

Overall Score:

68 - Weak

Legal Framework Score:

89 - Strong

Actual Implementation Score:

49 - 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:

Yes. The Constitution of Colombia has several articles related to anti-corruption (articles 23, 90, 122, 123, 124, 125, 126, 127, 128, 129, 183, 184, 209 and 270) and also to the right of citizens to organize freely. As in other cases in Colombia, legislation about the right to form civil society organizations is complex. Thus, there is no single legal framework regulating the organizations of CSO's 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 article 103 of the Constitution, the government should contribute to the organization, promotion, and training of civic and comunitarian nongovernmental 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 nonprofit organizations.

In what refers to the conformation of CSOs, according to the decree 2150 of 1995, the only requirement for the recognition of nonprofit organizations is the registration in the respective Chamber of Commerce.

The Law 850 of 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 nongovernmental organizations that work in the country, and are responsible of executing programs, contracts, or public services.

One of the main objectives of the "veedurias ciudadanas" is to strengthen mechanisms to control corruption in public procurement and public management. The Law 489 of 1998 states that public administration is obliged to provide support to citizens when they constitute veedurias. This Law also establishes that control authorities and the judiciary should support veedurias in order to investigate and follow up their denunciations.

The Law 136/1994 that regulates the functioning of municipalities states that one of local mayor's responsibilities is the promotion of veedurias ciudadanas. The law 812 of 2003 (National Development Plan), states as an objective the promotion of citizen participation in the definition, execution and oversight of public management. Other norms that refer to citizen participation in the oversight of public administration are the Law 80 of 1993 (Public Procurement), Law 472 of 1998 (popular and group actions) and Law 134 of 1994 (Citizen Participation).

References:

Constitucion Política de Colombia.

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 BIDCERFECCONG. Bogotá. Programa Presidencial de Lucha contra la corrupcion http://www.anticorruccion.gov.co/marco/marco_principios.asp http://www.contraloriagen.gov.co/html/participacion_ciudadana/con_participacion_normas.htm

Ley 412 de 1997 http://www.secretariassenado.gov.co/leyes/L0412_97.HTM
PROGRAMA PRESIDENCIAL DE MODERNIZACION TRANSPARENCIA EFICIENCIA Y LUCHA CONTRA LA CORRUPCION ESTRATEGIA REGIONAL . Documento explicativo de pactos por la transparencia.
http://209.85.173.104/search?q=cache:-M_d82WAbIJ:www.crautonomia.gov.co/documentos/ExplicacionPacto.pdf+%22%C2%BFQu%C3%A9+es+un+Pacto+por+I

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 receive funding from any source. The only restriction is the article 355 of the Constitution which prohibits donations from public to private sector 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, but only if their objective is of general interest.

It seems that CSOs working on good governance and anticorruption issues are not subject of these deductions. The Law 850 on veedurias ciudadanas" (citizen oversight committees) does not make any reference to sources of funding.

One of the big discussions around CSOs and nongovernmental organizations in Colombia refers to their sources of funding. During the 1980's, NGOs were very dependent on international funding, but during the 90's there was a strong reduction in international funding.

Nowadays, CSOs face financial problems because most international support is being channelled through the government or has been moved to countries facing more acute crises.

International donors generally ask for domestic compensations, and many CSOs working on democratization and anticorruption issues were used to get international funding and find it difficult to generate their own internal resources. Difficulties to find resources are deepened due to the lack of efficiency of NGOs but also to the stigmatization they face.

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"

Giovanni Perez Ortega. Reto Economico para las ONG. UN Periodico. <http://unperiodico.unal.edu.co/ediciones/69/08.htm>

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 legal obligation for CSOs to make information public although there is an obligation for veedurías ciudadanas, but it is not clear how this obligation should work.

Nonprofit organizations should report to the Chambers of Commerce their financial balance, their annual budget and any change to statutes, but there is no further reporting requirement.

The institutions that control and oversee nonprofits are often understaffed and lack resources to follow up. The Law 850 states that veedurías ciudadanas (citizen oversight committees) should “inform authorities about their sources and mechanisms of funding” and should guarantee that all citizens have free access to all information and documentation related to activities of public interest. However, the institutions that control and oversee nonprofits are often understaffed and lack resources to follow up, and it is not clear what is the mechanism that citizens can use to ask for information to CSOs.

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 organisms, 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 and agreements to the tax collection agency (DIAN). Also in 2004, concerned about transparency, 34 nongovernmental organizations 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, to respond partially to attacks made by the government to many human rights organizations, and to repel the attempt of different actors to co-opt NGOs.

Within this initiative in 2008, 293 NGOs presented the first public report about their sources of funding and their activities. Concerned about the need for transparency and about the lack of funding for citizen oversight Transparencia por Colombia, Fundación Corona, Fundación AVINA, Inter American Foundation and the British Embassy created the Fund for Citizen Oversight over public resources. This fund has subscribed Pacts of Cooperation in order to fund 15 initiatives of citizen oversight at the regional level, thus contributing to more transparency and independence of citizen oversight.

References:

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

<http://www.secretariassenado.gov.co/leyes/L0850003.HTM>

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/>

Corporacion Transparencia por Colombia. Cuaderno No. 9 Construyendo recomendaciones para la reglamentación de la Ley de Veedurías Ciudadanas

<http://www.transparenciacolombia.org.co/Portals/0/descargas/publicaciones/cuaderno9.pdf>

Ciudadanos al cuidado de lo

publico. <http://www.transparenciacolombia.org.co/CONTROLCIUDADANO/Fondoparaelapoyo/tabid/137/Default.aspx>

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?

75

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

Comments:

In general, CSOs can form autonomously as 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 get 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 periodicity of meetings and the faculties of the comptroller, if there is one.

The relative lack of obstacles to create CSOs and the pre-eminence 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 sustainably 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. In the case of Veedurías (citizen oversight committees) there are some legal contradictions regarding the exercise of oversight activities by legal entities.

It is not completely clear what is the procedure that citizens should follow when they are already organized and want to conduct oversight activities (veeduría), thus creating some barriers to the exercise of veeduría.

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 strong informal barriers for CSOs to operate freely.

First, CSOs are more able to operate freely at the national level than 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, 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 nongovernmental organizations are not able to denounce as they might be prey of threats from armed groups or corrupt public employees at the local level. Organizations promoting transparency and civic culture can operate more freely than those directly committed to denouncing or investigating corruption cases. Second, although the proliferation and number of NGOs and CSOs working on good governance (for example there is an estimate of 500 oversight experiences currently in place) is a positive sign about the strength of civil society, yet it creates problems as many of these organizations lack resources to operate in a sustained manner.

CSOs have little knowledge of fund-raising strategies, and thus they are limited to act. In the case of veedurías (citizen oversight committees) as this is not a professionalized activity, it becomes a stepping stone to access 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 coopted 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.

During the study period it became public that the main government intelligence agency (DAS Departamento Administrativo de Seguridad) had been spying and intercepting communications of the most well-known human rights organizations such as Redepaz, Comisión Colombiana de Juristas, Codhes, Cinep and the Colectivo de Abogados Jose Alvear Restrepo, and even the international NGO Human Rights Watch.

The illegal investigation and follow up became public in September 2008 after Senator Gustavo Petro and the NGO CINEP revealed documents about illegal wiretaps and intercepts of phone calls to human rights organizations. Although the government initially denied any type of illegal wiretap, in April 2009 the investigations body of the General Prosecutor's Office (Fiscalía, CTI) found documents in the Analysis Section of DAS, which confirmed that since 2004 activists from organizations considered "government opponents", their families, communications and finances were investigated within a operation called G3 led by former DAS director Jorge Noguera.

Although the Prosecutor's Office and the Attorney's General Office have taken positive steps to investigate these practices, there is evidence that sectors of state agencies such as the DAS and the military take actions that constrain NGO's work such as stigmatization and constant siege.

These are cases of human rights defenders being accused of libel and slander but prosecutors fail to investigate fully whether the accusations made by activists are true or not.

The government of Alvaro Uribe has not issued any public response about the actions of the DAS, and continues attacking publicly organizations such as Human Rights Watch, Amnesty International and the Committee of Victims of Violence, sometimes accusing them of being guerrilla supporters. The fear of stigmatization generated by these practices might become an informal barrier for citizens to organize new anticorruption CSOs (And thus implies a decrease on the indicator's score compared to the previous period).

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.

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Corporación Transparencia por Colombia. 2004. Cuaderno No. 9 . Construyendo recomendaciones para la reglamentación de la Ley de Veedurías Ciudadanas <http://www.transparenciacolombia.org.co/Portals/0/descargas/publicaciones/cuaderno9.pdf>

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

El Espinoso camino de un mecanismo de control social: Radiografía de las veedurías ciudadanas. Publicado en EL ESPECTADOR (22, 29 de sept y 6 de oct de 2007) <http://blogius.wordpress.com/2007/11/06/veedurias-ciudadanas/>

LOS DE SIEMPRE. 25 Abril 2009. Revista Semana. <http://www.semana.com/noticias-nacion/siempre/123265.aspx>

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Los otros chuzados: "las organizaciones opositorias frente a las políticas gubernamentales". Laura Jaramillo Bernal. 2Mayo 8 , 2009 <http://www.lasillavacia.com/historia/2154>

Asalto ilegal a las oficinas de la corporacion Casa de la Juventud y la corporacion Redvivir <http://www.peaceobservatory.org/es/15922/asalto-ilegal-a-las-oficinas-de-la-corporacion-casa-de-la-juventud-y-la-corporacion-redvivir> 12.08.08

Asaltan sede de Comité Permanente por la Defensa de los Derechos Humanos en Risaralda y roban discos duros Colectivo para la Defensa de los Derechos Humanos Domingo Taborda <http://www.prensarural.org/spjp/spjp.php?article1791> . 27 de diciembre de 2008

Robo de información y equipos del Colectivo Domingo Taborda. <http://www.prensarural.org/spjp/spjp.php?article2262> . 4 de mayo de 2009

Baseless Prosecutions of Human Rights Defenders in Colombia. In the Dock and Under the Gun. Human Rights First. <http://www.humanrightsfirst.org/pdf/090211-HRD-colombia-eng.pdf> . February 2009

Colectivo de Abogados José Alvear Restrepo y Federación Internacional de Derechos Humanos denuncian ante la Unión Europea, las actividades ilegales del Das 2 de julio de 2009, por Prensa – Colectivo.

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:

Since the 1991 Constitution, citizen participation became one of the pillars of the political system in Colombia. It is reflected in several laws and mechanisms created to ensure citizen participation. The specific instances in which CSOs working on anticorruption and good governance can engage in policy making process 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, thus, in practice there is a barrier for open participation, especially from small CSOs. The Commission is not working in practice.

Usually, big national CSOs are called to give comment on specific issues in the elaboration of laws in Congress. However, in general participation faces obstacles to be effective or does not go beyond the discussion of the policy itself.

References:

Transparencia por

Colombia. <http://www.transparenciacolombia.org.co/CONTROLCIUDADANO/Fondoparaelapoyo/tabid/137/Default.aspx>

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

Corporación Transparencia por Colombia. 2004. Construyendo recomendaciones para la reglamentación de la Ley de Veedurías Ciudadanas Cuadernos de Transparencia # 9. 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 and usually CSOs close by their own initiative, or as a result of financial pressures and threats coming from armed or corrupt actors but not from the government.

Yet, during the study period it became public that the main government intelligence agency (DAS Departamento Administrativo de Seguridad) had been spying and intercepting communications of the most well know human rights organizations such as Redepaz, Comisión Colombiana de Juristas, Codhes, Cinep and the Colectivo de Abogados Jose Alvear Restrepo, and even the international nongovernmental organization Human Rights Watch.

The illegal investigation and follow up became public in September 2008 after Senator Gustavo Petro and the nongovernmental organization CINEP revealed documents about illegal wiretaps and intercepts of phone calls to human rights organizations.

Although the government initially denied any type of illegal wiretap, in April 2009 the investigations body of the General Prosecutor's Office (Fiscalía, CTI) found documents in the Analysis Section of DAS which confirmed that since 2004 activists from organizations considered government opponents", their families, communications and finances were investigated within a operation called G3, led by former DAS director Jorge Noguera.

Although the Prosecutor's Office and the Attorney General's (Procuraduría) Office have taken positive steps to investigate these practices there is evidence that sectors of state agencies such as the DAS and the military take actions that constrain nongovernmental organizations' work such stigmatization and constant siege.

There are cases of human rights defenders being accused of libel and slander but prosecutors fail to investigate fully whether the accusations made by activists are true or not. The government of Alvaro Uribe has not issued any public response about the actions of the DAS, and continues attacking publicly organizations such as Human Rights Watch, Amnesty International and the Committee of Victims of Violence, sometimes accusing them of being guerrilla members.

According to the most recent report of the Observatory for the Protection of Human Rights Defenders (OBS) threats derived from the armed conflict as well as government stigmatization continue to be huge constraints for the action of human rights defenders.

References:

LOS DE SIEMPRE. 25 Abril 2009. Revista Semana.

<http://www.semana.com/noticias-nacion/siempre/123265.aspx>

Ong Exigirán Que Les Digan Si Sus Correos Fueron O No Interceptados
El Tiempo. 26 de noviembre de 2008

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Los otros chuzados: las organizaciones opositorias frente a las políticas gubernamentales". Laura Jaramillo Bernal. 2 Mayo 8 , 2009

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Asalto ilegal a las oficinas de la corporacion Casa de la Juventud y la corporacion

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Asaltan sede de Comité Permanente por la Defensa de los Derechos Humanos en Risaralda y roban discos duros Colectivo para la Defensa de los Derechos Humanos Domingo Taborda <http://www.prensarural.org/spip/spip.php?article1791> . 27 de diciembre de 2008

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2 de julio de 2009, por Prensa – Colectivo.

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. YES is a positive score.

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:

During the period studied, there were reported cases of irregular detention of civil society activists working on corruption issues. According to a report by the organization Human Rights First released in February 2009, some of the cases include a raid against the Rural Association of Rio Valle del Rio Cimitarra (ACVC) in January 2008 based on intelligence reports by the DAS (Central Intelligence Agency).

Members of the ACVC organization were never legally notified about a criminal investigation against them (four detained leaders were released later but charges have not been cleared up).

Another case was the detention of Martin Sandoval, president of the Permanent Committee of Human Rights in Arauca (CPDH) on November 4, 2008, apparently based solely on his human rights advocacy. He was also released later on.

Another case was the detention of Carmelo Agamez, technical secretary of the Movement of Victims of State Crimes (MOVICE) section in Sucre department, on November 13, 2008. Allegedly this detention took place without a warrant and without a notification of charges against Agamez. In March 2009, Rosalba Gaviria human rights defender in Quindio was detained.

References:

Baseless Prosecutions of Human Rights Defenders in Colombia. In the Dock and Under the Gun Fuente: Human Rights First. <http://www.humanrightsfirst.org/pdf/090211-HRD-colombia-eng.pdf> Fecha: February 2009

Actualización sobre el caso de Liliana Obando, prisionera del gobierno colombiano Fuente: Prensa rural. Septiembre 8 de 2008 <http://www.prensarural.org/spip/spip.php?article1514>

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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:

The cases here reported are based on denunciations made by civil society organizations and gathered by the nongovernmental organization CINEP and other human rights organizations.

During the period there were documented cases of threats and attacks on nongovernmental organizations 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 defend the rights of victims from armed groups. They are usually stigmatized as members of these groups.

Some of the violations are attributed to demobilized members of armed groups, especially the paramilitaries. The peace process with the paramilitaries which started in December 2002 has meant the demobilization of more than 31,000 paramilitaries. However, according to the UN Office for the High Commissioner on Human Rights, it is estimate that 15 percent of members of paramilitary groups have rearmed again.

On October 23, 2008, members from the Rural Association of Arauca received death threats in an email purportedly sent by paramilitaries.

In January 2009, three peasant leaders from the municipality of Caldonio Cauca, affiliated with the union FENSUAGRO were detained and beaten by army members. They were released a few hours later. Similar cases of physical attack against peasant leaders were reported in the municipalities of Caldonio and Corinto Cauca in January and March 2009.

References:

Policías encapuchados agreden a trabajadores azucareros Fuente: Agencia Prensa Rural. Fecha: 25 de septiembre de 2008
<http://www.prensarural.org/spjp/spjp.php?article1529>

Continúan las arremetidas contra los trabajadores de la Caña de Azúcar y de sus Familiares.
Fuente: Red de hermandad y solidaridad Colombia Fecha: 11 de octubre de 2008
http://www.redcolombia.org/index.php?option=com_content&task=view&id=301&Itemid=38

Militares agreden y detienen arbitrariamente a líderes campesinos en Caloto (Cauca)
Fuente: Prensa Rural Fecha: 16 de enero de 2009
<http://www.prensarural.org/spjp/spjp.php?article1826>

Herido líder campesino de Corinto (Cauca) Fuente: Prensa Rural
Fecha: 16 de enero de 2009
<http://www.prensarural.org/spjp/spjp.php?article1825>

Policías detienen y torturan a dos campesinos en Argelia (Cauca)
Fuente: Prensa Rural Fecha: 24 de marzo de 2009
<http://www.prensarural.org/spjp/spjp.php?article2075>

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:

During the study period, there were killings of civil society activists by members of armed groups (mainly the FARC and members of demobilized paramilitary groups reorganized into criminal bands) and by members of the state armed forces.

Particularly worrying is the increase of attacks on leaders of indigenous groups during 2009.

Some civil society activists have been victims of extrajudicial killings known as false positives, a practice that has caused widespread concern and debate during 2008 and 2009. This practice refers to the unlawful killing of civilians in order to be presented as members of the armed groups and thus as a military success. According to a report presented by the UN Special Advisor for Extrajudicial Killings, the victims are often led to a remote location in order to be executed by soldiers. The location is then manipulated and the victims are dressed as casualties occurred in combat and the deceased as guerrilla members. Although most victims of false positives are poor young men, not necessarily activists, the practice has also affected some civil society activists.

Among the documented cases of assassination are:

In August 2008, Eladio Ortega (President of a Communal Junta) by the FARC in Teorama, Norte de Santander

In September 2008, peasant leader César Marín was executed by paramilitaries.

On September 20, Human Rights Defender Ever Gonzalez, from CIMA organization in Sucre was shot dead by hit men. By the time of this death he was helping to clarify some cases of extrajudicial killings in Sucre.

On September 27, Enrique Giraldo peasant leader was assassinated in Granada, Antioquia.

On September 28, indigenous leader Raul Mendoza was killed in Cauca. Mendoza was leading a process to reclaim indigenous land and he had reported to the Attorney General's Office (Procuraduría) that he was receiving death threats.

On April 14, 2009, peasant leader Ana Isabel Gomez Perez, member of the Association of Relatives of Victims of Violence in Cordoba, which represents more than 4,000 people killed. She was participating on the process of recovering land usurped by paramilitaries. On April 1, she had publicly announced death threats against her.

On April 22, 2009, Edgar Martinez, social leader, was shot dead by five men in San Pablo, Bolívar.

On May 19, 2009, indigenous leader Robert de Jesus Guacheta was assassinated in Morales, Cauca. Guacheta was openly opposed to the extension of illicit crops in the region and was also part of movements opposing the expansion of multinationals in indigenous territory. He had reported death threats against him conducted by the groups known as Aguilas Negras (demobilized paramilitaries).

References:

Las FARC asesinan al presidente de la Asojuntas del corregimiento de San Juancito (Teorama, Norte de Santander)

FUENTE: PRENSA RURAL FECHA: 5 de agosto de 2008

<http://www.prensarural.org/spjp/spjp.php?article1409>

Asesinado Luis Mayusa Prada, reconocido dirigente sindical y sobreviviente de la Unión Patriótica en el Meta

FUENTE: PRENSA RURAL FECHA: 8 de agosto de 2008

<http://www.prensarural.org/spjp/spjp.php?article1418>

Secretario de Educación rechaza asesinato de dos profesores en el Departamento de Arauca Viernes, 10 de Julio de 2009
Centro virtual de noticias Ministerio de Educación Nacional.

<http://www.mineduacion.gov.co/cvn/1665/article-193417.html>

Falsos Positivos por sectores sociales.

Fuente: Revista Noche y Niebla 38 Julio diciembre de 2008

<http://www.nocheyniebla.org/files/u1/38/02PRES38.pdf>

Asesinado otro dirigente sindical en Colombia

Fuente: Agencia Prensa Rural Fecha: 29 de agosto de 2008

<http://www.prensarural.org/spjp/spjp.php?article1473>

Asesinado, EVER GONZÁLEZ, líder campesino del CIMA

Fuente: Red de hermandad y solidaridad Colombia Fecha: 23 de septiembre de 2008

http://www.agenciaenpie.org/index.php?option=com_content&task=view&id=1456&Itemid=87

Antioquia: homicidio contra dirigente campesino y comunal

Fuente: Red de hermandad y solidaridad Colombia Fecha: 27 de septiembre de 2008

http://www.redcolombia.org/index.php?option=com_content&task=view&id=280&Itemid=38

Cauca: Asesinado Gobernador Indígena Ex Consejero Mayor del CRIC

Fuente: Red de hermandad y solidaridad Colombia Fecha: 30 de septiembre de 2008

http://www.redcolombia.org/index.php?option=com_content&task=view&id=290&Itemid=38

En Popayán marcharon indígenas que acompañaron el sepelio del gobernador asesinado en Cauca Fuente: El Tiempo.com

Fecha: 1 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/CMS-4576370>

PCN: Asesinan a otro miembro Fecha: 11 de octubre de 2008

Fuente: Red de hermandad y solidaridad Colombia

http://www.redcolombia.org/index.php?option=com_content&task=view&id=310&Itemid=38

Integrante de la Ruta Pacífica de Mujeres asesinada junto con tres familiares
Fuente: Red de hermandad y solidaridad Colombia Fecha: 30 de septiembre de 2008
http://www.redcolombia.org/index.php?option=com_content&task=view&id=288&Itemid=38

Asesinado en Caquetá defensor de derechos humanos Fuente: Agencia Prensa Rural 15 de diciembre de 2008
<http://www.prensarural.org/spip/spip.php?article1766>

Paramilitares asesinan a líder campesino en Popayán (Cauca)
FUENTE: Agencia Prensa Rural FECHA: 18 de enero de 2009
<http://www.prensarural.org/spip/spip.php?article1827>

Fue asesinado el profesor y líder sindical Guillermo Antonio Ramírez
FUENTE: Agencia Prensa Rural FECHA: 17 de febrero de 2009
<http://www.prensarural.org/spip/spip.php?article1952>

14. Asesinan a dirigente campesina que luchaba por recuperar tierras robadas por paramilitares
Fuente: Agencia Prensa Rural 15 de abril de 2009
<http://www.prensarural.org/spip/spip.php?article2200>

Comunicado 49 La CNRR rechaza asesinato de Ana Isabel Gómez Pérez <http://www.cnrr.visiondirecta.com/09e/spip.php?article1057>

Sijín me pide que investigue crimen de mi padre
FUENTE: Agencia Prensa Rural FECHA: 4 de marzo de 2009
<http://www.prensarural.org/spip/spip.php?article2009>

Ruta Pacífica de las Mujeres rechaza asesinato de lideresa en Córdoba
FUENTE: Agencia Prensa Rural FECHA: 16 de abril de 2009
<http://www.prensarural.org/spip/spip.php?article2195>

Colombia: Asesinato del Sr. Edgar Martínez – COL 012 / 0409 / OBS 066

Asesinado Robert de Jesús Guachetá, líder indígena del Cauca
Fuente: Prensa Rural 18 de mayo de 2009
<http://www.prensarural.org/spip/spip.php?article2471>

DECLARACION DEL PROFESOR PHILLIP ALSTON, RELATOR ESPECIAL DE LAS NACIONES UNIDAS PARA LAS EJECUCIONES ARBITRARIAS
<http://www.nacionesunidas.org.co/index.shtml?apc=BB-3-&x=58590>

Observatory for the protection of human rights defenders. Annual report 2009. <http://www.fidh.org/IMG/pdf/AMER-UK.pdf>

Conmoción por crimen de indígena en Cauca; van 63 asesinados este año en Colombia http://www.eltiempo.com/colombia/occidente/conmocion-por-crimen-de-indigena-en-cauca-van-63-asesinados-este-ano-en-colombia_5758391-1

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). Article 39 specifies the right to form trade unions. However the Escuela Nacional Sindical (ENS, National Labor School) declares that the legislation only gives complete guarantees of association to workers with contracts that do not have specific time periods. Thus, temporal workers, subcontractors, service contractors, do not have effective ways to defend their rights.

Labor and human rights organizations declare that some articles in the CST constitute an interference of the government in the autonomy of unions and go against the Conventions of the International Organization of Labor (IOL) that the government has ratified.

For example, according to the law, in order to form a trade union at least 25 workers are required. This requirement may represent an obstacle to constitute trade unions, especially in small enterprises. Other examples are the legal prohibition of collective negotiation of contracts in the public sector even though the IOL conventions approve collective negotiations in the public sector, or the possibility that the overnment can declare illegal protests and unions do not have an immediate appeal mechanism of this decision.

International and national organizations have denounced that the proliferation of Cooperativas de Trabajo Asociado CTAs (Cooperatives of Associated Workers) has further undermined worker's rights and the possibility of unionization.

CTAs are firms of the solidarity sector that do not pay taxes and have become intermediaries that provide workers to companies but do not pay them salaries and benefits, thus reducing labor costs for companies.

Between 2002 and 2008 the numbers of CTAs multiplied by 3, from 1,110 to 3,903, increasing the number of affiliated workers to 537,859.

Most CTAs employ workers for sugar cane enterprises and as packers in supermarkets. The latter for example do not receive a minimum salary but only tips from consumers. In 2008 the government issued the Law 1233 that imposes regulations on CTAs, forbids them to provide compensations lower than the minimum wage, and prohibits the use of CTAs for labor intermediation.

The effects of this law are still to be analyzed and in January 2009 the government discussed ways to better regulate CTAs and reduce laboral intermediation practices. These practices of informalization and intermediation have reduced the rate of unionization, according to the ENS only four of each 100 workers are affiliated to unions and the number of union members has decreased between 2002 and 2008 from 86,8116 to 801,753.

A legal advance for the organization of unions was the Law 1210 issued by the government in 2008, in which the responsibility to declare the legality of protests is attributed to judges and not to government members as was the case previously.

References:

Constitucion Politica de Colombia art. 39, 55 and 56

Escuela Nacional Sindical

2009 annual survey of violations of trade union rights

Fuente: ITUC (CSI)

<http://survey09.ituc-csi.org/survey.php?IDContinent=2&Lang=EN>

Las Cooperativas de Trabajo Asociado en el sector azucarero Flexibilización, o salvajización laboral. Por Ricardo Aricapa

Fuente: Escuela Nacional Sindical

http://www.ens.org.co/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/CRONICA_COTEROS.doc

Cooperativas de trabajo asociado: en cintura

Fuente: Dinero.com Fecha: 09/26/2008

<http://www.dinero.com/noticias-agenda-publica/cooperativas-trabajo-asociado-cintura/52820.aspx>

Explosión" de cooperativas de trabajo asociado

Fuente: Dinero.com Fecha: 02/21/2007

<http://www.dinero.com/noticias-on-line/explosion-cooperativas-trabajo-asociado/31654.aspx>

Coyuntura económica, laboral y sindical 2008-2009

Revista Cultura y Trabajo – Edición Número 77

Fuente: Escuela Nacional Sindical

[http://www.ens.org.co/articulos.htm?x=20155070&cmd\[111\]=c-1-77](http://www.ens.org.co/articulos.htm?x=20155070&cmd[111]=c-1-77)

Panorama de la situación de los trabajadores y trabajadoras y de las organizaciones sindicales en Colombia. Fuente: Escuela Nacional Sindical Fecha: Mayo de 2009

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:

Significant barriers for the organization and operation of trade unions exist, many of them related to security issues and threats derived from the armed conflict, and others derived from labor practices.

Although statistics on violations against union members differ among governmental and nongovernmental institutions, the numbers show that violence increased in 2008 and 2009.

According to the ITUC report, in 2008 there was a 25 percent increase in murders against union members (compared to 2007), with 49 unionists murdered. In the first five months of 2009, 17 unionists have been murdered.

According to the National Union School (ENS), other forms of violence and intimidation such as death threats, arbitrary detentions and disappearances also increased during 2009, most of them attributed to reconfigured self defense (paramilitary) groups. Violent attacks and murders of trade unionists are still lower than the peak reached in the early 1990's, 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 very high, and threats and arbitrary detentions are on the increase, thus the security situation for trade unionists is still worrying. According to ITUC, Colombia still accounts for 60 percent of union member murders around the world.

Among the reported murder cases are the following:

The murder of Rafael Antonio Sepúlveda Lara on July 26, 2009, who was affiliated to the National Association of Hospital Workers ANTHOC and was member of the board of FENASER (National Federation of Public Servants).

On August 8, 2008, Luis Mayusa Prada, board member of the CUT (Worker's Central Union) in Meta, was assassinated in Saravena, Arauca.

On August 29, 2008, Alexander Blanco, member of the USO (oil workers union) was shot dead by hitmen in Cantagallo-Bolivar.

