

**ECUADOR'S RESPONSE TO THE QUESTIONNAIRE ON THE
PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION AND FOR FOLLOW-UP ON RECOMMENDATIONS
FORMULATED IN THE FIRST ROUND**

SECTION I

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION
PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND**

(1)

CHAPTER ONE

**SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND
SERVICES (ARTICLE III (5) OF THE CONVENTION)**

1. Government hiring systems

a) Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

Article 124 of the Political Constitution of the Republic establishes the principles governing the organization of Public Administration.

“Art. 124.- The organization and development of Public Administration shall be decentralized and deconcentrated.

The law will guarantee the rights and establish the obligations of civil servants. It will also regulate such issues as income, stability, evaluation, promotion and dismissal. Both income and promotion within the civil service and career in public administration will be upon based on merit and competitive examinations. Only exceptionally can public servants be freely appointed to and removed from office.

The remunerations of public servants shall be consistent with their functions, performance and responsibilities.

In no case shall political affiliation influence the entry, promotion or removal of a citizen from public office.”

This constitutional provision is applied in accordance with the Organic Law on the Civil Service, the Administrative Career and Salary Homologation (LOSCCA) which governs public officials in general (“*General System*”) and specific laws regarding public officials in areas such as the Judiciary, the Legislature, the Public Prosecutions Service and the Constitutional Court (“*Special Systems*”).

(1) All references to rules and references contained in this document can be found in the ANNEXES hereto.

In both systems, entry into the Civil Service is based on merit and competitive examinations and public functions commence when the new incumbent is informed of the appointment by the appropriate authority.

In both systems staff are hired in accordance with the regulations on:

- Free Appointment and Removal of Public Officials from Office, in the case of political and administrative management positions in State entities (LOSCCA Art. 92, 93) and;
- Occasional and temporary direct recruitment through civil contracts when a person is engaged by a public entity to provide a temporary service that cannot be covered by one of its permanent employees (LOSCCA Art. 19; Regulations to the LOSCCA, Art. 20, 21, 22, 23, 24; Technical Regulation on the Staff Recruitment Subsystem Art. 16).

Although people who are hired under the system of free appointment and removal of public officials, temporary contracts and the Labor Code, they are not administrative career staff but they still have the same duties as public servants.

Description of the “General System”: Civil Service and Administrative Career

The hiring of public officials is governed by the provisions of the Staff Recruitment Subsystem which is part of the Integrated Civil Service Human Resource Development System established in the LOSCCA, Art. 59 and subsequent articles.

The Staff Recruitment Subsystem is the series of rules, policies, methods and procedures whereby the suitability of applicants who meet the requirements for a particular position is competitively evaluated. The technical processes followed in the subsystem are described in the section on employment based on merit and competitive examinations (LOSCCA, Art. 60).

The Staff Recruitment Subsystem operates according to the following principles (LOSCCA Regulations, Art. 153):

Legality: The subsystem applies the provisions of Art. 124 of the Political Constitution of the Republic whereby entry and promotion must be based on merit and competitive examinations.

Neutrality: Staff recruitment methods and procedures must be applied fairly, technically and impartially for all candidates to public office.

Credibility: The selection process must be conducted by applying pre-defined policies, rules, procedures, methods and techniques, applied in such a way as to guarantee the results were obtained and verified in a secure and reliable manner.

Equality: The selection process applied must assess candidates under equal conditions, bearing in mind the requirements for the vacancies.

Transparency: The competition rules, procedure and results must be objective and transparent.

The Staff Recruitment Subsystem covers the advertisement, selection and trial period (LOSCCA Rules, Art.154).

The provisions of the LOSCCA and the Staff Recruitment Subsystem apply to all State entities, institutions and bodies, as well as corporations, companies and foundations in which the State has a majority stake or owns part (at least 50%) or all of its equity or assets (LOSCCA, Art. 3), to anyone in a remunerated public office in any of the institutions, entities and bodies indicated in Art. 3 of the Law and to Ecuadorian citizens who work for State institutions in accordance with the provisions of Art. 35 (9) of the Political Constitution of the Republic (employed under the Labor Code regime).

Despite the fact that Art. 5 of the LOSCCA stipulates certain exceptions to the application of provisions, as far as Public Officials’ rights, duties, obligations, disqualifications and prohibitions,

its mandate covers public officials who are excluded from those provisions (civil servants in the Legislature, Judiciary, Public Prosecutions Service, Constitutional Court, Court of Surveillance of the Guayas Transport Commission, Foreign Ministry staff serving abroad and State-employed educators).

The principles of legality, neutrality, credibility, equality and transparency applied in the three stages of the staff recruitment process guarantee the following rights (Regulations to the LOSCCA, Art. 153 and subsequent articles, Technical Regulation on the Staff Recruitment Subsystem, Art. 4):

- Access to employment in the civil service free of all discrimination.
- Information, which must be disseminated to the general public, on vacancies in the civil service. Access shall be based on merit or a competitive examination and the results of the selection published in the press or broadcast by radio, television or satellite. Vacancies must be announced in accordance with the provisions of the LOSCCA and the Law on Access to Information and Transparency.
- An efficient staff recruitment process. The methodology followed must comply with profile of competencies for each position which must be pre-defined through technical studies.

To facilitate implementation of the staff recruitment process in each entity, the National Technical Secretariat of Human Resources and Remuneration (SENRES) issued the Technical Regulation on the Staff Recruitment Subsystem.

Description of the Special Systems:

a) Legislative Function:

Recruitment is carried out in accordance with the Organic Law on the Legislature (LOFJ) and the Law on Career Employees in the Legislature (LCAFL). However, insofar as the duties and rights of legislative branch staff are concerned, these public officials must comply with the provisions of the LOSCCA.

The system seeks to achieve professionalism, stability and promotion for officials and employees of the Legislative Branch, to guarantee a high degree of efficiency and enhance the technical and administrative aspects of their work. (LCAFL, Art. 1). The Legislative Branch has two categories of workers (LCAFL, Art. 1 A):

Permanent Staff: These are permanent employees in administrative positions in the National Congress and the Legislative Commissions. They are Administrative Career employees of the Legislative Branch and are appointed by the Administrative Council of the Legislative Branch based on merit and competitive examinations (LCAFL, Art. 1B).

Temporary Staff: The Secretary and the Alternate Secretary of the National Congress, and the advisers and civil servants in legislative blocs and special and temporary commissions, legislators' secretaries and staff who are appointed directly by the President of the Congress on a temporary or occasional basis at the request of the Plenary, commissions or legislators, and they must comply with the contractual rules in force (LOFL Art. 22, LCAFL, Art. 1B).

b) Public Prosecutions Service

Pursuant to a constitutional mandate (Political Constitution Art. 217) all activities, including staff hiring, are governed exclusively by the Organic Law on the Public Prosecutions Service (LOMP), the Regulations to the Organic Law on the Public Prosecutions Service (RLOMP) (LOMP Art. 1 and RLOMP Art. 3) and the Instructions on Recruitment of Staff for the Public Prosecutions Service.

All provisions on administrative and human resource aspects meet the special regulations established in the LOSCCA.

The Public Prosecutor's Office employs:

Staff who can be freely appointed to and removed from office; the Director of Public Prosecutions, (LOMP Art. 6 and the Political Constitution Art. 201, 217) the Director General of Legal Counsel, the Secretary General of the Public Prosecutions Service (LOMP Art. 11), National Directors of Administration, Finance and Human Resources, Advisors to the General Directorate of Legal Counsel (LOMP Art. 9).

Officials in the Public Prosecutions Service; Appointed by the Director of Public Prosecutions. District Prosecutors (LOMP Art. 13), Prosecutors (LOMP Art. 18), based on merit and competitive examinations (LOMP Art. 8 (G and H)).

The Instructions on Staff Recruitment gives details of the mechanism used to select Public Prosecutions Service Officials, which includes processes for announcing vacancies in newspapers, selection mechanisms for specific candidates depending on the position to be filled and the Organic Law on the Public Prosecutions Service which stipulates the minimum requirements for each position to guarantee an efficient staff recruitment process.

i. Governing or administrating authorities of the systems and control mechanisms.

In the "General System": Civil Service and Administrative Career

Pursuant to Art. 52 of the LOSCCA and Articles 101, 102, 103 and 104 of its Regulations, the following agencies are in charge of staff management and remuneration for the civil service:

1. The National Technical Secretariat for the Development of Public Sector Human Resources and Remunerations (SENRES) is a public law body with national jurisdiction and technical, functional, administrative and financial autonomy. It provides guidance on the institutional use and management of public sector human resources; promotes and ascertains compliance with state policies and institutional development standards; and deals with queries on institutional development, the administration of human resources and remunerations within its field of competency.
2. The Human Resource Management Units of each Entity (UARHS) are the technical units in each institution that are responsible for the decentralized management of the integrated staff development system of the civil service and institutional development so that the policies of the SENRES can be implemented in their jurisdiction. They are organically dependent on each entity and technically dependent on the SENRES.

