FCD Ciudadanía y Desarrollo

UNCAC Coalition CIVIL SOCIETY

CIVIL SOCIETY REPORT

on the Implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN ECUADOR

by Fundación Ciudadanía y Desarrollo

ACKNOWLEDGMENTS

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. It should be noted that all information was believed to be correct as of November 28, 2020; therefore, actions and events after this date are not reflected in this document.

This civil society report was prepared by Denise Zelaya Perdomo and Mauricio Alarcón Salvador, who are grateful for the participation and contributions of representatives of the public sector, civil society and academia.

The reviewers of this report were Danella Newman and Mathias Huter from the UNCAC Coalition. The English translation of the original Spanish report was also conducted by the UNCAC Coalition.

Fundación Ciudadanía y Desarrollo (FCD)
Eloy Alfaro N33-231 and 6 de Diciembre. Edf. Monasterio Plaza. Of. 1003.
Quito - Ecuador
www.ciudadaniaydesarrollo.org
FB: https://www.facebook.com/ciudadaniaydesarrollo
TW: https://twitter.com/FCD_Ecuador

FCD, through research and citizen education, aims to promote and defend the rule of law, democratic principles and individual freedom, as well as to encourage citizen participation, social control, transparency, open government and public innovation.

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LIST OF PERSONS CONSULTED

INSTITUTION	NAME OF PERSON INTERVIEWED	POSITION	INTERVIEW DATE
Secretariat of Human Rights	Claudia Balseca Endara	Director of Integral Policy and Promotion of Human Rights	October 21, 2020
National Public Procurement Service	Iván Tobar Torres	Institutional Advisor	October 22, 2020
Public Prosecturor's Office	Patricia A. Carranco	Director of Cooperation and International Affairs	October 22, 2020
	Mario A. Muñoz Bayas	Fiscal Agent of the Anti-Money Laundering Unit	October 22, 2020
	Diego Sánchez Mantilla	Analyst of the Transparency in Management Directorate	October 22, 2020
National Electoral Council	Santiago Vallejo Vásquez	General Secretary	October 27, 2020
Council of Citizen Participation and Social Control	Anonymous	Secretarial Staff	November 2, 2020
Grupo FARO	Estefania Teran Valdez	Director of Democracy, Transparency and Active Citizenship Area	November 9, 2020
Pontifical Catholic University of Ecuador	Efren Guerrero	Professor and coordinator of the Master of Jurisprudence program.	November 10, 2020
Superintendency of Banks	María Soledad Salvador	Director of Citizen Services	November 16, 2020
Ministry of Foreign Affairs and Human Mobility	Juan Pablo Valdiviezo	Human Rights Director	November 20, 2020
	Vicente Medina Morocho	Second Secretary, Human Rights Directorate	November 20, 2020

LIST OF ABBREVIATIONS

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
CEICCE	Comisión de Expertos Internacionales de Lucha Contra la Corrupción en Ecuador	Commission of International Experts in the Fight Against Corruption in Ecuador
CGE	Contraloría General del Estado	Office of the Comptroller General of the State
CIES	Centro de Inteligencia Estratégica del Estado	State Strategic Intelligence Center
CNE	Consejo Nacional Electoral	National Electoral Council
CNJ	Corte Nacional de Justicia	National Court of Justice
COFJ	Código Orgánico de la Función Judicial	Organic Code of the Judicial Function
COIP	Código Orgánico Integral Penal	Integral Organic Penal Code
COPFP	Código Orgánico de Planificación y Finanzas Públicas	Organic Planning and Public Finance Code
CoST	Infrastructure Transparency Initiative	
CPCCS	Consejo De Participación Ciudadana Y Control Social	Council of Citizen Participation and Social Control
CRE	Constitución de la República de Ecuador	Constitution of the Republic of Ecuador
EITI	Extractive Industries Transparency Initiative	
FATF	Financial Action Task Force	
FCD	Fundación Ciudadanía y Desarrollo	
FGE	Fiscalía General del Estado	Public Prosecutor's Office
FLCC	Frente de Lucha Contra la Corrupción	Front for the Fight Against Corruption
FTCS	Función de Transparencia y Control Social	Transparency and Social Control Function
IDB	Inter-American Development Bank	
LOPC	Ley Orgánica de Participación Ciudadana	Organic Law of Citizen Participation
LOSEP	Ley Orgánica de Servicio Público	Organic Public Service Law
LOSNCP	Ley Orgánica del Sistema Nacional de Contratación Pública	Organic Law of the National Public Procurement System
LOTAIP	Ley Orgánica de Transparencia y Acceso a la Información Pública	Organic Law on Transparency and Access to Public Information
LPCDPJ	Ley de Presentación y Control de Declaraciones Patrimoniales Juradas	Law for the Presentation and Control of Sworn Patrimonial Statements
LPLAFD	Ley de Prevención de Lavado de Activos y del Financiamiento de Delitos	Law for the Prevention of Money Laundering and the Financing of Crimes

OAS	Organización de Estados Americanos	Organization of American States
OC4IDS	Open Contracting for Infrastructure Data Standard	
OCDS	Open Contracting Data Standard	
OGP	Open Government Partnership	
PGE	Procuraduría General del Estado	State Attorney General's Office
SEPS	Superintendencia de Economía Popular y Solidaria	Superintendency of Popular and Solidarity Economy
SERCOP	Servicio Nacional de Contratación Pública de Ecuador	National Public Procurement Service of Ecuador
SINFIP	Sistema Nacional de Finanzas Públicas	National Public Finance System
SPVAT	Sistema Nacional de Protección y Asistencia de Víctimas, Testigos y otros Participantes en el Proceso	National System for the Protection and Assistance of Victims, Witnesses and Other Participants in the Proceeding
SRI	Servicio de Rentas Internas	Internal Revenue Service
SUPERCIAS	Superintendencia de Compañías, Valores y Seguros	Superintendency of Companies, Securities and Insurance
UAFE	Unidad de Análisis Financiero y Económico	Financial and Economic Analysis Unit
UNCAC	United Nations Convention Against Corruption	
UNODC	United Nations Office of Drugs and Crime	

1 INTRODUCTION

Ecuador signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003 and ratified it on September 15, 2005.[1]

This report reviews Ecuador's implementation of the articles in Chapters II (Preventive Measures) and V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering both chapters. Ecuador was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the fifth year in the second year, i.e. in 2020. A draft of this shadow report was provided to the government of Ecuador on January 6, 2021.

Fundación Ciudadanía y Desarrollo, Transparency International's national contact in Ecuador and member of the UNCAC Coalition, is the organization that has authored this report.

1.1 SCOPE

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Art. 5), preventive anti-corruption bodies (Art. 6), public sector employment (Art. 7.1), codes of conduct, conflicts of interest and asset declarations (Arts. 7, 8 and 12), reporting mechanisms and whistleblower protection (Arts. 8.1 and 8.4 and 13.2), political financing (Art. 7.3), public procurement (Art. 9.1), the management of public finances (Art. 9), judiciary and prosecution service (Art. 11), private sector transparency (Art. 12), access to information and participation of society (Arts. 10 and 13.1), and measures to prevent money laundering (Art. 14).

It also covers the articles covering anti-money laundering (Arts. 52 and 58), measures for direct recovery of property (Arts. 53 and 56), confiscation tools (Art. 54), international cooperation for purposes of confiscation (Arts. 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Art. 57).

1.2 STRUCTURE

The report begins with an executive summary, including the condensed findings, conclusions and recommendations on the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Ecuador, as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

1.3 METHODOLOGY

This report was prepared using guidelines and a report template provided by the UNCAC Coalition and Transparency International. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessments checklist. The report template included a set of questions about the review process and, in the section on implementation and compliance, asked for examples of good practices

[1] See https://www.unodc.org/unodc/en/corruption/ratification-status.html.

and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

In preparing this report, Fundación Ciudadanía y Desarrollo resorted mainly to active transparency and official requests for public information, in accordance with the current Organic Law of Transparency and Access to Information. In this regard, it is worth mentioning that virtuality and teleworking due to the COVID-19 pandemic caused delays, for instance, in receiving responses to requests. The research team made efforts to obtain information from government offices and to engage in dialogue with government officials.

This report was written prior to the official country review.

2 EXECUTIVE SUMMARY

This report, prepared by Fundación Ciudadanía y Desarrollo, examines Ecuador's implementation of Chapters II (Preventive Measures) and V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC), with the objective of contributing to the ongoing review process which is part of the second review cycle.

2.1. DESCRIPTION OF THE PROCESS

At the time of writing this report, Ecuador's official review process is in the self-assessment stage. It should be noted that Fundación Ciudadanía y Desarrollo has repeatedly invited both the Presidency of the Republic, through its General Secretariat, and the Ministry of Foreign Affairs and Human Mobility, as the focal point of this review, to sign the Transparency Pledge promoted by the UNCAC Coalition, without obtaining a positive response to date. We have also expressed to these entities our willingness to work together to promote an open and collaborative review process. The State has not published information regarding the review process, nor has it involved non-state actors in the process, but it still has the opportunity to do so. On the other hand, the visit of the peer reviewers is uncertain due to the COVID-19 pandemic.

2.2 AVAILABILITY OF INFORMATION

Access to information for the preparation of this report was a challenge. Institutions publish little information on public policies, reports, statistics and programs on prevention and fight against corruption proactively. On the other hand, 75% of the public information requests submitted were not answered by the institutions or the information was denied. To fill these gaps, interviews were conducted with state and non-state actors. In the case of public institutions, out of the 15 interview requests, 7 were answered positively. It should also be noted that the State has not published information on the review process. Finally, the measures adopted in the framework of the COVID-19 pandemic represented an obstacle for accessing information and approaching key actors.

2.3 IMPLEMENTATION IN LAW AND PRACTICE

There are regulations at the constitutional level and laws in place that cover preventive policies and practices in the fight against corruption and preventive bodies. It should be noted that Ecuador has an unusual division of powers. In practice, the Transparency and Social Control Function (FTCS), which has been called on to play a leading role on these matters, has not been adequately established and has not achieved a solid institutional framework to fully comply with its legal functions. On the other hand, the Council for Citizen Participation and Social Control (CPCCS, an institution that is part of the FTCS and in charge of organizing the selection processes of the heads of different State agencies, promoting citizen participation, social control and accountability, and strengthening the system of complaints and investigation of corruption), is currently a contested institution, with low legitimacy, whose future is uncertain and requires a public, open and inclusive debate, since the changes it proposes to adopt affect the country's checks and balances.

Public service recruitment is mainly regulated by the Organic Law of Public Service[2], which has been in force for a decade. This law regulates all public service institutions at all government levels and standardizes recruitment through public, merit-based competitions. However, the standards of

[2] See http://bit.ly/3q8bGSu.

transparency and access to information in public service recruitment must be reinforced to strengthen the social control of citizens. Similarly, the requirements for accessing and evaluating information regarding higher-level officials, who can be freely appointed and removed, must be strengthened, and the discrepancy that exists in the respective law must be reduced. Similarly, access to senior positions in independent institutions such as the Comptroller General's Office or the Public Prosecutor's Office, should adopt international standards and comply with maximum publicity and transparency if the modality of public competition for free appointment and removal is maintained.

Until the beginning of 2020, regulations on political financing (Electoral and Political Organizations Organic Law - Democracy Code)[3] included very few provisions related to transparency, accountability and financial management of political organizations. Authorities had very limited powers to investigate and sanction conduct related to illegal financing of campaigns and political organizations. There is little precedent regarding investigation and sanctioning by the control bodies (National Electoral Council and Comptroller General of the State), and the most prominent case (known as "Green Rice" or "Bribes 2012 - 2016") was sanctioned under the criminal offense of bribery. The recent reforms to the Democracy Code[4] seek to strengthen transparency and accountability and provide more tools to the regulatory body. Their effective application began in the general election process in February 2021.

Furthermore, there is a need to strengthen transparency and broaden the scope of asset declarations, both in relation to the declared content and the obligated actors (including, for example, candidates running for office in public elections), on the basis of international standards that allow for the creation of effective monitoring tools. Similarly, there are regulatory and practical weaknesses in codes of conduct for public officials of all State functions, as there are no minimum standards for institutional codes or adequate supervision of their compliance. The country should adopt regulations aimed at preventing and managing conflicts of interest, as well as revolving doors. Bills have been presented in the Assembly on this issue, but they are yet to be discussed.

Significant reforms on whistleblower protection, anonymous reporting, and incentives for effective whistleblowing were approved at the end of 2020. To achieve their effective application, these regulations require inter-institutional coordination processes that limit discretion in their enforcement and guarantee security for whistleblowers.

Ecuador has made a significant qualitative leap in terms public procurement in recent years, adopting international standards, 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, there is a need to update legislation aimed at reducing corruption risks.

Although the issues related to the General State Budget are regulated in the Constitution, the management of public finances in Ecuador in general is regulated by the so-called Organic Code of Planning and Public Finances.[5] This code, which is supposed to organize, regulate and link the National Decentralized System of Participative Planning with the National System of Public Finances, coordinate budgetary programming, the General State Budget, the other budgets of public entities, and all public

[3] See http://bit.ly/3oJ1Zlk.
[4] See http://bit.ly/3oJ1Zlk.
[5] See http://bit.ly/2YLG4FL.

resources; establishes among the principles for the formulation of public economic policy, transparency, access to public information and citizen participation. The provision of information to citizens on budgetary issues has improved, both by the Ministry of Economy and Finance and the National Assembly, but the spaces for actual participation are still limited.

Moreover, the approval of a new Organic Law on Transparency and Access to Public Information (LOTAIP) that guarantees citizens timely access to quality information based on international standards and new technologies must not be postponed any longer. In terms of participation, providing legal security to social organizations is a priority. Ecuadorian legislation includes legal concepts for citizen participation that constitute good practices in the region, but their practical application must be improved.

Beyond requiring regulatory reforms, co-creation of public policies and effective actions, the real fight against corruption requires an independent justice system to overcome impunity. Other State functions' interference in the justice system, especially by the Executive (through referendums, transition regimes and evaluation processes) and the existence of disciplinary procedures based on largely subjective grounds, have directly impacted judicial independence and rendered the justice system instable. Both national and international organizations, as well as by the Inter-American and Universal Systems, have expressed their concern about these developments in observations. The imminent reforms to the Organic Code of the Judicial Function could provide a way out by adopting international standards for access and tenure in High Courts and Tribunals, delimiting the use of certain sanctions and adopting the Open Justice model to strengthen transparency, participation and accountability in the sector.

Regarding transparency in the private sector, there is a need to develop regulations and incentives to implement anti-bribery and compliance systems in companies. Similarly, there is a need for more proactive involvement, interest and willingness of the private sector to participate in corruption prevention practices.

There are regulations in place for the prevention of money laundering, but their application is poor. Prompted by a Financial Action Task Force (FATF) evaluation, the responsible public institutions developed technical standards, protocols, and instructions aimed at achieving an effective implementation of measures in the past year. The results of these efforts will soon be available for evaluation. Moreover, national legislation and institutions must adopt reforms to respond to the new forms of money laundering through Fintech.

Ecuador has very few convictions in the area of money laundering. It is necessary to analyze the investigation and prosecution processes in this area to determine bottlenecks and adopt corrective measures. On the other hand, since money laundering is a complex crime that is handled with circumstantial evidence, it is necessary to strengthen investigation systems and justice operators' capacity.

Although the country has legal tools for the confiscation of assets and goods resulting from illicit activities in place, they are insufficient and limited regarding the ultimate goal of recovering what has been lost due to corruption and other criminal conduct. In recent years, there have been some advances on this matter, such as making confiscation against legal persons viable, but the continuing dependency on the existence of an enforceable conviction is a problem when the investigated or

prosecuted person is a fugitive, dies or has immunity. Thus, it becomes necessary to improve the national legal system in line with the proposed Law on Asset Forfeiture[6] that will enable the direct recovery of assets, without conviction but respecting the defendants' fundamental rights. This bill, currently under discussion in the National Assembly, represents an opportunity to effectively implement regulations that comply with international standards in Ecuador.

Finally, in relation to international cooperation for confiscation, no specific cases have been identified regarding the recovery of assets or goods by Ecuador in other countries or by other countries in Ecuador. In this regard, regulations and procedures to facilitate cooperation must be developed. The draft Organic Law on Asset Forfeiture contains provisions that would improve the implementation of the UNCAC in Ecuador.

Table 1: Implementation and Enforcement summary - Chapters II and V

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 - Preventive anti-corruption policies and practices	Partially implemented	Poor
Art. 6 - Preventive anti-corruption body or bodies	Largely implemented	Moderate
Art. 7.1 - Public sector employment	Largely implemented	Moderate
Art. 7.3 - Political financing	Partially implemented	Poor
Arts. 7, 8 and 12 - Codes of Conduct, conflicts of interest and asset declarations	Partially implemented	Poor
Arts. 8.4 and 13.2 – Reporting mechanism and whistleblowers protection	Partially implemented	Moderate
Art. 9.1 - Public procurement	Largely implemented	Good
Art. 9.2 - Management of public finances	Largely implemented	Good
Arts. 10 and 13.1 - Access to information and participation of society	Partially implemented	Moderate
Art. 11 - Judiciary and prosecution services	Partially implemented	Moderate
Art. 12 - Private sector transparency	Partially implemented	Poor
Art. 14 - Measures to prevent money-laundering	Partially implemented	Moderate
Arts. 52 and 58 – Anti-money laundering	Partially implemented	Moderate

[6] See https://bit.ly/2MMZ2cG.

Arts. 53 and 56 - Measures for direct recovery of assets	Partially implemented	Poor
Art. 54 - Confiscation tools	Partially implemented	Poor
Arts. 51, 54, 55, 56 and 59 - International cooperation for purpose of confiscation	Partially implemented	Poor

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Keywords explaining performance (e.g. resources, organization, independence, technical skills)
Council of Citizen Participation and Social Control	Poor	Low legitimacy, social and political questioning, authorities dismissed and investigated for alleged corruption. Part of FTCS.
Office of the Comptroller General of the State	Poor	Leads FTCS in carrying out "national" integrity plan; improving scope and transparency of declarations; improving Codes of Ethics, ex post and non-preventive monitoring approach.
Ombudsman's Office	Moderate	Proposes new LOTAIP; current capacity and resources do not allow adequate follow-up of LOTAIP.
Public Prosecutor's Office	Moderate	Whistleblower protection, leads GEIRA, low effectiveness of the system in relation to money laundering convictions and in asset recovery.
General Secretariat of the Presidency	Moderate	Focal point for OGP, poor coordination of policies of inter-institutional anti-corruption prevention and the fight against corruption.
National Public Procurement Service	Good	Resources, transparency, innovation, open data, international standards, CoST, Open Contracting. Transparency in emergency contracting.
National Electoral Council	Moderate	Promotion of regulatory reforms in favor of policy transparency. Creation of an anti-money laundering unit. Problems in the creation of regulations. Perspectives for the 2021 process.
Financial and Economic Analysis Unit	Moderate	Activity in Egmont Group, low effectiveness of the system in money laundering detection and asset recovery.

Ministry of Foreign Affairs and Human Mobility	Poor	Inoperability of the CEICCE. UNCAC focal point. Lack of transparency and participation in the review process to date.

2.4 RECOMMENDATIONS FOR PRIORITY ACTIONS

Below is a summary of the key recommendations identified for UNCAC implementation. Further details of these recommendations can be found in the Recommendations Chapter:

- Co-create a national plan on the prevention of and fight against corruption, including all government institutions and non-state actors. Publish all public policies on the matter and their status of implementation in a timely and proactive manner.
- Improve the coordination of prevention policies and actions promoted by different State bodies and public institutions in order to strengthen coordination, and make efficient use of resources and generate holistic impacts.
- Develop minimum standards and a model for public codes of conduct, as well as a follow-up mechanism for compliance with the respective institutions' obligation to implement the standards and mechanism in collaboration with non-state actors.
- Regulate conflicts of interest and revolving doors.
- 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 (OAS); and guarantee access to the information contained therein to the public, with the limited exception of personal data.
- Approve a new Organic Law on Transparency and Access to Public Information (LOTAIP) in line with inter-American model laws, international standards and relevant new technologies.
- Regulate social organizations legally, and not by executive decree, in order to guarantee their legal security.
- Approve regulations on personal data and update regulations on public archives.
- Coordinate the creation of secondary norms and inter-institutional processes to guarantee the correct and effective application of the Organic Integral Penal Code (COIP)'s new articles related to anonymous reporting and incentives for effective reporting. Set minimum security standards for the use and management of reporting channels.
- Continue to implement open contracting practices and update current contracting regulations in order to fill identified gaps that constitute corruption risks or obstacles to transparency and social control.
- Adopt measures to ensure the application of standards of transparency and free access to information in public service recruitment. Establish specific, adequate and minimum procedures, in line with Article 7.1(b) of the UNCAC, to select and train public office holders most vulnerable to corruption.
- Adopt measures to ensure that members of High Courts and Tribunals are appointed through public merit-based and competitive examinations that fully comply with the necessary publicity and transparency, that disciplinary processes comply with the parameters of objectivity and the full implementation of the parameters of Open Justice.
- Include legal obligations for private companies to incorporate *compliance* and *anti-bribery* programs, especially in sectors with a high risk of corruption.
- Develop regulations to regulate financial technologies, including cryptocurrencies and crypto-assets.
- Promote the adoption of regulations that facilitate asset recovery and international cooperation in this area without violating citizens' fundamental rights.

3 ASSESSMENT OF THE REVIEW PROCESS FOR ECUADOR

This shadow report was written before Ecuador's official review process started, which has been delayed for various reasons, including the COVID-19 pandemic. The research team was unable to find published information on the review process, so this section is based on the interviews conducted.

Initially, the Presidency's Anti-Corruption Secretariat was in charge of the review process as the UNCAC focal point. However, the Secretariat was abolished in May 2020, and its decree of removal entrusted the Presidency's General Secretariat with the continuation of the review process. In this context, FCD initiated outreach and advocacy activities to the General Secretariat, inviting them to sign the UNCAC Coalition's Transparency Pledge and expressing our willingness to support a transparent and inclusive review process. Although the Undersecretary-General showed openness towards us, a new change of administration slowed down our efforts.

After a period during which there was no institution responsible for coordinating the process, the Ministry of Foreign Affairs and Human Mobility assumed this role. FCD first approached the Ministry on October 1, 2020[7], informing them about the elaboration of this shadow report, sharing and inviting them to sign the Transparency Pledge and expressing our willingness to work together to promote an open and collaborative review process.

We consulted this institution on the review process through stakeholder interviews. At the date of writing this report, the official process was at the stage of completing the self-assessment checklist. Initially, the topics covered in the review were distributed among the public entities participating in the process. Then, the Ministry received the information from each institution, compiled it, reviewed it and made observations and suggestions, which it shared with the institutions for their review and changes. The final version is currently being completed for official submission.[8] The official information gathering process involved 17 public institutions, and in the first stage, a technical workshop was held with UNODC and the focal points designated by each institution.[9]

When asked if any non-state actors had been approached during the self-assessment process, the Ministry staff stated, "We have not approached non-state actors, basically because it is a country report, since it is a report that we respond to as a State Party to the United Nations Convention, we have conducted it directly with state actors."[10] When asked if they still plan to reach out to non-state actors considering that the self-assessment has not yet been finalized, the Ministry staff explained that "In times like these, and with the public health situation, it will be quite difficult to achieve; and time is against us".[11] When asked whether Ecuador will agree to publish the full review report, the staff interviewed said that "They are in the process of consulting with the high authorities to make this decision".[12]

Regarding the possibility of an official visit by the peer-reviewing countries, the Ministry's staff expressed that "at the moment it is not yet defined" due to the sanitary situation caused by COVID-

[7] See http://bit.ly/3cF3Xai.
[8] Interview with Vicente Medina, November 20, 2020.
[9] Interview with Juan Pablo Valdiviezo, November 20, 2020.
[10] Interview with Medina, 2020.
[11] Interview with Valdiviezo, 2020.
[12] Ibid.

19, which is opening the door to exploring virtual communication mechanisms.[13] They also stated that "If the reviewing countries, Honduras and Thailand, wish to establish a dialogue to facilitate their review process, and adequately fulfil their role as reviewer, the Ecuadorian State and the Ministry of Foreign Affairs as the focal point, are completely open to their wishes of either visiting the country or contacting those stakeholders who they wish to contact virtually, due to the circumstances. Ecuador is willing to facilitate all the necessary means...."[14] When asked if the Ecuadorian State will proactively invite non-State actors to meet with the reviewers, the Ministry staff explained that "It has not been considered", but that they will facilitate all actions that the reviewers want to develop, maintaining a supportive, open and neutral role.[15]

On the other hand, none of the other institutions interviewed have approached non-state actors in their information-gathering processes for the self-assessment. On the publication of information on the process and its schedule in a proactive manner, the Ministry explains that no information has been published but that the State is planning to do so.[16] The Ministry of Foreign Affairs assured us that they would consider signing the Transparency Pledge.[17]

In interviews with other public institutions, the lack of knowledge on the status of the review process became apparent. Most of the interviewed institutions have undergone multiple staff changes among those in charge of the review process, without an orderly transition. Additionally, there have been changes in the focal point for the UNCAC review. These elements of instability have caused confusion and a lack of coordination during the process.

On the other hand, it should be noted that the list of government experts, updated in September 2020, includes personnel from the Anti-Corruption Secretariat, which was abolished in May 2020.[18] It also includes personnel from the Secretariat for Human Rights, which agreed to meet with the research team of this report, and explained that this institution has no competence related to the implementation of the articles of the Convention under review and that this has communicated this to the focal point.[19]

The lack of inclusion of non-state actors and the lack of publication of information on the process was highlighted by interviewees from civil society organizations and academia. They all agree that the participation and inclusion of non-state actors and transparency of the process are crucial.

In conclusion, the active transparency of the review process and the involvement of non-state actors have been non-existent to date. However, it should be noted that there is still an opportunity to implement actions aimed at implementing these principles, considering that the official review process is still in its initial phase.

[13] Interview with Medina, 2020.
[14] Interview with Valdiviezo, 2020.
[15] Ibid.
[16] Interview with Medina, 2020.
[17] Interview with Valdiviezo, 2020.
[18] United Nations Office on Drugs and Crime - UNODC (September 2020). *Governmental Experts List.* Accessed October 17, 2020. Available at https://bit.ly/2Vboych.
[19] Interview with Claudia Balseca, October 21, 2020.

