the external debts that were demanded on the basis of article 119 of the Organic Law of Financial Administration and Control, which represented a limitation to the works and respective proves of audit.

The Ecuadorian commercial external debt was conformed, since it birth, by "Original Contracts" of loans conceded by the international private banking to entities of the Ecuadorian public sector[5]. The initial balance in January 1976, starting point of this Audit, was US$ 115.700.000.
From the analyze of the extra accountable annexed provided by the Finances Ministry it was determined the subscription of the following contracts between 1976 and 1982:

YEAR I	NUMBER OF SUBSCRIBED CONTRACTS II	AMOUNT SUBSCRIBED IN EACH YEAR (US$) III	Balances of Commercial Foreign Debt with International Private Banks at the end of each year, according to Statistics of BCE (US$) IV
1976	8	119.421.500	218.400.000
1977	20	574.182.290	559.600.000
1978	19	329.991.287	1.666.000.000
1979	23	1.206.563.102	2.244.200.000
1980	21	1.014.559.428	2.938.300.000
1981	16	642.465.806	3.315.100.000
1982	9	560.424.328	4,846,260.000

Source: Letter No. MF-SCP-2008 1118 and Statistics Publisher by BCE.

Several contracts included in the column III constituted refinancing or conversions of previous contracts[6] and annual renovations of the "promissory notes", with the acting of a partnership of private banks represented by an Agent.

Through Circular Official Letter[7] the CAIC solicited information to the 18 entities of the Ecuadorian public sector to prove the origin of the external debt at their charge. In response, scarcely 4 entities presented pertinent answer, 3 did not deliver any information and other 11 offered information that did not corresponded to what was solicited.

[55] Entities that assumed Original Contracts in 1976: Port Authority of Guayaquil, Cementos Selva Alegre, Ecuatoriana de Aviación, Transnave, INECEL, DINE, CFN and H. National Defense Junta.
[6] In 1979, for example, it was verified a prepayment and new loan treated as "Refinancing" of previous Original Contracts for US$ 520 million, acting Citibank as Agent Bank.
[7] Circular Official Letter MF-CAIC No 376 of June 4th 2008 and No 463 of June 20th 2008.

The more surprising answer[8] the H. National Defense Junta (HJDN): *"we have not found documentation about the information that will detail received loans by the Honorable National Defense Junta from the International Private Banking in the indicated period from January 1976 until December 2006".*

Given the fragmentary answering of the public entities, it was not possible to confirm the origin of registered debt at their name. It is recommended, consequently, a special amplifying examination to the present audit in order to determine if the registered credits at their charge got to exist and under whose responsibility were since, in several cases, the entities did not confirm if the objectives for what were destined the contraction of debts were accomplished.

THE EVOLUTION OF THE COMMERCIAL EXTERNAL DEBT 1976-1982

In the analysis corresponding to 1976-1982 it could be verified that the accelerated growth of the Ecuadorian commercial debt was due to the issuing of "promissory notes" and to the process of "refinancing", of which meant anticipated prepayments to the international banking.

The more significant "refinancing" was made in 1979 for an amount of US$ 520.000.000[9] and was lead by Citicorp International Bank Ltd. in its quality of Agency, entity submitted to the Laws of the State of New York, which constitutes a aggression to the sovereignty.

"Grace periods" were offered apparently attractive, but in fact it was evidenced that this negotiation meant: 1) the anticipated prepayment of the obligations; 2) the transfer of the weight of the contraction of debts to the States' Budget; 3) the great risk of contracting credits with floating interest rates; and 4) onerous conditions reflected on the administration, engagement and agency commissions.

Prove of prepayment of obligations not totally dues at the date constitutes the Official Letter of Bank of America, that indicates the "DATE OF PREVIEWED PREPAYMENT" according with a detail of the "loans to be refinanced" and other that affirms: "The government proceeded to prepay the concede credit [...]".

This configures indications of irregularities against the finances of the Ecuadorian State. There was no justification for the anticipated payment of not due obligations of public entities that would have asked to keep fulfilling with the payment established schedules, which finally originated an unnecessary refinancing in more onerous conditions.

Operations with promissory notes

The biggest part of the contraction of debt of this period was made under the modality of inorganic issuing of fiduciary documents in the international financial market. Denominated "promissory notes", these only benefited the international private banking represented by the firms Shearson Loeb Rhoades, its concessionary E. F. Hutton and Morgan. Such issuing operations of promissory notes are originated in a series of contracts under the justification of

[8] On the information presented by the Finances Ministry to the CAIC is indicated the great volume of credits in charge of the HJDN.

[9] Decree No 3189 (January 26, 1979) of the Supreme Council of Government, that authorizes a loan of US$ 520 million.

"investment in projects"; were not identified accurately and the application of the funds is unknown.

In memorandum of the Finances Ministry[10] stands out the recommendation formulated by the Monetary Junta of "clearing the quality in which intervenes the firm E.F. Hutton International Inc. and to establish the compromise with the lenders to refinance the credit for nine years", manifesting the following:

> "Respectively we consider that the firm Hutton intervenes as Leader Administrator of the operation, of which compromise in front of the State is to deliver this last amount of the credit through the placement of the Promissory Notes."
> In consequence, it is not a loan contract in the traditional form, but of a "sui generis" credit operation that is practiced in the international capitals market and that, consequently, does not proceed a formal compromise by the current buyers of Promissory notes to acquire them in the future".

What has been exposed allows the state that under the figure of "credit operations" "promissory notes" were put on circulation abroad. "Initial credits" were not located in the statistics of 1978; besides, formal contracts were not found and appeared "executive decrees" that do not exist in the files of the President of the Republic's Office. They were stipulated under onerous financial conditions, renewable every year, and renouncing to the Ecuadorian sovereignty, as the analyzed documents by the CAIC evidence.

It worries, as well, the lack of information and data in the Finances Ministry and in the Central Bank of Ecuador respecting of these onerous operations that were made with a reduced group of international financial entities already mentioned: Shearson Loeb Rhoades, its concessionary E.F. Hutton and Morgan.

Credits instrumented with promissory notes for an amount of US$ 697.930.723,85 entered in the "Renewal and Refinancing" Agreement denominated ERA-83[11] and were totally liquidated, at their nominal value in January 1984:

CREDITS GIVEN BY MEANS OF PROMISSORY NOTES THAT WERE ENTERED TO ERA-83		
Promissory Notes Breakdown	Amount	Bank
Promissory Notes, Serie 9	108.687.612,73	Shearson Loeb Rhoades
Promissory Notes	23.345.879,02	Merban Corporation
Promissory Notes, Series 7	32.611.720,63	Shearson Loeb Rhoades
Promissory Notes, Series 6	185.917.456,93	Shearson Loeb Rhoades
Promissory Notes	46.505.650,84	Lloyds Bank
Promissory Notes, Series A	48.175.221,68	E. F. Hutton
Promissory Notes, Series 8	48.100.831,47	E. F. Hutton
Promissory Notes, Series B	77.438.229,82	E. F. Hutton
Promissory Notes, Series 5	127.148.120,73	Shearson Loeb Rhoades
	697.930.723,85	

[10] Memorandum No DCRP-82-109 (April 29th 1982) subscribed by Miguel Salazar Haro, General Director of Public Credit.
[11] ERA-83- Agreement subscribed for the amount of US$ 1.100.000.000, Executive Decree No 2085-83.

Source: Data published in "Summary which details the amounts refinanced by currency and type of credit issued by the Undersecretary of Public Credit and signed by officer Luis Gino MIGNOLI.

They are scarcely 6 the financial institutions that stood out in this period and that, with the lapse of the years, in fact get reduced to only 3 banks, due that the firm E.F. Hutton was the concessionary of Loeb Rhoades in Latin America. Loeb Rhoades was integrated afterwards the Citigroup and Chase merged with Morgan:

- Loeb Rhoades
- Citibank
- Lloyds Bank
- Chase Manhattan Bank
- Morgan
- E.F. Hutton

It is necessary to mention also that the international private banking operated in a great deal through an Agent Bank, which permits to conclude that in most of the cases the banks mentioned in the last paragraph lead the process and, at the same time, acted in representation of other foreign financial institutions, including several fiscal paradises – Bahamas, Nassau, Panama, Luxemburg – as it comes out of the list of "Restructured Credits" located in the files of Central Bank[12].

It is important to stand out that during the analyzed period; the Ecuadorian external debt grew 18 times for the public sector and 28,4 times for the private sector, as is demonstrated in the following table:

Debt with banks	1976 (US$)	1982 (US$)	Increase
Public Debt	161.100.000	2.904.590.000	18 times
Private Debt	57.300.000	1.628.500.000	28,4 times

Source: Statistics published by Central Bank of Ecuador

At the same time, the increase of the international interest rates was:

International rates	1976	1981	Increase
PRIME	6,3% per year	20,5 % per year	3,33 times
LIBOR	5,7% per year	19% per year	3,33 times

The mentioned data evidence an extreme increase of the Ecuadorian external debt, public and private, contracted with the international private bank.

[12] List of 3 sheets of the Central Bank of Ecuador, Sub Manager's Office of Refinancing of the Public Sector: Restructured Credits with the International Private Banking, November 22nd 1994, without responsibility signature. In writing Credit Number, Beneficiary name, Contract Date, Contracted Amount, Debtor, Margin, Rate, Initial Date and Final date (BCE/File House of Money)

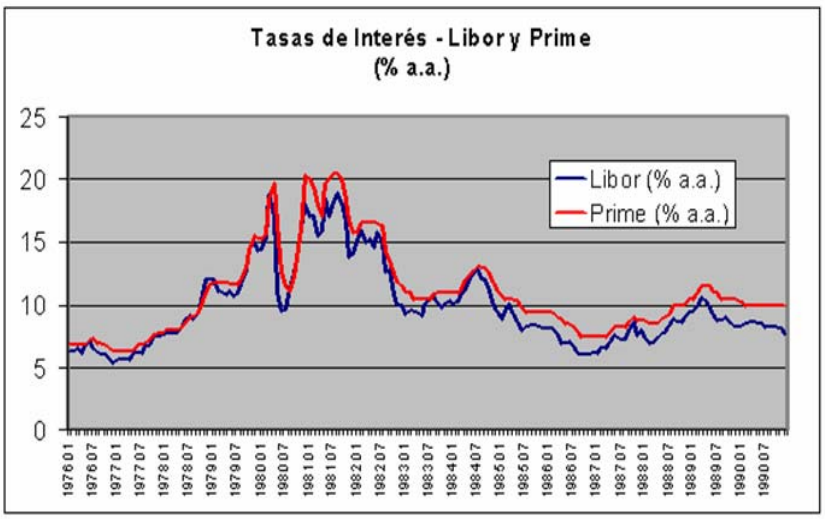
Besides, it is observed an identical behavior of the international rates "Prime", stipulated by the Federal Reserve Bank of United States, and the "Libor" that fixes an Association of Banks of London.

The amount of the contraction of debts was elevated even more by the increasing interest rates that reached 20,5%, provoking financial crisis and difficulties of fulfillment of the obligations.
In 1982 the international private banking got organized the named "Management Committee", closed the credit lines to Ecuador and articulated with the International Monetary Fund and with the Paris Club to force the country to assume the packet of 1983 to fulfill with the Stabilization Economical Plan and other established compromises on the Intention Letter with IMF.

THE DEBT CRISIS: THE UNILATERAL RISE OF THE INTEREST RATES

In 1976, due to the excess of liquidity originated by the rise of the oil price in the international market and the recession of the developed countries, the international private banking canalized the excess of existent resources offering credits in a massive way to the "developing" countries, with interest rates apparently "low" (around 6% annual floating, that resulted attractive in comparison with the internal inflation indices.

Since the late 70's, a process of unilateral rising of the international interest rates began by the Federal Reserve Bank, entailed, at the same time, to the most important financial corporation of the United States[13]. This unilateral interest rates rise was, then, a combined action, not only to preserve the economical system of the United States, but also aimed to control the peripheral countries economies that faced the impossibility of canceling the credits irresponsibly granted.
The following graphic evidences the similar behavior of the Libor and Prime rates that is a sample of the intervention of the world financial market. The same graphic stands out the abnormal rise of the rates to a level completely strange to the trend registered in the market between 1977 and 1983.



Fuente: Ipeadata (www.ipeadata.gov.br)

[13] Identified in the case Lewis vs. United States (Federal Register, 2nd series, volume 680, p.1239, 1982). The Court said: "Each Bank of the Federal Reserve is a separated owned by commercial banks in their regions. The commercial banks with tendencies of actions choose the two thirds of the nine members of the Directors Board of each bank"

According with the principle *Rebus sic Stantibus* previewed in the International Lawful, the significative increase of the interest rates represents a fundamental change of circumstances that allows the debtor to questions his payments, according with article 62 of the Vienna Convention about Treaty Lawful of 1969[14].

The strong rise of the international interest rates since the late 70's –from 6% until 20,5% annual" originated a financial crisis in the countries contracted debts in that decade, when the interest rates were lower, but floated.

Ecuador was strongly affected by this crisis, became even worse with the measurements of adjustment of the "Program of Social Economical Stabilization" of 1982/193, also included in the Intention Letter addressed to IMF of March 24th 1983 and subscribed by Abelardo Pachano B. General Manager of the Central Bank of Ecuador, and the Finances Ministry Pedro Pinto R.
It is important to mention that the increase of the international interest rates constitutes an important infraction to the norms of international lawful, according with what is established on dispositions of the Consultative Council of the Latin-American Parliament that establish:

> *"The increasing of the interest rates also infringe consuetudinary norms of the general international lawful as* ***rebus sic stantibus****, fundamental change of the circumstances, that is referred in the article 62 of the Vienna Convention about Treaty Lawful of 1969 […] Then, it results that these kind of abusive increases is a prohibited conduct in a way or another (civil and penal) in the different juridical systems of the debtor countries and the creditor countries (not to mention the Canonic Lawful [pages 261 until 289] and in the Islamic Lawful"[15].*
>
> Article 62 of the Vienna Convention about Treaty Lawful of 1969 establishes:
>
> > *62. Fundamental change in the circumstances: 1. A fundamental change in the circumstances occurred with regard to the existing ones at the moment of celebration of a treaty and that was nor previewed by the parities will not be able of allegation as cause to give term to the contract or to withdraw from it at least that:*
> > *a) The existence of those circumstances constitutes* ***a essential basis of the consent of the parties*** *of being obliged by the treaty, and*
> > *b) That change will have* ***by effect to radically modify the scope of the obligations*** *that still will have to be fulfilled in virtue of the treaty.*

It is evidenced that the low interest rates offered at the moment of subscribing the contracts until late 70's constituted " a essential basis for the consent" by Ecuador, to be obliged to this contracts. Additionally, the increase of the international interest rates, of 6% (in the middle 70's) until 21% in 1981, supposed a change of the circumstances whereof the "effect was to modify radically the scope of the obligations" that Ecuador had to fulfill with the international banks.

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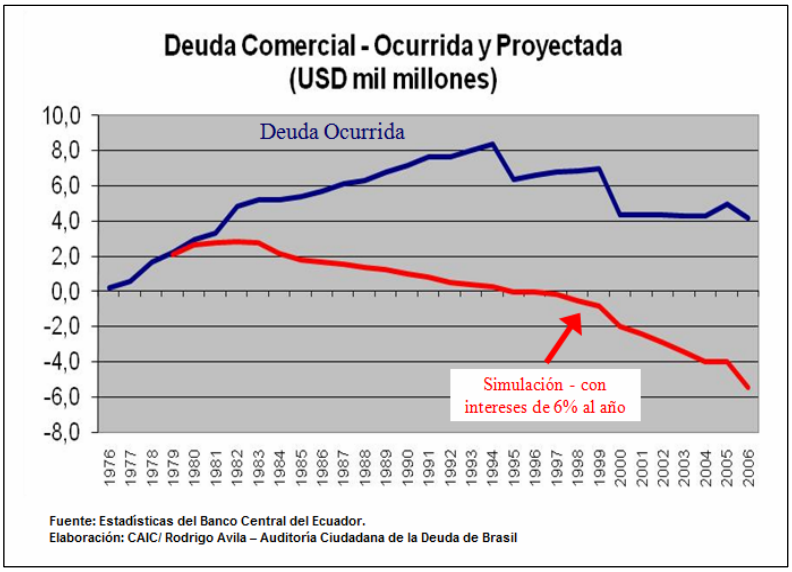
[14] Diaz.Müller, Luis (1989). "It is Illegal the External Debt versus the International Lawful". Caracas, New Society No 101, May-June, p.49-54.

[15] The External Debt versus the International Public lawful. Latin-American Parliament – Consultative Council, Version IV, 1998.



Pressured by the banking, represented in the Management Committee "unique instance for the renegotiations- Ecuador was forced to take new "loans", also at floating rates, to pay the previous ones.

If the applicable interest rates of the debt of Ecuador had maintained 6% per year (according the Libor and Prime rates were in the 70's when the loans were contracted), the payments of amortizations and interests by the Ecuadorian government would have cancelled all the debt in 1995 and that continued to be paid, afterwards would have originated rather an accrual to the international banking of US$ 5,4 thousand million.

The role of the International Monetary Fund and of the Management Committee of the Banking

With the rise of interests, at the beginning of the 80's, Ecuador starts to face difficulties to pay the external debt with the private banking. In front of this situation, the International Monetary Fund and other multilateral organisms began to intervene in the country through the instrumentation of economical, political, social and institutional measures, under pretext of managing the external debt.

The "Economical Social Stabilization Program" of 1982, recommended by the international organisms, particularly by the IMF, and the next Intention Letters had by objective to assure the generation of enough surplus to fulfill with the service of the debt, without taking into account the economical and social necessities of the country not he reduction of the amount of the debt. On the contrary, despite having paid growing volumes, far from diminishing the debt it rather grew.
Such politics were formulated along with the private banking that, as it was already mentioned, closed the credit lines to Ecuador and instituted in 1982 "The Management Committee", lead by the Lloyds Bank an the Chase Manhattan Bank, only instance by which all action for the renegotiation of the Ecuadorian external debts had to pass. This submitted definitively the country to the decisions if the banking and the financial interests, beginning a period of successive and growing pillage that generated poverty, inequality, and misery for the Ecuadorian people.

The relation between the IMF and the private banking is verified on the "Refinancing" contracts signed in 1983 that contained clauses in virtue of which it was demanded to the country to sign

Stand –by Agreements with IMF and apply the named "Economical Stabilization Plan" to assure the service of the external debt.

It is important to precise that in all the refinancing of the public debt of the 80's it was maintained the same renegotiation scheme, conditioning to a Economical Stabilization Plan or Program, Financial Plan and even to contract of loans of the International Monetary Fund.

The IMF continued exercising its influence in the Ecuadorian economy in the 90's. In 1994 the intervention of the Fund was decisive in the swap of the Ecuadorian external commercial debt for Brady Bonds that was tied to the faithful fulfillment of the Financial Plan of that year, according with what is in writing in the intention letters subscribed by the Ecuadorian authorities.

The support of the IMF to the "Brady Plan" is evidenced in the document *The Brady plan for Ecuador,* published by the economical authorities in 1994. In The Agreements that constitute the Brady Plan it is verified the clause relative to DEMAND OF MAINTAINING RELATIONSHIP WITH MULTILATERAL ORGANISMS.

The IMF also was tied to the reserved negotiations of swap of the Brady Bonds and Euro Bonds to Global Bonds, since 1999. Its interference was decisive because it was tied to the conclusion of the swap operation to an agreement with the IMF.

This negotiation concluded on July 27th 2000 with the publishing, in English, of the document "Offer to Exchange", a Letter of the International Monetary Fund signed by Director Manager Horst Köhler, of July 24th, and addressed to the international financial community. In this Letter the measures adopted by the Ecuadorian government of Gustavo Noboa are stood out, the Stand-by Agreement with the IMF for an amount equivalent to US$ 300 million and the measures included in the program of fiscal adjustment supported by the Fund. At the end of the letter, it is mentioned that *"the success of the program depends of assuring the enough external financing for Ecuador in year 2000 […] and that it will be its support through the exchange of the proposed debt instruments".*

In the Intention Letters is attributed to the IMF the right to monitor and asses periodically the fulfillment of the Program, which demonstrate the character of imposition of these measures. Other important finding in those Letters is the pressure of the IMF for the country to contract refinancing with the private banking and fulfill with the payment of the pendant debts.

The orthodox politics of fiscal and budgetary, monetary, of credit restrictions, and the persistent increases of the interest rates, aggravated the financial problems of the debtor countries.
The measures and conditionalities imposed by the IMF, the agencies of the World Bank, multilateral financial organisms, the international private banking, the Paris Club and other creditors of the Ecuadorian external debt, violate basic principles of international lawful as the sovereign equality of the States, free self determination of the peoples, no interference in the internal affairs of the States, right to the development and respect of human rights, consecrated on the United Nations Card and unnumbered instruments and international pacts.

THE ASSUMPTION OF THE PUBLIC AND PRIVATE SECTOR DEBTS BY THE CENTRAL BANK AND THE CONTINUAL "REFINACINGS" SINCE THE PACKAGE OF 1983

Before the impact of the rise of until 20,5% of the international interest rates that fall back on all the loans that had been contracted at "floating" rates, Ecuador entered in delay of its maturities since 1982.

The Package of Financing of 1983 is articulated simultaneously by the Management Committee, the IMF and the Paris Club, submitting the country to subscribe several Agreements in October of that year that contemplated the conversion of the commercial external debt of the public sector – that included two "promissory notes"- and of the private sector in debt of the Central Bank of Ecuador. Additionally, the package of 1983 incorporated the contraction of loans called "Fresh Money". As well, loans destined to the reopening of the commercial credit lines. The entire package was tied to the fulfillment of the "Economical Stabilization Program" and to the incorporated negotiation of the bilateral debts in the scope of the Paris Club and, specially, subject to the monitory of the IMF and to the fulfillment of all the conditions established on the Letter of Intention of 1983.

As result of those negotiations, since 1983 the commercial debt was submitted to the following agreements:

I) Refinancing of the Public Sector

a) Refinancing Agreements

- ERA 83 (Prorogation and Refinancing Agreement for US$ 1.100 million), subscribed on October 12th 1983.
- ERA 84 (Prorogation and Refinancing Agreements for US$ 350 million), subscribed on August 7th 1984.
- MYRA (Multiannual Refinancing Agreement for US$ 4.000 million), subscribed on December 19th 1985.

b) Credit Agreements:

- Fresh Money 83 (US$ 431 million), subscribed on October 12th 1983.
- Fresh Money 85 (US$ 200 million), subscribed on August 14th 1985.

II) Private Sector Refinancing, corresponding to the refinancing of the Commercial External Debt of Private Origin that was assumed by the Ecuadorian State (sucretization):

- Mechanism of Deposit and Loan (until US$ 1.600 million), subscribed on October 12th 1983.
- Consolidation Agreement (until US$ 1.600 million), subscribed on August 15th 1986.

In all these agreements the Coordinator Agent was Lloyds Bank (that also lead the Management Committee), with exception of the Mechanism of Deposit and Loan, where of the Agent was Citibank

These successive "refinancing" –ERA-83, ERA 84, MYRA- did not contribute any benefit to the country, because they only served to convert the debt represented by "Original Contracts" of public and government entities, "promissory notes" and assumed debts by the private sector in debts of the Central Bank.

During these audit works did not get to prove the destiny of the Loans of US$ 431 million in 1983 and US$ 200 million in 1985. As it is in writing in the Official Letter[16] of the Central Bank: *"A practice of the lender organisms is to make a tracking of the conditionalities of the granted loans, with consequent sanctions by breach, in the case of Ecuador it has not been known that it has received any penalty, which makes to suppose that the objective of fulfillment of the loans of US$ 431 MM and US$ 200 MM, that means, to cover the payments balance".*

Direct reimbursement abroad

Contracting new obligations abroad, established in the Agreements of "Refinancing", previewed the obligation of the Central Bank of making a direct payment to the international private banking for the nominal value of the obligations ("Promissory Notes" and dues of the "Original Contracts") that were being "refinanced" through a new credit for the same value.

This means, that for fulfilling such obligation, the BCE assumed new credits that stayed abroad, in hands of the same "Creditor" banking, as is in writing in the respective Agreements subscribed since 1983. It says so on Section 2.03 of the Agreement ERA-83.

> "The Debtor and Guarantor authorize irrevocably and instruct to each Lender for assigning the product of the Loan to be made by such Lender according to Section 2.3 to the direct reimbursement of the unsettled Capital Payments dues to that lender[17]"

The process was the same for the refinancing ERA 84 and MYRA.

The payments made directly abroad to the international private banking – of the "Promissory Notes" at nominal value and of debts of public entities- did not were accounted in the Finances Ministry nor in Central Bank of Ecuador, while the new contracted debts, previewed on each Agreement, were registered on the Passive of the BCE.

Not registering the resource income in the Active of BCE would provoke disequilibrium in the accounting balance that originated the artifice called "Complementary Mechanism" that is analyzed in the following paragraphs.

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[16] Official Letter BCE No DGB-659-2008, dated August 25 2008, subscribed by Jaime Aguirre, General Director of the Central Bank, that annexes to the Official Letter DSBI-985-2008, of August 25th 2008, subscribed by the Director Romeo Carrión, in his turn attach to the Official Letter DF-328-2008 of August 25th 2008, subscribed by the Financial Director Eng. Freddy Campoverde G.

[17] It is advisable to clear that the Debtor was the Central Bank of Ecuador and the Guarantor the Republic of Ecuador represented by the Finances Ministry. Each lender was the private bank abroad that had subscribed with Ecuador the named "Original Contracts"

Complementary Mechanism: Artifice to the intent of "legalization" of the assumption of debts of the public and private sector by the Central Bank.

By suggestion of the Management Committee[18] made in the package of "Refinancing", it was established the denominated **"Complementary Mechanism"** to "equilibrate" the Accounting Balance of the Central bank of Ecuador, that assumed the condition of **"Debtor"** of the obligations of entities of the public and private sector. It consists of the following:

The Finances Ministry issued State Bonds denominated in dollar, for the amount and conditions of the financial obligation assumed with the international private banking and that delivered to the Central Bank of Ecuador, without having to pay them; then, they were classified in the Active of BCE, in counterpart of the assumed obligation, which, in turn was registered in its passive.
The operation had to be authorized by Executive Decree and to count with opinions and reports of law. Each issuing of State Bonds was made through Public Scripture.

It is evidenced, then, that the *"Complementary Mechanism"* was an accounting artifice for that the balance did not present the losses provoked by the transference of the debt from the Ecuadorian public sector to the Central Bank, and consequently, to the State.

According to analyzed documents[19] by the CAIC, this mechanism was questioned in its legal aspects. In fact, the own Legal Assessor of the Central Bank of Ecuador reveals that the legality of the assumption of obligations of third parties had already be questioned, and that the "Complementary Mechanism" served to legalize such operation.

In relation with the destiny of the bonds, the Central Bank of Ecuador reported on June 27th 2008:

> " The issue was exclusively to support the Passive that acquired the Central bank of Ecuador for the payment of the external debt to the exterior, which were registered in the Balance of that Institution; in that sense there was no service of the debt while the balance of the issue diminished as the BCE made the payments abroad, amount that afterwards covered the Finances Ministry [...] It may be stand out that not existing definitive bonds issue in none of the mentioned decrees, the Central Bank did not affect the service of the public debt (payment of capital and interest), by which, these decrees are not in writing in the statistics of the public debt".

In the analyze of the scriptures of the issue of State bonds it was verified the usage of the "Complementary Mechanism" to alter financial conditions established in Executive Decrees, modifying specially the maturity terms, without legal authorization but only through public scriptures registered in notaries of Quito.

THE CONVERSION OF THE PRIVATE DEBT INTO DEBT OF THE CENTRAL BANK – SUCRETIZATION

In virtue of the Deposits and Loans Agreement the BCE assumes the external debt of the private sector as debtor before the international creditor banking, acting the Republic as guarantor, until the amount of US$ 1.600 million.

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[18] This suggestion is in writing of the Official Letter A.L. 255 of the Central Bank of Ecuador, dated July 19th 1983 and signed by Doctor Francisco Páez Romero, Legal Assessor (CM File 92-A 15)

[19] Official Letter A.L. 255 of the Central Bank of Ecuador dated July 19th 1983 and signed by Doctor Francisco Páez Romero, Legal Assessor.

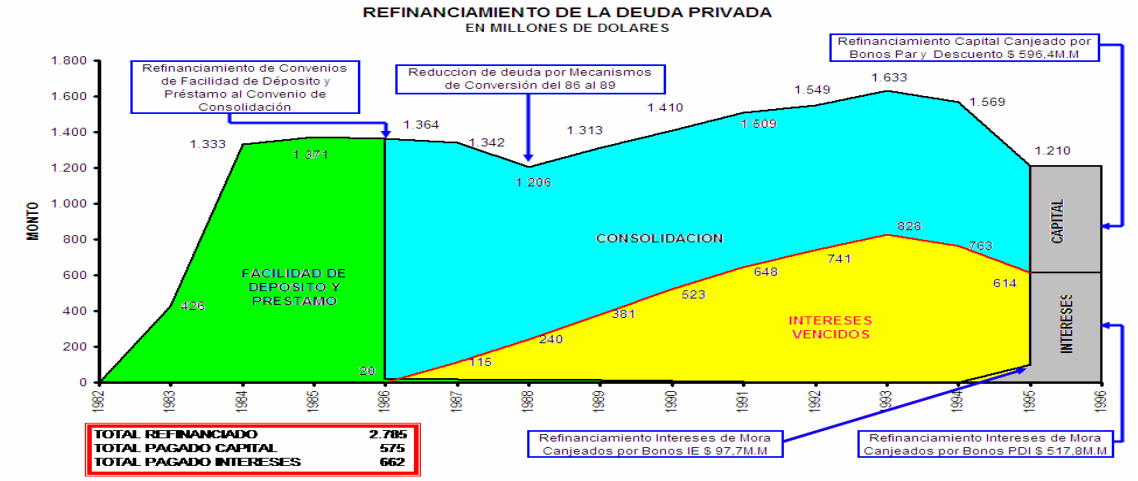
The benefits dedicated to the private sector were extended by disposition of the Monetary Junta, without any legal sequestration of the Executive.

The regulation 101-83 of the Monetary Junta establishes as principal condition for the credits subject to refinancing, that the maturities will be between November 1st 1982 and December 31st 1984. The private debtors had to pay in sucres with exchange parity and an interest rate fixed at the date of celebration of the contracts, which resulted into damage for the country.

The government of León Febres Cordero, through the Regulation No 201-84 of the Monetary Junta (October 15th 1984) extended even more the advantaging payment conditions of the "sucretized" external debt. To make this act viable, the article 66 of the Monetary Regimen Law was modified, through Decree Law No 41 of October 9th 1984. The payment terms were extended from 3 to 7 years; initially the amortizations had to begin in 1985 and to finish in 1987, but afterwards Febres Cordero delayed its beginning until 1988. Likewise, the interest rate was frozen in 16%, when the commercial rates surpassed 28% finally, the exchanging risk commission was annulated, freezing the exchange rate at 100 sucres per dollar and the grace period was increased from 1 and half to 4 and half year.

According to the information provided in magnetic device by the Central Bank of Ecuador to the CAIC, the sucretized value gets US$ 1.476.617.772,39, distributed with around of 40.000 operations and among 15.000 clients.

According to the extracted information of the statistical bulletins of the Central Bank of Ecuador relative to the external debt corresponding to the period comprised between 194 and 1993, the sucretized were benefited of the exchange of the debt for around US$ 550 million through "Reduction Mechanisms" implemented through the Regulations of the Monetary Junta, without legal support, that allowed the buying of Ecuadorian external debt in the secondary market (around 30% and its delivery to the Central bank until 100%). These mechanisms provoked damage to the Central bank and show how an apparent "reduction" of the debt amount in the following graphic.



Since 1984 until 1994 the stock of the sucretized debt rose from US$ 1.371 million to US $ 1.579 million, from which US$ 806,5 million correspond to capital and US$ 762,5 million to due interests.

In 1995 the sucretized debt is transformed in Brady Bonds, distributed in the following way: IE Bonds, US$ 97,73 MM; Discount Bonds, US$ 596,40 MM; PDI Bonds US$ 515,93 MM, which gives a total amount of US$ 1.210 MM.

Established losses of the Central Bank for assuming the external debt payment in the sucretization process

The sucretization process caused immense losses to the State. US $ 1.371 million sucretized in 1983 and 1984 were transformed for the State in US $4.364 million, from which US $ 1.557 million obey to losses for exchanging differential in the conversion of the contracted debt in foreign currency into sucres, national currency of that time. US. $ 1.238 was paid: US $ 575 million for amortization and US $ 662 million for interests, during the period 1983-94. The remainder US $ 1.569 million corresponded to the backward balance of capital and interests registered in 1994.

Bonds Issue for discharging the BCE losses

Through the Executive Decree No 3614 of August 7th 1992, under the presidency of Doctor Rodrigo Borja Cevallos was authorized by the Public Credit and Finances Ministry that, in name and in representation of the Ecuadorian State, to proceed to issue a unique State Bond, for an amount of until S/. 1.334.212'000.000, in favor of Central Bank, at one hundred years term, for the liquidation of the registered losses in the stabilization differed losses and revaluations of his general balance.

With the same date, it is stated the emission of State Bonds[20] in dollars for US $ 853.900.000,00 to transfer to the Ministry of Finances the balance of the external debt that had been assumed by the Central Bank.

Deficiencies and irregularities presented in the refinancing process of the sucretized of the external credits

Of the audit made over the sucretization process, many deficiencies and irregularities are evident. As examples the following cases are cited:

1. According to the Report 02389 of the External Credit and Investment Management Sub Office over Internal Control Assessment of the Central Bank, *"there is no tracking of the debt payment. What has been exposed caused to dispose with the information about the total cancellation of the contracted loans by the private sector".*

2. In the sucretization process, no mechanisms were previewed to know if the declared debts were really paid: the register of BCE only considered their entrance and not their payment when the transactions were made in the free market (85% of the cases). This lack of control was and open door for permitting that fictitious credits and unrecoverable credits could be sucretized.

3. The creditor banks denied sending the endorsement of the sucretization of the original promissory notes solicited by Central Bank.

[20] Executive Decree No 3615, published on the Official Register No 995 of August 7th 1992

4. Headquarters of foreign banks or related with bank offices in Ecuador as well as foreign companies or their subsidiaries were benefited of the sucretization mechanisms without having any right.

5. Refinanced operations with not valid documents have been detected, as simple photocopies or operations with the same documents for more than once or for a bigger correspondent amount (SAO-018). Authorized refinancing by the Manager and Sub Manager of the area, Hugo Ochoa and Manuel Vivanco.

6. Deficiencies in the calculation of interests, applying fixed rates by the foreign creditor and not referring interest rates (Libor and Prime).

TOLLING AGREEMENT: UNILATERAL RESIGNATION OF ECUADORIAN AUTHORITIES TO THE PRESCRIPTION OF THE EXTERNAL DEBT

During the research works made by CAIC, a document called **"Tolling Agreement"** was localized, that treats about the "resignation" to the Prescription of the Ecuadorian External Debt contracted with the private international banks.

This act meant a unilateral resignation an undisposable right of Ecuador, because it was subscribed, in New York on December 9th 1992, only by Ecuadorian parties: **Mario Ribadeneira**, Finances and Public Credit Minister; **Ana Lucia Armijos**, General Manager of the Ecuadorian Central Bank; and **Miriam Mantilla** , Consul in New York, in representation of the public sectors entities[21].

It can be pointed out that Miss Miriam Mantilla did not have authorization for the subscription because her appointment occurred several days after December 9th 1992.

The Tolling Agreement contains a unique annexed called "Schedule 1" that details the "Original Contracts" in charge of the Ecuadorian public sector entities and government.

The Executive Decree No 333[22], signed by the Republic's president **Sixto Duran Ballén C.** and by the Minister of Finances and Public Credit Sebastian Perez Arteta, was published in the country on December 9th 1992, that is, the same date of the Agreement subscription[23] that did not expressly stipulate that was not made in New York and accepted its laws. It only authorized the signature of the Rights Guarantee Agreement (Tolling Agreement)" **with** the foreign private banks that by themselves did not subscribe it.

In documents that analyze that they were analyzed in the present report, it was evidenced that **Lloyds Bank** had direct participation in the preparation of the *Tolling Agreement.*

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[21] **Ecuadorian Public sector entities that also part of the Tolling Agreement:** Port Authority of Bolivar Port, Housing Ecuadorian Bank, Foment National Bank, Company of Mixed Economy Selva Alegre Cements, Ecuadorian Steel Company, Azuay Provincial Council, Pichincha Ecuadorian Council, Regional Electrical Company of El Oro S.A., Quito Electrical Company S.A. Electrification Ecuadorian Institute, Ambato Municipality, Quito Municipality, Petroecuador and Ecuadorian Naval Transports (Transnave).

