

Overall Score:

70 - Weak

Legal Framework Score:

90 - Strong

Actual Implementation Score:

53 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁵ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

Article 23, No. 19 from the National Constitution of Ecuador establishes la libertad de asociación y de reunión, con fines pacíficos,” this is set forth like one of the civil rights. The law established in the Constitution does not put emphasis on civil associations, whose goal is to focus on corruption or good government. Additionally, the constitutional mandate gives freedom of association to all citizens (national or foreigners) to gather with peaceful ends. These organizations must respect the Ordaining of the Law.

In agreement with what has been mentioned in the previous paragraph, Article 29 from “Ley de Partidos Politicos” establishes that parties are free to diffuse their doctrine and programs, as well as to act in order to strengthen their organization. According to Article 8, these parties must not discriminate by motives of race, sex, religious creed, culture or social condition.

Article 178 of the Penal Code (Código Penal) establishes that if freedom of thought or expression or violated this can be punished with prison for one to five years.

References:

National Constitution of Ecuador: Articles 8, 23, 29
Penal Code: Article 178

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

The National Constitution of Ecuador establishes the Libertad de Empresa”.

Article 23 No.19 of the National Constitution does not prohibit funding from legal enterprises (foreign or domestic), and according to a legal principle what the law does not prohibit, it permits. The government, including all its public institutions, are not allowed to finance Civil Society Organizations (CSOs).

References:

National Constitution of Ecuador: Article 23 No.16 and No.19

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The first regulation establishes that the foundations or corporations that account for their own resources will be supervised by the General Comptroller of the State (CGE –Contraloría General del Estado).

If the CSO has a social function, for example, the CGE has to supervise their sources of income.

References:

Official Register No. 6610 2002/09/11 (Title XXIX of the book I Código Civil”).

Article 31, No.1 The Statutory Law of the General Comptroller of the State.

Regulations to the Law of Transparency and Access to Public Information.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The government does not create barriers to the organization of new CSOs. Recently, CSOs have increased their participation in the public life. CSOs, however, are subject to the same rules of creation as other new organizations.

References:

Interview with Francisco Delgado (Participación Ciudadana)
www.participacionciudadana.org

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Citizen Participation (PC–Participación Ciudadana) is a CSO that promotes democratic leadership and transparency in public activities and the political processes. It participates as observer in the electoral processes, ratifying the official results. When it disagrees with actions of Electoral Supreme Tribunal (TSE), it publicizes this through a communications bulletin. It supervises the actions carried out by the National Congress, identifying each candidate's, so that the citizens are informed and can form their own opinions.

PC is viewed favorably by the public because of the impartiality of its opinions with regard to the electoral process. It has also become an important political actor. According to the report of Audit of the Democracy Ecuador in the 2006, PC is more trusted by citizens than the Electoral Supreme Tribunal.

CSOs have said that they have been able to observe citizen participation in the local governments. Mainly in the Alternative Municipalities, there are work groups that are formed by citizens. The work groups help to create social polities or projects and participate in the policymaking process. Local governments where there have been successful experiences in citizen participation are: Cotacachi, Cuenca, Guamate, Orellana and Otavalo.

References:

Interview with Francisco Delgado (Participación Ciudadana)
www.participacionciudadana.org

Municipio de Cotacachi
www.cotacachi.gov.ec,

Informe Ecuador Seguimiento de la sociedad civil a la Implementación del Plan de Acción de Québec elaborado por la (CLD) Corporación Latinoamericana de Desarrollo. Auditoria de la Democracia Ecuador en el 2006 elaborado por (USAID) del Pueblo de los Estados Unidos, (LAPOP) Proyecto de Opinión

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

Comments:

There were no reported cases.

References:

Media (newspapers, broadcast media)

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

There were no reported cases.

References:

Media (newspapers, broadcast media)

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There were no reported cases.

References:

Media (newspapers, broadcast media)

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There were no reported cases.

References:

Media (newspapers, broadcast media)

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Article 23 No. 19 of the National Constitution recognizes the civil right of groups to congregate for peaceful purposes.

Article 440 from Código del Trabajo (Code of Work) recognizes the freedom of association for workers and employers, without any distinction and without need of prior authorization. They have the right to organize professional associations or unions that they consider to be convenient, to be affiliated to them or to be withdrawn, but in keeping with the laws and statutes of their respective associations.

Article 1 of Agreement 98 Relative to the Right of Trade Unions, establishes that workers should enjoy adequate protection against any act of discrimination attempting to diminish their union freedoms, in relation to their employment.

References:

National Constitution of Ecuador: Article 23 No. 19

Code of Work: Article 440

Article 1 of Agreement 98 Relative to the Right of Trade Unions, Official Registry No. 923, 1959/09/19.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There are four influential trade unions in Ecuador, which call themselves: the United Workers Front (FUT–Frente Unitario de Trabajadores), Ecuadorian Federation of Classist Organizations (CEDOC–Central Ecuatoriana de Organizaciones Clasistas), Ecuadorian Confederation of Free Union Organizations (CEOSL–Confederación Ecuatoriana de Organizaciones Sindicales Libres) and the Confederation of Ecuadorian Workers (CTE–Confederación de Trabajadores Ecuatorianos). They include other smaller trade unions.

The right of the workers of carrying out strikes is in the work law. The trade unions are against the (FTA) Free Trade Agreement. For this reason, they gathered together to strike during Alfredo Palacios government.

References:

<http://www.cideiber.com/infopaises/Ecuador/Ecuador-08-04.html>
http://www.bilaterals.org/article.php3?id_article=3110

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Article 81 from the National Constitution guarantees freedom of media. The article establishes the right to distribute truthful information without previous censorship in the events of general interest by journalists.

References:

National Constitution, Article 81
Law of Transparency and Access to the Public Information, Article 3
Law of Broadcasting and Television, Article 58
Code of Penal Procedure, Article 386

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Article 23 No. 9 of the National Constitution indicates the right to freedom of speech as a civil right.

Freedom of speech is guaranteed in various normative bodies, such the article 19 of the Economic, Social, Cultural, Civil, Politicians Rights of the Civil Register (Pacto Derechos Económicos, Sociales, Culturales, Civiles Políticos), which determines that freedom of speech includes freedom to seek, receive and distribute information and ideas of any kind, without boundaries, whether orally, in writing, printed or artistic form. However, there must be respect to the rights or reputation of others; as well as the protection of the national security, the law and order, and the public moral.

References:

National Constitution, Article 23 No. 9
Economic, Social, Cultural, Civil, Politicians Rights of the Civil Register, Article 19 No.101 1969/01/24

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

It is considered that the Ecuadorian government has created a barrier a print media entity, the legal battle between private and state shareholders of newspaper El Telegrafo.

Carlos Navarrete Castillo, the paper's editor since 2002 and a descendant of the founders of the 123-year-old newspaper, complained that the government invalidated capital infusions made in 2002, 2004 and earlier this year in an attempt to strip the private shareholders of their majority ownership position. The official regulatory body, the Office of Superintendent of Corporations, issued an edict reversing the capital increases and restored majority shareholder status to the national Deposits Guarantee Agency (AGD). Through this agency the Ecuadorian government began managing the newspaper a decade ago after freezing the assets of banker Fernando Aspiazu – the largest single shareholder of the newspaper at the time, currently in jail on charges of fraud in connection with the now defunct Banco del Progreso.

Navarrete argues that the increase in capital was made to save the newspaper from bankruptcy and accuses the government of abuse of power and wanting to take control of a news outlet. Inter American Press Association (IAPA) officers, in response to statements by local officials that the government's intention is to end up owning the newspaper, added that the government should call for public bids as dictated by law in order to avoid contradicting international principles that govern freedom of expression and press freedom.

References:

Sociedad Interamericana de Prensa
<http://www.sipiapa.com/>
4 de Junio de 2007)

La SIP observa disputa legal sobre la propiedad del periódico más antiguo del Ecuador, <http://www.periodistas-es.org/>
(11 de Junio de 2007)

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There is no regulation that requests a license for printed media. However, in the case that a procedure request is denied, citizens

can use the Article 28 from the Law of Modernization. This is the right to appeal that guarantees that all reclamation is taken care by the competent public authority.

References:

Law of Modernization, Article 28

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A license is not required to create a new newspaper according to the Asociación Ecuatoriana de Editores de Periódicos. The time spent to constitute a new company, to inscribe the name of the company in the Superintendence of Corporations, takes a long 11 days. But this is affordable having contacts in public sector.

A reference could be the average time to begin a business, according to Doing Business 2006, the time estimated was 65 days.

References:

Asociación Ecuatoriana de Editores de Periódicos www.aedep.org.

Doing bussiness Ecuador 2006.

Banco Central del Ecuador, IEM (monthly economy information).

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A special license is not required to create a new newspaper. The cost of inscribing the name of the company in the Superintendence of Corporations oscillates in a range of \$67, 20 dollars at \$579.20 dollars.

A reference could be average cost to begin a business, according to Doing Bussiness 2006, the cost is 38.1% of the per capita income; the value could be \$940,00 dollars.

References:

Asociación Ecuatoriana de Editores de Periódicos www.aedep.org, *Negocios en el Ecuador (Elementos Costo país)* es un documento elaborado por Ministerio de Comercio Exterior, Industrialización, Pesca y Competitividad (MICIP) y Organización de las Naciones Unidas para el Desarrollo Industrial (ONUDI) www.micip.gov.ec .
Doing Bussiness, Ecuador 2006
Banco Central del Ecuador, IEM (monthly economy information). www.bce.fin.ec

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The government has not created barriers to form a broadcast (radio and TV) media entity. President Rafael Correa has had a bad relationship with the media during his government. The president affirmed that the media entities manipulate the information because they are representing the interests of the economic groups. In Ecuador, there are five TV media entities that belong to the banks owners. Also, he claimed, that the majority of broadcast licenses belong to the same economic groups, in consequence radio and TV media entities are not concentrated in market structure of perfect competition. For this reason, the president wants to reform the law through the Constituent Assembly.

References:

Guillermo Navarro Jiménez ¿Quién limita la libertad de expresión?
www.ciudadaniainformada.com
(4 de Mayo de 2007) escrito por Paúl Mena La libertad de expresión,
el Gobierno de Correa y la Asamblea del Ecuador, (11 de Julio de 2007),
www.eluniverso.com (8 de Abril de 2007)

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There is no regulation that requests a license for media. However, in the case that a procedure request is denied, citizens can use the Article 28 from the Law of Modernization. This is the right to appeal that guarantees that all reclamation is taken care by the competent public authority.

References:

Law of Modernization, Article 28

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Citizens wanting to obtain a broadcast license, must apply for the broadcast license at the National advice of Broadcast and Television (CORNATEL–Consejo Nacional de Radiofusión y Televisión. The required time is 15 days. But this is affordable having contacts in public sector. A reference could be the average time to begin a business, according to Doing Bussiness 2006, the time estimated was 65 days.

References:

www.conartel.gov.ec
Artículo 9 de la Ley de Radiofusión y televisión.
Doing Bussiness Ecuador 2006

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The broadcast licenses are granted by National Advice of Broadcast and Television. The costs vary according to the city and if the frequency are in UHF or VHF etc. The costs for the annual concession oscillate in a range US\$50,000 to US\$4,000.

For example, the total cost of a frequency in Quito and Guayaquil in VHF and UHF are US\$54,800(VHF) and US\$20,580(UHF) respectively. It includes taxes.

The value of the concession is a single payment every 10 years.

References:

www.conartel.gov.ec

Resolución No 886 CONARTEL-Tarifas por concesión y utilización de frecuencias, canales y otros servicios de Radiofusión y Televisión.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

The government does not prevent Internet users from accessing online content. There are some forms of content that may be illegal to download (such as child pornography), but the government does not manipulate networks to prevent access to this information.

This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, and surveillance or technical difficulties in countries with poor infrastructure.

References:

Ecuadorian Corporation of Electronic Commerce (Corporación Ecuatoriana de Comercio Electrónico)

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

References:

Ecuadorian Corporation of Electronic Commerce (Corporación Ecuatoriana de Comercio Electrónico)

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

67

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Article 81 of the National Constitution prohibits damage to the dignity of the man since it is an elementary right of the human being.

Article 58 of the Law of Broadcasting and Television prohibits the broadcasting of news based on thoughts that could produce damages or social commotions, the violation of this norm would lead responsibilities of penal or administrative character.

The National Constitution and the law guarantees protection of the reputation, the good honor and the family and personal intimacy.

References:

National Constitution, Article 81
Law of Broadcasting and Television, Article 58
Universal Declaration on Human Rights, Article 12
Universal and American Declaration on Human Rights

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

President Rafael Correa claims that the media does not have self-censorship, because these enterprises believe that have the right to criticize the government and others, but they do not analyze themselves when they make mistakes. He also said that the media transmits untruthful information, because they distort the government's actions. In fact, he called the media wild beasts, liars, corrupts etc.

References:

www.eluniverso.com (26 de Mayo de 2007) Correa pide autocritica a los medios de comunicaci3n

www.elnewherald.com (24 de Julio de 2007) Correa admite problemas con la prensa

www.ciudadaniainformada.com (11 de Julio de 2007) Rafael Correa critica a los medios de comunicación desde España y justifica cierre de RCTV

www.elmercurio.com.ec (4 de Junio de 2007) SIP denuncia estrategia contra la prensa

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

In May, the biggest corruption scandal inside Rafael Correa's government occurred. The media broadcasted videos in which the Minister of Economics Ricardo Patiño talked about how to make financial speculations. For this, the National Congress began an investigation. Despite this, Correa does not want to dismiss him. After that, the president approved Ordinance 468 that prohibits the media transmit recordings or videos, without the consent of involved people, because it is attempting to hurt the honor of people.

In the case that the media doesn't accept to the executive ordinance, they will put on sanctions on the media. The Ecuadorian Association of Broadcasting (AER) and the Ecuadorian Association of Channels of Television (AECTV) exclaimed that the executive ordinance is an attack on the freedom of speech and that the executive ordinance is against the Ecuadorian Constitution. They also exclaimed that the government is protecting scandals, so that the Ecuadorians cannot be informed on the behavior of the public officials.

References:

www.elmercurio.com.ec (17 de Mayo de 2007) Ministro desvirtúa acusaciones (23 de Mayo de 2007) Pati Videos causa polémica (1 de Junio de 2007) Se integró Tribunal Constitucional, www.guapulo.com (28 de Mayo de 2007)

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

85

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

The article 94 of the National Constitution guarantees in its article 3 the access to public information.

Article 384 of the Penal Code determines that in case of a judgment the public prosecutor may ask information about the ownership of the print media.

