

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

ORIGINAL RESPONSE

OF THE REPUBLIC OF ECUADOR

**OF ON PROVISIONS SELECTED BY THE COMMITTEE OF EXPERTS FOR REVIEW
WITHIN THE FRAMEWORK OF THE FIRST ROUND**

INTRODUCTION

In accordance with Article 1 of the Political Constitution of the Republic, in effect since 1998, “Ecuador is a social state under law, sovereign, Unitarian, independent, democratic, multicultural and multiethnic. Its government is republican, presidential, elective, representative, responsible, alternative, and participatory with decentralized administration.”

“Sovereignty lies with the people, whose will is the basis for authority, and the people exercise that will through the agencies of public power and democratic means” provided in the Constitution.

Article 3 of the Constitution states that, *inter alia*, it is the fundamental duty of the State “To guarantee that the democratic system and government administration are exercised free of corruption.”

The civil, political, economic, social and cultural rights embodied in the Constitution support the operations of the democratic system and the rule of law.

The corresponding duties and responsibilities of citizens that the Constitution establishes in Article 97, without diminishing other rights provided therein and by law, include the citizens’ obligation to:

- Promote the common good and put general interests before individual interests;
- Respect the honor of others;
- Manage public assets in an honorable way;
- Undertake public functions as a service to the community and be accountable to society and authority in accordance with the law;
- Report and combat acts of corruption;
- Participate in the country’s political, civic and community life in an honest and transparent manner;
- Conserve the country’s cultural and natural heritage, care for and maintain public assets, both those intended for general use and those that have been expressly entrusted; ...

Political participation is guaranteed through the electoral system, set forth in Article 98 of the Constitution, according to which legally recognized political parties may present or back candidates for popularly elected positions. Citizens who are not affiliated with or backed by political parties may also present themselves for public office.

Similarly, the Constitution establishes other forms of democratic participation such as the popular referendum that can be conducted at the decision of the President of the Republic, at the petition of the citizenry and at the decision of sectional regime agencies.

In such cases the universal, equal, direct and secret nature of the vote is maintained. This is compulsory for those who are literate and optional for the illiterate and those older than sixty-five years of age.

Article 244 of the Constitution defines the country's economy as a social market economy. As indicated in that article, the public and private sectors and their economic enterprises shall coexist therein. Ownership and management may be private, public, mixed, communitarian or based on self-management.

LEGAL-INSTITUTIONAL SYSTEM

Article 118 of the Constitution establishes the following as State institutions that together make up the public sector:

- Bodies and agencies of the Legislative, Executive and Judicial branches;
- Electoral bodies;
- Oversight and regulatory agencies;
- Entities comprising the autonomous sectional regime;
- Agencies and entities created by the Constitution and by law to exercise state power, provide public services or develop economic activities undertaken by the State; and
- Legal entities created by sectional legislative act to provide public services.

The legal regime of each agency, its shape and organization, the requirements and disqualifications for selection or appointment of its officials, its powers, obligations and principal procedures are established in the Constitution, based on Titles V through XI, which may be consulted in the text of the Constitution that appears as electronic Annex No. 1.

We provide below a brief description of the aforementioned legal-institutional structure, mentioning the aspects we consider most pertinent for the purposes of this report:

LEGISLATIVE BRANCH

NATIONAL CONGRESS: its major functions are to amend and interpret the Constitution; to issue, amend and repeal laws and to interpret them; to monitor the actions of the Executive Branch and those of the Supreme Electoral Court and to ask public officials for the information it deems necessary. The National Congress appoints the following officials: the Attorney General, Chief Prosecutor, Public Defender, Superintendent (Banking and Insurance, Companies and Telecommunications), Members of the Constitutional and Electoral Supreme Tribunals and members of the Board of Directors of the Central Bank. It also establishes the short list from which the President of the Republic appoints the Comptroller General.

EXECUTIVE BRANCH

PRESIDENT OF THE REPUBLIC: exercises executive power, is the head of state and head of government, and is responsible for public administration. He is popularly elected for a four-year term and may be reelected when one term has elapsed since the term for which he was elected.

VICE PRESIDENT OF THE REPUBLIC: elected along with the President of the Republic for a similar term and based on the same requirements. In the event of the definitive or temporary absence of the President, the Vice President replaces him for the time remaining so as to complete the respective term. The functions of the Vice President are those assigned to him by the President.

JUDICIAL BRANCH

SUPREME COURT OF JUSTICE, the SUPERIOR COURTS, TRIBUNALS and LOWER COURTS, and the NATIONAL COUNCIL OF THE JUDICIARY: The bodies of the judicial branch are independent in the exercise of their duties and powers. The justice system establishes the principle of jurisdictional unity and alternative means (justices of the peace, arbitration, mediation and functions for authorities of the indigenous peoples). Procedurally it shall enforce the guarantees of due process and the principles of immediacy, swiftness and efficiency; oral argument (already applied in criminal procedures), disclosure and the principle of the instrumentality of form. The judicial career path is established.

The structure of the judicial system includes courts of first and second instance and the appeals court which corresponds to the Supreme Court of Justice.

The constitutional mandate (Article 191) establishes that the exercise of judicial power lies with the organs of the Judicial Branch, under the principle of jurisdictional unity, [and] recognizes alternative dispute resolution procedures subject to the law. With respect to jurisdictional unity, Transitory Provision No. 26 of the Political Constitution indicates that all magistrates and judges who belong to the Executive Branch shall be transferred to the Judicial Branch, a provision that includes military, police and juvenile judges. The National Council of the Judiciary is responsible for drafting bills to implement these provisions.

However, in this regard no consistent process has been started to incorporate the special courts.

ELECTORAL BODIES

ELECTORAL SUPREME TRIBUNAL: Autonomous and independent agency, with jurisdiction throughout the country; responsible for organizing, directing, monitoring and guaranteeing electoral processes, and examining the accounting records on funds used in electoral campaigns. An Electoral Provincial Tribunal operates in each province.

OVERSIGHT BODIES

Title X of the Constitution of the Republic establishes the following as oversight bodies: **OFFICE OF THE COMPTROLLER GENERAL, OFFICE OF THE GENERAL PROSECUTOR, OFFICE OF THE ATTORNEY GENERAL, COMMISSION FOR CIVIL CONTROL OF CORRUPTION, AND THE SUPERINTENDENCIES (Banking and Insurance, Companies and Telecommunications).**

These are bodies under public law with administrative and financial autonomy and structures and operations governed by their respective institutional laws.

A complete description of these bodies will be found in the corresponding sections.

THE CONSTITUTIONAL TRIBUNAL is the highest body providing constitutional oversight. It hears and resolves petitions for unconstitutionality submitted with respect to any type of measure issued by government institutional bodies or with respect to administrative actions taken by government authorities.

In addition it reviews decisions denying Habeas Corpus, Habeas Data and *Amparo* [regarding constitutionally protected rights] and appeals cases in *amparo* proceedings; it resolves disputes on jurisdiction or powers assigned by the Constitution, as well as other powers exclusive to it.

Procedural decisions of the judicial branch are not subject to oversight by this body.

The declaration of unconstitutionality produces an executory order, shall not have retroactive effect and cannot be appealed.

AUTONOMOUS SECTIONAL GOVERNMENTS

In accordance with the territorial and administrative organization of our country, the sectional governments consist of PROVINCIAL COUNCILS, with provincial jurisdiction, the MUNICIPAL COUNCILS, with cantonal jurisdiction within the respective provinces, PARISH BOARDS, with parish jurisdiction within the cantons, and ANY BODIES ESTABLISHED BY LAW to administer the indigenous and Afro-Ecuadoran territorial districts.