On February 15, 2009 Guillermo Antonio Rodríguez member of the Teacher's Union in Risaralda was shot dead in Belén de Umbria, Risaralda.

According to the May 2009 report about the situation of union members presented by the Escuela Nacional Sindical (ENS, National Union School) one of the big obstacles for the organization of unions is the tendency of the government to manage conflicts with them as public order problems.

This situation was reflected in the conflict with sugar cane workers in September 2009, when the government decided to militarize the response to protests aimed at improving working conditions. The government argued that protests were instigated by FARC guerrillas. The militarized response led to the stigmatization and death threats against protest leaders.

The illegal wiretap of union's communications by the DAS (Intelligence Department) was another issue of concern during the study period.

According to the government, efforts to reduce impunity in cases of attack against union members and to increase their protection have continued in 2008 and 2009.

In the 97th Meeting of ILO held in June 2009, the Colombian government declared that since 2002 there have been important advances in investigation as there have been judicial decisions on 188 cases, 75 in 2008.

For the 17 homicides taking place in 2009, three suspects have been detained. Due to these advances the Expert Commission for Colombia from the ILO considered that Colombia constitutes a progress case in the implementation of the Agreement 87 of the ILO.

Members of unions recognize the advances made by the General Attorney's Office, but declare that impunity is still around 95 percent. The Expert Commission expressed its concern about increases in violence in 2008 and urged the government to continue strengthening the investigation of cases of violence against unions.

References:

Coyuntura económica, laboral y sindical 2008-2009
Revista Cultura y Trabajo – Edición Número 77
Fuente: Escuela Nacional Sindical
[http://www.ens.org.co/articulos.htm?x=20155070&cmd\[111\]=c-1-77](http://www.ens.org.co/articulos.htm?x=20155070&cmd[111]=c-1-77)

Panorama de la situación de los trabajadores y trabajadoras y de las organizaciones sindicales en Colombia. Fuente: Escuela Nacional Sindical Fecha: Mayo de 2009

En Carta A Obama Congresistas De E.U. Piden No Apoyar TLC
Fuente: El Tiempo.com Fecha: 27 de febrero de 2009
<http://www.eltiempo.com/archivo/documento/MAM-3338454>

A Obama se le enfrió el entusiasmo por el TLC; probablemente se resolverá hasta 2010
Fuente: El Tiempo.com Fecha: 2 de junio de 2009
<http://www.eltiempo.com/archivo/documento/CMS-5330507>

2009 annual survey of violations of trade union rights
Fuente: ITUC (CSI)
<http://survey09.ituc-csi.org/survey.php?IDContinent=2&Lang=EN>

Asamblea permanente con cese de actividades en todas las empresas azucareras Fecha: 15 de septiembre de 2008
Fuente: Prensa Rural
<http://prensarural.org/spip/spip.php?article1503>

Policías encapuchados agreden a trabajadores azucareros
Fuente: Prensa Rural
<http://prensarural.org/spip/spip.php?article1529>

Ha muerto un líder campesino del Sumapaz
Fuente: Prensa Rural Fecha: 28 de mayo de 2009
<http://prensarural.org/spjp/spjp.php?article2374>

No cesan los asesinatos en Colombia
Fuente: International Trade Union Confederation Fecha: 26 de junio de 2009
<http://www.ituc-csi.org/spjp.php?article3955>

100: Trade unions are common and are an important part of 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 to receive truthful information and to create mass media is a basic right. It also guarantees the right of rectification and prohibits censorship (article 20). It also guarantees protection to the liberty and independence of journalists (article 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?

94

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

100 | 75 | 50 | 25 | 0

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.

The fact that no print media license is necessary facilitates the process of print media creation. As a result many print media are created opening opportunities for journalism. However, many of these media have difficulties surviving due to economic problems and the limits to free reporting mentioned above. Survival opportunities are higher for those printed media experiments initiated by big groups such as the Casa Editorial El Tiempo, which in 2008 created two new printed media.

During the study period, two events affected the freedom in printed media entities. First, the confirmation that the Central Intelligence Agency (DAS) has been illegally wiretapping and spying on the communications of printed media journalists. Second, the exaggerated reaction of Justice Jose Alfredo Escobar about a report published in *Semana*, one of the most important weekly magazines in Colombia.

The magazine published inaccurate dates about certain meetings. Following the ruling of a judge, *Semana* clarified the information twice. Yet, despite this clarification the judge ordered the imprisonment of the magazine's director for three days arguing that the clarification was not published on the cover.

National and international journalists and defenders of press freedom considered the reaction inappropriate and exaggerated. Although this type of harassment does not directly affect the creation of printed media it can be a hindrance for its free operation.

References:

El DAS sigue grabando Fuente: *Semana.com* Fecha: Sábado 21 Febrero 2009

<http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

El mecenas de la justicia RECTIFICACIÓN. Fuente: *Semana.com* Fecha: 11 Octubre 2008

<http://www.semana.com/noticias-enfoque/mecenas-justicia/116596.aspx>

Respeto la justicia, pero el fallo atenta contra la libertad de prensa": director de *Semana*

El magistrado y los medios Fuente: *Semana.com* Fecha: Jueves 20 Noviembre 2008

<http://www.semana.com/noticias-justicia/respeto-justicia-pero-fallo-atenta-contra-libertad-prensa-director-semana/117919.aspx>

Los pájaros tirándoles a las escopetas Revista *Semana* Sábado 22 Noviembre 2008

<http://www.semana.com/noticias-opinion/pajaros-tirandoles-escopetas/117980.aspx>

El magistrado y los medios Fuente: *Semana.com* Fecha: Sábado 14 Febrero 2009

<http://www.semana.com/noticias-confidenciales/magistrado-medios/120794.aspx>

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 appeals 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:

No print media license is required.

References:

Constitución Política de Colombia 1991. Art. 20 and 73

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:

No print media license is required.

References:

Constitución Política de Colombia 1991. Art. 20 and 73

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?

63

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

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, the state guarantees the creation of media entities (art. 73) and fair access to the airwaves (art.75).

There is an independent body that oversees this 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 obstacles to survive.

In TV, as well as in radio, it is important to note two tendencies that can be contradictory. On the one hand, in commercial radio and TV the panorama is characterized by monopolies and by high costs of operation that discourage competition and increase the monopoly of media power, whereas on the other hand the existence of community radio and TV has opened opportunities for small operators and this has democratized communications, even though in many cases independent and community media face obstacles to survive. The advances in community radio are reflected in the fact that Colombia has the largest network of community radio in Latin America.

Since 2003 the Ministry of Culture has developed programs and initiatives that contribute to the formation and training of members of community radio stations. Thus, in general, the panorama for the creation of community radio stations is positive although members of community networks report that the existing limit on broadcast power for community radio compared to commercial radio is justifiable in small municipalities but not in big ones.

In commercial radio, two main stations dominate around 90 percent of the market nationwide, although there are several local radio stations (1292 operating in 603 municipalities according to the Ministry of Communications). These two 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.

During the past year there have been legal advances in regulating the process of adjudication of community radio stations such as the decree 2805 of 2008. However some community radio stations of minority groups (indigenous groups and a gay radio station) reported threats and unusual limitations to their normal operation. These reports together with the report that the Central Intelligence Agency (DAS) has been illegally wiretapping journalists may constitute a limitation for the free constitution and operation of media.

The panorama for TV is more complicated. The adjudication of concessions in TV is criticized due to its lack of transparency, although the process of adjudication is done through open bidding.

It is considered that the National Commission on Television is highly politicized (the majority of the commission is clearly supporter of President Alvaro Uribe) and there have been debates about political influences, the distribution of licenses, irregular election of its members and irregular use of its funds.

A long debate regarding the adjudication of a third commercial private national TV station has taken place since 2007.

Three big economic groups are competing for the adjudication of the station given the high costs associated with the bidding process and the operation of the canal itself, and the discussion about the terms of the concession has been affected by the interests and power of these groups. Furthermore, the debate has been characterized by delays, lack of clarity and constant change in the chronogram and the terms under which the station will be assigned and will operate. As of June 2009, the terms had not been clearly defined.

References:

Urge Reformar Cntv En Próximos Dos Años El Tiempo. 2 de marzo de 2009.

<http://www.eltiempo.com/archivo/documento/MAM-3341780#>

El vía crucis del tercer canal. 27 Junio 2009 Revista Semana. <http://www.semana.com/noticias-economia/via-crucis-del-tercer-canal/125584.aspx>

Tensión en los medios comunitarios indígenas del Cauca

Fuente: Fundación para la libertad de prensa (FLIP) Fecha: 16 de octubre de 2008

<http://www.flip.org.co/veralerta.php?idAlerta=317>

El DAS sigue grabando Fuente: Semana.com Fecha: Sábado 21 Febrero 2009

<http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

Juez ordena arresto de Daniel Coronell Fecha: 25 Marzo 2009 Fuente: Semana.com

<http://www.semana.com/noticias-justicia/juez-ordena-arresto-daniel-coronell/122104.aspx>

José Obdulio Gaviria desmiente la existencia de pruebas de las chuzadas del DAS. 18 de Mayo de 2009 . Revista Semana

http://201.234.71.179/rcnradio_lafm00/noticias/2009-05-18/jos-obdulio-gaviria-desmiente-la-existencia-de-pruebas-de-las-chuzadas-del-das

Reporteros sin Fronteras ayuda a una emisora comunitaria gay amenazada

Fuente: Reporteros sin Fronteras Fecha: 5 de junio de 2009

<http://www.rsf.org/Reporteros-sin-Fronteras-ayuda-a.html>

Decreto 2805 de 2008 por el cual se expide el Reglamento del Servicio de Radiodifusión Sonora y se dictan otras disposiciones. Títulos III- IV – V

Fuente: Ministerio de Comunicaciones. Fecha: 31 de julio de 2008

http://www.mincomunicaciones.gov.co/mincom/src/?page=../mods/contenido/view_page&id=248&state=V

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 appeals 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 "Acción 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 "Acción 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 reposicion and appeal, if these mechanisms are exhausted there are judicial resources such nullity and reparation (jurisdicción contenciosa administrativa).

References:

Constitucion Política 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 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".

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 it easier for citizens to access media licenses.

However, it is important to note that the coverage and objective 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. The delays and difficulties in obtaining a license can result in the operation of radio stations without license.

However, over the past year there have been important advances in the norms that regulate the adjudication of radio stations such as the Decree 2805 of 2008 which determines that the Ministry of Communications has three months to decide on a radio license after all documentation has been presented. Although the time period to obtain a license is reasonable, sometimes the process of opening the adjudication might be considerably longer.

The situation for TV stations is more difficult. In what refers to community television stations, it is estimated that the majority of them operate illegally without a license, in part because there is no formal regulation of this process.

Over the past year, the process of adjudication of a third commercial national TV station has also been characterized by extreme delays and constant changes.

The process of adjudication of licenses for TV is slower than in the case of radio in part because of the politicized character of the National Television Commission (CNTV) and the lack of clear regulation. As a result several sectors within and outside the government talk about the necessity of reforming the CNTV.

References:

Urge Reformar Cntv En Próximos Dos Años El Tiempo. 2 de marzo de 2009.

<http://www.eltiempo.com/archivo/documento/MAM-3341780#>

El vía crucis del tercer canal. 27 Junio 2009 Revista Semana. <http://www.semana.com/noticias-economia/via-crucis-del-tercer-canal/125584.aspx>

Tensión en los medios comunitarios indígenas del Cauca

Fuente: Fundación para la libertad de prensa (FLIP) Fecha: 16 de octubre de 2008

<http://www.flip.org.co/veralerta.php?idAlerta=317>

El DAS sigue grabando Fuente: Semana.com Fecha: Sábado 21 Febrero 2009

<http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

Juez ordena arresto de Daniel Coronell Fecha: 25 Marzo 2009 Fuente: Semana.com

<http://www.semana.com/noticias-justicia/juez-ordena-arresto-daniel-coronell/122104.aspx>

José Obdulio Gaviria desmiente la existencia de pruebas de las chuzadas del DAS. 18 de Mayo de 2009 . Revista Semana

http://201.234.71.179/rcnradio_lafm00/noticias/2009-05-18/jos-obdulio-gaviria-desmiente-la-existencia-de-pruebas-de-las-chuzadas-del-das

Reporteros sin Fronteras ayuda a una emisora comunitaria gay amenazada

Fuente: Reporteros sin Fronteras Fecha: 5 de junio de 2009

<http://www.rsfn.org/Reporteros-sin-Fronteras-ayuda-a.html>

Decreto 2805 de 2008 por el cual se expide el Reglamento del Servicio de Radiodifusión Sonora y se dictan otras disposiciones. Títulos III- IV – V

Fuente: Ministerio de Comunicaciones. Fecha: 31 de julio de 2008

http://www.mincomunicaciones.gov.co/mincom/src/?page=../mods/contenido/view_page&id=248&state=V

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:

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

In the case of radio, the relative low costs of creating community radio stations are reflected in the fact that Colombia has the largest network of community radio in Latin America.

For television the situation is very different as reflected in the process of defining the cost for the third commercial national TV station. The cost of the license was initially estimated at US\$32 million, a prohibitive cost but justifiable given the amount of advertising that these stations can receive, then this price was artificially increased by limiting the number of competitors, to be finally decreased following negotiations with the three main economic groups competing.

The process of defining the cost of the license has been unclear and not transparent as stated by former Attorney General Edgardo Maya in December 2008. The lack of transparency in the definition of costs is also reflected in the definition of the price for the extension of the license for the two existing national TV stations.

The CNTV initially set the price at 344,000,000,000 pesos (US\$174,010,336) for the extension. The two existing commercial TV stations opposed this price arguing that the economic crisis, the competition with cable TV, and the costs of operation, meant that the price for renewal was 2.6 times higher the price they paid 10 years ago when the license was first obtained and when the market was less competitive.

As a result and after meeting with representatives from these stations the CNTV lowered the price by 46 percent. In sum, the definition of costs for TV stations has not been guided by public interest but by a highly politicized and non transparent process.

The lack of transparency in the CNTV has led to many discussions about the need to reform or to eliminate it. One of the last scandals in the CNTV refers to the apparently irregular adjudication of a license for a TV station that belonged to a group called DMG. During 2008, DMG, an investment group, was the center of a huge judicial process related to money laundering, fraud and illegal capturing of funds.

References:

Decreto 2805 de 2008 por el cual se expide el Reglamento del Servicio de Radiodifusión Sonora y se dictan otras disposiciones. Títulos III- IV – V Fuente: Ministerio de Comunicaciones. Fecha: 31 de julio de 2008

http://www.mincomunicaciones.gov.co/mincom/src/?page=/mods/contenido/view_page&id=248&state=V

Rádios ciudadanas, espacios para la democracia Fecha: 29 de septiembre de 2008

Fuente: Ministerio de cultura. Dirección de comunicaciones

<http://www.mincultura.gov.co/?idcategoria=1771>

Se enciende polémica por la televisión

Fuente: El País.com Fecha: 3 Dic 2008

<http://www.elpais.com.co/paionline/notas/Diciembre042008/eco8.html>

Procuraduría en desacuerdo por no saber precio del tercer canal de TV

Fuente: Dinero.com Fecha: Diciembre 4 de 2008

<http://www.dinero.com/noticias-telecomunicaciones/procuraduria-desacuerdo-no-saber-precio-del-tercer-canal-tv/55094.aspx>

Prórroga En Contratos De Tv: Perdieron Los Usuarios

Fuente: El tiempo.com Fecha: 9 de marzo de 2009

Urge Reformar Cntv En Próximos Dos Años

Fuente: El Tiempo.com Fecha: 2 de marzo de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3341780>

Revive propuesta de eliminación de la CNTV Fuente: El Espectador.com Fecha: 14 Abr 2009

<http://www.elespectador.com/impreso/articuloimpreso135930-revive-propuesta-de-eliminacion-de-cntv>

Llaman a interrogatorio a dos miembros de la Comisión Nacional de Televisión

Fuente: El Tiempo.com Fecha: 10 de junio de 2009

<http://www.eltiempo.com/archivo/documento/CMS-5407147>

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?

88

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

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 the internet is in the hands of the Ministry of Communications. The law 679 of 2001 (to prevent pornography, exploitation, sexual tourism of children) forbids users of global networks from publishing images, texts, documents, or vVideos related to sexual activities with children. The law also states that the government through the Ministry of Communications should encourage practices of self regulation.

Although the Colombian government has not used filters to limit access to contents online, some independent opposition media have reported prosecution against their reporting.

A remarkable case in this regard is the censorship against the communication network of the Association of Indigenous Caucuses of Northern Cauca (Acin). During indigenous protests that took place in October 2008 Acin reported that their website was blocked and could not be accessed precisely when they were reporting about police shooting against protesters.

References:

La censura en internet aumenta". Fuente: Portal : Aprende en Línea Universidad de Antioquia. Fecha: 12 de febrero de 2009
http://aprendeonline.udea.edu.co/portal-20091002/index.php?option=com_content&task=view&id=100&Itemid=52

Agobiante persecución contra medios indígenas Fuente: Semana.com Fecha: 11 Febrero 2009
<http://www.semana.com/noticias-conflicto-armado/agobiante-persecucion-contra-medios-indigenas/120639.aspx>

Tensión en los medios comunitarios indígenas del Cauca Fecha: 16 de octubre de 2008
Fuente: Fundación para la libertad de prensa (FLIP)
<http://www.flip.org.co/veralerta.php?idAlerta=317>

Cinco años de lucha contra la censura Fuente: Agencia de Prensa Rural Fecha: 18 de agosto de 2008
<http://www.prensarural.org/spip/spip.php?article1443>

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 on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are no major constraints for publishing information online. The law 679 of 2001 (to prevent pornography, exploitation, sexual tourism with children) sanctions providers or servers, managers, and users of global networks which publish images, texts, documents, or videos related to sexual activities with children. 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.

In October 2008 and February 2009 the communication network of the Association of Indigenous Caucuses of Northern Cauca (Acin) reported unusual practices that limited their ability to report online.

In October, their website was blocked precisely when they were reporting a police shooting during indigenous protests. On February, the computer of the webmaster Gustavo Ulcué (www.nasaacin.org) was stolen by two men who arrived at his house. Although these events do not seem to be part of a systematic policy of censorship, they constitute a deterioration of freedom to report on the Internet.

References:

La censura en internet aumenta". Fuente: Portal : Aprende en Línea Universidad de Antioquia. Fecha: 12 de febrero de 2009
http://aprendeenlinea.udea.edu.co/portal-20091002/index.php?option=com_content&task=view&id=100&Itemid=52

Agobiante persecución contra medios indígenas Fuente: Semana.com Fecha: 11 Febrero 2009
<http://www.semana.com/noticias-conflicto-armado/agobiante-persecucion-contra-medios-indigenas/120639.aspx>

Tensión en los medios comunitarios indígenas del Cauca Fecha: 16 de octubre de 2008
Fuente: Fundación para la libertad de prensa (FLIP)
<http://www.flip.org.co/veralerta.php?idAlerta=317>

Cinco años de lucha contra la censura Fuente: Agencia de Prensa Rural Fecha: 18 de agosto de 2008

<http://www.prensarural.org/spjp/spjp.php?article1443>

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 anticorruption 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:

Even though the Colombian government does not impose censorship, journalists have to resort to self censorship when they are threatened by armed groups, drug traffickers, or corrupt politicians.

Although the security situation for journalists has improved dramatically, according to the CPJ (Committee to Protect Journalists) self censorship has made the press less of a target.

According the Freedom for the Press Foundation (FLIP) the number of violations to press freedom and threats against journalists decreased by 20 percent in 2008 compared to 2007, however self censorship continues to be an option for journalists denouncing human rights offenses and corruption and opposing the government. Government opponents can be seen by the population as lacking patriotism, stigmatized as guerrilla members, and are subject to pressures and threats. The government itself sometimes accuses its opponents as slanderous. During the study period, it became public that the Central intelligence Agency (DAS) has been illegally wiretapping and following journalists' communications, a practice that clearly hinders press freedom and encourages self censorship.

Even though there is no official governmental censorship, the concentration of media ownership favors biased coverage towards the government, since private mass media are owned by big economic groups which in turn are pro-government.

A recent example of a practice that can led to self censorship involved one of the main pro government media groups RCN, which reported that a former presidential advisor ordered the illegal wiretapping conducted by the DAS. This report generated a struggle between RCN and the government which led the group to rectify the information.

In July 2009 another controversy regarding freedom to report emerged as the National Television Commission ordered all TV stations to broadcast a documentary in commemoration of Operacion Jaque" a military operation that took place on July 2008 and led to the rescue of 11 policemen and soldiers, three American soldiers, and former presidential candidate Ingrid Betancur, kidnapped by the FARC guerrillas.

The Liberal Party's chief and former president César Gaviria criticized this order arguing that it was against pluralism.

References:

Informe sobre el estado de la libertad de prensa en Colombia en 2008. Fecha: Febrero 9 de 2009 Fuente: Fundación para la libertad de prensa (FLIP)

<http://www.flip.org.co/veralerta.php?idAlerta=346>

Informe sobre abusos de publicidad oficial y otras formas de censura indirecta : 'El precio del silencio' http://www.flip.org.co/secciones/informes/informes_especiales.html

Getting Away With Murder 2009. CPJ s Impunity Index spotlights countries where journalists are slain and killers go free Fecha: March 23, 2009

Fuente: Committee to protect Journalists. CPJ

<http://cpj.org/reports/2009/03/getting-away-with-murder-2009.php>

Impunidad y autocensura Fuente: El Espectador.com Fecha: 3 Sep 2008

<http://www.elespectador.com/opinion/editorial/articulo-impunidad-y-autocensura>

Cascada" de sanciones a RCN Televisión impone la Comisión de Televisión

Fuente: El rincón del periodismo independiente Fecha: 06/12/2009

<http://www.mariomoraes.info/?q=node/2335>

Grandes contratistas del Estado, bananeros, y grupos Ardila y Santodomingo apoyaron Referendo de reelección Fuente:

PrimeraPágina.com Periodismo Investigativo. Fecha: 03/12/2008

<http://www.primerapagina.com.co/MostrarDocumentoPublico.aspx?id=1196378>

'Preocupada' por seguimientos ilegales, se declaró Comisionada para los DD.HH. de la ONU en Colombia

Fuente: El Tiempo.com Fecha: 16 June 2009

http://www.eltiempo.com/colombia/justicia/preocupada-por-seguimientos-ilegales-se-declaro-comisionada-para-los-ddhh-de-la-onu-en-colombia_5452368-1

OEA y ONU están preocupadas por acusaciones de Uribe contra Morris

Fuente: El Espectador.com Fecha: 10 Feb 2009

<http://www.elespectador.com/articulo116492-oea-y-onu-estan-preocupadas-acusaciones-de-uribe-contra-morris>

Comunicado. Fuente: Presidencia de la República de Colombia Secretaría de Prensa

<http://web.presidencia.gov.co/sp/2009/febrero/11/01112009.html>

Fecha: Febrero 11 de 2009

Tiempo Real con Hollman Morris Fuente: History Chanel

<http://www.tuhistory.com/es/CO/thc/Series/Tiempo%20real.html?url=urn:kbee:5071c690-2479-11de-854d-001d09fb6285&page-uri=urn:kbee:be9c7ff0-71bc-11dc-89ff-004854883d6c>

Fecha: El documental fue estrenado el 25 de mayo de 2009

Amenazadas periodistas en Huila y Tolima por paramilitares y contratista de multinacional

Fuente: Prensa Rural Fecha: 18 de abril de 2009

<http://www.prensarural.org/spip/spip.php?article2199>

Amenazan a periodista de Caracol Radio que cubre política

Fuente: Semana.com Fecha: 15 Mayo 2009

<http://www.semana.com/noticias-seguridad/amenazan-periodista-caracol-radio-cubre-politica/123999.aspx>

Asesinado periodista en Caquetá y amenazado su hermano, también reportero

Fuente: Prensa Rural Fecha: 8 de junio de 2009

<http://www.prensarural.org/spip/spip.php?article2442>

Capturan a sicario acusado de asesinar a periodista José Everardo Aguilar

Fuente: El Espectador.com Fecha: 10 Julio 2009

<http://www.elespectador.com/articulo149998-capturan-sicario-acusado-de-asesinar-periodista-jose-everardo-aguilar>

La CNTV declaró de interés público el documental oficial del Ejército colombiano sobre la Operación Jaque - TODA LA TV COLOMBIANA LO DEBE TRANSMITIR HOY JUEVES, A LAS 8:30 P.M.

Fuente: Comisión Nacional de Televisión Fecha: 2 de julio de 2009

http://www.cntv.org.co/cntv_bop/noticias/2009/julio/01_07_09a.html

Polémica por transmisión de documental de la operación 'Jaque'

Fuente: El Tiempo.com Fecha: 2 Julio de 2009

http://www.eltiempo.com/colombia/politica/polemica-por-transmision-de-documental-de-la-operacion-jaque_5575447-1

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 express constitutional prohibition of censorship. However there are many de facto filters on publication such as threats coming from armed groups, the fear that impunity will prevent the effective investigation of corruption cases, or the fear that there will be a rejection from the government when information does not favor it.

In July 2008 some journalists reported they received threats from the FARC as they were reporting about marches for peace and against kidnapping. The attacks on journalists, usually occur once information has been published, showing that official censorship is not as strong as other obstacles for the journalists' work such as self censorship.

The government has accused on some occasions the lack of patriotism bop posing journalists or those who report on corruption, violence and human rights. During the study period it became public that the central intelligence agency of the Government -DAS- had been spying illegally on several journalists. In December it was revealed that there was even a manual teaching intelligence agents how to spy on journalists.

As in the past study period, from 2008 to 2009 very well-known and respected journalists have been threatened because of their opinion articles and investigations. The willingness of national media such as the Semana Magazine to report on big corruption scandals continues, but the increasing number of demands against journalists can work against the freedom to report.

According to the director of El Heraldo newspaper, Gustavo Bell, and international reports such as Freedom of the Press 2009, there has been an increase in judicial accusations against journalists for libel and slander, and an increase in pressure techniques such as calling journalists to be witnesses in court hearings leading them to violate professional secrecy. One prominent example of pressure against journalists is the accusation made by the government against independent journalist

Hollman Morris as being friendly with terrorists because he was reporting when the FARC released several kidnapped people on February 2009. Another prominent case involves the opening of judicial processes against journalists such as Alejandro Santos after he reported the links between the Justice of the Superior Council of the Judiciary Jose Alfredo Escobar Araujo and Italian drug trafficker Giorgio Sale. These forms of legal harassment constitute counterincentives for the publication of controversial material.

According to the Freedom of the Press Foundation (FLIP)'s 2008 report the distribution of state publicity constitutes a form of indirect censorship and has been used indirectly to curtail reporting because state officials grant official publicity to non critical media or withdraw advertising contracts after critical reporting is made. This practice is especially worrying at the regional level where most advertising comes from the public sector and journalists have lost quotas of state advertising after doing critical reporting on public officials. Journalists can negotiate publicity directly with public officials and, as a result, governments tend to privilege those journalists that are favorable to them.

Another form of indirect censorship is that usually governmental sources prevail when reporting and 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 as in San Vicente del Caguan in July 2008.

In sum, although there is no official policy of governmental censorship and despite the improvements for the security of journalists over the past years, free reporting, specially at the local level continues being limited by indirect forms of censorship such as legal harassment, manipulation of official publicity and stigmatization. The illegal spying of DAS agents on journalists constitutes a worrying event that contributed to create an atmosphere of fear for the free reporting of journalists.

References:

Aumentan acciones judiciales contra periodistas en Colombia

Fuente: El Espectador.com Fecha: 5 Oct 2008

<http://www.elespectador.com/entretenimiento/arteygente/medios/articulo-aumentan-acciones-judiciales-contra-periodistas-colombia>

Informe sobre el estado de la libertad de prensa en Colombia en 2008

Fuente: Fundación para la libertad de prensa (FLIP) Fecha: Febrero 9 de 2009

<http://www.flip.org.co/veralerta.php?idAlerta=346>

Informe sobre abusos de publicidad oficial y otras formas de censura indirecta : 'El precio del silencio' Aumentan acciones judiciales contra periodistas en Colombia Fuente: Fundación para la libertad de prensa (FLIP)

http://www.flip.org.co/secciones/informes/informes_especiales.html

Audiencia final de juzgamiento de Alfredo Molano Bravo Fecha: 17 de abril de 2009

Fuente: Colectivo de abogados José Alvear Restrepo

<http://www.colectivodeabogados.org/En-defensa-de-la-prensa-libre>

Ruido de botines Fuente: Semana.com Fecha: Sábado 22 Noviembre 2008

<http://www.semana.com/noticias-opinion/ruido-botines/117970.aspx>

Freedom of the Press 2009 Colombia. <http://www.freedomhouse.org/template.cfm?page=251&year=2009>

Reporters without borders. <http://www.rsf.org/Manual-teaches-intelligence-agency.html>

El DAS sigue grabando Fuente: Semana.com. Fecha: Sábado 21 Febrero 2009

<http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

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?

50

10a. In law, print media companies are required to publicly 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 like in broadcast media, there is no mechanism to publicize print media ownership.

References:

Constitución Política de Colombia

YES: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly 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 implicitly requires them to disclose ownership.