[22] Executive Decree No 333, of December 8th 1992, Spanish version (BCE CM Case 37, File 360) and Spanish version along with the English version (MEF/SCO Tolling File)

[23] According with what is in writing in each Agreement, in the relative clauses to the Prevailing Lawful"

All the Agreements of the commercial external debts were submitted the prevailing laws in New York[24]. At the same time, some of the "Original Contracts" that were submitted to the London Laws. In these laws id the "Statue of Limitations", that recognizes the prescriptions of the debts when they have not been paid in the term of 6 (six) years.

Main express irregularities in the Tolling Agreement

The Unilateral Act of Resignation called *Tolling Agreement*, signed for the former Ecuadorian government agreement, constitutes an NULE ACT because:

a) The creditor's right to receive the commercial external debt would have already been prescript when the *Tolling Agreement* was subscribed, because the inclusion of the "Original Contracts" of the entities of the public sector and the Republic (Annexed in this Agreement) reveals that the previewed obligations did not were accomplished for the "Conversion Dates" in the MYRA.

b) It violated the legitimacy, competence and power rules: the signers did not have the authorization for this act, because the authorization for the subscription of the *Tolling Agreement* by the entities of the Ecuadorian public sector was conceded after December 9th 1992.

c) It constitutes a RIGHT's RESIGNATION ACT practiced by juridical person of public right, which nature invests of rights that are not of free availability, that is, not susceptible of resignation, according to of Lawful and all democratic legislations principles.

d) Even though the Republic's President had constitutional competence to sign the *Tolling Agreement*, the authorization that he conceded through Executive Decree No 333, published in Ecuador, did not correspond to the document as it was subscribed, because the Decree authorized the Finances and Public Credit Ministry, personally or through delegation, in name and in representation of Ecuador Republic, to subscribe the Agreement with the creditor foreign public banks of the external debt of the country, and not to formulate an unilateral declaration, as effectively happened.

e) The Executive Decree no 333 does not mention any authorization for a RESIGNATION OF RIGHTS. The "Agreement" was named RIGHTS GUARANTEE, which corresponds to the true objective of the subscribed document that was the RESIGNATION.

f) The involved amount was omitted in the *Tolling*, limiting to mention the name of the Agreements and other Instruments of the Ecuadorian commercial external debt, without doing reference to the respective amounts to which prescription Ecuador renounced, which represents a grave omission by the authorities that signed the Agreement and other enabling documents, without even quantifying its amount.

g) In arbitrary disposition of the public rights, through Telex SRSP-301-92, dated December 23 1992, addressed to Lloyds Bank and to all the international financial community, communicates the resignation of Ecuador to its rights, in an irrevocable way. It announces in an additional way that elects a foreign forum for the actions against the

[24] According with what is in writing, in the relative clauses to the "Prevailing Rights"

own country, at the same time that renounced to promote any judicial action against the creditors: it recognizes and admits the application of New York and London laws against Ecuador, meanwhile renouncing to the application of the same laws for the prescription of the commercial external debt.

h) The procedure relative to the destiny of the commercial law, that reached US $ 6.992 million at December 1992, did not obey to the legal procedures and did not take more than a week: all the preparing documents elaborated by the Monetary Junta, the Central Bank, and the General Attorney's Office are dated December 4th and 8th and in any case analyzes the *Tolling* nor its consequences for the country, observing moreover that all are extremely succinct.

i) The Ecuadorian authorities defend the creditor's private banks interests. Specially it must be stresses the fact that the General Attorney of the Ecuador Republic is identical to the opinion to the international private bank's lawyers, in this way constituting the Agreement in a true international private bank's rights guarantee treaty.

j) Even though the foreign private bank participated directly in the preparation of the resignation bank to the prescription of the commercial Ecuadorian external debt, did not subscribed the *Tolling Agreement*, possibly because it was aware of its tremendous illegalities, specially treating the renouncement of public rights.

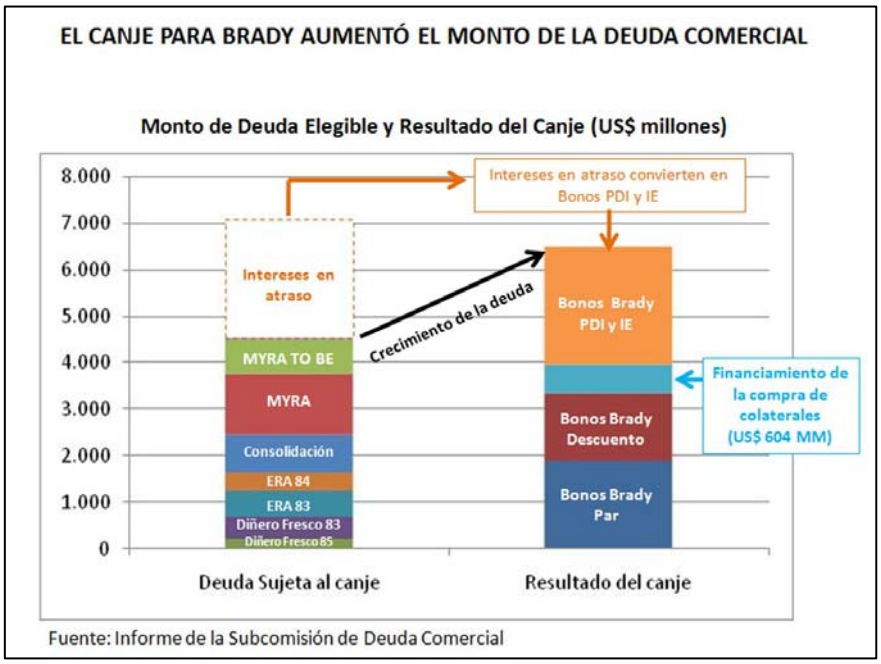
In presence of the mentioned irregularities, CAIC recommends that the Unilateral Act of full right named *Tolling Agreements* be declared NULL, which supposes the nullity of all the acts of the Ecuadorian commercial external debt practiced from the subscription of this Agreement.
In presence of this NULLITY, the *Tolling Agreement* could not impede the prescription of the Ecuadorian commercial external debt that, consequently, would not have been susceptible of claim by the international private banks.
In this context, the "negotiations" that followed the *Tolling Agreement*- swap of Brady Bonds in 1995 and Global Bonds in 2000 – become equally null because there would not be demanded amount from the mentioned null act.
Moreover, penal, civil and administrative actions should be initiated against national and foreign responsible involved in the *Tolling Agreement that* provoked big damages to Ecuador and its people.

THE BRADY PLAN

From the resignation to the prescription of the Ecuadorian commercial external debt and the fact that the market value of this "resuscitated" debt fluctuated scarcely between 24% and 32% in 1993, the Ecuadorian financial authorities ignored the prescription and considered all the corresponding amount to the agreements of the external debts existing then for the conversion objectives for the Brady Bonds.

Other documents show that the value of the Ecuadorian commercial debt in the secondary market at 1991 was 23% as is evidenced in the page 143 for the Statistical No1, dated in 1992 and published by the Ecuador Central Bank Debt Office, with data from 1970 until 1991.

The Brady Bonds issue was sheltered by the "Brady Plan" proposed on May 20th 1994 by JP Morgan that offered its services to coordinate along with Ecuador Central Bank a financial package to Ecuador.



The plan counted with the support of the IMF[25], as evidence a document published by the economical authorities denominated **"The Brady Plan for Ecuador"** , where it is in writing: "*Support of the International Agencies: The Agreement of Ecuadorian debt has the sponsorship of the multilateral financial institutions, the ones that will provide improvements for the process of debt reduction. The support of these organizations is related with the results of the macroeconomic Program and the structural reforms that the Ecuadorian government is implementing currently and about which is founded the future sustained growth of the country.*

In the Brady agreements, it is verified the clause relative to the EXIGENCE OF MANTAINING RELATIONSHIP WITH MULTILATERAL ORGANISMS: "(The country) will maintain in all moment its membership with the IMF and BIRF and will continue being eligible to use the general resources of the IMF".

The "eligible" Ecuadorian external debt for being renewed through the issuing of Brady Bonds was US$ 4.521 millions of Principal and US$ 2.549,2 million by payable interests, totalizing US$ 7.070 million. This debt was worth around of 25% in the secondary market. Meanwhile, the reduction of the amount transformed into Brady Bonds was scarcely US$ 1.174 million in the part of capital[26], without that any reduction were registered in the part of the interests, that were transformed into PDI and IE Brady Bonds, that also generated interests. This configures the ANOTACISM, that is illegal, according with the Ecuadorian Civil Code:

> *Art. 1602.- If the obligation is to pay an amount of money, the indemnification of the damages for the delay is subject to the following rules [...] 3rd The delayed interests do not produce interests.*

[25] In June 1994, the financial authorities of Ecuador –César Robalino, Finances and Public Credit Minter; Ana Lucia Armijos, President of the Monetary Junta; and Augusto de la Torre, General Manager of the Central Bank of Ecuador – publish the document called *The Brady Plan for Ecuador,* in Spanish and English, consistent with the copies obtained in the Central Bank of Ecuador in Quito.

[26] The amount transformed into Brady Bonds of Capital (Par and Discount) was US$ 3.374,6 million.

Art. 2140 – It is forbidden to charge interest over interests.

It evidenced once again the participation of the big banks in the process of renegotiations and conversions of the debt. Lloyds Bank was the Agent Bank of all the agreements (except the Consolidation Agreement, which Agent was Citibank) of the 80's and of the Brady's' trust. The agent bank on the issuing of the Brady's was Chase Manhattan Bank. Citibank, Agent of the Consolidation Agreement, was in 2000 the Agent Bank in the conversion of Brady Bonds into Global Bonds.

The analysis of the mentioned Contracts allows to establish that several clauses transgress the legal precepts established in the Ecuadorian legislation. For example:

- Renounce of jurisdiction.
- Renounce to immunity.
- Exigency of maintaining relationship with multilateral organisms.
- Possibility of utilization of the bonds for privatization programs.
- Renounce to any possibility of making claims against invalidity, illegality or possibility of not being executable.
- Submission to recognize that the bonds will not be registered on the Securities Exchange Commission (SEC) of USA.

The juridical analysis of these clauses equally offensive for Ecuador makes part of the Juridical Report of the Commercial Debt.

Collateral Guarantees

In the operation of conversion of the eligible debt into Brady Bonds the buying of guarantees was required for the hedge of capital and interests of the Discount and Par Bonds. Such guarantees were constituted through zero coupon bonds of thirty years of the Treasury of the United States that, after their capitalization, would reach the amount of US$ 3.347.6 million corresponding to the totality of the capital of the Par and Discount Bonds, and should be deposited in the Federal Reserve Bank of New York. Consequently, the country did not have the obligation of doing in the future any disbursement to cancel the capital of such bonds, having only to do the correspondent payments to the interest.

The Brady Plan demanded also the constitution of a guarantee for the interests of the same Discount and Par Bonds, to cover 12 months of interests. These collateral guarantees should have been strictly constructed as part of the International Monetary Reserve and to be susceptible of being executed by the creditors only in case of breach.

In February 1995 the paid amount by Ecuador for the buying of the referred collateral guarantees, of principal and interests of the Par and Discount Bonds, reached US$ 604 million.

Briefly, what did the Brady Plan mean to Ecuador?

As we just mentioned, in the context of Brady Plan, the country had to buy on February 1995, collateral guarantees by US$ 604 million[27], amount that at market price of the commercial debt, closer to 25% of its nominal value, corresponded to a view payment of 53%[28] of the principal of the commercial debt.

If we consider the resultant principal amount of the swap (US$ 3.348 million), the US$ 604 million destined to the buying of collateral corresponded to a view payment of 72% of the principal of the commercial debt at its market price.

ADAM PLAN – PACT FOR THE SWAP FROM BRADY TO GLOBAL ESTABLISHED IN 1999

The CAIC got the evidence that the Swap of Brady Bonds and Eurobonds to Global Bonds was planned through the "ADAM Project"; send to Ecuador in May 1999. According to the lawyers of the country abroad, Cleary Gottlieb Steen & Hamilton, the "Project Adam was a ´given name´ for this project to guarantee confidentiality [...] but there was no ´Adam Project´ separated of the restructuration of the bonds by itself. In other words, the restructuration of the Brady and Eurobonds was Adam Project".

This affirmation reveals that the swap from the Brady and Eurobonds to Global was planned before the date en which it was decided to suspend the interests' payment in 1999. That payments suspension impeded legally the rebuying of the Brady debt in the market, that on May 1999 was valued in about 29% of it nominal value, according to Bloomberg Agency.

Previously, the Minister of Finances an Public Credit, Ana Lucia Armijos[29], through the Agreement 028-A, dated April 1st 1999, conformed the Reengineering Inter Institutional Unit (UIR) of the Public Debt, to study the alternatives that could allow the country to restructure, refinance an/or renegotiate the public debt, "in the more adequate terms for the national economy"

On other side, in July 1999 the contract of the Company Salomon Smith Barney (SSB) already advanced to act with exclusivity on the mentioned swap and to utilize collateral guarantees, as it is in writing in the draft of the document *Engagement Letter Agreement,* dated on July 30th 1999, referring to the contract of such company, that was located in the files of the Central Bank Legal Assessor Office. That contract was signed on October 11th 1999, as it comes out of the document subscribed by the Finances Minister, economist Alfredo Arízaga, and by the General Director of SSB. The Finances Minister did not follow the procedures previewed in the Ecuadorian Public Contact Law with the firm Salomon Smith Barney and /or subsidiaries in which refers: a) the swap of the existent bonds, b) the restructuration and execution of the swap, c) the assessor activities on the operations of rebuying, d) the anticipated liquidation of the guarantees of

[27] US$ 604 million corresponded to the value of acquisition at February 28th 1995 of Zero Coupon Bonds of the American Treasury, which nominal value at 30 years would get US$ 3.347,6 million.
[28] 25% of US$ 4.521 million= US$ 1.130,25 million; US$ 604 million correspond to 54% of US$ 1.130,25 million. 25% of US$ 3.348 million= US$ 837million, US$ 604 million corresponded to 72% of US$ 837 million.
[29] Ana Lucía Armijos is the same officer that subscribes the *Tolling Agreement* in New York in 1992, in quality of General Manager of Central Bank of Ecuador; signs the Brady Plan in 1994 as President of the Monetary Junta, and, in the crisis of 1999, as Finances Minister.

the Par and Discount Bonds and e) the acting as liquidation agent with respect of the guarantee.

Once planned the swap from the Brady Bonds to Global in the Adam Project and previewed the contract of the company Salomon Smith Barney to act with exclusivity in the process, only in September of 1999, the country declares a "delay" of its debt to justify the swap, without considering at all the fact that the Par Bonds and the Discount Bonds were 100% guaranteed and that, in consequence, such guarantee had to be executed and not subject to its mere liquidation, as it is in written on the Section 11 of the letter signed by the Finances Minister without the authorization of the State's General Attorney.

In that moment the Brady Bonds guarantees, represented by "United States of America Treasury Zero Coupon Bonds" and given in trust to the Federal Reserve Bank were not executed, apparently by decision of the bondholders, aspect that is questioned by CAIC, due that it did not received any documentation that was previewed on the agreements to sustain the decision of not executing the guarantee.

The CAIC verified the presented justifications for breach or suspension of payment of the only interests coupon of Discount Brady for US $ 44 million due on August 28 1999 were false, because besides not existing enough guarantees to liquidate such obligation, the value to be paid did not reach 3% of the free international reserves in August 1999.

It is also verified that the External Debt Negotiator Commission, presided by Jorge Gallardo, did not consider the possibility of buying the Brady Debt that at the date of the swap was valued in the 29% of its nominal value, because as it is in written on the book of Osvaldo Hurtado[30] "a safer road was to buy the Brady Bonds in the market, that were quoted al least into a third part of its value, through a financing that agented by the Latin-American Bank of Exportations" (DOC 30)

In fact, when the swap was made from Brady to Global, the collateral guarantees were rescued and equivalent amount of US$ 723.945.364,80 got into the account No 18051375 in charge of the Central Bank in Salomon Smith Barney abroad. It should be stressed that the movements of that account were not registered in the Central Bank or in the MEF. Due to the absence of opportune accounting registers in the country about the utilization of the rescued collaterals in the moment of the swap from Brady to Global in 2000, it could not be proved the usage or destiny of such resources, which meant nothing less that the prepayment of the Brady Par and Discount Bonds.

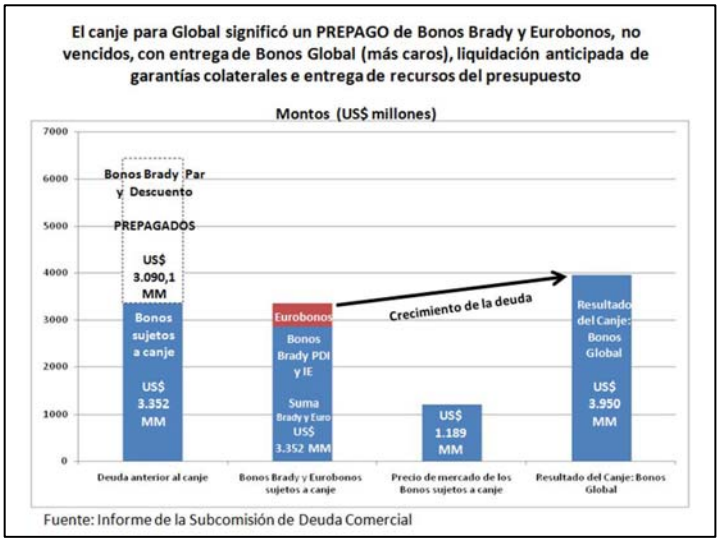
SWAP FROM BRADY TO GLOBAL

In June 2000 the "External Debt Negotiator Commission" was created, presided by a different person from the Financial an Economy Minister, with attributions to negotiate; to fix minimal conditions with governments, suppliers and other institutions; and, to renegotiate the preliminary agreements, activities all attributed to the Finances and Economy Minister according to what is disposed in the article 130 of the Organic Law of Financial Administration and Control.

[30] "Debt and Development in Contemporary Ecuador" Editorial Planeta. Quito, February 2002, page 73.

In august 2000 The Executive Decree No 168 that authorized the "restructuration" of the external debt in the terms of the "Swap Offer" (it had been made in July 2000 by Salomon Smith Barney and J.P. Morgan), according to the decision taken from the External Debt Negotiator Commission, through which the Brady and Eurobonds are offered to swap for "Global Bonds" 2030 and 2012. There is no evidence that the referred Commission has analyzed other alternatives and proposals.

The offer presented by Ecuador to the international financial market constituted a "renovation of the Ecuadorian external debt" through the delivery of "Global 2030" Bonds at 30 years, with rates that began at 4% and increased 1% per year until 10%, and "Global Bonds 2012" at 12 years, with fixed taxes of 12%. In the practice, this involved the delivery of economical resources coming from the Ecuadorian State Budget and the liquidation of the collateral guarantee, actions that were not expressly authorized in the Executive Decree No 618.



In the operation liquidation summary presented to CAIC it is evident not only the capitals swap from "Brady Par and Discount Bonds" to "Global 2030 Bonds" but the transformation into "Global 2012 Bonds" of a) "Brady PDI and IE Bonds", that represented current and delay interests, and b) dues interests overall the Brady Bonds, showing in this mechanism the issue of a interests recurrent capitalization. The Payment, Transfer and Register Agent was Citibank N.A.

The offers of the Ecuadorian external debt bonds were made as "Private Placement" under "Rule 144A" that permits the sell of non registered stocks, in a private way, only to qualified buyers (QIB-Qualified Institutional Buyers); and the "S Regulation", that nor only prohibits any sell effort inside the United States, but that determines that the transactions must be done in "Off-Shore" operations.

In virtue of the mentioned Executive Decree, the new issue demanded Ecuador more exigent liquid conditions, because it was stipulated the obligation that the country made "rebuyings" or "debt conversions" at nominal value from the six years of issue of the "Global 2012" Bonds and from 15 years of the issue of the "2030". The same procedure had already been used in an exaggerated way in year 2005 by an amount of US$ 740.000,00 by which Ecuador assumed new

debts: it issue other Global Bonds, called “2015” (under the market value), and made a loan of FLAR.

The main agents of the issue of the Global Bonds 2015 were JP Morgan, Chase Manhattan Bank and Citibank N.A.

The transactions that contained the bonds swap did not were accounted in the Central Bank of Ecuador nor in the Finances and Economy Ministry, making an accounting registration by the net issue (without the intermediate transactions) in the exercise 2002, by which “Due Obligations” against State “Equity” is accounted, what means that the State assumes a loss for the total of the issue.

The State’s General Controller Office made a special examination of the process of global bonds issue and of the renegotiation of the external debt during the period comprised between April 1st 1999 an December 30th 2002, issuing the Report No DA3-26-2003, which more relevant aspects have been considered in this audit.

Several observations, internal control deficiencies, irregularities and illegalities have been determined in the instrumentation, offer, issuing, accounting of the "from the Brady Bonds and Eurobonds to Global Bonds 2030 and 2012" swap.

Irregularities in the instrumentation of the issue of Global Bonds 2012 and 2030

a. The issue offer of Global Bonds 2030 and 2012 was not authorized by the Ecuadorian laws due to that the Executive Decree was not yet published at the date of subscription.

b. The “Opinion of the State’s General Attorney Office” does not analyze the terms of the operation and conditions its opinion to the granted authorization through Decree.

c. Salomon Smith Barney Inc. and J.P. Morgan acted in the negotiation of July 27th 2000 without the formal authorization of Ecuador.

d. The competence for the Ecuador Consul in New York to proceed to the restructuration of the external debt is delegated AFTER THE DATE OF NEGOTIATION.

e. Competence delegation to a “Commission” to negotiate the external debt, even though of being this an exclusive attribution of the Finances Minister.

f. Contract of a Trust and Exchange Agent without authorization because the Executive Decrees 605 A and 605 B were published on September 1st 2000, that is, after the date of the mentioned contract.

g. Collateral Guarantees liquidation in an illegal and arbitrary way.

h. Negotiation of Brady Par and Discount Bonds that did not have entered to any restructuration because they were prepaid, having constituted guarantee.

i. The State’s General Attorney does not analyze the contract called “Indenture” that constitutes essential requirement to make the negotiation.

Serious Economical Damage for Ecuador

1. The restructured bonds market value was under 30% of their nominal value, which determined that the amount subject to negotiation, in the secondary market priced US$ 1.005,7 million.

2. It is determined that the new issue of "2012 and 2030 Global" Bonds got the amount US$ 3.950 million, that is, almost four times the market value of the "negotiable" part of the "Existent Bonds".

3. The paid interests until August 2008 are US$ 2.450 million, resultant value, of those onerous levels, as the 12% before cited.

4. There was a restructuration of the debt, under the figure of swap that was not yet due, according the amortization tables. By consequence, it was an obligated prepayment.

5. The operation was made by a sole institution, Salomon Smith Barney (Citicorp), who proposed the restructuration, managed the swap and cashed the collateral guarantee, along with the Debt Negotiator Commission.

6. The operation had a "secret" character, so there was no support detailed information in the process responsible entities: Finances Ministry and Central Bank of Ecuador.

7. There was no transparency on the negotiation to demonstrate clearly its results. The unique information of the transaction was issued by the Debt Negotiator Commission, entity that proposed the swap and managed it, along with Salomon Smith Barney (Citicorp).

Abuse of the international banks against Ecuador

a) The debt restructuration operation through swap of Global Bonds constitutes the same modality of "restructuration" of the credits made by the international banks (Chase Manhattan Bank, J.P. Morgan, Citibank, Salomon Smith Barney, Lloyds Bank) from the "origin" of the debt, through prepayments of credit operations not demanded yet.

b) Interests rates established by the same international banks, commission collection and demanded prepayments according to new amortization tables, contracting of new credits abroad (FLAR) to cancel the compromises, making more onerous the cost of "2012 and 2030" Bonds issue.

c) "2015 Global Bonds" Issue to cover a prepayment demanded by the "2012 Global Bonds", whereof the buying is made by the same international banks, with "discount", and apply them to the existing debt represented in Global Bonds at "nominal" value.

d) The modality of "restructuration" makes that the debt maintains the capital almost intact, obligating to the payment of interests by semester, which supposes to obtain financial resources from Ecuador in a permanent way.

e) In opinion of CAIC these titles do not represent a "debt", in a way that, in a possible "trial", the bondholders could not demonstrate their right to call to Ecuador. It is the instrumentation of normal and delay interest s, of the irregular application of collateral guarantees and of abused practiced against the people of Ecuador, preceded of recurrent "restructurings" of the debt, for more than 30 years, en conditions that only benefited a reduced group of private banks.

f) Additionally, it is important to mention that the amount of capital of the original debt has already been paid through normal and delay interests, quantified in this report.

CONCLUSIONS OF THE PIECE OF THE COMMERCIAL DEBT

Following, the main evidences of illegalities and illegitimacies detected commercial external debt are resumed:

Item	Principal Illegalities/Illegitimacies
Origin of the debt	Unilateral increase of the interest rates (disrespect of the clause *Rebus Sic Stantibus). "Promissory Notes" issue, whereof the amount is about US$ 700 million was liquidated at its nominal value in the Agreement ERA-83*
Renegotiations of 1982/1983 and "Refinancing" Agreements	Interference of IMF and the Ecuador Management Commission. Disrespect of the statues of IMF, disrespect to sovereignty, violation of the Right to Development, asymmetry between the parties. Illegal clauses of the "Refinancing" Agreements. Assumption of the private debt by BCE (Sucretization).
Complementary Mechanism	Accounting artifice for not reflecting the weight of the assumption of the debt of the public and private sector by BCE. Evidence of the issue of the "State Bonds" to compensate the passive of BCE
Sucretization	Debt transference from the private sector to Central Bank with an accumulated cost of US$ 4.462 million. The private banks denied to give to the BCE back the original promissory notes of the sucretized. Risk of assuming fictitious and unrecoverable credits by lack of already paid debts by the private sector. Refinanced operations with not valid documents: photocopies and in duplicate.
Tolling Agreement	Surrender of a Public Right; imposition of onerous obligations to Ecuador without transparency; illegalities on the signature of the Unilateral Act of surrender to the prescription of the commercial external debt.
Brady Plan	Surrender of the debt re buying option at low market prices. Explicit anoticism: transformation of interests into bonds. Illegal and illegitimacy clauses. Demand of buying of collateral guarantees. Acquisition of Collateral, financed with loans destined to other purposes. No registered bonds at SEC. Absence of accounting in the BCE and MEF.
Adam Plan	Anticipated pact to the swap to Global. Not consideration of the rebuying option of the debt at low prices in the market. Unnecessary delay that impeded the rebuying. Contract of Salomon Smith Barney in disagreement

	with the Public Contract Law.
Global Bonds	Negotiator Commission without legal competence; absence of the Attorneys' Legal Opinion about the contract named *"Indenture"*; usage not due of collateral of the Brady's that were deposited in the account in Salomon Smith Barney, abroad, nor accounted in Ecuador; debt negotiation that was already paid; Executive Decree published after the consumed facts; bonds not registered in the SEC. Private character Offer, with issue of restricted bonds, in Luxemburg stock market.

Section I I

JURIDICAL ANALYSIS OF THE COMMERCIAL DEBT

The genesis for indebtedness

The Military Dictatorship at the beginning of democracy

The genesis of Ecuadorian debt incurrence dates back to the end of the second half of 1976 under the Dictatorial Government of the Supreme Council Government[70]. Since then, the debt has grown year after year without a solution to its continuity, parallel to the abundance of foreign credits facilitated by the United States Bank System that possessed prodigious funds originating from dollars invested by petroleum producing countries.

As banks needed assurance all types of jurisdictional controls in case of incompliance were implemented clauses was inserted in all contracts celebrated after March 1976 inclusively, submitting Ecuador to United States and British Legislation and the jurisdiction of the courts of law in New York and London which had dictated specific laws excepting the judgment in those courts of justice. As this submittal was illegal, considering that civil code Art.1505 impeded it, it was decided that the norm would be interpreted by a decree in order to end any legal obstacle which will impede the postponement of the jurisdiction.

Between 1976 and 1982 credits were granted for the sum of USD$3.424 million. Of this sum USD$984,576.272 corresponded to the defense budget, distributed in the following manner:

USD$734,576,272 (the Board of National Defense)

USD$250,000,000 (Secretary of Defense, other works)

If we add the direct state loans, plus what they refinanced, and you add those utilized in order to cover the financing of the budget, and to those we add the debt destined to Military expenses the amount of USD$ 2,344,576,282 in Dollars is reached, which represents more than half of external obligations, leaving only US$1,080 Million presumably destined for investments which resulted as being necessary in order to improve the infrastructure of the country. And we say presumable because in the auditing practices we could not relay or count on documentation which would effectively assure the supposed investments.

In all the operations related to indebtedness numerous banks intervened although later only certain of these were concentrated upon: LOEB RHOADES, which later was integrated to CITIGROUP, CITIBANK, LLOYDS BANK, CHASE MANHATTAN BANK and JP MORGAN. Additionally they will be the coordinating agents of the

[70] Presided by Admiral Alfredo Poveda Burbano and integrated by General Guillermo Durán Arcentales and Luis Leoro Franco, assumed office the 11th of January 1976.

(40) Presided by Admiral Alfredo Poveda Burbano and integrated by General Guillermo Duran Arcentales and Luis Leoro Franco, assumed office the 11th of January 1976.

operations in their different phases; they led all the sub sequential refinancing and re-structuring phases of the debt up to and after the year 2000; and, they represented a multitude of financial institutions including various with headquarters in diverse fiscal paradises, such as the Bahamas, Nassau, Luxemburg and Panama.

In all the management realized to justify the contracting of new debt they went so far as to re-finance prepaid debt which had not as yet become overdue, in other cases, promissory notes were emitted for more than USD$600,000,000, characterized by the Secretary of Finance as "sui-genesis" in light of the fact that they did not obey any of the guide lines fixed by the legal norms of the Country.

The USD$3.424 millions which the State was obligated to pay violated the juridical order which should have prevailed in all debt contracting and additionally incurring in the transgression commission of public action, it is the same debt that was being financed thru the different agreements named as ERA-83, ERA-84 and MYRA 85, "Fresh cash" "Complimentary mechanisms" "Deposit in Loan Mechanisms" in the decades of 1980. It is the same debt that determined the renouncement of the prescription rights which the State had in 1992, which was assumed trough the Bradley Plan and concluded with the global bonds of the year 2000.

Regardless of being extremely prudent in the characterization of the legal aspects of the contracts of those six years (1996 thru 2002) it appears based on evidence that not only the juridical order of the State had been violated but inclusively fundamental concepts of Anglo-Saxon laws, to whose norms all these contracts were subjected to. Here some basic points of illegality:

The falsehood of the strict sense of Article 1505 of the Civil Code, thru an arbitrary interpretation.

a. The ideological falsehood of the judgments of the Procuraduría General del Estado (Attorney General's Office) Arts. 337 and 338 of the Penal Code.
b. The violation of the Organic Law of the Administración Financiera y Control (Financial and Control Administration)[71] (41)
c. The violation of the principles of the Administration Law.
d. The ignorance of the exact destiny of funds, which implies *prima facie* "by first instance or appearance" defrauding the State "Junta de Defensa" (The Board of Defense) and diverse entities of the Public Sector.
e. The violation of the fundamental principle of goodwill.
f. The application of the *restatement of contract* (it's to say unreasonable and unjust clauses), which respond to the generally practice guidelines of Anglo-Saxon Law.
g. The damage to the interests of the State and the Public Patrimony.
h. The transgression of continual execution, which determines the imprescriptibly of the illicit committed.

[71] Supreme Decree No.l429. R.O. (Official Registry) 337 of 16th May 1977

THE INDEBTEDNESS IN THE 1980 DECADE

Although in some cases the contracts specifications had certain modification, they generally presented the same characteristics, as can be verified if you comparatively analyze the agreements reached in the prorogation and refinancing agreements of the year 1983 "ERA 83", 1984 "ERA 84" and the 1985 (MYRA), celebrated during the Presidencies of Oswaldo Hurtado Larrea and León Febres Cordero.

In all these agreements, beyond the technical aspects of the refinancing of obligations, all types of renouncement and waive clauses, in order to avoid any act of defense which the State could intend in order to protect or safeguard its rights were established. With exception to some terminology variations, the agreements proof to have common elements:

a. Neither the Republic nor any of its assets will have any right to immunity in respect of any claim, compensation, prevented or executive embargo: or the judgment of a verdict.

   (ERA 83 and 84). In the MYRA it is added that these rights will not be protected by the Laws of the Republic either.

b. It is mentioned that the Republic or the State is a member of I.M.F., indicating that they have complied with all the operative criteria and have realized all the acquisition programs by the Fund, probing the conditioning of the fixed policies of the multilateral organisms.

c. Among the un-fulfillment clauses it was stated that Membership to the IMF would be revoked or be eligible for the use of the general resources or Special Drawing Rights (SDR) or if the right would be suspended to use the contingencies loan services or any other line of credit, or agreement, or in effect with the IMF.

d. It was established that neither the Coordinating Agent nor any of its Directors, Officials, employees or Agents will be responsible for any action adopted or omitted by them in relation to the contract, except in those cases of grave fault or fraudulent conduct. This was a clear manner of avoiding responsibility.

e. Ecuador was always responsible for the expenses and this imposition entailed no justifiable or reasonable control of the same which in many cases lacked limits.

f. The jurisdiction was invariably of the Tribunals of London and New York, although additionally in some contracts, the origin of the Tribunals was: Canada, Japan, Germany and Switzerland, thus violating the constitution.

g. Any integral form or any other type of immunity was waived in order to be submitted to judging in conformity to the established by the Foreign Sovereign Immunity Act of the United States (1976) and the State Immunity Act of England (1978).

h. The interests were invariable established by the creditor who advised the State the amounts to be paid.

i. Payments made in excess could not be compensated and when Ecuador paid CITIBANK an interest amount less than the owed amount, it was not possible to compensate with the payment that had made in excess, breaking the equilibrium of the loans and violating the cardinal principle of reason of the contracts.

j. It was established that the register of creditors will always prevail in their accounts with absolute disdain for the legality of the Ecuadorian Public Accounts.

k. The terms of the agreements prevailed for any law of the State as well as that of that its own Constitution, which resulted in a clear violation of public order.

l. The obligations were always unconditional for Ecuador's part.

m. Ecuador always assumed the expenses not only of its own attorneys but the attorneys of the creditors, the operators, agents, etc. This determined that in some cases in the absence of specific control of the operations of the external sector, duplicate payments which were realized existed.

Although the State committed itself for the fulfillment of the opportune agreement, the internal and external conditions impeded the State to face its contracted obligations. This determined that the (Comité de Gestión de los Bancos Acreedores) " Management Committee of Creditors Banks be informed in the beginning of 1977, the impossibility of opportunely make effective the payments committed thru the previously cited agreements, and state of delayed payments was entered into during years until the signing of the *Tolling Agreement.*

THE TOLLING AGREEMENT

According with the register of the Central Bank of Ecuador the last effective payments of the public debt contained in agreements ERA 83, ERA 84, MYRA 85 and fresh money loans in 1983 (US$431 million) and 1985 (US$200 million) were produced in the year 1984, although we have not been able to count on sufficient support documentation that would accredit it in an indubitable manner. The last payment of the private debt – sucretized (in sucre currency), thru the "deposit and loan mechanism of 1983" and the "debt consolidation agreement" – was possibly realized in 1996.

A very particular situation was reached. The payment of obligations was suspended until the 9th of December 1992, an irregular and suspicious negotiation took place by the then Minister of Finance and Public Credit Mario Rivadeneira and Ana Lucia Armijos, General Manager of Central Bank of Ecuador, determined the subscription of a Rights Guarantee Agreement – *Tolling Agreement*-, thru which the Republic renounces to the prescription of the debt which would operate in January of the following year, as a prior step to the subscription of the Brady plan which was already being negotiated with its creditors. The signing of the agreement was supposedly authorized by Executive Decree No. 333 signed the 8th of December of that year by the President of the Republic Sixto Duran Ballén.

The right to the prescription of the debts was operated six years after the due date, in accordance with the statute of limitations from the State of New York, to whose norms were submitted all the agreements previously referred to.

The substantial objectives of the rights guarantee agreement or tolling agreement were the following:

a. Renounce to the prescription rights of the commercial debt.
b. Renounce to the rights of initiate any action in any tribunal against the agreement.
c. Irrevocably renounce to any immunity which may be obtained by the laws in the United States or England.
d. Renounced to Ecuadorian code of law
e. Guarantee the rights of international private banks from initiating any action in any tribunal against Ecuador, the Central Bank or any debtor.