References:

National Constitution, Article 94
Law on Transparency and Access to Public Information, Article 3
Penal Code, Article 384

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

Article 94 of the National Constitution (habeas data) and Law on Transparency and Access to Public Information guarantees in its article 3 the access to public information.

Article 384 of the Penal Code determines in its final clause that the directors, administrative or owners of radio and television stations are obliged to disclose, when the Public Prosecutor requires, films, videotapes or the recordings of sounds.

References:

National Constitution, Article 94
Law on Transparency and Access to Public Information, Article 3
Penal Code, Article 384

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

According to Social Movements that represent a minority in the country, there are Afro-Ecuadorians communities who feel discriminated by the media, the reasons are the way to transmit the news. The Afro-Ecuadorian communities emphasize that the media is not qualified to give the information because they transmit the news without making reports in the place of the facts.

References:

Debate de la Función de los Medios en la Sociedad, Programa del canal de televisión Telemazonas (28 de Julio de 2007)

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

During the 2006 presidential elections, candidates had interviews on television. Additionally, the front runners engaged in televised debates. The televised debates were organized by Voz y Voto 2006 and the Camara de Comercio de Quito included the candidates Rafael Correa, Cynthia Viteri, León Roldós, Álvaro Noboa and Fernando Rosero. The debate on ECUAVISA and CNN en Español invited four candidates: Rafael Correa, Cynthia Viteri, León Roldós and Álvaro Noboa. Gilmar Gutiérrez was excluded because the surveys showed he would not receive many votes. But in the presidential elections Gilmar Gutierrez obtained the third position displacing the candidates: León Roldós, Cynthia Viteri and Fernando Rosero. For that reason he exclaimed a complaint to the media for not inviting him to the debates, since he thought that he could have obtained a better position.

It is also necessary to emphasize that the candidates that had better financing in their campaigns, had more access to the media, for example the campaign of Álvaro Noboa.

References:

<http://www.ecuaworld.com/> (Foro Presidencial Ecuador 2006)

www.hoy.com.ec (23 de Agosto de 2006) Papelón de cinco candidatos en debate

www.elcomercio.com (15 de Octubre de 2006) Gilmar Gutiérrez considera éxito absoluto su posición en comicios

www.elcomercio.com (23 de Octubre de 2006) Lo positivo en la elección

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | **75** | 50 | 25 | 0

Comments:

During Alfredo Palacios presidency, for the first time presidential candidates had access to state financing, to publicize their government plans through the media. The Tribunal Supremo Electoral will give US1.7 million for publicity. This was realized in a modification to the Organic Elections Law. The resources will be distributed equally to the political parties.

The distribution of resources was: 70 percent for television, 20 percent for radio and 10 percent for printed means. The Tribunal Supremo Electoral (TSE) authorized that the advertising will be made between 6 a.m. to 9 a.m., 12 p.m. to 2p.m. and of 6 p.m. to 9 p.m.. In the radio the advertising times were presented from 5 a.m. to 8 a.m., of 11 a.m. to 2 p.m. and 5 p.m. to 8 p.m.

References:

www.elmercurio.com.ec (29 de Agosto de 2006) Pueblo financia campaña electoral

www.elcomercio.com (11 de Agosto de 2006) Gasto Electoral: el 70% en televisión.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There are no reported cases.

President Rafael Correa brought charges against Francisco Vivanco of the newspaper La Hora, for an editorial that criticized his administration. The punishment could be a prison sentence from six months to two years. TCorrea affirmed that he will go to Public Ministry and that he will retaliate against journalists who censure the government.

References:

<http://www.sipiapa.com> (11 de Mayo de 2007)

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There were not reported cases.

References:

<http://www.sipiapa.com> Informe de Ecuador 2007.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There are not reported cases. However there was a bomb threat to the ECUAVISA television channel.

References:

www.elmercurio.com.ec (1 de Noviembre de 2006)

<http://www.sipiapa.com> Informe de Ecuador 2007

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

84
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The National Constitution, in article 94, establishes that any person can access information; moreover if there is lack of attention the common citizen will be able to demand the corresponding compensation.

Article 8 from Ley de Transparencia y Acceso a la Información Pública indicates that all public sector institutions must implement, according to their competences and budget, programs of diffusion and training, directed to public servants and to organizations of the civil society (OSC). The purpose is to guarantee a greater and better civic participation in the life of the State.

References:

National Constitution, Article 94 and 118

Law on Transparency and Access to Public Information, Articles 1 and 8

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Article 94 clause 3 of the Constitution

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Article 94 of the National Constitution guarantees to all persons the right to access documents and information.

Article 19 from the Law on Transparency and Access to Public Information details the manner to access to the information.

References:

National Constitution, Article 94 and 118

Law on Transparency and Access to Public Information, Articles 1 and 8

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

55

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

For a CSO it is easier to receive answers to the requested information. With regard to the common citizen, it is easier for a lawyer to receive answers than a common citizen.

According to Ramiro Avila, the information required is generally given and without problems to institutions, maybe some exceptions in cases of environmental information, especially when the requests of the information is critical of that entity. This is a consequence of the lack of enforcement from Law on Transparency and Access to Public Information (LOTAIP — Ley Orgánica de Transparencia y Acceso a la Información Pública LOTAIP). The LOATIP requires public Institution to put their information on their Web sites, but few institutions fulfill these requirements.

References:

Ramiro Dávila citado en Informe Ecuador, Seguimiento de la Sociedad Civil a la implementación del Plan de Acción de Québec en Ecuador. Elaborado por (CLD) Corporación Latinoamericana de Desarrollo (2004).

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are not cases in which public information has a cost. These costs could be only the reproduction of the public information. Although the public information does not have cost explicitly, it is important to recognize that in order to access to certain information, the common citizen must insist constantly. It can require a lot of visits to the Public Institution.

References:

Informe Ecuador, Seguimiento de la Sociedad Civil a la implementación del Plan de Acción de Québec en Ecuador. Elaborado por (CLD) Corporación Latinoamericana de Desarrollo.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The citizens can use an appealing mechanism, if the public information is denied. This mechanism is judicial process, one of them is to request information toward the Defensor del Pueblo (Public Defender).

References:

Interview with Iván Granda Defensoría del Pueblo (Public Defender)

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

To resolve the appeals through the Defensoría del Pueblo (Public Defender), there is no cost.

The problem is the lack of public defenders Ecuador has only 32 public defenders, it requires having at least 3.000 public defenders.

References:

Interview with Iván Granda, Defensoría del Pueblo (Public Defender)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

Comments:

The Access to Public Information Law has a flaw because the reserved information is not specified. This flaw in the law, allows that the Public Institutions to deny any information, because it is considered like reserved.

References:

Interview with Iván Granda, Defensoría del Pueblo (Public Defender)

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The article 27 of the National Constitution says that the popular vote will be universal, equal, direct and secret... for Ecuadorians older than 18 years old . Hence the vote is a free expression of the democracy.

The Law on Elections restricts the right to vote from the citizens who are not registered in the electoral base and members of the police and military forces in active service.

References:

National Constitution, Article 27
Law on Elections, Article 5

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The article 164 of the National Constitution, says that the presidential tenure will last for a period of four years. Therefore, elections for public dignities are performed every four years.

The Interamerican Convention on Human Rights and Pact of Economic, Social, Cultural and Political Rights indicate that: All the citizens must enjoy the following rights and opportunities: to vote and to be chosen in periodic elections,universal, equal suffrage and secret vote; guaranteeing the free expression of the voters.

The Law on Elections determines the limits and terms of the electoral process.

References:

Article 164 of the National Constitution of Ecuador

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

92

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

At the present time all the citizens have the obligatory right to vote. People in the public forces are not allowed to vote, as are people who are not nominated in the electoral lists. Illiterate people and those older than 65 years have the optional right to vote.

In the last presidential elections, Ecuadorians who live abroad had the option to vote, only in the cities with embassies and consulates and the citizens had to be registered in the electoral lists. Voting in rural section proved difficult because the electoral ballots were delayed.

Most of people in Ecuador don't have an opinion as how to they should vote. For that reason, the CSO Citizen Participation (PC- Participación Ciudadana) proposes campaigns with he principle goal to educate the people about the candidates' platforms.

References:

Law on Elections, Article 1, 2,3 and 4

www.elcomercio.com.ec 13 de Octubre del 2006 Los discapacitados pueden votar,

www.elcomercio.com.ec 16 de Octubre del 2006 El emigrante votó de manera entusiasta,

Concertación Ecuador, Módulo V Institucionalidad y Gobernabilidad para el desarrollo por Banco Central del Ecuador,

Interview with Francisco Delgado (Participación Ciudadana)

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

In most of the cases the ballots are secret, but an isolated event showed that the ballots could not be protected completely.

In Muisne, (Esmeraldas) the citizens said people were voting who were not registered in the electoral ballots of Muisne. This caused fights and two people were wounded and the elections were suspended. Although the Organization of American State declared that there were no acts of fraud and that the elections were transparent, the citizens thought there was fraud because there were problems in the vote counting.

References:

www.elcomercio.com.ec (16 de Octubre del 2006) Los disturbios de Muisne dejaron 2 heridos y urnas quemadas

www.elcomercio.com.ec (17 de Octubre del 2006) ¿Prueba de fraude o cartón para reciclar?

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are held according to regular schedules, president, vice president and deputies are elected every four years.

References:

www.tse.gov.ec

Law on Elections, Article 46 and 49

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Article 114 of the Constitution establishes the right to establish political parties will be guaranteed and to participate in them in the established conditions expressed by the Law.

References:

National Constitution, Article 114
Law on Elections, Article 9

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Article 26 of the National Constitution indicates that Ecuadorean citizens will enjoy the right to choose and to be chosen.

References:

National Constitution, Article 26

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

All the citizens can group in political movements that later would be constituted in political parties. They have to complete the requirements enacted by Tribunal Supremo Electoral (TSE), after to introduce and complete the respective steps, the TSE will qualify the political movements. Once TSE approve the constitution of the political party, it will compete in the next elections. Ecuador has a lot of political parties; in the elections of 2006 were 142 political movements an increase of 97.2% more than the political movements that were written in the elections of the 2002. Therefore, the citizens believe in new political figures, because they could break the traditional outlines and make changes that didn't carry out by traditional parties. For that reason the Ecuadorians don not feel represented by the traditional political parties. Although those political movements don't represent a significant participation in the intention of the citizens' vote, they represent a vision of how the problems should be solved in the country.

References:

www.elcomercio.com (20 de Agosto de 2006) En el país hay cada vez más movimientos políticos , TSE Tribunal Supremo Electoral www.tse.gov.ec , Ecuador 2006: La polarización del proceso electoral escrito por Juan J Paz y Miño. <http://www.tse.gov.ec/Documentos/BOLETIN%20DE%20PRENSA%20No%20120.pdf>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

All citizens are allowed to run for political office, but they have to be affiliated to a political party or political movement.

Rafael Correa could win the presidential elections because he founded a new political movement PAIS Alliance (Alianza País). PAIS Alliance won in the second electoral turn over the political party National Action Institutional Renewal Party (PRIAN—Partido Renovador Institucional Acción Nacional), whose candidate was Álvaro Noboa. Also in the first turn, PAIS Alliance won over traditional parties like: the Social Christian Party (PSC — Partido Social Cristiano) with the candidate Cynthia Viteri, the Ecuadorian Roldosist Party (PRE — Partido Roldosista Ecuatoriano) with Fernando Rosero and the party (ID RED) with León Roldós.

References:

www.elcomercio.com (20 de Octubre de 2006) Los partidos políticos, los grandes perdedores

www.elcomercio.com (23 de Octubre de 2006) Lo positivo de la elección,

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | **75** | 50 | 25 | 0

Comments:

Ecuador is a country characterized by the political uncertainty. Rafael Correa assumed the presidency January of 2007 and the central plan of his government was to set up a Constituent Assembly. This Assembly must carry out reforms to the current Constitution. To carry out this Constituent Assembly the citizenship must be consulted in a Popular Consultation. To authorize the Popular Consultation, the government had to face opposition parties in the National Congress. These confrontations between the legislative branch and the executive branch caused a political crisis in the country.

The president Rafael Correa didn't have a political party in the National Congress, because he didn't throw candidates to deputys election. Patriotic Society Party (PSP — Partido Sociedad Patriótica) and the National Action Institutional Renewal Party (PRIAN — Partido Renovador Institucional Accion Nacional) are the biggest political forces in the National Congress. But Ecuador has a particular system of elections; the minorities are represented in the National Congress.

References:

www.elcomercio.com (20 de Diciembre de 2006) Una mayoría anticonstituyente se forja

www.elcomercio.com (21 de Octubre de 2006) PRIAN y Sociedad Patriótica tendrían mayoría en el Congreso

www.elcomercio.com (22 de Octubre de 2006) Nueva mayoría para el Congreso,

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

Article 210 of the National Constitution establishes the agency of election monitoring as the Supreme Electoral Tribunal (TSE– Tribunal Supremo Electoral) . This agency will supervise and will direct the electoral processes to elect representatives. Additionally this agency will elect representatives to deliberative agencies with international competence, in concordance with international treaties which are part of Ecuador.

Finally article 18 from Law on Elections pronounces in the same sense and indicates that the TSE is the highest electoral agency and among its functions are to organize, to direct, to watch and to guarantee the electoral processes.

References:

National Constitution, Article 210
Law on Elections, Article 18

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

Article 209 of the National Constitution, clause 4, indicates that the director of the Supreme Electoral Tribunal (TSE–Tribunal Supremo Electoral) will be appointed by the National Congress. With strict adherence to the law, this agency is protected from political interference. But as it is to be expected, the National Congress will appoint a close person to this position.

The Constitution in its article 209 and article 18 from Law on Elections determine that the TSE will be overseen by seven main directors, who will represent the political parties that have obtained the highest number of votes in the last elections.

References:

National Constitution, Article 209
Law on Elections, Article 18

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | **25** | 0

References:

www.elcomercio.com (26 de Agosto de 2006) La calificación de binomios presidenciales termina hoy

www.elcomercio.com (20 de Septiembre de 2006) Campaña electoral de Ecuador es austera y agresiva, www.eluniverso.com (28 de Agosto de 2006) Empresa española controlará el gasto electoral

Interview with Francisco Delgado (Participación Ciudadana).

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Participación Ciudadana (PC) is a Social Civil Organization, and has independence from the Tribunal Supremo Electoral (TSE). PC has participated several times like an independent observer, communicating later the transparency of the elections. The Tribunal Supremo Electoral (TSE) chooses companies or independent advertising agencies to carry out a control of the elections. These organizations have qualified and full time workers.