According to the provisions of Art. 105 to 107 of the Regulations to the LOSCCA, the following entities are control bodies:

1. The Ministry of Economy and Finance regulates the remuneration of civil servants.
2. The Ministry of Labor regulates public sector workers under the labor contract system.
3. The Auditor General's Office is the technical oversight body responsible for auditing State institutions, entities, agencies and enterprises to ascertain compliance with the LOSCCA and other laws and regulations in order to determine administrative, civil or criminal responsibilities in the event of non-compliance.

The Integrated System for the Development of Human Resources in the Civil Service has a technical mechanism to process information and monitor activities, in accordance with the provisions of Art. 108 of the Regulations to the LOSCCA. It is called the National Information

System on Institutional Development, Human Resources and Remuneration of Civil Servants, is administered by the SENRES and requires that each UARHS reports on the movements or actions of the Integrated System for the Development of Human Resources, at the institutional level.

The objectives of the National Information System are to:

- Automate and process information on the organizational management of human resources and remuneration.
- Facilitate means of evaluating and monitoring the application of the policies, standards and administrative development instruments issued by the SENRES.
- Provide information on decision-making on civil service and remuneration issues.
- Structure and update the database of jobs in public sector institutions.
- Provide a database of persons banned from holding public office, by appointment or under a contract.
- Set up databases of institutions subject to compliance with the LOSCCA.

In the “Special Systems”:

a) The Legislative Branch:

The Administrative Council of the Legislature is the highest-ranking administrative body of the Legislative Branch. It has a President, two Vice-Presidents and four deputies elected by Congress (LOFL Art. 21).

The Council is in charge of organizing and monitoring the administrative and financial legislative services. Its responsibilities include appointing and removing employees of the National Congress in conformity with the Law on the Administrative Career in the Legislative Branch (Art. 2.1 B).

The Human Resources Directorate of the National Congress administers the Legislative Branch’s Personnel Management and Development System and is responsible for the staff recruitment process.

b) The Public Prosecutions Service

The Director of Public Prosecutions, in his capacity as the highest-ranking authority of this Service, appoints civil servants to the Public Prosecutor’s Office Service at the national level and monitors the development of the selection processes through the National Administrative Directorate and the National Human Resources Directorate. There is a District Department of Human Resources in each District Prosecutions Office that carries out the orders of the National Directorate. (LOMP, RLOMP, Instructions on Staff Recruitment for the Public Prosecutor’s Office).

The National Human Resources Directorate is responsible for following up implementation of the procedures in place for the staff recruitment process.

ii. Access to the public service through a merit-based system.

In the “General System”: Civil Service and Administrative Career

Access to and promotion within the Civil Service and the Administrative Career are only possible based on merit and competitive examinations. The process is described below.

The Administrative Career is subject to a series of policies, standards, methods and procedures designed to raise the level of efficiency of public administration and guarantee the stability and merit-based promotion of civil servants (LOSCCA Art. 90).

To hold a public office the candidate must be appointed or hired by the appointing authority (LOSCCA Art. 17 and Regulations to the LOSCCA , Chapter III (I).

Access to a public office is subject to a merit-based competitive examination (LOSCCA Art.71).

Candidates who apply for a management position in a political or administrative branch of government are not required to sit a merit-based competitive examination, nor are they subject to the trial period established for entry into the civil service. They are not Administrative Career staff and can therefore be freely appointed and removed (LOSCCA Art. 4 and 93 LOSCCA, subparagraph b).

In the case of contracts under the Labor Code System, entry is not dependent on a merit-based competitive examination.

Nor is a merit-based competitive examination required for fixed-term contracts, free-lance contracts or transfers for secondment on a temporary basis (LOSCCA Art. 38, 39, 92 y 93; Technical Regulation, SSP Art. 16).

Merit-Based and Competitive Examination System (LOSCCA Art. 71, LOSCCA Regulations, Art. 151 to 172 and the Technical Regulations on the Staff Recruitment Subsystem (SENRES):

This a tool used in the Staff Recruitment Subsystem. It consists of a competitive process to select the candidate best-qualified for a particular position. It is applied during the Vacancy Announcement and Selection process of the Subsystem. The procedure is designed to avoid any kind of discrimination in the selection process.

The structure of the process is twofold, based on:

Merit: The documents submitted by applicants for a job in response to the requirements stipulated in the Vacancy Announcement are examined and rated.

Competition: The level of competence of the candidates is measured objectively through tests.

Merit-based and competitive examinations are held by the Human Resource Management Units of each entity. The competition process can be either closed (for officials from within the organization meet the requirements of the Vacancy Announcement, LOSCCA Regulations, Art. 162) or open (to anyone who meets the requirements of the Vacancy Announcement, LOSCCA Regulations, Art.161).

The Staff Recruitment Process comprises:

A Merit and Competition Tribunal which evaluates the information provided by the candidates, draws up the merit and competition reports containing the each candidate's score and declares the winner of the competition (Technical Regulation, SSP Art. 6 and 7).

An Appeals Tribunal, which receives and evaluates appeals contesting the result of the competition. Appeals must be submitted within 3 days following disclosure of the merit reports, the competition reports and the winner of the competition (Technical Regulation, SSP Art. 8 and 9).

The first stage of the Staff Recruitment Subsystem is the Vacancy Announcement, informing potential candidates that merit-based and competitive examinations are to be held in order to guarantee the participation of as many candidates as possible in the process.

In the "Special Systems:

a) The Legislative Branch

The merit-based system of access only applies to National Congress officials (LCAFL Art. 1B).

b) The Public Prosecutions Service

Except in cases of direct appointments, technical and administrative staff are admitted to the Public Prosecutions Service through an open or closed merit-based competitive examination. The recruitment process takes place according to the Instructions on Staff Recruitment for the Public Prosecutions Service and includes a recruitment stage or Vacancy Announcement and a selection stage (Recruitment Instructions Art. 4).

iii. Vacancy Announcement for the selection of public servants, indicating the qualifications required.

In the “General System”: Civil Service and Administrative Career

The Vacancy Announcement is disseminated through each UARHS. The competition conditions must be published in the newspapers and broadcast by radio, TV or cable, to inform the public at large (Technical Regulation, Art. 4 (7)).

The Vacancy Announcement is intended to encourage people to take part in the competition and inform them of the conditions of access to the government position (Technical Regulation, Art. 12).

The Vacancy Announcement must adhere to the following principles:

Advertising: the publication or dissemination of the Vacancy Announcements.

Unrestricted competition: the only restriction is that the competition conditions published in the notice must be met.

Transparency: clarity in the Vacancy Announcement, regardless of the selection and possibility of a revision if there are grounds for it.

Competitions must be announced to the SENRES by the UARHS on a quarterly basis.

The conditions of merit-based competitive examinations (Technical Regulation SSP Art. 11) cover the following aspects:

Indication of the candidate’s academic qualifications and experience, depending on the job competencies.

Description of the appraisal factors and breakdown of the parameters applicable in the merit-based competition phases.

Technical Regulation SSP stipulates that the selection process must be clear, timely, specific and valid. The SENRES designed Forms *SENRES RH SEL 01, 02, 03, 04, 05 and 06) to be used in the Vacancy Announcement and selection phases as technical tools to enable the UARHS to implement those phases of the process ⁽²⁾.

In the “Special Systems”:

a) The Legislative Function

The legislation makes no reference to disclosure.

b) The Public Prosecutions Service

The Vacancy Announcement is issued by the Prosecutor General of the Republic, the National Directorate of Human Resources and, if appropriate, the President of the corresponding professional association. In the case of a closed competition, an official circular is sent out. Open competitions are advertised in the press.

The Vacancy Announcement must specify the name of the position, legal requirements, professional suitability, responsibilities, salary, budget item number corresponding to the position,

² See ANEXO 2: INSTRUMENTOS TÉCNICOS DE SELECCIÓN DE PERSONAL.

place of work, duration of the employment and deadline for submitting documentation (Recruitment Instructions Art. 5).

iv. Ways to challenge a decision made in the selection system.

In the “General System”: Civil Service and Administrative Career

The staff recruitment process has an Appeals Tribunal that hears and decides appeals from candidates contesting the results of the merit-based and competitive examinations.

