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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Ecuador

1. Introduction: Overview of the legal and institutional framework of Ecuador in the context of implementation of the United Nations Convention against Corruption

Ecuador signed the Convention on 10 December 2003, ratified it on 27 July 2005 and deposited its instrument of ratification on 15 September 2005.

The Convention is part of the domestic legal system, ranking below the Constitution but above national laws, and can be directly applied (art. 425 of the Constitution).

The legal system follows the continental civil-law tradition. Criminal procedure follows the accusatorial system and consists of the stages of pretrial investigation, trial, adjudication and appeal.

The Constitution establishes five “functions” of the State: the executive, the legislature, the judiciary, the transparency and public oversight branch of government and the electoral branch of government). The most relevant institutions in the fight against corruption are the Council for Citizen Participation and Public Oversight (CPCCS), the National Council against Money-Laundering, the Attorney General’s Office, the Comptroller-General’s Office and the Financial Analysis Unit.

The Constitution was approved by referendum in 2008. It was the basis for the reform of criminal law and criminal procedure law through the Comprehensive Organic Criminal Code (which came fully into force on 10 August 2014). A number of cases under the Code are currently at the investigation and trial stages.

Article 229 of the Constitution and article 4 of the Organic Act on the Civil Service set out a broad definition of “public servant”.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is covered by article 280, paragraph 4, of the Comprehensive Criminal Code; however, the element of benefits for third parties is not explicitly covered. The concept of “gift” may cover non-material advantages, although to date there have been no cases involving such advantages.

Passive bribery of public officials is covered by article 280, paragraphs 1 to 3 (receipt and acceptance), and 281 (solicitation) of the Comprehensive Criminal Code. Both provisions deal with indirect commission of the offence, while only article 280 (paras. 1-3) explicitly covers advantages for third parties, including entities.

Ecuador has not criminalized the active or passive bribery of foreign public officials or of officials of public international organizations.

The offence of trading in influence (art. 285 of the Comprehensive Criminal Code) is established as the abuse by a public servant of his or her influence over another public servant.

Active trading in influence is covered by article 280, paragraph 4, of the Comprehensive Criminal Code (active bribery), in the form of bribery of a public official in order that the official commit the offence described in article 285 of the Code. These provisions apply in combination only where the person who receives the undue advantage is a public official and the influence he or she claims to have is real.

The offence is limited to acts and decisions; moreover, the above comments relating to active bribery apply also to trading in influence (with respect to benefits for third parties and non-material advantages).

Passive trading in influence is covered by article 286 of the Comprehensive Criminal Code, which establishes criminal liability for offering to carry out an act referred to in article 285 of the Code. Neither the indirect commission of the offence nor benefits for third parties are covered.

Neither active nor passive bribery in the private sector have been criminalized.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is established as a criminal offence in article 317 of the Comprehensive Criminal Code.

The elements of concealment or disguise of the location, disposition or movement of property are not explicitly covered. Conspiracy to commit money-laundering in its less serious forms is covered by article 370 of the Comprehensive Criminal Code, while the formation of a structured group of two or more persons who finance, control, direct or plan the activities of a criminal organization for the purpose of committing, inter alia, money-laundering in its most serious forms is an offence under article 369 of the Code.

All corruption offences committed within or outside Ecuadorian jurisdiction are predicate offences. Money-laundering is a separate offence and includes “self-laundering”.

Article 289 of the Comprehensive Criminal Code establishes the criminal liability of persons who disguise property derived, inter alia, from illicit enrichment or organized crime offences as their own.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement in the public sector has been established as a criminal offence (art. 278, paras. 1-3, of the Comprehensive Criminal Code). The initiation of criminal proceedings is subject to the prior issuance by the Office of the Comptroller General of a report establishing the grounds for prosecution (art. 581, final paragraph, of the Comprehensive Criminal Code).

Abuse of functions as a specific offence does not exist, although articles 285, 294 and 268 of the Comprehensive Criminal Code cover some related acts. Consideration has been given to the establishment of abuse of functions as a specific offence.

