

Overall Score:

72 - Moderate

Legal Framework Score:

91 - Very Strong

Actual Implementation Score:

53 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁷Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

As in other cases in Colombia, legislation related to the right to form Civil Society Organizations is complex, and thus is difficult to identify a single legal framework regulating the organizations of CSOs related to anticorruption and good governance. The constitution guarantees the right of free association (art. 38) and the right to control political power and public management (art. 40 and 103), and there are different laws regulating these rights.

According to art. 103 of the constitution, the government should contribute to the organization, promotion and capacitation of civic and community non-governmental organizations in order to make them democratic mechanisms of representation in instances of participation, concertation, control and oversight of public management.

Although there is no specific law on the formation of Civil Society Organizations focused on anticorruption and good governance, legal dispositions related to this type of organization can be found on the regulations for social control, veedurias ciudadanas (citizen oversight committees), and non profit organizations.

In what refers to the conformation of CSO's, according to the decree 2150 of 1995, the only requirement for the recognition of non profit organizations is the inscription in the respective chamber of commerce.

The Law 850 2003 develops the article 270 of the constitution and the right of citizens to oversee public management. The law states that citizens have the right to constitute Veedurias ciudadanas" or citizen oversight committees, which can be temporary mechanisms for CSOs to control public administration, procurement processes, etc. The veedurias enable citizens and/or civil society organizations to oversee public management and the performance of administrative, judicial, electoral and political

authorities, public and private entities, or non-governmental organizations that work in the country, and are responsible for executing a program, contract or public service. One of the main objectives of the “veedurias ciudadanas” is to strengthen mechanisms to control corruption in public procurement and public management.

The law 136/1994 that regulates the functioning of municipalities states as one of the local mayor’s responsibilities, the promotion of veedurias ciudadanas. The law 812 of 2003 that issued the National Development Plan, states as an objective, the promotion of citizen participation in the definition, execution and oversight of public management.

The Presidential Program Against Corruption, the Interior Ministry, the Finance Ministry, the National Planning Department, the Presidential Program for Youth, and the Administrative Department for Civil Service have created a training program for citizens that execute social control.

References:

Constitucion Politica de Colombia 1991 art.38.

Republica de Colombia. Ley 850 de 2003 Por medio del cual se reglamentan las veedurias ciudadanas.”

DECRETO NUMERO 2150 DE 1995 (diciembre 5) “por el cual se suprimen y reforman regulaciones, procedimientos o trámites innecesarios existentes en la Administración Pública.” DIARIO OFICIAL. AÑO CXXXI. N. 42137. 6, DICIEMBRE, 1995. PAG. 1

Mateus, Rafael and Mariño, Consuelo. 2001.

“INCREMENTO EN LA PARTICIPACIÓN CIUDADANA EN AMÉRICA LATINA MEDIANTE LA GENERACIÓN DE MARCOS LEGALES FAVORABLES.” INVESTIGACIÓN EN COLOMBIA BID-CERFE-CCONG. Bogotá.

Programa Presidencial Anticorrupción. www.anticorrupcion.gov.co

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | **NO**

Comments:

There is no specific legislation about the sources of funding for CSOs, and thus they are free to get funding from any source. However, art. 355 of the constitution prohibits donations from the public sector to private entities. CSOs can still access public funds through contracts or services. However, according to the Taxing Statute, certain CSOs (those working on health, education, culture, religion, sports, scientific research and social development) can get a reduction in taxes if they receive donations. It appears that CSOs working on good governance and anticorruption are not subject of these deductions. The Law 850 on veedurias ciudadanas” (citizen oversight committees) does not make any reference to sources of funding.

References:

DECRETO 624 DE 1989 (30 de marzo de 1989) Por el cual se expide el Estatuto Tributario de los Impuestos Administrados por la Dirección General de Impuestos Nacionales.”

Constitución Política de Colombia 1991, art. 355.

Ley 850 de 2003 “Por medio del cual se reglamentan las veedurias ciudadanas.”

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | **NO**

Comments:

There is no obligation for CSOs to make information public. Non profit organizations should report to the chambers of commerce the financial balance, the annual budget and any change to statutes, but there is no further reporting requirement. The institutions that control and oversee non profits are often understaffed and lack resources. The Law 850 states that veedurias ciudadanas” (citizen oversight committees) should “inform authorities about their sources and mechanisms of funding,” but it is not clear if such a report should be public.

In 2004, and after a series of accusations of lack of transparency and corruption in agreements of cooperation between public and private organizations and international groups, the government issued the decree 537 by which it compels all organizations receiving funding from agreements of cooperation to present a monthly relation of such contracts to the tax collection agency (DIAN).

Also in 2004, concerned about transparency, 34 NGOs with diverse objectives (many of them related with the promotion of transparency and good governance) signed a pact committing to disclose their sources of funding and promote transparency and accountability in their own interventions beyond a purely financial or economic perspective. The initiative was created to expand public information on the work of NGOs, to promote a culture of transparency, and to answer partially to attacks from the government to many human rights organizations.

References:

Ley 850 de 2003 Por medio del cual se reglamentan las veedurias ciudadanas”

DECRETO NUMERO 2150 DE 1995 (diciembre 5) “por el cual se suprimen y reforman regulaciones, procedimientos o trámites innecesarios existentes en la Administración Pública”. DIARIO OFICIAL. AÑO CXXXI. N. 42137.

DIARIO OFICIAL. AÑO CXXXIX. N. 45.472. 25, FEBRERO, 2004. PAG. 6.

DECRETO NUMERO 537 DE 2004 (febrero 24) por el cual se reglamenta el artículo 58 de la Ley 863 de 2003.

ONG por la Transparencia. <http://www.ongporlatransparencia.org.co/>

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

In general, CSOs can form with little interaction with the government. and there are not many steps to form an CSO. The only requirement to form a CSO is the registration before the Chamber of Commerce (Decree 2150/1995 at. 40) in order to get legal recognition, which is important to getting tax benefits or to contract with the State. To register, the organization must present a document detailing the name, address and identification of the founders, the object, the funding, management mechanisms, the frequency of meetings and the faculties of the comptroller, if there is one.

The relative lack of obstacles to create CSOs and the preeminence that is legally given to citizen participation is reflected in the fact that Colombia is one of the Latin American countries where the Third Sector has grown and is comparatively big. As a consequence, the instances and experiences of independent citizen oversight and social control have increased (TC 2004) as well as civil society's consciousness about the importance of the fight against corruption and the promotion of good governance.

Given the little structural specialization and differentiation of CSOs, it is difficult to trace specific difficulties for CSOs focused on good governance or anticorruption, however it is possible to identify some informal barriers for CSOs to operate more freely.

First, CSOs are more able to operate freely at the national that at the local level. There are civil society organizations which are recognized nationally and can operate safely, such as the Chapter of Transparency International, Confecamaras, and Congreso Visible. Successful oversight experiences are usually those in which big economic and media groups are involved. But there are other cases, especially those in which corruption issues are closely linked to human rights violations, as is commonly the case in Colombia, in which organizations are constantly threatened. Thus, in practice, many local NGOs are not able to denounce as they might be subject to threats from armed groups or corrupt public employees at the local level, as these concerns are more easily voiced by national organizations. Organizations promoting transparency and civic culture can operate more freely than those directly committed to denounce or investigate corruption cases.

Second, although the proliferation and number of NGOs and CSOs working on good governance and anticorruption is a positive sign of the strength of civil society, it creates problems as many of these organizations lack resources to operate in a sustained manner. CSOs have little knowledge on fund raising strategies, and thus they are limited to act.

In the case of veedurias (citizen oversight committees) as this is not a professionalized activity, it becomes a stepping stone to accessing jobs with the government or other private agencies, weakening the control exercise itself.

Third, although legally there are many ways for civil society activists to participate, in many cases there is incomplete knowledge about the range of mechanisms that can be used for this purpose.

Fourth, in practice some spaces of citizen participation might end up being co-opted by the government (TC 2004), as in the case of the case of Local Planning Council, a space in which CSOs can engage in local planning.

References:

DECRETO NUMERO 2150 DE 1995 (diciembre 5) por el cual se suprimen y reforman regulaciones, procedimientos o trámites innecesarios existentes en la Administración Pública". DIARIO OFICIAL. AÑO CXXXI. N. 42137. 6, DICIEMBRE, 1995.

Corporación Transparencia por Colombia. 2004. El Control Social a la administración pública en Colombia. Colección Cuadernos de Transparencia # 8. Bogotá.

VILLAR, Rodrigo. 2001. El Tercer Sector en Colombia. Evolución, dimensión y tendencias. Confederación Colombiana de Organizaciones no Gubernamentales, Bogotá.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

After the 1991 Constitution was issued, citizen participation became one of the pillars of the political system in Colombia. This is reflected in several laws and mechanisms created to ensure citizen participation. The specific instances in which CSOs working on anti-corruption and good governance can engage in policy making processes are the National Planning Councils and Regional Planning Councils. These instances of participation give a considerable margin for CSOs to participate in discussions about policy making, but many times their opinions are not reflected in the final decisions.

The Law 190/1995 (Anticorruption Statute) created the Citizen Commission for the Fight against corruption which later (decrees 1681/97 and 978/99) became the National Commission for Moralization composed by a Citizen Subcommission and an Institutional Subcommission. The Commission was designed as a mechanism to increase the engagement of CSOs in policy making, but it has not worked in practice. The Citizen SubCommission is composed by members proposed by CSOs and then elected by the president, so in practice, there is a barrier for open participation, especially from small CSOs.

The current Director of the Presidential Anticorruption Program considers that direct dialogue with CSOs is more effective than interaction in a committee.

Usually, big national CSOs are called to give concept on specific issues in the elaboration of laws in Congress, but in general participation faces obstacles to be effective or does not go beyond the discussion of the policy itself, so there is still considerable room for improvement.

In the case of veedurias ciudadanas (citizen oversight committees), their nature makes them more a tool to control the execution of projects than a tool for citizens to engage actively in policy making process (TC 2004).

References:

Corporación Transparencia por Colombia. 2004. El Control Social a la Administración pública en Colombia. Cuadernos de Transparencia # 8. Bogotá.

Constitucion Politica de Colombia 1991.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

There are no reports of CSOs being shut down by the government during the study period. Although there is an administrative power to remove the legal recognition of CSOs (if they deviate from their statutes, if they go against public order or security, or if they commit criminal activities), CSO members consider that it is only applied in extreme cases and is not used as a pressure mechanism. Usually, CSOs close by their own initiative, and in many cases, it is the result of pressures or threats coming from armed or corrupt actors, but not from the government.

References:

Interview with Marta Tamayo. Coordinator citizenship area. Corporación Transparencia por Colombia. July 16, 2007. Bogotá

Ley 600 de 2000 por la cual se expide el código de procedimiento penal.”

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

0

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

The cases reported in Centro de investigación y Educación Popular Cinep are based on denounces made by civil society organizations and gathered by the NGO CINEP. Most of the cases refer to the irregular detention of human rights defenders or civic leaders that because of their work, may touch upon corruption cases. In many cases, irregular detentions are then justified because of suspicions that detainees belong to armed groups, especially guerrillas. Although the burden of proof is low to know whether accusations are true or not, the important thing to note is that due process to detain is not followed in many cases. Some of the most relevant reported cases are:

On Aug. 3, 2006 in the municipality of Aguazul (east), the Army detained Alejandro Moreno, president of Communal Action Junta.

On Aug. 6, 2006 the army detained in Bogota Victor Oime, the former local mayor and former member of the extinct leftist party Union Patriótica, along with his son. His wife was also detained in Caqueta. Oime is a human rights defender and community leader.

On Aug. 12, 2006 the army detained several civic leaders in the municipality of Fortul (east).

On Sept. 19, 2006 the police detained two indigenous journalists in the municipality of Caldono, accusing them of rebellion. Their innocence was then proved.

On Oct. 1 2006 a group of civil leaders was detained by the army in the municipality of Arauquita.

On Oct. 5, 2006 the peasant and civic leader, Oscar Enrique Duque, was detained arbitrarily by the army.

On Oct. 18 2006 the lawyer and human rights defender, Claudia Montoya, was detained arbitrarily by the police and the sectional prosecutor on charges of rebellion. The lawyer reported several irregularities during her process.

On Oct. 27, 2006 there as a massive detention in the municipality of Saravena (east). Among the 120 initial detainees were several community and civic leaders.

References:

Centro de investigación y Educación Popular Cinep. 2007. Boletín Noche y Niebla # 34.

<http://www.nocheyniebla.org/>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

During the period, there were documented cases of threats and attacks to NGOs that work on human rights, whose work also touches upon corruption issues. It is important to note that the existence of a long lasting armed conflict in Colombia easily blurs the line between human rights defenders and anti-corruption champions.

In several occasions during the past year, the target of threats were human rights organizations that criticize a peace process with paramilitaries and denounce the links between state agents and the paramilitaries, and in many cases are accused of being guerrilla allies. The process with the paramilitaries started in December 2002, and until May 2007 in has meant the demobilization of 31,743 paramilitaries. However, it has been criticized by some organizations that consider it a way to legalize the paramilitaries and a blank check for impunity.

In July 2006, academics and journalists that had denounced corruption acts in Ocaña (a city in the north of the country) received threats through letters asking them to resign.

On Aug. 8, 2006, about 10 organizations received an e-mail with a threat, apparently from paramilitary groups.

On Jan. 23, 2007 the Permanent Assembly of Civil Society for Peace was victim of a robbery in which a database with names and photos of members of the group was stolen. The Assembly has denounced the links between paramilitaries and certain military units.

In February 2007 many social organizations, trade unions, university unions, and alternative media ** received an e-mail with a threat from the group "Aguilas Negras," which presumably is an organization of demobilized paramilitaries rearmed. These organizations belong to the National Movement of State Crimes Victims, which has also criticized the process of negotiation with paramilitary groups and has asked for deep investigations on politicians, public officers and economic groups that might be involved in human rights crimes. The threat could had been a reaction to denunciations they had made on the connections between state agents and paramilitaries.

On June 29, 2006 the Movement gave the general attorney two reports on crimes against human rights, documenting 14,476 cases between 1998 and 2003 and 41,407 cases between 1966 and 1998. The reports detailed names of the paramilitaries and police or military units implied in crimes.

In October 2006 the Movement asked for the separation of Senator Dieb Maloof from the Human Rights Commission of the Senate. Maloof appeared to be linked to a well known paramilitary leader “Jorge 40.” Jorge’s information found on a computer in October 2007 initiated what has been known as the “parapolitica” scandal, that links a significant number of senators, representatives, and local authorities to paramilitary groups through campaign funding and electoral alliances.

**Some of the organizations reported are: Movimiento Nacional de Víctimas de Crímenes de Estado Colectivo de Abogados, José Alvear Restrepo, Coordinación Colombia Europa Estados Unidos Comisión Colombiana de Juristas Colectivo de Abogados, Luis Carlos Pérez, Fundación Manuel Cepeda Vargas Fundación Comité de Solidaridad con los Presos Políticos Comité Permanente por los Derechos Humanos Asociación Nacional de Ayuda Solidaria, ANDAS – Asociación para la Promoción Social Alternativa, MINGA Sindicato de Trabajadores y Empleados Universitarios de Colombia, Sintraunicol, Asociación de Profesores Universitarios- ASPU, Federación Nacional Sindical Unitaria Agropecuaria, Fensuagro, Organización Nacional Indígena de Colombia -ONIC, Asociación Comunidad Motilón Barí de Colombia Comunidad Indígena Kankuama desplazada en Bogotá Instituto de Servicios Legales Alternativos – ILSA, Corporación para la Defensa y Promoción de los Derechos Humanos, Reiniciar, Corporación Yira Castro Justicia y Vida Asamblea Permanente de la Sociedad Civil por la Paz Frente Social y Político Periódico VOZ Prensa Rural Consultoría para los Derechos Humanos y el Desplazamiento -CODHES.

References:

Corporación Colectivo de Abogados Jose Alvear Restrepo. Las victimas quieren que se investigue a los responsables. June 29 2006.

Corporación Colectivo de Abogados Jose Alvear Restrepo. Miércoles, 7 febrero 2007 SE INCREMENTAN AMENAZAS QUE COINCIDEN CON SEÑALAMIENTOS DEL PRESIDENTE ÁLVARO URIBE VÉLEZ CONTRA ORGANIZACIONES SOCIALES, POLÍTICAS, DEFENSORAS DE DERECHOS HUMANOS, ENTRE OTRAS
<http://www.colectivodeabogados.org>

Centro de investigación y Educación Popular Cinep. 2007. Boletín Noche y Niebla # 34. <http://www.nocheyniebla.org/>

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist’s work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | **NO**

Comments:

On Sept. 22, 2006 Juan Danilo Guerra Camargo was assassinated by the FARC in Santander (north of the country). Guerra was a peasant leader known for his defence of human rights and his attacks to corrupt institutions and functionaries.

On Jan. 28, 2007 Freddy Espitia, the president of the Displaced Committee in Cotorra, was assassinated.

On Jan. 3, 2007, Yolanda Izquierdo, a leader of a group of victims of Paramilitaries was assassinated. These leaders had denounced human rights violations which, given the persistence of the armed conflict in Colombia, are in certain cases closely linked with abuses of power.

On July 13, 2007 Dairo Torres, community and humanitarian leader of the Peace Community in Apartado (north of the country), was killed by paramilitaries. Another leader of the same community was assassinated on May 14. The community has promoted civil resistance and respect to civil society by armed actors.

References:

PARAMILITARES ASESINAN A DAIRO TORRES LÍDER DE LA COMUNIDAD DE PAZ DE SAN JOSE DE APARTADÓ. Julio 14 de 2007, Comunidad de Paz de San José de Apartadó

Llamado Urgente COL 002 / 0207 / OBS 013 Asesinatos / Hostigamiento COLOMBIA
2 de febrero de 2007

Centro de investigación y Educación Popular Cinep. 2007. Boletín Noche y Niebla # 34. <http://www.nocheyniebla.org/>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

According to the Constitution (art.55), the state guarantees the right of collective negotiation in labor relations and the right to protest (art. 56).

References:

Constitucion Politica de Colombia art. 55 and 56

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

In general, the organization of trade unions in Colombia is marked by the existence of an armed conflict and by relatively low levels of unionization. In recent years, violent attacks and murders of trade unionists have diminished and the government has

taken measures to protect trade unionists, including the creation in 2006 of the special unit to investigate crimes against trade unionists in the General Prosecutor's Office (Fiscalía General de la Nación) and to reduce the impunity that has surrounded the investigation of attacks since 1994.

However, despite these improvements, murders are still high, and threats and arbitrary detentions are on the increase, thus the security situation for trade unionists is still worrying. Between January 2003 and December 2005, 90 trade union members were murdered. While this figure was 185 murders in average per year between January 2000 and December 2002, it is a 48 percent reduction. On the contrary, arbitrary detentions grew from 18 in average per year between January 2000 and December 2002, to 60 between January 2003 and December 2005.

Colombia is one of the countries in which the levels of unionization are still low, and according to Amnesty International in a report widely criticized by the government, Colombia is considered one of the most dangerous places for trade unionists (Amnesty International, July 2007). Around 831,000 workers in Colombia are affiliated to a trade union (Colombia's National Trade Union School) and it is one of the lowest rates of affiliation to trade unions in Latin America.

There are divergences on the number of trade unionists murdered in 2007, but in any case the numbers are still worrying. The government reports 13 murders, three of trade unions and ten of unionized teachers, while Amnesty International reports 16 murders between January and May 2007. The total of murders for the period of this study (June 2006 through June 2007) is 27 murders, according to the government.

References:

Amnesty International. 2007. Colombia Killings, arbitrary detentions, and death threats — the reality of trade unionism in Colombia. " AI Index: AMR 23/001/2007

Programa Presidencial de Derechos Humanos <http://www.derechoshumanos.gov.co>

Comisión Colombiana de Juristas. 2007. Colombia 2002-2006: Situación de Derechos Humanos y Derecho Humanitario. Bogotá.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The Constitution states that the right to inform and receive truthful information and to fund mass media is a basic right. It also guarantees the right of rectification and prohibits censorship (art. 20). It also guarantees protection to the liberty and independence of journalists (art. 73).

References:

Constitución Política de Colombia 1991. art. 20 and 73.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

According to the Constitution, freedom of expression (art. 20 and 74) is guaranteed to every person. The Constitution also guarantees the right to inform and to get impartial and truthful information.

References:

Constitución Política de Colombia 1991. art. 20 and 74.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

Comments:

According to the Constitution, the state guarantees the creation of media entities (art. 73) and there is no regulation or legal barriers for the creation of print media, however there are unofficial barriers determined by the existence of monopolies on media ownership and by the alignment of print media owners with the government or other groups, which limits the freedom of journalists to report. Thus, it is more difficult for independent print media to survive.

References:

Interview with Astrid Cañas, Coordinator of Social Sectors Planeta Paz, June 18, 2007. Bogotá.

La iniciativa de la comunicación. Colombia: tendencias en la comunicación y contexto. <http://www.comminit.com/la/tendencias/lact/lasld-39.html>.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

No print media license is necessary.

References:

Constitución Política de Colombia 1991. Art. 20 and 73.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no requirements to obtain print media licenses.

References:

La iniciativa de comunicación. Colombia: tendencias en la comunicación y contexto. <http://survey.wordpress-158395-729720.cloudwaysapps.com/scientist/surveyQuestions.cfm?questionID=16&subCategoryID=7>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no requirements to obtain print media licenses.

References:

La iniciativa de comunicación. Colombia: tendencias en la comunicación y contexto. <http://survey.wordpress-158395-729720.cloudwaysapps.com/scientist/surveyQuestions.cfm?questionID=16&subCategoryID=7>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the government does not create barriers to create broadcast media entities, however adjudication of licenses, especially for television, can be unfair and not transparent.

According to the Constitution, the state guarantees the creation of media entities (art. 73) and fair access to the electromagnetic spectrum (art.75). There is an independent body that oversees the policy and controls the adjudication of concessions to operate TV stations (National Commission on television).

The government, through the Ministry of Communications, regulates policy and distribution of concessions for private radio and licenses for community radio and public interest radio (Law 82 1995, Law 79 of 1989). In both cases (radio and TV) adjudication is regulated according to the law 80 of 1993 (Procurement Law).

Although broadcast entities can be created, there are informal obstacles. Distribution is not totally fair as big media owners concentrate power, whereas community or independent options face more obstacles. In radio, two main stations dominate around 90 percent of the market nationwide, although there are several local radio stations (1,292 operating in 603 municipalities according to the Ministry of Communications). Those two main radio stations belong to the two biggest economic groups in the country (Santodomingo and Ardila Lulle), which in turn, own the two national private TV stations that represent around 80 percent of the audience (TC 2002). As a consequence, there is unequal distribution of publicity, which usually penalizes independent and local media and deepens its economic problems. In sum, the concentration of media property becomes a big obstacle for the creation of independent or local media.

Only in 2007, 76 community radio stations have been closed. In February 2007 there was an important legal advance to protect the creation of community radio stations, a ruling from the Constitutional Court answering to a right of petition from social organizations compelled the Ministry of Communications to open biddings for the distribution of frequencies of community radio stations in capital cities. Such petition had been made for more than 10 years, and the Ministry had denied that there was an over-offering of radio stations in capital cities.

The adjudication of concessions in television is criticized because of its lack of transparency, especially in the case of private television, although the process of adjudication is done through open bidding. It is considered that the National Commission on Television is highly politicized, and there have been debates about political influences, unfair distribution of licenses, irregular election of its members, and irregular use of its funds. In sum, the Commission is highly de-legitimized in the public.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá. Planeta paz. www.planetapaz.org

Ministerio de Comunicaciones. www.mincomunicaciones.gov.co

La Comisión Nacional de Televisión 1995-2006. <http://www.c3fes.net/docs/CNTV.swf>
DIARIO OFICIAL. AÑO CXXX . N. 41681. 20, ENERO, 1995. PAG.1 LEY 182 DE 1995 (enero 20) por la cual se reglamenta el servicio de la televisión y se formulan políticas para su desarrollo, se democratiza el acceso a éste, se conforman la Comisión Nacional de Televisión, se promueven la industria y actividades de televisión , se establecen normas para contratación de los servicios, se reestructuran entidades del sector y se dictan otras disposiciones en materia de telecomunicaciones.”

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

Although there is no specific appeal mechanism for the licensing process, the Constitution contemplates three mechanisms to defend basic human rights, which are often used to appeal public decisions.

Those mechanisms are the "Accion de tutela" (resource to protect basic rights or tutelage) (art. 86) to protect individual rights when they have been wounded by action or omission of public authorities. These mechanisms have to be answered in 10 business days.

The "Accion de cumplimiento" (art 87) usually used as an appeal mechanism for "tutelas" and "Acciones populares" (art. 88) focused on the protection of collective rights.

Additionally, there are mechanisms to appeal any administrative decision, which are reposition and appeal, if these mechanisms are exhausted there are judicial resources such nullity and reparation (jurisdiccion contenciosa administrativa).

References:

Constitucion Politica de Colombia 1991 art, 86, 87,88.

Ley 393 de 1997 (acciones de cumplimiento) (julio 29) Diario Oficial No. 43.096, de 30 de julio de 1997 Por la cual se desarrolla el articulo 87 de la Constitución Política.

LEY 472 DE 1998 (agosto 5) Diario Oficial No. 43.357, de 6 de agosto de 1998 Por la cual se desarrolla el artículo 88 de la Constitución Política de Colombia en relación con el ejercicio de las acciones populares y de grupo y se dictan otras disposiciones."

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The support to community radio and TV stations has made easier for citizens to access media licenses. However, it is important to note that the coverage and objective audience of community media cannot be compared to mass media, where costs are prohibitive.

Social organizations report considerable delays in the adjudication of licenses for community radio stations which hinder the development of the sector. Currently, there are 469 radio stations operating legally and 200 operating without license. The operation of these radio stations without license can be the result of different problems, among them the delays and difficulties in obtaining a license.

In what refers to communitarian television stations, it is estimated that the majority of them operate illegally without a license, in part because the process is slow.

References:

Iniciativa de la comunicación. Colombia: tendencias en la comunicación y contexto. <http://www.comminit.com/la/tendencias/lact/lasld-39.html>

Monitor Políticas TIC y Derechos en Internet en América Latina y el Caribe. 2005. Informe anual sobre las radios comunitarias en Colombia 2004-2005. http://lac.derechos.apc.org/es.shtml?apc=21872s4952176e_1

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

There are three types of television in Colombia: private, public and community. The costs to obtain a private television license are calculated by the National Television Commission according to market standards, and they are very high. For example, the costs of the license for the two main private national television stations in Colombia was about US\$90 million, and operators consider that this cost was too high, even though they have the access to publicity and they cover about 80 percent of the total audience. Thus, the costs for private concessions are prohibitive as they have to be sustained with publicity, which given the concentration of media ownership, is difficult to access.

In what refers to radio licenses, the costs and regulations are relatively easy to access, thus radio has very big audiences. In Colombia there 1,292 radio stations that operate in 603 municipalities. However, there are 500 municipalities with no radio stations, as these are the less populated and poorer municipalities. In what refers to community radio stations, there are currently 469 operating legally and 200 operating without license. The operation of these radio stations without license can be the result of different problems, among them the difficulties in obtaining a license.

References:

Interview with Paulo Laserna, Director Caracol Televisión. By Nathalie Jaspar. In TV Latina March 29 2003. <http://www.tvlatina.tv/interviews/current.php?filename=laserna0104.htm>

Tellez Garzon, Maria Patricia. 2003. La Televisión Comunitaria en Colombia. O de cómo la perseverancia trae ventura... Ponencia escrita para la Cuarta Conferencia Internacional de Comunicación Social: Perspectivas de la Comunicación para el Cambio Social y el Tercer Encuentro Our Media/Nuestros Medios. Universidad del Norte. Barranquilla, 19-21 de mayo de 2003.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

In general, there are no restrictions for users to access contents online and the constitutional principles of freedom of speech and freedom of the media guarantee citizens the access to information. The regulation of internet is in the hands of the Ministry of Communications, which will soon become the Ministry of Telecommunications and information technologies. The law 679 of 2001 (to prevent pornography, exploitation, sexual tourism with child) forbids users of global networks of publishing images, texts, documents, or videos related to sexual activities with child. The law also states that the government, through the Ministry of Communications, should encourage practices of self regulation.

References:

Tunjo, Efrain and Casasbuenas, Julian. 2001. PROYECTO MONITOR POLITICAS DE INTERNET EN AMERICA LATINA Y EL CARIBE PAIS: COLOMBIA INFORME INICIAL SOBRE POLITICAS EN INTERNET Para ser Presentado en el taller Garantizando la Participación Ciudadana en la Era Digital: Políticas Públicas y Derechos en Internet en América Latina y el Caribe <http://www.ijilac.org/apc/colombia.2.htm>

LEY 679 DE 2001 Por medio de la cual se expide un estatuto para prevenir y contrarrestar la explotación, la pornografía y el turismo sexual con menores, en desarrollo del artículo 44 de la Constitución.

Freedom House. 2007. Freedom of the Press Report 2007. www.freedomhouse.org

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically

sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

There are no major constraints on publishing information online. The law 679 of 2001 (to prevent pornography, exploitation, sexual tourism with child) forbids providers or servers, managers, and users of global networks of publishing images, texts, documents, or videos related to sexual activities with child. The Decree 1957 of 1996 created the Governmental Commission for Publishing Information and Services on the Internet, but such commission has not been created in practice.

References:

Tunjo, Efrain and Casasbuenas, Julian. 2001. PROYECTO MONITOR POLITICAS DE INTERNET EN AMERICA LATINA Y EL CARIBE PAIS: COLOMBIA INFORME INICIAL SOBRE POLITICAS EN INTERNET Para ser Presentado en el taller Garantizando la Participación Ciudadana en la Era Digital: Políticas Públicas y Derechos en Internet en América Latina y el Caribe

Freedom House. 2007. Freedom of the Press Report 2007. www.freedomhouse.org

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

According to the Law 190 of 1995 known as the anti-corruption law, it is stated that investigations conducted by journalists on public authorities are a manifestation of the social role of media and of freedom of expression and information. As such, they should be protected and supported by all public functionaries. The Constitution guarantees the right to express and diffuse information and to report truthful and impartial information without censorship. In case information is not accurate, there are penal, civil, and administrative responsibilities, and slander is prohibited.

References:

LEY 190 DE 1995. (junio 6). por la cual se dictan normas tendientes a preservar la moralidad en la Administración Pública y se fijan disposiciones con el objeto de erradicar la corrupción administrativa.

Constitución Política de Colombia 1991. art. 20

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Self censorship is common and the current government has accused in some occasions of lack of patriotism opposing journalists or those who report on corruption, violence and human rights. Even though the government does not impose censorship, journalists have to self-censor when they are threatened by armed groups or local politicians, and it works to limit published stories.

According to the most recent report of Freedom House in 2007, Colombia's status improved from Not Free to Partly Free due to the increased willingness of journalists to report critically on political issues including high-level corruption scandals, as well as a gradually improving security situation."

However, the increasing role of national media in covering high level corruption is not coupled with similar coverage at the local level. Many times, even if local journalists want to unveil corruption scandals, they are not able to do so because they face in a direct way pressures and threats. In practice, the majority of corruption scandals have appeared after media reports and journalistic investigation are published (TC 2002), but free coverage of corruption-related stories is heavily limited by the influence and threats of armed groups, drug traffickers and local mafias, which lead journalists to self censorship.

The concentration of media ownership favors biased coverage towards the government as private mass media are owned by big economic groups, which in turn, are pro-government. Usually, governmental sources prevail when reporting. However, some printed mass media have played an important role in unveiling the details of the most recent and big corruption scandals that link politicians at all levels with paramilitary forces. The weekly magazine Semana won the prize for Best Investigative Journalism Report on Corruption 2006 for these reports.

An example of governmental restrictions for journalists to report freely occurred in January 2007, in Barranquilla, a northern city. After the newspaper El Heraldo and the civil organization Pro Transparencia (for transparency) published a report on supposed links between an enterprise contracting with the local government and paramilitary groups, the enterprise presented an "accion de tutela" (resource for the protection of basic rights) considering violated its right to honor and good name. While the case was solved, the judge ordered the newspaper not to publish information on the case. A big controversy appeared, and the court finally denied the "tutela."

The Fundacion para la Libertad de Prensa reported an obstruction to journalistic work when on Oct. 18 2006, in the Departments of Cordoba and Sucre at the north of the country, the broadcast of a congressional session on the links between paramilitaries and politicians was suddenly interrupted. Two weeks before, close to 80 percent of the newspaper “El Meridiano” covering the same issue was picked up by unknown people.

References:

Transparencia por Colombia. 2002. El Sistema Nacional de Integridad en Colombia: Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogota.

Transparency International. Transparency Watch July 2007. http://www.transparency.org/publications/newsletter/2007/july_2007/anti_corruption_work/journalism_prize

Freedom House. 2007. Freedom of the Press Report. www.freedomhouse.org

INFORME SOBRE LA LIBERTAD DE PRENSA EN COLOMBIA. Sociedad Interamericana de Prensa. 2007. <http://www.scribd.com/doc/47559/Colombia-Informe-SIP-2006>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

There is an expressed constitutional prohibition of censorship, however, there are many de facto filters on publications, such as threats coming from armed groups, the fear that impunity will prevent effective investigation of corruption cases, or the fear that there will be a rejection from the government when information does not favor it. The attacks on journalists usually occur once information had been published, showing that official censorship is not as strong as other obstacles for the journalists' work, such as self-censorship.

At the local level, it is common to find that politicians accuse local media of being their enemies.

A recent example of the indirect pressures that restrict media coverage appeared in May 14, 2007, when the Minister of Defense acknowledged that since two years ago the national police was illegally intercepting phone calls of government functionaries, opposition members and journalists. The acknowledgement came after *Semana*, the weekly magazine, unveiled some of the intercepted communications, but up to this date, there has not been further clarification about who ordered the interception beyond the imprisonment of some police members.

Some journalists denounce that there is censorship by police and military forces when they impede the access to areas where there have been guerrilla or paramilitary attacks or public order problems.