The Merit and Competition Tribunal is informed of the resolution taken by the Appeals Tribunal. This resolution is binding and cannot be appealed.

The Appeals Tribunal is comprised by a representative of the appointing authority, a representative of the unit with the vacancy, a workers’ representative and a representative of the UARHS.

In the “Special Systems”:

a) The Legislative Function

Appeals regarding the rights provided for in the LOSCCA and the LCAFL can be made to the Administrative Council of the Legislature and a decision reached within a 15 day period (LCAFL Art. 5).

b) The Public Prosecutions Service

Selection is decided by a Merit-Based Competition Tribunal with a specific structure depending on the characteristics of the vacancy. Either the Director of Public Prosecutions or an appointed delegate participates in all the tribunals.

The Merit-Based Competition Tribunal hears and decides appeals by candidates. Participants must appeal in writing on the day they are informed of the decision. The Tribunal’s decision on the appeal is definitive and no recourse in appeal is possible. (Recruitment Instructions, Art. 14 and subsequent articles).

v. Relevant exceptions to the above.

In the “General System”: Civil Service and Administrative Career

In addition to the two systems examined, there are special regimes through which officials are appointed by the President of the Republic or the National Congress in accordance with the Constitution and the laws, officials appointed to the Foreign Service in functions abroad, and staff in the Armed Forces and in the National Police Force.

Staff can also be hired under a dependency relationship, subject to the rules of the Labor Code.

In the “Special Systems”:

The Legislative Function:

Non-permanent officials are exempt from the merit-based competitive entry procedure and also from the benefits of the Administrative Career in the Legislative Branch. However, they must comply with the obligations that are binding upon public servants with permanent tenure under the LOSCCA.

b) In relation to question a), state the objective results obtained, including any available statistical data.

We are unable to state the objective results obtained because the standards and systems under review have not been in place for long and therefore there is no information or statistical data available on the National Information System on Institutional Development, Human Resources and Remuneration of Civil Servants.

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention.

NOT APPLICABLE

2. Government systems for procurement of goods and services.

a) Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

The Political Constitution of Ecuador acknowledges and guarantees people freedom of enterprise and freedom to hire, among other freedoms, in accordance with the Law (Art. 23 (16 & 18)).

Under Ecuadorian legislation, the regulations on systems for the procurement of works, goods and services are contained in the Government Procurement Law and the Consulting Services Law.

The Government Procurement Law (LCP) establishes the procedures for procuring work execution, goods and services not regulated by the Consulting Services Law (LCP, Art. 1) that must be followed by the public sector entities defined in Art. 118 of the Constitution. It also regulates the procedures for the precontractual and procurement phases (LCP Art. 3).

Public sector institutions that are covered by a Special Law are excluded from its provisions. Contracts for the procurement of medical, pharmaceutical and surgical products, entered into by public sector entities that provide health services and come under the Ecuadorian Social Security Institute are also excluded. These will be subject to the Regulations issued on the matter by the President of the Republic. Also excluded are contracts whose purpose is to carry out social communication activities designed to inform the public of the actions of the National Government or public sector entities (LCP Art. 2).

The provisions of the Consulting Services Law (LC) and its Regulations (LC Art. 1 and 3) will apply to the contracting of consulting services and support.

The official nature of the Information System on Government Procurement (CONTRATANET) is acknowledged in Executive Decree 122 of February 2003.

i. Procurement systems with a public tender and without a public tender

a) Government Procurement Law:

During the precontractual stage, the standard procedures for purchasing movable property, executing execution and providing services that do not come under the Consulting Services and Mercantile Leasing Law, will be applied in accordance with the sum of money involved (LCP Art. 4).

Tenders, if the amount of the referential budget (which is defined by the contracting entity) exceeds 0.00004 of the Initial State Budget (PIE). For 2006 the PIE is US\$8,564,213,250.11, therefore the amount will be US\$342,568.53 USD.

Public Competitive Bids, when the amount of the referential budget for works, goods or services related to the Consulting Services Law does not exceed the amount established for the Tender, but is more than 0.00002 of the PIE. Thus for 2006 it will be US\$171,284.27.

International Regulations, for the cases in which the referential budget is below the amount established for the Public Competitive Bid, the law states that contractors must be chosen according to the regulations issued by each contracting body.

Contracts for the purchase of real estate, leases on movable or real property or buildings and any others using funds from loans from multilateral agencies of which Ecuador is a member, shall be subject to the special procedures provided for in Title V, Chapter I, II and III of the LCP,

Exceptions: Article 6 states that the following contracts shall be exempt from compliance with the regular precontractual procedures.

- Those necessary to meet severe emergencies;
- Those required to execute priority projects to meet agreements entered into with foreign governments that offer advantageous financing conditions or by multilateral credit agencies of which Ecuador is a member;
- Those classified by the President of the Republic as necessary for national security;
- Swap contracts;
- Contracts for an artistic or literary work;
- Mail transportation contracts;
- Cases in which the contracting procedure would have been null and void upon reopening;
- Contracts for the purchase of spare parts or accessories for equipment and machinery maintenance;
- Contracts for the purchase of goods which are proven to be the only ones in the market, are available from a sole supplier and entail the use of exclusive marks or patents;
- Procurement contracts entered into between the State and public sector entities, or entered into among public sector entities.

Precontractual Tendering and Public Competitive Bidding procedures are public. Offers must be submitted in one envelope and the successful bidder is assessed through a system that ascertains compliance or failure to comply with requisites established in the precontractual documents, concerning legal, technical, economic and administrative capacities. The offer best suited to the nation's interests is selected out of all the offers that comply with the requisites. It is not required by Law to state the scope of the suitability. The only difference between these systems or processes, apart from the referential budget, is the time that stakeholders have to prepare their offers: 18 to 48 days in the case of a tender (LCP, Art. 32), and 12 to 24 days for a public competitive bid, and the day selected will be a multiple of six (LCP, Art.).

In selection systems regulated by public sector entities, the fundamental characteristic is the variety of thresholds and procedures, as well as the requisites necessary for the qualification and awarding of the contracts. This means that the stakeholders must be aware of the procedures to be followed and the requisites to be met, depending on the contracting entity.

In cases that are exempt from the common procedures described above (tender or public competitive bid), the Government Procurement Law provides that the legal representative of a contracting entity must determine the procurement system to be applied, and the minimum requisites that must be submitted to support the bidder's legal and technical and economic standing.

b) Consulting Services Law: This Law defines the following as procurement systems:

Public Bid, in cases where the estimated amounts are equal to or higher than 0.00004 of the PIE, i.e. US\$342,568.53 for 2006.

Private Bid, if the estimated amount of the contract is below the amount just mentioned but more than 0.00001 of the PIE, i.e. US\$85,642.13 for 2006.

Not subject to Tender, if the amount of the contract is less than or equal to 0.00001 of the PIE (\$84,642.13 for 2006), public sector institutions award contracts without inviting bids.

Exceptions:

- Contracts necessary to overcome emergencies.
- Those deemed necessary for national security.
- Those exempted from competition by special laws.

It is common in all consulting service procurement systems for all the consultants to be on the Register of Consultants and for offers to be submitted in two envelopes; the first containing the technical offer and the second the economic offer.

According to Article 27 of the Law, technical offers must be evaluated on the basis of the following parameters:

Technical capacity, background and experience of the firm; background and experience of the personnel; proposed work plan and methodology; economic capacity and availability of instruments or equipment, and in the case of associations in which foreign consultants participate, adequate transfer of technology.

Once the proposals have been rated and a score assigned, according to the pre-defined conditions, an order of priority is determined and a negotiation phase commences with the consultant whose technical proposal obtained the highest score. The negotiation must take place in a pre-established order (Regulations LC, Art. 41) in which the specific technical, economic and contractual aspects are decided and agreed on.

This applies to Public Bids, whereas in the case of Private Bids a list of three to six consultants must be drawn up and they must all be of the same type (individuals, firms, entities, agencies, bodies and organizations).

In accordance with Article 67 of the Regulations, in all processes or systems for the procurement of consulting services, all the documents related to methods and procedures – subject or not to a public or private competitive bidding process – are posted on the website of the procuring entities. Additionally, the selected and successful bidders and whoever is responsible for producing information on the bidding process, must deliver electronic files containing full details of the proposals, information and any other documentation pertaining to the processes.

