

THE FIGHT AGAINST CORRUPTION IN ECUADOR: EVALUATION OF LEGAL INSTRUMENTS AND THEIR EFFECTIVENESS IN PREVENTING AND PUNISHING POLITICAL CORRUPTION

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Abstract: Political corruption is a significant structural challenge to the consolidation of democracy and sustainable development in Ecuador. This article provides a thorough examination of the legal mechanisms available in the country to combat political corruption, encompassing both preventive measures and sanctions. A comprehensive review of legislation, doctrine, and case law was conducted to inform the analysis of the 2008 Constitution, the Comprehensive Organic Criminal Code, the Organic Law on Transparency and Social Control, and other pertinent legal frameworks. Additionally, an examination of international treaties ratified by Ecuador was undertaken to provide a comprehensive overview of the nation's legal framework in relation to international obligations. The efficacy of these mechanisms is evaluated in light of emblematic cases and the Ecuadorian institutional context. The research concludes that, despite the existence of a robust legal framework, structural limitations persist with regard to judicial independence, the politicization of control institutions, and the ineffective implementation of regulations. The recommendations put forth are designed to enhance the rule of law and strengthen democratic institutions.

Keywords: Political corruption; Ecuador; legal instruments; prevention; punishment; rule of law; institutions.

Introduction

Political corruption is a pervasive threat to democratic systems, governance, and sustainable development in states. In Ecuador, the pervasive presence of corrupt practices in the political sphere has led to a decline in public trust in institutions, resulting in the erosion of the rule of law and the exacerbation of the ongoing institutional crisis. Numerous governments have been subjected to allegations and legal proceedings for corruption, thereby establishing it as a persistent phenomenon that impacts actors within the executive, legislative, and judicial branches.

In response to this challenge, the Ecuadorian legal system has developed a series of instruments aimed at preventing, punishing, and eradicating political corruption. The 2008 Constitution of the Republic of Ecuador establishes fundamental principles for the ethical exercise of public power, while incorporating mechanisms for social control, citizen participation, and transparency. In addition, specific laws have been enacted, and criminal legislation has undergone reform to define and punish various acts of corruption.

Nevertheless, the mere existence of codified laws does not intrinsically ensure their efficacy. The discrepancy between the legal framework and its practical implementation is a persistent feature of Latin American nations, with Ecuador being a case in point. The pervasive influence of power networks, the subjugation of institutions by private interests, and the inadequacy of control and oversight systems hinder the efficacy of anti-corruption efforts.

The present article has as its objective a critical evaluation of the legal instruments implemented in Ecuador to combat political corruption. The evaluation will focus on two aspects: the preventive capacity of these instruments and their effectiveness in punishing corruption. To this end, a qualitative methodology of documentary and jurisprudential analysis will be adopted, combining a review of the legislation with the study of specific cases that occurred between 2000 and 2024.

The research is organized into several sections. First, a theoretical framework on political corruption is established. In the following section, an analysis of the historical evolution of the fight against

corruption in Ecuador is presented. Subsequently, an examination of the applicable national and international legislation is conducted, with an assessment of its scope, limitations, and levels of effectiveness. Finally, recommendations are proposed with the aim of strengthening the legal and institutional anti-corruption framework in the country

Theoretical and conceptual framework of political corruption

Conceptualization of corruption

Corruption is a multifaceted phenomenon with numerous etiologies, the definition of which varies depending on the disciplinary approach from which it is approached. According to Transparency International, the term "abuse of entrusted power for personal gain" is a general definition that encompasses actions within both the public and private sectors. This definition underscores the deviation from the public interest and the breakdown of the principle of legality that governs the administration of the state.

From a legal perspective, corruption can be defined as a series of unlawful actions that contravene established public ethics standards, thereby impacting public service, equitable access to state-provided goods and services, and democratic decision-making processes. In numerous countries, including Ecuador, the Penal Code criminalizes various forms of corruption, such as bribery, extortion, embezzlement, illicit enrichment, and abuse of power.

