

Diagnostic on Priority Areas for Cooperation Against Corruption in Ecuador



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EXECUTIVE SUMMARY

In the most recent 2019 Transparency International (TI) Corruption Perceptions Index (CPI), Ecuador received 38 out of 100 points, achieving its best score since being included in the index. However, the country continues to score below the Americas average (43/100), ranking 18th out of 30 countries in the region. Additionally, the most recent Global Impunity Index from the University of the Americas Puebla (UNDLAP) gave Ecuador a 62.72-point score on impunity, ranking it 18th of the 69 countries studied, in the lowest third. These data, civil society research reports and a series of criminal investigations of official involvement in fraud indicate the need to strengthen the regulatory, institutional, and social framework for the prevention and punishment of corruption.

Public funds lost to corruption have a direct effect on social inequality, on access to and quality of basic services, on citizen trust in public authorities, on democracy, and on national development. Although there are no fully validated figures on the economic losses due to acts of corruption in Ecuador, the ECLAC report “Fiscal Panorama of Latin America and the Caribbean 2019”, estimated that Ecuador loses nearly US\$ 4 billion annually due to tax evasion. Additionally, according to UNODC, studies suggest that an average of 10 to 25 percent of the value of public contracts is lost due to corruption in general. With these values taken as reference, Ecuador would have lost between US\$ 606.6 million and \$1.516 billion in public funds to acts of corruption in public contracting and procurement in 2019 alone, many of those cases under criminal investigation. Resources were lost to corrupt illegal campaign financing, procurement fraud and the overpricing of infrastructure projects.

Given this context, decision-making to strengthen an ecosystem of integrity is urgent and requires coordinated actions throughout society. Thus, Ecuador’s multisectoral initiatives to strengthen transparency, citizen participation, accountability, and anti-corruption measures are important; such as joining the Open Government Partnership (OGP) in 2018 and presenting its first Action Plan in December 2019. In the same month, Ecuador was accepted as a member of the Initiative for Transparency in Infrastructure (CoST). Finally, the country is preparing its candidacy to the Extractive Industries Transparency Initiative (EITI).

With this background, *Fundación Ciudadanía y Desarrollo* (FCD), in coordination with the Center for Strategic and International Studies (CSIS) Americas Program and with support from the Pan American Development Foundation (PADF), developed a diagnostic regarding the priority areas for cooperation in transparency, integrity, and the fight against corruption in Ecuador. The report addresses these five areas: 1. Transparency in political campaign financing; 2. Fiscal and budget transparency; 3. Transparency in public procurement; 4. Civil Service Reform and public administration; and 5. The fight against corruption and impunity and or judicial independence.

The full report consists of five chapters, one for each area mentioned in the previous paragraph. Each chapter, in turn, is made up of five parts. The first describes the status of the situation, including existing facts, figures, and research reports. The second describes the regulatory framework, constitutional provisions and principal laws, in addition to oversight bodies. The third identifies reforms, both already proposed or approved, but not implemented, as well as those that this report concluded are necessary. The fourth part describes various immediate actions to achieve progress on each topic. Finally, based on the previous information, the fifth suggests strategies and relevant actors and their roles to advance those actions and reforms.

The first chapter corresponds to **transparency in political campaign financing**. This issue's importance has been revealed in major corruption cases linked to illegal contributions to electoral campaigns. Ecuador has a mixed financing system, in which private contributions coexist with two public funds (Permanent Party Fund and Electoral Promotion [campaign] Fund). After the recent reforms to the Democracy Code, which will come into full effect for the 2021 general election, several aspects related to transparency and accountability have improved, both in the financing of political organizations and of electoral campaigns, including barring corporate financial contributions. Still, the diagnostic highlights the institutional weakness of the National Electoral Council, which does not have sufficient financial and human resources to fully carry out all its responsibilities, as well as the virtual non-existence of sanctions against political parties, organizations and candidates for contravening electoral regulations. Priority topics identified include the implementation of existing transparency mechanisms within political parties, organizations, and campaigns, and, of course, building the capacity of all actors in this area. Key reforms to address these topics include:

- Publishing information on financial contributions and expenditures of political candidates, parties, and organizations on their websites and on the

National Electoral Council (CNE) website in a timely manner to allow for citizen oversight, ideally prior to each election.

- Strengthening the operational and technical capacity of the National Electoral Council, with additional budget resources and international cooperation grant funds.
- Reinforcing coordination of oversight and auditing of all electoral actors by the CNE, Controller General, the new Unit of Financial and Economic Analysis of the Finance Ministry, as well as the Internal Revenue Service. That reinforcement needs to be paralleled by greater transparent public information management and investigation and sanctioning of electoral financing violations.