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	No	There is no published information on this matter.
Was the review schedule known?	No	There is no published information on this matter.
Was civil society consulted in the preparation of the self-assessment checklist?	Not applicable	At the time of writing 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 this report, the self-evaluation process has not been completed.
Did the government agree to a country visit?	Not applicable	At the time of writing this report, the country visit phase 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	At the time of writing this report, the country visit phase has not been reached.
Was civil society invited to provide input to the official reviewers?	Not applicable	At the time of writing this report, this stage has not been reached.
Was the private sector invited to provide input to the official examiners?	Not applicable	At the time of writing this report, this stage has not been reached.
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.

3.1 ACCESS TO INFORMATION

The following is a summary of the main points regarding access to information for this report's production.

a. **Laws and norms -** National normative bodies (Constitution, laws, regulations and other norms) were accessed through the websites of the Official Registry[20], which offers free access to citizens, and Lexis Ecuador[21], a private initiative that compiles the country's updated regulations. In this sense, there were no obstacles to access this type of documents.
b. **Institutional websites -** As part of the preparation of this report, FCD reviewed state institutions' websites to access public policies, reports, projects, statistics and information on structures. Information related to public policies, plans and their follow-up is generally not published on institutional websites, with some exceptions, as detailed in the section on Anti-Corruption Policies and Preventive Practices. Statistical data related to the implementation

[20] See http://bit.ly/3cOPs43.
[21] See http://bit.ly/3apuy8C.

of the UNCAC articles analyzed in this report are not published either, with some exceptions. In general, the information actively published on corruption is scarce and deficient.

c. **Requests for public information -** 12 requests[22] for public information were made for the preparation of this report, of which only 4 were answered, including one request that was denied. Only one of the responses was delivered within the time frame established by law. This shows the difficulties in accessing information through this channel, which also increased due to the measures adopted as a result of the COVID-19 pandemic. On the other hand, submitting requests through virtual means is difficult. The requests submitted were based on the Constitution of the Republic, the Organic Law on Transparency and Access to Public Information, specific laws on the subject and international jurisprudence.

d. **Interviews -** For the preparation of this report, 9 interviews were conducted, of which 7 were conducted with public servants, 1 was conducted with an expert from a civil society organization and 1 was conducted with a member of academia. We sent official letters[23] to public institutions that appear on the list of governmental experts[24] published on the UNODC website, as well as to the focal point for Ecuador's review process. A total of 15 requests for interviews were made to public institutions, of which 7 were accepted, and 8 did not respond to the request (see annex for more details).

   Interviews with non-state actors were conducted via e-mail. One interview was conducted with the civil society organization Grupo Faro and one interview was conducted with a professor of jurisprudence at the Pontificia Universidad Católica of Ecuador. Details of the persons interviewed can be found in the section List of Persons Consulted.

e. **Press releases -** Press releases were used as a reference for the preparation of some sections of the report.

[22] See http://bit.ly/3tq2o5Z.
[23] See https://bit.ly/3stVtaX.
[24] UNODC (September 2020). *Governmental Experts List.* Accessed October 17, 2020. Available at https://bit.ly/2Vboych.

4 ASSESSMENT OF IMPLEMENTATION CHAPTERS II AND CHAPTER V PROVISIONS

This section presents a thematic analysis of the articles of chapters II and V of the UNCAC. Each section begins with the name of the policy area and the numbers of the related UNCAC articles. This is followed by a legal and implementation analysis of the policy area in the Ecuadorian context, followed by a subsection identifying good practices and deficiencies.

4.1 CHAPTER II

4.1.1 ART. 5 - PREVENTIVE ANTI-CORRUPTION POLICIES AND PRACTICES

The main regulatory framework for the prevention of corruption in Ecuador is composed of the:

Constitution of the Republic of Ecuador (CRE)[25]
The CRE establishes five State functions, one of them being the Transparency and Social Control Function, which has among its main responsibilities "to prevent and fight corruption" (Art. 204). This function is responsible for the formulation of public policies on the prevention and fight against corruption, as well as for the creation of a national plan in this area (Art. 206). More details of this function, and of other bodies with constitutional powers in corruption prevention, can be found in the following section. Article 3.8 of the CRE establishes that it is the primary duty of the State to "guarantee its inhabitants the right to .... live in a democratic society free of corruption", while Art. 83 establishes as a responsibility of the citizens to denounce and fight corruption. It also recognizes the rights of oversight, participation, access to public information and freedom of expression, which are detailed in the section on access to information and participation of society.

Organic Law on Transparency and Access to Public Information (LOTAIP)[26]
The LOTAIP was approved in 2004 and has not been amended since then. This law aims to guarantee and regulate the exercise of the fundamental right of individuals to access public information, both in public and private institutions that manage public funds or provide public services. Information on the implementation of this law can be found in the section on access to information and participation of society.

Organic Law of Citizen Participation (LOPC)[27]
The LOPC was approved in 2010 and aims to promote, encourage and guarantee the exercise of the rights of participation and social control. It also regulates the citizen's right to accountability, which has among its objectives "To prevent and avoid corruption and bad governance" (Art. 91). Information on the implementation of this law can be found in the section on access to information and participation of society.

Law on the Prevention of Money Laundering and Financing of Crimes (LPLAFD)[28]
The LPLAFD, passed in 2016, aims to "prevent, detect and eradicate money laundering and the financing of crimes..." Information on the implementation of this law can be found in the sections on measures to prevent money laundering and anti-money laundering.

[25] See https://bit.ly/2yTZgYr.
[26] See https://bit.ly/2J4UkFH.
[27] See https://bit.ly/3mrbQT3.
[28] See https://bit.ly/3lhP8uR.

Within the legal framework, the Organic Law of Public Service (LOSEP)[29] of 2010, the Organic Law of the National Public Procurement System (LOSNCP)[30] of 2008, the Law of Presentation and Control of Sworn Patrimonial Declarations (LPCDPJ)[31] of 2016 and the laws that regulate the operation and attributions of bodies with competencies in matters of oversight and control are also of importance. On the other hand, in terms of the criminalization of and fight against corruption, the Comprehensive Organic Criminal Code (COIP)[32] of 2014 is important.

With regard to public policies formulated in recent years in the area of corruption prevention, the following are noteworthy:

- In June 2019, the Transparency and Social Control Function's National Plan for Public Integrity and Fight against Corruption (2019-2023) was approved.[33] This plan consists of three strategic objectives aimed at promoting integrity, strengthening citizen action and strengthening public and private inter-institutional coordination and cooperation.
  However, this plan is limited, for the most part, to actions exclusive to the FTCS. Therefore, it does not constitute a "national" public policy, as its title indicates and as required by the Constitution of the Republic. The absence of activities and coordination with entities of the other four State functions is evident. Similarly, there is a need to strengthen citizen participation in the implementation of commitments. On the other hand, the Plan does not have an explanatory section on the methodology used for its formulation, so it is impossible to know the level of citizen involvement in the Plan by reading the document. However, the 2019 accountability document of the FTCS[34] indicates that after approval, the Plan was brought to made accessible to the general public, but there is no indication of the existence of a participative process in its elaboration. Transparency of the methodology and ensuring optimal levels of participation and co-creation (not only making it accessible) of this type of public policies is fundamental.
  Regarding its implementation, the Plan does not establish specific deadlines for each milestone; it only indicates that they will be carried out between 2019 and 2023, making it difficult to follow up on them. In addition, citizens do not have access to seeing the progress of its implementation in a timely manner. According to the response to the request for access to information[35] requesting the follow-up documents, we were informed that the institutions that are part of the FTCS report the progress of the Plan's indicators every six months and that this information is processed annually, so it is not possible to know the progress to date, only the annual accountability report for 2019.
- On May 13, 2019, the plenary of the Transitory Council of Citizen Participation and Social Control (CPCCS-T) approved the Proposal of Public Policy on Transparency and Fight against Corruption, which was submitted to the Presidency and the National Assembly.[36] This proposal consists of six axes: 1) Implementation of the National Transparency System; 2) Strengthening of public control;

[29] See https://bit.ly/2RPu6YJ.
[30] See https://bit.ly/3q8bGSu.
[31] See http://bit.ly/2LfnD9z.
[32] See https://bit.ly/2JhEkjt.
[33] Transparency and Social Control Function (2019). *National Plan for Public Integrity and Fight against Corruption 2019-2013.* Accessed October 10, 2020. Available at https://bit.ly/39jxBAa.
[34] Transparency and Social Control Function (2020). *Informe de Labores 2019.* Accessed November 11, 2020. Available at https://bit.ly/2Lg5mJh.
[35] See http://bit.ly/39GIQCH.
[36] Council of Citizen Participation and Social Control (May 13, 2019). *CPCCS-T presented proposal of Public Policy on Transparency and Fight against Corruption.* Accessed November 7, 2020. Available at https://bit.ly/2KPlMrz.

3) Strengthening of the public procurement system; 4) Determination of an educational system; 5) Strengthening of the electoral system and; 6) Reforms applicable to criminal matters. The document is not published on the institutional website but was obtained through an official freedom of information request but to no avail; therefore, it is not possible to evaluate its contents. According to an interview with CPCCS staff, they have not received a response yet from the Presidency or the National Assembly regarding this proposal sent by the CPCCS, despite following up on the subject already twice.[37]

- In December 2017, the Anti-Corruption Front (FLCC), created by President Moreno, presented a government strategy to fight corruption and prevent it.[38] This strategy consists of five axes[39]: 1) Fight against impunity; 2) Promotion of transparency; 3) Education and reflection on values; 4) Fight against corruption in the private sector and; 5) Fight against corruption in the public sector management. This document is not published on the institutional website; therefore, an official freedom of information request was submitted, and the document was obtained in this way.
- The National Development Plan 2017-2021[40] , establishes in its eighth objective to "*Promote transparency and co-responsibility for a new social ethics*", and the promotion of ethics, the strengthening of transparency and the fight against corruption and impunity are reflected within the policies of this objective.
- In 2019, the Anti-Corruption Secretariat of the Presidency hired a consultancy to develop the "Design of the National Agenda for Transparent, Corruption-Free Institutions and Improved Service Delivery". For its elaboration, interviews were conducted with stakeholders from different sectors. The outcome of the consultancy has not been published on institutional websites, but we obtained the document after sending an official freedom of information request. No information on the implementation of this national agenda is available, and no one has been identified to follow up on this document after the closure of the Anti-Corruption Secretariat.

GOOD PRACTICES

- The Constitution of the Republic established a coordinating body within the function of transparency and social control, granting this body the specific attribution of "formulating public policies of transparency, control, accountability, promotion of citizen participation and prevention and fight against corruption" and "articulating the formulation of the national plan to fight corruption" (Art. 206). (Arts. 6.1 and 6.2, UNCAC)
- The National Plan for Public Integrity and the Fight against Corruption establishes as an action to be carried out an analysis of the application and compliance of regulations related to corruption prevention and the co-creation of reform proposals with the participation of multiple stakeholders. Regarding this commitment, the authors of this report made a freedom of information request for the documents or information on the progress of this commitment. In the FTCS's response[41], they explain that there is a legal commission working on the analysis and that no final and approved document is ready yet. There is no information on how the committee

[37] Interview with CPCCS Secretariat staff, November 2, 2020.
[38] Secretariat of Communication of the Presidency (June 2017). *Members of the Transparency and Anti-Corruption Front held their first working meeting.* Accessed September 27, 2020. Available at https://bit.ly/2V5UnU5.
[39] Grupo FARO (January 2018). *Progress report on six-month anti-corruption proposals.* Accessed September 30, 2020. Available at https://bit.ly/3IfEpRP.
[40] National Planning Council Ecuador (2017). *National Development Plan 2017-2021.* Accessed September 20, 2020. Available at https://bit.ly/2VaTVny.
[41] See http://bit.ly/39GIQCH.

was formed, so it is impossible to know if citizens, academia, autonomous decentralized governments, or the National Assembly were involved. There is also no information available on the process undertaken for its elaboration. (Art. 5.3, UNCAC)

- Starting in 2017, the Ecuadorian government facilitated spaces for the country's entry into several international multisectoral initiatives that were promoted for several years by civil society organizations. In this context, Ecuador joined the Open Government Partnership (OGP) in 2018, the Transparency in Infrastructure Initiative (CoST) at the end of 2019 and the Extractive Industries Transparency Initiative (EITI) in October 2020. (Art. 5.4, UNCAC)

DEFICIENCIES

- Some of the public policies related to corruption prevention are not easily accessible to citizens because they are not published on institutional webpages, and in some cases, they were not accessible through official requests for information. (Art. 5.1, UNCAC)
- There are no multisectoral mechanisms for monitoring and follow-up of current public policies and no evaluations of efficiency or progress reports have been found in the public domain. (Art. 5.3, UNCAC)
- The National Public Integrity and Anti-Corruption Plan (2019-2023) is not a national public policy, as it focuses on actions to be executed solely by the FTCS bodies. It was also not elaborated as a participatory public policy, with co-creation processes involving non-state sectors. Finally, the document does not establish clear deadlines that allow for adequate follow-up, and citizens do not have access to timely information on its implementation.

4.1.2 ART. 6 - PREVENTIVE ANTI-CORRUPTION BODY OR BODIES

As explained in the previous section, the Ecuadorian Constitution establishes five State Functions (Transparency and Social Control, Executive, Legislative, Judicial and Electoral).[42] All of these functions are key actors in the corruption prevention ecosystem. However, the state function with the most direct links to the issue is the Transparency and Social Control (FTCS) body, which will be briefly examined in the following paragraphs.

According to Art. 204 of the CRE, the FTCS is in charge of promoting the control of public entities and non-state actors that carry out activities of public interest, promoting accountability, transparency and equity, as well as encouraging citizen participation and preventing and combating corruption.

This body comprises the Council for Citizen Participation and Social Control (CPCCS), the Comptroller General's Office (CGE), the Ombudsman's Office, and the superintendencies. According to Art. 206, the heads of each of these bodies make up a coordinating body, which within its responsibility must "formulate public policies of transparency, control, accountability, promotion of citizen participation and prevention of and fight against corruption" and "develop a national plan to fight corruption".

Within the Council for Citizen Participation and Social Control (CPCCS)'s constitutional powers lie the organization of selection processes for the heads of various State agencies, which are fundamental for the system of checks and balances (e.g., Prosecutor's Office, Comptroller's Office, Public Prosecutor's Office, Superintendencies, electoral bodies and constitutional judges). Similarly, Art. 206 of the Constitution grants it the power to investigate allegations of corruption, act as a procedural party in open cases related to its investigations, contribute to the protection of whistleblowers of acts of

[42] See https://bit.ly/2yTZgYr.

corruption, promote citizen participation and establish mechanisms for social control and accountability of public institutions.

In a referendum held in February 2018, the CPCCS's appointment process for councilors was changed from public competition to election by popular vote. In an open consultation held in the same process, the termination of the CPCCS councilors was approved, and a transitional CPCCS was formed, with extraordinary powers to evaluate and, if necessary, replace the authorities appointed by the previous CPCCS. During this period, the transitional body appointed the heads of 11 agencies.[43] After the end of the transitional council's term, new councilors were elected for the first time by general election. Of the seven elected councilors, four were dismissed by impeachment by the Assembly in August 2019, and new incumbents were appointed.[44] Among the four councilors removed was the then CPCCS President, José Carlos Tuárez, who is currently facing criminal proceedings for alleged involvement in the sale of public offices.[45] On the other hand, in October 2020, the National Assembly dismissed the new President of the CPCCS, Christian Cruz Larrea, for breach of duties.[46] Similarly, Larrea faces an investigation by the Public Prosecutor's Office for the alleged crime of falsification of documents.[47]

In practice, the CPCCS has been widely called into questioned in recent years, and constitutional reform initiatives are currently being discussed to eliminate or transform it into an entity with fewer powers. Among these proposals is one aimed at removing the CPCCS and creating a bicameral legislative body.

In this regard, one of the civil society experts interviewed said, "The important thing is not to demonize the institution *per se*, but to evaluate the processes and see where there were failures." She also explains that before thinking about elimination, a solution or viable alternative should be found.[48]

On the other hand, one of the interviewed experts from academia states that "the problem is not that it is bad *per se*, but that it was rendered ineffective by politicizing civil society". Regarding the possibility of the legislature being in charge of the process of appointing authorities, he pointed out that the legislature is a function of the State with low social legitimacy and that this should be considered when making a decision.[49]

The State's Comptroller General (CGE) is the entity in charge of the administrative control of the use of public resources (Art. 212, CRE). In August 2020, the FTCS submitted a proposal[50] to the Assembly to transform the CGE into a Court of Auditors, to modernize the control of resources and decentralize

[43] Fundación Ciudadanía y Desarrollo (July 2019). *Informe final de veeduría al CPCCS-T.* Accessed October 20, 2020. Available at https://bit.ly/2VatbDC.
[44] El Comercio (August 14, 2019). *Assembly plenary dismissed Tuarez and three Cpccs councilors.* Accessed November 19, 2020. Available at https://bit.ly/2V62lfX.
[45] El Comercio (August 14, 2020). *Tuarez offered public posts in exchange for money, precious stones and even gold bars, says the Attorney General's Office.* Accessed November 19, 2020. Available at https://bit.ly/33pfiGd.
[46] National Assembly (October 13, 2020). *Oficio and resolution of impeachment.* Accessed October 30, 2020. Available at https://bit.ly/3qeM2vJ.
[47] El Universo (August 5, 2020). *Attorney General's Office opens investigation of Christian Cruz for his disability card.* Accessed November 7, 2020. Available at https://bit.ly/3q9Auti.
[48] Interview with Estefanía Terán Valdez, November 9, 2020.
[49] Interview with Efren Guerrero, November 10, 2020.
[50] Office of the Comptroller General of the State (August 2020). *Transparency Function delivered to the Assembly Draft of the Court of Accounts.* Accessed November 1, 2020. Available at https://bit.ly/36GDllD.

decision-making.[51] One of the experts interviewed from academia stated that the CGE "should have more investigative and interpretative powers within the public system and that the Comptroller's Office should be more interrelated in terms of *compliance*. It should not act in a punitive way but in a preventive way".[52]

The Ombudsman's Office is the body in charge of protecting and defending citizens' rights (Art. 215, CRE) and is the guarantor of the LOTAIP (Art. 11, LOTAIP). In order to fully comply with its functions, it is necessary to strengthen its structure and budget.

There are currently five Superintendencies: the Superintendency of Banks, the Superintendency of Companies, the Superintendency of Popular and Solidarity Economy, the Superintendency of Control of Market Power, and the Superintendency of Land Management.

There are state bodies in other state functions with competencies in the prevention and fight against corruption. The National Assembly is the main body with regulatory powers and has the authority to oversee the Executive, Electoral and Transparency and Social Control Functions (Art. 120.9, CRE). However, this body has low legitimacy. According to Cedatos/Gallup polls, the National Assembly's approval ratings reached only 5%, and credibility of legislators barely reached 2% by August 2020.[53]

Regarding the Executive Function, the Presidency's General Secretariat has amongst its responsibilities to advise the President on matters of government transparency, issue general policies for the effective management of the central administration and "coordinate, promote and facilitate the implementation of transparency mechanisms for the management of the central and institutional public administration, which contribute to the detection and prevention of acts of corruption" (Art. 2, Executive Decree 395-2018). In terms of practice, this instance coordinates the Open Government initiative in Ecuador on behalf of the government, whose co-creation of the first open government plan can be highlighted as a good practice in the country.[54] On the other hand, this instance has seen continuous changes in its leadership (at least five heads in three years of government) and has been affected by constant modifications in its structure and responsibilities within the Presidency.

It should also be noted that in February 2019, the Presidency's Anti-Corruption Secretariat was created with competencies for mainstreaming public policies and coordinating actions in the fight against corruption. In practice, the Secretariat generated discomfort among other State Functions and was removed in May 2020, upon receiving complaints from other bodies about duplication of efforts and interference of functions.[55] In its short time of operation, the Secretariat had three different heads.

Moreover, on May 13, 2019, the President created the Commission of International Experts to Fight Corruption in Ecuador (CEICCE) with a Technical Secretariat exercised by the United Nations Office on Drugs and Crime (UNODC), and delegating to the Foreign Ministry and the Anticorruption Secretariat

[51] Transparency and Social Control Function (2020). *Draft Organic Law of the State Audit Court.* Accessed November 1, 2020. Available at https://bit.ly/2MnFjk1.
[52] Interview with Guerrero, 2020.
[53] Agencia EFE (August 2020). *Credibility of Ecuador's president falls to 8%*. Accessed November 15, 2020. Available at https://bit.ly/2YG7CfT.
[54] Grupo Núcleo de Gobierno Abierto Ecuador (2019) *First Open Government Action Plan in Ecuador.* Accessed October 7, 2020. Available at http://bit.ly/3tq4a75.
[55] Primicias (May 2020). *Anti-Corruption Secretariat is rejected by the Prosecutor's Office, the Comptroller's Office and the CPCCS.* Accessed November 11, 2020. Available at http://bit.ly/3cCocFw.

to carry out the necessary actions for its operation. The CEICCE, created by Executive Decree 731-2019 with the objectives of advising and strengthening State institutions in the prevention and fight against corruption, providing technical support to institutions in high-impact corruption cases and coordinate with civil society on the fight against corruption. For its operation, the government transferred USD 1 million to UNODC. Nevertheless, it has not been established to date due to coordination and execution problems between the government and UNODC. In compliance with its mandate, the CEICCE delivered its draft Statute in July 2019. However, the government has not made any announcement on it, the funds transferred remain unexecuted, and the Commission has not been able to function fully.

Finally, there are other bodies of the Executive Function with competencies in prevention, such as the Financial and Economic Analysis Unit (UAFE) with the mission of leading the fight against money laundering, the Internal Revenue Service (SRI) in charge of taxation, and the National Public Procurement Service (SERCOP) in charge of public procurement, whose functions in practice are evaluated in the following sections of this report. In terms of investigation and prosecution of corruption crimes, there are several bodies, such as the State Strategic Intelligence Center (CIES), the National Police, the State Attorney General's Office (PGE), the State Prosecutor's Office (FGE) and the Judiciary.

GOOD PRACTICES

- The existence of a coordination body within the Transparency and Social Control Function (FTCS) created by the Constitution is a good practice. (Art. 6, UNCAC) However, the instance does not include bodies that are not part of this function of the State.

DEFICIENCIES

- Transparency and accountability must be improved in relation to the FTCS's coordinating body's constitutional responsibilities and activities. Currently, the coordinating body does not have a mechanism for publishing information. Similarly, this body's coordination with other State functions and non-State actors must be improved. (Art. 6.3, UNCAC) Furthermore, the FTCS's coordinating body does not have its own technical team but relies on the teams of the institutions that are part of the function.
- Regarding the CPCCS, the questioning of its actions, the criminal proceedings initiated against some of its former members, and the constant change of leadership in recent years have deepened the institution's legitimacy crisis, and its future is currently uncertain. A transformation or elimination of this institution would entail a change in the checks and balances as it is the body in charge of organizing the selection processes of various authorities and that the proposals must be analyzed in detail and debated openly and pluralistically. This body has a broad constitutional mandate in terms of prevention but a weak institutional framework, legitimacy and independence. (Art. 6.2, UNCAC)
- In the case of the Executive Function, a clear roadmap in terms of coordination of corruption prevention is lacking. In 2019, the Anti-Corruption Secretariat was created but was eliminated in 2020. That same year, the CEICCE was established, which to date fails to start operating due to a lack of adequate planning and political will of the government. (Art. 6.2, UNCAC)
- There is a need for better coordination among the bodies responsible for the prevention of corruption.

4.1.3 ART. 7.1 - PUBLIC SECTOR EMPLOYMENT

The Constitution of the Republic of Ecuador, within its Title IV - Participation and Organization of Power, chapter seven, covers the public administration. Article 228 establishes that "Entry into the public service, promotion and advancement in the administrative career shall be carried out through merit-based and competitive examinations, in the manner determined by law (...)". Elected authorities and the so-called free appointment and removal of civil servants are exempted from this modality. Given that every public body, entity or institution has a responsible authority, which in this case operates as the appointing authority, the Constitution determines that failure to comply with this mandate "shall result in the dismissal of the appointing authority".

The Constitution also establishes minimum prohibitions for entering public service, including: a) holding more than one public office simultaneously, with the exception of university teaching, provided that the schedule permits it; b) nepotism; and c) discriminatory actions of any kind.

Finally, the Constitution establishes the obligation for all public servants, without exception, to submit at the beginning and end of their term of office, "and with the periodicity determined by law, a sworn asset declaration". This must include the assets and liabilities owned by the person and authorize the lifting of their bank account secrecy. Failure to comply with this obligation will prevent the person from taking office. In addition, if this declaration is not presented at the end of the term of office, or if unjustified inconsistencies are detected, illicit enrichment will be presumed. However, the authors of this report found no information on the practical application of the presumption of illicit enrichment.

The law that regulates the public service and the administrative career in Ecuador is the Organic Law of Public Service (LOSEP)[56], in force since October 2010 and last amended in May 2019. This norm clearly distinguishes the public service as such and a career in the public service specifically. According to Article 4 of the LOSEP, "all persons who in any form or in any capacity work, provide services or exercise a position, function or dignity within the public sector" are considered a public servant.[57]

In addition to reaffirming the constitutional provisions, this regulation establishes a catalog of requirements for entry into public service (Article 5). Among them, in addition to the usual requirements related to legal capacity and the exercise of rights, is the requirement "not to be under civil interdiction (...), to comply with the requirements of academic preparation; technical, technological or its equivalent, and other competencies that, as the case may be, may be required; (...) not to be in default of payment of credits established in favor of entities or agencies of the public sector (...) to have been declared the winner in the competitive merit-based examination, except in the cases of public servants of popular election or free appointment and removal (...)".[58]

The Organic Law of Public Service (LOSEP) establishes that the sworn asset declarations must not only include the authorization to lift bank secrecy ordered by the Constitution but also a "statement of not owing more than two alimonies (...), a statement of not being involved in nepotism, inabilities or prohibitions (...) and a sworn statement of not being involved in the constant prohibition in the Organic Law for the Application of the Popular Consultation carried out on February 19, 2017."[59]

[56] See https://bit.ly/2RPu6YJ.
[57] Ibid. p. 7.
[58] Ibid. p. 8.
[59] Ibid. p. 8.