Theoretical approaches to corruption

There are various theoretical approaches that help us understand the phenomenon of corruption. Among the most relevant are:

- **Rational choice theory:** This theory posits that individuals act according to a cost-benefit calculation. Corruption occurs when the expected gains outweigh the risks of being discovered and punished. This approach highlights the importance of the probability of punishment and the effectiveness of the judicial system.
- **Institutionalist approach:** Points out that corruption is the result of structural flaws in institutions, such as lack of judicial independence, weak checks and balances, and low transparency in public management.

- **Network theory:** Proposes that corruption is not only the result of individual decisions but is organized into networks that include public and private actors, with stable patterns of interaction. This view is useful for understanding phenomena such as “systemic corruption.”
- **Culturalist perspective:** Suggests that corruption is rooted in social norms, informal practices, and cultural values that tolerate or even legitimize certain forms of illegal exchange.

Corruption and democracy

The relationship between corruption and democracy is ambivalent. Corruption has been demonstrated to have a number of negative consequences for democratic institutions. These consequences include the erosion of public trust, the distortion of electoral processes, and the facilitation of access to power for corrupt elites. Conversely, democratic systems provide instruments, including freedom of the press, active citizenship, and parliamentary oversight, that can be utilized to combat corruption.

In the case of Ecuador, the "delegative democracy" model (O'Donnell, 1994) — characterized by strong presidentialism and weak institutionalization — has fostered scenarios of power concentration and opacity in public management, facilitating corrupt practices.

Measuring corruption

Given its hidden nature, corruption is difficult to measure directly. Perception and experience indicators are used to estimate their magnitude. The main international instruments are:

- **Transparency International Corruption Perceptions Index (CPI)**
- **Global Corruption Barometer**
- **World Bank Governance Indicators**
- **World Bank Governance Indicators (WGI)**

Ecuador has hovered between the middle and lower ranks in these rankings over the past two decades, reflecting both regulatory advances and persistent institutional weaknesses.

Historical evolution of the fight against corruption in Ecuador

Overview

Corruption in Ecuador has been a persistent phenomenon since the inception of the republic, although its visibility and legal and political treatment have varied according to the historical context. The alternation between authoritarian and democratic regimes, as well as institutional weakness and the concentration of power, have been factors that have facilitated the development of corrupt practices, often entrenched in the state apparatus.

For a considerable portion of the 20th century, corruption was regarded as a marginal concern on the public agenda, typically addressed only when it reached levels of scandalous proportions. It was not until the democratic transition of the late 1970s, and particularly the constitutional reforms of recent decades, that specific mechanisms were implemented to address this issue.

Relevant constitutional and regulatory reforms

In the course of its recent history, Ecuador has enacted multiple constitutions. The most recent, from 2008, marks a significant turning point by explicitly incorporating principles of transparency, public ethics, and social control. As delineated in Article 227 of the Magna Carta, the principles of legality, transparency, efficiency, and accountability are to serve as the foundational tenets for the governance of public administration, among other provisions. Furthermore, it acknowledges the right of citizens to engage in the social oversight of public administration.

In terms of regulatory instruments, the following stand out:

- **Organic Law on the National Public Procurement System (2008)**, aimed at making government procurement processes more transparent.
- **Organic Law on Public Service (2010)**, which regulates the ethical behavior of public servants.
- **Reforms to the Comprehensive Organic Criminal Code (COIP)**, especially in its special section on crimes against the public administration.
- **Organic Law on Transparency and Access to Public Information (2004)**, with significant reforms in subsequent years.

Although these laws represent progress at the formal level, their effective implementation has often been limited due to a lack of political will, institutional weakness, and the co-opting of oversight bodies.