References:

Transparencia por Colombia. 2002. El Sistema Nacional de Integridad en Colombia: Análisis y resultados del estudio de caso. Cuadrenos de Transparencia # 4. Bogota.

Freedom House. 2007. Report Freedom of the Press 2007" . www.freedomhouse.org

INFORME SOBRE LA LIBERTAD DE PRENSA EN COLOMBIA. Sociedad Interamericana de Prensa. 2007. <http://www.scribd.com/doc/47559/Colombia-Informe-SIP-2006>

Medios para la paz. 2006. Diagnóstico sobre la libertad de prensa en Colombia julio-septiembre de 2006. <http://www.mediosparalapaz.org/index.php?idcategoria=2646>

Ayala Osorio, German. 2006. El periodismo en Colombia: una historia de compromisos con poderes tradicionales. En: Universita Volumen 1, Numero 3, julio 2006

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to disclose their ownership.

YES | **NO**

Comments:

There is no specific requirement for print media to disclose their ownership, and as there is no licensing requirement as that existent for broadcast media, there is no mechanism to publicize print media ownership.

References:

Constitución Política de Colombia 1991.

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

Although there are no specific regulations requiring broadcast media to disclose their ownership, the selection process for acquiring licenses requires them to disclose ownership. According the Procurement Law, radio and TV licenses are selected through a transparent and public process. The law also states that all procurement processes are public, and if there is a request, there can be a public audience for adjudication (art. 273 Constitution). If not, the decisions should be communicated to all bidders, published in two printed media with wide circulation and communicated to the Chambers of Commerce. Thus, when communicating the decisions on the adjudication of licenses, the ownership of broadcast media becomes public.

References:

Ley 80 de 1993 (octubre 28). Por la cual se expide el Estatuto General de Contratación de la Administración Pública. Art. 35

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

On different occasions, journalists from different media have signed agreements about codes of conduct, however in practice, there are many obstacles to abide to those codes. According to Freedom House, there is a widespread perception that journalists accept bribes in exchange for biased coverage. As local journalists discussed in a forum about media coverage before the 2006 Congressional elections, bribes are accepted in many cases to avoid physical harm, to avoid economic losses (in terms of publicity) or to directly get an economic gain. In other cases, media owners or directors prevent the journalists from covering the news in a proper way.

References:

Freedom House. 2007. Freedom of the Press 2007"

www.freedomhouse.org

www.flip.org.co

Crítico panorama para el trabajo informativo durante las elecciones en 2006. Primera sesión del Seminario Los medios de información en Colombia y el proceso electoral 2006.

Responsabilidades y retos para la protección de la información y los periodistas. Diciembre 9 de 2005.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The most recent election was the presidential election held in May 2006, in which for the first time in Colombia, re-election was permitted. The electoral legislation (Law 130 of 1994) guarantees TV space to all political parties. After re-election was approved, the congress issued another law known as the Electoral Guarantees Law (Law 996 of 2005), which stated that the private operators and concessionaries of private radio and TV must guarantee pluralism, fair coverage, and truthful information about presidential campaigns. This law was criticized that it was not clear what fair coverage meant, and some considered it unfair to give the same coverage to all candidates, despite their electoral power and popularity.

During the May 2006 presidential election, the then president and candidate for re-election Alvaro Uribe had an advantage over his adversaries. The broadcast of Comunal Councils (a space in which he along with his cabinet meets with community representatives to discuss and suggest solutions to local problems) on the institutional channel, as well as his condition as president, favored him in media coverage.

The Media Observatory of the Sabana University analyzed the coverage for candidates during the campaign in two TV news programs on the two main private TV stations as well as the main national newspaper and one regional newspaper. The analysis concluded that the media ignored background information on the candidates in 78.8 percent of news about them. Additionally, they didn't give information on pros or cons of campaign proposals in 72.6 percent and 87.2 percent of times respectively. The IPC, a think tank in Medellin, counted the times that each candidate appeared in three different newspaper finding that candidate-president Uribe got the majority of the reports.

References:

Votebien. Com. http://www.terra.com.co/elecciones_2006/reportaje/28-05-2006/nota286091.html Muy mal librados."

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

According to Law 130/1994 all candidates have free access to state-owned media during the 30 days previous to the election. For the most recent election held in 2006, it was noted that the double condition of Alvaro Uribe as president and candidate for re-election gave him an advantage over his adversaries while using institutional propaganda to his advantage. It is important to note, however, that for this election, the congress issued a new law known as Law of Electoral Guarantees” in which “Equal coverage” in presidential campaigns was guaranteed. This norm went beyond regulating institutional spaces that the government provides to candidates and referred to fair coverage in general.

In practice, although all parties do have access to media, coverage is unequal. At the regional level, sometimes majors and governors can exert stronger pressures than at the national level through institutional propaganda. The opinions of opposition and independent candidates do appear in public media, sometimes even more than in private media, given that there are more opinion and analysis spaces in public media, although the ratings are lower for public TV stations.

References:

Votebien. Com. http://www.terra.com.co/elecciones_2006/reportaje/28-05-2006/nota286091.html Muy mal librados.”

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del Estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There has been a slight improvement in terms of security for journalists as there have been less attacks on journalists in Colombia (Colombia is no longer the first place in the number of journalists murdered in Latin America). However, in 2006 Colombia was the second country with the highest number of attacks to journalists.

On Nov. 19, 2006 the journalist Freddy Muñoz from the TV station TELESUR was detained. Rubiel Lis Velasco and Griseldino Yafue Guetoto from the indigenous radio station Uxwal were detained by the police in the municipality of Caldon, Cauca department. They were accused for collaboration with guerrilla groups and rebellion and were finally released after nine days.

References:

Freedom House. 2007. Freedom of the Press Report 2007. www.freedomhouse.org

INFORME SOBRE LA LIBERTAD DE PRENSA EN COLOMBIA. Sociedad Interamericana de Prensa. 2007. <http://www.scribd.com/doc/47559/Colombia-Informe-SIP-2006>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

On Aug. 16 2006 Jorge Enrique Rojas and the photographer Mauricio Pinzón from the regional newspaper El Pais were kidnapped by the FARC and released two days later.

Germán Hernández Vera, judicial journalist and director of the regional newspaper Diario del Huila published an article on Feb. 15, 2007 about deviation of public resources in the public hospital of the city of Neiva. On Feb. 27 the journalist received a phone threat.

In March 2007, Dario Arizmendi, director of Caracol Radio, one of two most important private radio stations, went into exile after he received threats from an unknown group. Another nine journalists have gone into exile in similar conditions.

It is the case of Herbín Hoyos, presenter of a program called "Voices of Kidnapped" threatened by a mysterious group called Frente de Acción y Justicia por la Libertad y la Democracia that also threatened Hollman Morris and presented him as a FARC (the biggest guerrilla group in the country) collaborator.

Between May 14 and June 6, Afranio Franco, an independent journalist, received death threats attributed to the FARC.

On May 20, Rodrigo Callejas from a local radio station in the town of Fresno also received death treats from the FARC.

On May 10 in Tulua (southwest) some members of the military forces expelled, using shots to the air, a group of 12 journalists that had arrived to cover the death of a group of militaries in a FARC attack. Two days later, a group of police hit four journalists in Barranquilla (north) and one of them from a local radio station in the town of Marialabaja resulted injured.

References:

Reporteros sin Fronteras http://www.rsf.org/article.php3?id_article=22570.

Diagnóstico de la libertad de presa en Colombia. Julio – septiembre de 2006. Medios para la paz. <http://www.mediosparalapaz.org/index.php?idcategoria=2646>

Protection online. www.protectiononline.org

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

On Aug. 10, 2006 Milton Fabián Sánchez, who conducted community programs in a local radio station in the town of Yumbo (north), was shot dead. It is suspected that the murder was related with his denounces on networks for local distribution of drugs.

On Aug. 22 Atilano Perez, director of a program in a local radio station in Marialabaja (north), was shot dead. He had reported on a probable infiltration of paramilitaries in state agencies.

Gustavo Rojas Gabalo from a local radio station in Montería, Córdoba, died on March 20 after an attempted murder on Feb. 4.

References:

Reporteros sin Fronteras http://www.rsf.org/article.php3?id_article=22570.

Diagnóstico de la libertad de prensa en Colombia. Julio – septiembre de 2006. Medios para la paz. <http://www.mediosparalapaz.org/index.php?idcategoria=2646>

Protection online. www.protectiononline.org

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

69
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES

NO

Comments:

According to the Constitution, everyone has the right to access public documents except in cases established by Law (art. 74), and several legal documents develop this right.

In the Law 190 of 1995, known as the Anti-corruption Law, it is stated that journalists have guaranteed access to documents and administrative acts that explain the behavior of public authorities without any restriction, except those manifested in laws. It is also stated that authorities should inform journalists about penal accusations to public authorities, even if they are still ongoing and under reserve. Finally, the obstruction of the access of the citizenry, and especially media, to documents is causal of bad behavior for a public servant. However, it is also stated that the decision to deny documents can be motivated by legal or constitutional reserve.

References:

LEY 190 DE 1995, (junio 6), por la cual se dictan normas tendientes a preservar la moralidad en la Administración Pública y se fijan disposiciones con el objeto de erradicar la corrupción administrativa.”

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES

NO

Comments:

The appeal mechanisms for access to information requests are the same that are used to appeal any other administrative decision and to protect the basic right to information. The Constitution contemplates three mechanisms to defend basic human rights, which are often used to appeal the denial of information requests. Those mechanisms are the “accion de tutela” (resource to protect basic rights or tutelage) (art. 86) to protect individual rights when they have been wounded by action or omission of public authorities. These mechanisms have to be answered within 10 business days.

The “accion de cumplimiento” (art 87) is usually used as an appeal mechanism for “tutelas,” and “acciones populares” (art. 88) focuses on the protection of collective rights.

Additionally, there are mechanisms to appeal any administrative decision, which are reposition and appeal, and if these mechanisms are exhausted, there are judicial resources such as nullity and reparation.

References:

Constitucion Politica de Colombia 1991 art, 86, 87,88.

LEY 393 DE 1997 (julio 29) Diario Oficial No. 43.096, de 30 de julio de 1997 Por la cual se desarrolla el artículo 87 de la Constitución Política.

LEY 472 DE 1998 (agosto 5) Diario Oficial No. 43.357, de 6 de agosto de 1998 Por la cual se desarrolla el artículo 88 de la Constitución Política de Colombia en relación con el ejercicio de las acciones populares y de grupo y se dictan otras disposiciones.”

DECRETO 1 DE 1984 (enero 2) Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo, art. 50 http://www.dafp.gov.co/leyes/C_CONADM.HTM

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The mechanism to make effective the right to access public information is the right of petition (art. 23) that enables any citizen to make information requests to public authorities and to get a prompt response (within 15 days).

References:

Constitucion Politica de Colombia (art. 20, 23).

Ley 57 de 1985 Por la cual se ordena la publicidad de los documentos y actas oficiales." http://www.unal.edu.co/secretaria/normas/ex/L0057_85.pdf

DECRETO 1 DE 1984 (enero 2) Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo, Capitulo IV. http://www.dafp.gov.co/leyes/C_CONADM.HTM

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

60

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, there have been important advances in terms of access to information through the use of information technologies and the programs designed by the government to let entities publish their information online. In the area of government, 100 percent of institutions at the national level have implemented systems of information via the Internet, and according to the 2005 UN Global e-readiness report, Colombia is among the top 10 countries in implementing online participatory services. However, despite these advances in accessing general information, there are still many problems at the local level and in accessing sensitive information. At the municipal level, only 40 percent of municipal institutions have published information online.

In practice, public authorities may hide or delay sensitive information even though there are formal mechanisms to expedite process, such as the right of petition, which has to be answered in 10 business days for information requests. Public authorities

may not answer rights of petition within the time period, and although citizens may refer to the accion de tutela” to demand the answers, this process creates a time burden on the citizen.

The right to access information is guaranteed in the Constitution in all public documents except those considered sensible or reserved, and sometimes public authorities argue reserve in many documents. For citizens, it is not clear when information is not reserved or what the scope is of the right of petition.

Another problem is that even when documents are released, information is not available, because records are not properly organized or information is not completely credible. As an example, statistics on the armed conflict (information commonly used by journalists) varies enormously between governmental and non-governmental sources.

Another restriction while accessing information is the restriction on judicial files that are still open, over which there is no final decision. Although the restriction is normal, given the rates of impunity, it may take years to access information on certain judicial processes.

According to the 2005 statistics of the Defensoria del Pueblo (Ombudsman), the right of petition is the third right most threatened by the state and from which they receive more complaints asking for protection of the right (703 in 2005). In the same vein, the right of petition is among the three basic rights most commonly protected through “tutelas” (tutelage action).

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

Corporación Transparencia por Colombia. 2004. Informe del Comité de Expertos de la organización de estados Americanos: Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corruption. Cuadernos de Transparencia # 6. Bogotá.

Ruiz, Marta. Colombia: acceso sin transparencia. <http://www.revistaprobidad.info/23/007.html>

XIII Informe del Defensor del Pueblo al Congreso de la República 2005.

Corporación excelencia en la justicia. 2006. Investigación, el impacto de la accion de tutela en la corte suprema de justicia 2003.

2006 Investigadores Gloria María Borrero, Ana Lucía Gutiérrez, Jorge Bautista, Luz María Orozco, Andrea Castellanos, María Mercedes Hoyos, Andrés Ucrós, Luis Alberto Castel.

UN Department of Social and Economic Affairs. 2005. Global E Government Readiness Report.

Interview with Juan Fernando Zarama. Program for Public Administration Reform PRAP. June 2005. Bogotá.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

Comments:

The cost of access to information may vary between institutions at the national and local level. At the national level, a good amount of information can be found online, whereas this is not the case at the local level. In the area of e-government, 100 percent of institutions at the national level have implemented systems of information via the Internet, while only 40 percent at the municipal level have done it.

A recent survey on citizen perceptions about democracy in Colombia shows that the perception on accountability is better at the national than at the local and departmental levels (42 percent, 38 percent and 34.9 percent, respectively) and the perception of transparency is also better at the national than at the municipal level (35.8 percent and 29 percent, respectively).

The mechanism used for information requests (right of petition) can be easily used by citizens without any cost, however obtaining information in practice may create costs especially for information on local governments or politically sensitive information.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

Interview with Juan Fernando Zarama. Coordinator Transversal Reforms on e government, systems of information and rationalization of administrative procedures, Program for Public Administration Reform. June 8 2005. Bogotá.

United Nations Department of Social Economic Affairs. Global E Government Readiness Report.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

Comments:

Citizens can appeal decisions on access to information requests through the accion de tutela” (tutelage action to protect basic rights). This appeal mechanism has to be answered within ten business days. The appeal and nullity mechanisms for administrative acts have to be answered immediately or within 30 days maximum if there has to be an investigation process.

Although all these mechanisms have improved the protection of basic rights, in many cases when citizens request information, they are not fully aware of the mechanisms they can appeal to protect the right to access information. Also in many cases, although mechanisms are simple to use, given time or knowledge restrictions, average citizens cannot use these mechanisms.

The relatively easy access that citizens have to tutelage actions is reflected in the increasing number of “tutelas” presented by citizens, even to the point that there is a notable judicial congestion derived from them that may create future delays in answering

these appeal mechanisms.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

DECRETO 1 DE 1984, (enero 2), Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo.”

Corporación Transparencia por Colombia. 2006. TUTELA POR VULNERACIÓN DEL DERECHO DE PETICIÓN DE INFORMACIÓN: una herramienta ciudadana para defender el derecho de acceso a la información pública -Estudio analítico- Bogotá.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the 2005 statistics of the Defensoria del Pueblo (Ombudsman), the right of petition is the third right most threatened by the state and from which they receive more complaints asking for protection of the right (703 in 2005).

To protect it, citizens can refer to the accion de tutela” or tutelage action as a way to appeal negative decisions on information requests. Different studies show that the “tutela” has reduced the costs of appealing a decision as the resource can be used directly by the citizen without a lawyer. In fact, an study of the Corporación Excelencia en la Justicia shows that most of the tutelas presented to the Supreme Court of Justice have been presented by citizens without the mediation of a lawyer. The relatively easy access that citizens have to tutelage actions is reflected in the increasing number of “tutelas” presented by citizens, even to the point that there is a notable judicial congestion derived from them.

References:

XIII Informe del Defensor del Pueblo al Congreso de la República 2005.

Derechos reservados. Corporación Excelencia en la Justicia. 2006 CORPORACIÓN EXCELENCIA EN LA JUSTICIA. 2006. INVESTIGACIÓN EL IMPACTO DE LA ACCION DE TUTELA EN LA CORTE SUPREMA DE JUSTICIA 2003 2006 Investigadores, Gloria María Borrero, Ana Lucía Gutiérrez, Jorge Bautista, Luz María Orozco, Andrea Castellanos, María Mercedes Hoyos, Andrés Ucrós,Luis Alberto Castel.

Corporación Transparencia por Colombia. 2006. TUTELA POR VULNERACIÓN DEL DERECHO DE PETICIÓN DE INFORMACIÓN: una herramienta ciudadana para defender el derecho de acceso a la información pública -Estudio analítico- Bogotá.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

According to Law (administrative code), all public servants must explain to the petitioner and the Public Ministry when the decision on an information request is negative, however sometimes these explanations are too vague. The right to access information is guaranteed in the Constitution for all public documents, except those considered sensible or reserved, and sometimes public authorities may use the reserve argument to deny a request, even if the reserve on the document is not real. The problem then is that the extent of reserve is not clear or regulated.

According to a recent study of the Corporation Transparency for Colombia, the most common reason for citizens to use appeal mechanisms on rights of petition for information requests is that the entity does not give any response at all on the requests. This is the reason of 88 percent of tutelage mechanisms (appeal) presented by citizens on 2002. From those requests, 54 percent were conceded to those who demanded it, showing that at least in half of the cases, the entity before which the request was made did not provide appropriate response.

According to the same study, the areas in which citizens use appeals on information request more commonly are: social security, job related issues, administrative procedures, identification documents, and financial information services. The institutions that more commonly cause those appeal mechanisms are: The Institute of Social Security, the National Registry (Registraduría Nacional del Estado Civil), the Bogotá Mayor's Office, the National Police, the National Army and the Barranquilla Mayor's Office.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

INTERVENCIÓN DE ROSA INÉS OSPINA NOTAS SOBRE LA INFORMACIÓN PÚBLICA EN COLOMBIA Y SU ACCESO POR LA CIUDADANÍA Foro Deliberativo: La sociedad civil colombiana frente al fortalecimiento de la democracia en las Américas: construcción de una agenda propositiva.

Bogotá, 22 de noviembre del 2004 Universidad de los Andes.

Corporación Transparencia por Colombia. 2002 Respuesta al Cuestionario del Comité de Expertos del Mecanismo de Seguimiento de la Implementación de la CONVENCIÓN INTERAMERICANA CONTRA LA CORRUPCIÓN.

Corporación Transparencia por Colombia. 2006. TUTELA POR VULNERACIÓN DEL DERECHO DE PETICIÓN DE INFORMACIÓN: una herramienta ciudadana para defender el derecho de acceso a la información pública -Estudio analítico- Bogotá.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁶⁹Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

According to the Constitution (art. 40, 258), voting is a right and a responsibility, and all citizens (after 18 years old) can vote secretly for all public positions (president, mayors, governors, congress, municipal councils, departmental assemblies and local juntas).

References:

Constitución Política de Colombia 1991. art. 40 and 258.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

According to the Constitution, presidential elections are held every four years (art. 190), and a Constitutional reform in 2005 allowed re-election. Congressional elections are held every four years both for the senate and lower house and should not concur with presidential elections (art. 262). Local elections are held every four years after an electoral reform issued in 2002.

References:

Constitución Política de Colombia 1991, art. 190 and 262.

ACTO LEGISLATIVO 02 DE 2002, Diario Oficial No. 44.893, de 7 de agosto de 20 Por el cual se modifica el período de los gobernadores, diputados, alcaldes, concejales y ediles.”

ACTO LEGISLATIVO 02 DE 2004, por el cual se reforman algunos artículos de la Constitución Política de Colombia y se dictan otras disposiciones.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

According to law, voting is a fundamental right open to all citizens 18 years or older (art. 40 Constitution). However, in practice, given public security restrictions, not all citizens are able to vote, and there important restrictions to vote especially in rural areas. One of the main manifestations of the lack of liberty to vote are the extremely high abstention rates. Abstention is also a reflection of the lack of interest or credibility in the electoral process, the political class and of the fact voting is not mandatory. However, it is clear that in many municipalities, voting is not totally free.

The main restriction to free voting is the insecurity derived from the armed conflict even though, according to the Foundation Security and Democracy, the 2005-2006 electoral debate was the least affected by violence in Colombian history. There has been an improvement in terms of security for elections, but many citizens are still unable to vote because there are threats from armed groups. Guerrillas usually threat citizens in order to impede voting, using death threats before elections or terrorist attacks, burning electoral material on election day or attacking voting sites. Meanwhile, paramilitaries threaten citizens to compel them to vote for their preferred candidate or impose sole candidates to run for office in their areas of influence.

Besides the threats from armed groups, other restrictions to free voting reported by different missions of electoral observation in March 2006 include: the presence of non-identified armed actors in Bogota and Barrancabermeja, some vote buying with cash in Cali and Bucaramanga, the suggestion by electoral judges to vote for certain candidates, and the manipulation of ballots.

Another restriction of the right to vote comes from lack of proper understanding of the electoral system. For the congressional elections held in March 2006, there was a new electoral system in place and citizens, as well as electoral judges, did not properly understand the new system (proportional representation with open list). This problem was translated in difficulties voting and of counting the votes.

The Mission of Electoral Observation of the OAS reported an improvement in the general security conditions for the elections held in March and May 2006, but it was still acknowledged that in some municipalities there were threats from armed groups to impede citizens to vote freely.

For example, for the 2006 presidential elections in Buenaventura, one of the most war-torn municipalities in Colombia, there were 23 terrorist attacks in 15 days (10 of them deactivated by the police) and a threat of electoral fraud, but the voting day was calmer than years ago. However, abstention still reached 66 percent. News reports claimed an increased turnout in municipalities controlled by the FARC (the biggest guerrilla group in the country) in the 2006 congressional elections, showing the improvement in security conditions.

Despite improvements in security, there are still many restrictions on free vote. The Mission of Electoral Observation has established a risk map for the 2007 local elections, and has established that there are risks of fraud or irregular voting processes in at least 328 municipalities, from a universe of about 1,090 municipalities.

References:

Misión de Observación Electoral. ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR. www.vivalaciudadania.org

Informe preliminar de la Misión de Observación Electoral de la OEA sobre las elecciones generales realizadas en Colombia el 28 de mayo de 2006. Palabras de Santiago Murray, Jefe de la Misión de Observación Electoral. http://www.oas.org/OASpage/videosondemand/home_spa/videos_query.asp?sCodigo=06-0151#.

Revista Semana. Perdieron las FARC. Marzo 17,2006. http://www.terra.com.co/elecciones_2006/reportaje/17-03-2006/nota277856.html

Misión de Observación Electoral. 2007. Elecciones en riesgo. <http://www.moe.org.co/home/index.html>

Fundación Seguridad y Democracia. 2006. I. INFORME ESPECIAL SOBRE VIOLENCIA POLÍTICA EN LOS PROCESOS ELECTORALES DE 1997, 1998, 2002 Y 2006. <http://www.seguridadydemocracia.org/docConflicto.asp>

Romero, Marco Alberto. 2003. Elecciones, reforma política y garantías electorales. Actualidad Colombia, Informes Especiales CINEP. www.cinep.org.co/pdf/ac/Eleccionesreformapoliticaygarantiaselectorales.pdf –

Corporación Nuevo Arco Iris. 2007. Los Caminos de la alianza entre los paramilitares y los políticos.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are secret. However, in practice, sometimes voting is not totally secret, as the voting cubicles are too open and too close one to another (Corporacion Mision Observacion electoral) and are too close to the tables where the judges are. This situation enables candidates or armed groups interested in affecting the electoral process to control individual preferences.

References:

Misión de Observación Electoral. Elecciones Legislativas, 12 de Marzo 2006
Informe Preliminar.
www.vivalaciudadania.org

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are always held according to a regular schedule, every four years for congress and presidents, and after electoral reform in 2003, every four years for mayors, governors, local councilors, governmental deputies, and other local authorities. In 2006 there were 28 atypical elections (out of regular schedule), for two mayors and four governors, but those were scheduled because of extraordinary circumstances such as death or destitution of the dignitary or nullity of the election.

In fact, Colombia is recognized as having the longest tradition of regular and free elections in Latin America, a characteristic that contrasts with the existence of the longest armed conflict in the continent.

References:

Registraduría Nacional del Estado Civil. www.registraduria.gov.co

Duque Daza, Javier. 2006. Presidential Candidates and the Colombian Conflict. InfoCIP Newsletter #13 (Presidential Elections in Colombia), CIP-FUHEM, May 20, 2006. <http://www.cipresearch.fuhem.es/html/readarticle.asp?sb=3>

PNUD. 2004. La democracia en América Latina: Hacia una democracia de ciudadanas y ciudadanos.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

According to the Constitution (art. 40), all citizens can constitute and belong to political parties and political groupings without any restriction in order to exercise their right to control, practice, and form political power.

References:

Constitución Política de Colombia 1991, art. 40.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

According to the Constitution (art. 40), all citizens can vote and run for political office, and it is a fundamental right. There are no restrictions to be a candidate except those that refer to age restrictions, previous penal sentences or the inabilities and incompatibilities regime that prevents conflicts or interest.

References:

Constitución Política de Colombia 1991, art. 40.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

Comments:

Political parties can form freely, however in 2003 there was an electoral reform aimed at reducing the fragmentation and lack of organization that characterized political parties in Colombia. In order to do so, the law imposed requirements that may limit the ability of minor parties to remain in the electoral competition. For example, public funds for campaigns are only given to political parties and not to candidates, and to get the legal status, parties are required to have at least 2 percent of valid votes in congressional elections.

Although in general there was a consensus within the opinion about the necessity to organize political parties and not encourage fragmentation, there is a perception that the electoral reform did not provide significant guarantees for minority parties.

References:

Cárdenas, Mauricio, Junguito, Roberto, Pachón, Mónica. 2006. Political Institutions, and Policy Outcomes in Colombia: The Effects of the 1991 Constitution Research Network Working Paper #R-508. Inter-American Development Bank.

Romero, Marco Alberto. 2003. Elecciones, reforma política y garantías electorales. Actualidad Colombia, Informes Especiales CINEP. www.cinep.org.co/pdf/ac/Eleccionesreformapoliticaygarantiaselectorales.pdf

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

Comments:

The legal liberty to run for office is severely limited in Colombia by the armed conflict that imposes security constraints on candidates by high campaign costs and by the influence of illegal actors in the electoral processes. The direct and indirect political participation of paramilitary groups and the armed pressures of guerrillas (especially the FARC, the biggest guerrilla group) on candidates, reduced the transparency of elections and the liberty of candidates to run for office in the 2006 congressional elections. The extremely high costs of running a campaign and the difficult security conditions prevent many candidates from running for office and constitute an incentive for many politicians to ally with armed actors. Especially for local elections, many candidates are prevented from running as they receive threats from armed groups.

Overall, levels of political violence during election times, as expressed by kidnappings and murders, have diminished. But at the same time, the political influence of paramilitaries on elections has increased and has become evident, as testified by the recent scandal known as the *parapolítica*, which refers to the links between politicians and paramilitaries. Such scandal started in October 2006, when information found on the computer of a paramilitary leader started to reveal the links that congressmen, mayors, local councilors and governors had established with paramilitaries to secure their election through money and armed pressure in the 2002 and 2006 electoral debates. Among the many irregular and illegal mechanisms used by paramilitaries and politicians to win, one can include electoral fraud, manipulation of electoral districts and distribution of voters, and kidnappings, threats and murders on contending candidates.

In October 2007, there will be local elections for mayors, governors, local councils and departmental assemblies. By July 2, 2007, the electoral body reported that 1,500 candidates had retired their candidacies, many of them owed to the impossibility of covering high campaign costs and/or because candidates financed by paramilitaries have a clear advantage (El Tiempo, Julio 4 de 2007).

On June 23, 2007, a local observatory for elections in the Valle de Aburra alerted about the murder of two people and the threats to seven people that belonged to the party PDA in the municipality of Bello. There are also reports of candidates for mayors and local councilors murdered in the Departments of Meta and Caquetá (east).

On July 27, 2007, the Minister of Defense admitted that there are vulnerabilities in at least 25 percent of municipalities, derived from the armed conflict. He also gave information on a plan from the FARC (the biggest guerrilla group) to sabotage the upcoming local electoral process.

References:

Corporación Nuevo Arco Iris. 2007. Los caminos de la alianza entre paramilitares y políticos
El Tiempo. Julio 4 de 2007. Más de 1.550 candidatos a las consultas del próximo domingo se retiraron.”

Revista Semana. “No dejaré que empañen mi campaña: Uribe.” May 10, 2006.

Revista Semana. “Congresistas suscriptores del acuerdo de Ralito fueron llamados a indagatoria por concierto para delinquir agravado.” March 21, 2007.

Misión de Observación Electoral. ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR.
www.vivalaciudadania.org

El Tiempo. Agentes del CTI seguían desde el martes a 19 políticos capturados ayer por firmar el Pacto de Ralito. Mayo 15 de 2007 .

Votebien.com Elecciones 2007. Observatorio Electoral del Valle de Aburrá lanza primeras alertas. http://www3.terra.com.co/elecciones_2007/articulo/html/vbe417.htm

El Tiempo. Julio 31 de 2007. Ministerio de Defensa admite que 25% de los municipios tiene riesgo para elecciones.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In the congressional elections of 2006, the government's coalition obtained 61 seats in the senate while the opposition,

represented by the Liberal Party and the Democratic Independent Party, obtained 29 seats. Thus, the opposition does have representation, and its is very active, but it is limited in scope in terms of passing legislation.

The opposition has led important debates to oppose legislative proposals of the government, such as the reform to the Transfers Law” (the law that regulates the distribution of rents to decentralized entities) or the Free Trade Agreement initiative. In both cases, the opposition rejected the initiatives, but despite this rejection and popular discontent, the initiatives were issued.

The opposition has also been very active in political control, while calling government functionaries and ministers to debate very difficult issues, such as the links between politicians and paramilitaries. The most recent initiative of the opposition was a debate to apply the “moción de censura” (the mechanism of political control over ministers) to the Minister of Defense. The debate was called mainly because in May 2007, the minister had to acknowledge publicly, after a report published by the weekly magazine Semana, that for two years the police had been intercepting phone calls of high levels politicians, journalists, and members of the opposition.

Opposition in Colombia is stipulated as a right of political parties and political movements (Law 130 of 1994 and art.112 of the Constitution) and as such it is stipulated that the opposition have access to information, to state media according to their representation, and have a right to reply when there are public attacks on them from state authorities.

References:

Higueta, Oto. 2007. Colombia: Polo Democrático Alternativo, cómo nos fue en el 2006. <http://www.tinku.org/content/view/1597/1/>

Arciniegas, Elizabeth Arciniegas and Hernández, Andres. 2006. La nueva configuración partidista en Colombia. El sistema de partidos está en una etapa de transición y de reacomodamiento difícil de predecir. http://www.terra.com.co/elecciones_2006/reportaje/17-03-2006/nota277888.html

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition’s ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature’s proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Electoral Organization is the supreme authority for electoral processes and is composed of the National Electoral Council and the National Registry (Registraduría Nacional del Estado Civil). According to the Constitution, the National Electoral Council is the supreme authority to inspect and oversee the electoral process (art. 264 Constitution), and it elects the Registrador Nacional, who has among other functions, the civil registry and identification of persons, the electoral registry and the direction and organization of elections.

Additionally, there are other governmental institutions that have power in monitoring elections and have transitory responsibilities. Those are: the Commission for the Coordination and Follow-up of Electoral Processes (national, regional and municipal), the Special Commission for the Oversight of the Electoral Process in the senate and the lower chamber of congress, and the National Commission for the Coordination of Electoral Affairs of the General Attorney's Office.

References:

Constitución Política de Colombia 1991 (art. 264).
Consejo Nacional Electoral. www.cne.gov.co

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

According to the Constitution, the Electoral Organization is an independent branch of the government, although its election by congress makes it politically dependent from parties and congress.

References:

ACTO LEGISLATIVO 01 DE 2003. (Julio 3) Por el cual se adopta una Reforma Política Constitucional y se dictan otras disposiciones.”

Constitución Política de Colombia 1991.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | **25** | 0

Comments:

The Electoral Council is not free from political interference as its members are elected by both chambers of congress from lists proposed by political parties (art. 264 Constitution).

In 2003, there was a Constitutional reform that changed the election system for the Registrador Nacional in order to reduce political interference. The Registrador is now elected by the Presidents of the Constitutional Court, the Supreme Court of Justice and the State Council based on a merit competition. Despite these changes, there is a wide perception of political interference on the electoral agencies.

According to a recent study of the Misión de Observación Electoral (Mission of Electoral Observation, a CSO), the fragility and corruption within the Registraduría constitutes one of the biggest risks for transparency in the upcoming 2007 local elections. The report has identified cases in which personnel from the Registraduría has been involved in cases of electoral fraud during vote counting while altering the registry of votes.

Although the Registraduría Nacional del Estado Civil has an independent system of civil service, it is still falwed. According to a recent survey on institutional performance made among employees of the Registraduría, about 66 percent of employees say there are strong political considerations in appointments, and thus the agency is highly permeated by political interests.

References:

ACTO LEGISLATIVO 01 DE 2003. (Julio 3) Por el cual se adopta una Reforma Política Constitucional y se dictan otras disposiciones.”