Judging by the description of the procurement systems for works, goods and services not regulated by the Consulting Services Law, and for the procurement of consulting services, it would seem that these mechanisms are designed to ensure dissemination, equity and efficiency (invitations to tender, public call for bids, private competitive bidding processes)

ii. Governing or administrating authorities of the systems and control mechanisms.

a) Government Procurement Law:

A Procurement Committee must participate in processes involving tenders and public calls for bids. The Committee has five members, one of whom must be from the association of professionals whose line of work relates to the project's main field of activity.

In the case of tenders and public bidding processes, this committee in turn appoints a Technical Commission, to evaluate the proposals.

In cases where procurement is regulated by each entity, the entity's own rules shall be adhered to, while for processes that are exempted from the common rules, the legal representative of the Entity will be responsible for managing the goods and services procurement systems.

b) Consulting Services Law:

A Technical Commission on Consulting Services comprised by five or six members, handles the procurement processes in the systems provided for under by this Law. This Commission can in turn set up sub-commissions to assist it in its work.

Art. 60 of the Government procurement Law states the following with respect to control mechanisms:

"The Auditor General and the Attorney General must issue a report on the bidding process before a contract awarded in accordance with a tender or public competitive bidding process is signed.

These reports are necessary for entering into contracts for an amount that are equal to or higher than the base price stated in the call for public bids, even if they was no tender or bid.

If the contract involves the disbursement of public funds from the Budget of the National Government, a report from the Minister of Economy and Finance shall also be required.

If other reports are needed due to the nature or object of the contract, these will be in conformity with the respective laws.

The officials mentioned shall issue their reports within fifteen days of notification of the award, the successful bidder's offer, the reports on calculation of the formulas for readjusting prices and the standard formats and the draft project. Failure by the official responsible for notifying the results to issue and notify them before the deadline will be construed as a favorable decision.

Any clarification or original documentation required by the notifying official must be requested within five days following receipt of the respective documentation.

Once the reports have been obtained or the period has expired, any comments made shall be heeded and the contract then signed."

Ecuadorian legislation has created the Auditor General's Office and the Public Prosecutor's Office as control mechanisms:

a) Auditor General's Office:

"Issue well-reasoned reports, as a prior requisite for State Institution to sign contracts that affect public funds or involve the disbursement thereof, for an amount equal to or greater than the amount indicated in the Law for Public Competitive Bidding Processes, whether or not there was a tender or bid. The report will be issued within 15 days from the date of receipt of the request and all the supporting documents. Failure to submit a report shall not prevent the contract from being entered into once the period indicated in this paragraph expires. The report referred to in this paragraph shall not be necessary in domestic or foreign public debt contracts and agreements." (Organic Law on the Auditor General's Office, Art. 31 (16)).

b) Attorney General's Office:

"Art. 3 The Attorney General alone is responsible for the following functions: ...

F) Issue well-reasoned and justified reports on contracts entered into between State institutions as per Article 118 of the Political Constitution of the Republic, as well as those entered into by private companies with public funding, under the terms referred to for that purpose in the Organic Law on the Office of the Auditor General of the State, whose amount exceeds the base price for the public call for bids, as well as contracts subject to the Law on State Modernization. The entity or company shall request the corresponding report from the Attorney General.

The reports referred to in the previous paragraph will relate to compliance with the constitutional, legal and regulatory requisites shall be binding and must be issued within fifteen days from the date the request was received with the respective justifying documents. In exceptional cases, which must be justified, that term may be extended, only once, for ten days. Failure to issue the report within that period shall be construed as a favorable decision.

The highest authority of the Attorney General's Office shall be accountable for issuing or failing to issue reports, in the event of failure to comply with the provisions of this Law, the provisions of Article 130 of the Political Constitution of the Republic will apply, notwithstanding that failure to issue the reports within the deadline stipulated by the law will mean

that the official responsible will be subject to administrative, civil, pecuniary and criminal accountability for negligence in fulfilling his duties.

Contracts signed without a report being requested, before the period for issuance has expired, and without the comments of substance being included or if there is a negative report..... ..”

iii. Register of pre-approved contractors.

Article 5 of the Executive Decree provides that the bodies and dependencies of the Executive Branch must publish an electronic list of the registers of pre-approved contractors and the requisites for registration.

The Government Procurement Law contains no provision requiring that a centralized register of contractors of works, goods or services be kept; the only provision on such registers is for contracts that do not exceed the sum of a public call for bids for which the Auditor General’s Office issued internal rule No. 250-01.

Art. 12 of the Government Procurement Law establishes the centralization of the Register of Non-Performance Events.

“Art.112.- REGISTER OF NON-PERFORMANCE EVENTS.- Public sector entities must inform the Auditor General’s Office, attaching documents proving non-performance of contracts entered into with them in order to register any contractors who have failed to comply with their contractual obligations or refused to sign the contracts awarded to them.

iv. Electronic methods and information systems for government procurement.

With the help of the Secretariat of Public Functions of Mexico, the Commission for Civic Control of Corruption created the CONTRATANET system which is the system that publishes, discloses and optimizes government procurement processes through the Internet, in an endeavor to ensure that the State saves significant amounts of its budget, increase the chance of public institutions being elected and facilitate a tool to make their administration more transparent. Private enterprises will have more business opportunities and society will know how public funds have been spent..

According to the provisions of Executive Decree 1565, published in Official Register 302 of June 29, 2006, the President of the Republic requires that the Executive Branch’s entities publish through CONTRATANET the pre-approval procedures for contractors, the procedures regarding the purchase of goods, services and works construction, whose budgets exceed the result of multiplying the coefficient 0.000002 (two millionths), by the amount of the Initial Budget of the State for the corresponding economic year, i.e. for 2006 \$17,128.43 USD.

The Decree provides that this method be used to announce a public call for bids in the cases of processes with budgets that are below the amount established by the Government Procurement Law for the competitive bidding process, i.e. for 2006 US\$171,284.27.

An international commission made up of representatives of the Auditor General’s Office, the Attorney General’s Office, the Commission for Civic Control of Corruption, the Ministry of the Economy and the Council for Modernization, is currently working on the drafting of a new Government Procurement Law that modernizes the State procurement system, which includes procurement by electronic means (CONTRATANET).

v. Public works contracts.

Article 1 of the Government Procurement Law states that its provisions govern contracts for carrying out public works and hence the pre-approval procedures referred to in Section I, Chapter 1, headings 2a) and a) i. of this questionnaire apply to those contracts..

With respect to this phase of procurement, the LCP regulates the procedures in Title V on Contracting, referring in 9 chapters to capacities, disqualifications and bans, to the standard requisites and register of contracts; to prohibitions; to guarantees; to receipt; to price readjustment; to supplementary contracts and additional works; to the termination of contracts and to controversies.

vi. Identification of the selection criteria for contractors (e.g. price, quality and expertise).

According to Article 23 of the Government Procurement Law, the Committee only considers proposals that are in line with the precontractual documents and the law and the referential budget will not be taken into account for the purposes of evaluating and awarding offers.

Appraisal of offers takes into account compliance with the specific pre-established conditions, by virtue of which the selection criterion is economic, in other words the best economic offer of all those that comply with the pre-established procurement conditions. Article 24 of the Law states that a Technical Commission must prepare comparative tables of the offers and a report with comments that provide the Committee with the information required to award the contract.

The economic criterion for selection is backed up by the fact that Article 24 of the Government Procurement Law states that in order to evaluate the offers, the Technical Commission will consider exclusively the values given, without calculating any possible price adjustment.

Article 26 of the Government Procurement Law regarding the awarding of contracts states that the Committee will award the contract to the bidder who submitted the offer best suited to the country's national and institutional interests. This allows for discretionality and the possibility of analyzing variables other than economic ones.

vii. Ways to challenge a selection.

Actions can be taken in the internal administrative area, by challenging a selection in the administrative headquarters and also by appealing the administrative decision under the terms provided for in Article 38 of the State Modernization Law..

STATE MODERNIZATION LAW

Art. 38.- *The Administrative and Fiscal District Appeals Courts, within the sphere of their competence, shall hear and rule on all suits and appeals resulting from acts, contracts, administrative issues and Regulations issued, signed or produced by public sector entities. An affected party must file a complaint or appeal before the court with jurisdiction in that party's domicile. The procedure must be in accordance with the provisions of the Law on the Jurisdiction of Administrative Appeals or the Tax Code, if applicable. It will not be necessary, in order to bring suit, to indicate the reason for the complaint or the administrative action taken before the decision to appeal the ruling was reached. However, if a case is brought against a public sector institution, all the administrative steps already taken in relation to the complaint shall be null and void.*"

b) In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).