According to the Procurement Law, the concessionaires of 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 (article 273 of the Constitution). If not, the decisions should be communicated to all bidders, published in two printed media with wide circulations and communicated to the Chambers of Commerce.

This way, 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 publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

According to a study conducted by the Media Observatory from the Universidad de la Sabana in 2008, a significant percentage of journalists (31 percent) report that because of the fear of losing their job they have sometimes sacrificed professional criteria while managing information. This problem is even more acute in regions. In the west of the country, 48 percent of journalists declare that they have sacrificed such criteria while the percentage is 18 percent in the capital city of Bogotá.

Recent episodes have generated discussions about whether it is ethical for journalists to buy privileged information, and whether it is ethical to use illegal actors (such as guerrilla members) as sources of information, making evident some contradictions and dilemmas that emerge when journalists report in conflict situations or times of crisis.

For example, in August 2008 the TV station RCN broadcasted a video of Operación Jaque" a military operation that took place on July 2008 and led to the rescue of 11 policemen and soldiers, three American soldiers, and former presidential candidate Ingrid Betancur, kidnapped by the FARC guerrillas.

Apparently the channel bought this video and for many journalists it is not ethical to buy information that should be public, yet RCN never confirmed or denied that it bought information. The Semana Magazine was also accused of buying information to report about the illegal wiretapping conducted by the Central Intelligence Agency (DAS), but in this case the magazine's director denied they buy information.

Another discussion emerged around the accusations made by the government against journalist Hollman Morris, of being friendly with terrorists because he has informants in guerrilla groups. For most journalists it is legitimate to use illegal actors as informants and many journalists have supported Morris and rejected the government's accusations.

In a forum conducted in March 2009, several journalists from different media discussed the most prominent obstacles to adhere to strict professional criteria. Among the limitations journalist mentioned were the need to answer to immediacies, the tension between funding and reporting priorities, the lack of knowledge on topics such as the armed conflict, the lack of self reflection and clear criteria about the management of sources and informants.

References:

¿Es ético comprar información? Fuente: El País.com Fecha: 2 de marzo de 2009
<http://www.elpais.com.co/paionline/notas/Marzo022009/nal3.html>

Noticieros carroñeros Fecha: 3 de octubre de 2009
Fuente: El País.com

Memoria Foro CPB. Reflexiones entre periodistas: Periodismo en momentos de tensión ¿qué hacer? Fecha: 10 de marzo de 2009
Fuente: Círculo de periodistas de Bogotá
<http://www.cpb.org.co/html/a-foromomentos-memoria.html>

Libertad de prensa en Colombia: cada vez con más dudas (*)
Fuente: Agencia de Prensa IPC Fecha: Miércoles, 01 de Abril de 2009
http://www.ipc.org.co/agenciadeprensa/index.php?option=com_content&view=article&id=234:libertad-de-prensa-en-colombia-cada-vez-con-mas-dudas-&catid=98:general&Itemid=457

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:

During the study period there were no regular elections thus the score on this indicator remains that attributed to the elections held in 2007. Some atypical elections (elections that take place outside the regular calendar) take place when elected officials are deposed, die or are found to be unable to run for election, and there were some events of this type during the study period.

The most recent elections were held in October 2007, to elect mayors, governors, local councilors and deputies. The electoral legislation (Law 130 of 1994) guarantees TV time to all political parties but there is not specific legislation about electoral guarantees for presidential elections. In several cases, public officials use official advertising to campaign for their preferred candidates or parties in local elections.

According to the FLIP (Foundation for Press Freedom) most violations of press freedom occurred during the pre-electoral period.

And according to an analysis of printed media coverage of the 2007 elections conducted by the Corporación Medios para la Paz (MPP), the Centro de Solidaridad de la Federación Internacional de Periodistas (Ceso-Fip) and the Center for Investigation and Popular Education (CINEP), most printed media coverage on elections was related to declarations of candidates and reports of events, but little was related to describe political campaigns or to analyze the electoral processes.

These processes go against neutral reporting during elections, as well as the fact that most coverage refers to urban centers and little of it refers to rural areas where many irregularities may take place. This report also finds that even though there are no substantial biases against parties in printed media, there might be biases against individual candidates (given the high level of personalization of politics).

During the study period the country was uncertain about whether President Uribe will run for re-election in 2010. For opponents, some government decisions may be inappropriate in this context.

For example, the government ordered all TV stations to broadcast a documentary in commemoration of Operacion Jaque", a military operation that took place on July 2008 and led to the rescue of 11 policemen and soldiers, three American soldiers, and former presidential candidate Ingrid Betancur, kidnapped by the FARC guerrillas. The chief of the Liberal Party and former president César Gaviria criticized this order arguing that it would favor the president in case he runs for re-election, or his supporters, in case he does not.

References:

ENTRE LAS CAMPAÑAS, LA CENSURA Y LA PAUTA PUBLICITARIA:

Corporación Medios para la Paz (Mpp), Centro de Solidaridad de la Federación Internacional de Periodistas (CesoFip), CINEP.
2008. Las Agendas de la Prensa: Agenda Inforativa y Calidad periodística.

Polémica por transmisión de documental de la operación 'Jaque' Fuente: El Tiempo.com Fecha: 2 Julio de 2009
http://www.eltiempo.com/colombia/politica/polemica-por-transmision-de-documental-de-la-operacion-jaque_5575447-1

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:

During the study period there were no regular elections thus the score on this indicator remains the same as the former study period related to the 2007 elections.

According to Law 130 of 1994 all candidates have free access to state-owned media during the 30-day period before the election. For local elections there is no Law of Electoral Guarantees" as exists for presidential elections. In practice, although all parties do have access to media, coverage is unequal. At the regional level, sometimes mayors 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 so than in private media, given that there are more outlets for opinion and analysis in public media, although ratings are lower for public TV stations than for privately owned stations.

References:

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

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?

33

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

YES | NO

Comments:

In general in recent year there has been a slight improvement in terms of security for journalists as there have been less attacks to journalists in Colombia (Colombia is no longer the first place in the number of journalists murdered in Latin America). Although there are no reports of journalists imprisoned for more than 24 hours (therefore the indicator is positive) there are some cases that indicate some limitations on journalists through detention or the threat of detention.

During the study period, two prominent journalists Daniel Coronell director of the TV news station Noticias UNO and Alejandro Santos director of the Semana Magazine were convicted to three days of prison and required to pay fines because they allegedly refused to rectify information about a local Meta politician in the first case, and a justice in the second case.

Although these orders were appealed and thus effective detentions did not take place, in both cases associations for the freedom of the press and the journalists themselves considered these judicial decisions exaggerated and harmful for journalistic work.

In February 2009 journalists Hollman Morris, Leonardo Acevedo, and Camilo Raigoza were momentarily held by military personnel in San Vicente del Caguan as they were reporting on the release of kidnapped people by the FARC guerrillas. The military were asking the journalists to give the material they have recorded, until the Ombudsman called the military commander and asked him to stop requesting the material, after about eight hours of retention.

References:

Juez ordena arresto de Daniel Coronell

Fuente: Semana.com Fecha: 25 Marzo 2009

<http://www.semana.com/noticias-justicia/juez-ordena-arresto-daniel-coronell/122104.aspx>

Ordenan arresto y pago de multa a director de la Revista Semana. Marzo 25, 2009

<http://www.radiosantafe.com/2009/03/25/ordenan-arresto-y-pago-de-multa-a-director-de-la-revista-semana/>

Cerrado caso por desacato contra Alejandro Santos

<http://www.semana.com/noticias-nacion/cerrado-caso-desacato-contra-alejandra-santos/125950.aspx>

Alerta Ejército retiene a periodistas y les exige la entrega de su material periodístico

Fuente: Fundación para la libertad de prensa (FLIP) Fecha: febrero 2 de 2009

<http://www.flip.org.co/veralerta.php?idAlerta=342>

Hollman Morris revela porqué estaba en la zona de la liberación.

Fuente: Noticias Uno Fecha: 8 de febrero de 2009

<http://www.noticiasuno.com/noticias/detencion-hollman-morris.html>

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:

In recent years the security situation for journalists in Colombia has improved, and there were no reports of journalists being seriously wounded. Yet, threats and intimidation continue being strong hindrances for free reporting.

During the study period journalist Hollman Morris reported he has received several death threats that accused him of being a FARC supporter.

In April 2009 journalist and writer Gustavo Alvarez Gardeazabal was victim of an assault to his house, after seeing a military patrol surrounding his house.

Jose Granados, journalist from El Heraldo newspaper, also reported receiving death threats after reporting on corruption cases in the Corporacion Autonoma Regional del Atlantico (an environmental preservation institution).

Rodrigo Silva from Caracol Radio and Francisco Marquez Lugo from Radio Uno in the department of Cordoba have also reported they received death threats. On July 2, 2009, Luis Fontalvo General Editor of La Libertad newspaper was assaulted and threatened by two men who accused him of being a sapo" (informant).

References:

El periodista Hollman Morris recibe amenazas de muerte Fecha: 14 de febrero de 2009

Fuente: Fundación para la libertad de prensa (FLIP)

<http://www.flip.org.co/veralerta.php?idAlerta=347>

Ejército niega relación con asalto a vivienda de periodista Gustavo Álvarez

Fuente: El Espectador.com Fecha: 26 Abr 2009

<http://www.elespectador.com/noticias/judicial/articulo137942-ejercito-niega-relacion-asalto-vivienda-de-periodista-gustavo-alvar>

Periodista de El Heraldillo recibe amenazas por denuncias de corrupción Fecha: 04/03/2009

Fuente: El rincón del periodismo independiente

<http://www.mariomoraes.info/?q=node/2194>

Denuncian amenazas contra periodista en Colombia

Fuente: El rincón del periodismo independiente Fuente: 05/15/2009

<http://www.mariomoraes.info/?q=node/2279>

Federación denuncia amenazas de muerte a periodista en Córdoba

Fuente: La W Radio Fecha: Mayo 24 de 2009

<http://www.wradio.com.co/nota.aspx?id=817186>

Asaltado y amenazado periodista del diario la Libertad de Barranquilla Fecha: 2/7/2009

Fuente: Centro de Solidaridad de la Federación Internacional de Periodistas (CESO FIP)

<http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3883>

Ceso-FIP y FECOLPER condenan amenazas de muerte contra periodistas en Barranquilla,

1/2/2009. <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3004>

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:

There has been a slight improvement in terms of security for journalists as there have been fewer attacks on them in Colombia (Colombia no longer holds first place for the number of murdered Latin American journalists). Yet there were two journalists killed during the study period.

On June 8, 2009, Hernando Salas Director of the local TV station in the municipality of Curillo, Caquetá was assassinated by two men in a motorcycle. Salas was member of a committee promoting the recall of Curillo's mayor.

On April 24, 2009, Jose Everardo Aguilar journalist of Radio Super was shot dead in Cauca. The police captured the shooter who is a member of the criminal band Los Rastrojos. Apparently Aguilar was shot because of the reporting he did on corruption issues.

References:

Asesinado periodista en Caquetá y amenazado su hermano, también reportero

Fuente: Prensa Rural Fecha: 8 de junio de 2009

<http://www.prensarural.org/spjp/spjp.php?article2442>

Capturan a sicario acusado de asesinar a periodista José Everardo Aguilar Fecha: 10 Jul 2009 Fuente: El

Espectador.com <http://www.elespectador.com/articulo149998-capturan-sicario-acusado-de-asesinar-periodista-jose-everardo-aguilar>

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.

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, every citizen has the right to access public documents except in cases established by law (art. 74) and several legal documents and rulings of the Constitutional Court develop this right. Articles 23 and 95 also support the right to access information, as well as the Administrative Code. In the Law 190 of 1995, known as the Anti-corruption Law, it is stated that journalists have access guaranteed to documents and administrative acts that explain the behavior of public authorities without any restriction, except those expressly manifested in laws.

Authorities should inform journalists about penal accusations to public authorities even if they are still ongoing and under reserve. Finally, blocking the access of the citizens, and especially media, to documents is a cause for declaring bad behavior for a public servant. However the decision to deny documents can be motivated by legal or constitutional reserve or in case there is a norm that conditions the access of information to a report to a functionary of higher status.

A notable development in the right to access information was a ruling from the Constitutional Court in which it was indicated that victims of cases that involve violations by members of the armed forces against civilians can access any information that they consider necessary.

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."

Ley 489 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 la atribuciones previstas en los numerales 15 y 16 del artículo 189 de la Constitución Política y se dictan otras disposiciones http://www.banagrario.gov.co/webapp/images/templates/Ley_489_98.pdf

Instructivo sobre el Derecho de Petición. Universidad Nacional de Colombia, dirección de bienestar Universitario.

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 used to appeal any other administrative decision, and they also 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. The first mechanism is the Accion de tutela" (resource to protect basic rights or tutelage) (article 86), which protects individual rights when they have been violated by the actions or omissions of public authorities. These appeals must be answered in 10 business days. The second mechanism is the "Accion de cumplimiento" (article 87) and is usually used as an appeal mechanism for "tutelas." The third mechanism is "Acciones populares" (article 88), which is focused on the protection of collective rights.

Additionally, there are mechanisms to appeal any administrative decision; these are known as reposicion and appeal. If these mechanisms are exhausted, there are other judicial resources such nullity and reparation.

Constitutional Court rulings have established that it is a duty of public officials to answer information requests in a substantial, prompt and efficient way and not just formally. The answer requires the public official to provide a solution for the issue in

question (sentence T-030 of 1998).

Unjustified delays in answering information requests can lead to investigations and disciplinary sanctions for public officials. These investigations can be initiated by the person who made the initial information request.

References:

Constitucion Política de Colombia. art. 20, 23,

Ley 57 de 1985 Por la cual se ordena la publicidad de los documentos y actas oficiales,"
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 www.unat.gov.co/index.php?option=com_docman...Capitulo IV,

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 Constitution) that enables any citizen to make information requests to public authorities and to get prompt response (15 days). When a public official cannot resolve the right of petition in 15 days, she must inform the person making the request what is the reasonable time that the answer will take according to the complexity of the issue.

The Administrative Code and rulings from the Constitutional Court have developed in a detailed manner the process of the right of petition. The Constitutional Court in its rulings has established that it is a duty of public officials to answer information requests in a substantial, prompt and efficient way and not only formally. In other words the answer requires the public official to give a solution on the issue (sentence T-030 of 1998). Unjustified delays in answering information requests are cause to initiate investigations and disciplinary sanctions against public officials, and this investigation can be initiated by the person making the information request.

The Law 489 of 1998 establishes that a right of petition can be used to request a overnment service for a particular or for public benefit, to request government records or to request a public institution an opinion or concept related to its functions and responsibilities.

References:

Constitucion Política de Colombia. art. 20, 23,

Ley 57 de 1985 Por la cual se ordena la publicidad de los documentos y actas oficiales,"
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 www.unat.gov.co/index.php?option=com_docman...Capitulo IV,

Ley 489 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 la atribuciones previstas en los numerales 15 y 16 del artículo 189 de la Constitución Política y se dictan otras disposiciones http://www.banagrario.gov.co/webapp/images/templates/Ley_489_98.pdf

Instructivo sobre el Derecho de Peticion. Universidad Nacional de Colombia, dirección de bienestar Universitario.

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?

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 information technologies and the programs designed by the government to oblige entities to 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 readiness report, Colombia is among the top ten 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. According to the Transparency Index 2007-2008 published by Transparency for Colombia in July 2009, although improvements continue, the information published online by national institutions lacks discussion for and mechanisms to allow feedback when citizens make requests through the web.

In practice, public authorities may hide or delay sensitive information even though there are formal mechanisms to make the process expedited, such as the right of petition, which has to be answered in 10 business days. In some cases, rights of petition requesting information from high levels of government may not be responded properly. During the study period, the executive has not responded to a right of petition requesting information about the registry of visitors to the Presidential Palace (made by El Espectador newspaper in October 2008) arguing that the information is reserved when it is not the case. President Alvaro Uribe has not responded to rights of petition made by Senator Jorge Enrique Robledo requesting clarification about permits issued to the president's sons to create a Free Trade Area in the metropolitan area of Bogotá.

Public authorities may not answer rights of petition within the time period, and although citizens may recur 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 reservations in many documents. For citizens, it is not clear when information is not reserved or what is the scope of the right of petition; for example the Department of National Statistics declares reservation of its statistical reports or there is reservations to access the curricula of public officials but these are areas which can be highly important for the public.

Another problem is that sometimes information is not available, records are not properly organized or information is not completely credible. As an example, the statistics on the armed conflict, information that is commonly used by journalists, varies enormously between governmental and non-governmental sources. There is another restriction while accessing information and is the restriction on judicial files that are still open and over which there is no final decision. Although the restriction is normal given the rates of impunity in the country, it may take years to access information on certain judicial processes.

According to the 2008 statistics of the Defensoria del Pueblo (Ombudsman) the right of petition is the fourth right most threatened by the State and from which they receive more complaints asking for protection of the right (1,732 in 2008). In most complaints citizens argue that requests are not solved in depth (1,275 complaints), do not observe legal procedures (292 complaints) or do not answer in the terms set by the law. The majority of complaints are against national level authorities (494 complaints), municipal level (286 complaints), armed forces (83), departmental (regional) authorities (172 complaints) and national police (73 complaints).

According to the conclusions of a workshop organized by Transparency for Colombia in March 2009 about access to information, it is necessary to create a comprehensive law about the right to access information in order to facilitate citizen's understanding of the norms, the application of the regulations, and in order to improve and clarify some rules.

References:

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100
<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

Un derecho de petición sin una respuesta efectiva Fuente: El Espectador.com Fecha: 4 Abr 2009
<http://www.elespectador.com/articulo133950-un-derecho-de-peticion-sin-una-respuesta-efectiva>

Siguen inquietudes por metro Fuente: El Espectador.com Fecha: 18 Jun 2009
<http://www.elespectador.com/impreso/articuloimpreso146559-siguen-inquietudes-metro>

Indice de Transparencia Nacional 2007 2008 Fuente: Transparencia por Colombia Fecha: 29 de julio de 2009
<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Defensoria del Pueblo. XVI informe al Congreso
2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

The cost of access to information may vary between institutions at the national and at the local level. At the national level, a good amount of information can be found online, whereas it is not the case at the local level. In the area of government, 100 percent of institutions at the national level have implemented systems of information via 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, 38.1 percent and 34.9 percent, respectively) and the perception of transparency is also better at the national than at the municipal level (35.8 and 29.1 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.

According to the conclusions of a workshop organized by Transparency for Colombia in March 2009 about access to information, it is necessary to regulate the costs of accessing information because in some cases the cost is too high, for example the Administrative Department of Statistics (DANE) even asks for money to other public institutions when they want to access statistical information.

References:

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100
<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

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, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to the conclusions of a workshop organized by Transparency for Colombia in March 2009 about access to information, it is necessary to increase sanctions when public officials do not respond properly to access to information requests. In many cases when sensitive information is sought, responses are too vague, especially because the limits for public officials to declare reserve on documents are not clearly regulated.

For example, during the study period, the executive has not responded a right of petition requesting information about the registry of visitors to the Presidential Palace (made by El Espectador newspaper in October 2008) arguing that the information is reserved when it is not the case.

According to the 2007 statistics of the Defensoria del Pueblo (Ombudsman) the right of petition is the second right most threatened by the State and from which they receive more complaints asking for protection of the right (1,771 in 2007). In most complaints citizens argue that requests are not solved in depth (1,189 complaints).

References:

XV Informe del Defensor del Pueblo al Congreso de la República. http://www.defensoria.org.co/red/?_item=0202&_secc=02&ts=1

Un derecho de petición sin una respuesta efectiva Fuente: El Espectador.com Fecha: 4 Abr 2009
<http://www.elespectador.com/articulo133950-un-derecho-de-peticion-sin-una-respuesta-efectiva>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

Citizens can appeal decisions on access to information requests through the accion de tutela" (tutelage action to protect basic rights). These appeal mechanisms have to be answered within 10 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.

According to the conclusions of a workshop organized by Transparency for Colombia in March 2009 about access to information, it is necessary to increase the sanctions when public officials do not respond properly to access to information requests.

According to the 2008 statistics of the Defensoria del Pueblo (Ombudsman) the right of petition is the fourth right most threatened by the State and from which they receive more complaints asking for protection of the right (1,732 in 2008). In most complaints citizens argue that requests are not solved in depth (1,275 complaints), do not observe legal procedures (292 complaints) or do not answer in the terms set by the law. The majority of complaints are against national level authorities (494 complaints), municipal level (286 complaints), armed forces (83), departmental (regional) authorities (172 complaints) and national police (73 complaints).

References:

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100
<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

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

Defensoria del Pueblo. XVI informe al Congreso
2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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.

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

Comments:

According to the 2008 statistics of the Defensoria del Pueblo (Ombudsman) the right of petition is the fourth right most threatened by the State and from which they receive more complaints asking for protection of the right (1,732 in 2008). In most complaints citizens argue that requests are not solved in depth (1,275 complaints), do not observe legal procedures (292 complaints) or do not answer in the terms set by the law.

The majority of complaints are against national level authorities (494 complaints), municipal level (286 complaints), armed forces (83), departmental (regional) authorities (172 complaints) and national police (73 complaints).

To protect the right to information citizens can recur 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:

Defensoria del Pueblo. XVI informe al Congreso

2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100

<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

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,

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.

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

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 clearly regulated. For example in September 2008 the Supreme Court of Justice requested the army and other public entities to be clear when they deny information requests, after the Army denied the Semana Magazine information about the death of 10 presumed members of illegal groups. The Army said the information was critical for national security, but for the court it was not clear how information about past events could be harmful for national security.

According to the conclusions of a workshop organized by Transparency for Colombia in March 2009 about access to information, the limits of classified information are not clear for citizens. For example, the Department of National Statistics declares reserve of its statistical reports or there is reserve to access curricula of public officials but these are areas which can be highly important for the public.

In some cases, the reasons to deny rights of petition requesting information from high levels of Government are not clear. During the study period, the executive has not responded a right of petition requesting information about the registry of visitors to the Presidential Palace (made by El Espectador newspaper in October 2008) arguing that the information is reserved when it is not

the case. President Alvaro Uribe has not responded rights of petition made by Senator Jorge Enrique Robledo requesting clarification about permits issued to the President's sons to create a Free Trade Area in the metropolitan area of Bogotá. The Mayor's Office has repeatedly kept silent about questions related to the construction of the metro in the capital city of Bogotá.

References:

Corte pide claridad para negar el acceso a la información

Fuente: El Espectador.com

Fecha: 16 Sep 2008

<http://www.elespectador.com/noticias/judicial/articulo-corte-pide-claridad-negar-el-acceso-informacion>

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100

<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

CORPORACIÓN TRANSPARENCIA POR COLOMBIA MESA SOBRE EL ACCESO A LA INFORMACIÓN ¿Requiere Colombia una ley de Transparencia y Acceso a la información? Marzo 12 de 2009 Hotel Cosmos 100

<http://www.transparenciacolombia.org.co/Portals/0/descargas/Memoria-12-03-09%20Ley%20transparencia.pdf>

Derecho de petición fue amparado por la Corte Suprema de Justicia en un fallo de tutela

Fuente: El Tiempo.com Fecha: 1 de septiembre de 2008

http://www.eltiempo.com/colombia/justicia/2008-09-01/derecho-de-peticion-fue-amparado-por-la-corte-suprema-de-justicia-en-un-fallo-de-tutela_4493279-1

El silencio de Uribe Fuente: Fundación Nuevo Arco Iris Fecha: 20 de mayo de 2009

<http://www.nuevoarcoiris.org.co/sac/?q=node/383>

Un derecho de petición sin una respuesta efectiva

Fuente: El Espectador.com Fecha: 4 Abr 2009

<http://www.elespectador.com/articulo133950-un-derecho-de-peticion-sin-una-respuesta-efectiva>

Ibáñez insiste en pedir explicaciones, Uribe no responde 6 Mayo 2009

<http://www.semana.com/noticias-politica/ibanez-insiste-pedir-explicaciones-uribe-no-responde/123688.aspx>

ZONA FRANCA DE OCCIDENTE, NO ES LA LÁMPARA DE ALADINO, SON LOS HIJOS DEL EJECUTIVO Fecha: 26 de mayo de 2009

Fuente: Polo Democrático Alternativo

http://www.moir.org.co/ZONA-FRANCA-DE-OCCIDENTE-NO-ES-LA_3162.html

Siguen inquietudes por metro Fuente: El Espectador.com Fecha: 18 Jun 2009

<http://www.elespectador.com/impreso/articuloimpreso146559-siguen-inquietudes-metro>

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. ⁶⁶Voting & 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 (arts. 40, 258) voting is a right and a responsibility. All citizens 18 years old and older can vote secretly for all office positions (President, Mayors, Governors, Congress, Municipal Councils, Departmental Assemblies, and Local Juntas).

References:

Constitución Política de Colombia 1991, arts. 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 (art. 190), presidential elections are held every four years. A constitutional reform from 2005 allows re-election. Congressional elections are held every four years, both for the Senate and the Lower House, and should not overlap with presidential elections (art. 262). Local elections are held every four years, according to an electoral reform issued in 2002.

During the study period there has been a debate on whether to reform the Constitution to allow President Uribe to run for a third term as president. This attempt to reform the Constitution would potentially hinder the institutionality of Colombian elections.

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?

58

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 are important restrictions to vote specially in rural areas. One of the main manifestations of the lack of liberty to vote, especially in rural areas, are 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 that vote is not mandatory. However, it is clear that in many municipalities the vote is not totally free.

The main restriction to free voting is the insecurity derived from the armed conflict even though, according to thinks tanks such the Foundation Security and Democracy, the effect of violence on elections has decreased. 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 them to vote, using dead threats before elections or terrorist attacks, burning electoral material on the election day or attacking voting sites. Meanwhile, paramilitaries threaten citizens in order to compel them to vote for their preferred candidates or impose sole candidates to run for office in their areas of influence. During the study period more politicians were condemned within the parapolitical process (a judicial process started in 2006, which has been documenting the relation between paramilitaries and politicians) accused of constraining voters in elections.

During the study period there were only atypical elections, that is, elections that took place in order to replace mayors that have been condemned by justice and destituted. About these atypical elections, the Mission of Electoral Observation (MOE) reported that sometimes citizens are not able to vote because there are problems in the electoral census, and it is necessary to modernize and clear it up. On June 7, 2009, there were elections for local major in San Carlos-Antioquia, and 50 percent of citizens surveyed by the MOE reported that electoral posts lacked proper conditions for disabled people and the elder to vote.

References:

Capturado alcalde de Tarazá Fuente: El Colombiano.com Fecha: 13 de noviembre de 2008

http://www.elcolombiano.com/BancoConocimiento/C/capturado_alcalde_de_taraza/capturado_alcalde_de_taraza.asp

EL INFORME SOBRE LA OBSERVACIÓN ELECTORAL REALIZADA DURANTE LOS COMICIOS ELECTORALES ATÍPICOS PARA ALCALDÍA DEL 7 DE JUNIO DE 2009 DEL MUNICIPIO DE SAN CARLOS, ANTIOQUIA. Fecha: 18 de junio de 2009
Fuente: Misión de Observación Electoral (MOE)

<http://www.moe.org.co/home/doc/1%20Informe%20Observacion%20Electoral%20Atipicas%20Alcaldia%20San%20Carlos.pdf>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Semana.com Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Fiscal llamó a juicio a ex congresistas Gil y a Riaño

Fuente: Verdad Abierta.com Fecha: 21 de Julio de 2009

<http://verdadabierta.com/web3/parapolitica/1442-fiscal-llamo-a-juicio-a-ex-congresistas-gil-y-a-riano>

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 voting cubicles are too open, too close to one another (Corporacion Mision Observacion electoral) and too close to the tables where judges are. This situation enables candidates or armed groups interested in affecting the electoral process, to control individual preferences.

During the study period there were only atypical elections, that is elections that took place in order to replace mayors that have been condemned and dismissed. About these atypical elections the Mission of Electoral Observation (MOE) reported that on June 7, 2009, there were elections for local major in San Carlos-Antioquia and electoral observers noted how people accompanied voters to the voting cubicle, arguing that they helping elder, but in many cases they also accompanied not disabled people suggesting the possibility of proselitism and vote manipulation. In these elections the MOE reported that cubicle conditions were not favorable to secret vote in 31.6 percent of the voting cubicles. The situation seemed to be even worst in the local elections for the municipality of Magangué on July 8, 2009, where the MOE reported extreme practices of vote buying on elections day.

In June 2009, the elected governor of the department of Vichada was deposed after it was proven that he won the election by tampering ballots during counting.

In July 2009 the State Council issued a ruling nullifying the 2006 Congress elections because it found 33,683 fraudulent votes. Although the decision was extremely delayed and is of limited effectiveness given that the congressional period is about to finish and in practice the composition of Congress will not change after recounting the votes, it reflects that fraudulent practices in the counting of ballots are still of significant concern.

References:

EL INFORME SOBRE LA OBSERVACIÓN ELECTORAL REALIZADA DURANTE LOS COMICIOS ELECTORALES ATÍPICOS PARA ALCALDÍA DEL 7 DE JUNIO DE 2009 DEL MUNICIPIO DE SAN CARLOS, ANTIOQUIA.