DANE. 2006. Encuesta de Desempeño institucional, Registraduría Nacional del Estado Civil.
Misión de Observación Electoral. 2007. Elecciones en riesgo. <http://www.moe.org.co/home/index.htm>

Misión de Observación Electoral 2007. Mapa de Riesgo Electoral, Primer Mapa Anomalías e irregularidades electorales. <http://www.moe.org.co/home/index.html>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

Comments:

The National Electoral Council, the supreme electoral authority, does not have enough personnel to fulfill its duties, especially in auditing accounts on party and campaign funding. However it does have a professional, full-time staff. The Registraduría Nacional del Estado Civil does have a professional, full-time staff and an independent civil service regime. However, there is still a wide perception of politicization within the institution and a lack of professionalism of its employees. According to a recent survey on institutional performance conducted among employees of the Registraduría, about 40 percent of those surveyed consider the professional profiles of employees not adequate to fulfill the agency's mandate.

References:

Misión de Observación Electoral 2007. Elecciones en riesgo. <http://www.moe.org.co/home/index.html>
Transparency International. Crinis. 2007. Informe financiamiento en América Latina

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Registraduría Nacional del Estado Civil.

Romero, Marco Alberto. 2003. Elecciones, reforma política y garantías electorales. Actualidad Colombiana, Informes Especiales CINEP.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

Comments:

Every year the National Electoral Council has to present an activities report to the congress, but those reports, contrary to other institutions, are not easily accessible online.

According to a recent survey on institutional performance conducted among employees of the Registraduría, the decisions made by this agency are properly publicized.

According to the law, the financial accounts of political parties on political and party funding have to be published once the National Electoral Council has reviewed and certified them, in a newspaper with wide national circulation. It is not clear if this is a responsibility of the parties or of the National Electoral Council, but in the end, these reports are barely known by the citizens, and if they are published, it is not commonly noticed by the population.

References:

LEY 130 DE 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones.”

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Registraduría Nacional del Estado Civil 2005.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

According to the OAS on its most recent mission of electoral observation in Colombia, the National Commission for the Coordination and Promotion of electoral process has been very effective in giving priority treatment to complaints made on electoral matters for the March and May 2006 elections. The National Commission for the Coordination of Electoral Affairs from the Procuraduría (General Attorney's Office) has been very active and denouncing acts that go against the integrity of the electoral process. However, the institutions of the Electoral Authority (The National Electoral Council and the Registraduría Nacional del Estado Civil) seem slower to act and to take on serious offences against the integrity of the electoral process.

In what refers to violations on the norms of political party funding, the CNE has the faculty to initiate investigations if there are irregularities, however the perception is that even if they are initiated, these reports are barely concluded. Additionally, the perception is that it is difficult to impose sanctions because the priority of the audit on accounts is to review the limits of contributions and to determine the access to public funding, giving a second place to a real review of funding sources.

References:

LEY 130 DE 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones.”

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Informe preliminar de la Misión de Observación Electoral de la OEA sobre las elecciones generales realizadas en Colombia el 28 de mayo de 2006. Palabras de Santiago Murray, Jefe de la Misión de Observación Electoral. http://www.oas.org/OASpage/videosondemand/home_spa/videos_query.asp?sCodigo=06-0151#.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

75

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There is a transparent system of electoral registration that allows voters to check the accuracy of the registration, however it faces some technical problems.

The electoral register is not updated, and therefore, many deceased citizens are still counted in the register. The Mission of Electoral Observation of the European Union for the May 2006 presidential elections suggested that it was necessary to update the electoral register. It is important to note, however, that the Registraduria Nacional has already done some efforts to update the electoral register.

Second, there are still many cases of voter supplanting, for example the counting for the senate had to be done twice after a request of the Procuraduria (general attorney's office) that found 5,700 electoral locations with voter supplanting.

Third, usually voters are able to check the accuracy of their registration on the election date without having enough time to change. In some cases, voters were found to be registered in different locations. For the most recent electoral event (primaries for majors and governors in July 2007) there was a system that permitted citizens to check the registration in easily accessible locations, such as the stations of public transportation system. There have been technical improvements to prevent the "trasteo de votos" (votes moving) a practice through which candidates take voters to a specific location to make them vote for a specific candidate and to be able to check their vote.

References:

Misiones Parlamento Europeo y OEA resaltan compromiso democrático. http://www.terra.com.co/elecciones_2006/noticias/28-05-2006/nota286131.html.

Misión de Observación Electoral. 2006. ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR. www.vivalaciudadania.org

Registraduria Nacional del Estado Civil. www.registraduria.gov.co

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

According to the Administrative Contentious Code, there can be nullity actions to claim the nullity of a election, when the candidate does not have the legal or constitutional conditions to take office, when there is fraudulent counting or alteration of ballots, or when there is violence against the tellers of votes.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

DECRETO 1 DE 1984, (enero 2), Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo. Cahpter IV.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There is a Comité Nacional de Quejas y Delitos Electorales” (National Committee of Complaints and Electoral Offences) that recieves all complaints about irregular counting or about irregularities of the voting process itself. According to the OAS Mission of Electoral Observation, it has been very effective in following up on irregular election processes. For the 2006 congressional election the Procuraduría (general attorney’s office) celebrated public audiences in which candidates, electoral witnesses and candidates’ attorneys made all the complaints on electoral results. The Procuraduría issued 77 petitions asking the National Electoral Council to accept some and to deny other petitions. In the end, the National Electoral Council denied all petitions.

However, despite the existence of formal appeal mechanisms and the advances made in recent years, the perception is that given the lack of efficiency and politicization of the electoral agencies, there is no effective investigation of irregularities. Additionally, although the administrative jurisdiction has competence to decide on appeals of elections results, the administrative judges do not have proper training to decide on technical matters such as irregular vote counting, and there is little coordination between them and the electoral agencies.

References:

MOE ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR

Procuraduría General de la Nación. 2006. Historia breve y reciente del control electoral de la Procuraduría. www.procuraduria.gov.co/descargas/eventos/foroIEMP_092006_historiacontroelectoral.doc .

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

A long-lasting armed conflict in Colombia imposes severe restrictions on elections (even though the security situation for electoral events improved slightly in recent electoral events). This has led to a considerable involvement of armed forces in elections, giving them an important role in controlling the security situation and preventing armed attacks. However, the official role and the practical involvement of armed forces does not touch upon the political choice for elections. In fact, military and police members are banned from voting and participating in political competition.

On the most recent congressional and presidential elections, there was no report about the use of force by police and military members on voters to support certain candidates. In fact, the role of the military has to be that of preventing other armed or political actors from exerting pressure on citizens to support a particular candidate or party. In 2006 there were some reports about police preventing pressures on voters, such as the detention of a candidate who was recording voters in Putumayo (department at the south of the country) in the 2006 congressional elections.

Meanwhile, there were also a few cases reported by the Corporación Mision de Observacion Electoral of indirect manipulation of voters by public forces. In Ciudad Bolivar, a neighborhood in Bogota, a popular leader showed people the picture of the persons they had to vote for, there was another person writing the ID numbers of people voting, and inside the place there were civilians armed, all of this with the consent of armed forces.

However, it is important to note that, despite the non-political official role of armed forces, there is evidence about the links between some members of the military and paramilitary groups. As paramilitaries have affected elections in certain regions of the country, it is possible to think that some members of the military may have supported paramilitaries in their effort to consolidate political power.

A recent scandal known as "parapolitica" has shown the links existing between paramilitaries and politicians and how those links worked for securing the election of candidates close to paramilitary groups. The results derived from the investigations of this scandal may clearly show the role of some sectors of the military during elections in certain regions of the country, but this role is not completely clear yet. Conservative calculations made by the think tank Seguridad y Democracia considered that at least 60 officials and 120 subofficials from the military may be involved in the "parapolitica" scandal. The extent and details of those links are still to be clarified.

References:

Corporación Misión de Observación Electoral, ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR. www.vivalaciudadania.org

Votebien.com. Así se voto en uno de los municipios más violentos de Colombia. http://www.terra.com.co/elecciones_2006/reportaje/28-05-2006/nota286130.html

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Exercises of electoral observation are relatively recent in Colombia and are allowed under the general figure of "veedurías Ciudadanas" or citizen oversight committees, which can be created by any group of citizens or CSOs in order to oversee public administration and management. The Law 996 of 2005, known as Law of Electoral Guarantees, invited a process of international observers to accompany the 2006 presidential elections process. By request of the Colombian government, the OAS and other international bodies can send missions of electoral observation.

References:

LEY 996 DE 2005, (noviembre 24), por medio de la cual se reglamenta la elección de Presidente de la República, de conformidad con el artículo 152 literal f) de la Constitución Política de Colombia, y de acuerdo con lo establecido en el Acto Legislativo 02 de 2004, y se dictan otras disposiciones.

Constitucion Política de Colombia 1991, art. 240.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The Law 995 of 2005, known as Law of Electoral Guarantees, invited a process of international observers to accompany the

electoral process. By request of the Colombian government, the OAS also deployed a mission of observation. The mission deployed 35 observers from several countries and highlighted that, thanks to the support of the armed forces and the electoral bodies, their mission was completed successfully.

The European Union also deployed a mission of electoral observation with seven observers (Eurodeputies), and the CEPS Foundation deployed one observer for presidential elections and two for congressional elections. For the first time in 2006, there was an organized exercise of electoral observation of the civil society (Corporación Misión de Observación Electoral). The mission deployed 776 volunteer observers in 14 municipalities, including six capital cities, and did not report any substantial threat to their jobs. There was a report of harassment against an electoral observer from the think tank IPC and the National University who denounced that a senator was using a polling station as a campaign base.

References:

<http://www.institut-gouvernance.org/fr/analyse/fiche-analyse-241.html>

Restrepo, Juan Diego. 2006. Amenazan y roban material a Observador electoral. http://www.terra.com.co/elecciones_2006/reportaje/12-03-2006/nota277619.html

Launay, Claire. 2006. La organización de una Misión de Observación Electoral nacional e internacional en las elecciones presidenciales colombianas del 28 de mayo del 2006. Los mecanismos de observación y control ciudadano: ¿un criterio de legitimidad? <http://www.institut-gouvernance.org/fr/analyse/fiche-analyse-241.html>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

77
II-3. Political Financing

20. Are there regulations governing political financing?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law prohibits anonymous contributions and contributions from public servants, and also limits the amount of individual

donations in electoral campaigns (art. 109 Constitution).

References:

Constitucion Política de Colombia 1991. Art. 109

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones” Titulo IV http://www.secretariasenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 “POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES.”

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

According to the Constitution, the law can limit the amount of individual donations in electoral campaigns (art. 109). The specific amount of the limit is determined by the National Electoral Court six months before elections for congressional and local elections.

For presidential elections, there was a new framework issued for the 2006 presidential elections in which the specific amount of the limit for private contributions was determined. Such limit is 2 percent of the amount determined for total expenditures (US\$5,136,420). This law also determines that private contributions cannot exceed 20 percent of total expenditure in the campaign for presidential elections.

References:

Constitucion Política de Colombia 1991. Art. 109.

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones” Titulo IV http://www.secretariasenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 “POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES.”

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES

NO

Comments:

The legal framework for campaign funding (Law 130 of 1994) does not impose a limit on corporate donations as it does explicitly for individual private donations. The law establishes that corporate donations have to be approved by the majority of the board members in the respective corporation but it is not completely clear about limits for these kind of donations. However, for the Presidential Elections in May 2006 the Constitutional Court explicitly banned Presidential campaigns from receiving corporate donations.

In sum, the Law does impose some limitations on corporate donations but it is not completely clear if those limits apply to corporate donations as well. Although there was an advance in regulating corporate contributions for Presidential Elections, the ambiguities for local and legislative elections are still unsolved.

References:

Constitucion Política de Colombia. art. 240.

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones." Titulo IV. http://www.secretariassenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 "POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES."

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES

NO

Comments:

According to the Constitution, the law can limit campaign expenditures (art. 109), and according to the legal framework for campaign funding (Law 130 of 1994), the National Electoral Council has to determine the amount of such limit six months before elections. In the case of presidential elections, the government issued a law before the presidential elections in 2006 and determined specifically the limit of expenditures for Presidential elections in US\$5,136,420.

References:

Constitucion Política de Colombia. art. 240.

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones." Titulo IV. http://www.secretariassenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 "POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES."

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

According to the Constitution, parties, movements and candidates should disclose the volume, destiny, and origin of their income. (art. 109) during election times and also during their normal functioning, 30 days after every election, and 30 days after the end of every fiscal year. These reports on incomes and expenditures should be presented to the Electoral Council. Independent candidates shall present reports but not the individual members of the same party (after an electoral reform in 2003 candidates for congress run on an open list formula).

References:

Constitucion Política de Colombia. art. 109.

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones." Titulo IV. http://www.secretariassenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 "POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES."

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The Law 996 of 2005, issued to regulate the 2006 presidential elections, states that in order to control the management of income and expenditures in campaigns, parties and political movements with legal recognition should create and register before the National Electoral Council an audit system in order to be eligible to accept public and private funding. The auditor becomes responsible for the financial management if he or she does not inform the Electoral Council about irregularities. The external audit of resources is the responsibility of the National Electoral Council through the fund for party and electoral campaign funding.

There is no such requirement for all other elections.

References:

Ley 996 de 2005, 24 Nov. 2005 POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES.”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The National Electoral Council monitors political financing and reviews party's and candidate's financial reports.

References:

Constitucion Política de Colombia 1991. art. 265.

Ley 130 de 1994 (Marzo 23) Diario Oficial No. 41280, del 23 de marzo de 1994 Por la cual se dicta el Estatuto Básico de los partidos y movimientos políticos, se dictan normas sobre su financiación y la de las campañas electorales y se dictan otras disposiciones.” Título IV. http://www.secretariasenado.gov.co/leyes/L0130_94.HTM

Ley 996 de 2005, 24 Nov. 2005 “POR MEDIO DE LA CUAL SE REGLAMENTA LA ELECCIÓN DE PRESIDENTE DE LA REPÚBLICA, DE CONFORMIDAD CON EL ARTÍCULO 152 LITERAL F) DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA, Y DE ACUERDO CON LO ESTABLECIDO EN EL ACTO LEGISLATIVO 02 DE 2004, Y SE DICTAN OTRAS DISPOSICIONES.”

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

29

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There is a widespread perception that the obligation of disclosure and the limits on donations do not prevent parties to surpassing

limits on contributions and are not effective in preventing the entrance of proceeds from illegal activities into the political life. After the scandals about drug trafficking funding in the 1994 presidential elections, presidential candidates have been very careful in respecting limits on contributions. However, for all other elections, especially congressional elections, the reality is different. In fact, it is considered that parties only report around 30 percent of their actual contributions, and limits are not respected. The electoral body has limited capacity to identify violations to the regulations on political financing.

Some civil society organizations, such as the NGO Transparency for Colombia, made efforts in inviting candidates and parties to disclose their income in real time for the 2006 congressional elections (as they are receiving it). However, only two parties answered to this call, and the electoral rules changed rendering Transparency's platform unseful. The NGO Congreso Visible from the Universidad de los Andes has established a system in which candidates register campaign funding information on a voluntary basis. Although the experiment has increased awareness about the importance of transparency, it has not prevented candidates from surpassing donation limits, and only 376 congressional candidates out of 2,929 reported their programs and expenditures with Congreso Visible in 2006.

A recent scandal known as "parapolitica" (links between politicians and paramilitary groups) is an example of how limits are surpassed. Within the scandal, there have been several proven cases of politicians that accepted funding from paramilitary groups. To date, 15 congressmen have been separated from their congressional seats as a result of this scandal.

References:

Transparency International Crinis. 2007. Informe financiamiento en América Latina.

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

El Tiempo. Julio 4 de 2007. Más de 1.550 candidatos a las consultas del próximo domingo se retiraron."

Revista Semana. "No dejaré que empañen mi campaña: Uribe." April 10, 2006.

Revista Semana. "Congresistas suscriptores del acuerdo de Ralito fueron llamados a indagatoria por concierto para delinquir agravado." March 21, 2007.

Misión de Observación Electoral. ELECCIONES LEGISLATIVAS, 12 DE MARZO 2006 INFORME PRELIMINAR. www.vivalaciudadania.org

El Tiempo. Agentes del CTI seguían desde el martes a 19 políticos capturados ayer por firmar el Pacto de Ralito. Mayo 15 de 2007.

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

CAMPAÑAS Y DINERO: UN ARMA DE DOBLE FILO. PNUD. Revista Latinoamericana de Desarrollo Humano. Marzo 2006. # 3.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There is a widespread perception that the regulations on corporate donations do not prevent parties from receiving considerable funding from few economic groups. The lack of regulations on corporate donations has encouraged practices that might be harmful for democratic exercises, such as the parallel financing of the same economic group to various candidates, economic support that is directed only to the most powerful and popular candidates creating bias against independents, and the almost practical inexistence of campaigns funded with small donations.

The electoral body has limited capacity to identify violations to the regulations on political financing. It is important to note, however, that the prohibition on corporate donations for presidential elections constituted a more real limit to campaign funding in the 2006 congressional elections.

References:

Transparency International Crinis. 2007. Informe financiamiento en América Latina.

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

CAMPAÑAS Y DINERO: UN ARMA DE DOBLE FILO. PNUD. Revista Latinoamericana de Desarrollo Humano. Marzo 2006. # 3.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There is a widespread perception that the limits on expenditures do not prevent parties from surpassing campaign costs. Informally, many candidates report that campaign costs are too high compared to the expenditure limits. For example, for the 2002 elections for senate and congress, the limit was US\$156,000, and officially candidates reported total expenditures within that ceiling. However, informally, people sustained that some campaigns could have cost three or four times more.

In October 2007 there will be local elections for majors, governors, local councils and departmental assemblies. By July 2, 2007, the electoral body reported that 1,500 candidates had retired their candidacies, many of them owed to the impossibility of covering high campaign costs. The fears of irregular funding in local elections are bigger than in presidential elections as the regulations for the last presidential elections were stronger than the existent regulations for local elections.

References:

Moreno, María Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Transparency International Crinis. 2007. Informe financiamiento en América Latina
El Tiempo. Julio 4 de 2007. Más de 1.550 candidatos a las consultas del próximo domingo se retiraron.”

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

CAMPAÑAS Y DINERO: UN ARMA DE DOBLE FILO. PNUD. Revista Latinoamericana de Desarrollo Humano. Marzo 2006. # 3.

La transparencia en la financiación de la política: el mayor reto en la lucha contra la corrupción en Colombia.

Tamayo Rincón, Marta Lucía. 2007. Soluciones para ejercer un eficaz control de los dineros que financiarán las elecciones. http://www3.terra.com.co/elecciones_2007/articulo/html/vbe342.htm

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

In what refers to violations on the norms of political party funding, the CNE has the faculty to initiate investigations if there are irregularities, however even if they are initiated, these investigations are barely concluded. Additionally, the perception is that it is difficult to impose sanctions because the priority is on reviewing the limits of contributions and to determine the eligibility for public funding, giving a second place to a real review of funding sources.

The National Electoral Council lacks investigative capacities and personnel and is permeated by political interests, thus limiting its effective investigative capacity.

References:

Moreno, María Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Procuraduría General de la Nación. 2006. Historia breve y reciente del control electoral de la Procuraduría. www.procuraduria.gov.co/descargas/eventos/foroIEMP_092006_historiacontroelectoral.doc .

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

According to a recent study by Transparency International and the Carter Center, the perception among experts on political finance is that there is little credibility in the Electoral Council and its capacity to sanction violations to regulations on political party funding.

Although the responsibilities of the Electoral Council are clear and permanent, they are hindered by the partisan origin of its members. Often the sanctions imposed are small fines and the most serious violations are not detected or are ignored. Among other sanctions for violations on party funding regulations are the cancellation of public funding or of the legal status of political parties. However, there is no reported case of application of these major sanctions.

For the 2006 congressional election, the Procuraduría (general attorney's office) celebrated public audiences in which candidates, electoral witnesses and candidates' attorneys presented all the complaints on electoral results. The Supreme Audit Institution issued 77 petitions asking the National Electoral Council to accept some and to deny others. In the end, the National Electoral Council denied all petitions.

References:

Transparency International and Carter Center. 2007. Crinis. Informe financiamiento en América Latina.

Moreno, María Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

Procuraduría General de la Nación. 2006. Historia breve y reciente del control electoral de la Procuraduría. www.procuraduria.gov.co/descargas/eventos/foroIEMP_092006_historiacontroelectoral.doc .

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | **25** | 0

Comments:

The National Electoral Council constitutes the Campaigns Fund, which audits and reviews financial reports and can impose administrative investigations and impose fines. If there is penal responsibility, the case goes to the judiciary.

According to a recent study by Transparency International and the Carter Center, the scores in accountability of political financing in Colombia are better than the regional (Latin American) average. It means that the scope of the data reported is very good compared to the majority of Latin American countries. However, the big problem is that the credibility of information reported and thus, of the auditing exercise, is seriously flawed.

First, the Electoral Council is perceived as very politicized. Second, despite the auditing obligations, parties don't report the full extent of information, although this is very difficult to prove. And third, the Council lacks investigative capacities and usually auditing exercises are concentrated on the formalities rather than on the substance of accounts.

In December 2005, the newspaper El Tiempo reported that the National Electoral Council still had to review 5,000 accounts from the 2003 elections in order to distribute public funds for campaigns (paid on the base of valid votes).

The results of an auditing exercise on party accounts contracted by the Registraduría Nacional del Estado Civil in 2004 showed that the majority of parties have serious flaws in their accounts. Those flaws usually are related to the lack of documents supporting financial movements, expenditures and contributions, inadequate knowledge of the norms, or even lack of clarity about who signs checks within the parties. From 61 parties analyzed, only 18 were qualified as having clean" accounts.

References:

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

Transparency International and Carter Center. 2007. Crinis Informe financiamiento en América Latina.

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Consortio Nacional de Consultoría S.A. ¡ALERTA EN VISPERAS DE ELECCIONES! Más de 60% de los partidos y movimientos políticos colombianos continúan presentando problemas en el manejo contable de sus finanzas y en la rendición de cuentas a la ciudadanía. http://portal2.semana.com/documents/Doc-28_2006228.pdf

CAMPAÑAS Y DINERO: UN ARMA DE DOBLE FILO. PNUD. Revista Latinoamericana de Desarrollo Humano. Marzo 2006 # 3. http://www.revistadesarrollohumano.org/boletin/marzo_06/03_colombia.pdf

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

33

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Parties should present financial reports every year and after each election period, but they disclose this information to the Electoral Council and rarely to the public. Additionally, after an electoral reform was issued in 2003 introducing the system of open lists, parties centralize the information on individual candidates, and thus citizens can access general party accounts and only very limited information on the candidates. Experts on party funding consider that parties only report about 30 percent of their real donations.

References:

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Transparency International and Carter Center. 2007. Crinis, Informe financiamiento en América Latina.

De la Calle, Humberto. 2003. ANÁLISIS COMPARATIVO SOBRE FINANCIAMIENTO DE CAMPAÑAS Y PARTIDOS POLÍTICOS COLOMBIA. Unidad para la promoción de la democracia OEA, IDEA Internacional.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

When the National Electoral Council audits the financial reports where parties and candidates disclose their sources of funding and expenditures, the reports should be published in a magazine with national coverage. However, these reports do not include the annexes, where contributors appear, and thus, if citizens want to access this data, they have to make a specific request to the electoral body. There are long waiting times to obtain this information.

References:

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Transparency International and Carter Center. 2007. Crinis Informe de Financiamiento en América Latina.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

After the National Electoral Council audits the financial reports where parties and candidates disclose their sources of funding and expenditures, the reports should be published in a magazine with national coverage. The wide perception is that these reports are effectively publicized, but it is not noticed by the citizens in general. Additionally, these reports do not include the annexes, where contributors appear, and thus, if citizens want to access this data, they have to make specific request to the political parties directly or through the electoral body and the release of documents is not guaranteed.

There might be high payments when common citizens want to access this information. It is important to note that the efforts of NGOs such as Transparency for Colombia and Congreso Visible in inviting candidates to disclose information on a voluntary basis have reduced the costs of accessing some basic information. However, the problem here is also that candidates do not report complete information.

References:

Moreno, Maria Fernanda. 2006. ¿Y las cuentas?. Votebien.com http://www.terra.com.co/elecciones_2006/reportaje/20-06-2006/nota289322.html

Transparency International and Carter Center. 2007. Crinis Informe de financiamiento en América Latina.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ~~67~~ Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

Comments:

There are different constitutional mechanisms to protect citizens from violations of civil rights. The "accion de tutela" (tutelage action or resource to defend basic rights art. 86), the "accion de cumplimiento" (observance action, art. 87, to make effective a law or administrative act), "derecho de petición" (right of petition to request information art. 23), and the "popular action" to protect collective rights (art. 88). The art. 89 of the Constitution also expresses that the law should create other resources to protect individual and collective rights against the action or omission of the state. Those legal resources are: recall mechanism for elected authorities, nullity action, nullity action and reposition of the right, action of reparation, electoral action of nullity. Some of those mechanisms, such as the tutela are better known by citizens. In consequence, tutelas and rights of petition are more widely used by citizens to protect their rights before actions of the government.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Constitución Política de Colombia 1991. art. 23, 86, 87, 88, 89

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

81

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, every decision of the executive has to be motivated and has to abide by the law. With some exceptions, the chief executive gives explanations for his policy decisions, and citizens are aware of the arguments the executive has for making decisions.

Since the beginning of his first mandate, President Alvaro Uribe created the Consejos Comunitarios de Gobierno (Communitarian Councils of Government). The Councils are weekly regional meetings moderated by Uribe himself to solve peoples' problems and have become a space for the president to explain his decisions. The Councils have created a sense of efficiency highly valued by citizens that reinforce Uribe's unmediated approach to citizens.

The downside of the openness of the government and cabinet members to explain decisions is the fact that the president is not very keen on accepting questions from journalists or opposition in a regular manner. Although there is no official censorship, the government has accused journalists who report on corruption, violence and human rights of lack of patriotism. For example, after the national magazine, *Semana*, published a report linking the head of the Intelligence Agency (DAS) with paramilitary groups, Uribe dismissed *Semana* as "frivolous" and portrayed its editor as a high society fop.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

INFORME SOBRE LA LIBERTAD DE PRENSA EN COLOMBIA. Sociedad Interamericana de Prensa. 2007. <http://www.scribd.com/doc/47559/Colombia-Informe-SIP-2006>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitutional Court reviews the constitutionality ex officio and ex ante of the most important statutes, treaties and bills issued by congress and proposed by the government. It can also review ex ante the declaration of any state of emergency (a legal period conferred by the congress to the president within which he can issue decrees during periods of external war, economic crisis, or difficult public order situations). The Constitutional Court can also revoke decrees passed by the executive during periods of emergency if they are considered unconstitutional and any legislative decree issued by the government.

The Council of the State reviews the administrative actions of the government.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Constitución Política de Colombia 1991 art. 237 and 241.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court has been very active in reviewing actions of the government and in voiding unconstitutional aspects of laws. The Constitutional Court has been characterized as being highly liberal and progressive and even criticized as being fairly independent from the government. Among the most representative decisions of the Court are the constitutional review on the 2003 government referendum proposal or the adjustments included in the Peace and Justice Law," a law issued to facilitate the peace process with paramilitary groups that has been criticized by some sectors as a blank check for impunity.

In 2003, the court reviewed Uribe's referendum proposal and reduced the questionnaire to 15 points eliminating a question to ban drug consumption; the possibility to extend the period of mayors and governors; and most important, the possibility to vote the text of the law as a whole, which would have facilitated the success of the government's proposal.

Since July 2007, there has been a controversy on the election of a new member of the Court, for which the government initially sent a list of three conservative women. The move was criticized as a way to reduce the progressive spirit of the Court, but especially because the elaboration of the lists seemed to answer to the demands made by the conservative party to the president. In the end, two of the initial candidates quit the list, and the government elaborated a new one, including the current Judicial Secretary of the Presidency in a very politicized and criticized decision. Thus, critics argue, the independence of the Court can be weakened. The risks derived from this decision may lower the score of the indicator in the future.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Revista Semana. 2007. La Corte de Uribe El Presidente ya no quiere quitarle poder a la Corte Constitucional, sino darle un rumbo más conservador. July 28, 2007 # 1317.

Revista Semana. 2007. La categórica renuncia de las aspirantes a Magistrado de la Corte Constitucional desnuda una elección anunciada. Aug. 14, 2007

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

Executive orders are the norm in Colombia's presidential system, but it is not a contravention to legal requirements. Even by Latin American standards, the Colombian president is very powerful.

The president has veto power on legislative decisions (art. 165, 166 and 167 of the Constitution), decree power (art. 150 Constitution) and gatekeeping powers on the elaboration of budgets. He can also use an urgency petition" to prioritize bills in the legislative agenda. The 1991 Constitution created some checks on presidential actions, and as a consequence, the president today has lost power on agenda setting and is more accountable for his actions than before 1991. According to Cardenas et al, after 1991, the president has more difficulties passing laws. However, the president is still the main agenda setter in most policy areas.

References:

Cárdenas, Mauricio, Junguito, Roberto, Pachón, Mónica. 2006. Political Institutions, and Policy Outcomes in Colombia: The Effects of the 1991 Constitution Research Network Working Paper #R-508. Inter-American Development Bank.

Shugart, Mattew Soberg. 1999. Presidentialism, Parliamentarism, and the Provision of Collective Goods in Less-Developed Countries. In: Constitutional Political Economy, 10:1, March, 1999.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The president can be investigated and accused by the head of the Procuraduría or Public Ministry (general attorney) or by the Accusations Commission of the Lower Chamber, and the sanction power is in the hands of the Senate. In case of penal charges, the president can be investigated by the Supreme Court of Justice. Despite the existence of these mechanisms, in practice, accusations on the president are highly political.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Constitución Política de Colombia 1991. art. 178, 235.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

All ministerial-level officials can be investigated, prosecuted and charged for criminal allegations by the Procuraduría (general attorney's office) for offenses related to the responsibilities of their position. The Supreme Court of Justice investigates ministerial-level officials in cases of criminal and penal allegations after accusation of the General Prosecutor (Fiscal General de la Nación).

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Constitución Política de Colombia 1991 art. 234, 277, 251.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

72

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

According to the Law 190 of 1995 (art. 13,14), all public servants have to declare the amount of their income and rents before taking office, when leaving, and when requested by relevant authorities.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.” art. 13,14.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

According to the Law 190 of 1995 (art. 13,14), all public servants have to declare the amount of their income and rents before taking office, when leaving, and when requested by relevant authorities.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.” art. 13,14 .

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

The Constitution states that public servants cannot accept gifts, hospitality and honors from foreign governments or international institutions without previous authorization from the government. The Law 734 of 2002, which refers to the disciplinary code for public servants, forbids them to receive or ask for gifts from users or employees who may have an interest in their performance. The Law 190 of 1995 introduces influence peddling as a criminal offence.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

Ley 734 de 2002. (febrero 5) Diario Oficial No. 44.708 de 13 de febrero de 2002 Por la cual se expide el Código Disciplinario Unico” art. 35.

Constitución Política de Colombia 1991 art. 129.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

There is no formal requirement for the independent audit of asset disclosure forms. The Law 190 of 1995 only states that this information has to be in the personnel offices of each entity and it is a requirement for public servants to fill this form out in order to take office. The Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is in the hands of the chief of personnel in each government entity, but there is no specific regulation for high-ranking executive officials. The chief of personnel has to review every six months the veracity of declarations using a random selection method. The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms, but there are no statistics on the follow-up to these forms.

References:

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

DECRETO NUMERO 2232 DE 1995. DIARIO OFICIAL. AÑO CXXXI. N. 42152. 18, DICIEMBRE, 1995 por medio del cual se reglamenta la Ley 190 de 1995 en materia de declaración de bienes y rentas e informe de actividad económica y así como el sistema de quejas y reclamos.”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

The regime of inabilities and incompatibilities for public servants, which covers the president and ministers, does not mention any restriction on private-sector employees after leaving the government. The article 207 of the Constitution states that in order to be a minister, it is necessary to have the same qualifications as being a legislator, and it includes the inability to have private posts while being in office, but does not refer to any restriction after leaving office.

However, the Law 734 of 2002 prohibits former public servants to give advice or representation on matters related to their previous responsibility within one year after leaving office, and also prohibits to influence or participation directly or indirectly on matters that used to be under their responsibility.

References:

Constitución Política de Colombia 1991 art. 207.

LEY 734 DE 2002 (febrero 5) Diario Oficial No. 44.708 de 13 de febrero de 2002 Por la cual se expide el Código Disciplinario Unico.”

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Comments:

There is no system to monitor the activities of public servants after leaving office. In fact, there is a widespread perception that there is a revolving door” between the public and private sector. Informally there may be a cooling off period given the public character of heads of state and ministers, who usually take jobs in academia or international organizations after leaving office. However, the accountability derived from this kind control is limited given its informality and sometimes even though former Ministers do not take positions in private enterprises they act as advisors of them. For example, the former Minister of Finance, who held office until March 2007, then took a position as advisor of the Financial Group AVAL in September 2007. The former Minister of Foreign Relations who held office until February 2007 and then took a position in the Graduate School of the University Externado de Colombia was recently elected as a substitute Board Member of the recently privatized energy enterprise ISAGEN.

References:

Constitución Política de Colombia 1991.

Misas Arango, Gabriel. 2005. La Lucha Anticorrupción en Colombia, teorías, prácticas y estrategias Contraloría General de la República, Bogotá.

Revista Portafolio Económico. 16 de Mayo de 2007. Cambio en cúpulas por la llegada de nuevos dueños

Periódico El Tiempo. Noviembre 26 de 2007. Elección de María Consuelo Araújo como integrante de Junta de Isagén provocó protestas en asamblea

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

Regulations are enforced, and when scandals arise they are prosecuted. Over the last year, there have been no serious accusations on ministers receiving gifts and hospitality. However, the perception is that it is still frequent for members of the executive branch to receive gifts and hospitality in order to disclose important information or to facilitate administrative or political procedures.

In general, although there are legal frameworks to prevent conflicts of interests, there are still weaknesses in the detection of those conflicts and in the coordination of the institutions that have a responsibility to control and prevent conflicts of interest.

It is important to note that there is a perception that in recent years the extent of petty corruption has decreased in Colombia.

References:

Revista Portafolio. Escándalos de Marca Mayor. Bogotá, Miércoles 11 de abril de 2007.