One of these organizations is Participación Ciudadana. Participación Ciudadana (PC) toward its Centro de Monitoreo de Medios was working in the main cities of Ecuador as Guayaquil and Quito, the employees were 16 between the two cities. The coverage was 24 hours, the pursuit of the publicity toward the outlet means was carry out in three turns: 6:00 am – 14:00 pm; 14:00 pm – 20:00 pm; 20:00 pm – 6:00 am.

References:

Interview with Francisco Delgado (Participación Ciudadana)

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The agency Infoadex tracks 50 TV channels, 250 radio stations and 30 magazines in Ecuador. However, the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) fined Infoadex US\$54,600 for not reporting electoral expenses on time, or on the Web page. The TSE and provincial tribunals, with these delays, could not have a strict control of the candidates' bills. Nevertheless, the TSE renewed the company's contract, despite these incidents, for the second turn.

The CSO Citizen Participation (PC-Participación Ciudadana) has less participation in the control of the electoral expenses, than Infoadex. PC tracks eight TV channels, 16 radio stations and 10 newspapers and carries out reports every week.

References:

www.elcomercio.com (26 de Agosto de 2006) La calificación de binomios presidenciales termina hoy

www.elcomercio.com (20 de Septiembre de 2006) Campaña electoral de Ecuador es austera y agresiva

www.elcomercio.com (22 de Octubre de 2006) Tribunal Supremo Electoral multa a empresa española Infoadex encargada de control político

www.elcomercio.com (28 de Octubre de 2006) TSE ratificó a la empresa española Infoadex para el control del gasto electoral

www.elcomercio.com (9 de Diciembre de 2006) TSE revisa multa de campañas

Interview with Francisco Delgado (Participación Ciudadana)

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) is the body that imposes penalties to candidates that make infractions.

According to the groups Infoadex and Citizen Participation (PC-Participación Ciudadana) before the end of the presidential campaign, the campaigns had already exceeded the limit of the electoral expenses. Thus the TSE imposed froze the electoral campaigns' spending. However, the candidates continued spending without the TSE's knowledge. They also benefited from indirect publicity. However, the TSE did not do anything to stop the publicity. Once the electoral campaign s concluded, Infoadex confirmed that Álvaro Noboa surpassed by 340 percent the limit of the electoral expenses and Rafael Correa by 68 percent.

According to Infoadex, Noboa overspent by US\$3,117.654 and according to PC Noboa overspent by US\$3,084.886. Despite these reports, TSE found that the candidate overspent by US\$153,928 and that he had to pay a penalty of US\$306.000. TSE demonstrated that is not impartial because Noboa should have to pay a penalty of around US\$10 million.

References:

www.elcomercio.com (9 de Diciembre de 2006) TSE revisa multa de campañas

www.elcomercio.com (16 de Noviembre de 2006) Noboa sobrepasó límite del gasto electoral con \$122, 965

www.elcomercio.com (17 de Noviembre de 2006) TSE inmovilizó la cuenta del gasto electoral de Álvaro Noboa

www.elcomercio.com (17 de Noviembre de 2006) TSE inmovilizó cuentas de gasto electoral de Correa y Noboa

www.elcomercio.com (18 de Noviembre de 2006) TSE congela las cuentas de los candidatos

www.elcomercio.com (20 de Noviembre de 2006) Participación Ciudadana critica al TSE por el gasto

www.ciudadaniainformada.com (17 de Noviembre de 2006) Los grandes gastos de Noboa y Correa y la publicidad disfrazada

www.elcomercio.com (9 de Diciembre de 2006) TSE revisa multa de campañas

Entrevista con Francisco Delgado (Participación Ciudadana)

www.elmercurio.com.ec (2007/04/04) TSE impone sanción a Alvaro Noboa.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

96

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The System of voter registration is safe. Some flaws were at hand as incomplete ballots, but the system of register has not presented flaws.

The Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) publicizes the electoral process and the the importance of citizen participation in the elections through radio, television and print media.

The first round of elections were carried out on Oct. 15, 2006. The TSE promulgated the official results after 12 days. The TSE hired a Brazilian company called E-VOTE to make a quick account of votes, however this company failed and TSE canceled its contract.

The electoral observers, including Citizen Participation (PC-Participación Ciudadana) and the Organization of American States (OEA-Organización de Estados Americanos) ratified the transparency of the elections and the lack of fraud. Although they found that the TSE made an error to hire E-VOTE.

However, citizens were still worried about fraud due to the collapse of quick count of the votes by the company E-VOTE. University officials carried out an audit to the systems of TSE to confirm the transparency of the voting system. These results were favorable for the TSE, because it was demonstrated that there was no fraud in the first round. The official results of the second round were proclaimed after 14 days, the OEA found that the elections were totally transparent.

References:

www.elcomercio.com (31 de Agosto de 2006) La contratación de E-VOTE fue de USD 5,2 millones

www.elcomercio.com (1 de Septiembre de 2006) Una empresa brasileña transmitirá el conteo electoral

www.elcomercio.com (16 de Octubre de 2006) TSE anunció hoy la cancelación del contrato de la empresa E-VOTE

www.elcomercio.com (16 de Octubre de 2006) E-VOTE no logró cumplir con conteo rápido

www.elcomercio.com (17 de Octubre de 2006) El colapso en el envío de datos provocó una crisis

www.elcomercio.com (17 de Octubre de 2006) OEA descarta fraude en elecciones

www.elcomercio.com (18 de Octubre de 2006) El fracaso de E-VOTE no afecta la votación

www.elcomercio.com (27 de Octubre de 2006) TSE promulgó los resultados oficiales de primera vuelta presidencial

www.elcomercio.com (22 de Noviembre de 2006) Un informe legitima transparencia del TSE en la primera vuelta electoral

www.elcomercio.com (27 de Noviembre de 2006) OEA: las elecciones se desarrollaron con normalidad

www.elcomercio.com (4 de Diciembre de 2006) TSE finalizó conteo oficial de votos: Rafael Correa tiene 56.67%, Álvaro Noboa 43.33%.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The Ley de Elecciones (Law on Elections) establishes an internal administrative procedure to challenge the election results.

References:

Article 196 National Constitution

Article 38 de la ley de modernización

Article 94, 95 Ley de Elecciones (Impugnaciones)

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

If a candidate thinks there has been fraud, they can turn to the judicial system.

During the first round of the presidential elections, Rafael Correa was in the second position, as the candidate Álvaro Noboa won the elections. Correa suspected computer fraud was the cause of the collapse of the quick vote calculations by the Brazilian company E-VOTE. The Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) investigated and found that there was no computer crime.

References:

www.elcomercio.com (16 de Octubre de 2006) Correa insiste en que ganó la primera vuelta

www.elcomercio.com (17 de Octubre de 2006) Correa busca aliados, la estrategia y fondos,

www.elcomercio.com (17 de Octubre de 2006) Fiscalía impidió salida del país de empresa E-VOTE

www.elcomercio.com (18 de Octubre de 2006) Una indagación a la empresa

www.elcomercio.com (18 de Octubre de 2006) La Fiscalía puso vigilancia al sistema informático de E-VOTE,

www.elcomercio.com (8 de Noviembre de 2006) TSE cobró las garantías a la empresa brasileña E-VOTE

www.elcomercio.com (2 de Diciembre de 2006).

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

Comments:

The military and security forces were quite neutral; keeping the order and guiding the voters to their respective electoral places.

References:

Interview with Francisco Delgado (Participación Ciudadana)

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Ecuador work with international institutions such as the Organization of American States (OEA–Organización de Estados Americanos), whose principle goal is to carry out a transparent elections. Article 3 of the Reglamento de Observación (Election Observation Regulations) determines that the observers can be international or national. Article 6 of the regulation authorizes observers to carry out a series of activities to monitor the elections.

References:

Article 3 and 6 Reglamento de Observación Electoral

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

Comments:

As international observer, the Organization of American States (OEA–Organización de Estados Americanos) signed an agreement with the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) for the surveillance of the electoral process guaranteeing transparency in the elections.

The inspection of the electoral process covers all stages, at the technical levels, computer levels, constitution of the electoral meetings, and partial recounts of votes. The OEA conformed 140 observers, like the groups Citizen Participation (PC–Participación Ciudadana) and the Foundation Q'ellkaj. PC observed the elections inside and outside of the country. For the elections abroad, PC had volunteers in consulates and embassies of the foreign countries.

References:

www.elcomercio.com (8 de Septiembre de 2006) TSE firma convenio con OEA para vigilancia de comicios

www.elcomercio.com (25 de Octubre de 2006) En la final no habrá envío rápido de votos

www.elcomercio.com (1 de Enero de 2007) PC afianza su credibilidad en duro proceso

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

80 II-3. Political Financing

20. Are there regulations governing political financing?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The political parties recognized by the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) cannot accept contributions from certain groups, including activities or operations prohibited by the law; contributions of foreign governments; non-governmental organizations, foreign people, financial institutions, etc that have contracts with the State. Organizations with legal proceedings against the state are not allowed to contribute in campaigns.

References:

Article 21 Ley Orgánica de control del Gasto y Propaganda Electoral
Ley de Partidos Políticos

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | **NO**

Comments:

In this case, there is no limit to legal contributions from natural people.

References:

There are no explicit laws.

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

The law says that corporate contributions may not exceed the 10 percent of the maximum total of authorized electoral expense of each candidate.

References:

Article 23 Ley Orgánica de Control del Gasto y Propaganda Electoral.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

Spending limits exist, but differ for each candidate, with the goal of equal opportunities.

References:

Ley Orgánica de Control del Gasto y Propaganda Electoral
www.tse.gov.ec

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The law of elections says political parties should make known their sources of financing. The law says that after receiving a contribution during a campaign, the party must register the contribution and provide proof. Once the campaign is over the political parties must send this information (origin of incomes, items of expenditures, contributors, etc) to the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral).

References:

Article 58 Ley de Partidos Políticos

Article 19 de la Ley Orgánica de control del Gasto y Propaganda Electoral

Article 21 de la Ley Orgánica de Control del Gasto y Propaganda electoral

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous

donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The law of elections establishes that the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) should oversee of the finances of the political parties. Nevertheless the independent audit should not be carried out necessarily by the TSE.

The resolution of the TSE of 2006/08/22, published in the official register Not 339, puts the responsibility for audits with private companies. These audits are carried out, in cases of discrepancies among the monitoring agency hired by the TSE and the accounts of the political parties.

References:

Resolución del Tribunal Supremo Electoral (TSE) 2006/08/22, registro oficial No. 339.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

Article 209 of the National Constitution establishes that the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) is the body responsible for supervising, to controlling and auditing to the political parties. It is carried out by Unidad de Control.

References:

National Constitution, Article 209

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

According to the Ecuadorian laws, there are no limits to the campaign donations made by people. However, there are statutes prohibiting contributions to electoral campaigns from foreign people, and people involved in illicit business, such as drug trafficking.

The political parties and political movements have the obligation to disclose expenditures to the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) through their campaign treasurers. The TSE should review them and should inquire about the sources of the individual contributions.

Citizen Participation (PC–Participación Ciudadana) does not have information about individual contributions, because the TSE give out this information until it finishes the process of reviewing the expenditures. Despite these reviews, two presidential candidates in the second round spent an excess of the electoral limit, according to PC

References:

Interview with Simón Jaramillo (Participación Ciudadana)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

In accordance with the laws of Ecuador, the companies may contribute to the electoral campaign of a particular candidate as much as 10 percent of the limit of the electoral expenses. But in reality, Alvaro Noboa is the owner of a holding of companies that finance the presidential campaign.

Citizen Participation (PC–Participación Ciudadana) does not agree with the contributions to the electoral process from companies,

because this could create relationships between the economic groups and the political parties. The contribution of the company could take place without furthering a specific interest or could it be a quid pro quo.”

References:

Interview with Simón Jaramillo (Participación Ciudadana).

Article 23 from Ley Orgánica de Elecciones.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

In the last electoral campaign, two candidates exceeded the expenditure limits. Despite the freezing of the campaign spending, the candidates created ways to continue spending more.

References:

Interview with Simón Jaramillo (Participación Ciudadana).

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) is authorized to carry out investigations with the objective to know the origin of the contributions in the electoral campaigns. But generally, the accusations are carried out by opponent candidates whose investigations have other sources.

Ramiro Gonzáles, candidate for vice-president by the political party (ID-RED) accused Rafael Correa of receiving contributions from the President Hugo Chávez. Although the candidate Rafael Correa denied this accusation and reiterated that in the first round his electoral campaign had a deficit. On the campaign's home page it specifies the contributors to its campaign. After the second round, the presidential candidate Álvaro Noboa investigated with its detectives that the contributions of Rafael's Correa campaign were illegal money, because the financiers had not declared the taxes to the Internal Revenue Service. Due to those accusations, the TSE investigated the contributions to Rafael Correa's campaign.

References:

www.elcomercio.com (12 de Septiembre de 2006) R. Gonzáles acusa a Rafael Correa de recibir dinero de Venezuela

www.elcomercio.com (1 de Noviembre de 2006) Correa dice no tener dinero y Álvaro Noboa llega hoy a Quito

www.elcomercio.com (1 de Noviembre de 2006) Correa busca fondos entre los empresarios

www.elcomercio.com (9 de Noviembre de 2006) Un importador financia mi campaña: Correa

www.elcomercio.com (6 de Diciembre de 2006) Noboa rompe silencio y decide indagar a Correa

www.elcomercio.com (6 de Diciembre de 2006) Los aportes para Rafael Correa serán investigados por el TSE

www.elcomercio.com (12 de Diciembre de 2006) Las denuncias de Noboa buscan descalificación de Correa

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) imposes sanctions when it demonstrates that there are infractions.

Álvaro Noboa had to pay a penalty, because he surpassed the electoral expense limits. Rafael Correa has to pay a penalty too, but the TSE has not finished reviewing his expenditures.

References:

Interview with Simón Jaramillo (Participación Ciudadana).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

When the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) suspects infractions it should arrange an audit. But these audits are limited because the political parties send the information to the TSE (Tribunal Provincial, when the elections are at that level), this agency analyzes and reviews the documentation. Some experts indicate the necessity of external audits.

References:

www.elcomercio.com (5 de Noviembre de 2006) La ley señala que debe contarse el gasto de regalos y de espectáculos,

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Rafael Correa publicized the contributors to his electoral campaign to the media on the home page of his party, Alianza País. The others candidates did not disclose their sources of financing. The Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) has not yet disclosed the sources because the review process has not ended.