Fuente: Misión de Observación Electoral (MOE) Fecha: 18 de junio de 2009

<http://www.moe.org.co/home/doc/1%20Informe%20Observacion%20Electoral%20Atipicas%20Alcaldia%20San%20Carlos.pdf>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Semana.com Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Anulan elección del gobernador de Vichada

Fuente: Caracol.com Fecha: Junio 12 de 2009

<http://www.caracol.com.co/nota.aspx?id=828308>

La anulación del Senado

Fuente: El Mundo.com Fecha: 9 de julio de 2009

<http://www.elmundo.com/sitio/editorial.php?>

[jdcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428](http://www.elmundo.com/sitio/editorial.php?jdcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428)

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 held according to a regular schedule, every four years for Congress and presidents, and after an electoral reform in 2003, every four years for mayors, governors, local councilors, governmental deputies, and other local authorities.

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

There are atypical elections scheduled due to extraordinary circumstances such as death or the deposition of the dignitary, or nullity of the election. During 2008 and 2009 there has been a significant number of atypical elections (16 in 2008 and 7 in 2009) after electoral fraud has been proved, because elected officials receive judicial sentences, or because candidates were found to have inabilities to run for office. In the later case, the number of elected officials found unable to run for office makes evident that controls on candidates before elections are not properly enforced. Atypical elections due to these circumstances increase the opportunities for manipulation of the schedule and of the conditions of the elections. It was evident in the election of mayor for the municipality of Magangué on July 8, 2009, or in the election of mayor for the municipality of Jamundi-Valle on July 4, 2009.

References:

Elecciones en Magangué no cumplen los tiempos que estipula la ley

Fuente: Misión de Observación Electoral

http://moe.org.co/home/boletinmoe/10_19junio2009.html

Cayó El Gobernador De Casanare

Fuente: El Tiempo.com Fecha: 28 de agosto de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3071170>

Caquetá, a elecciones Fuente: El Espectador.com Fecha: 28 Ago 2008

<http://www.elespectador.com/impreso/nacional/articuloimpreso-caqueta-elecciones>

Destituido gobernador de Arauca Freddy Forero Requíniva

Fuente: el Tiempo.com 24 de octubre de 2008 <http://www.eltiempo.com/archivo/documento/CMS-4623866>

Arauca elegirá el domingo Gobernador Fuente: El Colombiano.com Fecha: 25 de mayo de 2009

http://www.elcolombiano.com/BancoConocimiento/A/arauca_elegira_el_domingo_gobernador/arauca_elegira_el_domingo_gobernador.asp

Yo hice el fraude electoral Fuente: Semana.com Fecha: 1 Noviembre 2008

<http://www.semana.com/noticias-nacion/hice-fraude-electoral/117278.aspx>

Anulan elección del gobernador de Vichada

Fuente: Caracol.com Fecha: Junio 12 de 2009

<http://www.caracol.com.co/nota.aspx?id=828308>

El próximo domingo, Suesca estrenará alcalde

Fuente: El Tiempo.com Fecha: 17 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/CMS-4607553>

Notificación (Destitución alcaldesa de Jamundí)

Fuente: Diario Occidente Fecha: 18 Feb 2009

<http://www.diariooccidente.com.co/index.php?name=News&file=article&sid=62335&theme=Printer>

Alta tensión en Jamundí por elección de Alcalde

Fuente: El País.com

<http://www.elpais.com.co/paionline/notas/Julio042009/reg1.html>

Salazar De Las Palmas Elige Nuevo Alcalde

Fuente: El Tiempo.com Fecha: 21 de febrero de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3327757>

San Agustín define hoy su futuro Fecha: 29 marzo 2009

Fuente: LA NACIÓN, San Agustín

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Ultima-Hora/San-Agustin-define-hoy-su-futuro

Anulan elección de alcalde de San Juan del Cesar Fecha: 18 de abril de 2009 Fuente: El

Tiempo.com <http://www.eltiempo.com/archivo/documento/CMS-5007151>

San Carlos elegirá otra vez

Fuente: El Colombiano Fecha: 5 de mayo de 2009

http://www.elcolombiano.com/BancoConocimiento/S/san_carlos_elegira_otra_vez/san_carlos_elegira_otra_vez.asp

En firme fallo que anula elección del Alcalde de Valledupar

Fuente: Radio Guatapurí Fecha: 11 de Junio de 2009

http://www.radioguatapur.com/rg/index.php?option=com_content&view=article&id=842:en-firme-fallo-que-anula-eleccion-del-alcalde-de-valledupar-&catid=39:judicial&Itemid=55

De aberrante calificó la MOE elecciones en Magangué

Fuente: Semana.com Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

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?

75

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

YES | NO

Comments:

According to the constitution (art. 40), all citizens can form and belong to political parties and political groups without any restrictions.

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 art. 40 of the Constitution, all citizens can vote and run for political office. There are no restrictions, except age limits, previous penal sentences, or incompatibilities that can spark conflicts of interest. According to the art. 40 of the Constitution all citizens can vote and run for political office and it is a fundamental right.

According to the art 108 of the Constitution political parties and political movements can register candidates without additional requirements, and social movements and significant groups of citizens can also present candidates.

References:

Constitución Política de Colombia 1991, art. 40, 108

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.

100 | 75 | 50 | 25 | 0

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 campaign funding are only given to political parties and not to candidates.

In June 2009 a political reform was issued by Congress increased the threshold to gain or maintain legal status to 3 percent. Thus the reform, that initially was presented as a way to clean up politics and Congress after the scandals of drug trafficking and paramilitary influence in Congress, ended up affecting minority parties rather than actually punishing and creating restrictions to prevent illegal actors from entering politics. Some opinion sectors considered that a measure approved in the reform according to which members of local council and departmental assemblies have to leave their posts at least six months before the time of registration of candidacies if they want to aspire for the national level corporations (Lower chamber and Senate). For them the reform harms plurality and tends to reinforce traditional sectors in Congress as a similar restriction does not apply to incumbents in Congress. Finally a norm approved in the reform allows politicians to change parties freely thus contributing to the weakening of party structures that were supposed to be strengthened with the reform.

References:

Elecciones.com.co Fecha: 30 de abril de 2009
http://www.elecciones.com.co/candidatos_presidencia.html

Pasó la Reforma politiquera
Fuente: Revista Semana Fecha: 7 Mayo 2009
<http://www.semana.com/noticias-politica/paso-reforma-politiquera/123708.aspx>

¡Ojo con la reforma política!
Fuente: David Luna. Representante a la Cámara por Bogotá Fecha: 31 de Mayo de 2009
<http://www.davidluna.com.co/nuevositio/prensa/articulos/400-ijo-con-la-reforma-politica.html>

A punto de empezar puja por 'trasfuguismo político'
Fuente: Diario del Huila Fecha: 17 de Julio de 2009
<http://74.125.113.132/search?q=cache:http://www.diariodelhuila.com/politica/item/533-a-punto-de-empezar-puja-por-%27trasfuguismo-pol%C3%ADtico%27>

No cometeré un suicidio político Fuente: La Nación Fecha: 29 de junio 2009
http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/No-cometere-un-suicidio-politico

Salto a la Cámara comienza esta semana Fuente: El Colombiano.com
Fecha: 26 de julio de 2009
http://www.elcolombiano.com/BancoConocimiento/S/salto_a_la_camara_comienza_esta_semana/salto_a_la_camara_comienza_esta_semana.asp

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.

100 | 75 | 50 | 25 | 0

Comments:

Liberty to run for office is severely limited in Colombia by the armed conflict which 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, and although the situation seemed to improve during the 2007 local elections, evidence on limitations to run for office still exists. 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, political influence of paramilitaries on elections has increased and has become evident, as testified by the judicial process known as the parapolítica, which since 2006 has documented the links between politicians and paramilitaries and which during the study period also made evident that even in the 2007 elections there were some fraudulent practices. For example, on June 12, 2009, the governor of Vichada was dismissed due to fraud in elections

During the study period no regular elections were held, there were only atypical elections, it is those aimed at replaced elected officials which have been deposed or those who have died while being in office. About these atypical elections the Mission of Electoral Observation (MOE) noted irregular practices of vote buying in Magangué (July 8, 2009). Threats and vote buying were also reported for the mayor elections in the municipality of Jamundi-Valle on July 5, 2009, where a candidate supported by a businesswoman presumed to be related to paramilitaries won. These events show that despite improvements, there are practices that hinder the possibility of all candidates to run on equal grounds for political office.

During this period there has been also a heated debate about the possibility that President Alvaro Uribe can run for reelection in 2010. Although it has not yet been completely decided whether the president will be allowed to run for a second reelection, opponents declare that in case he does, it will give him an advantage over other candidates given his status as candidate-president.

References:

Alta tensión en Jamundí por elección de Alcalde Fuente: El País.com
<http://www.elpais.com.co/paisonline/notas/Julio042009/reg1.html>

¿Si no es Uribe quién? Fuente: Revista Dinero Fecha: Agosto 22 de 2008

<http://www.dinero.com/noticias-estrategia/no-uribe-quien/51549.aspx>

Uribe es candidato desde diciembre" Fuente: Revista Semana Fecha: Abril 17 de 2009

<http://www.semana.com/multimedia-politica/uribe-candidato-desde-diciembre/1885.aspx>

¿Que no hay candidatos? Fuente: Revista Semana Fecha: 2 Julio 2009

<http://www.semana.com/noticias-politica/no-candidatos/125756.aspx>

Los quintuples. Por: León Valencia Fuente: Fundación Nuevo Arco Iris Fecha: 30 de junio de 2009

<http://www.nuevoarcoiris.org.co/sac/?q=node/422>

Primera Grieta Para Los Quintuples Fuente: Portafolio.com Fecha: 16 de julio de 2009

<http://www.portafolio.com.co/archivo/documento/MAM-3526232>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Semana.com Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

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. A system of party lists may discourage or prevent independent 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. During the study period the opposition was active in promoting debates regarding the referendum to allow presidential re-election, the scandal regarding illegal wiretapping of social activists, journalists and magistrates by the Central Intelligence Agency DAS, and the extent of businesses conducted by President Alvaro Uribe's sons. Thus, the opposition does have representation, and it is very active, but it is limited in its capacity in terms of passing legislation. It was the case for example with a political reform approved in Congress in June 2009, despite the opposition's strong criticism. In fact the opposition denounced irregularities during the process of approving the reform.

Opposition in Colombia is a legal right of political parties and political movements (Law 130 of 1994 and art. 112 of the Constitution) and as such it is stipulated that opponents have access to information, to state media according to their representation, and have a right to reply when there are public attacks to them from state authorities. In June 2009, the government announced that it will introduce a project to issue an opposition law. According to opposition Senator Gustavo Petro one critical issue for the exercise of opposition is the need to regulate access to media especially during election times.

References:

Proponen estatuto para la oposición

Fuente: El Espectador Fecha: 23 Jun 2009

<http://www.elespectador.com/impreso/articuloimpreso147246-proponen-estatuto-oposicion>

Pasó la Reforma politiquera Fuente: Revista Semana Fecha: 7 Mayo 2009

<http://www.semana.com/noticias-politica/paso-reforma-politiquera/123708.aspx>

ZONA FRANCA DE OCCIDENTE, NO ES LA LÁMPARA DE ALADINO, SON LOS HIJOS DEL EJECUTIVO Fuente: Polo Democrático Alternativo Fecha: 26 de mayo de 2009

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

18. Is the election monitoring agency effective?

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 of 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. art. 264

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 (CNE) 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). Various experts and politicians have suggested that it is necessary to reform or even eliminate the Council because it is neither effective nor independent. Although during the study period there were no reports of members of the CNE under administrative or penal investigation, various independent electoral observers such as the MOE and Transparency for Colombia consider that the fact that members of the CNE are elected by Congress has hindered their independence to initiate substantial investigations for irregularities in party and campaign funding in the most recent elections, and even going back to the 2006 elections.

It is important to note that during the study period the CNE decided to investigate irregularities in the expenses reports made by the committee promoting a referendum to approve the second reelection of President Alvaro Uribe, a decision that many observers considered brave given the popularity of the president and indicative of some independence.

According to the 2008 recent survey on institutional performance made among employees of the Registraduría by the DANE (National Statistics Department), the Registraduría has a level of development as institution that is neither high nor low (3.25 on a 5 point scale). This score represents a deterioration compared to 2007 and locates the Registraduría among the institutions with the lowest institutional quality. According to the survey, the level of development refers to the availability of resources, rules and policies and the perceptions about the neutrality in the selection of personnel. In terms of transparency levels, according to Transparency for Colombia the Registraduría presents scores below the average of other national institutions in terms of visibility, sanctions, and institutional performance .

References:

Así cuadraron las cuentas. Revista Semana. 28 Marzo 2009
<http://www.semana.com/noticias-nacion/cuadraron-cuentas/122200.aspx>

DANE. Encuesta Desempeño Institucional 2008.
http://www.dane.gov.co/files/EDI/Resultados_2008.pdf

RESULTADOS ÍNDICE DE TRANSPARENCIA 2005
http://www.transparenciacolombia.org.co/Portals/0/descargas/itn/ITN_final.pdf

Congresistas piden crear un nuevo organismo investigador. EL ESPECTADOR 9 de Julio de 2008
<http://www.elespectador.com/impreso/politica/articuloimpreso-consejo-nacional-electoral-inoperante>

Vote Bien: Las Cuentas Sin Sanciones. http://www.terra.com.co/elecciones_2010/articulo/html/vbn95-las-cuentas-sin-sanciones.htm

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.

100 | 75 | 50 | 25 | 0

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 has a professional full-time staff registered.

The Registraduría Nacional del Estado Civil has a professional full time staff and an independent civil service regime. However, there is still a wide perception of politicization within the institution and of lack of professionalization of its employees.

According to the 2008 survey on institutional performance made among employees of the Registraduría by the DANE (National Statistics Department), the Registraduría has a level of development as institution that is neither high nor low (3.25 on a 5 point scale). This score represents a deterioration compared to the 2007 and locates the Registraduría among the national institutions with the lowest institutional quality. According to the survey, the level of development refers to the availability of resources, rules and policies and the perceptions about the neutrality in the selection of personnel. The indicator also measures the availability of resources and personnel and in this area the Registraduría is also below national average.

According to the 2007-2008 integrity index published by Transparencia for Colombia in July 2009, the Registraduría has a very low transparency index and is considered to be at a very high risk of corruption.

References:

DANE Encuesta de Desempeño institucional 2009.

Transparencia por Colombia 2007-2008. http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/Ranking%20ITN%202007-2008_40-43.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

Every year the National Electoral Council presents activity reports to Congress. These reports, contrary to other institutions, are not easily accessible online.

According to law, the financial accounts of parties have to be published in a national newspaper of wide circulation once the National Electoral Council has reviewed and certified the accounts. Yet, it is not clear if this is the responsibility of the parties or of the National Electoral Council, but in the end these reports are barely known by citizens, and if they are published, the general public rarely notices it. Neither the Registraduría nor the Council released reports easily accessible on the most recent elections (October 2007). The CNE's web page does not have up-to-date information and it is not possible to access election funding reports online.

During the study period the State Council issued a ruling nullifying the 2006 Congress elections because it found 33,683 fraudulent votes. However, it is impossible to find such ruling in order to clarify what are its potential effects, making evident the difficulties to access official election reports.

In sum, the CNE releases reports and decisions after election cycles, yet usually there are delays and/or the quality of these reports may be very limited.

References:

Diálogo sobre rendición de cuentas de campaña 2007 Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

La anulación del Senado Fuente: El Mundo.com Fecha: 9 de julio de 2009

<http://www.elmundo.com/sitio/editorial.php?>

[idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428](http://www.elmundo.com/sitio/editorial.php?idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428)

La anulación del Senado Fuente: El Mundo.com Fecha: 9 de julio de 2009

<http://www.elmundo.com/sitio/editorial.php?>

[idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428](http://www.elmundo.com/sitio/editorial.php?idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428)

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:

Electoral rules are increasingly enforced to prevent vote buying or voter relocation, but they are not as strictly enforced in the case of political financing. 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 offenses against the integrity of the electoral process. An example of the slow process to impose sanctions is reflected in the decision made by the State Council aimed at nullifying the 2006 Congress election almost three and a half years after the election, because it found that more than 34,000 votes were fraudulent. The decision is not only extremely delayed but also of little effect, considering the congressional period is about to finish.

According to a recent survey on political culture, 48 percent of respondents only partially trust electoral control institutions. However, other institutions, such as the Attorney General (Procuraduría) and the General Prosecutor's Office (Fiscalía) are more active in imposing penalties, and coordinated work between them has increased. These two offices created an Immediate Unit for Electoral Offenses, which has been active in sanctioning irregularities in the electoral process.

For the 2007 elections there was a new legal framework that increased penalties for electoral crimes, including prison terms. As of Oct. 11, 2007, the Attorney General's Office had initiated investigations in 21 complaints on the illegal movement of voters.

As for violations of 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 investigations are initiated, they are rarely 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. This gives a second place to a real review of funding sources. For example in the aftermath of the 2007 local elections, most funding reports were returned because they were not properly filled rather than because there were irregularities. Additionally, at the local level, there are reports about the lack of collaboration of entrepreneurs, media and candidates in reporting to the Tribunal of Electoral Guarantees information that could help establish violations of funding norms.

References:

Diálogo sobre rendición de cuentas de campaña 2007 Fecha: 17 de octubre de 2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

La anulación del Senado

Fuente: El Mundo.com Fecha: 9 de julio de 2009

<http://www.elmundo.com/sitio/editorial.php?>

[idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428](http://www.elmundo.com/sitio/editorial.php?idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428)

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?

83

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, problems identified for the 2006 and 2007 elections persist and have not been solved.

Firstly, the electoral register is not updated and therefore many deceased citizens are still counted in the registry (about 1,500,000). The problems in updating the electoral registry make it difficult, for example, to calculate how many valid votes are necessary to pass a referendum (a crucial aspect given the government's proposal for a referendum that would allow the President to run for a third term).

Secondly, there are still many cases of voter supplanting and voter movement (trashumancia electoral or trasteo de votos). There have been technical improvements to prevent the trasteo de votos", a practice through which candidates take voters to a specific location to make them vote for a specific candidate and to check their vote. In July 2009, the State Council issued a ruling nullifying the 2006 Congress elections because it found 33,683 fraudulent votes with cases of voter supplanting and voter movement. According to the Mission of Electoral Observation it is likely that employees of the Registraduría help in the process of registering voters illegally, as could have been the case in the recent atypical (out of schedule) election for Mayor in the municipality of Magangué in July 2009.

Thirdly, voters are usually able to check the accuracy of their registration only on election day, without having enough time to change it. In some cases voters were found to be registered in different locations. This situation was evident in the atypical election for Mayor in the municipality of San Carlos in June 2009, where about 50 percent of voters had problems with finding their IDs in the registry.

References:

EL INFORME SOBRE LA OBSERVACIÓN ELECTORAL REALIZADA DURANTE LOS COMICIOS ELECTORALES ATÍPICOS PARA ALCALDÍA DEL 7 DE JUNIO DE 2009 DEL MUNICIPIO DE SAN CARLOS, ANTIOQUIA. Fecha: 18 de junio de 2009
Fuente: Misión de Observación Electoral (MOE)

<http://www.moe.org.co/home/doc/1%20Informe%20Observacion%20Electoral%20Atipicas%20Alcaldia%20San%20Carlos.pdf>

Hay 16 mil fallas en el proceso de cedulaación

Fuente: El Periódico.com.co Fecha: 13 de marzo de 2009

<http://www.elperiodico.com.co/seccion.php?codigo=19566&seccion=5&fecha=2009-03-13>

La reelección de Uribe y el censo electoral

Fuente: Razón Pública Fecha: 1 de junio de 2009

<http://www.razonpublica.org.co/?p=2467>

Demandadas elecciones del congreso

Fuente: El Tiempo.com Fecha: 7 de julio de 2009

http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5593667.html

Corte Suprema vigila a congresista con brazalete electrónico por presunto trasteo de votos

Fuente: WRadio.com Fecha: Mayo 5 de 2009

<http://www.wradio.com.co/nota.aspx?id=806421>

Es muy posible que el referendo haya tenido simpatizantes en la Registraduría

Fuente: El Espectador Fecha: 4 Abr 2009

Registraduría pide que no la culpen por posible compra de votos en Magangué

Fuente: Revista Semana Fecha: 10 Julio 2009

<http://www.semana.com/noticias-politica/registraduria-pide-no-culpen-posible-compra-votos-magangué/126032.aspx>

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, elections nullity can be called when a candidate does not have the legal or constitutional conditions to take office, when there is fraudulent counting or alteration of ballots, and when there is violence against vote tellers.

References:

Cayó el gobernador de Casanare al haber pagado de manera extemporánea una condena en su contra. Fecha: 28 de agosto de 2008 Fuente: El Tiempo

http://www.eltiempo.com/colombia/justicia/2008-08-28/cayo-el-gobernador-de-casanare-al-haber-pagado-de-manera-extemporanea-una-condena-en-su-contra_4471523-1b

Consejo de Estado anuló credencial del alcalde de Valledupar

Fuente: El País Vallenato Fecha: junio 04 de 2009

<http://www.elpaisvallenato.com/html/noticias/2009/junio/04/5804497cosejodeestado.html>

Por 33 mil votos fraudulentos en el 2006, Consejo de Estado ordena revisar composición del Senado

Fuente: El Tiempo.com Fecha: 7 de julio de 2009

http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5593667.html

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. Chapter 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 Offenses) that receives all complaints about irregular counting or about irregularities in 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 2007 local elections, the Attorney General (Procuraduría) demanded 16 investigations, as the respective elected candidates had legal disabilities to run for office. The Attorney General's Office has been the most effective in solving appeals on elections. The State Council and the Administrative Tribunal have nullified elections that took place in 2007 – for example the election for mayor in Valledupar (June 2009) and for Governor in Casanare (August 2008).

In June 2009, the State Council issued a ruling nullifying the 2006 Congress elections because it found 33,683 fraudulent votes. This decision has been criticized because it was extremely delayed (the current 4 year period is about to finish) and it is not likely to affect the composition of Congress. This event suggests that timely action on complaints varies among institutions (this extremely delayed decision is the reason to lower the score compared to the 2008 assessment).

References:

La anulación del Senado Fuente: El Mundo.com Fecha: 9 de julio de 2009

<http://www.elmundo.com/sitio/editorial.php?idcuerpo=1&dscuerpo=Secci%C3%B3n%20A&idseccion=2&dsseccion=Editorial&idedicion=1428>

Anulan elección de Martha Lucía Ramírez Fuente: Caracol.com Fecha: Julio 7 de 2009

<http://www.caracol.com.co/nota.aspx?id=841383>

Cayó el gobernador de Casanare al haber pagado de manera extemporánea una condena en su contra. Fecha: 28 de agosto de 2008 Fuente: El Tiempo

http://www.eltiempo.com/colombia/justicia/2008-08-28/cayo-el-gobernador-de-casanare-al-haber-pagado-de-manera-extemporanea-una-condena-en-su-contra_4471523-1b

Consejo de Estado anuló credencial del alcalde de Valledupar

Fuente: El País Vallenato Fecha: junio 04 de 2009

<http://www.elpaisvallenato.com/html/noticias/2009/junio/04/5804497cosejodeestado.html>

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:

During the study period there were no regular elections, only atypical elections took place (those conducted to replace deposed elected officials), and in these elections there were no reports of security forces intervening in elections.

References:

Alta tensión en Jamundí por elección de Alcalde Fuente: El País.com

<http://www.elpais.com.co/paisonline/notas/Julio042009/reg1.html>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Semana.com Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangue/126010.aspx>

Elecciones en Magangué no cumplen los tiempos que estipula la ley

Fuente: Misión de Observación Electoral

http://moe.org.co/home/boletinmoe/10_19junio2009.html

Cayó El Gobernador De Casanare

Fuente: El Tiempo.com Fecha: 28 de agosto de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3071170>

Caquetá, a elecciones Fuente: El Espectador.com Fecha: 28 Ago 2008

<http://www.elespectador.com/impreso/nacional/articuloimpreso-caqueta-elecciones>

Destituido gobernador de Arauca Freddy Forero Requínva

Fuente: el Tiempo.com 24 de octubre de 2008 <http://www.eltiempo.com/archivo/documento/CMS-4623866>

Arauca elegirá el domingo Gobernador Fuente: El Colombiano.com Fecha: 25 de mayo de 2009

http://www.elcolombiano.com/BancoConocimiento/A/arauca_elegira_el_domingo_gobernador/arauca_elegira_el_domingo_gobernador.asp

Yo hice el fraude electoral Fuente: Semana.com Fecha: 1 Noviembre 2008

<http://www.semana.com/noticias-nacion/hice-fraude-electoral/117278.aspx>

Anulan elección del gobernador de Vichada

Fuente: Caracol.com Fecha: Junio 12 de 2009

<http://www.caracol.com.co/nota.aspx?id=828308>

El próximo domingo, Suesca estrenará alcalde

Fuente: El Tiempo.com Fecha: 17 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/CMS-4607553>

Notificación (Destitución alcaldesa de Jamundí)

Fuente: Diario Occidente Fecha: 18 Feb 2009

<http://www.diariooccidente.com.co/index.php?name=News&file=article&sid=62335&theme=Printer>

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:

Electoral observation is relatively recent in Colombia, and it is allowed under the general figure of "veedurías Ciudadanas" or citizen oversight committees, which can be created by any group of citizens or CSO in order to oversee public administration and management. By request of the Colombian Government, the OAS and other international bodies can send missions of electoral observation.

References:

Constitución 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:

During the study period, there were no regular elections held. There were only atypical elections (elections held because elected officials were dismissed or needed to be replaced), and in all the instances there was electoral observation by the local Misión de Observación Electoral (Mission of electoral observation) and the OAS. The MOE played an active role although it reported that in some cases its action was facilitated by local governments (as in the municipality of San Carlos), while in other it was made more difficult (as in Magangué).

References:

Elecciones juntas de acción comunal, Consejos Locales de Discapacidad y Consejos Locales de la Juventud en el distrito

Capital, realizadas en 2008.

<http://www.moe.org.co/home/doc/Observacion%20Puntual%202008/Recomendaciones%20Consolidadas%20Bogota%20MOE.pdf>

Proceso electoral Universidad del Magdalena 7 y 8 de noviembre de 2008

<http://www.moe.org.co/home/doc/Observacion%20Puntual%202008/Informe%20MOE%20Observacion%20Unimagdalena.pdf>

Comicios atípicos en San Carlos (Antioquia) 7 de junio de 2009

<http://www.moe.org.co/home/doc/1%20Informe%20Observacion%20Electoral%20Atipicas%20Alcaldia%20San%20Carlos.pdf>

Comicios atípicos en Magangué (Bolívar) el 5 de julio de 2009

http://www.elcolombiano.com/BancoConocimiento/D/detectan_riesgos_en_las_elecciones_de_magangue/detectan_riesgos_en_las_elecciones_de_mag

Para garantizar elecciones en Jamundí el Jueves sesiona la Comisión de Seguimiento Electoral Fuente: Gobernación del Valle
Fecha: 1 de junio del 2009.

<http://www.valledelcauca.gov.co/publicaciones.php?id=8599>

COMISIÓN DE SEGUIMIENTO ELECTORAL VIGILA PROCESO EN SAN AGUSTÍN

Fuente: Gobernación del Huila. Fecha: Viernes, 06 de Marzo de 2009

http://www.gobernacionhuila.gov.co/cms/index.php?option=com_content&view=article&id=7665:comision-de-seguimiento-electoral-vigila-proceso-en-san-agustin&catid=62:secretaria-de-gobierno-y-desarrollo-comunitario&Itemid=98

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.

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 by 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).

It elects the Registrador Nacional, who has amongs other functions, the civil registry and identification of persons, the elaboration of the electoral registry and the direction and organization of elections. Additionally, there are other governmental institutions who 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 Attorney General's Office (Procuraduría).

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 exists 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.

81
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

83

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

The law prohibits anonymous contributions from public servants, and also limits the amount of individual donations in electoral campaigns (art. 109 of the constitution). Funding regulations for local and congressional elections are weaker than those for presidential elections. According to the constitution, the law can limit the amount of expenditures and 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. However, since these limits are not imposed by law, there is always room for discretionality.

The article 109 of the Constitution was slightly changed by a political reform approved in July 2009 eliminating a sentence where the violation of limits to donations was punished with deposition of the elected official.

In presidential elections there are both limits on the total amount that can be contributed to a campaign and on the amount of individual donations whereas in congressional elections there is only a limit on the total amount of contributions but not in the individual amount. In other words, in congressional elections a single individual can completely fund a campaign.

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" Título IV

CONSEJO NACIONAL ELECTORAL Resolución No. 0330 del 30 de mayo de 2007 Por medio de la cual se establece el procedimiento para el registro de libros y presentación de informes de ingresos y gastos de campañas electorales y consultas populares internas de los partidos y movimientos políticos con personería jurídica y se dictan otras disposiciones. (art. decimo primero)

Texto de la reforma política aprobado por la cámara de representantes.