Although the Constitution already prohibits nepotism, it is this law that delimits it in its Article 6. Thus, it prohibits the appointing authorities to designate, appoint, post and hire in the same institution or organization their relatives "up to the fourth degree of consanguinity and second degree of affinity, their spouse or with whom they maintain a common-law relationship".[60] The LOSEP also establishes a package of special prohibitions to be part of the public service, thus preventing those who have "carried out sentences for crimes of: embezzlement, illicit enrichment, extortion, bribery, trading in influence, offer to carry out trading of influence, and identity theft; as well as, asset laundering, illicit association and organized crime related to acts of corruption; and, in general, those who have been sentenced for defrauding State institutions" and those who "have been convicted for (...) customs offenses, trafficking of narcotic and psychotropic substances, asset laundering, sexual harassment, sexual exploitation, human trafficking, illicit trafficking or rape." The Organic Law for the Implementation of the Popular Consultation which entered into force on February 19, 2017 also incorporated the prohibition to be part of the public service for those who "have assets or capital in tax havens." In January 2019, an action of unconstitutionality (0001-19-IN)[61] of this law was filed, which is still pending resolution in the Constitutional Court.

According to the LOSEP's provisions, entry into the public service is only possible through a public competition based on merit and competition. The regulation mandates that the qualifications are established with objective parameters and without the direct intervention of the appointing authorities; and that if this happens, the selection process is invalidated. The provisions also establish that additional points will be awarded in case an applicant proves to have obtained recognition within the National Program of Recognition of Academic Excellence or recognition of excellence in the field of technical and technological training or its equivalent, recognized by the governing body of Higher Education, Science, Technology and Innovation. Competitive merit-based examinations are also the applicable mechanisms for promotions, with an emphasis on the evaluation of efficiency and years of service.

The administrative career or public service career is based on the system for competitive merit-based examinations. To start this career, in addition to the general requirements, it is necessary "to have been declared the winner of the competitive merit-based examination, which must be recorded in the respective minutes (...)" and "to have been appointed to the position." A career civil servant has additional guarantees of job stability and the preferential right to transfer to a vacant position of a similar nature if their current position is abolished.

The law establishes that employees must undergo periodic evaluations during the performance of their duties. If, as a result of such evaluations, an inability to perform is determined, this determines a cause for dismissal. The Human Talent Management Units of public institutions are in charge of these evaluations and must carry them out once a year, considering the institutional nature and the service rendered by the employees. The LOSEP also establishes a Performance Evaluation Subsystem, which is "the set of standards, techniques, methods, protocols and harmonized, fair, transparent, impartial and free of arbitrariness procedures that systematically aim to evaluate responsibilities and profiles of the position using objective parameters in accordance with the functions. The evaluation will be based on quantitative and qualitative management indicators, aimed at promoting the achievement

[60] Ibid. p. 9.
[61] See https://bit.ly/38uPgUe.

of institutional aims and purposes, the development of public servants and the continuous improvement of the quality of the public service provided by all entities (...)".
Additionally, the LOSEP gives the Ministry of Labor the responsibility to establish remuneration scales for all public sector institutions on an annual basis. It also establishes, with few exceptions, that no public servant may receive a unified monthly remuneration lower than the minimum established in the scales, or higher or equal to the maximum, which is that of the President of the Republic.

Finally, following the Ecuadorian legal tradition that no law can be fully in force and applied if it does not have its regulations, in April 2011, after the issuance of Executive Decree No. 710, the President of the Republic issued the General Regulations to the Organic Law of Public Service.[62] This regulation ratifies the Constitution's provisions and the LOSEP and defines procedures in greater detail. The regulation implements the entry, permanence and exit of the public service and the public service career.

In practice, even though Ecuador has provisions on the obligatory nature of sworn asset declarations, which date back to before the existence of the UNCAC to the Constitution of 1998, it is difficult to determine cases in which after the Comptroller's Office or another control entity presumes illicit enrichment, people are criminalized accordingly. There are several assembly members, both from the 2013-2017 period and from the 2017-2021 period, who continue to be investigated by the Prosecutor's Office for illicit enrichment after the Comptroller's Office detected inconsistencies in their asset declarations. Another recent example is the investigation initiated by the Prosecutor's Office in 2018 against three former judges of the Constitutional Court for "unusual and unjustified operations", following a complaint by the Financial and Economic Analysis Unit (UAFE)[63], which has not yielded any results.

Despite a constitutional and legal prohibition of nepotism, in practice, it is the same rule that allows this provision to be circumvented. The starting point is that the prohibition relates to the appointing authority. Thus, in the National Assembly, for example, a collegiate representative body of 137 members, where each member may have at least two advisors and two assistants, the appointing authority is the President of the Assembly. In this case, only the Assembly Presidents' relatives would be barred from working in the institution, but not the Assembly members' relatives. A similar situation occurs in the Executive, where for example, the daughter of the President of the Republic, Lenin Moreno, was part of the diplomatic corps as an advisor to the Mission of Ecuador to the UN. Legally, there was no nepotism since her appointing authority was not the President of the Republic but the Minister of Foreign Affairs.[64] Several other cases could be named, such as that of the Ambassador of Ecuador to Spain, Cristóbal Roldán, father of the Secretary of President Moreno, Juan Sebastián Roldán[65], or that of Iván Granda, former Anti-Corruption Secretary and Minister of Economic and Social Inclusion, who is the husband of the Minister of Government, María Paula Romo, and whose mother was appointed Consul in Mexico. Nepotism has been present in every government since its return to democracy in 1979, despite the prohibitions in the Constitution and the law on the matter.

[62] See http://bit.ly/3jmh0yL.
[63] Office of the Comptroller General of the State (2018). *Prosecutor's Office investigates three judges of the Constitutional Court*. Accessed February 2, 2021. Available at https://bit.ly/3ukH2HO.
[64] Diario Expreso (May 2020). *President Lenin Moreno's daughter keeps her position as Ecuador's advisor to the UN*. Accessed February 2, 2021. Available at https://bit.ly/3pC6Zz7.
[65] Pichincha Comunicaciones (May 2020). *Juan Sebastián Roldán defends charges of his father and Iván Granda's mother in the foreign service*. Accessed February 2, 2021. Available at https://bit.ly/37yLpVQ.

The LOSEP also determines some rules regarding salaries in the public sector, including an express prohibition - with very few exceptions - that no one may receive a remuneration higher than that of the President of the Republic. Nevertheless, a report prepared by the Public Expenditure Observatory of Fundación Ciudadanía y Desarrollo concluded that more than 300 civil servants and authorities did so.[66] Prefects, mayors, managers and directors of public entities, among others, receive a salary higher than that of the President, despite the express prohibition. The Office of the Comptroller General of the State has not carried out controls to prevent this illegal malpractice from continuing and being corrected.

Finally, the rules related to transparency and access to public information in competitive public examinations and merit-based competitions are not being complied with. This occurs mainly with respect to the processes to appoint high authorities of control bodies and collegiate bodies, as well as members of the justice sector. This was evidenced between 2018 and 2019 in the processes in charge of the Council of Citizen Participation and Transitory Social Control[67] , or more recently in the process of a comprehensive evaluation of judges and co-judges of the National Court of Justice, in charge of the Judiciary Council[68], or in the public competition to appoint new judges and co-judges of the same National Court held during 2020.[69]

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- Although it is from before Ecuador's ratification and entry into force of the UNCAC, since it has been in force since the Constitution of 1998, the constitutional obligation of all public servants to submit sworn asset declaration that include the authorization to lift bank secrecy at the beginning (without which they cannot take office) and end of their term of office, is a good practice to be highlighted. It should be noted that the Constitution of 2008 established that if the declaration is not presented at the end of the administration, or if inconsistencies are detected, illicit enrichment will be presumed.
- With the enactment of the norms mentioned above, a general rule was implemented stating that access to the civil service and promotion in the administrative career is based on merit and competition. (Art. 7.1(a), UNCAC)
- The regulation of remuneration in the public sector, both on the basis of the LOSEP and the scales issued annually by the Ministry of Labor, have allowed for certain regulation and control, but above all remuneration equity among the officials of institutions at different levels of government. (Art. 7.1(c), UNCAC) The annual salary adjustments, made through these scales, obey objective criteria based on the country's economic reality.
- Although it is included in a transitory provision and not in an article of the LOSEP, having enshrined in law that no one in the public sector may earn more than the President is a good practice. The exceptions are established in this provision in a restrictive and limited manner.

[66] Fundación Ciudadanía y Desarrollo (January 2020). *Más de 300 Autoridades y Funcionarios Ganan Más que el Presidente.* Accessed November 10, 2020. Available at https://bit.ly/3365iS0.
[67] Fundación Ciudadanía y Desarrollo (March 2019). *Veeduría Consejo en la Mira. Annual Report CPPCS-T March 6, 2018 - March 6, 2019*. P. 5. Accessed February 2, 2021. Available at: https://bit.ly/3ujW9B8.
[68] Fundación Ciudadanía y Desarrollo (November 2019). *Informe de veeduría al proceso de evaluación integral a los jueces y conjueces de la Corte Nacional de Justicia*. Accessed February 2, 2021. Available at: https://bit.ly/3uiciXT.
[69] El Comercio (2020). *Comisión Nacional Anticorrupción pide dejar insubsistente concurso de jueces para la Corte Nacional de Justicia*. Accessed November 17, 2020. Available at: https://bit.ly/3kbpQjk.

- The regulation establishes a Personnel Training and Development Subsystem to enable public servants to acquire and update their knowledge, develop techniques, skills, and values to perform efficiently and effectively.

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- In public competitions, both for access to public service and for access to certain positions of authority, the standards of transparency and free access to information that should govern these processes, in line with Article 7.1 of the UNCAC, are still not complied with. Compliance with the principle of publicity regarding these competitions, as per the Organic Law on Transparency and Access to Public Information, must be enforced so that citizens can carry monitor them.
- Although there are parameters for entry into the public service, as regards certain authorities and, in general, freely appointed and removed officials, they are weak and are not complied with. Objective and minimum criteria should be established so that those who occupy these positions have sufficient capacity and merit to do so.
- Despite the regulatory prohibition that no one may earn more than the President, several elected authorities and senior public officials receive a salary higher than that of the President. The Comptroller General's Office has not carried out controls to prevent this malpractice.
- The Law does not establish specific, adequate and minimum-standard procedures to select and train public office holders most vulnerable to corruption. (Art. 7.1(b), UNCAC) It is worth mentioning, for example, that even for the processes of appointment of high authorities of the justice sector, the procedures are established for each call by resolution so that each contest has a different normative basis.
- Although there is the so-called Subsystem of Training and Development of Personnel in the norm, and the Institute of Meritocracy was created (which operated autonomously between 2011 and 2016, when it was integrated into the Ministry of Labor), there is no updated information that allows for the verification of the promotion of "education and training programs that enable them to meet the requirements of correct, honorable and due performance of their functions and provide them with specialized and appropriate training to make them more aware of the risks of corruption inherent in the performance of their functions". (Art. 7.1(d), UNCAC) However, the National Training Plan of the Undersecretariat for Meritocracy 2018-2021 states that "The methodology for identifying training needs, in the public sector will be adapted to the results of the performance evaluation of public servants, and will also consider complementary training components on topics such as: rights approach, transparency, environmental care and efficient use of resources, information and communication technologies and National Development Plan from the institutional approach or mission, among others."[70]

4.1.4 ART. 7.3 - POLITICAL FINANCING

In Ecuador, national political organizations - national political movements and political parties - are non-state public organizations. Their financing falls within the mixed model, allowing private contributions and grants public funds, and is framed in two aspects: a) permanent financing; and b) financing for electoral promotion.

With the entry into force of the Constitution of 2008, the prohibition for political subjects to contract advertising in the media and billboards was established, and the State became responsible for

[70] Ministry of Labor (April 2018). *National Training Plan for the Public Sector 2018 - 2021*. P. 49. Accessed November 17, 2020. Available at https://bit.ly/3aGZvqa.

promotion through these channels (Art. 115 CRE).[71] In general, political financing is regulated by the Organic Law on Electoral and Political Organizations, better known as the Democracy Code, approved initially in 2009 and recently amended in February 2020[72], and by several regulations that the National Electoral Council approves for this purpose in each process.[73] In addition to the parameters of private financing, these regulations establish two public funds, the Permanent Party Fund and the Electoral Promotion Fund, the latter of which is related to the constitutional prohibition.

The Permanent Party Fund is granted to political organizations that meet at least one of the following conditions: 1) four percent of the valid votes in two consecutive multi-person elections at the national level; or, 2) at least three representatives to the National Assembly; or, 3) eight percent of mayoralties; or, 4) at least one councilman or councilwoman in each of at least ten percent of the country's cantons. This fund is allocated through a line item in the State's General Budget. Fifty percent is distributed equally among all political organizations that comply with the law's requirements, 35% is distributed proportionally according to the results of the last multi-person elections, and the remaining 15% is allocated to research and training in electoral matters. The Electoral Promotion Fund is established by calculating[74] up to 15% of the maximum electoral expenses established by the authority in the call for elections.

Regarding the private component of campaign financing, political organizations participating in elections may receive contributions through ordinary and extraordinary mandatory contributions from their affiliates, as well as voluntary and personal contributions made by candidates for their campaigns; contributions or donations made in cash or in kind, freely and voluntarily by individuals of Ecuadorian nationality, and by foreign individuals residing in Ecuador; and contributions obtained by parties from the income of their assets, as well as from their promotional activities. The regulation establishes prohibitions and limits contributions and donations. Regarding permanent financing, political organizations may not, in any case, receive anonymous contributions. Furthermore, prohibitions include direct or indirect economic contributions from state-owned companies, from concessionaires of public works or services owned by the State, from religious congregations of any denomination, from natural or legal persons that contract with the State, or from foreign companies, institutions or states. Individuals or legal entities may not donate an amount greater than the value of 200 basic shopping baskets annually, which is currently equivalent to just over USD 143,000.[75]

During the electoral processes, it is prohibited to receive any kind of contribution or delivery of any type of resource of illicit origin. Similarly, contributions from national individuals are prohibited in the following cases: if they have contracts with the State in the execution of public work, provision of public services or exploitation of natural resources; or, if they maintain direct or indirect judicial litigation with the State for contracts for public works or services. In addition, the use of public resources and assets to promote candidates is explicitly prohibited, including the delivery or inclusion of names or political organizations in the delivery of works. Finally, the solicitation of mandatory contributions in favor of political organizations or any candidacy in State institutions is prohibited.

[71] See https://bit.ly/3cNLjK9.
[72] See National Electoral Council (2020). Available at https://bit.ly/3sec02r.
[73] See https://bit.ly/3k8O1ie.
[74] Article 202 of the Organic Electoral and Political Organizations Law - Democracy Code. See https://bit.ly/3sec02r.
[75] Art. 359. Ibid.

The limits on donations and contributions apply to individuals and 1) may not exceed 5% of the maximum amount of electoral expenses authorized for each post, for candidates, 2) may not exceed 10% for income obtained by the organizations from the financial income of their assets, as well as from their promotional activities, 3) may not exceed 50% of the maximum amount for loans that the political subjects obtain from the national financial system to cover the costs of the electoral campaigns in which they participate, and 4) may not exceed 20% of the maximum threshold of the expenses established by law.

According to the norm, during a campaign, the monitoring of electoral expenses begins with the call for elections, which is when the political organizations may use money on activities for the dissemination of their ideological principles, government plans, work plans and candidacies, considering that the money used is counted as part of the electoral expenses, even though the campaign *per se* has not yet begun. The maximum amounts allowed are calculated according to the post being elected, since it is the result of multiplying a fixed value established in the law, by the number of citizens registered in the national registry or in the corresponding jurisdiction.

The financial management and reporting of the political organizations falls mainly on their accountant, since this person is in charge of the receipt and expenditure of the political organizations and their alliances' funds. Additionally, to fulfill their duty, this person must open a single account in the national financial system during the electoral years and manage separate accounts for the institutional and electoral campaign resources. Despite this individual responsibility, institutionally, the political parties and movements must comply with transparency and access to their information obligations.

Political organizations that have received funding must submit an annual report on the use of public resources to the National Electoral Council, which may request an audit by the Office of the Comptroller General of the State. The latter may also act ex officio if it receives complaints about the misuse of public resources.

It is worth mentioning that in the recent reforms to the Democracy Code (2020)[76], the National Electoral Council has an obligation to develop the necessary technological and computer tools to implement the Political Financing Accounting System, which will be of free access to all organizations and political subjects so that they can register their Chart of Accounts in a mandatory manner. The National Electoral Council shall make the accounting information public through its official web page and regulate the obligatory compliance with the mechanisms of control of the electoral expenditure. The control of expenses will be executed and reported in continuous periods of a maximum of fifteen days, until the end of the electoral process. In compliance with the regulation, in August 2020, the electoral authority created the so-called Complementary Anti-Money Laundering Unit that seeks to prevent, stop and eradicate the crime of money laundering, and report any unusual or unjustified movement of economic resources of political organizations to the Financial and Economic Analysis Unit (UAFE).

The major package of political finance reforms came into effect in February 2020, to be implemented as of the February 2021 general elections. Its effective implementation and results will be seen in the coming months.

[76] See https://bit.ly/3oJ1ZIk.

It is important to mention that several of the reforms on political financing were proposed already in 2013, but gained momentum only after an independent journalistic investigation published in May 2019[77] , which revealed, thanks to a leak, an email from one of former President Rafael Correa's advisors containing an attached document with information on alleged contributions from multinational companies, State contractors, to the ruling Alianza PAIS movement during the period November 2013 to February 2014. This publication contained detailed information about an internal network of the organization, which under a system of codes that identified national and transnational companies, State contractors and the highest representatives of Alianza PAIS, including the former President of the Republic, the former Vice President, Ministers, Assembly members, advisors, among others, received substantial contributions for political campaigns. The aim of this large sum of contributions was to finance Rafael Correa and Jorge Glas's electoral campaign, as well as that of a number of Assembly members and local government authorities of the ruling party in 2013.

Through documents and emails, there was alleged evidence of double accounting by Alianza PAIS, since some reports were submitted to the CNE and other documents were handled internally by the organization, but were later uncovered. The so-called "Arroz Verde" case evidenced the scarce controls of the Electoral Function over campaign contributions and the existence of a financial scaffolding that facilitates the flow of illicit money to politicians.[78]

According to the investigation portal that uncovered this case, the contributions totaled USD 11.6 million, through two mechanisms: USD 4.6 million in cash through cross-invoicing, and USD 7 million, where multinational companies canceled the receipts from suppliers of the Alianza PAIS campaign.[79] Both mechanisms consisted in receiving and channeling illicit money for politics that goes under the electoral authorities' control radars and allows for payments that circumvent the official and declarable limits of electoral expenses.[80] The companies' money stemmed from procurement contracts worth millions of USD, mainly infrastructure-related, of bridges, tunnels, sanitation, irrigation, electrification, ports, airports and buildings. However, several of the contributions were made after the campaign had concluded and once the procurement of such contracts was assured.

In July 2019, once the Public Prosecutor's Office took up the case, it was named 'Bribery Case 2012-2016', expanding the investigation of the complaint filed in the digital portal. On April 7, 2020, 18 people were sentenced to eight years in prison, including ten businessmen, former President Rafael Correa, former Vice President Jorge Glas and six other former senior officials of the previous government. In addition, a reduced sentence was given to two of President Correa's former advisors for collaborating with the justice system.[81]

Similarly, general elections were held in Ecuador in 2017, through which the President, Vice President, Assembly members and Andean Parliamentarians were appointed. During the second electoral round,

[77] Villavicencio, F., & Zurita, C. (May 3, 2019). *Odebrecht and other multinationals put president in Ecuador.* Accessed November 17, 2020. Retrieved from Investigative Journalism: https://bit.ly/2zfeuY1.
[78] PlanV Digital Magazine. (May 13, 2019). *The specter of double counting shakes politics.* Accessed November 1, 2020. Available at https://bit.ly/34RJXLE.
[79] Villavicencio, F., Zurita, C., & Solórzano, C. (May 11, 2019). All names in Green Rice. Accessed November 1, 2020. Retrieved from Investigative Journalism: https://bit.ly/3eHf0P1.
[80] PlanV Digital Magazine (August 12, 2019). *Los cuatro "mecanismos" con los que habría operado el "Arroz Verde" correísta*. Accessed November 1, 2020. Available at https://bit.ly/2RY7GVh.
[81] El Universo Newspaper (April 9, 2020). *Defenders of those sentenced in the 2012-2016 bribery case prepare appeals.* Accessed November 1, 2020. Available at https://bit.ly/2VQ3ZC2.

Lenin Moreno was elected President and Jorge Glas was elected Vice President. These candidates belonged to the ruling party, even though months after assuming power, the now President departed from his predecessor's policies. However, the investigative journalism portal Mil Hojas published a report denouncing irregularities in the financing of the campaign that led them to win the elections. The denunciation was based on three aspects: there were contributions from private, national and foreign companies in exchange for the concession of public tenders or the promise of high positions in the cabinet. Regarding public institutions, they committed embezzlement by diverting public resources to finance their electoral campaign through the Prefectures of three provinces. The total amount donated by private companies and public institutions was USD 7.72 million. Finally, special funds were diverted for the President and Vice President's political campaign, such as the USD 350 000 that was intended for the reconstruction of the areas affected by the 2016 earthquake and USD 1.5 million from the National Intelligence Secretariat under the justification of "reserved expenses".[82]

Although the National Electoral Council, which is the central institution in charge of controlling the financing of politics, has sufficient legal powers to act, it does not have enough economic and human resources to carry out its task adequately. For instance, during the last quarter of 2019, the Council was in a dispute with the Ministry of Finance because they lacked of sufficient funds to pay its personnel's salaries. This lack of resources meant the non-renewal of contracts and dismissals of technical-electoral staff, but after a new allocation from the Ministry, the staff was rehired; however, with lower salaries in some cases. In February 2020, the crisis worsened again, when the Electoral Council alerted the public through a press release that the Ministry of Finance had determined the allocation of the institution's operating budget and therefore, the preparation of the 2021 presidential and parliamentary elections was put at risk. Finally, the Ministry of Finance issued a press release stating that "the 2021 electoral process is not at risk from the budgetary point of view".[83]

GOOD PRACTICES

According to the information available based on the last electoral processes, no good practices are identified that deserve to be highlighted. Precisely because of all the shortcomings detected, and in particular what happened with the so-called Bribery Case 2012 -2016, also known as *Arroz Verde* Case[84] , the reforms that came into force in 2020 were promoted in view of the 2021 electoral process.

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The information presented is in view of the previous electoral processes, keeping in mind that new regulations will be implemented in the 2021 process, and depending on their application, new deficiencies could be determined. In line with Article 7.3 of the UNCAC, the following deficiencies are identified:

- Regarding infractions and sanctions within the framework of political financing and expenditure, the categories of infractions in the analyzed regulations vary according to the offending party, not according to the seriousness of the infraction. In this sense, political actors, natural and legal

[82] Thousand Leaves Foundation (June 4, 2019) *How was Lenín and Glas' campaign financed .* Accessed November 1, 2020 . Available at https://bit.ly/2VrGU9Z.

[83] Gómez Ponce, L., & Alarcón Salvador, M. (02 13, 2020). Does *the CNE have enough resources for the 2021 elections?* . Date accessed November 13, 2020. Retrieved from Observatorio de Gasto Público: https://bit.ly/363Dfml.

[84] Attorney General's Office. *Bribery Case 2012-2016*. Accessed February 2, 2021. Available at https://bit.ly/3qFTorS.

persons, were involved in illegal practices by campaigning outside the established time frames, by disrespecting the limits and sources allowed for financing, as well as the maximums determined for expenditure, by not submitting complete and duly justified financial reports, and by contracting electoral advertising directly (outside the established times for the campaign).

- The monitoring performed by both the electoral authority (the National Electoral Council) and the Office of the Comptroller General of the State has been deficient. Despite the existence of evidence and denunciations of misuse of public resources by political actors, only four reports on special investigations carried out on the delivery and use of the Permanent Party Fund, and one investigation on the monitoring of the management of accounts are public.[85] None of them resulted in specific glosses or sanctions for the organizations, nor for those responsible for the management of finances.
- Although the Comptroller's Office is the institution in charge of auditing public funds, and considering that every year money is given to political organizations, it is alarming that the last year of special investigation of parties and movements was in 2016.[86]
- There is an evident lack of transparency, opacity and secrecy in the financial management of political organizations, which in addition to constituting a violation of the norms, opens the door to the possibility of using it as an instrument to launder assets or money or as a "means of investment" for those who contribute to a particular campaign in exchange for a future concession of public contracts. Despite the fact that there is a legal obligation that the information on the financial management of political organizations must be published on their web portals, of the total of the 24 national organizations registered for 2020, 37% (9) do not have a web page, 25% (6) have a web page that does not work, 17% (4) have a web page but do not have a transparency or financial reports section, and 21% (5) have a web page and a transparency section, but the quality of the information published varies considerably. This is not monitored by any entity.

4.1.5 ARTS. 7, 8 AND 12 - CODES OF CONDUCT, CONFLICTS OF INTEREST AND ASSET DECLARATIONS

The Internal Control Standards of the Office of the State's Comptroller General (CGE), approved in 2009 and amended in 2019, establish in section 100-01 that "internal control shall be the responsibility of each State institution...and shall aim to create the conditions for the exercise of control."[87] Similarly, section 200-01 on integrity and ethical values states that "The highest authority of each entity shall formally issue the standards specific to the code of conduct, in order to contribute to the proper use of public resources and the fight against corruption." As a result, there is a great variety in the structure, content, and quality of the institutions' codes of conduct, so there is a need to establish minimum standards and basic guidelines for them. Additionally, it is impossible to know if all public entities comply with the requirement to have a code of ethics.