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

Transparency International. Integridad Pública en América Latina: ¿Contribuye el marco legal latinoamericano a que los funcionarios sean íntegros? ¿Coincide la práctica con la ley?. www.transparency.org/content/download/17926/242560

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

Comments:

Asset disclosure forms of the executive are audited, but there is no mechanism or procedure to ensure regular auditing. As analyzed by the Corporation Transparency for Colombia, there are different limitations in effectively auditing asset disclosure forms. First, habeas data regulations and the public order situation by which citizens can be victim of kidnapping by ransom makes difficult a real disclosure. Second, it is difficult to monitor increases in assets, because they are hidden behind practices such as money laundering, foreign accounts, and the use of legal entities to hide real assets. And third, even when available, information might be unreliable.

According to the most recent index of transparency in public institutions done by the Corporation Transparency for Colombia, some ministries have better information and are more visible than others. These factors still exist even though the Law 190 of 1995 requires all public servants to declare their participation in private affairs, as well as their foreign accounts, loans and credits, etc.

Another problem is that there is no formal requirement for the independent audit of asset disclosure forms. The Law 190 of 1995 only states that this information has to be always on the personnel offices of each entity and is a requirement for taking office.

The Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is in the hands of the chief of personnel in each government entity, but there is no specific regulation for high-ranking executive officials. The chief of personnel has to review every six months the veracity of declarations using a random selection method, but the process is not regular.

The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms and it constitutes an advance in the quality of auditing. However, there are no statistics on the follow-up to asset disclosure forms through this system, although it represents a significant advance.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio

de caso. Cuadernos de Transparencia # 4. Bogotá.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

DECRETO NUMERO 2232 DE 1995. por medio del cual se reglamenta la Ley 190 de 1995 en materia de declaración de bienes y rentas e informe de actividad económica y así como el sistema de quejas y reclamos.

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional, Entidades públicas nacionales. Bogotá.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens, and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of heads of government and ministerial-level officials.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa."

Constitución Política de Colombia 1991. art. 1.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of heads of government and ministerial-level officials.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens, and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law,

according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of heads of government and ministerial-level officials.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

There are distinctions between state functions and party activities. According to the Law 734 of 2002, public servants with civil and political authority and those in managerial posts are forbidden to participate in the activities of political parties and in political controversies, being this causal for a disciplinary sanction. Although there can be clear political party influences in civil service or in independent government institutions, resources and personnel are clearly separated.

References:

Ley 734 de 2002, publicada en el Diario Oficial No 44.708, de 13 de febrero de 2002, por la cual se reforma el Código Disciplinario Único.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

100

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

According to chapter four of the Constitution, the Constitutional Court has the power to decide over the constitutionality of laws passed by congress when there are unconstitutionality demands made by citizens or by the government.

References:

Constitución Política de Colombia 1991. Cap. 4.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

Comments:

The amount of bills that are reviewed by the Constitutional Court each year has increased substantially since 1991 as a reflection of an increased political independence of the Constitutional Court. Between 1991 and 2001 the court produced 2,923 rulings on constitutional review. The effectiveness of the Constitutional Court is such that it is sometimes criticized by sectors that consider it is acquiring power in legislative processes.

As expressed by Cardenas et al, it is a consequence of the fact that after 1991 many issues became constitutional rights, and thus regulations on these matters have to be reviewed by the court. The court has produced profuse doctrine on a very wide range of matters. During the past year, some of the most noted rulings of the court were the conditions imposed on the Law of Peace and Justice, issued to reduce sentences for paramilitaries demobilized in a peace process initiated in 2003 and the depenalization of abortion.

Since July 2007, there has been a controversy on the election of a new member of the court, for which the government initially sent a list of three conservative women. The move was criticized as a way to reduce the progressive spirit of the court, but especially because the elimination of the lists seemed to answer to the demands made by the conservative party to the president. In the end, two of the initial candidates quit the list and the government established a new one including the current Juridical Secretary of the Presidency in a very politicized and criticized decision. Thus, critics argue, the independence of the court can be weakened. The risks derived from this decision may lower the score of the indicator in the future.

References:

Cárdenas, Mauricio, Junguito, Roberto, Pachón, Mónica. 2006. Political Institutions, and Policy Outcomes in Colombia: The Effects of the 1991 Constitution Research Network Working Paper #R-508. Inter-American Development Bank.

Revista Semana. 2007. La Corte de Uribe El Presidente ya no quiere quitarle poder a la Corte Constitucional, sino darle un rumbo más conservador. 07/28/2007 # 1317.

Revista Semana. 2007. La categórica renuncia de las aspirantes a Magistrado de la Corte Constitucional desnuda una elección anunciada. August 14, 2007.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

According to the Constitution, all members of the legislature are subject to criminal proceedings before the Supreme Court of Justice, which is the only institution that can order a detention (art. 186 Constitution). As of July 2007, the Supreme Court of Justice was investigating 15 legislators accused of having links with illegal paramilitary groups, within a broad corruption scandal known as the parapolitica.”

The legislators can lose their investiture (the privilege of being prosecuted only by the Supreme Court of Justice) for violating the regime of inhabilities and incompatibilities, for non-attendance to six plenary sessions in the same legislative period, for inadequate use of public funds and for influence peddling. Decisions on the lost of investiture are made by the Council of the State on Petition of the Direction of the corresponding chamber or of any citizen (art. 184). Between 1991 and 2003 there were 347 demands asking for a "lost of investiture," from which 42 were accepted and from them five referred to conflicts of interest.

References:

Constitucion Politica de Colombia 1991.

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

Ley 144 de 1994. LEY 144 DE 1994 (julio 13) Diario Oficial No. 41.449., Julio 19 de 1994 Por la cual se establece el procedimiento de pérdida de la investidura de los congresistas."

Cepeda Ulloa, Fernando. 2003 . LA PERDIDA DE INVESTIDURA DE LOS CONGRESISTAS EN COLOMBIA: ANALISIS DE LA CAUSAL RELATIVA AL CONFLICTO DE INTERESES COMO INSTRUMENTO PARA LUCHAR CONTRA LA CORRUPCION. INFORME DE LA INVESTIGACION DIRIGIDA POR FERNANDO CEPEDA ULLOA PARA EL BANCO INTERAMERICANO DE DESARROLLO OCTUBRE DE 2003.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

54

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

According to the Law 5 of 1992, it is a duty of all legislators to present an asset disclosure declaration and a declaration of activities that may generate economic gain for them outside their position as legislators, when initiating their terms as legislators.

References:

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

The regime of inabilities and incompatibilities for legislators of the Constitution (art. 180) does not mention any restriction on private-sector employment after leaving the government, but only during and before being in office. However, the Law 734 of 2002 prohibits former public servants to give advice or representation on matters related to their previous responsibility within one year after leaving office, and also prohibits to influence or participate directly or indirectly on matters that used to be under their responsibility.

The Law 5 of 1992 states that when a legislator has a direct interest in a legislative process because it can affect his wife or her husband, relatives, or associates, should declare impeded to vote and to participate in debates. And the law 144 of 1994 states that when legislators had been private-sector employees during the year before taking office, and the interests of those enterprises are involved in legislative processes, the legislators should declare impeded. Those restrictions about conflict of interest may prevent ex-legislators to influence their former colleagues, but there is no regulation on employment after leaving congress.

References:

Constitución Política de Colombia 1991. art. 180.

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

Ley 144 de 1994. (julio 13) Diario Oficial No. 41.449., Julio 19 de 1994 Por la cual se establece el procedimiento de pérdida de la investidura de los congresistas.”

LEY 734 DE 2002 (febrero 5) Diario Oficial No. 44.708 de 13 de febrero de 2002 “Por la cual se expide el Código Disciplinario Unico.”

YES: A YES score is earned if there are regulations restricting national legislators’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

The Constitution states that public servants cannot accept gifts, hospitality and honors from foreign governments or international institutions without previous authorization from the government. The law 734 of 2002, which refers to the disciplinary code for public servants, forbids them to receive or ask for gifts from users or employees who may have an interest on their performance, and the Law 190 of 1995 introduces influence peddling as a criminal offence.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

There is no formal requirement for the independent audit of asset disclosure forms. The Law 190 of 1995 only states that this information has to be always in the personnel offices of each entity and it is a requirement for public servants to fill this form out in order to take office. The Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is in the hands of the chief of personnel in each government entity, but there is no specific regulation for legislators. The chief of personnel has to review every six months the veracity of declarations using a random selection method. The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms but there are no statistics on the follow up to the asset disclosure forms.

References:

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

DECRETO NUMERO 2232 DE 1995. DIARIO OFICIAL. AÑO CXXXI. N. 42152. 18, DICIEMBRE, 1995 por medio del cual se reglamenta la Ley 190 de 1995 en materia de declaración de bienes y rentas e informe de actividad económica y así como el sistema de quejas y reclamos.”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no restrictions on private-sector employment after leaving office. Conflicts of interest of this type may be prevented through other regulations preventing conflicts of interest. In any case, there are many deficiencies in the other regulations governing conflicts of interests. For example, a recent study by the Corporation Transparency for Colombia has determined that there are many informal meetings between interest groups and legislators in order to agree on decisions and there is no public registry of those meetings. Additionally, regulations to declare impediments during the discussion of legislative projects are not totally clear and in practice legislators participate in debates even when they have declared to have impediments.

References:

Constitución Política de Colombia 1991.

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

Corporación Transparencia por Colombia. 2005. Riesgos de incidencia indebida de intereses particulares en la formación de leyes. Cuadernos de Transparencia # 10. Bogotá.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | **25** | 0

Comments:

In practice, the regime of inabilities and incompatibilities may work as a restriction on receiving gifts to the extent that legislators should declare impeded to vote and discuss projects when a direct private interest from them is involved. Although the inabilities and incompatibilities regime works, there are some restrictions on its effectiveness. For example, there are many informal meetings between interest groups and legislators in order to agree on decisions and there is no public registry of those meetings. Additionally, regulations to declare impediments during the discussion of legislative projects are not totally clear and in practice legislators participate in debates even when they have declared to have impediments.

In general, although there are legal frameworks to prevent conflicts of interests, there are still weaknesses in the detection of those conflicts and in the coordination of the institutions that have a responsibility in controlling and preventing conflicts of interest.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

Corporación Transparencia por Colombia. 2005. Riesgos de incidencia indebida de intereses particulares en la formación de leyes. Cuadernos de Transparencia # 10. Bogotá.

Transparency International. Integridad Pública en América Latina: ¿Contribuye el marco legal latinoamericano a que los funcionarios sean íntegros? ¿Coincide la práctica con la ley?. www.transparency.org/content/download/17926/242560

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

The asset disclosure forms of the legislative are audited but there is no mechanism or procedure to ensure regular auditing. As analyzed by the Corporation Transparency for Colombia, there are different limitations in effectively auditing asset disclosure forms. First, habeas data regulations and the public order situation by which citizens can be victim of kidnapping by ransom make difficult a real disclosure. Second, it is difficult to monitor increases in assets, because they are hidden behind practices such as money laundering, foreign accounts, and the use of legal entities to hide real assets. Additionally, in many cases information is not reliable.

According to the most recent index of transparency in public institutions done by the Corporation Transparency for Colombia, the congress, and specifically the lower chamber, is among the institutions where a stronger effort in transparency has to be made.

These problems still exist even though the Law 190 of 1995 obliges all public servants to declare their participation in private affairs as well as foreign accounts, loans and credits, etc. There is no formal requirement for the independent audit of asset disclosure forms. The Law 190 of 1995 only states that this information has to be always in the personnel offices of each entity and is a requirement for taking office. The Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is in the hands of the chief of personnel in each government entity, but there is no specific regulation regarding legislators. It is stated that the chief of personnel has to review every six months the veracity of declarations using a random selection method.

The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms and it constitutes an advance in the quality of auditing. However, there are no statistics on the follow up to asset disclosure forms through this system, although it represents a significant advance.

References:

Corporación Transparencia por Colombia. Índice de Transparencia Nacional, Entidades públicas nacionales. 2006. Bogotá.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of legislators.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. art. 1.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of legislators.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the National Registry's office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of legislators.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa."

Constitución Política de Colombia. art. 15

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, head of the anticorruption program of the Presidency of the Republic. July 19, 2007. Bogotá.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

According to the Law 5 of 1992 for all sessions of the congress there should be a record with a relation of the participants, the interventions, the propositions and the decisions made. There should be an official printed media called Gaceta del Congreso for the publicity of all legislative debates. There can be reserved sessions on decision taken by a fifth of the members of the respective chamber or commission.

References:

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes. art. 35, 36.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available at the library of the congress and are published in the newspaper of the congress called Gaceta del Congreso. All records are available except those on reserved sessions. Records can be retrieved immediately from the library.

Although citizens can have expedited access to legislative documents, both the senate and especially the lower chamber are perceived to have medium levels of transparency according to the most recent evaluation of transparency in public institutions made by the Corporation Transparency for Colombia. In general, citizens perceive that the most important negotiations on legislative decisions are made behind the scenes and are not transparent for the public. This perception is reflected in the fact that about 46 percent of citizens surveyed by Latinobarometro consider that democracy can exist without the congress.

References:

www.congreso.gov.co

Programa Congreso Visible Universidad de los Andes. <http://cvisible.uniandes.edu.co>

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

Corporación Latinobarometro. 2005. Informe Latinobarometro 2005.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens for recent sessions if there is availability of the gazette of the congress, and at the cost of photocopying for old records.

Although citizens can have access to legislative documents at a low cost, both the senate and especially the lower chamber are perceived to have medium levels of transparency according to the most recent evaluation of transparency in public institutions made by the Corporation Transparency for Colombia. In general, citizens perceive that the most important negotiations on legislative decisions are made behind the scenes and are not transparent for the public. This perception is reflected in the fact that about 46 percent of citizens surveyed by Latinobarometro consider that democracy can exist without the congress.

References:

Programa Congreso visible Universidad de los Andes. <http://cvisible.uniandes.edu.co/var/rw/CMS/temasDeActualidad/>
www.congreso.gov.co

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

Corporación Latinobarometro. 2005. Informe Latinobarometro 2005.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

59
III-3. Judicial Accountability

33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Justices of the Supreme Court of Justice and the Council of the State are elected by their own institutions from lists of more than five people sent by the Superior Council of the Judicature. Justices for the Constitutional Court are elected by the senate from lists of three candidates presented by the president, the Supreme Court of Justice and Council of the State. (art. 231 and 239 Constitution). Justices for the Superior Council of the Judicature are elected by the congress (senate and lower chamber) from lists of three candidates sent by the government (art. 254).

There are clear rules for the election process, but there is no formal oversight mechanism for the process, and thus it is not public. Citizens can refer to the citizen oversight committees” established in the Constitution as a mechanism to oversee processes and result in public administration, and that has recently been the case with a group of civil society organizations creating an oversight committee for the election processes of national-level justices.

References:

Constitucion Política de Colombia 1991. Art. 231, 239, 254.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, there are certain qualifications and requirements that have to be met by national-level justices. Those requirements are: the justice has to be a lawyer, without any sentence privative of liberty except for political crimes, with ten years of experience in a judicial post or in the public ministry, or have ten years experience as a lawyer in exercise or university professor.

In practice, almost all national-level justices met these criteria. Political criteria do play a role in the selection, although the independence of the judiciary has increased since the new Constitution was issued in 1991. In 1999, the NGO Corporación Excelencia en la Justicia, in association with a number of CSOs and universities, started the first exercise of citizen oversight over the process of selection for justices in the Council of the State and the Supreme Court of Justice. The Corporación has conducted similar exercises in 2006 and 2007 in order to make public the CVs of the candidates as well as the selection criteria. The Corporation reports that as a result of this exercise, the courts feel compelled to be more transparent in their actions. For the case of the Constitutional Court, after 1991 a tradition of independence has been established, by which the justices elected are very well known for their qualifications. Political criteria are stronger in the selection of justices for the Supreme Court of Justice.

Since July 2007 there has been a controversy on the election of a new member of the court, for which the government initially sent a list of three conservative women. The move was criticized as a way to reduce the progressive spirit of the court, but especially because the elaboration of the lists seemed to answer to the demands made by the conservative party to the president. In the end, two of the initial candidates quit the list, and the government elaborated a new one including the current Juridical Secretary of the Presidency in a very politicized and criticized decision. Thus, critics argue, the independence of the court can be weakened. The risks derived from this decision may lower the score of the indicator in the future.

References:

Corporación Excelencia en la Justicia.
www.cej.org

El Tiempo. 2007. "Respetar una tradición". 18 July, 2007.

Rios-Figueroa, Julio. Judicial Independence: Definition, Measurement, and Its Effects on Corruption. A Study of Latin America.
<http://homepages.nyu.edu/~jrf246/papers.html>

Revista Semana. 2007. "La Corte de Uribe El Presidente ya no quiere quitarle poder a la Corte Constitucional, sino darle un rumbo más conservador." 07/28/2007 # 1317

Revista Semana. 2007.

"La categórica renuncia de las aspirantes a Magistrado de la Corte Constitucional desnuda una elección anunciada." 08/14/2007.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES

NO

Comments:

There is a confirmation process for justices of the Superior Council of the Judicature and the Constitutional Court. In these cases, the nominating agency is different from the appointing agency.

For the Superior Council of the Judicature, nominees are proposed by the government, and for the Constitutional Court by the president, the Supreme Court of Justice and the Council of the State. In both cases, congress makes the final election.

References:

Constitución Política de Colombia 1991. Art. 239 and 254.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

79

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

According to the Constitution the administration of justices has to be public except in the cases specified by law. However this obligation is limited to the moment of a process in which a final decision is formally made. There is a prohibition to inform, reveal or publish actions, while there is no final sentence on a process.

According to the Law 270 of 1996, the acts of sessions of the Superior Council of the Judicature, the Supreme Court of Justice, the Constitutional Court and the Council of the State referring to administrative matters are public. All decisions on individual or collective cases are reserved until a decision is made.

References:

Constitución Política de Colombia 1991.

LEY 270 DE 1996 (marzo 7) Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA .

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

Comments:

All judges are compelled to explain their judgments, however in practice, explanations are given at the national level, but are more limited at the local level, and this is the reason for the score given to this indicator

The rulings of national-level courts are available and constitute a body of precedent that guides further judicial decisions. However, at the local level, security constraints on judges, prosecutors and lawyers limits them to give full explanation of their decisions. They can be threatened by armed groups, drug traffickers, and corrupt politicians if they fully publicize their decisions, or it might be impossible to explain decisions that have been made answering to these pressures.

It is important to note however, that the security situation for judges has improved as there haven't been reports on kidnapping, murders or physical attacks to them during 2006 and 2007. However, there are indications that judges are still threatened or bribed by different actors, especially paramilitary and guerrilla groups. According to the results of a recent survey made among citizens on perceptions about democracy, about 66 percent of respondents consider that corruption of judges is generalized and from all justice institutions; local tribunals are the least trusted. It suggests that citizens are less confident in the institutions that work as the first level of a judicial decision, those that are closer to the citizen.

References:

US Embassy. Colombia – Informe sobre Derechos Humanos, 2006. <http://bogota.usembassy.gov/wwwspc141.shtml>

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. USAID.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES

NO

Comments:

The Superior Council of the Judicature (Consejo Superior de la Judicatura) is the agency in charge of examining and sanctioning disciplinary faults of the judicial system in what respects to the acts of judges (art. 256 Constitution).

The Procuraduría General de la Nación (general attorney's office) has the power to investigate all public servants including employees of the judiciary that do not administer judgments. The national-level justices are judged by the Commission of Accusations of the lower chamber.

References:

Constitución Política de Colombia 1991, Art. 256, 178, 277.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Article 228 of the Constitution states that the administration of justice in general is independent. The Law 270 of 1996 enforces that independence, stating that it is a crucial principle of the Administration of Justice. The disciplinary agency (Superior Council of the Judiciary) can act without the approval of judges themselves, but the justices of this court are elected by congress from lists of three candidates sent by the government, and thus there can be political interference in their election.

References:

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA .

Constitución Política de Colombia 1991. Art. 228, 254.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The judicial disciplinary agency (The Superior Council of the Judiciary) does start investigations on members of the judiciary. According to the most recent statistics, in 2005 the Superior Council received 1,256 disciplinary investigations against members of the judiciary and made decisions on 184 cases. There were absolutions in 53 percent of cases, and the majority of sanctions were fines (30 percent), followed by amonestations (8 percent), suspensions (6 percent) and destitutions (3 percent).

Of the 1,256 processes that entered the Superior Council, 1,105 were acted upon, representing an improvement in the number of cases effectively processed and an advance in reducing backlog, although it is still a problem in effective sanctioning of disciplinary faults.

At the local level, the sections of the Superior Council received 9,932 cases against judicial servants and made decision on 197 cases and sent 9,932 cases to archives.

Besides congestion in the judiciary, another hindrance for the effective initiation of investigation is that besides the Superior Council of the Judiciary, the Procuraduría General de la Nación (general attorney's office) and the Fiscalía General de la Nación (general prosecutor for penal offences) have responsibilities to investigate members of the judiciary. In consequence, sometimes there is confusion about which is the most appropriate agency to initiate the investigation, generating delays and inefficiencies.

References:

Consejo Superior de la Judicatura. 2006. Informe al Congreso. 2005 – 2006.

Corporación Excelencia en la Justicia. 2003. Percepciones sobre la corrupción en la justicia y régimen disciplinario.

<http://www.cej.org.co>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The judicial disciplinary agency (The Superior Council of the Judicature) does start investigations on members of the judiciary. According to the most recent statistics, in 2005 the Superior Council received 1,256 disciplinary investigations against members of the judiciary and made decisions on 184 cases. There were absolutions in 53 percent of cases, and the majority of sanctions were fines (30 percent), followed by amonestations (8 percent), suspensions (6 percent) and destitutions (3 percent).

Of the 1,256 processes that entered the superior council, 1,105 were acted upon, representing an improvement in the number of cases effectively processed and an advance in reducing backlog, although it is still a problem in effective sanctioning of disciplinary faults.

At the local level, the sections of the Superior Council received 9,932 cases against judicial servants and made decision on 197 cases and sent 9,932 cases to archives. From the 197 acted upon, 110 received fines as the sanction.

Although statistics show that there are sanctions effectively imposed, the majority of them are minor sanctions and it is considered that a reform is still needed in order to clarify better types of offences that judiciary employees can commit and the most appropriate sanctions for each offence.

References:

Consejo Superior de la Judicatura. 2006. Informe al Congreso. 2005 – 2006

Informe de coyuntura de la justicia.

Corporación Excelencia en la Justicia. 2003. Percepciones sobre la corrupción en la justicia y régimen disciplinario

<http://www.cej.org.co>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

61

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

According to Law 270 of 1996, before taking office, every two years, when leaving the position and when requested by the relevant authority, members of the judiciary are obliged to declare the amount of their assets and rents.

References:

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

According to Law 270 of 1996, it is a disciplinary fault to receive gifts, hospitality, and any other form of economic gain from other judicial employees, or from those involved in judicial processes.

References:

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA .

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

There is no formal requirement for independent audit of asset disclosure forms. Law 190 of 1995 only states that this information has to be always in the personnel offices of each entity and is a requirement for taking office. The Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is in the hands of the chief of personnel in each government entity, but there is no specific regulation for the judiciary. It is stated that the chief of personnel has to review every six months the veracity of declarations using a random selection method.

The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms, but there are no statistics on the follow up to asset disclosure forms.

References:

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

DIARIO OFICIAL. AÑO CXXXI. N. 42152. 18, DICIEMBRE, 1995. PAG. 2

DECRETO NUMERO 2232 DE 1995. por medio del cual se reglamenta la Ley 190 de 1995 en materia de declaración de bienes y rentas e informe de actividad económica y así como el sistema de quejas y reclamos.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

The regime of inabilities and incompatibilities for members of the judiciary (Law 270 of 1996) does not mention any restriction on private sector employment after leaving the government, but only during and before being in office. However, Law 734 of 2002 prohibits former public servants to give advice or representation on matters related to their previous responsibility within one year after leaving office, and also prohibits to influence or participate directly or indirectly on matters that used to be under their responsibility. Law 734 of 2002 states that when the general interest is in conflict with a private a direct interest of a public servant, he or she should declare impeded, but it does not make specific mention to post-government employment.

The only express regulation about employment after leaving office exists for the justices of the Constitutional Court. They are forbidden of being employed with the government one year after leaving office (Art. 245 CN).

References:

Constitucion Politica de Colombia, art. 245.

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA
LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no system to monitor the activities of public servants after leaving office. In fact, there is a widespread perception that there is a revolving door” between the public and the private sector.

References:

Constitucion Politica de Colombia 1991, Art. 245.

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA.

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico.

Misas Arango, Gabriel. 2005.

La Lucha Anticorrupción en Colombia, teorías, prácticas y estrategias.
Contraloría General de la República, Bogotá.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is a general restriction on members of the judiciary receiving gifts and hospitality from those involved in judicial processes or from functionaries in their same office. In practice, the regime of inabilities and incompatibilities may work as a restriction on receiving gifts, however there is a widespread perception that corruption and bribing are generalized in the justice sector, especially at the local level.

Following the results of a recent survey made among citizens on perceptions about democracy, about 66 percent of respondents considered that corruption of judges is generalized and from all justice institutions, tribunals are the least trusted.

In general, although there are legal frameworks to prevent conflicts of interests, there are still weaknesses in the detection of those conflicts and in the coordination of the institutions that have a responsibility in controlling and preventing conflicts of interest. It is important to note, however, that in recent years, the perception about the existence of petty corruption has decreased in Colombia.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. USAID.

Transparency International. Integridad Pública en América Latina: ¿Contribuye el marco legal latinoamericano a que los funcionarios sean integros? ¿Coincide la práctica con la ley?. www.transparency.org/content/download/17926/242560

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms of the judiciary are audited, but there is no mechanism or procedure to ensure regular auditing. As analyzed by the Corporation Transparency for Colombia, there are different limitations in effectively auditing asset disclosure forms. First, habeas data regulations and the public order situation by which citizens can be prey of kidnapping by ransom make disclosure difficult. Second, it is difficult to monitor increases in assets, because they are hidden behind practices such as money laundering, foreign accounts, and the use of legal entities to hide real assets. Third, the information still lacks reliability.

These factors still exist even though Law 190 of 1995 requires all public servants to declare their participation in private affairs, foreign accounts, loans and credits, etc. There is no formal requirement for the independent audit of asset disclosure forms. Law 190 of 1995 only states that this information has to be always in the personnel offices of each entity and is a requirement for taking office. Decree 2232 of 1995 establishes that the responsibility to review asset disclosure forms is responsibility of the chief of personnel in each government entity, but there is no specific regulation for the judiciary. It is stated that the chief of personnel has to review every six months the veracity of declarations using a random selection method.

The Administrative Department for Civil Service has created software called SIDEC to file and monitor asset disclosure forms, representing significant advances in monitoring and systematizing asset disclosure forms. However, there are no statistics on the follow up to asset disclosure forms yet.

According to the most recent index of transparency in public institutions done by the Corporation Transparency for Colombia, overall the judiciary has better scores than the executive and the legislature, and in institutional dimension (where the registry of asset disclosure forms is included) the Superior Council of the Judicature is better than the other high level courts.

References:

Corporación Transparencia por Colombia. Índice de Transparencia Nacional, Entidades públicas nacionales. 2006. Bogotá.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Corporación Transparencia por Colombia. 2002. El sistema nacional de integridad en Colombia. Análisis y resultados del estudio de caso. Bogotá. Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES

NO

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the national registry's office. Asset disclosure records are not easily available for citizens, and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can decide upon the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of members of the judiciary.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. Art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms are only available for the general attorney’s office, the heads of personnel offices in each entity, and the national registry’s office. Asset disclosure records are not easily available for citizens, and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can decide upon the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of members of the judiciary, and it is important to note that given the security situation in Colombia, there might be more opposition to disclose information that can make public servants prey of kidnapping by ransom.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. Art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms are only available for the general attorney's office, the heads of personnel offices in each entity, and the national registry's office. Asset disclosure records are not easily available for citizens, and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can decide upon the use of information about them registered in databases of public institutions. In sum, common citizens might not be able to access asset disclosure forms of legislators, and it is important to note that given the security situation in Colombia, there might be even more opposition to disclose information that can make public servants prey of kidnapping by ransom.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.”

Constitución Política de Colombia 1991. Art. 15.

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

The legislature can amend the budget, but the initiative is exclusively in the hands of the executive. The congress can change but cannot increase the budget proposal (Art. 150 Constitution). In practice, congress members introduce budgetary allocations to specific projects (these allocations were called *auxilios parlamentarios* prior to 1991). The committees of the senate and the house examine jointly the budget proposal between July 20 and Sept. 15 each year.

References:

Constitución Política de Colombia 1991. Art. 150.

Cárdenas, Mauricio, Junguito, Roberto, Pachón, Mónica. 2006. Political Institutions, and Policy Outcomes in Colombia: The Effects of the 1991 Constitution Research Network Working Paper #R-508. Inter-American Development Bank.

Ayala, Ulpiano and Perotti, Roberto. 2000. The Colombian Budget Process. Working paper series. Fedesarrollo.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The legislature does have power to approve significant expenditures and most expenditures are approved by the legislature. According to the Constitution, there cannot be any public expenditure not approved by congress. However, in practice, the biggest power in budget approval is in the hands of the executive, and thus the hierarchy in the process is not very clear.

On the one hand, the executive can issue the budget without congressional approval under exceptional circumstances. The committees of the senate and the house examine jointly the budget proposal between July 20 and Sept. 15 each year and must reach a decision by Oct. 20. If no decision is made by that time, the budget has to be approved with the modifications made in the first debate. If congress does not approve the budget at all, the executive should issue a decree repeating the budget of the previous year.

On the other hand, the congress practices the political control of the budget, and to meet this responsibility, it can call ministers and the heads of administrative departments and examine the reports produced by the president, ministers, and heads of the administrative departments. Thus, the congress exerts significant power during budget approval.

In practice, congress members introduce budgetary allocations to specific projects (these allocations were called auxilios parlamentarios prior to 1991). However, the committees in congress need a written authorization by the Finance Minister to increase a partida de gasto” or introduce a new one (Art. 351 Const.), while they can, with some exceptions, eliminate or reduce “partidas de gasto” by their own initiative (Art. 63 EOP and Art. 351 Const.).

The score given to this indicators refers more to the preeminence of the executive than to the fact that formally major expenditures are excluded from open discussion with the legislature. It is important to note that proposals to increase the power of congress in budget proposal have met considerable opposition give the low reputation of congress.

References:

Constitución Política de Colombia. Cárdenas, Mauricio, Janguito, Roberto, Pachón, Mónica. 2006. Political Institutions, and Policy Outcomes in Colombia: The Effects of the 1991 Constitution Research Network Working Paper #R-508. Inter-American Development Bank.

Ayala, Ulpiano and Perotti, Roberto. 2000. The Colombian Budget Process. Working paper series. Fedesarrollo.

Cardenas, Mauricio, Mejia, Carolina and Olivera, Mauricio. 2006. La Economía Política del Proceso Presupuestal en Colombia. Fedesarrollo.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Legislators in the economic commissions of the congress are among the most professionalized legislators in congress. There is a restriction for legislators to change commission, and thus, there is some degree of professionalism and stability that is also promoted by the existence of re-election. The level of professionalism in congress is not equal for all commissions, but economic and budget commissions are usually those considered the place for natural leaders of congress with power and knowledge.

As permanent constitutional commissions, economic commissions do have permanent administrative staff. Additionally, all legislators have the right to compose a unit of legislative work (Unidad de Trabajo Legislativo, UTL) composed by professionals who advise the legislators’ daily work. Although UTLs are highly permeated by clientelism and political favors, they have contributed in many cases to make legislators’ work more professional.

References:

Cardenas, Mauricio, Mejia, Carolina and Olivera, Mauricio. 2006. La Economía Política del Proceso Presupuestal en Colombia. Fedesarrollo.

Pachón, Mónica. 2004. Congress and Political Parties in Colombia, in Fortalezas de Colombia edited by Fernando Cepeda. Ariel, Bogotá.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

67

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | **50** | 25 | 0

Comments:

According to Law 5 of 1992 (Statute of Congress), citizens can assist to any public session of the congress, unless there is a request to make it reserved (reserved sessions are requested by the Directorate of the Chamber or Commission, a minister, or a fifth of the members of the chamber or commission), and sessions are transparent. In practice, however, there is some substantial negotiation taking place in the preparation process and a good amount of informal negotiation between legislators and congress before the budget goes to discussions on plenary sessions. During the hearings and debates in congress, a lot of transactions take place, reflected in investment projects negotiated by the legislators with the government to approve the budget. The whereabouts of these negotiations are not totally transparent for the public.

It has been identified that the decentralization in the preparation stage of the budget (in which each government agency provides input to the National Planning Department and the Finance Minister) makes the approval process less transparent and more difficult to understand. In the preparation stage there is a good amount of bargaining between each government entity and the National Planning Department and the Ministry of Finance to decide on investment budget.

According to Art.13 of the General Budget Statute, the budget must be consistent with the Plan Nacional de Desarrollo, the Plan Nacional de Inversiones, the Plan Financiero, and the Plan Operativo Anual de Inversiones, and this consistency can make the approval in congress more difficult to understand even though in the end the approved budget might not reflect those plans.

References:

Ayala, Ulpiano and Perotti, Roberto. 2000. The Colombian Budget Process. Working paper series. Fedesarrollo .

Cardenas, Mauricio, Mejia, Carolina and Olivera, Mauricio. 2006. La Economía Política del Proceso Presupuestal en Colombia. Fedesarrollo.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

Comments:

During the hearings for the approval of the budget, after it is sent by the government to the congress, citizens can participate under the rules provided by Law 5 of 1992 (Statute of the Congress). According to them, citizens can assist to any public session of the congress, unless there is a request to make it reserved (reserved sessions are requested by the Directorate of the Chamber or Commission, a minister, or a fifth of the members of the chamber or commission). The same law states that any citizen can express opinions about any law proposal, having registered previously with the respective commission, but in practice, there is no much change on the budget with inputs provided by citizens.