References:

www.elcomercio.com (12 de Septiembre de 2006) R. Gonzáles acusa a Rafael Correa de recibir dinero de Venezuela

www.elcomercio.com (1 de Noviembre de 2006) Correa dice no tener dinero y Álvaro Noboa llega hoy a Quito

www.elcomercio.com (1 de Noviembre de 2006) Correa busca fondos entre los empresarios

www.elcomercio.com (9 de Noviembre de 2006) Un importador financia mi campaña: Correa

www.elcomercio.com (6 de Diciembre de 2006) Noboa rompe silencio y decide indagar a Correa

www.elcomercio.com (6 de Diciembre de 2006) Los aportes para Rafael Correa serán investigados por el TSE

www.elcomercio.com (12 de Diciembre de 2006) Las denuncias de Noboa buscan descalificación de Correa

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During the electoral campaign the citizens could enter in the home page of Alianza País to know the donors. At the moment, if citizens were to go to the home page of the the Supreme Electoral Tribunal (TSE-Tribunal Supremo Electoral) they could not find the information because the review process has not ended.

References:

Tribunal Supremo Electoral (TSE) www.tse.gov.ec

Interview with Simón Jaramillo (Participación Ciudadana)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public information is free. Yet, although the information is free, the problem is that the information is not available to the common citizen.

References:

Monitoreo de Partidos Políticos, Coalición Acceso.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. ⁵⁸Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

National Constitution, Article 23 No. 1 3 CN, todos los ciudadanos son iguales ante la ley; Article 23 No. 15 CN, El derecho a dirigir quejas y peticiones a las autoridades; and Article 95.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

50

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

The National Constitution, specifies that the president every Jan. 15 should present in the National Congress an execution of government plan.

During his presidency Rafael Correa is interviewed every Saturday. Using broadcasting media (especially radio), the president discusses the priorities of the government, explains about policy decisions, etc. He also takes questions from journalists.

However, Correa has been criticized by different media outlets, for ousting an editor from El Universo” newspaper when he did not like a question. Correa alleged that the editor, Emilio Palacio, was not behaving properly.

At the ministerial levels, there are not reported cases of regular interviews with media outlet, but they inform the media of their achievements when this is necessary.

References:

National Constitution, Article 17

www.elhoy.com.ec, 25/02/2007, Rafael Correa fustiga a la oposición.

www.elhoy.com.ec, 11/03/2007 Las siete cadenas de los 50 días.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

Article 196 of the National Constitution says: the administrative acts by any authority of the State, could be reviewed before the corresponding bodies of the judiciary. The executive makes administrative acts, therefore the actions of the executive can be reviewed by the administrative route or the judicial route.

References:

Article 196 of the National Constitution

Article 23 Ley de Control Constitucional

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Interview with PhD Wilson Perez, expert in Institutional themes (FLACSO).

Media

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The President Rafael Correa has made use the article 180 of the National Constitution several times during the first half of 2007. Sectors like Agriculture, Health, Roads, Education, etc, have been declared in emergency. Until now, Correa has declared 12 states of emergency by decree.

References:

www.elhoy.com.ec 27/02/07 Rafael Correa decreta la emergencia vial y encarga obras al Ejército

www.elhoy.com.ec 26/03/07 EL DECRETO 147 delega la ejecución de las obras al ejército y este puede eludir procesos pre contractuales

www.elhoy.com.ec 26/03/07 Las emergencias deben ser de estricta excepción”

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

50

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

The President of the Republic enjoys immunity.

Article 130 of the National Constitution says a judge can remove presidential immunity with the approval of 2/3 of the National Congress.

References:

National Constitution: Article 23 No. 3 CN establece la igualdad ante la ley and article 130, No. 10.

Article 13 No2, ic.9 Ley Orgánica de la Función Judicial.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

At the ministerial-level officials have fuero especial", they do not have immunity.

References:

National Constitution, article 23 No. 3 Igualdad ante la ley" (Equality Before the Law)

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

59

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The form in which they should declare their assets is designed by the State Comptroller (CGE–Contraloría General del Estado).

References:

Article 122 National Constitution of Ecuador

Article 5 Reglamento para la declaración jurada de bienes.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

The Ministers are appointed by the president. In Ecuador the Ministers are not appointed by popular elections, but they handle public resources so they must file an asset disclosure form.

References:

National Constitution: Articles 122 and 176

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Article 121 of the National Constitution establishes: The norms to establish the administrative, civil and penal responsibility for the handling and administration of funds, goods or public resources, will be applied to the dignitaries, officials and public servants of the Organisms and Institutions of the State).

The members of the executive branch cannot accept gifts of any nature, because it is concession of crime.

The articles 285 and 264 from Penal Code, specifically prohibit to ask or to receive (bribe) money, favors, keepsakes or gifts.

References:

Article 121 National Constitution

Article 285, 264 Código Penal

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The article 122 of the National Constitution says when there are serious indications of use of a front man, the Controller's Office will be able to request similar declarations of third persons linked with public officials.

References:

Article 122 of the National Constitution of Ecuador

Article 31 Nro.1 La Ley Orgánica de la Contraloría General del Estado

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

It is a civil right and therefore once finished his period public officials can take any private position freely. However, the law prohibits performing two public functions at the same time, except for the case of university teaching.

References:

National Constitution: Article 23 No. 3 and Article 125
Article 12 Ley Orgánica de Servicio Civil y Carrera Administrativa

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

The law has no restrictions, some of heads at the ministerial level have entered the private sector.

References:

Interview with Dr. Wilson Perez (expert in Institutional themes, FLACSO).
Media Outlet

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | **50** | 25 | 0

Comments:

When President Rafael Correa assumed his position in January 2007, he received a gift from President Hugo Chávez (the sword of the Liberator Bolívar). This one was the opportunity to make a public call to all civil servants of this one branch not to accept any type of gifts. Correa accepted this gift, but like a gift from Venezuela to Ecuador. Correa has indicated often that this government is a government of clean hands.”

References:

Speeches and interviews regarding the possessions of President Rafael Correa.

News in several media.

www.elmercurio.com.ec Hacia la revolución ciudadana 2007/01/16

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | **25** | 0

Comments:

The Civic Corruption Control Commission (CCCC–Control of Corruption Comisión Control Cívico de la Corrupción) and the State Comptroller(CGE–Contraloría General del Estado CGE) are the agencies that make audits. These agencies need a previous accusation, before starting an investigation.

References:

There were not reported cases in which Comisión Control Cívico de la Corrupción (CCCC) and Contraloría General del Estado (CGE) have initiated audits at ministerial levels.

Outlet media

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

33

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The State guarantees the right to access sources of information, except on national defense documents.

References:

National Constitution, Article 81 and Article 4.

Article 4 Reglamento a la Ley de Transparencia y Acceso a la Información Pública

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of the head of estate and government are not publicly available, and to get them is sometimes very difficult. The deputies in the National Congress must disclosure their assets before taking positions. But, again these records are not publicly available.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=77877&anio=2007&mes=6&dia=24 2007/06/24 La patria de todos

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The money is not a barrier; these records are rarely available to the common citizen.

References:

Interview with Dr. Wilson Perez expert in Institutional themes, FLACSO.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The ruling political party of President Rafael Correa is Alianza País and one of the principal objectives is to establish a Constituent Assembly. The National Congress has denounced the use of public funds through its political party to promote the Assembly.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=62722&anio=2007&mes=2&dia=28 2007/02/28 Congreso pide investigar a Gobierno por promocionar a Alianza País con fondos públicos.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

33

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Both branches are independent. Ecuador has a democratic system, the balance of powers precludes interference between the branches of government.

References:

National Constitution: Article 119, Principio de No injerencia; Article 199, Principio de Legalidad

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Judiciary System has jurisdiction with regard to resolutions that have been taken by the National Parliament.

References:

Article 275 of the National Constitution

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Article 23 No. 3 of the Constitution establishes equality before the law. But the Congress is required to lift the parliamentary immunity of the deputies.

References:

National Constitution, Article 23 and 137

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

54

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Article 122 of the National Constitution

Article 5 Reglamento para la declaración jurada de bienes.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

Once the deputy has finished their term, there are no employment restrictions, however it is prohibited to carry out certain activities in the private sector while in public office, except teach in universities.

References:

National Constitution: Article 23, No. 3 and Article 125

Ley Orgánica de Servicio Civil y Carrera Administrativa: Article 12

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

The members of the National Legislature cannot accept gifts of any nature, because it is a crime. Articles 285 and 264 from Penal Code specifically prohibit to ask or to receive (bribes) money, favors, or gifts.

References:

Article 121 of the National Constitution
Articles 285 and 264 Código Penal

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

The last article determines that audits must be carried out in cases of infraction indications.

References:

Article. 122 of the National Constitution
Article 31 No. 1 La Ley Orgánica de la Contraloría General del Estado.
Article 1 Resolución del TSE 2006/08/22, registro oficial No. 339 Reglamento para Contratación de Servicios de Servicios de Auditoría con Compañías Privadas de Auditoría
Comments:

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are cases of legislators working in their own business.

References:

There are no laws that restrict deputies entrance into the private sector after living the public sector.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Any kind of gifts or hospitality offered to deputies is an illicit act legally speaking.

It is very difficult to observe and document this behavior in the practice, however.

References:

Media

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups

or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | **25** | 0

Comments:

The Fiscalía General del Estado (General office of the Public Prosecutor of the State) brought an investigation against the Deputy Salvador Quishpe for alleged illegal enrichment. However, the deputy alleged the investigation was an act of retaliation because he accused the public prosecutor of plagiarism.

The Comisión Control Cívico de la Corrupción (CCCC) and Contraloría General del Estado are agencies for making process of audit. However, these agencies need a previous accusation, before to starting an investigation.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=77792&anio=2007&mes=6&dia=23 2007/06/23 La Fiscalía investiga a Salvador Quishpe.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=75920&anio=2007&mes=6&dia=9 2007/06/09 Salvador Quishpe acusa al fiscal general de Ecuador por plagio de publicación

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

33

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

The National Constitution guarantees the access to information except in cases of national defense.

References:

National Constitution: Article 81 and Article 94

Reglamento a la Ley de Transparencia y Acceso a la Información Pública: Article 4

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The deputies in the National Congress must disclosure their asset before to take positions. But, again these records are not publicly available.

References:

(http://www.elcomercio.com/solo_texto_search.asp?id_noticia=81360&anio=2007&mes=7&dia=19) El Congreso Nacional está dispuesto a abrir sus cuentas por sospecha de corrupción.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The money is not a barrier; these records are rarely available to the common citizen.

References:

interview with Dr. Wilson Perez (expert in Institutional themes, FLACSO)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

92

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The State guarantees the right to access to sources of information.

It is logical that the people can access to legislative documents, because this branch is charged with creating the laws .

References:

National Constitution: Article 81 and Article 94

Article 4 Reglamento a la Ley de Transparencia y Acceso a la Información Pública.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The document records are publicly available, and getting them is very easy.

References:

<http://www.congreso.gov.ec/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

These documents are available online.

References:

<http://www.congreso.gov.ec/>

<http://www.congreso.gov.ec/frame.aspx?url=/legislacion/fraproyectosPresentados.aspx>

<http://www.congreso.gov.ec/frame.aspx?url=/legislacion/fraproyectosAprobados.aspx>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Article 201 and 204 of the National Constitution indicate the requirements to be a magistrate of the Court of Supreme Justice (CSJ–Corte Suprema de Justicia).

The Resolution of the Consejo Nacional de la Judicatura (CNJ), settles the steps and requirements necessary in the process of selection in order for it to be transparent

References:

National Constitution: Article 201 and 204

Resolución de Consejo Nacional de la Judicatura (CNJ) publicada en el Registro Oficial 345 de 2006/08/30.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The judges must enter in a competitive selection process.

For example, articles eight and nine of the Instructivo para el Concurso de Merecimientos y Oposición para Integrar la Terna de Ministro Fiscal General del Estado,” delineate how to choose the head of the Public Prosecutor’s Office.

In May of the last year, the Supreme Court arranged that the judiciary must be reconstructed. The objective of this resolution was to remove 1.400 judicial employees who were working in prorogued functions and to designate replacements through public contests.

Although the “Consejo Nacional de la Judicatura” (CNJ) was delayed for more than a year carrying out a contest of merits and opposition, in which 209 interested judges participated, just 138 were selected. The court hopes that the next phases will going take less than a year.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=62181&anio=2007&mes=2&dia=24 2007/04/22 211 vacantes en la Fiscalía General.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=72839&anio=2007&mes=5&dia=18 2007/05/18 Correa da un espaldarazo a la Corte y compromete su ayuda

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=78023&anio=2007&mes=6&dia=25 2007/06/25 La reestructuración judicial culmina en su primera fase

2007/06/07 www.hoy.com.ec En promedio, nuevos jueces tuvieron notas de 74 sobre 100.

2007/06/07 www.hoy.com.ec La probidad será la clave para elegir a ministros de cortes.

(2007/05/07 www.hoy.com.ec CNJ Alista Segunda Convocatoria).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

Comments:

The National Council of the Judiciary (CNJ–Consejo Nacional de la Judicatura) is the disciplinary office of the judiciary. The law determines its integration, the form of designation of its members, its structure and its functions. The administrative, economic and financial management of the judiciary should carry out in de-concentrated form.

References:

National Constitution: Article 198 CN (de los órganos de la función judicial); Article 199 CN (de la independencia de la función judicial); and Article 206.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

75

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

The resolutions must contain complete foundations.

References:

National Constitution: Article 24 No. 13 CN

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

The problem is not the lack of reasons that can have been given by the judges; the greater problem is the credibility of their decisions. According to the study Auditoría para la Democracia: Ecuador 2006, the confidence in the ability of the Ecuadorian legal system in guaranteeing a right judgment is insignificant.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=60192&anio=2007&mes=2&dia=9
200/02/09 Poca confianza en los tribunales.

www.elmercurio.com.ec 2007/06/27 Detenidos sin sentencia.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The National Council of the Judiciary is the disciplinary body of the judiciary. This agency sanctions administratively.

References:

National Constitution: Article 206

Article 1 Ley Orgánica del Consejo Nacional de la Judicatura.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The National Council of the Judiciary (CNJ–Consejo Nacional de la Judicatura) is the administrative and disciplinary agency of the judiciary.

In the confirmation process of the members of the CNJ there is a participation by the Supreme Court, sub national courts, the faculties of law, and the judicial associations. It is an internal process of the judiciary.

References:

Article 1 Ley Orgánica del Consejo Nacional de la Judicatura.