Thru this agreement, the renouncement of rights of prescription of the following obligations occurred:

1. Refinancing and postponement agreement of October 12th 1983.
2. Credit agreement dated October 12th, 1993
3. Refinance and postponement agreement of August 7th 1984.
4. Credit agreement dated August 14th, 1985
5. Multi-annual refinancing agreement of December 19th of 1985 (MYRA)
6. Consolidation Agreements of August 15th 1986
7. Regulating instruments, and of the other loans, credits, financing or similar agreements, promissory notes, and other documents and instruments that can be amended or complemented at any moment, that guide or evidence the external debt.

Once this agreement was signed, that guaranteed the rights of the creditors and meant the waiving of the States` rights to the prescription, the creditors dedicated themselves to preparing a new fraud against the rights of the State or the Republic: The Brady plan which imposed conditions to Ecuador, violating internal juridical order, of the legal general principles and more so of the public international rights.

The basis for the subscription of this waiver was suggested by the North American Lawyers of Ecuador that suggested the signing of the t*olling agreement* with the purpose of avoiding a forceful suit of the foreign creditor banks, before or prior to the expiration of the statute of limitation (31st December 1992). This suggestion born of a clear threat by the lawyers Management Committee of the Creditor Banks who indicated that in the event that the State did not subscribe the rights warranty agreement, the involved creditors would initiate simultaneously and certainly massive law suits in any applicable jurisdiction against the debtor and the guarantor in order to obtain embargos prior to the prescription in order to make use of their rights.

The agreement was not the expression of an official decision made by the Executive Power, but a mechanism elaborated in New York by the creditors in order to limit the rights of the State and avoid the operation of the prescription, as evidence by all the antecedents which labor in the power of the CAIC.

It just so happens that in accordance with some accounting constants that can be found in the Central Bank registers, the prescription could have been realized in full legal right, if the last payments made in 1986 would had been taken into account.

The juridical examination of the agreement permits us to conclude that:

a. Contradicts that which was expressly ordered by an Executive Decree in which it authorized the signing of the legal rights warranty agreement and not revoking a right agreement which was effectively signed.

b. The signing parties overstepped their faculties, because they were not authorized to renounce to any legal right as indicated in Decree 333.

c. One of the signing parties of the Agreement, Mrs. Myriam Mantilla, appears as representing 14 Ecuadorian enterprises[72] (42), without any faculty to obligate the companies that she pretended to represent since at that date she was not authorized for the subscription in lay of the fact that her appointment occurred various days after the 9th of December of 1992.

d. The State Attorney General signed an approbatory judgment which does not reflect an accurate expression of his will but, that of the creditors, which constitutes a transgression of false ideology.

e. Public order has been violated when the basic principles of the political constitution in force had been ignored, such as articles 39, paragraph 2; 45, paragraph 1; 59 literals e and h; 65, paragraph 4; literal 78 a y c; 85 paragraph 1; 1.1.1 y 1.3.7.

f. Elemental principles of administration legal rights such as publicity, transparence, efficiency, justice in addition to the cardinal principle of the act of reasoning have been affected.

g. There was complicity between diverse State organisms in order to celebrate this agreement eluding all control mechanisms.

THE BRADY PLAN AS THE SYSTEM PARADYGME

In all the indebt process of Ecuador and other Latin American countries it is revealed that there is a structural bonding between the first contracts executed by the external creditors and the successive loans and re-financings which have been done afterwards. In the auditing it is revealed that were contracted loans made by the Military Dictatorship which were refinanced during the restoration of democracy. In he same manner, after the process of sucretization "sucretización" which continued to increase the public external debt, new refinances were concluded thru agreements ERA-83, ERA-84, and MYRA 85. In light of partial non-compliance to the obligations the plan Brady was reached, which was nothing more than the new re-structuring

of the public external debt, with more demanding conditions, acknowledgment of interest capitalization, infringement clauses of legal internal order, of legal general principles, and inclusively of the United States own legislation, to which this plan was submitted.

[72] Autoridad Portuaria de Puerto Bolívar, Banco Ecuatoriano de la Vivienda, Banco Nacional de Fomento, Compañía de Economía Mixta Cementos Selva Alegre, Compañía Ecuatoriana de Siderurgia, Consejo Provincial del Azuay, Consejo Provincial de Pichincha, Empresa Eléctrica Regional El Oro S.A., Empresa Eléctrica Quito S.A., Instituto Ecuatoriano de Electrificación, Municipalidad de Ambato, Municipalidad de Quito, Corporación Estatal Petrolera Ecuatoriana, Transportes Navieros Ecuatorianos (Transnave)

The Brady plan was the major indebtedness global contract celebrated by the State since 1995 the amount of bonds emitted was USD$5.953.613.730.

Even though the Ecuadorian negotiations with the management committee- which leaded the Brady process- began in 1991, just reached and agreement on the 2nd of May of 1994, intervening as part of the State the Secretary of Public Credit and Finance, César Robalino Gonzaga, the President of the Monetary Board, Ana Lucia Armijos, and Augusto de la Torre, General Manager of the Central Bank of Ecuador, all who received the instrumentation of the Plan on behalf of J.P. Morgan.

On the 29th of September the President of the Republic, Sixto Duran Ballén, signed Executive Decree No. 2143, authorizing the subscription of the different Agreements which integrated the Plan, signed the 4th of October by the Secretary of Finance, Modesto Correa San Andrés. The debt on 31st of May, 1994 totalized USD$7.070 million: USD$ 4.521.50 millions in capital and USD$2.549 millions in interest. It should be noted, notwithstanding, that the capital was simply nominal in view of the fact that the market value of the Ecuadorian debt was around USD$1.130 million.

As a basis of the operation was indicated that harboring the Brady plan meant a reduction in the capital debt of USD$1.173,9 million which reduced the nominal value USD$5.896 million. But in reality this amount was fictional because the real value is what was previously indicated.

To the USD$ 5.896 million the payment of USD$604 million[73] had to be added for the purchase of collaterals which guaranteed part of the bonds, which shows the injuriousness of the operation : between the Brady bond emission and the purchasing of the collateral, the Stated obligated itself for the sum of USD$6.490 for the debt which, if it would be repurchased, would have had to pay USD$1.130 million in addition to accepting inadmissible and infringement conditions of legal order, and submit itself again to structure its economic policy on the basis of the demands made by its creditors and multilateral credit organisms.

JURIDICAL CONSIDERATIONS ABOUT THE PLAN

a. The jurisdiction of the State was wrongfully prolonged, submitting it to the jurisdiction of foreign judges.

b. The opposition to the defense of the sovereign immunity of the Country was renounced. This waiver was not authorized by any of the legal and constitution norms, or by authorizational Decree No.2143.

c. Interests on top of interests were agreed upon consecrating the "anatocism" (consisting in the accumulation of overdue interests) and openly violating the dispositions of the civil and commercial code.

d. Even though legal domicile was established in the representative Counsel of Ecuador in London and New York, alternative domiciles were established in two financial institutions

[73] To face the payment 12 credits were contracted with multilateral organisms

foreign to the country, establishing the validity that any notifications regarding controversies and making it quite clear that the creditor had the faculty to select any of the agreed upon domiciles.

e. Infringement occurred concerning the legislation which establishes that only diplomatic agents or accredited consulship out of Ecuador could receive citations or legal lawsuit notifications, in which the Ecuadorian State is involved through the contracts or any other signed obligations, with the emission of bonds which would have to be accomplished; all this in conformity with the established in Art. 14, clause 3, of the Organic Law of the Public Ministry, which naturally was not performed.

f. The Ecuadorian State took it upon it-selves to pay the total expenses of the operation, including those that because of their nature corresponded to the banks that intervened in the exchange. Said expenses included legal fees and expenses of the legal advisors, operators, commission agent, representatives, and inclusive undetermined apportions.

g. It was established that Ecuador eventually be notified by mail by the agent and in case of not being notified by the closing agent, irregardless he was considered notified, violating in this manner a legal elemental principle of legal proceeding of the acknowledgment of the lawsuit in order to eventually propose the defense that they would think convenient.

h. The State renounced to all possible opposing defenses, leaving the country in a true state of defenseless, it would be impossible to effectuate any argument, in case of any juridical controversy.

i. The State, when it renounced to the utilization of any legal argument which could turn the contract null or illegal, violated public order of the Country and international agreements; and the creditors their own legislation being that of the United States.

j. Upon agreement that the contract was a private right (*iure gestionis)*, Ecuador accepted to be treated as a conventional merchant renouncing to the essential principles of its sovereign condition.

k. Upon renouncing to any legal action questioning negligence, improper conduct, or irregular procedures on behalf of the bank agents, the interests of the country were seriously affected, they were at the mercy of any abuse of rights which were executed in the total process of contracting, conciliating, and positioning of the bonds.

l. Ecuador obligated itself to pay any and all responsibilities, obligations, losses, damages, judicial fines, legal expenses, charges or disbursements, of any nature or class which they could impose or endorse which members of the management committee will incur, the closing agent, or any IE agent, or any action taken or omitted taken by the bank management committee, the closing agent, the IE Agent, and the fiduciary agent.

m. Violating the normal legal administrative elements, it was established that the collateral agent nor any of its directors, officials, lawyers, agents, sub-agents, sub-custodians or employees would be responsible for any action taken or omitted by them or of any error or judgment error or in respect to non compliance or delay in fulfillment for any reason.

n. State Attorney General signed a decree totally imposed upon by the crediting banks incurring in the crimes of ideological falsehood and prevaricate.

These aspects which has been summarized in the most possible synthetic manner not only resulting in detrimental acts to the dignity of the nation but they also constituted a clear example of constitutional and legal violations which have been indicated in the prior points, in addition to be in clear evidence that the State did nothing more than contract obligations, renouncing to all its rights as a sovereign entity.

In exchange for this submission the creditors would relief of any contractual obligation and they were even exonerated for the misconduct that they may have incurred.

THE GLOBAL BONDS

Before the crisis which took Ecuador to the suspension of the Brady bond payments the 20th of August of 1999 occurred, the Public Debt Reengineering Unit had been created

In charge of studying the alternative which would allow the country to restructure, refinance, and / or negotiate its debt in the most adequate terms for the national economy, and elaborate a serious of projects which serve as a reference frame for a new refinance.

Violating its own agreements that establish the existence of bonds, whose payments would guaranteed by collaterals and utilizing the excuse the unwillingness of creditors to execute the warranties they began to study the aspects of new indebtedness.

Through Executive Decree 466 of June 5th of 2000, the President of the Republic, Dr. Gustavo Noboa Bejarano, created the negotiating committee for the foreign debt, granting it faculties so that in coordination with the secretary of finance and economy, will renegotiate the foreign debt and granting ample attributions to the President of the Commission to lead the negotiation. The same day executive decree No 466 was signed, and named as President of the Commission was Economist Jorge Gallardo Zavala, and on the 7th of June through Executive Decree No. 473 members of the negotiating committee were named, these were Alfonso Perez Kakabadse, Juan Montufar Freile and Francisco Arosemena Robles.

On the 26th of July, President Gustavo Noboa signed executive Decree No. 618 thru which he authorized the secretary of finance and economy, Luis Iturralde, to execute the emission of global bonds. Additionally he was empowered to proceed with the restructuring of the foreign debt, subject to "the terms and conditions specified in the documents that contain the exchange offer of the indicated debt and prepared by Salomon Smith Barney.

JURIDICAL CONSIDERATIONS CONCERNING THE OPERATION

a. The offer of emission, was not authorized by Ecuadorian laws, because Decree No. 618 entered into effect after the signing of the offer.

b. On the 26th of July, with amazing speed Decree No.618 was dictated, the State Attorney General emitted a Decree, the offer was signed by the Ecuadorian Counsel in New York, and the General Director of Studies of the Central Bank of Ecuador prepared the report

DGE-565-00 by means of which he recommended a favorable emission report. The Bank Directory had a meeting and approved the emission by means of a Resolution. All these acts violated the due administrative procedures.

c. The attorney Ramón Jimenez Carob in his judgment did not analyze the terms of the operation and conditioned his opinion to the fact that the Ministry of Finance would work with authorization from the President of the Republic.

d. With the direct contracting of Salomon Smith Barney article 12, clause c. Consultative Law was infringed.

e. Salomon Smith & Barney and J.P.Morgan intervened in the negotiation of July 27th without Ecuadorian authorization.

f. The agreement that regulated distinct obligations of the participants in the emission of bonds naming *indenture*, was not subject to consideration from the State General Attorney violating the legal dispositions which demanded it.

g. The emissions did not obey the formalities of a public offer, subject to the stipulations of the *Securities Exchange Commission (SEC)*, as corresponded to a clear and transparent negotiation of a sovereign country, but to the forms of a private placement with qualified buyers and a series of sale restrictions in the United States.

h. The control that was the competence of the State General Comptroller was not existent.

i. In the *indenture* the immunity of the sovereign state was irrevocably renounced, which was not authorized by the constitution in force and to any other immunity right concerning execution.

j. Unconditional rights were granted to the bond holders.

k. If was falsely established that the agreement of emitted bonds were in legal form under the laws of Ecuador.

l. The "colocadores" were exonerated from the responsibility of any damage that they may have incurred during the operation and they were guaranteed indemnity and maintain them free of any loss, damage, reasonable expense, which evidence an obvious or a clear inequity and absolution of responsible damages to Ecuador.

THE PERFORMANCE OF THE STATE ATTORNEY GENERAL

In all the steps for restructuring of the debts and in the new contracting of the public foreign debt the roll of the State Attorney General had been more than significant in as much as the successive constitutions established the figure of this official as being that of the State Lawyer, in other words, the one in charge of its defense and the most precise advisor for the protection of its interests.

In all the constitutional systems the figure of the Attorney General always has decisive importance because is he who upon analyzing documents that have been submitted for his judgment can question all the clauses that result damaging or inconvenient; it is definitely the maximum consultant and advisor of the State.

Through its judgments the State should have the assurance that all documents submitted for its acknowledgment or review strictly comply with all the legal dispositions of the Republic and with the political constitution; consequently in the opinions that it emits you may always see a relation between the juridical norms to which the contract must be submitted in order to do not contravene the juridical order.

Through the investigation conducted by the CAIC and the State Attorney General's office and the analysis of the judgment realized by the Attorney General in the different governmental periods, concerning the distinct restructuring of the public debt performed between 1993 and 1996, and the subscription and validation of the *tolling agreement* of December 9th of 1992, to the Brady plan signed on October 1994, the conclusion can be reached that in the generality of things the decrees were not the product of personal analysis in the part of the Attorney or Official of the State Attorney General's office.

Effectively, they obeyed mere formal acts in which these officials limited themselves to receiving from Central Bank and Finance Ministry authorities the decree projects that they had to emit and would reproduce in the organisms without any change or with some simple detail modifications, which did not affect the legal aspects of the contracts. *(35). In the case of the global bonds the Attorney General Jimenez Carob simply conditioned his opinions to the authorization of bond emission thru a Decree of the President of the Republic.

In all the agreements for any type of indebtedness the normal procedure consisted in that the Attorney General would send a text to which he would have to abide in its decree, which the General Manager of the Central Bank or Ministry of Finance will send him with its original in English and an attached translation. Except for an isolated exception, this text was respected in detail without this important State official showing even the least scruple in obeying such an imposition which creditors sent through economic authorities of the country.

After the verification conducted by the General Attorney, the CAIC, it has been approved without even the least doubt that in all the documents referred to in the indebtedness the creditors utilized the same procedure, send it to the General Attorney through the officials of the Central Bank and Ministry of Finance, the model of how they should enunciate establishing a permanent state of illegality, which was never questioned and in contrary was adopted as a norm.

The scrutiny of the Decrees emitted by the State Attorney General has allowed verification of what has been previously been expressed. There had been more than 200 decrees registered concerning the restructuring of the external debt since 1983 up to the global bond emission of the year 2000. In which the opinion of the lawyers of the State has been in reality that of the creditors obviously dictated the documents alleging legality and legitimacy in everything that was being done.

It may be noted that all the different ways of proceeding which involved one of the highest officials in the State administration realizing act which are clearly delinquent presents an enormous damage to the country it leaves it in a virtually defenseless situation because the

General Attorney did not act in function of the task assigned by the Constitution – to legally advise the State and reassure their interest, in this case concerning the agreements of the debt -, instead he limited to comply a serious of formal act related to the opinion he should give.

THE INTELLECTUAL AUTHORS OF THE DEBT AGREEMENT

If in fact it was the foreign banks that imposed their conditions on the country during the complete restructuring process of the debt it is important to know the intellectual authors of the distinct operations which in some cases acted jointly with the Ecuadorian advisors abroad.

Milbank, Twee, Hadley and McCloy is one of the principle attorney buffets in the United States and the globalized world, founded more than 140 years ago, it operates in the principle financing centers of the world:

London, Tokyo, Frankfurt, Munich, Beijing, Hong Kong, Singapore, Los Angeles, Washington and Moscow.

They have been advisors of JP Morgan and partners of Rockefeller group for more 80 years, they represented the most important financial groups, the New York stuck exchange, historically Chase Manhattan Bank.

Among its prominent partners stands out among others John Mc Cloy, lawyer and diplomat, advisor to seven United States presidents, Under Secretary of Board, President of the World Bank, commissioner for Germany 1949 to 1952, President of the Chase Manhattan Bank, President of the Ford Foundation, and special advisor to President Kennedy and, William H. Webster, lawyer and judge of the Appeals courts of the Aid Circuit, Director of FBI from 1978 to 1987 and Director of Center of Intelligence Agency (C.I.A.) from 1987 to 1991. In the year 2002 they were denounced by the University of California as being principle protagonist of the Enron catastrophe accusing them of having prepared false documentation, inclusively delinquent strategy which determined a fraud of more than USD$ 32.000 millions.

THE LAWYER COUNCELLORS OF ECUADOR

In all the restructuring process of the debt and in the emission of bonds, you can count on the external advisory from lawyers of the United States who supposedly would work in benefit of the country discussing clauses, limiting conditionals, trying that the operations would be the least expensive possible. Otherwise, it would not be justifiable to expend great sums of money and legal assistance that would not be useful.

Nevertheless in no case was it like this: no bank, tweed, Hadley McCloy orchestrated the agreements which they sent to the lawyers of Ecuador, who limited themselves to transmitting to the country, making some formal observations.

The lawyers who the country had to year 2006 were Coudert Brothers, and Cleary, Gottlied, Steen and Hamilton.

· COUDERT BROTHERS

During of decade of 1980 the lawyers which executed the advisory of the country in all processes of the restructuring of the debt were the integrants of Coudert Brothers, a legal buffet of long tradition founded in 1853 which represented for many years the investors of the Panama Chanel, Ford Motor Company, distinct arms and weapon purchasers in the whole world. Their offices were established in 28 countries, with more than 600 lawyers and an important roll lasting more than a hundred years, up to its decadence and bankruptcy, in 2006 following the frustrated fusion of Baker and McKenzie.

· CLEARY, GOTTLIEB, STEEN AND HAMILTON

This buffet was founded in New York in 1946, by Henry J. Friendly who was appeals court judgment for second district in New York; George Ball, acted as secretary of the State and Ambassador to the United Nations; and Fouler Hamilton who occupied the direction of the Agency for International Development (USAID). After fusions and transformations the buffet opted for the name that is presently known by. Its prestige began to increase due to the association with Jean Monnet, Chief Architect which would be the European Union and in 1971 the opening of the offices in London situated him in a leadership position in Europe nevertheless his real positioning began with the structure of Brady Plan between 1990 and 1995 in different countries, and the buffet to care all of the negotiations, advising debtor countries such as Mexico, Argentine, Chile, Panama, Ecuador. Afterwards continuing with the advisory to another countries they had advised and continue doing so to multinational companies – and to the most important institutions such as the Citibank, ABN AMRO, Citigroup Global Markets, Bank of America, HSBC, Goldman Sachs, Royal Bank of Canada, Deustche Bank, BN Paribas, Crédit Suisse, Crédit Lyonnais, BBVA, Société Générale.

Among its specializations you find the defense of executives involved in financial transgressions.

Its lawyer have held important public positions such as Secretary of Tributary Policy for the Treasure of the United States, Director of the Corporative Financial Division of the SEC, Supreme Court Judge of the United States, Lawyers of the European Community Tribunal, Executives of New York Times, and members of the Appeal Organism of the Commercial World Organization.

This buffet that we have said appears in 1992, it was contracted by Central Bank of Ecuador in the 9th of September 1993, in conformance to the authorization conferred on the 16th of August by the Executive Commission of the Monetary Board, which had received on the 2nd of August a report from the Foreign Debt Bank Manager supposedly favorable for said contracting although the contracting date is the 9th of September, on the 16th of August 1993 the President of the Monetary Board, Ana Lucia Armijos, informed Dr. Augusto de la Torre, General Manager of the Central Bank, to proceed with the payment of an invoice dated 5th of May for USD$82.778,13 and another on the 4th of August for USD$656,427,05 presented by the indicated firm of lawyers.

Based on the conferred authorization by the Monetary Board, Dr. de la Torre, authorized payment of the two invoices, for the total value of USD$739,205,18, and Economist Mauricio Valencia, Manager of the Foreign Debt of the Central Bank, was instructed to execute payment advising him that said invoices were due to professional services or legal advise and expenses incurred in matters related with the refinancing of the external debt on other legal aspects.

At the Central Bank these documents have not been found which would justify neither those payments, nor any relation with the procedures realized by the lawyers in the advisory of the refinancing of the debt.

This buffet of lawyers ceased to advise the country just recently in March of 2008.

VIOLATIONS OF THE JURIDICAL ORDER

After examining all the contracts of the greater sections of the commercial debt whose clauses we summarized in the previous pages, evidence appears attesting to the violation of the different constitutions, the civil code, commercial code, the organic law of financial and administration control, and the consultative law. As public actions transgressions had been committed such as ideological falsehood, prevaricate, incompliance of the duties of public officials, the breaking of the political order with total impunity without the established control organisms in the constitutional text having decided to intervene in guarding the public patrimony.

But this disdain to legal order on behalf of the officials, of the legislators, of the highest authorities of the Executive Power and naturally of the crediting financial groups, and the multilateral credit organisms, were not limited to the dispositions of internal legal right of the country but to the infringement of the general principles of the law, which are the source of public international right, inclusively, the in force legislation of the United States to whose jurisdiction all the debt contracts were submitted.

Additionally international agreements have not been recognized and juridical doctrines have been quietly accepted as the autonomy of will, the disgusting debt, the non compulsive collecting of the public debt, and during the decade of 1990 inclusively the principals of UNIDROIT[74] which are good will, excessive onerous, force majeure, fraud , error, and threat.

On the part of the authorities the will to defend has not existed, utilizing legal arguments to question contracts, refute or still solicit a reconsideration over the base of the principle *rebus sic stantibus* of roman law, which recognizes the same fundamental that *unnecessary hardship* of Anglo Saxon Law, the norms of the Vienna Convention, which could result in the application for those public order norms which were violated when the agreements were instrumented.

I can not help but point out that the contracting analyzed it is quite evident that:

1. The abuse of legal right
2. The violation of public order
3. The vice of consent
4. Illicit enrichment
5. The distortion in the meaning of public credit
6. The disregard of administrative right
7. The public patrimony lesion

THE CREDITORS CONFIGURED A NEW POLITICAL ORDER

[74] International Institute for the Unification Law

Since the appearance of general massive processes of indebtedness as well as the affluence of external credits for Latin American countries, as a product of petrodollar generation, in the second half of the 1970 decade, began a slow progressive and deleterious modifications of certain norms in international public right, even the internal rights of the countries to adapt them to the credit agreements which would be signed by distinct governments.

This modification supposed a substantial change about the diverse forms of contracting in order to give way to a juridical conceptualization, where the general principles of legal right in many of the uniform criteria which would be handled up to that moment about the consideration of the State acts, would radically change. The principal one would be the sovereign immunity of the State which would cease to be absolute as had been considered by the classical doctrine to put it in a better way restricted or determined acts of government.

It was pretended, in specific manner to limit its reach in a clear attempt to privilege the situation of the creditors and to impede any defense which could opposite. And to that restriction of the state sovereignty was added the new interpretation of the act celebrated by the same which would result fundamental for the interpretation of the contracts in case of an eventual controversy limiting the sovereign rights of any countries and submitting them to foreign jurisdictions, always agreed upon in benefit of the creditor.

The concept of *iure imperii* ,as an exercise or practice of sovereign power, would be substituted by the concept of *iure gestionis* in all contracts celebrated with financial organisms, understanding that the State did not proceed in use of its sovereignty, but contracting as the conventional debtor being these agreements as mere commercial acts, in consequence, susceptible to be judge by the jurisdiction agreed upon in them. From then on in all the contracts of the external debt and in the emission of bonds it was established with clarity that the acts being celebrated were *iure gestionis* and in consequence will deprived of any type of immunity which could oppose the lending State, in addition it became quite usual to agree the specific resignation to oppose the defense of sovereign immunity.

Additionally norms of internal right were being modified, such as those forbade the capitalization of interests and it was like this that the Codes of Argentina, Brazil, Spain, Italy, France, among others, the acceptance of the “anatocism” (capitalization of interests), when they mediate the agreement between parties existing the absolute prohibition only in the German Civil Code.

In Ecuador’s case there were no modifications in the Civil Legislation inclusively this prohibition was included in the Political Constitution of the State of the year 1998 but these dispositions were regular violated by the different Governments, which they ignored when they accepted said capitalization in the contracts of the commercial debts and in the contracts of the bilateral debt which CAIC had examined. The application of internal right had been waived in order to submit to the creditor’s legislation which would permit said forms of contracting.

One point of singular relevance is the modifications of the internal juridical order of the States constituted the fact that the annulment legislation controls which could eventually limit the indebtedness or question its reasonability and legality. In some countries they opted for the delegation of parliamentary faculties in favor of the executive power; in others such is the case of Ecuador, all possibility of control on the part of the National Congress was eliminated, being the constitution of 1967 the last one in which indebtedness was controlled by that power of the State.

To the evident modification of norms which had been in force during decades and form part of the doctrines of the greatest writers of law, new concept concerning the deregulator was added which was approaching as consequence of the external indebtedness which would not stop potentialyzing itself with the rising of the interest.

It is necessary to point out that this process was borne from the evolution of a series of economic theories, which for one of its defenders shook the foundations of some classical institutions of administrative law and can be summarized in what has been called “new public economy” (public choice). This new school questions the interventionist function of the State, analyzing the hypothetical weaknesses it would have as a regulator and as administrator as well, understanding that all action of the State directed towards common wellbeing was nothing more than simply theory which the facts would be in charge of refuting in each step. Furthermore attempts to demolish the juridical conception of the State attributing a complete set of inequities and its construction while they pondered the virtues of free market as the only possibility of a maximization of possibilities for the common man, characterized than nothing more than “economic man” that only sought its individual interest.

This is to say, there existed a clear intention to modify the juridical frame work which would regulate the debt agreement, imposing determined contractual norms which would impede in any case an efficient defense of the debtor by abusive acts which would be an increase of interests, rates, in a unilateral manner over the base that the Federal Reserve Bank of the United States would decide. This was also added to the decisions of privatizing public enterprises of the Latin American continent and the process of indebtedness was going to be a substantial element to do it with.

These theories were transformed afterwards in a development of distinct doctrinal aspects which were imposed in all the contracts for public debt as a way of avoiding any possibility of defense of the borrowing countries which in the majority of cases accepted all conditions, they submitted themselves to these impositions, claudicating before abusive clauses, violating their own internal rights, infringed an customary norms of public international rights, and finally conditioned all the possibilities of their economy to the financial structure which imposed them.

SECTION III.

MULTILATERAL DEBT

BRIEF CHARACTERISTICS:

In Ecuador in a similar form to what has occurred in other Latin American countries, the indebtedness process, with multilateral organisms was developed in an initial face with credits destined exclusively to investment projects, in conformance with legal dispositions ratified in the political constitution of the Republic, in force since 1998, which prohibits current finance expenses with public credit resources.

Later in the context of world finance globalization appeared the fiscal adjustment and structural change programs in order to impose, on the countries of the region, loans destined to the execution of macroeconomic programs, with which the financing of the state budget is completed. These credits have induced a self generating indebedness process, with the interest and the amortization services are covered with new credits and with amounts superior to those that had been amortized.

This model of credits not only generates a pernicious budget dependency but also constitutes a pressure mechanism so that the country infringes upon its sovereignty and it submits itself to impositions and conditions of economic policies, attached to the section of expenditures.

The group of multilateral credit organisms is comprised of IMF (International Monetary Fund) leader and vigilant of the financial monetary order,; the International Bank of Reconstruction and Fomentation (BIRF), also called World Bank; the Interamerican Development Bank (BID); the Andean Foment Corporation (CAF); Latin-American Reserve Fund and the International Fund for Agricultural Development.

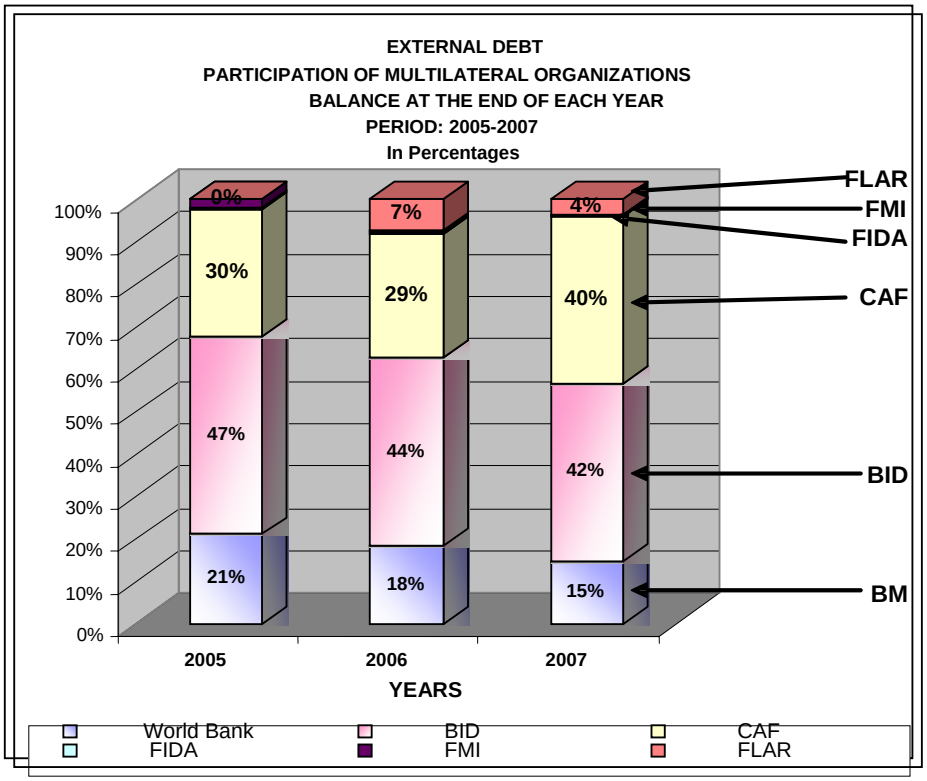
According to statistical data elaborated by the Investigating Commission of the Foreign Debt (CEIDEX), Ecuador contracted 286 credits with multilateral organisms during the 1996 – 2006, with amounts that totaled up to USD$12.500.30 millions which represented 42% of the public external debt contracted in the cited period.

The multilateral organisms participated with their credit in a limited way, designating them exclusively to development projects, consequently in 1991 the level of indebtedness with that crediting group was USD$ 574 million. With the debt crisis, the multilaterals come to rescue the private international bank in such a way that the amount owed by Ecuador ascends to USD$1.090 million in 1983 and continues to rise to USD$2.423 million in 1990, and USD$4.100 in 2000. The figures which are here forth noted refer to the contribution of each of the mentioned organisms in the last three years through the balances of due obligations.

BALANCES AT 31ST OF DECEMBER OF EVERY YEAR
Million dollars

International Organizations	2005	2006	2007
BIRF	816,9	762,2	698,5
BID	7	1.837,7	1.993,8
CAF	1.154,7	1.202,4	1.866,9
FIDA	18,1	16,8	16,3
FMI	78,5	22,7	0,0
FLAR	0,1	300,0	166,7
Total	3.888,1	4.141,8	4.742,2
Relation with the External Public Debt	35,8%	40,5%	44,6%

In the following graph it is possible to visualize the proportions in which the lenders participate in the multilateral section and their variations in the observed period. The balances of the World Bank had declined while the C.A.F. has increased in the credit concessions to the country



Fuente: Ministry of Finances.

SELECTED MULTILATERAL CREDITS

The Sub-commission of Multilateral Debt of Peoples, Environmental, Social Impact have carried out the auditing of selective credits specially due to the incidence which they have had an Ecuadorian economy and the living conditions of the population.

Bellow is a synthesis of the loans, grouped together by nature and destiny: Firstly we have those utilized over the base of macroeconomic programs and structural adjustment programs; afterwards those credits with specific destiny to sectorial projects such as education, health, agricultural, potable water, sanitation, infrastructure, foreign trade, mining, people and environments, and finally adjoins in the auditing the multilateral credits utilized in the multipurpose project Jaime Roldós Aguilera managed by CEDEGE, jointly with bilateral credits which are described in the corresponding point.

SUMMARY OF MULTILATERAL CREDITS IN AUDITING
In million - US dollar

CREDITS	No.	Contracted Amount	Disbursements	Paid Principal	Paid Interests and Commissions	Aprox Balance Due To 31/12/2007
PLAN BRADY CREDITS AND REFORMS	12	1.052,0	785,8	449,9	337,7	286,0
SECTORIALCREDITS	26	956,4	826,3	386,1	299,7	409,7
MULTILATERALS CEDEGE	7	466,4	439,2	426,6	283,3	32,9
TOTAL AUDITED CREDITS	45	2.474,8	2.051,3	1.262,6	920,7	728,6

Source : Ministry of Finances – Under secretariat of Public Credit

Fundamentals of the selection

It consists of twelve credits that came together due to their link with the Brady Plan negotiation, which in turn contemplated conditions and precise resources for the insertion of the country in the free market model.

Both objectives appear interrelated in a reiterated form although in an ambiguous manner and in some cases hidden, in the loan documentation which are analyzed in this segment.

In concerted acts, five loans -four from the World Bank and one from the BID- were subscribed in one day (February 10th of 1995) previously three credits from the BID were signed in one day, the 8th of December of 1994. On February 1995 the credit from the FLAR (The Latin America Reserve Fund) is contracted and in the 25th of March, Japan granted three credits co-financed with the three multilateral: FMI, BM and BID (IMF, WB, and IDB).

In this operations a multilateral collision is configured in order to support and assure, in first place, the negotiation of the Brady Plan, whose legitimacy and legality are seriously questioned in the examination which the CAIC makes of the commercial debt; and with the perception of proper occasion, introduce the economic doctrine at the moment related with the reduction in size and role of the State, privatizations, productive and commercial liberation behind the backs of prevalent inequities and social impacts.

The second group corresponds to 26 loans, granted in the sectorial ambit, by the World Bank and the IDB (International Development Bank) where credits with specific destinations or use to sectorial projects, such as education, health, potable water, agriculture, foreign trade, mining and environment, rural development and peoples. This selection primarily obeys the presumption of illegitimacy in accordance with previously established criteria of the CAIC by clues, amounts, and impacts.

Finally, and as the third part of the multilateral debt, not exclusively, because in accordance with the project segment the internal and bilateral financing are also considered “the emission of bonds and the counter part”, the auditing has circumscribed to credits utilized in the multipurpose project “Jaime Roldós Aguilera” managed by CEDEGE, whose grand components

in the Daule – Peripa dam, the Marcel Laniado de Wind hydroelectric power plant and the decanting of the Daule river to the Santa Elena peninsula, demanded the greatest efforts deployed by the country in order to satisfy regional necessities, based on the large amount of resources almost completely proceeding from the foreign debt.

CREDITS FOR DEBT REDUCTION, (BRADY PLAN) AND MODERNIZATION / PRIVATIZATION

INTERNATIONAL AND LOCAL CONTEXT OF THE AUDIT SELECTED CREDIT AGREEMENTS SUSCRIBED

After the decade of 1980 international pressure was unleashed in order to introduce new liberal policies which restrain the intervention of the State so that the market may freely interact.

The fundamental idea of these policies has been the reduction of the size of the State and the public expenditure, deregulations, privatization of enterprises and institutions, with the handing over of public assets, and competences to the private sector, laboural flexibility and market aperture.