As government administrative entities, their performance reflects the principles of autonomy, administrative decentralization and citizen participation. Their members are elected in general elections in each territorial district. Their functions include legislating, on subjects within their competence, through ordinances, creating, amending and eliminating taxes and special contributions for improvements, and defining and carrying out provincial and local development plans.

OTHER PUBLIC SECTOR BODIES AND ENTITIES

A wide range of entities have been established in the country by constitutional mandate or by law to exercise the powers of government in the provision of public services or the development of economic activities undertaken by the State. Similarly, the sectional governments have created specialized entities to provide public services.

DATA ON RATIFICATION OF THE CONVENTION AND SUBSCRIPTION TO FOLLOW-UP MECHANISM

On May 13, 1997, the National Congress ratified the Convention. This resolution was published in Official Record No. 70 dated May 22 of the same year. For purposes of its implementation, the complete text of the Convention was published in Official Record No. 83 dated June 10 of that year.

Delegates from the Permanent Mission to the OAS participated in the initial meetings of the Working Group on Probity and Public Ethics in connection with the establishment of the Follow-up Mechanism. Ecuador participated with a delegate from the Office of the Attorney General and two delegates from the Commission for Civil Control of Corruption in the first preparatory meeting for the Conference of the States Parties, in March 2001.

At the Buenos Aires Conference (May 2-4, 2001), which was attended by Dr. Marina Yépez de Velasco, Attorney General of Ecuador, as the national Central Authority in accordance with the provisions of the Convention and Chief of the Ecuadoran Delegation at that Conference, Ecuador participated in the agreement to establish the Follow-Up Mechanism, which was subsequently approved at the XXXI regular session of the General Assembly of the OAS (San José, Costa Rica, June 3-5, 2001).

In October 2001, the Office of the Attorney General appointed the national delegates to the Mechanism's Committee of Experts.

CHAPTER ONE

MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS

The responses to this first chapter of the Questionnaire have been grouped according to the subparagraphs corresponding to: *a)* the existence of standards, *b)* mechanisms to enforce compliance with them, *c)* results obtained from their implementation, and *d)* if no such standards and mechanisms exist, alternative measures to create, maintain and strengthen standards in this regard.

Ecuadoran legislation has an extensive body of law with respect to the prevention and punishment of acts of corruption.

Some standards relating to the ethical behavior of public officials have been in effect for more than two decades. These include the standards contained in the Civil Service and Administrative Career Act as well as some standards that are even older.

However, indications of the increasing deterioration of public probity and an accurate assessment by the citizenry of the harmful and complex effects that corrupt practices have on legal institutions, public trust and national development possibilities led to an increasingly broader discussion of the problem and growing—and unceasing—pressure to incorporate new standards, oversight procedures and mechanisms for the administration of justice in order to combat impunity.

In this context, the year 1997 was a key year for national efforts directed toward combating corruption. The principal events supporting that assertion are:

- a) the popular reaction that in February 1997 toppled the government at the time under the weight of serious accusations of corruption and abuse of power;
- b) evidence that corruption constitutes a governmental problem caused the Executive Branch to make direct decisions regarding alternative oversight methods, leading to the creation of the first Anticorruption Commission, whose members were appointed directly by the President of the Republic; and
- c) the ratification of the Inter-American Convention against Corruption, an international instrument that, in accordance with the provisions of Article 163 of the Constitution, forms part of the legal order of the Republic and has precedence over lesser laws and standards and is politically and legally binding.

Annex No. 2 contains a general compendium of existing provisions regarding each of the topics and subtopics covered in the questionnaire, for this chapter and for chapters II, III and IV.

Immediately below we provide a **brief summary of the content** of the major provisions in this regard:

- 1. a). Standards of conduct for the correct, honorable and adequate fulfillment of public functions.**

In the last five years the most important result of the process of legislative development in this area has been the Political Constitution of the Republic, promulgated in August 1998 and expressly incorporating

the State's obligation to guarantee an administration that is free of corruption (Article 3, no. 6), the duty of citizens to report and combat acts of corruption (Article 97, no. 14) and the determination that no public official or employee shall be exempt from responsibility, through act or omission, in the exercise of his or her functions (Article 120).

The Constitution also establishes the imprescriptibility of the crimes of embezzlement, extortion, bribery and illegal enrichment, and provision for trying public officials and individuals involved in such crimes even in their absence, which represents the most important practical element in our legislation (Article 121, paragraph 2).

In addition to an extensive repertory of administrative provisions, Title III of the **Penal Code** makes specific provision for crimes against public administration. Chapters V, VI, VII, and VIII.1 deal, respectively, with violation of the duties of public officials, usurpation of powers and abuses of authority; prevarication; bribery; and illegal enrichment, behaviors covered by the topics in the questionnaire:

- **Failure to obey a superior's order** or to comply with laws, regulations and failure of responsibility in enforcing them: Article 249.
- **Delay in carrying out or enforcing a superior's order**, except in cases of illegitimacy as indicated in this regard: Article 250.
- **Collusion to prevent, suspend or hamper the enforcement of a law**, regulation or superior order: Article 251.
- **Excessive powers** when issuing regulations or provisions and **undue arrogation of judicial powers** or functions in order to impede the enforcement of a procedural ruling or decision handed down by a competent judge: Article 254 and 255.
- **Embezzlement**, defined as misuse of public or private monies, effects representing them, evidence, securities, documents or movable effects in ones power by virtue or reason of ones position, whether the abuse consists of kiting, misappropriation, arbitrary disposal or any other similar abuse. The punishment is four to eight years of long-term ordinary imprisonment: Article 257.

This provision is applicable to popularly elected officials, delegates or representatives of collegiate bodies of state institutions, representatives or delegates of the President of the Republic, public officials and servants and, generally, anyone responsible for a public service.

The provision includes public servants who handle the funds of the Ecuadoran Social Security Institute or state or private banks; public servants in the Office of the Comptroller General and the Superintendency of Banks when their reports involve complicity in or cover-up of the crime under investigation; officials, administrators, executives or employees of the private national financial system and members of the boards or councils administering these institutions; and employees of the Internal Revenue Service and customs employees who may have acted in determinative actions.

It establishes the same punishment for those who, abusing their powers, have willfully acted to obtain or grant linked, related or inter-company credits, violating legal provisions prohibiting them; for beneficiaries who willfully participated in the commission of this crime and those who lent their names for the benefit of a third party: Article 257.A.

Law 2000-4 (March 13, 2000) establishes as punishment in addition to the principal punishment the confiscation of goods that have been seized.