On the other hand, it is noteworthy that an amendment to the CRE was approved[88] in February 2018 after an open consultation and referendum, which establishes in its Art. 233 that persons convicted for corruption offenses "...shall be barred from being candidates to elected positions, to contract with the State, to hold public jobs or positions and shall lose their rights of participation..." This article has

[85] Fundación Ciudadanía y Desarrollo (May 2020). *Diagnosis on priority areas for cooperation against corruption in Ecuador*. Pp. 27 and 28. Accessed February 4, 2021. Available at https://bit.ly/2NkuQq0.
[86] Ibid. p. 28.
[87] See http://bit.ly/3aCpKwW.
[88] See https://bit.ly/3cNLjK9.

already been applied in practice for the presidential and legislative elections of 2021. Some pre-candidates failed to register due to this prohibition, including former President Rafael Correa Delgado who was running for the position of Vice President and was convicted for embezzlement.[89]

Regarding conflicts of interest and revolving doors, Art. 153 of the CRE establishes that those who have held the position of Minister of State and senior public servants may not be part of the board of directors or the management team, legal representatives or proxies of legal entities that enter into contracts with the State, or be officials of international financial institutions that are creditors of the country once they have left office and during the following two years. However, no regulations support this constitutional article, nor is there an entity in place with defined powers to ensure its application. In practice, the article is not complied with.

There are clear cases of revolving doors in the financial, extractive, construction and energy sectors in Ecuador. One of the cases of revolving doors that has generated media attention and criticism from different sectors in recent months is that of the former Minister of Economy and Finance Richard Martinez[90], who resigned from the State portfolio, where as part of his duties, he conducted negotiations with multilateral credit institutions, to take the position of Vice President of the Inter-American Development Bank (IDB). In this regard, Moreno's government positioned itself in favor of Martinez being appointed in this high position at the IDB, while the Attorney General issued a consultation opinion in which he assured that the IDB, according to Ecuadorian law, is not a financial institution.[91]

Regarding preventive measures for conflicts of interest related to gifts, the Organic Law of Public Service (LOSEP)[92] in its articles 24 and 116 establishes the prohibition for public officials to request or receive gifts, presents, contributions or privileges because of their functions, sanctioning non-compliance with dismissal. Similarly, the LOSEP regulation[93] sets rules on gifts received by public officials in official acts and in this framework, the CGE approved a regulation in January 2019 to regulate this matter.[94] This regulation contemplates that each institution will keep a registry of official gifts with their appraisal among its mandates. Article 4 of the regulation establishes that these procedures must observe the principles of publicity, timeliness and transparency, among others. However, there is no evidence that these records are publicly accessible through active transparency mechanisms. Two requests for access to information were made, requesting information on the CGE and the Presidency records, but no response was obtained.

On the one hand, the Regulation on Foreign Travel of Public Servants was approved in November 2019.[95] In its Article 5, the regulation establishes transparency as a governing principle, indicating that all trips made by public servants must be entered into the System of Travel Abroad and Travel when

[89] El País (September 2020). *Ecuador court disqualifies Rafael Correa as vice-presidential candidate*. Accessed November 20, 2020. Available at http://bit.ly/3aA9lsu.
[90] Fundación Ciudadanía y Desarrollo (October 2020). *Open Letter to the President of the Republic and Ecuadorian Authorities.* Accessed October 28, 2020. Available at http://bit.ly/36F1Clx.
[91] El Comercio (October 2020). *'IDB is not an international financial institution,' Ecuador's Attorney General argues.* Accessed November 10, 2020. Available at http://bit.ly/3rk15DP.
[92] See https://bit.ly/2RPu6YJ.
[93] See http://bit.ly/3jmh0yL.
[94] See http://bit.ly/2LhPpCn.
[95] See http://bit.ly/3ogOQ9R.

Abroad[96]; however, the record of these trips is not public. On the other hand, according to Article 2 of the regulation, this does not apply to the President, Vice President, Secretary-General and the Presidency's Private Secretary. Travel within Ecuador is also not governed by this regulation. The authors of this report sent an official request of access the information of the registry to the Presidency's General Secretariat, but obtained no response.

No regulations or good national practices were identified in relation to the presentation of declarations of interest by public servants.

Regarding asset declarations, Article 231 of the CRE establishes the obligation of public servants to submit a sworn asset declaration at the beginning and end of their term, authorizing the lifting of bank secrecy, and provides that the Comptroller "shall examine and compare the declarations and investigate cases in which illicit enrichment is presumed". In 2016, the Law on the Presentation and Control of Sworn Patrimonial Declarations (LPCDPJ) entered into force[97], which establishes the obligation for all public servants, without exception, to present a sworn asset declaration at the beginning and end of their term of office. In practice, it is not possible to start working in the public sector without first complying with this requirement. In the case of elected public servants, Art. 8 of the LPCDPJ establishes that the declaration is required for taking office. The declarations must be updated by the public servants every two years. Art. 3 of the law leaves open the possibility for the CGE to request updates on the declarations if deemed necessary in an investigation or complaint framework. These obligations are monitored by the human resources departments of each institution.

The LPCDPJ brought about a change concerning the previous regulation: the declarations are filled in through an online form on the State Comptroller General's webpage and not before a public notary, as used it used to be done. The form includes sections on basic information of the declarant's partner, the declarant's assets (bank accounts, investments, shares, acquired rights, receivable accounts, private pension funds, movable and immovable property) and liabilities (debts incurred).[98] According to Art. 9 of the law, the information covers domestic and foreign assets and liabilities.

The LPCDPJ allows the Office of the State Comptroller General to manage the system in order to consult declarations as they see fit.[99] Thus, at the time of this report, the public is only allowed to access information on declarants' total assets, total liabilities and total wealth, without further details, even though Article 16 of the law explicitly states that " information in the sworn patrimonial declarations shall be public." Similarly, the system only shows the declaration summaries as of 2017.

It is also worth mentioning that, since these are sworn statements, the possibility of officials or authorities being criminally prosecuted for perjury in accordance with the Organic Integral Criminal Code exists in case of false or incomplete information by the declarant, in addition to the actions to be taken by the Comptroller's Office which were mentioned above.

In this investigation framework, a freedom of information request was submitted to the CGE to access the sworn asset declarations of the heads of the five State Functions, but it was denied. This denial of

[96] Presidency of Ecuador. *Foreign Travel System.* Accessed October 15, 2020. Available at http://bit.ly/3pMPRaG.
[97] See https://bit.ly/2LfnD9z.
[98] Office of the Comptroller General of the State. *Instructions for filling out the electronic form of the sworn asset declaration.* Accessed November 7, 2020. Available at https://bit.ly/39J10DG.
[99] Office of the Comptroller General of the State. *Sworn Patrimonial Declarations.* Accessed October 7, 2020. Available at http://bit.ly/35bMVfx.

information was based on the regulation for sworn asset declarations[100], approved in 2019 by the Comptroller's Office, which in its Article 10 establishes that information of the total and unrestricted content of the statements will be provided only in cases in which it is judicially ordered or by request of the Prosecutor's Office, the head of the Assembly or the highest authority of a control body. Similarly, this article states that "The information requested by third parties shall be granted upon justified and motivated request of the same through an official letter addressed to the Comptroller General of the State, who, if appropriate, shall authorize it". However, the authors of this report conclude that the regulation cannot limit or condition the disclosure of information that the law explicitly declares public. On the other hand, the Constitution recognizes citizens as the first controller of public power. This citizen right of control must be guaranteed with public information and the necessary mechanisms to exercise it. The information available on these declarations is not in an open data format.

GOOD PRACTICES

- The approval, by referendum, of the prohibition to hold elected office for persons sentenced for corruption offenses (Art. 7.2, UNCAC) is an improvement, and results are beginning to be seen in this regard with respect to the 2021 electoral process.
- Although there was already a law on the matter in place, the approval of the Law on the Presentation and Control of Sworn Patrimonial Declarations in 2016 incorporated some international standards. (Art. 8.5, UNCAC)
- The creation of specific regulations and records of trips abroad and official gifts is a good practice. However, these records are not accessible to the public through active transparency mechanisms, nor was it possible to access them through requests for information. Moreover, the travel registry does not include trips within the national territory. (Arts. 7.4 and 8.5, UNCAC)

DEFICIENCIES

- There is a need to create minimum standards and parameters for the process of creating codes of conducts in public institutions, in order to have effective instruments that are aligned with international standards. (Arts. 8.1 and 8.2, UNCAC)
- There are no regulations that support the constitutional provision regarding revolving doors, nor is there an entity with defined powers to ensure its application. In practice, this provision is not complied with. There are bills on the matter in the National Assembly which are not being processed. (Arts. 8.5 and 12.2, UNCAC)
- No regulations or best practices on declarations of interests of public officials have been identified. There are bills on the matter in the National Assembly that are not being processed. (Art. 7.4, UNCAC).
- The sworn asset declarations submitted by public servants are not accessible to the public; only the total amounts of assets and liabilities can be accessed, even though the law establishes that they must be made public. (Arts. 7.4 and 8.5, UNCAC) It was also not possible to access them through access to information requests. This is an obstacle to effective social control and monitoring.
- The obligation to file a sworn assets declaration is triggered only when a person has won an election. Candidates for elected office are not required to submit such a declaration, nor a declaration on conflicts of interest. These initiatives are voluntary exercises that are activated at the initiative of the candidate themselves or by civil society organizations.

[100] See http://bit.ly/2O4gTfL.

- The change brought about by the LPCDPJ regarding the sworn assets declarations to be filled out through an online form State Comptroller General's web page and not before a notary public, causes problems for the justice sector when trying to judicially sanction those who submit false or incomplete information, since Article 270 of the Organic Integral Criminal Code states that "perjury is committed when knowingly false sworn assets declarations or sworn statements are made before a public notary".[101]

4.1.6 ARTS. 8.4 AND 13.2 – REPORTING MECHANISM WHISTLEBLOWER PROTECTION

Article 83 of the CRE establishes "to administer public assets honestly and with unrestricted adherence to the law, and to denounce and combat acts of corruption" as one of the duties and responsibilities of Ecuadorian citizens.[102] Article 208 establishes as one of the Council for Citizen Participation and Social Control (CPCCS)'s responsibilities to investigate allegations of corruption and "contribute to the protection of persons who denounce acts of corruption". In its Art. 195, it establishes that "The Prosecutor's Office will direct, either ex officio or at the request of a party, the pre-procedural and criminal procedural investigation; ...".

By constitutional provision, the Prosecutor General's Office leads the National System for the Protection and Assistance of Victims, Witnesses and other Participants in the Process (SPAVT). Within this framework, the Public Prosecutor's Office (FGE) leads the inter-institutional coordination and the adoption of specialized protection and assistance measures to ensure integrity and non-revictimization. This system has its Regulations for the System of Protection and Assistance to Victims, Witnesses and other Participants in Criminal Proceedings (SPAVT Regulation)[103], approved in October 2018, which describes the processes and measures that can be taken for protection. There is a special unit in place within the FGE to carry out this type of protection.

The main protection provided to persons protected under the SPAVT, according to Art. 36 of the regulation, are actions to protect their physical integrity, which vary according to the risk level. Similarly, depending on the case, Art. 37 establishes that complementary measures may be adopted, such as a change of identity, protection using technological means and training in self-protection measures. Furthermore, in Art. 38, judicial protection is contemplated as a measure, which consists of the confidentiality of data that allows the identification of the victim or complainant within a process, and measures to ensure protection when testifying or giving judicial testimonies. On the other hand, Arts. 39, 40 and 41 of the regulation establish that the SPAVT also contemplates adopting social assistance measures for the protected person and their family, psychological assistance, legal sponsorship, administrative changes in case the protected person is a justice operator, and educational assistance.

By November 2020, SPAVT was covering 976 protected persons. The total number of public servants within the SPAVT Directorate is 111, of which eight are in the National Directorate and 103 at the decentralized level in 23 provincial units.[104] The authors of this report sent a freedom of information request to the SPAVT regarding statistics on the number of persons covered by the SPAVT who are

[101] See https://bit.ly/2JhEkjt.
[102] See https://bit.ly/3cNLjK9.
[103] See http://bit.ly/37dmt5r.
[104] Attorney General's Office (November 2020). *Response to request for information.* Available at http://bit.ly/3pPcdbC.

linked to investigation processes or cases of corruption crimes, as well as the number of persons who have been victims of threats or crimes against physical integrity, but did not receive a response.

FGE personnel interviewed believe that SPAVT has been able to do its job, but must increase personnel and financial resources and improve inter-institutional cooperation mechanisms to strengthen the system.[105]

In relation to the constitutional mandate of the CPCCS, the institution's staff interviewed stated that, although they have "legal authority in relation to the protection of victims and witnesses, we do not have the budget for this", and that in this context, the CPCCS collects requests from complainants to transfer them to the FGE and helps them comply with the requirements for entry into the protection program. They also highlighted that the CPCCS and the FGE are working to improve inter-institutional coordination in this area.[106]

On the other hand, the LOSEP establishes in its Art. 4.1[107], approved by the National Assembly in December 2019, that "the public servant who reports an act of corruption, becomes an informant or witness within a process...". In cases where they provide data on the destination of goods or assets resulting from corrupt activities, they may request an administrative transfer, and if this is not possible, a paid leave of absence while retaining seniority rights. The duration of these measures is established according to the specific case, and the informant's right to reserve their original position is guaranteed. Similarly, the LOSEP in its Art. 23 establishes as one of the public servants' rights, the right "to enjoy the protections and guarantees in cases in which the servant reports, in a motivated manner, the non-compliance with the law, as well as the commission of acts of corruption".

Within the reforms to the Integral Organic Penal Code (COIP) approved in December 2019, Art. 427 and 430.1 incorporated the possibility of reporting anonymously in cases of corruption and organized crime and the possibility for the whistleblower to request entry into the SPAVT.[108] Regarding this reform, the FGE staff interviewed stated that it structuring internal processes, protocols and training for different units within the FGE will become necessary in order to implement the new provision. Furthermore, they stressed that inter-institutional coordination would be necessary to guarantee that the public entities involved in the process, such as the FGE and the National Police effectively handle whistleblowers' personal information with confidentiality. They also stated that in order to comply with the spirit of the law in relation to anonymous reporting, working meetings would need to be held with all the institutions that have within their internal regulations the possibility of receiving reports, so that a pre-established and secure process for the assignment of an alphanumeric code that protects the whistleblower, and protocols and minimum regulatory criteria are in place and established for the reporting channels when these are taken up by the Prosecutor's Office. They also pointed out that the COVID-19 pandemic has delayed the actions aimed at achieving this inter-institutional planning and coordination.[109]

Moreover, the package of reforms approved in December 2019 incorporated the possibility of granting economic incentives for persons who provide evidence that leads to the recovery of assets from illicit activities. The approved article 430.2 establishes that a whistleblower "...may receive an

[105] Interview with Patricia A. Carranco, October 22, 2020.
[106] Interview with CPCCS Secretariat staff, November 2020.
[107] See https://bit.ly/2RPu6YJ.
[108] See http://bit.ly/2JhEkjt.
[109] Interview with Mario Muñoz, October 22, 2020.

economic compensation proportional to the economic resources that the State manages to recover, up to an amount of between 10% and a maximum of 20% of what is recovered. Once the funds and assets have been recovered, the judge shall order the immediate delivery of the resources...". However, the approved norm does not determine the public institution in charge of leading the application of this new provision, and also leaves room for a high degree of interpretation in its application, which could open the door to inadequate management of the incentives, if no transparent, coordinated and auditable processes are established in the matter.

In this regard, the FGE staff interviewed stated that an inter-institutional coordination process must be initiated to make the new provision operational and to adequately manage the incentives. Similarly, they explained that coordination with the institution in charge of recovering the assets, as well with the PGE, will become necessary in order to deliver the incentives to eligible whistleblowers once the respective sentence has been issued.[110]

In terms of channels for reporting acts of corruption, several public institutions, from decentralized governments, ministries, superintendencies and others, have opened electronic channels for receiving complaints. However, in many cases, no minimum-security conditions or protocols have been established for handling these reports to ensure the whistleblowers' safety and properly handle the information.

Below, we briefly explore the electronic reporting channels of the two institutions that are constitutionally competent to investigate allegations of corruption and grant whistleblower protection:

- The FGE has a complaints mailbox on its website, which is exclusively for reporting possible acts of corruption committed within the Prosecutor's Office.[111] The form allows you to file a complaint without needing to register your name or identity. The required fields are: type of corruption, description, e-mail and telephone number. In addition, the mailbox has instructions and a video tutorial on how to file a complaint. However, there is no explanation of the procedure within the FGE following receipt of a complaint, the security measures taken, or how to follow up on the complaint. The interviewed FGE staff explained that these complaints are handled by the Prosecutor's Office's Transparency and Anti-Corruption Unit, whose members sign confidentiality agreements on handling information.[112]
- The CPCCS has within its channels for receiving complaints of corruption, an application called CLIC.[113] To use the system, the whistleblower needs to register, including by indicating their personal data, contact information, and even their fingerprint code. When entering the system to file a complaint, there is an option to check a box for an anonymous complaint. This system allows whistleblowers to follow up on their complaint and even submit it for reconsideration. However, the system does not explain how complaints are processed, the system's security measures, nor does it explain how the whistleblower's identity is kept confidential. The interviewed CPCCS staff explained that there are internal guidelines for the proper handling of information on complaints, ensuring a chain of custody and the adequate handling of

[110] Ibid.

[111] State Attorney General's Office. *Transparency Mailbox*. Accessed November 18, 2020. Available at http://bit.ly/3tsf1NZ.

[112] Interview with Diego Sanchez, October 22, 2020.

[113] Council of Citizen Participation and Social Control. *CLIC.* Accessed on November 18, 2020. See http://bit.ly/3trR9dg.

confidentiality, and that they intend to submit these guidelines to the plenary for approval of a resolution on the matter. In addition, the CPCCS takes all necessary measures to ensure that the complainant's data does not reappear in the records and the public processing of the complaint, and that the fingerprint code is included to prevent the duplicate filings complaints or false identities, thus creating a more rigorous and effective process.[114] The authors of this report requested statistical information on the complaints received by the CPCCS, but obtained no response.

GOOD PRACTICES

- The inclusion of the possibility of reporting corruption offenses anonymously, approved at the end of 2019, is crucial to improving the reporting and alert system. For this provision to have a positive impact, strong inter-institutional coordination and the structuring of regulations and processes that ensure the proper handling of information and guarantee the whistleblower's security are necessary. (Art. 13.2, UNCAC)
- The inclusion of administrative measures to protect public servants who report acts of corruption is a positive step. However, its impact needs to be analyzed.
- The SPAVT regulation contemplates the possibility of extending protection measures to the extended family of the person who is part of the system (Art. 9.7 of the SPVAT Regulations), which can be identified as a good practice. (Art. 32.1, UNCAC)

DEFICIENCIES

- There are multiple reporting channels through institutional electronic means. However, there is no regulation of these reporting channels or minimum parameters and criteria for security, information handling and special controls of the personnel who have access to the information received. (Arts. 13.1 and 32.1, UNCAC)
- There is no clarity as to who and how the percentages of financial compensation to persons who provide evidence that allows for the effective recovery of goods or assets lost due to corruption is determined. Arbitrary use of incentives may constitute a corruption risk.
- Statistics on complaint channels and their processing are not available to the public. Having data to analyze the systems' effectiveness is necessary to identify points for improvement and the presentation of proposals.

4.1.7 ART. 9.1 - PUBLIC PROCUREMENT

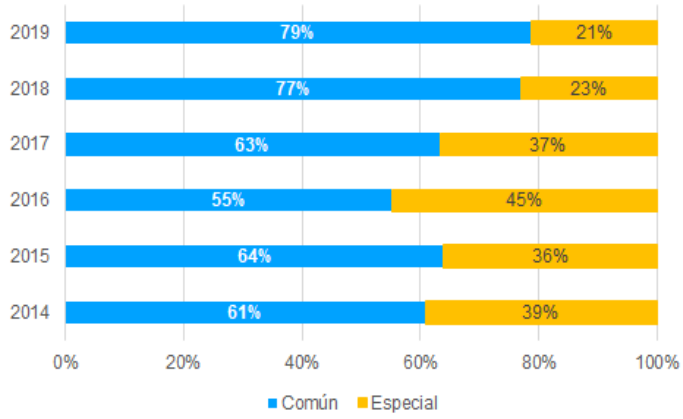
Public procurement in Ecuador is regulated by the Organic Law of the National Public Procurement System (LOSNCP)[115] and its regulations.[116] The National Public Procurement Service (SERCOP), an entity with administrative, technical, operational and budgetary independence, which is part of the Executive Branch and whose head is appointed by the President, is in charge of overseeing the system.

The legislation establishes two types of contracting regimes, the common one and the special one. The common regime is used as a general rule, and is competitive, with some exceptions. Its specific modality depends on the object of the contract and the amount to be contracted, which varies every year according to the State's general budget. The special regime limits competitiveness and is only allowed under certain restricted circumstances.

[114] Interview with CPCCS Secretariat staff, November 2020.
[115] See http://bit.ly/3q8bGSu.
[116] See http://bit.ly/2YMq7iQ.

The current SERCOP administration has focused its efforts on increasing transparency and competition in public procurement. As a result, it has promoted competitive contracting (by common regime) and limited contracting by special regime. The graph below shows the evolution of these efforts. In 2016, Ecuador was hit by a natural disaster (earthquake of April 16, 2020), which may be the main cause of the increase in contracting by special regime during that year. A significant decrease in this hiring modality can be observed between 2017 and 2018 as a result of the policies taken by SERCOP.[117]

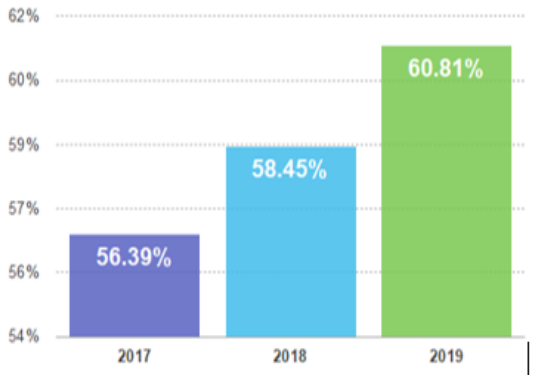
Graph 1 - Percentage of government procurement by common and special regime, 2014-2019



Blue: common regime, Yellow: special remine

The following graph shows another competitiveness indicator, the percentage of processes with two or more bidders. It shows an improvement in the indicator, with an increase of 4.42% in the number of processes with two or more bidders. According to the interviewed SERCOP staff, an important improvement was eliminating single suppliers in the electronic public procurement catalogs. By 2016, there were 86 single suppliers, and now there are no single suppliers in the catalog.

Graph 2 - Percentage of public procurement processes with two or more bidders, 2017-2019[118]



Regarding the registration and publicity of procurement documentation, the contracting entities are obliged to upload the main documents to the Official Public Procurement System (SOCE).[119] SERCOP manages the SOCE, and the information is public. However, some types of contracts are not made public in a timely manner because there is no regulatory obligation to do so, for example, for low value

[117] Fundación Ciudadanía y Desarrollo (May 2020). *Diagnosis on Priority Areas for Cooperation Against Corruption In Ecuador*. Accessed November 13, 2020. Available at https://bit.ly/3ro12XL.
[118] SERCOP 2019, own elaboration.
[119] SERCOP. *Official Public Procurement System.* Accessed October 10, 2020. Available at http://bit.ly/2MDJule.

contracts (small amounts). SERCOP is currently working on a public open data portal for these types of contracts. Similarly, there are some types of contracts that are governed by special rules, which prevent transparency. These include contracts related to the exploration and exploitation of hydrocarbons, purchase and sale of energy, and public debt contracting.

It should be noted that most of the major corruption scandals that have been reported in Ecuador in recent years are directly related to public procurement. Particular attention should be paid to modifications to the original procurement contracts.

The cases of possible corruption in the context of emergency contracting during the COVID-19 pandemic have brought weaknesses in the public contracting system to light, which must be addressed urgently. Among them are the difficulties in identifying overpricing and family or business ties of bidders, conflicts of interest, the lack of knowledge and capacity to manage emergency contracting in a timely manner, as well as the arbitrary use of such contracts, and difficulties to effective monitor a high volume of processes in a short time. On the positive side, these cases have increased social monitoring initiatives and efforts by non-state actors. In addition, SERCOP's quick response to COVID-19 in creating an open data portal[120] for emergency contracting that was launched in May of 2020, and the issuance of guidelines to strengthen competition and transparency in these processes, should be highlighted. Before the creation of this portal, emergency procurements had not been published in a timely manner.

SERCOP is responsible for permanently monitoring ongoing public procurement processes and for issuing recommendations. According to the LOSNCP, it is the State control agencies' responsibility to carry out post-contracting controls. In this sense, the Comptroller General's Office plays a leading role in auditing and investigating contractual processes.

According to figures provided by SERCOP, approximately 300 contracting processes are carried out daily, which adds up to 72,200 processes per year. There are approximately 4,300 contracting entities and 353,000 participating suppliers. The high number of contracting processes and the number of actors involved make it difficult for SERCOP, an entity with limited human and financial to monitoring all activities. SERCOP has around 300 officials, who are currently working with reduced working hours of six hours due to COVID-19. In this context, according to the interviewed SERCOP staff, a sustained investment in technological tools is necessary to enable more efficient processes and optimize monitoring of public contracting. Furthermore, they find it necessary that not only SERCOP has updated technological tools, but also other institutions in order to effectively interconnect and link data between entities. They therefore suggest a review of the regulations in place to strengthen SERCOP's monitoring role.[121]

Another point to highlight is that in July 2020, SERCOP made the use of digital signature in key documents of the contracting process mandatory.[122] It also regulated issues related to claims in contracting processes, providing that after a claim is filed with SERCOP the award of a contract is suspended until the monitoring action is resolved and sets a minimum period of three days between the award and the signing of a contract, opening a space for the timely submission of claims.[123]

[120] National Public Procurement Service. *Open Data.* Accessed November 13, 2020. Available at http://bit.ly/3oIZVQI.
[121] Interview with Iván Tobar, November 22, 2020.
[122] See SERCOP's Codification of Resolutions, art.10.1. Available at http://bit.ly/36f9cd4.
[123] Arts. 168.A and 168.B of the SERCOP Codification of Resolutions.

Furthermore, the regulatory advances in terms of final beneficiaries of companies supplying the State[124], which are explained in the section on transparency in the private sector are noteworthy.

Regarding conflicts of interest, Articles 62 and 63 of the LOSNCP establish general and special prohibitions for public contracting. Being a public servant directly or indirectly involved in any stage of the contracting process is among the disqualification factors. Depending on the degree of involvement of the public servant and the stage of the process, there is the possibility of extending this prohibition to family members and companies the public servant is a part of. Furthermore, authorities of decentralized autonomous governments in their respective jurisdictions, members of boards of directors or technical commissions of the contracting entity (extended to family members) are prohibited from being awarded such contracts.