For the application of these policies in the emergent economy, the multilateral organisms constituted as financial agents, inclusively private operations, utilized the credits which included the demands of measures which governments should adopt in order to receive the disbursement agreed upon. All this is a stage of high liquidity and speculation in the financial markets and before the eminent necessity that multilaterals had in order to place their monetary availabilities.

Ecuador did not escape this type of pressures in the same decade of 1980 but it is in the subsequent decade under the Presidency of Architect Sixto Duran Ballén when it was admitted, with fidelity, the contents of the neoliberal economic doctrine, compiled in the prescription from the Washington consensus. It was in reality the Vicepresident, Ec. Alberto Dahik, who exercised the State leader in economic material.

Within the framework of a discrediting campaign of the institution and the magnification of the unbalanced economy at the moment,, that government dictated, after two months of having taking office, a drastic plan of economic adjustments which entailed the elevation of prices of combustibles, electric bills, telecommunications, and the macro devaluation of the local currency.

Additionally, since its initiation the government established contact with the IMF whom they informed of the applicable measures and those which would be adopted in the measure of its economic program 1992 – 1993. In the letters of intention, subscribed one of the 31st of March of 1994 and the other transacted in 1995, commit itself to apply measures of deregulation, privatizations, and offered fiscal super-avits in order to assure the payments of the debts and other legal and administrative reforms which configured the faithful compliance to the suggestions and demands received.

The IMF considered the circumstances adequate and the World Bank totally agreed with the IDB and did pact with commercial banks that formed part of the integrants with the management committee formulated orientation documents each one in its own environment, in which they

registered the conditions and actions which the country should adopt to the Brady negotiation, widely focused in another section of this report.

- Country assistance strategy / CAS set by the World Bank in 1993.
- Country Plan from the IDB , expedited in 1993 for the orientation of policies and conditions of credits for Ecuador
- Letter of intention of 1994 and stand by agreement with the IMF signed in May of 1994.
- Financial plan for Ecuador, June of 1994 disseminated later as the Brady plan and prepared by the lawyers buffet residing in New York.
- Letter of development policies, of October 1994 elaborated with the guidance of the Mission of the World Bank so that Ecuador may present it as a requisite for the approval of the package of the first four loans which are analyzed in the following titles.

The major part in the contest of these documents is included in the form of precise commitments in the different credits, to whose compliance on behalf of the governments in office are conditioned the various sections in disbursements.

JOINT NEGOTIATIONS: A PLANNED MULTILATERAL ACTION TO GUARANTEE THE OBLIGATIONS OF THE BRADY PLAN

- The World Bank grants Ecuador credits in a package for the sum of USD$312 million with denominations that reveal in some cases openly and in other veiled, the two real objections of the negotiation assured with guarantees the application of Brady Plan and the consequent revalorization of the Ecuadorian debt and introduce in the national economy the legal and institutional changes that the neoliberal model demands.

The agreements to the following credits were signed on the 10th of February 1995:

3819 – EC- / BM – Structural adjustment (SAL)
3820 – EC / BM – Reduction of the debt
3821 – EC / BM – Technical assistance for the Public Enterprises reform (PERTAL)
3822 – EC / BM – Technical assistance for the modernization of the State.

- That same day the IDB joints the agreement to adopt the Brady Plan, through the concession of credit 850-OC-EC- USD$80 millions to Ecuador, in order to contribute to the acquisition of bonus coupon 0 from the Treasury of the United States in the condition of collateral for the bonds exchange in the mentioned plan.

- On the same date the FLAR receives the credit solicitude from Ecuador and grants the loan with unusual swiftness, USD$200 millions for the Brady collateral operation.

- On previous days the IDB subscribed with Ecuador three credits which are processed for different development programs, and simultaneously signed the 8th of December of 1994 with commitments not declared in the agreements, that, that the first disbursement for each one be destined to the purchasing of collaterals (US Treasury bonds coupon 0) which formed part of the Brady Plan. These three loans from the IDB are:

831-OC-EC - Agricultural development for USD$80 millions

833-OC-EC – Financial sectorial program for USD$100 millions
842-OC-EC - Support and reform for the public sector for USD$80 million.

- Finally the Japanese Government decided to support the concretion of the Brady Plan through a financial facility of up to USD$200 million, segregated into three credits which co-finance, at the same time, previous loans granted by the World Bank (Structural adjustment), the IDB (Financial Sectorial Program) and the IMF (Stand by in process). The three credits were subscribed on the 24th of March 1995.

This complete financial collision put together so that the renegotiation and the payment of the debt can be a reality in the Brady plan was a product of "*support from the crediting governments" (in particular United States and Japan) and the multilateral financial institutions (World Bank, IDB, IMF), operations directed to reduce the weight and the service of the debt"* according to the document the Brady Plan for Ecuador that was distributed in 1994, and was elaborated by Cesar Robalino, Minister of Public Credit and Finance: Ana Lucia Armijos, President of Monetary Board: and Augusto de la Torre, General Manager of Central Bank of Ecuador.

It is important to remember that on the 10th of February 1995 Ecuador confronted the beginning of the armed conflict with Peru in its southwest border. At that time a grave economic situation was developing with unpredictable social and political implications were arising. Nevertheless these circumstances were not reason enough to the further process but more likely give a rapid concretion to the ineffable Brady Plan.

EVIDENCE OF MANIPULATION AND CONDITIONING IN THE PRE-CONTRACT PHASE

The multilateral lenders special the World Bank and the IMF intervened during the elaboration of the documents that formally, appeared free and voluntary decisions of the country. The conditions that appear in previous documents like the development policies letter and, later, in the agreements (generally annexed) at the same that proposed orientation missions for the preparation of the projects and programs receptors of the credits.

Similar economic and political measures are reedited in the credits that are integrated on this occasion in such a way that if they not apply in some cases it becomes inevitable in other credits for this the packages are conformed.

The following conditions appear in the development policy letters, of October 17th 1994, over which the World Bank approves the package of the forth credits.

- Diesel tariffs adjusted before the negotiations
- Payments through the bank network
- Restructuring plan, including a chronogram for the reduction of public employees
- Restructuring / privatization of public enterprises with a limited value and date estimated when the Government expects to receive.
- Restructuring of the telecommunications (positioning of rented assets, and delivery of concessions if the companies are not sold)

- Final copy of the signed agreement with the commercial banks in Madrid including the agreement of collateral liens.

- Generic guides prepared with the CONAM for the privatization / disinvestment.

EXPOSED PURPOSES IN THE ANNEXES OF THE TECHNICAL ASSISTANCE AND STRUCTURAL ADJUSTMENT LOAN FOR THE REFORM OF PUBLIC COMPANIES (PERTAL)

The credit for structural adjustment indicates that the disbursements would be realized under advanced conditions in the execution of the program, with emphasis in the reform / privatization of public companies, specifically the issuing of the new Telecommunications Law in order to permit the privatization of all the telecommunications services.

It also demands satisfying evidence from the bank concerning the progress attained by the lender in the execution of the program that the action described in parts II and III of Annex 5 of this agreement (privatization of companies in joined macroeconomic policies) have been taken into consideration in satisfactory form and substance to the bank.

Annex 2 describes the project as an aid to the lender to sustain a firm macroeconomic policy: privatization of public enterprises; the execution of fiscal reforms, budget and administrative; appraisal of the public sector: And if it is convenient implementation of the Debt Reduction Plan.

In annex 5 that narrates the referred actions in the structural adjustment program, establishes as a fundamental point of the macroeconomic policies "the signing on behalf of the lender and its crediting commercial banks (that have at least 95% of the eligible debt of the lender, as is defined in the debt reduction plan) from an agreement to reduce the loan to said lenders". The PERTAL credit agreement contemplates the obligation to maintain in the CONAM unities from telecommunication and electricity sector as well as the strategic planning unit for the privatization and separation of the public companies. In all cases, the characteristics and specialization of the consultants who should incorporate the respective unities is explicit.

In accordance to annex 2 of the agreement the objectives of the project are:

a. Reduce the subsidy of electricity, in a substantial manner
b. Reform the legal frame and regulators of the electricity and communications sectors, to assure a total separation of the State policy and regulatory functions of the State commercial activities in said sectors.
c. Fortify (or establish and fortify) the public institutions in charge of said political and regulatory functions.
d. Privatize the provision of telecommunications and electricity services in Ecuador.

It is proven how the credits reiterate among themselves the principal goals of the multilateral intervention.

EFFECTIVE USE OF DISBURSEMENTS

- The agreement of the structural adjustment credit as well as other five loans analyzed in this group of twelve, establishes that the 75% of the funds will be utilized for the financing of the imports required during the execution of the program.

- The accounting verifications revealed that two disbursements were not destined to imports or the execution of the macroeconomic program. The first disbursement of USD$15 million was used, as was predetermined in the agreement, in the debt reduction

plan, concretely in the acquisition of collaterals of the Brady Plan. The second disbursement of USD$49 million, on the margin that was legally agreed upon, it was accredited to the provisions account for payment of the external debt that the Central Bank has in the Federal Reserve Bank of New York; this is to say in order to continue with the service of the debt to foreign private banks.

Flagrant illegality in this deviation of funds, because the destination of the credit does not adapt to the agreement or the destination of the multilateral financial organism: it is constitutive agreement does not contemplate loans to pay debts.

- The rest of the credit a USD$101 millions was rescinded because the real principal objective was accomplished that was the payment of credits. For the other objective, privatization of public services, was the other loan: PERTAL.

- In amendment to the agreement, the World Bank eliminated the "imports destiny", skillfully included to justify "auditing purposes" the irregular use of credit funds. But in the Central Bank remained lists of fictitious imports (the majority private) supported by the structural adjustment loan.

PERTAL CREDIT CONSEQUENCIES

- Neither in the pre-contract face nor in the agreement was a previous particular evaluation of the companies considered. Discrediting campaigns were deployed, without considering their evident strengths, the efforts and the necessity realized for universal coverage, the strategic, solidary and redistributed character and as many alternatives for improvement existed with less cost.

- It is presumably unconstitutional because its objectives and actions of privatizations violated Art. 46 of the Constitution in force at that time converting in general norm what said disposition establishes as an exception.

- The resources of the credit were used for onerous contracting, foreign and personal consultants in order to comply with the principle objective of the agreement: privatizations that failed. In light of accusation of irregularities, legal proceedings were not initiated. As in the case of Francisco Sweet, who charged USD$349.000 in 22 months of work in the Coordinating Unit.

- The institutional transformation in the area of electricity determined the paralyzation of the investments in hydroelectric infrastructure so necessary for the socio economic development of the country.

THE WORLD BANK´S APPLICATION OF THE STRATEGY FOR COUNTRY ASSISTANCE

In the context of the strategy of Country Assistance – Ecuador "CAS" "for its abbreviations in English" formulated by the World Bank, the MOSTA Project, financed with credit 3822, consolidates the budget reforms to the public sector structure in relation with the size, organization, and management capacity. Payment systems of the public resources "thru the private bank network" are defined, the existence or not existence of institutions is determined, of programs, competencies and attributions, decentralization, reforms to the economic legislation, public price policies,

MOSTA CREDIT LINKED WITH THE STRUCTURAL ADJUSTMENT CREDIT, WHICH IS FINANCED BY THE BRADY PLAN OPERATION

In a similar manner to what occurred with PERTAL, starting from the preparation phase of the MOSTA project, in other words during the PPF-206, the prolonged intervention of the economic and financial management of the Republic begins, which extends throughout of decade of 1990 and the beginning of the 2000 always to credit financing.

In the Memory Aid : Mid term revision mission. Cooperation project for the modernization of the State (MOSTA), on the 30th of April 1997, in the list of contents you will find the following: conditions of the Structural Adjustment (SAL, for its English abbreviation) related with MOSTA.

The first page of the text notes: *"the support that the MOSTA project mission rendered to the SAL Mission or centered around the imperative conditions in the related activities with MOSTA and SAL that probably should be included in any SAL that would be restructured, specifically, the institutional restructuring and fortifying of Minister of Finance, under the lineament established by the guide for the subscription of the institutional fortification agreement (CFI) and assuring that the payment system for the bank network which is fundamental objectives. Mr. John Panzer "Resident Representative", also closely collaborated with the MOSTA mission as well as with the SAL mission"*

It can be proven, once again, the premeditated relation of one credit with another, the same conditions of the MOSTA and PERTAL loans with the Structuring Adjustments "SAL" whose disbursements is worth reiterated, were destined to the adoption of the Brady plan.

MOSTA RESULTS AND IMPACTS, JOINTLY WITH IDB AND WORLD BANK CREDITS, WHICH APPLY THE SAME POLICIES

- In spite of the high cost that the public sector had to confront for the reduction of personnel "figure close to USD$400 million", this was an objective that was not reached. In the Central Government the number of public servants grew 40% from 1994 to 2005.

- The national planning was practically annulled since the suppression of the National Development Counsel (CONADE), drastically weakening the governmental capacity to order, impulse, or guide the national development.

- The social programs were significantly sacrificed as well in the modernization process with the elimination of the gratuitously access to schools and public hospitals, a great part of the population was margined from these fundamental services of education and health.

- Poverty index: unemployment grew in 6.1% (of the Economically Active Population , PEA) to 14.4% between 1991 and 1999 specially affecting female labour whose unemployment rate in the peak year during that period was 19.6%[75]. Large investment projects, managed by public companies and margined institutions in their capacity to construct infrastructure, ceased to be executed without the private sector being able to assume it, as was contemplated in the privatization model.

[75] Data taken from the Unemployment publication of Ecuador from the Technical Secretary of the Integrated System Social Front. September 2006

PARTICIPATION OF THE BID IN THE DEBT REDUCTION PROGRAM AND SERVICE

The referring documents to the agreement subscribed for the execution of the financial plan 1994 establishes the origin of the values required for its fulfillments in the following proportions:

Bilateral and Multilateral organism, 65% (fraction that is integrated with 13% the IMF, 20% The World Bank, 20% the IDB, and 20% the Japanese Government): and the remaining 35% would be financed by the Government of Ecuador.

In the same manner the IDB subscribed an agreement loan 850-OC, simultaneously with the package from the World Bank on the 10th of February of 1995.

In this credit concession and the three that were described further ahead the package of four credits is conformed, with which the IDB contributed to the acquisition of the collaterals of the Brady Bonds, established in the Ecuadorian negotiation of October 1994.

CREDITS LINKED TOGETHER FOR A COMMON PROGRAM WHICH CONCEALING THE DEVIATION OF THE HIGHER VALUE LOAN TOWARDS THE PAYMENT OF THE FOREING DEBT

a) Agricultural Development Program

For the execution of this program the IDB granted loan No. 831 for a value of USD$80 million destined to policies subprogram and credit No.832 for USD$12.5 million for the technical assistance subprogram

The accountancy revealed that the first loan was maintained on time for the following debt payments:

- The first disbursement was added to the acquisition of Brady Plan collaterals realized the 20th of February of 1995.

- November 25th, 1998 the Undersecretary General of the Ministry of Public Credit and Finance, José Carrera Espinosa, in the name of the Minister solicited Doctor Iván Ayala Reyes, General Manager of the Central Bank of Ecuador, that the second disbursement from the BID-831-OC-EC- loan “Agricultural Sector Program” be transferred to the “Public Debt Provision Payment” account.

- The third disbursement is accredited to the same account on April 18th 2000, “in order to cover obligations derived from the overdue payments of the external debt”

The decisions taken in coauthoring of creditor debtor but show the illegal practice for the total distortion concerning the destination established in the agreement. As in the structural adjustment credit case, the IDB is neither empowered because of its constitutive agreement for its credits to member countries be destined to the payment of debts, much less if the creditors are private.

It is additionally inferred, that only with the technical assistance subprogram funds (administered by the IICA) fulfillment of the conditions of the two credits was complied, as was emphasized in the project termination report presented in union with the management revision committee June 4th 2002.

b) Restructuring transportation services and sectorial financial programs

Loans 833 for USD$100 million, combined with loan 834 of technical assistance for USD$10 million, loan 842 for USD$80 million was contracted for financial sectorial program, jointly with loan 843 of technical assistance for USD$2.4 million, were supposedly destined to the restructuring transportation service program.

According to accounting registers, the fund of the principle loans – a greater value- were utilized in the following manner: the first disbursement in acquisition of collaterals and the remaining disbursements were managed by the lenders till on different dates, officials from the Finance Ministry and the Central Bank would solicit them for payments of other debts, such as those of April 2000 when they were in the process of signing of the stand by agreements with IMF.

It is convenient to know that in all the credit agreements subscribed with the IDB audited on this occasion you will find clauses like this one: Show that "the setting of the macroeconomic policy is still consistent with the agreement realized by Ecuador with the IMF approved on May 11th 1994".

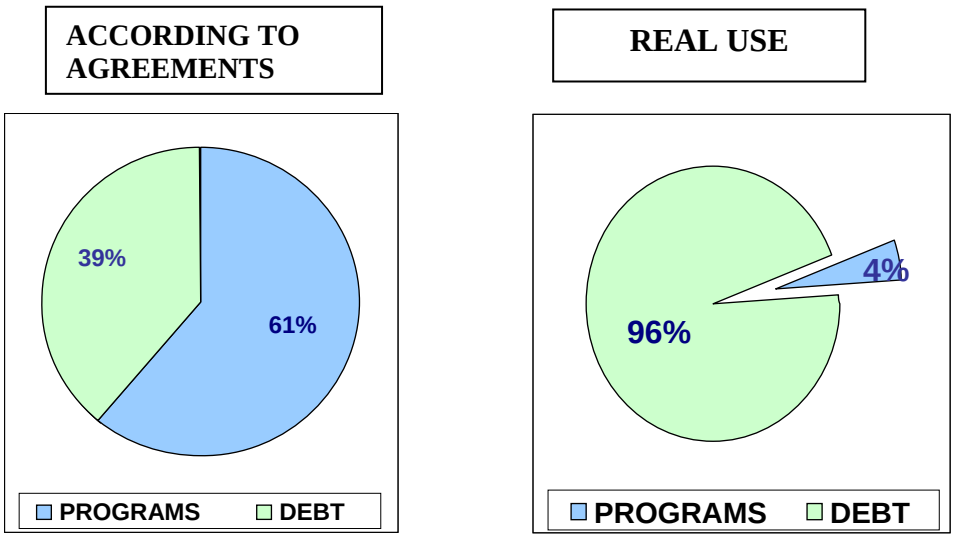
In this manner the IDB completes its participation in the Brady Plan and subsequent deviations of credit funds for new payments of debts.

CREDITS FOR GUARANTEES, PAYMENTS TO OTHER DEBTS AND STATE REPORMS

Million - dollars

	Contracted for Debt			With distorted destiny			Reforms	
	Bank	IDB	FLAR	WB	IDB	EXIMBANK Japan	WB	TOTAL
According to Agreements	130	80	200	150	260	200	32	1.052
Disbursments	130	80	200	49	206	91	30	786
Expenses in Programs					2	3	30	35
USED IN DEBT	130	80	200	49	204	88		751
Colaterals Brady	130	80			105	73		588
Other Payments				49	99	15		69

DESTINY OF THE FUNDS



The above illustrated table and graphs show the arranged actions of the multilateral lenders jointly with the Government of Japan and of course the Ecuadorian Government of Sixto Duran Ballén and Alberto Dahik to utilize contracted credits with distinct purposes and divert them in their majority, to the solution of debt problems with international banks.

In figures as well as in the graphs it can be observed that for the debt deduction program better identified as the Brady Plan, it was agreed upon to destine only 39% of the USD$1.052 million contracted in the total credits, the remaining 61% should be utilized in the execution of various programs and projects. In reality hardly 4% was used for said programs and 96% of the payments were for external debts.

Credits that financed sectorial programs

The second group of selected credits corresponds to the selection of 26 signed credits signed during the period 1976 and 2006 between the Ecuadorian State and International Financial Institutions, IFIs (World Bank and Interamerican Development Bank) which have supposed structural and legal changes in various productive and social sectors of the country (Annex 2).

IFI	Credit/Project	Year of subscription	Amount contracted in Dollars
	PUBLIC SERVICES		
	HEALTH		
BIRF	PROJECT FASBASE I	08.02.1993	70.000.000
BIRF	PROJECT FASBASE II	12.11.1999	20.200.000
BIRF	MODERNIZATIÓN HEALTH SERVICES - MODERSA	25.09.1998	45.000.000
	EDUCATION		
BID	IMPROVEMENT OF BASIC EDUCATION - PROMECEB	03.05.1990	43.560.857
BIRF	EDUCATION/TRAINING - EB/PRODEC	09.03.1992	89.000.000
BID	RURAL SCHOOL NETWORK PROGRAM	13.12.1998	45.000.000

BID	PROGRAM OF SCIENCE AND TECHNOLOGY	17.01.1996	24.000.000
	POTABLE WATER AND SANITORY		
BID	POTABLE WATER CONCESSION GUAYAQUIL	16.10.1997	40.000.000
BIRF	PRAGUAS I	11.04.2001	32.000.000
BIRF	PRAGUAS II[76]	01.12.2006	48.000.000
	AGRICULTURE, RURAL DEVELOPMENT AND POPULATION		
BIRF	RURAL DEVELOPMENT – PRONADER	08.08.1991	84.000.000
BID	AGRICULTURE SECTORIAL PROGRAM –PS[77]	08.12.1994	12.500.000
BIRF	TÉCHNICAL ASSISTANCE SUBSECTOR IRRIGATION PAT	19.10.1994	12.500.000
BID/BIRF	AGRICULTURAL INVESTIGATION - PROMSA	30.04.1996	51.000.000
BID/FIDA	INDIGENOUS AFRO DESCENDENTS VILLAGE DEVELOPMENT – PRODEPINE	12.06.1998	39.741.635
BIRF	POVERTY REDUCTION/ LOCAL RURAL DEVELOP.- PROLOCAL	03.01.2002	25.200.000
BID	LAND REGULARIZATION PROGRAM – PRAT	22.05.2002	15.200.000
BID	SOCIAL INVESTMENT FUND FISE III	22.05.2002	40.000.000
	NATURAL RESOURCES AND ENVIRONMENTAL		
BIRF	MINING DEVELOP./ENVIRONMENTAL CONTROL- PRODEMINCA	08.03.1994	14.000.000
BIRF	ENVIRONMENTAL TECHNICAL ASSISTANCE - PATRA	01.08.1996	15.000.000
	INFRASTRUCTURE		
BID/CAF	CUENCA MOLLETURO-NARANJAL ROAD[78]	1987- 1997	162.000.000
	FOREIGN TRADE		
BIRF	FOREIGN TRADE AND INTEGRATION PROGRAM	07.10.1998	21.000.000

- The audit done has an integral nature, as is disposed in Executive Decree No. 472.
- The Integral Audit of the multilateral credits incorporates the doctrine of ILLEGITIMACY of the debt, based on the lesion to the sovereignty of the State, violation of the human rights, collective and environmental rights, as well as the impact on people's living conditions, due to the IMPOSITION of neoliberal policies through projects financed with external debt.
- The amount of the selected credits would seem not to be too significant compared to the magnitude of the multilateral debt. Nevertheless, they constitute the credit framework, through which the neoliberal policies were imposed in the different fields, such as state services: health, education, drinking water and sanitation; agriculture, foreign trade, natural resources and environment.

76 The Ecuadorian Government in the first trimester of 2008 have resolved to renounce to USD$36 million of the loan leaving it as USD$12.000.000

77 For the PSA the BID granted another loan for USD$80.000.000 which was destined in all reality to the purchasing of collaterals of the Brady plan as well as other subsequent payments of the commercial debt (the multilateral credit reports for the debt reduction program)

78 The credits for the Cuenca Molleturo Naranjal road were audited due to its relevance, although it is not presently in force.

- The applied methodology has a relation with the doctrine of the Illegitimacy of the debt, and presupposes a list of criteria that have led the analysis of the official documents and enclosed literature. Priority has been given to the investigation of the lenders' responsibility. As will be seen next, beyond the financial analysis, it especially determines the interference of the multilateral credits in internal affairs of the country, and in the social and environmental impact of the towns.

- In the investigation of the documents that lie in official records, there have been extracted those that become evidence of the different findings in relation to the Illegitimacy of the credits, but not of the levels of responsibility in project management. A big limitation has been, in the majority of the cases, the difficulty in access to files or delivery of documents, and their condition, loss or elimination, due to the elapsed time or to the proper handling.
- There have been issued integral audit reports of each of the 26 credits/audited projects, with their respective supporting documents. There has also been carried out the general analysis of the incidence of the neoliberal model on the fields mentioned.
- The analysis of the credits has allowed us to identify similar practices that become common in the audited credits; which configures the nature of illegitimacy of the debt acquired by the Ecuadorian government with International Financial Institutions, as detailed below.

COMMON FINDINGS OF ILLEGITIMACY

LESION TO THE NATIONAL SOVEREIGNITY BY INTERFERENCE IN THE INTERNAL NATIONAL AFFAIRS

- The multilateral credits respond to an International Matrix

In the audited credits, evidence is clear that they all respond to the guidelines of the Country Assisting Strategy (CAS), designed by The World Bank (BM Banco Mundial) and "Plan País" (Interamerican Development Bank – IBD), which are closely related.

From the strategic guidelines of the BM, the World Bank, there is the evidence of four principles of the neoliberal management: a) management focus on the poor, b) introduction of legal reforms to the dismantling of the public sector; c) strengthen the private component of the management; and d) provide financial resources for such "adjustment" operations.

"The bank's lending strategy in the short term period is designed to support the current government (President Sixto Duran Ballén) on the implementation of its structural reform program, being the intensity of that support subject to the ability of the government to carry out the reforms. Our strategy of assistance will be focused on three major objectives. Given the importance of the problems associated with poverty in Ecuador, it is justified a continued and sustained focus on improving services to the poor. In order to respond to the priorities of the government program, we would also diversify our assistance to two other broad objectives: public sector reform and strengthening of public finances, and the promotion of private sector development. It should also be considered the support to find a solution to the situation of Ecuador's external debt."

Each one of these elements will be clearly identified throughout this integral audit. The CAS for Ecuador is defined in 1993, therefore, the majority of the selected credits are registered within its guidelines.

Under this same matrix the WB and the IDB have designed regional strategies to guide the reforms in the different fields, in Latin America and the Caribbean, such as: Health reform (BM 1997). Basic Education, Primary School and High School (IDB 2000). Food and Farming development (IDB 2002). Mining Strategy (WB). Water and Sanitation Program (PAS-ALC), and theme Group of Water and Sanitation. (GTAS) WB.

Another important identified aspect is the interrelation between the WB and the IDB with United Nations and regional corporations to impose these policies over the national needs. Among these institutions, there is FAO in the agriculture field, OEA, OPS, to comply with the reforms in the fields of health, as well as with UNDP for Water and Sanitation.

The strategy concerning Education is questioned, inclusively, in the evaluations done by the IDB (2003) where it is mentioned that the strategy for basic education of the Bank "is not useful to help the lending countries in the process of defining the priorities according to their contexts and specific institutional capacities because they propose an inflexible and one-dimensional solution".

There has also been identified the action of the WB depending on the interests of the transnational enterprises, as in the case of the Water World Forum (The Hague, 2000) organized by the water trading companies. On the other hand, the WB granted loans to transnational mining companies (Comsur, MBR, MITUI, SAMARCO, BHP-Billiton, RZ, Newmont), for US$ 790,5 millions, between 1994 and 2001. For this same field, the WB granted loans to five countries in Latin America and the Caribbean in order to modernize the laws concerning mining, and, in some cases, to support the privatization of State-owned mining enterprises.

The IDB places capitals even breaking its own internal rules, but always within the negotiations of the IMF.

According to the "Evaluation of the program of País Ecuador 1990-2002" conducted by the IDB, the following is found:

"There is no evidence that the Bank has realized "Evaluations of the borrowing capacity" of the country in the way required by its own internal rules (...) In many cases, the Bank was framed within negotiations led by the IMF, therefore it didn't prioritize the conclusions of its own economic analysis at the moment of operation approval.

The WB and the IDB boost similar projects and loans in the region, using the same matrix and the same interests. The WB has supported projects of similar characteristics as the PRAGUAS in Ecuador for Drinking Water and Sanitation, in Paraguay and Peru (PRONASAR). These institutions have implemented projects for the regularization and cadastre; and also, to promote the land market, besides Ecuador (PRAT), in Peru, Brazil, Bolivia, El Salvador, Guatemala, Jamaica, Belize, Nicaragua. These projects have been financed with credits that, until April 2005, have gone up to US$798 millions.

It has been proven that the WB is closely related to the World Trade Organization, since it finances and advises about the adequacy of laws and institutions of the countries according to the norms of this organization.

It is important to remember that in the WB and the IDB, the countries that more financially contribute have a major possibility to decide. Therefore, the northern countries are the ones that decide according to their interests.

THE WB AND THE IDB CONDITION THE CREATION OF EXECUTING UNITS IN DETRIMENT OF THE STATE INSTITUTIONALITY

In the evaluation of the "Program País" (Country Program), IDB 1990 – 2002, it's stated that the "the facto institutional strategy that was applied, used two instruments: the executing units and the technical cooperation".

In the majority of loan contracts of the WB and the IDB, the first disbursement is conditioned to the creation and reorganization of the Executing Units, recruitment of staff, and project assignment; being this done to the "satisfaction of the Bank".

The Project Executing Units (PEU) are set up outside the institutional structure of the respective ministries and state departments, generating overlapping roles. They function as parallel governments that respond to the control and monitoring of the WB and the IDB, which norms stipulate that all the decisions of the Project have to go through "no objection" of the Bank. The PEU follow the guidelines these banks establish in the frequent monitoring missions of the projects.

This way, the international financial institutions have direct interference in all that has to do with the Project: from the recruiting of coordinators, Executing Units Staff, national and international consultants, procurement of goods and services, to the legal and institutional changes.

Some examples:

- The credit contract of PROMECEB with the IDB, clause 4.02 Conditions for the first disbursement, subject to the reorganization of the Executing Unit MEC/BID, project, the project assignment and designation of functions.

- The contract with the IDB 832 of the PSA: in the clause 3.03 with regard to special conditions for the first disbursement, says: "The first disbursement of funding is conditioned on compliance with and total satisfaction of the Bank (...) (a) that the money lender has submitted to the bank evidence of the creation of the Program Implementation Unit (PIU) within the Technical Undersecretary of the Ministry of Agriculture.

- Clause 3.02 of the contract with the FISE III and the IDB conditions the first disbursement to an Operative Regulations of the Project, new structure of the FISE, recruiting entities responsible for monitoring and evaluation, management systems.

CREDITS ARE CONDITIONED TO LEGAL CHANGES IN THE PREPARATION AND EXECUTION OF THE PROJECT

The WB and the IDB condition the financing to the creation or reforms of laws, regulations, and their approval. This is meant to impel the structural reform in all sectors, which started with the expedition of framework laws as the Budget Law in the Public Sector in 1992, Modernization Law

of the State, privatization and public service delivery by Private Initiative of 1993, Special Law to decentralize the State and Social Participation of 1997, among others, as well as, the Constitution of 1998, with which, the process to implement the neoliberal policies in the country was legalized.

Consistent with the state reform; the changing of laws, policies and institutionality were to change the role of the state, from provider and administrator of services, to regulator, controller and evaluator, in order to transfer competences to the private sector.

Through these conditions were developed, managed and adopted two important laws in the Health field: Organic Law of the Health National System (2002), emphasizing that the health system, as well as, the models of assistance will function in a decentralized and participative manner; the Health Organic Law (2006), that emphasized the changes within the reform process in the Health field.

Concerning education, in the Project EB/PRODEC, changes to the organic regulations of provincial directorships of education were decided. As a requisite of the program "School Networks", the Special Regulation of the Autonomous School Networks is approved, with administrative autonomy. These projects would violate the Education Law in force, its regulation and the Law of Seniority and Teaching career, superior general tools, since it's not only a delegation of duties, but the creation of a new administrative structure. The Law of Education and its regulation do not mention the existence of school networks among the educational management organizations; there's no sustenance to hand over to the parents the administration of those networks. Also, in the Law of Seniority and Teaching career doesn't mention the Network Council as trained to dismiss principals and teachers.

In the agriculture field, the WB and the IDB condition important regulations in practically all areas of state intervention. In the credit contract 831-OC-EC, Agriculture Sectorial Program, is established the regulation of the Agriculture Development Law, according to the Bank, under free trading principles and price determination of the products and agriculture goods; elimination of the intervention of the National Enterprise of Supplying and Marketing (ENAC) in the agriculture market and derogatory of the Executive Decree No. 625 over the National Storage System. The same credit includes the satisfactory application of the dispositions in the Law of Agriculture Development regarding the land market; they redefine the functions of the National Institute of Colonization and Agrarian Reform (IERAC) and establish the creation of the Institute of Agrarian Development (INDA) in order to regularize the ownership of rural lands. It's arranged the preparation of a Law of Water project, according to terms of reference agreed with BID.

In the mining field it was conditioned the financing to the elaboration of the regulation of the Law of Mining 126 of 1991 and to its legal reforms, which finally were introduced through de Law of Investment and Citizen Participation (known as Law Trole II, 2000). With these reforms the benefits were expanded to the private sector, especially from abroad, making the direct investing conditions more flexible, eliminating royalties, minimum patents of conservation and production, among other.

In the environmental sector, under the auspices of the Project of Technical Assistance for the Environmental Management (PATRA) and the guidelines of the WB, it's promulgated the Law on Environmental Management in1999 which, under a neoliberal approach, defines a decentralized system of environmental management: it doesn't clearly establish the competences on control matter and environmental regulations that correspond to each entity or sector. Competences are mainly transferred to government ministries, sectional governments and the private sector

(Decentralized System of Environmental Management), creating serious conflicts of interest. Sensitive issues were left unsolved, like protected natural areas and ecologically fragile areas.

In the field of foreign trade, with the purpose to adequate the legal and institutional framework for the adhesion of Ecuador to the World Trade Organization (OMC), in the Phase of Project Preparation (PPF) of Integration and Foreign Trade, there was issued the Law on Foreign Trade and Investment (LEXI). The approval of LEXI by the National Congress was a condition for signing the agreement. There is conditioned the elaboration of other laws and regulations; among others, the Law of the Ecuadorian System of Quality and the General Regulation of the Organic Law of Customs. There are also being prepared the conditions for the promulgation of the Law of Promotion and Investment guarantee.

In the credit agreements, the WB clearly establishes that "correctives" would be taken – suspension of loan- if these laws, regulations and norms were modified.

· STRUCTURAL CHANGES OF THE PUBLIC SYSTEM ARE CONDITIONED, PRIVATIZATIONS AND TRANSFER OF COMPETENCES TO THE PRIVATE SECTOR

Health

In article No.3 of Credit Agreement FASBASE 1, referring to the Execution of the Project, it is conditioned the PRIVATIZATION OF THE FOOD PROCESSING PLANT OF THE MSP:

"Section 3.02. (...) No alimentary items produced by the food processing plants of the MSP could be acquired by the Project, unless those plants have been transferred to major property and control of the Private Sector".

The WB and the USAID promote the elimination of the Ecuadorian Center of Drugs and Supplies (CEMEIM) to weaken the governmental control mechanisms over price and acquisition of medicines.

In document of WB it is informed about the elimination of CEMEIM.

"Additionally, the Project supported the reform to the National System of Drug Acquisition (the old and inefficient CEMEIM was eliminated by Ministerial Decree in1999 based upon a Joint Assessment FASBASE/MSH/USAID which was prepared in the mid 90s and which outlined several options of reform), and the development of a new and compact Drug Administration Unit in order to apply more efficient selling and buying strategies".

The agreement FASBASE I conditioned the focus of free care and assistance and the recovery of costs of the prescribed medicines. In Article III of the Loan Agreement, referring to the Execution of the Project, it is established that:

"Except for the generic drugs (...) for children under 14 years and (...) high risk illnesses (...) the medicines covered by Part A3 (s) of the Project should be sold (...) at prices that result in a return to the MSP of at least (...) 35% from May 1996 to December 1998".

Project MODERSA had a component to create mechanisms of self management in the main public hospitals of the country, by which the costs of assistance were transferred to the users, affecting, in fact, the poorest people of Ecuador. The services were no longer free and the payment systems were generalized in all the Health System.

Education

In the Project Report PROMECEB it is indicated that:

"In order to partially recover some costs of the Program, the Ministry of Education considers the creation of a Special Fund for school texts; therefore, students would be charged a symbolic price for the textbooks, and teachers a more significant amount for the tutorial guides".

Condition to the credit PROMECEB was the creation of the main schools (CEM) (Agreement Min. 3695, 1990) without legal support, measure continued by the projects Friend Networks (Redes Amigas) and EB/PRODEC. With this disposition was reformed, by fact, the current Law of Education, its General Regulation and the Law of Seniority and Teaching Career.