CONTRATANET's results relate to the levels of publication obtained. Despite the fact that the use of CONTRATANET is compulsory only for entities of the Executive Branch, mechanisms such as inter-institutional agreements have been implemented in order to use the system. Since CONTRANET was first implemented in June 2003, 265 state entities have disclosed information on over 3,800 procurement processes, valued at the time at more than US\$1.798 billion. More than 1,700 public officials have been trained to use the system and there are now 6,000 suppliers registered with CONTRATANET.

As of December 2005, the following processes, classified by type, were published by CONTRATANET:

	Number of processes	Sum total of amounts published (millions of dollars)
Tender	260	757
Competitive Bid	546	75
Internal regulations	2,510	1,269

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.

NOT APPLICABLE.

CHAPTER TWO

Systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III (8) of the Convention.

a) Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents.

In relation to the above, refer, among others, to the following aspects:

The main duty of the State under the Political Constitution of the Republic is to guarantee the applicability of the democratic and public system free of corruption (Art. 3).

Art. 17 states that “The State shall guarantee all its inhabitants, without any discrimination whatsoever, the free and effective exercise and enjoyment of the human rights established in this Constitution and in the declarations, treaties, agreements and other international instruments in force. It shall adopt measures, through permanent plans and programs, to guarantee the enjoyment of those rights..”

The duties and responsibilities of Citizens as stated in Article 97 (14) of the Political Charter refer to: “*Reporting and combating acts of corruption*”

Ecuadorian legislation classifies the Public Prosecutions Service and the Commission for Civic Control of Corruption, among others, as Control Agencies.

The Public Prosecutions Service is responsible for the preliminary hearing of cases, directing and promoting pre-trial and criminal trial investigations and guaranteeing protection for victims, witnesses and other participants in criminal trials (Art. 219 (4) of the Constitution).

The Organic Law on the Public Prosecutions Service stipulates the creation of a protection program for witnesses, victims and other participants in a trial and officials of the Public Prosecutions Service, through which those persons, their spouses and relatives up to the fourth degree by blood and second degree by marriage, are granted protection and assistance if their personal safety or security are at risk, as a result of occasion their involvement in criminal lawsuits (Art. 33).

The Commission for Civic Control of Corruption is responsible for hearing and investigating reports of corruption presented, and must guarantee legal protection for anyone who assists in clarifying the facts (Art. 221 of the Constitution).

The Organic law on the Commission for Civic Control of Corruption requires that its members keep all their investigations absolutely secret, as well as any information that reaches them directly or indirectly as a result of their work on the Commission, until the investigations are concluded and the corresponding report issued (Art. 8 (b)).

The Code of Criminal Procedure determines that the accused is entitled to protection of himself and his privacy and to demand that the Police, the Prosecutor, the Judge and the Court use whatever means are necessary to guarantee such protection (Art. 69).

The Program to Protect Victims, Witnesses and other Participants in a Criminal Lawsuit which is under the direction and coordination of the Public Prosecutions Service, determines that victims, witnesses and other participants in criminal lawsuits and their relatives up to the fourth degree by blood and second degree by marriage will be afforded protection and assistance. This program will cover anyone participating in a criminal lawsuit involving people who reported acts of corruption.

Article 2 of the Assistance Program determines that any protection procedure requires that the link between the threat, risk and pre-trial and trial participation be checked. It also states that the protection afforded will be governed by the principles of voluntary participation, reservation, investigation, linkage, direction and temporary protection.

i.- Mechanisms for reporting.

According to the criminal justice system, complaints must be public and whoever submits a complaint must sign it, though not under oath (CPP, Art. 46).

Also under the criminal justice system Public Prosecutions Service can officially bring suit, this being the only case in which identification of the complainant is not necessary because the complaint is filed by the Prosecutor..

The Commission for Civic Control of Corruption issued Regulations on the Classification of Complaints, and determined that the only formal requisite when filing a complaint is that it be submitted in writing and signed by the person responsible, although a complaint can be classified as anonymous if it is accompanied by a document that warrants its admission (Art. 27).

The Regulations on the Classification of Complaints by the Commission for Civic Control of Corruption states that complaints shall be confidential. Hence all officials are bound not to reveal their knowledge of facts they are aware of by reason of their position or referentially, which includes protecting the complainant's identity (Art. 36).

In June 2006 the Commission for Civic Control of Corruption presented the President of the Republic with the Draft Amended Regulations of the Organic Law on the Civil Service and the Administrative Career (LOSCCA) regarding protection for complainants. One of its most important aspects is its intention to provide administrative protection mechanisms to public officials and civil servants who report acts of corruption in fulfillment of the provisions of the LOSCCA.

The information can be presented verbally or in writing and the identity of the person presenting it and the contents thereof shall remain confidential: rights regarding their administrative career: stability, performance, promotion and work environment in keeping with the position and preparation; personal safety and security; protection measures vis-à-vis acts of harassment or within the organization as a result of the complaint filed; determination of preventive or corrective administrative measures to safeguard vested rights.

The Municipal Code for the Metropolitan District of Quito stipulates the procedure for filing complaints with the Metropolitan Anti-Corruption Commission in cases of embezzlement, bribery, graft and illicit enrichment, among others. These can be submitted in writing, by e-mail or fax and can be reserved, in which case they will be specially classified and total discretion will be employed regarding the name of the person who filed the complaint.

Under the Organic Customs Law anyone can report unlawful customs activities to the trial judge, in accordance with the provisions of the Tax Code and guaranteed protection and confidentiality (Art.93).

When a complaint is submitted to the Auditor General's Office, the signature of the complainant must be acknowledged by a judicial authority or certified by a notary public; otherwise the file will be closed (Art. 64), unless the Auditor General or the District Prosecutor finds similarities between the reported acts, in which case the appropriate institutions, within their competencies, shall review the documents related to the case being reported (Art. 64 LCP Regulations).

The purpose of the Ecuadorian Anti-Corruption System as a government policy, as provided for in Executive Decree 122 of February 19, 2003, is to foster the eradication of corruption and the fight against impunity, whereby any citizen may report acts of corruption provided complaints are

submitted in writing and contain the full name and address of the person making the allegation (Art.11).

The System acknowledges a citizen's right to report acts of corruption against a public servant from a State Institution through civic and social trade union organizations. These complaints must also be submitted in writing.

The Instructions on the Examination and Assessment of Electoral Expenditure stipulate that all individuals and corporations are entitled to submit complaints, and the Supreme Electoral Court shall not disclose the information received or the complainant's identity (Art.41).

The General Regulations on the Government Procurement Law provides that any complaint submitted to the Auditor General's Office, must be acknowledged by a judicial authority or the signature of the complaint certified by a notary public, in for it to be processed, otherwise the file will be closed (Art. 64).

Pursuant to the Regulations of the Legal-Administrative System of the Executive Branch, any citizen can report an act of corruption provided the complaint is submitted in writing and contains the complainant's full name and address (Art. 50 (C)).

ii.- Mechanisms for reporting threats or reprisals.

Article 23 of the Political Constitution of the Republic of Ecuador guarantees the physical safety of people who report acts of corruption.

The Regulations to the Program to Protect and Assist Victims, Witnesses and Other Participants in Criminal Proceedings state that protection must be officially requested by an Assistant Attorney or District Attorney, by the Judicial Police or a Public Force, or by the interested party, either personally or through a relative (Art. 12).

The request can be presented on the standard form designed for that purpose by the Public Prosecutions Service, or a written request submitted, provided that the information necessary to make a value judgment, and the items of evidence necessary to identify the case, the risk and danger factors, and their direct connection with the investigation of the case, are also submitted.

No later than fifteen days after the request is received, the Department of Protection and Assistance, shall determine whether protection is warranted, after which time the Director shall inform the National Council of the decision reached to include the person in the program.

No later than fifteen days after the decision to include the person in question is reached, the Council shall accept or revoke the Director's decision, notwithstanding the possibility that protection may have commenced, in which case it shall cease forthwith.

iii.- Witness protection mechanisms.

Pursuant to a provision contained in the Constitution, the Public Prosecutions Service will see that victims, witness and other participants in criminal proceedings are afforded protection. The legislation on the matter further provides that victims, witnesses or any persons involved in a pre-trial investigation or inquiry, whose life or personal safety is in danger, shall immediately enter the protection program (LOMP Art. 17 (E)).

The Code of Criminal Procedure also provides that witnesses shall be entitled to protection by the Public Prosecutions Service in order to guarantee their personal security, their ability to attend the trial and the veracity of their testimony (Art. 118).

One of the attributions of the Commission for Civic Control of Corruption, through the appropriate authorities, is to grant legal protection to people who cooperate of their own accord with the Commission in order to clarify the facts, to guarantee their personal safety (Art. 7 (e)).

