

CITIZENS' AMENDMENTS TO ECUADORIAN CONSTITUTION:

A STEP TOWARDS BUILDING INTEGRITY IN THE PUBLIC SECTOR?

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Executive summary

Twelve years after the creation of the Citizen Participation and Social Oversight Council (CPCCS), this report assesses the CPCCS fulfilling its three main tasks: fighting corruption, promoting citizen participation and social oversight and appointing independent public authorities based on their merits. This report assesses the CPCCS based on three indicators: independence, credibility and, performance using a comparative model, where one successful anti-corruption agency (ACA), the Transitory Citizen Participation and Social Oversight Council (CPCCS-T), is contrasted against the CPCCS.

When it comes to fighting corruption and promoting citizen participation, this report shows that these functions were neglected. The only specialized executing bodies of the CPCCS - the Secretariats - were unfunded. For nine years, the Technical Secretariat of Transparency and Fight against Corruption (STLCC) executed on average 1,08 per cent of the budget. Similarly, the Technical Secretariat of Transparency for Social Participation and Oversight (STPCCS) executed 2,26 per cent. The main activities performed for 'fighting against corruption' were unrelated: the CPCCS's number offers of 'legal guidance' to citizens in their particular affairs almost doubles the number of corruption complaints processed. Citizen participation was centralized and manipulated for political purposes, in 2017, a supposedly citizen 'veeduría' was created to 'oversee' the due process of former vice-president, now convicted for corruption, Jorge Glas.

The CPCCS focused on appointing authorities close to the creators of this institution: former president Correa's political party 'Movement for a Proud and Sovereign Country' (MPAIS) and with it, the CPCCS virtually annulled oversight, not only its own but all of it. The CPCCS' appointments affected the independence of the electorate branch and the judiciary. The 'merit contests' became a mechanism to legitimize patronage and entitled public servants to keep their office despite the serious doubts around their independence.

This report shows that the CPCCS did not fulfil its tasks; instead, it became an obstacle for each of them. The report recommends the abolishment of the CPCCS but acknowledging that the issues behind the creation of the CPCCS are real, it suggests implementing mechanisms to improve vertical accountability.

Introduction

Ecuador, the land for which the Incas, Cañaris, Spaniards, Criollos fought and died over, is now occupied by citizens ashamed of their own authorities. It was two hundred years ago that the criollos' out of touch Constitutions shocked the new republics and caused chaos, which led eventually to authoritarian regimes ('caudillos'). Much like the criollos, Ecuadorian constituent legislators have included unrealistic poetic declarations of rights and in the last decade, an array of oversight agencies. As a result, in the last year, Ecuador has had 14 national independent oversight agencies,¹ which attempt to solve problems that have haunted the country's democracy for centuries. This report assesses one of them: the CPCCS.

Currently, a National Assembly, desperate to win credibility,²³ debates the abolition of the CPCCS – with the approval of most Ecuadorians.⁴⁵ The discussion about the fate of the CPCCS unfolds in a sensitive time in Ecuador: the 2021 presidential elections are approaching. Already the most popular candidates have promised to create a new ACA when they get to power.⁶⁷ This is mainly a response to the corruption scandals that have rattled the country during the COVID-19 pandemic.⁸ As the miseries of the public service are exposed, the country falls down into a 'credibility crisis'⁹¹⁰.

¹ Ombudsman, Superintendencies (6), Comptrollership, National Prosecutor, Attorney General, FTCS, CPCCS, Anti-corruption Secretariat -no longer functioning- and the Anti-corruption International Commission.

² The National Assembly had 9,4 per cent of citizenry approval in May 2020. As of August 2020, approximately 60 out of the 137 legislators are being trialled.

³ Centre for Studies and Data. (2020). 'The population assesses the management of president Lenin Moreno's three years of government' URL: <https://www.cedatos.com.ec/blog/2020/05/23/la-poblacion-evalua-la-gestion-de-los-tres-anos-de-gobierno-del-presidente-lenin-moreno/>

⁴ 64,9% of Ecuadorians approve the abolition of the CPCCS. And a citizen's amendment proposal has been signed by more than 300,000 citizens.

⁵ Centre for Studies and Data (2019). URL: <https://wambra.ec/wp-content/uploads/2019/07/CEDATOS-BOLETIN-Estudio-a-30-JUNIO-2019-10-07-2019.pdf>

⁶ Guillermo Lasso, a conservative candidate has already anticipated the creation of an international anti-corruption commission. Likewise, the Andrés Arauz, a left-wing candidate for president, has already suggested the creation of a commission 'composed by citizens' and a 'Truth Commission' (Comisión de la Verdad).

⁷ Lasso, G. Announcement the creation of an international anti-corruption commission. Via: <https://twitter.com/LassoGuillermo/status/1298661704713240581>

⁸ The first case became public in March when the Institute of Social Security signed a contract for \$1 million paying an overprice of approximately \$6 for each mask. Since then, the National Prosecutor has started at least 131 investigations due to irregular processes during the pandemic.

⁹ In June 2020, the president's credibility descended to 8 per cent and the National Assembly's to 2 per cent.

¹⁰ Centre for Studies and Data. (2020) 'Moreno's credibility at 8 percent' Reported by Ecuavisa. URL: <https://www.ecuavisa.com/articulo/noticias/nacional/629506-credibilidad-lenin-moreno-cayo-al-8-segun-cedatos>

'In this year, as in no other since the return to civilian ruling in 1979, the citizens place corruption and mismanagement of government and justice as the main priority issue of the country'¹¹.

While the Assembly debates the abolition of an ACA, presidential candidates pursue votes offering the creation of another, and corruption scandals lower the country's morale. It seems pertinent to reflect on the broader picture: the history behind this chaos and institution that was supposed to prevent it, the CPCCS.

First, the report presents an overview of Ecuador's national integrity system created in 2008 and locates the CPCCS as an ACA ([SECTION 1](#)). Then, it recaps the theoretical foundation of the independent oversight agencies and the comparative evidence around them ([SECTION 2](#)). The next section approaches the different ACAs that Ecuador has had and recounts its history. ([SECTION 3](#)). Then, the report sets up the criteria under which the CPCCS will be assessed and the methodology behind it. and assess the institution. ([SECTION 4](#)). [SECTION 5](#) provides an overlook of the CPCCS's current administration and [SECTION 6](#) goes over the policy options and recommendations.

¹¹ Polibio Á. (2020) La República. 'Public opinion shows crisis' URL: <https://www.larepublica.ec/blog/opinion/2020/08/04/opinion-publica-dimensiona-crisis/>

Section 1.- Ecuador's national integrity system

The CPCCS is a part of the Transparency and Social Oversight Branch (FTCS). Ecuador's twentieth Constitution diverged from the traditional Madisonian presidential design and created five branches of government: executive, legislature, judicial, electoral and the FTCS. This is not the first time that the idea of creating an integrity branch has been discussed in the country. In 2005, former president Lucio Gutiérrez proposed the creation of an 'accountability branch' and, in the region, this idea was first introduced by Simón Bolívar, almost two centuries ago, who called it the 'moral power'.¹²

The creation of the FTCS in 2008 represents the foundation of Ecuador's national integrity system. The concept of a national integrity system suggests that integrity 'extends through a wide variety of integrity institutions and processes used to hold each other accountable, in a network fashion as well as operating on agencies and individuals through traditional top-down supervision'.¹³ Behind the creation of a distinct function lies the acknowledgement that the relationships between branches exceed 'simply mutual accountability' and that an integrity branch will allow coordination and cooperation between each in the 'appropriate exercise of power'.¹⁴

The FCTS has the following functions: (1) promote oversight so that public entities and certain private ones¹⁵ perform their duties with responsibility, transparency and fairness; (2) promote citizen participation; (3) protect the exercise and enforcement of rights and prevent and combat corruption.¹⁶ In order to fulfil those duties, the heads of the entities that compose the FTCS constitute a coordination platform.¹⁷ It is important to note that the coordination platform of the FTCS is an entity itself, separated from the ones that comprise it. (See [MAP 1](#))

¹² Vicente S. (2018). 'Participatory democracy and meritocracy'. Angostura Speech (1819). Universidad Simón Bolívar.

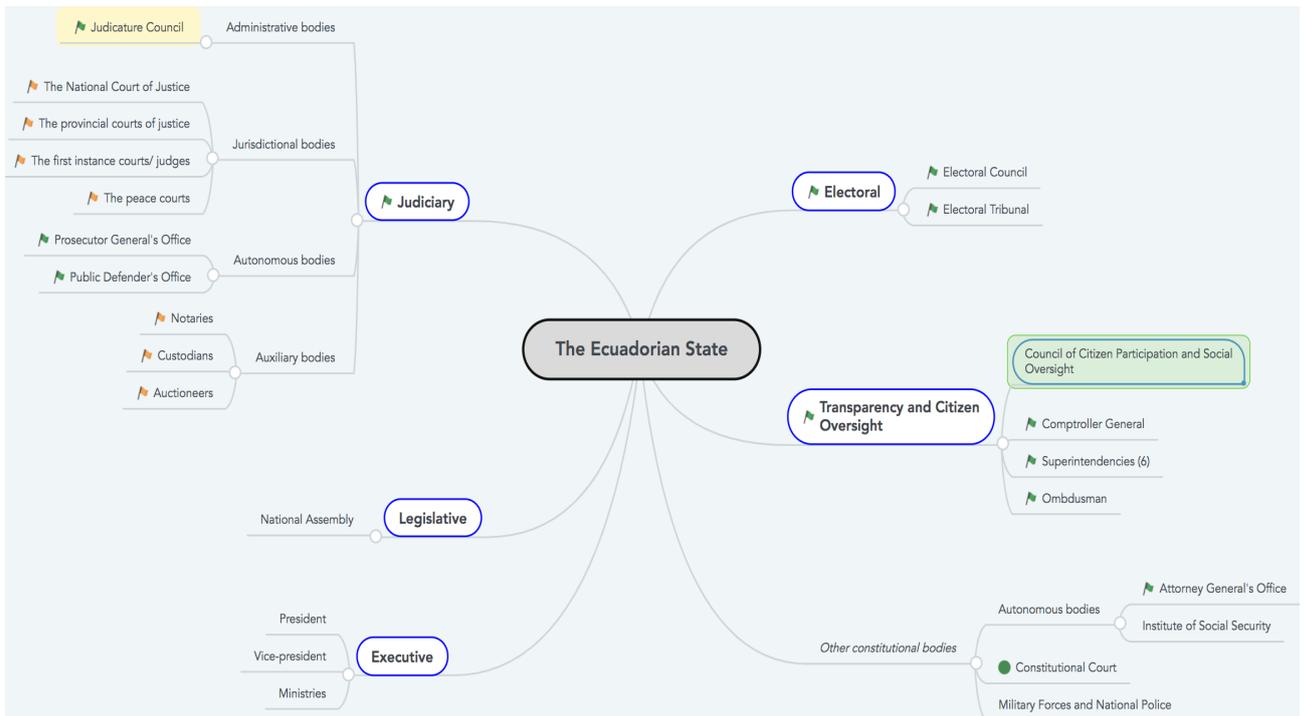
¹³ Brown, A.J. (2006). Putting Administrative Law Back into Integrity, and Putting the Integrity Back into Administrative Law.

¹⁴ Brown, A.J. (2006). Putting Administrative Law Back into Integrity, and Putting the Integrity Back into Administrative Law.

¹⁵ And private entities that provide services or carry out activities in the public interest.

¹⁶ Constitution of the Republic of Ecuador. (2008) Article 204. Official Register No. 499.

¹⁷ Constitution of the Republic of Ecuador. (2008) Article 206. Official Register No. 499.



MAP 1: shows the general constitutional design of the Ecuadorian State since 2008.

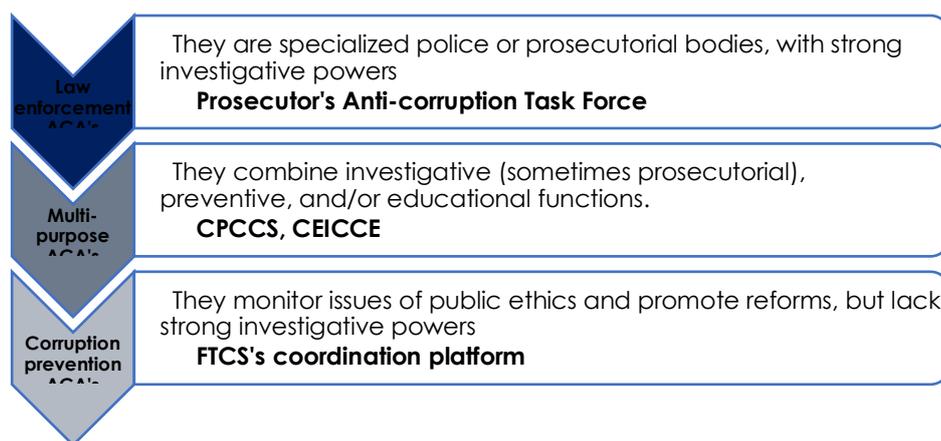
- indicates authorities that are directly appointed by the CPCCS.
- Indicates authorities that are directly appointed by the Judicature Council.
- Indicates a special kind of appointment procedure which involves the CPCCS.

Independent oversight agencies

All of the agencies that compose the FTCS are 'independent oversight agencies'-these are public entities that provide information to law enforcement institutions and some even have prosecutorial powers. Other examples of independent oversight agencies are the national prosecutor (fiscalía) and the attorney general (procuraduría); these entities are also called 'independent pro-accountability agencies' (IPAs), or 'superintendencies'.

ACAs

An ACA is a specialized oversight agency that performs public integrity oversight, they are 'mandated to address corruption, the abuse of public office for private gain'.¹⁸ The OECD has categorized them according to their powers. (See MAP 2).