Citizens provide input to the budget in the preparation process through the participation they have in the elaboration of National Development Plan (NDP), which is elaborated at the beginning of each presidential term. The NDP includes a National Investment Plan for four years that has to be consistent with the budget. The plan is elaborated by the government with active participation of the planning authorities, the territorial entities, and the Consejo Superior de la Judicatura.” The draft plan must be submitted to the Consejo Nacional de Planeacion, which is formed by “representatives of the territorial entities, and of the economic, social, ecological, community, and cultural sectors” (Art. 340 Const.). In this sense, there is an incidence of CSOs in the preparation process of the budget, however in practice, it is sometimes difficult to establish the link between the yearly budget and the four-year development plan.

In general, the incidence of a significant number of actors in the budgetary process does not necessarily increase effective participation and sometimes can even be more harmful for the transparency of the process. It is necessary to note that after the budget law is approved by congress, the government can include modifications to the budget, and in practice, it is in this stage when most changes take place, rather than during the hearings.

There are three mechanisms to change the budget once it is approved by congress. First, cuts can be introduced by decree by the government with previous authorization from the cabinet. Second, the government can change assignments for specific projects within institutions through decree with congress approval when money is allocated to items that differ from the initial allocation. Third, the government can ask for additions to the budget with congress approval, unless there is a state of economic emergency.

References:

Ayala, Ulpiano and Perotti, Roberto. 2000. The Colombian Budget Process. Working paper series. Fedesarrollo.

Cardenas, Mauricio, Mejia, Carolina and Olivera, Mauricio. 2006. La Economía Política del Proceso Presupuestal en Colombia. Fedesarrollo.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the information and it is easily available online at the Web page of the Ministry of Finance.

References:

Presupuesto Nacional. http://www.minhacienda.gov.co/portal/page?_pageid=37,118689,37_1030957&dad=portal30&schema=PORTAL30

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

In the senate and the lower chamber there are two permanent constitutional commissions that discuss economic issues (such as the approval of the budget). Their legal mandate is to give first debate to all the legislative proposals that relate to the issues of their concern, but they don't have specific mandate to oversee the expenditure; this is a mandate of the Supreme Audit Institution. Those commissions are the third and the fourth commission.

By constitutional mandate, the Supreme Audit Institution (Contraloria) must present the general budget and treasury accounts to legislators. The National Accountant must present the General Consolidated Balance of the budget. Both reports are studied and comments are made by the Legal Accounting Commissions. In some cases, the commission calls managers and directors of institutions in order to clarify deficiencies reflected in the general balances and accounts.

References:

Corporacion Transparencia por Colombia. 2002. El Sistema Nacional de Integridad: Análisis y Resultados del estudio de caso. Cuadernos de Transparencia #4. Bogotá.

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

Constitución Política de Colombia 1991. Title X Chapter 1.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

56

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

As the economic commissions are no formal oversight committee, heads of agencies do not send regular reports. However, the legislators have the legal power to call ministers, vice ministers, heads of agencies, the manager of the Central Bank, directors of decentralized entities and other functionaries of the executive to discuss law projects or issued related to their functions. Additionally, most national institutions must present yearly reports of activities to congress, including budget and financial aspects.

By constitutional mandate, the Supreme Audit Institution (Contraloría) must present the general budget and treasury accounts to legislators. The National Accountant must present the General Consolidated Balance of the budget. Both reports are studied and comments are made by the Legal Accounting Commissions. In some cases, the commission calls managers and directors of institutions in order to clarify deficiencies reflected in the general balances and accounts.

References:

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

According to law, all members of commissions are elected from lists proposed by parties by the electoral system. In practice, the most experienced legislators and those with more political power are the ones elected to the most important commissions, among them the economic commissions. Thus, it is common to see less presence from the opposition in these commissions.

References:

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is a good amount of informal negotiation between legislators and government outside formal discussions in congress, and within these informal negotiations a lot of political bargaining takes place, hindering the independence of the committee. It is important to note, however, that as economic commissions are among the most professionalized in congress and are usually composed by powerful legislators with long traditions in congress, the room for manipulation is smaller than in other congressional commissions.

References:

Pachón, Mónica. 2004. Congress and Political Parties in Colombia, in Fortalezas de Colombia edited by Fernando Cepeda. Ariel, Bogotá.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | **25** | 0

Comments:

The committee does not have formal power to initiate investigations of financial irregularities.

References:

Ley 5 de 1992. (junio 17) Diario Oficial No. 40.483, de 18 de junio de 1992 Por la cual se expide el Reglamento del Congreso; el Senado y la Cámara de Representantes.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁷³Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The law 909 of 2004 on Civil Service regulates civil service and establishes that merit is one of the main principles on the functioning of civil service. It means that professional and personal qualities are the main substantial elements in the selection processes for public servants. According to the Constitution, impartiality and the preeminence of general interest are key principles in the functioning of civil service. The Constitution also prohibits the use of party affiliation as a determinant of the selection, promotion or removal of public servants. (art. 125)

References:

Ley 909 de 2004, por la cual se expiden normas que regulan el empleo público, la carrera administrativa, gerencia pública y se dictan otras disposiciones.

Constitución Política de Colombia 1991 art. 125.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

According to the Constitution, public servants cannot appoint relatives unless the relatives participate in competitive selection processes. There are competitive selection processes for members of civil service. Some posts are free of appointment and dismissal. This group includes managerial staff in agencies of the executive and posts of confidence” which perform advising and essential functions to managerial levels.

References:

Constitución Política de Colombia 1991. art. 126

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

According to article 130 of the Constitution, there is a National Civil Service Commission which has the mandate to administer and oversee the civil service. The Law 909 of 2004 establishes that such Commission is independent of the branches of public power.

References:

Constitución Política de Colombia 1991. art. 130

Ley 909 de 2004, por la cual se expiden normas que regulan el empleo público, la carrera administrativa, gerencia pública y se dictan otras disposiciones.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

In 2003 President Alvaro Uribe presented a referendum on 15 issues that ranged from economic reforms to changes in the composition of the Senate. The only point approved in that referendum referred to the political death of corrupts" which was then translated into a Constitutional reform that included as a constitutional norm the mandate to inhibit as public servants all persons who had been convicted, at any time, for offenses against public patrimony.

According to the Law 909 of 2004, the following inhibits public employment: a prison sentence lasting more than four years, except in case of political offenses; more than three disciplinary sanctions four years prior to the employment; to have a penal or disciplinary sanction in force when the employment is related to that sanction; to have a sanction for fiscal responsibility over five years before getting the employment, although this ceases when the employee pays back the General Audit Office (Contraloría).

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico. El Congreso de Colombia.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there are frequent cases in which public servants act according to political interest, this is especially the case in the regions where local political chiefs have notable influence on appointments and try to influence public servants in their decisions. At the national level, the political independence of public servants has increased with the laws that have been issued to modernize civil service.

While employees that enter through a competitive process cannot be fired without justification, employees of free appointment and removal" (managerial levels and their advisors) can be removed without relevant justification. In this case it is more likely to encounter un-appealed, politically motivated firings.

All employees that enter civil service through competitive process can only be fired following a deficient performance evaluation. In any case, a firing decision can be appealed. In fact, the problem is that it is easier to get into the civil service than to get out, and in several cases servants with low performance remain in service due to the lack of serious evaluation. In recent years, systems of evaluation have been improved but they are still deficient.

References:

Corporación Transparencia por Colombia. 2002. El sistema nacional de Integridad en Colombia. Análisis y Resultados del eStudio de Caos. Cuadernos de Transparencia #4. Bogotá

Interview with Fernando Grillo. Director of the Administrative Department for Civil Service DAFP. 14 July 2005. Bogotá

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

At the local level, political considerations have influence on appointments to civil service,. It is important to note that in recent years there have been some efforts made to professionalize civil service and these are specially noted in national level institutions. According to a recent study by According to Francisco Longo, the civil service in Colombia is among the top four

within Latin American countries, and above the Latin American average, in regards to the use of merit as a crucial consideration in civil service appointments. Evaluations are more formal requirements, rather than tools to measure real performance of employees. According to a recent evaluation of the Administrative Department for Civil Service based on performance evaluations, less than 1 percent of employees in civil service show low performance. This clearly shows the lack of accuracy of evaluations, as the widespread perception is that under-performance is considerably high.

In the case of employees of free appointment and removal, party affiliation can be clear, even though they have merits for the post.

With the new law on civil service and the creation of the National Commission for the Civil Service, there has been an increase in the number of entities reporting information on their personnel in order to nurture a national database on the civil service. These advances may help make meritocracy and control on civil servants more effective.

References:

Corporación Transparencia por Colombia 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Bogotá

Longo, Francisco. 2005. Diagnostico institucional comparado de sistemas de servicio civil.

Interview with Fernando Grillo. Director of the Administrative Department for Civil Service DAFP. 14 July 2005. Bogotá

Departamento Administrativo de la Función Pública. 2006. Informe de Rendicion de Cuentas Sector Funcion Publica 2005-2006

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

Comments:

Nepotism, cronyism and patronage are legally discouraged but in practice, citizens are not very confident in the competitive processes of selection. They consider political recommendations and familiar relations important. With the legal reforms conducted in recent years, nepotism has been reduced, but it is still influential in civil service. However, according to a recent survey conducted by the DANE among civil servants, political considerations appear to have more influence on appointments than personal considerations.

References:

Corporación Transparencia por Colombia 2002. El sistema nacional de integridad en Colombia: Análisis y resultados del estudio de caso. Bogotá

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

According to a recent study by Francisco Longo, there are deficiencies in civil service information systems, thus it is difficult to identify how cohesive job descriptions are with current responsibilities. However, Colombia is one of the countries in Latin America where job descriptions are more detailed, to the point that these restrictions can create excessive inflexibilities for job mobility.

References:

Longo, Francisco. 2005. Diagnostico institucional comparado de sistemas de servicio civil.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Salaries are not a management tool, and thus bonuses linked to performance are a small percentage of salary. However with "prima técnica" (technical bonuses), managers and advisors in managerial levels can get up to 50 percent of their total pay according to their academic training, or on the basis of their performance. In the first case (advanced academic training) the bonuses become part of the total pay, but in the second it is not considered part of the total pay.

For general staff, there are other bonuses that may represent a significant share of the total pay such as representation expenses, antiquity bonuses, transportation bonuses and travel expenses.

References:

Longo, Francisco. 2005. Diagnostico institucional comparado de sistemas de servicio civil.

Interview with Fernando Grillo, Director of the Administrative Department for Civil Service DAFP. June 2005. Bogotá.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Although the government publishes the number of positions available when competitions are open, in general there is a lack of coherent information on current civil servants and employment needs. There has been an effort to solve this problem while creating the Sistema Unico de Información de Personal (SUIP—Centralized System on Personnel Information) which provides updated information on openings and recruitments. According to the Administrative Department of Civil service, the SUIP has information on 223 entities, from an expected total of 300 reporting entities between 2004 and 2008. The advances made on the information system allowed the DAFP to make the first report on the characterization of civil service in 2005.

References:

Longo, Francisco. 2005. Diagnostico institucional comparado de sistemas de servicio civil.

Departamento Administrativo de la Función Pública. 2006. Informe de Rendicion de Cuentas Sector Funcion Publica 2005-2006

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The National Commission for Civil Service (CNSC) is legally independent and autonomous from power branches, however it just recently began regular work (after reforms), thus it is difficult to evaluate its effectiveness. According to the most recent evaluation of work presented by the CNSC to Congress, it was reported that all complaints regarding competitive processes in 2005-2006 were answered in a timely manner. During the first three months in 2007 NCSC received 2,564 complaints. However, at the same time the CNSC reported that between 2005-2006 it received 508 tutelage actions" (instrument to protect basic rights) and the agency was not prepared and did not have enough staff to answer such a high number of petitions.

There are some fears that the CNSC might not be effective as there is an overlap of functions with the Administrative Department for Civil Service attached to the Presidency of the Republic (DAFP), and the CNSC can rely on the DAFP to conduct its work. The biggest inefficiencies of the CNSC are derived from the fact that it lacks enough personnel to conduct investigations in a timely and efficient way.

References:

Comisión Nacional del Servicio Civil. 2007. Informe a las Comisiones Séptimas del Congreso. de la República.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In general salaries are paid on time and there are no substantial reports of delays in payments over the past year. However, some unions report payment delays in state enterprises, mostly those that are undergoing restructuring processes.

References:

Organización Internacional del Trabajo OIT. 2006 Comentarios formulados por la Comisión de Expertos en Aplicación de Convenios y Recomendaciones (des 1990)

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | **75** | 50 | 25 | 0

Comments:

There is a System of Information of public servants, which among other functions is aimed at detecting inabilities and incompatibilities, such as those derived from previous convictions. However, there is no exact information on how efficient this tool has been in detecting civil servants with these restrictions.

The most effective tool to make sure than those convicted for corruption do not get into civil service again is made through the system of disciplinary antecedents issued by the General Attorney's Office (Procuraduría General de la Nación). This certification is required to be contracted or to make contracts with the state. The General Attorney's Office reports than in 2006 there were 1,600,000 petitions for disciplinary antecedents, three times the number in 2006, which reflects more interest and practical action preventing those convicted for corruption to get into the civil service again.

References:

Informe del Comité de Expertos de la Organización de Estados Americanos: Implementacion en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Procuraduría General de la Nación. 2006. Balance Social Procuraduría.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

There is a detailed regime trying to prevent conflicts of interest. The Law 734 of 2002, or Disciplinary Code for Civil Servants states that a public servant cannot become creditor or debtor of someone interested in his office business and should recuse from policy decisions when there is a direct interest for himself, his relatives or his business partners.

In general, public servants should recuse from policy decisions when there is a conflict between the particular and the general interest. Additionally, the Procurement Statute includes personal or economic interest as a reason for public servants to recuse from procurement decisions.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

LEY 80 DE 1993 (octubre 28) por la cual se expide el Estatuto General de Contratación de la Administración Pública

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There are no restrictions on employment in the private sector after leaving office. However, the Law 734 of 2002 prohibits former public servants to give advice or representation on matters related to their previous responsibility within one year after leaving office. It also prohibits them from influencing or participating directly or indirectly on matters that used to be their responsibility.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The Constitution expressly prohibits the acceptance of posts, honors and hospitality from foreign governments and international entities (art. 129). The Law 734 of 2002 makes a general prohibition for public servants to directly or indirectly accept gifts, hospitality and any kind of benefits.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

Constitución Política de Colombia 1991. Art. 129

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no system to monitor the activities of public servants after leaving office. In fact, there is a widespread perception that there is a revolving door” between the public and the private sector.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

Misas Arango, Gabriel. 2005. La Lucha Anticorrupción en Colombia, teorías, prácticas y estrategias Contraloría General de la República, Bogotá.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent

or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Public employees frequently receive gifts and hospitality, although the perception is that bribing and petty corruption has decreased in recent years. However, it is still a tool to facilitate administrative procedures, to access to public services and, in most cases, to facilitate or render favorable procurement decisions. According to a recent survey about corruption among entrepreneurs, about 31.8 percent and 24.2 percent of respondents thought bribing is used very frequently or with certain frequency in procurement processes and to obtain licenses-permissions respectively. Among common citizens, according to the bribing barometer conducted by Transparency International, only 15 percent of common citizens surveyed declared to have paid bribes over the past year. In general, Colombia is the Latin American country where the perceptions about the existence of corruption in day-to-day transactions have improved the most.

References:

Corporación Transparencia por Colombia. 2020. El sistema nacional de integridad: Resultados y Análisis del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

Confecámaras.2004. Encuesta Probidad III. Encuesta Empresarial sobre Corrupción y Probidad en el Sector Público.

Transparency International. 2006. Informe sobre el Barómetro Global de la Corrupción de Transparency International 2006

Corporación Latinobarometro 2005.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Although recently there has been an improvement in terms of regulations preventing conflicts of interest, it is still widely perceived that civil servants participate and influence policy decisions where their personal interest may be involved. It is important to note that according to a recent survey conducted by the DANE among public employees, the perception that personal interests affect

policy decisions is smaller than the perception that these decisions are influenced by political considerations, for example in the case of procurement.

The Procuraduría General de la Nación (General Attorney's Office) reports that 3,802 civil servants were sanctioned for disciplinary faults in 2006. Presumably, some of these sanctions refer to conflicts of interests, and increased sanctions have helped reduce the extent of conflicts of interest. However, statistics are not desegregated enough to determine the real extent of sanctions against conflicts of interest.

Finally, it is interesting to note that according to a recent survey on perceptions of democracy, only a fifth of those surveyed consider using personal considerations as a corrupt act in policy decisions such as appointments.

References:

DANE. 2006. ENCUESTA AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Procuraduría General de la Nación. 2007. Balance Social Procuraduría 2006.

Rodríguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES

NO

Comments:

There are no specific provisions for citizens to access the asset disclosure forms of civil servants. Citizens can use the right of petition included in the Constitution (art. 23) to request those records but they might be difficult to access given habeas data restrictions.

References:

Constitución Política de Colombia 1991 art. 20, 23

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure forms are only available for the General Attorney’s Office, the heads of personnel offices in each entity and the National Registry’s Office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions.

In general, common citizens might not be able to access asset disclosure forms of civil servants. There can also be opposition to disclose asset disclosure forms to the public as this information can be used by criminals to threaten civil servants with kidnapping by ransom or extortion.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa”.

Constitución Política de Colombia 1991. art. 15

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

Comments:

Asset disclosure forms are only available for the General Attorney's Office, the heads of personnel offices in each entity and the National Registry's Office. Asset disclosure records are not easily available for citizens and there is no specific provision to make asset disclosure forms available for the public. Although any citizen can request information through rights of petition, the nature of asset disclosure forms might be reserved as it refers to personal information. Although there is no habeas data law, according to the Constitution and the rulings of the Constitutional Court, citizens can authorize the use of information about them registered in databases of public institutions.

In general, common citizens might not be able to access asset disclosure forms of civil servants. There can also be opposition to disclose asset disclosure forms to the public as this information can be used by criminals to threaten civil servants with kidnapping by ransom or extortion.

References:

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa".

Constitución Política de Colombia 1991. art. 15

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos a la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

69

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There are no specific laws protecting whistle-blowers in the public sector, however the legal base for whistle-blower protection can be found in different legal documents. According to Law 734 of 2002, it is a duty of public servants to denounce disciplinary faults, crimes and contraventions, and to offer guarantees to public servants or citizens that report wrongdoing of public servants. Although there is no specific system of whistle-blowing protection for public servants reporting corruption, they can be covered by witness protection programs which are primarily directed to protect in penal processes and those involving human rights violations.

Law 104 of 1993 created the Program to Protect Witness, Victims, and Employees from the General Prosecutor's Office (Fiscalía General). Law 241 of 1995 extended this protection to disciplinary processes in the Procuraduría (General Attorney's Office). Currently the Program at the General Prosecutor's Office is based on the law 418 of 1997, and its most recent extension, the law 1106 of 2006. The General Attorney's Office program is not working but the General Attorney is very active in supporting and promoting other witness protection programs.

References:

Ley 104 de 1993 (art. 63).

Ley 241 de 1995, Por la cual se prorroga la vigencia, se modifica y adiciona la Ley 104 de 1993. Art. 38

Procuraduría General de la Nación. RESOLUCION NÚMERO 28 (12 MAR. 1996) Por la cual se crea el Programa de protección a testigos, víctimas, intervinientes en el proceso disciplinario y funcionarios de la entidad.

Ley 418 de 1997, Diario Oficial No. 43.201 del 26 de diciembre de 1997, Por la cual se consagran unos instrumentos para la búsqueda de la convivencia, la eficacia de la justicia y se dictan otras disposiciones."

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

LEY 782 DE 2002 (diciembre 23) Diario Oficial No. 45.043, de 23 de diciembre de 2002 Por medio de la cual se prorroga la vigencia de la Ley 418 de 1997, prorrogada y modificada por la Ley 548 de 1999 y se modifican algunas de sus disposiciones. Art. 26

Ley 1106 de 2006, publicada en el Diario Oficial No. 46.490 de 22 de diciembre de 2006, "Por medio de la cual se prorroga la vigencia de la Ley 418 de 1997 prorrogada y modificada por las Leyes 548 de 1999 y 782 de 2002 y se modifican algunas de sus disposiciones" art. 1

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Although there are witness protection programs in place, they don't effectively cover public sector whistle-blowers and witnesses in corruption cases, but usually in cases regarding human rights violations. However, it is important to note that given the

existence of an armed conflict in Colombia, protection to human rights defenders, whistle-blowers and witnesses means protection to those denouncing corruption cases.

In any case, public servants report that a major constraint for them to denounce corruption is the fear of retaliation. In a study conducted by the World Bank and the vice presidency of the Republic in 2002, the main reasons for public servants not to denounce corruption cases was identified as the lack of protection against possible reprisals and a lack of confidence in the mechanisms designed to investigate and sanction corruption cases. On the most recent evaluation of institutional performance made among public employees in 2005, public servants in most national level public institutions also report that they don't denounce corruption, mostly because they fear retaliation.

Finally, the weakness of the systems to protect public sector whistle-blowers is reflected in the fact that the majority of effective corruption investigations are initiated by denunciations made by media reports. It is important to note that given the security situation in Colombia, the most common retaliations are related to personal security.

References:

GTZ. 2005. ANEXO 1: TABLA DE SINTESIS (MEMORIA DE TRABAJO DE MARINO TADEO HENAO, DICIEMBRE, 2005) CONVENCION DE LAS NACIONES UNIDAS CONTRA LA CORRUPCION. <http://www.u4.no/pdf/?file=/themes/conventions/docs/UNCAC-Compliance-Review-Colombia-SUMMARY.pdf>

Corporación Transparencia por Colombia. 2004. El Control Social a la Administración pública en Colombia. Cuadernos de Transparencia # 8. Bogotá

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la Corrupción.

Vicepresidencia de la República, Banco Mundial. 2002. Corrupción, Desempeño institucional y Gobernabilidad en Colombia.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES

NO

Comments:

There are no specific laws protecting whistle-blowers in the private sector, although there are general programs primarily directed to protect witnesses in penal processes and those involving human rights violations which may cover whistleblowers in corruption cases. According to Law 734 of 2002, it is a duty of public servants to denounce disciplinary faults, crimes and contraventions, and to offer guarantees to public servants or citizens that report wrongdoing of public servants. Thus, there are some procedures which can be extended to protect whistleblowers in the private sector although they are not specifically directed to them.

The Law 104 of 1993 created the Program to Protect Witness, Victims, and Employees from the General Prosecutor's Office (Fiscalía General) which manages the investigation of corruption cases. The Law 241 of 1995 extended this protection to

disciplinary processes of public servants in the Procuraduría (General Attorney's Office). Currently the Program at the General Prosecutor's Office is based on the law 418 of 1997, and its most recent extension, the law 1106 of 2006. The General Attorney's Office program is not currently working but the General Attorney is very active in supporting and promoting other witness protection programs.

References:

Ley 104 de 1993 (art. 63).

Ley 241 de 1995, Por la cual se prorroga la vigencia, se modifica y adiciona la Ley 104 de 1993. Art. 38

Procuraduría General de la Nación. RESOLUCION NÚMERO 28 (12 MAR. 1996) Por la cual se crea el Programa de protección a testigos, víctimas, intervinientes en el proceso disciplinario y funcionarios de la entidad.

Ley 418 de 1997, Diario Oficial No. 43.201 del 26 de diciembre de 1997, Por la cual se consagran unos instrumentos para la búsqueda de la convivencia, la eficacia de la justicia y se dictan otras disposiciones."

LEY 782 DE 2002 (diciembre 23) Diario Oficial No. 45.043, de 23 de diciembre de 2002 Por medio de la cual se prorroga la vigencia de la Ley 418 de 1997, prorrogada y modificada por la Ley 548 de 1999 y se modifican algunas de sus disposiciones. Art. 26

Ley 1106 de 2006, publicada en el Diario Oficial No. 46.490 de 22 de diciembre de 2006, "Por medio de la cual se prorroga la vigencia de la Ley 418 de 1997 prorrogada y modificada por las Leyes 548 de 1999 y 782 de 2002 y se modifican algunas de sus disposiciones" art. 1

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

There are no formal programs or laws to protect private sector whistle-blowers in corruption cases. However there is a general program of witness protection and private sector whistleblowers can recur to this program to look for their own protection. The majority of effective corruption investigations are initiated by denunciations made by particulars or media reports, and it may suggest that there are better incentives for private individuals than for public employees to denounce. It is important to note that given the security situation in Colombia, the most common retaliations are related to personal security than with retaliations such as losing a job or a relocation to less prominent positions. There are no available reports about cases of retaliation against whistleblower protection. Yet, it is important to note that there is still an important ground to cover in order to extend to the private sector regulations to prevent and combat corruption basically focused in the public sector. Additionally, the system of witness protection is still susceptible of being more efficient and more explicitly extended to corruption cases. Given the situation of armed conflict in Colombia, protection is usually given to witnesses in cases related to human rights violations.

References:

GTZ. 2005. ANEXO 1: TABLA DE SINTESIS (MEMORIA DE TRABAJO DE MARINO TADEO HENAO, DICIEMBRE, 2005) CONVENCION DE LAS NACIONES UNIDAS CONTRA LA CORRUPCION. <http://www.u4.no/pdf/?file=/themes/conventions/docs/UNCAC-Compliance-Review-Colombia-SUMMARY.pdf>

Corporación Transparencia por Colombia. 2004. El Control Social a la Administración pública en Colombia. Cuadernos de Transparencia # 8. Bogotá

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Civil servants can report corruption cases using the same mechanisms available for citizens in general. They can report to the General Attorney, the Ombudsman, the General Prosecutor, the Presidential Program against corruption and the internal control offices in each entity. Most entities have free phone lines or internet reporting mechanisms. According to Law 190 of 1995, each public entity shall create a free phone line for citizens to report recommendations, denouncements or critics related to the service offered by the respective institution. According to the same law each entity shall report the main complaints and their resolution every three months to the Citizen Commission for the Fight Against Corruption .

References:

Ley 190 of 1995. (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa. art. 53

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad. Análisis y Resultados del Estudio de Caso.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

As there is no exclusive mechanism for civil servants to report corruption, the score given on this indicator is derived from the performance of the general reporting mechanisms that receive information from any citizen. It is important to note also, that although no specific statistics are available, it is believed that reports of corruption generated in public servants are less common than reports generated in common citizens.

The most important mechanisms for reporting public sector corruption are those located at the Presidential Anti-corruption Program, the General Attorney's Office, the Supreme Audit Institution and the General Prosecutor's Office. The existence of these mechanisms has strengthened a culture of denouncement and as reported by the Presidential Anti-corruption Program in 2004, those mechanisms have increased the number of reported corruption cases. In general, despite some personnel weaknesses, important reports received are usually acted upon with efficiency. An increasing number of denouncements may require more staff, and it has led the heads of the above mentioned agencies to focus their follow-up efforts in high level corruption cases.

The reporting mechanism of the Presidential Anti-corruption Program has personnel (one person usually) that continuously monitors the cases reported and directs denouncements to the appropriate agencies. However, according to the Director of the Program most relevant, denouncements are sent directly to him rather than reported through the phone line and thus sometimes it is a waste of time monitoring the phone line.

The General Attorney's office (Procuraduría) reported that in 2006 it received 500,000 documents reporting irregularities or offenses. From that universe, 31 percent were directed for disciplinary processes and 22 percent for preventive processes. By law, the institution has an office exclusively dedicated to attend the reports made through the phone line or email.

References:

Interview with Rodrigo Lara Restrepo. Director Presidential Anticorruption Program. July 18 2007. Bogotá.

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos: Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

Comments:

As there is no exclusive mechanism for civil servants to report corruption, the score given on this indicator is derived from the performance of the general reporting mechanisms that receive information from any citizen. It is also important to note that although no specific statistics are available, it is believed that reports of corruption generated in public servants are less common than reports generated from common citizens.

The most important mechanisms for reporting public sector corruption are those located at the Presidential Anti-corruption Program, the General Attorney's Office, the Supreme Audit Institution and the General Prosecutor's Office. It is important to note that these mechanisms are general, not only for civil servants to report. The existence of these mechanisms has strengthened a culture of denouncement and, as reported by the Presidential Anti-corruption Program in 2004, those mechanisms had increased the number of reported corruption cases. There is no specific budget allocation for these types of mechanisms in general, but their funding is reliable and included within the general budget of the specific institution. The funding for these mechanisms might not be affected by political considerations as much as by efficiency or budgetary considerations. In general, important reports received are usually acted upon with efficiency, but an increasing number of denouncements may increasingly require more resources, and it has led the heads of the above mentioned agencies to focus their follow-up efforts in high level corruption cases.

The Presidential Anti-corruption Program in general has limited budget, however its director believes that it is possible to work with the available resources by focusing on the most relevant cases.

There is no specific information on the available resources for the reporting mechanism at the General Attorney's Office, but the number of reports testifies to the relevance of this mechanism. The General Attorney's office reported that in 2006 it received 500,000 documents reporting irregularities or offenses. From that universe, 31 percent were directed for disciplinary processes and 22 percent for preventive processes. According to the 2005 Institutional Performance Survey of public servants, employees in the General Attorney's Office believe that resources are the weakest component of institutional performance and that there are not enough resources to fulfill the mandate of the institution. This is the response of 37.4 percent of respondents in the General Attorneys Office. However, there is a specific office attending to complaints received through the phone line or email.

References:

DANE. 2006. Encuesta Desempeño y Ambiente institucional Procuraduría General de la Nación.

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

Interview with Rodrigo Lara Restrepo. Director of the Presidential Anticorruption Program. July 18 2007. Bogotá

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos: Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Comments:

As there is no exclusive mechanism for civil servants to report corruption, the score given on this indicator is derived from the performance of the general reporting mechanisms that receive information from any citizen. It is important to note also, that although no specific statistics are available, it is believed that reports of corruption generated in public servants are less common than reports generated in common citizens.

In general the perception is that when denouncements are made, they are quickly directed into investigation when relevant. What is more difficult to determine in a reliable way is how much time it will take to solve the case. The Procuraduría has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. However, it is important to note that available statistics do not show the average time that takes a process by type of offense or how many processes denounced by civil servants became effectively investigated. The number of files under process went from 63,688 in 2000 to 34,498 in 2006, showing the advances in acting upon cases.

Regarding the Presidential Anti-corruption Program, when a complaint is considered relevant, the Program acts quickly in submitting it to the agency that may have the mandate to investigate and sanction the specific case. In that case it is not clear how much time the respective institution may take to complete an investigation. Although most institutions have made efforts in recent years to act quickly on complaints, there are delays and backlogs. The Director of the anti-corruption agency reports that most of the complaints made through the reporting mechanism are not relevant to the interests of the agency and therefore are quickly dismissed.

It is important to note that according to a recent survey on the perception of democracy in Colombia, the Procuraduría, with a specific mandate to investigate corruption, is better perceived by citizens than the judiciary. In general, however, citizens believe that the main obstacle to protecting rights is the fact that investigations are slow.

References:

Interview with Rodrigo Lara Restrepo. Director of the Presidential Anticorruption Program July 18 2007. Bogotá

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos: Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

As there is no exclusive mechanism for civil servants to report corruption, the score given on this indicator is derived from the performance of the general reporting mechanisms that receive information from any citizen. It is important to note also, that although no specific statistics are available, it is believed that reports of corruption generated in public servants are less common than reports generated in common citizens.

The perception is that more investigations increasingly derive from denouncements made through reporting mechanisms. It is important to note that answers to denouncements can be more easily carried out at the national than at the local level. In fact, in order to look for more efficiency in case solution, national level reporting mechanisms have focused in managerial and high level corruption, probably leaving behind important cases at the local level. According to a recent survey on perceptions of democracy in Colombia, the Procuraduria, with an specific mandate to investigate corruption, is better perceived by citizens than the judiciary. In general, however, citizens believe that the main obstacle to protect rights is the fact that investigations are slow.

The Presidential Anti-corruption Program does not have power to initiate investigations, but over the past year under the new director it has been very active in collaborating with intelligence agencies and judiciary institutions to work on high level corruption cases, most of them related to irregular procurement.

The General Attorney's office does have power to initiate investigations and it does. However, as in the case of the Anti-corruption Program, the General Attorney has decided to focus active investigation on cases of managerial and high level corruption. In 2006 it received 500,000 documents reporting irregularities or offenses. From that universe, 31 percent were directed for disciplinary processes and 22 percent for preventive processes.

In general the perception is that when denouncements are made, they are quickly directed into investigation when relevant. What is more difficult to determine in a reliable way is how much time it will take to solve the case. The Procuraduria has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. However, it is important to note that available statistics do not show the average time that takes a process by type of offense or how many processes denounced by civil servants became effectively investigated. The number of files under process went from 63,688 in 2000 to 34,498 in 2006, showing the advances in acting upon cases.

References:

Procuraduria General de la Nación. 2006. Balance Social de la Procuraduria.

Interview with Rodrigo Lara Restrepo. Director of Presidential Anticorruption Program. July 18 2007. Bogotá

Corporación Transparencia por Colombia. 2202. El sistema nacional de integridad, Análisis y resultados del estudio de caso. Cuadernos de Transparencia # 4. Bogotá.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos: Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

48. Is the public procurement process effective?

65

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

According to Law 80 of 1993, public servants are unable to participate in procurement processes as well as their relatives, the societies in which any of the members has familiar links with another bidder, former members of the entity making the procurement process, relatives of managerial servants in the contracting entity, the wife or husband of managers, advisors, members of directorates and those with previous disciplinary sanctions.

References:

LEY 80 DE 1993 (Octubre 28) Diario Oficial No. 41.094, del 28 de octubre de 1993 Por la cual se expide el Estatuto General de Contratación de la Administración Pública. art. 8

Constitución Política de Colombia 1991. art. 127

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

One of the objectives of the Law 909 of 2004 that regulates civil service is the professionalizations of public employees. In this context, training programs are included as an important tool to improve the professional capacities of employees and the development of their duties. Thus, training programs have been increasing in recent years. However, there is no specific regulation on regular training for public procurement official.