The Program to Protect and Assist Victims, Witnesses and Other Participants in Criminal Proceedings offers two types of protection (Art.16).

Regular. Protection is afforded subject to compliance with the procedure set forth in the Articles of the program; and

Immediate. In view of the imminent risk involved, the protection afforded will be provisional and hence not subject to compliance with any procedure at the time, but subsequently it must be validated.

The decision to include the interested party in the program will be included in a report that must be signed by the person afforded the protection or by a relative up to the fourth degree by blood and second degree by marriage, who is of legal age and legally competent to enter into an agreement with the program director.

In cases where immediate protection is given, the recipient or relative thereof, and the District Attorney or State Attorney, must sign the respective document.

This document will specify the following obligations under the program:

Design and implement pertinent policies to make provision for the medical and psychological needs of persons afforded protection, as well as for their requirements in terms of security, maintenance and accommodation;

Consider whether it would appropriate for the person afforded protection to work or study in order to fit better into society;

Treat persons afforded protection with dignity and respect for their constitutional rights;

Make sure that the funds allocated are used properly; and,

Deal with any queries that protected persons may have and channel any cases not within the scope of the Public Prosecutions Service to the appropriate government authority.

In practice, the Public Prosecutions Service’s victim/witness protection program offers the following services: immediate acceptance, police protection, medical care, psychological help, economic aid and in cases where people must be moved from their place of residence, help in finding employment, and support to enable children and young people to continue their studies.

b) In relation to question a), state the objective results obtained, including any available statistical data.

According to the statistics issued by the Public Prosecutions Service, in 2003 and 2004 a total of 117 people entered the Protection and Assistance Program for Victims and Witnesses.

Between Jan 1 and Aug 1, 2005, the Program has assisted 117 people.

73 people	Police Protection
19 people	Police Protection and shelter
5 people	Shelter
4 people	Transferred from prison
2 people	Protection in prison
6 people	Financial aid
8 people	Shelter and financial aid
117 people	

Men	44	38%
Women	73	62%
Total	117	100%

Adults	69	59%
Adolescents	19	16%
Boys	16	11%
Girls	13	14%
Total	117	100%

It is important to stress that under Ecuadorian anti-corruption legislation, control bodies cannot submit complaints. Instead, the highest ranking authority must file the complaint with the Public Prosecutions Service, as can be seen in the following table.

Source of Complaints and Reports by Control Bodies filed with the Public Prosecutions Service ⁽³⁾.

Between July 13 and March 31, 2006

	Commission for Civic Control of Corruption (CCCC) ⁴	Auditor General's Office CGE ⁵	Superintendency of Banks	Superintendency of Companies	Superintendency of Telecommunications
Embezzlement	141	192	12	4	
Bribery					
Graft	2	2			1
Illicit Enrichment	4	3	1		
Money laundering			47		
Financial crimes			7	1	
Other crimes ⁽⁶⁾	50				
TOTAL	197	197	67	5	1

³ Data provided by the National Anti-Corruption Directorate of the Public Prosecutions Service.

⁴ Commission for Civic Control of Corruption (CCCC)

⁵ Auditor General's Office (CGE.)

⁶ Customs Crimes, Breach of Trust, etc.

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption.

NOT APPLICABLE

CHAPTER THREE

3. Acts of Corruption (Article VI of the Convention).

1.- Criminalization of acts of corruption provided for in Article VI (1) of the Convention.

a) Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.

Art. 120 of the Constitution provides that no dignitary, authority, official or public servant is exempt from responsibility based on performing or failing to perform any official acts or duties. The exercise of public dignities and functions is a service to society as a whole and calls for capacity, honesty and efficiency.

Under Ecuadorian legislation, crimes involving embezzlement, bribery, graft and illicit enrichment, trial and sentencing can be tried and sentenced in the absence of the accused (Constitution, Art. 121).

Chapters V, VI, VII and VIII.1 of Title III of the Criminal Code specifically cover crimes against public administration, specifically in the event of the breach of duties by government officials; impersonation and abuse of authority; breach of trust; bribery; crimes against judicial activity, and illicit enrichment.

i. Regarding Article VI (1.a) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code:

Under Art. 285 of the Ecuadorian Criminal Code, bribery is criminalized and punishable with six to three years imprisonment and a fine, and three times the amount received must be repaid if a public official or person entrusted with a public service refrains from doing something he is employed to do, even if it is fair, but not subject to remuneration.

Under Art. 286, criminal behavior is aggravated if an official or person entrusted with a public service acts wrongfully or refrains from acting in accordance with his duty in exchange for offers, gifts or presents and is punishable by a short-term prison sentence of three to six years and a fine of three times the value received.

According to Art. 287, the sentence for a crime committed while performing public functions, in exchange for offers or promises, or receiving gifts or presents, will be four to eight years imprisonment.

Any Judge, Arbitrator or Mediator who accepts a bribe shall be punished with four to eight years imprisonment and banned from practicing law in the case of a legal practitioner.

Art. 264 of the criminal justice system criminalizes graft, and any government employee or person entrusted with a public service, who wrongfully demands rights, quotas, contributions, income or interest, salaries or gratifications that they know they are not entitled to, will be sentenced to two months to four years imprisonment. If such action involved violence or threats, the sentence shall be two to six years imprisonment, and repayment of four times the amount they would have received. Any government agents or representative who collaborated with that public official to commit graft will also be prosecuted and sentenced.

ii. Regarding Article VI (1.b) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following article of the Criminal Code:

If a public official, jury member, arbitrator or mediator, or anyone entrusted with a public function is corrupted by promises, offers, gifts or presents in exchange for doing something in the course of his employment or work, even if it is fair, but not subject to remuneration, or if such persons refrain from any action they are duty bound to take, they will be subject to the same penalties as the culprit for allowing themselves to be bribed, i.e. a long-term prison sentence of four to eight years (Art. 290).

iii. Regarding Article VI (1.c) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code:

Ecuadorian legislation severely punishes embezzlement with regular long-term imprisonment of eight to twelve years, criminalizing such conduct if it is committed by civil servants from public sector organizations or entities and anyone entrusted with a public service who, for his own benefit or that of a third party, misuses public or private moneys or instruments representing them, items, deeds, documents, movable and real property in their possession because of their position, whether such constitutes theft by fraud, arbitrary misallocation and any other kind of misappropriation (Art. 257).

Any public employee or person entrusted with a public service who maliciously or fraudulently destroys or deletes documents, deeds, programs, data, databases, information or data messages in an information system or electronic network for whose maintenance and safekeeping they are responsible, or that were entrusted to them by reason of their position, shall receive a short-term prison sentence of three to six years (Art. 262).

Any public employee who takes action for himself or feigns to act on behalf of someone else, or who through a third party takes all or part of a property or effect in whose auction, lease, award, embargo, sequester, judicial division, deposit or administration he is involved because of his position or job shall be punished; likewise if any of the people referred to is involved in a negotiation or speculates for profit or personal interest in connection with that same property or those same effects, or anything in which he is officially involved, will be fined six to twelve percent of the value of such property or deal and sentenced to prison for six months to three years and not entitled to a suspended sentence (Art. 265).

Art. 267 stipulates a fine of eight to thirty-one dollars and three years suspension of the rights of citizenship for Magistrates or Judges who fraudulently, while a trial, process or business deal they are aware of is taking place, stands debtor or guarantor or enters into a financial agreement with one of the parties.

iv. Regarding Article VI (1.d) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code:

Ecuadorian legislation contains no specific provision for cases of fraudulent utilization or concealment of the proceeds of acts of corruption. However the guardian of such proceeds shall be punished if criminal evidence or processes or other papers, records or documents contained in files, offices or in public storage under his safekeeping are removed or destroyed (Art. 263).

Even though the regulation in force is included in the chapter on Crimes against Property, it is a punishable offence for persons to totally or partially conceal goods that have been stolen goods or obtained by criminal means in order to use them, and the a six month to five year prison sentence and a fine of six to sixteen dollars are applicable (Art. 569).

The criminal system also provides that under no circumstances shall the goods delivered by the corruptor, or the value thereof, be returned to him; instead they will be seized and placed at the disposition of the President of the Republic for donation to those public welfare establishments he deems appropriate (Art. 291).

v. Regarding Article VI (1.e) of the Convention, Ecuadorian legislation criminalizes the behavior described in the following Articles of the Criminal Code:

Book I, Title III, Chapter II refers to people who commit offences and the perpetrators thereof and their accomplices and accessories after the fact are accountable before the law (Art. 41), as is anyone who attempts to commit an act defined as a criminal offence under Art. 16.