The second chapter deals with **fiscal and budgetary transparency**. In addition to presenting financial data to explain fully the national macroeconomic situation, it discusses the recent reforms sent to the National Assembly by the Executive, as well as the status of fiscal transparency beyond the norms established in the Organic Code of Planning and Public Finance. Given substantial estimated tax evasions, reform measures adopted by the Internal Revenues Service (SRI) are described in detail. Finding that current regulations are insufficient, the report describes the greatest challenge as regulatory reform and incorporating Ecuador into the Global Initiative for Fiscal Transparency (GIFT). Ecuador should implement, completely and effectively, GIFT's High Level Principles for Fiscal Transparency, Participation, and Accountability and the Principles of Public Participation in Fiscal Policy. Ultimately, most important is for citizens to engage in monitoring and follow-up so that the principles are not only adopted as norms but also put into practice. Other key reforms include:

- Without infringing on internationally protected labor rights, modernize the legal framework around labor contracting in order to adapt to the demands of the national and international economy.
- Take steps for comprehensive reforms to the social security system to expand coverage and address issues of liquidity, politicization, and fraud.
- Pass and ensure the effective implementation of reforms to the Organic Code of Planning and Public Finance.
- Address the underlying issue of tax evasion comprehensively by insuring equity, progressivity, and efficiency in the tax system and utilizing web-based mechanisms to facilitate compliance and control, carrying out the SRI Plan for Control and Fight against Fiscal Fraud, which should also emphasize civil society monitoring.

Transparency in public procurement is addressed in the third chapter. The emergency situation produced by the COVID-19 pandemic has highlighted the need to strengthen anti-corruption in government procurement, following evidence of recent contracting frauds costing millions of dollars public funds. This chapter describes the changes that are already being implemented by the public procurement authority in Ecuador, such as ISO 9001 and 37001, and international initiatives, such as the Open Contracting Partnership (OGP) and Transparency in Infrastructure (CoST), as well as the commitments adopted in the First National Action Plan under OGP. The chapter also highlights the need for further significant strengthening of efficiency, transparency, accountability, and control nationally but also at decentralized levels of government, which in 2019 represented 37 percent of public contracting. Additionally, integrity in public procurement requires not only accountability in the public sector but also in the private sector and in civil society. The chapter pinpoints the following priority lines of action:

- Comprehensive regulatory reform of the National Public Procurement System within the framework of international obligations and in accord with international standards, assuring further increases in transparent, competitive public contracting.
- Institutional strengthening through technological innovation, greater support for whistleblowers and the development of holistic public procurement and contracting policies. This includes adapting and implementing the kind of web-based dashboards that Colombia and Chile use to assure greater transparency, higher quality and lower costs in contracting in accord with international standards.
- Building capacity for social control, prevent conflicts of interest and avoid corruption through on-line access to public information, internal oversight mechanisms as well as closer auditing by the Controller General, and professional training at national, regional and municipal levels.

In the fourth chapter, **public service and administrative careers** are analyzed. The diagnostic found that despite adequate norms in the Constitution and Organic Law relating to civil service and public sector careers, gaps persist including even in knowing the number of employees within the public bureaucracy. In addition, reforms are needed in appointing high-level officials and assuring merit-based recruitment and promotion at all levels. Additionally, further reforms are required to address and prevent conflicts of interest in the public sector. Priorities include:

- Amend the Law of Sworn Asset Declarations to include all family members and all positions, public or private, advisory or temporary, and incorporate standards established in the Model Law on the declaration of interests, income, assets and liabilities of the Organization of American States (OAS),

requiring that all information included in the declarations be public, with the limited exception of personal data, and that these must be published online.

- Approve the Organic Law on the Prevention of Conflict of Interest to assure effective regulation of lobbying the public sector, creating registries of officials, employees, and lobbyists, regulating the requirements for the appointment of certain officials and servants, and establishing measures aimed at avoiding conflicts of interest and clearly regulating the practice of “revolving doors”.
- Establish procedures for open competition in high-level appointments to reduce subjectivity and discretion in the assessment of merits of a candidate.

The fifth and final chapter addresses **the fight against corruption, the fight against impunity, and judicial independence**. In addition to presenting data from international indices, it addresses the institutionality of these issues in Ecuador, with special emphasis on the judicial system’s fundamental role in confronting impunity and corruption, but also in guaranteeing the rights of citizens. Priorities addressed include updating regulations on transparency and access to public information in response to new standards and technologies; reforming regulatory bodies ; the evaluation, redesign, and implementation of public policies on transparency, judicial independence, anti-corruption, and fighting impunity; and strengthening institutional and individual capacities to promote transparency and combat impunity. Specific reforms include:

- Update Ecuador’s Law on Transparency and Access to Public Information (LOTAIP) to include standards in the Inter-American Model Law on Access to Information such as anonymity of the requester, digitization of access, use of open data, independence of the guarantor authority, and effective judicial recourse.
- Strengthen oversight to prevent conflict of interests in the judiciary and law enforcement, assure access by appropriate authorities to bank records in corruption investigations, approve legislation on asset seizures (*extincion de dominio*) to recover stolen public funds and properties.
- Adopt measures to incorporate international standards to control money-laundering, incorporate forensic and technological methods to prevent and investigation corruption and incorporate legal measures to penalize corporate or individual interference or suppression of whistleblowers or witnesses.
- Modify the Organic Code of Judicial Function to eliminate discretionary factors, such as “inexcusable error”, and clearly incorporate international norms in disciplinary processes affecting judges and other justice sector officials.

For the development of this diagnostic report, the research team at FCD consulted and analyzed documented information from various institutions, media websites, public institutions, and other reliable portals related to the subject. For the economic and fiscal analysis, FCD worked with the consultancy firm *Multienlace*, headed by Ec. Mauricio Pozo Crespo. This work was carried out thanks to the support of PADF.

Full report (spanish only): <https://padf.org/wp-content/uploads/2020/09/Informe-de-consultoria-con-portada.pdf>

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