- **Use of workers paid by the State or public sector assets**, for ones own benefit or that of third parties: Article 257.1

- **Taking economic advance of information that is secret, confidential or limited in circulation** that the public servant was aware of due to the position he or she carries or carried out: Article 257.2.
- **Taking advantage of ones position to favor** individual or legal persons by **granting contracts or business with the public sector**, in violation of express legal or regulatory provisions: Article 257.3.
- **Receiving of illegal fees or alteration of prices in procuring articles and furnishings for the public sector.** The penalty of two to four years of prison shall also apply to an individual who takes part in or involves him or herself in the illegal action: Article 260.
- **Charging of fines without authorization to do so and** without providing a receipt: Article 261.
- **Malicious and fraudulent destruction or suppression of documents** or securities in ones custody by reason of ones position: Article 262.
- **Extortion**, defined as demanding, including ordering, the receipt or acceptance of improper shares, contributions, income, salaries or gratuities: Article 264.
- **Profits that a public servant makes through open or simulated actions**, or through an intermediary, involving all or part of the material effects of an auction, lease, award, confiscation, attachment, judicial distribution, deposit or administration of effects, in which the public servant participates by reason of his or her position: Article 265.
- **Aggravated penalties** for the commission of other crimes that, based on their duties, official agents should have prevented, prosecuted or repressed: Article 275.
- **Suspension of conditional liberty** for the crimes indicated in Articles 257 through 261, Articles 264, 265 and 276.
- **Prevarication** which will be discussed under conflict of interests: Article 277.
- **Bribery** defined as the acceptance of an offer or promise or the acceptance of donations or gifts to perform an action in ones job, even though just, that is not subject to any payment. This is punished with six months to three years in prison, a fine and restitution of double the amount received: Article 285.
- **Aggravated bribery** that, under the previous heading, punishes the performance of **actions that are manifestly unjust or for failing to perform actions required**. This is punished with one to five years in prison and restitution of three times the amount received: Article 286.
- **Bribery to commit a crime in the exercise of ones functions**. This is punished with four to eight years of prison: Article 287.
- **Bribery of judges or arbitrators**, which is punished with four to eight years of long-term prison and disbarment: Article 289.
- **Liability of individuals** who have coerced a public servant through violence or threats, or corrupted a public servant with promises, offers, donations or gifts to consummate a bribe, who shall be punished with the same penalties as the culpable public official: Article 290.
- **Illegal enrichment** defined as the unjustified increase in a person's wealth on the occasion of or as the result of the exercise of a public function: Article 296.1.

2.a) Standards of conduct to prevent conflicts of interest in the performance of public functions

The Political Constitution of the Republic establishes (Article 101, paragraph 2) that public officials who are openly appointed for a fixed term may not be candidates for any popularly elected office unless they have resigned their position prior to the date their candidacy is registered.

Paragraph 6 of the same article prohibits persons who have contracts with the State to perform public works, provide public services or exploit natural resources through licenses, associations or any other contractual method from participating in elections.

In turn, Article 123 establishes that those who have interests or represent third parties who have interests in areas to be overseen or regulated may not serve as officials or members of managing bodies of entities that exercise government oversight and regulatory powers.

The article requires that public officials abstain from acting in those cases in which their interests come into conflict with those of the body or entity in which they render their services.

Article 135, paragraph 3, establishes a prohibition on deputies with respect to the offering, acceptance or handling of funds in the general state budget, and the handling of government appointments. They may not collect per diems or other income from public funds other than those of the deputy, and they may not be members of the management boards of collegiate bodies of institutions or companies in which the State participates.

Article 205 of the Constitution prohibits magistrates and judges from acting as attorneys or practicing any other public or private profession, with the exception of university teaching. They are also prohibited from performing functions in political parties and intervening in electoral contests.

The **Penal Code** punishes conflicts of interest through the following provisions:

- **Prohibition on engaging in trade** by customs employees and by criminal judges or the exercise of commercial activities in the districts where they perform their functions. Establishes the same penalty for the President of the Republic, Ministers of State, Governors, General Commandants, military zone Chiefs and Magistrates of the courts if they engage in trade, except for selling the product of their own farms and the industries in which their families or agents are engaged: Article 266.
- **Prohibition on magistrates' or judges' becoming debtors or guarantors** or contracting any obligation with the parties to litigation they are hearing: Article 267.
- **Prevarication**, Article 277: generally defined as actions that, based on personal interest, like or dislike of a person or corporation or to the detriment of the public welfare or an individual's welfare, lead to:

IN THE CASE OF JUDGES AND ARBITRATORS

- Decisions or findings contrary to express laws;
- Advice that favors one of the parties in disputes they are hearing;
- Malicious application of express laws in the litigation of cases.

IN THE CASE OF PUBLIC EMPLOYEES OF ANY TYPE

- When in the exercise of judicial, government or administration authority they deny, refuse or delay the administration of justice or the protection or remedy sought from them or that the public welfare requires, provided they are obligated to provide this;
- When requested or advised legally by a legitimate authority or legitimate interested party, they refuse to provide or delay in providing the collaboration or assistance dependent upon their powers for the administration of justice or any other public service need;
- When they willfully abuse their powers to the detriment of the public welfare or a person.

The **Public Contracting Law** establishes the following:

- **Disqualification for public contracting**, Article 55:
 - The following persons may not enter into contracts with the State or with Public Sector Agencies: the President, Vice President, Ministers of State, Legislators, Presidents or Legal Representatives of Public Sector Agencies operating nationally, [provincial] Prefects and [municipal] Mayors, paragraph a);
 - Those who have entered into contracts while disqualified, paragraph d);
 - Delinquent debtors of the National Development Bank, paragraph e).

- **Special disqualifications**, Article 56:
 - Provincial counselors and council members in their respective jurisdictions;
 - Individuals or legal entities that have drawn up the study or design or prepared plans for engineering or architectural projects or the specifications for goods to be purchased;
 - Members of Boards of Directors or similar bodies of the contracting committee of the institution issuing the bid, their spouses or relatives to the fourth degree by blood and the second degree by marriage;
 - Public officials or employees who have participated in the precontract phase and whose action or failure to act could favor their relatives to the degrees indicated above, as well as the companies or de jure or de facto corporations in which such public servants, their spouses or relatives to the third degree by blood and second degree by marriage hold more than 20% of the capital or have similar interests; and
 - Those who have been directly involved with the preparation, review or approval of precontractual documents.

- **Early and unilateral termination of contracts** entered into in violation of an express prohibition, with no compensation allowable. If such a contract should cause economic damage to the contracting agency, the contractor and the public officials who negotiated and entered into the contract shall be jointly liable, without prejudice to any applicable administrative and criminal indemnities: Article 57.
- **Nullity of public contracts**, the grounds for general nullity of contracts include the disqualifications indicated above: Article 58.
- **Complaint regarding contracts entered into with unqualified persons**, which anyone can submit to the senior official of the contracting agency, the Comptroller General or the Attorney General, with the respective evidentiary documents: Article 59.

The **Civil Service and Administrative Career Act** also prohibits nepotism (Articles 6 and 16) and Article 60, paragraph b) thereof prohibits public servants from carrying out duties or performing other functions during the period established as their work hours, except when authorized to take courses.

Various public agency organic laws and regulations govern specific situations in which civil servants may become involved in conflicts of interests. These provisions appear in the corresponding section of Annex 2.

- 3.a) **Existing standards for the conservation and proper use of resources entrusted to public officials.**

The Political Constitution of the Republic (Article 20) requires government institutions, their delegates and concessionaries to indemnify individuals for damages they cause them due to the deficient provision of public services or the actions of their officials and employees in the performance of their functions. The Constitution establishes the State's right of repetition to enforce the responsibility of its officials who, through failure to perform or judicially determined gross negligence, have caused the damages.

In turn, the aforementioned Article 120 of the Constitution establishes the responsibility that every public official has for his or her actions or failures to act in the performance of his or her functions.

The **Organic Law of the Comptroller General's Office [CGE]** defines public resources as follows:

- **Public resources** are all goods, funds, securities, shares, participations, assets, income, profits, surplus, subsidies and all rights pertaining to the State and its institutions, regardless of their source, including those derived from loans, donations and deliveries that, for any other reason, are made in the favor of the State or its institutions by individuals or legal entities and national and international bodies, Article 3, no. 1.