Participation as a principal, co-principal, instigator, accomplice or accessory after the fact is defined in the following articles:

Art. 42.- Perpetrators are whoever commits a criminal act, whether directly or immediately, or instigates another to do so, when the advice given is instrumental in the commission thereof; anyone who prevents or endeavors to prevent a crime from being committed; anyone who decides to commit a crime and does so using other people, whether or not there is a causal relationship between the actor and the criminal act, in exchange for a payment, gift, promise, reward or through any other fraudulent and direct means; anyone who plays an important part in helping to carry out a criminal act by deliberately and intentionally doing something without which the offence could not be perpetrated; and anyone who through physical violence, abuse of authority, threat or any other coercive method, compels another to commit a punishable act, whether or not the person is able to resist being forced to do so.

Art. 43.- Accomplices are whoever is indirectly involved in cooperating in the execution of a criminal act, by means of previous or simultaneous punishable acts. If the particular circumstances of the cause result in the person accused of complicity only being willing to cooperate in a less serious act than the one committed by the author, the accomplice will only be punished for the act he intended to commit.

Art. 44.- Accessories after the fact are whoever ,with knowledge of the criminal conduct of the offenders, habitually provides them with accommodation, a hiding place or a meeting place; or supplies them with the means that allow them to benefit from the proceeds of the crime committed; or helps them by concealing instruments or material evidence of the offence, or by destroying the marks or fingerprints of the crime to avoid them being caught, and whoever is responsible in the course of his profession, employment, skill or craft for examining the marks or fingerprints of a crime or clarifying a criminal act, conceals or alters the truth in order to benefit the offender.

Art. 16.- Whoever carries out an act that is unquestionably intended to lead to the commission of a crime shall be accountable for attempting to commit a crime if it is not consummated or if the event is not confirmed. If the author refrains voluntarily from the action, he shall only be punished for the acts actually executed, provided they constitute a different offence, except in specific cases where the law classifies the mere attempt as an offence. Whoever voluntarily prevents the offence from being committed shall be subject to the penalty for attempting to commit it, reduced by one third to half thereof.

b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those

results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

According to data provided by the State Prosecutor's Office, the following complaints of acts of corruption were handled from July 13, 2001 to March 31, 2006:

		TYPE OF OFFENCE	PRELIMINARY INVESTIGATION	REJECTION	OTHERS ⁽⁷⁾	
Statistics for January 1, December		EMBEZZLEMENT	329	334	139	the period 2004 to 31, 2005.
		BRIBERY	22	17	6	
		GRAFT	28	17	5	
		ILLCIT ENRICHMENT	8	16	11	
		OTHER CRIMES ⁽⁸⁾	45	24	8	
	TOTAL YEAR	432	408	200	169	
c) If		EMBEZZLEMENT	347		452	the
		BRIBERY	20		28	
		GRAFT	12		39	
		ILLCIT ENRICHMENT	15		20	
		OTHER CRIMES ⁽⁹⁾	30		34	
		TOTAL	424		573	

aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts.

NOT APPLICABLE

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)

a) Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents

Ecuador has not entered into an agreement with other States to apply the Convention for crimes not covered by thereby.

b) If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

NOT APPLICABLE.

⁷ Prohibitions, added to other criminal processes

⁸ Conversion, money laundering

⁹ Money laundering

SECTION II

Follow-up on the Recommendations formulated in the National Report in the First Review Round.

The Commission for Civic Control of Corruption, in line with its responsibility as the Central Authority representing MESICIC in Ecuador, set up the Bureau for Implementation of the Recommendations of the Report of the Committee of Experts of MESICIC, allowing the analysis, assessment, planning and implementation of the recommendations to be undertaken within a participatory, deliberative and coordinated environment.

To ensure the continued efficiency of the projects already initiated, the Bureau decided to set up a sub-working group to study the proposals made to enhance the progress already made in achieving the objectives.

1.- Standards of Conduct and Mechanisms to enforce compliance (Articles III, Paragraphs 1 and 2 of the Convention)

1.1.- Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms.

1.- “Strengthen the implementation of laws and regulatory systems related to conflicts of interest”

The following measures were adopted in order to comply with this recommendation:

- At the request of the Implementation Bureau, the National Congress compiled all the legislation on prohibitions, disqualifications and incompatibilities related to conflicts of interest.
- A questionnaire was designed to enable Public Institutions to conduct self-assessments on the use and effectiveness of standards of conduct in preventing conflicts of interest and mechanisms for enforcing them.
- It was decided that mechanisms for training public servants with respect to standards of conduct, including conflicts of interest, should be designed and implemented by the National Technical Secretariat for Public Sector Human Resource Development and Remuneration (SENRES) with the participation of the Auditor General’s Office, the Association of Municipalities of Ecuador, the Consortium of Provincial Councils of Ecuador, the Judiciary Council, Ministry of the Economy and Finance and the Armed Forces Police Academies, through the National Training System. Currently the SENRES is training public officials on aspects of the Civil Service and the Administrative Career Law.
- In July 2006, the Central Authority, following a process that included social, economic and legal relevance studies, presented the President of the Republic with the Code of Conduct for Public Officials in the Executive Branch. After it is approved and adopted it will serve as a model for the other Branches of Power¹⁰.

¹⁰ See ANNEX 3: DRAFT DECREES, Code of Conduct for Public Officials in the Executive Branch.

1.2.- Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms.

I.- “Strengthen the system of control of public resources”

The following measures were adopted in order to comply with this recommendation:

- In view of the fact that the Bill on the Modernization of the Criminal Treatment of Corruption has been sent to the National Congress for review by the Commission on Civil and Criminal Matters, it is felt that it should be analyzed together with other legal initiatives designed to rationalize the Criminal Treatment of Acts of Corruption and Congress has thus been asked to remit the other bills that have been submitted on this subject.

1.3.- Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

I.- “Strengthen the mechanisms in place in the Republic of Ecuador that require public officials to report to the appropriate authorities acts of corruption in the exercise of public functions of which they are aware”

The following measures were adopted in order to comply with this recommendation:

- In June 2006, the Commission for Civic Control of Corruption presented to the President of the Republic the Draft Amended Regulations to the Organic Law on the Civil Service and the Administrative Career (LOSCCA), in relation to protection for complainants. These Draft Amended Regulations various aspects, in particular efforts to introduce administrative mechanisms in order to protect public officials and civil servants subject to compliance with the LOSCCA, who report acts of corruption ⁽¹¹⁾.

The regulations stipulate that information can be submitted in writing or given verbally, and that the content thereof and the identity of the complainant shall be confidential; the rights granted under the Administrative Career system: stability, performance promotion and work environment in keeping with the position and preparation; personal safety and integrity; protection measures in the event of harassment, harassment in the workplace, as a result of the allegations; determination of preventive or corrective mechanisms to safeguard vested rights.

2.- Systems for registering income, assets and liabilities (Article III, Paragraph 4 of the Convention)

I.- “Strengthen systems for the disclosure of income, assets and liabilities”

The following measures were adopted in order to comply with this recommendation:

- With the entry into effect of the Law on Access to Public Information, it is now possible to have access to the sworn statements of assets of public servants.
- The Commission for Civic Control of Corruption, the Public Prosecutor’s Office and the Public Auditor General’s Office, with support from the National Congress, the Attorney General’s Office and the *Corporación Latinoamericana para el Desarrollo* (Latin American

¹¹ See ANNEX 3: DRAFT DECREES, Reform of the Regulations to the Organic Law on the Civil Service. the Administrative Career and Salary Homologation, with respect to Protection of Complainants.

Development Corporation) will prepare draft a new Law on Sworn Statements of Assets which will be presented to the National Congress for review and approval.

3.- Oversight Bodies for the selected provisions (Article III, Paragraphs 1, 2, 4 and 11 of the Convention).

I.- “Strengthen the oversight bodies concerning the functions they perform related to the effective enforcement of the provisions of Articles 1, 2, 4 and 11 of the Convention, with the objective of ensuring the effectiveness of such oversight, as follows: provide them with the necessary resources to do an excellent job; ensure that they receive improved support for their activities, as appropriate, as well as the ongoing evaluation and monitoring of these activities.”

The following measures were adopted in order to comply with this recommendation:

- An Institutional Coordination Workshop was held and attended by representatives of ten State Institutions. Its objective was to determine their individual degrees of competency so they might work together, pinpointing the potential fields in which they could liaise and coordinate with one another.
- Through Executive Decree 1776 dated June 21, 2004 the Government created the Commission for the Application of the Anti-Corruption System of Ecuador (SAE) which was not applicable as its members did not represent institutions that have been working on this subject.