Fuente: Proyecto Fortalecimiento Democrático Fecha: 2 Jul 2009

www.fortalecimentodemocratico.org/.../14-texto-aprobado-por-la-plenaria-de-la-camara

EL FINANCIAMIENTO ELECTORAL EN COLOMBIA.

Por: Nicolás Montoya Céspedes Juan Gabriel Navarrete

Fuente: Misión de Observación Electoral Fecha: Marzo de 2009

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

The legal framework for campaign funding (Law 130 of 1994) imposes limits on individual donations from both personas naturales y jurídicas" (individuals and corporations). In practice however the only effective regulation is that the law 130 of 1994 states that

any donation from a corporation to a campaign has to be approved by a qualified majority of its board members, but no effective limits are imposed.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

EL FINANCIAMIENTO ELECTORAL EN COLOMBIA. Fecha: Marzo de 2009

Por: Nicolás Montoya Céspedes Juan Gabriel Navarrete

Fuente: Misión de Observación Electoral

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20c. 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.

Recently the CNE has issued the resolution determining limits on expenditures for the 2010 congressional elections, authorizing a 22 percent increase in the amount of expenditures compared to the 2006-10 elections thus encouraging, according to observers, an increase in campaign costs.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

Consejo Nacional Electoral. Resolución No 0521 de 9 de junio de 2009 para elecciones de senado y cámara

Resolución No. 050 de 10 de febrero 2009 para elecciones de alcaldes y gobernadores

Resolución No. 0196 de 25 de marzo de 2009 para consultas populares de candidatos presidenciales

El Cne Incrementó Exageradamente Los Topes De Gastos De Campaña

Fuente: El Tiempo.com Fecha: 23 de junio de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3496149>

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

According to the constitution, parties, movements and candidates should disclose the volume, destination, and origin of their income (art. 109) during election times but 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.

For the 2007 local elections, both parties and candidates were responsible to present reports. However, candidates were responsible to present reports only to the authorities of their own party, and then the party was the one responsible before the Electoral Council.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

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

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

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

The external auditing of resources is the responsibility of the National Electoral Council through the Fund for Party and Electoral Campaign Financing.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The National Electoral Council monitors political financing and reviews the financial reports of political parties.

References:

Constitución Política de Colombia. 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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

80

21a. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

The law prohibits anonymous contributions from public servants and also limits the amount of individual donations in electoral campaigns (art. 109 of the constitution). Funding regulations for local and congressional elections are weaker than those for presidential elections. According to the constitution, the law can limit the amount of expenditures and of individual donations in electoral campaigns (art. 109).

The specific amount of the limit is determined by the National Electoral Court six months before congressional and local elections. However, since these limits are not imposed by law, there is always room for discretionality.

The article 109 of the Constitution was slightly changed by a political reform approved in July 2009 eliminating a sentence where the violation of limits to donations was punished with deposition of the elected official.

In presidential elections there are both limits on the total amount that can be contributed to a campaign and on the amount of individual donations whereas in congressional elections there is only a limit on the total amount of contributions but not in the individual amount. In other words in congressional elections a single individual can completely fund a campaign.

References:

Constitución 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" Título IV

CONSEJO NACIONAL ELECTORAL Resolución No. 0330 del 30 de mayo de 2007 Por medio de la cual se establece el procedimiento para el registro de libros y presentación de informes de ingresos y gastos de campañas electorales y consultas populares internas de los partidos y movimientos políticos con personería jurídica y se dictan otras disposiciones. (art. decimo primero)

Texto de la reforma política aprobado por la cámara de representantes.

Fuente: Proyecto Fortalecimiento Democrático Fecha: 2 Jul 2009

www.fortalecimientodemocratico.org/.../14-texto-aprobado-por-la-plenaria-de-la-camara

EL FINANCIAMIENTO ELECTORAL EN COLOMBIA.

Por: Nicolás Montoya Céspedes Juan Gabriel Navarrete

Fuente: Misión de Observación Electoral Fecha: Marzo de 2009

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

The legal framework for campaign funding (Law 130 of 1994) imposes limits on individual donations from both personas naturales y jurídicas" (persons and corporations). Yet in practice there are no effective limits and the only requirement is that the law 130 of 1994 states that any donation made by a corporation to a campaign has to be approved by a qualified majority of its board members.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

EL FINANCIAMIENTO ELECTORAL EN COLOMBIA. Fecha: Marzo de 2009

Por: Nicolás Montoya Céspedes Juan Gabriel Navarrete

Fuente: Misión de Observación Electoral

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

According to the constitution, parties, movements and candidates should disclose the volume, destination, and origin of their income (art. 109) during election times but 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.

For the 2007 local elections, candidates were responsible for presenting reports before the parties who supported them, which in turn were responsible before the Electoral Council. Candidates supported by social movements or by a significant number of citizens (registered through signatures) were required to present their accounts directly to the council.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

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

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

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

Comments:

The external auditing of campaign finances is the responsibility of the National Electoral Council through the Fund for Party and Electoral Campaign Financing.

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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if

such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The National Electoral Council monitors political financing and reviews financial reports of political parties and candidates registered by social movements or a significant number of citizens. While reviewing parties' financing, the council is supposed to review the financing of individual candidates that each party supports.

References:

Constitución Política de Colombia 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"

http://www.dmsjuridica.com/CODIGOS/contitucion_politica/leyes/L0130_94.htm

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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

21

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Despite the existence of formal limits on party funding, it is clear that state capture occurs through private donations to campaigns (irregularities do not occur often through the funding of regular activities of political parties).

Although most violations on campaign funding occur through donations to candidates rather than parties, the score in this indicator reflects the poor control that parties exert on the funding of their candidates.

The electoral body has limited capacity to identify violations to the regulations on political financing.

According to experts, for the 2007 elections, parties were less able to control finances because accounts were managed individually for candidates, creating confusion of the responsibilities between parties and candidates.

In general there is a strong perception that formal accounts did not reflect the reality of campaign contributions.

Experts and the Electoral Council consider that candidates use many ways to conceal their real campaign contributions. Candidates for Juntas Administradoras Locales (legislative bodies within cities) have no obligation to present reports of contributions because they do not get state funds. However, many irregularities occur in these bodies since many ediles (members of the JAL) are base leaders who collaborate in the election of local councils. In practice they get huge contributions well above the real campaign expenditures. In some cases these contributions are made by councilors trying to get support, and in other cases councilors divert their own contributions to ediles in order to report smaller expenditures.

During the study period some prominent cases reveal the influence that individuals gain over the political process through campaign funding despite the existence of formal limits on individual donations.

In December 2008 Congressman Wilson Borja announced that in the 2007 elections 10 candidates for governor and 50 candidates for mayor received money from the enterprise DMG.

DMG was a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners. DMG was shut down in 2008 because such collection of funds was

illegal and because DMG was apparently a façade for money laundering from drug trafficking. Wiretaps and testimonies by DMG employees and owners have revealed how DMG owner David Murcia funded campaigns in the hope that it would get favorable treatment in procurement processes with the state (getting liquor, gambling, and tourism contracts).

In a similar way since 2004 it has been revealed that owners of gambling houses (Chance) in close connection with paramilitaries managed to get privileged status in the assignation of contracts by funding campaigns (most of these connections were revealed in the parapolítica scandal).

In 2009 some irregularities in the bidding process for gambling have been detected again and seem to favor La Gata" a well-known businesswoman with connections to the paramilitaries, who despite multiple accusations and processes against her, continues funding candidates as in the case of the election for mayor in the municipality of Magangué in July 2009.

During the study period, irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public.

The campaign apparently received contributions of about 1,900 million pesos (about US\$930,000) violating the limit on individual donations (US\$1,500). Apparently the committee promoting the referendum used a third-party scheme to receive the money and avoid the limitations, and then received the contributions as a loan from that third party.

References:

El caso Amín. Autor Ernesto McCausland Sojo

Fuente: El Tiempo Fecha: 15 de febrero de 2009

<http://www.eltiempo.com/archivo/documento/CMS-4817963>

Zar Anticorrupción Alerta Por Negocio Que Mueve 2 Billones De Pesos Al Año El Chance, En Las Mismas Manos
eltiempo.com 22 de abril de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3409794>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Revista Semana Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Procurador investigará a alcaldes y gobernadores implicados con DMG

Fuente: El Espectador Fecha: 24 Nov 2008

<http://www.elespectador.com/noticias/nacional/articulo93029-procurador-investigara-alcaldes-y-gobernadores-implicados-dmg>

Abren investigación preliminar contra dos gobernadores en caso DMG

Fuente: El Espectador Fecha: 1 Dic 2008

<http://www.elespectador.com/articulo95196-abren-investigacion-preliminar-contra-dos-gobernadores-caso-dmg>

DMG también armó su mapa político: Salpicado por segunda vez gobernador de La Guajira

Fuente: El Pilón Fecha: 17 Dic 2008 <http://www.elpilon.com.co/noticias/not00021348.htm>

Fiscalía le imputa cargo de enriquecimiento ilícito a Rojas Birry

Fuente: CaracolTV.com 5 de marzo de 2009

<http://www.caracoltv.com/articulo136055-fiscalia-le-imputa-cargo-de-enriquecimiento-ilicito-a-rojas-birry>

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe

Fuente: Periódico Vanguardia

<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe>

El Triángulo del referendo.

Fuente: Noticias 1 Fecha: 30 Nov 2008

<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

El Registrador se equivoca

Fuente: El Espectador Fecha: 2 Ago 2009

<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Although most violations on campaign funding regulations occur through donations to candidates rather than parties the score in this indicator reflects the poor control that parties exert on the funding of their candidates. (Irregularities do not occur often through the funding of regular activities of political parties)

The electoral body has limited capacity to identify violations to the regulations on political financing.

According to experts, for the 2007 elections the effectiveness of financing regulations was reduced because accounts were managed individually for candidates outside party structures, and because there were no limits to corporate donations.

These aspects and the lack of consciousness on the part of corporations increased the risk of undue influence of the corporate sector in elections. Transparency for Colombia considers that corporate donations could be monitored if corporations themselves decided to report their donations to parties, which does not occur in practice. In general, there is a strong perception that formal accounts do not reflect the reality of campaign contributions.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. The campaign apparently received contributions of about 1,900 million pesos (about US\$930,000) and some corporate donations of about 100 million pesos (about US\$49,000) thus violating both the limit on campaign expenditures (US\$164,000) and on individual corporate donations (US\$1,500). Apparently the committee promoting the referendum used a third entity to receive the money and avoid the limits, and then received the contributions as a loan from that entity.

According to a survey conducted in 2007 by Transparency for Colombia among Colombian enterprises about bribing practices in the private sector, 65 percent of the surveyed declared to prohibit political contributions as a corporate policy however 52 percent declared to use campaign contributions as a way to bribe public officials.

References:

Jornadas de Reflexión la Reforma Política que el País Necesita Fecha: 2 Jul 2009

Fuente: Proyecto Fortalecimiento Democrático – PNUD

<http://www.fortalecimientodemocratico.org/recursos/publicaciones>

El Triángulo del referendo. Fecha: 30 Nov 2008

Fuente: Noticias 1

<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

¿Las Cuentas Del Referendo Son Muy Sospechosas?

Fuente: El Tiempo.com Fecha: 9 de diciembre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3226625>

Fiscalía llama a interrogatorio a promotor del referendo de la reelección.

Fuente: El Tiempo.com Fecha: 14 de abril de 2009

<http://www.eltiempo.com/archivo/documento/CMS-4973208v>

Piden La Formulación De Cargos Contra Los Promotores Del Referendo

Fuente: El Tiempo.com

<http://www.eltiempo.com/archivo/documento/MAM-3516580>

El caso Amín. Autor Ernesto McCausland Sojo

Fuente: El Tiempo Fecha: 15 de febrero de 2009

<http://www.eltiempo.com/archivo/documento/CMS-4817963>

Zar Anticorrupción Alerta Por Negocio Que Mueve 2 Billones De Pesos Al Año El Chance, En Las Mismas Manos
eltiempo.com 22 de abril de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3409794>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Revista Semana Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Procurador investigará a alcaldes y gobernadores implicados con DMG

Fuente: El Espectador Fecha: 24 Nov 2008

<http://www.elespectador.com/noticias/nacional/articulo93029-procurador-investigara-alcaldes-y-gobernadores-implicados-dmg>

Abren investigación preliminar contra dos gobernadores en caso DMG

Fuente: El Espectador Fecha: 1 Dic 2008

<http://www.elespectador.com/articulo95196-abren-investigacion-preliminar-contra-dos-gobernadores-caso-dmg>

DMG también armó su mapa político: Salpicado por segunda vez gobernador de La Guajira

Fuente: El Pílon Fecha: 17 Dic 2008 <http://www.elpilon.com.co/noticias/not00021348.htm>

Fiscalía le imputa cargo de enriquecimiento ilícito a Rojas Birry
Fuente: CaracolTV.com 5 de marzo de 2009
<http://www.caracoltv.com/articulo136055-fiscalia-le-imputa-cargo-de-enriquecimiento-ilicito-a-rojas-birry>

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe
Fuente: Periódico Vanguardia
<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe->

El Triángulo del referendo.
Fuente: Noticias 1 Fecha: 30 Nov 2008
<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

El Registrador se equivoca
Fuente: El Espectador Fecha: 2 Ago 2009
<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Preguntas acerca del financiamiento de la política por parte del sector privado. por Bruno Wilhelm Speck – Asesor senior
Transparency Internacional 24 Oct 2008
Fuente: Transparencia por
Colombia <http://www.transparenciacolombia.org.co/OPINION/tabid/64/ctl/Details/mid/774/ItemID/118/Default.aspx>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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 stipulated campaign costs and limits on expenditures (Irregularities do not occur often through the funding of regular activities of political parties outside election periods).

Although most violations of campaign funding regulations occur through donations to candidates rather than parties the score in this indicator reflects the poor control that parties exert on the funding of their candidates.

According to Transparency for Colombia most violations to limits on expenditures occur in publicity, which seems easier to monitor. Yet since in local elections many parties assumed publicity expenditures it is not totally clear if candidates should report those expenditures.

It is important to note that in October 2008, the CNE imposed fines on parties whose candidates did not present expenditure reports. However, since accounts are managed individually for candidates outside party structures, it is not clear which the responsibilities are for candidates and which are for parties in reporting expenditures. This creates more opportunities to conceal real expenditures.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential election became public. The group promoting the process apparently used complicated mechanisms in order to conceal a violation on the limit imposed to expenditures in campaigns for participation mechanisms such as the referendum.

Informally, many candidates report that campaigns costs are too high compared to the expenditure limits. Recently the CNE has issued the resolution determining limits on expenditures for the 2010 congressional elections, authorizing a 22 percent increase in the amount of expenditures compared to the 2006-10 elections. Although the increase could encourage a more realistic elaboration of expenditure reports it can also encourage, according to observers, an increase in campaign costs.

There is a widespread perception that there are no effective mechanisms to detect violations to limits on expenditures.

Experts and the Electoral Council consider that candidates use many ways to conceal their real campaign expenditures.

Candidates for Juntas Administradoras Locales (legislative bodies within cities) have no obligation to present reports of contributions because they do not get state funds. However, many irregularities occur in these bodies since many ediles (members of the JAL) are base leaders who collaborate in the election of local councils. In practice get huge contributions, well above the real campaign expenditure. In some cases these contributions are made by councilors trying to get support, and in other cases councilors deviate their own contributions to ediles in order to report smaller expenditures.

References:

El Cne Incrementó Exageradamente Los Topes De Gastos De Campaña Fuente: El Tiempo.com Fecha: 23 de junio de 2009
<http://www.eltiempo.com/archivo/documento/MAM-3496149>

Jornadas de Reflexión la Reforma Política que el País Necesita Fecha: 2 Jul 2009
 Fuente: Proyecto Fortalecimiento Democrático – PNUD
<http://www.fortalecimientodemocratico.org/recursos/publicaciones>

El Triángulo del referendo. Fecha: 30 Nov 2008
 Fuente: Noticias 1
<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

¿Las Cuentas Del Referendo Son Muy Sospechosas?
 Fuente: El Tiempo.com Fecha: 9 de diciembre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3226625>

Fiscalía llama a interrogatorio a promotor del referendo de la reelección.
 Fuente: El Tiempo.com Fecha: 14 de abril de 2009
<http://www.eltiempo.com/archivo/documento/CMS-4973208v>

Piden La Formulación De Cargos Contra Los Promotores Del Referendo
 Fuente: El Tiempo.com
<http://www.eltiempo.com/archivo/documento/MAM-3516580>

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos
 Fuente: El Tiempo Fecha: 18 de octubre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3144592>

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Council (CNE) has the faculty to initiate investigations if there are irregularities in party funding; however, even if they are initiated, these investigations are rarely 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 eligibility for public funding, giving a second place to a real review of funding sources.

In an evaluation of the publication of the 2007 campaign reports, the Electoral Council reported that the majority of funding reports were returned because they are not properly prepared, therefore it is difficult to initiate investigations on the substance of funding reports.

According to a former magistrate of the council, investigative capacities are also hindered because it is not clear what constitutes expenditures and what constitutes contributions. Also, since in many cases the only penalty for not presenting accounts is a fine, some candidates prefer to pay the fine rather than to present reports.

Finally, even though there is a widespread perception that the quality of information reported by parties is very low, the council has very limited capacity to detect irregularities. On their side, party leaders argue that one month is a very short time to consolidate good reports on contributions and expenditures.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. In July 2009, the CNE decided to initiate the investigation on the irregularities in the reports and in the funding process itself.

References:

Piden La Formulación De Cargos Contra Los Promotores Del Referendo

Fuente: El Tiempo.com

<http://www.eltiempo.com/archivo/documento/MAM-3516580>

Diálogo sobre rendición de cuentas de campaña 2007

Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos

Fuente: El Tiempo Fecha: 18 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3144592>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

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

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

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 and by the lack of adequate personnel and technical capacities to fulfill its mandate.

Often times the sanctions imposed are small fines and the most serious violations are not detected or are ignored. In July 2009, the CNE started to impose fines on 14 parties whose candidates did not present campaign reports suggesting a more effective imposition of sanctions.

However it appears that parties can avoid these fines. For example it is estimated that in the department of Santander there were fines imposed on 102 candidates to municipal councils in 2003 but as of April 2009, more than US\$350,000 has not been paid either because the movements that supported candidates disappeared or because candidates changed their addresses. This case shows how often decisions on investigations may come too late to be effective.

In other cases decisions may have little effect on political processes. For example even though the CNE has initiated an investigation regarding the funding of signature collection and the campaign for a referendum on presidential re-election, the vice president of the CNE declares that a decision regarding the funding of the process will not have any direct impact on the discussion of the referendum itself. Although one of the magistrates of the CNE presented a complete report concluding that the committee promoting the referendum had violated three funding norms. As of July 31, 2009, the CNE had not issued an official decision.

Among other sanctions for violations on party funding regulations is 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. Some independent electoral observers such as Transparency for Colombia and the MOE have noted in reports released in 2009 that all the sanctions imposed for violations in the 2006 elections refer to the failure to present reports, but there is no sanction on the most substantial violations, such as surpassing limits to party donations or expenditures as these violations can lead to parties losing their legal status.

In sum, although the CNE may initiate investigations, and in fact some of those investigations can be very prominent as in the case of the investigation about the funding for the referendum, the efficacy and timeliness of sanctions is often very limited, as seen in the same case where despite of the existence of a complete report the final decision was delayed. Some sanctions affect individual candidates but sanctions to parties are even less common.

References:

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos

Fuente: El Tiempo Fecha: 18 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3144592>

Las cuentas olvidadas de los candidatos en Santander
Fuente: Vanguardia.com Fecha: 30 de Abril de 2009
<http://www.vanguardia.com/politica/93-politica/27089-las-cuentas-olvidadas-de-los-candidatos-en-santander>

El Registrador se equivoca
Fuente: El Espectador Fecha: 2 Ago 2009
<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Dilatar y dilatar: la estrategia del Consejo Nacional Electoral para no cargar con el muerto del referendo Fecha: 30 Jul 2009
Fuente: La Silla Vacía.com
<http://www.lasillavacia.com/historia/3386>

Las cuentas sin sanciones. http://www.terra.com.co/elecciones_2010/articulo/html/vbn95-las-cuentas-sin-sanciones.htm

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

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

As a result of such monitoring in October 2008, the CNE imposed penalties on 14 parties because their candidates had not presented their accounts.

The scope of the data reported and the period of auditing exercises is very good compared to the majority of other Latin American countries. In fact according to the director of the Campaign and Party Funding Office of the CNE, the reports for the 2007 election improved compared to the 2003 where only summaries of funding reports were reported.

The main problem in auditing is the credibility of information reported, and thus of the whole auditing exercise, is seriously flawed.

First, the Electoral Council is perceived as very politicized. For example in July 2009 a magistrate of the electoral council presented a detailed report about irregularities on the funding reports of the committee promoting a referendum on presidential re-election.

However as of July 2009, the CNE had not issued an official decision in part because the decision could impact the discussion of the referendum and would therefore affect politically the magistrates.

Second, despite the auditing obligations, parties do not report the full extent of information, although this is very difficult to prove. More than 3,000 out of 15,000 candidates who competed in the 2007 local elections did not present adequate reports. And third, the council lacks investigative capacities. Usually auditing exercises are concentrated on the formalities rather than on the substance of accounts.

According to a former magistrate of the council, auditing is also hindered because it is not clear what constitutes expenditures and what constitutes contributions.

In many cases, since the only penalty for not presenting accounts is a fine, some candidates prefer to pay the fine than to present reports.

In other cases, decisions on auditing exercises may come too late and therefore the parties or movements responsible for the violations may have disappeared as seemed to be the case in the department of Santander where fines were imposed on 102 candidates to municipal councils in 2003 but as of April 2009, more than US\$ 350,000 has not been paid either because the movements that supported candidates disappeared or because candidates have changed their addresses.

For the 2007 local elections, the question around whose responsibility it was for publishing information – parties or candidates – made an effective auditing exercise more difficult. Parties should compile and present the reports of their candidates, but in many cases not all candidates present adequate accounts to parties.

In an evaluation of the 2007 elections publication of campaign reports, the Electoral Council reported that the majority of funding reports were returned because they are not properly prepared. Therefore it was difficult to initiate investigations on the substance

of funding reports.

References:

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos
Fuente: El Tiempo Fecha: 18 de octubre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3144592>

La estocada final al referendo de la reelección del presidente Uribe la darán el registrador Carlos Ariel Sánchez y el magistrado del CNE Joaquín José Vives
Fuente: Periódico El Sol.net Fecha: 19 Jul 2009
<http://www.periodicoelsol.net/noticia.php?id=2224>

Dilatar y dilatar: la estrategia del Consejo Nacional Electoral para no cargar con el muerto del referendo
Fuente: La Silla Vacía.com Fecha: 30 Jul 2009
<http://www.lasillavacia.com/historia/3386>

El Registrador se equivoca
Fuente: El Espectador Fecha: 2 Ago 2009
<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Las cuentas olvidadas de los candidatos en Santander
Fuente: Vanguardia.com Fecha: 30 de Abril de 2009
<http://www.vanguardia.com/politica/93-politica/27089-las-cuentas-olvidadas-de-los-candidatos-en-santander>

Diálogo sobre rendición de cuentas de campaña 2007
Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008
<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

20

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

Despite the existence of formal limits on party funding it is clear that state capture occurs through private donations to campaigns.

The electoral body has limited capacity to identify violations to the regulations on political financing. According to experts, for the 2007 elections parties were less able to control finances because accounts were managed individually for candidates, creating confusion of the responsibilities between parties and candidates. According to the Electoral Council (CNE) more than 3,000 out of 15,000 candidates for the 2007 local election failed to present funding reports.

Experts and the Electoral Council consider that candidates use many ways to conceal their real campaign contributions even when they present reports.

Candidates for Juntas Administradoras Locales (legislative bodies within cities) have no obligation to present reports of contributions because they do not get state funds. However, many irregularities occur in these bodies since many ediles (members of the JAL) are base leaders who collaborate in the election of local councils. In practice they get huge contributions well above the real campaign expenditures. In some cases these contributions are made by councillors trying to get support, and in other cases councillors divert their own contributions to ediles in order to report smaller expenditures. On their side candidates argue that they do not have enough time or knowledge to prepare adequate campaign funding reports.

During the study period some prominent cases reveal the influence that individuals gain over the political process through campaign funding despite the existence of formal limits on individual donations.

In December 2008, Congressman Wilson Borja denounced that in the 2007 elections 10 candidates for governor and 50 candidates for mayor received money from the enterprise DMG. DMG was a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners.

DMG was shut down in 2008 because such collection of funds was illegal and because DMG was apparently a façade for money laundering from drug trafficking. Wiretaps and testimonies by DMG employees and owners have revealed how DMG owner David Murcia funded campaigns in the hope that it would get favorable treatment in procurement processes with the state (getting liquor, gambling, and tourism contracts).

In a similar way since 2004, it has been revealed that owners of gambling houses (Chance) in close connection with paramilitaries managed to get privileged status in the assignment of contracts by funding campaigns (most of these connections were revealed in the parapolítica scandal).

In 2009 some irregularities in the bidding process for gambling have been detected again and seem to favor La Gata² a well-known businesswoman with connections to the paramilitaries, who despite multiple accusations and processes against her, continues funding candidates as in the case of the election for mayor in the municipality of Magangué in July 2009.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. The campaign apparently received contributions of about 1,900 million pesos (about US\$930,000) violating the limit on individual donations (US\$1,500). Apparently the committee promoting the referendum used a third-party scheme to receive the money and avoid the limitations, and then received the contributions as a loan from that third party.

References:

El caso Amin. Autor Ernesto McCausland Sojo

Fuente: El Tiempo Fecha: 15 de febrero de 2009

<http://www.eltiempo.com/archivo/documento/CMS-4817963>

Zar Anticorrupción Alerta Por Negocio Que Mueve 2 Billones De Pesos Al Año El Chance, En Las Mismas Manos
eltiempo.com 22 de abril de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3409794>

De aberrante calificó la MOE elecciones en Magangué

Fuente: Revista Semana Fecha: 8 Julio 2009

<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Procurador investigará a alcaldes y gobernadores implicados con DMG

Fuente: El Espectador Fecha: 24 Nov 2008

<http://www.elespectador.com/noticias/nacional/articulo93029-procurador-investigara-alcaldes-y-gobernadores-implicados-dmg>

Abren investigación preliminar contra dos gobernadores en caso DMG

Fuente: El Espectador Fecha: 1 Dic 2008

<http://www.elespectador.com/articulo95196-abren-investigacion-preliminar-contra-dos-gobernadores-caso-dmg>

DMG también armó su mapa político: Salpicado por segunda vez gobernador de La Guajira

Fuente: El Pilón Fecha: 17 Dic 2008 <http://www.elpilon.com.co/noticias/not00021348.htm>

Fiscalía le imputa cargo de enriquecimiento ilícito a Rojas Birry

Fuente: CaracolTV.com 5 de marzo de 2009

<http://www.caracoltv.com/articulo136055-fiscalia-le-imputa-cargo-de-enriquecimiento-ilicito-a-rojas-birry>

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe

Fuente: Periódico Vanguardia

<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe>

El Triángulo del referendo.

Fuente: Noticias 1 Fecha: 30 Nov 2008

<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

El Registrador se equivoca

Fuente: El Espectador Fecha: 2 Ago 2009

<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Diálogo sobre rendición de cuentas de campaña 2007

Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

Mantener A Los Partidos Costó \$100 Mil Millones En Un Año

Fuente: El Tiempo Fecha: 26 de diciembre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3251621>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

According to experts, for the 2007 elections, the effectiveness of financing regulations was reduced because accounts were managed individually for candidates outside party structures, and because there were no limits to corporate donations. These aspects and the lack of consciousness on the part of corporations increased the risk of undue influence of the corporate sector in elections. Transparency for Colombia considers for example that corporate donations could be monitored if corporations themselves decided to report their donations to parties, which does not occur in practice. In general, there is a strong perception that formal accounts do not reflect the reality of campaign contributions.

During the study period some prominent cases reveal the influence that corporations gain over the political process through campaign funding despite the existence of formal limits on individual donations.

In December 2008, Congressman Wilson Borja announced that in the 2007 elections 10 candidates for governor and 50 candidates for mayor received money from the enterprise DMG.

DMG was a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners. DMG was shut down in 2008 because such collection of funds was illegal and because DMG was apparently a façade for money laundering from drug trafficking. Wiretaps and testimonies by DMG employees and owners have revealed how DMG funded campaigns in the hope that it would get favorable treatment in procurement processes with the state (getting liquors, gambling, and tourism contracts).

In a similar way since 2004, it has been revealed that owners of gambling houses (Chance) in close connection with paramilitaries managed to get privileged status in the assignment of contracts by funding campaigns (most of these connections were revealed in the parapolítica scandal).

In 2009 some irregularities in the bidding process for gambling have been detected again and seem to favor La Gata" a well-known businesswoman with connections to the paramilitaries who despite multiple accusations and processes against her, continues funding candidates as in the case of the election for mayor in the municipality of Magangué in July 2009.