An example of conflict of interest in public contracting during the COVID-19 pandemic is that of the ex-prefect of Guayas, Carlos Luis Morales and his family. The case, currently in court, involves the alleged emergency contracting from the Autonomous Decentralized Government of Guayas to ghost companies allegedly linked to the ex-prefect's wife and her children (second degree of affinity) for the acquisition of products (including masks and food kits) with alleged overpricing.[125]

Regarding the registry of non-compliant suppliers, this information is public and can be found in the SOCE; however, it is not in open data format.[126]

Moreover, one of the interviewed experts from academia considers that Ecuador's public procurement legislation "has gaps that have not been discussed and resolved". He also states that there is a need for a collective of public contractors in Ecuador.[127]

GOOD PRACTICES

- Among the commitments of Ecuador's first Open Government Plan[128] is implementing an open information platform on public procurement based on the Open Contracting Data Standard (OCDS) and Open Contracting for Infrastructure Data Standard (OC4IDS). It should be noted that SERCOP increased its collaboration with multi-sectoral stakeholders as a result of this commitment. (Art. 9.1, UNCAC)
- From 2016 to 2019, there was a significant reduction in the use of the special contracting regime, from 45% to 21%. This represents a difference of 24%. However, the COVID-19 pandemic may generate a new increase in this type of contracting, as well as cause an exponential increase in emergency contracting. (Art. 9.1, UNCAC)
- According to SERCOP data, there was an increase in the percentage of contracting processes with two or more bidders in recent years, from 56.39% in 2017 to 60.81% in 2019. This data is a positive indicator of competitiveness. (Art. 9.1, UNCAC)

[124] Seventh and ninth general provisions of the LOSNCP and article 61 of Ibid.
[125] Citizenship and Development Foundation (2020). *Prefecture of Guayas/COVID-19*. Accessed November 15, 2020. Available at Observatorio Anticorrupción http://bit.ly/3oZlUTp.
[126] National Public Procurement Service. *Failed Suppliers and Unsuccessful Awardees.* Accessed November 13, 2020. Available at http://bit.ly/39Oumkc.
[127] Interview with Guerrero, November 10, 2020.
[128] Grupo Núcleo de Gobierno Abierto Ecuador (2019). *First Open Government Action Plan in Ecuador.* Accessed October 7, 2020. Available at http://bit.ly/3tq4a75.

- The regulatory advances in terms of transparency of final beneficiaries of government suppliers, electronic signature and complaint deadlines in contracting processes are highlighted as good practices. (Art. 9.1, UNCAC)
- Finally, Ecuador will join the Infrastructure Transparency Initiative - CoST, in December 2019. (Art. 9.1, UNCAC)

DEFICIENCIES

- The current regulations do not take into account multisectoral spaces for the evaluation of public contracting to serve as channels for feedback and identification of weaknesses and possible solutions in the contracting system.
- Documents on claims, appeals, and decisions within public procurement processes are not proactively published on the public procurement platform, nor are procurement payment documents, works audit reports or subcontractor information.
- The legislation on public procurement should be reviewed and adjusted to international standards. Particular importance should be given to SERCOP's sanctioning capacity, which is currently weak, as well as the legislative impulse to open data.
- Although the figures show a significant reduction in the special regime for public procurement, this is due to improved practices, i.e., subjective criteria. Within the current law's reform, it is essential to further restrict the use of the special regime (Art. 2, LOSNCP) to reduce or eliminate these subjectivities.
- Technological development among public institutions differs greatly, which hinders the effective interoperability of data. There is a need for a greater investment in technology for all entities that are part of the National Public Procurement System.

4.1.8 ART. 9.2 - MANAGEMENT OF PUBLIC FINANCES

In its chapter entitled Economic Sovereignty, the current Constitution establishes a whole section to deal with the General State Budget. It starts by defining it as "the instrument for the determination and management of the State's income and expenditures, and includes all income and expenditures of the public sector, except for those on social security, public banking, public enterprises and decentralized autonomous governments." The Constitution ties it to the National Development Plan, specifying that subnational budgets and those of other public entities must be adjusted to their respective plans, but always within the National Plan framework.

It is the Executive Branch's responsibility to prepare the annual budget proforma, as well as the four-year budget programming. It is the Legislative Function's responsibility to control that these two tools are in accordance with the Constitution, the law on the matter and the National Development Plan and, based on this, to approve or observe them. The Constitution establishes the times in which this must take place, reaffirming that the National Assembly requires a single debate to carry out its work. If it does not take a stance, then what was sent by the Executive automatically goes into effect. If the Legislature issues observations, these may only be by sectors of income and expenses but may not alter the proforma's total amount.[129]

If the National Assembly makes an observation on the proforma annual budget or budget programming within ten days, the Executive Branch may accept such an observation and send a new proposal to the National Assembly or ratify its original proposal. Within the following ten days, the

[129] See Article 295 of the Constitution of the Republic.

National Assembly must ratify its observations in a single debate; otherwise, the programming or proforma budgets the Executive Function sent in the second instance will enter into force.

The Constitution also establishes that any increase in expenditures during the execution of the budget must be approved by the National Assembly, within the limit established by law. It also establishes that all information on the process of formulation, approval and execution of the budget shall be public and shall be permanently disseminated to the population through the most appropriate means.[130]

The Executive is constitutionally obliged to submit a report on the execution of the budget to the Legislature every six months, as a means of accountability. The General State Budget's resources must be managed in a single account in the Central Bank.

Constitutionally, Art. 298 establishes mandatory budgetary pre-allocations "destined to the decentralized autonomous governments, the health sector, the education sector, higher education and research, science, technology and innovation under the terms provided by law. Transfers corresponding to pre-allocations will be predictable and automatic. It is prohibited to create other budgetary pre-allocations."

Since 2010, the country has also had an Organic Code of Planning and Public Finances (COPFP)[131], whose purpose is "to organize, regulate and link the National Decentralized System of Participative Planning with the National System of Public Finances, and regulate its operation at different levels of the public sector, within the framework of the development regime, the regime of good living, constitutional guarantees and rights". This norm also regulates "the four-year budget programming of the Public Sector, the General State Budget, the other budgets of public entities; and, all public resources and other instruments applicable to Planning and Public Finance."[132]

This standard establishes the following as its main guidelines:

- Promote citizen participation and social control in the formulation of public policy that recognizes the diversity of identities, as well as the rights of communities, peoples and nationalities;
- Contribute to the construction of a social, solidarity-based and sustainable economic system that recognizes the different forms of production and work, and promotes the transformation of the primary-export economic structure, the conditions of accumulation of wealth and the equitable distribution of the benefits of development;
- Promote territorial balance within the framework of the State's unity that recognizes the social and environmental function of property and guarantees equitable distribution of the burdens and benefits of public and private interventions;
- Strengthen the process of building a pluri-national and intercultural State, and contribute to the exercise of the rights of peoples, nationalities and communities and their institutions;
- Strengthen national sovereignty and Latin American integration through public policy decisions.

Among its principles it enshrines the following:

- Transparency and access to information - Information generated by the planning and public finance systems is freely accessible, in accordance with the Constitution's provisions and this

[130] Ibid.
[131] See http://bit.ly/2YZI7WU.
[132] See Article 1 of the COPFP.

Code. These systems' competent authorities shall be held accountable and provide the necessary means for social monitoring in a permanent and timely manner,

- Citizen Participation - The entities in charge of development planning and public finance, and all entities that are part of the planning and public finance systems, have the duty to coordinate the mechanisms that guarantee participation in the systems' operation.[133]

In its book number II, the COPFP establishes a regulation regarding Public Finances, managed in accordance with the National System of Public Finances (SINFIP), which is constituted as: the set of norms, policies, instruments, processes, activities, records and operations that public sector entities and agencies must carry out in order to manage public revenues, expenditures and financing in a programmed manner, subject to the National Development Plan and the public policies established in this law. The processes necessary for the organization and management of SINFIP, also known as "components", are: Fiscal Policy and Programming; Revenues; Budget (each budget consists of six stages: budget programming, budget formulation, budget approval, budget execution, budget evaluation and monitoring, and budget closing and liquidation); Public Indebtedness; Government Accounting; and Treasury. These components were designed to ensure sustainability, stability and consistency in managing the country's public finances. However, public entities have not fully complied with some of the provisions, but the reasons for this are not apparent.[134][135]

The COPFP also enshrines the guidelines of fiscal transparency, where the State seeks to ensure that the Ecuadorian population has all the State's financial information at its disposal. According to the first chapter of the transparency book[136], the State must guarantee citizens free access to all budgetary and financial information generated by public entities, according to the law. This should be done through an official information system and a wide dissemination of information. Business plans, business strategies and related documents for public enterprises and public banking are exempted from this provision.

Overall, transparency and access to information seem to be the COPFP points that have been best applied during the past few years. Both the information presented directly by the Ministry of Finance, as well as the information collected and presented by the Central Bank of Ecuador, enable citizens to maintain almost constant control over the State's finances. The only limitations or failures that the authors of this report identify correspond to public companies' financial statements and details that do not use the same information systems as the State, although they belong to the State.

GOOD PRACTICES

- The public finance provisions listed above, together with the principle of active transparency enshrined in the Organic Law on Transparency and Access to Information, have allowed citizens to access information on budgets, their execution and operating result, among other aspects, through web portals. These portals also provide tools to track the budget allocated and spent every month for each ministry, institution or agency.
- Based on the Constitution and through secondary legislation (the Organic Law of Citizen Participation), subnational governments have implemented participatory budgets so that

[133] See Article 5 of the COPFP.
[134] See Article 82 of the COPFP.
[135] Fundación Ciudadanía y Desarrollo (May 2020). *Diagnosis on priority areas for cooperation against corruption in Ecuador*. Accessed November 20, 2020. Available at https://bit.ly/2NkuQq0.
[136] Article 174 and following of the COPFP.

citizens, individually or through social organizations, can contribute to decision-making processes on budget execution.

- The National Assembly's web portal has a special section containing all information and documentation related to the approval process of the State's General Budget. This is easily accessible to citizens, and does not only refer cover the current fiscal year, but also to the previous one.

DEFICIENCIES

- Constitutionally, the Legislative Function has limited powers regarding the formulation of the budget. It can only observe and issue comments on the General State Budget proposed by the Executive, but it cannot make a real counter proposal if it considers that its content is inadequate. A balance of responsibilities should be established so that the budget review and approval follow a real analysis process, and the Legislature's role is not a mere formality.
- Although budget information and data is available to the public through the Ministry of Economic and Finance's web portals[137] and the institutions, it is not available in formats that facilitate analysis by citizens, such as open formats.
- Although citizen participation and coordinating mechanisms that guarantee that citizens can intervene in the matter at hand is one of the principles established in the COPFP, this has not been put into practice. The Constitution and the Organic Law of Citizen Participation establish the obligation of all levels of government to formulate their annual budgets within the framework of an open call for the participation of citizens and civil society organizations, as well as to continuously provide information and account for the results of budget execution. Nevertheless, this obligation has not been sufficiently implemented.

4.1.9 ARTS. 10 AND 13.1 - ACCESS TO INFORMATION AND PARTICIPATION OF SOCIETY

The Organic Law on Transparency and Access to Public Information (LOTAIP)[138] was passed in 2004, after a strong push by civil society and journalists, and has not been amended since then. In its Art. 3 and 4, the LOTAIP establishes that the information belongs to the citizens and that its depositaries or administrators (the State and the persons or non-state entities that administer public goods or services or administer public funds) are obliged to guarantee access to it. The LOTAIP, in its Art. 7, regulates active transparency by establishing the obligation for public institutions to publish a series of minimum requirements every month. On the other hand, in its Title IV, the LOTAIP regulates the procedure for requesting and receiving information and the exceptional cases in which the information may be declared as reserved or confidential. According to Art. 11 of the Law, the promotion and monitoring of compliance with this Law is the Ombudsman's Office's responsibility. Also, in its Title VI, it establishes sanctions for non-compliance, which in practice have not been effective. Finally, the law's regulations[139] have been in force since 2005.

The current Constitution (2008)[140], which entered into force after the LOTAIP, recognizes in its article 18.2 the right of access to public information without reservations other than "the cases expressly established by law" and states that "in case of violation of human rights, no public entity shall deny the information". Additionally, Article 91 establishes within the jurisdictional guarantees, the

[137] Institutional portal of the Ministry of Economy and Finance of Ecuador: https://www.finanzas.gob.ec/.
[138] See https://bit.ly/2J4UkFH.
[139] See https://bit.ly/3avey50.
[140] See https://bit.ly/3cNLjK9.

possibility to send an official request of access to public information that may be used when information is denied or when it has not been delivered comprehensively or reliably.

In practice, the LOTAIP has been an important instrument of participation and social control. However, after 16 years in force, there is a strong need to update it in order to align it with the Constitution, ratified international agreements and conventions, as well as with transparency standards of the multisectoral initiatives to which Ecuador is a party. It is also necessary to include issues of new technologies and open data, open permanent virtual channels for the entry of requests, regulate the partial classification of documents, among others. Furthermore, aspects that have proven to be obstacles in its application, such as the arbitrary nature of the denial of information, response times, the inefficient use of information reserves, the revision of the sanctioning regime, and the powers of the oversight body must be reviewed and corrected, and the minimum features of publication in transparency portals must be updated. Within this framework, different legislative initiatives have been presented to reform the LOTAIP and bills for a LOTAIP 2.0.

In terms of practical application, the results of the Executive Function's 2019 Active Transparency Index, developed by Fundación Ciudadanía y Desarrollo[141], show that only 14 of the 26 institutions analyzed had all the information required by the LOTAIP updated in a timely manner. On the other hand, the 2019 Active Transparency Index of municipalities[142] shows that only 22.17% of the 221 municipalities comply with the timely updating of their portals as indicated in the LOTAIP, and that 52.48% of the municipalities do not make their information transparent.

Moreover, the Ministry of Telecommunications approved the Open Data Policy for Application in the Central Public Administration in April 2020. This policy, of mandatory compliance, seeks to promote the implementation of open data in the Executive Function in order to, as stated in its Article 1, "strengthen citizen participation, government transparency, improve efficiency in public management, promote research, entrepreneurship and innovation in society."[143]

There is also a need for new regulations on the management of archives and documents. The National Archives System's current Law[144] was approved in 1982 and did not take into account new information technologies, nor does it follow international principles on the subject. In 2019, a technical archives rule was approved[145]; however, it does not have the necessary legal or political force to ensure the proper handling of archives. On the other hand, the authors identify a need to approve specific legislation for the protection of personal data.

The 2008 Constitution brought with it innovation, and the dedication of a catalog of participation rights, which replaced the traditionally-called political rights, expanding them and focusing on citizen participation and social control. In this catalog, the provisions of Article 61 "to participate in matters of public interest" and "to oversee the acts of public power" stand out. In addition, several participation tools are enshrined as rights in the same article, such as "to present projects of popular

[141] Fundación Ciudadania y Desarrollo (February 2020). *Active Transparency Index 2019 Executive Function*. Accessed October 10, 2020. Available at http://bit.ly/3mkmPgP.
[142] Fundación Ciudadania y Desarrollo (July 2020). *Active Transparency Index 2019 Municipal Decentralized Autonomous Governments*. Accessed October 10, 2020. Available at http://bit.ly/2HRlpvq.
[143] Ministry of Telecommunications and Information Society (April 2020). *Ministerial Agreement 011-2020.* Accessed October 17, 2020. Available at https://bit.ly/3aEBgb7.
[144] See http://bit.ly/3tDHAIy.
[145] See http://bit.ly/3tstitY.

normative initiative", "to be consulted", and "to revoke the mandate conferred to popularly elected authorities."

Art. 95 of the CRE also establishes that citizens shall participate "in a leading role in decision-making, planning and management of public affairs... in a permanent process of building citizen power", Art. 96 recognizes the right of citizens to organize themselves in any form to "influence public decisions and policies and social control at all levels of government" and Art. 100 establishes the creation of instances of citizen participation at each level of government that within their functions seek to "strengthen democracy with permanent mechanisms of transparency, accountability and social control".

The rights mentioned above are also developed throughout the constitutional text. Thus, Art. 103 establishes the normative popular initiative, Art. 104 establishes the call for a referendum, Art. 105 covers the revocation of the mandate of generally elected authorities, and Art. 98 establishes the right to resistance. It is also noteworthy that the CRE establishes in its Art. 204 that "The people are the principal and first controller of public power, in the exercise of their right to participation".

As previously mentioned, the CRE created the Council for Citizen Participation and Social Control, whose duties and powers, established in Art. 208, include "promoting citizen participation, stimulating public deliberation processes and fostering training in citizenship, values, transparency and the fight against corruption", as well as establishing accountability mechanisms and contributing to citizen oversight and social control processes. A request for access to public information was submitted requesting information and statistics on this issue, but no response was obtained.

Since 2010, Ecuador has had an Organic Law of Citizen Participation (LOPC)[146], which develops the rights of participation and enshrines all the tools in force in the country. The LOPC, according to its Art. 1, aims to "propitiate, promote and guarantee the exercise of the participation rights of citizens (...) institute instances, mechanisms, instruments and procedures for public deliberation between the State, at its different levels of government, and society, for the monitoring of public policies and the provision of public services; strengthen citizen power and its forms of expression; and, lay the foundations for the functioning of participatory democracy, as well as, accountability and social control initiatives."

The LOPC enshrines three packages of citizen tools for citizen participation and social control. The first package is related to mechanisms of direct democracy, and includes the popular normative initiative, the referendum, the public consultation, and the recall of the mandate. The second package covers participation tools, exclusively at the local or sub-national level, and includes: local assemblies, local citizen participation bodies, local planning committees and participatory budgets. Finally, the third package deals with participation and social control in public management, including public hearings, public councils, the so-called “empty chair”, oversight bodies, observatories, and advisory committees.

The so-called “empty chair” is a unique practice in the region. It is constitutionally and legally enshrined that "the sessions of the decentralized autonomous governments will be public, and in them, there will be an empty chair that will be occupied by a representative of civil society according to the issues to be discussed, with the purpose of participating in debates and decision-making" (Art.

[146] See https://bit.ly/3mrbQT3.

101, CRE). This tool gives a voice and vote to any citizen to participate in local government processes. A summary table with data on the implementation of the empty chair at the different levels of decentralized autonomous governments, published by the CPCCS from 2014 to 2018, can be found in this report's annex.

Furthermore, the CRE recognizes the collective right of communes, communities, indigenous peoples and nationalities to "free, prior and informed consultation, within a reasonable period of time, on plans and programs for prospecting, exploitation and commercialization of non-renewable resources found on their lands that may affect them environmentally or culturally; to participate in the benefits of such projects and to receive compensation for the social, cultural and environmental damages caused to them". It is also established that the consultation "shall be mandatory and timely" (Art. 57, CRE). In practice, this has not been applied as a right, in line with international standards, since despite being recognized in the Constitution, it is implemented through an Executive Decree.[147]

The freedom of association, which is fundamental for the creation and guarantee of the functioning of social organizations, is enshrined in the Constitution. However, this issue has been regulated by an Executive Decree, and its contents has been observed by the Inter-American System and the Universal System of Human Rights for several years. The arbitrary nature of this norm's content has led to the persecution of civil society organizations and even to their dissolution. The National Assembly has discussed a draft Organic Law of Social Organizations to establish minimum standards of operation, requirements, and processes and provide legal certainty to social organizations; however, this regulation's approval remains pending.

It is worth mentioning that in recent years the country has joined the main international initiatives to promote transparency: the Open Government Partnership - OGP (2018), the Transparency in Infrastructure Initiative - CoST (2019) and the Extractive Industries Transparency Initiative - EITI (2020). It has also worked on the adoption of the Open Contracting Partnership - OCP standards. Ecuador's first National Action Plan for Open Government[148] which is scheduled to be implemented by 2022, includes commitments on transparency, access to information, openness, among others.

Finally, in December 2018, the National Assembly approved a reform to the restrictive Organic Communication Law, which eliminated the Superintendence of Information and Communication (SUPERCOM), which monitored media content, investigated journalists and issued fines and other sanctions. The reform also eliminated the legal concept of "media lynching", which strongly restricted investigative journalism. Although the conditions for guaranteeing the right to freedom of expression have improved in recent years, there are still cases of censorship of the media and investigative journalists working on anti-corruption issues. Through international standards related to copyright, political actors and public officials have filed claims to download content published in digital media. Ecuador's rating in global indexes indicates the country scored 65/100 in the Freedom House 2020 Index, being classified as a partially free country.[149] On press freedom specifically, Ecuador obtained 3.63/10 in the ERCAS Public Integrity Index 2019, ranking as country with the third lowest score of the 18 countries evaluated in the region.[150]

[147] See Executive Decree No. 1247 of July 19, 2012. Available at: https://bit.ly/2NvNV8q.
[148] See https://bit.ly/3aG2uPB.
[149] Freedom House (2020). *Freedom in the World 2020.* Accessed March 26, 2021. Available at https://bit.ly/3d8rNKd.
[150] European Research Centre for Anti-Corruption and State-Building -ERCAS (2019). *Index of Public Integrity.* Accessed March 26, 2021. Available at https://bit.ly/39hQimZ.

GOOD PRACTICES

- The country has an open data policy in place that is mandatory for the central public administration. (Art. 10, UNCAC)
- The enforcement of active transparency by various institutions at all levels of government has helped citizens participate in and exercise social control over the management of public affairs.
- The dedication of the empty chair, a tool for citizen participation that gives citizens a voice and the ability to vote and decide, strengthens citizens' capacity to influence public management.
- As mentioned above, citizens now have access to digital tools that provide more and better information on public procurement processes.
- Ecuador's entry into the main international transparency and open government initiatives is a good practice that should be strengthened and sustained.

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- After 16 years, the regulations on transparency and access to public information require an update that cannot be postponed. (Arts. 10 and 13, UNCAC) During this time, there was a lack of adequately raising public awareness on the regulation; insufficient measures were taken to ensure that both public officials and citizens are aware its content.
- There is a clear need to strengthen active transparency, with an emphasis on decentralized autonomous governments, as several of them do not have the necessary and sufficient resources to implement their legal obligations in this area. (Arts. 10 and 13, UNCAC)
- The country does not have legislation on the protection of personal data. This is a recurrent excuse used by officials to deny access to public information.
- Although the right to free, prior and informed consultation is enshrined in the Constitution, there is no law that guarantees its full exercise. This is regulated by an Executive Decree that does not ensure the constitutional precepts and international standards on the matter.
- Ecuador has an Archives Law from 1982 that needs to be reformed, since its provisions reflect a reality from several decades ago. Currently, this law does not take into account new information technologies or mechanisms to preserve digital data and documents.
- There is an evident lack of legal certainty for social organizations as they are regulated by Executive Decree, and are therefore subject to the discretion of the government of the day. (Art. 13, UNCAC)

4.1.10 ART. 11 - JUDICIARY AND PROSECUTION SERVICES

The Ecuadorian Constitution establishes two main points on judicial independence. The first is that among the guarantees to the right to due process, established in Article 76 of the Constitution, is "to be judged by an independent, impartial and competent judge." The second is establishing as one of the justice system's basic principles that "the Judicial Function's organs shall enjoy internal and external independence. Any violation of this principle shall entail administrative, civil and criminal liability in accordance with the law."

Regarding admission to the judicial function, the Constitution determines that "criteria of equality, equity, probity, opposition, merit, publicity, challenge and citizen participation must be observed." In addition, Article 170 recognizes and guarantees the judicial career, and establishes continuous training and periodic evaluation as "indispensable conditions for promotion and permanence in the judicial career." Article 176 establishes that the appointment of judicial servants shall be based on a competitive merit-based examination, with challenges and social control. With the exception of the

National Court of Justice judges, all judicial servants "must pass a general and special training course and pass theoretical, practical and psychological tests for their admission".

The main law regulating the sector is the Organic Code of the Judicial Function (COFJ).[151] The COFJ determines that in order to guarantee judicial independence, "the organs of the Judicial Function, within the scope of their competencies, shall formulate administrative policies that transform the Judicial Function to provide quality service according to the needs of users; economic policies that allow budget management in order to optimize available resources and timely planning and programming of investments in physical and operational infrastructure; human resources policies that consolidate the judicial, prosecutorial and public defense careers, strengthen the Judicial Function School, and eradicate corruption."

The Code enshrines the principle of independence by establishing that judges "are subject in the exercise of their jurisdictional power only to the Constitution, international human rights instruments and the law. In exercising it, they are independent even vis-à-vis the other organs of the Judicial Function."[152] It further states that "no function, organ or authority of the State may interfere in the exercise of the duties and attributions of the judicial function" and ratifies what is enshrined in the Constitution that "any violation of this principle shall entail administrative, civil and/or criminal liability, in accordance with the law."

Furthermore, when dealing with the general rules of jurisdictional bodies, the COFJ states that judges, prosecutors and public defenders "are subject only to the Constitution, international human rights instruments and the law. Judicial rulings issued within trials, whatever their nature, may only be reviewed through the ordinary and extraordinary challenge mechanisms, established by law." It determines that "no public authority, including the officers and officials of the Judiciary Council, may interfere in jurisdictional functions, much less in the making of their decisions and in the elaboration of their rulings." It is incumbent upon judicial servants to report any undue interference or pressure in the exercise of their functions.

The COFJ incorporates in one of its chapters the regime of prohibitions and the disciplinary regime applicable to all judicial servants, whether they belong to the judicial, prosecutorial or public defender careers, including the administrative division. It classifies infractions as minor, serious and very serious. Among them is the controversial legal concept of an inexcusable error. This legal concept, which has been in force since 2009 but applicable to judges only since 2011 as a result of a constitutional referendum, has been invoked on countless occasions, causing a severe impact on the independence and stability of justice operators in Ecuador.