Institutions for control and anti-corruption

The fight against corruption in Ecuador has historically been led by various entities, including:

- **State Comptroller General (CGE):** Main external oversight body for the use of public resources. Its effectiveness has been questioned due to its political dependence and limited sanctioning powers.
- **State Attorney General's Office:** Responsible for investigating and prosecuting crimes, including corruption. Although it has had moments of independence, its actions have been inconsistent.
- **Financial and Economic Analysis Unit (UAFE):** Responsible for monitoring suspicious financial transactions.
- **Council for Citizen Participation and Social Control (CPCCS):** Created by the 2008 Constitution as a mechanism for social control, its effectiveness has been the subject of intense debate, especially due to its politicization.

At various times, ad hoc commissions have also been set up to investigate corruption scandals (such as the National Anti-Corruption Commission), although these lack coercive powers.

Notable political corruption scandals

Ecuador's recent history has been marked by several high-profile cases of political corruption that have weakened public confidence in public institutions. Among the most notorious are:

- **Petroecuador case (2016):** Involved high-ranking officials in a bribery network related to contracts awarded to the state-owned oil company.
- **Odebrecht case:** The Brazilian construction company confessed to paying bribes to high-ranking officials to secure public works contracts. This case involved former Vice President Jorge Glas, who was convicted of illicit association.
- **2012–2016 Bribery Case:** Involved a scheme to illegally finance political campaigns through state-contracted

companies. Former President Rafael Correa was sentenced in absentia to eight years in prison for bribery.

These scandals reflect not only the existence of systematic corrupt practices, but also the weakness of institutional mechanisms to prevent or punish them in a timely manner.

Progress and setbacks in the fight against corruption

Ecuador has experienced periods of greater momentum in anti-corruption reform, especially when cases have generated media and social pressure. However, it has also experienced significant setbacks:

- **Progress:** Implementation of public procurement portals, greater access to information, creation of citizen observatories, and some relevant judicial processes.
- **Setbacks:** Political interference in oversight bodies, regulatory instability, lack of effective protection for whistleblowers and witnesses, and political use of the justice system for selective persecution.

This evolution allows us to affirm that, although there is a legal and institutional framework to combat corruption, its effectiveness is contingent upon political will, the independence of state powers, and the active participation of civil society.

Analysis of legal instruments currently in force in Ecuador to combat political corruption

Constitution of the Republic of Ecuador (2008)

The Constitution in force since 2008 establishes a comprehensive regulatory framework for combating corruption. Among the guiding principles of public service, transparency, social control, public ethics, and accountability stand out. Article 233 establishes the objective responsibility of public officials, including for acts committed through negligence. Likewise, Article 226 requires all State entities to coordinate actions to ensure the fulfillment of their purposes.

The right of citizens to participate in oversight processes through mechanisms such as class action, citizen complaints, and access to public information is also recognized.

Comprehensive Organic Criminal Code (COIP)

The COIP, in force since 2014, provides detailed definitions of a series of crimes against the public administration, including embezzlement, bribery, extortion, illicit enrichment, influence

peddling, and money laundering, among others. It also introduces aggravating circumstances when these crimes are committed by high-ranking public officials or when they seriously affect the interests of the State.

One of the advances of the COIP is the establishment of proportional penalties and the enabling of procedural mechanisms such as effective cooperation, which has made it possible to uncover corruption schemes through the collaboration of defendants in exchange for judicial benefits.

However, limitations remain in its application, such as the slowness of judicial proceedings, the lack of independence of the judiciary, and the lack of protection for whistleblowers.

Organic Law on Transparency and Access to Public Information (LOTAIP)

This law aims to guarantee citizens' right to know how state institutions are managed. It requires all public entities and some private entities that manage state funds to publish information on budgets, contracts, audits, remuneration, among other aspects.

Despite its importance, the LOTAIP has frequently been violated. Many public institutions do not update their information or present it in a way that is difficult to understand. The lack of effective sanctions and an independent oversight authority limits its real impact.

Organic Law on Public Service (LOSEP)

This law regulates the principles and standards governing human talent management in the public sector. It establishes a disciplinary regime and disqualifications from public office in cases of corruption, in addition to promoting a merit-based administrative career.

