

LEGAL SYSTEM OF ECUADOR

In accordance with Article 1 of the Constitution of the Republic, in effect since 1998, “Ecuador is a social state of law, sovereign, unitary, independent, democratic, pluricultural and multi-ethnic. Its government is republican, presidential, elected, representative, responsible, alternating, participatory and decentralized.”

Article 3 of the Constitution stipulates that it is the fundamental duty of the State, among other things: “to guarantee the operation of the democratic system and the public administration free of corruption.”

The civil, political, economic, social and cultural rights enshrined in the Constitution support the operation of the democratic system and the state of law.

Among the rights and duties of the citizens established as a corollary by the Constitution in Article 97, without prejudice to others provided for in the Constitution and under the law of the land, are included the following obligations: to promote the common good and to place the public interest before private interests; to administer honorably the national wealth; to treat public functions as a service to the collectivity, and to render accounts to society and to the respective authority in accordance with the law; to report and combat acts of corruption; to participate in the political, civic and community life of the country in an honest and transparent fashion; and to conserve the cultural and natural heritage of the country, to care for and maintain public property, both that used by the citizens in general as well as property that has been expressly entrusted to them.

Political participation is guaranteed through the electoral system, enshrined in Article 98 of the Constitution, under which legally recognized political parties can present or support candidates for popular election. As well, citizens that are not affiliated with or supported by political parties can present themselves as candidates.

Similarly, the Constitution establishes other forms of democratic participation such as public referenda; these can be conducted by decision of the President of the Republic, at the request of the citizenry, and by decision of the agencies of the departmental system.

Article 118 of the Constitution establishes the following State institutions, which make up the public sector as a whole:

- Agencies and bodies of the Legislative, Executive and Judicial branches;
- Electoral agencies;
- Oversight and regulatory agencies;
- Entities that make up the autonomous departmental system;
- Agencies and entities created by the Constitution and the law to exercise state authority, to provide public services or to carry out economic activities taken on by the State; and,
- Legal entities created by departmental legislative act to provide public services.

The following paragraphs contain a brief description of the above-mentioned institutional-juridical structure; mention is made of those aspects considered to be most relevant for the purposes of this report.

- Legislative branch: the main functions of the National Congress are to reform the Constitution and to interpret it; to issue, reform and repeal laws and to interpret them; to review the acts of the Executive Branch and those of the Electoral Supreme Court and to request information considered necessary from public servants. The National Congress appoints the following

authorities: Attorney General, State Prosecutor, Ombudsman, Superintendents (Banks and Insurance; Corporations and Telecommunications), members of the Constitutional Courts and Supreme Electoral Court, and members of the Board of Directors of the Central Bank. The National Congress also establishes the short-list from which the President of the Republic designates the Auditor General.

- Executive branch: the head of the Executive Branch is the President of the Republic, who is both chief of State and head of the government and is responsible for public administration. The President is elected by popular vote for a four-year period; the President may be re-elected after having spent a period of time out of office following the term for which he or she was elected. Provision is made for a Vice-President who, in the event of the temporary or definitive absence of the President, will replace the President for the remaining period of his or her term. The functions of the Vice-President are those assigned by the President.

- Judicial branch: the bodies of the Judicial Branch are the Republic of Ecuador; the Superior Courts, Tribunals and Courts; and the National Council of the Judiciary. The bodies of the Judicial Branch carry out their duties and assignments in an independent fashion. The judicial system provides for the principle of jurisdictional unity and alternative means (justices of the peace, arbitration, mediation and functions for authorities of the indigenous people). Judicial careers are provided for under the system.

- Electoral Agencies: the Electoral Supreme Court is an autonomous and independent agency with jurisdiction throughout the national territory. It is responsible for organizing, directing, monitoring and guaranteeing electoral processes, and for auditing the accounts of the resources used in electoral campaigns. A Provincial Electoral Court operates in each respective province.

- Oversight agencies: Chapter X of the Constitution establishes the following oversight agencies: Auditor General's Office; Attorney General's Office; State Prosecutor's Office; Commission for Civic Control of Corruption, and the Superintendencies (Banks and Insurance; Corporations; and Telecommunications).

These are public law agencies with administrative and economic autonomy, and whose structure and operations are regulated by the respective institutional laws.

- The Constitutional Court is the chief constitutional oversight agency; its functions include receiving and ruling on petitions of unconstitutionality submitted in relation to any type of regulation issued by bodies of State institutions or administrative act on the part of public authorities.

- The Ombudsman's Office is a public agency, with administrative, economic and functional autonomy, and national jurisdiction; it is headed by the Ombudsman. The Ombudsman's Office defends and promotes, ex officio or upon petition of an interested party, as appropriate, the observance of all basic individual and collective rights; it also sponsors actions for habeas corpus, habeas data and legal protection for individuals who require such assistance.

- Autonomous Departmental Governments; these are made up of Provincial Councils, with provincial jurisdiction; Municipal Councils, with cantonal jurisdiction within the respective provinces; Parish Councils, with jurisdiction in parishes within the cantons; and such agencies as determined by law for the administration of the Afro-Ecuadorian and indigenous territorial areas.

As entities of the public administration, their activities are based on the principles of autonomy, administrative decentralization and citizen participation. Their members are elected in general elections held in each territorial riding. Their functions include, among others, to legislate in areas within their jurisdiction through issuing ordinances to create, amend and repeal taxes and special improvement levies, and to define and carry out local and provincial development plans.