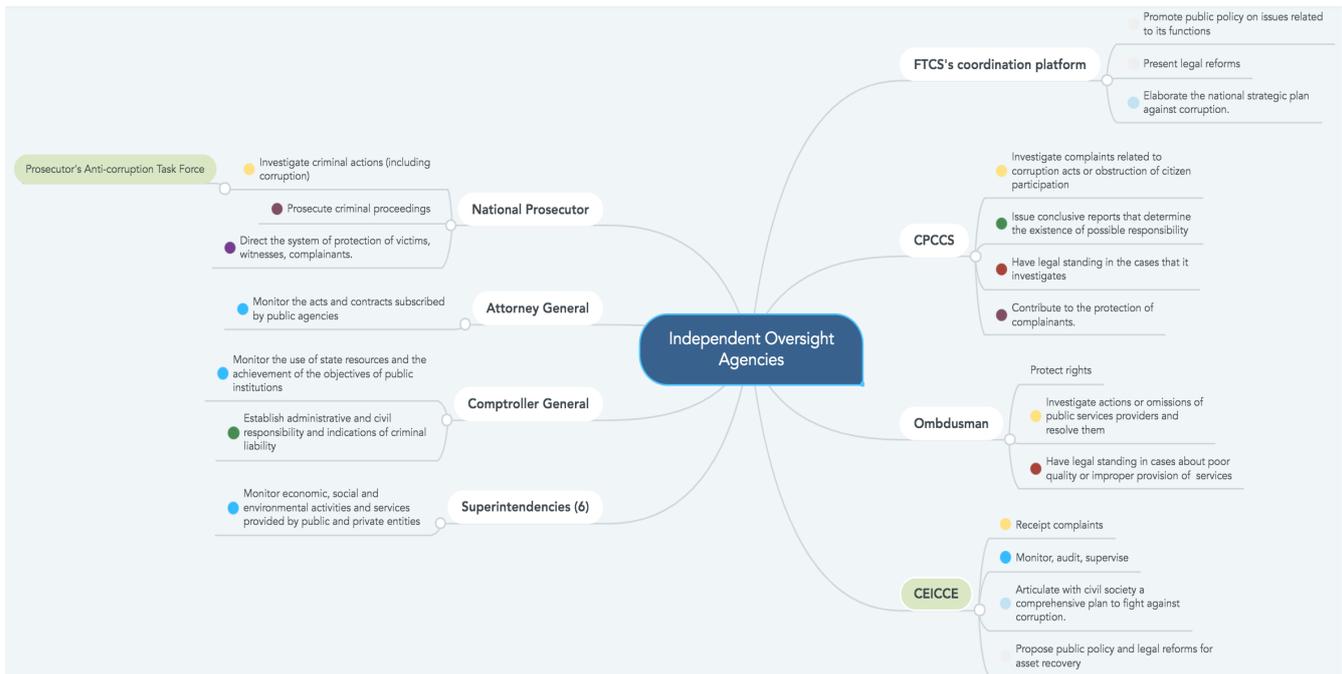
MAP 2

Ecuador currently has 14 oversight agencies, 12 of them are constitutionally recognized. Out of those 14, four are ACAs: CPCCS, FTCS's coordination platform, Prosecutor's Anti-corruption Task Force¹⁹ and the Commission of International Experts on Anti-Corruption in Ecuador (CEICCE).²⁰ The rest of these agencies also perform investigative and monitoring functions. MAP 3 shows all of the oversight agencies of the country and highlights the similarities around them in the 'anti-corruption' functions that they all share.

¹⁸ Organisation for Economic Co-operation and Development. (2013). Specialised anti-corruption institutions: Review of models(2nd ed.) URL: www.oecd.org/corruption/acn/specialisedanti-corruptioninstitutionsreviewofmodels.htm

¹⁹ This was created by National Prosecutor – Diana Salazar to specifically investigate corruption crimes. It is composed of 8 highly specialized prosecutors.

²⁰ CEICCE was created by president Moreno in collaboration with the United Nations Office on Drugs and Crime, which conformed the CEICCE's Secretariat.



MAP 3: highlights the anti-corruption related functions of all of the independent oversight agencies

● ● ● and others indicate similar functions

In green are the two agencies that are not constitutionally recognized

²¹ Note that most of these entities have other powers that are not illustrated in the figure.

The CPCCS

Ecuador's CPCCS fulfils two more functions besides fighting against corruption, as MAP 4 shows:



MAP 4

Section 2.- Independent agencies and the 'accountability deficit'

In the last two decades, one of the main concerns with democracies in Latin America has been the deficit of accountability.²² When it comes to addressing the lack of political accountability in the region, there is a debate around which policies to implement. Over the past decades, there has been a regional tendency to build a new infrastructure of accountability, to address this issue. This has had strong encouragement from researchers, such as Conaghan,²³ Sousa²⁴, Mainwaring.²⁵ Ecuador has been deeply influenced by this idea, but are they a solution? The following section unfolds this discussion and relates it to the CPCCS.

Independent agencies solving the accountability deficit

In order to understand the role of these agencies it is useful to bear in mind the difference of what O'Donnell has called horizontal and vertical accountability. According to him, accountability is not only vertical -that is of state agents to citizens and civil society mainly through the ballot box- but also horizontally -that is to a network of independent state agencies. Horizontal accountability includes agencies:

[T]hat are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.²⁶

While vertical accountability comes from someone who is not on the same level (citizenry-principal), horizontal accountability emanates from the same public structure. O'Donnell proposes that democratization requires both vertical and horizontal accountability, the latter assists' vertical accountability by providing information that elected politicians and citizens can use in holding their agents accountable'. The CPCCS in its fight against corruption

²² Mainwaring, S. (2003). 'Democratic Accountability in Latin America'. 'Introduction: Democratic Accountability in Latin America.', Oxford University Press.

²³ Conaghan C. (2012) Prosecuting Presidents: The politics within Ecuador's Corruption Cases. Cambridge University Press.

²⁴ De Sousa, L. (2010). 'Anticorruption agencies: between empowerment and irrelevance'. Crime Law Soc Change.

²⁵ Mainwaring, S. (2003). 'Democratic Accountability in Latin America'. 'Introduction: Democratic Accountability in Latin America.', Oxford University Press.

²⁶ O'Donnell, G. (1998). 'Horizontal Accountability in New Democracies' Journal of Democracy, vol.9 No. 3.

dimension is, by all means, a manifestation of O' Donnell's horizontal accountability. However, a specific argument has been made to support the function of the CPCCS in promoting citizens' participation.

The 'institutionalization of participatory mechanisms'

Smulovitz and Peruzzotti have argued further that another type of vertical yet non-electoral accountability exists - 'societal accountability'. This is defined as those mechanism that rest on the actions of citizens' associations, the media, which 'aim at exposing governmental wrongdoings'²⁷ To improve this type of accountability, Ackerman has suggested the 'institutionalization of participatory mechanisms'. The logic is similar to O'Donnell's, but he uses societal accountability instead: by creating independent agencies that promote citizen participation, one can overcome its deficit. Ackerman proposes three levels of the 'institutionalization of participatory mechanisms', the second one is to create 'specific government agencies (...) that have the goal of assuring societal participation in government activities or act as a liaison in charge of building links with societal actors'.²⁸ The CPCCS is the embodiment of Ackerman's institutionalization of participatory mechanisms.

Independent agencies endangering accountability

There are two main concerns around the creation of these agencies: the first one refers to the lack of ability of these agencies to address the real accountability issue of Latin American democracies; and the second one is on their effectiveness, there are various comparative cases that show that in practice these structures are prone to political intervention and eventually end up obstructing accountability. This section goes over both of these arguments.

Independent agencies and vertical accountability

Shugart et al have argued that the roots of the shortcomings that are experienced in Latin American democracies are not to be found in the horizontal dimension of the state. That is, the deficit of accountability lies instead in the faulty vertical accountability: legislators who do not represent the values and preferences of the broad citizenry.²⁹ The creation of autonomous agencies is actually an 'indicative of a breakdown in the interplay of the vertical

²⁷ Smulovitz, C., Peruzzotti E., (2000). 'Societal accountability in Latin America' Journal of Democracy. John Hopkins University Press. Volume 11, Number 4.

²⁸ Ackerman, J. (2005). 'Social Accountability in the Public Sector'. Paper No.82. The World Bank.

²⁹ Shugart, M., E. Moreno and Crisp, B. (2000) 'The accountability deficit in Latin America.' In 'Introduction: Democratic Accountability in Latin America. Democratic Accountability in Latin America'. Oxford University Press.

and horizontal dimensions of the state'.³⁰ This 'breakdown', they argue, cannot be solved solely by the creation of agencies; which even if they are successful are not addressing this underlying issue.

Traditionally, constitutions seek to limit the exercise of power and create accountability mechanisms by a parliamentary or a presidential system. Ecuador has a presidential system, and as such, the legislature and the executive are independent agents of the electorate - unlike the parliamentary system-. In theory, because of this separation, both powers have an incentive to show the wrongdoings of the other. In Madison's terms, these countervailing ambitions exist because of the separate and independent origin of each branch. The presidential system rests on the idea of a conditional delegation of authority. From the principal-agent perspective, governments are agents of the citizenry and they are entrusted with powers 'at the pleasure of the principal. That it may be withdrawn is the very essence of accountability'.³¹ That is the essence of vertical accountability. The creation of 'horizontal' bureaucracies is no solution to solve a problem that rooted in a vertical dimension.

On a similar note Smilov concludes that what is urgently needed 'is a revival of the representative structures of democracy'³². Smilov notes that one function that these agencies actually perform effectively is 'to give to the government some leverage over the anticorruption discourse.'³³ He argues that the reason behind the continuous proliferation of these bodies -specifically the anti-corruption agencies- is the political opportunity that they offer. Smilov observes that traditionally, incumbent governments have been on the other side of the anti-corruption battle- defending themselves in courts and under constant evaluation. However, in the ACAs they have found an opportunity to turn that around by becoming active parties that 'provide strategies'. ACAs provide citizen's assurance and allow governments no to find 'themselves at the receiving end of investigations and trials'³⁴.

³⁰ Shugart, M., E. Moreno and Crisp, B. (2000) 'The accountability deficit in Latin America.' In 'Introduction: Democratic Accountability in Latin America. Democratic Accountability in Latin America'. Oxford University Press.

³¹ Crisp, Soberg. The Accountability Deficit in Latin America.

³² Smilov draws this conclusion on his research done in Eastern Europe.

³³ Smilov, D. (2010) Anticorruption Agencies: expressive, constructivist and strategic uses. *Crime Law Soc Change*.

³⁴ Smilov, D. (2010) Anticorruption Agencies: expressive, constructivist and strategic uses. *Crime Law Soc Change*.

Effectiveness of the independent agencies

When it comes to the effectiveness of ACAs, the comparative evidence is discouraging -not only it is rare the ACAs succeed, some of them are contra-productive and they often become 'obstacles' to their purposes³⁵. In the last years, international organizations that were the main sponsors of the ACAs have toned down their support. In 2005, a United Nations Development Programme report concluded: 'the creation of such an institution is not a panacea to the scourge of corruption. There are actually very few examples of successful independent anti-corruption commissions/agencies'³⁶

According to Pope, ACAs have been 'more often failures than successes.'³⁷ Often these agencies are just a façade to obstruct transparency. As Ackerman points out, they often help governments avoid accountability: 'In many countries there is a long tradition of creating new "independent" bureaucracies in response to problems in order to make the government appear as if it were committed to resolving the issue at hand'³⁸ The evidence around these institutions shows that they could -in few cases- function. Smilov describes the creation of ACAs as a 'constructivist leap of faith'³⁹. The main concern is that when these agencies become part of a cover-up structure, their harm is not only to the institution, it diminishes the trust of anti-corruption strategies as a whole. Ackerman also warn that after 'institutionalizing' participation where there is the of a creation of 'an elite class of individuals or civil society organizations who supposedly speak for the people but do not'⁴⁰ Even when Ackerman does warns about the vulnerabilities of his suggested policies, it is not clear how such organizations -prone to be hijacked- are supposed to operate as expected in the Latin American fragile democracies.

Smilov's research on the Baltics provides further evidence on how these agencies fail and become a political tool for demagogues' leaders to gain power.⁴¹ However, there are also

³⁵ Anechiarico, Frank. (2009). 'Protecting integrity at the local level: the role of anticorruption and public management networks'. *Crime, Law and Social Change*.

³⁶ United Nations Development Programme. (2005). 'Institutional Arrangements to Combat Corruption: A Comparative Study. Bangkok', UNDP URL: http://regionalcentrebangkok.undp.or.th/practices/governance/documents/corruption_comparative_study-200601.pdf

³⁷ Pope, J. (2000) '*Confronting Corruption: The Elements of a National Integrity System*, Berlin', Transparency International.

³⁸ Ackerman, J. (2005). 'Social Accountability in the Public Sector'. Paper No.82. The World Bank.

³⁹ Smilov, D. (2010) *Anticorruption Agencies: expressive, constructivist and strategic uses*. *Crime Law Soc Change*.

⁴⁰ Ackerman, J. (2005). 'Social Accountability in the Public Sector'. Paper No.82. The World Bank.

⁴¹ Smilov, D. (2010) *Anticorruption Agencies: expressive, constructivist and strategic uses*. *Crime Law Soc Change*.

some successful cases: the Independent Commission against Corruption (ICAC), Hong Kong. Independent Commission against Corruption, New South Wales (NSW ICAC), Corrupt Practices Investigation Bureau Singapore -which has a function of screen candidates for civil service positions to prevent those with criminal and corruption records from being appointed-⁴² International Commission against Impunity in Guatemala (CICIG)⁴³ What makes these agencies fail or triumph? Doig and Watt have compiled the 'drivers for success' of ACAs. (See [ANNEX 2](#)).⁴⁵ These are related to the indicators presented in this report for the assessment of the CPCCS (See [INDICATORS](#))

Agencies with 'teeth'?

A common argument is that ACAs fail because they lack law-enforcement powers -these are the 'toothless' ACA's, they are not able to execute coercive measures. Opposed to these are the ACA's with 'teeth' that have 'strong investigative powers, such as the ability to execute search warrants, use force, and arrest suspects.'⁴⁶ Intuitively, the latter should prove to be more effective. However, Kuris has provided evidence drawn from dozens of countries that indicates that giving strong powers to the ACAs does not determine their effectiveness. He concludes: 'law enforcement powers are not always advantageous. In many contexts, 'toothless' ACAs may be more resilient, robust, and cost-effective.'⁴⁷ Kuris observes that despite their 'teeth' many ACAs with law enforcement powers are ineffective especially in fragile democracies. Kuris indicates:

'Some ACAs have promising starts but collapse quickly under political pressure, as in Kenya (Kpundeh, 2004). Others are mere facades, created to satisfy domestic or foreign pressure but deprived of the resources and political will required to actually operate effectively, as in Sierra Leone and Malawi (Kpundeh, 2004). Others are ineffective because their work is undermined by unreliable partners in the police, judiciary, or government, as in Lithuania (Kuris, 2012d). Many studies have illuminated

⁴² Quah, J. Evaluating the effectiveness of anti-corruption agencies in five countries. A comparative analysis. *Asian Education and Development Studies*. Vol. 4. No. 1, 2015.