One of the most emblematic cases regarding judicial dismissals, is that of National Judge José Suing and the Titled Judge Gustavo Durango, members of the Tax Litigation Chamber of the National Court of Justice at the beginning of 2014. The Judiciary Council, applying the legal concept of inexcusable error, dismissed them for having ruled against the Internal Revenue Service (SRI) in a case related to the Heavy Crude Oil Pipeline (OCP). The complaint that led to the dismissal was filed by the Director

[151] See http://bit.ly/3tP9Yrg.
[152] See Article 8 of the COFJ.

of the SRI. After a judicial fight that lasted more than six years, the National Court of Justice ordered the Judiciary to reinstate Suing and Durango in their positions in June 2020.[153]

More recently, in October 2019, the Judiciary Council again dismissed two judges of the National Court - Edgar Flores and Luis Enriquez - for issuing a ruling in favor of the former Legal Secretary of the Presidency of the Republic, Alexis Mera, who was prosecuted for the 2012-2016 Bribery Case.[154]

Fundación Ciudadanía y Desarrollo, in its report on Judicial Independence[155], prepared in 2017 for the Universal Periodic Review of Ecuador before the United Nations, highlights that despite the existence of a broad doctrinal development regarding the legal concept of "inexcusable error" as well as clear restriction in legislation of other countries in the region, the situation in Ecuador is far away from that. Similarly, the international organization Human Rights Watch noted in a letter of January 2014[156] that of the 244 processes of dismissal of judges initiated by the Transitional Judiciary Council, this ground was invoked in 132 cases, and for the same reason, the Judiciary Council that replaced it, dismissed judges in 88 of the 136 processes initiated in 2013.

The Judicial Observatory of Fundación Ciudadanía y Desarrollo has obtained and systematized data regarding the use of this legal concept of disciplinary control from 2013 to October 2019, resulting in that, the legal concept of inexcusable error was used in 195 out of 531 judicial dismissals.

Thus, after almost ten years of being in force, the legal concept of inexcusable error has not been clearly restricted. The authors of this report hope it will finally be restricted according to international standards in the reforms to the COFJ discussed by the National Assembly up to the cut-off date of this report, so that it does not affect the independence of judicial officials.

Moreover, the case of "violating, under the pretext of exercising supervisory powers, the internal independence of the servants of the Judicial Function" is determined as a severe infraction, with the sanction of dismissal.[157] Interference in the exercise of judges', prosecutors and public defenders' competences, violating their internal judicial independence, is grounds for impeachment of members of the Judiciary Council.

According to the constitutional mandate and the Law for the Presentation and Control of Sworn Assets Declarations, officials and judicial authorities and all other public servants are required to submit their sworn asset declarations. With the limitations mentioned above, these declarations are made available on the Office of the State's Comptroller General's web portal.[158] As mentioned in a previous section, the country does not yet have a regulatory obligation to submit declarations on conflicts of interests.

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[153] El Universo (2014). *Judiciary dismissed two judges of the National Court*. Available at https://bit.ly/2NlFtsC; and Primicias (June 2020). *Dos jueces destituidos por el correísmo vuelven a sus cargos*. Available at: https://bit.ly/2ZzxbQc. Accessed from both pages on February 6, 2021.

[154] El Comercio (October 2019). *Judiciary Council dismissed two judges who ruled in favor of Alexis Mera*. Accessed February 6, 2021. Available at https://bit.ly/3dMubsf.

[155] Fundación Ciudadanía y Desarrollo (2016). *Report on the status of judicial independence.* Accessed February 6, 2021. Available at https://bit.ly/2MYtCAl.

[156] Human Rights Watch (2014). *Charter on judicial independence in Ecuador*. Accessed February 6, 2021. Available at https://bit.ly/3t5RYHZ.

[157] Article 109 of the Organic Code of the Judicial Function.

[158] Website available at https://www.contraloria.gob.ec/Consultas/DeclaracionesJuradas.

Regarding the general factual situation of judicial independence in the country, the authors of this report would like to highlight some recent facts beyond the norm.

In 2011, the former President of the Republic Rafael Correa, submitted to the Constitutional Court of Ecuador a package of 10 questions[159] through an Executive Decree, in order to carry out a process of constitutional amendments. Among the questions contained in this process, which took place on May 7, 2011, two questions were raised that had a crucial impact on the functioning of the Ecuadorian Judicial System. The report "Judicial Independence in the reform of the Ecuadorian justice system"[160] explains the scope of these questions and indicates that the first question posed the creation of a transitional Judiciary Council that, for 18 months, would be in charge of carrying out a profound reform of the Ecuadorian Justice System. The second question posed a constitutional amendment that would permanently modify the appointment system of the Judiciary Council.

Despite the petitions and alerts addressed to international bodies such as the Inter-American Commission on Human Rights[161], both questions were approved by the majority of citizens at the polls and thus began a process of transformation of the Ecuadorian justice system that seriously undermined the guarantee of independence that should exist within a democratic state.

The Transitory Judiciary Council, appointed directly by the President of the Republic, the National Assembly and the Transparency and Social Control Function, carried out a total of 1,607 disciplinary proceedings against judges; a figure that exceeded the number of disciplinary proceedings initiated against judges in the previous three years. Luis Pásara's report indicated that one out of every six disciplinary processes initiated culminated in dismissal. This brought the total number of judges dismissed during the 18 months of the Transitional Judiciary Council to 204.[162]

A similar process happened in February 2018, when Ecuadorians again went to the polls due to the call of the President of the Republic, Lenin Moreno, to a constitutional referendum that proposed the dismissal of the members of the Council of Citizen Participation and Social Control (CPCCS) and the subsequent appointment, through a shortlists sent by the President to the National Assembly, of seven members of a Transitory Council of Citizen Participation and Social Control (CPCCS-T) in charge of evaluating, dismissing and appointing a large part of the high authorities of the State.

The so-called CPCCS-T evaluated the Judiciary Council members that had been in office since 2015, even though there were several criticisms and opposing positions.[163] Several stakeholders, including the outspoken ones, considered that this transitory institution did not have the competencies to evaluate[164] the Judiciary and that, on the contrary, it should allow the Council to carry out its functions

[159] BBC News (February 2011). Ecuador: green light for Correa referendum. Accessed February 6, 2021. Available at https://bbc.in/2y53KeM.
[160] Luis Pásara in Fundación para el Debido Proceso (July 2014). *Judicial independence in the reform of the Ecuadorian justice system*. Accessed February 6, 2021. Available at https://bit.ly/3bqOMiN.
[161] El Universo (April 2011). Pronunciamientos de la CIDH sobre consulta están en espera. Accessed February 6, 2021. Available at https://bit.ly/3fPDKFi.
[162] Plan V (2014): *Is the CNJ a "Tremendous Court"?* Accessed February 6, 2021. Available at https://bit.ly/3bxTADg.
[163] El Mercurio (2018). *Transitory Council has voices for and against.* Accessed February 6, 2021. Available at https://bit.ly/3skRuNL.
[164] El Universo (2018). *Gustavo Jalkh questions competencies of the Transitory CPC*. Accessed February 6, 2021. Available at https://bit.ly/37BVzF9.

foreseen until 2021. Despite this and through a controversial evaluation process, the Judiciary Council authorities were dismissed[165], and on June 14, 2018, it appointed a Transitory Judiciary Council (competence not granted to the CPCCS-T in the citizen mandate resulting from the referendum). This Transitory Judiciary Council was also marred by irregularities such as, for example, the evaluation of judges of the National Court of Justice[166] not provided for in the norm, and resignations[167] following the filing of complaints about the actions of other judges.

In May 2018, the CPCCS-T started to evaluate the members of the Constitutional Court, with the vote against one of its members[168] who considered that this did not lie within the transitory body's competences. This evaluation generated a broad debate among jurists.[169] After an evaluation process that involved hearings and presentation of evidence, on August 23, 2018, the CPCCS-T resolved to dismiss the Constitutional Court judges[170] on the grounds that there were irregularities in their appointment process, they failed to perform their duties, and citizens distrusted their management.

The CPCCS-T issued a series of instruments that gave rise to a designation process that was not entirely in line with constitutional regulations and that was reformed during the process.[171] According to the citizen oversight conducted by Fundación Ciudadanía y Desarrollo, the process was marred by allegations of irregularities, resignations of actors involved[172] in the management of the process, lack of transparency and excessive discretion in the applicants' evaluation process.

The CPCCS-T could not complete the Nation's former Public Prosecutor's evaluation[173] because while the evaluation was being carried out, the National Assembly filed an impeachment process against it.[174] The National Assembly dismissed the Public Prosecutor[175] before the CPCCS-T could resolve his dismissal. As can be seen in a report conducted by Fundación Ciudadanía y Desarrollo[176], between March 2018 and April 2019, a total of four people occupied the position of nation's acting Public Prosecutor, because there were no clear rules on the order of substitution in the framework of the process of re-institutionalization that the country went through.

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[165] El Comercio (2018). *CPCCS cesa a Gustavo Jalkh y a 4 vocales del Consejo de la Judicatura*. Accessed February 6, 2021. Available at https://bit.ly/3skd3Ov.
[166] Teleamazonas (2018). *CPCCS-T disallowed the Judiciary Council in charge to evaluate CNJ judges*. Accessed February 6, 2021. Available at https://bit.ly/3k87PT7.
[167] El Universo (2018). *Juan Pablo Albán resigns from the transitory Judiciary Council*. Accessed February 6, 2021. Available at https://bit.ly/3pEBu7y.
[168] El Universo (2018). *Transitory CPCCS initiates evaluation of the Constitutional Court and sends it a warning.* Accessed February 6, 2021. Available at https://bit.ly/3bxUHTs.
[169] Ecuavisa (2018). *Jurists give their opinion on CPCCS's evaluation of CC*. Accessed February 6, 2021. Available at https://bit.ly/3sfzynv.
[170] Council of Citizen Participation and Social Control (2018). *CPCCS-T cessation of Judges and Justices of the Constitutional Court*. Accessed February 6, 2021. Available at https://bit.ly/2NrDClW.
[171] Council for Citizen Participation and Social Control (2018). *Terms of Reference for the Process of Selection and Appointment of the Members of the Constitutional Court*. Accessed February 6, 2021. Available at https://bit.ly/3bsgR9t.
[172] El Comercio (2018). *Resignation of member of Constitutional Court qualifying commission*. Accessed February 6, 2021. Available at https://bit.ly/3qTHXN2.
[173] CPCCS-T Resolution (2018). Accessed February 6, 2021. Avaialble at https://bit.ly/3qIBZ1J.
[174] National Assembly Resolution. Available at https://bit.ly/3qNKcSo.
[175] National Assembly Resolution. Available at https://bit.ly/3pAaMwM.
[176] Fundación Ciudadanía y Desarrollo (2019). *Informe de Veeduría al Concurso Público de Méritos y Oposición para la Designación de Fiscal General.* Accessed February 6, 2021. Available at https://bit.ly/2M9XrgS.

Finally, in the case of the National Court of Justice, the highest body of ordinary justice in the country, its members were not subject to evaluation, dismissal or appointment by the CPCCS-T. In March 2019, the Judiciary Council, amid complaints about the coexistence of conflicting constitutional and legal provisions, issued the corresponding regulatory framework[177] to initiate a comprehensive evaluation of the National Court Judges. The evaluation process of the 21 judges consisted of several stages in which quantitative and qualitative aspects of the judges' actions were analyzed.[178] This led to the filing of a series of actions of guarantees[179] with the purpose of declaring the process illegal and unconstitutional.

On November 15, 2020, the Judiciary Council declared the completion of the comprehensive evaluation process of the National Court of Justice members and published the final results of the evaluation. Two-thirds of the national judges and associate judges were dismissed in a process, which international organizations and even the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García Sayán, expressed their concerns about.[180]

The contradiction of norms that exists with respect to the power to evaluate and dismiss justice operators in Ecuador is problematic, thus jeopardizing international principles such as the stability of these public servants. It is pertinent that the norms regarding the processes of designation and evaluation of members of the justice system be adapted in order to guarantee judicial independence in the country.

GOOD PRACTICES

- The Organic Code of the Judicial Function incorporated norms that regulate officials and authorities' conduct. (Art. 11.1, CNUCC) These norms also determine different types of infractions and the process to be followed by the authorities. The most severe infractions are those related to the solicitation of goods, favors or services that may call into question the impartiality of the official and violate the official's internal independence.
- The COFJ establishes the permanent evaluation of judicial officers, individually and periodically, to measure their performance.

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- Political actions involving citizen consultation processes have made undue interference of other State Functions in the Judicial Function possible.
- Public competitions for the appointment of high authorities do not have clear and permanent rules. Each process has its own rules based on the responsible authority's (the Judiciary Council's) resolutions. This causes the parameters for access to high positions to vary from process to process.
- Although the inclusion of codes of conduct in the COFJ is a positive development, the legal concepts of inexcusable error and gross negligence have been used arbitrarily to affect the independence of justice as a system of rewards and punishments for judicial officials based on

[177] Judiciary Council (2019). *Judiciary Council issues committee instructions for the evaluation to judges of the National Court of Justice*. Accessed February 6, 2021. Available at https://bit.ly/2ZzDXpf.
[178] See methodology document available at https://bit.ly/3pIgnkL.
[179] La Hora (2019). *Judges and co-judges of the Court of Ecuador begin oral argumentation of sentences*. Accessed February 6, 2021. Available at https://bit.ly/3unuO0S.
[180] Expreso (2019). *UN asks to avoid errors in evaluation of judges*. Accessed February 6, 2021. Available at https://bit.ly/3bwuswF.

their decisions. This has led to arbitrary dismissals, which international organizations have called into question.

4.1.11 ART. 12 - PRIVATE SECTOR TRANSPARENCY

For many years, the private sector showed a disinterest in preventing and fighting corruption, claiming that it was exclusively a matter for the public sphere. In recent years, after the private sector has been shaken by corruption cases and has been an active actor in them, there has been greater participation of unions and companies in prevention and transparency initiatives. Some examples are the participation of private companies and unions in multi-sector initiatives such as the Transparency in Infrastructure Initiative (CoST) in 2019 and the Extractive Industries Transparency Initiative (EITI) in 2020. Similarly, the Quito Chamber of Commerce's Integrity and Anti-Corruption Commission was created in 2019. Nevertheless, there is still a long way to go to achieve full participation of the private sector in the prevention and fight against corruption.

In November 2020, Ecuador joined the International Network Alliance for Integrity[181], in collaboration with the Chamber of Industries and Production, to provide technical advice to the provincial unions that are part of the Federation of Industries, to promote learning and nurture experiences to prevent corruption in companies that are part of these unions in several cities across the country. It also has a training component for prevention.

One of the civil society experts interviewed points out that, given the lack of interest and willingness of the private sector, there is a need for a regulation that makes the application of *compliance* mechanisms mandatory in private companies.[182] On the other hand, one of the experts interviewed from the academic sector states that "There is no *anti-bribery* commitment from the chambers of production or industry in Ecuador " and "it is not on their agenda". He points out that "more public-private interaction of ethics and corporate social responsibility in matters of corruption" is needed. [183]

The private sector is mainly governed by the Companies Law, which was last amended at the beginning of 2020.[184] According to the law, it is the Superintendence of Companies' responsibility to organize a registry of companies with the information that companies and the Mercantile Registry are obliged to provide. According to Art. 20, paragraph b, of the Companies Law, companies must provide "the list of administrators, legal representatives and partners or shareholders, including both legal owners and beneficial owners, in accordance with international standards of transparency in tax matters and the fight against illicit activities (...)" annually.[185] This information is public and can be consulted through the Superintendence of Companies, Securities and Insurance's website.[186] However, it is not in open data and has its limitations. It is worth mentioning that some data can be crossed and corroborated with the Internal Revenue Service's public information.

[181] El Comercio (November 2020). *Ecuador joins Alliance for Integrity, the International Anti-Corruption Network*. Accessed October 10, 2020. Available at http://bit.ly/2MUe1kX.
[182] Interview with Terán, 2020.
[183] Interview with Guerrero, 2020.
[184] See http://bit.ly/3leLPET.
[185] See https://bit.ly/3leLPET.
[186] Superintendence of Companies, Securities and Insurance (2020). *Consultation of Individuals.* Accessed September 13, 2020. Available at http://bit.ly/3cJ0jMw.

Regarding beneficial owners of companies participating in public procurement processes, the Seventh General Provision of the LOSNCP[187] establishes that bidding companies must submit the list of their partners or shareholders in order to verify that they are not disqualified, and grants SERCOP the power to "request at any time information that identifies the partners, shareholders or members of the national or foreign legal entities that, in turn, are partners, shareholders or members of the bidding company, and so on until the last natural person is identified". Similarly, the Tenth General Provision establishes that all information related to payments received by contractors and subcontractors of the State, and financial movements, has to be public and that "...no tax, corporate, stock exchange or banking reserve may be claimed on this type of information." Both provisions were approved in 2017.

Within this framework, in September 2020, SERCOP issued a resolution establishing that the contracting entities must obligatorily require the identity of the majority shareholders of the bidding companies and if the shareholders are legal entities in the bidding documents of each contracting procedure. Additionally, the structure must be made transparent up to the level of ownership at the level of natural persons. It also establishes that "the declarations referring to the beneficial owner and/or those who exercise the final effective control of the financial movements of the contractor or subcontractor shall be made so that the respective control bodies may detect with certainty, in accordance with their powers, the final or real beneficiary. This information will have the character of public and will be disseminated through an information portal or web page, determined for that purpose". Additionally, it establishes that an infraction occurs when inconsistencies between what is declared by the supplier and the actually verified beneficial owner are identified. Similarly, this resolution's Art. 61 presents a definition of beneficial owner: "beneficial owner shall be understood as the natural person or persons who, through companies or other corporate or associative mechanisms, exercise effective control in the decision-making of a given legal person or consortium; and/or, the natural person or persons who, through a third party, perform or benefit from a financial transaction derived from the flow of public resources obtained from a contract subject to the LOSNCP; all this, without prejudice to owning, directly or indirectly, a shareholding or voting rights of the legal person contractor".[188]

SERCOP staff interviewed stated that this new provision "is a very important step forward in the fight against corruption". He also explained that progress on this issue is being made in coordination with the National Directorate of Public Data Registry (DINARDAP) and the Superintendence of Companies in order to evaluate the information that can be exchanged between the institutions. He also stated that SERCOP's disposition seeks "to encourage companies to keep their cadaster or registry of partners and shareholders updated in the Superintendency". He added that the internal platform to verify the cross-checking of data is already in operation and that work will continue to provide greater facilities for verification in open data public procurement.[189]

Regarding criminal matters, Art. 40 of the COIP establishes the criminal liability of national or foreign legal entities under private law, which is independent of the liability of natural persons. Some of the possible penalties established in Art. 71 for legal entities are fines, confiscation, closure, dissolution, prohibition to contract with the State, to carry out activities for the benefit of communities and remediation of environmental damages.

[187] See https://bit.ly/3q8bGSu.
[188] See https://bit.ly/36f9cd4.
[189] Interview with Tobar, 2020.

GOOD PRACTICES

- Regulatory advances in the area of beneficial ownership in public procurement in recent years pave the way to strengthening transparency in this area. (Art. 12.2(c), UNCAC)
- Information on companies is public and available through a freely accessible digital portal. (Art. 12.2(c), UNCAC)

DEFICIENCIES

- There are no sustainable collaborative initiatives for integrity and corruption prevention in the private sector in Ecuador. (Art. 12.1, UNCAC)
- There are no regulations or incentives for private companies to implement *compliance* or *anti-bribery* mechanisms. (Arts. 12.1 and 12.2, UNCAC)
- Although the Constitution establishes certain bases, the norm to regulate the prevention of conflicts of interest and revolving doors has not yet been approved by the National Assembly. Several draft bills on this matter have not advanced. (Art. 12.2(e), UNCAC)

4.1.12 ART. 14 - MEASURES TO PREVENT MONEY-LAUNDERING

The Law for the Prevention of Money Laundering and Financing of Crimes (LPLAFD)[190] , approved in July 2016 and last amended in December 2019, aims to "prevent, detect and eradicate money laundering and the financing of crimes, in their different modalities." The law's regulations were approved in 2017 and amended in August 2020.[191] The LPLAFD defines the concept of "unusual economic operations or transactions" and establishes obligations and prohibitions for institutions of the financial and insurance system, among which the following stand out:

- The obligation to keep an updated data record of all natural and legal persons who are clients and that this record be maintained for ten years after the date of completion of the last transaction or contractual relationship.
- The obligation to record individual and multiple operations and transactions that are equivalent to USD 10,000 or more.
- The obligation to report unusual economic transactions to the Financial and Economic Analysis Unit (UAFE).
- The explicit prohibition of opening anonymous accounts and encrypted investments.

It is important to note that the obligation to report high transactions is extended to other regulated entities outside the financial and insurance system, and the UAFE is granted the possibility of extending this obligation to other entities through a resolution. Foundations and non-governmental organizations are also considered to be obligated parties, as well as those who trade habitually with vehicles and ships, companies that transport securities, tourism agencies, among others.

On the other hand, the Law establishes that any citizen who becomes aware of unusual or suspicious activities is also obliged to inform the authorities.

Similarly, if deemed necessary, the UAFE may request additional information from the regulated entities or any state institution, and the law specifies that public sector institutions that maintain databases shall be obliged to allow the UAFE to access them, in the fields that are not confidential. The UAFE processes the information received, analyzes it, and, if necessary, sends a report to the

[190] See https://bit.ly/3lhP8uR.
[191] See http://bit.ly/3pZj95X.

Public Prosecutor's Office (FGE), in a confidential manner and with the appropriate supporting documentation. According to data published by the UAFE, a total of 19 reports of unjustified unusual operations were sent to the FGE during 2019.[192]

One of the most prominent cases of money laundering in recent years is that of Iván Espinel Molina, former candidate for the Presidency of Ecuador and former Minister of Economic and Social Inclusion in 2017, who also held management positions for several years at a decentralized level for the Ecuadorian Institute of Social Security. After an investigation conducted by the Financial and Economic Analysis Unit (UAFE) from 2010 to 2016, it identified unusual and unjustified operations and economic activities, which link Espinel to the crime of money laundering. Consequentially, Espinel was sentenced to a prison sentence of 10 years in the first instance and a fine of USD 505,124 in May 2019. On December 11 of the same year, the Provincial Court of Guayas ratified his sentence.[193]

With regard to the exchange of information at the international level, UAFE is part of the Egmont Group and currently holds the vice-presidency of its technical assistance and training work area.[194]

Regarding cash, any person entering or leaving Ecuador with an amount equal to or greater than USD 10,000 is required to declare it to the customs authorities. The control of this provision is in charge of an operative group formed by officials of the customs sector and the National Police. However, effective control on this matter is limited, especially on land borders where there are border integration agreements.

Furthermore, the LPLAFD establishes a regime of sanctions for regulated entities that do not comply with the obligations regarding the prevention and detection of money laundering. Sanctions range from fines, suspension of operating permit to the definitive cancellation of the operating authorization certificate. According to UAFE data, during 2019, 256 administrative sanctioning procedures were initiated for non-compliance by regulated entities, of which 192 were sanctioned.[195]

The following bodies and institutions play an important role in Ecuador's anti-money laundering framework:

- The Monetary and Financial Policy and Regulation Board: Governing body for the prevention of money laundering.
- The Financial and Economic Analysis Unit (UAFE): A technical entity responsible for collecting information, preparing reports, and executing national policies and strategies for the prevention and eradication of money laundering and financing of crimes. Its Director is appointed by the President. UAFE's public servants of the UAFE are obliged by law to maintain secrecy in the exercise of their functions, and for ten years after the end of the same.
- The following are considered complementary units in matters of prevention and detection of money laundering: FGE, Superintendencies of Banks, SUPERCIAS, SEPS, National Police, National Customs Service and SRI. All these institutions are required to implement anti-money

[192] Financial and Economic Analysis Unit (2020). *Virtual Accountability*. Accessed November 14, 2020. Available at http://bit.ly/36OQAkm.
[193] Citizenship and Development Foundation (2020). *Iván Espinel Case*. Accessed November 15, 2020. Available at Observatorio Anticorrupción http://bit.ly/3p1nJPU.
[194] El Universo (January 2020). *UAFE official appointed Vice President of the Technical Assistance and Training Area of the Egmont Group*. Accessed October 20, 2020. Available at https://bit.ly/2KNWSIJ.
[195] Financial and Economic Analysis Unit (2020). *Virtual Accountability*. Accessed November 14, 2020. Available at http://bit.ly/36OQAkm.

laundering units and report to the UAFE unusual operations. Other institutions, which consider it necessary to create anti-money laundering units may also do so; an example of this is the anti-money laundering unit of the CNE mentioned in a previous point of this report.

It is noteworthy that in December 2019, the Superintendency of Companies issued its Standard for the Prevention of Money Laundering, aimed at obligated entities to develop due diligence systems and instruments to adequately know customers, employees, partners/shareholders and suppliers, reinforcing the knowledge of those who, due to their activity or condition, are at risk of money laundering.[196]

In July 2020, the Control Standard for Money Laundering Risk Management issued by the Superintendency of Banks was published in the Official Gazette.[197] This Superintendency controls the 24 private banks and three public banks in Ecuador. In terms of money laundering, they are oriented to detect possible laundering issues and suspicious subjects of illicit activities within the financial system through the information that the controlled financial institutions provide. Within this framework, the regulation issued establishes that controlled entities must design and implement systems to prevent transactions from being used as an instrument for money laundering and detect cases potentially related to money laundering. The Superintendency has a money laundering sub-directorate composed of six public servants.

According to staff interviewed, the Superintendency has implemented the regulation in stages since the its issuance. Dissemination and training activities have been carried out virtually with all controlled financial institutions, reaching around 300 people. Additionally, a supervision guide based on money laundering risks was developed within the Superintendency and a supervision pilot is being carried out by applying this model to a financial institution, which will allow identifying the necessary adjustments to the supervision process before implementing it in a general way to the rest of the controlled institutions by the end of 2020. The Superintendency is working on a matrix of the inherent risk associated with the prevention of money laundering.[198]

Ecuador does not have regulations that regulate and supervise money laundering through cryptocurrencies, crypto assets and financial technology, such as Fintech. During the interview, the Superintendency of Banks' staff explained that the Superintendency is in a process of technical assistance with the Toronto Centre to assess the situation in Ecuador on the matter and make a diagnosis to identify possible actions to be taken and the key actors that should be involved in the process, to achieve effective control and regularization of these new modalities. Furthermore, it should be noted that Fintechs are not qualified financial institutions as such in Ecuador, but companies registered with the Superintendency of Companies, and this makes it difficult for the Superintendency of Banks to supervise them.[199] The FGE considers it necessary to train prosecutors in cybercrime or digital evidence.[200] The prevention and detection of money laundering through the use of new technologies is an big challenge, not only for Ecuador, which must be addressed as a priority and cannot be postponed.

[196] See https://bit.ly/3mibzBJ.
[197] See http://bit.ly/3lhrFu2.
[198] Interview with María Soledad Salvador, November 16, 2020.
[199] Interview with Salvador, 2020.
[200] Interview with Muñoz, 2020.