The Educational Projects hand over private entities, and especially NGO (qualified as School Support) the teacher training, which is questioned for its quality and qualified as an outsourcing system.

The promotion of the school networks within the framework of the so called "school autonomy", creates forms of dissembled privatization that allow representatives of the private sector or individuals to take fundamental educational decisions.

Potable Water

The credit agreement of the BID 1026 OC-EC, the Concession Program to the Private Sector regarding the Potable Water and Sewage System of Guayaquil, was subscribed in 1997 when the current Constitution of 1978 in its Article 46 indicated that services such as Potable Water and others were exclusive of the state and that only in an exceptional manner would be delegated to the private initiative. By allowing the concession the current Constitution was violated since it stated "delegation" rather than "concession". In 1998, the Constitution, in its Article 249, establishes a skillful set of concepts that allows the introduction of the "concession" figure under the term "delegation".

So is it, that in the Project PRAGUAS (2001) it is supported, technical and financially the "delegation" of provision of Potable Water and Sanitation to "autonomous operators" (preferably private) through different models of delegation: management contracts, concessions, joint ventures, partnerships.

Agriculture

The BM and the BID condition the reorganization or elimination of institutions or state enterprises that used to develop agricultural projects, as well as, provide services.

Through the PSA several state enterprises were suppressed or privatized: National Fertilizer Company – FERTISA was acquired by the Group Wong.

The companies EMADE and PRONAMEC were administratively closed; ENDES and EMSEMILLAS were eliminated. The National Programs of Cacao Production, coffee, cotton and rice were closed. The warehouses ENPROVIT and ENAC were dismantled.

The Ecuadorian Institute of Agrarian Reform and Colonization (IERAC) was replaced by the Institute of Agrarian Development (INDA), limiting its functions to the regularization of ownership of rural lands.

The Loan Agreement for the Technical Assistance Project (PAT) establishes structural reforms that have to be fulfilled by the Government: reorganization of the National Council of Hydric Resources (CNRH), decentralization and new structure of the National Institute of Hydric Resources (INERHI).

To provide a legal basis to the project of sector irrigation, PAT, condition of the credit from the BM, there is the emission of the Executive Decree 2224, dated October 1994, with the objective of achieving the "transfer of the irrigation systems to the private users", the practical "extinction" of the INHERI, whose competences were transferred to the created National Council of Hydric Resources – CNRH, and to the regional development corporations. Each of the corporations, before constituting as such, were Irrigation Districts of the INERHI.

Mining

Section 3.09, Art. III of Agreement PRODEMINCA, states that:

"At the latest, a year after the date to go into effect, the borrower must have prepared a plan to the satisfaction of the Bank for the privatization of the Portovelo Mine and all the other mining operations owned by CODIGEM in Ecuador".

Throughout all the execution of the Project, the BM puts pressure on the elimination of the CODIGEM and the creation of the National Direction of Geology (DINAGE) to promote the investment in the private mining sector.

Clause 3.07 of PRODEMINCA Agreement states the new role of (CODIGEM) Corporation of Development and geological – mining –and metallurgical Investigation that used to administer and execute state interests.

Foreign Trade

Even though this project was never carried out, there was an attempt to privatize the commercial services of INEN.

Art. 111 of the contract stated:

"Section 3.06 The Borrower must, no later than June 30, develop sales of commercial services of INEN".

The Foreign Trade and Integration Project allowed that Representatives of unions not democratically elected have a high participation in the definition of the legislation and institutionality of several fundamental sectors of the Ecuadorian economy. Consequently, more power in decision-making parties related to foreign trade. This was realized with the expedition of

laws that created "mixed counseling". The most relevant cases were, Investment and Foreign Trade Council (COMEXI) and the National Council of Competitiveness.

Indigenous and Afro-American People

In the Credit Agreement of PROPEDINE, section 3 Benefits and Objective Population, it is stated that "the Project will be useful to maintain peace and stability, contributing this way to a favorable environment for investing in the private sector in Ecuador" making this way evident the real objective of the Project of Indigenous and Afro-American People of Ecuador.

IN THE CREDIT AGREEMENTS IS STATED THAT THE NATIONAL LEGISLATION IS SUPPLEMENTARY TO THE NORMS OF THE WB AND IDB

In the credit agreements, the norms of the International Financial Institutions are placed over certain laws; ignoring, in fact, the national regulation.

In the clauses and stipulations of the loan agreements were specified the application and compliance of various dispositions that would prevail over the laws and the national norms, in some cases, or would be omitted deliberately in other.

The conditions of the agreements related with tender, guarantees and consulting services, infringe the national legislation and seriously affect the national interests. In some cases these faults were observed by officials and national institutions, without obtaining any effect.

The national authorities accepted, almost without any restriction, the imposition of these conditions, disregarding inclusively the observations or allegations, that in some matters or facts were done by officials or national institutions, as it happened in relation to the loan agreements MODERSA and INTERNATIONAL TRADE, matter that was observed by the advisory committee of the Vice-presidency of the Republic, consisting of accepting clauses that infringe the legislation and regulation of the Consulting Law of Ecuador.

- In some loan agreements, there is a limitation to the function of The State General Comptroller and the State Attorney General; in other there's an expansion of the attributions of the Executive Unit.

In the PAT and PATRA, there was a limitation to the authority of the control agencies in the country, such as The State General Comptroller and or State Attorney General, to revise the tender final documents and the final contract. There was stated in an explicit way "the approval of the State General Comptroller and of the State Attorney General was limited to: I) The standard tender documents, II) the standard format of the contract". In the case of the International Trade Agreement, it wasn't considered the authority of The State General Comptroller and of the State Attorney General for approving the contracts or the selecting processes of consultants, to transfer these attributions to the Executive Units of the projects that, originally, only had an internal administrative function.

- THE IDB IS WARNED ABOUT IRREGULARITIES RELATED TO THE CONDITIONING OF THE BANK ON THE PROJECT PROMECEB, WITHOUT HAVING ANY RESPONSE TO THE WARNINGS:

Through official letter dated May 27th, 1993, the Ec. Rafael Correa Delgado, Administrative Financial Director of the Executive Unit MEC-BID, from August 1992 to April 1993, presents Mr. Ronald Brusseau, Representative of the IDB in Ecuador, a series of denounces that relate to:

- Derogatory through Ministerial Agreement No. 160 of Sept. 2nd, 1992, from the Regulation to Staff Recruitment (previous condition to the first disbursement). Nevertheless, the staff recruitment takes place without any pre-selection process and according to the will of the Executive Director and the Sectorial Specialist of the BID. The terms of reference are changed according to the person to be recruited.

- Existence of illegal contracts that violate what is stipulated on the Credit Contract.

- Existence of abuse of power by the engineer Oscar Aguilar, Sectorial Specialist of the IDB, evident in contracts, rehiring of a person who generates case of nepotism and abuse of staff of the Executive Unit.

IN CASE OF CONTROVERSIES THE COUNTRY IS SUBJECT TO A COURT OF INTERNATIONAL ARBITRATION RENOUNCING NATIONAL JURISDICTION

In case of controversy, it would be submitted to arbitration at an *arbitral tribunal* that according to the dispositions, should be selected in agreement between the parties, at the place and date set by the annulling arbiter, who was part of the *arbitral tribunal* that included the Representative of the Bank and of the borrower.

Nevertheless, in the loan agreements financed by the BID, like: PRAT,PROMSA, PSA, PROMECEB, REDES AMIGAS, FISE, it would remain stated that this *arbitral tribunal* would be constituted in Washington, IDB headquarters, this way the country would be subject to a court that was aside from the National Legislation and the Juridical Power of Ecuador.

THE WB AND THE IDB CONDITION THE STAFF REDUCTION, AS A STRATEGY TO REDUCE THE BUDGET OF THE PUBLIC SECTOR

Granting of potable water in Guayaquil

In the Loan Contract 1026/OC-EC, Annex A, about the Transformation of ECAPAG, it is established de Staff Reduction and mitigation of social costs, in which are stated two stages for the "Staff reduction": the first one through "voluntary withdrawal", and for the second one, a consulting firm would be hired to certify the final separation of the employees.

The proposed loan by the IDB contemplated the risks of the program pointing out the possibility of a "Rejection of the workforce to voluntary resignations", which was evident in prosecutions brought by workers against ECAPAG.

In the trial brought by a former employee of ECAPAG , the lawyer José Ramón Hernandez Moreno, he denounces the pressure he was subject to. "... as a matter of fact, fearing a penalty I went to the indicated place (...) I met with unpleasant people, armed and unknown, sent by the General Manager of the ECAPAG, engineer José Luis Santos García, for not letting me leave that office and the plant EL Progreso if I didn't sign my resignation, as well as other workers that

were told to go to that place (...) under pressure, I signed against my will the content of the resignation and other documents".

In total, there were 1607 liquidations, which meant an additional 18% to what was programmed in the Staff reduction plan.

Agriculture

PSA

Clause 4.04 of the Credit Agreement of PSA stated the previous conditions for the disbursements of the second stage of the financing, among them, there are the following: I)... make significant progress in the reorganization plan of the Government Agricultural Sector, that includes: II)... the process of reduction of assets and personnel of the INDA; III) adopt amendments to the Organic Functional Regulation of the MAG in order to take into account the suppression of the National Programs per Product, the reorganization of the INDA and INERHI and the advances on the Project of Agricultural Services.

Through adjustments to the Organic Functional Regulation of the MAG, its personnel were substantially reduced (from 8.000 people in 1992 to almost 1650 at present).

Mining

According to specific reports, there were paid indemnifications to 108 workers of the CODIGEM. According to the report of closure of the project, 120 people were laid off, who represent 50% of the total workers in the Undersecretary of Mining.

International Trade

Despite not being recorded in the contract documents, according to the report of mid-term review, upon the execution of the project 210 officials of the MICIP were laid off.

Additionally, the WB interfered in the decision regarding who could stay in the Unit, since the hiring of the consulting firm to decide on the most suitable staff for the different positions had to be hired under the principle of "no objection" of the WB.

THE WB AND THE IDB PREPARED AND EXECUTED THE PROJECTS AND CREDITS WITH THE CONSENT OF THE CORRESPONDIGN ECUADORIAN GOVERNMENTS, WITH SECTORS AND PEOPLE RELATED WITH PRIVATE NATIONAL AND TRANSNATIONAL INTERESTS.

In the Document of Strategy of the Country – Ecuador (CAS) of the WB in 1993, it is mentioned that:

"President Sixto Duran Ballén took office in August 1992. (...) the new administration immediately implemented a strong package of stabilization (...) a Law of Modernization of the Integral State, which was sent to the Congress will provide the legal base for the privatizations, the reform of the public sector and the decentralization; also, the Government has accelerated the liberalization of trade and financial markets and has enabled the regulations for foreign investment. The major challenge will be to reduce and reform an oversized and inefficient public sector, create the

environment to increase the investment and the productivity, to lighten the huge external debt burden and cope with the omnipresent poverty".

Effectively, one of the periods in which more credits have been found, was precisely in the Government of Sixto Duran Ballén and the Economist Alberto Dahik, vice-president and in charge of the programs called "Modernization of the State" to which belong the majority of the selected credits.

Since mid 80s, the 90s, until the middle of this season, the Ecuadorian Governments, negotiated, prepared and contracted agreements with the International Financial Institutions (IFIs), for the implementation of various projects in the different areas of the economy and the social area.

FOR THE TECHNICAL ASSISTANCE there were hired consultants associated to the IFIs

Potable Water

The WB and the IDB acted in a coordinated manner and worked together in preparing the majority of projects. Therefore the project PRAGUAS, financed by the WB, as well as that of Water Concession of Guayaquil, financed by the IDB, shared the same consultant: Dr. Jorge Carlos Rais, who in his country of origin, Argentina, was the architect of the privatization of the State Enterprise OSN-OBRAS SANITARIAS DE LA NACIÓN (public services supplier of potable water and sanitation).

In the case PRAGUAS I, the reform of the sector was lead by the economist Patricio Rubianes, who at the same time was the coordinator of MIDUVI projects. Economist Rubianes had been before official of the BM. Immediately upon signing the agreement, this official was hired as Coordinator of the PRAGUAS Project.

Health

The project FASBASE is prepared under the direction of Dr. Fernando Sacoto Aciaga, who later will be technical director of the project MODERSA and further on, its coordinator.

FASBASE hired Dr. Oscar Emilio Guerra Morales, so that, together with Dr. René Mauge Mosquera, they would elaborate the "Project for a National Health System" and the "Project about Private Health Insurance". Dr. Guerra, specialized in Finance, was one of the most active consultants of the BM for the health and social security reforms in several Latin American countries. Dr. Guerra was also hired by the Project MODERSA to continue with the preparation of the Organic Law of the National Health System that was approved in 2002.

Agriculture

Between 1993and 1994 there were elaborated initial reports by specific consulting led by the IDEA Foundation and supervised by the IDB and the WB

Morris Whitaker was consultant of the PAT and the IDEA Foundation that together with FUNDAGRO and PROEXANT, were the institutions that actively acted in the execution of the

programs dedicated to the agriculture sector reforms: PSA, PAT, PROMSA, financed by the IDB and BIRF.

One of these reports was elaborated by the engineer Jaime Durango Flores, national consultant hired by the BM for PROMSA, at the request of the minister of agriculture at that time, Mariano González, who simultaneously was in charge of revising, adjusting, negotiating the PROMSA with the IDB and the WB. Later Engineer Durango was director of the Unit of Implementation of the Program (UIP).

The IDEA Foundation received training from several international organizations (USAID) to prepare a preliminary report about the agrarian conditions in Ecuador (precedent to PAT, PSA, PRAT) and was directed by Neptalí Bonifaz, Representative of the Agricultural Chambers. The IDEA Foundation also prepared the Project about the Law on Agrarian Development in order to end the failure of agrarian reform and promote the need for a path of capitalist development in agriculture.

Dr. Julio Chang, who had been consultant of the BID and Director of the Executive Units of the PSA and PROMSA, was related to FUNDAGRO, as well as Mariano González, Minister of Agriculture, during the reform of the sector.

The execution of Transfer Component of Agricultural Technology, financed with the loan from the BID 892/OC, was in charge of the Consortium PROUNID, conformed by the PROEXANT Corporation (University of Florida an the IDEA Foundation), was hired on Aug. 5, 1998 for an amount of U$5,4 millions and for a 5 year period. The consortium PROUNID received U$5.262.358, which represents the 38,4% of the disbursement of the credit from the IDB.

The execution of Transfer Component of Agricultural Technology (GTA), financed with a loan from the BIRF 4075-EC, was in charge of the consulting firm from the United Kingdom, Natural Resources International Ltd. (NRIL). The total cost of the contract was U$2.879.299, subscribed on November 18th, 1998 for a 4 year period. The NRIL hires FUNDAGRO as administrator of the payroll.

Kevin Barthel, who participated as member of the staff of the Supervising Division in the Mission to identify the PRAT Program, the orientation missions (2001), in the preparation of the loan proposal, in the Administrative Missions (2002, 2003), was hired as consultant of the PRAT. The contract was signed on the 12 of June 2007, with duration of 7 days for U$7.085 (plus IVA), previous "no objection" from the Bank.

In some projects there were identified a series of related interests linked to private sectors and public officials.

Several names appear in a moment as representatives of private interests in mining and later to occupy public office as ministers and under secretariats of industry and even as consultants for the project. Among others, Pablo Terán Ribadeneira, President of the Mining Chamber, later Minister of Government; César Anibal Espinosa, advisor to the Mining Chamber, consultant of PRODEMINCA, advisor the Undersecretary of Mining, current president of the Mining Chamber of Ecuador; Jorge Paz Durini, former president of the Mining Chamber, later undersecretary of Mining; Santiago Cordovez Noboa, director of the Mining Chamber, later undersecretary of Mining.

From the first reunions of Ecuadorian Officials with representatives of the WB, regarding a possible credit for exports development, participate representatives of the Ecuadorian Exporters Federation (FEDEXPOR) and the Chamber of Industries of Pichincha. The Camber of Commerce in Guayaquil will incorporate later in different activities. The most evident case is of Mr. Hernán León Guarderas, president of FEDXPOR, who takes office as the first director of the Project for Development of Exports upon signing the agreement for the Preparation Phase (after having signed the Loan Agreement the project is known as Project of Foreign Trade and Integration).

The financial Institutions thoroughly chose the officials and the organizations related to the proposal of neoliberal reform in Ecuador.

HIGH COST OF INDEBTEDNESS

Cost of indebtedness

The International Financial Institutions charge high interests on loans supposedly assigned to the development of southern countries; in Ecuador the average is 5,24% and in some cases it has gone up to 8,46%. Additionally, anticipated commissions are charged for management and undisbursed commitments for resources.

FINAL DESTINY OF THE FUNDS

In the information obtained concerning the use of funds of a group of 13 credits, the principal destiny of the funds was to pay consulting service fees, training and technical assistance, with an average of 37%. Nevertheless, there are credits in which more than 60% is destined to pay consulting services, like PAT and PATRA. 17% is destined to equipment and vehicles, and the 16% to civil works.

Technical Assistance Program of Irrigation Sub sector (PAT)

72% of the loan was destined for expenses of personnel and training.

Citing problems of political and institutional instability, the work of the consultants had serious delays that led to a "renegotiation" of contracts, which reduced the supply of services from 48 months to 28 months without a substantial variation of the budget. For example the consulting firm UTAH should have been paid US$3.446.000 for a 48-month working period, but by means of the amendment, for a 28-month period it was paid US$3.445.999,68. (1)

Modernization of Health Services (MODERSA)

In the Preparation Phase, with funding from Japanese donation and loan advances from the WB (U$1.510.000), it financed basically international consulting services (92%) for the feasibility of the project, a total amount of US$1.383.751

University John Hopkins (hospital modernization)	US$718.911
Consortium California (Blue Print Health Reform)	US$594.320

Dr. Oscar Emilio Guerra (Legal framework Health Reform) US$ 70.520 (2 months)

PRONADER

The hiring of the Interamerican Institute of Cooperation for Agriculture – IICA was conditioned as a co-executor entity. In the Agreement with this entity it is established that salaries will be determined according to the salary scale of the IICA.

The construction of the tunnel Oyacachi cost three times more than the initial budgeted value, US$3 millions.

FOREIGN TRADE

Half of the funds of the credit were transferred to the Corporation for Promoting Exports and Investment (CORPEI), juristic person of private law.

Despite not being included in the project, people were hired as part of the technical team and an advisor for the negotiations with ALCA.

THE CONDITIONINGS VIOLATE THE FUNDAMENTAL RIGHTS, DEEPENING THE POVERTY AND ENVIRONMENTAL DESTRUCTION

The majority of the programs financed by the WB and the IDB were conceived as "compensatory" to the impacts of the economic policy; they weren't based on rights.

The audited credits contain several violations to constitutional dispositions and obligations assumed by the Ecuadorian government in different international documents: Declaration of Human Rights, International Pacts of economical, social. Cultural, civil and political rights; American Convention of Human Rights, Protocol of San Salvador, Collective Rights of Indigenous People, etc.

· FASBASE I and II BIRF 3510-EC/BIRF 2510-1-EC. The elimination of price control in the medicines prevents access to those in need and who lack the financial capacity to buy, creating a disadvantageous situation to the right of health, universal and without discrimination.

· MODERSA – BIRF 4342-EC. The "self management" through charges for health services, left the majority of the poor population of the country with an extremely limited access to them, restricting the exercise of one of the fundamental rights. This credit violates the human right to free access to health established in Art. 42 and 43 of the Constitution of Ecuador, and the right to protection of health established in the American and International Pacts about Economic, Social, and Cultural Rights, of which Ecuador is part.

· POTABLE WATER CONCESSION IN GUAYAQUIL – BID 1026-OC. The IDB granted a loan for the concession of potable water and sewage system services to Interagua enterprise. This company suppressed its service to users with fewer resources, that couldn't afford the increased tariffs since the granting in 188.89%. According to reports from ECAPAG, INTERAGUA suppressed the water service in 32.204 families from Guayaquil. 98.585 families have not been able to pay off their water service debts. The water service right is

restricted in important segments of the population; and consequently there's a violation of the effective exercise of the right to nourishment and health.

It is important to take into account that only 73 consumers of over 500 m3 of water owed Interagua only in the year 2006 US$16.2 millions. Interagua shows this amount in its account statements as "uncollectible accounts".

There's evidence in the contracts that investments to be made by the private companies were not guaranteed. In addition, Interagua does not meet its contractual obligations and has been fined twice, in 2007 and 2008 for not complying with the fixed goals regarding sanitary sewage system, which is causal enough for terminating the contract.

In the loan contract is established the reduction of ECAPAG Staff to facilitate the concession. More than 1.600 workers are dismissed. Interagua outsources with TERPER S.A. the hiring of 1.200 workers.

· PRAGUAS I and II-BIRF 7035-O-EC/7401-O-EC. The PRAGUAS Projects went against Art. 46 of the, at that time, current Constitution, by means of conversion of the exception to the delegation to private enterprise. In general, by promoting the abandonment by Central State and by the municipalities the provision of potable water and sanitation.

· PROMECEB – BID 834/SF-EC. In paragraph 4.44 of the agreement, it is established the cost recovery in education, while the Constitution of 1978 recognizes the right to free primary/basic education. The quality of education didn't improve with the BID projects. The Project REDES AMIGAS transfers the financial and administrative responsibilities to the parents.

· AGRICULTURAL SECTORIAL PROGRAM PSA 831-OC-EC

TECNICAL ASSISTANCE IRRIGATION SUBSECTOR BIRF 3730-S-EC PAT

The changes in the structure and agrarian legislation to separate the State from its obligations, the transference of the public irrigation systems to private users and the deinstitutionalization of the sector was an imposed and aggressive process of privatization of assets and transference of competences that benefited, principally, economically powerful groups, it strengthened the regressive trend on the irrigation projects, the credits ended up benefiting the landowners and the agro-exporter monopolies at the expense of people's rights, like the rights to nourishment and decent work.

· PRODEPINE BIRF 4277-0-EC. "The project will be useful to maintain the peace and stability, contributing this way to a favorable environment to invest in the private sector in Ecuador". The objective of this credit was to convert the supposed beneficiaries into simple functional objects to create a favorable environment for private investments. In the process of PROPEDINE there was the division of the organizations and the cooptation of its best leaders to the project structure and its weakening as actor and social force.

· FISE III – BID 1373-OC-EC. " The Committee of Project Execution and Administration (CEJA) is the Executive Unit that will represent the communities in the execution of projects to which this regulation refers". This way it is established a new organization over the traditional, the communitarian municipal council.

· ROAD CUENCA MOLLETURO NARANJAL. BID 227-IC-EC/723-OC-EC/1057-OC-EC/CAF. The construction initiates with a favorable report from the IDB, despite the engineering studies that showed serious difficulties when outlining the road. The change of the original route would have responded to economical groups of power. During the construction there was serious environmental, social and economical damage to 27 communities. The price adjustments with the construction companies raised in more than 1.000%.

· PRONADER – BIRF 3390-EC. The construction of the tunnel Oyacachi started with "no objection" from the Bank, but without the approval of the study on environmental impact by the INEFAN, going against the credit agreement.

· PRODEMINCA – BIRF 3655-EC. The WB didn't comply with its own operational guideline 4.01 related to the consultations during the preparation of the project; compelling to the execution of legal reforms to allow mining activities at great scale in Protected Areas and ancestral lands (Law to Promote Investment and Citizen Participation "Trole II" and Environmental Mining Regulation) that violate the Constitution and current Ecuadorian Laws.

The collective rights of the Indigenous People (Agreement 169 of the OIT and recognized in the Constitution of 1998) are not recognized in the legal reforms imposed from the credits, violating norms of national law like the explicit recognition of the norms and International Public Right.

· PATRIA – BIRF 3998-EC. The disorder of the Ministry of the Environment set up by PATRA and inadequate institutional regulations with other public entities, have caused that the environmental and collective rights have not been correctly protected.

In brief and as a direct consequence of the credits:

· There was a reduction of public employees, propitiating the violation of the human right to work.

· The elimination of the constitutional obligation to impulse the agrarian reform attempted against the social function of the property, established in Art. 48 of the Constitution.

· The payment imposition of health and education public services lesioned the rights to access to health and education public service in lower social classes;

· The privatization of Potable Water, with the effects from raising tariffs and the exclusion of the ones who are not able to pay, attempted against the right to access water and the right to health.

· "Creating a favorable environment for investing" against the indigenous organizations and Afro-American population attempted against their dignity and their right to organize themselves and practice their political right to offer resistance.

· Ignoring the Institution of the Community and the communitarian property, of wide force and deeprootedness in the rural/indigenous areas, attempted against the property community sector, on whose behalf the state was obliged to promote and develop, according to Art. 46.3, 49 and 51 of the Constitution then in force.

· The destiny of the major part of the credit resources for consulting services and administrative expenses, reaching the intended recipients only a residual value, attempts against the right of development of the people, the State as borrower and violents the principle of equality.

· The conditions imposed before and during the celebration of the credit agreement, in the determination of the adhesion clauses, in the execution of the projects; in the stipulations about interests and commissions attempt against the principle of equality of all people of the country.

- The conditions imposed before and during the execution of the credit agreement, the clauses included in the agreement, the implementation of the projects, and the stipulations regarding interest rates and commissions all violate *the right to equality for all people from member countries when dealing with multilateral institutions.*

- Facilitating direct investment by transnational companies without complying with the prohibition of the commercial exploitation of protected natural areas and territories belonging to communities living in voluntary isolation and neglecting the right to be consulted, violates – by omission - the individual and collective right to a clean and ecologically balanced environment, the community's political right to be consulted about decisions that may affect their natural environment and their economy the collective human rights of free peoples in voluntary isolation to live as they wish; to live according to their own cultural guidelines; to not be displaced from their territories nor physically or culturally exterminated.

These elements mentioned above constitute a violation of the *jus cogens* standards, among which are obviously all those incorporated into instruments for the protection of human rights. Regarding economic, social and cultural rights, we refer to the Pact on Economic, Social and Cultural Rights, specifically the Limburg Principles (interpreting the Pact) and the Maastrich Principles (violations of the Pact) in which there are very important tools to sustain the illegitimacy and illegality of loan agreements.

The right to a life of dignity will never be a reality unless everyone can exercise their Economic, Social and Cultural Rights fairly and appropriately.

Violating human rights due to the impositions of multilateral banks is reason enough to consider the debts contracted for under these conditions to be odious, illegitimate and illicit.

Loans for implementing the Jaime Roldós Aguilera Multi-purpose Project implemented by CEDEGE

Daule-Peripa Dam

The contract for the word to be done was granted to CEDEGE –Agroman on 17-11-1982 for a total of $ 189.9 million (calculated at an exchange rate of 25 sucres per dollar). Then, three complimentary contracts were signed expanding and increasing the number of projects and

adding complementary and additional work, resulting in a total, including adjustments, of (the equivalent of) approximately $ 284.2 million.

Findings and observations

Excessive cost increases throughout the implementation process

- Feasibility study (1978) $113 million
- IDB mission report (1980) $149.3 million
- Total contract amount (1982) $189.9 million
- Final cost (1992) $284.2 million (50% in readjustments)

Exaggerated unit prices

The main unit prices that were looked at were between 3 and 5 times higher than the market prices at that time. The difference of costs for these items totals $23.9 million (15% of the contract total).

Exaggerated Project benefits

In the loan contracts, the objectives include "irrigating 100,000 hectares; 50,000 along each bank of the Daule River", while in reality only 17,000 hectares were irrigated. Other predicted benefits like boating, recreation and tourism never happened. In fact, the opposite occurred.

Progressive loan cost increase

The financing began with a loan granted at a soft, long-term, annual interest rate of 1% and the interest rates that followed were at LIBOR plus 0.625 and were at 7.9% annually on outstanding principal balances, generating an increase in the cost of the loan.

The reservoir worsened poverty conditions and excluded the neighboring populations

CEDEGE did not fulfill the promises made to the community and creditors. After 20 years of filling the reservoir, there are still farmers who were affected. 14,965 rural residents from 8 populations were displaced and 63 communities were isolated.

The increase in cost for basic services is one of the highest in the country. The safe drinking water and sewage deficit is between 70 and 90%; the cantons and parishes affected by the project are among those with the worst living conditions.

The reservoir was a critical factor in the environmental deterioration of the ecosystems

Almost 1/3 of the reservoir's 27,000 hectares is covered with lily pads or other plant growth. The proliferation of these weeds has deteriorated the ecosystems, isolated many populations and provoked an increase in disease-transmitting vectors.

The natural forest has practically disappeared due to deforestation. Erosion affects 85% of the basin.

The loner did not enforce the environmental requirements

Despite fact that D.W. Jenkins of the IDB mission (1979), warned them about the aquatic plant growth and associated health problems, CEDEGE did not implement any serious program for controlling the aquatic undergrowth or reforestation of the basin. Nor did IDB enforce any of the environmental or resettlement guidelines.

Transfer from Daule to the Peninsula (PHASE- Aqueduct Plan for Santa Elena)

International Bidding Process PHASE-LI-01-86

CEDEGE´s bidding committee (June 24, 1987) resolved to a) award the contract to implement projects for the Section II and b) desert the Section I bidding process and then reopen it after 30 days, which was not long enough for a 160 million-dollar bid.

The Section I bidding process, which reopened under pressure in 1987, served as the basis for awarding and hiring 5 years later (10 December 1992) the same company that built Section I to implement Section II.

PHASE-Section II

The work contract was signed by the construction firm Norberto Odebrecht S.A. on October 9, 1987, for a total of $176.6 million (calculated at 152 sucres per dollar).

A modified contract and 3 complementary contracts were later signed for: changing the form of payment, decreasing the irrigation area, changing the irrigation pipes, introducing expansions, increases or reductions in budget lines and implementing works which were not in the original contract. The total amount of the investment was $238.25 million.

PHASE - Section I

The work contract was signed by the construction firm Norberto Odebrecht S.A. on December 10, 1992, for a total of $160.9 million.

Later,, 6 complementary contracts with a variety of modifications and extensions were signed. Of the complementary contracts, 1 and 3 eliminated the tunnel's concrete covering and changed its specifications. The total amount invested was $333.8 million, that is, 207% of the contract amount.

Complementary Infrastructure Projects in the Santa Elena Peninsula (OCIPSE)

The primary contract was also signed by Odebrecht & Asoc. (August 18, 1997) for a total of $126.7 million.

5 complementary contracts were signed for carrying out additional projects, modifications, eliminations, promotion, protection and eventual repair and/or reconstruction of the infrastructure due to the El Niño phenomenon, studies and clarifications of contractual stipulations. The total amount of the implementation was $259.2 million (205% of the contracted amount)

Findings and observations

Section II

Despite the fact that 34.8% more money was invested, not all of the irrigation projects that were in the contract were carried out, like in the Chongon irrigation region and the secondary and tertiary pipes in the Daular and Cerecita irrigation areas.

Section I

The contract freezes and "dollarizes" the value of the Ecuadorian currency to an exchange rate of 250 sucres to the dollar, but recognizes Brazilian inflation when payments are made in cruzeiros.

In the complementary contracts Nos. 1 and 3, certain items and technical specifications were changed in order not to cover the surface of the Cerro Azul tunnel. Changes were only made to the girder and not to the tunnel itself, which contributed to the tunnel's collapse in June, 2007. This occurrence implied liability on the part of the officials who made the decision and the firm which carried it out.

OCIPSE

The contract amount ended up costing 105% more due to complementary contracts for projects which were not originally considered.

The liberalness with which the projects were carried out and the pressure to work quickly as well as a desire to sign contracts resulted in the construction of projects like "the repair of the San Vicente Dam" which until now has served no purpose. Its cost was $10,674,870.

The potable water, sewage and pavement projects are not complex and could have been implemented for less money funds and with local contractors whose costs are much lower.

Despite having invested so many resources in the area, there are still inadequate services. According to "Aguapen", sanitary sewer services coverage is 40% and potable water is 70% (El Universo newspaper, January 14, 2007).

Water Transfer Analysis

Technical, economic and financial aspects

As of the date it was signed, the financing for the contracts was not been completely secured. In other words, resources were allocated to force the Ecuadorian government to act on "done deals".

In total, CEDEGE signed a series of 3 principle and 13 complementary contracts with Odbrecht over a period of 15 years.

The total value of three principle contracts was initially $464.21 million but ended up being $831.01 million. In other words, there was an 80% increase.

The Brazilian government, through the Bank of Brazil, financed the three principle contracts implemented by the Contractor Norbet Odebrecht S.A. These three loans later required additional loans from the CAF and BNDES of Brazil in order to complete the projects.

The Brazilian financial entities, BNDES and Bank of Brazil share the responsibility because they were both part of the chain of operations taking place in a country which was experiencing a financial crisis and weak political stability at the time.

Social and environmental aspects

Studies carried out in 1951 by the USBR, determined that most of the peninsula's ground was inappropriate for irrigation. In total, almost 2/3 of the irrigable area presented a high risk of salinization. However, the project was implemented anyway under conditions to be analyzed below.

The land ownership was passed from community to private hands.

Until 1982, in the project's potential irrigation areas 71.2% of the land was occupied by rural communities. As a result of the land transfer, only 90 private property owners now possess 81% of the land.

All Ecuadorians pay for the resources need for the pumping

The project was conceived, financed and carried out even though it was an unsustainable endeavor in terms of energy. Since the project could not cover its own operation and maintenance costs, the bill had to be passed on to the Ecuadorian taxpayers.

Effective irrigation areas: 1/3 of those planned

Of the 18,568 hectares which was to be irrigated to 8 zones of operation, only 6,276.4 hectares were actually irrigated. This implies an enormous loss of resources that were invested and not used.

The excessively high unit cost per hectare irrigated

US$571.75 million for 6,276 irrigated hectares provides an enormous cost of US$91,156 / hectare. If the amount invested is divided by the 18,568 irrigable hectares, the unit price is still US$30,805.69, which is still excessively high.

The tariffs do not even cover operating costs

The rate of US$0.01-0.02/ m^3 covers on average less than 50% of the cost of operation and maintenance. According to Herrera, P. (Universiteit Gent, 2005), the magnitude of the subsidy in the project is around 4.5 million per year of investment.

An economically inefficient and socially inequitable project

Despite the fact that PHASE is the most expensive irrigation system in Ecuador, to date the results have been very poor. After a decade of operating, the system has not achieved the expected results, with only around 20% of its capacity being used.

The project has caused more inequity and has favored those who already have more.

The installation and the chain of contracts associated with it were the result of a set of economic and political interests of certain national groups of power, on the one hand, and on the other, the interests of the contractor.

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HYDROELECTRICAL PLANT (MARCEL LANEADO DE WIND)

Works contract

- The first convoking of Italian companies took place August 8th 1991. Second convoking was 6thh of December 1991, in which 2 offers were received in the same Consortiums.

- The works contract was subscribed January 22, 1993, for the construction of two units of 65 mw each one for a total amount equivalent to USD$161.3 Million.

- Complementary contract No. 1 was signed January 30, 1996, for the increase in power for each unit from 65 mw to 71 mw. Complementary contract No.2 was signed June 6, 1996 for a third unit of 71 mw. The final amount of the contract was US$263.6 million (163.4 % of the original amount)

FINDINGS AND OBSERVATIONS

Firm financing did not exist when the contract was signed

The work contract was subscribed on January 1993 and the first credit contract was signed in November 1995. In complementary contract No.2 the consumer price index considered was that of Italy.

Variation of costs along the execution process

The cost of the project increased from US$53million originally estimated in 1980, a US$161.3 million in which it was contracted in 1993. Afterwards it was increased by the complementary contracts up to US$214.8 million to conclude at an amount of US$263.6 million including readjustments.

Bilateral financing that aided Italian companies

Caused by the financing offer which at the date of tender had not yet been specified, this was restricted to Italian firms in association with national local firms. The financing "partial" from Italy was subscribed four years later. For the financing of 20%, the tender process was limited to Italian companies limiting therefore the competition.

Real Power generated barely 1/3 of the installed power

The average power generated in the last 8 years is 75.8 mw which clearly shows the over-dimension power of three turbines, which function at 30% of their capacity. This shows that reserve value was non existent or critical flow sufficient to install three units. The decision to build a third turbine could have been justified during the emergency state that the country was going thru but not in long term.

Should this fact be proven it would constitute in a grave alteration of facts and in a transgression of fraud not having delivered the equipment specified.

Financial – Economic Aspects

Financing of the reservoir (dam) and irrigation system

Four DIB credits were subscribed for a total value of USD$320 million. The total amount invested was USD$422.3 million, amount that also used to finance the irrigation system Daule, in which the local counterpart was included.

Financing of PHASE section II

Was executed with an initial credit from the Banco do Brazil for 155.25 million (October 6th 1987) in addition to a credit by the Libra Bank for US$32 million and a local contribution of US$74.29 million.