Ecuador has criminalized illicit enrichment (art. 279 of the Comprehensive Criminal Code). As in the case of embezzlement, the prosecution of illicit enrichment offences is subject to the issuance by the Office of the Comptroller General of a report establishing the grounds for such prosecution (art. 581, final paragraph, of the Comprehensive Criminal Code). Illicit enrichment of a public servant consists in an unjustified increase in assets, procured by the public servant him- or herself or through another person, proceeding from his or her official position or function; that is, where there is a discrepancy between his or her lawful income and the increase in his or her assets. The public servant must prove the lawful source of such an increase.

The Comprehensive Criminal Code establishes criminal liability for embezzlement committed by officials, managers, executives or employees of financial institutions or entities of the “popular and solidarity-based economy”(art. 278, paras. 4-6, of the Comprehensive Criminal Code). In addition, the offence of abuse of trust (art. 187 of the Comprehensive Criminal Code) covers some elements of embezzlement in the private sector.

Obstruction of justice (art. 25)

The conduct described in article 25 (a) of the Convention is covered by the very broad provisions of the Comprehensive Criminal Code relating to participation, which includes inducing a person to commit an offence by promising or offering recompense or by any other means, or through physical violence, threat or other means of coercion (art. 42, paras. 2(b) and (c), of the Code). In that regard, participation in the offences of perjury and false testimony (art. 270 of the Code), procedural fraud (art. 272) and tampering with evidence (art. 292) includes the obstruction of justice as it comprises the elements of inducement of false testimony and interference in the production of evidence. Interference in the giving of testimony is not covered.

The conduct described in article 25, paragraph (b), of the Convention is punishable under article 283 of the Comprehensive Criminal Code, which establishes criminal liability for any person who attacks or resists certain public-sector employees and agents.

Liability of legal persons (art. 26)

Ecuador distinguishes between legal persons under private law, legal persons in the public sector and legal persons in the popular and solidarity-based sector. The criminal liability of legal persons under private law is regulated (art. 49 of the Comprehensive Criminal Code), but not that of other legal persons.

That liability is incurred regardless of whether a natural person is liable for the same act or acts (arts. 49 and 50 of the Comprehensive Criminal Code).

Administrative liability (art. 25 of the Companies Act, art. 208 of the Stock Market Act and other legislative provisions) and civil liability (art. 622 (6) of the Comprehensive Criminal Code) have been established for all legal persons.

Participation and attempt (art. 27)

Ecuador has criminalized participation (arts. 41 to 43 of the Comprehensive Criminal Code) and attempt (arts. 39 and 40 of the Code), but not preparation for an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The Comprehensive Criminal Code establishes sanctions that can be adjusted according to the gravity of the offence.

Ecuador has established the immunity of members of the National Assembly and of the Ombudsman (arts. 128 and 216 of the Constitution). A broad range of public officials enjoy immunity (arts. 128, 205 and 216 of the Constitution).

The Attorney General's Office may apply the principle of prosecutorial discretion (art. 411, para. 1, of the Comprehensive Criminal Code), including in corruption cases if the maximum penalty for the offence in question is deprivation of liberty for a term of up to five years, provided that doing so does not seriously endanger the public interest or harm the interests of the State.

An accused person or defendant may be taken into custody, inter alia, to ensure his or her appearance in the proceedings (art. 77 (1) of the Constitution; arts. 534 (3) and art. 536 of the Comprehensive Criminal Code).

The conditional suspension of a sentence (arts. 630 and 631 of the Comprehensive Criminal Code) is permitted only where the nature and degree of gravity of the conduct in question are such that there is no need to enforce the sentence.

In application of the principle of presumption of innocence, public officials accused of an offence are not suspended, removed from office or reassigned except in the case of accused judicial officials, who are not permitted to continue performing their functions (art. 77 of the Organic Code of the Judiciary).

Where the offence is directly related to the convicted person's exercise of his or her profession, the court orders that person's disqualification for the period of time established for the offence in question (art. 65 of the Comprehensive Criminal Code; art. 10 of the Organic Act on the Civil Service). Most but not all corruption offences carry the penalty of disqualification.

Criminal and disciplinary proceedings are separate (art. 41 of the Organic Act on the Civil Service; art. 104 of the Organic Code of the Judiciary).