However, in practice, discretionary appointments and weak implementation of objective performance evaluations have weakened the effectiveness of this regulation as an anti-corruption tool.

National Public Procurement System (SERCOP)

SERCOP regulates public procurement processes through the Organic Law on the National Public Procurement System. It introduces the public procurement portal, which seeks to make processes more transparent and facilitate social control. It also establishes different procedures depending on the type of contract (reverse auction, common regime, special regime, etc.).

Despite these mechanisms, various reports have pointed to manipulation of processes, targeted awarding, and the use of special regimes to evade controls. The lack of interoperability with other databases and limited real oversight limit its effectiveness.

Financial and Economic Analysis Unit (UAFE)

The UAFE is a technical entity specialized in detecting and preventing money laundering and terrorist financing. Although it has no judicial functions, it refers reports of unusual or unjustified transactions to the Prosecutor's Office. Its role is crucial in detecting irregular financial flows linked to corruption.

However, its functional dependence on the executive branch has raised doubts about its independence in politically sensitive cases.

Council for Citizen Participation and Social Control (CPCCS)

This body, created by the 2008 Constitution, has among its main functions the appointment of supervisory authorities and the promotion of social control. In theory, it is a pillar of the anti-corruption system.

However, its functioning has been highly questioned due to its politicization, internal conflicts, and lack of concrete results. The selection processes for authorities have been the subject of complaints due to a lack of transparency and political manipulation.

Mechanisms for international cooperation

Ecuador is party to various international instruments that promote the fight against corruption, including:

- **United Nations Convention against Corruption (CNUCC).**
- **Inter-American Convention against Corruption (OEA).**
- **Financial Action Task Force of Latin America (GAFILAT).**

These mechanisms have contributed to strengthening regulations and international judicial cooperation, especially in complex cases such as Odebrecht. However, the effective implementation of the recommendations still has shortcomings.

Assessing the effectiveness of legal instruments: achievements, limitations, and current challenges

Achievements

Despite multiple challenges, Ecuador has made some significant progress in the fight against political corruption, particularly in strengthening the legal framework and institutional development:

a) Comprehensive criminal classification:

With the entry into force of the Comprehensive Organic Criminal Code (COIP), the country now has modern criminal legislation that clearly defines corruption offenses and establishes differentiated penalties for each type of illegal conduct.

b) Implementation of transparency technologies:

SERCOP's public procurement portal, together with platforms such as the Public Procurement Information System (SICP), has contributed to reducing arbitrary practices in government procurement, allowing citizens and oversight bodies to access detailed, real-time information on award processes.

c) Participation in international agreements:

Ecuador's accession to international instruments has enabled greater cooperation in the prosecution of transnational crimes, the exchange of information, and the harmonization of best practices. High-profile cases such as Odebrecht have revealed the importance of judicial cooperation and whistleblower rewards.

d) Creation of specialized bodies:

Institutions such as the UAFE have played an essential role in financial monitoring, enabling the detection of suspicious transactions that serve as indicators of illicit enrichment, money laundering, or other forms of corruption.

Structural and functional limitations

Despite progress, the effectiveness of legal instruments in Ecuador faces serious limitations that weaken the anti-corruption system:

a) Lack of judicial independence:

The justice system in Ecuador has been accused of being co-opted by political or economic interests. The politicization of the judiciary reduces public confidence in the system and hinders the prosecution of high-level corruption cases.

b) Impunity and slow proceedings:

Many cases of political corruption go unpunished due to inefficient criminal investigations, a lack of human and technical resources, and constant changes in the Attorney General's Office. In addition, judicial proceedings often drag on for years, which favors the statute of limitations and impunity.

c) Inadequate protection for whistleblowers:

The absence of a robust regulatory framework for the protection of whistleblowers and witnesses limits citizen collaboration. Those who report corruption often face reprisals, which discourages their active participation in social control.

d) Weak institutional control:

Institutions such as the Comptroller General's Office, the Council for Citizen Participation and Social Control (CPCCS) and the Attorney General's Office have been questioned for their lack of independence, effectiveness and transparency. In many cases, these bodies do not act on their own initiative or respond to political interests, which hinders the fight against structural corruption.

e) Culture of tolerance towards corruption:

There is a perception in some sectors of society that corruption is a normal practice. This attitude of resignation or acceptance weakens social control and public pressure on the authorities.