During the study period, irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. The campaign apparently received contributions of about 1,900 million pesos (about US\$930,000) and some corporate donations of about 100 million pesos (about US\$49,000) thus violating both the limit on campaign expenditures (US\$164,000) and on individual corporate donations (US\$1,500). Some of the contributors were apparently beneficiaries in the assignment of procurement processes with the government. Apparently the committee promoting the referendum used a third entity to receive the money and avoid the limits, and then received the contributions as a loan from that entity.

According to a survey conducted in 2007 by Transparency for Colombia among Colombian enterprises about bribing practices in the private sector, 65 percent of the surveyed declared to prohibit political contributions as a corporate policy however 52 percent declared to use campaign contributions as a way to bribe public officials.

References:

El caso Amín. Autor Ernesto McCausland Sojo
Fuente: El Tiempo Fecha: 15 de febrero de 2009
<http://www.eltiempo.com/archivo/documento/CMS-4817963>

Zar Anticorrupción Alerta Por Negocio Que Mueve 2 Billones De Pesos Al Año El Chance, En Las Mismas Manos
eltiempo.com 22 de abril de 2009
<http://www.eltiempo.com/archivo/documento/MAM-3409794>

De aberrante calificó la MOE elecciones en Magangué
Fuente: Revista Semana Fecha: 8 Julio 2009
<http://www.semana.com/noticias-politica/aberrante-califico-moe-elecciones-magangué/126010.aspx>

Procurador investigará a alcaldes y gobernadores implicados con DMG
Fuente: El Espectador Fecha: 24 Nov 2008
<http://www.elespectador.com/noticias/nacional/articulo93029-procurador-investigara-alcaldes-y-gobernadores-implicados-dmg>

Abren investigación preliminar contra dos gobernadores en caso DMG
Fuente: El Espectador Fecha: 1 Dic 2008
<http://www.elespectador.com/articulo95196-abren-investigacion-preliminar-contra-dos-gobernadores-caso-dmg>

DMG también armó su mapa político: Salpicado por segunda vez gobernador de La Guajira
Fuente: El Pílon Fecha: 17 Dic 2008 <http://www.elpilon.com.co/noticias/not00021348.htm>

Fiscalía le imputa cargo de enriquecimiento ilícito a Rojas Birry
Fuente: CaracolTV.com 5 de marzo de 2009
<http://www.caracoltv.com/articulo136055-fiscalia-le-imputa-cargo-de-enriquecimiento-ilicito-a-rojas-birry>

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe
Fuente: Periódico Vanguardia
<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe>

El Triángulo del referendo.
Fuente: Noticias 1 Fecha: 30 Nov 2008
<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

El Registrador se equivoca
Fuente: El Espectador Fecha: 2 Ago 2009
<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Diálogo sobre rendición de cuentas de campaña 2007
Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008
<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

Mantener A Los Partidos Costó \$100 Mil Millones En Un Año
Fuente: El Tiempo Fecha: 26 de diciembre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3251621>

Preguntas acerca del financiamiento de la política por parte del sector privado. por Bruno Wilhelm Speck – Asesor senior
Transparency Internacional 24 Oct 2008
Fuente: Transparencia por Colombia <http://www.transparenciacolombia.org.co/OPINION/tabid/64/ctl/Details/mid/774/ItemID/118/Default.aspx>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Council (CNE) has the faculty to initiate investigations if there are irregularities in party funding; however, even if they are initiated, these investigations are rarely 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 eligibility for public funding, giving a second place to a real review of funding sources.

In an evaluation of the 2007 elections publication of campaign reports, the Electoral Council reported that the majority of funding reports were returned because they are not properly prepared, therefore it is difficult to initiate investigations on the substance of funding reports.

Substantial investigations may start only after scandals emerge as was the case in December 2008 when Congressman Wilson Borja denounced that in the 2007 elections 10 candidates for governor and 50 candidates for mayor received money from the enterprise DMG.

DMG was a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners.

DMG was shut down in 2008 because such collection of funds was illegal, and because DMG was apparently a façade for money laundering from drug trafficking. After these allegations became public, the General Attorney's Office (Procuraduría) announced it

would initiate investigations. The General Prosecutor's Office (Fiscalia) also initiated investigations on this case against two current governors.

It appears that substantial monitoring may start in agencies other than the CNE and usually as part of broader penal processes and not as a result of the routine funding monitoring of the CNE. It is necessary to note that the existence of these alternate institutions that can initiate investigations improves the effectiveness of sanctions and investigations

According to a former magistrate of the council, investigative capacities are also hindered because it is not clear what constitutes expenditures and what constitutes contributions. Also, since in many cases the only penalty for not presenting accounts is a fine, some candidates prefer to pay the fine rather than to present reports.

Finally, even though there is a widespread perception that the quality of information reported by parties is very low, the council has very limited capacity to detect irregularities. On their side, party leaders argue that one month is a very short time to consolidate good reports on contributions and expenditures.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. In July 2009, the CNE decided to initiate the investigation on the irregularities in the reports and in the funding process itself .

References:

Piden La Formulación De Cargos Contra Los Promotores Del Referendo

Fuente: El Tiempo.com

<http://www.eltiempo.com/archivo/documento/MAM-3516580>

Diálogo sobre rendición de cuentas de campaña 2007

Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos

Fuente: El Tiempo Fecha: 18 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3144592>

Procurador investigará a alcaldes y gobernadores implicados con DMG

Fuente: El Espectador Fecha: 24 Nov 2008

<http://www.elespectador.com/noticias/nacional/articulo93029-procurador-investigara-alcaldes-y-gobernadores-implicados-dmg>

Abren investigación preliminar contra dos gobernadores en caso DMG

Fuente: El Espectador Fecha: 1 Dic 2008

<http://www.elespectador.com/articulo95196-abren-investigacion-preliminar-contra-dos-gobernadores-caso-dmg>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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, thought limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

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 and by the lack of adequate personnel and technical capacities to fulfill its mandate.

The Attorney General's (Procuraduría) and General Prosecutor's (Fiscalia) have imposed effective sanctions on some candidates, but as mentioned above these sanctions usually become effective when there is a penal or disciplinary investigation in place, rather than as part of the routine process of monitoring of campaign funding.

Often times the sanctions imposed are small fines compared to the amounts by which limits on contributions and expenditures are violated. The most serious violations are usually not detected, are ignored or come to be investigated and sanctioned only after broader penal processes start.

In July 2009 the CNE started to impose fines on 14 parties because 97 candidates did not present campaign reports, suggesting a more effective imposition of sanctions. However it appears that candidates manage to avoid these fines. For example it is estimated that in the department of Santander there were fines imposed on 102 candidates in municipal councils in 2003 but as of April 2009, more than US\$350,000 has not been paid either because the movements that supported candidates disappeared or because candidates have changed their addresses. This case shows how often decisions on investigations may come too late to be effective.

In other cases decisions may have little effect on political processes. For example even though the CNE has initiated an investigation regarding the funding of signature collection and the campaign for a referendum on presidential re-election, the vice president of the CNE declares that a decision regarding the funding of the process will not have any direct impact on the discussion of the referendum itself. Although one of the magistrates of the CNE presented a complete report concluding that the committee promoting the referendum had violated three funding norms, as of July 31, 2009, the CNE had not issued an official decision.

The Attorney General's Office and the Prosecutor's Office (Procuraduría and Fiscalía) have played an important role on imposing sanctions on individual candidates, yet despite the existence of more sanctions on individual candidates than on parties, as a member of the MOE points out it is widely known that everyone violates limits on campaign funding but very few people are sanctioned".

References:

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos
Fuente: El Tiempo Fecha: 18 de octubre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3144592>

Las cuentas olvidadas de los candidatos en Santander
Fuente: Vanguardia.com Fecha: 30 de Abril de 2009
<http://www.vanguardia.com/politica/93-politica/27089-las-cuentas-olvidadas-de-los-candidatos-en-santander>

El Registrador se equivoca
Fuente: El Espectador Fecha: 2 Ago 2009
<http://www.elespectador.com/impreso/articuloimpreso154106-el-registrador-se-equivoca>

Dilatar y dilatar: la estrategia del Consejo Nacional Electoral para no cargar con el muerto del referendo Fecha. 30 Jul 2009
Fuente: La Silla Vacía.com
<http://www.lasillavacia.com/historia/3386>

La estocada final al referendo de la reelección del presidente Uribe la darán el registrador Carlos Ariel Sánchez y el magistrado del CNE Joaquín José Vives
Fuente: Periódico El Sol.net Fecha: 19 Jul 2009
<http://www.periodicoelsol.net/noticia.php?id=2224>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Council (CNE) runs 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.

As a result of such monitoring, in October 2008 the CNE imposed penalties on 14 parties because 97 candidates had not presented their accounts.

The scope of the data reported and the periodicity of auditing exercises is very good compared to the majority of other Latin American countries. In fact according to the director of the Campaign and Party Funding Office of the CNE the reports for the 2007 election improved compared to the 2003, where only summaries of funding reports were reported.

The main problem in auditing is that the credibility of information reported, and thus of the whole auditing exercise, is seriously flawed.

First, the Electoral Council is perceived as very politicized.

For example in July 2009, a magistrate of the electoral council presented a detailed report about irregularities on the funding reports of the committee promoting a referendum on presidential re-election. However as of July 2009, the CNE had not issued an official decision in part because the decision could impact of the discussion of the referendum and would therefore affect politically the magistrates.

Second, despite the auditing obligations, parties do not report the full extent of information, although this is very difficult to prove. More than 3,000 out of 15,000 candidates who competed in the 2007 local elections did not present adequate reports. And third, the council lacks investigative capacities. Usually auditing exercises are concentrated on the formalities rather than on the substance of accounts.

According to a former magistrate of the council, auditing is also hindered because it is not clear what constitutes expenditures and what constitutes contributions.

In many cases, since the only penalty for not presenting accounts is a fine, some candidates prefer to pay the fine than to present reports.

In other cases decisions on auditing exercises may come too late and therefore the parties or movements responsible for the violations may have disappeared as seemed to be the case in the department of Santander where fines were imposed on 102 candidates to municipal councils in 2003, but as of April 2009 more than US\$350,000 has not been paid either because the movements that supported candidates disappeared or because candidates changed their addresses.

For the 2007 local elections, the unclear responsibilities between parties and candidates made an effective auditing exercise more difficult. Parties should compile and present the reports of their candidates, but in many cases not all candidates present adequate accounts to parties.

In an evaluation of the 2007 elections publication of campaign reports, the Electoral Council reported that the majority of funding reports were returned because they are not properly prepared, therefore it was difficult to initiate investigations on the substance of funding reports.

References:

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos
Fuente: El Tiempo Fecha: 18 de octubre de 2008
<http://www.eltiempo.com/archivo/documento/MAM-3144592>

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<http://www.periodicoelsol.net/noticia.php?id=2224>

Dilatar y dilatar: la estrategia del Consejo Nacional Electoral para no cargar con el muerto del referendo
Fuente: La Silla Vacía.com Fecha: 30 Jul 2009
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100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

13

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the 2007 local elections, given the high concern about illegal funding of political campaigns after the parapolítica scandal, both the government and the Mission of Electoral Observation promoted transparency pacts compelling parties and candidates to publicize their campaign accounts even before the elections.

The Project Voto limpio promoted by the government was signed by mayors and governors, who promised not to use public funds in elections and to report any campaign irregularities. It also invited 14 signing parties to compel their candidates to declare before the elections that they did not receive illegal funding.

The government created the Unit of Immediate Reaction for Electoral Transparency, uniting the Attorney's Office (Procuraduría), the Prosecutor's Offices (Fiscalía) and the National Electoral Council to monitor these pacts. Eleven parties signed the MOE pact and committed to publicize their accounts in the media. Transparency for Colombia also donated to the National Electoral Council (CNE) an application for parties to better organize their accounts. The application was designed for both parties and candidates.

All these initiatives represented real improvements, because previous similar initiatives did not achieve the same party support. However, as they were not binding, they were not followed through by either parties or candidates.

None of the signing parties published its accounts before elections. In October 2008, the CNE started to impose sanctions on 14 parties because 97 candidates either failed to present their funding reports or did not present them on time.

In March 2009, the General Comptroller (Contralor General) reported that 9,000 candidates (both elected and non elected) since 2002 have failed to report their accounts. Non-elected candidates may fail to report as they try to avoid returning the money they have received as advance payment for state funding that in the end they were not qualified to receive because they did not get enough votes. In other cases when reports are presented on time they may have serious flaws, as was recently the case with the funding reports of the committee promoting a referendum on presidential re-election.

According to law, parties should disclose data related to financial support 30 days after each election. In fact, the Electoral Council publishes the available data online when it is reported. However, usually there are inconsistencies in funding reports and it takes time before the real information is published, if ever.

References:

Diálogo sobre rendición de cuentas de campaña 2007. Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos

Fuente: El Tiempo Fecha: 18 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3144592>

Hay nueve mil candidatos que no han rendido cuentas electorales: Contralor

Fuente: Caracol.com Fecha: Marzo 26 de 2009

<http://www.caracol.com.co/nota.aspx?id=784875>

En cuentas del referendo no hubo una discriminación detallada: Registrador

Fuente: Transición Colombia. Fecha: 15 julio de 2009

http://transicioncolombia.com/oficial/index.php?option=com_content&view=article&id=458:en-cuentas-del-referendo-no-hubo-una-discriminacion-detallada-registrador&catid=183:el-espectador&Itemid=119

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties 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 centralized the information of individual candidates, but this information is limited. Experts on party funding consider that parties only report about 30 percent of their real donations.

For the 2007 elections, despite the fact that parties had signed pacts of transparency, only one party published online financial records. And as of July 2008 none of the main political parties had publicly available reports on their normal functioning financial records.

Some information on the 2007 elections can be accessed through the Electoral Council or by direct requests to the parties, but it refers mainly to candidates for governor and mayor positions; there is no information on candidates for local legislative bodies. Reports about normal functioning expenses are more difficult to access in practice and it is not possible to access online the reports and information collected by the Office for Campaign and Party Funding of the CNE.

Even when available reports may not reflect accurately the reality of funding, as was the case with the funding reports of a campaign promoting a referendum on presidential reelection.

References:

Diálogo sobre rendición de cuentas de campaña 2007. Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

Denuncian a promotores del referendo reeleccionista

Fuente: La Libertad.com Fecha: Enero 09, 2009

<http://www.lalibertad.com.co/dia/ene09/po1.htm>

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: 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.

24c. In practice, citizens can access the financial records of political parties 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 of national circulation.

The wide perception is that even if these reports are effectively publicized, they are generally not noticed by citizens.

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 requests directly to the political parties or through the electoral body.

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 non governmental organizations 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. For example, even though parties signed pacts promoted by the government and the Mission of Electoral Observation to publicize their campaign accounts even before the elections, they have not followed through.

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.

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.

24d. In practice, the publicly available records of political parties' finances are of high quality.

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 of individual candidates, but this information is limited. Experts on party funding consider that parties only report about 30 percent of their real donations.

In an evaluation of the 2007 elections publication of campaign reports parties coincided in stating that the time period established to present reports is not enough to produce high quality and accurate reports. At the same time the Electoral Council reported that the majority of funding reports are returned because they are not properly prepared, therefore it is necessary to educate and train better the people in charge of elaborating the reports.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. According to the President of the Electoral Council (CNE), the promoters of the referendum failed to present books, receipts and detailed information about contributors to the campaign.

Apparently promoters also used complicated maneuvers in the reports in order to conceal contributions that had exceeded the limit on contributions, presenting some contributions as loans from a third entity that had received the money.

References:

Denuncian a promotores del referendo reeleccionista
Fuente: La Libertad.com Fecha: Enero 09, 2009
<http://www.lalibertad.com.co/dia/ene09/po1.htm>

Diálogo sobre rendición de cuentas de campaña 2007
Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008
<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

19

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

Comments:

For the 2007 local elections, several parties signed transparency pacts promoted by the government and the Mission of Electoral Observation to publicize their campaign accounts even before the elections. These initiatives were an incentive for parties to better organize their finances, and it represented an improvement because previous similar initiatives did not achieve the same party support. However, as they were not binding, no candidate published accounts before the elections.

Those accounts that are presented to the Electoral Council are usually inaccurate either because candidates do not have knowledge or capacity to prepare adequate reports, because the law is not totally clear, or because candidates are able to report unreal expenditures and contributions.

In October 2008, the CNE started to impose sanctions on 14 parties because 97 candidates either failed to present their funding reports or did not present them on time. In March 2009 the General Comptroller (Contralor General) reported that 9,000 candidates (both elected and non-elected) since 2002 failed to report their accounts.

Non-elected candidates may fail to report as they try to avoid returning the money they received as advance payment for state funding, that in the end they were not qualified to receive because they did not get enough votes. In other cases when reports are presented on time they may have serious flaws, as was recently the case with the funding reports of the committee promoting a referendum on presidential re-election.

References:

Diálogo sobre rendición de cuentas de campaña 2007. Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

97 Ex Candidatos Morosos Dejan En Líos A 14 Partidos

Fuente: El Tiempo Fecha: 18 de octubre de 2008

<http://www.eltiempo.com/archivo/documento/MAM-3144592>

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<http://www.caracol.com.co/nota.aspx?id=784875>

En cuentas del referendo no hubo una discriminación detallada: Registrador

Fuente: Transición Colombia. Fecha: 15 julio de 2009

http://transicioncolombia.com/oficial/index.php?option=com_content&view=article&id=458:en-cuentas-del-referendo-no-hubo-una-discriminacion-detallada-registrador&catid=183:el-espectador&Itemid=119

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

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 of individual candidates, but this information is limited. Experts on party funding consider that parties only report about 30 percent of their real donations.

Some information on the 2007 elections can be accessed through the Electoral Council or by direct requests to the parties, but it refers mainly to candidates for governor and mayor positions; there is no information on candidates for local legislative bodies. It is not possible to access the reports online or information collected by the Office for Campaign and Party Funding of the CNE.

Even when reports are available, they may not reflect accurately the reality of funding, as was the case with the funding reports of a campaign promoting a referendum on presidential re-election.

References:

Diálogo sobre rendición de cuentas de campaña 2007. Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

Denuncian a promotores del referendo reeleccionista

Fuente: La Libertad.com Fecha: Enero 09, 2009

<http://www.lalibertad.com.co/dia/ene09/po1.htm>

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: 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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

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 of individual candidates, but this information is limited. Experts on party funding consider that parties only report about 30 percent of their real donations.

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References:

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http://transicioncolombia.com/oficial/index.php?option=com_content&view=article&id=458:en-cuentas-del-referendo-no-hubo-una-discriminacion-detallada-registrador&catid=183:el-espectador&Itemid=119

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.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

After an electoral reform issued in 2003 introducing the system of open lists, parties centralize the information of individual candidates, but this information is limited. Experts on party funding consider that parties only report about 30 percent of their real donations.

In an evaluation of the 2007 elections publication of campaign reports, parties agreed in stating that the time period established to present reports is not enough to produce high quality and accurate reports. At the same time the Electoral Council reported that the majority of funding reports are returned because they are not properly prepared, therefore it is necessary to educate and better train the people in charge of preparing the reports.

During the study period irregularities regarding the funding of signature collection and the campaign for a referendum on presidential re-election became public. According to the president of the Electoral Council (CNE), the promoters of the referendum failed to present books, receipts and detailed information about contributors to the campaign.

Apparently promoters also used complicated maneuvers in the reports in order to conceal contributions that had exceeded the limit on contributions. They allegedly presented some contributions as loans from a third entity that had received the money.

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Denuncian a promotores del referendo reeleccionista Fuente: La Libertad.com Fecha: Enero 09, 2009
<http://www.lalibertad.com.co/dia/ene09/po1.htm>

Diálogo sobre rendición de cuentas de campaña 2007
Fuente: Corporación Transparencia por Colombia Fecha: 17 de octubre de 2008
<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/60/Default.aspx>

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: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁶⁰Executive Accountability

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

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

According to the law, every decision of the executive has to be motivated follow the law and be limited in discretion. In practice, with some exceptions, the chief executive and cabinet gives explanations for his policy decisions, and citizens are aware of the arguments the executive has for making decisions.

During the study period there have been criticisms of the government because it has failed to express publicly a position regarding different scandals that have affected public institutions.

For example, the president refused to give a public statement regarding illegal wiretapping and investigation of civic leaders, journalists, members of the judiciary, and politicians conducted by the Central Intelligence Agency (DAS).

The president also refused to provide a public statement regarding businesses conducted by his sons that have been the subject of heated debates. Most importantly during the study period the president refused to assume a clear position regarding his interest of running for a third presidential period in case re-election was approved through a referendum. The president's silence on the re-election issue, which affected and delayed many other policy discussions, and on the DAS scandal, constitutes the main reason for a lower score on this indicator compared to the former study period.

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 people's problems. They have become a space for the president to explain his decisions. The councils have created a sense of efficiency highly valued by citizens, and at the same time reinforce Uribe's unmediated approach to citizens.

The downside of this openness of the government and cabinet members, is the fact that the president is not very keen on accepting questions from journalists or opponents in a regular manner.

References:

Ibáñez insiste en pedir explicaciones, Uribe no responde

Fuente: Revista Semana 6 Mayo 2009

<http://www.semana.com/noticias-politica/ibanez-insiste-pedir-explicaciones-uribe-no-responde/123688.aspx>

El silencio de Uribe. Por Leon Valencia

Fuente: Fundación Nuevo Arco Iris Fecha: 05/19/2009

<http://www.nuevoarcoiris.org.co/sac/?q=node/383>

¿Está pasando el Presidente de agache frente al escándalo del DAS?

<http://www.lasillavacia.com/movidadeldia/1546?order=totalcount&sort=asc>

3 mayo 2009

El titubeo del presidente de los colombianos retrasa al país en lo político y lo económico

Fuente: Globedia.com Fecha: 22-05-2009

<http://co.globedia.com/titubeo-presidente-colombiano-retrasa-pai-politico-economico>

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.

27b. 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. This is a legal period conferred by the Congress to the president within which the president 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 administrative actions of the government.

References:

The Constitution of Colombia 1991 articles 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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

During the last two years, the Supreme Court of Justice has been very active in requesting explanations from the executive on certain controversial decisions.

In May 2009, the president of the Supreme Court of Justice on behalf of an inter-institutional commission of the judiciary, requested the president to give a public statement regarding a scandal involving illegal wiretapping and investigation of civic leaders, journalists, members of the judiciary, and politicians conducted by the Central Intelligence Agency (DAS).

During the same month the court also decided to initiate preliminary investigations against 86 congressmen regarding their vote in the law regulating a referendum for presidential re-election because such voting took place before the director of the National Registry (Registrador) expressed his opinion about the viability of the reform.

The court also condemned to eight years in jail the member of the lower chamber Ivan Diaz Mateus for exerting influence on the positive vote of another member of the chamber to support the reform that eventually allowed presidential re-election. The court's decision led to another round of confrontations between the government and the Supreme Court of Justice. Confrontations between the two branches of power have been very strong over the past two years as the court opposes some presidential decisions and the government in response tries to question the legitimacy of the court.

Since its creation, 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 highly liberal and progressive and even criticized for excessive influence, while being fairly independent from the government.

However, former magistrates and experts agree that the current court is losing independence from the government as the president has had a huge influence in recent selections of magistrates, such as the selection of candidates to replace two magistrates, presented in March 2009.

However, during the study has also issued decisions aimed at controlling the government, for example conducting an extensive evaluation of the government's policies towards displaced populations in July 2009. In February 2009 the court declared unconstitutional all the decisions and decrees the government issued during the state of interior exceptionality (conmoción interior) declared by the government in October 2008 in order to confront a judicial strike.

A lower score on this indicator reflects the increasing politicization in the process of selecting magistrates, which affects negatively judiciary control over the executive.

References:

Ibáñez insiste en pedir explicaciones, Uribe no responde

Fuente: Revista Semana 6 Mayo 2009

<http://www.semana.com/noticias-politica/ibanez-insiste-pedir-explicaciones-uribe-no-responde/123688.aspx>

La Hora de la Justicia, entrevista con Gloria Maria Borrero Directora de la Corporación Excelencia en la Justicia. Revista Semana. Septiembre 8 de 2008. <http://www.semana.com/noticias-politica/hora-justicia/128395.aspx>

El enfrentamiento de Gobierno colombiano y Corte llega a la CPI

Fuente: AFP Fecha: 26/08/2008

<http://afp.google.com/article/ALeqM5jSg16rwlvMnXjCX3Z1bt6-Wakf5g>

Uribe Vélez se compromete con CPI a respetar el poder judicial

Fuente: El Financiero en línea Fecha: 27 de agosto

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=140356&docTipo=1&orderBy=docId&sortBy=ASC>

Pulso de poder
Fuente: Prensanet.com Fecha: 24 de junio de 2009
http://www.prensanet.com/images/news/2009/06/25/news_1177014.html

Uribe-Corte, ¿diferencias irreconciliables? 14 Jun 2009
<http://www.elpais.com.co/paisonline/notas/Junio142009/na13.html>

Conmoción interior para enfrentar paro judicial decretó el Gobierno
Fuente: El Tiempo Fecha: 10 Oct 2008
http://www.eltiempo.com/colombia/politica/2008-10-10/conmocion-interior-para-enfrentar-paro-judicial-decreto-el-gobierno_4595212-1

Corte tumbó la Conmoción Interior de Uribe
Fuente: Radio SantaFe Fecha: Febrero 12, 2009
<http://www.radiosantafe.com/2009/02/12/corte-tumbo-la-conmocion-interior-de-uribe/>

Corte Constitucional pide explicaciones por chuzadas
Fuente: Corporación Excelencia en la Justicia. Fecha: 19 de Mayo de 2009
http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1353:corte-constitucional-pide-explicaciones-por-chuzadas&Itemid=168

Corte Constitucional denuncia presiones en fallo sobre reelección
Fuente: Terra.com Fecha: Mayo 26 de 2009
<http://www.terra.com.co/noticias/articulo/html/acu21815-corte-constitucional-denuncia-presiones-en-fallo-sobre-reeleccion.htm>

Atención a desplazados: Corte Constitucional evaluó al Gobierno y el balance aún es negativo
Fuente: El Tiempo Fecha: 12 Jul 2009
http://www.eltiempo.com/domingoadomingo_eltiempo/atencion-a-desplazados-corte-constitucional-evaluo-al-gobierno-y-el-balance-aun-es-negativo-_5614150-1

Marcado sesgo en candidatos de Uribe a la Constitucional
Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009
http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

Marcado sesgo en candidatos de Uribe a la Constitucional
Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009
http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

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 rely 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.

27d. 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 powers on legislative decisions, decree power, and gate-keeping powers on adding onto budgets.

In October 2008, the president declared a state of internal exceptionality (conmocion interior) used to issue decisions in order to confront a strike in the judiciary. However such decrees were declared unconstitutional by the Constitutional Court in February 2009.

The president can also use an urgency petition" to prioritize bills in the legislative agenda. For example, in April 2009 the government addressed the Lower Chamber insisting that there were 48 critical hours in which it was necessary to make decisions on four crucial legislative proposals.

Such a statement led to the approval in eight hours of two crucial projects, the referendum on re-election and a political reform (The projects still required additional debates). 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 had more difficulties in passing laws. However, the president tends to be the main agenda setter in most policy areas.

This tendency has been strengthened given the high popularity of the current President Alvaro Uribe, his tendency to centralize orders into his hands, and the increasing evidence that non-transparent clientelistic practices, vote buying and influence peddling have become prevalent tools for the government to try to get its initiatives approved in Congress.

These practices have been reflected in the process of approving a Political reform and a referendum for reelection. Recently the president has started to declare that Colombia is under the rule of opinion rather than under the rule of law, and that this is an advanced stage of democracy. Such declarations reflect a belief in that Uribe's popularity can bypass legal authority and institutionalized decision making processes.

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.

Conmoción interior para enfrentar paro judicial decretó el Gobierno

Fuente: El Tiempo Fecha: 10 Oct 2008

http://www.eltiempo.com/colombia/politica/2008-10-10/conmocion-interior-para-enfrentar-paro-judicial-decreto-el-gobierno_4595212-1

Corte tumbó la Conmoción Interior de Uribe

Fuente: Radio SantaFe Fecha: Febrero 12, 2009

<http://www.radiosantafe.com/2009/02/12/corte-tumbo-la-conmocion-interior-de-uribe/>

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

Presidente Uribe Habla De 48 Horas Críticas

Fuente: El Tiempo Fecha: 22 de abril de 2009

<http://www.eltiempo.com/archivo/documento/MAM-3409976>

'Aplanadora uribista' aprobó, en 8 horas, un referendo y una reforma política. 23 de abril de 2009

<http://www.eltiempo.com/archivo/documento/CMS-5052749>

Reforma política, a pupitrazo

Fuente: El Periódico.com Fecha: 24 de abril de 2009

<http://www.elperiodico.com.co/seccion.php?codigo=20936&seccion=5&fecha=2009-04-24>

Senado aprueba referendo reeleccionista en último debate

Fuente: Terra Colombia Fecha: Mayo 19 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu21682-senado-se-prepara-para-votara-proyecto-de-referendo.htm>

Estado de opinión: fase superior del Estado de Derecho

Fuente: El Espectador Fecha: 7 Jun 2009

<http://www.elespectador.com/columna144625-estado-de-opinion-fase-superior-del-estado-de-derecho>

Alertan sobre riesgos de la Constituyente

Fuente: El Periódico.com Fecha: 10 Jun 2009

<http://www.elperiodico.com.co/seccion.php?codigo=22598&seccion=12&fecha=2009-06-11>

Estado de Opinión mencionado por Uribe genera ambigüedades Julio 27 de 2009

<http://www.wradio.com.co/nota.aspx?id=851390>

Pardo denuncia que el Gobierno gasta \$220 mil millones en compra de votos

Fuente: Terra.com Fecha: Agosto 24 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu24424-pardo-denuncia-que-el-gobierno-gasta-220-mil-millones-en-compra-de-votos.htm>

Reflexiones sobre el trámite de la reforma política de cara a las elecciones 2010.