Persons who cooperate with the law enforcement authorities benefit from a reduction of the penalty imposed but are not granted immunity (arts. 44-46 and 491-493 of the Comprehensive Criminal Code); they may also be afforded protection (art. 494 of the Code). Ecuador has not concluded any agreements with other States on the treatment of persons who provide cooperation in the investigation or prosecution of an offence.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Attorney General's Office operates a national system for protecting and assisting victims, witnesses and other participants in criminal proceedings (art. 198 of the Constitution; art. 295 of the Organic Code of the Judiciary). Protection may be afforded to the families of participants in criminal proceedings (art. 6 (5) of the Regulations governing the system for protecting and assisting victims, witnesses and other participants in criminal proceedings), but not to other persons close to witnesses or experts. Only the prosecutor, not the persons seeking protection, may apply for protective measures (art. 494 of the Comprehensive Criminal Code).

The Police Protection Unit provides services to persons in need of physical protection. Persons may be relocated within Ecuador or abroad, and information relating to the protection procedure is kept strictly confidential (art. 295 (2) of the Organic Code of the Judiciary).

Testimony may be given by videoconference (art. 502, paras. 9 and 10, of the Comprehensive Criminal Code).

Ecuador has concluded arrangements to facilitate international relocation.

Victims have the right to access the National Protection System (arts. 11 (8) and 441 of the Comprehensive Criminal Code) and are regarded as participants in proceedings (art. 439 of the Code). Victims may be heard at any stage of criminal proceedings; refute, in the presence of the judge, statements made by other parties; familiarize themselves with the case materials and initiate stages in the proceedings; and be assisted by a public defender (arts. 11, 13, 17, 439, 502 (14), 505, 563 (paras. 9 and 10), 604, 614 and 618 of the Comprehensive Criminal Code).

Other than the protection measures mentioned above, Ecuador does not have specific legislation for the protection of reporting persons. A draft law on such protection was under consideration at the time of the country visit.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Confiscation (arts. 69 and 71 of the Comprehensive Criminal Code) applies to proceeds of crime and instrumentalities used in an offence, but not to instrumentalities destined for use in an offence. Property may be seized (arts. 549 to 557 of the Code).

Seized and confiscated property is managed by judicial depositaries (arts. 314 to 316 of the Comprehensive Criminal Code), except in money-laundering cases, in which the property in question is managed by the National Narcotic and Psychotropic Substances Control Board (Act on Preventing, Detecting and Eradicating Money-Laundering and the Financing of Crime, general provision).

Confiscation depends on the object or item in question. In the case of sentences that have been enforced, including sentences imposed for money-laundering offences, if the property in question cannot be confiscated, the court orders the confiscation of any other property of equivalent value belonging to the convicted person (art. 69 of the Comprehensive Criminal Code).

Proceeds of crime that have been transformed or converted into other property may be confiscated (art. 69 (2)(c) of the Comprehensive Criminal Code), as may proceeds that have been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds (art. 69 (2)(d) of the Code), and income or other benefits derived from property acquired through, or the proceeds of, a criminal offence (art. 69 (2)(e) of the Code) may be confiscated. Where such property cannot be confiscated, the court orders the payment of a fine of the same value.

The authorities confirmed that commercial, financial or original bank records that may be considered documentary evidence for the prosecution or the defence may be seized under article 549 of the Comprehensive Criminal Code.

Ecuadorian legislation does not require that an offender demonstrate the lawful origin of alleged proceeds of crime.

The rights of third parties are not referred to with regard to the seizure and confiscation of property, except in relation to the confiscation of property of legal persons (art. 71 of the Comprehensive Criminal Code) and the destruction, where appropriate, of the proceeds of and instrumentalities used in an offence (art. 69 (3) of the Code).

Bank secrecy does not apply to information concerning transactions carried out by persons who are participants in, or investigated as part of, proceedings of which a judge or the Attorney General's Office is seized (art. 354 of the Organic Monetary and Financial Code).

Statute of limitations; criminal record (arts. 29 and 41)

Criminal proceedings relating to the offences of embezzlement, bribery, extortion and illicit enrichment and the enforcement of penalties applicable to those offences are not subject to a statute of limitations period (art. 233 of the Constitution). The statute of limitations period for most corruption offences is seven years, while for others it is 5, 10 or 13 years (arts. 417 to 419 of the Comprehensive Criminal Code). Where the alleged offender has evaded the administration of justice, the statute of limitations period is calculated from the day on which the person appears or from the time at which evidence sufficient to file a charge becomes available (art. 417 (3)(d) of the Code).