The **Civil Service and Administrative Career Act** requires public servants to:

- **Preservation of public resources:** "To tend to the finances of the State and the preservation of documents, instruments, equipment, furnishings and assets generally entrusted to their custody, management or use": Article 58, paragraph f).

The **Organic Law on Fiscal Responsibility, Stabilization, and Transparency (July 2002)** contains provisions on the formulation and centralized and decentralized execution of public finances and also establishes provisions on access to information in view of the public requirement of transparency and citizen oversight.

Thus, all public officials or government agents, whether elected, designated, appointed or delegated, are responsible for the public resources in their charge or within their competence. In this respect, regulatory provisions of the various public agencies reinforce the standards in this area (see sample in the second part of Annex 2).

4.a). Standards of conduct that establish the requirement that public officials report to appropriate authorities regarding acts of corruption of which they are aware.

As we noted earlier, the Political Constitution of the Republic establishes as one of the duties and responsibilities of all citizens that of denouncing and combating acts of corruption: Article 97 no. 14.

In this regard, the **Civil Service and Administrative Career Act** establishes the following and other duties of public servants,:

- **Observance of illegal or immoral orders** imparted by hierarchical superiors. However, the written insistence of the superior requires that an order be carried out, except in cases of fiscal or criminal liability.
- **Obligation to report** to ones superior actions that could cause damage to the administration.

Article 58 paragraphs d) and h), respectively.

The final paragraph of the above-mentioned Article 249 of the **Penal Code** establishes the exception that public officials may refuse to enforce a law, regulation or order from a superior in the event they are manifestly contrary to the Constitution and the law.

In addition to these provisions that expressly bind public officials, it is clear that those who in the performance of their functions learn about the existence of acts of corruption and fail to report them could be subject to the provisions that the Penal Code establishes for cases of complicity, cover-up or participation as applicable.

Ecuadoran law also considers other illegal actions associated with the abuse of public functions and damages to public welfare, including the following: nepotism, double payment

TYPE	LAW	ARTICLE
Nepotism	Political Constitution	125
	Civil Service and Administrative Career Act	5, 6, 16, 19, 20 and 21
	CGE Organic Law	34 a)
Double Payment	Civil Service and Administrative Career Act	18, 32, 33 y 37
Moonlighting	Political Constitution	101 No. 2, 125, 135, 205
	Civil Service and Administrative Career Act	18
	Regulations for Civil Service and Administrative Career Act	13
	Legislative Branch Organic Law	56
	Judicial Branch Organic Law	4 No. 11, 178
Improper use of working hours	Political Constitution	205
	Civil Service and Administrative Career Act	60
	CCCC Law	8 d)
	Public Branch Organic Law	194
Appointment/Hiring of Personnel (merit)	Political Constitution	124
	Civil Service and Administrative Career Act	72, 74, 85, 86, 94, 97, 101, 114
		85, 117

	Regulations for Civil Service and Administrative Career Act	
	CGE Organic Law	35
Influence-peddling	Political Constitution	135

GENERAL MECHANISMS FOR ENFORCING THE PREVIOUS STANDARDS OF CONDUCT

The mechanisms the questionnaire asks for information about in items and paragraphs 1.b), 2.b), 3.b) and 4.b) of this first chapter are those that in Ecuador are generally those that the laws themselves establish and exempt. A more operational level is found in specific regulations, a sample of which is found in the second part of Annex 2.

From the perspective of the role of institutions that have higher obligations in this regard, we will point out some important elements.

The redefinition of functions of the Office of the Attorney General, as contained in Article 219 of the Constitution, represents a milestone in the development of Ecuadoran criminal procedure law by establishing in paragraph one that the office "...shall have primary jurisdiction in the hearing of cases, shall direct and expedite the preliminary investigation and criminal proceeding," leaving behind the exclusively formal participation that the Office of the Attorney General used to have in criminal proceedings.

In addition, paragraph five of the same article establishes that the Office of the Attorney General "shall coordinate and direct the fight against corruption, with the collaboration of all agencies that, within the limit of their powers, have an equal duty."

The new Code of Criminal Procedure became fully effective as of July 13, 2001. It **institutes the accusatory system** and establishes in procedural law the Office of the Attorney General's new powers to act as the investigator of crime and be responsible for prosecuting the accused before competent judges and courts and expediting the indictment in criminal proceedings.

The Code of Criminal Procedure establishes deadlines for preliminary investigations: one year for crimes punished by prison and two years for those punished by imprisonment. Upon the conclusion of the investigations phase, prosecutors decide to order the start of the probable cause hearing or to dismiss the charge, based on the evidence at hand. The probable cause phase lasts for ninety days. During this period, the prosecutor shall report to the Judge who heard the case that he has declared the phase to have been concluded and decides to arraign or not. When the prosecutor has not declared the probable cause phase to be concluded within that period, the judge will order the prosecutor to reach a decision within six days, in accordance with the law.

The incorporation within the Political Constitution of the Republic (Article 220) of the Commission for Civil Control of Corruption and its Law, in effect since August 12, 1999, represents another important regulatory advance by establishing it as an **entity under public law** that, representing the citizenry, must prevent and investigate acts of corruption in public administration and submit its conclusions on irregularities detected to the Office of the Attorney General or the Office of the Comptroller General.

Similarly, the creation of the National Council of the Judiciary (Article 206) as an administrative and disciplinary government agency belonging to the Judicial Branch represents another particularly important aspect in the efforts to make the administration of justice transparent, to establish suitable procedures and combat improper actions or omissions by judges and court employees that create impunity mechanisms.

The new Organic Law of the Office of the Comptroller General, promulgated in June 2002, replaced the last six chapters of the Organic Law for Financial Administration and Control (1977), which was the subject of various amendments up to the year 2000, and strengthened the system for control, oversight and audit of the State.

The work of the Office of the Comptroller General is also based on the oversight work that must be carried out through the **internal oversight system** of public institutions, including the Internal Auditing Office, which reports technically to the Office of the Comptroller General.

In accordance with Article 26 of this law, governmental audit reports must be submitted no more than one year from the date the respective work order is issued.

In addition, depending on the seriousness of accusations or matters detected, the agency's officials shall have special operations available to accelerate the performance of their audits.

In this respect, it should be emphasized that prosecutors, judges and courts may request reports on data appearing in records and files, including computer files and reports in general and that these must be submitted within the period indicated in the request: Article 149 of the Code of Criminal Procedure.

In September 1998, the new government created a special office for Management Oversight of the Executive Branch, reporting to the Office of the Secretariat of the Presidency of the Republic. This office is barely worth mentioning because its existence had no public effect and because it was dissolved when the then President of the Republic was overthrown, under the weight of serious accusations of corruption.

Among the mechanisms to which this chapter alludes, we should mention three initiatives of the General Prosecutor's Office:

- Agreement on **Inter-institutional cooperation for the investigation and/or examination of acts of corruption** (December 8, 1999) jointly signed by the Office of the Comptroller and the General Prosecutors' Offices, the Superintendencies of Banking, Companies and Telecommunications, the Judicial Police and the Office for Oversight of the Executive Branch.
- **Agreement extending** the above agreement (January 19, 2001), which extends the objectives of cooperation to a series of jointly executed projects.
- **Andean Instrument on Cooperation between General Prosecutors' Offices** (February 27, 2002), which establishes guidelines for assistance for joint actions against the crimes of corruption, financial crimes and money laundering and related offenses.