⁴³ Note that Guatemala's CICIG was created as an international institution.

⁴⁴ Hudson, A., and Taylor A., (2010) 'The International Commission against impunity in Guatemala.' A Model for International Criminal Justice Mechanisms. *Journal of International Criminal Justice*.

⁴⁵ Doig, A., Watt, D., Williams R., (2005) 'Measuring 'success' in five African Anti-Corruption Commissions'. U4 Anti-corruption Resource Centre.

⁴⁶ Kuris, G. (2017) 'Watchdogs or guard dogs: Do anti-corruption agencies need strong teeth?'. *Policy and Society*, 34:2, 125-135.

⁴⁷ Kuris, G. (2017) 'Watchdogs or guard dogs: Do anti-corruption agencies need strong teeth?'. *Policy and Society*, 34:2, 125-135.

the daunting obstacles that thwart ACAs with strong teeth from achieving results (Doig, Watt, & Williams, 2007; De Sousa, 2010).'

Section 3.- The history behind the CPCCS

The CPCCS was created because the constituent legislature had lost its trust in the traditional institutional design and this distrust was not ill-founded. At the beginning of the 21st century, Ecuador was in the throes of a political crisis, it seemed to be the country of the ungovernable: in ten years, from 1996-2006 Ecuador has had seven different presidents.⁴⁸ The 'month of four presidents'⁴⁹ of 1947⁵⁰ was exceeded by the 'night of the three presidents' in 1997.⁵¹ Since Ecuador became a republic, it has shown to be indeed 'a very difficult country to govern'⁵² as famously stated by former president José María Velasco Ibarra.

The anti-corruption rhetoric exacerbated Ecuador's constant political instability and it became a tool to promote different political agendas. In the name of the 'fight against corruption' presidents have been elected and ousted.⁵³ Only in the current government, over the past three years, two of the four vice-presidents the country has had were accused of corrupt actions.⁵⁵ The destabilizing nature of corruption scandals haunted the country's politicians, regardless of their political affiliation. This has made it very difficult to differentiate the anti-corruption policies from its antithesis. Smilov's conclusion on the anti-corruption movement in the Baltics could have been easily written for Ecuador:

'The local elites are increasingly seen as hypocritical, confidence in them is very low, and there are waves of populist newcomers vowing to carry out a "new revolution", create a "new republic", start the transition again, etc. As a result, Eastern Europe has become the stage for the demagoguery of politicians (...) [who] instrumentalize the anticorruption discourse mostly in order to gain power.'

⁴⁸ Abdalá Bucaram, Rosalía Arteaga, Fabián Alarcón, Jamil Mahuad, Gustavo Noboa, Lucio Gutiérrez and Alfredo Palacios.

⁴⁹ Blanksten, G. (1951). 'Ecuador: Constitutions and Caudillos.' University of California Press.

⁵⁰ From August to September, 1947 Ecuador had four chief-executives: Velasco Ibarra, Carlos Mancheno, Mariano Suarez Veintimilla and Carlos Julio Arosemena.

⁵¹ The night of 6 February 1997 where Bucaram, Alarcón and, Arteaga had presidential claims.

⁵² José María Velasco Ibarra. Cited in Blanksten, G. (1951). 'Ecuador: Constitutions and Caudillos.' University of California Press.

⁵³ Since the creation of the first ACA in 1997 to this date, eight of the nine presidents have become targets of judicial investigations on corruption charges.

⁵⁴ Conaghan C. (2012) Prosecuting Presidents: The politics within Ecuador's Corruption Cases. Cambridge University Press.

⁵⁵ Jorge Glas is currently in prison for his illicit activities with the company Odebrecht, related to the case 'Lava Jato' in Brazil and María Alejandra Vicuña.

In Ecuador, the improvised anti-corruption policies have been executed as a reaction to the numerous public scandals. Since the creation of the first ACA in 1997, the country has already had five other different ACAs (See MAP 5), most of them showed a change in government.



MAP 5: shows all of Ecuador's public anti-corruption national agencies.
 indicates a transitory entity
 indicates that it no longer exists

This section seeks to set up the national and international context that influenced the creation of the CPCCS, as well as to provide a short overview of Ecuador's anti-corruption movement.

TABLE 1 summarizes the presidential mandates that will be referred to in this report.

PRESIDENT	CAPACITY	TERM ⁵⁶	CAUSE OF TERMINATION
Abdalá Bucaram	President	1996-1997	Congress dismissal
Rosalía Arteaga	Constitutional President	1997	Congress dismissal

⁵⁶ According to the Ecuadorian Constitutions in force during these years, the presidential term was four years.

Fabián Alarcón	Interim President	1997-1998	End of term
Jamil Mahuad	President	1998-2000	Rebellion
Gustavo Noboa	Constitutional President	2000-2003	End of term
Lucio Gutierrez	President	2003-2005	Rebellion
Alfredo Palacio	Constitutional President	2005-2007	End of term
Rafael Correa	Constitutional President	2007-2017	End of term
Lenín Moreno	Constitutional President	2017-2021	In office

TABLE 1

The Anti-Corruption Commission (1997)

The first ACA, the Anti-Corruption Commission was created on 4 March 1997 by the interim ruler, Fabián Alarcón. The institution was a special commission of inquiry⁵⁷ in charge of investigating the corruption scandals of the former president, Abdalá Bucaram.⁵⁸ A national poll taken in 1997 reported that the public viewed corruption as the country's number one problem and that Bucaram was considered the most corrupt president⁵⁹ since 1979⁶⁰. Bucaram, also known as 'The Madman' (El Loco), was elected president in 1996, despite corruption scandals that occurred during his period in office as mayor of Guayaquil.⁶² Bucaram portrayed himself to the electorate as the anti-dote of the elites. He portrayed himself as the 'messiah' fighting against the 'devil'.⁶³ However, after being in office for less than six months and starring in several public scandals, the Congress dismissed him for lacking the mental capacities⁶⁴ to govern the country.

Once dismissed, it was only right that the vice-president, Rosalía Arteaga, assumed the presidency of the country. However, the Congress alleged a legal vacuum⁶⁵ in the Constitution and appointed the President of Congress, Fabián Alarcón, as the interim President. On the night of the 6th of February, Bucaram claimed to have been illegally

⁵⁷ Presidency of Ecuador. (1997). 'Executive Decree 107-A'

⁵⁸ As I write this report Bucaram, who returned to Ecuador after twenty years of living in political exile in Panama, is incarcerated for the second time this year. He has been involved irregularities in the acquisition of medical supplies and, the prosecutor claims links to the investigation of assassination. Bucaram is running for President on the 2021 elections.

⁵⁹ Centre for Studies and Data. (1997). Corruption, the new enemy. *Diario Hoy*.

⁶⁰ The 1979 Constitution marked the country's return to civilian ruling (retorno de la democracia).

⁶¹ Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' *Scholarly Resources*.

⁶² These included a brief incarceration for alleged drug trafficking in Panama.

⁶³ De la Torre, C. (1997). 'Populism and Democracy: Political Discourses and Cultures in Contemporary Ecuador.' *Latin American Perspectives*.

⁶⁴ He was dismissed without any medical report to support this decision of the Congress.

⁶⁵ The legal vacuum was that the Constitution stated that 'In the event of temporary absence of the President of the Republic, he shall be replaced by the Vice President of the Republic (...)'

removed from office, Arteaga to be the constitutional successor, and Alarcón to have the legitimacy of the Congress to rule. Thus, the 6th is known as the 'night of the three presidents'. In the end, after several negotiations which included military representative, General Moncayo, Alarcón and congressional leaders,⁶⁶ Arteaga assumed the presidency temporarily until the national Congress designated a Constitutional Interim President⁶⁷. As Allen notes: 'Moncayo assured the other notables that if Arteaga were sworn in, she would step down soon.' As promised by General Moncayo, Arteaga presented her resignation after 72 hours in office. The Congress then appointed Alarcón as the Interim President for the second time.

Alarcón's political life was marked by several electoral defeats,⁶⁸ but in 1997 he was suddenly the President without having won an election. His presidency is the epitome of concealed transactions between political parties in the Congress. During Alarcón's administration, he summoned a referendum to provide legitimacy to his government and to approve a new Constitution -which replaced the Constitution of 1979-. When he assumed the presidency he highlighted that: 'one of the objectives of this government is to combat everything that signifies corruption'.⁶⁹ And, as stated above, Alarcón created the Anti-Corruption Commission, which was composed of eight members⁷⁰ and had as its main task to investigate the corrupt acts of Bucaram's government.⁷¹ As it is common within the creation of the ACAs, Alarcón with the Commission signalled the citizens a recognition of their demands, and appointed representatives of different segments of society. In appointing their members, he did too good of a job – an action that he would come to regret.

The Anti-corruption Commission reported a criminal network that operated inside the Congress and the Executive under Bucaram's mandate. The Commission investigated the 'Piponazgo' case which involved Alarcón in irregular contracts while he was president of the Congress. Soon after, Alarcón threatened to dissolve the Commission but did not⁷². The Commission, in its final report, set what would become one of the main characteristics of the

⁶⁶ Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' Scholarly Resources.

⁶⁷ Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' Scholarly Resources.

⁶⁸ See a recount of this Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' Scholarly Resources.

⁶⁹ Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' Scholarly Resources.

⁷⁰ Five of them were directly appointed by the President and three were appointed by the president of the Congress.

⁷¹ Anticorruption Commission (1998). 'Report of activities: from the 1st of august of 1997 to July, 31st of 1998.'

⁷² Silvia Rey. Simón Bolívar Andean University. The construction of the news on issues of public corruption, 2000, pg. 54. <https://core.ac.uk/download/pdf/159775925.pdf>

anti-corruption movement in Ecuador: the citizen's participation. The underlying idea was that the oversight public agencies were themselves corrupted. No public agency could or should be trusted and therefore, the solution was to have *organized citizens* in charge of the oversight. Also, since public officials failed to represent the citizens, social organizations were thought to do it adequately. In their report, the Commission stated that:

'Corruption belongs to the human nature, to society and its economic systems; the fight against it is never finished. It must be fought from the heart of the people, from the participation of the citizens (...) The Commission is committed to promoting ethical values, citizen participation (...)'⁷³

Moreover, the Commission suggested to the National Assembly to include the fight against corruption as one of the main principles of the Constitution of 1998 and to recognize this agency as a permanent institution.⁷⁴

The Civic Commission for Corruption Control (1998-2008)

Following the Commission's suggestion, the National Assembly created the Civic Commission for Corruption Control (CCCC). The constituent legislature mandated that the members of the CCCC will have to be appointed by the 'institutions of the civil society'⁷⁵. Along the same lines, the CCCC acted 'in representation of the citizenry' to promote the eradication of corruption.⁷⁶

On 10 August 1998, the conservative Jamil Mahuad assumed the Presidency of Ecuador, after winning national elections. During his ruling, Mahuad appointed the first members of the CCCC, according to the transitory dispositions of the Constitution. The permanent CCCC commenced its work on 23 February 2000 and ceased in 2009 with the creation of the CPCCS. The CCCC was created to prevent and investigate corruption and promote values and transparency in public affairs. In case that the CCCC found preliminary evidence of responsibility, it had to notify other agencies that could eventually initiate trials and enforce preventive measures.⁷⁷ The seven members of the CCCC were appointed by electoral colleges, which included different kinds of organizations such as universities, professional associations, journalist unions, commercial chambers, women organizations, and institutions

⁷³ Anticorruption Commission. Report of activities: from the 1st of august of 1997 to July, 31st of 1998.

⁷⁴ Anticorruption Commission. Report of activities: from the 1st of august of 1997 to July, 31st of 1998.

⁷⁵ Constitution of the Republic of Ecuador. (1998) Article 220.

⁷⁶ Constitution of the Republic of Ecuador. (1998) Article 220.

⁷⁷ Organic Law of the Council of Citizen Participation and Social Oversight. Article 2. Official Register No. 22, 09 September 2009.

for the defence of human rights.⁷⁸ This agency was supposed to function as a link between the citizens and the public sector. Its members were seen as members of the civil organization, not as a public agency per se.

Like the CPCCS, the CCCC had also the duty to 'promote the citizen participation and their organization to create a culture of honesty and legality'⁷⁹ And it also could not impose sanctions of any kind, it could only 'request to the competent authorities' to do so. However, unlike the CPCCS, the CCCC's regulations were more clear -and less poetic- when it determined its investigative functions. In this way, the CCCC could appoint experts to execute specific investigations⁸⁰ and could order law enforcement officials to protect the members of the CCCC.⁸¹

During the ten years that the CCCC existed, Ecuador went through presumably the worst political and economic crises in its Republican history. The crisis was triggered by a combination of factors, which included: plunging oil-export prices, damage from natural disasters from 'El Niño' phenomena, conflict with Peru, confrontational politics, corruption, fragmentation of the political parties.⁸²⁸³ All of these factors sank the country in a deep crisis. 'In late 1999 with the price level increasing at a rate of near 30 percent per month. The national currency, the sucre, was in free fall'.⁸⁴ Mahuad's government confronted the financial crisis by suspending banking activities and adopting the U.S. dollar as Ecuador's national currency. These unpopular austerity measures led to an indigenous and military rebellion which eventually ousted Mahuad in 21 January 2000, and the Vice-president Gustavo Noboa assumed the constitutional presidency.

In 2003, Colonel Lucio Gutiérrez, one of the main leaders of the rebellion that ousted Mahuad, was elected President with strong support of indigenous groups and the promise of creating a pluralist government. However, in the first months of his administration Gutierrez's policies shifted, and he allied with conservative political parties. In former President Gutierrez, is where we find the first presidential discourse in Ecuador focused on the creation of a state branch

⁷⁸ Organic Law of the Council of Citizen Participation and Social Oversight. Article 4. Official Register No. 22, 09 September 2009.

⁷⁹ Law of the Civic Commission for Corruption Control. Article 7, b). Official Register No. 253.

⁸⁰ Law of the Civic Commission for Corruption Control. Article 7, j). Official Register No. 253.

⁸¹ Law of the Civic Commission for Corruption Control. Article 7, l). Official Register No. 253.

⁸² Gelarch, A. (2003). 'Indians, Oil, and Politics: A Recent History of Ecuador.' Scholarly Resources.

⁸³ In May 2000 the 123 members of the Congress were divided in twelve parties.