Por: Víctor Andrés Barrera1 Fuente: Cinep

<http://www.cinep.org.co/node/723>

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. 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 (Attorney General) 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 of the president are highly political. Currently the Accusations Commission is investigating the president regarding the possible use of influence peddling and vote buying for the approval of the constitutional reform allowing the first presidential re-election in 2006. The Attorney General is planning to start investigations regarding the use of vote buying and influence peddling by the government for the approval of the referendum allowing for the second presidential re-election.

The Accusations Commission of the Lower Chamber does not have a good reputation given the lack of transparency in its procedures and the fact that it is highly politicized: currently 11 out of 15 legislators in the commission belong to the government's coalition.

The Attorney General has been more active in investigating public officials close to the president. For example, in May 2009 the Attorney General opened investigations against the Secretary General, the Communications Advisor, and the Chief of Press in the presidency regarding the scandal of illegal wiretapping and investigations conducted by the Central Intelligence Agency (DAS) against civic leaders, journalists, magistrates, and members of the opposition.

However as of July 2009 there were no formal processes investigating the responsibility of the president in this case, or in other cases such as the declarations that some demobilized paramilitaries have made stating that they contributed to Alvaro Uribe's 2002 presidential campaign.

References:

Constitución Política de Colombia 1991: art. 178, 235

¿Hay investigación por apoyo de paramilitares a Uribe en elecciones presidenciales?

Fuente: Comisión Intereclesial de Justicia y Paz Fecha: Miércoles 1ro de julio de 2009

<http://justiciaypazcolombia.com/Hay-investigacion-por-apoyo-de>

Abren investigaciones contra secretarios de Uribe y ex jefes de inteligencia

Fuente: RCN TV Fecha: 15 de Mayo de 2009

<http://www.nuestrotele.tv/content/abren-investigaciones-contra-secretarios-uribe-y-ex-jefes-inteligencia>

¿La investigación de la Procuraduría a los asesores de Uribe confirmaría la participación de la Casa de Nariño en 'chuzadas'?

Fuente: La Silla Vacía Fecha: 18 de mayo de 2009

<http://www.lasillavacia.com/movidadeldia/1883>

Investigación por cohecho no impedirá que Uribe se presente a la reelección

Fuente: El Espectador Fecha: 31 Jul 2009

<http://www.elespectador.com/noticias/politica/articulo153761-investigacion-cohecho-no-impedira-uribe-se-presente-reeleccion?page=1>

Procuraduría investigará posible entrega de prebendas a cambio del referendo

Fuente: El Espectador Fecha: 24 Ago 2009

<http://www.elespectador.com/noticias/politica/articulo157606-procuraduria-investigara-posible-entrega-de-prebendas-cambio-del-re>

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.

28b. 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 by the General Prosecutor.

In December 2008, the General Prosecutor's Office (Fiscalía General) initiated investigation against the Minister of Interior Fabio Valencia to inquire if he received financial support from paramilitary groups in 1995.

In June 2008, the General Attorney's Office (Procuraduría General) opened an investigation against the Ministry of Social Protection for violating the secrecy of a judicial process. The process referred to a legislator who sold her vote for the constitutional reform that approved presidential re-election in 2004. The minister revealed in public some information that had been given by the accused legislator in her declarations. This minister as well as a former the minister of interior were also investigated for their supposed participation in providing favors to legislators in exchange of their favorable vote for re-election.

In March 2009, both ministers were absolved because there was not enough proof. The former minister of interior (current ambassador in Italy) is also currently under preliminary investigation by the Prosecutor's Office in relation to meetings he held with members of paramilitary groups. The anti-corruption office of the presidency initiated in May 2009 an investigation against Minister of Defense Juan Manuel Santos for allegedly favoring a close friend in a procurement process with the ministry

In some cases; however, political criteria seems to shelter ministerial level officials from investigation.

References:

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

Fiscalía abre investigación previa contra ministro del Interior Fabio Valencia Cossio

Fuente: Terra Colombia / AFP Fecha: 6 Dic 2008

<http://www.terra.com.co/actualidad/articulo/html/actu17054-fiscalia-abre-investigacion-previa-contra-ministro-del-interior-fabio-valencia-cossio.htm>

Absueltos Diego Palacios y Sabas Pretelt de la Vega por 'Yidispolítica'

Fuente: Vanguardia.com Fecha: 16 de Marzo de 2009

<http://www.vanguardia.com/archivo/23609-absueltos-diego-palacio-y-sabas-pretelt-de-la-vega-de-la-yidispolitica>

Archivan investigación contra Mindefensa por uso de helicóptero en paseo familiar

Fuente: Caracol Fecha: Mayo 5 de 2009

<http://www.caracol.com.co/nota.aspx?id=806740>

Fiscalía investigará a ex ministro de Gobierno por reunión con paras

Fuente: Colombia.com- EFE Fecha: 19/Jun/2009

<http://www.colombia.com/actualidad/autonoticias/nacionales/2009/06/19/DetalleNoticia35742.asp>

Manuel Santos

Fuente: El NuevoDía.com Fecha: 26 de Mayo de 2009

<http://www.elnuevodia.com.co/nuevodia/nacional/notas-nacionales/8912-oficina-anticorrupcion-de-la-presidencia-investiga-a-ex-ministro-j-manuel-santos-.pdf>

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.

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

63

29a. 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 (articles 13,14) , all public servants before taking office, when leaving, and when requested by relevant authorities have to declare the amount of their income and rents.

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". 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.

29b. 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 before taking office, when leaving, and when requested by relevant authorities have to declare, the amount of their income and rents.

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". 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.

29c. 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 from receiving or asking for gifts from users or employees who may have an interest on their performance. The Law 190 of 1995 introduces influence peddling as a criminal offense.

References:

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.

The Constitution of Colombia 1991, article 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.

29d. 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 always be in the personnel offices of each entity and is a requirement for public servants to fill this form 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.

It is stated that every six months the chief of personnel has to review the veracity of declarations using a random selection method. The Administrative Department for Civil Service has created a software named SIDEC to file and monitor asset disclosure forms, but there are no statistics on the follow up to the asset disclosure forms.

References:

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

Article 207 of the constitution states that in order to be a minister it is necessary to have the same qualifications as a legislator and it includes the inability to have private posts while being in office, but does not refer 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. It also prohibits influence or participation directly or indirectly on matters that used to be under their responsibility. Yet it is not clear that this rule refers to employment after leaving office.

Although there is ambiguous regulation about post-public sector employment, some people consider that the problem is not the lack of an specific regulation, but the lack of enforcement of the existing regulations.

In any case, the revolving door" of employees moving from the public to the private sector is seen as one of the core problems of public administration in the country.

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.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers 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.

During 2007 some notable cases relating to high level officials in the Ministry of Commerce and agencies dealing with the negotiation of the Free Trade Agreement were taking positions with transnational companies right after leaving their public positions. Media criticism can sometimes act as a limitation for the most visible officials to take private positions after leaving office.

References:

The Constitution of Colombia, 1991

Misas Arango, Gabriel. 2005. La Lucha Anticorrupción en Colombia, teorías, prácticas y estrategias Contraloría General de la República, Bogotá.

Puerta giratoria de representantes del país a funcionarios privados. Nov 25 2007. http://pda-usa.blogspot.com/2007/11/puerta-giratoria-de-representantes-del_25.html

PROYECTO DE LEY PARA CERRAR LA PUERTA GIRATORIA PRESENTA EL SENADOR ROBLEDO. <http://www.moir.org.co/PROYECTO-DE-LEY-PARA-CERRAR-LA.html>

Renuncia negociadora de la mesa de Propiedad Intelectual y se pasa al bando contrario RECALCA, Bogotá, 16 de Noviembre de 2007 <http://www.recalca.org.co/?q=node/330>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

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

Comments:

Regulations are enforced, and when scandals emerge they are prosecuted. Over the last year there has been no serious accusation of 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, especially those related to procurement processes.

During the past year a topic that has caused heated debates is the business conducted by the president’s sons. Even though the businesses have been apparently conducted following all legal procedures, many doubts have emerged regarding the privileged status that the president’s sons have to access crucial information and to benefit from their close contact with government members.

According to critics, the pPresident’s sons benefited from public decisions made by the minister of transportation, the governor of Cundinamarca, and the mayor of the municipality of Mosquera, such as the formation of a free trade area, the construction of roads in areas surrounding properties they own, and the issuing of a law regarding recycling (one of their companies works in recycling).

There have also been accusations that the president’s sons have received gifts from the private enterprise Sab Miller after it obtained tax exemption benefits. Although no legal accusation has taken place, this episode reflects the complicated and not completely clear relations that are established among members of the executive, enterprises, and families, and the double way nature that the exchange of gifts may take from the private to the public sector and vice versa.

In general, although there are legal frameworks to prevent conflicts of interest, 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.

There is a widespread perception that most irregularities in procurement processes take place through the executive branch. It is important to note that there is a perception that in recent years the extent of petty corruption has decreased in Colombia.

References:

Los hijos del Presidente. <http://www.elespectador.com/articulo137690-los-hijos-de-los-presidentes?page=1>

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe

Fuente: Periódico Vanguardia Fecha: Miércoles 22 de Abril de 2009

<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe->

POLÉMICA POR LOS MILLONARIOS NEGOCIOS DE LOS HIJOS DEL PRESIDENTE URIBE

Fuente: El Clarín Fecha: Mayo 15 2009

<http://www.ddhh-colombia.org/html/noticias%20ddhh/polemica27052009.pdf>

Dueño de DMG asegura que hijos de Uribe hacen negocios con él 14 de Noviembre de 2008

<http://www.vanguardia.com/pais/103/12956>

Presidente Álvaro Uribe entregará sus declaraciones de renta al Procurador, Edgardo Maya Villazón

Fuente: El Tiempo Fecha: 26 Nov 2008

http://www.eltiempo.com/colombia/politica/presidente-lvaro-uribe-entregara-sus-declaraciones-de-renta-al-procurador-edgardo-maya-villazon_4688768-1

Maya no sabe si puede revisar declaración de renta de Uribe

Fuente: El Espectador Fecha: 3 Dic 2008

<http://www.elespectador.com/articulo95903-maya-no-sabe-si-puede-revisar-declaracion-de-renta-de-uribe>

Sobrados de lote

Fuente: Revista Semana Fecha: 18 Abril 2009

<http://www.semana.com/noticias-opinion/sobrados-lote/122986.aspx>

Partido Liberal llama a hijos del Presidente a mostrar declaraciones de renta

Fuente: El Espectador.com Fecha: 21 Abr 2009

<http://www.elespectador.com/articulo136979-partido-liberal-llama-hijos-del-presidente-mostrar-declaraciones-de-renta>

La falsedad

Fuente: Revista Semana Fecha: Sábado 2 Mayo 2009

<http://www.semana.com/noticias-opinion/falsedad/123516.aspx>

La Dian ratifica decisión sobre la Zona Franca de Occidente

Fuente: Caracol Fecha: Mayo 4 de 2009

<http://www.caracol.com.co/nota.aspx?id=806022>

‘Utilidades que obtengamos en zona franca irán para inversión social’, dicen Tomás y Jerónimo Uribe

Fuente: El Tiempo Fecha: 11 May 2009

http://www.eltiempo.com/colombia/politica/utilidades-que-obtengamos-en-zona-franca-iran-para-inversion-social-dicen-tomas-y-jeronimo-uribe_5180247-1

Nos culpan por ‘un negocio legal’, sostiene Tomás Uribe

Fuente: Terra.com Fecha: Mayo 13 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu21528-oposicion-arremete-contr-hijos-de-uribe-en-debate.htm>

Demostrarán que valorización de lotes de los niños Uribe" no vino por la zona franca sino por una vía

Fuente: Primera Página – Agencia de Noticias Fecha: 23/04/2009

<http://www.primeropagina.com.co/MostrarDocumentoPublico.aspx?id=1210127>

Los hijos del presidente no efectuaron trámites para favorecer sus predios, asegura Mintransporte

Caracol 1 Abril 23 de 2009

<http://www.caracol.com.co/nota.aspx?id=800198>

Tomás y Jerónimo Uribe, ¿los zares del reciclaje?

Fuente: El Heraldó Fecha: 5 May 2009

http://www.elheraldo.com.co/ELHERALDO/BancoConocimiento/X/x6tomas_y_jeronimo_uribe_%C2%BFlos_zares_del_reciclaje/x6tomas_y_jeronimo_uriCodSeccion=48

Los recicladores encuentran un competidor inesperado en el negocio de la basura: los hijos de Uribe. Fecha: 20 de Abril, 2009

Fuente: La Silla Vacía

<http://www.lasillavacia.com/historia/1137>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. 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 and high level officials might be audited as accusations or scandals emerge, but there is no mechanism or procedure to ensure regular auditing.

The 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 always has to be 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 in the hands of the chief of personnel in each government entity, but there is no specific regulation for high ranking executive officials. It is stated that the chief of personnel has to review every six months the veracity of declarations using a random selection method, but the process is still not regularized. According to the OAS, it is expected that the creation of a new system of Information and Management of Public Employment (SIGEP) could improve the registry and auditing of asset disclosure forms.

According to the most recent report of the Colombian government regarding the implementation of the Interamerican Convention Against Corruption, the Government is taking measures to allow the publication of elected officials' asset disclosure forms, yet these forms are still not public.

A recent episode around a topic that has caused heated debates illustrates the difficult nature that the auditing of asset disclosure forms may have in practice. The businesses conducted by the president's sons, although apparently conducted following all legal procedures, have raised many doubts and criticisms regarding the privileged status that the president's sons have to access crucial information and to benefit from their close contact with government members.

As a response, the president offered to disclose his and his sons' asset reports to the General Attorney (Procurador). However, as of July 2009 no effective action had been taken to review these forms because it is not clear if the attorney can review the asset disclosure forms of the president (according to law, the president can only be investigated by the Accusations Commission of Congress), and the attorney cannot review the president's sons asset disclosure forms because they are not public servants.

References:

Presidente Álvaro Uribe entregará sus declaraciones de renta al Procurador, Edgardo Maya Villazón. Fuente: El Tiempo
http://www.eltiempo.com/colombia/politica/presidente-lvaro-uribe-entregara-sus-declaraciones-de-renta-al-procurador-edgardo-maya-villazon_4688768-1
Fecha: 26 Nov 2008

Maya no sabe si puede revisar declaración de renta de Uribe
Fuente: El Espectador Fecha: 3 Dic 2008
<http://www.elespectador.com/articulo95903-maya-no-sabe-si-puede-revisar-declaracion-de-renta-de-uribe>

Partido Liberal llama a hijos del Presidente a mostrar declaraciones de renta
Fuente: El Espectador.com Fecha: 21 Abr 2009
<http://www.elespectador.com/articulo136979-partido-liberal-llama-hijos-del-presidente-mostrar-declaraciones-de-renta>

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

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.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

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. Any citizen can request information through rights of petition and although there is no explicit exemption for asset disclosure forms in the Constitutional norm that guarantees access to information, the private/personal nature of the information included in asset disclosure forms can make them reserved under habeas data protection.

According to the constitution, the rulings of the Constitutional Court, and the habeas data law, only individuals can authorize the use of information registered about them in databases of public institutions. In conclusion, 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".

The Constitution of Colombia 1991, article 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.

30b. 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 (Procurador), 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.

According to the constitution, the new habeas data law, and the rulings of the Constitutional Court citizens can authorize the use of information about them registered in databases of public institutions. In conclusion, 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".

Constitution of Colombia 1991, article 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.

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.

30c. 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 (Procuraduría), 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.

According to the constitution, the new habeas data law, and the rulings of the Constitutional Court citizens can authorize the use of information about them registered in databases of public institutions. In conclusion, 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".

Constitution of Colombia 1991, article 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.

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.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

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".

Constitution of Colombia 1991, article 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

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

26. 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. These are the "acción de tutela" (tutelage action or resource to defend basic rights), the "acción de cumplimiento" (observance action), which makes a law or administrative act effective; "derecho de petición" (right of petition to request information), and the "popular action", which protects collective rights.

Article 89 of the constitution also expresses that the law should create other tools to protect individual and collective rights against state actions.

The legal resources would be 1) recall mechanism for elected authorities, 2) nullity action and reposition of the rights, 3) action of reparation, and 4) electoral action of nullity.

Some of those mechanisms, such as the "tutela" (tutelage action) and right of petition are better known by citizens.

In consequence, these and the rights of petition are more widely used by citizens to protect themselves from government actions.

References:

Constitution of Colombia, 1991, articles 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.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

75

31. 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 Law 734 of 2002, public servants with civil and political authority and those in managerial posts are forbidden from participating in the activities of political parties and in political controversies. Doing so would be the cause for a disciplinary sanction. Although there can be clear political party influences in civil service or in independent government institutions, resources and personnel are formally separated.

Legally public servants are not allowed to participate in politics and campaigns during election times. However, in practice elected officials and public servants sometimes can use official funds to promote campaigns for the candidates or parties of their preference. Reports of this kind of irregularities appeared during the 2007 local elections. During the study period, a debate has emerged regarding whether public officials are allowed to campaign for a referendum on re-election.

Given the different nature of referenda and normal elections, opinions are divided on whether public servants can actively support one side of the campaign. The situation is not clear but many public servants, including members of the national executive have actively supported the campaign.

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 RESPUESTA A TRIBUNAL DE GARANTÍAS ELECTORALES: [LINK] lang_frlang_en

ENTRE LAS CAMPAÑAS, LA CENSURA Y LA PAUTA PUBLICITARIA: BALANCE DE LA ACTIVIDAD PERIODÍSTICA EN LAS ELECCIONES DE 2007 Por Carlos Cortés Castillo* [LINK] 05-Dec-2007 17:05

Participación política de los funcionarios, todo un enredo. Por: Edward Jaramillo González. <http://www.elcolombiano.com/proyectos/referendo2003/serie/participacion.htm>

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

32. Can members of the legislature be held accountable for their actions?

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

According to Chapter 4 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:

Constitution of Colombia 1991, Chapter 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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The amount of bills that is reviewed by the Constitutional Court each year has increased 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. In 2007, the Court issued 195 Constitutionality rulings. The effectiveness of the Constitutional Court is such that it is sometimes criticized by sectors which consider that 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 decisions on a very wide range of matters. During the past year, some of the most noted rulings of the court were those related with the constitutionality of an exceptionality state (estado de conmoción interior) declared by the government in December 2008 in order to confront a strike in the judiciary.

Currently the court is reviewing the constitutionality of a political reform approved in May 2009 (which has 16 demands of unconstitutionality) and of a referendum aimed at approving the use of death penalty against child rapists.

Former magistrates and experts coincide in stating that the current Constitutional Court lost independence from the government as the president has had a huge influence in recent selections of magistrates.

References:

Pasó la Reforma politiquera

Fuente: Revista Semana Fecha: 7 Mayo 2009

<http://www.semana.com/noticias-politica/paso-reforma-politiquera/123708.aspx>

Presidente de la Corte Constitucional pidió más eficiencia para evitar proliferación de tutelas. El Tiempo. 23 de Agosto de 2008

Anuncian demanda contra reforma política recién aprobada

Fuente: Vanguardia Fecha: 07 de Mayo de 2009

<http://www.vanguardia.com/politica/93-politica/27703-anuncian-demanda-contra-reforma-politica-recien-aprobada>

Por demanda de parágrafo de la reforma Concejalas y diputados a riesgo de quedarse 'sin el pan y sin el queso'

<http://www.el-informador.com/detgen.php?id=54750>

Referendo para que violadores de niños reciban cadena perpetua llegó a la Corte Constitucional

Fuente: Bogotá Respira Fecha: 22 de Julio de 2009

<http://www.davidluna.com.co/nuevositio/hot-topic/452-referendo-para-que-violadores-de-ninos-reciban-cadena-perpetua-llego-a-la-corte-constitucional.html>

Aplanadora uribista aprueba en último debate referendo de reelección

Fuente: El Espectador Fecha: 19 Mayo 2009

<http://www.elespectador.com/articulo141532-aplanadora-uribista-aprueba-ultimo-debate-referendo-de-reeleccion>

Denuncian a promotores del referendo reeleccionista

Fuente: La Libertad.com Fecha: Enero 09, 2009

<http://www.lalibertad.com.co/dia/ene09/po1.htm>

La Corte Constitucional y el referendo reeleccionista

Fuente: Revista Semana Fecha: 02/10/2009

<http://www.semana.com/multimedia-justicia/corte-constitucional-referendo-reeleccionista/1574.aspx>

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.

32c. 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).

The legislators can lose their investiture (the privilege of being prosecuted only by the Supreme Court of Justice) for violating the regime of inabilities and incompatibilities, for not attending 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.

In June 2008, the Supreme Court initiated investigations against two senators regarding their alleged involvement with the FARC guerrillas. The investigation was closed in July 2009 as there was not enough proof to charge any of the accused members of Congress.

In May 2009, and in a very controversial decision, the court sentenced legislator Teodolindo Avendaño to eight years in prison and his colleague Ivan Diaz Mateus to six years within a scandal known as "Yidispolitica", which referred to anomalies and influence peddling during the voting of the Constitutional Reform in 2004, which allowed the second re-election of President Alvaro Uribe.

In May 2009 the court also opened a preliminary investigation against 86 legislators because of irregularities that may have occurred during the discussion and approval of a referendum that would allow President Alvaro Uribe to run for a third presidential term.

The actions and decisions of the Supreme Court of Justice, in most cases opposed to the president, have created during the past two years a strong confrontation between the government and the judiciary.

The Supreme Court of Justice has been subject of strong political pressures because of its investigations against legislators. There have also been debates among different institutions (i.e the Supreme Court and the General Attorney (Procurador)) reflecting the confusion of principles and responsibilities that emerges sometimes regarding the penal investigation of legislators.

Despite the existence of investigative mechanisms, it is important to note that according to the 2007-08 index of transparency conducted by Transparency for Colombia, the congress is among the institutions at higher levels of risk for corruption, with very low levels of visibility, institutionalality, and sanction.

References:

Constitucion Política de Colombia art. 186

La reforma a la justicia Fecha: 31 Jul 2008

Fuente: El Espectador.com

<http://www.elespectador.com/opinion/editorial/articulo-reforma-justicia>

Corte reclama investigar a congresistas y critica Reforma a la Justicia

Fuente: Terra Colombia Fecha: Octubre 14 de 2008

<http://www.terra.com.co/actualidad/articulo/html/actu15705-corte-reclama-investigar-a-congresistas-y-critica-reforma-a-la-justicia.htm>

La justicia emprende investigaciones por Farc-política

Fuente: Caracol Fecha: Mayo 22 de 2008

<http://www.caracol.com.co/nota.aspx?id=601090>

Se destapa la Farc-política

Fuente: Revista Semana Fecha: 11 Junio 2009

<http://www.semana.com/noticias-politica/destapa-farcpolitica/124991.aspx>

Se desmorona la Farc Política

Fuente: Radio Todelar Fecha: Julio 25, 2009

<http://www.todelar.com/node/2466>

Corte absuelve al senador Jaime Dussan por la Farc-Política

Fuente: Radio Santafe Fecha: Julio 28, 2009

<http://www.radiosantafe.com/2009/07/28/corte-absuelve-al-senador-jaime-dussan-por-la-farc-politica/>

Procuradores de bolsillo Por María Jimena Duzán

Fuente: Revista Semana Fecha: 11 Abril 2009

<http://www.semana.com/noticias-opinion/procuradores-bolsillo/122730.aspx>

Procuraduría absuelve a embajador y a ministro por 'Yidispolitica'

Fuente: La W Radio Fecha: Marzo 16 de 2009

<http://www.wradio.com.co/nota.aspx?id=778833>

Apelan fallo absolutorio de la procuraduría en 'Yidispolitica' Abril 1 de 2009

<http://www.wradio.com.co/nota.aspx?id=788380>

Comments:

The regime of inabilities and incompatibilities for legislators of the constitution (article 180) 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 from giving 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, but there is no specific mention of employment after leaving office.

Although there is regulation about post-public sector employment, some people consider that the problem is not the lack of a specific regulation, but the lack of enforcement of the existing inabilities and incompatibilities rules.

In any case, the revolving door" of employees leaving public sector to the private sector is seen as one of the core problems of public administration in the country.

References:

Constitution of Colombia 1991, article 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. [LINK]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.

33c. 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.

Law 734 of 2002, which refers to the disciplinary code for public servants, forbids receiving or requesting gifts from users or employees who may have an interest on their performance, and Law 190 of 1995 introduces influence peddling as a criminal offense.

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 Por la cual se reforma el Código Disciplinario"

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.

33d. 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. 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 public servants to fill this form in order to take office.

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.

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 a software named 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.

33e. 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, although other regulations aimed at preventing conflicts of interest do exist. In any case, there are many deficiencies in such regulations governing conflicts of interests.

For example, a 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:

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 cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

Comments:

There are several restrictions on the effectiveness of the inabilities and incompatibilities regime.

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. Although some of these meetings do not involve gift giving, it is difficult to draw the line between legal and illegal lobbying, since most of these activities are not completely public.

Additionally, regulations that declare impediments during the discussion of legislative projects are not totally clear and in practice legislators participate in debates even when they have declared their conflicts. Experts agree that regulations on lobbying are strongly needed as well as more clarity about how projects are distributed and discussed among legislators in Congress.

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.

One manifestation of these problems is that the congress is one of the least trusted institutions in the country. According to the 2007-08 index of transparency conducted by Transparency for Colombia, Congress is among the institutions at higher levels of risk for corruption, with very low levels of visibility, institutionality, and sanction.

The lack of trust in congress has deepened as scandals reflecting how members of the Legislature are easily captured not only by private interests, but also by illegal actors, continue emerging.

Since 2006 the para-política scandal linked more than 50 legislators with paramilitary groups, and during the study period evidence linked one legislator to one of the biggest embezzlement scandals in the country (embezzlement in a public pensions fund, CAJANAL), and another with DMG, a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners. DMG was shut down in 2008 because such collection of funds was illegal and because DMG was apparently a façade for money laundering from drug trafficking.

A recent evaluation made by the nongovernmental organization Congreso Visible in the department of Tolima about transparency of legislators found that legislators from that region presented about 80 law projects that are completely unrelated to the region they are supposed to represent and seem to respond only to clientelistic interests.

It is known that when the government wants to get legislative support for its initiatives, legislators are invited to the presidential palace to discuss support for projects, then ministers initiate a process of lobbying and usually the negotiation of support ends with the distribution of bureaucratic posts.

Even though some of these meetings are known by the public, the regulations and the limits between political negotiation and cronyism are difficult to draw.

During the study period a former superintendent of notaries made public that about 34 legislators exchanged their vote in favor of presidential re-election in 2004 for the assignment of notaries to their friends and family. In July 2009, the Supreme Court of Justice initiated preliminary investigation for these episodes.

References:

Los pagarés del presidente del Congreso

Fuente: Revista Semana Fecha: 18 Octubre 2008

<http://www.semana.com/noticias-politica/pagares-del-presidente-del-congreso/116778.aspx>

Con un 'mico' legalizarían a DMG en la reforma financiera

Fuente: Caracol Fecha: Noviembre 19 de 2008

<http://www.caracol.com.co/nota.aspx?id=713538>

Zulema Jattin es la autora del 'mico' a favor de DMG

Fuente: Vanguardia Fecha: 26 de Noviembre de 2008

<http://www.vanguardia.com/pais/103-pais/13905-zulema-jattin-es-la-autora-del-mico-a-favor-de-dmg>

Se revelan nuevas pruebas sobre presunta entrega de dineros de DMG a congresistas

Fuente: Radio Santa Fe Fecha: Julio 6, 2009

<http://www.radiosantafe.com/2009/07/06/se-revelan-nuevas-pruebas-sobre-presunta-entrega-de-dineros-de-dmg-a-congresistas/>

Exsuperintendente de Notariado y registro confirma corrupción a cambio de votos por reelección presidencial

Fuente: Periódico el Sol.net Fecha: 28 de junio de 2009

<http://www.periodicoelsol.net/noticia.php?id=2045>

Corte abre investigación a 34 congresistas por feria de notarías

Fuente: Radio Santa Fe Fecha: Julio 8, 2009

<http://www.radiosantafe.com/2009/07/08/corte-abre-investigacion-a-34-congresistas-por-feria-de-notarias/>

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

Tolimenses exigen rendición de cuentas de congresistas que los representan

Fuente: El Tiempo Fecha: 22 Jul 2009

<http://www.eltiempo.com/colombia/tolima/tolimenses-exigen-rendicion-de-cuentas-de-congresistas-que-los-representan-5644298-1>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms of the legislature are sometimes audited, but there is no mechanism or procedure to ensure regular auditing.