These initiatives are part of the Office of the Attorney General's plan to comply with the mandate given to it by the Constitution of the Republic with respect to combating corruption.

In the year 1998, the Commission for Civil Control of Corruption coordinated an inter-institutional process that led to the preparation of the first National Anti-Corruption Plan, which was submitted for the consideration of the President of the Republic. For various reasons, however, this instrument did not

become a national reference point for inter-institutional coordination in the public arena, for the assumption of commitments by the private sector, or much less for promoting government or State policies in this area.

The Commission also developed a National Plan to Prevent Corruption (December 13, 2000), which indicates the institutional actions planned up to the year 2004 under three horizontal strategies: *i*) promoting the practice of civil values for the strengthening of citizenship and social participation in the monitoring of government administration; *ii*) promoting the development of mechanisms and instruments of transparency and efficiency in public administration; *iii*) promoting the strengthening and independence of government oversight bodies and of the Judicial Branch in order to eradicate impunity.

In this context, the Commission is moving ahead with interesting projects the results of which we will summarize in the following section.

RESULTS

The country does not have an information system that would allow it to provide objective data and statistics regarding the results obtained from implementation of the standards and mechanisms referred to in this and other chapters of the questionnaire.

However, we point out that the General Prosecutor's Office submitted to the OAS Representative in Ecuador in October of 2002 and on February 23, 2001 a request to be OAS to provide technical assistance and to support the search for financing from the IDB for the design and execution of various projects designed to overcome the lack of quantifiable information. We summarize some of them below:

- **“Ongoing Evaluation of the Fight against Corruption in Ecuador”**: series of statistical indicators that reflect the extent of national progress primarily in fields such as: *i*) processing of accusations, determination of responsibilities and institutional results in the detection of acts of corruption, prosecution of cases and conclusion of court proceedings; *ii*) efficiency and transparency of public institutions in the critical areas of management in public administration; *iii*) indemnification to the State for acts of corruption or damages caused by public officials; *iv*) citizen participation in the planning, follow-up and oversight of public administration, as well as other indicators.
- **Monitoring of the government procurement system**: preparation of a national registry of all cases the State is pursuing against individuals or individuals are pursuing against the State relating to government contracting, taxation, customs, and other areas susceptible to serious corrupt practices. The project is particularly important for the implementation of the State's right of repetition and for obtaining, for the first time, information on the government procurement situation as an area that is also critical from the perspective of defending public interests.

Unfortunately, there was never any response in this regard.

To these projects should be added another initiative of the Office of the Attorney General, again in the context of the agreements on cooperation between the oversight bodies, on the creation of the **“Single National Registry on the Handling of Accusations and Cases of Acts of Corruption”** which seeks to give citizens objective, instructive, periodic and statistical information regarding the performance of each of the oversight bodies and judicial agencies in the investigation, prosecution and punishment of acts of corruption.

However, it should be recognized that the levels of coordination and international agreement necessary for carrying out the actions stipulated in the indicated conventions are not optimal.

The Office of the Attorney General, through the Attorney General, District Prosecutors and District Attorneys, has indicted the accused in all cases in which, based on reports from oversight bodies, their own investigations or information they have learned, there is justification for doing so and for pursuing criminal action, as established in the Political Constitution and the law.

Of the 38 cases filed in the country against representatives, shareholders and administrators of financial system institutions, allegedly responsible for crimes that led to the crisis in the Ecuadoran financial system, the Office of the Attorney General is pursuing criminal action in 31 cases. The remaining cases began with individual charges in which prosecutors are also participating actively as procedural subjects.

In addition to the above, from February 1998 to July 31, 2002, the Office of the Attorney General pursued criminal action in more than 400 cases related to crimes of administrative corruption, prosecuting them under the previous Code of Criminal Procedure. It is currently conducting more than 250 investigations for similar crimes in the context of the new accusatory system.

The General Prosecutor's Office is particularly interested in monitoring cases and the legal relevance of prosecutorial actions, for which it has established internal mechanisms that are being implemented and will yield results in upcoming months.

The Office of the Comptroller General, in its reports for the years 2000 and 2001, indicates as national results 181 and 501 audit reports that establish evidence of criminal liability, as well as 578 and 754 that define civil and administrative liability, respectively.

In accordance with the previous Code of Criminal Procedure, the Office of the Comptroller General used to notify the competent judges directly of the evidence of criminal liability. With full implementation of the new Code of Criminal Procedure, such reports are now sent to the Office of the Attorney General. Civil and administrative procedures continue to be its responsibility.

In its reports for the periods March 2000-February 2001 and February 2001-January 2002, the Commission for Civil Control of Corruption provides an account of 99 and 112 cases resolved for the respective periods, with the understanding that these are cases that ended with reports signed by the full Commission.

In 67 and 101 cases, respectively, in each period, the Commission found evidence of liability (administrative, civil or criminal) and the cases were submitted, by constitutional mandate, to the competent bodies. The following table summarizes the information in this respect, according to the sources cited:

Office	March 2000-February 2001	February 2001-January 2002
Atty. General's Office	54	28
Comptroller General's Office	31	26
Executive Branch	25	10
Judicial Branch	12	23*

* Includes 5 cases sent to the Supreme Court of Justice and 18 cases sent to judges and district attorneys without differentiating how many were sent to the latter and belong to the Office of the Attorney General and should be counted under that heading.

Other oversight bodies	6	13**
Others	4***	7

STANDARDS AND SUPPLEMENTAL MEASURES TO ENFORCE THE PROVISIONS OF THE CONVENTION

While the country's existing standards of conduct have been presented, we interpret the scope of what is asked for in items and paragraphs 1.d), 2.d), 3.d) and 4.d) of the questionnaire so as to point out that the most important effort in this regard is the Project for Reform of the Penal Code in order to adapt it to the Inter-American Convention against Corruption.

All oversight bodies participated in preparing the project and, based on preliminary consensus regarding the identification of the reforms needed for full application of the Convention, the Office of the Attorney General, the Office of the Comptroller General and the Latin American Corporation for Development drafted a document that was submitted to the National Congress on May 20, 2002 and is currently going through the usual process in the legislature.

The draft contains amendments to provisions on *extradition, violation of duties by public officials, misappropriation of funds, active bribery, illegal enrichment, illegal association, concealment of stolen items and international bribery, as well as other important aspects.*

The draft can be found in Annex 9.

SOME CONCLUSIONS

- ENFORCING STANDARDS

It is imperative that the practice of law and the administration of justice focus on combating impunity as its most important goal, thus strengthening the process of modernization already begun in the Judicial Branch.

Judicial, police and diplomatic cooperation actions to detain criminals or alleged criminals subject to orders for temporary detention pending trial or final sentencing and who are outside the country must be intensified if such standards are to have any real effect.

- DEVELOPMENT OF NEW STANDARDS AND MECHANISMS

Despite the above, the legislative development process on this subject must continue and must consider establishing new definitions of crime or expanding the scope of existing standards; protecting accusers through concrete mechanisms to support those who in good faith and with documentary evidence contribute to investigations conducted by oversight bodies; providing access to information on public resources and administration; increasing penalties and, above all, establishing measures to break the chain of complicity and silence among those who participate in the commission of crimes of corruption.