⁸⁴ Beckerman, P., Solimano A., (2002) Crisis and Dollarization in Ecuador. World Bank. URL: <https://elibrary.worldbank.org/doi/pdf/10.1596/0-8213-4837-X>

designed to oversee the remaining three so that they become accountable and to 'somehow control' them.⁸⁵

Gutiérrez's administration showed little commitment to his pro-accountability discourse. He summoned to special sessions in the Congress and allied with his political opponents⁸⁶ to form a parliamentary majority and massively dismiss judges.⁸⁷⁸⁸ After a highly irregular and political appointment, the new Supreme Court (the 'Pichi Corte') annulled proceedings against Bucaram and other politicians, which allowed Bucaram to briefly return to the country. In 2005, the group self-named as the 'outlaws' (los forajidos) rebelled against Gutierrez forcing him to run away from the presidential house through the roofs. In the aftermath of Gutierrez ousting, 'civil society groups converged around the 'Que se vayan todos! (Everybody go home!)'⁸⁹ Soon after, Gutierrez was removed by the Congress because of 'absence from office'. The Constitutional presidency was assumed then by the vice-president, Alfredo Palacios.

Olivo⁹⁰ shows the work of the CCCC from 1998 to 2008. Among the most notorious cases, the CCCC investigated were those related to former president Mahuad for the management of the 1999 financial crisis and the dismissal of two of its own members of the CCCC in 2005.⁹¹⁹²

The CPCCS (2008)

In 2007, in a deeply political and socially fragmented country, the outsider and charismatic Rafael Correa was elected president. Correa represented the arrival of the pink tide⁹³ to

⁸⁵ El Universo. (2004). 'The President proposes to create a fourth state power' URL: <https://www.eluniverso.com/2004/11/30/0001/8/2B40ADCBA58742F087C0E0EAB22D4892.html>

⁸⁶ Gutierrez allied with the Institutional Renewal Party National Action (PRIAN) and the Ecuadorian Roldosist Party (PRE) -this last one was founded by Abdalá Bucaram.

⁸⁷ This was eventually taken to the Inter-American Court of Human Rights which declared responsibility against the Ecuadorian State.

⁸⁸ Inter-American Court of Human Rights. (2013). 'Camba Campos and others v. Ecuador'. https://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=382&lang=es

⁸⁹ Levitsy S., Helmke G. (2006) 'Informal Coalitions and Policymaking in Latin America' Mejía, A: Crafting Legislative Ghost Coalitions in Ecuador. Latin American Studies Social Sciences and Law. Johns Hopkins University Press.

⁹⁰ Olivo, C. (2017) 'Economic analysis of anti-corruption control based on the Ecuadorian case' Universidad Complutense de Madrid. Law School

⁹¹ The dismissal occurred after a civil organization, the 'Civic Anti-Corruption Network' insisted on pursuing investigations against the Commissionaires and alleged their intervention in the appointment of judges.

⁹² El Universo. Toma simbólica en CCCC por situación de Vanegas y López. September, 2005. <https://www.eluniverso.com/2005/09/13/0001/8/399COC265AE24CCB8FFFFDC311D705CA.html>

⁹³ Pink tide is the left-wing turn in Latin American countries, which rejected the neoliberal policies. Some of them include presidents Hugo Chávez of Venezuela, Evo Morales of Bolivia, Cristina Fernández de Kircher of Argentina, Manuel López Obrador of México, etc.

Ecuador with the promise to end the 'long night of neoliberalism'.⁹⁴ Correa's discourse encouraged the 'citizen's revolution' to take the power, which he claimed was controlled by the *partidocracia*, and the 'media connected to the banks'.⁹⁵ As other left-wing leaders from the region, Correa summoned a new Constituent Assembly, which was approved by the outstanding majority of 81,72 per cent support of the electorate.⁹⁶ And shortly after, the Constituent National Assembly was summoned in Montecristi. Correa's popularity was also reflected in the seats of the Montecristi Constituent Assembly,⁹⁷ the Committee that proposed the creation of the CPCCS held eight out of the 13 seats.⁹⁹

When drafting the constitutional text, the legislators had in the back of their minds the Congress of the past twenty years -the unaccountable one. The one that would mock the law to obey their hidden commitments,¹⁰⁰ that would brazenly exchange votes for pork and patronage, that would dismiss and appoint presidents, judges, whoever. In essence, a profoundly fragmented Congress that obstructed governance and did not represent its citizens.

As a result, the 2008 Constitution renamed the legislature the 'National Assembly' and diminished its powers. The CPCCS addressed three of the legislator's main anxieties. (SEE TABLE 2)

Anxiety	CPCCs' tasks
Lack of citizen representation in political parties and the Legislature	Promote citizen participation and social oversight
Lack of accountability of politicians, corruption	Investigate corrupt acts
Lack of independence in the appointment procedures, patronage	Appoint independent public authorities based on their merits

TABLE 2

⁹⁴ While going through the records of the Montecristi Constituent Assembly one finds countless references to the 'long night of neoliberalism' associated to concepts as 'republic' and 'rule of law'.

⁹⁵ Conaghan C. (2012) *Prosecuting Presidents: The politics within Ecuador's Corruption Cases*. Cambridge University Press.

⁹⁶ Conaghan C. (2012) *Prosecuting Presidents: The politics within Ecuador's Corruption Cases*. Cambridge University Press.

⁹⁷ In the Constituent Assembly 80 out of the 130 seats were from Correa's movement, Movement for a Proud and Sovereign Country (MPAIS).

⁹⁸ Conaghan C. (2012) *Prosecuting Presidents: The politics within Ecuador's Corruption Cases*. Cambridge University Press.

⁹⁹ The Committee on Organization, Social and Citizen Participation and Participation Systems.

¹⁰⁰ Levitsy S., Helmke G. (2006) 'Informal Coalitions and Policymaking in Latin America' Mejía, A: *Crafting Legislative Ghost Coalitions in Ecuador*. Latin American Studies Social Sciences and Law. Johns Hopkins University Press.

As TABLE 2 shows, the lack of representation of the citizenry led the constituent legislature to advocate for the creation of an agency that would promote citizen participation. The discourse behind it was that the former model had created a gap between the government and society – in turn, this gap allowed the elite to capture the State. Paradoxically, the solution provided by the legislator was that it up to the State -not the citizens- through the CPCCS to take the power back. As noted above this is what Ackerman called the 'institutionalization of participation mechanisms'. The CPCCS was supposed to decentralize the 'accountability' mechanisms and give it back to the citizens. The constituent legislators claimed that:

'We believe that a central problem at the moment, which has to be dealt with by this House, is **the loss of relations between the constituents and the representatives.**'¹⁰¹

'We believe it is necessary to create (...) the Council for Citizen Participation and Social Oversight that has as its central attributions (...) the promotion of citizen participation and its diverse capacities of expression (...) the State, through the Council, contributes to the training of its citizens'¹⁰²

The records also mention the failure of traditional institutions in their attempt to reduce corruption. The constituent legislators referred to the 'toothless' former anti-corruption agencies. They noted that: 'When the 1998 Constitution created the Commission for the Civic Control of Corruption, did so with **harmful restrictions** (...) [as] not being able to pursue the relevant legal actions and act as a procedural part in the proceedings against officials involved in acts of corruption'¹⁰³. As a result, the CPCCS -unlike the CCCC- has the power to have legal standing in the cases that are established as a result of its investigations.

The constituent legislators noted the harm caused by the intrusion of political parties in the appointment of the judiciary and the heads of the oversight agencies. They wanted to guarantee that only the 'best men and women'¹⁰⁴ get appointed through an objective analysis of their merits and qualifications. After having witnessed the dangers that come when this power lies in just one branch, they envisioned the CPCCS as the 'technical' entity, they argued:

¹⁰¹ Ecuadorian Constitutional Assembly (2008) Act No. 12.

¹⁰² Ecuadorian Constitutional Assembly (2008) Act No. 70.

¹⁰³ Ecuadorian Constitutional Assembly (2008) Act 70.

¹⁰⁴ Ecuadorian Constitutional Assembly (2008) Act No. 12.

'The main problem in the Ecuadorian state, which we have all experienced and criticized many times, is (...) the **interference of political parties in the nomination of these important** (...) officials of the Ecuadorian state. And what we had to do was something very simple, **to take away from the hands of the political parties the nomination** of the three candidates for Comptroller, for Attorney General, for General Prosecutor, for superintendents. That was fundamental. How? **By making a technical council with the highest level in the country, so that the best men and women**, so that the best Ecuadorian citizens [will get appointed]'.¹⁰⁵

The contradictions

It was crucial to the constituent legislators that the CPCCS would (1) avoid political nominations by allowing any citizen to openly postulate to the contests; and (2) appoint the most talented and trustworthy candidates after being assessed by 'Citizen Commissions'. However, the constitutional text approved a proceeding that did not reflect this. The 'Citizen Selection Commissions' (CCC) execute the public contests, but these Commissions are not composed only by citizens -from their 10 members, five represent the 'social organizations and the citizenry' and the other five are 'delegates' of each State branch.¹⁰⁵ This caught the attention of some of the legislators, who anticipated that: 'In this form of selection (...) let the whole country know that justice in Ecuador will be handled by the Executive Branch'¹⁰⁶ Others expressed their concerns about the possibility of 'manipulation' of the representation of the citizenry.¹⁰⁷ However, the MP AIS majority overruled these concerns.

[MAP 1](#) shows the scope of the CPCCS's power to appoint authorities. It influences the whole FTCS, but it goes beyond that: the whole electoral branch and it reaches the judicial branch through the Judicature Council, which in turn, appoints every member of the branch. This means that by creating the CPCCS, citizens are delegating to the Board of the CPCCS the power to appoint ultimately most of the non-elected oversight, accountability, law-enforcement agencies of the country. This scheme annuls the separation of Montecristi's five powers.

With unsettling contradictions and averted dangers, the CPCCS was included in the constitutional text. Correa argued that the future of the 'citizen's revolution' rested on the

¹⁰⁵ Constitution of the Republic of Ecuador. (2008) Article 209. Official Register No. 499.

¹⁰⁶ Ecuadorian Constitutional Assembly (2008) Act No. 70.

¹⁰⁷ Ecuadorian Constitutional Assembly (2008) Act No. 70.

approval of the Constitution via referendum¹⁰⁸ so, Ecuadorians approved it, despite the warnings that it created a *hyper-presidentialist* regime¹⁰⁹. Soon after, Correa claimed that the Constitution required to be amended and so it was, twice during his ruling.¹¹⁰ Conaghan, accurately has described Correa's mandate as a 'plebiscitary presidency' –his ruling was characterized by constantly appealing to public opinion in order to govern 'over the heads' of their institutions.¹¹¹ And so he ruled, for as long as he could control the CPCCS throughout its different administrations.

The problems behind the creation of the CPCCS

The problems pointed out by the constituent legislators were, and still are real: the lack of political representation, crisis in the political parties mirror the deep social fragmentation that have haunted our country for centuries. As Mejía notes:

'Since the country's transition to democracy in 1979, the presence of a strong ethnic and regional cleavage, combined with highly permissive electoral institutions, has meant that no Ecuadorian president has had even close to a majority in Congress.'¹¹²

Since 1980's Ecuador's indigenous movement, CONAIE (Confederation of Indigenous Nationalities of Ecuador) have had an important role in Ecuador's politics, their presence represents unresolved historic conflicts of our country. On top of that, Ecuador's social landscape is also marked by 'regionalismo'. Since the Ecuadorian Republic, a division between the Sierra or highlands and the coastal area developed. The geographical isolation of the regions nurtured citizen's first loyalty to the region, as opposed to the nation.¹¹³ Ever since, Ecuadorian politics have been shaped by the rivalry between the Sierra and the Coast,¹¹⁴ this division has besieged the country and has forced policymakers to allocate

¹⁰⁸ Conaghan C. (2012) *Prosecuting Presidents: The politics within Ecuador's Corruption Cases*. Cambridge University Press.

¹⁰⁹ Salgado, H. (2012) "The presidential system in Latin America - From the autocratic *caudillismo* to the constitutional hyper-presidentialism", CEP. Second Edition.

¹¹⁰ The first amendment (2011) was directed to reform the judiciary. He said: '(...) we want to get our hands on the judicial system but for the sake of the Ecuadorian people'. The second amendment (2015) was proposed by the Congress and among other reforms, it allowed candidates to be elected indefinitely.

¹¹¹ Conaghan C. (2012) *Prosecuting Presidents: The politics within Ecuador's Corruption Cases*. Cambridge University Press.

¹¹² Levitsy S., Helmke G. (2006) 'Informal Coalitions and Policymaking in Latin America' Mejía, A: *Crafting Legislative Ghost Coalitions in Ecuador*. Latin American Studies Social Sciences and Law. Johns Hopkins University Press.

¹¹³ Schodt, D (2018). *Ecuador: an Andean enigma*. Routledge, New York.

¹¹⁴ Blanksten, G. (1951). 'Ecuador: Constitutions and Caudillos.' University of California Press.

resources and filled quotas to maintain regional balance.¹¹⁵ These problems cannot be solved solely with the creation of an independent agency. As this report shows, the CPCCS has exacerbated the differences among Ecuadorians, by having a strong political influence -which for years represented the 'correismo'.

¹¹⁵ Schodt, D (2018). *Ecuador: an Andean enigma*. Routledge, New York.

Section 4.- Assessing the CPCCS

Assessing ACAs

Difficulties in assessing ACAs

Assessing the performance of an ACAs is a complex task, given the nature of the functions that they have – in the Ecuadorian case ‘fight against corruption’ ‘promote citizens participation’, ‘appoint independent authorities’-. These abstract powers cause a lot of complexities to measure the agencies’ impact. As Smilov points out it is:

‘[V]irtually impossible to measure the concrete costs and benefits of institutional performance either because specific institutions cannot be meaningfully discussed in isolation from the rest of the government, or because they deal with complex and multifaceted problems.’¹¹⁶

There are different difficulties regarding the evaluation of ACAs. The first one is that there has to be an agreed definition around corruption and around how to measure it. Smilov remarks ‘the performance of anticorruption institutions is practically impossible to measure since there is no reliable measurement of corruption—the very phenomenon they aim to reduce’¹¹⁷. If one cannot measure the issue one is trying to reduce, how is it possible to know if one succeeds? However, there are some methods that attempt to measure corruption. (See TABLE 3)

METHOD	DESCRIPTION	RESULTS	LIMITATIONS
EXPERT SURVEYS	Experts are surveyed on different indicators, using different units of analysis (country, region, industry, etc.)	Perception of experts. E.g. Corruption Perception Index.	It reports perceptions of a very limited segment of people. Who are the experts? And what are they experts in?
EXPERIENCE SURVEYS	The public is surveyed on their experiences.	Perception of citizens E.g. Global Corruption Barometer.	It reports perceptions of the public. These are complaints, not a real assessment of institutions.