There are no legislative provisions establishing explicitly that a previous conviction in another State may be used in criminal proceedings.

Jurisdiction (art. 42)

Ecuador has established its jurisdiction over offences committed in its territory or on-board national vessels or aircraft, offences committed against an Ecuadorian national (arts. 14 and 400 of the Comprehensive Criminal Code) and participation outside Ecuadorian territory in money-laundering offences committed in Ecuador

(art. 14 (2)(a) of the Code). Ecuador has partially established its jurisdiction over offences committed abroad by Ecuadorian nationals (arts. 14 and 400 of the Comprehensive Criminal Code), but has not established its jurisdiction over offences committed abroad by stateless persons who have their habitual residence in Ecuador.

Ecuador has not established its jurisdiction over offences committed against the State; article 4 of the Extradition Act establishes Ecuadorian jurisdiction where Ecuador does not extradite an alleged offender solely on the ground that he or she is one of its nationals.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to article 94 of the Organic Act on the National Public Procurement System, the State may unilaterally terminate contracts. The grounds for such unilateral termination do not include acts of corruption.

Article 628 of the Comprehensive Criminal Code establishes that any conviction must include comprehensive reparation to the victim, as provided for in articles 77 and 78 of the Code.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The Attorney General's Office has a special prosecutor's office for offences against public administration.

Public officials are required to report acts of corruption (art. 83 (8) of the Constitution; arts. 277 and 422 of the Comprehensive Criminal Code), and the Council for Citizen Participation and Public Oversight and the Financial Analysis Unit may request any information necessary for their investigations (art. 13, para. 2, of the Organic Act on the Council for Citizen Participation and Social Control; art. 4 of the Act on Preventing, Detecting and Eradicating Money-Laundering and the Financing of Crime). A number of agreements on inter-agency cooperation have been concluded.

The institutions of the financial system are required to cooperate with the Financial Analysis Unit, and citizens are obliged to report acts of corruption (art. 83 (8) of the Constitution). The Council for Citizen Participation and Public Oversight has adopted a set of regulations governing the management of requests and complaints concerning acts or omissions that affect citizen participation or facilitate corruption.

2.2. Successes and good practices

Criminalization and law enforcement:

- Ecuador has reformed its penal system and recently adopted the Comprehensive Organic Criminal Code;
- Its legislative provisions establishing liability for specific criminal offences were amended, inter alia, to include the offence of laundering of assets of illicit origin, in order to meet international standards;
- The National Plan for Preventing and Combating Corruption (2013-2017) was signed;
- The offence of illicit enrichment covers the unjustified cancellation of debts and includes assisting public officials to commit that offence through the use of front companies (art. 20 of the Convention);
- Criminal proceedings relating to the offences of embezzlement, bribery, extortion and illicit enrichment and the enforcement of penalties applicable to those offences are not subject to a statute of limitations period (art. 29);

- In the case of seized and/or confiscated property that is the most complicated to administer, a body competent to manage the property is sought (art. 31).

2.3. Challenges in implementation

Criminalization and law enforcement:

It is recommended that Ecuador:

- Establish as an element of active and passive bribery the commission of those offences for the benefit of a third party (extortion) (art. 15 of the Convention);
- Ensure that the concepts of “gift” (arts. 280 and 286 of the Comprehensive Criminal Code) and “reward” (art. 281) apply to non-material advantages. If the courts interpret the law in such a way that non-material advantages are not covered by the concepts of “gift” or “reward”, clarify the law through reform (arts. 15 and 18);
- Criminalize the active bribery of foreign public officials and officials of public international organizations (art. 16, para. 1);
- Consider amending its legislative provisions on active and passive trading in influence in order to bring those provisions into line with the requirements of article 18;
- Consider the possibility of criminalizing active and passive bribery in the private sector (art. 21);
- Consider expanding the scope of its provisions on embezzlement to all private-sector entities (art. 22);
- Amend its legislation to explicitly cover the concealment or disguise of the location, disposition or movement of property where the perpetrator knows that such property is the proceeds of crime (art. 23 (1)(b)(i));
- Amend its legislation to cover conspiracy to commit money-laundering in its less serious forms (art. 23, para. 1 (b)(ii));
- Consider criminalizing the concealment or continued retention of property when the person involved knows that such property is the result of an offence established in accordance with the Convention, beyond the provisions of article 289 of the Comprehensive Criminal Code (art. 24);
- Amend its legislation to cover interference in the giving of testimony, and consider whether the establishment of obstruction of justice as a specific offence would be beneficial, having assessed the possible consequences in Ecuadorian society (art. 25, para. (a));
- Amend its legislation to cover the use of physical force, threats or intimidation against any justice or law enforcement official, including beyond the immediate context of attack or resistance (art. 25);
- Analyse the range of officials who enjoy immunity to determine whether reducing that range could strengthen the balance between jurisdictional privileges and the investigation and prosecution of corruption offences (art. 30, para. 2);
- Consider suspending, removing or reassigning officials accused of any offence established under the Convention, other than judicial officials (art. 30, para. 6);
- Consider establishing procedures for the disqualification of persons convicted of offences established in accordance with the Convention from holding public