- DISSEMINATION OF STANDARDS AND INFORMED SOCIAL CRITICISM

Despite the existence of an extensive repertory of standards, the citizens' limited level of knowledge regarding such standards makes it difficult to strengthen **informed social criticism**

** Includes those sent to the Internal Revenue Service.

*** Includes 2 cases sent to the Judicial Branch and 2 cases sent to sectional bodies.

that would unearth petty or large-scale corrupt practices in various social arenas and that would over time undo the mechanisms that produce such practices.

- **PREPARATION OF A NATIONAL ANTI-CORRUPTION PLAN**

A National Anti-Corruption Plan must be developed as an exercise involving the country as a whole rather than as a merely institutional exercise, providing indicators that make it possible to objectively evaluate the fulfillment of obligations and commitments by government agencies and private sector organizations.

- **MONITORING OF PUBLIC ADMINISTRATION**

It is imperative to establish new methods for monitoring public administration, with the participation of civil society organizations. Such methods must be applied to all public institutions in a gradual and sustained process by type of institution or area of control. It is considered necessary to prevent mechanisms of this type from being claimed, for political ends, as certificates of the integrity of the institutions that are currently seeking to implement them or from becoming an inorganic effort of those institutions that have already begun to establish them within their management schemes.

- **STATISTICS AGAINST IMPUNITY**

Oversight bodies and the judicial branch must have a statistical system that allows them to evaluate their institutional performance in the investigation and prosecution of acts of corruption, and civil society organizations should participate in the design and management of that system.

The contributions that the **Ecuadoran Episcopal Conference** has made to the topics contained in this first chapter include criteria similar to those indicated herein. We summarize them below:

“Currently there are not sufficient standards or mechanisms in the country to curb corruption. Existing standards and mechanisms do not provide sufficient guarantees for reporting, investigating and prosecuting corruption. The constitutional oversight bodies do not achieve the needed efficiency, due among other factors to a lack of inter-institutional coordination and limited citizen awareness of values and practices in the fight against corruption (...)”

“2. There are standards directed to preventing “Conflicts of interest” in the performance of public functions. However, these are not sufficient and—more seriously—their application is deficient. Generally corruption has the ability to implicate individuals, functions and individual and group interests.”

“3. There are standards directed to the conservation and proper use of resources entrusted to public officials in the performance of their functions. However, such standards are frequently violated to the detriment of society’s resources. It is enough to mention the whole series of existing standards for public works contracting, which is one of the most bountiful channels for the diversion and misappropriation of funds.”

“4. Graft, “commissions,” and extortion are the most common forms of corrupt practices among public officials. However, it should be noted that public service is not (...) sufficiently valued and, as an example, the compensation paid to public servants is well below the wages and salaries paid in the private sector, which often fosters complicit silence if not the immoral practice of seeking or accepting sinecures (...). No doubt there are public officials who even against their will end up becoming victims of a system of corrupt practices.”

CHAPTER TWO

SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES

- a) The sworn statement of assets is established in Article 122 of the Political Constitution of Ecuador, in Article 31 (9) of the Organic Law of the Office of the Comptroller General, as published in Official Register No. 595 of June 12, 2002, and in the Regulations for the submission and checking of the sworn statement of assets, issued with Agreement No. 022-CG, published in Official Register No. 119 of July 13, 2000.

These standards are directed to public servants, managers of public resources or assets, citizens elected by popular vote, members of the Judicial Branch, and members of law enforcement.

Those making statements of assets, which must be public documents, submit them to the Office of the Comptroller General when they first assume office and when they leave office and, in the case of members of law enforcement, prior to promotion and upon retirement as well.

The content of the statement is what appears on the form, which is considered a qualifying document and basically discloses the assets, liabilities and net worth of the individual and those belonging to the couple, with respect to assets held in Ecuador or overseas.

The asset and liability valuation criteria are the responsibility of the person reporting, who must justify them with the relevant documentation duly referenced in the statement.

Through a special examination, which is an auditing method, the Office of the Comptroller General is empowered to check the statement and in the case of falsehood, concealment, failure to meet the obligation to report, use of a "front," or unjustified increase in wealth, is also empowered to inform the Office of the Attorney General regarding suspicions of the crime of illegal enrichment

The information may be made public with the authorization of the Comptroller.

- b) The principal result that has been obtained is the disincentive provided by the risk entailed in violating the standard. Approximately 40% of the universe of those required to submit statements is being processed and we hope to consolidate the process with the support offered by the Latin American Corporation for Development which has been negotiating with oversight bodies in the Republic of Mexico.

The Office of the Comptroller General has strengthened the processing of this information with additional staff and basic equipment to be installed. Follow-up of the effects and results obtained from the sworn statement of assets will be carried out through the agreement with the Latin American Corporation for Development and Mexican support.

Under these conditions, the practical validity of the statement of income, assets and liabilities made by government servants and officials will be promoted, reliable statistics will be obtained and potential irregularities will be detected.

- c) Not applicable for Ecuador.

CHAPTER THREE

OVERSIGHT BODIES

Title X of the Constitution of the Republic establishes oversight bodies. The organic laws governing the actions of these bodies are also found in the annexes.

We provide a description of these bodies below, focusing on those whose functions directly correspond to the provisions in Article III, numbers 1, 2 and 11 of the Convention.

OFFICE OF THE COMPTROLLER GENERAL

This is the senior technical oversight body, with administrative, budgetary and financial autonomy. The Comptroller General, appointed by the President of the Republic from a short list submitted by the National Congress, serves for a four-year term.

The Office of the Comptroller General has powers to check income, expenses, investment, use of resources, administration and safekeeping of public assets and its activities shall extend to entities under private law, exclusively with respect to assets, income or other subsidies of a public nature in their possession.

This office is also responsible for conducting management audits of public sector institutions and their employees in order to establish the legality, transparency and efficiency of the results they obtain.

It has exclusive power to determine administrative and civil liabilities and evidence of criminal liability and must monitor compliance with its orders and oversight continuously and on a timely basis.

The determination of liability may be based on information provided through internal audits, but the determination itself is the exclusive province of the Office of the Comptroller General. Internal auditors are appointed, removed and transferred by the Comptroller General, except for those belonging to the autonomous sectional regime and those backed by collective contracts, in which case, such powers lie with the authorities appointing such bodies.

The principles of normative centralization and operational decentralization apply in the area of personnel management. However, the Office of the Comptroller, in addition to contributing to the process of controlling the quality of reports from internal audit offices, must systematically evaluate their performance and, when applicable, define their responsibilities.

When the Office of the Comptroller establishes evidence of criminal liability, it submits its reports to the Office of the Attorney General for initiation of the corresponding legal action.

GENERAL PROSECUTOR'S OFFICE

This is an autonomous agency, directed and represented by the General Prosecutor, who is appointed for a four-year term by the National Congress from a short list sent to it by the President of the Republic.

The General Prosecutor is the judicial representative of the State and may delegate this representative power as established by law. His or her functions are defense of the State, provision of legal advice and other functions established by law.

OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General is an indivisible and independent body in its relationships with the branches of government, with administrative and financial autonomy. Its indivisible nature is based specifically on the constitutional principle of jurisdictional unity.

The Attorney General is the Office's legal representative. He or she is elected by the National Congress, through a majority vote of its members from a short list submitted by the National Council of the Judiciary, for a term of six years.

The Office of the Attorney General prepares the hearing of cases, directs and promotes preprocedural investigation and criminal proceedings. When justified, it indicts the accused before competent judges and courts, and initiates the indictment in the substantiation of the criminal case.