Another point to highlight is that a referendum in 2017 approved that in order to hold an elected office or to be a public servant, you cannot have assets or capital, of any nature, in territories considered tax-havens. In order to implement this consultation, a law was approved.[201]

Finally, it should be noted that Ecuador will undergo a new FATF evaluation in 2021. The FGE points out that not having cases that ended in a conviction in Ecuador makes the evaluation of the country a difficult one.[202] They also point out that the institutions are showing important signs of willingness to fight against money laundering and to comply with FATF recommendations.[203]

This report's research team has found that the institutions involved in the FATF evaluation have taken actions to comply with the recommendations in the past two years. An example of this is the development of regulations by the Superintendencies mentioned above, the reforms to existing regulations and the recent creation of several anti-money laundering units. Similarly, in May 2019, the national risk assessment of money laundering and crime financing began as a follow-up to FATF recommendation 1, which involves 25 public institutions and is carried out with the World Bank's support.[204]

GOOD PRACTICES

- The development of money laundering control and prevention regulations by the Superintendency of Companies and the Superintendency of Banks aimed to strengthen money laundering detection procedures and tools in their respective sectors. Although this is a step forward, the biggest challenge is to achieve its effective implementation.
- The creation of anti-money laundering units in key institutions is identified as a good practice. Similar to the standards, the creation of these units is recent in several institutions, so it is too early to assess their effectiveness.
- UAFE's participation in the Egmont Group, as vice-president of the technical assistance and training work area is also identified as a good practice.

DEFICIENCIES

- There are no regulations to regulate and control financial technologies (FinTech), including crypto assets and cryptocurrencies, which are playing an increasingly important role in global money laundering.
- There is no planning or order in the implementation of measures. Given the imminence of a GAFILAT evaluation, just at the beginning of October 2020, the UAFE publicly communicated that it issued the Rule for the prevention of the crime of money laundering and financing of crimes directed to the subjects obliged to report under the supervision of the UAFE by Resolution No. UAFE-DG-2020-0089, related to "the system for the prevention of the crime of money laundering and financing of crimes with a risk-based approach" and with "special considerations for the qualification of compliance officers".
- Consultation processes for international evaluations are not comprehensive and do not consider all stakeholders. In addition, there is a severe lack of knowledge of the norms and regulations. Based on an evaluation conducted by Fundación Ciudadanía y Desarrollo on 38 of the main non-

[201] See http://bit.ly/2MFFRSh.
[202] Interview with Carranco, 2020.
[203] Interview with Muñoz, 2020.
[204] Financial and Economic Analysis Unit (2020). *Virtual Accountability*. Accessed November 14, 2020. Available at http://bit.ly/36OQAkm.

profit organizations in the country, more than 50% were unaware of the regulations, more than 30% affirm that there are no specific provisions on the subject or that they are not subject to them, and only 13% affirm the existence of specific provisions.[205]

4.2 CHAPTER V

4.2.1 ARTS. 52 AND 58 – ANTI-MONEY LAUNDERING

The Organic Integral Penal[206] Code typifies money laundering, explaining that it is a separate crime from others committed inside or outside the country. It is a criminal offense that contains six punishable conducts, directly or indirectly. Thus, it punishes those who:

- Hold, acquire, transfer, possess, administer, use, maintain, safeguard, deliver, transport, convert or benefit in any way from assets of illicit origin;
- Conceal, disguise or prevent the accurate determination of the nature, origin, provenance or linkage of assets of illicit origin;
- Lend their name or that of the corporation or company, of which they are a partner or shareholder, for the commission of the crimes typified in this article;
- Organize, manage, advise, participate in or finance the commission of the crimes defined in this article;
- Carry out, by themselves or through third parties, financial operations and transactions to give the appearance of legality to money laundering activities; or
- Enter or exit money of illicit origin through the country's crossings and bridges.

In Ecuador, money laundering is punishable by a prison sentence, the length of which depends on the amount of assets involved in the crime, the existence of an association to commit a crime, and the type of position and institution. In addition, money laundering is punishable with a fine equivalent to twice the amount of the assets of the offense, with confiscation, and with the dissolution and liquidation of the legal entity created for the commission of the offense, as appropriate.

Regarding this type of crime, the interviewed Public Prosecutor's Office (FGE) staff highlighted the progress made concerning the possibility of prosecuting legal persons for money laundering, in accordance with Arts. 49 and 71 of the COIP.[207]

As the governing body of the criminal investigation and public prosecution, the Public Prosecutor's Office leads the pre-procedural and criminal prosecution of money laundering. In this regard, the FGE has an Anti-Money Laundering Unit, which currently has six leading prosecutors.

As shown in the table below, only three money laundering cases have gone to trial in Ecuador in the past three years. Most of the cases do not go beyond the stage of preliminary investigation (233 in the past three years), which indicates that there is no solid evidence of criminal responsibility to continue with the process.

Table 4 – Money-laundering[208]

Money laundering	2018	2019	2020	Total

[205] International Center for Not-for-profit Law (2021). *Mapping the risk of terrorist financing in non-profit organizations among GAFILAT countries: Regional report*. Accessed February 5, 2021. Available at https://bit.ly/3keHxyn.

[206] See Código Orgánico Integral Penal, art. 317. Available at https://bit.ly/2JhEkjt.

[207] Interview with Muñoz, 2020.

[208] State Attorney General's Office (2020). *Response to request for information.* See http://bit.ly/3pPcdbC.

Fiscal Instruction	2	2	2	**6**
Preliminary investigation	112	85	36	**233**
Trial	2	1	0	**3**
Trial preparation	5	2	3	**10**
Under analysis	7	33	12	**52**
Total	**128**	**123**	**53**	**304**

No cases on crimes of false incrimination and failure to control money laundering were prosecuted in the past three years.

When asked about the low number of sentences in money laundering cases, the interviewed FGE staff explained that it is a complex crime that works with circumstantial evidence, and requires strengthening of the entire justice system's capacity to understand and work with this type of evidence. Similarly, it is necessary to increase human capacity and resources. Additionally, they point out the complexity of the standard of proof beyond a reasonable doubt at the judicial level.[209]

It is important to emphasize the information presented in previous sections of this report. All public officials, without exception, are required to submit their sworn asset declarations at the beginning and end of their term of office. These are, or at least should be, periodically reviewed by the Comptroller General's Office to determine not only possible illicit enrichment, but also the alleged commission of other crimes such as money laundering. Although there have been reports of alleged illicit enrichment and money laundering through the media in the case of authorities, such as members of the National Assembly, it is not publicly known if these allegations have been prosecuted and criminally sanctioned.

Finally, it is important to mention that the Organic Criminal Code (COIP) also penalizes false incrimination for money laundering with a prison sentence of between one and three years, also establishing that the maximum penalty must be applied if a public servant commits this crime. The omission of money laundering monitoring is also penalized when someone who is part of a subject obliged to report and whose obligation it is to prevent, detect and monitor money laundering fails to do so. In this case, the penalty is imprisonment from six months to one year.

GOOD PRACTICES

- The creation of the Anti-Money Laundering Unit[210] in the institution, which specializes in this area, with external and international advice to strengthen the institution in this area[211] is identified as a good practice.
- The possibility that legal entities may be prosecuted and punished for the crime of money laundering is an important aspect to fight this crime.

DEFICIENCIES

- Although several complaints have been filed for the crime of money laundering, statistics show that most of them remained at the stage of analysis and preliminary investigation in the past three years. Few end up in trial and receive sentences, demonstrating the need to strengthen justice operators' capacities in this area.

[209] Interview with Muñoz, 2020.
[210] In accordance with the Twelfth General Provision of the Democracy Code.
[211] Interview with Muñoz, 2020.

4.2.2 ARTS. 53 AND 56 - MEASURES FOR DIRECT RECOVERY OF PROPERTY

As will be seen in detail below, the Organic Integral Penal Code establishes the criminal confiscation that proceeds in all cases of intentional crimes, as a restrictive penalty of property rights, but not in those crimes of negligence.[212] At the moment, the confiscation only proceeds in case of executed convictions. If the goods, funds or assets in general cannot be confiscated, the criminal law establishes that the judge shall order the confiscation of any other assets owned by the convicted person for an equivalent value, even if this is not directly related to the crime.

Once the assets have been seized, they are definitively transferred to the state institution in charge of the administration and management of the State's real estate, which may dispose of them for their regularization. The values seized must be transferred to the Single Account of the National Treasury at the Central Bank. In the case of historical objects and works of art, they become part of the State's tangible patrimony, and their ownership is transferred to the National Institute of Cultural Patrimony. The criminal law even establishes that, in the case of an offense against the environment or mining resources, the immediate destruction or immobilization of heavy machinery used for the commission of the offense may also be ordered in addition to the confiscation.

Under the current legislation, criminal confiscation also applies to legal entities. The COIP establishes the possibility of seizure of property subject to the alleged commission of a crime as a precautionary measure until a judge issues the final judgment. However, currently, the possibility of confiscation without a sentence has not been legislated. This represents a problem when the investigated or prosecuted person is a fugitive, dies or has immunity.

Due to the regulatory gaps and in line with the commitments acquired by the State when approving and ratifying international instruments, a proposed Law on Asset Forfeiture was submitted to the National Assembly with the support of the StAR (Stolen Asset Recovery) Initiative.[213] The purpose of the law, soon to be approved by the Legislative, is to "regulate the removal of ownership of assets of illicit or unjustified origin or illicit destination in favor of the State."[214]

The proposed law is based on a clear definition of the term forfeiture of ownership as the "declaration of ownership in favor of the State through a judgment of a judicial authority, without any consideration or compensation whatsoever for the owner, or whoever holds or behaves as such, and is applied to property acquired through actions or omissions contrary to law. The extinguishment of ownership is jurisdictional and real, it is directed against goods and not against persons and is declared through an autonomous and independent procedure of any other trial or process."[215]

The draft law establishes the State Attorney General's Office, the Public Prosecutor's Office and the affected parties as procedural subjects. In the case of the Attorney General's Office, it must "file the complaint for extinguishment of ownership and promote the actions in the asset investigation". While in the jurisdictional stage "it must file the claim for extinguishment of ownership before the competent judge in extinguishment of ownership, assessing the amount of the asset or assets subject to the extinguishment of ownership; as well as intervene in the procedural acts, jurisdictional or constitutional actions derived from the procedure for extinguishment of ownership". The Public Prosecutor's Office is responsible for the investigation of assets, ex officio or following a complaint, as

[212] See Article 69 of the Organic Integral Penal Code.
[213] Fundación Ciudadania y Desarrollo (2020). *Asset Forfeiture Bill Tr. 311647*. Accessed November 28, 2020. Available at Observatorio Legislativo https://bit.ly/2Z00US9.
[214] Ibid.
[215] Ibid.

well as for being "a specialized procedural party in the judicial stage of the extinguishment of ownership".[216]

The proposed law establishes all procedural stages, the goods and/or assets that may be subject to asset forfeiture, and forms of inter-institutional and international cooperation. It also establishes three types of preventive measures: prohibition of alienation, retention and seizure. It creates the Service for the Administration of Special Goods or Assets, whose main responsibility, according to the law, will be "the administration of real and personal property, cash, national and international investments, and other financial or stock market products on which the precautionary measures and the judicial sentences of forfeiture of ownership are issued".

Finally, as stated in the explanatory memorandum, "the draft Law on Asset Forfeiture highlights the procedural principle called "*nullity ab initio*" (nullity of origin), applicable in cases of acquisition or disposition of property or the constitution of assets of illicit or criminal origin -knowing they are of illicit origin or reasonably presuming it-, constitutes legal business contrary to public order and express prohibitive laws or have been constituted in fraud of law. The acts and contracts that deal with such business, in no case constitute just title and are null and void from their origin, that is, *ab initio*."

At the closing date of this report, the second debate of the bill was being held in the National Assembly's Plenary.

GOOD PRACTICES

- The latest reforms to the COIP improved the existing regulations to make the confiscation of assets for money laundering offenses feasible.
- The government's openness to cooperation with initiatives such as StAR to draft and present a bill that would allow Ecuador to have rules for the direct recovery of assets, in line with international standards, can be seen as a good practice.
- The current regulations also allow for the confiscation against legal entities involved in the commission of crimes.

DEFICIENCIES

- The current regulatory framework only allows for the confiscation of assets when there is an enforceable judgment. Considering that no one can be judged in absentia, as a general rule, this makes it impossible to confiscate the assets of fugitives.

4.2.3 ART. 54 - CONFISCATION TOOLS

The Organic Integral Penal Code[217] establishes criminal confiscation as one of the restrictive penalties of property rights, which is employed in cases of intentional crimes when these are instruments, products or proceeds from the commission of the crime. The confiscation must be ordered by a judge employing a conviction and may be applied to:

- Property and assets used to finance or commit the crime;
- The property or assets into which the proceeds of crime are transformed;
- Proceeds of crime that are intertwined with property acquired from lawful sources may be subject to confiscation up to the estimated value of the intertwined proceeds;
- Income or other benefits derived from the proceeds of crime;

[216] Ibid.

[217] See Código Orgánico Integral Penal, Art. 69. Available at https://bit.ly/2JhEkjt.

- Property or assets owned by third parties, when these have been acquired with the knowledge that they come from the commission of a crime or to make it impossible to confiscate the convicted person's property.

The Assembly amended the article on criminal forfeiture in December 2019. This reform specified that in case of an enforceable conviction in criminal proceedings for money laundering, organized crime and crimes against public administration, "if such property, funds or assets, products and instruments cannot be confiscated, the judge shall order the confiscation of any other property owned by the convicted person, for an equivalent value, even if this property is not linked to the crime." Before the reform, this provision applied only to terrorism crimes and those related to controlled substances.

The Assembly also approved an article on confiscation without a sentence for certain types of crimes (including money laundering, organized crime and crimes against the public administration), empowering the judge to order the confiscation of assets of indicted persons and providing for the restitution of such assets if it is proven that they have no connection with the crime. This article was vetoed by the President based on the presumption of innocence, the principle of legality and the right to defense, and was submitted to the Constitutional Court for review, which determined that it violated the established legal security.[218] Finally, the article did not enter into force.

Art. 549 of the COIP establishes the possibility of issuing preventive measures on the assets of the natural or juridical person prosecuted. The possible measures are seizure, retention and prohibition of transferal. These measures are an instrument that prosecutors can use to prevent the dissipation or loss of assets related to crimes.

According to the interview with FGE staff, it is possible to apply preventive measures so that the assets are not lost, but the recovery of assets as such currently requires a criminal conviction. Within this framework, the FGE staff considers the approval of asset recovery regulations that would allow the authorities to recover assets through a civil and not through a criminal proceeding necessary.[219]

In this context, it should be noted that the National Assembly is currently debating an Organic Bill on Asset Forfeiture, presented in October 2019, which is in its second stage of debate.[220] This bill allows for seizure without a criminal sentence and contemplates its application on assets of illicit or unjustified origin located in Ecuador and abroad. The bill contains specific provisions on international cooperation aimed at guaranteeing the prosecution of illicit assets abroad for their subsequent recovery and to facilitate the recovery of assets in Ecuadorian territory that is sought by other States. It also contemplates the validity of foreign judgments on the matter and the possibility of distribution or administration of assets resulting from the forfeiture of ownership between States.

Furthermore, in September 2019, 11 state institutions signed a Cooperation Agreement to form an Inter-Agency Asset Recovery Liaison Group (GEIRA) with support from the World Bank's StAR initiative, to increase coordination capacities and form high-level working groups for the permanent execution of asset recovery activities.[221]

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[218] Constitutional Court of Ecuador (November 26, 2019). *Opinion No. No. 4-19-OP/19 on objections of unconstitutionality to the draft Organic Law.* Accessed November 15, 2020. Available at https://bit.ly/2LqP5kG.
[219] Interview with Muñoz, 2020.
[220] Fundación Ciudadania y Desarrollo (2020). *Asset Forfeiture Bill Tr. 311647*. Accessed November 28, 2020. Available at Observatorio Legislativo https://bit.ly/2Z00US9.
[221] El Universo (September 2019). *With group seeks to recover money from corruption.* Accessed November 15, 2020. Available at http://bit.ly/2MFGYBr.

Initially, the GEIRA was composed of the Public Prosecutor's Office, the UAFE, the National Court of Justice, the Council of Citizen Participation and Social Control, the Attorney General's Office, the Judiciary Council, the Ministry of Foreign Affairs, the Strategic Intelligence Center, the Internal Revenue Service, the Real Estate Management Service and the Presidency's Anticorruption Secretariat. However, the Presidency's Anti-Corruption Secretariat was removed in 2020, leaving only ten institutions in the group. Additionally, the Real Estate Service was transformed into a Technical Secretariat attached to the Presidency in 2020 by Executive Decree 1107. This group is currently led by the Public Prosecutor's Office.

Finally, the authors of this report requested information on the amount of money, property or other assets that the Ecuadorian State has effectively recovered in 2018, 2019 and 2020 linked to corruption cases from the State Attorney General's Office, but received no response.

GOOD PRACTICES

- The signing of the Cooperation Agreement to form an Inter-institutional Asset Recovery Liaison Group to increase coordination capabilities and form high-level working groups for the permanent execution of asset recovery activities is highlighted as a good practice.

DEFICIENCIES

- Under the current regulatory framework, it is impossible to confiscate the proceeds of corruption without a criminal conviction. (Art. 54.1(c), UNCAC)
- It is impossible for citizens to access reliable information on the assets and amounts seized by the State. Information on these issues is scattered, low quality, and used in a non-technical manner for political purposes.

4.2.4 ARTS. 51, 54, 55, 56 AND 59 - INTERNATIONAL COOPERATION FOR THE PURPOSE OF CONFISCATION

In its Article 497 on mutual legal assistance, the COIP allows prosecutors to request direct international criminal assistance for any type of crime and specifies that it may be provided for the seizure or confiscation of assets.

Similarly, Art. 488 empowers prosecutors to request foreign authorities to submit the necessary evidence to prove the alleged criminal liability of persons under investigation in the country, as well as to provide evidence to foreign authorities upon request. Additionally, Art. 496 of the COIP establishes that Ecuador may "conduct joint investigations with one or more countries or mixed investigation bodies to combat transnational organized crime."

Furthermore, the Seventh General Provision of the COIP, approved in December 2019, establishes that the FGE will request the Ministry of Foreign Affairs sign bilateral agreements of cooperation and international criminal assistance. It also establishes that the FGE "may additionally sign cooperation agreements with its peers in the jurisdictions involved, in order to make effective the return of assets, which may be signed on ad hoc terms as appropriate."[222]

The Prosecutor General's Office functions as the central authority to execute international mutual legal assistance in criminal matters. The FGE bases its work on the multilateral conventions signed by Ecuador and on the bilateral agreements born within these Conventions.[223] The FGE had an

[222] See Código Orgánico Integral Penal, https://bit.ly/2JhEkjt.

[223] Attorney General's Office (n.d.). *System of international legal cooperation in criminal matters in Ecuador*. Accessed November 15, 2020. Available at http://bit.ly/3tyec6t.

International Criminal Cooperation Instruction approved in 2014, intending to guide prosecutors and judicial operators to handle and manage requests for international criminal assistance.[224] Requests for international criminal assistance are sent to the other countries and received by Ecuador, using two channels: The central authority (FGE) or the Ministry of Foreign Affairs and Human Mobility.[225]

According to FGE staff, the institutions has increased its efforts to strengthen Ecuador's international criminal cooperation in recent years. Specifically in terms of information exchange on money laundering and asset recovery, the FGE highlights the Basel Institute's technical support to improve international criminal assistance requests initiated by Ecuador.[226]

When asked if there are specific cases of asset or property recovery by Ecuador in other countries or from other countries in Ecuador, the FGE responds that no such cases have been identified. Similarly, the interviewed staff explained that the absence of asset recovery cases in other countries is due to the fact that it is not possible to carry out international criminal cooperation actions without having a final conviction. Furthermore, there are clashes with the domestic legislation of other States.[227]
The staff interviewed from the Ministry of Foreign Affairs equally did not identify a specific case of asset recovery by Ecuador in other countries or by other countries in Ecuador.

In the specific case of the UNCAC, the National Court of Justice is responsible for its enforcement. The authors of this report requested an interview with the institution's staff, but received no response.

GOOD PRACTICES

- Since no success stories on this article's application have been identified, no good regulatory or enforcement practices can be highlighted.

DEFICIENCIES

- There are many hurdles for international cooperation on asset recovery. Therefore, national legislation and institutional procedures should be reviewed and modified to facilitate international cooperation for confiscation, based on the UNCAC.
- No specific cases have been identified regarding the recovery of assets or goods by Ecuador in other countries or by other countries in Ecuador.

[224] See http://bit.ly/3p0DMh0.
[225] Attorney General's Office (n.d.). *System of international legal cooperation in criminal matters in Ecuador.* Accessed November 15, 2020. Available at http://bit.ly/3tyec6t.
[226] Interview with Carranco, 2020.
[227] Ibid.

5 RECENT DEVELOPMENTS

Referendum and public consultation, the CPCCS-T and institutionality

On November 29, 2017, President Lenin Moreno called for a referendum and public consultation that included seven questions. Two of them, 1 and 3, were related to the fight against corruption and institutionalism: "1. Do you agree with amending the Constitution to punish any person convicted of acts of corruption with their disqualification to participate in political life and with the loss of their assets (...)? (...) 3. Do you agree with amending the Constitution of the Republic of Ecuador to restructure the Council of Citizen Participation and Social Control, as well as to terminate the constitutional term of its current members and that the Council that temporarily assumes their functions has the power to evaluate the performance of the authorities whose appointment corresponds to it, being able, if necessary, to anticipate the termination of their terms (...)?"[228]

On February 4, 2018, Ecuadorians went to the polls, and these questions were approved with 74% and 63% of the votes, respectively. With this result, the citizenry once again amended the Constitution, establishing political and patrimonial sanctions to persons convicted for acts of corruption, but, in addition, substantially changing the Council of Participation and Social Control so that its members are elected by popular vote after a Transitory Council (CPCCS-T) with extraordinary powers evaluates the appointments of their predecessors and appoints replacements.

The members of the so-called CPCCS-T interpreted the annex to the question that founded its existence and carried out evaluations of authorities that were not theirs to evaluate, dismissed them from their functions in advance and even appointed their replacements by applying rules not foreseen in the current legal system. Due to these actions, there were problems with the Transitory Judiciary Council's operation, and the National Electoral Council was formed with representatives of political organizations, and an interim Public Defender is still in office, among others.

The new way of electing members of the CPCCS was implemented in March 2019. Three months later, the seven new councilors were sworn in. In August of the same year, after an impeachment trial in the National Assembly, four of them were denounced and dismissed. In October 2020, a new impeachment trial ended with the denunciation and dismissal of the organization's president. While this was happening, a further attempt to amend the Constitution was launched to remove the Council of Citizen Participation and Social Control. At the closing date of this report, the National Assembly, was discussing this proposal of the self-commissioned Committee for Democratic Institutionalization led by one of the members of the extinct CPCCS-T through a Commission of Amendments. The National Assembly has also proposed the transformation of the General State Comptroller's Office into a Court of Accounts.

Although the previous government abolished the so-called Technical Secretariat for Management Transparency (former Anti-Corruption Secretariat), in February 2019, the government of Lenin Moreno announced that, based on the commitments acquired by the Ecuadorian State through the ratification of the United Nations Convention Against Corruption, it would create "an Anti-Corruption Secretariat, within the institutional framework of the Presidency of the Republic" so that, among other responsibilities, it would propose "guidelines for the generation of public policies and actions that facilitate the reporting of high-impact acts of corruption" and "initiatives to fight corruption", and mainstream "the implementation of the public policy to fight corruption with the entities of the

[228] El Comercio (2018). *what are the seven questions of the referendum and popular consultation of February 4, 2018 in Ecuador?* Accessed February 5, 2021. Available at https://bit.ly/3aG0NBZ.

Central Government and its dependencies".[229] After a bit more than a year of operation, the Public Prosecutor's Office, the Comptroller General's Office, the Judiciary Council and the National Court of Justice expressed to the Executive their discomfort for the interference of the Anti-Corruption Secretariat in acts of competence of other institutions and authorities. Despite high government officials supporting the agency's existence and the work of its head, in May 2020, the President of the Republic issued Executive Decree No. 1065, which abolished the Anti-Corruption Secretariat.

In February 2019, after receiving an appeal from the National Assembly, President Moreno presented his decision to convene the world community to create an International Commission against Corruption in a televised address. The Commission would be made up of independent international experts, whose main task would be to follow up and support Ecuadorian institutions to "uncover and hold accountable all acts of corruption". Three months later, on May 13, 2019, the Commission of International Experts to Fight Corruption in Ecuador (CEICCE) was formally created. In an unconventional manner for this type of mechanism, it was done by Executive Decree. At the beginning of July, one million dollars was given to the United Nations (UNODC) to set up the Commission. In July, the commissioners submitted a proposed statute. In August 2019, the initial 90 days established in the Decree expired without anything happening. The Executive decided to extend the initial stage of the CEICCE by an additional 90 days until November 2019. Since then, the CEICCE has not been implemented, nor has it functioned.

The situation of justice

After dismissing the members of the Judiciary Council, the CPCCS-T appointed a transitional Judiciary Council. The work of the transitional members was marred by allegations of judicial interventions, wiretapping and internal conflicts. The CPCCS-T, unconstitutionally, resolved to suspend the Judicature Council's responsibilities and constitutional powers and to initiate the appointment of the definitive members.

On January 23, 2019, the CPCCS-T appointed the Judiciary Council's definitive members, who will be in office until January 2024. Among its first actions was to conduct a comprehensive evaluation of the judges and associate judges of the National Court of Justice. This process was observed by several national and international organizations, as well as the Inter-American Commission on Human Rights and the UN Special Rapporteur for the Independence of Judges and Lawyers, since it did not comply with national and international standards on the matter.

Finally, on November 15, 2019, the Judiciary Council's Plenary released the final results of the "Comprehensive Evaluation of Judges and Associate Judges of the National Court of Justice - 2019". As a result, 13 judges and ten associate judges were removed from their positions. A few days later, the names of 26 "temporary judges" were announced to replace those judges who did not pass the evaluation or resigned during the process.

