

Country Report: Ecuador

1. EXECUTIVE SUMMARY

Judicial reform in Ecuador is best summarized as a push-and-pull between different regimes, with every new president using their electoral mandate to reset both the judiciary's membership and its structure. The continual reforms are motivated by a desire to end corruption and restore public trust in the judiciary, as well as to combat real problems facing the country, including violent crime. However, it is the needs, whims, and swings of electoral politics that have contributed the most to the changing structures of the country over the last 15 or so years. Charting the back-and-forth of these reforms reveals novel institutional design but mixed outcomes for judicial independence, rule of law, and successful anti-corruption work.

President Rafael Correa, noted in the international community for his authoritarian tendencies, made significant progress in increasing and tracking the efficiency of the judiciary, as well as expanding its scale to increase access to it, even as he replaced virtually every member of it with actors loyal to his regime. Correa also oversaw the creation and implementation of a new constitution in Ecuador. This constitution provides for a 5-branch structure of government and is among the most novel reforms seen. Correa was immensely popular within Ecuador, despite his corruption, and was seen as standing up for Ecuadorian interests against outside influences, most notably Western ones.

When his deputy Lenin Moreno became President in 2017, he once again replaced members of the judiciary with his own people and altered significant portions of Correa's reforms to make them more democratic. Moreno also oversaw the corruption investigation of Correa, who has been convicted of bribery and is legally barred from running for president again. Despite Moreno's substantive improvements to rule of law, he was hugely unpopular and did not win a

second term in office. Newly elected President Lasso has overseen a successful use of the process set up by previous administrations to renew three of the judges on the Constitutional Court, but he has also promised to hold yet another referendum to renew the judiciary in the style of both of his predecessors. This pattern of constant renewal makes it difficult to assess the long-term success of any one policy implemented in Ecuador.

2. MOTIVATIONS

Judicial reform in Ecuador is motivated by the desire to eliminate corruption and violent crime, as well as to restore public trust in the judiciary. The public's perception in Ecuador is that judges are soft on crime, especially the high violent, often drug-related crime that continues to be an ongoing problem in the country.¹ Citizens do not understand how the judiciary works and try to avoid entanglement with it.² Going through judicial processes in Ecuador is so time-consuming, expensive, and corrupt that there is saying, roughly translated, that means "it is better to have a bad contract than a good judicial resolution."³ In fact, the judicial system is considered to be so broken that the nation has felt the need to throw everything out and start over again repeatedly, beginning with President Correa's constitutional reforms in 2011, when this attitude was most justified.⁴ Before these initial reforms, judicial positions most frequently passed to an official's children, because there were no public contests or training for the positions.⁵ The

¹ Alexandra Valencia, *Ecuador to ask citizens to vote on justice reform -president*, REUTERS (Jan. 18, 2022, 8:23 AM PST), <https://www.reuters.com/world/americas/ecuador-ask-citizens-vote-justice-reform-president-2022-01-18/>.

² Zoom interview with Carla Suarez, Anti-Corruption Expert at the Pan-American Development Foundation (Mar. 8, 2022).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

negotiations going on inside judicial offices were mostly regarding the size of the bribe to be paid in order to receive “justice” expeditiously.⁶

However, the reforms have continued to feed the feelings of instability that motivated them in the first place. Ecuador’s criminal code has been reformed six times in the past two years, meaning that no one knows the state of the law currently or how to implement it, creating an unstable environment which is a breeding ground for corruption.⁷ Money meant to be invested in positive reforms has been diverted for corrupt purposes, despite the variety of structures to prevent this that Ecuador has tried, including most notably the Transparency branch of their novel five-branch government.⁸ Fundamentally, Carla Suarez, an Ecuadorian anti-corruption expert I spoke with, I spoke to believes that Ecuador continues to majorly overhaul its judiciary because the nation is unsure what it is looking for in a justice system.⁹

3. DESCRIPTION OF REFORMS

(A) PRESIDENT CORREA’S INITIAL REFORMS

Ecuadorian President Rafael Correa, who served from 2007 to 2017, enjoyed a large popular mandate, likely in part because oil prices were high and the economy of Ecuador performed well during his presidency.¹⁰ His regime is credited with significantly stabilizing the country, but he was labeled an authoritarian by the United States’ Congressional Research Service and other watchdog organizations due to restrictions he imposed on freedom of expression and the significant judicial capture that occurred during his regime.¹¹

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Ecuador: An Overview*, CONGRESSIONAL RESEARCH SERVICE (Sept. 8, 2021), <https://sgp.fas.org/crs/row/IF11218.pdf>.