Article 2 Ley Orgánica del Consejo Nacional de la Judicatura.(de la conformación)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Council of the Judiciary (CNJ– Consejo Nacional de la Judicatura) has launched several investigations in civil and penal branches; the objective was to determine if the judges were acting in accordance with the law. Nevertheless it is possible to observe that this body has limitations in the effectiveness of its investigations.

The CNJ, through a specialized commission, investigated a sampling of judicial processes between 2005 and 2006 to determine irregularity of opinions committed by the judges.

The CNJ started administrative processes against judicial civil servants to establish individual responsibilities in supposed acts of corruption.

References:

www.elmercurio.com.ec 2006/06/27 Sigue evaluación para jueces y fiscales.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=66277&anio=2007&mes=3&dia=28 2007/28/03 La Judicatura está dispuesta a tramitar posible queja del TSE contra Juez del Guayas

www.hoy.com.ec 2007/01/20Caso Videos”: el Consejo Nacional de la Judicatura inicia una investigación.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are several cases in which the National Council of the Judiciary (CNJ– Consejo Nacional de la Judicatura) sanctioned to judges who were not acting in accordance to the law.

The CNJ accepted from TSE a complaint against a judge, the CNJ launched an investigation and made the decision to dismiss him.

The president of the Superior Court in Chimborazo, and the ministers judges Armando Vinueza and Luis Oña Mendoza were removed from their positions by the CNJ. The CNJ ruled that the judicial servants acted with lack of well-known probity and aptness in the exercise of their functions, contravening the legal rules of the Constitution.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=66277&anio=2007&mes=3&dia=28 2007/03/28 La Judicatura está dispuesta a tramitar posible queja del TSE contra Juez del Guayas www.hoy.com.ec 2007/04/06. La Judicatura destituye a juez Juan José Ramírez.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=72697&anio=2007&mes=5&dia=17 2007/05/17 El Titular de la Corte de Chimborazo fue destituido.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

46

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

Article 5 f determines the requirements that must be gathered on the asset declaration form.

References:

National Constitution: Article 122
Article 5 del Reglamento para la declaración jurada de bienes.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Members of the judicial branch cannot accept gifts of any nature.

Article 285 and 264 from the Penal Code specifically prohibit to ask for or to receive (bribe) money, favors, or gifts. Article 121 of the National Constitution also makes mention to these crimes.

References:

National Constitution: Article 121
Article 285 and 264 Código Penal.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

When there exist serious indications of use of a front man, the Controller's Office will be able to request similar declarations of third persons linked to public officials.

Article 31 No.1 of the Law of the General Controller's Office of the State (Ley Orgánica de la Contraloría General del Estado) authorizes the practice of an external audit in any case and in anyone of its modalities.

References:

National Constitution: Article 122
Article 31 No. 1 La Ley Orgánica de la Contraloría General del Estado

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

It is a civil right and therefore once a judge has finished his or her period he or she can take any private position freely. The law prohibits performing two public functions at the same time, except for the case of university teaching.

References:

National Constitution: Articles 23, 125 and 205

Article. 12 Ley Orgánica de Servicio Civil y Carrera Administrativa.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no restrictions.

References:

Outlet means.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

Comments:

If a judge accept any kind of a gift, that constitutes a crime. There is evidence through several cases that have been reported by media outlets, in which judges and judicial servants have accepted bribes.

The USAID study shows Another great problem that faces the judicial power in Ecuador is corruption. Ecuadorians consider the corruption as a serious problem in the country and 68 percent of the population thinks that the corruption between the officials government is wide-spread.. They launched a study using surveys, and recognized wide-spread bribes in the judicial system. This is a case in which two judges of the Penals Third Office of the i Supreme Court are implicated in a case of bribes.

References:

Auditoría de la democracia: Ecuador 2006 USAID Ecuador.

www.elmercurio.com.ec 2006/09/11 LOS BORBUA VIDEOS.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

Comments:

This is done by Civil Commission of Corruption Control (CCCC–Comisión Control Cívico de la Corrupción) and General Controller of the State (CGE–Contraloría General del Estado).

Nevertheless, there is no formal process to corroborate information declared and the real information. The agencies only take action when they suspect deceptive information.

References:

Media

www.hoy.com.ec 2007/01/02 El caso Bermeo lleva tres años en la Suprema sin sentencia

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

67

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Article 81 of the National Constitution guarantees the right of access to information.

In accordance with the law, people can access the financial assets of members of the national level judiciary.

References:

National Constitution: Article 81 and Article 94

Article 4, Ley de Transparencia y Acceso a la Información Pública.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The members of the Superior and Supreme Courts should declare their assets by public declaration in a notary. This is a requirement, before to take their jobs. This is a public document, and the common citizen can access it.

The common citizen must spend a considerable amount of time” to access these documents. The slowness of the judicial function is a barrier.

References:

The declaration of goods of the General Prosecutor of the Nation in a Public

Notary: http://www.elcomercio.com/solo_texto_search.asp?id_noticia=62181&anio=2007&mes=2&dia=24 211 vacantes en la Fiscalía General

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The cost to access this document is not difficult, depending the numbers of pages could be US\$10 to US\$15 USD. The central problem is that the information is not publicly available.

References:

www.elmercurio.com.ec 2006/09/25 Cuentas aún no se hacen públicas.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

37. Can the legislature provide input to the national budget?

50

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

The Constitution authorizes to the National Congress to approve the budget, but the same Constitution does not authorize to deny it. The laws indicate that the National Congress will not be able to increase the amount of income and expenditures in the pro forma. During the execution of the budget, the Executive branch needs the prior approval of the Congress to increase expenses beyond the percentage determined by the law.

References:

National Constitution: Article 130 No. 13 and Article 258

Article 75 Ley Orgánica de Administración Financiera y Control (LOAFYC).

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The National Budget must be approved by the Congress. The law indicates that this institution must watch" the execution.

It is important to emphasize that there is a difference between "to approve" and "to execute" the budget. The approval is a duty of the Congress and the execution corresponds to Ministry of Economy and Finance (MEF–Ministerio de Economía y Finanzas).

References:

Article 3 lit (a) Ley No. 18 R.O. 1992/11/30.

Article 4 lit. (a) Ley No. 18 R.O. 1992/11/30.

Article 130 of National Constitution, No. 13.

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

The Budget is developed and executed by the executive branch, and one of the characteristics in the budget is the little gap to make changes by the National Congress. Almost all expenditures are pre-assigned, this leave little margin to make big changes in the National Budget by the National Congress. The National Congress participates with little input in the approval.

References:

Article 4 lit. (a) Ley No. 18 R.O. 1992/11/30.

El Congreso Nacional aprobará el presupuesto únicamente por sectores de ingresos y gastos y no podrá incrementar el monto estimado de ingresos y egresos previstos en la proforma presupuestaria presentada por el Ministerio de Finanzas y Crédito Público.

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The National Congress is not a political arena to discuss economic topics, especially budgetary ones, because this is a political branch. Additionally, the political parties are fragmented in Ecuador, the necessity to make coalitions are crucial to approve it.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

In Ecuador has some CSOs that may have a voice, but they can not influence the endorsement of the budget.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

Once the National Budget is approved by the National Congress, it is published in the Official Register (RO– Registro Oficial). This document has the budget allocation by group of expenditures. The common citizen can access to budget information in the Ministry of Economy and Finance (MEF– Ministerio de Economía y Finanzas) too. But, it is important to indicate that there is a big difference between what is budget and what is executed.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.
Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The committee of Tributario, Fiscal, Bancario y Presupuesto” provides oversight over the national budget.

Article 211 establishes that the General Controller of the State (CGE–Contraloría General del Estado) operate like an organization of audit that observes that the budget is applied correctly.

References:

http://www.congreso.gov.ec/frame.aspx?url=/comisiones/fraComision.aspx?pk_comision=15. (National Congress, Fiscalization Commission)

National Constitution: Article 211

Article 31, No.1 and No. 2 Ley Orgánica de la Contraloría General del Estado

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

31

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Economy and Finance (MEF–Ministerio de Economía y Finanzas) send three times a year a document to the Commission on the Tributary, Finance, Banking and Budget (Comisión de lo Tributario, Fiscal, Bancario y Presupuesto) in the National Congress. . This gives information on cash flow and does not have a clear execution details.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Committees are integrated with all political parties, but the parties with bigger participation are usually the parties that obtained more votes in the preceding election, and they have the priority to integrate the Commission.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Committee is structured by politics and their decisions are political.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

The Commission on the Tributary, Finance, Banking and Budget makes the investigation. And if this Commission finds an irregularity, the Commission of Fiscalización assumes the respective duty.

References:

Interview with M.Sc. Fabián Carrillo, expert in budget process.

Carrillo, F.: Los Recursos en el Presupuesto 2007: nada Nuevo bajo el sol, Ciudadanizando las Políticas, Grupo FARO, Quito, abril 2007.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁴⁹Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The goal of the civil service law is that the civil servants have qualities like: impartiality, independence but mainly effectiveness. Additionally the law determines that the General Controller of the State (CGE–Contraloría General del Estado) must investigate and evaluate in terms of cost and time, the legality, effectiveness and transparency, of the public civil servants.

References:

Article 2 Ley Orgánica de Servicio Civil y Carrera Administrativa.

Article 31 No.4 Ley Orgánica de la Contraloría General del Estado.

Article 4 No.4 Norma Técnica del SENRES.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The law prohibits to hire or to designate family members of the dignitary or civil servant in the same organization.

Additionally article 125 inc.2 of the National Constitution of Ecuador prohibit nepotism.

References:

National Constitution Article 125

Article 7 of the Ley Orgánica de Servicio Civil y Carrera Administrativa.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The law does not establish this one mechanism explicitly. Depending on the damage, civil servants could use the Labor Law, the Civil Service Law, the Penal Code, etc. The Tribunal Constitucional would be an outside mechanism of last resort.

References:

National Constitution: Article 23. No. 5

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

Article 50 of the civil service law indicates, that the civil servants convicted of corruption will not be able to exert functions for a period of two years, but once finished that time will be able to appeal and to enter in the public sector again. But re-entry will not be able to occur in the same institution of the State, of which he or she was dismissed. In cases of the use of public resources to gain personal benefits or bribes, they will never be able to return on the public sector.

References:

Article 16 Ley de Servicio Civil y Carrera Administrativa.

Article 49 lit.c) Ley de Servicio Civil y Carrera Administrativa. (Causales de destitución)

Article 50 Ley de Servicio Civil y Carrera Administrativa.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

58

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants in Ecuador do not have complete independence from political interference, the heads of different branches in the public sector, public's enterprises, and ministries, have an influence at the civil servants' level. Notwithstanding, the Secretaría Nacional de Remuneraciones (SENRES), is the Agency of Administration and Regulation of the civil servants. Political interference is less limited, because SENRES has jurisdiction over civil servants.

References:

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

The agency that is in charge of evaluating, training, and appointments is the SENRES (Secretaría Nacional de Remuneraciones). The SENRES has legal function at the beginning of February of 2006; prior the Institutions of the Public Sector had their own criteria of appointments, hirings, and evaluation. SENRES provides a general criterion, but each institution applies this one norm.

There are few institutions in the public sector, which technical skills and experience are key factors for making appointments. Institutions like Banco Central, Servicio de Rentas Internas (SRI), and Contraloría General del Estado and Procuraduría make public concursos to fulfill their jobs.

There are approximately 3,000 posts. Once President Rafael Correa assumed the presidency he filled jobs based on professional criterion, not necessarily because of political or party relationships.

References:

Informe de Sociedad Civil, Segunda Ronda de Evaluación CICC, Corporación Latinoamericana para el Desarrollo CLD, julio 2006.

<http://www.senres.gov.ec/ProductosCapacitacion.html>

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Actually Hirings, firings, and promotions of the civil servants are based on merit and performance. SENRES has begun to regulate hiring, firing and promotions between the public institutions.

References:

<http://www.senres.gov.ec/ProductosCapacitacion.html>

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

A clear definition of job descriptions, assigned functions and payments between civil servants in all public institutions are the exception. Each institution of the public sector must have a manual of classification of jobs. This manual must indicate the profile and activities of the civil servants.

References:

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/resumenRinne2006-09-21.pdf>

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/Rinne2006-09-21.pdf>

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

Comments:

There are instances when civil servants receive bonuses. Nevertheless, these bonuses are not a significant part of their payment. The civil servants has unified monthly remuneration) , in this payment, there are not any type of bonus.

Additionally a process of establishing scales of remuneration according to the occupational category has been developed. The occupational categories are: Auxiliar de servicios, Asistente Administrativo A, Asistente Administrativo B, Asistente Administrativo C, Técnico A, Técnico B, Profesional, Profesional 1, Profesional 2, Profesional 3, Profesional 4, Profesional 5 y Profesional 6.

There are institutions like: Pacifictel and Petroecuador in which the workpeople through collective contracts have bonds and awards. Their salaries are significantly major than an average salary in the public sector

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

12/26/2006 http://www.elcomercio.com/solo_texto_search.asp?id_noticia=53794&anio=2006&mes=12&dia=26 Fin de Megasueldos.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | **50** | 25 | 0

Comments:

The SENRES publishes this list, notwithstanding this list groups by sectors, and the sectors are not divided by positions.

This list is the total civil servants by sectors like: legislative sector, national defense, administrative sector, etc.

References:

www.senres.gov.ec

<http://www.senres.gov.ec/ServidoresSector.html>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

This mechanism is carried out by the Unit of Evaluation and Control within SENRES. This unit establishes what public institutions that could be investigated.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | **50** | 25 | 0

Comments:

Once Rafael Correa began his presidency, they received US\$900 million in delays. There were some delays in the last presidency, but the priority of the actual government is to fulfill with principal obligations like: health, education, etc, and not necessarily with external obligation (debt).

References:

03/01/07 www.hoy.com.ec ENTREVISTA CON RICARDO PATIÑO: Pediré a Contraloría investigar atrasos”

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

The law exists; there are not reported cases of civil servants being convicted of corruption that have come back to public sector.

Additionally a cooling off period of two years is applied to civil servants convicted of corruption.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

25

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

The civil servants must take care that they can not use privileged information to gain personal benefits.

References:

These laws do not exist explicitly.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

It is a civil right and therefore once finished his period he/she can take any private position freely. The law prohibits the performing of two public functions at the same time, except for the case of university teaching.

References:

National Constitution: Article 125 and Article 23, No. 3
Article 12 Ley Orgánica de Servicio Civil y Carrera Administrativa

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The members of the civil service cannot accept gifts of any nature.