For purposes of the questionnaire, it should be repeated that, as provided by the Constitution and the law, the Office of the Attorney General coordinates and directs the fight against corruption, and must do so with the cooperation of all agencies that, within the limits of their powers, have an equal duty.

It should also be noted that it directs the judicial police, guarantees the protection of victims, witnesses and others participating in criminal cases and must help provide public protection to maintain the rule of the Constitution and the law.

Its institutional structure provides for the operation of District Ministries in the various provinces of the country and district attorneys handling various types of crimes. It has various technical and operational directorates, including the National Anticorruption Directorate.

Its process of consolidation and institutional development is recent, as it was a part of the General Prosecutor's Office until a few years ago. The functions provided in the Constitution of the Republic and the entry into effect of the accusatory system have been great challenges since 1998 and continue to be so.

COMMISSION FOR CIVIL CONTROL OF CORRUPTION

This is an entity under public law with autonomy and financial, political and administrative independence.

The Commission is made up of representatives from institutions or sectors of civil society who are appointed by Electoral Colleges formed by each of the following entities:

- The National Council of Universities and Polytechnical Schools;
- Legally recognized professional associations representative of each sector and national in nature;
- The Ecuadorian Association of Editors of Newspapers, Television Channels and Radio-broadcasting and the National Federation of Journalists;
- The National Federations of the Chambers of Production;
- Union Federations and Indigenous, Afro-Ecuadorian and Peasant Organizations that are national in nature and legally recognized;
- Legally recognized and national women's organizations; and
- Legally recognized human rights and consumer protection organizations.

The leaders of the sponsoring organizations cannot be members of the Commission unless they resign from their respective leadership functions.

Each of these organizations will appoint a regular member and an alternate who will replace him or her in the event of suspension, temporary or permanent absence. The Supreme Electoral Court will call on the respective Electoral Colleges thirty days in advance of the election date to proceed with their appointments. The Regulations of the Commission Law establish the mechanisms making it possible to publicize the names of candidates prior to their selection, so that any citizen can submit objections to the candidacies.

The functions of the Commission are to promote the eradication of corruption and receive reports regarding alleged crimes committed in the institutions of the State, so as to investigate them and seek their prosecution.

When final reports on Commission investigations establish evidence of liability and have been approved by the full Commission, they must be made known to the Office of the Attorney General, the Office of the Comptroller General or the competent judicial body.

The Commission may request any public agency or official to provide the information it deems necessary to move ahead with its investigations. Public officials who refuse to provide such information shall be removed from their positions at the request of the Commission; on the other hand, those who cooperate to clarify the facts shall enjoy legal protection.

SUPERINTENDENCIES

The country has the Superintendency of Banking and Insurance, the Superintendency of Companies and the Superintendency of Telecommunications. These are technical agencies under public law with administrative, economic and financial autonomy. They are responsible for overseeing public and private institutions to ensure that economic activities and the provision of services are subject to the law and serve the general public interest.

Coordination between the Office of the Attorney General and the Superintendency of Banking, based on reports in which the latter has established evidence of criminal liability in the administration of financial system institutions, has been very important in supporting the criminal cases that the Office of the Attorney General initiates in this regard.

- The first chapter of this report mentions some of the results obtained by the oversight bodies whose activities, as we have indicated, are most closely associated with combating corruption.

We can generally assert that there is an acceptable level of coordination between oversight bodies. However, it appears that a certain tendency to promote one's own institution must be eliminated and that citizens must be offered the practical and final results of joint work.

This will strengthen the institutional structure of oversight and prosecution that the country needs and will place the fight against the corruption outside the arena of short-term goals.

The above would even have significant practical repercussions with respect to the confidentiality that investigations must maintain in order to ensure that those who are suspected of being responsible for acts of corruption do not cover their tracks before the force of the law can be brought to bear against them.

In addition, greater external, technical and financial cooperation is needed in order to strengthen these bodies as a group, to harmonize policies and to prevent actions from being scattered.

CHAPTER FOUR

PARTICIPATION BY CIVIL SOCIETY

The compendium of standards relating to this chapter can also be found in Annex 2. We present here a summary of their content in connection with the information requested in *a)*. With respect to paragraph *b)*, we must point out that we do not have any statistical information on the subject

1. On the mechanisms for participation in general.

Within the context of the Constitution, it is established that a fundamental principle of the Ecuadoran State is the participatory nature of its democratic institutions at all levels and in all spheres.

The Ecuadoran State guarantees the right to found political parties and movements, as well as to participate freely in them. In this regard, as indicated in the first part of this report, fundamental rights are guaranteed, including the right to vote, to be elected, to hold public positions, and to exercise political power through critical opposition, suggesting alternatives to governmental policies.

As mechanisms to encourage participation, the Political Constitution of Ecuador recognizes the right of national social movements to take the initiative in submitting draft laws within the established legal framework. The support of a number of people exercising their political rights equal to one quarter of one percent of the people in the voter registration records is required. Those who submit a draft law may participate in debating its merits either in person or by delegating someone else to do so in their stead.

The Law on Decentralization of the State and Citizen Participation seeks to encourage the participation of civil society through decentralized administration in autonomous sectional governments and in public administration. This law establishes that social participation shall be governed by the principles of democracy, social and gender equity, pluralism, respect for and recognition of the values of indigenous peoples, blacks and other ethnic groups.

Social participation, understood in the context of local and community participation, must be promoted by mayors, provincial prefects and by regional development organizations. This form of participation seeks to “achieve the development of the community and improve the living conditions of the inhabitants of the respective districts.” The agencies responsible for promoting community participation are the Parish Boards and, on an organizational basis, Neighborhood Federations, Neighborhood Committees and Communes.

Social participation in this field consists of activities such as the identification of basic needs, the evaluation of the performance of projects in the territorial district, formulation of suggestions on quality, timeliness and efficiency with respect to works programs; and proposals on works and projects within municipal development plans. It is also the duty of the committees, federations or parish boards to keep the community informed and to be accountable to those they represent.

In order to propose significant reforms for the country or to seek the revocation of the mandate of mayors, prefects or deputies under the presumption of corruption or improper failure to perform, civil society (eight percent of the citizens exercising their political rights) may ask the Electoral Supreme Court to call for a popular referendum.

2. On mechanisms for access to information.

Article 4 of the Political Constitution of Ecuador establishes that the State recognizes and guarantees the right of the people to freedom of opinion, freedom of conscience, and free expression of ideas without prejudice to responsibilities established in the law. Similarly, it guarantees freedom of association and assembly for peaceful purposes.

The right to public information is established by Article 81 of the Constitution, which guarantees the right to access sources of public information without prior censorship. The third paragraph of this article establishes that “there is no secrecy with respect to information found in public archives, except for documents for which such secrecy is required for reasons of national defense and other reasons expressly established in the law.”

In addition, the Constitution establishes habeas data in Article 94, guaranteeing anyone the right to access information about him or herself or about his or her assets that is held by public or private agencies, as well as to know about the use made of such information and for what purpose. People have the ability to rectify or eliminate data if they are incorrect or will unlawfully affect their rights. When failure to attend to a request causes damages, the affected party can claim compensation.

It is important to point out that most of the information generated by the State is considered public information and that the Political Constitution itself established in Article 18, paragraph three that “the absence of law cannot be alleged to justify the violation or ignorance of the rights established in this Constitution, to reject action based on these facts, or to deny the recognition of such rights.”