Current challenges and pending reforms

In order to effectively combat political corruption in Ecuador, it is essential to promote structural reforms that strengthen the legal system and oversight institutions. Among the main challenges are the following:

a) Reform of the judicial system:

Ensure the independence of the judiciary through transparent merit-based competitions, ongoing training, and institutional stability. The creation of courts and prosecutors' offices specializing in corruption crimes could help improve the quality and speed of proceedings.

b) Strengthening social control:

Promote real mechanisms for citizen participation in the oversight of public management, through participatory budgeting, citizen oversight committees with technical support, and effective legal protection for whistleblowers reporting acts of corruption.

c) *Active transparency:*

Demand strict compliance with the LOTAIP, with indicators for access to information, interoperability between public systems, and ongoing audits of the State's digital portals.

d) *Professionalization of public service:*

Strengthen merit as a criterion for entry, retention, and promotion in the public sector. The implementation of objective performance evaluation systems is key to reducing discretion in appointments and strengthening public ethics.

e) *Effective international cooperation:*

Take advantage of international cooperation instruments to investigate transnational corruption networks. It is essential to modernize legislation on the recovery of illicit assets and improve coordination between agencies such as the UAFE, the Attorney General's Office, and the Ministry of Foreign Affairs.

Proposals for strengthening the legal and institutional framework against corruption in Ecuador

Ecuador's recent experience has shown that, although legal and institutional tools exist to combat political corruption, they have not been sufficient or fully effective. In this context, it is essential to formulate proposals aimed at strengthening the regulatory framework and the institutional anti-corruption system, with a comprehensive and sustainable approach.

6.1. Constitutional reform and independence of oversight bodies

a) *Ensure the functional and budgetary autonomy of the judiciary:*

It is essential to promote constitutional and legal reforms that ensure the independence of the Judicial Council and the Attorney General's Office from political pressure. To this end, it is proposed that:

- Establish objective and transparent mechanisms for the appointment of supervisory authorities.
- Provide job security for judges and prosecutors specializing in corruption crimes.
- Expressly prohibit political interference in the administration of justice, with clear penalties.

b) Redesign the CPCCS appointment system:

The structure of the Council for Citizen Participation and Social Control must be reformed to prevent partisan co-optation. It is proposed that:

- Limit the number of members.
- Require a recognized track record in transparency and accountability.
- Strengthen the selection process through independent citizen committees and external audits.

6.2. Development of a National Public Integrity System

Inspired by models such as those in Chile and Peru, Ecuador should establish a National Public Integrity System that coordinates all entities responsible for preventing, detecting, and punishing corruption. This system should:

- Be coordinated by an autonomous technical entity (such as a National Anti-Corruption Secretariat).
- Establish national indicators of integrity and corruption risk.
- Generate cross-cutting public policies with a preventive approach.
- Promote periodic evaluation of results through independent audits.

6.3. Strengthening the criminal and procedural legal framework

a) Clear classification and proportionate penalties:

It is proposed to update and harmonize criminal legislation to incorporate new criminal offenses such as private corruption, illicit campaign financing, conflict of interest, among others. In addition:

- Establish aggravated penalties when crimes affect essential public goods (health, education, justice).
- Incorporate the concept of confiscation without conviction in cases of unjustified enrichment.

b) Expand procedural mechanisms for effective cooperation:

The law should establish adequate incentives for people involved in corruption cases to cooperate with the justice system. This includes:

- Comprehensive protection for witnesses and collaborators.
- Prison benefits proportional to the value of the information provided.
- Abbreviated procedures to expedite asset recovery.