¹¹ *Id.*

Correa presided over a total rewrite of the constitution of Ecuador which moved the country's government from the traditional three-branch structure to a five-branch structure, with an additional Electoral Branch and a Transparency Branch.¹² The Transparency Branch handles the appointment of most authorities relevant to the judiciary, including judges, the attorney general, and the public defender, making consideration of it as a governmental structure critical for assessing judicial reform in Ecuador.¹³ This branch also surveys all government offices for compliance with a stringent public transparency law regarding the spending of government funds, which is meant to combat corruption.¹⁴ The Transparency Branch is made up of several independent institutions, including most notably the Citizen Participation and Social Control group, which under Correa was composed of seven appointed members.¹⁵ In theory, this branch is meant to serve as an independent watchdog representing citizens within the structure of the national government, thus preventing corruption in use of funds and in appointments. However, in practice, the Transparency Branch became incorporated into the executive branch, as it appointed only officials approved by Correa's regime and did not take up or publicize corruption cases connected to Correa. In fact, under Correa, it created more corruption, as isolating the appointment process for judicial officials increased the process's vulnerability to executive capture.¹⁶ This branch continues to exist and presides over judicial appointments still, including by appointing the Qualifying Commission used to renew the Constitutional Court, as discussed in the Results section.

¹² Zoom interview with Carla Suarez, *supra* note 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

President Correa's reforms also made significant progress in improving judicial efficiency in Ecuador. However, these reforms came at significant costs to the independence of the judiciary, as documented by Human Rights Watch and the Center for Strategic and International Studies.¹⁷ Following a 2011 referendum, Correa created a Transitional Council of the Judiciary, which had broad powers to completely overhaul the judiciary for 18 months.¹⁸ This organization supervised the removal of hundreds of judges from the judiciary, including all 21 members of the National Court of Justice (Ecuador's highest court) and all its substitute judges.¹⁹ Though it did replace these officials, it did not uphold the required qualifications for judges in selecting replacements, as the Council often gave scores arbitrarily that did not reflect the qualifications of the candidates.²⁰ Additionally, the scoring process allowed members of the Council to give a certain percentage of points without justification, providing an avenue for corruption.²¹ Human Rights Watch objected publicly due to these mechanisms' failure to provide the "objectivity and transparency provided for in international standards on judicial independence."²² The Council also removed and replaced hundreds of lower court judges, dismissing 205 judges in 2012, 136 judges in 2013, and 108 judges in 2014 according to one in-country watchdog.²³ In addition to the problems with the appointment procedure, these removals

¹⁷ For a comprehensive overview of judicial reform under Correa from an anti-corruption perspective, see *Diagnostico sobre areas prioritarias para la cooperacion contra la corrupcion en Ecuador*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES, 119-149 (Sept. 2020), <https://pdf.org/wp-content/uploads/2020/09/Informe-de-consultoria-con-portada.pdf>.

¹⁸ Letter on Judicial Independence in Ecuador from Jose Miguel Vivanco [hereinafter, Human Rights Watch Letter], Human Rights Watch, to Gustavo Jalkh, President of the Council of the Judiciary, (Jan. 29, 2014), <https://www.hrw.org/news/2014/01/29/letter-judicial-independence-ecuador#>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Tracker of the Displacement of judicial servants*, OBSERVATORIO JUDICIAL ECUADOR, <https://observatoriojudicial.ec/destituciones-jueces-servidores> (last visited Mar. 31, 2022, using the drop-down menu to select multiple years' of data).

were also suspect interferences with judicial independence. In July 2012, the Unit of Disciplinary Control of the Council of the Judiciary announced in a memo to judges that “they [might] be sanctioned if they erroneously rule[d] against the government,” indicating that the intent behind replacing the judges was to facilitate Correa’s executive capture of the judiciary.²⁴

