

Ecuador: Civil Society Report
by Fundación Ciudadanía y Desarrollo
An input to the UNCAC Implementation Review Mechanism:
Fifth year of review of UNCAC chapters II and V

-Executive Summary-

This is the executive summary of a civil society shadow report from April 2021 that reviews Ecuador's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters II (Preventive Measures) and V (Asset Recovery). The report was supported by the UNCA Coalition and is intended as a contribution to the UNCAC peer review process of Ecuador covering those two chapters. The full report is available on the UNCA Coalition's website.¹

While Ecuador has made some progress towards developing normative legal frameworks for the implementation of articles of Chapter II of the UNCAC, several challenges remain to effectively advance anti-corruption efforts, especially regarding the implementation of Chapter V articles. There is a need for more inter-institutional coordination and a truly independent judiciary.

Assessment of the review process

Did the government disclose information about the country focal point?	No	No published information on this matter.
Was the review schedule known?	No	Same as above.
Was civil society consulted in the preparation of the self-assessment checklist?	Not applicable	At the time of writing of this report, the self-assessment process has not been completed. However, there is no record of civil society participation in the process to date.
Was the self-assessment checklist published online or provided to civil society?	Not applicable	At the time of writing, the self-evaluation process has not been completed.
Did the government agree to a country visit?	Not applicable	At the time of writing, this stage has not been reached. However, according to interviews with Foreign Ministry staff, Ecuador is open to the country visit, but this may not take place due to the COVID-19 pandemic.
Was a country visit undertaken?	Not applicable	*
Was civil society invited to provide input to the official reviewers?	Not applicable	*
Was the private sector invited to provide input to the official examiners?	Not applicable	*

¹ <https://uncaccoalition.org/new-civil-society-report-on-ecuador-more-inter-institutional-coordination-and-a-truly-independent-judiciary-needed-to-advance-anti-corruption-efforts/>.

Has the government committed to publishing the full country report?	No	At the time of writing, the Ecuadorian government has not signed the Transparency Pledge promoted by the UNCAC Coalition, nor has it otherwise committed to publishing the full report.
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Main findings and Recommendations (R)

Anti-corruption policies and bodies

There are constitutional provisions and laws in place that cover preventive policies and practices in the fight against corruption. In practice, the Transparency and Social Control Function (FTCS), which is mandated to lead prevention efforts, has not been adequately established and lacks a solid institutional framework to fully comply with its legal functions. Moreover, the Council for Citizen Participation and Social Control (an institution that is part of the FTCS, in charge of selecting heads of different State agencies, promoting citizen participation, accountability, and strengthening the system of complaints and investigations of corruption) is currently a contested institution, with low legitimacy. Its future requires a public, open and inclusive debate, since the changes it proposes to adopt affect the country's checks and balances.

R: Improve the coordination of prevention policies and actions promoted by different State bodies and public institutions, and make efficient use of resources. Co-create a national plan on the prevention of and fight against corruption, including all government institutions and non-state actors.

Public sector employment

The Public Service law regulates all public service institutions at all government levels and standardizes recruitment through public, merit-based competitions. However, the standards of transparency and access to information in public service recruitment must be reinforced. Requirements for accessing and evaluating information regarding higher-level officials, who can be freely appointed and removed, must be strengthened. Appointments to senior positions in independent institutions, such as the Comptroller General's Office (CGE) or the Public Prosecutor's Office, should be done with maximum transparency.

R: Develop minimum standards and a model for public sector codes of conduct, as well as a follow-up mechanism for compliance with the respective institutions' obligation to implement the standards and mechanisms in collaboration with non-state actors.

Political financing

Until early 2020, Ecuador had few provisions related to transparency, accountability and financial management of political parties. Authorities had limited powers to investigate and sanction conduct related to illegal political financing. High-level corruption cases, which resulted in prominent convictions, recently led to regulatory reforms, seeking to strengthen transparency and accountability and provide more oversight powers. Their application began during the national election February 2021.