Financing of Section I of PHASE

Initial financing was from a credit granted by Banco do Brazil for USD$115.6 million (August 7th, 1992), to which later were added to C.A.F. credits for USD$55.3 and 9.8 million respectively, a second credit from Banco do Brazil for USD$8.58 million, a credit from BNDES de Brazil for 11.9 million, additionally a local contribution for USD$132.6 million, which adds up to USD$333.86 million.

Financing the OCIPSE

The first credit was from Banco do Brazil (PROEX) signed on the 6th of October 1997 for an amount of USD$55.25 million. Later three CAF credits were received for 41.2; 13.3 and 25 million (1998) respectively, in addition a credit from BNDES for 38.25 million (June 18th 1998), a second credit Banco de Brazil for USD$40 million (August 14th 2001), an additional local contribution for 46.26 million for a total US$259.26 million.

Financing the Hydroelectric Central (Power Plant)

The Central was financed by a contract with Banco Medio Credito Centrale (November 22nd, 1995) for USD$60 million, additionally three CAF contracts (November 28, 1995) for USD$ 76.86 million, No.2 (August 8th, 1996) for USD$62.5 million, and No. 3 for USD$49.11 million, for a total external financing of USD$248.47 million.

Total Financing for CEDEGE in audited projects

Contract	Initial amount millions dollars	Final amount CEDEGE Million US$	Observations
Dam and irrigation	189.87'	422,3'	
PHASE II	176,61	238,25	
PHASE I	160,90	333,50	Includes high level
Ocipse	126,70	259,26	Includes complem. 4
Central hydroel.	161,3'	263,6'	
Total	815,38	1.516,91	186,0 %

CONCLUSIONS FOR THE MULTILATERAL DEBT SECTION

1. The multilateral credit organisms diverted their mission stipulated in the respective constitutive agreements and they promoted disloyal systems for getting into debt with their member countries like Ecuador, after having make alliances with private powerful creditors, in no case are these organisms allowed to grant loans for the payment of debts or related guarantees with the same.

2. These organisms associated themselves in order to save illegitimate debts like those negotiated in the Brady plan without skimping distractions or diversions and distortions in the destiny of the credits.

3. The multilateral credits shared recurrent characteristics whose objective is the imposition of a neoliberal model such as:

a. Interference in internal country affairs with the consequent lesion to its sovereignty.

b. Weakening of the State, deregulations, and privatizations.

c. Renouncement of national jurisdiction and the right to defend and claim.

d. Violation of fundamental rights of people and towns; as well as disrespect to its principles and international agreements for human rights.

4. Thru linked together credits, a uniform model was imposed, distant to national reality, which weakens the state capacity to plan, promote and orient national development, in function of guaranteeing the interests of powerful national and international groups.

5. The audited multilateral credits, while establishing unlawful conditions to the interests of the Ecuadorian people, generated political instability and continued confrontations between social sectors and the governments.

6. The conditions imposed thru the credits limited the fundamental rights of people; such as the rights to health, education, work, alimentary, and a healthy environment.

7. In spite of the high levels of debts the life condition of the population, especially those of native indigenous, farm-workers, and afro-descendents, particularly the women did not improve; quite the contrary, the poverty has grown deeper, migration has increased, and the environmental conditions have deteriorated.

8. Sufficient proof exists to repudiate the loans that conform the group that was examined and exposed in this part of the auditing, of the multilateral debt and initiates annulment process and reinvindicates sovereignty.

9. The juridical analysis, from the Ecuadorian rights point of view, in the perspective of the international right, and the specific doctrine of the legitimacy of indebtedness (the act of getting in debt), find that the multilateral credits audited on this occasion revealed the simultaneously presence of the factors of hatefulness, legitimacy, illegality, and illicitly.

Section IV

BILATERAL DEBT

INTRODUCTION

The examination was aimed at carrying out a detailed analysis of the country's bilateral indebtedness process, through a case study, which was determined to be representative based on the volume of funds committed in the process. Previously, and using the same criteria, the countries to be analyzed were selected from among those who had outstanding balances as of December 31, 2007, when the audit was closed[40].

The scope of work includes two levels:

1) The study verified compliance with existing laws and regulations in Ecuador for contracting public foreign debt, under the terms provided in the guidelines contained in Title I, Chapter 8, Section 2 of the Organic Financial Administration and Control Act (LOAFYC). As a result, a series of deviations were identified which could potentially be grounds for nullifying the processes that they are associated with.

2) The contractual terms agreed upon for external financing were analyzed, in order to establish the degree to which they were aligned with international legal principles, the application of laws and regulations existing in creditor countries and in Ecuador, and with healthy financial practices.

The limitations with the greatest impact on the scope defined for the examination consisted of:

1) Disperse and incomplete information
2) The absence of documentation related to the different phases of the process: pre-contractual, contractual, implementation and project closure.
3) The lack of environmental and socio-economic impact studies

GENERAL CHARACTERISTICS OF BILATERAL DEBT

As of December 31, 2007, the bilateral debt contracted by Ecuador totaled US$2.615 billion, corresponding to 109 projects considered priorities for the development of the country when they were approved[41].

The loan balance is US$1.371 billion, or 52.4% of the total debt acquired. Brazil, with US$554 million, and Spain, at US$375 million, are our largest creditors. Together they account for 67.7% of all outstanding foreign debt.

36 loan operations were audited, totaling $1.609 billion, equivalent to 61.5% of the total debt acquired and 65.2% of the total outstanding balance. Most of the loans audited were from Spain (16) and Brazil (15), which represent 42% and 25% of total bilateral debt, respectively. The

[40] Nevertheless, events after that date were also looked at to the extent that information was available.
[41] This includes the loan granted to HIDROPASTAZA S.A., guaranteed by the Ecuadorian State. Source: Ministry of Finances.

balance owed as of the cutoff date related to these loans was $893 million, as illustrated in the following table.

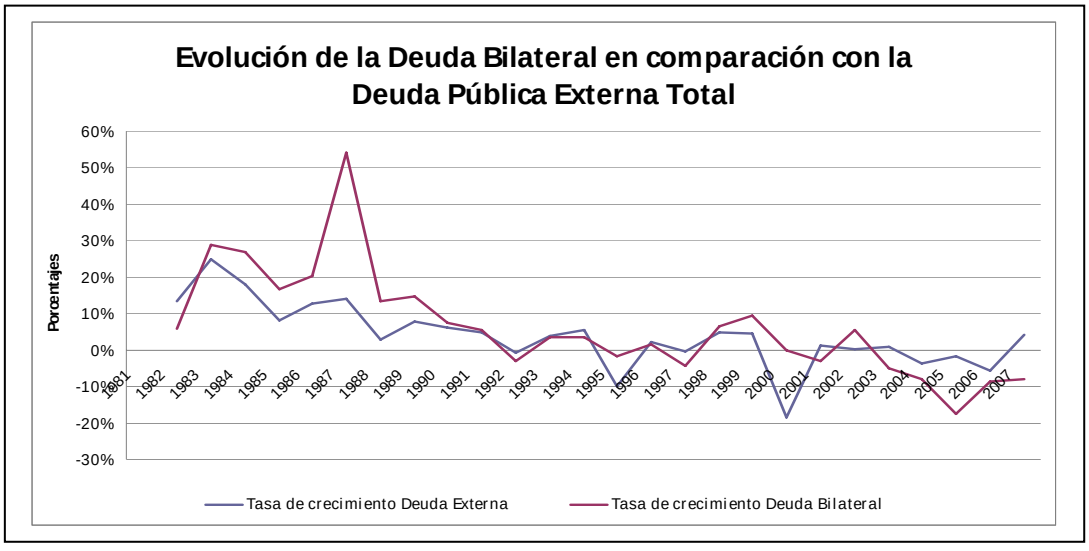
AUDITED LOANS COMPARED TO ALL ORIGINAL LOANS
IN US DOLLARS (exchange rate as of December 31, 2007)
BALANCE AS OF DECEMBER 31, 2007

CRÉDITOS AUDITADOS SOBRE EL TOTAL DE CRÉDITOS ORIGINALES
MONEDA USD (Cotización al 31 de diciembre de 2007)
SALDO AL 31 DE DICIEMBRE DE 2007

CRÉDITOS ORIGINALES				CRÉDITOS AUDITADOS			% CREDITOS CAUDITADOS	
PAIS ACREEDOR	Nº	MONTO CONTRATADO	SALDO ADEUDADO	Nº	MONTO CONTRATADO	SALDO ADEUDADO	%M. C.	%S. A.
ALEMANIA	13	137.396.162,05	60.181.696,24	0	-	-	-	-
BÉLGICA	9	24.143.481,80	16.947.132,24	1	1.386.200,10	1.386.200,10	5,74	8,18
BRASIL	18	1.091.593.592,38	553.533.488,19	15	1.038.273.379,00	534.538.801,68	95,12	96,57
CHINA	6	22.212.731,47	7.101.568,19	0	-		-	-
DINAMARCA	2	22.046.969,71	16.734.752,06	0	-		-	-
ESPAÑA	35	650.606.523,66	374.492.801,67	16	369.218.548,71	240.050.175,95	56,75	64,10
FRANCIA	12	165.994.436,01	86.543.841,77	1	32.528.770,94	15.310.727,44	19,60	17,69
ITALIA	5	105.628.894,10	76.211.625,58	1	70.672.538,04	70.672.538,04	66,91	92,73
INGLATERRA	1	32.000.000,00		1	32.000.000,00	-	100,00	-
JAPON	8	363.464.334,13	178.745.388,17	1	64.785.889,77	31.065.570,90	17,82	17,38
TOTAL	**109**	**2.615.087.125,31**	**1.370.492.294,10**	**36**	**1.608.865.326,56**	**893.024.014,11**	**61,52**	**65,16**

Fuente: SIGADE BCE

Evolution of Bilateral Debt in comparison with Total Foreign Public Debt



The 80's were the decade where the bilateral debt more expanded, with an annual average growth of 22%, bigger than the total external public debt growth that was 13% annual.

The 90's were characterized by a significative deceleration of the contracting debts, with a 2% of average annual growth. Since year 2000, the bilateral debt decelerated faster than the total debt,

with an average rate of -7% per year, meanwhile the total external public debt decrease with a rhythm of -1% per year.

For the service of the prevailing bilateral debt at December 31 2007, the country aimed $ 2.164 million USD. From this amount, 55, 9% was aimed to liquidate the capital; 32, 3% covered the payment of regular interests and the difference (11, 8%), corresponded to commissions and delay interests.

Common evidences in bilateral contraction of debts

Linked help

The main characteristic of the bilateral contraction of debts has to do with its condition of linked financing. The total of the analyzed credits, during the examination, finances exclusively national exportations of the creditor country, under mechanisms more or less onerous, depending on the money-lender. This situation is translated into "help" bounded to the expansion of goods and services, even for concept of discharge of fiscal's duties[42] of the creditor country that imposes quality restrictions and acquisition prices.

In most cases, these deficiencies finally concretes in works with structural failures that affects the generation of cash flows on the projects and demands costly repairing that turn into additional financial charges for the country, outside of the impact over the real hedge of services that requires the society. Some examples that better exemplifies this situation are San Francisco dam, the financing for the supply of drinkable water in Guayaquil and the Tabacundo irrigation project.

National sovereignty waiver

It is a common clause in the external debt contracts; in Ecuador its state of being in force has been "justified" because an extensive interpretation of the constitutional norm[43], from which is inferred tacitly but not explicitly that resignation of the national sovereignty is admitted in the case of international agreements signed in a foreign country.

In this way, the country concurs to the process as one more citizen, without empire power, deprived of every sovereign investiture and accepts to submit the contracts to the legislation of the creditor country or even to a third country; which permits that the contract state clauses estrange to the Ecuadorian law, getting even some of them, because of this resignation, to be contrary to the constitutional and legal norms and in some cases to the public order of the country.

Resources that do not enter into the country

[42] The credits received from Brazil to build facilities include the financing of discharge of fiscal's duties with Brazilian companies. The export insurances are contracted with official companies with its cost to financed charge.

[43] Article 14 of the prevailing Republic's Constitution; article 16 of 1978 Constitution and its codifications.

This condition relates with the criteria of linked help and annuls the multiplier effect the over the internal economical activity that waits a “foreign” investment. In the practice, the money only changes of account in the creditor country, generating in exchange adjustments effects by inflation and exchanging rate that translates into substantial increasing of the debt for the borrower. From the legal point of view, this situation brings to identify a doubt in the motivation of contracting these debts, in other words, the inner motivation of the contracts, that is one of the requirements for the validity of the deeds and contracts in the Ecuadorian legislation as well as the prevailing legislation in the lender countries.

Most part of the projects do not achieve their objectives

The process, in most the cases longs and tiresome (for being little transparent), followed since the formulation of the project until the subscription of the financing agreement and the effective found disposal, translates in the practice into a significative variation of the prices at the moment of the start of the works, which motivates financial laps , that are not attended with opportunity and even rebound, afterwards, in unfinished and useless works that demands voluminous additional founds to become productive (if they get it).

The responsibility of the lender does not consider these situations and self restrain to offer the required founds because the final objective is reduced to the sell of products and services. In this way, the object of the contracts is disguised because generates only benefits to the contractors and lenders, whose nationality generally is the same, and not for the population of the financed which is apparently what motivated contracting debts. In this situation, may be considered as violator of the licit cause, which constitutes an element of validity of the contracts, common in several western legislation with Roman or Germanic roots.

General Findings

Illegalities in the precontractual phase of the credits

The preparation of the will of the State, to compromise in the agreements of the agreements, is contemplated in the section 2 of the Chapter 8, Title III of the Organic Law of Financial Management and Control (LOAFYC). The breach of such formalities may lead to bear with the nullity of the contracts because the will of the State has been vitiated and, as consequence, the procedure would have lack of validity.

From the examination made, the following observations relative to the precontractual phase were determined:

83% of the made reports by the Public Credit Sub Secretary does not include an analysis of the economical situation or payment capacity of the credit benefited entity, as is disposed in article 125 of LOAFYC. Due to this misstatement in the reports, the incised second of article 128 of the legal body in reference was not either applied. The State granted its guarantee without knowing with certitude or having pondered adequately the true payment capacity of the guaranteed entity.

The availability of information with regard to the project, its profitability, programming and other related aspects was limited; in the files of the Finances Ministry were not found all the investment projects, even if article 123 of the applicable norm demands that the credit solicitor entity, previously to de authorization application to acquire the compromise.

The conceded credit deserved by BNDES[44] to Ecuador. From analyzed agreements (8 agreements) the financings conceded to Ecuador, four of them were contracted through the subscription of a credit agreement; the rest were habilitated through promissory notes or I.O.U., exclusively. This procedure constitutes an unfulfillment of the restrictive disposition contained in article 127 of LOAFYC.

Illegality in agreements

Abusive clauses in credit agreements

"Abusive Clauses" are defined as those which were not individually negotiated, and that are contrary to good faith and fair equilibrium of rights and obligations between the contracting parts.

In general, abusive clauses establishes favorable conditions to one contracting part, over the legal norms established for the free, voluntary and fair development, with the objective to obtain legal and economical advantages; in resume, they brake the commutativity of the contracts, a universal law principle.

The abusive clauses, characterized in such way, become illegal, because for Europe are expressly determined in the Directive 93/13/CEE, of the European Union Council, of April the 5th 1993, related to the contracts made with consumers, as well as in the general conditions of regulations of contracting.

In Spain, they are typified en Law 7/98, of April 13th 1998, denominated *Contracting General Conditions*, where is in writing a numbered of abusive clauses included in Spanish Law. The effect of inclusion of these clauses en credit contracts of agreements is illegality, compliant to the same law.

The credit agreements subscribed with Spain are subjected to this normative.

In the 36 audited agreements nine common clauses were identified, characterized as abusive, whose detail is presented:

#	Countries Common abusive Clauses	%
1	Indemnification, costs and future undetermined fee payments,	62%
2	Conditioned advanced amortization	50%
3	Exigency of a declaration of the credited after a annexed (adhesion instead of	43%

44

	agreement of wills)	
4	Clause Pari Passu[45] in exclusive benefit of the creditor	33%
5	Only the certification of the creditor is sufficient and valid prove, in case of controversy.	33%
6	Funds disbursement subject to conditions that affect to third parties (previous payment to suppliers)	33%
7	Additional Forfeits and penalties to the interest for delay in cases of unfulfillment	33%
8	It is declared unilaterally the credit in the payment term in case of delay of Ecuador not only in the credit mentioned but in any other contract with the creditor country.	30%
9	Hidden costs: Interest + commission for disbursement + Availability commission + Insurance+ Fees +…	23%

Source: Credit contracts and Spanish Law 7/98

Illegitimacy

Declaration that the agreements do not violate the constitution, the laws, norms or the public order of Ecuador

Most of the contracts or agreements contains a clause or the obligation of the pronouncement of the legal assessor of the beneficiary institution, where it is stated that the obligations contained in them do not violate constitutional, legal, juridical in general norms, or the public order of Ecuador.

Such clause is a statement false many times, because the contracts have obligations that are in contradiction with the Ecuadorian internal normative, as anatocism, additional penalties to the delay interest and the contractual taxing exemptions.

Relevant cases by country

BRASIL

SAN FRANCISCO HYDROELECTRIC DAM

Credit Amount: US $ 242,965,100.00

Destiny: Partial financing for the construction of the hydroelectric project San Francisco, as well as the capitalization of the interests during the grace period.

Lender: Economical and Social Development National Bank of Brazil (BNDES)

Executor Entity: HIDROPASTAZA S.A.

Illegality indications

[45] Any benefit granted by the debtor to other(s) creditor(s) is extended to other creditors.

1. The collateral from the State in favor of Hidropastaza, an anonym society under control of the Companies' Super Intendance, does not fulfill the disposition contained in article 113 of LOAFYC and, consecutively, had not to be granted. The legal fundamental to grant this collateral is article not numbered following article 27 of the Basic Law of Electrification, introduced by Supreme Decree 1887, published on the Official Register 454, from October 31st 1977, whose state of being in force was guaranteed by opinion of the State's General Procurator, Ramón Jimenez Carob, with report No. 09929, of January 11th 2000. This Audit considers that the criteria of the Procure Agency, founded in the state of being in force of the referred article, it is not precedent, because this article was not derogated by the state of being in force by the Law of Regime of the Electrical Sector, published in the supplement of the Official Register 43, October 10th 1996.

2. The clauses 1.1.1 and 5.3 of the Agreement, that contemplates the capitalization of interests of the grace period, were authorized officially under the basis of a reformed normative at the date of subscription of the Agreement, by article 257 of the Constitution, as well as article 2113 (ex 2140) of the Ecuadorian Civil Code and 561 of the Commerce Code, that prohibit expressly anotocism[46].

3. On the clauses 11.1 and 11.2 the agreement of credit and clause 32 of the engineering contract it is stated the exemption of any kind of tribute – currents or futures- over the debt service and the Brazilian imports, respectively, in a way that the fiscal sacrifice for the country will be consumed by double way. Beside of the economical impact, these kinds of stipulations provoke violation of article 257 of the Republic's Constitution that orders: "Tributes may be established, modified or extinguished only by legislative deed of competent organ", disposition that reaffirms article 5 of Tribute Code and Internal Tribute Regimen Law.

Illegitimacy Indications

1. The financing conditions, established in the clauses fifth, seventh and eighth of the credit agreement, as well as its calculation mechanisms, represent an onerous excessive charge for the project: in the grace period, the interest rate gets 9, 75% and in the amortization period gets 7, 75%. I the rates of administration and compromise are added to the contracted interest rate, the final effect in the financial charge almost duplicate. In exchange, soft conditions are established en the penalty mechanisms for the building company in case of breach during the building period, thanks to the determination of a forfeit modified calculation system that reduces the charge to the half if a conventional system were applied[47]

[46] "Anotocism" is understood by capitalization of interests or "composed interest".

[47] IDC(damages by interests) per day= MF*TIA/360*2
Where: MF: Total financing amount for works
TIA: Annual interest financing rate

2. Clause 13.1 establishes the payment of undetermined fees related with the validity and excitability of the Agreement, deriving in a probable cost increase that brings to a violation of the principle of commutativity of the contract. The mentioned principle is proper to the nature of bilateral onerous agreements and determines that the granting of the contractors be equivalent, with the objective of maintaining its equilibrium.

3. Clauses 14.3, 15 and 16 determine additional penalties to the delay interest, such as loose compensation and a forfeit of 10% over the capital and charges, in case of unfulfilment, prohibited in Ecuador, according to dispositions of articles 2141 and 2142, current 2114 and 2115 of the Civil Code and 558 of the Commerce Law.

4. Clauses 17.2, 17.3 and 18.2 stipulates compensations for advanced payment, including administrative costs and established in a unilateral way by the creditor, without being obligatory to justify properly the amount of them, generating inequity and risk of damage for the financed.

5. In clause 21, that establishes submission to Brazilian law, that is, to a foreign juridical order and jurisdiction, under its condition of guarantor of the contracted credit.

Unfaithful practices indications

1. The fact that ten amplifying contracts have been required to conclude the work, where five of them were related with mitigation of geological faults and the acceleration with bonus of the works, evidences a costly and not adequate planning, that was perceived since the beginning of the construction, according to the engineering contract conclusions of the content of clause 3.2 , that stipulates the execution of a process of bonus *"optimization"* immediately after the subscription of the contract.

2. Even though the excessive financial charge, the report of Finances Ministry, previous to contracting the credit, subscribed by economist Fabiola Calero C., National Studies Director, concludes with the recommendation that the subscription of the agreement due to that *"the financials conditions of the granted credit […] The conditions of this financing are favorable to the Interests of the Ecuadorian State and soft and adequate for the project execution". Even, it is affirmed , that "not being Hidropastaza of the public sector nor belonging their rents to the State's General Budget, can not be considered its external debt as public external debt",* not recognizing the legal effect and potential economical damage resultant of the official guarantee to the loan, recommended in the same report. These criteria were shared by Central Bank, other of the instance to whom corresponded to pronounce in this matter. (Subscribed report by Studies General Director, Francisco Hidalgo V.).

SPAIN

STRENGTHENING OF THE VIGILANCE SYSTEM IN THE SEA AND MARINE AND COASTAL ZONE

1. CASA AIRPLANE CN-235-300 Sea Version

Credit amount: US $ 24.283.000 plus 100% of the Insurance Policy issued by CESCE (Export Insurance Spanish Agency)

Destiny: Acquisition of a CASA airplane CN-235-300 sea version, inside the project "Strengthening of the Vigilance System in the Sea and Marine and Coastal Zone"

Lender: Deutsche Bank S.A.E.

Executor: Ecuadorian Navy

Illegality Indications

1. Clause 3: current and future tribute exemptions that contravene constitutional, legal dispositions and the principle of legality in tribute lawful: only to the law that creates the tribute corresponds to determine its self exemptions.

2. Clause 3.4.2: the cost increase by effect of the insurance policy and potential undetermined future increase in the prime constitute a unilateral increase of the credit price, which is considered an abusive clause in terms of the Spanish law 7/98.

3. Clause 5.1: presence of undetermined costs over the credit, at the date of subscription of the agreement, impeding to know the decision real transcendence of taking a credit and configuring the characteristics of the abusive clause, according to the Spanish Law of General Contracting Conditions.

4. Clause 5.2: stipulates the right of the creditor to select the interest delay rate that convenes his interests, between two possible, abusive clauses, according with what is disposed in the Spanish Law of Contracting General Conditions, because it causes an unbalance between rights and obligations of the parts.

5. Clause 9.2: liquid payments, that gives place to current and future tribute exemptions with similar effects to those indicated in point 1.

6. Clause 10.1: express statement for the execution of the agreement over conformity of terms, pacts and contract compromises to the Ecuadorian prevailing norms and to the established public order, opposes clause 5.2 of the same contract that stipulates

additional penalizations to the delay interest in case of breach of the debtor, prohibited in Ecuador.

7. Clause 11.1: establishes the transference of the current and future taxes to the financed, braking the contractual balance, which confers this clause a character of abusive clause, according to what was stipulated in the Spanish law 7/98 (prevail: April, 1998)

8. Clause 11.2: determination of future undetermined additional costs, with risk of incurring into a retroactive norm application, besides that the new costs that would be charged to the credit by effect of this clause would violent the consumer rights, according to Spanish law 7/98, that prohibits to increase unilaterally costs to the consumer at the moment of granting the service, without subjecting it to determined legal index.

9. Clause 13: stipulates the possibility of indiscriminate value debit in the name of the debtor, in any entity of the group and any currency, without specifying the conversion conditions, meaning undetermined form, what constitutes an abusive clause, according to what is disposed in the Spanish legislation (law 7/98)

10. Clause 15: establishes penalties for the anticipated amortization of the credit, including the payment of "damages" suffered by the creditors for collecting the funds, contrary to what is disposed in article 1169 of the Spanish Civil Code, that permits the anticipated payment of a liquid debt, meaning, determined.

Illegitimacy indications

1. Clause 3: express statement, previous to the credit disposition, over the conformity with the terms, pacts and compromises of the contract to the Ecuadorian norms and to the order and public interest, situation contrary to the presence of abusive clauses, the will wound Ecuadorian norms (with exemption of taxes) and the order of the country (breaking of the commutativity of the contracts).

2. Clause 5.2: contemplates the obligation of the creditor of responding by the "suffering damage" by the creditor in case that the delay interest that are paid in a different date from the last day of the interest period, contravening Ecuadorian norms that prohibit penal additional delay clauses (2141 and 2142, current 2114 and 2115 of the Civil Code and 558 of the Commerce Code).

3. Clause 10.2: establishes a clause *pari passu* in exclusive benefit of the creditor, breaking the principle of commutativity of the contract, in the sense that provokes unbalance of the rights and obligations of the parties.

2. THREE OCEANIC BOATS

Credit Amount: US $ 34,893,774.18 plus 100% of the Insurance Policy issued by CESCE (Insurance to the Exports Spanish Agency)

Destiny: To finance the acquisition of three patrol oceanic boats into the project of "Vigilance in the Sea and Coastal Marine Zone System Strengthening"

Lender: Banco Bilbao Vizcaya S.A (BBVA)

Executor: Ecuadorian Navy

Illegality Indications

1. Clause 5.1: establishes the transfer of the tribute applicable charge in Ecuador and other retentions of the creditor to the debtor. The principle of legality in tribute law determines that only law that creates tribute may determine its exemptions.

2. Clause 6.3: fixation of responsibility for the financed over the undetermined future insurance primes, that increase the cost and constitute an unilateral increase of the credit price, which is considered an abusive clause in terms of the Spanish law 7/98.

3. Clause 13: establishing of punishment for credit anticipated amortization and submitting to undetermined conditions, under the criteria of CESCE and ICO (Institute of Official Credit of the Spanish Kingdom), opposed to what is disposed in article 1169 of the Spanish Civil Code, that allows anticipated payment of a debt with condition of being liquid, that is, completely determined.

Illegitimacy Indication

1. Clause 21.3: registers the express statement that stipulations and obligations contained in the in the contract do not contravene nay law in Ecuador nor its public order, in circumstance that in other clauses, such as clause 5.1 mentioned, violate juridical principles of universal application, as it is the case of the principle of legality of the tribute lawful.

Unfaithful practices indications

International pressure for the acquisition of the CASA airplane and three oceanic boats

The negotiation process of the credit contract between the Ecuadorian Government (Ecuadorian Navy) and Deutsche Bank for the buy of a CN-235-300 airplane to the Spanish company EADS/CASA prolonged several months. According with exchanged mailing between EADS/CASA and the Ecuadorian Navy, this process was delayed for the solicitude of the Central Bank of Ecuador to wait that the OECD conditions to which the credit was subjected will improve[48]. According to the available documentation, the chronology of that negotiation was the following:

- Between June and October 2002, the Ministry of Economy pronounced over the terms of financing (allowing that such operation will be into the Financial Program between Ecuador and Spain) and in September 12th 2002 the Sub Secretary of Public Investment (MEF) issue the viability of qualification of the project. Between October and November 2002 the Navy General Command finishes the activities of certification of the contract and presentation of the copy of the agreement of definitive financing.

[48] Iolanda Fresnillo- Observatory of the Debt in Globalization. Analyze of the debt between Ecuador and Spain.

- According to EADS/CASA, in two occasions, December 26th and March 14th 2003, the Central Bank pronounced for postponing the definitive signature of the contract, "adducing cost reasons of the prime of the Spanish insurance cost, proposing to wait until the qualification of the country into OECD consensus (Organization for the Economical Cooperation and Development) will improve" For this date, such qualification was 1851 and 1438 points, respectively. The President of the Board of Directors of the Central Bank of Ecuador, Mauricio Yépez, reports that the Central Bank has resolved to suspend the contracting of such credits until that *"the credit stand-by be approved with the International Monetary Fund"* because that *"will facilitate the accomplishing of new actions [...] with the objective of reducing the cost of the insurance prime [...], and even to improve the financial conditions.*

- In communication of April 8th 2003, EADS/CASA manifests to the Navy General Command and to National Defense Ministry, its worry for the process dilatation, and announces that because of the delay *"the prices will be reviewed and increased [...] what would result more costly for the country that the possible saving that could suppose an improvement in the risk assessment in the OECD, in the case of get produce".*

  Also aware to the Ecuadorian authorities that *"if the credits of this project do not formalize, all the other projects in process for other sectors of Ecuador in the Financial Program Spanish-Ecuadorian, would be suspended"* (credit that will be as well based on the financial marked conditions by OECD consensus)[49] . By this date the EMBI was 1254 points, revealing a defined descendent trend.

- It can be appreciated in the content of these communications the small consequence of the Spanish company with the Ecuadorian interests that seek to get better conditions in financing; under threat, it pressures for the breach of the business. This contradicts the state in force of a Financial Program between both countries.

- In document of April 23 2003, referring to a "Meting Central Bank and Budget for Credits" between the Defense Ministry and functionaries of Central Bank, it is evidenced the pressure made for the Ministry of Defense as well as for the Spanish government and the exporter. It is also argued *"Now days, the interest rates are in the lower levels* of last times, the risk that these increase for the market uncertainty must be taken into account".

- On April 23rd, the Under Secretary of Public Credit, economist María de los Angeles Rodriguez, solicits to the Central Bank that submits "again to approval" the "projects of loan agreement for the acquisition of a airplane CASA CN-235-300 for US $ 24.283.000 and Three Ocean Boats for US $ 30.893.774, components of the project "Strengthening of the Vigilance System in the Sea and Marine Coastal Zone". The same document indicates that the cost of the Insurance Prime CESCE (Insurance to Export Spanish Agency), to the prevailing rate, is 14,48% and that *"in the supposed case that Ecuador gets an immediate reclassification inferior in the context of OECD the saving would be US $875.000 "only over the price of the airplane"*. On April 23 2003 the EMBI was 1.110 points, beginning a decreasing evolution.

- On May 7 2003 the Sub Secretary of Public Credit reports that the contract green light is given to the contract, that the financial conditions of it, and that the Central Bank

[49] Iolanda Fresnillo- Observatory of the Debt in Globalization, ANALYZE OF THE DEBT BETWEEN ECUADOR AND SPAIN.

expresses a favorable opinion over the financial terms of the loan agreement. According to the data of MEF the contract was definitively signed on October 23rd 2003.

The country risk, measured through the index EMBI (Emerging Markets Bond Index), that over its base the insurance prime of CESCE is calculated, was in 1.117 points on September 2003, but, at the end of the year decreases to 779 points[50], according to the report prepared by the Board of Directors of Central bank about the economy of the country in 2003[51]

In sum, the pressure made by EADS CASA provoked an additional cost for US$ 857.000 for the country.

The creditor's exigencies for the subscription of he agreement, through the threat of suspending all the credits of the Spanish- Ecuadorian Financial Program, constitutes intimidation or moral force, causal that vice the consent and generates nullity in the acts and contracts, according with the Spanish Civil Code (art. 1261, 1265, 1267) and Ecuadorian (art. 1488, 1494, 1499 and 1500, prevailing at the date of the subscription of the contract.

PROVISIONING OF POTABLE WATER FOR GUAYAQUIL

Credit Amount:	Until US $ 34.973.520 more 50% of insurance prime (CESCE)
Destiny:	Partial Financing of the project Master Plan of Potable Water for Guayaquil
Lender:	Official Credit Institute of the Kingdom of Spain (ICO)
Executor:	Guayas Provincial Enterprise of Potable Water (EPAP-G)

Illegality Indications

In clause 10, that establishes conditions for obligation anticipated amortization,

in relation to his amount, in the circumstances where the debt is liquid, that is,

determined, in a contrary way to what is disposed in article 1169 of the Spanish Civil

Code.

En clause 18, current and future tribute exemptions are stipulated, contravening

[50] Al the values of EMBI (Emerging market Bond Index) have been obtained on the page the Super Intendancy of Banks www.superban.gov.ec

[51] Notes over Economy No. 45, Second Semester 2003
http://www.bce.fin.ec/docs.php?path=./documentos/PublicacionesNotas/Catalogo/Apuntes/ae45.pdf

constitutional dispositions to the law the basic tribute basic normative, where are comprised the exemptions faculties. This clause transfers the tribute charge from the creditor to the debtor, even in the case of taxes considered directs.

Illegitimacy Indications

1. Clause 6, numeral 3, unentail an state that the credit of the situation that originates in what is related with the buy of Spanish goods and services, convened in specific terms with the supplier and that could even have hidden vices of fabrication or supply. This is a common condition to all contracts, do not recognize the conditionality that is at the origin of the transaction and that corresponds to the character exclusively linked to the contracted financing.

2. In clause 6, numeral 4, that establishes the right of the creditor (ICO) to suspend the credit for pendant payments in charge of the debtor derived from the agreement or any other formalized agreement with the lender, provoking an arbitrary partition and unbalanced of responsibility between the contractors and braking, in such way, the principle of commutatively of the onerous contracts.

3. In clause 8, numeral 1, that determines the recover of a commission of availability applicable to all the amounts that have been utilized during the availability period, because it imposes financial costs over portions of the loan that have been disbursed, that results into the presence of hidden costs that rise the price of the credit, because they are exigible even into the term where the funds can be utilized, denaturalizing the penalization condition attributed to its not utilization.

4. In clause 15, numerals 2, 4 and 5, that establish the conditions to a declaratory of anticipated expiration of the creditor and that make extensive to strange causes to the credit, that is, other agreements signed with the creditor, with the public Spanish sector in general and /or insured by CESCE. The abusive character of these clauses translates into an imposition of an unconditional collateralization between all the obligations in charge of the lender with the creditor country.

5. In clause 20, that submits the agreement to the jurisdiction of the judged and tribunals of Madrid, renouncing expressly to any other jurisdiction that would correspond them, due that it establishes an external jurisdiction to solve officially the quarrels, with renouncement to the national sovereignty.

6. This last clause, as well as in that relative to the exemption of taxes cause inside the country, could have, furthermore, characteristics of challenging clauses, because the weak the national sovereignty and imposes expressly the resolution of conflicts in front of the justice of countries whose rules favor particular interests (of the creditor, of course).[52]

[52] Even though it is not the case of this agreement, in the course of the auditor ship , it has been identified stipulations of contracts that opposes to the national norm and that due that they prevail in the jurisdiction to which submits the agreement to the country; elude the legality in which Ecuador would incur, as anatocism, for example.

Unfaithful Practices Indications

1. The numbers over inefficiency in times and costs of the project, as well as the current juridical claims, due to the differences in the designs, the quality of the materials and the building of the work, in general, evidence that the process did not accomplish the previewed objectives, resulting into negative effects for the country, as well as the economical character of the previewed services to the consumers, affecting in this way their population quality of life.

2. The linked help does not constitute an effective help mechanism to the development of the funds receptor country. Although the loan was orientated to the supply of basic services, its real rationality is far away of contributing to the development of the country; on the contrary, as is common in these kind of financed operations by official agencies of industrialized countries, it was directed to supply the necessary infrastructure for the local development seeking to legitimate their own objectives and necessities of commercial expansion through the internationalization of their companies, rather contributing to generate noxious implications for the local development, due to the high financial charge that is imposed, even if they are official creditors.

3. The final dénouement of the process shows that this international logic was also functional with the governmental politics in turn, that conditioned the loan to the beginning of a administrative restructuration process with the objective in the last term to make viable the privatization of the service, provoking that the contracted debts by a public institution, with financial charges that affect all the society, benefit, finally, the private sector.

4. The loan was served through the funds of the central government even before the official subrogation of the obligations by the Ecuadorian State[53]. This procedure evidences, moreover, that through this project the government contributed to provide the necessary infrastructure for that the private enterprise will begin to operate a basic service that should, by nature, maintain its condition of public service. The State, meaning all the Ecuadorians, contributed to finance an infrastructure that then would be taken in advantage in private benefit.