Subsequently, Correa created the Council of the Judiciary to administer the judiciary after the transitional period ended. He filled all five seats with his personal appointees, including his own private secretary, Gustavo Jalkh.²⁵ Despite its corrupt creation, the Council made significant positive efficiency changes in continuation of the Transitional Period’s work, including building 30 new buildings for the judiciary, implementing a system of electronic appointments, and training 18,000 officials.²⁶ It also increased the number of judges per 100,000 citizens from 4.5 to 10 (adding nearly 600 judges to the judiciary), which was a significant improvement in access to justice.²⁷ The Council of the Judiciary was created in part through consultation work Correa’s administration did with the Chilean government, to determine the right number of judges per population, as well as the length of procedures and other factors in designing a system of justice that is specialized to the region.²⁸ The Council of Justice under Correa also measured the time that judicial proceedings took to ensure swift justice.²⁹

Correa also threw international watchdog and aid organizations out of Ecuador, making it difficult to counter or even track some of these reforms. USAID closed their offices in Ecuador from 2014-2020, and US counterdrug operations in Ecuador were shut down between 2009 and

²⁴ Human Rights Watch Letter, *supra* note 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Zoom interview with Carla Suarez, *supra* note 2.

²⁹ *Id.*

2018.³⁰ Furthering his authoritarian credentials, Correa currently hosts a show on RT (Russian state TV) where he interviews subjects like Nicolas Maduro, the dictator of Venezuela.³¹ Despite this spotty track record and the skepticism of the international community, Correa was popular in Ecuador, and continues to maintain that popularity even after his corruption conviction, discussed below.³² This popularity is largely due to the economic prosperity Ecuador enjoyed during his tenure, including his success in reducing the poverty rate by 38% and the extreme poverty rate by 47%.³³

(B) PRESIDENT MORENO'S REFORMS: UNDOING CORREA'S CORRUPTION

Lenin Moreno was one of Correa's deputies before his election to the Presidency. While he made fewer radical changes than Correa, Moreno dramatically changed the direction of the country. He was hailed in Western development circles as a singular heroic example of bringing a nation back from the brink of illiberal populism.³⁴ However, in undoing the corruption and judicial capture of Correa's presidency, he also undid some of Correa's beneficial efficiency reforms and introduced another transitional period, continuing the cycle of instability.

³⁰ *Ecuador: An Overview*, *supra*, note 10.

³¹ *Ecuador's trial of the century opens*, THE ECONOMIST (Feb. 6, 2020), <https://www.economist.com/the-americas/2020/02/06/ecuadors-trial-of-the-century-opens>.

³² For a pro-Correa view of his corruption investigation and the subsequent reforms of the Moreno government that asserts the popularity of Correa and what he stood for, see Guillaume Long, *In Lenin Moreno's Ecuador, Democracy Is in Danger*, JACOBIN (Sept. 2020), <https://www.jacobinmag.com/2020/09/ecuador-lenin-moreno-election-2021-democracy>.

³³ Mark Weisbrot, Jake Johnston, & Lara Merling, *Decade of Reform: Ecuador's Macroeconomic Policies, Institutional Changes, and Results*, CENTER FOR ECONOMIC AND POLICY RESEARCH, 2 (Feb. 2017), <https://cepr.net/images/stories/reports/ecuador-2017-02.pdf>.

³⁴ *Ecuador: An Overview*, *supra* note 10; see Oliver Stuenkel, *Is Ecuador a Model for Post-Populist Democratic Recovery?*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (July 11, 2019), <https://carnegieendowment.org/2019/07/11/is-ecuador-model-for-post-populist-democratic-recovery-pub-79472>.

In his inauguration address, Moreno repeatedly emphasized the strength of his belief in judicial independence.³⁵ As part of that commitment, Moreno introduced and passed a referendum which moved the selection of the membership of the Citizen Participation and Social Control Group to elections, reducing the executive capture of this important link to the judiciary.³⁶ He also took a referendum on and subsequently introduced his own period of transitional justice, where all of Correa's people were removed from all of the institutions captured by Correa.³⁷ While this decision did successfully eliminate the lingering aftereffects of the specific executive capture of the Correa regime, this transitional period was very poorly managed, resulting in instability for the country.³⁸ Because he replaced all of the officials appointed by the previous, popular regime. Moreno was accused of the same kind of executive capture of the judiciary to serve politically motivated ends as Correa was. However, there was evidence to suggest that these attacks are politically motivated and far less based in fact than the broad criticisms of Correa's executive capture.³⁹

A paradox revealed by Moreno's regime is the difficulty of monitoring transitional regimes while maintaining meaningful independence between branches of government. A commitment to actual independence of the other branches of government made it very difficult for the Moreno regime to actually monitor the success of the transition, but successful transition monitoring compromised judicial independence.⁴⁰ A key example of this was Moreno's reform

³⁵ Adriana Noboa, *Lenin Moreno: 'Nunca llamare a un magistrado para influir en el'*, EL COMERCIO (Ec.) (Sept. 8, 2017, 2:53 PM), <https://www.elcomercio.com/actualidad/leninmoreno-llamar-jueces-independencia-gustavojalkh.html>.