The Law 909 states that It is a responsibility of the offices of human resources in each institution, and of the Administrative Department for Civil Service (DAFP) to train their employees, however, these programs are still in the process of becoming regularized and standardized. Many public officials still report that the lack of knowledge on procurement rules is one of the main reasons for irregular procurement processes. According to the diagnosis made by the DAFP, training of public procurement regulations constitutes the main interest of public employees and therefore they are planning to increase training in this area. In sum, although the regularization of training procedures in public procurement is increasingly seen as a priority for the Civil Service Department and some initiatives are being taken in this area, there are still many loopholes in training public procurement officials.

References:

Vicepresidencia de la República, Programa Presidencial de Lucha contra la Corrupción. 2005. Propuesta de una política de Estado para el control de la corrupción.

Departamento Administrativo de la Función Pública. 2006. Informe de Rendición de Cuentas Sector Funcion Publica 2005-2006

LEY 909 DE 2004 (septiembre 23) Diario Oficial No. 45.680, de 23 de septiembre de 2004 Por la cual se expiden normas que regulan el empleo público, la carrera administrativa, gerencia pública y se dictan otras disposiciones” Title XI Chapter I.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | **25** | 0

Comments:

Despite the existence of detailed and specific regulations to prevent conflicts of interest, public procurement is still one of the major sources of corruption cases through different mechanisms used to circumvent regulations such as: specifications previously negotiated with contractors, use of figureheads, contract fractioning, non-competitive process in which the winner is favored from the beginning and the use of untrue prices which are then compensated with additional contracts.

The Federation of Chambers of Commerce published a survey about procurement processes among 1,697 entrepreneurs in 2004 and 2006, reporting an improvement in the transparency of tendering processes. Such improvement is reported at the national, but not the sub-national level. In general, entrepreneurs still report very low levels of confidence in public institutions for procurement processes. Additionally, it is believed that bribing is more common in procurement than in any other administrative process and a high percentage of entrepreneurs (around 80 percent) report that they abstain from procurement processes for three main reasons: there are monopolies, the specifications are adjusted to favor some bidders, and there are political pressures to decide on contracts.

References:

Confederación de Cámaras de Comercio. Encuesta Probidad 2006.

Confederación de Cámaras de Comercio. Encuesta Probidad III. Encuesta Empresarial sobre corrupción y probidad en el sector público.

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad. Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

There is no such mandate, although according to Law 190 (Anti-corruption Law) and Law 734 (Disciplinary Code for Public Servants), it is a responsibility of public servants to present asset declarations when taking and leaving office.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico art. 34

Ley 190 de 1995 (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa". art 13,14, 15, 16

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

According to Law 80 of 1993 and its most recent reform introduced in July 2007, all major procurements require competitive bidding. The amount of procurements that require bidding is determined according to the yearly budget of the respective institution.

References:

Ley 1150 de 2007, Diario Oficial No. 46.691 de 16 de julio de 2007, Por medio de la cual se introducen medidas para la eficiencia y la transparencia en la Ley 80 de 1993 y se dictan otras disposiciones generales sobre la contratación con Recursos Públicos" Art. 2, 3

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

According to the most recent amendment to the Procurement Law, there is no provision for sole sourcing but for direct contracting which can only be used for credits, inter-administrative bidding, in case of manifest urgency, for Security and Defense contracts, for the development of scientific and technological activities, when there are not enough suppliers in the market and for special professional services or artistic works that can only be recommended to certain suppliers.

References:

Ley 1150 de 2007, publicada en el Diario Oficial No. 46.691 de 16 de julio de 2007, Por medio de la cual se introducen medidas para la eficiencia y la transparencia en la Ley 80 de 1993 y se dictan otras disposiciones generales sobre la contratación con Recursos Públicos”.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

According to the law, bidders can access and appeal reports, concepts and decisions made or adopted during all the stages of the procurement process. They also can express observations when those reports or decisions are presented.

References:

Law 80 of 1993.(Octubre 28) Diario Oficial No. 41.094, del 28 de octubre de 1993 Por la cual se expide el Estatuto General de Contratación de la Administración Pública” art. 24

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

According to law, all procurement decisions can be submitted to the same appeal mechanisms specified to all public decisions: Reposition, appeal, nullity and reparation can be presented before courts. Bidders can ask for a nullity action previous to the adjudication if the complaint relates to the bids specifications and has to be presented within 30 days after bids are

communicated. If there are controversies bidders can ask for nullity before the administrative jurisdiction, the Supreme Audit Institution (Contraloría) the General Attorney's Office (Procuraduría) or the General Prosecutor (Fiscalía General de la Nación).

References:

Law 80 of 1993.(Octubre 28) Diario Oficial No. 41.094, del 28 de octubre de 1993 Por la cual se expide el Estatuto General de Contratación de la Administración Pública” art. 44- 49

Decreto Extraordinario 1818 de 1998, DECRETO 1818 DE 1998 (septiembre 7) Diario Oficial No. 43.380, del 07 de septiembre de 1998 Por medio del cual se expide el Estatuto de los mecanismos alternativos de solución de conflictos.

Ley 1150 de 2007, publicada en el Diario Oficial No. 46.691 de 16 de julio de 2007, “Por medio de la cual se introducen medidas para la eficiencia y la transparencia en la Ley 80 de 1993 y se dictan otras disposiciones generales sobre la contratación con Recursos Públicos”. art. 6

DECRETO 1 DE 1984 (enero 2) Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo, art. 50

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

According to the most recent amendment to the Procurement Law issued in July 2007, individuals who have been convicted of bribing or other corruption acts cannot participate in procurement processes. This prohibition is extended to the societies or companies to which they belong. However, the law does not create a formal blacklist.

References:

Ley 1150 de 2007, publicada en el Diario Oficial No. 46.691 de 16 de julio de 2007, Por medio de la cual se introducen medidas para la eficiencia y la transparencia en la Ley 80 de 1993 y se dictan otras disposiciones generales sobre la contratación con Recursos Públicos”. art. 18

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There is no system of formal blacklists and in practice many companies convicted or involved in corruption scandals contract with the state again.

There are two online systems of information on public procurement. These have improved the centralization of information which can be useful to prevent convicted companies from engaging in procurement again. However, those systems are still in implementation stages and there are many problems in the reliability of information and in the level of use and knowledge of those mechanisms.

References:

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad. Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá

Corporación Transparencia por Colombia. 2006. Monitoreo ciudadano a herramientas de transparencia en la contratación pública. Sistema de Información para la vigilancia de la contratación estatal SICE y portal Unico de Contratación. Cuadernos de Transparencia # 12. Bogotá.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

75

49a. In law, citizens can access public procurement regulations.

YES

NO

Comments:

Regulations for public procurement are covered in Law 80 of 1993 and all its amendments and are open to the public. The Constitutional principle that guarantees the right to information compels the government to make regulations public and easily available. In practice, the complexity of regulations and the amount of amendments made to the law makes it difficult for citizens to know and understand the specific regulations in place.

References:

Constitución Política de Colombia 1991. Art. 20

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

All procurement processes are public. If there is a request there can be a public audience for adjudication (art. 273 Constitution). If not, the decisions should be communicated to all bidders, published in two printed media with wide circulation, and communicated to the Chambers of Commerce.

References:

Law 80 of 1993.(Octubre 28) Diario Oficial No. 41.094, del 28 de octubre de 1993 Por la cual se expide el Estatuto General de Contratación de la Administración Pública” art. 24, 31

Constitución Política de Colombia 1991. Art. 273

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records on general rules governing public procurement are easily available online, but given the amount of rules and changes that have been made to the general framework, citizens may have some difficulties in understanding or knowing the entire universe of regulations.

There are problems in accessing specific bids. In fact, entrepreneurs feel that previous negotiations and privileged access to information before bids are open constitute major constraints for them to participate in fair procurement processes.

References:

Confederación de Cámaras de Comercio. Encuesta Probidad 2006.

Confederación de Cámaras de Comercio.2004. Encuesta Probidad III. Encuesta Empresarial sobre corrupción y probidad en el sector público.

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad.Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia #4. Bogotá.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records on general rules governing public procurement are easily available online, but given the amount of rules and changes that have been made to the general framework, citizens may have some difficulties in understanding or knowing the entire universe of regulations.

There are problems in accessing specific bids. In fact, entrepreneurs feel that previous negotiations and privileged access to information before bids are open constitute major constraints for them to participate in fair procurement processes and may generate a financial burden on bidders. On July 2007 there was a reform to the Procurement Law prohibiting requests for payment for procurement specifications.

References:

Confederación de Cámaras de Comercio. Encuesta Probidad 2006.

Confederación de Cámaras de Comercio. 2004. Encuesta Probidad III. Encuesta Empresarial sobre corrupción y probidad en el sector público.

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad. Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

Comments:

There are two online systems of information on public procurement, which have made it easier for citizens to access information, however those systems are still in implementation stages and there are many problems in the reliability of information and in level of use and knowledge of those mechanisms by citizens.

Through Law 598 of 2000, the Supreme Audit Institution (Contraloría General de la República) created the Sistema de Información para la Vigilancia de la Contratación Estatal (SICE– Information System to Oversee Public Procurement) and in 2003 the vice-presidency of the Republic created the Portal Único de Contratación on which public institutions publish information on public procurement. According to the decree 2434 of 2006 it is a duty for institutions to publish procurement information with some exceptions as national security and defense, and leasing of real estate, among others.

The Documento Conpes 3249 of October 2003 proposed to integrate both online information systems. It is an ongoing process. According to a study from Transparency for Colombia, up until July 2005, 134 public entities were publishing information on the Portal Único and the number of monthly average visits increased from 30,000 to 43,087. On that Web page citizens can access contract specifications for open biddings. The SICE concentrates information on reference prices, list of providers and catalogs of goods and services. Up until July 2005 it had information on 2,221 national and decentralized entities. The publishing of information on the SICE and Portal Único has improved, but there still are many information gaps between what is published and the information held by public entities, thus information on the Web page is not totally reliable. Additionally, there are still many public entities that do not publish information on those Web pages. Transparency for Colombia reports that the performance of the Portal is better than the performance of the SICE.

There are problems in accessing specific bids. In fact, entrepreneurs feel that previous negotiations and privileged access to information before bids are public constitute major constraints for them to participate in fair procurement processes and may generate a financial burden on bidders. On July 2007 there was a reform to the Procurement Law prohibiting requests for payment for procurement specifications.

References:

Corporación Transparencia por Colombia. 2006. Monitoreo ciudadano a herramientas de transparencia en la contratación pública. Sistema de Información para la vigilancia de la contratación estatal SICE y portal Único de Contratación. Cuadernos de Transparencia # 12. Bogotá.

Confederación de Cámaras de Comercio. Encuesta Probidad 2006.

Confederación de Cámaras de Comercio. 2004. Encuesta Probidad III. Encuesta Empresarial sobre corrupción y probidad en el sector público.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

Comments:

Citizens can access results on public procurement on two Web pages, the Portal Unico de Contratacion and the SICE. It is reported however that information on procurement results is not totally consistent with information available directly in the procurement offices of public institutions (53 percent in national institutions and 33percent in decentralized entities).

The quality of information published online has improved but in many cases the publication of results is limited to those directly interested in the process. A reform to the Procurement Law passed in July 2007 makes it mandatory to adjudicate open biddings in public audiences, a reform that can improve the publication system once in place.

References:

Corporación Transparencia por Colombia. 2006. Monitoreo ciudadano a herramientas de transparencia en la contratación pública. Sistema de Información par ala vigilancia de la contratación estatal SICE y portal Unico de Contratacion. Cuadernos de Transparencia # 12. Bogota.

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad. Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

83

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

According to Law 226 of 1995, all individuals and enterprises can access all state stocks privatized by the state.

References:

Ley 226 de 1995, Diario Oficial No. 42.159, de 21 de diciembre de 1995 Por la cual se desarrolla el artículo 60 de la Constitución Política en cuanto a la enajenación de la propiedad accionaria estatal, se toman medidas para su democratización y se dictan otras disposiciones. " art. 2

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There are no specific regulations for conflicts of interest in the privatization process, however there is a detailed regime trying to prevent conflicts of interests for public servants in general. This regime is applicable to privatization processes. The Law 734 of 2002, or Disciplinary Code for Civil Servants, states that a public servant cannot become creditor or debtor of someone interested in his office business and should recuse from policy decisions when there is a direct particular interests from himself, his relatives or his business partners. In general, public servants should recuse from policy decisions when there is a conflict between the particular and the general interest. Additionally, the Procurement Statute includes personal or economic interest as a reason for public servants to recuse from procurement decisions.

According to the Law employees in state enterprises which are being privatized have to be offered shares in the first place. The aim of this norm is democratize the property of public enterprises giving priority to general employees rather to directives in the process of selling the shares. As this process is public and the employees act in the process of buying shares in their own capacity as employees there are no conflicts of interests as such. These conflicts may arise when shares are sold to the general public, and the conflicts in this area can be covered through the general rules on conflicts of interest.

References:

LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Regulations on conflicts of interest in privatization may not work sometimes, and there are usually controversies about the existence of conflicts in privatization process. For example, in 2006 Senator Jorge Robledo denounced that in the upcoming process of privatization of the Petroleum Company (ECOPETROL) there could be a possible conflict of interest as the Minister of Mining and Energy had worked for a long time with private enterprises in the petroleum sector. It is reported that big economic groups with interest in privatization processes may exert undue influence on the functionaries conducting the process. However it is important to note that social control and the General Attorney's office have increased their involvement in the oversight of

privatization processes. In 2006, the General Attorney's office accompanied and oversaw the privatization of the Gas company ECOGAS.

According to the Corporation Latinobarometro on its 2005 report, about 40% of surveyed citizens in Colombia consider that privatization processes have benefited the country, and this figure is above the same figure for most Latin American countries.

References:

El nuevo ministro, un hombre de las trasnacionales La privatización de Ecopetrol, un gran negocio en contra del interés nacional (15 de agosto de 2006) 15 de agosto de 2006 Intervención del senador Jorge Enrique Robledo en el debate sobre la venta del veinte por ciento de Ecopetrol, Comisión Quinta del Senado

BANCO INTERAMERICANO DE DESARROLLO, CONFERENCIA SOBRE TRANSPARENCIA Y DESARROLLO EN AMÉRICA LATINA Y EL CARIBE LOS PACTOS DE INTEGRIDAD: UNA HERRAMIENTA PARA BUSCAR LIMPIEZA EN CONTRATACIONES DE INTERÉS PÚBLICO Rosa Inés Ospina Robledo Mayo 2000

Procuraduría General de la Nación. 2007. Balance Social 2006.

Corporación Latinobarometro. Informe Latinobarómetro 2005.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

90

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

According to the Law 226 of 1995 all privatization processes should be widely publicized in order to guarantee the democratization of property (art. 2 and 9)

According to the Constitutional principle that guarantees the right to access information, all citizens can access regulations on privatization.

References:

Law 226 of 1995, Diario Oficial No. 42.159, de 21 de diciembre de 1995 Por la cual se desarrolla el artículo 60 de la Constitución Política en cuanto a la enajenación de la propiedad accionaria estatal, se toman medidas para su democratización y se dictan otras disposiciones. " art. 2

Constitución Política de Colombia 1991. art. 20

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

There is no formal process of advertising privatization processes, although through media major processes are known. There are sectors in which advertisement has functioned very well as in the case of electricity companies, which have also been an example in terms of democratizing the property while allowing an easy process for citizens to obtain a share. In 2007, the details on how to obtain a share in the electricity distribution company ISAGEN were widely advertised in mass media (printed, tv and radio). In other cases, as the financial sector, although the shares are initially offered to unions, retirees and employees, in practice general citizens have little access to information before the privatization is conducted.

References:

2007-07-10 – 11:32:00 – DJ Colombia Govt Sets Price For Stake In 5 Power Cos At COP946B DJ Colombia Govt Sets Price For Stake In 5 Power Cos At COP946B

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

According to the Law 226 of 1995 all privatization processes should be widely publicized in order to guarantee the democratization of property (art. 2 and 9), the results of the privatization processes conducted in 2006 are available at the web page of the Ministry of Finance.

References:

Law 226 of 1995, Diario Oficial No. 42.159, de 21 de diciembre de 1995 Por la cual se desarrolla el artículo 60 de la Constitución

Política en cuanto a la enajenación de la propiedad accionaria estatal, se toman medidas para su democratización y se dictan otras disposiciones". art. 2

Ministerio de Hacienda y Crédito Público. Resumen de procesos de privatización adelantados durante el 2006: 11-MAY-2007

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to law, all regulations on privatization should be widely publicized and easily accessible. However, the specifics of each privatization process may be more difficult to access or the access may be limited to the common citizen. According to Law 226 of 1995, specific privatization programs should be designed by the Minister of the respective sector and by the Finance Minister, then submitted to the cabinet and the Government for final approval, and then sent to be known by Congress.

References:

Law 226 of 1995, Diario Oficial No. 42.159, de 21 de diciembre de 1995 Por la cual se desarrolla el artículo 60 de la Constitución Política en cuanto a la enajenación de la propiedad accionaria estatal, se toman medidas para su democratización y se dictan otras disposiciones"

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to law, all regulations on privatization should be widely publicized and easily accessible. However, the specifics of each privatization process may be more difficult to access or the access may be limited to the common citizen. According to Law 226 of 1995, specific privatization programs should be designed by the Minister of the respective sector and by the Finance Minister, then submitted to the cabinet and the Government for final approval, and then sent to be known by Congress. If available, regulations can be obtained online.

References:

Ley 226 de 1995, Diario Oficial No. 42.159, de 21 de diciembre de 1995 Por la cual se desarrolla el artículo 60 de la Constitución Política en cuanto a la enajenación de la propiedad accionaria estatal, se toman medidas para su democratización y se dictan otras disposiciones”

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷⁹National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

According to the Constitution (art. 275, 276, 277), the General Attorney (Procurador) is the head of the Public Ministry and has, among other responsibilities, the disciplinary control of public servants, the oversight of the observance of the Constitution, the protection of human rights and the defense of the society's interests. To protect human rights the Attorney has the assistance of the Ombudsman (Defensor del Pueblo) who has the constitutional responsibility of protecting the promotion, exercise and divulgation of human rights. According to the Constitution the Attorney and the Ombudsman can request from public servants and particulars all the information considered relevant. The Attorney also has powers of judicial police.

References:

Constitución Política de Colombia 1991. Art. 275, 276, 277

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

70

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

According to Decree 262 of 2000, the Public Ministry headed by the General Attorney has fiscal, administrative and budgetary autonomy, and has its own staffing system separated from the general regime of civil service.

References:

Presidencia de la República. DECRETO NUMERO 262 DE 2000 (febrero 22). por el cual se modifican la estructura y la organización de la Procuraduría General de la Nación y del Instituto de Estudios del Ministerio Público; el régimen de competencias interno de la Procuraduría General; se dictan normas para su funcionamiento; se modifica el régimen de carrera de la Procuraduría General de la Nación, el de inhabilidades e incompatibilidades de sus servidores y se regulan las diversas situaciones administrativas a las que se encuentren sujetos.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

During recent years the credibility of the Public Ministry has increased, mainly because it has been independent in initiating investigations. However, the score obtained in this indicator derives from weaknesses in selection processes for the heads of these agencies which may hinder their independence, and from the fact that at the local level, prosecutors and ombudsmen are more politically constrained.

Although the Ombudsman and the Attorney are formally independent, their selection is made by the Lower Chamber (Ombudsman-Defensor) and the Senate (Procurador-Attorney). This selection method in fact links the heads of these agencies to political commitments which then can be reflected in the personell structure and the decisions made by them, limiting the independence from political influence.

At the local level, political pressures derived from the armed conflict make it very difficult for local Attorneys and Ombudsmen to conduct their job. However, it is important to note that the independence and importance of control organisms to protect rights and defend citizens before the State has been on the increase. According to a recent study by the Vanderbilt University about citizens' perceptions on democracy, the Ombudsman is the most trusted institution regarding the protection of human rights, and it is the first instance to which citizens complain about abuses. Within the Latin American context, Colombia presents the highest percentage of citizens who trust the institutions that protect rights.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Micheal. 2007. La Cultura Política de la Democracia en Colombia 2006. USAID.

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad: Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia #. 4.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, the General Attorney and the Ombudsman are elected for fixed periods (4 years) and cannot be removed except if there is a sanction. This prescription is respected in practice.

References:

Constitucion Politica de Colombia 1991. art. 276, 281

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad: Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia #. 4.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman and General Attorney's offices have sufficient full time staff. Since 2005 the Ombudsman started to increase its staff, owed to the creation of the National System of Public Defense (Sistema Nacional de Defensoría Pública).

According to a recent survey on institutional performance made among employees of the Attorney's and Ombudsman's offices, about 37.28 percent and 34.86 percent of employees surveyed consider that the professional profiles in both institutions are not appropriate to fulfill their mandate, however in general the institutions do not face major staffing problems.

References:

XIII Reporte del Defensor del Pueblo al Congreso de la República 2005.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Procuraduría General del Nación 2005.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Defensoría del Pueblo 2005.

Interview with Edgardo Maya Villazon. General Attorney. August 3, 2005. Bogotá.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

According to the 2005 Institutional Performance Survey made within public servants in the General Attorney's and the Ombudsman's office, political criteria are significant in hiring decisions (36.30 percent for the Attorney and 40.48 percent for the Ombudsman) but not so much in procurement decisions. About half of the respondents in the Ombudsman agency (48.35) and General Attorney's Office (43.45) consider that appointments are made on the base of professional qualifications and merit.

References:

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Procuraduría General de la Nación 2005.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding sources are reliable and consistent from year to year, however according to the 2005 Institutional Performance Survey made within public servants, employees in the Ombudsman's office and General Attorney's Office feel that resources are the weakest component of institutional performance and that resources are not enough to fulfill the mandate of the institution. This is the response of 37.40% of respondents in the General Attorneys Office and 67.80% respondents in the Ombudsman agency. Funding restrictions are specially noted in local offices of both institutions where employees sometimes don't have basic resources to conduct their work, such as enough computers

References:

DANE. 2006. Encuesta Ambiente y desempeño Institucional Procuraduría General de la Nación 2005.

DANE. 2006. Encuesta Ambiente y desempeño Institucional Defensoría del Pueblo 2005.

Interview with Edgardo Maya Villazón. General Attorney. August 3, 2005. Bogotá.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The General Attorney and the Ombudsman must make a yearly report of activities to the Congress. These reports are available at the agencies' web sites. Although reports are usually comprehensive, statistics are not very detailed. According to the most recent institutional performance survey made by DANE among public servants, about 83.05 percent of employees at the Attorney's Office and 79.30 percent at the Ombudsman agency believe that managers make their decisions public. According to the Transparency Index of Transparency from Colombia, both the Defensoria and the Procuraduria are located in a medium level in what refers to the visibility of their decisions.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Procuraduria General de la Nación 2005.

DANE. 2006. Encuesta Ambiente y Desempeño institucional Defensoría del Pueblo 2005.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la organización de Estados Americanos: Implementación en Colombia de las disposiciones la Convención Interamericana contra la corrupción.

Corporación Transparencia por Colombia. 2006. Indice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The General Attorney has the mandate and initiates investigations aggressively. The Ombudsman does not have power to initiate investigations but can start popular actions to protect human rights and make demands to the proper judicial agency on behalf of citizens. According to the most recent report of the General Attorney, in 2006 the agency received 41,568 new processes and acted on 48,212 from a total of 76,066 files. These results show that the number of processes has increased over the past five years and there has been an effort in reducing the unsolved cases, which, at 28,007, is still a high number. Most of these processes refer to territorial institutions and on managerial levels.

The most recent report of the Ombudsman shows that in 2005 the office received 41,820 requests classified as advice (15,728), petitions (13,285) and complaints for violations or threats to human rights (12,807). The office acts immediately on all the cases, and it concluded its action on 93.25 percent of petitions. The Ombudsman can act as Council of the Defense in judicial processes about human rights violations. In this sense it received 14,564 and initiated a judicial action in 13.46 percent of petitions (all those that were relevant), from which 65.67 percent got a favorable decision. In the other types of requests, advice is given to the petitioner. The Ombudsman statistics report that 7,4443,113 individuals benefited from its actions.

The score presented on this indicator shows the effectiveness of both the General Attorney's and Ombudsman's offices in protecting rights, but also the limitations that their functions face at local levels of government, many of them related to the armed

conflict.

References:

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

XIII Reporte del Defensor del Pueblo al Congreso de la República 2005.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

On corruption cases, the General Attorney reported that it sanctioned 3,802 cases in 2006. 40 percent of those sanctions refer to corruption cases and to very serious offenses, and ended with separation of public servants from duty.

The Ombudsman does not have the power to impose penalties, but it reports that from all the petitions to act received in 2005, it acted on 93.25 percent, leaving a very small backlog.

References:

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

XIII Reporte del Defensor del Pueblo al Congreso de la República 2005.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The concepts of the Attorney are influential even though they may find resistance within the government. Both the Attorney and the Ombudsman can present law projects on the matters of their interest.

The current General Attorney has been on the post for three consecutive periods and during this time the credibility and influence of the institution has increased. Although there have been important advances in collaborations with other branches of power, coordination is still one of the major problems for the the Ombudsman and the General Attorney's Office.

References:

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

Interview with Edgardo Maya Villazon. General Attorney. August 3, 2005. Bogotá.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The General Attorney's Office (Procuraduría) has relieved the congestion of processes over the past five years, which means that it is more efficient in acting on complaints. However it is important to note that available statistics do not show the average time that a process takes, the type of offence or how many processes denounced by civil servants became effectively investigated. The number of files under process went from 63,688 in 2000 to 34,498 in 2006. The General Attorney's office reported that in 2006 it received 500,000 documents reporting irregularities or offenses. From that universe, 31 percent were directed for disciplinary processes and 22 percent for preventive processes. The General Attorney's office has been more aggressive on the follow up of offenses at the managerial level. On its side, the Ombudsman is the most trusted institution for complaining about human rights as reflected in a recent survey made among citizens about perceptions on democracy, and has invested resources on training and personnel to strengthen the responses to claims and complains made by citizens.

References:

Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

83

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

According to the Constitution, the Ombudsman and the General Attorney should present yearly reports to Congress, and even though it is not specified that these reports are public, they are usually published on the Web page of the respective entities.

References:

Constitución Política de Colombia 1991.art. 277 and 282

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Most general information on the decisions of the Ombudsman and the General Attorney can be found online or directly at the offices, but more detailed information can be difficult to obtain for most citizens. The General Attorney's office has created a system through which any citizen can find online information on the concepts issued by the Attorney to the Constitutional Court

and the all disciplinary sanctions made by the office. On the Defensoría del Pueblo (Ombudsman) Web page, citizens can access a list a of popular actions taken to protect human rights.

References:

Procuraduría General de la Nación. www.procuraduria.gov.co

Defensoría del Pueblo. www.defensoria.org.co

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All records available online are easily accessible at no cost, however it may be difficult for citizens to understand and properly use the information systems, which are not user friendly.

According to the Transparency Index of Transparency from Colombia, the Defensoría has lower scores than the Procuraduría in what refers to the availability of information for citizens.

References:

Procuraduría General de la Nación. www.procuraduria.gov.co

Defensoría del Pueblo. www.defensoria.org.co

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

According to the Constitution, the Contraloría General de la República is the agency that oversees fiscal management of all public servants, particulars and entities managing public resources.

References:

Constitución Política de Colombia 1991. art. 267

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

78

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

According to the Constitution (art. 267), the Supreme Audit Institution (Contraloría) is a technical institution which has administrative and budgetary independence, and belongs to the oversight institutions.

References:

Constitución Política de Colombia 1991. art. 267

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The director of the Supreme Audit Institution cannot be removed as he or she is elected by both Chambers of Congress for a four-year term. He or she can only be removed if there is a sanction, an inability or an incompatibility.

References:

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad en Colombia: análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Audit Institution has sufficient full-time staff, which is regulated by an independent civil service system. About 60 percent of employees surveyed within the institutional performance survey believe the professional profile and qualifications in the Supreme Audit Institution are pertinent for the fulfillment of its mandate.

For a long time there has been a huge controversy on the pertinence of municipal auditors as it is believed their functions can be carried out by departmental auditors. A referendum conducted in 2003 proposed the elimination of the municipal offices of the Audit Institution.

References:

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005. CONTRALORIA GENERAL DE LA REPUBLICA

Interview with Antonio Hernandez Gamarra. General Auditor. August 4, 2005. Bogotá.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Although the Contralor is formally independent, his/her selection is made by Congress. This in fact links the head of this agency to political commitments which are then reflected in the personnel structure and the decisions made. According to the most recent survey on institutional performance conducted by the Statistics Department (DANE) within 173 public servants in the Audit Institution, about 36 percent of employees believe that there are political criteria involved in appointments but that familiar or personal considerations are not so important (57 percent). However the survey also reports that about 60 percent of employees feel the appointments are merit based.

References:

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005. CONTRALORIA GENERAL DE LA REPUBLICA

Corporación Transparencia por Colombia. 2002. Sistema Nacional de Integridad, Análisis y Resultados del Estudio de Caso. Bogotá.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding sources are reliable and consistent from year to year, however according to the most recent survey on institutional performance conducted by the Statistics Department (DANE) within 173 public servants in the Audit Institution, about 59.77 percent feel that the budget and physical resources are not enough to carry out with the mandate of the Institution.

References:

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005. CONTRALORIA GENERAL DE LA REPUBLICA

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Contraloría (Supreme Audit institution) produces reports and documents that are public such as: yearly report on State finance, the situation of public debt, the general budget account, the audit report to the general balance of the nation, a monthly financial report, the Economía Colombiana magazine and special reports. According to the Index of Transparency made by the Corporation Transparency for Colombia, among 155 institutions at the national level, the Supreme Audit institution has the second best score in terms of visibility of its information. According to the most recent survey on institutional performance conducted by the Statistics Department (DANE) within 173 public servants in the Audit Institution, about 82.71 percent consider that the managerial decisions are registered formally in electronic or printed media.

References:

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005. CONTRALORIA GENERAL DE LA REPUBLICA

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional, entidades públicas nacionales. Bogotá.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Usually the reports of the Supreme Audit Institution are taken seriously at the national level, and lead to action of pertinent authorities. However at the local level the situation is different, first because local auditors are widely de-legitimized, as they are often involved in corruption cases, and it is believed that their mandate can be carried out by departmental and national auditors. The score on this indicator primarily reflects the credibility that the national auditor has gained in recent years despite the lack of credibility of local auditors.

References:

Interview with Antonio Hernandez Gamarra. General Auditor. August 4, 2005. Bogota

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, the Supreme Audit Institution can promote investigations on fiscal responsibility before the competent authorities providing all the necessary documentation, and it can request immediate suspension of public servants while penal or disciplinary investigations end. Every three months the Audit Institution publishes the name of all the servants convicted for fiscal responsibility. Between April and June 2007, 4,413 people were sanctioned with fiscal responsibility, which prohibits them from being appointed as civil servants. The action of the Contraloria is more effective at the national level, where it can act independently, than at the local level where auditors are subject to political pressures or lack legitimacy.

References:

Contraloria General de la República. Boletín Responsables Fiscales. Boletín No. 050, 4 de julio de 2007. http://www.contraloriagen.gov.co/html/responsabilidad_fiscal/responsabilidad_boletin.asp

Interview with Antonio Hernandez Gamarra.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

According to the Constitution, the Supreme Audit Institution should present yearly reports to Congress. Even though it is not specified that these reports are public, they usually are published on the Web page of the institution

References:

Constitución Política de Colombia 1991. art. 268

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Most general information on the decisions of the Supreme Audit Institution can be found online or directly at the offices, but more detailed information can be more difficult to obtain for most citizens. The Supreme Audit Institution has created a system through which any citizen can find online information on the process of fiscal responsibility initiated within the Supreme Audit Institution.

According to the Transparency Index made by the Corporation Transparency for Colombia among 155 institutions at the national level, the Supreme Audit institution has the second best score in terms of visibility of its information.

References:

Contraloría General de la República. www.contraloriagen.gov.co

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional, entidades públicas nacionales. Bogotá.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All records available online are easily accessible at no cost, however it may be difficult for citizens to understand and properly use the information systems, which are not user friendly.

References:

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional, entidades públicas nacionales. Bogotá.

Contraloría General de la República. www.contraloriagen.gov.co

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

According to Decree 2117 of 1992 the DIAN (National Tax and Customs Agency) is the responsible agency for tax collection. It is a technical agency ascribed to the Ministry of Finance but with financial and administrative autonomy.

References:

DECRETO NUMERO 2117 DE 1992 (Diciembre 29) POR EL CUAL SE FUSIONA LA DIRECCION DE IMPUESTOS NACIONALES Y LA DIRECCION DE ADUANAS NACIONALES EN LA UNIDAD ADMINISTRATIVA ESPECIAL DIRECCION DE IMPUESTOS Y ADUANAS NACIONALES Y SE DICTAN DISPOSICIONES COMPLEMENTARIAS. http://www.eltransporte.com/normas/Decretos/hacienda/D_2117_92/index.htm

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

75

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The DIAN (National Tax and Customs Agency) has sufficient staff to fulfill its mandate and is regulated by independent regulations on civil service. According to a recent survey of institutional performance made by DANE among civil servants, about 40 percent of employees of the DIAN consider that the profiles of employees are not adequate to fulfill the mandate of the agency. However, it is important to note that according to a recent study by the CEPAL, there has been an advance in the level of institutionalization of the tax system in Colombia, owed partially to the professionalization of tax agencies.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Dirección de Impuestos y Aduanas Nacionales.

Baer, Katherine. 2006 La administración tributaria en América Latina: algunas tendencias y desafíos In Tributación en América Latina. En busca de una nueva agenda de reformas Oscar Cetrángolo y Juan Carlos Gómez Sabatini (compiladores). 2006.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The funding is fairly consistent from year to year and the majority of employees surveyed in a recent survey of institutional performance consider that the agency has sufficient budget to fulfill its responsibilities.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Dirección de Impuestos y Aduanas Nacionales.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

25

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

According to a recent study of the CEPAL, there has been an advance in the level of institutionalization of the tax system in Colombia, owed partially to the professionalization of tax agencies. However, in 2007 the Economist Intelligence Unit rated Colombia as having high tax policy risk derived from the existence of many differential rates and exemptions, which are created by the influence of vested interests.