office and holding office in an enterprise owned in whole or in part by the State (art. 30, paras. (7)(a) and (b));

- Amend its legislation to provide for the confiscation of property, equipment or other instrumentalities destined for use in the commission of corruption offences (art. 31, para. 1(b));
- Clarify in its legislation that confiscation should not prejudice the rights of bona fide third parties (art. 31, para. 9);
- Ensure the protection of persons who are close to witnesses or experts but are not their relatives, and allow persons seeking protection to request such protection directly (art. 32, para. 1);
- Consider legislating to protect reporting persons, beyond providing for their access to the protection system (art. 33);
- Adopt specific measures in implementation of art. 34 of the Convention on addressing the consequences of acts of corruption; inter alia, corruption could be considered a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession or other similar instrument;
- Consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of a corruption offence (art. 37, para. 3);
- Consider entering into agreements or arrangements with other States concerning persons who provide such cooperation (art. 37, para. 5);
- Encourage cooperation between national investigating authorities and entities of the private sector (art. 39, para. 1);
- Clarify through its legislation the consideration in criminal proceedings, under such terms as and for the purpose that it deems appropriate, of any previous conviction in another State of an alleged offender (art. 41);
- Establish its jurisdiction over offences committed abroad by Ecuadorian nationals other than the head of State, diplomatic representatives or members of their families or entourage; by public servants acting outside the course of their duties or official functions and consuls outside the exercise of their consular functions; or by stateless persons who have their habitual residence in Ecuador (art. 42, para. 2);
- Establish its jurisdiction over corruption offences when the offence is committed against the State (art. 42, para. 2 (d)) and when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).

2.4. Technical assistance needs identified to improve implementation of the Convention

The following forms of technical assistance would enable Ecuador to improve its implementation of the Convention: assistance with regard to legislative drafting (art. 16), model legislation (art. 21) and legal advice (arts. 23 and 32); on-site assistance provided by an expert (arts. 30 and 31); technological assistance in implementing the “transparency portal” and training for staff of the law enforcement authorities (art. 36).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The legal framework for extradition comprises article 79 of the Constitution, the 11 bilateral treaties and four multilateral conventions on extradition to which Ecuador is a party, the Extradition Act and the Regulations accompanying the Aliens Act. Ecuador is negotiating four additional treaties. Since 2010, Ecuador has processed 10 active extradition requests and three passive extradition requests in connection with corruption offences.

Each extradition request received by Ecuador is transmitted by the Ministry of Foreign Affairs and Human Mobility through the Ministry of the Interior to the President of the National Court of Justice. The decision of the judiciary to refuse an extradition request is final. A decision to grant extradition may be appealed against (art. 13 of the Extradition Act) and is not binding on the head of State, who issues the final decision. The President has rejected extradition requests, including in one corruption case. The active extradition procedure is initiated by the judge presiding over the case, and the President of the National Court of Justice rules on the admissibility of the request, which is then processed by the Ministry of Foreign Affairs and Human Mobility (arts. 24 and 25 of the Extradition Act).

Dual criminality is a requirement of the law (art. 2 of the Extradition Act).