³⁶ Zoom interview with Carla Suarez, *supra* note 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *In Lenin Moreno's Ecuador, Democracy Is in Danger*, *supra* note 32; for a pro-Moreno view of the Correa trial, including substantiations of the accusations of Correa's judicial capture, see *Ecuador's trial of the century opens*, *supra* note 31.

⁴⁰ Zoom interview with Carla Suarez, *supra* note 2.

to the Council of the Judiciary, which had been tracking the efficiency of the judiciary under Correa. Under the theory that these executive tracking and efficiency procedures violated judicial independence, the Council of the Judiciary stopped measuring the efficiency of the judiciary.⁴¹ Now, judges' case closure rates are only examined once every ten years when they are evaluated, and it is very hard to tell how efficient the judiciary is, or how efficient any particular judge is.⁴² Moreno also made it much harder to remove judges, to prevent the kind of rampant replacement that occurred under Correa, but on the ground, advocates indicate that the reforms have overcorrected.⁴³ Now, judges can only be removed in connection with an investigation.⁴⁴ These investigations can begin over issues such as applying the ruling of a higher court incorrectly, but the disciplinary process takes a long time and is filled with corruption.⁴⁵ This conundrum of self-undermining or unmonitorable judicial reform work, particularly when working on the problem of judicial independence from executive capture, is worth further study.

Moreno did successfully oversee the prosecution of Correa for his various corruption crimes and therefore prevented Correa from re-entering Ecuadorian politics in the medium term. Correa was convicted of overseeing bribery schemes during his presidency, and his eight-year prison sentence was upheld in August 2020.⁴⁶ To avoid his prison sentence, Correa is currently living in Belgium, and thus was unable to run for vice president in 2021.⁴⁷ Moreno also reinstated presidential term limits, which Correa had removed from the constitution in 2015, in

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Freedom House, *Freedom in the World 2021: Ecuador*, <https://freedomhouse.org/country/ecuador/freedom-world/2021>.

⁴⁷ *Id.*

an attempt to prevent Correa's return to office.⁴⁸ However, commentators worry that Moreno's reforms are not very durable because of the way in which they were promulgated and Ecuador's history of frequent, drastic reform.⁴⁹ Despite his track record of judicial independence and anti-corruption, Moreno was hugely unpopular in Ecuador by the end of his term in office, with a roughly 8% approval rating.⁵⁰ His unpopularity was likely largely a result of the program of economic austerity he instituted in order to receive an economic stimulus package from the IMF, as well as the devastating effects of COVID-19 in Ecuador.⁵¹ He has been replaced by President Lasso, whose attitudes about judicial reform are still unknown in detail.

4. NOVELTIES OF REFORMS

Ecuador's 5-branch governmental structure is the most novel institutional design I have ever seen, particularly the existence of a branch explicitly devoted to governmental transparency.⁵² The idea that such a branch can be popularly elected separately from the others and can therefore be trusted with appointments in other branches is novel. As we have seen, however, it is unclear whether such separation exists in practice in Ecuador. Additional branches of government provide additional opportunities for executive capture, and constant elections make it difficult for any permanent or lasting change to be built.

⁴⁸ John Polga-Hecimovich, *Constitutional Change in Ecuador: Improving Democratic Accountability—and Constraining a Rival*, CONSTITUTIONNET (Mar. 31, 2018), <https://constitutionnet.org/news/constitutional-change-ecuador-improving-democratic-accountability-and-constraining-rival>.

⁴⁹ *Id.*

⁵⁰ *In Lenin Moreno's Ecuador, Democracy Is in Danger*, *supra* note 32.