4.- Mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption (Article III, Paragraph 11 of the Convention)

4.1.- Mechanisms for access to information.

I.- Strengthen the mechanisms to guarantee access to public information”

The following measures were adopted in order to comply with this recommendation:

- On May 18, 2004 the Law on Access to Public Information Law was passed and at the insistence of a number of institutions and the Commission for Civic Control of Corruption, the Regulations thereto were adopted and published on January 19, 2005.

4.2.- Mechanisms for consultation.

I.-Complement existing consultation mechanisms, by establishing procedures, as appropriate, that enable public consultations to take place prior to the development of public policies and the final approval of legal provisions.”

- Since it is important to make consultative mechanisms compulsory, their scope must be established and workshops organized in order to hold debates to determine the issues and mechanisms where public consultation prior to decision-making would be appropriate.

4.3- Mechanisms to encourage participation in public administration.

I.- “Strengthen and continue to implement mechanisms that encourage civil society and non-governmental organizations to participate in public administration, as well as make progress in repealing regulations that may discourage such participation.”

- On November 30, 2005 the Commission for Civic Control of Corruption approved the Regulations on the Creation and Work of Citizen Watchdog Groups (*Veedurías Ciudadanas*), which determine how civil society can undertake social monitoring and supervision of public administration through citizen involvement.

4.4.- Mechanisms for participation in the follow-up of public administration.

I.- “Strengthen and continue to implement measures that encourage civil society organizations and non-governmental organizations to participate in the monitoring of public administration.”

- The Commission for Civic Control of Corruption has undertaken a series of plans to encourage civil society to participate in the monitoring of public administration and has approved a number of Citizen Watchdog Groups (*Veedurías Ciudadanas*) for that purpose in different areas of public administration, taking into account that these groups are tools that facilitate social surveillance of a predominantly preventive nature and encourage citizens to enhance their quality of life in terms of politics and local development.
- Another experience in citizen involvement is the Commission for Civil Control of Corruption’s training program on Citizen Preparation organized for the members of the District Development Committees (*Comités de Desarrollo Cantonal*) in the parishes and districts under a Framework Agreement signed with CARE and a local NGO.

SECTION III

Information on the official responsible for completion of this questionnaire.

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ANNEXES

ANNEX I: LEGISLATION.

- Political Constitution de la Republic;
- Organic Law on the Civil Service, the Administrative Career and Salary Homologation
- Regulations to the Organic Law on the Civil Service, the Administrative Career and Salary Homologation
- Technical Regulation on the Staff Recruitment Subsystem.
- Organic Law on Transparency and Access to Public Information.
- Labor Code
- Organic Law on the Legislative Branch
- Administrative Career in Legislative Law.
- Organic Law on the Public Prosecutions Service
- Regulations to the Organic Law on the Public Prosecutions Service
- Instructions on Recruitment and Selection of Staff for the Public Prosecutions Service
- Government Procurement Law
- Regulations to the Government Procurement Law
- Consulting Services Law
- Regulations to the Consulting Services Law
- Executive Decree 122
- Organic Law on the Office of the Auditor General of the State
- Organic Law on the Office of the Attorney General of the State
- Executive Decree 1565
- State Modernization Law
- Organic Law on the Commission for Civic Control of Corruption
- Criminal Code
- Code of Criminal Procedure
- Victim Protection and Assistance Program
- Regulations on the evaluation of reports by the Commission for Civic Control of Corruption
- Municipal Code on the Metropolitan District of Quito
- Organic Customs Law
- Instructions on the Examination and Assessment of Electoral Expenditure
- Bylaws to the Legal Regime governing the Administration of the Executive

ANNEX 2: TECHNICAL INSTRUMENTS FOR STAFF SELECTION

- Competition Rules SENRES, RH SEL 001
- Vacancy Announcement SENRES RH SEL 002
- Job Offer SENRES RH SEL 003
- Merit Score SENRES RH SEL 004
- Interview SENRES RH SEL 005
- Checklist SENRES 006
- Scoring SENRES RH SEL 007
- Map of Public Sector

ANNEX 3: DRAFT DECREES

- Amended Regulations to the Civil Service, Administrative Career and Salary Homologation Law
- Code of Conduct for Public Officials in the Executive Branch

TABLE OF CONTENTS

<i>ECUADOR'S RESPONSE TO THE QUESTIONNAIRE ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND ROUND AND FOR FOLLOW-UP ON RECOMMENDATIONS FORMULATED IN THE FIRST ROUND</i>	<u>1</u>
<i>SECTION I</i>	<u>1</u>

SECTION I

<i>QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND</i>	<u>1</u>
<i>CHAPTER ONE</i>	<u>1</u>
<i>SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III, PARAGRAPH 5 OF THE CONVENTION)</i>	<u>1</u>
<i>1. Government hiring systems.</i>	<u>1</u>
a) Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.	<u>1</u>
Also describe how the above systems ensure openness, equity and efficiency in your country.	<u>1</u>
i. Governing or administrating authorities of the systems and control mechanisms.	<u>4</u>
ii. Access to public service through the merit-based system.	<u>5</u>
iii. Advertisement for the selection of public servants, indicating the qualifications for selection.	<u>7</u>
iv. Ways to challenge a decision made in the selection system.	<u>8</u>
v. Relevant exceptions to the above.	<u>8</u>
b) In relation to question a), state the objective results obtained, including any available statistical data.	<u>9</u>
c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention.	<u>9</u>
<i>2. Government systems for procurement of goods and services.</i>	<u>10</u>
a) Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents..	<u>10</u>
i. Procurement systems with a public tender and without a public tender.	<u>10</u>

ii. Governing or administrating authorities of the systems and control mechanisms.	12
iii. Register of pre-approved contractors.	14
iv. Electronic methods and information systems for government procurement.	14
v. Public works contracts.	14
vi. Identification of the selection criteria for contractors (e.g. price, quality and expertise.	15
vii. Ways to challenge a selection.	15
b) In relation to question a), state the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).	16
c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.	16
CHAPTER TWO	17
<i>Systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III (8) of the Convention).</i>	17
a) Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents.	17
In relation to the above, refer, among others, to the following aspects:	17
i.- Mechanisms for reporting.	18
ii.- Mechanisms for reporting threats or reprisals.	19
iii.- Witness protection mechanisms.	19
b) In relation to question a), state the objective results obtained, including any available statistical data.	20
c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption.	22
CHAPTER THREE	22
3. Acts of Corruption (Article VI of the Convention).	22
1.- Criminalization of acts of corruption provided for in Article VI(1) of the Convention.	22
a) Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.	22

i. Regarding Article VI (1.a) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code: _____	22
ii. Regarding Article VI (1.b) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following article of the Criminal Code: _____	23
iii. Regarding Article VI (1.c) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code: _____	23
iv. Regarding Article VI (1.d) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code: _____	24
v. Regarding Article VI (1.e) of the Convention, Ecuadorian legislation criminalizes the conduct described in the following articles of the Criminal Code: _____	24
b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years. _____	24
c) If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts. _____	25
2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI(2) _____	25
a) Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2) If so, briefly describe the respective agreements or conventions and attach a copy of the related documents. _____	25
b) If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years. _____	25
SECTION II _____	26
Follow-up on the Recommendations formulated in the National Report in the First Review RoundRonda. _____	26
1.- Standards of Conduct and mechanisms to enforce compliance (Articles III, Paragraphs 1 and 2 of the Convention) _____	26
1.1.- Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms. _____	26
1.2.- Standards of conduct intended to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms. _____	27
1.3.- Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware. _____	27
2.- Systems for registering income, assets and liabilities (Article III, Paragraph 4 of the Convention) _____	27

3.- Oversight bodies for the selected provisions (Article III, Paragraphs 1, 2, 4 and 11 of the Convention).	28
4.- Mechanisms to encourage civil society and non-governmental organizations to participates in efforts to prevent corruption (Article III, Paragraph 11 of the Convention)	28
4.1.- Mechanism for access to information.	28
4.2.- Mechanism for consultation.	28
4.3- Mechanisms for encouraging participation in public administration.	28
4.4.- Mechanisms for participation in the follow-up of public administration.	29
<i>SECTION III</i>	29
Information on the nformation on the official responsible for completion of this questionnaire.	29
<i>ANNEXES</i>	<i>Error! Bookmark not defined.</i>
ANNEX I: LEGISLATION.	30
ANEXO 2: TECHNICAL INSTRUMENTS FOR STAFF SELECTION	31
ANEXO 3: DRAFT DECREES	31
<i>Table of Contents</i>	32