During 2020, in the context of the COVID-19 pandemic, the competition for the appointment of 16 national judges (seven federal judges whose constitutional term ends in 2021 and nine judges removed at the end of 2019) and new adjunct judges of the National Court began. Again, national and international organizations, the UN Rapporteur, the official oversight of the competition and the CPCCS made observations on this process due to irregularities that have occurred throughout, which could affect judicial independence in the future.

At the time of writing this report, the National Assembly was about to approve reforms to the Organic Code of the Judiciary, establishing criteria for the evaluation of national judges, guaranteeing their

[229] See Executive Order No. 665 of February 6, 2019. Available at https://bit.ly/3ungkhR.

stability in office, restricting the use of the legal concepts of inexcusable error and gross negligence, and establishing criteria for judicial transparency in line with Open Justice.

Legislative work

During the period 2017 - 2021, several norms have been presented, discussed, approved and even filed inside the National Assembly. The authors of this report would like to highlight the following:

- Draft Organic Law on the Fight against Corruption, presented in July 2017 by legislative initiative: The norm that contained reforms to the Organic Integral Criminal Code, the Organic Law of the State's Comptroller General, the Organic Law of Public Service, the Organic Law of the National Public Procurement System, the Organic Law of the Council of Citizen Participation and Social Control, the Organic Law of the Legislative Function and the Organic Law of Prevention, Detection and Eradication of the Crime of Money Laundering and Financing of Crimes, was approved by the National Assembly in August 2018. However, the President of the Republic vetoed it, blocking the possibility of the norm being dealt with again in the Legislative for one year.
- After the unification of several bills on the subject, submitted over several years, the legislative process was completed on January 30, 2020, which allowed putting the reforms to the Organic Law on Elections and Political Organizations, Code of Democracy into effect (after publication in the Official Gazette on February 3). Among them are new provisions related to political financing, transparency and accountability of political subjects, as well as the creation of a complementary anti-money laundering unit.
- After the unification of several legislative and presidential bills, the National Assembly approved a package of reforms to the Organic Code of the Judicial Function in early October 2020 that establishes rules for competitive merit-based examinations, evaluation standards for members of high courts, restrictions on using the legal concepts of inexcusable error and gross negligence, reforms to the infractions of judicial officials, the establishment of Open Justice in Ecuador, among others. It is expected to enter into force in 2021.
- Based on the Democracy and Institutional Reform Roundtable of the 2030 Agreement, the draft Organic Law for the Recovery of Assets of Illicit and Unjustified Origin and Destination (Asset Forfeiture Law) was submitted to the National Assembly in October 2019. At the closing of this report, the National Assembly had concluded the second debate and had approved the law, which will be submitted to the Executive for its partial or complete objection. The proposed law is based on international standards on the matter.
- At the beginning of March 2020, the President of the Republic presented a draft Organic Law Reforming the Comprehensive Organic Criminal Code in Anti-Corruption Matters, in line with the commitments made in the United Nations Convention Against Corruption and the Inter-American Convention. This regulation is part of Ecuador's commitments before the International Monetary Fund concerning its most recent disbursements of funds. At the closing of this report, the National Assembly has concluded the first debate in the plenary.

6 RECOMMENDATIONS

- **Transparency and the review process:** The authors of this report again invite the State to sign the Transparency Pledge promoted by the UNCAC Coalition, to guarantee access to information on the review process and its results, as well as to promote the participation of civil society in the remaining phases of the official review process.
- **Beneficial owners:** Although there have been regulatory advances in terms of final beneficiaries, as mentioned above, especially concerning public procurement processes, there is an excellent opportunity to strengthen the following of international standards and specific commitments, such as those related to the Extractive Industries Transparency Initiative (EITI).
- **National Plan for the Prevention and Fight against Corruption:** The authors of this report recommend that in order to duly comply with its constitutional mandate, the Transparency and Social Control Function, co-create a proper National Plan for the Prevention and Fight against Corruption, which integrates the other four State Functions (Executive, Legislative, Judicial and Electoral) and directly involves non-state actors.
- **Publication of plans and policies and their monitoring and follow-up mechanisms:** The authors of this report recommend that public policies, programs, evaluations and other relevant documents related to corruption prevention be proactively published on institutional state websites. Along the same lines, we recommend that plans be prepared with defined goals and indicators that allow for adequate monitoring, follow-up and evaluation, and the adoption of policies and tools that guarantee citizens access to reliable information on their implementation in a timely manner, for social control.
- **Inter-institutional coordination:** The authors of this report recommend that legal and institutional mechanisms be adopted to strengthen the organization and coordination of the institutions responsible for the prevention of corruption.
- **Codes of Conduct:** The authors of this report recommend that the Comptroller General's Office develop minimum standards and criteria for the creation of codes of conduct in public institutions, as well as a mechanism to verify compliance with the obligation to have this type of instrument.
- **Conflicts of interest and revolving doors:** It is crucial that the National Assembly discuss and approve legislation to regulate and prevent conflicts of interest and revolving doors. Several bills have already been presented in line with international standards and inter-American model norms.
- **Sworn asset declarations:** The authors of this report recommend that the information contained in sworn asset declarations, with the limited exception of personal data, be made actively transparent in open data format. Furthermore, we recommend to expand the scope of these declarations based on the OAS Model Law on the Declaration of Interests, Income, Assets and Liabilities, and highlight the need to extend the obligation to submit declarations to candidates for elected office.
- **Access to public information:** Although Ecuador has a law regulating transparency and the right of access to information, it entered into force in 2004 and has not been updated so far, in line with inter-American model laws, international standards and new applicable technologies. Therefore, it is urgently necessary that the National Assembly discusses and approves a new law on the matter, which fully guarantees access to public information.
- **Social organizations:** Given the lack of legal certainty for social organizations as they are regulated by Executive Decree and therefore subject to the discretion of the government of the day, the authors of this report recommend that a law be passed that avoids arbitrary enforcement and guarantees the rights of social organizations.
- **Personal data**: The approval of a regulation governing personal data is recommended. This is necessary, both to guarantee the right to personal data for citizens and so that the lack of

legislation in this regard does not continue to be used as an excuse to violate the right of access to public information.

- **Law on Archives:** The authors of this report recommend that a new Law on Archives be approved that reflects Ecuador's current reality and guarantees the correct use and custody of public documents.
- **Transparency of records:** The authors of this report recommend making the information in the registry of trips abroad managed by the Presidency's General Secretariat and the records of official gifts of each institution available to the public in open data format.
- **Anonymous whistleblowing:** The authors of this report recommend that an inter-institutional coordination process be carried out to co-create rules, instructions, and procedures to ensure the whistleblower's safety and the possibility to report anonymously, which was approved in December 2019.
- **Complaint channels:** The authors of this report recommend establishing minimum standards and criteria for security, information handling, follow-up of complaints, and special controls of the staff who have access to the information received through the different institutions' complaint channels. In addition, we recommend guaranteeing a coordinated and secure process regarding the transfer of information from the receiving entity to the FGE.
- **Incentives for whistleblowing:** The authors of this report recommend developing a regulation and establishing clear processes that allow the proper implementation of the COIP reform regarding the economic compensation to persons who provide evidence that allows the effective recovery of goods or assets lost due to corruption. This recommendation is made in the spirit of avoiding the arbitrary use of incentives and establishing clear responsibilities for each stage of the process in order for it to be effective.
- **Public procurement and multisectoral platforms:** The authors of this report recommend that multisectoral platforms for evaluating public procurement be created to serve as channels for feedback and identifying weaknesses and possible solutions in the procurement system.
- **Transparency of procurement documentation:** The authors of this report recommend to publish documents on claims, appeals and decisions thereof within public procurement processes, as well as procurement payment documents, works audit reports and subcontractor information in a timely manner and in open data. Furthermore, we recommend to continue with sustained efforts to implement open contracting practices and open data at all stages of the procurement process. Within this framework, it is crucial to invest in technology and enhance the interconnectivity of databases.
- **Public procurement legislation:** The authors of this report recommend that current legislation be reviewed in order to bring it up to international standards. These reforms should include elements such as strengthening SERCOP's sanctioning capacities, evaluating the role of the CGE so that it can perform concurrent monitoring instead of subsequent control, limiting the special procurement regime more strictly, strengthening the regulation and detection of conflicts of interest, adding issues of open contracting and reviewing the types of contracting that are not governed by the National Public Contracting System.
- **Employment in the public sector:** In relation to the deficiencies highlighted in the report, the authors of this report recommend guaranteeing the standards of transparency and free access to information in public competitions for access to public service by all possible means. It is also crucial to eliminate arbitrary enforcement and standardize norms for the entry into public service of the so-called officials of free appointment and removal. Finally, a reform to the Organic Law of Public Service is recommended to establish specific, adequate and sufficient procedures to select and train holders of public positions most vulnerable to corruption, including high authorities related to the issue, in line with Article 7.1 (b) of the UNCAC.
- **Judicial independence:** In order to effectively implement various UNCAC commitments, an independent judiciary is essential. Although several reforms to the Organic Code of the Judiciary (COFJ) in line with international standards, are currently being discussed and are likely to enter

into force, work still must be done to ensure that members of High Courts and Tribunals access positions through public merit-based competitions that fully comply with the necessary publicity and transparency. Furthermore, ensuring that disciplinary processes comply with standards of objectivity is crucial, so that they do not constitute rewards or punishments for judicial officials with respect to their decisions. The authors of this report recommend that the parameters of Open Justice be fully implemented to guarantee transparency, user participation and permanent accountability.

- **Compliance and anti-bribery:** The authors of this report recommend including legal obligations for private companies to incorporate *compliance* and anti-bribery programs, especially in sectors with a high risk of corruption.
- **Money laundering:** Due to the low number of sentences in the area of money laundering, the authors of this report recommend that an evaluation be conducted to determine bottlenecks and possible solutions that will allow for the effective detection of this illicit activity.
- **Fintech and crypto-currencies:** The authors of this report recommend developing regulations to regulate financial technologies, crypto assets and cryptocurrencies, in order to prevent and detect money laundering by these means, as well as to punish illicit actions carried out in this framework. Similarly, it is crucial to train justice operators in relation to these types of actions, which may constitute digital evidence crimes.
- **Confiscation without sentence:** The authors of this report recommend promoting the adoption of a regulation that facilitates the recovery of assets, with the possibility of carrying out such an action without an enforceable criminal sentence, and without violating the fundamental rights of citizens. Furthermore, the regulations should promote international cooperation in the recovery of assets, facilitating and simplifying the national procedures aimed at this objective. The discussion of the draft Organic Law on Asset Forfeiture is a great opportunity in this regard.
- **Political financing:** in this regard strengthening the electoral institutions' controls regarding political subjects' non-compliance with the rules. In addition, based on an analysis of the effectiveness of the regulations that entered into force for the 2021 electoral process, we recommend conducting a study on the need for new reforms regarding political financing.

7 ANNEXES

This annex details the official access to information requests and interviews requested as part of the information gathering process for the preparation of this report. A summary table with data on the implementation of the so-called empty chair at different levels of the decentralized autonomous governments, published by the CPCCS from 2014 to 2018, is also presented in the annex of this report.

Finally, you can access the documentation this report is based on at the following link: https://bit.ly/2IPKiYo. This documentation includes the laws and regulations referenced in the text of the report, the official access to information request documents, interview request letters and other official communications that have been sent as part of the report writing process. The documents will be available at this link for a minimum period of 10 years.

Requests for public information

No.	Institution	Date of shipment	Subject of the application	Reply
1	National Service of Integral Attention to Adults Deprived of Liberty and Adolescent Offenders of Ecuador (SNAI)	4/11/2020	Statistics of persons deprived of liberty for crimes against the public administration, organized crime and money laundering	No response was obtained
2	State Attorney General's Office (PGE)	4/11/2020	Amount of money, goods or other assets that have been effectively recovered by the State	No response was obtained
3	Public Prosecutor's Office (FGE)	4/11/2020	Statistics on money laundering and on the Victim and Witness Protection and Assistance System	See answer here: https://bit.ly/3kYv4xA
4	Council of Citizen Participation and Social Control (CPCCS)	4/11/2020	Statistics on complaints and on the use of citizen participation mechanisms	No response was obtained
5	Presidency of the Republic	21/10/2020	Institutional gift registry	No response was obtained
6	Office of the State's Comptroller General (CGE)	21/10/2020	Institutional gift registry	No response was obtained
7	The Presidency's General Secretariat	19/10/2020	Foreign travel database	No response was obtained
8	Office of the State's Comptroller General (CGE)	19/10/2020	Financial Statements	The information was denied. See response here https://bit.ly/35REOFu

9	State Attorney General's Office (FGE)	12/10/2020	Statistics on the National System of Protection and Assistance to Victims and Witnesses	No response was obtained
10	General Secretariat of the Presidency	8/10/2020	Results of the consultancy "Design of the National Agenda for Transparent, Corruption-Free and Improved Service Delivery Institutions" 2019 and government strategy document to combat and prevent corruption 2017	The information was delivered on a disk
11	Council of Citizen Participation and Social Control (CPCCS)	8/10/2020	Proposed Public Policy on Transparency and the Fight against Corruption for 2019	No response was obtained
12	Transparency and Social Control Function (FTCS) / Comptroller General's Office (CGE)	8/10/2020	National Public Integrity and Anti-Corruption Plan Follow-up Documents	See answer here: https://bit.ly/36ZCf3v

Requested and conducted interviews

No.	Institution	Date of interview request	Reply
1	CPCCS	19/10/2020	Interview conducted on November 2, 2020
2	CNJ	15/10/2020	No response was obtained
3	CGE	15/10/2020	No response was obtained
4	CNE	15/10/2020	Interview conducted on October 27, 2020
5	Judiciary Council	15/10/2020	No response was obtained
6	SEPS	15/10/2020	No response was obtained
7	Ombudsman's Office	15/10/2020	No response was obtained
8	FGE	15/10/2020	Interview conducted on October 22, 2020
9	Ministry of Labor	15/10/2020	No response was obtained
10	Human Rights Secretariat	15/10/2020	Interview conducted on October 21, 2020
11	SERCOP	15/10/2020	Interview conducted on October 22, 2020
12	Superintendency of Banks	15/10/2020	Interview conducted on November 16, 2020
13	SUPERCIAS	15/10/2020	No response was obtained
14	UAFE	15/10/2020	No response was obtained

15	Ministry of Foreign Affairs	4/11/2020	Interview conducted on November 20, 2020

Implementation of the "empty chair" between 2014 and 2018

Empty chair - year 2014					
GAD	**Yes**	**No**	**Subtotal**	**No report**	**Total**
Parish	213 (26%)	569 (70%)	782 (96%)	33 (4%)	815 (100%)
Municipal	82 (37%)	124 (56%)	206 (93%)	15 (7%)	221 (100%)
Provincial	13 (54%)	11 (46%)	24 (100%)	0 (0%)	24 (100%)
TOTAL	308 (29%)	704 (66%)	1012 (95%)	48 (5%)	1060 (100%)
Empty chair - year 2015					
GAD	**Yes**	**No**	**Subtotal**	**No report**	**Total**
Parish	243 (30%)	517 (63%)	760 (93%)	55 (7%)	815 (100%)
Municipal	105 (47.5%)	108 (49%)	213 (96.5%)	8 (3.5%)	221 (100%)
Provincial	15 (62.5%)	9 (37.5%)	24 (100%)	0 (0%)	24 (100%)
TOTAL	363 (34%)	634 (60%)	997 (94%)	63 (6%)	1060 (100%)
Empty chair - year 2016					
GAD	**Yes**	**No**	**Subtotal**	**No report**	**Total**
Parish	209 (25.5%)	595 (73%)	804 (98.5%)	10 (1.5%)	814 (100%)
Municipal	93 (42%)	127 (57.5%)	220 (99.5%)	1 (0.5%)	221 (100%)
Provincial	11 (46%)	13 (54%)	24 (100%)	0 (0%)	24 (100%)
TOTAL	313 (29.5%)	735 (69.5%)	1048 (99%)	11 (1%)	1059 (100%)
Empty chair - year 2017					
GAD	**Yes**	**No**	**Subtotal**	**No report**	**Total**
Parish	164 (20%)	625 (77%)	789 (97%)	27 (3%)	816 (100%)
Municipal	83 (37.5%)	136 (61.5%)	219 (99%)	2 (1%)	221 (100%)
Provincial	12 (50%)	12 (50%)	24 (100%)	0 (0%)	24 (100%)
TOTAL	259 (24%)	773 (73%)	1032 (97%)	29 (3%)	1061 (100%)
Empty chair - year 2018					
GAD	**Yes**	**No**	**Subtotal**	**No report**	**Total**
Parish	139 (17%)	569 (70%)	708 (87%)	108 (13%)	816 (100%)
Municipal	59 (26.5%)	143 (64.5%)	202 (91%)	19 (9%)	221 (100%)
Provincial	8 (33.3%)	15 (62.5%)	23 (95.3%)	1 (4.7%)	24 (100%)
TOTAL	206 (19%)	727 (69%)	933 (88%)	128 (12%)	1061 (100%)

Source: Own elaboration based on data published by CPCCS Report (2019)

8 BIBLIOGRAPHY

Agencia EFE (August 2020). *Credibility of Ecuador's president falls to 8%*. Retrieved from https://bit.ly/2YG7CfT.

Attorney General's Office (n.d.). *Sistema de cooperación jurídica internacional en materia penal en ecuador*. Retrieved from https://www.fiscalia.gob.ec/cooperacion-penal-internacional/.

Balseca, C. (October 21, 2020). Interview on UNCAC application to Human Rights Secretariat. (D. Zelaya, Interviewer).

Carranco, P. (October 22, 2020). Interview on UNCAC application to FGE. (D. Zelaya, Interviewer).

Constitutional Court of Ecuador (November 26, 2019). *Opinion No. ° 4-19-OP/19 on the objections of unconstitutionality to the draft Organic Reformatory Law to the Comprehensive Organic Penal Code*. Retrieved from https://bit.ly/2N3xHmY.

Council of Citizen Participation and Social Control (May 13, 2019). *CPCCS-T presented proposal of Public Policy on Transparency and Fight against Corruption.* Retrieved from https://bit.ly/2KPlMrz.

Council for Citizen Participation and Social Control (2019). *Comparative report: Implementation of the mechanism of citizen participation the empty chair in decentralized autonomous governments. Period 2014 to 2018.* Quito: CPCCS.

CPCCS, P. d. (November 2, 2020). Interview on UNCAC application to CPCCS. (D. Zelaya, Interviewer).

El Universo Newspaper (April 9, 2020). *Defenders of those sentenced in the 2012-2016 bribery case prepare appeals.* Retrieved from https://bit.ly/2VQ3ZC2.

El Comercio (August 14, 2019). *Plenary of the Assembly dismissed Tuarez and three Cpccs councilors.* Retrieved from https://bit.ly/2V62lfX.

El Comercio (August 14, 2020). *Tuarez offered public posts in exchange for money, precious stones and even gold bars, says Prosecutor's Office.* Retrieved from https://bit.ly/33pfiGd.

El Universo (November 27, 2019). *With group seeks to recover money from corruption*. Retrieved from https://bit.ly/2Of6I8w.

El Universo (August 5, 2020). *Fiscalía General abre investigación a Christian Cruz por su carné de discapacidad (Attorney General's Office opens investigation of Christian Cruz for his disability card).* Retrieved from https://bit.ly/3q9Auti.

El Universo (January 30, 2020). *UAFE official appointed Vice President of the Technical Assistance and Training Area of the Egmont Group*. Retrieved from https://bit.ly/2KNWSIJ.

European Research Centre for Anti-Corruption and State-Building ERCAS. (2019). *Index of Public Integrity*. Retrieved from https://bit.ly/39hQimZ.

Freedom House. (2020). *Freedom in the World 2020*. Retrieved from https://bit.ly/3d8rNKd.

Financial and Economic Analysis Unit (2020). *Virtual Accountability*. Retrieved from https://www.uafe.gob.ec/rendicion-de-cuentas-virtual-2019/.

Fundación Ciudadanía y Desarrollo (July 2019). *Informe final de veeduría al CPCCS-T.* Retrieved from https://bit.ly/2VatbDC.

Fundación Ciudadania y Desarrollo (February 2020). *Active Transparency Index 2019 Executive Function*. Retrieved from http://bit.ly/3mkmPgP.

Fundación Ciudadania y Desarrollo (July 2020). *Active Transparency Index 2019 Municipal Decentralized Autonomous Decentralized Governments*. Retrieved from http://bit.ly/2HRlpvq.

Fundación Ciudadania y Desarrollo (2020). *Asset Forfeiture Bill Tr. 311647*. Retrieved from Observatorio Legislativo: https://bit.ly/3ep5WR8.

Gómez Ponce, L., & Alarcón Salvador, M. (February 13, 2020). Does *the CNE have enough resources for the 2021 elections?* Retrieved from Observatorio de Gasto Público: https://bit.ly/363Dfml.

Grupo Faro (January 2018). *Six-month progress report on anti-corruption proposals.* Retrieved from https://bit.ly/3lfEpRP.

Guerrero, E. (November 10, 2020). Interview on UNCAC application to PUCE. (D. Zelaya, Interviewer).

Medina, V. (2020 November 2020). Interview on UNCAC application to MREMH. (D. Zelaya, Interviewer).

Muñoz, M. (October 22, 2020). Interview on UNCAC application to FGE. (D. Zelaya, Interviewer).

National Assembly (October 13, 2020). *Oficio and resolution of impeachment.* Retrieved from https://bit.ly/3qeM2vJ.

National Electoral Council (February 3, 2020). *Democracy Code.* Retrieved from https://bit.ly/3sec02r.

National Planning Council Ecuador (2017). *National Development Plan 2017-2021.* Retrieved from https://bit.ly/2VaTVny.

Official Gazette of Ecuador (May 18, 2004). *Organic Law on Transparency and Access to Public Information.* Retrieved from Registro Oficial Suplemento 337: https://bit.ly/2J4UkFH.

Official Gazette of Ecuador (October 20, 2008). *Constitution of the Republic of Ecuador.* Retrieved from Registro Oficial No. 449: https://bit.ly/2yTZgYr.

Official Gazette of Ecuador (October 20, 2008). *Constitution of the Republic of Ecuador. Version March 12, 2020.* Retrieved from Registro Oficial No. 449: https://bit.ly/3cNLjK9.

Official Gazette of Ecuador (August 4, 2008). *Ley Órganica del Sistema Nacional de Contratación Pública*. Retrieved from http://bit.ly/3q8bGSu.

Official Gazette of Ecuador (April 20, 2010). *Organic Law of Citizen Participation.* Retrieved from Registro Oficial Supplement 175: https://bit.ly/3mrbQT3.

Official Gazette of Ecuador (October 6, 2010). *Organic Law of Public Service. Version May 8, 2019.* Retrieved from Official Gazette Supplement No. 294: https://bit.ly/2RPu6YJ.

Official Gazette of Ecuador (February 10, 2014). *Código Orgánico Integral Penal*. Retrieved from https://bit.ly/2JhEkjt.

Official Gazette of Ecuador (April 24, 2014). *Instructivo de Cooperación Internacional Penal*. Retrieved from https://drive.google.com/file/d/1rs4qxOxIbMYI-L5oDNUtmYvLF-yFWOzD/view.

Official Gazette of Ecuador (October 2017). *Codificación Superintendencia de Bancos, Libro Primero tomo II*. Retrieved from http://bit.ly/3lhrFu2.

Official Gazette of Ecuador (October 12, 2018). *Reglamento Sustitutivo para el Sistema De Protección y Asistencia a Víctimas, Testigos y Otros Participantes en el Proceso Penal*. Retrieved from http://bit.ly/37dmt5r.

Official Gazette of Ecuador (December 9, 2019). *Norms for the Prevention of Money Laundering, Financing of Terrorism and other Crimes*. Retrieved from https://bit.ly/3mibzBJ.

Official Gazette of Ecuador (November 11, 2019). *Regulations on foreign travel by public servants*. Retrieved from http://bit.ly/3ogOQ9R.

Official Gazette of Ecuador (September 2020). *Codification of Resolutions of the National Public Procurement Service*. Retrieved from http://bit.ly/36f9cd4.

Official Gazette Ecuador (January 28, 2019). *Regulation registry of gifts received by public servants*. Retrieved from https://bit.ly/3ldWEXW.

PADF, CDF and CSIS (May 2020). *Diagnosis on Priority Areas for Cooperation Against Corruption In Ecuador*. Retrieved from https://padf.org/wp-content/uploads/2020/09/Diagnostico-sobre-areas-prioritarias.pdf.

PlanV Digital Magazine (May 13, 2019). *The specter of double counting shakes politics.* Retrieved from https://bit.ly/34RJXLE.

PlanV Digital Magazine (August 12, 2019). *Los cuatro "mecanismos" con los que habría operado el "Arroz Verde" correísta.* Retrieved from https://bit.ly/2RY7GVh.

Salvador, M. S. (November 16, 2020). Interview on the application of the UNCAC to the Superintendency of Banks. (D. Zelaya, Interviewer).

Sánchez, D. (October 22, 2020). Interview on UNCAC application to FGE. (D. Zelaya, Interviewer).

Secretariat of Communication of the Presidency (June 2017). *Members of the Transparency and Anti-Corruption Front held their first working meeting.* Retrieved from https://bit.ly/2V5UnU5.

Téran, E. (November 9, 2020). Interview on UNCAC application to Grupo Faro. (D. Zelaya, Interviewer).

Thousand Leaves Foundation (June 4, 2019). *how was Lenín and Glas' campaign financed?* Retrieved from https://bit.ly/2VrGU9Z.

Tobar, I. (October 22, 2020). Interview on UNCAC application to SERCOP. (D. Zelaya, Interviewer).

Transparency and Social Control Function (2019). *National Plan for Public Integrity and Fight against Corruption 2019-2013.* Retrieved from https://bit.ly/39jxBAa.

UNODC (September 2020). *Governmental Experts List*. Retrieved from https://bit.ly/2Vboych.

Valdiviezo, J. P. (November 20, 2020). Interview on UNCAC application to MREMH. (D. Zelaya, Interviewer).

Villavicencio, F., & Zurita, C. (May 3, 2019). *Odebrecht and other multinationals put president in Ecuador.* Retrieved from Investigative Journalism: https://bit.ly/2zfeuY1.

Villavicencio, F., Zurita, C., & Solórzano, C. (May 11, 2019). *All the names of Arroz Verde.* Retrieved from Investigative Journalism: https://bit.ly/3eHf0P1.