⁵¹ Lucas Perello, *After economic policies backfire, Ecuador's Lenin Moreno struggles to save his presidency...and the country's democracy?*, GLOBAL AMERICANS (Oct. 17, 2019), <https://theglobalamericans.org/2019/10/after-economic-policies-backfire-ecuadors-lenin-moreno-struggles-to-save-his-presidency-and-the-countrys-democracy/>; *Freedom in the World 2021: Ecuador*, *supra* note 46.

⁵² In general, most nations committed to at least the appearance of liberal democracy have governments with the three traditional branches—executive, judicial, and legislative. For a discussion of why three branches of government has come to be established as a norm historically, philosophically, and normatively, see Gediminas Mesonis, *The Principle of the Separation of Powers: The Ontological Presumption of an Ideologeme*, 13 BALTIC J. OF L. & POL. 2 (2020) (Lith.), https://repository.mruni.eu/bitstream/handle/007/17347/10.2478_bjlp-2020-0009.pdf?sequence=1&isAllowed=y.

Additionally, the in-depth, multi-phase vetting process conducted on Constitutional Court judges as they are appointed, including multiple public comment phases and the use of the internet, including Facebook Live, to make hearings accessible to the public, is novel due to its intensity and depth. This process is laid out below, because of the difficulty of disaggregating a description of the process from a description of its results when implemented for the first time recently. As discussed below, the process did seem to work at some level to eliminate unqualified, unethical, or corrupt candidates, but it also took a long time and had several problems, resulting largely from the Commission's ability to set the rules of the selection process themselves, as well as continuing corruption.

5. RESULTS

(A) IMPLEMENTING JUDICIAL SELECTION PROCESSES AND COMBATING CORRUPTION

Because of the continuity that has existed so far between President Moreno and President Lasso's approaches in judicial selection and vetting, it is possible to look in-depth at the success of the Constitutional Court renewal process, which took place between August 2021 and February 2022, as a case study example of the fits and starts of progress in the wider system.⁵³ Because it is easier to understand the institutional design of this complex selection process by way of an example, I have chosen to describe both the specific reforms of this selection process (which are extensive) and its results in this section, rather than describing the reforms above and the results here.

This process was initially set up in the 2008 Constitutional Reform package, and is done by the Qualifying Commission, the members of which are appointed by the president of the

⁵³ Fermin Vaca Santacruz, *The Ups and Downs of the Renewal of the Constitutional Court*, PLAN V (Ecuador) (Mar. 9, 2022), <https://www.planv.com.ec/ups-and-downs-renewal-constitutional-court>.

Transparency and Social Control Function (FTCS).⁵⁴ The Qualifying Commission includes two members from the Executive Function, two from the Legislative Function, and two from the FTCS.⁵⁵ Appointed officials all had various law-related degrees and worked in some capacity in a legal or government role.⁵⁶ Members of the Commission are also held to the same conflict of interest standards as the judges themselves, which **require them not to be public servants, relatives of public servants or to have other conflicts of interest.**⁵⁷ The Qualifying Commission has **great latitude in setting the regulations for the selection process, leaving it open as an avenue for executive capture.**⁵⁸ Each renewal process replaces three of the nine members of the Constitutional Court, who are chosen by lottery if three judges do not decide to complete their terms, and the renewal process takes place every three years.⁵⁹ All nine judges on the Constitutional Court were appointed in 2017 during the transitional justice period under President Moreno, making this the first judicial renewal since Moreno's reforms. In 2022, this process successfully appointed three new judges to the Constitutional Court and disqualified several unqualified or unfit candidates at its various stages of review.⁶⁰

The process begins when the Qualifying Commission asks for candidates from the Executive, Legislative, and Transparency functions of government, who can each nominate three candidates.⁶¹ **These candidates must comply with the eligibility requirements, including having**

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Zoom interview with Carla Suarez, *supra* note 2.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Fundación Ciudadanía y Desarrollo (FCD), *Informe de veeduría: Proceso de renovación parcial de la Corte Constitucional* [hereinafter, FCD Constitutional Court Renewal Report], 2 (Feb. 22, 2022, forthcoming English version), https://www.ciudadaniaydesarrollo.org/projects/informe-de-veeduria-proceso-de-renovacion-parcial-de-la-corte-constitucional/?fbclid=IwAR2YXXai2cWz6_8w2R9N0bbcgMU8LHEm8DRzff6th_gAbb6xqh9t8meH3lM. Note that I read this article as translated by Microsoft Translation from the original Spanish.