HYDROELECTRIC POWER PLANT "MARCEL LANIADO DE WIND"

Credit Amount: Lit. 92.998.004.000 (Italian lyres)

Destiny: Financing for the construction of the Hydroelectric Power Plant Marcel Laniado de Wind

[53] Through law No. 121, published in the supplement of RO No 378, of August 7 1998, the National Congress issues the special law through which the Ecuadorian State assumes formally the internal and external debts of ECAPAG, authorizing Finance and Public Credit Ministry for that, in the name and in representation of the Ecuadorian State, make the appropriate activities that will allow the State to assume directly the service of the debt from the date of concession to ECAPAG. Between the considerations of the mentioned law it is mentioned the delicate financial situation of the company, fact that requires the help of the State to accomplish with its internal and external credit obligations.

The debts of the company with internal and external organisms, at June 30 1998, gests US $ 6.597.863,21 and US $ 112.625.762,12 respectively. The settlement of the public external debt at the date was US$ 12.554.478.000. The disposed subrogation in this Law represented 1% of this total.

Lender: MEDIO CREDITO CENTRALE S.p.A.

Executor: CEDEGE

Illegality Indications

1. Genesis default of the contraction of debts process by lack of good faith "incontraendo" in each phase of the project (previous, of execution and ulterior) for the involved individuals, who hide or disguise the true motivations that brought to subscribe the credit that violates the principle of good faith which is the principle that must procure to assume the credit.

2. Not accomplishing the Italian law of February 16th 1987 No 49 over the "new discipline of the Italian Cooperation with developing countries"; in article 1.2 of the law 49/87 establishes that "the cooperation to development is aimed to the satisfaction of the primary necessities and, in first place, to the safeguard of human life, the alimentary auto sufficiency, the valuation of the human resources, the conservation of the environmental heritage and the consolidation of the endogenous development process and to the economical, social and cultural growth of the developing countries".

3. Presumable will vice, having the Italian government conceded the loan for a supposed pressure of the economical subjects interested in the execution of the project. Being such circumstance, more precisely the moral violence according to an old proverb "etsi coactus, tamen voluit"[54] In substance, there is a conflict between the will as it has been formed and the hypothetical will as has been without the disturbing influence of some element that have fallen into the knowledge or the will of the subject. In such case, the will elaborated in that way, it has been formed in a vice way, allowing in such way to consider precedent the action of annulations of the loan contract.

4. The excessive increase of he project costs and/or, in a gradual way, of the taking of advantage of the necessity condition of the State; "ultradimidium"[55]. In Italy regulated by the ex Art. 1448 of the Italian Civil Code; referred to the enormous lesion as cause of rescission of the contract, the enormous lesion provokes a stressed disproportion between the acts of granting of the contractors.

Illegitimacy indications

Lack of previous consultation with the involved communities, an established requirement by the OD 4.30 of the World Bank, to which Italy is subjected and that consecrates a situation that turns illegitimate the project.

Unfaithful practices indications

1. Lack of due diligence and skill of the creditor Government, because it did not made a careful economical, technical and environmental assessment, circumstance that is reflected in the

[54] A free translation would be "wished, by force"
[55] Equivalent to the concept of "enormous lesion".

existence of a first negative impression of the Italian Credit Agency that rejected the credit concession.

2. High breach risk level of payment of the complete amount, as it is previewed in the subscribed contract. It looks evident that the Ecuadorian State did not dispose of the necessary funds to compromise with the execution of the work. In fact, in such period Ecuador had not subscribed yet the proper financial convention that would procure it the availability of the necessary amounts for the payment to the Italian companies (loan contract)

3. Absence of a proper assessment of the increase of project costs by the debtor, who put in risk the accomplishment of the assumed obligations and the consequences that derivates of the breach of such obligations.

CONCLUSIONS OF THE BILATERAL DEBT PIECE

1. There are indications of illegality regarding the rules in force in the country (Constitution of the Republic, LOAFYC, Internal Tax System Law, Civil Code, Commercial Code) and in Europe through Spain (CC, General Contracting Conditions Law and Defense of Users and Consumers).

2. It was observed that malpractices were carried out by officials inside and outside the country on which responsibilities should be taken on by the appropriate bodies. (Co-responsibility)

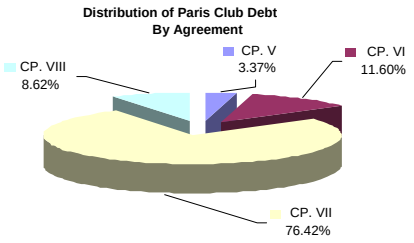
3. The control agencies have not determined the obvious damage suffered by the country in the process of bilateral credit.

4. Indications of illegality by the removal of legal principles universally applicable (public), it is assumed, especially in those countries in which it was not possible to verify their laws, as the case of Brazil or Japan

THE PARIS CLUB

A. Financial and budgetary issues

- As of December 31st 2007 the total debt owed to the Paris Club was US$ 839.7 million.



PUBLIC DEBT PARIS CLUB

In US$ Millions

CREDITOR COUNTRY	BALANCE 31-12-2007	%
CANADA	23.34	2.78%
SPAIN	17.36	2.07%
E.E.U.U.	52.38	6.24%
FRANCE	96.89	11.54%
GREAT BRITAIN	94.30	11.23%
ISRAEL	161.18	19.20%
ITALY	253.23	30.16%
JAPAN	98.42	11.72%
GERMANY	42.57	5.07%
TOTAL	839.67	100.00%

- Interest service (US$ 717.5 million) includes overdue and punitive interest for US$ 22.million.

PARIS CLUB

In US$ Millions

CLUB	PRINCIPAL	INTEREST	TOTAL
CP. V	298.86	189.68	488.54
CP. VI	196.90	218.02	414.92
CP. VII	185.09		
CP. VIII	16.28		
STOCK INTERESTS 1992-1994			

DEBT SERVICE

- Projections of payments to the Paris Club from January 1, 2008 to December 31st 2023 indicates that the total debt service will reach US$ 1.1253 billion.

PARIS CLUB PROJECTIONS

(Annual 01.01.2008 to 31.12.2023; US$ '000; Exchange rates as of 31.12.2007)

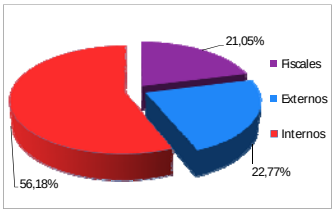
YEAR	PRINCIPAL	INTEREST + COMISSIONS	TOTAL SERVICE
2008	72,550.89	44,821.24	117,372.12
2009	76,227.47	40,063.25	116,290.72
2010	48,471.71	36,137.15	84,608.86
2011	57,753.99	33,436.96	91,190.94
2012	61,525.25	30,400.96	91,926.22
2013	65,522.33	27,001.76	92,524.09
2014	73,158.34	23,379.30	96,537.65
2015	76,107.38	19,404.71	95,512.09
2016	83,376.53	15,223.57	98,600.10
2017	90,864.93	10,554.64	101,419.56
2018	98,566.09	5,508.68	104,074.77
2019	10,764.79	1,350.91	12,115.70
2020	11,425.19	867.69	12,292.88
2021	9,208.97	364.76	9,573.72
2022	607.50	27.10	634.60
2023	607.50	11.61	619.11
TOTAL	836,738.86	288,554.28	1,125,293.14

Nota: *Principal for 2008,does not include possible US$ 2.9m for debt swap*

- Between 2000 and 2007 (BCE External Debt Bulletins) the losses from exchange rate differences with the Paris Club totaled US $70.8 million.

In US$ '000

Year	Exchange diff.
2000	(22,227)
2001	(47,874)
2002	50,504
2003	60,896
2004	28,352
2005	(47,039)
2006	25,028
2007	23,124
Total	**70,764**



Servicing the Paris Club debt (principal installments and interest) represented 9.5% of the total foreign debt service paid by the central government. Internal resources were used as the main source of funds to make these payments.

Findings on financial and budgetary issues

1. The Public Credit Undersecretary's Office does not have an accounting system which permits it to confirm the debt balance owed to the Paris Club in the Debt Analysis Management System (SIGADE) nor does it possess accounting records needed to determine the exchange difference. Verifying the interest rates paid to the creditor for the debt service is also not possible due to the lack of available information. The Central Bank of Ecuador reports information regarding dollar exchange rates as of the year 2000 but does not report exchange rate differences for the Sucre against other currencies before 2000.

2. There are differences in capital amortization figures between information from SIGADE and that provided by creditor countries belonging to the Paris Club – Memorandums of Understanding V to VIII.

3. It is difficult to obtain budgetary information prior to 2001 due to the destruction of physical files belonging to the Treasury Undersecretary.

4. From 2001 to 2007 the budgeted amounts totaling US $508.3 million were not enough to cover the amounts paid; therefore US $ 546.2 million was paid in principal and US $ 414.5 million in interest against US $ 400.5 million as budgeted.

5. The main source of financing for principal payments from 2001 to 2007 was internal credit (56.2%) followed by external loans (22.8%) and finally fiscal resources (21.1%). In other words, new debts were created in order to finance almost 80% of principal payments made to the Paris Club.

B. Legal issues

Findings from the legal analysis of the Memorandums of Understanding

1) Neither the signed names of creditor country representatives nor the Government of the Republic of Ecuador is recorded in any of the Memorandums of Understanding

2) Clauses in each Memorandum of Understanding state that debts involved include interest charges on interest or compound interest, which is prohibited by Ecuadorian legislation.

3) The Republic of Ecuador signed the Memorandums of Understanding with the group of creditors (the Paris Club) which reserves the right to establish rules and regulations and ultimately decides whether or not to pardon a debt. Any form of debtor relations or negotiations is inherently unbalanced.

4) From Memorandum of Understanding V the possibility of "selling or exchanging debt due to its nature" is agreed upon in a voluntary and bilateral manner.

5) The Memorandums of Understanding with the Paris Club grant the International Monetary Fund a dominant role in the country's economic policy, which in many cases has impeded development.

C. Conclusions

Despite the fact that it is does not have independent legal status, the Paris Club imposed conditions on the country during the negotiation process such as subjecting it to IMF supervision in which pressure was exerted by lender countries, taking advantage of the economic and social fragility of Ecuador during such times, as well as the lack of expertise and fortitude of the negotiating teams.

In the Memorandums of Understanding, evidence of irregularities was found as well as renegotiations including interest charges on interest, prohibited by Ecuadorian legislation. These conditions grant the IMF the authority to oversee interest imposed by creditors, who dominate the Fund's decisions.

SECTION V

INTERNAL PUBLIC DEBT

INTRODUCTION

Servicing the public debt became the main objective of economic policy beginning in the 1980s. This mechanism put in place by the international loaning institutions through the use of "Letters of Intent" to the International Monetary Fund (IMF) has represented in the most critical years around one-half of national budget expenditures. This was done at the expense of spending on national development and the fulfillment of human rights.

While debt service payments were made religiously, resources for national development and for the education and health of the Ecuadorian people were reduced. Under these conditions, the population, and especially its women, had to take over tasks that were the responsibility of the State.

Internal indebtedness: the hidden strategy of financial capital

The mechanisms encouraged by international financial capital have not been limited to acquiring external loans to help pay down the debt, but in recent decades ***internal debt*** has been pushed strongly, especially through the ***issuance of bonds and Treasury Certificates*** which were purchased during periods of high interest rates by domestic and international banks who in turn charged high interest rates to hold them, and then when rates fell and the bankers stayed away, the government had to turn to the funds of worker in the custody of the Ecuadorian Social Security Institute (IESS). That is, somehow, some source of money was always found to service the country's debt, even if that source was the social security fund.

OBJECTIVES AND SCOPE OF THE AUDIT OF INTERNAL DEBT

Specific objectives

- Identify the magnitude of the emissions of State Bonds and the degree to which they helped to sustain the payment of the service on public debt.
- Analyze the constitutional coherence of executive decrees that undergird internal debt.
- Determine who were the main holders of public internal debt bonds during the period of high interest rates.
- Establish the mechanisms and beneficiaries of the issuance of AGD bonds for the banking bailout.

Scope

Because internal public debt is made up of: Bond issues, Treasury certificates (CETES) and loans made by the government to other institutions, the Word focused on evaluating the issuance of State Bonds, because they represent, on average, around 85% of all internal public debt.

The Central Bank of Ecuador provided information that made it possible to begin this audit with respect to the issuance of bonds from 1984 to 2006, into which complementary investigations were carried out to determine bond issues that financed payments of the Public Debt (sucretization, external debt and public debt in general), the identify of bondholders during periods of high interest rates and relevant aspects of the issuance and use of AGD bonds.

The technical research and analysis was carried out on legal documents, such as the laws in effect during the period in question, executive decrees, resolutions of the Monetary Board, National Congress records and public documents where the issues were formalized; along with interest rate statistics and other data from official sources and from research institutes.

The Audit faced, however, limitations and obstacles to accessing the information, disorganized files, a reduced professional staff and its temporary nature.

THE INTERNAL PUBLIC DEBT AUDIT

Internal public debt and interest rates

The internal public debt grows during periods of crisis and precisely when some of the sources of external debt are closed off; it has been used especially to cover the State budget deficit. In recent decades, the budget deficit has been caused, primarily, by the high payments made to service internal and external public debt.

INTERNAL PUBLIC DEBT AND LEGAL INTEREST RATES
In US$ Millions

YEAR	BALANCE	% growth	% Interest rate *
1988	464.1		23.00
1989	298.0	-36	32.00
1990	278.2	-7	35.00
1991	323.8	16	49.00
1992	256.8	-21	49.00
1993	533.2	108	33.57
1994	1,701.9	219	44.88
1995	1,766.8	4	59.41

1996	2,224.5	26	46.38
1997	1,937.3	-13	37.46
1998	2,754.9	42	61.84
1999	3,371.9	22	64.38
2000	3,201.1	-5	13.16
2001	3,208.8	0	16.44
2002	3,181.1	-1	14.55
2003	3,016.0	-5	11.80
2004	3,489.0	16	9.86
2005	3,686.0	6	9.61
2006	3,277.0	-11	9.22

Source: Central Bank of Ecuador:

* Interest rates in Sucres in 1998-1999. From 2000, the legal interest rate is in dollars.

As has been seen, efforts to renegotiate the external debt follow profound economic and financial crises, when internal indebtedness is turned to in order to mitigate the situation. From the US$256 million in internal public debt in 1992, this number grew to US$2.224 billion in 1996, and then again in 1998 (the year of another bailout) to US$2.754 billion, reaching $3.277 billion by 2006.

However, the fiscal deficit is not the only cause of the growth in internal debt, there is another factor related to adjustment problems, imposed from the outside, like the "liberalization" of interest rates ordered by the Law of Financial System Institutions (1994), as well as the regulations issued by the Monetary Board (1993) [56]. The consequences can be seen in interest rates that reached 59% in 1995, and 64% in 1999[57]. These levels were applied to governmental issues, which stimulated even more interest among national and international private banks, who by acquiring Government bonds (fixed income), received large returns due to the high interest rates in place; in addition, this debt turned out to be very onerous for public financing and reduced resources available for the development of the Ecuadorian people.

Government Bonds: the main component of internal public debt

According to the official classification scheme, the government's internal debt is comprised of bond issues and Treasury Certificates (CETES), loans to entities by the Central Bank, the IESS and the Bank of the State for investments, and the amounts that are in trust funds.

STATE OF THE INTERNAL PUBLIC DEBT
Balance at the end of the period
In millions of US dollars

YEAR	BONDS	CETES	CENTRAL BANK	IESS	BANK OF THE STATE	FIDEICOM	TOTAL

[56] Monetary Board Regulation No. 837-93 of January 20, 1993 liberates interest rates for active and passive operations. See regulation text in the Appendix.

[57]. Central Bank of Ecuador, 75 years of Statistics, 1927-2002. Interest Rate Tables: legal and conventionan maximum (1948-1999), p.101.

1988	292.4		34.8	70.0		66.9	464.1
1989	180.9		22.9	46.3		47.9	298.0
1990	166.1		14.9	32.3		64.9	278.2
1991	210.9		9	21.0	11.1	71.7	323.7
1992	161.5		4.9	12.4	14.3	63.7	256.8
1993	364.4		3.9	11.7	30.0	123.3	533.3
1994	1320.1		2.9	9.5	102.3	267.1	1701.9
1995	1312.7	16.4	1.7	6.7	140.5	288.8	1766.8
1996	1551.0	131.0	8.9	4.9	167.7	361.1	2224.6
1997	1485.1	16.8	7	3.3	146.0	279.1	1937.3
1998	2239.6	66.5	1.6	1.1	125.8	320.3	2754.9
1999	2892.8	67.7	0.6	0.3	53.2	357.3	3371.9
2000	2758.9	19.0		0.1	54.5	368.6	3201.1
2001	2732.2	0.0		0.1	69.1	407.4	3208.8
2002	2547.2	122.5		0.1	101.5	409.8	3181.1
2003	2611.9	301.6	102.7				3016.2
2004	2983.1	414.6	91.4				3489.1
2005	2831.1	680.6	174.6				3686.3
2006	2824.6	292.7	160.4				3277.6

Source: Central Bank of Ecuador

The data in the table show us the jump since 1992, when there were $161.5 million in bonds outstanding, to 1996 with a balance of US$1.551 billion. That is, in only four years, during the government of Sixto Duran Ballen, bond issuance grew by ten times. This would one of the factors that led to the banking crisis of 1998-1999, in which bonds were again issued, this time for a new bailout of private banks. Then, beginning in 2002, there was an increase in Treasury Certificates, which were bought for the most part by the IESS and which were meant to finance the State budget.

Internal public debt service

Another one of the consequences of the accelerated issuance of bonds is the growth in internal public debt service. As warned, the deregulation of the financial system implemented during the administration of President Sixto Duran Ballen and the "liberalization" and elevation of interest rates, which made this paper attractive to obtain, and these bonds were indeed obtained especially by domestic and international banks. Let's look at the evolution of this service.

SERVICING THE INTERNAL PUBLIC DEBT – by 5-year periods
Millions of US Dollars

YEAR	INTEREST	PRINCIPAL	TOTAL
1981	56.1	65.0	121.08
1985	73.7	64.0	137.73
1990	52.2	65.9	118.10
1995	88.6	112.5	201.10
2000	191.8	415.6	607.40
2005	242.6	1089.2	1331.80

2006	235,0	1369,4	1604,40
TOTAL	3153.4	9046.4	12,199.9

Source: Central Bank of Ecuador

This data shows the growing cost of public debt service paid by the State and the escalation of debt that began in the mid-1990s.

From this data we can appeal to the principle of illegitimate debt, which indicates that a borrower cannot be forced to repay a debt when the original lending conditions threaten the public good, for instance when they are unfair, dishonest or challengeable for other reasons (Joseph Hanlon).

It is necessary, then, to identify the portions of the debt that have some characteristics of illegitimacy within this internal public debt, like the issuance of bonds that have been used to pay debts, and the era during which this debt rose more than a billion dollars:

1. During the period from 1992 to 1996, there was an accelerated growth in internal public debt, which went from $256 million to $2.224 billion. The main vehicle for this growth was the emission of Government Bonds, which have caused great hardship to the Treasury due to their high cost, but which represented huge returns and interest income for private banks. It was precisely the same banks that benefitted from Sucretization, as well as international banks, like Citibank and Lloyds Bank, who charged interest rates of over 50% in sucres.

2. In 1998 and 1999, the bank bailout took place, during which the State again took on private sector debts, this time those owed by private banks, by creating the AGD. In order to cover the deposits, the State issued bonds that were purchased by the Central Bank of Ecuador, which thus became a creditor of the State.

3. In 1984 there began to be issues of bonds to pay debts, with the largest amounts taking place in the 1990s, but then, beginning in 2004, the spiral began to grow again, Government Bonds and short-term Treasury Certificates are issued in order to begin what is now called “debt re-engineering.”

AUDIT RESULTS

GOVERNMENT BONDS USED TO FINANCE DEBT PAYMENTS

a. The issuance of Government Bonds as part of the economic policies and the strategies proposed to the International Monetary Fund (IMF) to pay external debt service

Based on the principles of illegitimate debt defined at the beginning of the audit, we believe that taking on debt to pay other debts should be considered illegitimate; this has happened with a number of bond issues.

Beginning in 1982, when the debt crisis erupted, the various governmental administrations began to implement what are known as "adjustment policies", which are in line with the Letters of Intention signed with the IMF that were primarily intended to ensure that resources would be available to pay foreign debt service in arrears, as well as to access international debts for the same purpose.

In 1983, this objective was expressed in the first Letter of Intention signed with the IMF by Abelardo Pachano, the General Manger of the Central Bank of Ecuador and Pedro Pinto, the Minister of Finance: *"the government is in the process of reforming the exchange rate system, reconditioning public finances and using monetary instruments and establishing proper controls and regulations for foreign public debt. IN order to achieve these objectives, the government has formulated a plan […] for which it hopes to have the support of the International Monetary Fund. Therefore, it is requesting a contingent credit agreement."*

Findings

- Issuing and placing Government Bonds to cover the budget déficit caused by foreign debt service payments has been part of the finance strategy of all administrations.

- This strategy has also been expressed in some of the reports of the IMF as a measure to confront fiscal imbalances and the lack of funds to be able to service foreign debt.

- Moreover, in the IMF Letters of Intention, there is not only an indication that the bonds will be issued, but that the government also commits to setting domestic interest rates at levels that will make it possible to float the bonds successfully.

- This demonstrates how the bond issuance policies, that is internal debt, were not only part of domestic economic policies but also part of the commitments established internationally with the IMF.

- This brings to light the close relationship that began to be established between external debt payment and internal indebtedness through

Government Bond issues; the internal debt is thus part of the indebtedness system.

b. More than 50% of the resources from bonds are used to support the public debt.

According to information provided by the Central Bank in Official Communication DSF-628-2007 dated November 21, 2007, it can clearly been seen what the priority use for the proceeds from government bond issues was.

USES OF FUNDS RECEIVED FROM THE ISSUE OF GOVERNMENT BONDS
1984-2006

USE OF FUNDS	IN SUCRES	% S/	IN UVC	IN DOLLARS	% US $
Refinancing and paying down public debt	153,616,000,000	4.88	2,000,000	5,244,329,669	57.9
Capitalization of Central Bank and bailouts	2,027,558,922,342	64.39		2,175,138,249	24.0
Infrastructure Works	813,800,000,000	25.84		1,189,915,133	13.1
Budget deficit				135,000,000	1.5
Modernization of the State				115,000,000	1.3
Military Spending	50,000,000,000	1.59		95,400,000	1.1
Capitalization and payment of debts of Ecuatoriana de Aviacion	28,140,000,000	0.89		31,000,000	0.3
Social Projects	76,000,000,000	2.41		75,000,000	0.8
TOTAL	3,149,114,922,342	100.00	2,000,000.	9,060,783,052	100.00

Source: Central Bank of Ecuador.

Findings

1. Since 1984, all governmental administrations have issued Government bonds (internal debt) in order to obtain proceeds to be used to pay foreign debt service.
2. Of all the dollar issues from 1984 to 2006, it was determined that the most of the amount issued (58%) was used to refinance public debt, both foreign and domestic, while only 13% was used to finance infrastructure works.
3. Bond issues have also served to bail out banks and recapitalize bankrupt companies.
4. The proceeds from internal debt issuance have been used to "modernize" the State, following the conditions of international creditors, which has led to the privatization of services that had previously been considered rights of citizens.

5. Internal debt has been primarily used to:

    a. Cover refinanced private foreign debt (Sucretization) (Decree 3615)
    b. Restructure external public debt (Decrees 2817 and 1349)
    c. Cover internal public debt balances

These uses demonstrate the strong relationship between internal public debt and external public debt.

6. During each period when foreign debt financing was reduced, government bonds have been issued to cover the deficit in liquidity to make payments to international creditors.

C. The issuance of bonds from the selected sample (Decrees 1349 and 1788)

Based on information provided by the Central Bank in communication DSF-628-2007 dated November 21, 2007, two of the most representative decrees were taken for the sample.

DECREE 1349[58]:
Transforming external debt to internal debt

Number	1349
Official Registry Nº	348 dated 30 December 1993
Amount	US $ 909,429,669
Term	16 years
Interest rate	Not established in the Decree
Use of proceeds	Issuance of government bonds denominated in foreign currency and payable in Sucres to be delivered to the Ecuadorian Central Bank for capitalization
Signed by:	
Minister of Economy and Finance	César Robalino Gonzaga
President	Sixto Durán Ballén

Within the framework of the deepening application of neoliberal measures, the administration of Sixto Duran Ballen and his Minister of Economy and Finance issued Decree 1349 in December 1993, which transfers bonds in the amount of US$ 909.4 million to the Central Bank of Ecuador as collateral for the balance of foreign public debt, whose service was to be paid by the Central Bank of Ecuador.

Findings regarding Decree 1349

1. The issuance of Decree 1349, intended to issue bonds to be given to the Central Bank of Ecuador to be capitalized, shows the series of loan payments made since 1983 by different governmental administrations to international and multilateral banks, which is now transferred to the accounts of the Central Bank for its accounting adjustments.
2. This accounting adjustment, however, is not reflected in Central Bank statistics on internal debt bond issues for 1993 which reached $303 million, while this issuance was in the amount of $909 million.
3. In addition, although the Decree provides for this issuance and the accounting records are there[59], there is no evidence that the bonds were ever physically issued.

[58] Published in Official Registry 348 dated December 30, 1993.
[59] Accounting support Annex of the Central Bank for Decree 1349.

4. In conclusion: the objective of this transaction was to transform foreign (external) debt into domestic (internal) debt, reduce the quasi-fiscal deficit, without properly recording it in statistics and adjusting indicators in order to continue to acquire more debt.

DECREE1788[60]:
Reducing foreign debt with internal debt and IESS funds

Number	1788
Official Registry Nº	361 dated 15 June 2004
Amount	US $ 1,035,000,000
Term	3 and 10 years
Interest rate	7%
Use of proceeds	Partially finance the needs of the "Capital Preservation via Amortization of the Public Debt as Part of the 2004 Debt Reduction Plan"
Minister of Economy and Finance	Mauricio Yépez Najas
Manager, Central Bank of Ecuador	Leopoldo Báez
President	Lucio Gutiérrez

One year after taking office as President and having signed the last letter of intention with the IMF, the government of Lucio Gutierrez and his Minister of the Economy, Mauricio Yepez, issue Decree 1788 authorizing the issue of bonds to finance public debt payments as part of the 2004 Debt Reduction Plan.

The background part of the decree states that:

In order to fulfill the objectives of the National Government and the Debt Reduction Plan, approved in Ministerial Accord No. 106 published in the Official Registry No. 300 on May 7, 2004, the Ministry of Economy and Finance prepared the "Capital Preservation via Amortization of the Public Debt as Part of the 2004 Debt Reduction Plan" Project, which will be financed with disbursements from multilateral organizations and bond issues in the amount of US$1.355 billion."

In this context, Decree 1788 is issued, and of the resulting bonds issued initially with a value of US$622,000,000, US$486,980,000 worth were placed between July and November 2004, and of a later issue of US$413,000,000, only $17,150 were placed, that is a total of US$504 million.

Holders of Decree 1788 bonds

According to the digitalized information provided by the Central Bank of Ecuador with official communication No. DSF-368-2008 dated June 26, 2008, it is considered that the IESS is the primary holder of these bonds, with 96% of the total as of January 2008.

[60] Decree 1788 published in Official Registry No. 361 of June 22, 2004.

Findings regarding Decree 1788

1. The issuance and placement of government bonds as established in Decree 1788 is part of the financing policy to pay debt service as indicated in the 2004 Debt Reduction Plan of the Lucio Gutierrez administration. This plan explicitly talks about financing the payment of previous debts with funds from multilateral operations and internal debt bonds.

2. 50% of these bonds were eventually placed on the market, and the primary bondholder is the Ecuadorian Social Security Institute, and entity which acts as the main holder during periods of low interest rates.

3. While the State pays IESS 7% for its government bonds, it is paying 12% on Global Bonds on the international market.

4. Contrary to what happened in the 1990s when national and international private banks were the primary bondholders, now when rates are lower or the rates for foreign debt are higher than domestically placed bonds, it is the Social Security Institute that buys those bonds.

BONDHOLDERS DURING TIMES OF HIGH INTEREST RATES

Elimination of interest rate controls as a State policy since the 1980s

From the first Letter of Intention addressed to the International Monetary Fund, the different governmental administrations committed to "liberalizing" interest rates and formulated a legal/regulatory framework for that purpose.

The first letter, signed on March 24, 1983, states that in order to prevent a deterioration in the Balance of Payments, measures are being implemented like devaluation, increasing interest rates and restricting credit from the Central Bank.

Then, the remaining 12 Letters of Intention continue to insist on interest rate liberalization.

In January 1993, during the government of Sixto Duran Ballen, Regulation No. 837-93 is issued by the Monetary Board, which states in Article 1:

"Replace the Sixth Title (Interest Rate Systems) of Book I (Monetary-Credit Policy) of the Codification of Regulations of the Monetary Board for the following:

CHAPTER I: BENCHMARK INTEREST RATES
Art. 3. Benchmark Interest Rate

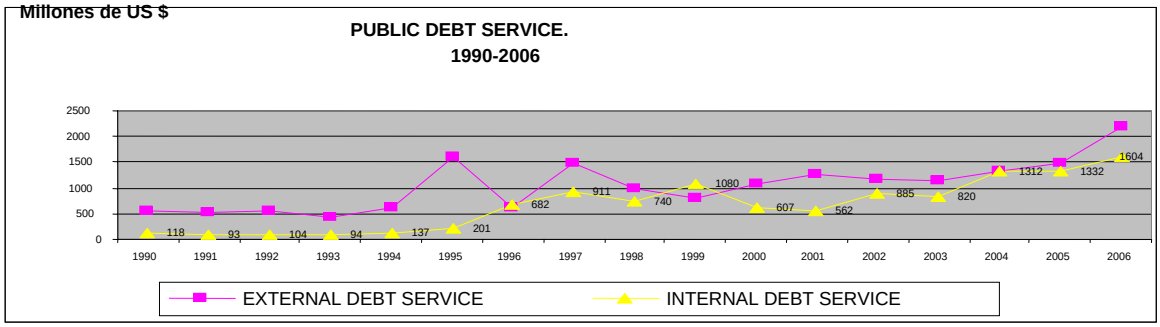
This will be equal to the average weighted rate of credit operations of between 84 and 91 days granted by the five banks with the most paid capital and reserves to the corporate sector."

This was the first step toward definitive liberalization of the interest rates where there was no ceiling in place to stop their ascendance.

Thus, since January 1993, a system of benchmarked interest rates was adopted, based on market conditions (including those applicable to Central Bank bonds) in order to increase the "transparency" of financial markets.

All of this created the conditions for increasing interest rates during the 1990s and the creation of a speculative economy.

The results of the enforcement of these regulations caused an accelerated growth of interest rates during the period, and the legal rate reached 59.41% in 1995 with a maximum conventional rate of 89.12%.



Source: Central Bank of Ecuador. Boletines de Información Estadística Mensual

This increase in interest rates together with the issuance of bonds for different purposes encouraged speculative capital to purchase them. Let's look at a sample of the main bondholders of that period.

BONDHOLDERS AFTER INTEREST RATE LIBERALIZATION

The above encouraged national and international banks to acquire bonds for internal debts, which together with the zero risk associated with government bonds, paid high quarterly interest rates. Following are the main bondholders from 1992-1996:

HOLDERS OF BONDS IN SUCRES: 1992-1995
Amounts in Sucres

HOLDERS/YEARS	1992	1993	1994	1995	1996
BANCO POPULAR	3,035	460	11,762	27,589	109,199
PROINCO	629	1,720	1,161	1,267	318
BANCO DE GUAYAQUIL	1,855	1,371	1,558	1,490	144
BANCO AMAZONAS	3,238	75	1,322	1,947	1,284
FILANBANCO	305	1,026	391	128	621
BANCO DEL PICHINCHA	31	231	6,223	7,125	7,372

BANCO DEL PACIFICO	1,490	951	8,974	9,671	5,782
BANCO CONTINENTAL	120	210	4,682	2,239	2,520
BANCO DEL PROGRESO		148	651		
HIDALGO & HIDALGO		1,176	1,178	1,259	916
CITIBANK	301	1,421	3,713	2,655	1,743
LLOYDS BANK	508	1,159	2,285	5,443	939
TOTAL	11,515	9,948	43,900	60,613	130,838

Source: Central Bank of Ecuador. Debt service records 1992-1995

We can see from the table that the main bondholders were banks, which had already benefitted from Sucretization; international banks which had already been external creditors and were now buying internal debt bonds and construction companies like Hidalgo & Hidalgo, which, together with the contracts that it won from the government at that time, was also one of the main beneficiaries of bonds during periods of high interest rates.

Below we can also see the holders of dollar bonds in 1994 and 1995:

HOLDERS OF BONDS IN DOLLARS: 1994-1995

In dollars

HOLDERS	1994	1995
BANCO DE PRESTAMOS	217.821	452.499
BANCO AMAZONAS	368.488	1.614.911
BANCO DEL PACIFICO	907.040	711.034
BANCO POPULAR	1.752.251	1.146.225
BANCO DEL PICHINCHA	911.599	1.033.537
PROINCO	21.510	71.441
BANCO DE GUAYAQUIL	26.852	3.750
CONSTRUCTORA ANDRADE GUTIERREZ	345.563	243.563
JULIO HIDALGO	518.175	844.754
IVAN ANDRADE APUNTE	83.252	
CITIBANK	152.907	542.726
LLOYDS BANK	2.287.053	3.322.952

Source: Central Bank of Ecuador. Debt service records.

The data related to dollar bond holders provide new clues to the holders in general, and here we can see that, in addition to the banks, certain individuals who had links to the Ministry of Finance were also bondholders at that time.

Findings

1. The process of interest rate "liberalization" begins with the implementation of adjustment programs and is specifically referred to in all of the Letters of Intention that the government signs with the International Monetary Fund.

2. The regulation of the Monetary Board that establishes the liberation of interest rates in 1993 was the conclusion of a series of interest rate hikes since the 1980s.
3. Domestic and foreign banks took advantage of the situation and purchased bonds corresponding to dozens of decrees which allowed them to charge high interest rates every three months in exchange for buying the bonds.
4. Among the main bondholders we see that there are the banks that had previously benefitted from Sucretization, international creditor banks (Citibank, Lloyds Bank) and construction firms like Hidalgo & Hidalgo.

BONDS TO BAIL OUT THE DOMESTIC BANKING SYSTEM

A. With AGD Bonds, the Ecuadorian government went from being a creditor of private banks to being a debtor of the Central Bank

Historically we have seen how the Ecuadorian state has rushed to "save" the banking system in its moments of crisis.

After periods during which the banks have earned huge profits from deregulation and high interest rates charged in their transactions with the government, they declare bankruptcy and the State has to assume the liability to their depositors and creditors.

The banking bailout has been the mechanism used since the end of 1998, consisting of the Central Bank granting credits to banks with liquidity problems. Then, by creating the AGD, the State had to pay the amounts corresponding to the preferential return of money to depositors and creditors with financial shortfalls. The accumulation of bank closings led the government to issue bonds, delivered to the Central Bank, so that the Central Bank could cover the amounts required for the AGD to return money to depositors and creditors.

In this way, the government, as the owner of these debts to private banks, became a borrower from the Central Bank, with obligations to pay interest and other costs from the public treasury.

By creating the AGD, and then issuing AGD bonds, the economic interests of Ecuadorians were harmed in the following ways, according to Wilma Salgado[61]:

- *"The devaluation automatically transferred the cost of the reduction of salaries*
- *Reduced devalued public spending*
- *Reduced and frozen savings that were automatically devalued*
- *Higher debts of companies resulting from loans that were artificially granted in dollars before the devaluation and then multiplied in Sucre terms, while the value of company assets fell dramatically because of the recession, with the resulting massive bankruptcy of companies"*

[61] Salgado Wilma (2007). "El juego de papeles y la auditoría de la deuda interna y externa" in the magazine *Ecuador Debate* Nº 72. Quito, CAAP, December. (Title translation: "The role of papers and an audit of internal and external debt")

B. The management of AGD Bonds

The institutions that participated in issuing government bonds, delivering resources, supervising banks and guaranteeing deposits had the following responsibilities:

Central Bank

Article 261 of the 1998 Constitution states that: The Central Bank of Ecuador, a public entity, with technical and administrative autonomy, will have the responsibility to establish, control and enforce the State's monetary, financial, credit and exchange rate policies and its objective will be to *ensure the stability of the currency.*

Nevertheless, the Law of Economic Reorganization in the tax and finance area of 1998 (the AGD Act) states:

- Art 22: On Guaranteeing Deposits, with respect to the IFIs which are engaged in the Restructuring Procedure, the Ecuadorian government guarantees the payment of all of the deposit balances and other funds held, contracted and to be contracted with the corresponding interest rates calculated as of the day before the beginning of the Restructuring Procedure, of individuals and entities domiciled in Ecuador and abroad, duly registered in the …. and other entities that are part of the same financial group, including the off-shore operations of domestic financial institutions, as long as they are authorized to…. the deposits of the public in the country by the Superintendence of Banks.