¹¹⁶ Smilov, D. (2010) Anticorruption Agencies: expressive, constructivist and strategic uses. Crime Law Soc Change.

¹¹⁷ Smilov, D. (2010) Anticorruption Agencies: expressive, constructivist and strategic uses. Crime Law Soc Change.

INTEGRITY TESTING	External mechanisms that test the behaviour of the members of an organization.	Behaviour patterns E.g. undercover tester ¹¹⁸	It can only work on organizations, not on a national level. The results might be circumstantial.
PROXY MEASURES	Assess different information to trace corruption. It relies on assumptions that corruption affects measurable indicators such as money expenditure.	Effect of 'corruption' in numbers. E.g. Public expenditure tracking surveys. ¹¹⁹	It is limited only to corruption that translates directly to traceable monetary loss.

TABLE 3

As TABLE 3 suggests, all of these methods have different limitations and they ultimately do not measure 'corruption' -at least not in a way that other phenomena can be measured. The evaluation of the ACAs is also subjected to different limitations but there are different models that attempt to determine their success or failure. Quah has done so through the application of 'benchmarking', where one identifies the ineffective ACAs by comparing their work against indicators. Quah offers 22 indicators. ([SEE ANNEX 1](#)). Along the same lines, Doig and Watt have compiled the 'drivers for success' of ACAs. (See [ANNEX 2](#)).¹²⁰ Note that these models use, among other methods, perception measures, which have the limitations expressed above.

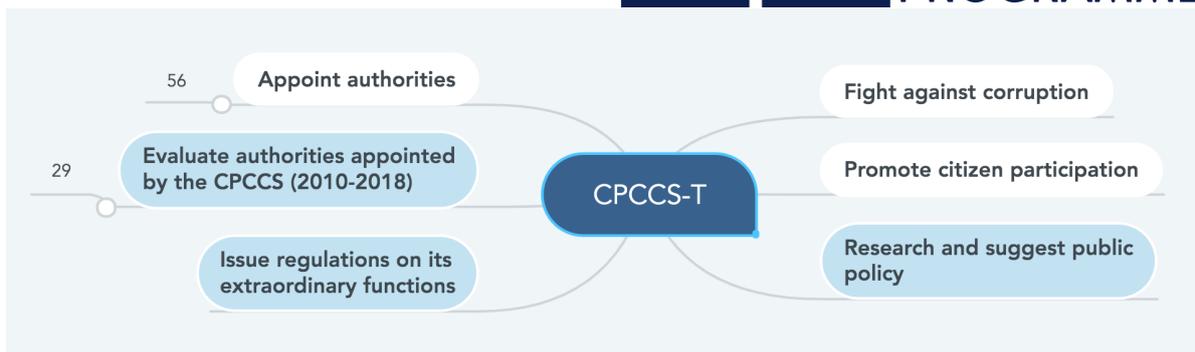
Methodology

The report assesses the performance of the CPCCS's from 2010-2019 through a comparative method between the CPCCS (2010-2018) and the CPCCS-T (2018-2019). Note that the CPCCS-T is not the same entity as the CPCCS; the former was a transitory institution with 'extraordinary' functions, but it also assumed the 'ordinary' functions of the CPCCS and performed them (See MAP 6). Therefore, the comparison is made only for the functions that it shared with the CPCCS.

¹¹⁸ Uses undercover testers to invite members of an organization to engage in corrupt activities and record the response.

¹¹⁹ They highlight cases where public money has either not ended up where it should have or can't actually be accounted for at all.

¹²⁰ Doig, A., Watt, D., Williams R., (2005) 'Measuring 'success' in five African Anti-Corruption Commissions'. U4 Anti-corruption Resource Centre.



MAP 6: shows the extraordinary powers of the CPCCS-T highlighted in blue

The data taken in this report is mainly taken from:

- (i) Reports submitted by the heads of each department in 2019 from 2009 to April 2019; these figures have been systematized and adjusted for duration of the bodies' activities.¹²¹
- (ii) Evaluation reports performed by the CPCCS-T
- (iii) National polls
- (iv) International Perception Indexes

Two administrations of the CPCCS are excluded from the analysis: (1) the transitory CPCCS from 2009¹²²¹²³, because it did not have the functions of the CPCCS; and, (2) the current administration of the CPCCS (2019-present), because of the unavailability of the information.

Indicators

This report assesses the CPCCS based on three indicators: independence, credibility and, performance of the CPCCS as explained below:

INDICATOR	DATA
Credibility	National polls
	Citizen's complaints presented to the CPCCS
	Public scandals of corruption of the members
Political independence	Appointment mechanisms
	National polls

¹²¹ Note that the CPCCS was 86 months in office, while the CPCCS-T operated only for 15 months.

¹²² The first CPCCS (January 2009 – September 2009) was of a transitory nature. Its main function was to draft the law that would regulate the CPCCS and submit it to the National Assembly for its discussion and approval.

¹²³ Constitution of the Republic of Ecuador. (2008) Second Transitory Disposition. Official Register No. 499.

Performance	Budget execution
	Activities executed

TABLE 4

These indicators have been adapted to the CPCCS, from Quah's benchmarking model, Doig and Watt's 'drivers of success' and, Sousa's description of successful ACAs.¹²⁴ The evidence provided below is descriptive, it shows how the CPCCS performed its tasks in relation to the indicators.

Credibility

There is a consensus around the idea that credibility is vital for the ACA's performance. Quah adverts that 'credibility is perhaps the most important criterion'¹²⁵ After all, if the citizens do not believe in the institutions, they will not file complaints, ultimately defeating the purpose of the ACAs. The public needs to believe in the institution and its administration, as well as the public officials that could be investigated.¹²⁶ Simply put, the citizens need to trust that the ACA is no a façade, and the actions of the ACA's members need to support this belief through their administration. It is no coincidence that experts have found a link between strong leadership and the ACA's success.¹²⁷

Political independence

Anechiarico points out that: 'The prime indicator of the effectiveness of an integrity agency or other actors concerned with government probity is degree of political independence and relative scope of authority.'¹²⁸ The lack of independence or even perceived independence affects drastically the performance of the ACAs. Sousa understands independence as 'the capacity to carry out its mission without political interference'

¹²⁴ De Sousa, L. (2010). 'Anticorruption agencies: between empowerment and irrelevance'. *Crime Law Soc Change*.

¹²⁵ Quah, J. (2009). 'Benchmarking for excellence: a comparative analysis of seven Asian Anti-Corruption Agencies, *Asia Pacific Journal of Public Administration*.

Oyarte, R. (2019) 'Constitutional Law'. CEP: Third Edition.

¹²⁶ Johnston, M. (1999) 'A Brief History of Anti-Corruption Agencies,' in Andreas Schedler, Larry Diamond & Marc F Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies*, Boulder: Lynne Rienner Publishers.

¹²⁷ Cited in Anechiarico, Frank. (2009). 'Protecting integrity at the local level: the role of anticorruption and public management networks'. *Crime, Law and Social Change*. URL: https://www.unodc.org/pdf/afg/anti_corruption_roadmap.pdf

¹²⁸ Anechiarico, Frank. (2009). 'Protecting integrity at the local level: the role of anticorruption and public management networks'. *Crime, Law and Social Change*.

To guarantee independence, it is important to implement a credible appointment selection system and budgetary autonomy from the origin of the ACA. As noted by Sousa, in an ACA, 'appointment and recruitment procedures and budgetary independence are the most sensitive areas in which ACAs can be exposed to political pressure.'¹²⁹ ; but independence also needs to be confirmed through the work of the agency and it needs to be externally and publicly palpable. This means that ACAs need to ensure that -if necessary- they would investigate any public official, regardless of their position.¹³⁰ It is not just about the origin of the agency, this needs to be shown constantly.

Performance

The executed budget and each of the activities performed are analysed.

Assessment

CPCCS-T (2018-2019)

In 2017, Lenín Moreno, former Correa's first term Vice-president won the elections.¹³¹ Against all odds, Moreno did not follow the political plan of his predecessor. Moreno quickly realized that without reforming the CPCCS, he could not govern; all of Correa supporters had been appointed by the CPCCS as heads of every inquiry and oversight institution. With Montecristi's appointment system, Correa had made sure that even if he was not president, the 'correísmo' would still govern. Moreno knew that in order to get rid of the cover-up web established in 2008, he needed to dismantle and reform the CPCCS, so, in 2018 he summoned a referendum to do just that. He created a transitory entity (CPCCS-T) to implement the 'transition to democracy'.

The CPCCS-T had extraordinary powers: (1) evaluate and dismiss (if necessary) public authorities that had been appointed by the former CPCCS in six months; (2) appoint new authorities; (3) and, propose public policy to fight against corruption.¹³²¹³³ The CPCCS-T was appointed by the National Assembly after the executive's nomination of 21 candidates. The

¹²⁹ De Sousa, L. (2010). 'Anticorruption agencies: between empowerment and irrelevance'. Crime Law Soc Change.

¹³⁰ Quah, J. (2009). 'Benchmarking for excellence: a comparative analysis of seven Asian Anti-Corruption Agencies, Asia Pacific Journal of Public Administration.

Oyarte, R. (2019) 'Constitutional Law'. CEP: Third Edition.

¹³¹ Lenín Moreno was vice-president in Correa's first term (2007-2013).

¹³² The members were appointed by the National Assembly from nominees provided by the executive.

¹³³ National Electoral Council. 'Referendum Official Results of 2018', PLE-CNE-1-8-2-2018-R, 2018. Annex 3.

Councillors represented different segments of societies,¹³⁴ but more importantly, citizens trusted them.

The CPCCS-T was led by an 88-year old former academic and politician, Julio César Trujillo, often referred to as 'Ecuador's moral reserve',¹³⁵ and his word had more credibility than any other authority in office at the time, including the president's.¹³⁶ ¹³⁷ The CPCCS-T's decisions had around 70 per cent national support.¹³⁸ In fact, adjusted for duration, the CPCCS-T received four times as many corruption complaints as the CPCCS.¹³⁹¹⁴⁰ It held public hearings and allowed the evaluated officials (mainly heads of independent accountability agencies) to report back to the citizenry.

In Quah's, words, the CPCCS-T investigated grand corruption and 'fried big fish'-it initiated the investigation on twelve emblematic¹⁴¹ cases from some of the highest authorities of the government apart from the investigations that it executed to perform the evaluations. Some of the public officials that were investigated and dismissed were soon after imprisoned or are being trialled.¹⁴² The CPCCS-T's investigations have been the prelude to an array of different investigations that are currently being processed by the National Prosecutor. In just 15 months of existence, the CPCCS-T had provided more 'high profile cases' than the CPCCS did in its 8 years of existence.

The work of the CPCCS-T, along with other anti-corruption measures that Moreno's administration implemented was reflected in the Transparency International Corruption Perception Index (2019). As a matter of fact, for the first time since 2012 (CPI's updated

¹³⁴ Chambers of commerce, academy, activism, indigenous groups, anti-corruption experts, journalists and others.

¹³⁵ El Telégrafo, "A tribute to the 'last moral reserve' of the country" <https://www.eltelegrafo.com.ec/noticias/politica/3/julio-cesar-trujillo-homenaje-samborondon>

¹³⁶ 60,2 per cent of the people believed Julio César Trujillo's word, as opposed to 43,1 percent that believed Moreno in May 2018.

¹³⁷ Centre for Studies and Data. 'National Poll: 25 July 2018', 2018. URL: http://www.cedatos.com.ec/detalles_noticia.php?id=386.

¹³⁸ Centre for Studies and Data. 'National Poll: 25 July 2018', 2018. URL: http://www.cedatos.com.ec/detalles_noticia.php?id=386.

¹³⁹ The CPCCS from 2010- February 2018 received an average of 41.3 complaints per month. The CPCCS-T from March 2018, to April 2019 received an average of 150,5.

¹⁴⁰ Transitory Council of Citizen Participation and Social Oversight (2019). 'Report of the Technical Secretary of Transparency and Fight Against Corruption' presented to the Secretary General.

¹⁴¹ Transitory Council of Citizen Participation and Social Oversight. Resolutions: PLE-CPCCS-T-E-245-30-01-2019, PLE-CPCCS-T-E-372-04-04-2019, PLE-CPCCS-T-O-412-07-05-2019, PLE-CPCCS-T-E-371-04-04-2019, PLE-CPCCS-T-O-228-16-01-2019, PLE-CPCCS-T-E-298-13-03-2019, PLE-CPCCS-T-E-373-04-04-2019, PLE-CPCCS-T-E-374-04-04-2019.

¹⁴² The more salient case is of the former president of the Constitutional Court and prior to that Correa's adviser, Pamela Martínez is currently in prison for the case 'Arroz Verde' which uncover a bribery scheme and illegal political funding.

methodology),¹⁴³Ecuador figured as one of the countries that had gone through statistically significant changes in 2019, as the country went up 7 points up -from a 31/100 score to a 38/100.¹⁴⁴

The CPCCS- (2010-2018)

Integration of the CPCCS

The second CPCCS' administration (2010- 2015) alongside with the third one (2015-2018) were appointed through the ordinary constitutional mechanism established in 2008. The salient factor of these administrations is their clear political inclination towards Correa's movement 'Movement for a Proud and Sovereign Country' (MPAIS).

The CPCCS is integrated by seven councillors. According to the 2008 Constitution, the candidates were nominated by the 'social organizations and the citizenry' and were submitted to a contest of examination and merit executed by the Electoral National Council.¹⁴⁵ In the CPCCS, the dreaded political intervention occurred through the manipulation of mechanisms in forced for citizen participation. The evaluation of public institutions held in 2018 revealed two key facts about the appointment of the CPCCS'S members:

- (i) Most of the councillors had conflicts of interests, which were confirmed with their actions in office: benefiting Correa's movement MPAIS.¹⁴⁶
- (ii) An array of irregularities of the contest that the CPCCS councillors 'won'. These are now documented in several reports.¹⁴⁷ Apparently, the 'contests' were another façade, infested with bold violations of the law, such as obstruction of public documentation, limitations to citizen oversight (veedurías), absence of citizen's objections against the candidates, among others.

¹⁴³ Transparency International. (2012) 'Corruption Perception Index 2012: An updated methodology' URL:https://www.transparency.org/files/content/pressrelease/2012_CPIUpdatedMethodology_EMBARGO_EN.pdf

¹⁴⁴Transparency International. (2019) 'Corruption Perception Index) URL: https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf

¹⁴⁵ Constitution of the Republic of Ecuador. (2008) Article 207. Official Register No. 499.