⁶¹ Santacruz, *supra* note 53.

been a lawyer for at least ten years with “notorious probity” in the profession, as specified in the Constitution.⁶² On October 18, 2021, the Commission determined that the first round of candidates did not meet these criteria and rejected them.⁶³ The ability of the Commission to reject unqualified candidates and expect new nominations represents a significant anti-corruption measure built into the process of judicial selection. However, the Commission accepted all but two of the new nominees, including several candidates who had also been among the previous, rejected slate of applicants, leaving questions about how well this system works in practice.⁶⁴ There was also some indication that university affiliation played a major role in candidate selection, indicating the potential for corruption within networks of elites between branches of government based on common education.⁶⁵ Rafael Oyarte resigned from the Qualifying Commission in protest of the “lack of rigor in the fulfillment of the requirements” after the third round of nominations finally secured an acceptable nine-person shortlist at the beginning of December.⁶⁶ Oyarte was not replaced, as no mechanism for replacing a member of the Qualifying Commission exists, representing a significant deviation from the constitutionally-mandated procedure.⁶⁷

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* It is important to note that selecting high court judges from a very small pool of university affiliations is very common around the world—the United States Supreme Court is also made up of justices from a very small pool of law schools. However, this make-up may be undesirable from the perspective of equality-minded reformers (Santacruz notes the lack of any nominees who went to public universities, for example), or it may be undesirable in a nation with a corruption problem based simply on a desire to weaken the social links between people in places of power in an attempt to decrease the possible mechanisms and motivations for corrupt activity. For a long exploration of the definition of judicial corruption as applied to the Ecuadorian Constitutional Court, see Santiago Basabe-Serrano, *Judicial Corruption: The Constitutional Court of Ecuador in Comparative Perspective*, in *THE LIMITS OF JUDICIALIZATION: FROM PROGRESS TO BACKLASH IN LATIN AMERICAN POLITICS* (Sandra Botero, Daniel Brinks, & Ezequiel Gonzalez-Ocantos eds., forthcoming Aug. 2022), http://www.santiagobasabe.com/uploads/1/2/1/4/12145125/chapter_cup.pdf.

⁶⁶ Santacruz, *supra* note 53.

⁶⁷ FCD Constitutional Court Renewal Report, *supra* note 60 at 24.

The phases of evaluation designed by the Qualifying Commission then evaluated the fitness of the nine candidates.⁶⁸ During the Citizen Challenge Phase, in which any citizen can challenge someone's candidacy for nearly any reason, including moral character deficiencies and corruption concerns, two candidates withdrew from the process.⁶⁹ The Citizen Challenge Phase provides candidates with notice of the accusations against them and then holds a public hearing in which the citizen confronts the candidate with their accusations, after which the Commission determines whether to keep the candidate.⁷⁰ Salim Zaidan resigned due to the challenge against him by feminist activists, and though Barbara Teran survived her challenge, she resigned due to a positive COVID-19 test.⁷¹ However, Jorge Sosa survived his challenge, even though it revealed he had been a legal adviser of the drug trafficker known as Gerald, making this phase's success as a corruption gatekeeping mechanism dubious.⁷²

Finally, the Commission moves to a Merit Phase which is scored on a 100-point scale.⁷³ Each candidate can earn up to 20 points based on a rubric that assesses their education and professional experience.⁷⁴ Another 40 points are given based on a rubric that grades a written evaluation where candidates answer constitutional law questions written by the Commission.⁷⁵ The final 40 are earned based on a rubric assessing an oral evaluation, where a candidate must perform an oral argument, explain how the Constitutional Court would address the case, and answer pre-written questions from the Commission that they draw out of a jar.⁷⁶ This oral

⁶⁸ *Id.* at 10.

⁶⁹ Zoom interview with Carla Suarez, *supra* note 2.

⁷⁰ *Id.*

⁷¹ Santacruz, *supra* note 53.