A mechanism that can be used as an alternative, according to Ecuadoran law, is the application of the appeal for constitutional protection if public administration violates the constitutional right of access to public information.

In addition, Article 23, paragraph 15 of the Political Constitution establishes “the right to submit complaints and petitions to the authorities, but in no case in the name of the people; and to receive attention or relevant response in a timely manner.”

We should mention that Article 28 of the Modernization Law promulgated in 1993 establishes that any application, petition or claim made to a public authority must be resolved in no more than 15 days from the date of its submission, except for tax matters. In addition, applications shall be understood as having been accepted if during that 15-day period what the citizen requested has not been sent. However, if the response is negative, the petitioner can use either the judicial or the administrative route if he or she feels that his or her rights have been injured.

In the past, a citizen had to exhaust the administrative remedy in order to access the judicial remedy. Currently, the petitioner may access either of the routes without distinction. However, as soon as the petitioner has received a final decision through the judicial route, he or she may no longer resort to the administrative route.

Finally, we can specify that there is currently discussion regarding the content and scope of a future law on access to information. The National Congress has a preliminary draft that we feel will be the subject of more extensive discussion in upcoming months, so as to incorporate the views of various civil society groups that have been working on the subject.

However, the application of the above-mentioned standards requires the identification of mechanisms to enforce them since in Ecuador, for example, the practical use of the right to access information is very

limited and appeals for constitutional protection in cases where the public administration has denied requests for information have been every more limited.

In this area, civil society organizations also have great responsibility for identifying practical and more comprehensive mechanisms for extending and making these provisions viable, particularly in the monitoring of public administration.

3. On mechanisms for consultation.

Article 103 of the Political Constitution of Ecuador establishes the power to call for a popular referendum. The President of the Republic can call for a referendum to amend the Constitution or to implement reforms of special interest to the country. Agencies of the sectional regime can also call for referenda where there is a need for significant changes that are of interest to the community. As mentioned in the first paragraph of this chapter, citizens are also empowered to call for popular referenda.

There have been several popular referenda conducted in Ecuador. However, the decisions reached in them on various important subjects have not been reflected in law on a timely basis or sufficiently so as to ensure their implementation or make them permanent. Although the Constitution establishes the binding nature of decisions adopted through such referenda, it does not provide for the timing of this requirement nor does it require that such decisions or their scope be amended through a similar referendum process.

Thus, citizen participation in the adoption of public policies, through such referenda, is not ensured in medium- or long-term standards and administrative decisions.

As another area of consultation, Article 84, paragraph 5 of the Constitution establishes, among other collective rights belonging to the indigenous peoples, the right to be consulted on policies that may affect them environmentally or culturally and the right to receive compensation for social and environmental damages such policies cause.

The selection of Ministers of the Courts of Justice, through a procedure that assumed the submission of candidates backed by civil society organizations, illustrates the tendency to identify and implement mechanisms to expand citizen participation in the selection of certain public servants.

In addition, although Ecuadoran law does not make consultation with civil society organizations mandatory, in recent years some interesting modalities have been implemented: roundtables, assemblies, forums and public hearings on subjects of national, provincial or local importance --most of them, however, on an occasional basis.

In many cases such actions have emerged from initiatives or pressures from citizen organizations, although the willingness on the part of government agencies or authorities to expedite such mechanisms to promote agreements on aspects that incite strong debates or differences is to be noted.

4. On mechanisms to encourage active participation in public administration.

Article 225 of the Constitution establishes that the State shall promote through decentralization and deconcentration the harmonious development of the country, the strengthening of citizen participation and of sectional agencies, and the distribution of public revenues and of wealth.

Participatory planning mechanisms are used particularly in the area of sectional and local governments, although to a limited degree as yet.

However, on the whole methods for encouraging more active and democratic citizen participation are as yet incipient.

5. On participation mechanisms for follow-up of public administration.

As we have indicated, in accordance with the Political Constitution of the Republic, Ecuadoran citizens have, among other rights, the right to monitor the actions of the agencies of public power, to revoke the mandate they bestow on popularly elected officials and the right to submit draft laws to the National Congress and to be consulted in the cases specified in the Constitution.

Citizen participation is promoted by some public sector institutions and agencies that have developed a series of on-line tools to make the right to information a reality. This is the case with the creation of a series of web pages and databases that are available or being developed in the country.

Nonetheless, such efforts to make government activities transparent, although an important step forward, are still isolated and not very informative, both due to the media in which the data are found (Internet or work reports that do not facilitate or encourage consultation) and the type or technical specificity of the information (promotion of management or technical data), and do not specifically encourage or support greater participation in the follow-up of public administration.

In this area we also feel it is important that business organizations in the private sector make their commitment to the fight against corruption clear and practical, through self-regulatory mechanisms and professional sanction of their members, as applicable, and reporting of corruption officials.

CHAPTER FIVE

ASSISTANCE AND COOPERATION

MUTUAL ASSISTANCE

- a) The Extradition Law establishes active extradition in the event that Ecuador seeks cooperation from another country to search for, detain and extradite a person against whom an order for temporary detention pending trial or final sentencing has been issued for some criminal action committed in the country or in the cases established by law.

Passive extradition refers to a request sent to Ecuador by another country for the same purposes with respect to a national of that country or a foreigner against whom an order for temporary detention pending trial or final sentencing has been issued.

Article 25 of the Constitution of the Republic establishes that in no case shall the extradition of an Ecuadoran be granted. The prosecution of Ecuadorians is subject to the laws of Ecuador.

In addition, the country is a signatory of international agreements on the subject and has signed bilateral agreements with various countries.

Ecuador is party to the Inter-American Convention on the Taking of Evidence Abroad, whereby requests and letters rogatory directed to the respective central authority of the States Parties must lead the receiving State, through the competent bodies, to attend to the request made by the other State.

In addition, Ecuador has signed the Inter-American Convention on Preventive Measures and, in that context, the respective judges and courts must carry out the measures requested by other States Parties.

- b) The Ecuadoran central authority has not received any requests for mutual assistance as referred to in the Convention.
- c) Not applicable.

2. MUTUAL TECHNICAL COOPERATION

- a) Under the provisions of the Constitution and the law, the country has no restrictions on mutual technical cooperation, much less on the areas indicated in this question.
- b) No.
- c) Not applicable.
- d) There are some technical cooperation projects related to combating corruption and to that extent they are related to aspects referred to in the Convention. Their effect has been and continues to be limited. Among them, we point to training programs supported by the World Bank, cooperation resources allocated by the IDB to the Commission for Civil Control of Corruption, support from USAID through the Esquel Foundation, and OAS collaboration with the Latin American Corporation for Development to promote the project to make the Penal Code consistent with the provisions of the Convention.

The Office of the Attorney General and the Office of the Comptroller General, key agencies in the fight against corruption, have not had and do not have any specific technical and financial cooperation.

CHAPTER SIX

CENTRAL AUTHORITY

a), b) and c): Dr. **Mariana Yépez de Velasco, Attorney General of Ecuador**, by virtue of constitutional provisions regarding the Attorney General, was designated as Ecuador's Central Authority for purposes of channeling requests for assistance and cooperation as provided in the Convention. The Office of the Attorney General was informed of this decision by the Undersecretariat of Multilateral Organizations of Ecuador's Ministry of Foreign Relations, through note No. 14278/01 DGDHASN-SOI, of January 22, 2001, and our Permanent Mission subsequently formally reported this designation to the OAS.

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