Colombia has one of the highest nominal tax rates in the Americas, for both corporate and personal taxes, but deductions are widespread and this is where the base of unequal treatment lies. In 2005, the government implemented an online platform to facilitate payments and declarations and to verify taxes due by comparing reporting information with the financial sector and other government agencies in order to avoid evasion. The result of the last amendment, which was initially aimed at making the taxing statute shorter and simpler, was the opposite.

References:

Baer, Katherine. 2006 La administración tributaria en América Latina: algunas tendencias y desafíos In Tributación en América Latina. En busca de una nueva agenda de reformas Oscar Cetrángolo y Juan Carlos Gómez Sabatini (compiladores). 2006. CEPAL

THE ECONOMIST INTELLIGENCE UNIT. Colombia risk: Tax policy risk. June 18, 2007.

Revista Semana. Otra colcha de retazos: Irresponsable resultó la nueva reforma tributaria que aprobó el Congreso. Dentro de dos años habrá que hacer otra". Edición 1286-1287 Diciembre 25 de 2006 a Enero 8 de 2007.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

According to Decree 2117 of 1992, the DIAN (National Tax and Customs Agency) is the responsible agency for excise collection and inspection of customs. It is a technical agency ascribed to the Ministry of Finance but with financial and administrative autonomy.

References:

DECRETO NUMERO 2117 DE 1992 (Diciembre 29) POR EL CUAL SE FUSIONA LA DIRECCION DE IMPUESTOS NACIONALES Y LA DIRECCION DE ADUANAS NACIONALES EN LA UNIDAD ADMINISTRATIVA ESPECIAL DIRECCION DE IMPUESTOS Y ADUANAS NACIONALES Y SE DICTAN DISPOSICIONES COMPLEMENTARIAS.http://www.eltransporte.com/normas/Decretos/hacienda/D_2117_92/index.htm

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The DIAN has sufficient staff to fulfill its mandate and it is regulated by independent regulations on civil service. According to a recent survey of institutional performance made by DANE among civil servants, about 40 percent of employees of the DIAN consider that the profiles of employees are not adequate to fulfill the mandate of the agency. However, it is important to note that according to a recent study by the CEPAL, there has been an advance in the level of institutionalization and professionalization within the tax and customs agency.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Dirección de Impuestos y Aduanas Nacionales.

Baer, Katherine. 2006 La administración tributaria en América Latina: algunas tendencias y desafíos In Tributación en América Latina. En busca de una nueva agenda de reformas Oscar Cetrángolo y Juan Carlos Gómez Sabatini (compiladores). 2006. CEPAL

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The funding is fairly consistent from year to year and the majority of employees surveyed in a recent survey of institutional performance feel that the agency has sufficient budget to fulfill its responsibilities.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Dirección de Impuestos y Aduanas Nacionales.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

In recent years there has been an improvement in reducing customs procedures in Colombia. However, both entrepreneurs and customs officers state that there still are many problems in enforcing customs regulations consistently. The first problem relates to the time that customs procedures take. According to a survey made among entrepreneurs by the World Bank, the average time for clearance of imports and exports is higher in Colombia than the average time in the rest of the countries surveyed. Delays increase costs and discourage businesses from participating in external trade, but most importantly, create incentives both for customs officers and for entrepreneurs to ask for and offer bribes in order to expedite processes. The second problem is the lack of technology that could help in make customs processes more efficient. For example, there are no comprehensive programs for risk management to prevent and monitor violations of customs regimes. And the third problem is the lack of appropriate training for customs officers and the fact that inspections depend on the will of improperly trained officers.

The DIAN (customs and excise agency) is among the institutions most widely perceived by the public as being corrupt, although it is important to note that in general perceptions about the existence of corruption have decreased in recent years in Colombia.

References:

Banco Mundial. 2006. Encuesta de Empresas. Examine las economías, Colombia 2006.

Rosalba Cubillos F. Colombia, lejos de una aduana actualizada. 2005. La República.

http://www.larepublica.com.co/noticia.php?id_notiweb=40776&id_subseccion=72&template=noticia&fecha=2005-08-29_10:19am

VICEPRESIDENCIA DE LA REPÚBLICA, BANCO MUNDIAL. 2002. CORRUPCIÓN DESEMPEÑO INSTITUCIONAL Y GOBERNABILIDAD EN COLOMBIA: ELEMENTOS PARA LA CONSTRUCCIÓN DE UNA ESTRATEGIA ANTICORRUPCIÓN. RESULTADOS DE LAS ENCUESTAS A USUARIOS, EMPRESARIOS Y FUNCIONARIOS PÚBLICOS SOBRE CORRUPCIÓN, DESEMPEÑO DEL SECTOR PÚBLICO Y GOBERNABILIDAD

ALCA – COMITE DE NEGOCIACIONES COMERCIALES. REUNION DE EXPERTOS SOBRE MEDIDAS DE FACILITACION DE NEGOCIOS REFERENTES A ASUNTOS ADUANEROS DIFUSIÓN DE LAS MEDIDAS DE FACILITACIÓN DE NEGOCIOS REFERENTES ASUNTOS ADUANEROS. Estatus de Implementación y Necesidades de Asistencia Técnica: Medidas de Facilitación de Negocios

Referentes a Asuntos Aduaneros. http://www.alca-ftaa.org/spcomm/derdoc/cbfw1r7_s.asp

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

According to Law 489 of 1992, state owned enterprises are subject to the oversight of the entity to which they are ascribed. There are two big groups of state enterprises. First, the Industrial and Commercial enterprises which are subject to private law regulations except in their administration and organization. The second group are the Public Service Enterprises such as health enterprises, which are subject to the control of the Superintendencia de Servicios de Salud (Superintendency of Health) and to the Social Protection Ministry. In what refers to fiscal control, State Enterprises are subject to the control of the Supreme Audit Institution (Contraloría General de la República).

References:

LEY 489 DE 1998 (diciembre 29) Diario Oficial No. 43.464, de 30 de diciembre de 1998. Por la cual se dictan normas sobre la organización y funcionamiento de las entidades del orden nacional, se expiden las disposiciones, principios y reglas generales para el ejercicio de las atribuciones previstas en los numerales 15 y 16 del artículo 189 de la Constitución Política y se dictan otras disposiciones.

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The oversight of state owned enterprises is in the hands of the respective Ministry or entity to which they are ascribed and to the superintendency that oversees the respective economic activity. Each superintendency, although independent in terms of administration and budget, is subordinate of the respective Ministry. Thus, the Superintendency for Industry and Commerce is ascribed to the Ministry of Industry and Commerce.

The Supreme Audit Institution, which oversees the fiscal aspects of state enterprises, is an independent branch of government.

References:

DECRETO 1080 de 1996 (19 de junio) POR EL CUAL SE REESTRUCTURA LA SUPERINTENDENCIA DE SOCIEDADES Y SE DICTAN NORMAS SOBRE SU ADMINISTRACION Y RECURSOS EL PRESIDENTE DE LA REPUBLICA DE COLOMBIA.
LEY 489 DE 1998 (diciembre 29) Diario Oficial No. 43.464, de 30 de diciembre de 1998. Por la cual se dictan normas sobre la organización y funcionamiento de las entidades del orden nacional, se expiden las disposiciones, principios y reglas generales para el ejercicio de las atribuciones previstas en los numerales 15 y 16 del artículo 189 de la Constitución Política y se dictan otras disposiciones.

Constitución Política de Colombia 1991. Art. 267

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The superintendencies have an independent civil service system and the ministries are subject to general rules on civil service. The pertinence of staff differs for each agency. According to a survey on institutional performance made among public servants, from the institutions that may have responsibilities in overseeing state enterprises, more employees of the Superintendency of Health (51 percent) feel that personnel profiles are not adequate to fulfill the mandate of the Ministry. The Ministry of Mining and Energy has a very good level of staff pertinence and only 13 percent of employees feel professional profiles are not adequate. In the Superintendency of Industry and Commerce and the Ministry of Commerce, about 35 percent of employees feel that functional profiles are not adequate. The percentage is 40 for the Ministry of Social Protection (Health). In any case, as the oversight responsibilities are extended over different institutions, it is difficult to accurately determine the adequacy of the staff that oversees state owned enterprises. Considering that risks of corruption appear to be higher in state enterprises of the health sector, and that the oversight agencies in this sector are the ones reporting more problems with staff and funding, it can be inferred that resources are lacking precisely in the sector where they are most needed.

References:

Ley 775 de 2005. Por el cual se establece el Sistema Específico de Carrera Administrativa para las Superintendencias

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Superintendencia de Industria y Comercio
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Comercio, Industria y Turismo. DANE. 2006. Encuesta Ambiente y Desempeño Institucional Superintendencia de Salud
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Minas y Energía
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Protección Social http://www.dane.gov.co/index.php?option=com_content&task=category§ionid=36&id=110&Itemid=298

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

The superintendencies and the ministries have consistent budgets from year to year. However, the pertinence of funding differs according to the specific agency. According to a survey on institutional performance made among public servants, from the institutions that may have responsibilities in overseeing state enterprises the Superintendency of Industry and Commerce, the Ministry of Commerce and the Ministry of Mining and Energy are the ones where more employees (62 percent) feel that funding is not enough to fulfill their mandate. The percentage is 66 for the Ministry of Social Protection (Health).

In any case, as the oversight responsibilities are extended over different institutions, it is difficult to accurately determine the sufficiency of the budgets for the institutions that oversee state owned enterprises. Considering that risks of corruption appear to be higher in state enterprises within the health sector, and that the oversight agencies in this sector are the ones reporting more problems with staff and funding, it can be inferred that resources are lacking precisely in the sector where they are most needed.

References:

Ley 775 de 2005. Por el cual se establece el Sistema Específico de Carrera Administrativa para las Superintendencias DANE.
2006. Encuesta Ambiente y Desempeño Institucional Superintendencia de Industria y Comercio DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Comercio, Industria y Turismo.
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Superintendencia de Salud
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Minas y Energía
DANE. 2006. Encuesta Ambiente y Desempeño Institucional Ministerio de Protección Social http://www.dane.gov.co/index.php?option=com_content&task=category§ionid=36&id=110&Itemid=298
Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacionales. Entidades públicas nacionales Bogotá.

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The superintendencias are able to initiate investigations and impose sanctions related to the specific service. For example the Superintendencia de Servicios Públicos (superintendency of domiciliary public services) has started 14 investigations in 2007.

In any case, as the oversight responsibilities are extended over different institutions and the information is fragmented, it is difficult to accurately determine efficacy of the initiation of investigations on state owned enterprises.

References:

Superintendencia de Servicios Públicos Domiciliarios. INVESTIGACIONES Y SANCIONES 2007.

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

In 2006, the Superintendency of Public Services imposed 527 fines. Although statistics are not desegregated, it is possible to determine that many of those fines were imposed to state owned enterprises. In any case, as the oversight responsibilities are extended over different institutions, it is difficult to determine with high levels of accuracy the efficacy of sanctions on state owned enterprises.

References:

Superintendencia de Servicios Públicos. Sanciones e investigaciones 2007.

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

70

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

There is no specific rule for citizens on accessing financial information of state owned enterprises. According to law the main principles of the administrative function are efficacy, efficiency, participation, publicity, responsibility and transparency. Thus, in an indirect way, all the information on state enterprises should be available for common citizens.

References:

LEY 489 DE 1998 (diciembre 29) Diario Oficial No. 43.464, de 30 de diciembre de 1998. Por la cual se dictan normas sobre la organización y funcionamiento de las entidades del orden nacional, se expiden las disposiciones, principios y reglas generales para el ejercicio de las atribuciones previstas en los numerales 15 y 16 del artículo 189 de la Constitución Política y se dictan otras disposiciones.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

At the Web page of the National Planning Department, as well as at the Web page of the enterprises, it is possible to find detailed and up-to-date financial data on state enterprises. According to the most recent Transparency Index of the Corporation Transparency for Colombia, in general all state enterprises have fairly good systems of information available to the public. Thus, their transparency indexes are at medium and medium to high levels compared to the whole universe of state institutions.

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Some records may be available online but it is not the case for all state enterprises. The Web page of the National Planning Department also has some financial information on state enterprises, but it is not constantly updated. According to the most recent Transparency Index made by the Corporation Transparency for Colombia, in general all institutions offer fairly good information systems to the public. Commercial and industrial enterprises have better levels of transparency than public service enterprises. Enterprises in the mining and energy sectors have better transparency levels than enterprises in the health sector.

The lack of a sole system or agency centralizing all information on state owned enterprises may cause delays in obtaining information, as well as the lack of clarity in information for citizens on how to access such information. Thus, there can be important time restraints for obtaining up-to-date information and notable differences on accessibility between enterprises.

References:

Departamento Nacional De Planeación. EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO Y SOCIEDADES DE ECONOMÍA MIXTA. http://www.dnp.gov.co/paginas_detalle.aspx?idp=167

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

Some records may be available online but this is not the case for all state enterprises. The National Planning Department Web page also has some financial information on state enterprises, but it is not constantly updated. According to the most recent Transparency Index made by the Corporation Transparency for Colombia, in general all state owned enterprises offer fairly good

public information systems. Commercial and industrial enterprises have better levels of transparency than public service enterprises. Enterprises in the mining and energy sectors have better transparency levels than enterprises in the health sector. The lack of a sole system or agency centralizing all information on state owned enterprises may cause delays and additional costs for obtaining information, but in general all documents are available at the cost of photocopying.

References:

Departamento Nacional De Planeación. EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO Y SOCIEDADES DE ECONOMÍA MIXTA. http://www.dnp.gov.co/paginas_detalle.aspx?idp=167

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

70
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

81

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

According to article 333 of the Constitution, economic activities and private initiatives are free within the framework of the the general benefit and for its exercise nobody can request permission unless required by law.

References:

Constitución Política de Colombia 1991, art. 333

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

The appeal mechanisms for business licenses are the same used to appeal any other administrative decision.

The mechanisms to appeal any administrative decision are reposition, appeal, nullity and reparation. Additionally, when citizens feel that they have used all available appeal mechanisms, they can use the Constitutional mechanisms created to protect basic rights.

The Constitution uses three mechanisms to defend basic human rights: the Accion de tutela” (resource to protect basic rights or tutelage) (art. 86) to protect individual rights when they have been wounded by action or omission of public authorities. These mechanisms have to be answered in 10 business days. The “Accion de cumplimiento” (art 87) is usually used as an appeal mechanism for “tutelas.” “Acciones populares” (art. 88) focuses on the protection of collective rights.

References:

Constitucion Politica de 1991 art, 86, 87,88.

Ley 393 de 1997 (acciones de cumplimiento)

Ley 472 de 1998 (acciones populares)

DECRETO 1 DE 1984 (enero 2) Diario Oficial No. 36.439, del 10 de enero de 1984 Por el cual se reforma el Código Contencioso Administrativo, art. 50 http://www.dafp.gov.co/leyes/C_CONADM.HTM

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The basic requirements to create a business can be met in 15 days and additional steps such as those referring to health care and pensions for employees can be met in about two months. It is estimated that business creation may take up to 60 days, and although it is still a long time, it is low compared to countries such as Spain. The Government is making efforts in trying to reduce time to create business in order to promote the creation of small enterprises.

In 2002 the Government of Alvaro Uribe created a program for Public Administration Reform (PRAP) which included reforms to rationalize and simplify administrative procedures and reduce the time spent by citizens in obtaining those licenses. The PRAP allows citizens to make several procedures in the same place and at the same time. The reform had a special focus on external trade procedures and it has reduced the number of steps that businessmen have to conduct to obtain licenses, improving the conditions for investment and trade and reducing bribing options. A simple importing license can be obtained within a reasonable time period (five days) and the process can be checked online.

However, according to a survey about perceptions on corruption made among entrepreneurs, about 24.2 percent of entrepreneurs surveyed report that they are frequently asked to pay bribes in order to expedite licensing procedures.

References:

Departamento Nacional de Planeación. www.dnp.gov.co

STANDARDIZED COMPANY Legal Form: Sociedad de Responsabilidad Limitada (SRL) Minimum Capital Requirement: 0 City: Bogota http://www.doingbusiness.org/Explore_Topics/StartingBusiness/Details.aspx?economyid=46

Confecámaras. 2004. Probidad III. Encuesta empresarial sobre corrupción y probidad en el sector público. Confecamaras.

Solicitud de aprobación o modificación de Licencias de Importación. <http://www.gobiernoenlinea.gov.co/tramite.aspx?traID=8>

Gomez, Lijis, Martinez, Joselin and Arzuza, Maria. 2006. Política pública y creación de empresas en Colombia. En: Pensamiento y Gestión no. 21. http://ciruelo.uninorte.edu.co/pdf/pensamiento_gestion/21/politica_publica_creacion_empresas.pdf

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Basic licenses such as obtaining a tax identification number can be acquired for free. Registration before the Chamber of Commerce requires 0.7 percent of capital in registration tax plus COP 341,000 for trade registration + COP 21,000 fixed fee + COP 21,000 registration fee for each company book + COP 2,900 for the registration form (about US\$250). Specific licenses such as sanitary registries may impose a financial burden, for example licenses for food and alcoholic beverages may vary between approximately US\$750 and US\$1,500. A simple importing license can be available at a reasonable cost (starting at about US\$15).

In 2003 the Government started the Program for Public Administration Reform (PRAP) and within the program simplified some licensing processes, thus reducing costs for entrepreneurs. At the same time the restructuring process of some institutions started with the PRAP could have increased the costs of some licenses because payments for licenses became part of the budget for institutions such as the INVIMA (the sanitary inspection agency). In sum, although costs for business creation can be still high in Colombia, they are low compared to countries such as Spain, and the government is trying to reduce costs in order to promote the creation of small enterprises.

References:

www.dnp.gov.co

www.invima.gov.co

STANDARDIZED COMPANY Legal Form: Sociedad de Responsabilidad Limitada (SRL) Minimum Capital Requirement: 0 City: Bogota

<http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=46>

Confecámaras. 2004. Probidad III. Encuesta empresarial sobre corrupción y probidad en el sector público. Confecamaras.

Solicitud de aprobación o modificación de Licencias de Importación. <http://www.gobiernoenlinea.gov.co/tramite.aspx?traID=8>

Gomez, Liyis, Martinez, Joselin and Arzuza, Maria. 2006. Política pública y creación de empresas en Colombia. En: Pensamiento y Gestión no. 21. http://ciruelo.uninorte.edu.co/pdf/pensamiento_gestion/21/politica_publica_creacion_empresas.pdf

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

According to the Decree 1290 of 1994 the INVIMA (an autonomous public establishment) is in charge of sanitary control and quality control of food, pharmaceuticals, biological products, makeup products, medical surgical instruments and equipment and all individuals who can have an impact on public and individual health. Regulatory requirements can be found at the INVIMA's Web page. However, there are weaknesses in the articulation of the INVIMA responsibilities at the local and regional levels, so even though information is public, it can be difficult for citizens to understand regulatory requirements. The INVIMA issues sanitary registries and importation registries.

References:

INVIMA. <http://www.invima.gov.co/>

DECRETO 1290 DE 1994 (junio 22) Diario Oficial No. 41.406 del 24 de junio de 1994 Por el cual se precisan las funciones del Instituto Nacional de Vigilancia de Medicamentos y Alimentos -INVIMA- y se establece su organización básica. http://www.dafp.gov.co/leyes/D1290_94.HTM

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

According to Law 99 of 1993, the Ministry of Environment is responsible for determining the minimal standards and general regulations regarding mining, transportation and industrial activities, or any activity which can directly or indirectly generate environmental damages. It is the responsibility of the Ministry to define and regulate the administrative instruments to prevent and control environmental damage. Thus, basic regulatory requirements are public and can be found on the Web page of the Ministry of Environment, Housing and Development, however sometimes it can be difficult for common citizens to understand the appropriate regulations or to find them, given the complex universe of regulations.

References:

LEY 99 DE 1993 (Diciembre 22) Diario Oficial No. 41.146, de 22 de diciembre de 1993 Por la cual se crea el Ministerio del Medio Ambiente, se reordena el Sector Público encargado de la gestión y conservación del medio ambiente y los recursos naturales renovables, se organiza el Sistema Nacional Ambiental, SINA y se dictan otras disposiciones".
http://www.secretariasenado.gov.co/leyes/L0099_93.HTM

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

There are different safety regulations depending on the type of business or industry.

There are clear regulations for public safety in transportation services. To operate transportation services, it is necessary to obtain a license through the DIMAR (for maritime transportation) and the AEROCIVIL (for aerial transportation). To obtain these licenses, it is necessary to meet financial and public safety standards.

For businesses that are open to the public and in the case of public shows, a certification of public safety from the Firemen Body is required.

Basic regulatory requirements are public and can be found on the Web pages of the Ministry of Transportation, the Chambers of Commerce and the Superintendencies of Industry and Commerce, Public Services and Health. However sometimes it can be difficult for common citizens to find or understand the appropriate regulations, given the complex universe of regulations.

References:

LEY 105 DE 1993 (diciembre 30) Diario Oficial No. 41.158, de 30 de diciembre de 1993 Por la cual se dictan disposiciones básicas sobre el transporte, se redistribuyen competencias y recursos entre la Nación y las Entidades Territoriales, se reglamenta la planeación en el sector transporte y se dictan otras disposiciones." Art. 2

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

In the past ten years the INVIMA (the sanitary inspection agency) has demonstrated increasing efficiency in its procedures and more expedited licensing processes and inspections. However, according to an analysis made by the PRAP (Program for Public Administration Reform) on the INVIMA (the sanitary inspection agency), citizens had little faith in the institution because it lacks appropriate staff and resources to conduct its mission.

According to the recent Index of Transparency in public institutions made by the Corporation Transparency for Colombia, the INVIMA has one of the highest transparency scores. Although this score does not reflect the actual cases or levels of bribing that may occur within an institution, it gives an idea of how likely it is that certain procedures and how the availability of information may hinder or promote corruption. Currently, some of the processes that can be requested to the INVIMA are free and accessible online. Others are not free but also can be initiated through online systems.

Although there is no specific information on public health inspections, according to a survey on perceptions of corruption made among entrepreneurs 24.2 percent of entrepreneurs surveyed report that they are frequently asked to pay bribes in order to expedite licensing procedures. The lack of clarity, the dispersion and lack of specificity of the rules governing business requirements may hinder an expedited process for inspecting public health standards.

References:

En defensa del Invima. 9/22/2004.

<http://www.tlc.gov.co/econtent/NewsDetail.asp?ID=3301&IDCompany=36>

INSTITUTO NACIONAL DE VIGILANCIA DE MEDICAMENTOS Y ALIMENTOS INVIMA ESTUDIO TECNICO REDISEÑO INSTITUCIONAL BOGOTA, D. C. 2003

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá

Gomez, Liyis, Martinez, Joselin and Arzuza, Maria. 2006. Política pública y creación de empresas en Colombia. En: Pensamiento y Gestión no. 21. http://ciruelo.uninorte.edu.co/pdf/pensamiento_gestion/21/politica_publica_creacion_empresas.pdf

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

The control of public environmental standards is better at the national than at the local level.

In 2003, the Ministry of Environment was fused with the Housing and Development Ministry, the result has been more general efficiency as testified by the improvement in transparency scores obtained by the Ministry of Environment, Housing and Development between 2003 and 2005. At the local level the situation is different, as the agencies with the highest responsibility at the local level to control environmental standards (Autonomous regional corporations) are perceived as widely corrupt. According to the recent Index of Transparency in public institutions made by the Corporation Transparency for Colombia, most autonomous regional corporations which have responsibilities on public health standards at the regional levels have medium to low scores in transparency and thus are declared to have a medium to high corruption risk. The Ministry of Environment has a moderate corruption risk.

References:

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

There are no available reports on substantial irregularities in the application of public safety regulations. In general, levels of petty

corruption have decreased in Colombia in recent years, and the Government has designed programs directed to reduce bribing options in administrative procedures. In 2002 the Government of Alvaro Uribe created a program for Public Administration Reform (PRAP) which included reforms to rationalize and simplify administrative procedures and reduce the time spent by citizens in obtaining those licenses. The PRAP allows citizens to make several procedures in the same place and at the same time. The reform has reduced the number of steps that businessmen have to conduct to obtain licenses, improving the conditions for investment and trade and reducing bribing options. According to a survey about perceptions on corruption made among entrepreneurs, about 24.2 percent of entrepreneurs surveyed report that they are frequently asked to pay bribes in order to expedite licensing procedures.

References:

Interview with Juan Fernando Zarama. Program for Public Administration Reform PRAP. June 2005. Bogotá

Confecámaras. 2004. Probidad III. Encuesta empresarial sobre corrupción y probidad en el sector público. Confecamaras.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁴Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

The penal code does not expressly mention corruption as an illegal act. However, certain offenses may include the attempt as a crime. For example, the penal code includes the offer of bribes to a public servant as an offense.

References:

Ley 190 of 1995. (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa".

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000.

LEY 890 DE 2004 (julio 7) Diario Oficial No. 45.602, de 7 de julio de 2004 "Por la cual se modifica y adiciona el Código Penal".

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

The penal code includes prevaricato por accion" and "prevaricato por omisión" which refer to the public servant which issues a resolution that is contrary to law or that denies or delays an act within its functions. The Penal code (art. 453) also states that offering or asking for a bribe to keep someone from testifying in the penal process is a crime.

References:

Ley 190 of 1995. (junio 6) Diario Oficial No. 41.878, de 6 de junio de 1995 Por la cual se dictan normas tendientes a preservar la moralidad en la administración pública y se fijan disposiciones con el fin de erradicar la corrupción administrativa.

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000.

LEY 890 DE 2004 (julio 7) Diario Oficial No. 45.602, de 7 de julio de 2004 PODER PÚBLICO – RAMA LEGISLATIVA Por la cual se modifica y adiciona el Código Penal. Art. 444A, 453

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Article 407 of the penal code says it is a crime to offer money or privilege to public servants. Article 404 states that it is illegal for a public servant to ask for a bribe.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. Art. 404 and 407

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Articles 405 and 406 of the penal code state that receiving money or any other privilege to influence, withhold or delay a decision is a crime.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. Art. 405 and 406

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

In the Penal Code, Article 433 states that it is illegal for a nation to offer money or any other privilege to a foreign official directly or indirectly in order to lead or refrain him from a decision.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. art. 433

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Articles 397 and 398 of the Penal Code says it is illegal for a public servant to use or take possession for himself or for a third party public goods or resources. The penalties for this offense were increased through Law 890 of 2004.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. Art. 397 and 398

LEY 890 DE 2004 (julio 7) Diario Oficial No. 45.602, de 7 de julio de 2004 Por la cual se modifica y adiciona el Código Penal”.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Article 420 of the Penal Code says the undue use of confidential information by a public servant or particular for personal benefit is illegal.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. art. 420

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

Article 323 of the Penal Code says money laundering is a crime. It is defined as the acquisition, possession, investment, protection, transportation, hiding, giving legal appearance or administration of money derived from illicit activities such as human trafficking, extortion, arms trafficking, kidnapping, rebellion, terrorism financing, drug trafficking and offenses against the financial system or public administration.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. Art. 323

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Article 340 of the Penal Code states that conspiracy to commit a crime is a penal offense. The punishment for this offense increases when the crime is genocide, forced disappearance, torture, homicide, terrorism, drug trafficking, extortion and money laundering.

References:

LEY 599 DE 2000. (julio 24) Diario Oficial No 44.097 de 24 de julio del 2000. Art. 340 and 434

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

There are several institutions that are responsible for investigating and prosecuting corruption, or that have created specific units to investigate corruption. This is the case of the General Attorney's Office (Procuraduría General de la Nación) which oversees the discipline of public servants, the Supreme Audit Institution (Contraloría General de la República) which oversees fiscal

management, the National Audit Institution (Auditoria General de la Nacion) and the General Prosecutor's Office (Fiscalía General) that investigates and prosecutes all penal crimes. The Police and the Intelligence Service (DAS) have created specific units to investigate corruption cases.

The Presidential Program for the Fight Against Corruption is a central government agency that specifically addresses corruption. In 1998, then President of the Republic Andres Pastrana created the program through Decree 2405 of November 30, 1998. It was modified with Decree 127 of January 19, 2001 and Decree 519 of March 5, 2003. Currently it is known as Presidential Anti-corruption Program. Its main function is to advise the President about anti-corruption policies.

References:

Programa Presidencial Anticorrupción. <http://www.anticorrupcion.gov.co>
Constitución Política de Colombia 1991. Art. 267, 275

Decreto 519 de 2003. DECRETO NUMERO 519 DE 2003. (marzo 5). por el cual se suprimen, se transforman y se crean unas consejerías y programas presidenciales.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

61

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Presidential Anti-corruption Program is a subordinate of the Presidency of the Republic. In law, the Supreme Audit Institution, the General Prosecutor's Office and the General Attorney's Office are autonomous agencies and independent from the government.

References:

Constitución Política de Colombia art. 267, 275.

Decreto 519 de 2003. DECRETO NUMERO 519 DE 2003. (marzo 5). por el cual se suprimen, se transforman y se crean unas consejerías y programas presidenciales.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

Given the nature of the Presidential Anti-corruption Program, it is protected from some influences and vulnerable to others. In practice, the agency is a subordinate of the President. One of the vulnerabilities of the program is that its actions depend highly on the priorities set by the person heading the agency.

The General Attorney's office and Supreme Audit Institution are formally independent but as the selection of the General Attorney is made by the Senate (Procurador-Attorney) and the Congress as a whole (General Auditor) there can be political commitments which are then reflected in the personnel structure, limiting independence from political influence. At the local level, political pressures and pressures derived from the armed conflict make it very difficult for local attorneys to conduct their jobs. However, it is important to note that the independence and importance of control organisms has been on the increase and the General Attorney's Office at the national level is strengthening its position and influence.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia 2006. Vanderbilt University.

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad: Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia #. 4.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program . July 19, 2007. Bogotá

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the

Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

The Director of the Presidential Anti-corruption Program is a public employee, he or she can be removed at any time. However, since the creation of this type of agency (1998) no head has been removed because of their own actions, but because of conflicts about the extent, objective and orientation of the agency.

Both the General Attorney and the Supreme Auditor are elected for fixed terms and can only be removed if there is a formal disciplinary or penal accusation against them

References:

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

Corporación Transparencia por Colombia. 2002. El Sistema Nacional de Integridad en Colombia: Análisis y Resultados del Estudio de Caso. Cuadernos de Transparencia # 4. Bogotá.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

In the case of the anticorruption agency, appointments are made on professional qualifications, however individuals may have clear party loyalties. Most posts are assigned as contracts and the control on merit is less rigid than when employees are civil servants.

According to the 2005 Institutional Performance Survey made within public servants, 36.3 percent of employees surveyed at the General Attorney's Office feel that political criteria are significant in hiring decisions and 43.45 percent feel that appointments are made on the basis of professional qualifications and merit. These percentages are 36 percent and 60 percent for the Supreme Audit Institution.

References:

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Contraloría General de la República.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Procuraduría General de la Nación.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

The Supreme Audit Institution and General Attorney's Office have sufficient full time staff which is regulated by independent civil service systems. About 60 percent of employees surveyed within the institutional performance survey consider that the professional profile and qualifications in the Supreme Audit Institution are pertinent for the fulfillment of its mandate. This percentage is 37.28 percent for the General Attorney's Office.

For a long time there has been a huge controversy on the pertinence of municipal auditors as it is considered that their functions can be carried out by departmental auditors. A referendum conducted in 2003 proposed the elimination of those municipal offices of the Supreme Audit Institution.

The Presidential Anti-corruption Program has limited staff (about 43 people), and most of it is not from civil service but independent contractors. The current director points out that it is possible to work with the current resources. The problem is that the continuity of the program is limited by these staff restrictions.

References:

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

Interview with Antonio Hernandez Gamarra. General Auditor. August 4, 2005. Bogotá.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Contraloría General de la República.

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Procuraduría General de la Nación.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

The Presidential Anti-corruption Program does not have a predictable source of funding, the budget may change yearly and as it is a small program, the budget is limited. The current director says that it is possible to do things with the current budget. With more resources it will be possible to do more. A previous director said on the contrary, it is necessary to obtain more resources in order to do more.

For the Supreme Audit Institution and the General Attorney's Office, funding sources are reliable and consistent from year to year, however according to the 2005 Institutional Performance Survey made within public servants, 37.4 percent of employees surveyed at the General Attorney's Office consider that resources are the weakest component of institutional performance and that resources are not enough to fulfill the mandate of the institution. In the Audit Institution, about 59.77 percent of employees feel that the budget and physical resources are not enough to carry out the mandate of the Supreme Audit Institution.

References:

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005.CONTRALORIA GENERAL DE LA REPUBLICA.

DANE. 2006. AMBIENTE Y DESEMPEÑO INSTITUCIONAL 2005.PROCURADURIA GENERAL DE LA NACIÓN.

Interview with Rodrigo Lara Restrepo, head of the anticorruption program of the Presidency. July 19, 2007. Bogotá

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

Often the most important decisions made by the Presidential Anti-corruption Program are publicized, but there is no periodic reporting mechanism. Currently the Vice-presidency of the Republic is working on a strategy to make the program's Web page

more accessible and interactive for citizens.

The General Attorney and the Supreme Audit Institution must make a yearly report of its activities to the Congress. These reports are available on agencies' Web sites. Although reports usually are comprehensive, statistics are not very detailed. According to the most recent institutional performance survey made by DANE among public servants, about 83.05 percent of employees at the General Attorney's Office and 82.71 percent of employees at the Supreme Audit Institution say that managers make their decisions public. According to the Transparency Index of Transparency from Colombia, the Procuraduría is located in the medium range in reference to visibility of its decisions and the Contraloría (Supreme Audit institution) has the second best score in terms of visibility of information.

References:

DANE. 2006. Encuesta Ambiente y Desempeño institucional Procuraduría General de la Nación 2005.

DANE. 2006. Encuesta Ambiente y Desempeño institucional Contraloría General de la República 2005.

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la organización de Estados Americanos: Implementación en Colombia de las disposiciones la Convención Interamericana contra la corrupción.