References:

National Constitution: Article 121

Articles 285 and 264 from codigo pena

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are not such regulations.

References:

Personal Criterion

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The research work of Auditoria para la Democracia Ecuador 2006 indicates that the corruption is a daily event and arrives at all levels.

References:

Personal Criterion.

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

The law explicitly does not prohibit it, but the civil servants should not use privileged information for personal use.

References:

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

33

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The article 94 of the National Constitution consecrates the right of Habeas Data like a constitutional resource to accede to the documentation that is required.

The Ley de Transparencia y Acceso a la Información Pública establishes several mechanisms to accede to the public information, by the principle of publicity and public information.

This law considers public information like documents in any format, that are safekeeping inside public institutions or other institutions referred in this law.

The law has jurisdiction over all documents obtained with resources of the states or that are under their responsibility, and independent of the time at which was created.

Article 81 from the Political Constitution of Ecuador, guarantees the access to the information except on national defense.

References:

Article 94 CN, (Habeas Data).

Article 81 CN

Article 4 Ley de Transparencia y Acceso a la Información Pública.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Constitution theoretically guarantees access to public information. But not all civil servants have the obligation to declare their assets.

References:

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some senior civil servants like the General Prosecutor, the President of the Justice Court are obligated to disclosure their assets. But in practice citizen access to even a limited number of these disclosures is extremely burdensome.

References:

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Article 23 No. 2 of the National Constitution consecrates the protection to the human beings, and by logic the State must continuously search the protection to whom it denounces acts opposed with the law and the moral.

|

Article 97 No. 14 of the National Constitution, it is a duty and responsibility of all citizens to denounce and to fight against the corruption.

References:

National Constitution: Article 23 No. 2 and Article 97 No. 14

Article 118 Código de Procedimiento Penal. (Protección a testigos)

Article 7 Ley Orgánica de la Comisión Control Cívico de la Corrupción.

Article 8 lit. b) Ley Orgánica de la Comisión del Control Cívico de la Corrupción (Obligaciones y prohibiciones de la CCCC).

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The law applies over all sectors, including the private sector.

References:

National Constitution, Article 23 No.2 and Article 97 No.14
Article 7 Ley Orgánica de la Comisión Control Cívico de la Corrupción.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has a legal witness protection program covering private and public sector employees.

It is difficult to gather information about these cases especially in private sector, because in Ecuador there is a lack of resources that could offer safety to the citizens. Very few people receive this program in Ecuador.

References:

Article 34. Ley Orgánica del Ministerio Público".

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

There are no explicit internal mechanisms to report corruption acts that are consecrated and recognized by the law.

The Comisión Control Cívico de la Corrupción, has the mandate to investigate accusations of corruption that have been presented and to search the sufficient data that could make to presume corruption.

References:

Article 2, Ley Orgánica de la Comisión Control Cívico de la Corrupción.(...Receptará tramitará e investigará denuncias sobre actos de corrupción...

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

19

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

Comments:

SENRES, has a department that receives denunciations of civil servants. This department is called a Unidad de Control and Evaluacion(Control and Evaluation Unity).

SENRES has a departmentThe Evaluation and Control Unit (Unidad de Evaluación y Control)has not the sufficient professional staff to fulfill with this goal.

But there is no civil service-wide internal reporting system within the various ministries.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Evaluation and Control Unit (Unidad de Evaluación y Control) lacks technical, professional and financial resources. For example, within SENRES the witnesses protection program does not receive appropriate funding.

But there is no civil service-wide internal reporting system within the various ministries.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time of response is not ideal. This is caused by limited resources.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The time of response is not ideal. The is caused by limited resources.

Civil servants can complain to other institutions like: Comisión Control Cívico de la la Corrupción and Ministerio Público.

References:

Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

48. Is the public procurement process effective?

93

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The article 56 lit. c) And lit d) from Ley de Contratación Pública does not allow to contract in cases such as: public official or civil servants that were participating in the precontractual stage and whom boiled up the Committee of Contracts.

The regulations are applied to the relatives of the officials government until the fourth degree of consanguinity and second of affinity.

And additionally, in cases of conflict of interest between public institutions the Office of the Judge Advocate General of the State(PGE–Procuraduría del Estado (PGE), could resolve it.

References:

Article 56 lit. c) and d), Ley de Contratación Pública.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The law clearly establishes objective qualifications of human resources in the public sector.

The law indicates that the National Secretariat of Remunerations (SENRES–Secretaría Nacional de Remuneraciones) must establish general programs and training that it will execute over public sector.

The training programs must be in accordance with the characteristic functions of the respective unit in the public sector.

References:

Article 54 Ley Orgánica de Servicio Civil y Carrera Administrativa.

Article 54 lit. i) Ley Orgánica de Servicio Civil y Carrera Administrativa.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

Comments:

Ecuador during the analyzed period has increase the transparency in procurement. There were no reported cases of public officials participating actively in this process. Additionally, the law precludes the participation of the persons that have a conflict of interests.

There is also a system called Contratanet. This is a system in which the different institutions in the public sector publicize their requirements and the private sector offer goods and services that could satisfies the demand of public sector.

Lastly the government has implemented a program of public buying, toward the ministries of Industry, Economy and the National Secretariat of Planning and Development. The objectives of this agreement is basically to increase the transparency in procurement.

References:

www.contratanet.gov.ec

2007/04/17 www.eluniverso.com Estado administrará compras públicas a través de Consejo.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Controller General of the State (CGE–Contraloría General del Estado), is the agency created by law to control activities concerning expenditures and public resources. In law, the CGE can monitor income and expenditures of those in the public sector, including procurement officers.

References:

National Constitution: Article 211 and 212

Ley Orgánica de la Contraloría General del Estado.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

Article four of the Law on Public Procurement (Ley de Contratación Pública) has as one of the principal goals to assure in the pre-contractual procedures the best bidder.

References:

Article 4 Ley de Contratación Pública.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The Law on Public Procurement (Ley de Contratación Pública) demands three sources to contract be with the State.

The selection is realized through different processes, which depends on the type of bid, which is related to the value of the contract. There are cases of direct hiring, and cases of exception in the pre-contractual procedures. Pre -ontractual proceeds are skipped in an emergency state.

References:

Article 6 Ley de Contratación Pública

Article 48 Ley de Contratación Pública.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

Unsuccessful bidders can ask for a reconsideration. But this is difficult to do, because there must be indications of illegal activity.

References:

Article 72 Ley de Contratación Pública

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

However, if fraud was involved in the awarding, this resource can be used. The reclamation is applied to the pre-contractual procedures or awarding procedures.

References:

Article 72 Ley de Contratación Pública

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

These articles hint the causes of inability to participate in procurement bids. Additionally, the Controller General of the State (GGE–Contraloría General del Estado) has a black list.

References:

Article 55 and 56 Ley de Contratación Pública”.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The Public Procurement Law ask a certificate of the Controller General of the State (CGE–Contraloría General del Estado) about the fulfillment contracts in the past of the enterprises interested in the next procurement. The CGE has a record of enterprises that failed to fulfill contracts with the public sector in the past.

References:

Media outlets

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

50

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Natural persons or legal institutions can bid and therefore can participate and access the procedures.

References:

Article 55 Ley de Contratación Pública (Incapacidades Generales)
Article 56 Ley de Contratación Pública (Incapacidades Especificas)
Ley de Transparencia y Acceso a la Información Pública.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | **NO**

Comments:

The announcement of the results are between the contracting parts, except in oil contracts, or contracts of general interest. The Public Procurement Law arranges that the president of the committee will notify in writing, to the bidders within the term of three days after the awarding.

References:

Article 27 Ley de Contratación Pública.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

There is a difference between what the law says and what happens in reality. Usually the common citizen can know about public procurement regulation from newspapers with the biggest circulation in the country, but it is not easy for the common citizen to access to this documentation.

The different institutions that belong to the central government have the obligation to update their Web sites with the public procurement regulations, but this is the exception. Additionally, there is no free access to documentation of different procurement's documents.

References:

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/Forero2006-09-21.pdf>

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/resumenForero2006-09-21.pdf>

Media outlets.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

Most of them are not published online. The common citizen, journalist and CSO have to pay a fee to access to this documentation. Additionally, this cost could vary between the sectors, for example the petroleum area it is expensive. But in general, there are a lot of process and regulations, in the end the cost is high.

References:

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/Forero2006-09-21.pdf>

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/resumenForero2006-09-21.pdf>

Informe de Sociedad Civil, Segunda Ronda de Evaluación CICC, Corporación Latinoamericana para el Desarrollo CLD ,julio 2006 .

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The central government has improved the advertising on its Web sites, especially using the system of Contratanet. But these Web sites should be updated with more frequency.

References:

www.contratanet.gov.ec

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/Forero2006-09-21.pdf>

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/resumenForero2006-09-21.pdf>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There are exceptions, not all results of public procurement bids are available online.

References:

www.contratanet.gov.ec

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/Forero2006-09-21.pdf>

<http://www.concertacion.ec/docsFrame.php?doc=../conferencias/resumenForero2006-09-21.pdf>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

This article of the Ley de Modernización del Estado shows that all citizens are able to participate in a given privatization process. All private enterprises can compete for public assets as well regardless of their nationality (domestic or foreign).

References:

Article 49 lit. b. Ley de Modernización del Estado (De los Participantes).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

They should not use public information to gain personal benefits.

References:

There are not such regulations.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has no experience on privatization.

References:

No historical cases.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

65

51a. In law, citizens can access privatization regulations.

YES | NO

References:

National Constitution: Article 94
Article 15 Ley de Modernización del Estado

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | **25** | 0

Comments:

Ecuador has no experience on privatization.

References:

No historical cases.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The government is obligated to communicate to the citizenship their resolutions. This is done in the Official Register.

References:

Ley de Transformación Económica del Ecuador
Ley de Modernización del Estado.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has no experience on privatization.

References:

No historical cases.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has no experience on privatization.

References:

No historical cases.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. ⁷⁷National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

Ecuador has several agencies.

References:

National Constitution: Article 96, La Defensoria del Pueblo; Article 275, El Tribunal Constitucional; and Article 217, Ministerio Público

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

55

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

These agencies by the law are protected from political interference, nevertheless the form in which their members are selected through the National Congress results in political interference.

References:

Article 130 lit. 11 (Deberes y Atribuciones del Congreso: Nombrar a las autoridades del National Ombudsman).
National Constitution: Article 96, La Defensoría del Pueblo; Article 211, De la independencia de la CGE; Article 275, De la forma de integrar el Tribunal Constitucional.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The National Ombudsman is not protected from political interference, because the head of National Ombudsman is appointed by the National Congress, which is composed of various political parties. It is difficult to believe that there is no political interference.

References:

Interview with Gustavo Yalk (Projusticia)

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the National Ombudsman is protected with immunity; he cannot be removed from his public position without relevant justification.

References:

Interview with Gustavo Yalk (Projusticia)

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The National Ombudsmans office is located in Quito. There are offices in the 22 provinces of the country, which means, there are 22 commissioners that solve the cases. Also there are several departments that are focused on the population's vulnerable groups. Among the vulnerable groups are the natives; the elderly and people who have handicaps, children and adolescence; afro-Ecuadorians; and migrants.

The staff is not sufficient.

References:

Interview with Iván Granda (Defensoria del Pueblo)

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Projusticia is an agency that advises to the Supreme Court of Justice in the judicial function. The National Ombudsman should be an independent institution. The National Ombudsman is an institution that was founded in 1998.

The head of National Ombudsman is designated by the National Congress. Consequently, the citizens will be represented by the head of National Ombudsman; also human rights agencies can observe the appointments process. This way, the head of National Ombudsman would be designated by the Congress but with the opinion of the citizenship.

References:

Interview with Gustavo Yalk (Projusticia)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The National Ombudsman receives an annual contribution from the Budget of the Ecuadorian State through the Ministry of Economy and Finances. The resources are not enough.

References:

Interview with Iván Granda (Defensoría del Pueblo)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The National Ombudsman publicizes, through press bulletins information about the actions it is carrying out. It also puts out a bimonthly publication with articles about human rights. Recently, there was the publication of Homus man, which is a magazine that contains articles about human rights with foreign and national experts in the topic.

References:

Interview with Iván Granda (Defensoria del Pueblo)

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Ombudsman begins investigations when there are cases of Habeas Data, "Habeas Corpus" and "Recurso de Amparo," also when the citizens feel their human rights are violated.

The National Ombudsman also defends the human rights of the foreigners that are residents in the country and the foreigners that are tourists in the country.

There are many branches (Habeas Data, Habeas Corpus and Recurso de Amparo) in which the National Ombudsman will intervene, but one of the most important problems is the lack of public defenders.

References:

Interview with Iván Granda (Defensoria del Pueblo)

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Ombudsman doesn't hand out sanctions or dictate sentences. It does not have coercive power. The National Ombudsman receives complaints from people when their rights are harmed, it promotes a respectful culture of the human rights, intervenes as mediator in the conflict of people or social organizations with the public administration, it intervenes in the matters of environmental protection.

The National Ombudsman is limited in its effectiveness.

The National Ombudsman mediates conflicts only between legal persons and popular organizations with the Public Institutions.

References:

www.defensordelpueblo.gov.ec

<http://www.defensordelpueblo.gov.ec/index.php>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The majority of cases that are undertaken by the National Ombudsman do not receive support from the government. Only a small percentage of cases that the head of National Ombudsman receives are supported. For example, the case of the fumigations of

glifosato occurred on the border between Colombia and Ecuador. The government has supported this cause through the Ministry of Exterior Relationships.

References:

Interview with Gustavo Yalk (Projusticia),

Informe de Misión de Verificación, Impactos en Ecuador de las fumigaciones realizadas en el Putumayo dentro del Plan Colombia, elaborado por Acción Ecológica.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The mediations that are carried out through the National Ombudsman do not need lawyers. In fact, 80 percent of the cases are solved quickly. Another 10 percent of the cases cannot be solved quickly because the social conflict is more complicated and it requires time for the mediation.

References:

Interview with Iván Granda (Defensoría del Pueblo)

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The Resource of Habeas Data, aforementioned in the constitution, authorizes to the citizens to access information.

The principle of publicity of the information is supported by the Law on Transparency and Access to Public Information (Ley de Transparencia y Acceso a la Información Pública).

References:

Article 94 Habeas Data

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports that the National Ombudsman publicizes for the citizens are annual, but the cases where the National Ombudsman is serving as a mediator are reserved information.

References:

Defensoria del Pueblo

www.defensordelpueblo.gov.ec.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the National Ombudsman are found on its Web site. The information is free. But not all the information is available.