In order to be extraditable, an offence must carry the penalty of imprisonment for a term of at least one year in both States (art. 2 of the Extradition Act; art. 4 of the Regulations accompanying the Aliens Act). Corruption offences satisfy this requirement. Ecuador may grant extradition for ancillary offences carrying lesser penalties (art. 2 of the Extradition Act). Not all corruption offences are covered by all of the treaties to which Ecuador is a party. However, all offences may be deemed to be extraditable in direct application of article 44, paragraph 4, first sentence. Ecuador has not concluded any extradition treaties since its ratification of the Convention. The Comprehensive Criminal Code does not establish a distinction between ordinary offences and political offences.

Ecuador does not make extradition conditional on the existence of a treaty, but prefers to grant extradition on the basis of the principle of reciprocity. Ecuador cannot use the Convention as a legal basis for extradition.

Ecuadorian legislation provides for a simplified extradition procedure, without a court hearing, if the person sought consents to the extradition (art. 11 of the Extradition Act). The Extradition Act establishes time limits aimed at expediting the procedure. In order to grant a request for extradition, Ecuador does not require proof of the elements of the offence but only proof that the requirements for extradition have been met.

The President of the National Court of Justice may order the arrest of the person sought (art. 8 of the Extradition Act).

Ecuador does not permit the extradition of Ecuadorian citizens (art. 79 of the Constitution; art. 4 of the Extradition Act). In order to avoid impunity, Ecuadorian law applies (art. 4 of the Extradition Act). The recognition and enforcement of foreign judgments are governed by art. 143 of the Organic Code of the Judiciary.

The grounds on which an extradition request may be refused (art. 6 of the Extradition Act) include discrimination on any of the bases referred to in the Convention, except the person's sex and ethnic origin, in which cases extradition may be refused on the

basis of the general prohibition of discrimination (art. 11 of the Constitution). The grounds for refusal do not include the fact that the offence involves fiscal matters.

All fundamental rights recognized in criminal proceedings apply to extradition proceedings. The National Court of Justice is required to inform the person sought of the request and ensure that the person attends the hearing with counsel and, if necessary, an interpreter (art. 11 of the Extradition Act). The requesting State may participate in the hearing (art. 12 of the Extradition Act).

Ecuador has concluded eight bilateral treaties and is negotiating a further eight on the transfer of sentenced persons. It is a party to the Council of Europe Convention on the Transfer of Sentenced Persons and the Inter-American Convention on Serving Criminal Sentences Abroad. In the absence of a treaty, Ecuador transfers sentenced persons on the basis of the principle of reciprocity.

Ecuador may transfer criminal proceedings on the basis of the provisions of the Convention, although there are no examples of such transfer in practice.

Mutual legal assistance (art. 46)

Mutual legal assistance is governed by the six bilateral treaties and various multilateral treaties to which Ecuador is party, and by article 497 of the Comprehensive Criminal Code. Ecuador provides assistance on the basis of reciprocity, without the requirement of dual criminality. There have been very few cases in which assistance has been provided in connection with a corruption offence (an estimated 10 such cases between 2013 and 2015).

Ecuador may provide assistance for any purpose provided for in its legislation, regardless of whether the alleged perpetrator of the offence is a legal or natural person. Assistance must be provided in a manner compliant with international human rights instruments and Ecuadorian law. Procedures specified in the request may be considered, to the extent that they are not contrary to domestic law.

Ecuador provides information without prior request only when a person has been detained (art. 77 (5) of the Constitution). If it receives information without prior request, the accused is granted access to that information from the time at which it officially becomes part of a criminal proceeding.

Bank secrecy and the fact that an offence involves fiscal matters do not constitute grounds for refusing assistance.

There is no impediment to the transfer of a detained person to a foreign territory for the purpose of testimony, nor to fulfilment of the requirements of article 46, paragraph 11; such transfer in accordance with those provisions may be carried out in direct application of the Convention or other international instruments. However, there are no examples of the practical application of those provisions.

The central authority is the National Court of Justice. Requests are received in Spanish through diplomatic channels, unless direct contact between central authorities is permitted under a bilateral treaty. In urgent cases, requests may be made by e-mail and orally, or through the International Criminal Police Organization (INTERPOL). The Attorney General's Office is the central authority for several other treaties and has issued a directive on international cooperation in criminal matters.