Corporación Transparencia por Colombia. 2006. Índice de Transparencia Nacional Entidades Públicas Nacionales. Bogotá.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

Both internal and external observers say the orientation of the anti-corruption program and the activities carried out by it depend basically on the political will of its head. One of the functions created by decree for the program is to receive denouncements, give them direction and follow them up. Under the previous Director, the Program did not focus in prosecution of corruption cases, whereas currently the focus has been on following up cases, not just in submitting denouncements to the sanctioning agencies. Thus, the current director states that even though the agency does not have the formal power to gather information he can rely on the relevant agencies to conduct such work. The current work of the agency has been more that of coordinating or acting as a bridge between the agencies that can investigate and sanction (especially the anti-corruption units of the intelligence agency and the police, the General Attorney) and follow up on important cases. By initiative of the director, the agency has gathered information that facilitates the work of other institutions with a formal power to investigate once the agency sends a specific case for investigation. As a program that is directly attached to the executive, the agency has a more moral than formal capacity to gather information, given the high power held by the President in Colombia and his levels of popularity.

The Contraloría and the Procuraduría have the legal power to initiate investigations and to gather information. In recent years, and specially at the national level, both institutions have increasing credibility, which facilitates the fulfillment of their

responsibilities. At the local level, given the armed conflict and the higher influence that corrupt individuals may have, the scope of the work of anticorruption agencies is more limited.

References:

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

Interview with Edgardo Maya Villazón. General Attorney. August 3, 2005. Bogotá.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

The Presidential Anti-corruption Program does not have legal power to initiate investigations, its role is to submit reports on abuses to the relevant institutions. Such reports are received through a phone line or directly to the office, however the most significant investigations are received directly by the Director. Between January and March 2007, the agency received 1,493 reports. They submitted 738 to the relevant institutions and filed the rest because they were minor issues unrelated to corruption. When the agency feels a case is relevant, the case is submitted immediately to the relevant agency. For the most relevant cases submitted by the agency there is a sustained interest in the follow-up of the investigation. Under current direction, the agency has been very active in initiating investigations unveiling high level corruption scandals, especially in procurement processes. During the past year the program has unveiled three high level corruption scandals and pushed for the cancellation of at least 67 irregular procurement processes.

The General Attorney has the mandate and starts investigations aggressively. According to the most recent report of the General Attorney, in 2006 the agency received 41,568 new processes and acted on 48,212 from a total of 76,066 files. These results show that the number of processes has increased over the past five years and that there has been an effort in reducing the number of unsolved cases, which, at 28,007, is still a high number. Most of these processes refer to territorial institutions and on managerial levels. According to the Constitution, the Supreme Audit Institution can promote investigations on fiscal responsibility before the competent authorities. It can request immediate suspension of public servants while penal or disciplinary investigations are underway. Every three months the Audit Institution publishes the names of all the servants convicted for fiscal irresponsibility. Between April and June 2007 4,413 people were sanctioned with fiscal responsibility, which inhibits future appointments as civil servants.

The score presented on this indicator shows the effectiveness of the agencies in initiating investigations at the national level but also the limitations that their functions face at local levels of government, many of them related to the armed conflict. The difficulties to investigate corruption at the local level is the main reason for a medium score in this indicator.

References:

Interview with Rodrigo Lara Restrepo. Director of the Presidential Anticorruption Program July 18 2007. Bogotá

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

38

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The score given on this indicator refers to the three most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Attorney's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

When the Presidential Anti-corruption Program feels a complaint is relevant it acts quickly in submitting it to the agency that has the mandate to investigate and sanction the case. In that case it is not clear how much time it may take the respective institution to complete an investigation.

Although most institutions have made efforts in recent years to act quickly on complaints, there are delays and backlog. The Director of the Anti-corruption Program reports that most of the complaints made by citizens are not relevant for the interests of the agency.

In regards to Procuraduría, the perception is that when relevant denouncements are made, they are quickly directed into investigation. What is more difficult to determine in a reliable way is how much time it takes to solve cases. The Procuraduría has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. However it is important to note that available statistics do not show the average time it takes to process a case by type of offense. The number of files under process went from 63,688 in 2000 to 34,498 in 2006, showing the advances made in acting upon cases.

It is also important to note that according to a recent survey on perception of democracy in Colombia, the Procuraduría, with an specific mandate to investigate corruption, is better perceived by citizens than the judiciary. In general, however, citizens feel that the main obstacle to protect rights is the fact that investigations are too slow.

References:

Interview with Rodrigo Lara Restrepo. Director of the Presidential Anticorruption Program July 18 2007. Bogotá

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | **25** | 0

Comments:

There is no official whistle blowing protection policy, although there are programs to protect witnesses, but it is difficult to access those programs. The United Nations' high commissioner for human rights reported that in 2006 it received complaints of witnesses under army protection that were attacked, showing the weaknesses of whistle blowing protection programs.

Usually reports on corruption come from particulars and not from public servants, but according to a survey conducted in 2002 among public servants, 40 percent of respondents reported that they do not denounce because they fear negative consequences or because they don't trust the efficiency of public institutions. The Director of the Presidential Anti-corruption Program reports that there is total discretion when a whistleblower makes such a request, but it is not part of an official protection policy. Finally, it is important to note that whistle blowers are usually concerned more about their personal security rather than job security.

References:

Informe Anual de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de derechos humanos y derecho internacional humanitario en Colombia, Año 2006

Organización de Estados Americanos. 2004. Informe del Comité de Expertos de la Organización de Estados Americanos. Implementación en Colombia de las disposiciones de la Convención Interamericana contra la corrupción. Bogotá.

Interview with Rodrigo Lara Restrepo, Director of the Presidential Anticorruption Program. July 19, 2007. Bogotá

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

66
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

58

74a. In law, there is a general right of appeal.

YES | NO

Comments:

According to the constitution, the right to due process is a basic right and anyone can appeal a judicial decision. The Penal Procedure Code states that any criminal judgment can be appealed, with some exceptions. Additionally, article 86 of the National Constitution creates the "accion de tutela" (tutelage action) which is aimed at protecting basic rights and can be used as an appeal mechanism when there are no other appropriate mechanisms.

References:

Constitución Política de Colombia 1991. art. 29 and 86.

DECRETO NUMERO 2700 DE 1991(Noviembre 30) Por el cual se expiden las normas de Procedimiento Penal

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The "tutela" action to protect basic rights has become one of the most widely used mechanisms for citizens to appeal decisions, given the fact that decisions on tutelas have to be made within a very specific and short time period (10 days). Thus, the tutela has become a very important tool to protect citizens. However, tutela is a last resort action. Normal appeals may take a long time given the congestion and backlog that characterizes the Colombian judicial system.

The ombudsman (Defensor del Pueblo) reports that right to due process and the right of defense are among the rights that citizens feel are most frequently violated. In 2005 the ombudsman received 496 complaints about violations of this right. In general, according to a recent survey made among citizens about perceptions of democracy, about 80 percent of those surveyed feel judicial decisions are slow or too slow.

According to data from the World Bank, in 2003 it was estimated that a job related case could take 1,647 days to be solved on average, and a civil process about 2,048 days. As a consequence of these delays, evidence may be missed and there may be an increase in impunity rates. Although in recent years there have been important efforts in all judicial institutions to reduce backlog, it is so big that there are still unsolved cases from many years ago, so it is difficult to compel judges to act within the legal time frame.

References:

XIII Informe del Defensor del Pueblo al Congreso de la República 2005.

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

CAJPE. 2003. Red de Información Jurídica, SISTEMAS JUDICIALES Reforma y modernización judicial Colombia (enero-diciembre, 2003) <http://www.cajpe.org.pe/RIJ/BASES/REFORMA/col7.htm>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The tutelage action" to protect basic rights has become one of the most widely used mechanisms for citizens to appeal decisions given the fact that it can be requested by any citizen without the assistance of a lawyer, thus reducing the costs of accessing appeals. Different studies show that the "tutela" has reduced the costs of appealing a decision. In fact, a study of the Corporación Excelencia en la Justicia shows that most of the tutelas presented to the Supreme Court of Justice have been presented by citizens without the mediation of a lawyer. However, tutela is a last resort action so normal appeals imply higher costs as they need to be requested by a lawyer and may take a long time to be solved.

It is important to note also that given the widespread use of the "tutela," the congestion of the judiciary has also increased.

References:

CORPORACIÓN EXCELENCIA EN LA JUSTICIA. 2006. INVESTIGACIÓN EL IMPACTO DE LA ACCION DE TUTELA EN LA CORTE SUPREMA DE JUSTICIA 2003 2006 Investigadores, Gloria María Borrero, Ana Lucía Gutiérrez, Jorge Bautista, Luz María Orozco, Andrea Castellanos, María Mercedes Hoyos, Andrés Ucrós, Luis Alberto Castel,

XIII Informe del Defensor del Pueblo al Congreso de la República 2005.

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

CAJPE. 2003. Red de Información Jurídica, SISTEMAS JUDICIALES Reforma y modernización judicial Colombia (enero-diciembre, 2003) <http://www.cajpe.org.pe/RIJ/BASES/REFORMA/col7.htm>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

There are many restrictions for judgments to follow written law. Problems include inadequate preparation of prosecutors, judges, defense attorneys and administrative staff. These problems are stronger at the local level where justice institutions are weak or not present. Although the judicial system in Colombia includes innovative mechanisms such as Casas de Justicia aimed at bringing justice closer to populations in rural areas, there are restrictions specially in complex cases.

Armed conflict creates one of the biggest obstacles for the judiciary to follow written law, as armed actors and corrupt networks threaten judges or try to bribe them. At the local level the investigative skills of the police and justice institutions are weak. Citizens also may consider that the social position of the claimant influences the outcome of judicial processes (Gargarella).

Following the results of a recent survey made among citizens on perceptions of democracy, the confidence in institutions that protect rights is higher in Colombia than in other Latin American countries. However, about 66.3 percent of respondents feel that the corruption of judges is generalized. Of all justice institutions, tribunals are the least trusted, showing that citizens are less confident in the institutions that are closest to them. In general, about half of respondents were satisfied with the action of judges and prosecutors.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

CAJPE. 2003. Red de Información Jurídica, SISTEMAS JUDICIALES Reforma y modernización judicial Colombia (enero-diciembre, 2003) <http://www.cajpe.org.pe/RIJ/BASES/REFORMA/col7.htm>

Rama Judicial de Colombia. Acceso a la Justicia. www.ramajudicial.gov.co/csj_portal/assets/Acceso%20a%20la%20Justicia.htm
– 56k –

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

Comments:

Judicial decisions are generally enforced, however on several occasions conflicts of enforcement have appeared between the judiciary and the executive at the national level, especially decisions that affect President Alvaro Uribe's policy of democratic security and those that affect policies on security and the peace process.

The most recent example is the conflict that appeared between the executive and the Supreme Court of Justice. The Court decided not to approve the government's proposal to judge paramilitaries involved in a demobilization process under the sedition" figure. Although the government accepted the decision, it was bitterly criticized and the government is planning to issue a legislative reform to introduce a new penal figure for paramilitaries, similar to sedition.

References:

Comisión Internacional de Juristas. 2005. COLOMBIA: SOCAVANDO EL ESTADO DE DERECHO Y CONSOLIDANDO LA IMPUNIDAD

EL TIEMPO, Julio 27 de 2007 , Para dar estatus político a 'paras', presidente Álvaro Uribe buscará apoyo del pueblo

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

88

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

According to the constitution, the decisions of the judiciary are independent. Law 270 of 1996 enforces that independence is a crucial principle of the Administration of Justice.

References:

Constitución Política de Colombia 1991. Art. 228

LEY 270 DE 1996. Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The political independence of the national courts has increased since the constitutional change in 1991, and their judgments are increasingly influential, even until the point that it is considered that politics have been judicialized in Colombia. This process refers to the influence that judges have in political processes. As such this is a process which carries several advantages (such as an increased protection of basic rights) and disadvantages (such as the risk of politicization in the judiciary). It is criticized by some and praised by others.

There are conflicts between the executive and the national level courts on controversial matters. Although the government respects decisions from the courts, in several occasions they have been criticized and the government has even proposed to eliminate some Courts (as the Constitutional Court) or judicial mechanisms as the Acción de tutela” or tutelage mechanism to protect human rights. The most recent episode of conflict between the executive and the courts occurred because the Supreme Court of Justice decided to declare that paramilitaries involved in the peace process started in 2003 cannot be prosecuted by sedition, as it only applies to guerrillas. The government disliked the decision and stated that the independence of the court cannot be used to avoid responsibilities in the peace process.

Although national level judges are elected for fixed terms and cannot be removed without justification, there is a perception that despite increasing independence, their election is highly determined by political criteria. In order to make the selection process more transparent, in 1999, the NGO Corporacion Excelencia en la Justicia, in association with a number of CSOs and Universities, started the first exercise of citizen oversight over the process of selection for Justices in the Council of the State and the Supreme Court of Justice. The Corporación has conducted similar exercises in 2006 and 2007 in order to make public the CVs of the candidates as well as the selection criteria. The Corporation reports that as a result of this exercise the courts feel

compelled to be more transparent in their actions. For the case of the constitutional court, after 1991 a tradition of independence has been established, by which the justices elected are very well known for their qualifications. Political criteria are stronger in the selection of justices for the Supreme Court of Justice.

Since July 2007 there has been a controversy on the election of a new member of the court, for which the Government initially sent a list of three conservative women. The move was criticized as a way to reduce the progressive spirit of the court. In the end, two of the initial candidates removed themselves from consideration and the Government created a list including the current juridical secretary of the presidency in a very politicized and criticized decision. Based on situations like this, critics argue that the independence of the court can be weakened.

References:

EL TIEMPO, Julio 27 de 2007 , Para dar estatus político a 'paras', presidente Álvaro Uribe buscará apoyo del pueblo

Navas Talero, German. UN PUNTO DE VISTA PANORAMICO DE LA JUSTICIA EN COLOMBIA DIEZ AÑOS DESPUES DE LA NUEVA CARTA POLITICA Y UN LUSTRO MAS TARDE DE LA FUNDACION DE LA CORPORACION EXCELENCIA EN LA JUSTICIA.

Uprimny Yepes, Rodrigo. La judicializacion de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas http://www.surjournal.org/esp/conteudos/artigos6/esp/artigo_yepes.htm

Revista Semana. 2007. La Corte de Uribe El Presidente ya no quiere quitarle poder a la Corte Constitucional, sino darle un rumbo más conservador. 07/28/2007 # 1317

Revista Semana. 2007. La categórica renuncia de las aspirantes a Magistrado de la Corte Constitucional desnuda una elección anunciada. 08/14/2007

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

According to the Law that regulates the Administration of Justice, the judiciary is independent in its administration and thus the executive does not influence the system to assign cases. The Law and the Constitution determine what type and what level of jurisdiction have the responsibility for processing and acting on cases. There are three jurisdictions: administrative, constitutional and ordinary. Additionally, there are special jurisdictions for indigenous groups, the military, and a special peace jurisdiction. The Law states that the Supreme Council of the Judicature can intervene in the adjudication of cases when there is congestion.

However, this system is not totally transparent and efficient in practice. Each court of Law including national level courts has an office that adjudicate cases, however the widespread perception is that adjudication is not efficient and that there is a big contrast between the adjudication of few notable cases which are solved efficiently and in a very visible manner, and the bulk of cases

which are not properly and transparently distributed. Criminal matters may get more press and more political attention, whereas civil matters that concern the population in day-to-day life are not properly adjudicated..

References:

LEY 270 DE 1996 (marzo 7) Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas http://www.surjournal.org/esp/conteudos/artigos6/esp/artigo_yepes.htm

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | **NO**

Comments:

The justices of the supreme court of justice, constitutional court, supreme court of justice and state council are elected for eight year terms. Thus they are protected from removal without relevant justification.

Magistrates and judges belong to the judicial civil service and cannot be removed without relevant justification. The only judges that can be removed without justification are those appointed on a temporary basis. Occasionally there are reports of removals without relevant justification, as in the case of one prosecutor who was removed by the General Prosecutor after making a decision that was in apparent contradiction with the security policy of Alvaro Uribe's government.

References:

Constitución Política de Colombia 1991. Art. 233

LEY 270 DE 1996 (marzo 7) Diario Oficial No. 42.745, de 15 de marzo de 1996 ESTATUTARIA DE LA ADMINISTRACIÓN DE JUSTICIA. art. 252

Comisión Internacional de Juristas. 2005. COLOMBIA: SOCAVANDO EL ESTADO DE DERECHO Y CONSOLIDANDO LA IMPUNIDAD

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There is a widespread perception that judges and prosecutors are threatened and subject to undue pressures from armed and corrupt actors, however there are no official reports of judges physically harmed over the last year.

References:

Comisión Internacional de Juristas. 2005. COLOMBIA: SOCAVANDO EL ESTADO DE DERECHO Y CONSOLIDANDO LA IMPUNIDAD

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There is a widespread perception that judges and prosecutors are threatened and subject to undue pressures from armed and corrupt actors, however there are no official reports of judges physically harmed over the last year.

References:

Comisión Internacional de Juristas. 2005. COLOMBIA: SOCAVANDO EL ESTADO DE DERECHO Y CONSOLIDANDO LA IMPUNIDAD

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

50

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

Comments:

Since the Constitution in 1991 was issued, there has been an important effort in creating and strengthening a special judicial system for indigenous groups. This special system has improved these groups' access to justice. However, the emphasis on indigenous groups is not coupled with a similar interest on African descendants, which represent between 16 and 25 percent of the total population (between 6 and 10.5 million).

In general, the emphasis given in Colombia to alternative resolution methods has facilitated the access of minority groups to justice. However, African descendants and indigenous groups are not well aware of the existence or the way these mechanisms work

References:

Centro de Estudios Jurídicos de las Américas. Métodos Alternativos de Resolución de Conflictos MARC)
 [22]http://www.cejamericas.org/reporte/muestra_pais.php?idioma=espanol&pais=COLOMBIA&tipreport=REPORTE2&seccion=INST_135

Wednesday, October 11, 2006

Declaration by Indigenous and Afro-Colombian Councils in Cauca

DECLARATION BY THE INDIGENOUS AND AFRO-COLOMBIAN COMMUNITY COUNCILS AND ETHNIC-TERRITORIAL ORGANIZATIONS OF THE CAUCANA PACIFIC COAST, GATHERED AT THE MEETING FOR LIFE AND AUTONOMY

(Translated by Peter Lenny, a CSN translator) <http://colombiasupport.net/news/2006/10/declaration-by-indigenous-and-afro.html>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

Comments:

Formally, women enjoy full access to the courts, however different state and non state actors still worry about the inefficiency of the judicial system to investigate and sanction cases of violence against women, especially those that occur within the armed conflict and are perpetrated by armed actors.

One of the major problems reported by the Office of Women from the Organization of American States during its visit to Colombia is that women victims of violence do not get appropriate treatment when they try to access judicial resources. These problems however, are not limited to women but to victims of violence in general, from which women constitute a significant group

According to the latest report of the above mentioned Office for Women, Colombian women say that they don't report violence acts because they fear stigma or because they are not fully aware of the available judicial resources. It is important to note that the government and the judiciary have taken special measures to address crimes against women in a specialized way and to train public servants on gender and women issues. The Supreme Council of the Judicature has created a training program with gender focus for judiciary employees. Its goal was to train 15,000 employees between 2002 and 2005. National level courts have produced a body of doctrine aimed at protecting women's rights. The government also has created special programs to attend

women victims of violence. It is estimated that women have been the main beneficiaries of Justice Houses, a mechanism aimed at facilitating the solution of minor conflicts. On average, approximately 60 percent of Justice House users are women

References:

Organización de Los Estados Americanos, Comisión Interamericana de Derechos Humanos. 2007. ACCESO A LA JUSTICIA PARA LAS MUJERES VÍCTIMAS DE VIOLENCIA EN LAS AMÉRICAS

Checchi and Company Consulting, Inc.. 2006. COLOMBIA ADMINISTRATION OF JUSTICE PROGRAM (2001-2006) FINAL REPORT Submitted to: USAID/Colombia Bogotá, Colombia

Ministerio del Interior y de Justicia. Casas de Justicia de Colombia. <http://www.google.com.co/search?client=firefox-a&rls=org.mozilla%3Aes-ES%3Aofficial&channel=s&hl=es&q=costos+acceso+justicia+colombia&meta=&btnG=Buscar+con+Google>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

According to the Penal Procedure Code, all citizens have the right to due process and can access a lawyer if they don't have their own.

References:

DECRETO NUMERO 2700 DE 1991(Noviembre 30) Por el cual se expiden las normas de Procedimiento Penal”

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

State provided aid is available but flawed, mainly because there are not enough prosecutors and public defenders, and those available lack adequate training and resources to conduct effective investigations. Corrupt practices and caseload affect the effectiveness of available state aid.

With the recent introduction of the orality system in Colombia, the weaknesses of state-provided aid are even more evident. It is important to note that several international organizations have given aid to Colombia in order to modernize the judicial system, and a fraction of this aid goes toward the training of public defenders.

According to 2004 figures, there are 2.5 public defenders per 100,000 inhabitants in Colombia, a figure that is slightly above the Latin American average (2.4).

References:

Fernanda Santos. 2005. Colombian lawyers back in schools Program funded by U.S. provides training on navigating a new justice system to resemble sponsor's. Spring 2005 IRP Fellow
Reprinted with permission of Newsday http://www.journalismfellowships.org/stories/colombia/colombia_lawyers.htm

CEJA. 2005. Foro Iberoamericano de Acceso a la Justicia. Desafíos Futuros: Calidad y Participación. Juan Enrique Vargas, Director Ejecutivo CEJA.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The existence of informal justice systems and mechanisms such as the accion de tutela" which can be used by any citizen at a relatively low cost, have facilitated the access of middle class citizens to justice. However, in more complex cases (such as penal processes or those where big economic disputes are involved), where informal systems are not a suitable tool, the costs are prohibitive and the quality of state-provided aid is low, compared to that provided by private defenders. Costs can be more difficult to afford in rural areas and in certain regions of the country where the presence of justice institutions is weak and inefficient.

Although courts of law in formal systems are easily accessible, the costs derive from the need of citizens to spend considerable amounts of money in order to access good lawyers. Citizens earning a median income might have difficulties paying for good quality lawyers and to pay for all the necessary administrative procedures. Since lack of information is identified by citizens as one of the main obstacles to accessing justice, in complex cases it is necessary to recur to specialized knowledge in order to follow the right procedure, and such knowledge carries significant costs.

Informal systems are not homogeneous throughout the country and in certain areas citizens might not be able to access these alternative mechanisms that reduce costs and time spent in solving conflicts. In Colombia, various mechanisms exist for alternative dispute resolution: equity conciliation, legal conciliation, mediation, arbitration and peace judges. Those mechanisms are suitable to solve minor and collective conflicts and incorporate local knowledge and authority as part of the conciliation process. Although those mechanisms complement formal justice systems, they are not a substitute of them for middle class citizens.

The Casas de Justicia (Justice Houses) are a system created by the Government to facilitate access from citizens to formal and informal justice systems. To date, there are 44 Casas de Justicia functioning around the country which have attended to about 600,000 cases in 2007. Even though the Casas have given important advantages to middle and lower class citizens, the breakdown of processes attended in justice houses shows that familiar conflicts (28.1 percent) and questions about lost documents (26.7 percent) are the principal causes attended in 2007. Penal problems represented 11.1 percent of causes attended. Thus, even though Casas de Justicia may facilitate access of middle class citizens to formal justice in complex cases, their impact is still limited.

References:

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas http://www.surjournal.org/esp/conteudos/artigos6/esp/artigo_yepes.htm

Rama Judicial de Colombia. Acceso a la Justicia. www.ramajudicial.gov.co/cs_j_portal/assets/Acceso%20a%20la%20Justicia.htm
– 56k –

Gargarella, Roberto. 2002. Too far removed from the people Access to Justice for the Poor: The Case of Latin America. Universidad Torcuato di Tella, Argentina.

Ministerio del Interior y de Justicia. 2007. Casas de Justicia, Consolidado nacional. <http://www.mininteriorjusticia.gov.co/adminFiles/CONSOLIDADO%20NACIONAL.doc>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

Comments:

The existence of informal justice systems and conciliation mechanisms can reduce the costs for a small business to redress a grievance in daily or minor disputes. In more complicated cases where big economic disputes are playing, costs are prohibitive given that it is necessary to obtain a good private defender or to make additional payments in order to expedite processes in formal justice systems. The costs of expediting a process can be more difficult to afford in rural areas and in certain regions where the presence of justice institutions is weak or inefficient.

Informal systems are not homogeneous throughout the country, so in certain areas it might be more difficult for a small business to access those mechanisms that can reduce costs. In Colombia, various mechanisms exist for alternative dispute resolution: equity conciliation, legal conciliation, mediation, arbitration and peace judges. However, as already mentioned in cases where economic disputes are in place, alternative justice mechanisms might not be the most suitable tool as they are primarily used to solve minor disputes, incorporating community knowledge and authority.

References:

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas http://www.surjournal.org/esp/conteudos/artigos6/esp/artigo_yepes.htm

Fuentes Hernández, Alfredo. 2006. Reforma judicial en Colombia: Progresos en 15 años (Primera versión para comentarios). http://www.cejamericas.org/doc/documentos/reformajudicialcolombia_afuentes.pdf

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | **25** | 0

Comments:

There is a big contrast between different regions of the country. In some regions, it is possible for citizens to access court rooms at low cost. However, in other areas, especially rural areas, the formal judicial mechanisms are weak. Even when they are present, they lack resources and personnel or are reported as being corrupt. Although the existence of alternative resolution mechanisms has facilitated the access to justice in simple cases in certain areas of the country, access to formal mechanisms is still very limited.

References:

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia. Vanderbilt University.

CAJPE. 2003. Red de Información Jurídica, SISTEMAS JUDICIALES Reforma y modernización judicial Colombia (enero-diciembre, 2003) <http://www.cajpe.org.pe/RIJ/BASES/REFORMA/col7.htm>

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas http://www.surjournal.org/esp/conteudos/artigos6/esp/artigo_yepes.htm

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

58

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to the most recent survey of institutional performance made among 147 police employees, only 18 percent feel that appointments are made on the base of political connections and about 40 percent feel that personal considerations have an influence on appointment decisions. In general, about 42 percent feel the professional profiles in the institution are adequate to fulfill the police's mandate.

Within the plan to improve the police, there have been programs and decisions oriented to professionalize and better organize the institution such as the creation of a new disciplinary statute, the separation of the disciplinary from the operational functions, and the improvement in personnel selection processes.

References:

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Policía Nacional de Colombia.

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

On average, the police budget increased 20 percent annually between 2000 and 2006. According to the survey on institutional performance made among police employees, about 50 percent feel that the institution's budget is enough to carry out its mandate. Although there might not be budgetary problems, when the institution has faced big internal corruption scandals, it has been noted that there is a problem with the salary structure, which might create an incentive for officers to engage in corruption. However, as a whole, the institution does not face budgetary problems.

References:

DANE. 2006. Encuesta Ambiente y Desempeño Institucional Policia Nacional. http://www.dane.gov.co/files/EDI/defensa/policia_nal/info05.pdf

CEJA. 2006. III. Descripción Institucional y Organización del Sistema de Justicia http://www.cejamericas.org/reporte/muestra_pais3.php?idioma=espanol&pais=COLOMBIA&tipreport=REPORTE3&seccion=POLICIA

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

By law, the police are an armed civil institution and, as such, independent to act. Law enforcement has an independent career system for its employees. However, the police are a subordinate of the executive (the president at the national level, and mayors and governors at the local level), and can be influenced by political incentives. It is precisely the dual nature of the police, as a civilian institution but with the structure and organization of an armed institution (such as the National Army), that makes it more difficult to operate. On one hand, it can be immune from political control, but on the other, it is a subordinate of the executive.

References:

Policia Nacional de Colombia. <http://www.policia.gov.co/inicio/portal/normas.nsf/d4f709c9f72f168605256b02004f2316/2ce2790dd848fcf186256b59007f7fc?OpenDocument>

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the

government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

71

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

According to law, the disciplinary power over police is in the hands of the institution itself, even though the general attorney's office (Procuraduría General de la Nación) has disciplinary power in the state. It means that the attorney general can request information on disciplinary processes conducted against police members. The Ombudsman (Defensor del pueblo) receives and follows up citizen complaints related to human rights violations by police members.

References:

REPUBLICA DE COLOMBIA MINISTERIO DE DEFENSA NACIONAL DECRETO 1798 DE 2000 (Septiembre 14) Por el cual se modifican las Normas de Disciplina y Etica para la Policia Nacional

Constitución Política de Colombia 1991. art. 275, 277, 282

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

In general, although complaints can be acknowledged and acted upon quickly, it is not clear how long it will take for a case to be solved, and the perception is that there are high rates of impunity regarding police action. The police itself have implemented a citizen complaint mechanism and the response to complaints can be checked online or through phone lines.

The ombudsman is the most trusted institution for complaining about human rights, as reflected in a recent survey made among citizens about perceptions on democracy, and has invested resources on training and personnel to strengthen the responses to claims and complaints made by citizens. In 2005, the ombudsman received 52 complaints against police officers regarding

violations to international humanitarian law. All of them were sent for investigation. However, it is not clear how long it takes to investigate and solve a complaint against a police officer.

According to the United Nations High Commissioner for Human Rights in Colombia the fuero militar” is irregularly applied to protect police (and army) officers in cases of human rights violations, and in these cases there can be substantial delays in the investigation of cases.

References:

Informe Anual de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de derechos humanos y derecho internacional humanitario en Colombia, Año 2006 Procuraduría General de la Nación. 2006. Balance Social de la Procuraduría.

XIII Reporte del Defensor del Pueblo al Congreso de la República 2005

Rodriguez Raga, Juan Carlos and Sellingson, Mitchell. 2007. La Cultura Política de la Democracia en Colombia 2006. Vanderbilt University.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES

NO

Comments:

According to law, the National Police Commissioner is responsible for overseeing the operational and disciplinary actions of the police, without being inhibited by organizations such as the General Attorney’s Office (Procuraduría General de la Nación).

References:

LEY N° 62 DEL 12-AGO-93 POLICIA NACIONAL GERENCIA PROYECTO DE REESTRUCTURACION Y MODERNIZACION POR LA CUAL SE EXPIDEN NORMAS SOBRE LA POLICIA NACIONAL, SE CREA UN ESTABLECIMIENTO PUBLICO DE SEGURIDAD SOCIAL Y BIENESTAR PARA LA POLICIA NACIONAL, SE CREA LA SUPERINTENDENCIA DE VIGILANCIA Y SEGURIDAD PRIVADA Y SE REVISTE DE FACULTADES EXTRAORDINARIAS AL PRESIDENTE DE LA REPUBLICA.”

MINISTERIO DE DEFENSA NACIONAL DECRETO 1798 DE 2000 (Septiembre 14) “Por el cual se modifican las Normas de Disciplina y Etica para la Policía Nacional”

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

In general, and given the big corruption scandals that surround police action, the internal control mechanism of the police has to be strengthened and the control of high government officials over the institution must increase. In practice, the police function more as a military unit than as a police institution, but by law it is an armed civilian institution. This double condition has been used by the institution to favor its own interests.

According to an evaluation of the police conducted in 2003 after a big corruption scandal, the national police commissioner, who is supposedly responsible for conducting the internal and external control of the police, has not performed any function of internal or external control. The commissioner's responsibilities are unclear, and have been subject to multiple changes and restructuring since the position was created in 1993.

According to the United Nations high commissioner for human rights in Colombia, there are high rates of impunity in cases involving police, as the system to judge and investigate is independent. The responsibilities of the attorney general and the prosecutor general regarding police are not completely clear and generate confusion during case investigations. However, in 2006 there was a 7 percent increase in the number of disciplinary administrative processes against police officers, compared to 2004. Of all these processes, 5.5 percent resulted in expulsion.

References:

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia.

Informe Anual de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de derechos humanos y derecho internacional humanitario en Colombia, Año 2006

CEJA. Reporte de la Justicia 2006-2007. Colombia. <http://www.cejamericas.org/>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Police can be prosecuted for criminal actions, however they are subject to an independent system that is primarily in the hands of the police itself and the minister of defense. According to law, higher ranking officers must know about the disciplinary faults of other officers, and a special military corps is in charge of knowing about the crimes committed by police on active duty.

References:

LEY N° 62 DEL 12-AGO-93 POLICIA NACIONAL GERENCIA PROYECTO DE REESTRUCTURACION Y MODERNIZACION POR LA CUAL SE EXPIDEN NORMAS SOBRE LA POLICIA NACIONAL, SE CREA UN ESTABLECIMIENTO PUBLICO DE SEGURIDAD SOCIAL Y BIENESTAR PARA LA POLICIA NACIONAL, SE CREA LA SUPERINTENDENCIA DE VIGILANCIA Y SEGURIDAD PRIVADA Y SE REVISTE DE FACULTADES EXTRAORDINARIAS AL PRESIDENTE DE LA REPUBLICA.”

MINISTERIO DE DEFENSA NACIONAL DECRETO 1798 DE 2000 (Septiembre 14) “Por el cual se modifican las Normas de Disciplina y Etica para la Policía Nacional”

Constitución Política de Colombia 1991. Art. 221

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

In general, and given the big corruption scandals that surround police action, it has been stated on several occasions that the internal control mechanisms of the police have to be strengthened and that the control of the high government over them has to increase. In practice, the police work more as a military than as a police institution, but by law it is an armed civilian institution. This double condition has been used by the institution to favor its own interests.

According to the United Nations high commissioner for human rights in Colombia, there are high rates of impunity in cases involving police, as the system to judge and investigate police is independent. The responsibilities of the attorney general and the prosecutor general regarding police are not completely clear and generate confusion when cases have to be investigated. It is even more complicated to prosecute the police for criminal offenses.

It is important to note that in 2007, 85 police officers were separated from duty and criminally prosecuted because of abuses against civilians. This demonstrates that police can be prosecuted. However, it is not always clear where civilians should report abuses.

References:

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia.

Informe Anual de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de derechos humanos y derecho internacional humanitario en Colombia, Año 2006

Revista Semana. 2007. La dirección de la Policía Metropolitana destituyó a efectivos que agredieron a taxista en Bogotá. 08/13/2007

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