References:

Defensoria del Pueblo

www.defensordelpueblo.gov.ec.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Controller General of the State (CGE–Contraloría General del Estado), is the supreme agency that audits the institutions of

the state. According to law the CGE will carry out audits of the companies and agencies in the public sector and its servants.

References:

National Constitution: Article 211

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

81

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

According to the National Constitution, this agency enjoys autonomy; nevertheless the head of the Controller General of the State (CGE–Contraloría General del Estado) is appointed by political parties. The National Constitution delineates that the head of the CGE must be approved by 2/3 of the National Congress' members. The appointment is decided between a list of three names, previously sent to the National Congress by the Executive.

References:

National Constitution: Article 211; Article 130, No. 12; Article 171, No. 11 (Atribución del Congreso Nacional para nombrar las autoridades).

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The actions of the Controller General of the State (CGE–Contraloría General del Estado) are supervised by the National Congress. If the National Congress considers that the actions of the CGE are not good, the National Congress has to the right to begin a political judgment. Actually, the CGE has not been removed from his public position without any relevant justification.

What has been generated is a polemic among the Executive and Legislative function regarding the Controller's appointment. There should be greater cooperation among the two functions, to reach agreements and to improve the political stability.

References:

Interview with Gustavo Yalk (Projusticia)

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a full-time staff to carry out the audits. The full-time staff works eight hours a day. One of the biggest problems is the absence of a renewal of the personnel, with young professionals on accounting and audit careers.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Audit agencies support the independence of the Controller General of the State (CGE–Contraloría General del Estado). The CGE carries out the administration and financial audits. The CGE is a control body; it should be independent so that there are not political pressures on the policymaking process. It is recognized that its full-time staff are qualified and have great experience in carrying out audits.

References:

Interview with Gustavo Yalk (Projusticia)

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget of the Controller General of the State (CGE–Contraloría General del Estado) is of 5 percent of the total budget. These resources guarantees supervision by the CGE.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

Comments:

The Controller General of the State (CGE–Contraloría General del Estado) make reports annually when it carries out its annual audits. The reports are found on the Web site, but audited reports are not found on the Web site, because it is considered like protected information. Not all information is available.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

Comments:

The government and public institutions are audited by the Controller General of the State (CGE–Contraloría General del Estado). When the audit agency find some irregularities, the government and public institutions must justify their actions.

I think that the CGE must realize a major previous control in all the public entities. Once a later control is realized, the CGE receipts more information and the sanctions could not be opportune.

References:

Interview with Modesto Santos (Contraloría General del Estado)

2006/07/07 www.elmercurio.com.ec Se alarga el cobro a la Andrade Gutierrez".

2007/03/01 www.elmercurio.com.ec "Exámenes por mala utilización de Recursos".

2007/05/23 www.elmercurio.com.ec "Pativideos causa polémica".

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Controller General of the State (CGE—Contraloría General del Estado) is able to carry out its own investigations. In fact it carries out 99 percent of the audits within the government, National Congress; judicial public institutions, state-owned companies and companies that contain public capital. The CGE also supervises the goods of the employees of the executive function, legislative function and judicial function. The remaining 1 percent of audits include environmental and computer audits that are carried out by other audit agencies.

The CGE initiated special examinations in organizations like Andinatel, Pacifictel and Petroecuador.

References:

Interview with Modesto Santos (Contraloría General del Estado)

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=76387&anio=2007&mes=6&dia=13 2007/06/13 La obra Carrizal-Chone está bajo investigación.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=62041&anio=2007&mes=2&dia=23 2007/02/23 Haré un control a todos los entes.

www.elmercurio.com.ec 2007/03/01 Exámenes por mala utilización de recursos

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=69464&anio=2007&mes=4&dia=22 2007/04/22 No aceptó presiones de mi partido: Pólit.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

67

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The concept of Habeas Data authorizes citizens to request information.

The principle of publicity of the information supported by the Law on Transparency and Access to Public Information (Ley de Transparencia y Acceso a la Información Pública).

References:

National Constitution; Article 94

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The audit reports are protected information, because there are some cases that imply to open civil and penal processes. It is not ethical that any person can have access to it. When a specific audit report is granted, the petition should be written to the Controller General of the State (CGE–Contraloría General del Estado and to justify that he/she will make with the information. These petitions granted are a minority, because in the majority of the cases the information is denied.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

The information is free.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

83 V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

The State collects taxes through the Internal Revenue Service (SRI–Servicio de Rentas Internas), created by law to collect the resources originating from different taxes (Impuesto a la Renta, Impuestos Indirectos, Impuesto a Consumos Especiales, etc).

SRI is responsible for executing the tax policies, therefore is the responsible for collecting taxes.

References:

Ley 41, Registro Oficial 206, 1997/12/02 Ley de Creación del Servicio de Rentas Internas.

Article 2 Ley 41, Registro Oficial 206, 1997/12/02 Ley de Creación del Servicio de Rentas Internas.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Internal Revenue Service (SRI–Servicio de Rentas Internas) has a full-time staff, who can take charge of the collection of taxes. In the case that these officials verify that the businesses or companies are not obeying the law, they are authorized to close the businesses or companies.

References:

Servicios de Rentas Internas (SRI)

www.sri.gov.ec

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Internal Revenue Service (SRI–Servicio de Rentas Internas) receives funds of the General Budget of the State, channeled through the Ministry of Economy and Finances.

References:

Servicios de Rentas Internas (SRI) www.sri.gov.ec

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

50

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

The collection of taxes in Ecuador, has a bigger percentage participation in the tributary revenues of the Non Financial Public sector (SPNF). The Tax of Added Value (IVA) represents 57 percent, the property tax contributes 27 percent and the special consumptions tax, 10 percent.

The administration of the Internal Revenue Service (SRI–Servicio de Rentas Internas) is classified as good, because it was able to increase the collection of all the taxes through the institutional reformation it carried out. The tributary revenues starting from the 2001 were bigger than the oil revenues.

There are some problems, however. For example, there are articles about how when companies or people pay the Tax of Added Value, in some cases the SRI may refund what was paid.

Others examples, are when the SRI collects some taxes, those collections are assigned to some institutions, which are considered vulnerable sectors, but those collections do not benefit all in the vulnerable sector. Therefore, there is discrimination in the way vulnerable sectors are assigned.

References:

Ecuador Notas de Políticas. Una Propuesta para el Despegue Económico y Social por Banco Mundial.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

Through the Law of Customs (Ley Orgánica de Aduanas) the Ecuadorian Customs Corporation (CAE–Corporación Aduanera Ecuatorina) is the agency which is responsible for administering the national customs system of the Ecuador and to recollect the tributes by imports or exports.

References:

La Ley Orgánica de Aduanas.

<http://www.cae.gov.ec/content/Historia-Mision-Vision.aspx>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Ecuadorian Customs Corporation (CAE–Corporación Aduanera Ecuatorina) possesses a full-time staff that assists eight hours a day. However, their staff is considered not very qualified.

References:

Corporación Ecuatoriana de Aduanas (CAE)
www.cae.gov.ec

Ecuador Notas de Políticas. Una Propuesta para el Despegue Económico y Social por Banco Mundial.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Ecuadorian Customs Corporation (CAE–Corporación Aduanera Ecuatorina) receives funds from the General Budget of the State, channeled through the Ministry of Economy and Finances.

References:

Corporación Ecuatoriana de Aduanas (CAE)
www.cae.gov.ec

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The Ecuadorian Customs Corporation (CAE–Corporación Aduanera Ecuatorina) is not able to fulfill its goals. The CAE has not had the success of the Internal Revenue Service (SRI–Servicio de Rentas Internas).

References:

Ecuador Notas de Políticas. Una Propuesta para el Despegue Económico y Social por Banco Mundial.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The Superintendent of Banks (SB–Superintendencia de Bancos) controls and to regulate banks; independently if they are public or private.

The Contraloría General del Estado (CGE), is the supreme agency that audits the Institutions of the State.

The article 211 second clause indicates that the Contraloría General del Estado (CGE) will carry out audits to the companies and agencies of the public sector and its servants, and will be pronounced on the legality and transparency norms.

The Controller General of the State (CGE– Contraloría General del Estado) investigates institutions of the state or public agencies in which the public resources are not used in a correct manner.

The Art. 146 of the National Constitution enacts La Superintendencia de Compañías será el organismo técnico y autónomo . The Superintendencia de Compañías (SCB), controls and to regulate public companies too.

Additionally in the oil sector, the organism that regulates and controls is the Dirección Nacional de Hidrocarburos (DNH).

References:

National Constitution Article 222-223; Article 172.Ley General de Instituciones del Sistema Financiero; and Article 143. Article 211 CN.

Article 146 CN. (Superintendencia de Compañías)

<http://www.menergia.gov.ec/secciones/hidrocarburos/HidroMarcoLegal.html> (Direccion Nacional de Hidrocarburos).

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

80

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The Superintendent of Banks (SB–Superintendencia de Bancos) and the Controller General of the State are free of political interference by law, nevertheless the manner of appointment less their independence. The agency overseeing state-owned companies is free from political interference.

The Superintendent of Telecommunications, Companies and the Oil Direction, has a political appointment. But in the law, they have independence.

References:

National Constitution: Article 211, Independencia de la Contraloría.

Ley s/n, publicada en Registro Oficial Nro. 120 1997/07/31.

Art.145 La Superintendencia de Bancos será el organismo técnico y autónomo

Art. 146 La Superintendencia de Compañías será el organismo técnico y autónomo

Art. 146a La Superintendencia de Telecomunicaciones será el organismo técnico.

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Superintendent of Banks (SB–Superintendencia de Bancos) and Contoller General of the State (CGE–Contraloría General del Estado) supervise the state-owned companies.

The CGE oversees municipal companies and companies in which the government has shares. Both possesses a full-time staff that carries out their goals.

The Superintendencia de Compañías (SC) and the Dirección de Hidrocarburos (DNH) have a professional and full-time staff too.

References:

Interview with Modesto Santos (Contraloría General del Estado)

<http://www.menergia.gov.ec/secciones/hidrocarburos/HidroEstructura.html>

<http://www.supercias.gov.ec/default.html>

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There are not reported cases of a lack of resources for either the Superintendence of Companies, Superintendence of Banks, Superintendence of Telecommunications, or Oil National Direction.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Superintendent of Banks (SB–Superintendencia de Bancos) and Contoller General of the State (CGE–Contraloría General del Estado) are able to carry out investigations.

The heads of the agencies do not have entire independence.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Controller General of the State (CGE–Contraloría General del Estado) can request explanations from the state-owned companies. If it is demonstrated that the state-owned company is at fault, the state-owned or the state-owned company's official is sanctioned.

When there are cases of civil responsibility, the CGE can request explanations from the state-owned company. If it is demonstrated that state-owned company or the state-owned company official has a civil responsibility, the case is sent to the Tribunal Administrativo de los Contencioso (Administrative Tribunal of the Contentious).

References:

Interview with Luís Bonaño (Projusticia)

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

65

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

However, article 88 of the General law of Institutions of the Financial System (Ley general de Instituciones del Sistema Financiero) establishes the sigilo bancario," which is the prohibition to give financial information.

References:

National Constitution: Article 94, Habeas Data. (otorga el derecho a acceder a información)

Article 88 Ley general de Instituciones del Sistema Financiero.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the stated-owned companies update the financial records. In the case that some state-owned companies do not fulfill with this requirement, the Controller General of the State (CGE–Contraloría General del Estado) makes suggestions and the state-owned companies have to upgrade the financial records, so that the CGE carries out the audits.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The Controller General of the State (CGE–Contraloría General del Estado) performs the audits according to international accounting standards. In the case that the financial records of the stated-owned companies do not fulfill these requirements, the CGE makes suggestions so that they fulfill the international accounting standards.

The Contraloria General del Estado (CGE) applies International Standards of audit, these are called (Normas Internacionales de Auditoría, NIA´s).

According to these norms, the (CGE) adapts them and they shelter in Ecuadorian Norms of Audit (Normas Ecuatorianas de Auditoría, NEA´s).

The NEA´s are adapted in the pure Public Sector, these norms are know like NAGAS (Normas Gubernamentales de Auditoría). The public companies with private management like Andinatel, Pacifictel apply the NEA´s.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Some state-owned companies have the financial records on their Web sites; other companies do not have them in their Web sites.

Having contacts the citizen can access to them within reasonable time period. But the common citizen must visit the company several times.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The information is free, however not all information is available.

References:

Interview with Modesto Santos (Contraloría General del Estado)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

81

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

The Constitution gives the right to free enterprise, any person can apply for a business license.

The free enterprise must be framed under the law, that is to say, the business licenses are not allowed for activities explicitly prohibited by law.

References:

National Constitution: Article 23 No.16, Libertad de empresa

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

This law recognizes the right of petition, by which citizens have the right to present claims to a public authority. The claim should be resolved in a term not greater of 15 days after its date of presentation.

In all cases if the Agency during the closing date does not have a decision the claim is approved (administrative silence).

References:

Art. 28 Ley de Modernización del Estado.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

When a person wants to import a good, there are three import regimens, which are: free import, subject to import license and forbidden import. Inside the subject to import license regimen, the importers should declare the imports before the shipment of the goods in the Unique Document of Import. The Central Bank and the other bank entities should allow the importations realize and they grant the automatic license in 10 days.

But in the case that the imported goods need a previous license like sanitary license etc., there is a non-automatic import license and applications are not always approved. When the non-automatic licenses of import are approved, these are granted between 10 to 60 days.

References:

Cómo exportar a Ecuador (Embajada de Brasil en Ecuador)

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No exact cost exists. Once the information of the importer is given to the Central Bank, the importer can enter to Central Banks Web site, and put the quantity and the value of product. Automatically, the system will calculate the cost of the importation and the institutions from which to request a license.

References:

Cómo exportar a Ecuador (Embajada de Brasil en Ecuador)

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The Constitution gives the right to health, therefore the licenses must be offered based on the law and with transparency. Additionally there are several laws in which where standards of public health are established, among them we can mention the following, the Law of Health (Ley orgánica de salud) and Regulations for the licensing of the services of health (Reglamento para el licenciamiento de los servicios de salud).

References:

National Constitution: Article 42, 43,44 and 45, Derecho a la Salud.

Ley de Transparencia y acceso a la información pública

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The environmental standards are transparent. There are several laws which establish public environmental standards.

References:

Ley del Sistema Ecuatoriano de Calidad

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The Law of the Ecuadorian System of Quality (Ley del Sistema Ecuatoriano de Calidad), mentions among its objectives to guarantee the compliance of the civic rights related to the security, the protection of the life and the vegetable, animal, and human health, the preservation of the environment, the consumer protection against deceitful practices and the correction and sanction of these practices.