R: Strengthen the electoral institutions' monitoring of political parties' non-compliance with the rules.

Asset declarations and conflicts of interest

While all public officials have to present sworn asset declarations both at the beginning and end of their term of office, there is a need to broaden their scope and strengthen transparency, both in relation to the declared content and the obligated subjects, based on international best practice. There are regulatory and practical weaknesses in codes of conduct for public officials, with no

minimum standards for adequate monitoring of their compliance. Conflicts of interest are not regulated.

R: Extend the obligation to submit sworn asset declarations to candidates running for elected office as a requirement for registration; expand the content of these statements based on the Model Law of the Organization of American States; and guarantee access to the information contained therein to the public. Regulate conflicts of interest and ‘revolving doors’.

Public procurement

Ecuador has made significant progress in public procurement in recent years, adopting open procurement policies and regulating situations that limit competitiveness and transparency. However, these efforts must be made sustainable to achieve a change in the system, which has been involved in multiple scandals of grand corruption. Additionally, legislation aimed at reducing corruption risks requires updating.

R: Reform the legal framework on public procurement to bring it up to international standards; strengthen sanctioning capacities, evaluate the role of the CGE so that it can perform concurrent monitoring instead of subsequent control.

Whistleblowing

Significant reforms on whistleblower protection, anonymous reporting, and incentives for effective whistleblowing were approved at the end of 2020.

R: Guarantee the correct and effective application of the Organic Integral Penal Code’s new articles related to anonymous whistleblowing and incentives for effective reporting. Set minimum security standards for the use and management of reporting channels.

Judicial independence

Other State institutions’ interference in the justice system, especially by the Executive (through referenda, public consultations and evaluation processes) and the existence of disciplinary procedures based on largely subjective grounds have directly impacted judicial independence and rendered the justice system unstable.

R: Adopt measures to ensure that members of High Courts and Tribunals are appointed through public, merit-based, competitive examinations, and that disciplinary processes comply with the parameters of objectivity and the full implementation of the parameters of Open Justice.

Access to information

While Ecuador has a law on access to information which is being widely enforced, it is outdated – it does not consider new technologies and does not follow international standards. Furthermore, the lack of data protection legislation is a recurrent excuse used by officials to deny access to public information; Several regional governments do not have the necessary resources to implement their legal obligations on providing access to public information.

R: Approve a new Organic Law on Transparency and Access to Public Information in line with inter-American model laws, international standards and relevant new technologies.

Participation of society

The so-called “empty chair”, a unique practice in the region, grants a representative of civil society a seat in decentralized autonomous government sessions to participate in debates and decision-making. This provides any citizen with a voice and a vote to participate in local government processes. Civil

society organizations are regulated by executive decree instead of legally, which poses a risk of arbitrary enforcement.

R: Regulate social organizations by law, and not by executive decree, in order to guarantee their legal security.

Anti-money laundering

The application of existing regulation to prevent money laundering is poor, with few convictions in this area. Prompted by an upcoming Financial Action Task Force evaluation, the responsible public institutions developed technical standards, protocols, and instructions to improve effectiveness of AML regulation.

R: Conduct a study to determine bottlenecks and possible solutions that will allow for the effective detection of this illicit activity.

Asset recovery

Although legal tools for the confiscation of assets resulting from illicit activities are in place, they are insufficient and limited. In recent years, there has been some progress – confiscation against legal persons was introduced – but the continuing dependency on an enforceable conviction is a problem when the investigated or prosecuted person is a fugitive, dies or has immunity. A bill on asset forfeiture that will enable the recovery of assets without a conviction and improve the implementation of the UNCAC is currently under discussion in the National Assembly and represents a great opportunity for Ecuador to comply with international standards on asset recovery.

R: Promote the adoption of regulations that facilitate asset recovery and international cooperation in this area without violating citizens' fundamental rights.