¹⁴⁶ The CPCCS-T used several mechanisms during the evaluations, including investigating those councillors who had connections with the executive and studying their voting patterns to determine the lack of independence of the CPCCS.

¹⁴⁷ Transitory Council of Citizen Participation and Social Oversight. (2018). 'Evaluation Report', PLE-CPCCS-T-O-064-17-07-2018.

(iii) Most of the councillors did not credit relevant experience in any of the tasks of the CPCCS.¹⁴⁸

These irregularities during the selection of the councillors were then confirmed by their actions; the CPCCS's perceived lack of independence caused their dismissal in 2018, where 63,08% of the Ecuadorians voted for terminating their functions.¹⁴⁹

The structure of the CPCCS

The CPCCS operates through four different bodies: governing, executing, advisory and auxiliary, as it is shown in FIGURE 4



MAP 7

The important aspect of the CPCCS' structure is that broadly speaking, the CPCCS operatively fulfils its functions as Table x shows:

FUNCTION	BODY THAT EXECUTES	BOARD'S ROLE
Fight against corruption	Technical Secretariat of Transparency and Fight against Corruption (STLCC)	Approves the investigations that are prosecuted
Promote citizens participation	Technical Secretariat for Social Participation and Oversight (STPPCS)	Approves the reports from the veedurías that are referred to law-enforcement authorities.
Appoint authorities	Citizen's Commission and the Board	Appoints the authorities, regulates and monitors the process ¹⁵⁰

¹⁴⁸ Technical Evaluation Committees. (2018) 'Technical Evaluation Reports' CPCCS- PLE-CPCCS-T-E-034-16-05-2018, PLE-CPCCS-T-E-050-25-06-2018.

¹⁴⁹ National Electoral Council. (2018). 'Referendum Official Results of 2018', PLE-CNE-1-8-2-2018-R, 2018.

¹⁵⁰ Organic Law of the Council of Citizen Participation and Social Oversight. (2009) Article. 38, 4. Official Register 22.

TABLE 5

The Board's main executing functions are focused on the appointment of authorities, while the Technical Secretariats investigate and promote participation. The Secretariats organize, direct, and execute the technical and operative work in their fields (corruption and citizen participation).¹⁵¹ They are the 'specialized' structure of the CPCCS but still the Board ultimately decides on their reports.¹⁵² The other executing bodies, the delegations, are mainly provincial representations of the CPCCS around the country.

The performance of the CPCCS

Execution of budget

The budget execution of the CPCCS -as in any other institution- shows the priority that the administration gives to the different tasks of the institution and it influences the scope of their performance.

CHART 1 shows how the budget was executed from 2010 until April 2019, differentiating the execution of the Secretariats from the administrative expenses, which includes 'bills, maintenance of the vehicles, fuel, rent, security services, salaries.'¹⁵³ This rubric would also include the expenses of the appointment contests. CHART 1 shows that the only specialized executing bodies of the CPCCS -the Secretariats- were neglected. The STLCC executed on average 1,08 percent of the budget. Similarly, the STPCCS executed 2,26 per cent. This shows that there was no intention of performing the 'integrity' functions of the CPCCS, the real priority was on the more political power of the CPCCS: the appointment contests.

It is also worth mentioning that the CPCCS-T assumed power when the country initiated an austerity plan. So, during its administration, the budget was reduced even though the CPCCS-T had more functions than the CPCCS. The extraordinary powers of the CPCCS-T are accounted as 'administrative expenses' which in its case also includes expenses on evaluation proceedings, investigations and, research for the suggestion of public policy.

¹⁵¹ Organic Law of the Council of Citizen Participation and Social Oversight. (2009) Article. 50. Official Register 22.

¹⁵² Organic Law of the Council of Citizen Participation and Social Oversight. (2009) Article. 38, 15. Official Register 22.

¹⁵³ Transitory Council of Citizen Participation and Social Oversight. (2019). Report of the Chief Administrative Officer presented to the Secretary General.

Budget Execution (2010 -April 2019)

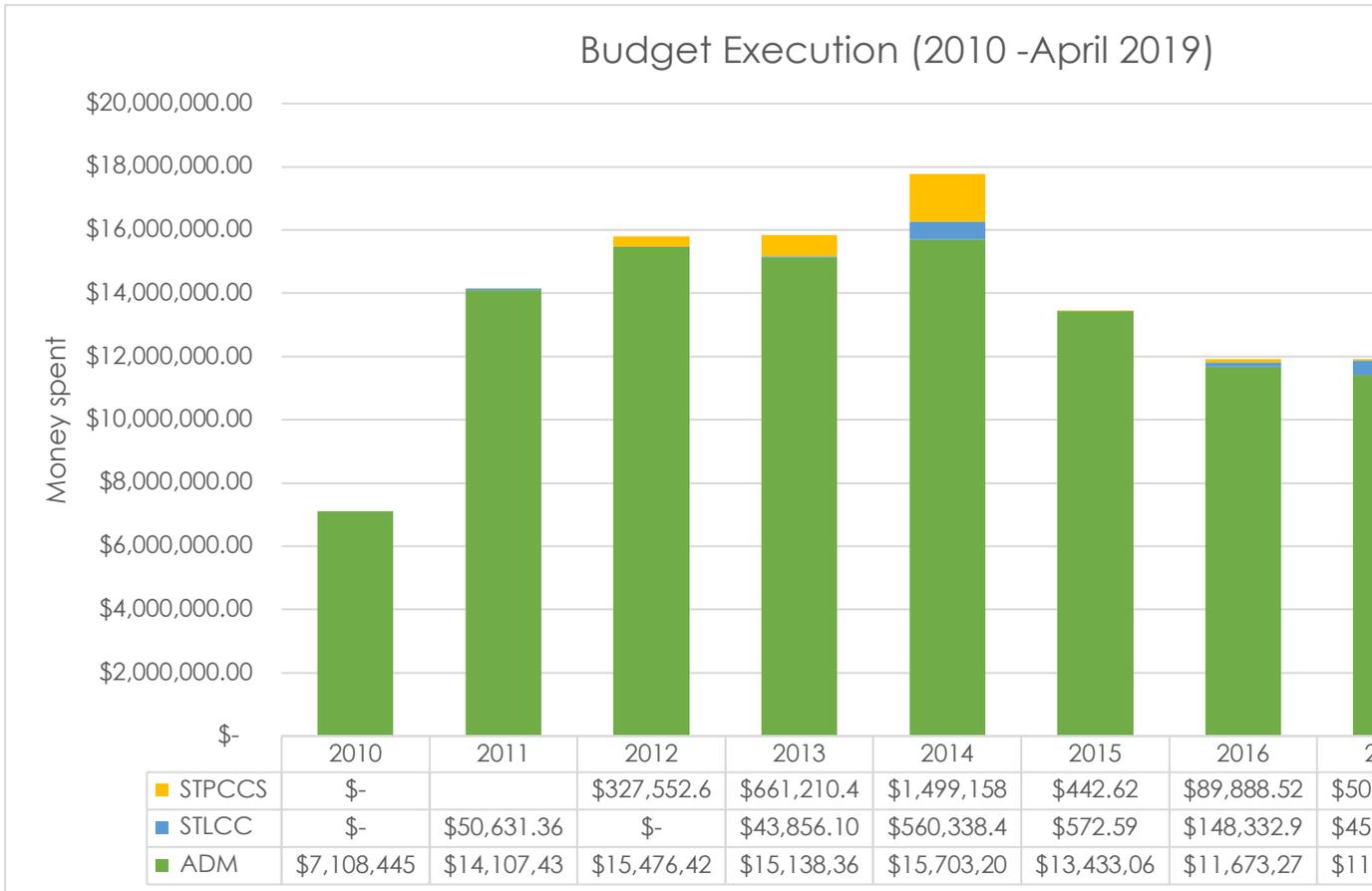


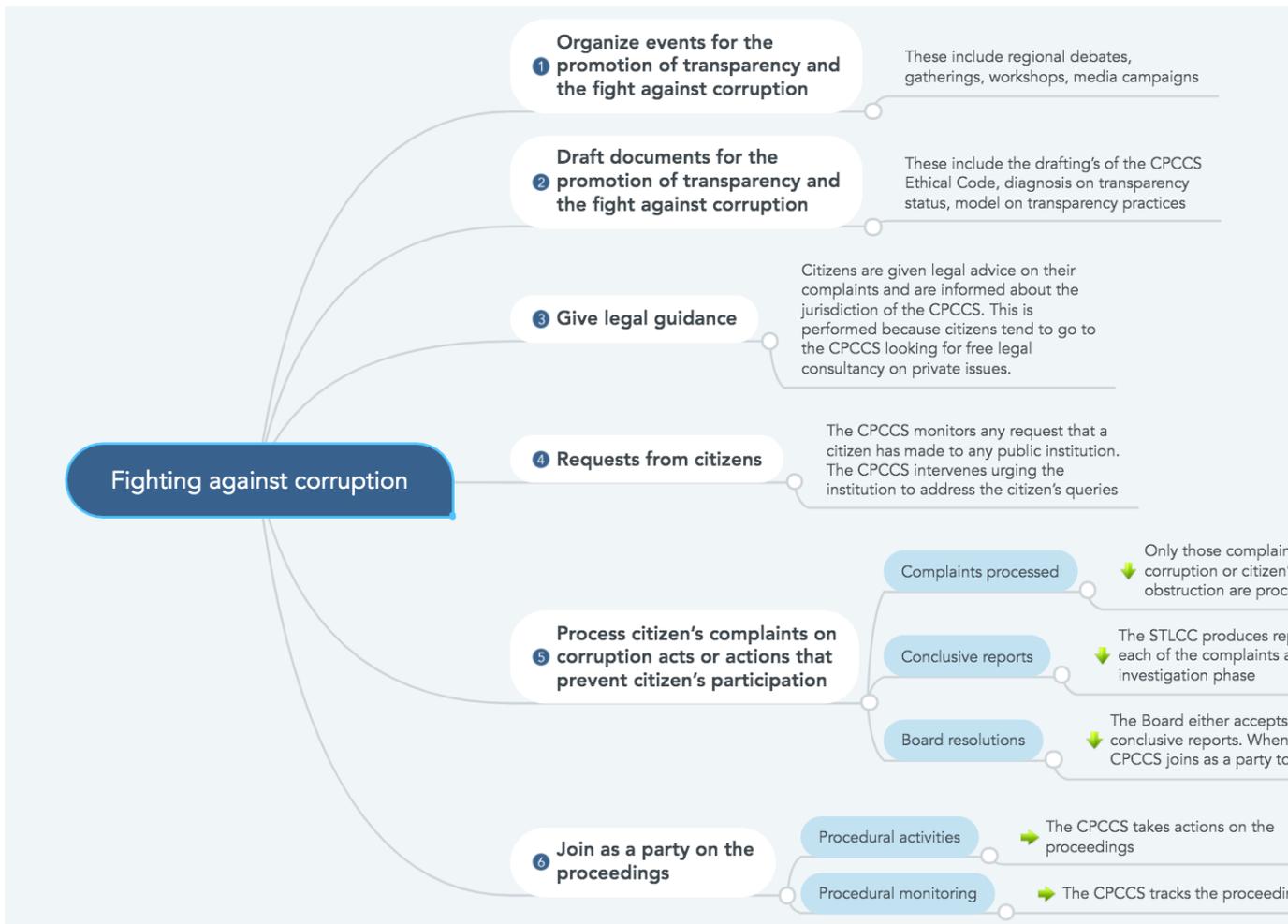
CHART 1

Fight against corruption

According to the report presented by the STLCC in 2019, the CPCCS has fulfilled its function of fighting against corruption mainly by performing six activities as shown in MAP 8¹⁵⁴, these were fulfilled as indicated in CHART 2.¹⁵⁵

¹⁵⁴ Transitory Council of Citizen Participation and Social Oversight (2019). 'Report of the Technical Secretary of Transparency and Fight Against Corruption' presented to the Secretary General.

¹⁵⁵ On the first two activities, there is no data that allows a real comparison between the CPCCS and the CPCCS-T, because the way the CPCCS did this changed over time



MAP 8

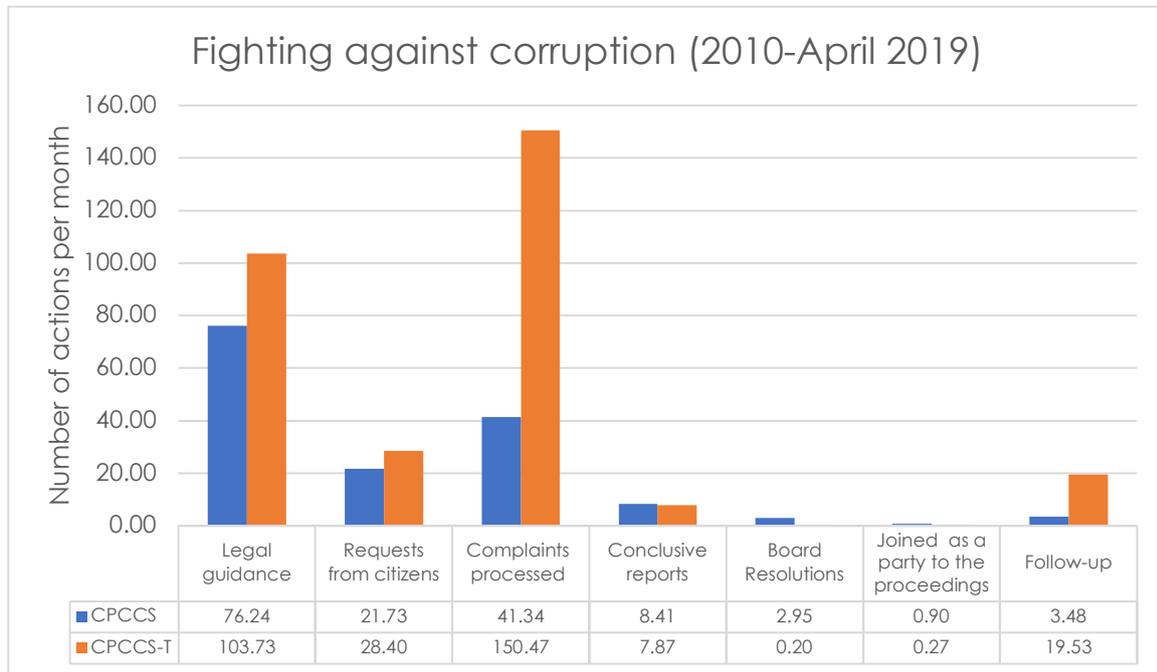


CHART 2

The data shows that the most performed activity by the CPCCS was the 'legal guidance' one which is basically solving citizen's particular legal queries, directing them to the agency that has jurisdiction on the issue they consult and informing them of the CPCCS' functions. It is truly outstanding that an ACA's main activity for eight years was outside of its scope and completely unrelated to fighting corruption.¹⁵⁶ The number of 'legal guidance' that the CPCCS provided per month is almost double as the corruption complaints that it processed. As for the CPCCS-T, it is important to mention that these numbers do not include the conclusive reports, board resolutions, and prosecutorial actions that the CPCCS-T approved in the final month of its administration (May 2019).¹⁵⁷ However, In just 15 months, the CPCCS-T processed 2257 corruption complaints filed by citizens, while the CPCCS in 86 months processed 3555.¹⁵⁸

On these functions, Olivero further provides evidence on the failure of the CPCCS, as she compares the CCCC (1998-2008) with the CPCCS (2010-2015). Her research indicates that

¹⁵⁶ It is the public defender's task to provide legal representation, even the Ombudsman has the power to provide legal assessment under certain circumstances

¹⁵⁷ These are presented on the performance report of the former Secretary General.