References:

Article 1 Ley del Sistema Ecuatoriano de Calidad

Acuerdo Ministerial 154, Registro Oficial 61, 1984/11/08

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The Metropolitan Address of Health of the Quito Municipality carries out inspections of the control of the last food chain, which means after the consumers already ingested the foods. But this control is not enough to guarantee efficiency and effectiveness. There is not information in other places of the country.

References:

Seminario-Taller Proyecto Piloto de Inocuidad de Alimentos en la Zona Norte-Distrito Metropolitano de Quito.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

Comments:

The inspections could be carried out by: comisarias” (Municipal Level) and “Defensoria del Consumidor”(the last one is an agency within the National Ombudsman). Their scope is local.

The Quito’s Municipality carries out inspections for the industrial, commercial and services activities. These activities may fulfill the environmental standards. The contamination of the air of Quito is due to the emission of particles that contribute to the global warming. These activities may show a detailed report about physical-chemical characteristics of their emissions biannually as control mechanism for preventing the contamination of the air. In the case that, these activities do not fulfill environmental standards, they may pay a penalty.

References:

Plan Maestro de Gestión Ambiental 2004-2010.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

It is not known if the Municipality carries out these classes of inspections.

References:

Municipio Distrital de Quito Metropolitano (Atención al ciudadano)

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁸Anti-Corruption Law

70. Is there legislation criminalizing corruption?

89

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

The Penal code does not punish the attempt of bribe like a crime. Only if the attempt is materialized, the Penal Code sanctions it.

References:

Article 285 and 286 Código Penal (Cohecho)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

The Penal Code (Código Penal) classifies extortion” as a crime.

References:

Article 557, 558 and 559 Código Penal “.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

It is considered as delineated in the penal code. These regulations specifically prohibit asking for or receiving money, favors, or gifts.

The National Constitution in its article 121 also classifies these acts as crimes.

References:

National Constitution: Article 121

Article 285 Código Penal

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Asking for or receiving bribes are illegal acts and they are delineated in the penal code. These regulations specifically prohibit to ask for or to receive (bribe) money, favors, or gifts.

The National Constitution in its article 121 also classifies these acts as crimes.

References:

Article 121 National Constitution
Article 264 Penal Code
Article 285 Penal Code

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Asking for or receiving bribes are illegal acts and they are detailed in the penal code.

References:

Article 121 National Constitution
Article 264 Penal Code
Article 285 Penal Code

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

This is considered a crime, according to both Article 121 of the National Constitution and Article 257 of the Penal Code. The last article defines this crime as the arbitrary disposition of public resources.

References:

Article 121 National Constitution
Article 257 Código Penal

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Nobody can take advantage about reserved information for private gains, this is considered like blackmail or extortion. This method of obtaining gains, can be considered illicit enrichment and is a crime sanctioned in the Penal Code.

References:

Art. 18 de la Ley 2001-47, R.O. 422, 28-IX-2001, Código Penal.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

The Law of Laundering Assets” (Ley de Lavado de activos) decrees that money laundering is a crime sanctioned with jail, because this offense can affect the economy and, therefore, other crimes like illicit enrichment.

References:

Article 14, Ley de Lavado de activos.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

The Penal Code, establishes as a crime the conspiracy, and by legal logic those who conspires to commit a crime. This includes the crime's author, accomplice or accessory after the fact.

References:

Codigo Penal

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The National Constitution in article 220 institutes this Agency, as the organization mandated to fight corruption, the law grants political independence, administrative and economic self-sufficiency and recognizes the representativeness of the civil society.

The Law of the Civic Commission to Control Corruption (Ley Orgánica de la Comisión Control Cívico de la Corrupción), in articles 1 and 2 creates and establishes the agency's goals.

References:

National Constitution: Article 3, lit 6 (una administración libre de corrupción); and Article 220

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

92

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Civic Commission for the Control of Corruption (CCCC), is an independent organization free from political interference.

References:

Article 1, Ley Orgánica de la Comisión Control Cívico de la Corrupción.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has an Agency which exclusively is dedicated to fighting corruption and is called Civic Commission for the Control of Corruption (CCCC–Comisión Control Cívico de la Corrupción).

Additionally we have an Agency with dependency of the Fiscalía del Estado. This Agency fights with crimes such as bribes and the laundering of assets.

The CCCC has relative independence from political interference. This is structured with the participation of several Civil Society Organizations like: Asociación Ecuatoriana de Editores de Periódicos, de Canales de Televisión, de Radiodifusión, Federación Nacional de Periodistas , Cámaras de la Producción, Organizaciones de Derechos Humanos y Defensa de los Consumidores, etc.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=67754&anio=2007&mes=4&dia=9
2007/04/09 La ciudadanía es clave para frenar la corrupción.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There were no cases of removal without relevant justification.

The agency has a Web site, which is updated frequently.

References:

<http://www.unl.edu.ec/anticorruccion/history/marco.html>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The actual members of the Civic Commission for the Control of Corruption (CCCC—Comisión Control Cívico de la Corrupción) were elected with professional several years experience. They are recognized as people with honesty and foresight.

References:

<http://www.comisionanticorrupcion.com/comisionados.htm>

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

This Agency has full-time staff.

References:

Interview with Lcdo Juan Rosero, Coordinador Recursos Humanos (SENRES).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There were no reported cases of a lack of resources.

References:

Media outlets

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Commission publishes regular bulletins that show the cases and the actions that have been taken.

References:

<http://www.comisionanticorrupcion.com/boletines.htm>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Commission has the legal ability and resources to gather information and carry out their investigations. The problem is that when the Commission finds an irregularity, the agency must inform the Controller General of the State (CGE– Contraloría General del Estado) and the Financial Ministry (Ministerio Fiscal). Only these agencies can initiate judicial inquiries.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=67271&anio=2007&mes=4&dia=5
2007/05/04 El 90% de las denuncias de Anticorrupción no trasciende

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Anti-Corruption Office has initiated many investigations, and many of them have been presented to the courts.

References:

www.elmercurio.com.ec 2007-06-27 Informan sobre supuestos actos de corrupción, El secretario Nacional Anticorrupción, José Luis Cortázar, entregó la noche de ayer a la Policía Judicial al Secretario de Solidaridad Ciudadana, Darío Echeverría, para que sea investigado y enjuiciamiento por supuestos actos de corrupción, al extorsionar a Municipios siendo descubierto en forma flagrante.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

75

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The agency acts within a reasonable time period, if they have all the needed information.

References:

<http://www.comisionanticorrupcion.com/denuncia.htm>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Commission has been cautious in this area and additionally has the legal obligation to those who collaborate with it.

References:

Media.

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=48760&anio=2006&mes=11&dia=27 2006/11/14 Sin planes concretos para frenarla

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=46299&anio=2006&mes=10&dia=26 2006/10/26 Un problema que corroe a todas las esferas públicas.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

89 VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

Comments:

The Constitution consecrates the right to defense and therefore to appeal.

This is decreed in an International Treaty ratified by Ecuador and, therefore, has supra-constitutional rank. The doctrine also indicates the inconvenience to have a single instance and therefore a single opinion.

References:

Article 163 National Constitution of Ecuador

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time in which the common citizen can carry out the judicial process is far from the ideal. More than 40 percent of cases are not resolved. The principal barriers are: the obsolescence in the different stages in the judicial process and the congestion.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is important to say that there are not judicial rates in cases of social sensibility like food and labor judgments.

One of the problems is related to the Tasa de Amparo de Pobreza," this rate is too insignificant that even the indigent people cannot benefit.

In general terms the common citizen can access to judicial process.

Finally, there are costs of the judicial process, especially in mercantile and civil branches but they are in accordance with the value of the demand.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

Comments:

In general terms, once the judge has made a decision it is executed.

The problem is the slowness of the Judicial System. Additionally the system has bad practices, thwarting the execution of a judges resolution.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

81

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

It is a branch of the state, with autonomy and independence recognized in the Law of the Judicial Function (Ley Orgánica de la Función Judicial).

References:

National Constitution: Article 198-199.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial System has increased its Independence especially on the internal level. On the external level it still is vulnerable. The Judicial System will be independent if the other actors let them act with independence. This can happen if the Judicial System is legitimized by the citizens.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

The Civil Procedure Code grants to the judges the competent jurisdiction so that it is clear the cases that are within its established jurisdiction.

Article 23 grants the absence of predisposition within Judicial Function toward random selection.

References:

Article 23, Ley orgánica de la función judicial.

Código Civil

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The judges cannot be removed without process, this right is established in the Law of the Judicial Function (Ley Orgánica de la Función Judicial).

The procedure of removal is outlined in the judicial law.

References:

National Constitution: Article 23, No.27 and Article 24, No.13

Article 71, Regulation of Judicial Race

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There are no reported cases.

References:

No reported cases.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There are no reported cases.

References:

No reported cases.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

71

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

The state gives the right to a defense in cases in which citizens with judicial problems do not have resources to pay for it.

The citizens with judicial problem can use this option, because the government grants a public defense.

Ecuador has recognized several International Treaties too.

References:

National Constitution: Article 24, No.5; Article 163, International Treaties recognizes a supra legal character

Article 55 No. 2 literal c) Statute of Rome of the Penal Court International

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is not legal counsel for people who cannot afford the cost. Ecuador has only 32 Public Defenders , it is should have at least 3,000 public defenders.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In general terms the judicial charges are adequate.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Ecuador has a problem in geographical access to justice.

For example, Ecuador has only six judges per 100.000 person, compared to the average of 14 judges per 100.000 people in Latin America.

At the sub-national levels (provincial) the situation could be dramatic, some judges could have a lot of cases, but others could have only a few cases.

There are citizens (depending where they are located) could take hours or days to arrive to a Justices Tribunal.

References:

Interview with Dr.Gustavo Jalk (Projusticia)

USAID, Auditoría de la Democracia, Ecuador 2006

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

The National Constitution says that the President of the Republic is the maximum authority of this institution.

The appointments are usually according to professional criterion, because the different police branches send delegates and the President chooses from them.

References:

National Constituion: Article 184 La fuerza Pública se debe al estado

www.hoy.com.ec 2006/09/09 Generales de Policía ascienden de grado

2007/01/19 www.hoy.com.ec Ministro de Gobierno pide disponibilidad de oficiales

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have

clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

This Institution has a lack of resources to accomplish with their goals.

References:

http://www.elcomercio.com/solo_texto_search.asp?id_noticia=67724&anio=2007&mes=4&dia=9 2007/09/04 La Policía plantea sus necesidades al Cabildo

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The President is the maximum authority of the Public Force, and the heads of this institution are appointed by the President.

References:

National Constitution: Article 183, 184 and 185

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

79

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Article 187 of the National Constitution says the members of the Public Force will be subject to judicial exemption in cases of infractions made in the exercise of their professional work.

There are no special or independent mechanisms to complain about police action. The common citizen must use the normal mechanisms.

In the Public Ministry citizens can present or display their denunciations against crimes, corruption acts, etc. that police officials could commit.

The common citizen, can also go to the National Ombudsman, because this agency picks up denounces of violation to the citizen rights.

References:

National Constitution: Article 187 National Constitution of Ecuador

Articles No.1 and No.2 Ley Orgánica del Ministerio Público.

<http://www.defensordelpueblo.gov.ec/paginas/orientaciones.htm> (Defensoria del Pueblo)

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The performance of the Police Institution is acceptable. The greatest challenge of the Police Institution is not a separation of their members when an illicit is discovered.

The Nation Advice Bureau of the Police (Consejo Nacional de la Policía) carries out investigations with great details. It must show proof of corruption, like a branch of the Judicial System.

The Consejo Nacional de la Policía (National Council of the Police) is an instance in charge to judge and to sanction to the police that had a mis conduct within the institution.
The sanction is generally the separation of the institution.

Additionally the ordinary justice acts over the normal procedure to judge a member of the Police.

The National Ombudsman could also play a role in responding if a violation of human rights was involved.

References:

www.hoy.com.ec 2006/11/24 Ministro de Gobierno pide auditoría independiente para investigaciones sobre policía

El primer punto hace referencia a la incorporación de la justicia policial a la Función Judicial.....El objetivo es implementar un Consejo Nacional de la Policía para que funcione como un organismo que vigile y sancione a quienes no cumplen los procedimientos establecidos....

2006/11/19 ¿Y la Unidad Jurisdiccional? by Ernesto Albán Gómez.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Civic Commission to Control Corruption (CCCC–Comisión Control Civico de la Corrupción), is in charge of watching all the

civil servants who commit illicit acts.

In case of finding something illicit the Public Minister (Ministerio Público) or Controller General of the State (Contraloría General del Estado) takes part.

References:

Article 1 and 2 Ley Orgánica de la Comisión Control Cívico de la Corrupción.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

The Public Ministry (Ministerio Público) is the institution in charge. The problems are the slowness of the judgments.

References:

Media Outlets

Auditoria para la Democracia, Ecuador 2006.

Claudio Mena Villamar , La Policía no da más, Diario Hoy sección opinión, 2006/11/24.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The officials who enforce the law can be objects of denunciations for abuses and violations to human rights.

References:

National Constitution: Article 23 No. 3, igualdad ante la ley.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

There are many cases in which police officials have been subject to criminal proceedings for misconduct.

The National Congress of Ecuador created the Advice Bureau of Citizen Security (CNSC–Consejo Nacional de Seguridad Ciudadana), who will be in charge of supervising and evaluating this institution.

This is contained in the law of Seguridad y Convivencia Ciudadana.

References:

(www.elmercurio.com.ec 2006/047/28 Policía a rendir cuenta).

The Comandancia General de Policía removed to the head of the Policía Judicial de El Oro, the reasons were illicit acts. Subsequently the official police must challenge a Judicial Process. (2006/11/10

www.elmercurio.com.ec. Removida la cúpula policial de El Oro).

2006/12/25 www.elmercurio.com.ec Oficiales dados de baja .

2006/07/05 http://www.elcomercio.com/solo_texto_search.asp?id_noticia=26129&anio=2006&mes=5&dia=7 Esposas de fallecidos en caso Fybeca demandarán al Estado “

2006 /11/01 www.elhoy.com.ec “Jueza cierra proceso legal en caso “Fybeca”

2007/23/04 http://www.elcomercio.com/solo_texto_search.asp?id_noticia=69561&anio=2007&mes=4&dia=23 “No existe un divorcio entre la Policía y los Derechos humanos”

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