The Central Bank did not fulfill its role of currency stabilizer as established in the Constitution

This institution became the main holder of AGD bonds; as of March 31, 2008, it holds 78% of the total issue of US$1.41 billion, 12% has been repurchased by the Ministry of Finance and 10% is on the market.

At the end of 2014, the Ministry of Finance will still have to pay the BCE US$1,102,201,394.82 from the national budget.

Deposit Guarantee Agency (AGD)

After the Law of Economic Reorganization in the area of Taxes and Finance was in place, 17 financial institutions, with their respective banking subsidiaries abroad with off shore licenses, ended up being administered by the Deposit Guarantee Agency during the period from December 1998 to April 2000. These institutions include 12 banks: Tungurahua, Financorp, Azuay, FINAGRO, Occidente, Progreso, Bancomex, Crédito, Préstamos, Unión, Solbanco and Popular; 1 *mutualista*: Previsión y Seguridad and 4 financial companies: FINIBER, America, Valorfinsa and Necean.

The licenses to operate abroad held by the off shore subsidiaries of the Tungurahua, Finagro, Progreso, Bancomex and Préstamos banks were revoked.

Not all of the decisions made by the Board of Directors of the Deposit Guarantee Agency, which authorized the AGD General Manager to ask the Ministry of Finance to issue government bonds, have the technical and legal reports and the opinion of the Temporary Administrator needed to support the making of decisions at the Board level.

For the financial institutions that were being restructured, paragraph b) of Article 24 of Law 98-17 established that within 60 days counting from the date of the appointment of the Temporary Administrator, the Administrator must present a report on the economic-financial situation of the institution.

The request for bonds made to the Ministry of Finance and the setting of financial conditions for each of the institutions that were begin administered by the Deposit Guarantee Agency were established by the General Manager of the AGD, with Board approval, without any participation from the State Attorney General, the Board of Directors of the Central Bank and the National Secretariat of Planning and Development, because there an express exclusion in Article 31 of the Law of Economic Reorganization in the area of Taxes and Finance. This procedure was an exception to the procedure established in the Organic Law of Financial Administration and Control (LOAFYC), which states in Article 134 that the above-mentioned entities have to issue their findings before the government can issue bonds.

CONCLUSIONS ON INTERNAL DEBT

Conclusions

1. The internal debt that continues to grow rapidly has become an important source of money to fund the budget and a large part of total public debt service.

2. Interest rates in the domestic financial market experienced an accelerated growth, especially from 1992 to 1996; which bondholders benefitted greatly from, most of them being international private banks, including Citibank and Lloyds bank, and all domestic banks, who were later involved in the bailout.

3. The AGD bonds confirm the strong ties that join the banking system with the State, who it turns to in order to guarantee all of its debts, even at the expense of resources for national development.

4. The AGD bonds turned the government from a creditor of the banking system to a debtor of the Central Bank.

5. The Central Bank, by issuing money to acquire the AGD bonds, strayed from its role of currency stabilizer, and on the contrary contributed to an accelerated devaluation.

III. CONCLUSIONS

1. Detrimental characteristics and conditions were identified in the debt auditing process, restricting any defensive efforts that the country could attempt in order to safeguard its rights, including the following:

    a) Usurpation of the country's internal affairs and the resulting affront to national sovereignty
    b) Surrender of the country's sovereign immunity, the immunity of jurisdiction and the right to defense and reclamation
    c) Violation of fundamental rights of people and communities and a disrespect for international human rights treaties.
    d) Abusive clauses that violate the rights of a sovereign country
    e) Violation of IMF, WB, IDB regulations and the laws of lender and borrower countries.
    f) Asymmetric relationship between the contracting parties
    g) Profiteering and compound interest

2. Multilateral organisms, foreign banks and other lenders, with the participation of national authorities and officials, imposed their conditions on the country, forced it to accept a higher level of debt and successive "restructuring" procedures that were not transparent and that generated the transfer of private debts to the State, swaps and unjustified up front payments, onerous costs and direct operations abroad not registered in Ecuador; they also caused deviations and distortions in the use of the proceeds of debt operations in order to focus on the payment demands of private foreign lenders. In the case of the international private banks this was represented by a smaller group of banks: Shearson Loeb Rhoades, Lloyds Bank, Citibank, JP Morgan, Chase.

3. The above are acts which are considered damaging to the nation's dignity and constitute violations of the Constitution and Laws of the Republic of Ecuador. Evidence obtained demonstrated the continuous violation of the Constitution, Civil Code, Code of Commerce, Organic Law of Financial Administration and Control, Law of Consultation and Law of Public Hiring, etc.

    There is evidence that public offences have been committed including: ideological falsehoods, corruption, non-fulfillment of the duties of public officials, breach of the judicial order with total impunity, without oversight entities from former governments having intervened in order to safeguard the national wealth.

4. There is also evidence that general legal principles have not been observed, which are the source of international public law, along with legislation in force in the United States and other creditor countries to whose jurisdiction debt contracts were submitted. Commonly accepted international treaties and legal doctrines were not acknowledged which include the following concepts: voluntary autonomy, odious debt, good faith, excessive onerous burden, unforeseen circumstances, threats, fraud and error.

5. Ecuador's process of indebtedness between 1976 and 2006, seen through the lens of structural continuity, developed in benefit of the financial sector and transnational companies, visibly affecting the nation's interests. The conditions imposed and debt payment limited the fundamental rights of people and communities, worsening poverty, increasing migration and damaging environmental conditions.

6. Authorities from previous governments did not demonstrate willingness to defend Ecuador's interests; these authorities could have used legal arguments in order to question contracts, oppose them or even request a reconsideration based on the *rebus sic stantibus* principle (fundamental change of circumstances) from Roman Law, which acknowledges the same unnecessary hardship principle from Anglo-Saxon Law and the Vienna Convention standards.

7. With regards to the trade debt:

    a) Evidence of illegal and illicit procedures in multiple renegotiations with international private banks has been discovered, which harmed Ecuador and benefitted the interests of creditors; the use of accounting tricks and the waiver of the statute of limitations, followed by conversion of lapsed debt to Brady Bonds and subsequently to Global Bonds.

    b) The IMF actively participated in all agreements signed between the country and the international private banks by issuing a favorable and binding report outlining a stand-by agreement which implied complicity with private creditors and an unacceptable interference in sovereign social and economic political decisions.

    c) The unilateral increase of interest rates to exorbitant levels from 1979 on implied a fundamental alteration of contract circumstances that violated the principle of equity, one the general principles of law; this is also an Anglo-Saxon principle which contracts were subject to.

    d) The *sui generis* issuance of promissory notes beginning in 1978, equivalent to an external debt bond, and their settlement abroad, as detailed in the ERA 83 agreement for the sum of US $70 million, represented a violation of administrative law which must govern in these types of operations.

    e) The transfer of private foreign debt to the State (Sucretization) caused huge losses of the national wealth; in addition abuse and indications of illegality in these operations were also detected.

    f) "Refinancing" of commercial debt carried out from 1983 on (ERA 83, ERA 84 and MYRA) implied the direct payment of promissory notes and "Original Contract" obligations belonging to public and government entities abroad via the Central Bank, causing the Central Bank to assume further debt as a result of the sum paid off. The absence of records of these new debts (which were destined to the same private bank abroad) caused the creation of a mechanism called the "Complementary Mechanism".

    g) The unilateral waiver by Ecuadorian authorities to the lapse of external commercial debt, named the Tolling Agreement, in 1992 must be considered as a null act due to the violation of the Constitution and laws of the Republic which prohibit the surrender of such rights.

h) The Brady Plan signified the exchange of an already lapsed debt which was worth around 25% on the secondary market, for bonds with the capitalization of interest charges, implying the payment of compounded interest. In addition, there was a demand to purchase collateral in the form of US Treasury Bonds for a sum corresponding to 72% of the principal commercial debt at market value.

i) The "Bonds Offerings" for Ecuadorian external debt was not recorded in the SEC – Securities and Exchange Commission - and this was performed as a Private Placement" under "Rule 1444 A," which permits the sale of non-registered securities privately solely to qualified buyers: QIB (Qualified Institutional Buyers); and Regulation S which not only prohibits any sale within the USA but also determines that these transactions must be performed in offshore operations.

j) Global bonds showed serious indications of illegality from their preparation in 1999 to their issuance in 2000. Firstly, they were for the prepayment, under the swap model, of a debt guaranteed by non-"swapable" collateral (Brady Par Bonds and Discounts); afterwards, upon including interest bonds (Brady PDI and IE) compound interest was incurred; finally, it was verified that the collateral (US $ 724 million) was used for other improper purposes, after being deposited in a Salomon Smith Barney offshore account which was not recorded in accounts in Ecuador, nor by the MEF or the Central Bank of Ecuador.

In addition these Brady bonds and Eurobonds which were also exchanged were not expired therefore non-callable. Financially, there were several illegal aspects to the exchange of Brady for Global Bonds, and the transaction represented serious economic and moral damages and losses for Ecuador.

8. With regards to multilateral debt:

a) Multilateral lending institutions including the IMF, WB and IDB veered away from their mission as stipulated in the respective Incorporation Agreements and promoted debt systems that were disloyal to member countries, such as Ecuador, for having made alliances in order to protect powerful private creditors. The by-laws of these organisms do not detail the granting of loans for the payment of debts or collateral related to these.

b) The group of multilateral loans from the World Bank and the IDB, used to purchase collateral guarantees for the Brady Plan, indicate evidence of deviations, distortions and aiding and abetting the use of loan proceeds for collateral and to make debt payments and not in programs for which they were intended as stated in these agreements.

c) Multilateral loan agreements established conditions giving rise to the weakness of the State and its capacity to carry out planning, structural adjustments, deregulation processes, privatization and the transfer of authority to the private sector, detrimental to the nation's interests and following a strategy imposed on countries in the South. This generated political instability and continuous confrontations between the government and social sectors.

d) Conditions imposed through multilateral loans limited fundamental rights enjoyed by people and communities including the right to education, work, health, food and a healthy environment, giving rise to unimproved living conditions for the population (particularly in indigenous and peasant villages, for Afro-Ecuadorians and women); on the contrary, they worsened poverty, increased migration and caused environmental conditions to deteriorate.

9. With regards to bilateral debt:

a) The country's existing laws and regulations (Constitution of the Republic, LOAFYC, Internal Tax Regime Law, Civil code, Code of Commerce) and European legislation (Civil Code, General Conditions for Hiring and the Law for User and Consumer Rights) have not been respected.

b) Practices unduly carried out by national officials inside and outside of the country have been observed, for which responsibility should be established in cases where appropriate, including:
   - Infrastructure projects were launched that were financed with foreign loans, and once the loans are concluded the projects are transferred to the private sector, which receives all benefits without also transferring responsibility for paying the debt service. This therefore continues to be the exclusive responsibility of the State and, as a result, the country.
   - Contracts came into existence unfunded in spite of the provisions of the Public Hiring Law.
   - After having awarded the primary contract, an endless number of complementary contracts were awarded to the same contractor, which consequently immeasurably increased the cost of the work to be carried out.
   - Many construction projects did not fulfill the purpose for which they were created; their social utility is extremely limited, such as in the case of the potable water plan for Loja. Many studies performed for the preparation of investment projects failed to contemplate social and environmental impacts.
   - The State ended up taking on the debt due to the financial incapacity of the implementing unit to honor the debt as in the case of EPAPG.

c) Oversight organisms failed in their duties. The Attorney General's Office and the Monetary Board failed to take precautionary measures against the presence of abusive or unfair clauses in bilateral agreements before signing the contract; the State Comptroller's Office did not comment on inobservances of the Law and procedures encountered in the reports reviewed.

d) In spite of not possessing legal status, the Paris Club imposed conditions on negotiations with Ecuador such as subjecting it to IMF supervision for which pressure was exerted by lender countries taking advantage of the economic and social fragility of Ecuador during such times, as well as the lack of expertise and fortitude of the negotiating teams.

   In the Memorandums of Understanding evidence of irregularities was found as well as the renegotiations which include interest charges on interest, prohibited by Ecuadorian legislation. These conditions grant the IMF the responsibility of overseeing interest imposed by creditors, who dominate the Fund's decisions.

10. With regards to internal debt:

    a) The internal issuance of government bonds has served mainly to tend to foreign public debt service and cover payment requirements of internal public debt.

    b) Internal debt has served to cover inefficiencies in the larger national business and banking sectors benefited by this: firstly with the nationalization of private debt (Sucretization) and subsequently with the bailout of the banking sector.

    c) The issue and placement of AGD bonds transformed the State from a creditor of banks to a debtor of the Central Bank.

Upon issuing money to acquire AGD bonds the Central Bank deviated from its role of maintaining currency stability as assigned by the Constitution; on the contrary the Central Bank contributed to the acceleration of the Sucre's devaluation.

Appendix 1 (executive decree no. 472)

No. 472

RAFAEL CORREA DELGADO

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREAS:

Foreign and domestic loans provide financing for Ecuador's economic and social development projects;

In the last few decades, this important instrument in the State's economic and financial policies has been manipulated causing the state to submit itself to a model which favors the creditors' conditions and interests and is devoid of transparency to the point at which the foreign debt has become an international financial conspiracy;

For this reason, governments have been forced to allocate very high percentages of their national budget to servicing the debt, requiring new debts to finance it and causing the Ecuadorian State to be more and more dependent on foreign governments and financial institutions. This has resulted in a permanent threat to national sovereignty, to the enforcement of human rights, and an obstacle to sustainable growth and the eradication of poverty;

According to a report written by the Special Investigation Commission on Foreign Debt there are indicators which state that in negotiation processes as well as recommended debt renegotiations, there is a pattern of irregular management practices;

It is the State's duty to observe economic activities ensuring that they comply with the law, regulate and control them in defense of the common good, and that compounding interest in the debt system is prohibited, as established in Article 244, number 4 of the Republic's Political Constitution;

Article 3 of the Constitution establishes that the following are the State's fundamental duties; assuring the enforcement of human rights, preserving sustainable economic growth and eradicating poverty and promoting economic progress, among others;

Article 1 of the Constitution states that the Ecuadorian government shall; be participatory, which provides for the intervention of social organizations, investigation and development institutions in order to observe public debt management; and,

carry out the responsibilities mentioned in Articles 171 number 9 and 11 of the Constitution letter g) Legal System Statute and the Executive's Administrative Functions,

DECREES:

Art. 1.- The Commission for the Comprehensive Auditing of Public Debt (CAIC) is hereby created and assigned to the Ministry of Economy and Finance, whose office is in the city of Quito and has administrative autonomy and a defined term.

Art. 2.- Comprehensive Auditing is defined as financial actions with the purpose of examining and evaluating public debt contracting and/or renegotiation processes, the resources origin and intended use and carrying out programs and projects which are financed by foreign and domestic loans, in order to determine their legitimacy, legality, transparency, quality, capacity, and efficiency considering legal and financial aspects, and economic, social, regional, and ecological impacts as well as on gender, nationalities and communities.

Art. 3.- The primary purposes of the Commission for the Comprehensive Auditing of Public Debt (CAIC)

a) Define and carry out a Comprehensive Auditing methodology for: each loan, the renegotiations and other restructuring methods which may have been carried out, the amounts paid for capital and interest, the investments made in the corresponding projects and the impacts on those projects stated in Article 2, and apply the said auditing methodology to all current agreements.

b) Audit the agreements, contracts and other means and methods of acquiring public debt in Ecuador, governments' providers, multilateral financial system institutions or the banking system and the foreign and domestic private sector, from 1976 to 2006 and establish the following in each case:

1. The precedents, studies, technical, economic, financial, and social viability scores and other documents which support the request.
2. The loan amount and the currency in which it was obtained in, for the incremental totals or previous increases.
3. The economic, financial and commercial conditions which were agreed upon and those which were effectively applied.
4. Constraints/stipulations
5. The planned vs. the real use of the resources
6. The project's overall impacts
7. The persons who, on behalf of the parties, filed papers for and/or signed the contractual agreement.
8. Any other circumstance or information considered pertinent.

c) Form a database with the information obtained, which allows for all kinds of analysis related to the loan acquisition process with the information obtained;

d) Establish a transparent information system for the investigative and auditory processes as well as future loan acquisition processes. The information regarding public, private, foreign and domestic debt, which is used in public entities, should be gathered and the necessary information systems to carry this out should be obtained.

Art. 4.- The CAIC, is authorized to audit and make all the State's institutional loan acquisition processes transparent.

Art. 5. – The CAIC's term will be one calendar year, which may be renewed for a period of time considered necessary by the Ministry of Economy and Finance to fulfill its objectives. The Commission will turn in reports every six months during its term.

Art. 6. – The Commission for the Comprehensive Auditing of Public Debt's (CAIC) will be made up of:

a) Four representatives from state institutions related to debt, controlling functions and defending the State's interests.

2. State General Comptroller, or his/her delegate

3. State Attorney General, or his/her delegate

4. The President of the Civic Anti-Corruption Commission, or his/her delegate.

b) Six representatives from national social and citizen's organizations who have worked with Ecuadorian public debt:

1. Hugo Arias Palacios, main; Maria Rosa Anchundia, substitute.

2. Aurora Donoso, main; Angel Bonilla, substitute.

3. Ricardo Ulcuango, main; Blanca Chancoso, substitute.

4. Franklin Canelos, main; Piedad Mancero, substitute.

5. Karina Saenz, main; Juan Montaño, substitute.

6. Cesar Sacoto Guzman, main; Nancy Carcia Intraigo, substitute.

c) Three representatives from prestigiously recognized international bodies in society related to the topic and their respective substitutes:

1. Gail Hurley, main; Jürgen Kaiser, substitute.

2. Maria Lucia Fatorelli, main; Alejandro Olmos, substitute.

3. Osar Ugarteche, main; Eric Toussaint, substitute.

These appointments will be made by the President of the Republic.

Once the members of the Commission have been appointed and placed appropriately by the President, they will elect the president and vice president of the Commission at their discretion.

The Commission will be able to form task forces with their substitutes and members of civil society or State institutions, who, based on their experience, are qualified to support the debt investigation process.

Art. 7.- In order to carry out its objectives, the CAIC will possess the following attributes, duties and obligations:

a) Designate and establish responsibilities for the Executive Coordinators and the Commission's collaborators;

b) Draft internal rules which they consider pertinent to its functions and to the fulfillment of its objectives.

c) Define and propose the hiring process for national and international technical auditors, according to the administrative norms and procedures established in the Ecuadorian Constitution and other related laws.

d) Designate and hire a minimum number of in-house personnel to fulfill the Commission's duties and objectives.

e) Read reports in the areas of investigation, auditing and other studies which are entrusted to the commissions and technical units through Executive Coordination.

f) Approve the Commission's annual budget and operative plans for Executive Coordination and manage the corresponding finances when necessary.

g) Ask the public sector institutions for technical support and when necessary, the transfer of technical personnel, who are needed for concrete programs, in exchange for payment, and establishing the time period for the services' payment.

h) Hold sessions twice a month, regularly, and in any special circumstances when requested by at least three members.

i) Gain access to the necessary information for the fulfillment of its objectives.

j) Periodically give progress reports along with any pertinent recommendations or suggestions and a final report with conclusions to the Ministry of Economy and Finance. Additionally, responsibilities to be channeled as well as judicial and controlling institutions to initiate the corresponding administrative, civil and/or penal actions, according to legal regulations should be included, and

k) Propose public norms and policies to strengthen public debt auditing, as a permanent function of the state.

Art. 8.- The following are the President of the Commission's attributes and duties:

a) Convene and preside over the sessions;

b) Legally represent the Commission.

Art.9.- All public sector entities are obligated to provide information which the Commission requests, in the terms and according to the sanctions established in the Fiscal Transparency Law;

Art. 10. – The Commission's budget will correspond with the General Budget of the State which includes the Ministry of Economy and Finance.

Art. 11.- Executive Decrees No. 1272 and 2963, published in the Official Registries No. 248 and 404, from April 11 and November 24, 2006, respectively, are hereby abolished.

Art. 12. – This decree will be effective starting on the present date, and will not prejudice its publication in the Official Registry, and its execution will be carried out by the Ministry of Economy and Finance.

Issued in the National Palace, Quito on July 9, 2007

(signed)

RAFAEL CORREA DELGADO

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

(signed)

RICARDO PATIÑO AROCA

MINISTRY OF ECONOMY AND FINANCE

APPENDIX 2

AN AUDIT OF SECTORAL LOANS: OBJECTIVES AND RESULTS

IFIs	LOAN/SECTOR	OBJECTIVE	RESULTS
	HEALTH		
IBRD	FASBASE I-FASBASE II Increase the number of basic health services	Provide health, nutritional and basic sanitation services, with family and community participation.	Created market focused services. Privatized MSP food plant. Focused the program on free medicine and cost recovery. Did not improve health, mortality remained stable and increased. FASBASE II did not achieve its declared objectives. Little spending capacity.
IBRD	MODERSA-Modernize health services.	Reform the health sector: create new laws and institutionalize the MSP. Decentralize services and introduce *financial self-management*.	Established charges for public hospitals, left the poor population with limited access to health services, violating Article 42 of the Constitution and the fundamental right to health care.
	EDUCATION		
IBD	QUALITY BASIC EDUCATION - PROMECEB	Improve basic education in rural areas through: training, educational materials, infrastructure, and equipment.	Showed prolonged delays with poor results. Structural changes, without any legal framework, causing an educational privatization process. There was corruption within IBD's areas of responsibility.
IBRD	SOCIAL DEVELOPMENT, EDUCATION/TRAINING.-EB/PRODEC	Create school networks in urban-marginalized areas.	There was no achievement evaluation, but general education indicators show that there was no positive effect on education. Network Educational Centers (CEMs) were implemented without legal support and on the margins of the education system.
IBD	RURAL SCHOOL NETWORKS	Grant autonomy to administer resources and parent and community participation to 20% of the rural schools	Few results for education. Corruption was identified and IBD was directly responsible. Provision of public education was transformed into a form of *quasi* market.

IBD	SCIENCE AND TECHNOLOGY PROGRAM	Strengthen scientific and technological capacities in order to support economic and social development through FUNDACYT.	The purpose was to aid the private sector with resources and subsidies to support technology innovation projects. This never materialized due to lack of interest by public sector. Impact difficult to measure.

IFIs	LOAN/SECTOR	OBJETIVO	RESULTADOS
	SAFE DRINKING WATER AND SANITATION		
IBD	DRINKING WATER CONCESSION FOR GUAYAQUIL	Provide safe drinking water and sanitation services to Guayaquil's private sector, and to improve existing services.	ECAPAP provided services to INTERAGUA, a subsidiary of Bechtel. In the concession's 7 years, quality of service did not improve, prices rose 180%, and service was suspended to poor families who did make the payments. The provider has been fined twice for not fulfilling its responsibilities, not investing and for recovering capital for investment from the price increase.
IBRD	PRAGUAS I, PRAGUAS II	Reform the Potable Water and Sanitation (AP and S) sector; establish new laws and institutional character. *Delegate* AP and S services to the private sector for participation.	28 municipalities adopted the delegated management model, one of which, Pedro Moncayo, delegated the services' management to a private operator. Coverage in rural areas increased due to community contributions like physical labor and cash. The current government paid 75% ($36 million) of the debt finishing the project in 2008.
	AGRICULTURE, DEVELOPMENT OF RURAL AREAS AND VILLAGES		
IBRD	RURAL DEVELOPMENT-PRONADER	Strengthen self-management for the rural resident to incorporate him/her in the productive process, with the purpose of improving his/her living conditions.	Exceptional allocations to consultants represented one fourth of the debt. Excessive cost increases through Oyacachi in the DRI northern highlands occurred, and construction was carried out without environmental impact

			studies. Impacts were unsatisfactory.
IBD	SECTORAL AGRICULTURE AND LIVESTOCK PROGRAM PSA[1]	Implement structural reforms in the agriculture and livestock sector: policies, importation of eligible goods, technical cooperation.	There was a neoliberal shift in the agriculture and livestock sector. Prices were deregulated; public companies were privatized or eliminated like FERTISA, EMPROVIT, and ENSEMILLAS. The added value of agricultural/livestock products deteriorated by 40% from 1990 to 2002.
IBRD	TECHNICAL ASSISTANCE TO SUBSECTOR IRRIGATION PAT	Modernize public institutions related to the management of water resources; improve policies and design irrigation projects.	Public irrigation systems were transferred to users, the process was not well-formed and aggressively privatized assets which benefitting interest groups. 85% was spent on goods, administration and international consultants: UTAH, DAI, LOTTI.
IBD/ IBRD	AGRICULTURAL INVESTIGATION - PROMSA	Improve the level of competition in production, strengthen the agriculture and livestock sector, and modernize institutions and productive processes.	The program did not fulfill its objectives and goals because of problems in this sector including low yields, there is almost no technical assistance, low seed quality, etc. Institutional weakening of the INIAP has resulted.

IFIs	LOAN/SECTOR	OBJECTIVE	RESULTS
IBD IFAD	DEVELOPMENT OF INDIGENOUS AND AFRO –ECUADORIAN VILLAGES- PRODEPINE	. Improve the quality of life in poor indigenous and afro-Ecuadorian villages with more and better access to land and projects.	The BM says that the project was useful in maintaining peace and stability which favored private sector investment. Organizations reported that the project resulted in division among leaders and a weakening of the organizations.
IBRD	POVERTY REDUCTION/DESAR. RURAL LOCAL-PROLOCAL	Improve equality and inclusion of the poor in rural areas: create jobs, production, and improve natural resources management.	The project was poorly formed from outside and didn't respond to the beneficiaries' needs. Customers were not benefitted. The credit was used mainly for consultants, whose costs reached 50.52% of the total invested. Poverty indexes rose from 51% to 61%.
IBD	LAND ADJUSTMENTS PROJECT-PRAT	Establish a modern system to update property and land rights and improve the transfer system.	The Project responded to the market development policies presented by IBD. They eliminated any possibility of agrarian reform as a mechanism for land redistribution. The project was effectively carried out with regard to institutionalism.

IBD	SOCIAL INVESTMENT FUND FISE III	Improve living conditions for the poor, mediate integration of network services and organizational strengthening.	Action and administration committees were established by the projects-CEJA superimposed its priorities on the traditional town hall meetings, causing the organizational capacities to weaken. Rural poverty indexes show that poverty is on the rise.
	NATURAL RESOURCES AND ENVIRONMENT		
IBRD	MINING DEVELOPMENT/ENVIRONMENTAL CONTROL	Reform and implement the Mining Law of 1991, in order to attract new private investment to support development and increase mining production in the country.	Legal and institutional reforms obtained many rights to mining concessions, tax benefits and perks for private, foreign investors. Social, collective and environmental rights of indigenous communities and rural residents were violated.
IBRD	ENVIRONMENTAL TECHNICAL ASSISTANCE-PATRIA	Strengthen the capacity to provide loans in order to carry out analyses and implement environmental policies and management.	The Environmental Management Law was enacted, the decentralized system proved deficient. It did not establish clear controls, creating conflicts among the Ministries, local governments and the private sector. Only, the private sector benefitted.

IFIs	LOAN/SECTOR	OBJECTIVE	RESULTS
	INFRASTRUCTURE		
IBD/ CAF	CUENCA-MOLLETURO-NARANJAL HIGHWAY	Build a highway connecting Cuenca, Molleturo and Naranjal.	It was constructed to save 56km extra of travel from Cuenca to Guayaquil. The route passes by haciendas which belong to powerful groups. It passes through Cajas National Park, fragile economic and agricultural zones, and 27 affected communities. It violated human and environmental rights.
	FOREIGN TRADE		
IBRD	FOREIGN TRADE AND INTEGRATION PROJECT	Effectively manage foreign trade, improve the learning process and business innovation, and establish the National Quality Program.	The Foreign Trade and Integration Law (LEXI) was implemented. Its goal was to internationalize the Ecuadorian economy. Resulted in poor management practices in the MICIP, customs and the INEN. It improved conditions for fulfilling the Investment Promotion and Guarantee Law.

APPENDIX 3: DECLARATION

OPEN LETTER OF SUPPORT FOR THE AUDITING PROCESS IN ECUADOR

To Mr. Rafael Correa, President of the Republic
To the Ministry of Finance, to the Ministry of Political Economy Coordinator, to the Constituent Assembly and to the CAIC-
The organizations, networks, movements and people who have signed this letter would like to share our knowledge and solidary support for *the Commission for the Comprehensive Auditing of Public Debt's* (CAIC) current operations; an auditing body with the objective of explaining the legitimacy of the debt processes taking place in Ecuador, whether they be legal or not, with the purpose of applying measurements aimed at achieving justice, ending domination and looting instruments through the debt and restoring the Ecuadorian people's sovereignty and the resources which belongs to it.

The complete and participatory Audit of Debts opens the door for an autonomous financial system, together with other policies which you, President Correa, are implementing like the *Banco del Sur (Bank of the South)* with equal participation by the countries under the jurisdiction of the CIADI- International Centre for Settlement of Investment Disputes under the World Bank – and willingness to suspend payments of certain debts generated illegitimately.

We trust that you will remain firm in your position, and at the same time, express our dedication to helping you through the previously mentioned objectives. We also invite all Latin American and Caribbean governments to take part in this project aimed toward a free and sovereign continent.

FIRST SIGNATURES:

Jubilee South
The World Lutheran Federation's Program for Illegitimate Foreign Debt Incidence
Jubilee USA
The Southern People's Ecological-Social Debt Creditors Alliance
CLOC Peasants' Way

Assembly of the Peoples of the Caribbean, Regional Executive Committee CER-APC-COMPA
Cadtm International
Latindadd
Network or Women Transforming the Economy REMTE – CONACAMI Peru – Common Frontiers Canada: Quebec Network on Continental integration
World Women's March Peru
Continental Social Alliance (National Chapters from Argentina, Canada, Cuba, Mexico, Paraguay, Peru, and Venezuela)

CDES Ecuador
Workers' Socialist Bolivarian Force of Venezuela
Dialogue 2000 Argentina
Argentine Workers' Center
Popular Block Honduras
Jubilee South Brazil -Globalization Debt Observatory (Spain)
PAPDA Haiti
Sinti Techan Network El Salvador
CESDE Colombia

Brazilian Network on Multilateral Financial Institutions – ATTAC Morocco
Nicaraguan Social Movement

Center for International Studies of Nicaragua - - Freedom from Debt Coalition Philippines
Debt and Development Coalition of Zimbabwe

Send additions to: apoyoauditoria@gmail.com

For more information: jubileosur@wamani.apc.org - www.jubileosuramericas.org

International Meeting of Legal Experts
Quito, July 8 -9, 2008

Conference on the Legal and Political Aspects of Foreign Debt

Participants: Lutheran World Federation
Latin American Council of Churches
Commission for the Comprehensive Auditing of Public Debt CAIC/Ecuador

Conclusions of the International Judicial Meeting, carried out in Quito on July 8-9, 2008:

- This Meeting represents a historic event, especially for one country in particular, Ecuador, which has initiated sovereignty by carrying out a complete audit of public debt.

- The legal experts have agreed that in legal relations, the foreign debt in Latin America, has violated general rights (like faith, free choice for villages and communities, prohibition of usury , contractual fairness, *rebus sic stantibus*, human rights, environmental rights, among others), international treaties and fundamental domestic rights principles.

- The nations should exercise their right to sovereignty to create complete auditory commissions for the domestic and foreign public debt.

- We support the sovereign acts of the states which, grounded in law, nullify illicit and illegitimate instruments for public debt, including the suspending payments.

- The legal contributions made during the meeting support the Commission for the Comprehensive Auditing of Public Debt's (CAIC) efforts and establish the judicial foundations for legal and political action at the national and international levels based on international law against the creditors in the case of Ecuadorian domestic and foreign debt.

- The national and international consequences of the CAIC's report will be very important for Latin America and the world. A Head of State, President of the Republic of Ecuador, Rafael Correa, has assumed leadership of the changes to unjust international financial management.

- We hope that the government of the Republic of Ecuador will present a resolution project to the General Assembly of the United Nations to solicit the International Court of Justice in The Hague for an advisory opinion regarding the legal aspects of the foreign debt.

We shall ask the participants in this meeting, the Lutheran World Federation and the Latin American Council of Churches to motivate their churches and other citizens' movements at the national, regional and world levels, to request support from other governments in order to present an advisory opinion before the International Court of Justice.

City of Quito, July 9, 2008

Miguel Ángel Espeche Gil, Franklin Canelos, Nilton Guiesse, Andrés Soliz Rada, Ángel Furlan, Alejandro Olmos Gaona, Nildo Ouriques, Juan Pedro Schaad, Daniel Marcos, Fabio Marcelli, Elvira Méndez Chang, Ramiro Chimuris, Alfredo Carella, Hugo Ruiz Díaz Balbuena, Miguel Rodríguez Villafañe, María Lucia Fattorelli, Franklin Rodríguez Da Costa, César Sacoto.

APPENDIX 4:

NAMES OF PERSONNEL AND INSTITUTIONS WHICH COLLABORATE IN THE COMPREHENSIVE AUDITING OF THE ECUADORIAN DEBT

SUBCOMMISSION ON TRADE DEBT

Auditors

Miriam Ayala Silva
Félix Campoverde Vélez
Carlos García Andrade
Maritza García Moncayo
Silvia Puetate Montenegro
Marco Rodríguez Arias
Mercedes Silva Mejía
Fabrizio Viveros Charpentier

Assistants

Félix Aguirre Aguirre
Kathylee Cazares Mafla
José Corozo Sinisterra
Santiago Chicaiza Cabrera
Andrea Eguez de la Torre
Vinicio Ramírez Carbonell
Mauro Vera García
Gabriela Viteri Ayala
Lucila Viteri Mancero
José Zapata Chancusig

Brazilian Citizen Auditor

Rodrigo Ávila

MULTILATERAL SUBCOMMISSION

Alicia De la Torre Rojas
Irene Villalba Salvador

Center for Research, Evaluation and Prospective CIEP

SOCIAL, ENVIRONMENTAL AND COMMUNITY IMPACTS SUBCOMMISSION

Nancy Burneo Salazar
Jorge Corral Fierro
Mary García Bravo
César Pilataxi Lechón
Edgar Isch López
Carlos Carrión González

Simon Bolivar Andean University UASB: Carlos Larrea, Natalie Greene, Alison Vásconez.

Center for Health Studies and Assessment CEAS: Arturo Campaña
Institute for Ecology and Development of Andean Communities IEDECA:
Mauricio Cisneros, Mauricio Realpe, Jenny Venegas y Andrea Tafur
"Mi Cometa" Organization: Marlon Cabrera, Andrés Freire, Julieta Monsalve, Augusto Parada y César Cárdenas
Center for Economic and Social Rights CDES: Nora Fernández, Jorge Castro, Alejandro Gordillo, Andrés Benítez

Legal Analysts
Raúl Moscoso Álvarez
José Luis Nieto
Ramiro Chimuriz
Hugo Ruiz Díaz Balbuena

BILATERAL DEBT SUBCOMMISSION

Alexandra Contreras Flores
Patricio Chimbo Pozo
Jessica López Salazar
Raquel Nazareno Rosero
Catalina Rivera Ochoa
Catalina Sacta Campos
Paul Jiménez Larriva
Gonzalo Lima Galarza
Fraklin Robles Orellana
Amelia Pinto
Julia González
Edison Argoti

University of Cuenca

INTERNAL DEBT SUBCOMMISSION

Gonzalo Lima Galarza
Franklin Robles Orellana
Giselle Salgado Albornoz
Rosa Montes Rey

CEDEGE AUDITING TEAM

Raúl Castillo Flores
Alfredo Chum Kuffo
José Giler Moreira
Xavier Guerrero Fariño
Gustavo Mayorga López
María del Carmen Morán
Martha Olmedo Vera
Vladimir Soria Freire

Romel Yela Acosta
Othón Zevallos

JUDICIAL SUBCOMMISSION

Elizabeth Ell Egas

GENERAL CONSULTANTS

Mario Andrade Trujillo
Byron Cardoso Cascante
Henry Llanes Suárez

AUDITING COORDINATOR

Nancy Arias Barreno

ADMINISTRATIVE TEAM

Jeanette Reyes Pérez
Esmeralda Salinas
Nadya Villacis Salvador