¹⁵⁸ The values presented on the chart are adjusted for duration of activities.

there was a reduction of 83 per cent on citizen's complaints in the CPCCS during that time.¹⁵⁹ As the credibility of the institution lowered, so did the citizen's complaints.

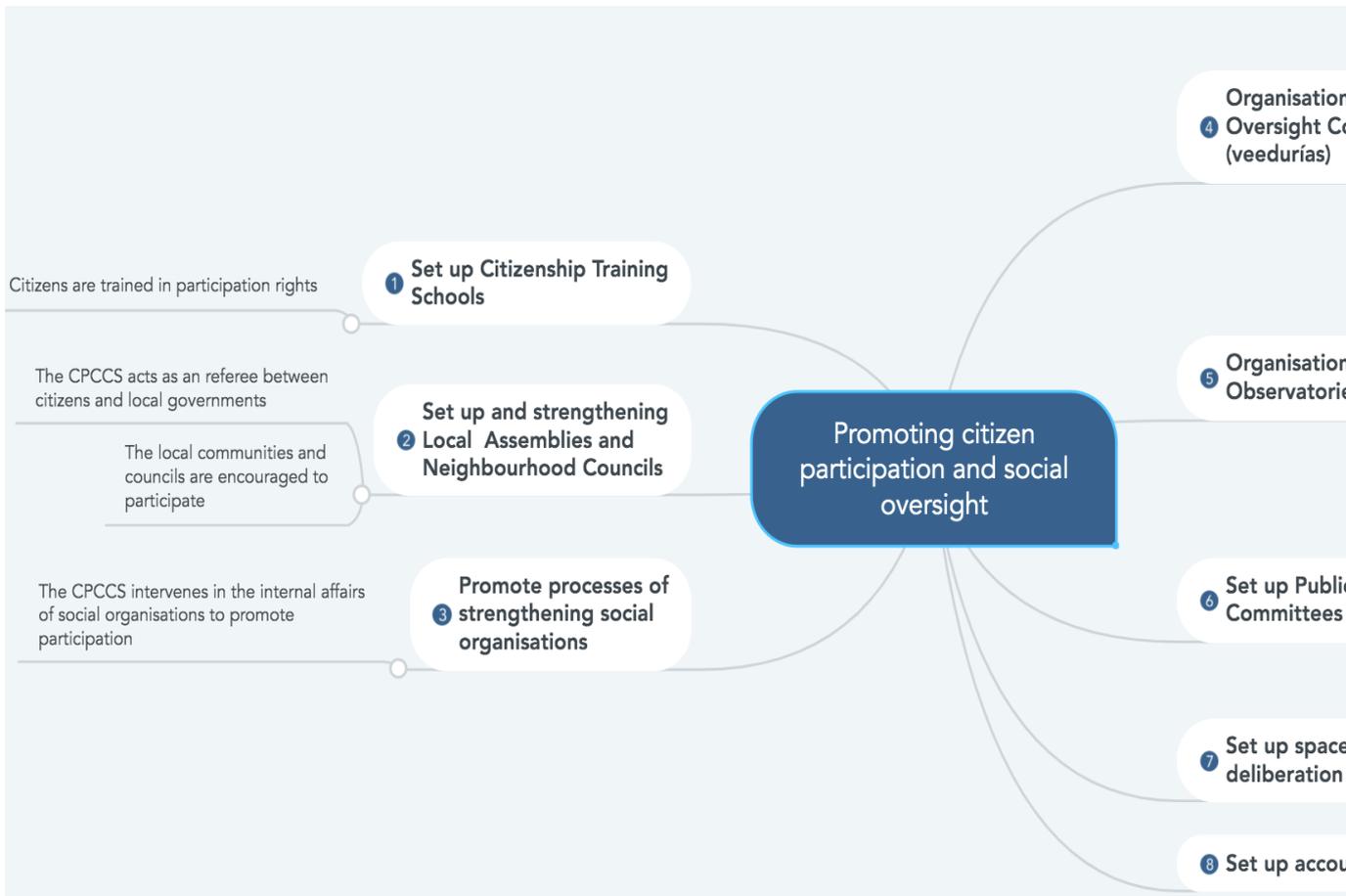
Promote citizen participation and social oversight

According to the report presented by the STPCCS in 2019, the CPCCS has fulfilled the function of promoting citizen participation and social oversight mainly by performing eight activities (See MAP 9), which were fulfilled as indicated in CHART 3¹⁶⁰¹⁶¹.

¹⁵⁹ Olivo, C. (2017) 'Economic analysis of anti-corruption control based on the Ecuadorian case' Universidad Complutense de Madrid. Law School.

¹⁶⁰ The chart excludes the eight activity because the accountability mechanisms cannot be quantified as they consist of sub-products that are applied over time and have varied among administrations.

¹⁶¹ Transitory Council of Citizen Participation and Social Oversight (2019). 'Report of the Technical Secretary of Social Participation and Oversight' presented to the Secretary General.



MAP 9

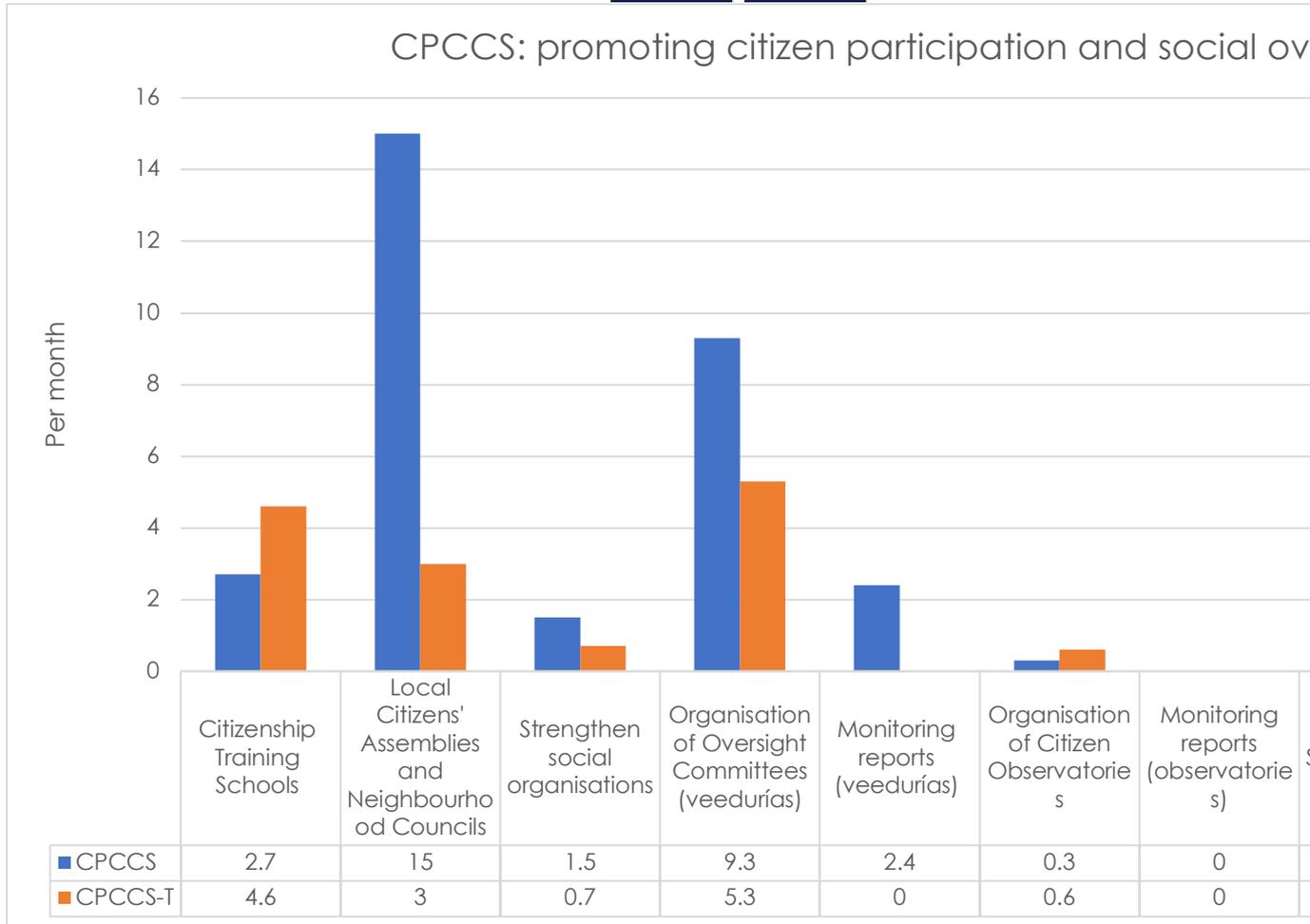


CHART 3

The main activity of this function has been the strengthening of 'local citizen's assemblies and neighbourhood councils', where the CPCCS performs the role of a mediator between the communities and the local authorities; even though other institutions perform that role already.¹⁶² The second most performed activity is the organization of citizen's oversight committees (veedurías), as noted above the Board holds the power to accept or dismiss the findings of the veedurías. It should also be mentioned that every level of governance is obliged to set up participation platforms, including these committees when requested by the citizens.¹⁶³ Not to mention that the FTCS's platform has a similar role. In other words, all these activities are already performed by other public institutions.

By having a public agency that controls the mechanisms of public participation, the main threat is that it ends up obstructed or manipulated. Eventually, these mechanisms could be used as a political platform. Through the records of the 'oversight committees' in 2017, there is a registry of a 'citizen' committee that was composed to observe the 'due process' in the trial initiated against the then vice-president Jorge Glas; which was clearly a political issue. The lack of independence of the entity taints the performance of these activities and converts the mechanisms of 'citizen training and education' into a permanent platform of electoral campaign.

Appoint public authorities based on merits

This became the most important power of the CPCCS, through this mechanism, the CPCCS ultimately obstructed not only its own functions, but almost all of the other oversight and accountability entities of the country (See MAP 1). According to the Constitution, the CPCCS has to organize three kinds of proceedings as shown in MAP 10.

¹⁶²The Ombudsman acts as a 'soft power' authority as well and, also, mediation processes are offered through the judiciary.

¹⁶³ Constitution of the Republic of Ecuador. (2008) Article 100. Official Register No. 499.



MAP 10

According to the Constitution, the Board of the CPCCS is in charge of organizing the 'Citizen Selection Commissions' (CCC), which execute the public contests, but as noted above, these Commissions are composed of five 'delegates' of each State branch.¹⁶⁴ Also, the Board of the CPCCS is the one that regulates, monitors and ultimately appoints the authorities -it effectively holds all the power over the proceedings. The evaluations performed by the CPCCS-T demonstrated the manipulation of the public contests to appoint people close to MP AIS; these contests became a mechanism to legitimize patronage and annulled oversight. Some of the irregularities are summarized in TABLE 6.

¹⁶⁴ Constitution of the Republic of Ecuador. (2008) Article 209. Official Register No. 499.

ENTITY	HIGHLIGHTS OF IRREGULARITIES IN THEIR APPOINTMENT	H
CONSTITUTIONAL COURT (2015)	<p>Five of the nine judges had worked for the Executive prior to being appointed judges.</p> <p>Pamela Martínez was previously the personal advisor of President Correa and member of MPAIS. She obtained a perfect score (100/100) in the test that she drafted when years before she was President of the Commission in the selection of judges in 2012.</p> <p>The CPCCS failed to analyse the possible conflict of interests, real results on the tests, allowed the contestant to cheat to get to office.</p>	<ul style="list-style-type: none"> • Martínez having • None decreed uncon
CONSTITUTIONAL COURT (2012)	<p>Tatiana Ordeñana was councillor of the CPCCS during the contest that she later won. She was part of the appointment Boar; she was even judge and councillor at the same time -which is illegal.</p> <p>The CPCCS failed to provide any guarantee of impartiality and broke the law.</p>	
JUDICATURE COUNCIL (2011)	<p>Four of the five members of the Judicature Council had held various positions in the executive branch prior to their appointment, including its former president Gustavo Jalkh, who was personal secretary of President Correa.</p> <p>The CPCCS failed to analyse the possible conflict of interests.</p>	<ul style="list-style-type: none"> • The Ju hundre commi senten • The Ju to ben accou
ELECTORAL COUNCIL (2011)	<p>Nubia Villacís, appointed councillor, lied to be favoured by the affirmative action's mechanisms.</p> <p>The CPCCS did not contrast the documents provided by the candidates.</p>	<ul style="list-style-type: none"> • The Ele by dis opposi • It also through were o govern
NATIONAL PROSECUTOR (2011)	<p>Four candidates that were ahead in the contest claimed that there had been illegal changes in their grades which ultimately allowed Galo Chiriboga, former minister of Correa's government, to move up to first place. There is no explanation presented by the CPCCS on the last-minute modifications of the scores.</p> <p>The CPCCS manipulated the scores</p>	<ul style="list-style-type: none"> • Chiriba Papers
COMPTROLLER (2012) (2017)	<p>Carlos Polit, known for his sympathy to MPAIS, scored 95/100 in a contest where the grading system was not clear.</p> <p>The CPCCS manipulated the scores</p>	<ul style="list-style-type: none"> • Polit is convic schem Ecuadr



BUILDING INTEGRITY PROGRAMME

TABLE 6

By controlling all of the CPCCS, the 'correismo' was by all means, unaccountable. If the *correismo* lost the elections, the National Electoral Council would turn-off the systems and adjust the results.¹⁶⁵¹⁶⁶ It also would disqualify political parties of the opposition. They would never get convicted, because the only one who can accuse them -the National Prosecutor- would not investigate. They were cautious though: even the prosecutor could not investigate cases for the crimes of embezzlement and illicit enrichment, the Comptroller had to issue a report before investigating these crimes. And how could the Comptroller investigate? He was, after all, part of the Odebrecht scheme. However, if any of the above did not work, the Judicature Council would illegally dismiss the judges that were not aligned to the regime. On top of that, if anyone would ever dare to question their independence, they could always argue that they had won 'won a merit contest' and they, therefore, had a right to be in office. This is it; this is why the CPCCS was so important and still exists, whoever controls it, controls the whole country.