⁷² *Id.*

⁷³ Zoom interview with Carla Suarez, *supra* note 2. Additionally, the rubrics described in this paragraph, as well as the candidates' scores on them, are given in the FCD Constitutional Court Renewal Report, *supra* note 60 at 27-33.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

evaluation is livestreamed on Facebook for the public to watch, which promotes anti-corruption and transparency, as the public can see whether the score a candidate receives matches their actual performance.⁷⁷ However, in this cycle, the questions asked at oral argument became political, based on the Commissioners' private interests in issues like mining rights where they have personal stakes.⁷⁸ Two candidates resigned during the testing process, leaving five who were fully assessed by the Commission.⁷⁹ At the end of the process, the three highest-scoring candidates were appointed to the Constitutional Court as judges, with scores of 94, 93, and 89.5 out of 100, while the final two were added to the bank of judges who can serve on that Court if there is an unexpected vacancy, with scores of 75 and 58.5.⁸⁰ The entire process also had a citizen overseer committee and was monitored by Fundación Ciudadanía y Desarrollo (FCD), the independent Ecuadorian think tank and watchdog supported by the Pan-America Development Foundation (PADF).⁸¹

This process is one of the most rigorous, multi-layered, publicly accountable judicial appointment or vetting processes imaginable. However, as FCD and other reporting has catalogued, it was not free from irregularities, largely surrounding the possible encroachment of corruption and other private interests on the process. Major access points for corruption and potential authoritarian capture include the Commission's broad authority to set the rules of the process themselves, as well as the lack of vetting of the Commissioners themselves.⁸²

(B) THE FUTURE OF JUDICIAL REFORM IN ECUADOR

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Santacruz, *supra* note 53.

⁸⁰ *Id.*

⁸¹ Santacruz, *supra* note 53; see FCD Constitutional Court Renewal Report, *supra* note 60.

⁸² Santacruz, *supra* note 53.

Despite these issues, Ecuador has the potential to be a hopeful case for the future of judicial reform. PADF and FCD are investing significant resources into studying the current state of judicial independence and anti-corruption work in the country, including a study into the efficacy of the judicial vetting process to be done by PADF in 2022.⁸³ FCD also does significant work to educate the public regarding the rule of law and anti-corruption work done in Ecuador, particularly by exposing the backgrounds of various candidates and livestreaming relevant hearings on Facebook.⁸⁴ FCD also tracks the removal of judicial officials, especially judges, on an open-access website so that judicial purges done by the regime are captured in data.⁸⁵

Whether Ecuador's future reforms will put the country on the right path is an open question. Mark Schneider, an American expert on the region, worries that Ecuador could backslide in the same way that Guatemala did, after anti-corruption efforts began to target the families of politicians who had previously supported it.⁸⁶ FCD and PADF-affiliated anti-corruption expert Carla Suarez, based in Ecuador, believes the judiciary will get worse every time there is a new government with a new transitional justice period, due to the overwhelming instability in both the short and long-term this regime change causes in the structure and substantive law of Ecuador.⁸⁷ She believes the complete reset was justified during President Correa's term, as was the 2008 re-writing of the constitution, and that lots of good ideas were initially promulgated

⁸³ Phone interview with Mark Schneider, Senior Adviser (non-resident), Americas Program and Human Rights Initiative, Center for Strategic and International Studies (Feb. 11, 2022).

⁸⁴ See Observatorio Judicial Ecuador, FACEBOOK, <https://www.facebook.com/ObservatorioJudicialEC/>.

⁸⁵ See *Destituciones de servidores judiciales*, OBSERVATORIO JUDICIAL ECUADOR, <https://observatoriodjudicial.ec/destituciones-jueces-servidores>.

⁸⁶ Phone interview with Mark Schneider, *supra* note 83.

⁸⁷ Zoom interview with Carla Suarez, *supra* note 2.

during these reforms.⁸⁸ However, corrupt use of the money invested in developing these reforms and constant change has undermined their effectiveness.⁸⁹

President Guillermo Lasso, who took office in 2021, has, however, promised to have another referendum on judicial reform in 2023, as part of an effort to pressure judges resisting efforts to fight violent, drug-gang motivated crime.⁹⁰ The reforms at stake under Lasso may be structural as well, making it seem unlikely that the cycle of judicial reform will end soon. Lasso has proposed eliminating the Judicial Council, initially created by the Correa reforms, to resolve a conflict between it and the National Court of Justice over which branch is meant to administer the judiciary, a reform path which seems likely to further destabilize the efficiency and access gains that have been made in the Ecuadorian judiciary.⁹¹ Ecuador continue will be an important nation to watch for innovation in judicial and constitutional reform.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Valencia, *supra* note 1.

⁹¹ Zoom interview with Carla Suarez, *supra* note 2.