6.4. Structural prevention: public ethics, transparency, and social control

a) Education in values and public ethics:

Promote educational reform that integrates, from basic levels to higher education, content on democratic values, civic responsibility, a culture of legality, and the fight against corruption. Likewise:

- Implement mandatory ethics training programs in all public entities.
- Create a national observatory on ethics in public service.

b) Active transparency and interoperability:

In addition to strict compliance with the LOTAIP, it is proposed that:

- Develop a single national open data platform that integrates financial, asset, and public procurement records.
- Ensure interoperability between the Comptroller's Office, the Internal Revenue Service, the Financial Intelligence Unit, the Prosecutor's Office, and the National Court.
- Establish administrative penalties for failure to publish key information.

c) Encourage citizen social control:

Institutional design should facilitate active citizen participation in the oversight of public management. Some proposals include:

- Provide resources and technical training to citizen oversight groups.
- Create a national fund for social organizations working to combat corruption.
- Incorporate participatory budgeting mechanisms and open town hall meetings with binding power.

6.5. Professionalization of public service and prevention of conflicts of interest

a) Reforming the civil service:

A professional public administration reduces incentives and opportunities for corruption. In this regard, it is necessary to:

- Strictly enforce merit-based competitive examinations.
- Establish periodic performance evaluations and quality control in management.

- Punish the political use of public institutions.

b) *Strict rules on conflicts of interest:*

It is essential to update the Organic Law on Public Service (LOSEP) to include:

- Mandatory and updated declarations of conflicts of interest.
- Prohibition on persons with contractual ties to the State from holding public office.
- Cooling-off periods for former officials who wish to join companies that were regulated by or benefited from State contracts.

6.6. International cooperation and asset recovery

a) *International partnerships:*

Ecuador must strengthen its judicial cooperation with international organizations such as the UN, the OAS, the IDB, and with neighboring countries. This will allow:

- Exchange information in a timely manner.
- Pursue transnational corruption networks.
- Implement international standards on money laundering prevention.

b) *National asset recovery strategy:*

The country needs a clear, sustained, and specialized policy to recover public funds diverted through acts of corruption. This involves:

- Create a permanent inter-agency unit (Prosecutor's Office, UAFE, SRI, Ministry of Foreign Affairs, Attorney General's Office).
- Strengthen legislation on asset forfeiture.
- Coordinate with international banks and multilateral organizations to repatriate funds.

Conclusions

The fight against corruption in Ecuador, particularly in the political arena, is a complex challenge requiring a comprehensive, long-term approach. Although the country has made significant regulatory and institutional progress, this analysis has shown that profound limitations persist, affecting the effectiveness of existing legal instruments for preventing and punishing corruption.

The Ecuadorian constitutional and legal framework contains adequate principles and norms to address corruption, including detailed criminalization and the incorporation of technological mechanisms that promote transparency. However, effective implementation of these norms is hindered by the politicization of control bodies, judicial slowness, impunity, and inadequate protection for whistleblowers.

To reverse this situation, structural reforms are needed to guarantee the independence and autonomy of the judiciary and oversight bodies while encouraging the active and protected participation of citizens. Creating a national public integrity system, updating and harmonizing the criminal framework, and professionalizing the civil service are fundamental pillars for effectively combating political corruption.

Additionally, consolidating a culture of public ethics and transparency that transcends regulations and becomes ingrained in the daily behavior of officials and citizens is essential. International cooperation and the effective recovery of illicit assets are strategic tools for confronting transnational networks that facilitate and benefit from corruption.

In short, fighting corruption in Ecuador must be a national priority that unites political will, institutional commitment, and citizen participation. Only then will it be possible to establish a genuine rule of law that ensures justice, equity, and sustainable development for all Ecuadorians.

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