The CPCCS has proven to be an ineffective, anti-democratic agency.

¹⁶⁵ This occurred in the 2017 presidential elections.

¹⁶⁶ El Comercio (2017). 'CNE about the technical problems: the system never failed'. URL: <https://www.elcomercio.com/actualidad/cne-problemas-sistema-caida-resultados.html>

Section 5.- The CPCCS now

The 2018 referendum also reformed the CPCCS, these amendments sought to rectify the CPCCS's lack of democratic legitimacy (non-elected councillors) and to ensure that it represented citizens rather than political interests.¹⁶⁷ Some of the most relevant changes are shown in TABLE 7.

	2008 CONSTITUTION	2018 AMENDMENT
SELECTION PROCESS	Contest of examination and merit with citizen oversight (veeduría) and objection executed by the CNE.	National Elections
REQUIREMENTS	<p>The requirements were to:</p> <ul style="list-style-type: none"> • Be Ecuadorian • Be able to exercise their participation rights, • Be at least 18 years old • Demonstrate 'notorious probity' and 'efficient performance' and 'diligence and responsibility in the fulfilment of their obligations.'¹⁶⁸ 	<p>In addition to the 2008 requirements, the candidates had to:</p> <ul style="list-style-type: none"> • Have experience in social organizations, in civic participation, fighting against corruption, or to have 'prestige that demonstrates its civic commitment and defence of the general interest.'¹⁶⁹ • Have a college degree
BARS¹⁷⁰	<ul style="list-style-type: none"> • The candidates could not have been in a directive position of political parties or have been elected for office during the last two years.¹⁷¹ 	<ul style="list-style-type: none"> • The candidates could not have been members, adherents or leaders of political parties or movements, or have been elected during the last five years.

TABLE 7

Since 2018, the councillors were elected along with the legislators.¹⁷²¹⁷³ The candidates for the CPCCS ran an electoral campaign and leaders of political parties publicly appeared

¹⁶⁷ Presidency of the Republic of Ecuador. Document No. T141-SGJ-17-0330, 02 October 2017.

¹⁶⁸ Organic Law of the Council of Citizen Participation and Social Oversight. (2009) Article. 20, 4. Official Register 22.

¹⁶⁹ Organic Law of the Council of Citizen Participation and Social Oversight. (2018) Article. 20. Official Register 207-2S.

¹⁷⁰ Other bars were in force in the different legislations that are not addressed in this report. They are in the LOCPCCS Art. 21 from (insert date) and (insert date).

¹⁷¹ Organic Law of the Council of Citizen Participation and Social Oversight. (2009) Article. 21, 8. Official Register 22.

¹⁷² Note that in Ecuador voting is mandatory.

¹⁷³ Constitution of the Republic of Ecuador. (2018) Article 207. Official Register No. 180.

supporting several candidates.¹⁷⁴¹⁷⁵ Paradoxically, the entity that the 2008 constituent legislature foresaw as essentially 'apolitical' became in essence, through elections, political. The first electoral process of the CPCCS proved to be chaotic: there were 43 different candidates to choose from. In Ecuador, a country where voting is mandatory, citizens were expected not only to elect legislators from more than a dozen political parties but also, to know each of the 43 candidates to the CPCCS and their proposal. The Constitutional Court was requested to declare the elections unconstitutional due to the violation of the citizen's right to be 'informed' before voting, but the claim was rejected by the Court and the councillors were elected.

A survey conducted by the Centre for Studies and Data (CEDATOS) determined that 92% of voters did not know who the candidates running for the CPCCS were and 60% did not know how to vote. The result was that the null vote surpassed any other null vote result in the history of Ecuador. ¹⁷⁶ The official results of the National Electoral Council indicated that the percentage of the invalid and blank ballots (44,96%) surpassed the percentage of votes that any candidate received.

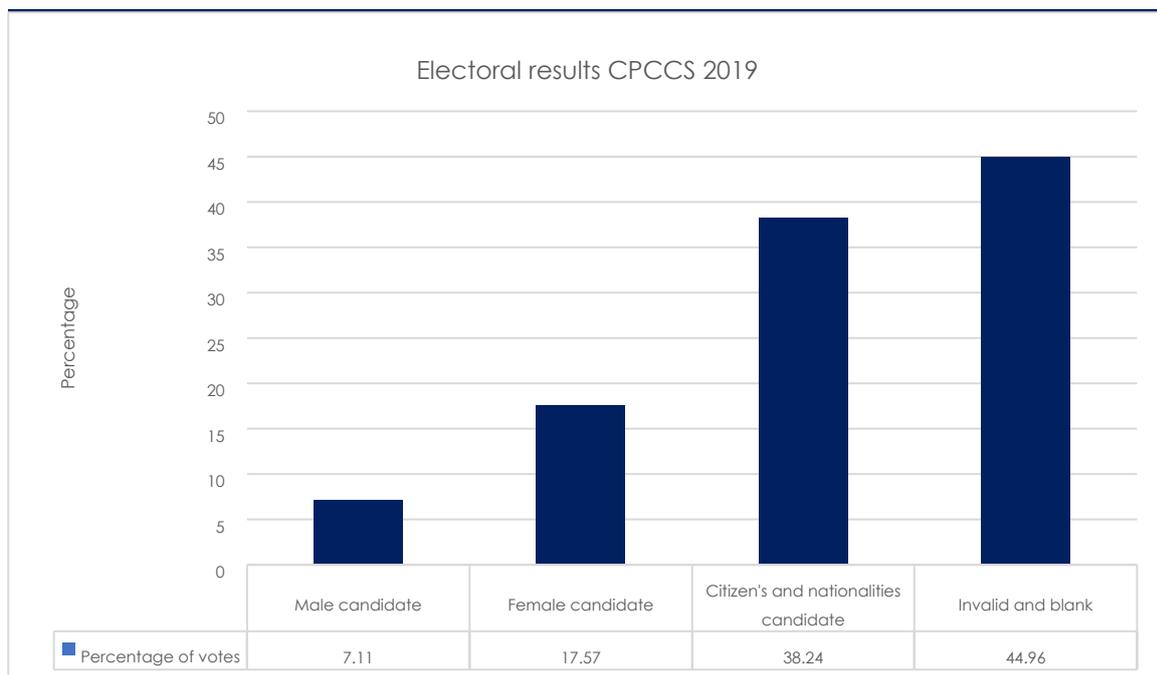


CHART 4: shows the highest percentage of ballots in each category

¹⁷⁴ It was particularly inconsistent to see Correa's political campaign after he had defended the CPCCS's 'apolitical' nature.

¹⁷⁵ See for example, Rafael Correa's social media campaign: <https://twitter.com/mashirafael/status/1101473784639483906?lang=es>.

¹⁷⁶ The average number of invalid and blank ballots was 44.96 per cent of the votes.

Suffice it to say, elections did not guarantee the suitability of the members of the CPCCS, nor did they give the 'democratic legitimacy' that the reform aimed. The CPCCS's mechanisms of selection has made the institution prone to political influence currently more than ever.

The current administration was conformed following the 2018 reforms, and ever since their election, the CPPCS has become a source of public scandals. The first president of the entity, the priest José Tuárez, who was publicly supported by Correa, led the CPCCS as if it was a political platform -very far away from the objective agency envisioned by the constituent legislature-. He claimed that 'the Lord' had enlightened him and asked him to promote a Constituent Assembly.¹⁷⁷ Months after he assumed the office, the National Assembly impeached four of the seven councillors, including Tuárez. As I write this report, Tuárez has been convicted for being the head of an unlawful association that offered public offices in exchange of money.¹⁷⁸

Unfortunately, that has not been the only time the president of the CPCCS has been involved in illegal activities. The current president, Christian Cruz, who had the support of the conservative party, is now being investigated as part of the scandal of the 'disability card' – which uncovered that public officials had illegally obtained a disability card to allow them to import vehicles with a tariff exemption, among holding other benefits.¹⁷⁹¹⁸⁰ Currently, the National Assembly is processing his impeachment. Christian Cruz, who before the scandal had never mentioned or shown his alleged disability, has argued that his 81 per cent of visual and hearing disability that appears in his card is justified.¹⁸¹

¹⁷⁷ La Hora. 'Tuárez says that God asks him for a Constituent' 20 July 2019. URL: <https://lahora.com.ec/losrios/noticia/1102259378/tuarez-dice-que-dios-le-pide-constituyente>

¹⁷⁸ Primicias. (2020) 'Court sentenced Jose Cures Tuarez to five years of prison' <https://www.primicias.ec/noticias/lo-ultimo/tribunal-condena-prision-jose-tuarez/>

¹⁷⁹ Currently 22 public officials, mostly legislators or their spouses are being investigated for irregularities in with the expedition of their disability cards.

¹⁸⁰ El Comercio. (2020). '22 public servants are being investigated for fraudulently holding disability card' <https://www.elcomercio.com/actualidad/funcionarios-investigacion-carnes-discapacidad-qsamblea.html>

¹⁸¹ El Comercio. (2020) 'Commission received explanations from Christian Cruz about his disability card'. Available at: <https://www.elcomercio.com/actualidad/explicaciones-christian-cruz-carne-discapacidad.html>

Section 6.- Policy Options and Recommendations

Policy options

With the failure of the CPCCS, there are at least three options to be considered:

Option 1: Maintain the CPCCS but change the leadership

This option relies on the idea that the CPCCS is a well-designed institution that has been mismanaged by the governments in turn. The idea of leaving the CPCCS the appointing mechanisms on the hope that good leadership would deliver the best results is a risk that the country should not take. By maintaining the CPCCS, citizens are delegating to the Board of the CPCCS the power to appoint ultimately most of the non-elected oversight, accountability, law-enforcement agencies of the country. The CPCCS violates the principle of separation of powers, not potentially, but effectively.

Option 2: Reform the CPCCS

This option seeks to reform the CPCCS via a constitutional amendment and abolish its appointment powers. It relies on the idea that having an independent agency improves the accountability deficit; this is contested on two levels: theoretical and empirical. As Shugart et al have challenged – these agencies do not address the fragmentation of political parties in the legislature and their unrepresentativeness. They are mostly useful for politicians that seek to gain popularity (Smilov); and comparative evidence shows that in most cases they are ineffective. (See [ABOVE](#)) The CPCCS is part of an over-bureaucratization that constituted a façade of accountability. (See [MAP 3](#)). This option will maintain an institution that merely duplicates functions with the risk of centralizing citizen participation and covering-up corruption.

Policy recommendations

Abolish the CPCCS and evaluate the impact on other oversight agencies.

Based on the evidence provided in this report, the best policy is to abolish the CPCCS and restructure the appointment proceedings. Due to the proliferation of similar agencies in Ecuador; it is essential to analyse the role that they are playing in accountability.

Improve vertical accountability

Mechanisms to improve vertical accountability, this will require:

1. Implement electoral reforms to strengthen political parties.¹⁸²
 - a. Improve candidate selection processes: assure that incentives for 'countervailing ambitions'.
 - b. Design a system where the relationship between voters and politicians encourages officials to represent collective preferences.
2. Address the social and political fragmentation by implementing leadership models based on public integrity: as established above, Ecuador suffers from ethnic and regional cleavage that has led to the division and collapse of the political parties. In turn, when in power, political parties benefit their own as much as they can and fulfil their concealed transactions, without representing the citizens. This has caused several political crises and has led to almost the extinction of public credibility.

¹⁸² Shugart, M., E. Moreno and Crisp, B. (2000) 'The accountability deficit in Latin America.'

Annexes

Annex 1

Indicators for Benchmarking the Performance of Asian ACAs

National Indicators (3)

1. Transparency International's CPI score for a selected year.
2. World Bank's control of corruption percentile rank for the same year.
3. PERC's corruption score for the same year.

Agency Indicators (19)

4. ACA's per capita expenditure
5. ACA's staff-population ratio
6. ACA's independence
 - a. Location
 - b. Appointment of director
 - c. Independence from police
 - d. Investigation of grand corruption
 - e. Frying "big fish"
 - f. Weapon against opposition
7. ACA's credibility
 - a. Consideration of all complaints
 - b. Public perceptions of ACA's professionalism
 - c. Enforcement of anti-corruption laws
 - d. Public image of ACA
8. ACA's performance indicators
 - a. Cycle time
 - b. Completion rate
 - c. Productivity ratio
 - d. Prosecution rate
 - e. Conviction rate
 - f. Attendance to visitors
 - g. Number of persons charged and disciplined

SOURCE: Quah, J. (2009). 'Benchmarking for excellence: a comparative analysis of seven Asian Anti-Corruption Agencies, Asia Pacific Journal of Public Administration, pg. 192.

Annex 2

2.3.2 The drivers of success

- Political will and broad political support
- Medium rather than very high levels of corruption. Where corruption is endemic and pervasive, ACCs function in form but not in substance¹
- ACC is situated in a comprehensive anti-corruption strategy supported by effective and complementary public bodies
- Economic stability and a focus on reducing incentives and opportunities for corruption, for example, carefully managed privatisation programmes
- Adequate financial resources and skilled staff
- A clear and relevant mission focusing less on punishment and more on corruption prevention, supported by appropriate business planning, budgeting and performance measurement regimes
- Appropriate legal frameworks, including the rule of law, and sufficient legal powers for investigative and preventive work
- Operational independence and freedom from political interference
- High standards of integrity in ACC leaders and staff
- Public awareness of, and confidence in, the ACC's mission

SOURCE: Doig, A., Watt, D., Williams R., (2005) 'Measuring 'success' in five African Anti-Corruption Commissions'. U4 Anti-corruption Resource Centre, pg. 12.

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