The use of videoconferencing is provided for (art. 502 of the Comprehensive Criminal Code). Ecuador observes the principle of speciality in directly applying the Convention or other treaties. Investigative techniques are confidential (art. 490 of the Comprehensive Criminal Code), but the accused and the defence counsel have the right to access the results of their application.

The authorities indicated that simple procedures take two to four weeks and more complex procedures take three to four months. Any decision by the public authorities must state the grounds on which it is based (art. 76 (7) (l) of the Constitution). Before refusing assistance, Ecuador does not routinely consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary (art. 46, para. 26); consultation is possible when assistance is provided on the basis of a bilateral agreement. Safe conduct for persons who consent to give evidence may be provided, and the rules applicable to the costs of such safe conduct applied, in direct application of the Convention.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Ecuador is a party to the Inter-agency Asset Recovery Network of the Financial Action Task Force of Latin America (GAFILAT), the Ibero-American Network for International Legal Cooperation (IberRed) and the Ibero-American Association of Public Prosecutors (AIAMP), although it has not yet used those networks in corruption cases. The police provide cooperation through INTERPOL. Ecuador exchanges personnel with other States, but has not posted any liaison officers.

The Financial Analysis Unit has concluded 17 memorandums on international cooperation and is preparing to become a member of the Egmont Group of Financial Intelligence Units. The Attorney General's Office has concluded 11 memorandums of cooperation, is negotiating a further such memorandum and is part of the Andean Cooperation Instrument signed by the Attorneys General of Bolivia (Plurinational State of), Colombia, Ecuador, Peru and Venezuela (Bolivarian Republic of) in February 2002. Ecuador may use the Convention as a legal basis for law enforcement cooperation.

The police is responsible for combating cybercrime in the context of organized crime (art. 500 of the Comprehensive Criminal Code).

Ecuador has established provisions governing joint investigations (art. 496 of the Comprehensive Criminal Code) with respect to organized crime, but not with respect to corruption.

Undercover operations and controlled deliveries are provided for (arts. 483 to 492 of the Comprehensive Criminal Code) but are subject to authorization by the prosecutor; the monitoring of telephone conversations (art. 476 of the Code) is subject to authorization by the judge. At the international level, such techniques may be used on the basis of memorandums of cooperation and the Convention.

3.2. Successes and good practices

- Ecuador frequently transfers sentenced persons (art. 45);
- Where the central authorities can communicate directly with their counterparts, a draft request is submitted before the formal request is made (art. 46).

3.3. Challenges in implementation

It is recommended that Ecuador:

- Continue to define the roles and responsibilities of each institution in international cooperation and to strengthen inter-agency coordination in the execution of requests (arts. 44-50);
- Grant extradition in the absence of dual criminality (art. 44, para. 2);

- Ensure that acts that have not yet been established as offences (see “Challenges in implementation” relating to chapter III) are deemed to be extraditable offences (art. 44, paras. 1, 4 and 7);
- Clarify the concepts of “political offence” and “ordinary offence” in the Extradition Act and bring them into line with the Comprehensive Criminal Code (art. 44, para 4);
- Analyse whether the adoption of more detailed legislation, or the issuance by the National Court of Justice of a directive, on mutual legal assistance could strengthen the system of mutual legal assistance (art. 46);
- Apply the general rules set out in article 46, paragraphs 9 to 29, when processing requests on the basis of the principle of reciprocity (art. 46, paras. 9 to 29);
- Consider transmitting information without prior request (art. 46, para 4);
- Notify the Secretary-General of the designation of its central authority and of the language (or languages) acceptable to it; Consider whether cooperation on the basis of the Convention or the principle of reciprocity could be expedited through direct contact between central authorities (art. 46, paras. 13 and 14);
- Consult with the requesting State before refusing assistance (art. 46, para. 26);
- Continue to strengthen cooperation between the law enforcement authorities, including through liaison officers (art. 48, para. 1);
- Endeavour to cooperate with other States to respond to corruption offences committed through the use of modern technology (art. 48, para. 3);
- Consider the possibility of concluding agreements relating to joint investigation teams or agreements on a case-by-case basis or using the Convention as a legal basis (art. 49).

3.4. Technical assistance needs identified to improve implementation of the Convention

The exchange of information between central authorities by electronic means would assist Ecuador in implementing the chapter under review.