The Law 190 of 1995 requires all public servants to declare their participation in private affairs as well as foreign accounts, loans and credits, and more, but there is no formal requirement for the independent audit of asset disclosure forms. This same law 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 a software named SIDECA 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.

According to the OAS, it is expected that the creation of a new system of Information and Management of Public Employment (SIGEP) could improve the registry and auditing of asset disclosure forms.

References:

Corporación Transparencia por Colombia. Índice de Transparencia Nacional, Entidades públicas nacionales. 2006. Bogotá.

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

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: 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.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. 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 (Procuraduría), the heads of personnel offices in each entity, and the National Registry's Office. Asset disclosure records are not easily available, 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.

According to the recently issued habeas data law, the constitution and the rulings of the Constitutional Court, in order to access information about citizens registered in databases of public institutions, the individuals should authorize such access. 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".

The Constitution of Colombia 1991, article 1

Estado Actual de la Ley de habeas data.

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.

34b. 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 (Procuraduría), the heads of personnel offices in each entity, and the National Registry's Office.

Asset disclosure records are not easily available, 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. A

According to the habeas data law, the Constitution and the rulings of the Constitutional Court, in order to access information about citizens registered in databases of public institutions, individuals should authorize such access. In conclusion, 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".

The Constitution of Colombia 1991, article 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.

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.

34c. 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 (Procuraduría), the heads of personnel offices in each entity, and the National Registry's Office.

Asset disclosure records are not easily available, 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.

According to the habeas data law, the Constitution and the rulings of the Constitutional Court, in order to access information about citizens registered in databases of public institutions, individuals should authorize such access. In conclusion, 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".

The Constitution of Colombia 1991, article 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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

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.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Given the difficulties in accessing asset disclosure forms it is difficult to know the quality of these reports. However when proof of

misconduct emerge, then asset disclosure reports might be requested.

But as the recent case of Senator Habib Merheg illustrates, legislators may use a variety of techniques in order to hide some sources of income.

References:

Senador Habib Merheg vuelve a escena por negocios que despiertan sospechas a autoridades judiciales
Fuente: Revista Cambio Fecha: 2 de noviembre de 2008

http://www.cambio.com.co/paiscambio/789/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4445399.html

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".

The Constitution of Colombia 1991, article 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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

Las artimañas de Habib Merheg

Fuente: Prensa Rural Fecha: 23 de septiembre de 2008

<http://www.prensarural.org/spip/spip.php?article1519>

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

67

35a. 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 congress, there should be a record with the participants, the interventions, the propositions and the decisions taken.

There should be an official printed media called Gaceta del Congreso (Congressional Gazette) for the publicity of all legislative debates. A fifth of the members of the respective chamber or commission can declare sessions closed. The law also provides that the activities of congress should have permanent spaces in radio and television.

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, 88, 195

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. 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 (Congressional Gazette). All records are available except those of closed 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 at high levels of risk of corruption and have very low levels of visibility, 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. For example a recent evaluation made by the nongovernmental organization Congreso Visible in the department of Tolima found that legislators from that region presented about 80 law projects that are completely unrelated to the region they are supposed to represent and seem to respond only to clientelistic interests.

References:

www.congreso.gov.co

Programa Congreso Visible Universidad de los Andes.

Transparencia por Colombia. Índice de Transparencia Nacional 2007-2008. <http://www.transparenciacolombia.org.co/>

Tolimenses exigen rendición de cuentas de congresistas que los representan

Fuente: El Tiempo Fecha: 22 Jul 2009

<http://www.eltiempo.com/colombia/tolima/tolimenses-exigen-rendicion-de-cuentas-de-congresistas-que-los-representan-5644298-1>

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.

35c. 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 Congressional Gazette. For old records, the cost is for photocopying. These records include approved laws and background debates in commissions and in the plenaries.

Although citizens can have access to legislative documents at a low cost, both the Senate and especially the Lower Chamber are at high levels of risk of corruption and have very low levels of visibility, 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.

Thus, some important information (such as negotiations on projects or lobbying efforts, or administrative and procurement processes within the legislature) might not be available for citizens. When the information is officially public, it is available at no cost. Older records; however, require a visit to the congressional archives in the capital city.

References:

www.congreso.gov.co

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.

51 III-3. Judicial Accountability

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Justices of the Supreme Court 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.

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. 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 recur to the Citizen Oversight Committees" established in the Constitution as a mechanism to oversee processes and result in public administration, as it has been recently the case with a group of civil society organizations creating an Oversight Committee for election processes of national level justices.

References:

The Constitution of Colombia 1991, articles 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.

36b. In practice, professional criteria are followed in selecting national-level judges.

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 penal sentence, with 10 years of experience in a judicial post or in the public ministry, or to have 10 years experience as lawyer in exercise or university professor.

In practice, almost all national level justices usually meet these criteria. Yet, political criteria do play a role in the selection of judges although the independence of the judiciary has increased since the new constitution was issued in 1991.

Yet, over the last two years, the selection of justices has become more political. In 1999, the nongovernmental organization 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 organization reported that these courts opened the access to information about candidates and opened a channel for citizens to report any irregularity of these candidates that are selected from within the court.

In the second half of 2008, four new magistrates in the Superior Council of the Judicature were elected from the lists proposed by President Uribe by a Congress that is mainly Uribista. As a result, the Council is now totally pro-government, a novel situation in the country. The rationale for allowing the president to propose candidates was to give him power, but this process was thought of in a context where presidential re-election was prohibited. In the new context in which the president is now in his second term, this process appears to be too risky for the independence of the judiciary vis-a-vis the executive.

According to some observers such as the NGO Excellence in Justice the selection of candidates for Magistrates by the President is driven more by political criteria than by professional criteria. For example in March 2009 the Government presented candidates to replace Magistrates in the Constitutional Court, but none of the candidates appeared to have significant experience in Constitutional Law and rather seemed to have more experience in private law. Furthermore, 5 out of 6 candidates obtained their degrees in the same University, known by its ideological position rather than by its academic quality. High politicization of candidates was also perceived in the process to select the new General Prosecutor (Fiscal General).

In conclusion, as conflicts between the executive and the judiciary increase and executive power increases along with the popularity of the president, the guarantees for non political criteria in the selection of justices are weakened, and therefore the independence of the Judiciary is threatened. The Supreme Court of Justice is still recognized by its opposition to the Government, but the Constitutional Court and the Superior Council of the Judicature seemed to be increasingly tied to the Executive.

References:

Uribe consigue control del órgano que vigila y sanciona a los jueces . 3 Septiembre 2008

http://semana.com/wf_InfoArticulo.aspx?idArt=115127

Sombra de duda en la tutela a favor del Ministro

Fuente: Revista Semana Fecha: 2 Octubre 2008

<http://www.semana.com/noticias-justicia/sombra-duda-tutela-favor-del-ministro-palacio/116145.aspx>

Marcado sesgo en candidatos de Uribe a la Constitucional

Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

Fiscalía general de la Nación

Gobierno designa terna para escoger Fiscal General

Fuente: El Espectador.com Fecha: 3 Jul 2009

<http://www.elespectador.com/articulo148885-gobierno-designa-terna-escoger-fiscal-general>

Candidatos a fiscal admitieron su cercanía con el gobierno

Fuente: Elección Visible – WRadio

<http://www.eleccionvisible.com/index.php?> Fecha: 06 de julio de 2009

[option=com_content&view=article&id=514:candidatos-a-fiscal-admitieron-su-cercania-con-el-gobierno&catid=57:columnas-de-opinion-y-editoriales&Itemid=200](http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=514:candidatos-a-fiscal-admitieron-su-cercania-con-el-gobierno&catid=57:columnas-de-opinion-y-editoriales&Itemid=200)

Candidato a Fiscal está siendo investigado por posible soborno Julio 13, 2009

<http://www.radiosantafe.com/2009/07/13/candidato-a-fiscal-esta-siendo-investigado-por-posible-soborno/>

Corte Suprema considera pedirle al Presidente Uribe que revalúe terna para Fiscal

Fuente: Corporación Excelencia en la Justicia – El Tiempo Fecha: 06 de Agosto de 2009

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1653:corte-suprema-considera-pedirle-al-presidente-uribe-que-revalue-terna-para-fiscal&Itemid=198

Elección Visible pide a los ternados que declinen de su aspiración a ser Fiscal General de la Nación.

Fuente: Elección Visible Fecha: Julio 29 de 2009.

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=642:eleccion-visible-pide-a-los-ternados-que-declinen-de-su-aspiracion-a-ser-fiscal-general-de-la-nacion&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

Elección Visible pide a los medios, su respaldo en la solicitud de renuncia a los candidatos a Fiscal.

Fuente: Elección Visible Fecha: Agosto 4 de 2009.

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=684:eleccion-visible-pide-a-los-medios-su-respaldo-en-la-solicitud-de-renuncia-a-los-candidatos-a-fiscal&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

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.

36c. 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:

The Constitution of Colombia 1991, articles 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 or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

75

37a. 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 justice 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:

The Constitution of 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).

37b. 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.

According to the 2007-2008 transparency indexes produced by Transparency for Colombia, the level of corruption in the judiciary increased compared to the former assessment, although it is still lower than in the executive, legislature and the General Attorney's Office.

One of the institutions perceived to be more corrupt is the Superior Council of the Judicature, and this is very worrying considering that this court is in charge of disciplinary oversight in the judiciary. The politicization of the Superior Council while being now completely composed by government supporters negatively impacts the transparency of the decisions made by this court.

It is also the case in the Constitutional Court, which over the past two years has lost independence vis-a-vis the government, and thus its ability to explain some decisions has decreased also.

At the local level, security constraints on judges, attorneys and lawyers limits them to give full explanation of their decisions. They can be prey to threats from armed groups, drug traffickers, and corrupt politicians if they fully publicize their decisions, or it might be impossible to explain decisions which have been made answering to these pressures.

It is important to note that the security situation for judges has improved as there are no reports on kidnapping, murders or physical attacks on them during the study period. However, there are still indications that judges are threatened or bribed by different individuals, especially paramilitary and guerrilla groups.

According to the results of a recent survey of citizens on perceptions about democracy, about 45 percent of respondents consider that there is a high level of corruption in the judiciary 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. Citizens are not certain about the access, opportunities, and efficiency in the judiciary. In conclusion, there is still a weak culture of accountability in the judiciary and of the need of transparency in judicial decisions. Experts consider that there is no systematic information of penal decisions that could constitute a body of precedent and knowledge in investigating and punishing corruption cases.

References:

En 23 entidades estatales acecha la corrupción Fecha: 29 Julio 2009

<http://www.semana.com/noticias-politica/23-entidades-estatales-acecha-corrupcion/126779.aspx>

Percepción de corrupción en la justicia en Colombia

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/transparencia/tabid/67/Default.aspx>

Global Corruption Barometer 2009. Fuente: Transparency

International http://www.transparency.org/policy_research/surveys_indices/gcb/2009

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.

37c. 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 respects to judges' actions.

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. National level justices are judged by the Commission of Accusations of the Lower Chamber.

References:

The Constitution of Colombia 1991, articles 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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The 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 Judicature) 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
The Constitution of Colombia 1991, articles 228, 254

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. 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 Judicature) does start investigations on members of the judiciary but statistics about members of the judiciary being investigated are not completely reliable. This demonstrates a lack of transparency in the disciplinary control within the judiciary.

During July 2009 alone, there were three judges and four prosecutors sanctioned by the Superior Council. Since 1992 there have been disciplinary sanctions against 1,415 judges and prosecutors. Yet, according to the director of the nongovernmental organization Excellence in Justice (Corporación Excelencia en la Justicia), rigorous disciplinary mechanisms are lacking, especially because most sanctions refer to minor faults, whereas there are few paradigmatic sanctions on corruption cases.

According to the most recent official statistics, in 2007 the Superior Council started with 2,718 processes at the national level and 33,182 processes at the local level and finalized the year with 3,586 at the national level and 25,854 at the local level.

At the national level there were 907 new disciplinary investigations against members of the judiciary (for a total of 15,568 active processes) and took action on 1,394 cases, representing an improvement in the number of cases effectively processed and an

advance in reducing backlog, although backlog 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 decisions on 197 cases and sent 9,932 cases to the archives.

Besides congestion in the judiciary another hindrance for the effective initiation of investigation is that besides the Superior Council of the Judicature, the Procuraduría General de la Nación (General Attorney's Office) and the Fiscalía General de la Nación (General Prosecutor for penal offenses) 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 especially on the most complicated cases, like those related to corruption networks, the undue provision of advantages to drug traffickers or paramilitaries.

References:

Consejo Superior de la Judicatura ha destituido a 80 jueces en 17 años

Fuente: El Tiempo Fecha: 03 de Julio de 2009 00:00

<http://www.eltiempo.com/archivo/documento/CMS-5576607>

Consejo Superior de la Judicatura. 2008. Informe al Congreso. 2007 – 2008

http://www.ramajudicial.gov.co/csj_portal/jsp/frames/index.jsp?idsitio=21

La Hora de la Justicia. Entrevista con Gloria Maria Borrero Directora Corporacion Excelencia en la Justicia. Revista Semana.

Septiembre 8 de 2008. <http://www.semana.com/noticias-politica/hora-justicia/128395.aspx>

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.

37f. 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 of members of the judiciary.

Since 1992 there have been disciplinary sanctions to 1,415 judges and prosecutors. The Council has also imposed sanctions on 10,110 lawyers since its creation in 1992.

Compared to 2006, in 2007 at the national level there was a 25 percent increase in destitutions against members of the judiciary, 23 percent increase in suspensions and 16 percent increase in warnings. There was also a 29 percent increase in absolutions. Thus, although there has been an improvement in reducing the backlog of cases, there are still restrictions in making effective decisions on disciplinary processes. As a result as of December 2007, there were still 12,502 active cases at the local level.

In July 2008 the Superior Council reported to have sanctioned 106 lawyers and employees of the judiciary, including three judges, four attorneys and three sectional justices. Sanctions included fines and suspensions. Although statistics show that there are sanctions, but a reform is still needed in order to clarify types of offenses that judiciary employees can commit and the most appropriate sanctions for each offense.

References:

Consejo Superior de la Judicatura ha destituido a 80 jueces en 17 años

Fuente: El Tiempo Fecha: 03 de Julio de 2009 00:00

<http://www.eltiempo.com/archivo/documento/CMS-5576607>

Consejo Superior de la Judicatura. 2008. Informe al Congreso. 2007 – 2008

http://www.ramajudicial.gov.co/csj_portal/jsp/frames/index.jsp?idsitio=21

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.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

54

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

According to the 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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

According to the 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.

38c. 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 auditing 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 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 a software named 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.

38d. 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, 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 734 of 2002 also states that when the general interest is in conflict with a private or direct interest of a public servant, he or she should declare to be impeded.

Although these norms may be interpreted as a cooling off period, they have not been effectively applied as a restriction on employment after leaving office. In fact, former Anticorruption Zar and current Senator Rodrigo Lara, has proposed a new anticorruption law including a norm prohibiting private employment for public officials leaving office. This law project follows recommendations regarding the implementation of international anticorruption conventions. The project has not yet been approved.

Although there is no formal regulation about post public sector employment, some experts consider that the problem is not the lack of an specific regulation, but the lack of enforcement of the existing inabilities and incompatibilities regime. In any case, the revolving door, or the transfer of employees from the public to the private sector, is seen as one of the core problems of public administration in the country.

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.

References:

The Constitution of Colombia, article 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

PONENCIA PARA PRIMER DEBATE AL PROYECTO DE LEY 036 DE 2008 SENADO
www.confecamaras.org.co/documentos/juridico/.../036CORRUPCION.doc

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.

38e. 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:

The Constitution of Colombia, article 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

Revelan grabación que enreda a candidato a Fiscal Juan Ángel Palacio con tráfico de influencias

Fuente: Elección Visible Fecha: Jueves 23 de Julio de 2009 14:05

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=614:revelan-grabacion-que-enreda-a-candidato-a-fiscal-juan-angel-palacio-con-trafico-de-influencias&catid=56:noticias&Itemid=199

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. 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 bribery are common in the justice sector, especially at the local level.

During the study period a case of corruption and influence peddling in the Council of State became public and illustrated that corruption may also be reaching high level positions. It has been alleged that Juan Ángel Palacio, an aspiring candidate for General Prosecutor (Fiscal), facilitated decisions favorable to private actors when he was a member of the Council of State. Although the investigation was closed given the lack of proof, it generated widespread doubts about transparency in judicial decisions.

According to the 2007-2008 transparency indexes produced by Transparency for Colombia, the level of corruption in the judiciary increased compared to the former assessment, although it is still lower than in the executive, legislature and the General Attorney

's Office.

One of the institutions perceived to be more corrupt is the Superior Council of the Judiciary. 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 the extent of corruption seems to be wider in the legislative and the executive than in the judiciary.

Since June 2008, there has been a scandal regarding relations of justices of the Supreme Court of Justice and the Superior Council of the Judiciary with Giorgio Sale, an Italian businessman" who was also a drug trafficker and had very close links with paramilitaries in Colombia.

The veracity of accusations, especially against the justices of the Supreme Court of Justice is difficult to determine because they have political undertones given the active opposition of the Supreme Court to the government and the proximity of the Superior Council to the president. It has not been determined yet the extent to which Sale, who posed as a businessman in Colombia, was benefiting from his relations with justices, and if justices were in fact aware of any illegal conduct.

In any case, one thing is clear is that justices, especially ones in the Superior Council, received constant gifts and hospitality from the Italian businessman, and it is still difficult to determine if those gifts were in fact inadequate.

References:

En 23 entidades estatales acecha la corrupción Fecha: 29 Julio 2009

<http://www.semana.com/noticias-politica/23-entidades-estatales-acecha-corrupcion/126779.aspx>

Percepción de corrupción en la justicia en Colombia

<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/transparencia/tabid/67/Default.aspx>

Global Corruption Barometer 2009. Fuente: Transparency

International http://www.transparency.org/policy_research/surveys_indices/gcb/2009

Las grabaciones del proceso italiano que no se conocen en Colombia – La alianza entre Giorgio Sale y Mancuso

Fuente: El Espectador Fecha: 14 Jun 2008

<http://www.elespectador.com/impreso/investigacion/articuloimpreso-alianza-entre-giorgio-sale-y-mancuso>

Por nexos con Sale, a indagatoria El magistrado Yesid Ramírez y el ex magistrado Carlos Isaac Náder Fecha: 17 Sep 2008

Fuente: El Espectador

<http://www.elespectador.com/impreso/judicial/articuloimpreso-nexos-sale-indagatoria>

Magistrado Escobar Araújo fue el más visitado por Giorgio Sale en 2006

Fuente: Revista Cambio Fecha: 26 Nov 2008

http://www.cambio.com.co/paiscambio/804/4689492-pag-2_2.html

Magistrado Escobar Araújo ganó tercera tutela contra periodistas

Fuente: El Tiempo Fecha: 28 May 2009

<http://www.eltiempo.com/colombia/justicia/magistrado-escobar-araujo-gano-tercera-tutela-contra-periodistas- 5300209-1>

Bitácora de chuzo en el DAS

Fuente: El Espectador Fecha: Mayo 16

<http://www.elespectador.com/impreso/articuloimpreso141174-bitacora-de-chuzo-el-das>

La Hora de la Justicia, entrevista con Gloria María Borrero Directora de la Corporación Excelencia en la Justicia. Revista Semana. Septiembre 8 de 2008. <http://www.semana.com/noticias-politica/hora-justicia/128395.aspx>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure forms of the judiciary are sometimes audited when scandals emerge, but there is no mechanism or

procedure to ensure regular auditing.

The Law 190 of 1995 obliges all public servants to declare their participation in private affairs as well as foreign accounts, loans and credits, but there is no formal requirement for the independent audit of asset disclosure forms. There is a unit within the Ministry of Finance (UIAF, Unit of Financial Analysis and Investigations) that investigates money laundering, and within its work may analyze assets of any public official.

During the study period, and in close collaboration with the Central Intelligence Agency (DAS), the UIAF analyzed asset disclosures of several justices in the Supreme Court and in the Superior Council of the Judicature. The problem is that this follow up was unofficial, was not part of a judicial investigation, and was in fact part of a broader scandal of illegal wiretapping conducted by the DAS. This episode reflects the limitations and problems that emerge in the correct monitoring of asset disclosure forms and the lack of clear regulations about the UIAF's responsibility in monitoring asset disclosure forms of public officials.

The Law 190 of 1995 only states that 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 members of 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 a software called SÍDEC 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.

According to the OAS, it is expected that the creation of a new system of Information and management of public employment (SIGEP) could improve the registry and auditing of asset disclosure forms.

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".
The Constitution of Colombia 1991, article 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.

Bitácora de chuzo en el DAS

Fuente: El Espectador Fecha: Mayo 16

<http://www.elespectador.com/impreso/articuloimpreso141174-bitacora-de-chuzo-el-das>

Magistrados piden que se aclare qué autoridad permite seguimientos financieros

Fuente: El Espectador Fecha: 8 Jun 2009

<http://www.elespectador.com/articulo144566-uiaf-revela-posibles-vinculos-de-magistrados-personas-actividades-ilicitas>

Informe de la UIAF no contiene pruebas contra magistrados: Fiscal

Fuente: Caracol TV Fecha: 10 Junio 2009

<http://www.caracoltv.com/noticias/justicia/articulo142120-informe-de-la-uiaf-no-contiene-pruebas-contra-magistrados-fiscal>

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: 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. 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.

According to the habeas data law, the Constitution and the rulings of the Constitutional Court, individuals should authorize the use of information about them registered in databases of public institutions. In conclusion, 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".

The Constitution of Colombia 1991, article 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.

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.

39b. 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.

According to the new habeas data law, the Constitution and the rulings of the Constitutional Court, individuals should authorize the use of information about them registered in databases of public institutions should authorize such access.

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".

The Constitution of Colombia 1991, article 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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

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.

39c. 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.

According to the habeas data law, the Constitution and the rulings of the Constitutional Court, individuals should authorize the use of information about them registered in databases of public institutions should authorize such access. In conclusion, 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".

The Constitution of Colombia 1991, article 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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

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.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Given the difficulties to access asset disclosure forms, it is difficult to know the quality of these reports.

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".

The Constitution of Colombia 1991, article 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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The norms that regulate budget approval are the Constitution, the Organic Law of the National Development Plan and the Law of the General Budget. The legislature can amend the budget but the initiative is exclusively in the hands of the executive. Congress can change but cannot increase the budget proposal. 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 September 15 each year.

According to the 2005 IBP assessment of budget process in eight Latin American countries, Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score among the 8 countries) and 45 in what refers to the attributions of the Legislature (the fourth place among the eight assessed countries).

References:

El sistema presupuestal.

The Constitution of Colombia 1991, article 150

La programación presupuestal.

Auditoria.gov.co

Indice Latinoamericano de Transparencia Presupuestaria
2005. <http://www.fundar.org.mx/indice2005/docs/paises/ReporteColombia2005.pdf>

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.

40b. 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. Yet the government can propose extraordinary expenditures, and although these have to be approved by Congress, in practice the Executive has implemented important budget decisions without legislative approval. Budget approval is usually heatedly debated in Congress, but usually the result is that the executive is able to approve its budget introducing some amendments in order to negotiate with legislators.

In practice the biggest power in budget proposals 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 legislature exerts political control of the budget and to meet this responsibility it can call ministers, heads of administrative departments and examine the reports produced by the president, ministers, and heads of the administrative departments. Thus the legislature exerts significant power during budget approval. In practice, congress members introduce budgetary allocations to specific projects, which are usually part of negotiated exchanges. However, the committees in congress need a written authorization by the finance minister to increase a partida de gasto" (expenditure) or introduce a new one, while they can, with some exceptions, eliminate or reduce "partidas de gasto" by their own initiative.

Legislators can introduce amendments to the budget proposal. Yet the general structure of the budget is mostly decided by the technocrats who design the budget in the executive in the first place. According to the 2005 IBP assessment of budget process in eight Latin American countries Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score among the eight countries) and 45 in what refers to the attributions of the Legislature (the fourth place among the eight assessed countries).

The congress does have power in defining expenditures but its effectiveness is shaped by the political relation between the Legislature and the executive. For example during the study period (and in fact since President's Uribe initiated his first period) the fact that the majority of congress is from the president's coalition has weakened the political control congress can exert.

The election of a member of the president's coalition as head of the Economic Commission in the Lower Chamber illustrates how political dynamics in congress can affect its influence on the budget's approval.

For the approval of the 2009 and 2010 budget some opposition legislators and the General Comptroller (Supreme Auditor) heavily criticized the calculations the government used to define the budget using a projection of economic growth that does not consider the situation of financial crisis and low levels of tax collection. Despite these criticisms the budget was approved without major changes, thus illustrating the executive's preeminence. It is important to note that proposals to increase the power of congress in budget proposals have met considerable opposition given the low reputation of congress.

References:

Indice Latinoamericano de Transparencia Presupuestaria

2005. <http://www.fundar.org.mx/indice2005/docs/paises/ReporteColombia2005.pdf>

Presupuesto de la Nación está inflado: senador Camilo Sánchez

Fuente: Dirección de la Cámara de Representantes Fecha: 12 de agosto de 2009

http://direccion.camara.gov.co/prontus_senado/site/artic/20090812/pags/20090812175326.html

Se salvó" el presupuesto general de la Nación de 2009

Caracol Octubre 20 de 2008

<http://www.caracol.com.co/nota.aspx?id=693916>

Aprobado presupuesto General de la Nación que recorta diez mil millones para el mantenimiento y adecuación de vías terciarias

Fuente: Polo Democrático.net Fecha: 20 de octubre de 2008

Protección social será el sector con más inversión en 2010

Fuente: Semana.com Fecha: 30 Julio 2009

<http://www.semana.com/noticias-economia/proteccion-social-sera-sector-inversion-2010/126821.aspx>

<http://www.polodemocratico.net/Aprobado-presupuesto-General-de-la>

Presupuesto de 2010: más deuda, mayor déficit y menor inversión 29 Jul 2009

<http://www.elespectador.com/articulo153404-presupuesto-de-2010-mas-deuda-mayor-deficit-y-menor-inversion>

Presupuesto General de la Nación de 2010 recibió duros cuestionamientos en primer debate en el Congreso

Fuente: Portafolio.com Fecha: 14 agosto de 2009

http://www.portafolio.com.co/economia/economiahoy/ARTICULO-WEB-NOTA_INTERIOR_PORTA-5844148.html

Ley para fortalecer el control fiscal

Fuente: LA NACIÓN, NEIVA Fecha: 16. junio 2009

http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/Ley-para-fortalecer-el-control-fiscal

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.

A marcha forzada, última legislatura del Congreso. Fecha: jul-18

Fuente: La Opinión

http://www.laopinion.com.co/noticias/index.php?option=com_content&task=view&id=33542&Itemid=94

Chávarro, presidente de la Comisión Tercera

Fuente: LA NACIÓN, NEIVA

Fecha: 29. julio 2009

http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/Chavarro-presidente-de-la-Comision-Tercera

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.

40c. 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 congress are among the most professional legislators in congress.

There is a restriction for legislators to change their commission, and thus there is some degree of stability that is also promoted by the existence of congressional 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. However, political criteria for the election of the members of economic commissions may prevail over technical criteria as illustrated by the recent election of a member of the President's coalition as head of the Economic Commission in the Lower Chamber.

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 legislators' daily work. Although UTLs are highly permeated by cronyism and political favors, they have contributed in many cases to make legislators' work more professional.

According to the 2005 IBP assessment of the country budget process (the Latin American component, conducted in eight countries) Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score in Latin America) and 45 in what refers to the attributions of the Legislature (the fourth place among the eight assessed countries).

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.

Indice Latinoamericano de Transparencia Presupuestaria
2005. <http://www.fundar.org.mx/indice2005/docs/paises/ReporteColombia2005.pdf>

Chávarro, presidente de la Comisión Tercera Fuente: LA NACIÓN, NEIVA
http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/Chavarro-presidente-de-la-Comision-Tercera

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.

41. Can citizens access the national budgetary process?

67

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:

According to the Law 5 of 1992 (Statute of Congress) citizens can attend any public session of congress, unless there is a request to make it closed, and sessions are transparent. Discussions are also reserved when expenditures refer to matters of national security (intelligence expenditures, criminal investigation, witness protection). In practice, some substantial negotiations take 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. These are 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 is important to note that there is a good deal of public debate that takes place outside congress.

For the approval of the 2009 and 2010 budgets, there was a lot of discussion between the government, experts and some legislators because the budget represented a great increase in expenditures, despite the situation of global financial crisis and the low levels of tax collection. Even though the government maintained the general structure proposed initially, due to the critiques it ended up reducing some expenditures in both years. It is important to note that these discussions outside congress as well as some efforts promoted by the Supreme Audit Institution to discuss the composition of the security and defense budget, help to publicize better the whereabouts of the approval process.

However, the fact that the majority of congress is from the president's coalition has reduced the transparency of the approval process. The 2009 budget ended up being approved in a rushed debate without much discussion on October 20, 2008.

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 the investment budget.

According to article 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.

According to the 2005 IBP assessment of budget process in eight Latin American countries, Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score among the eight countries) and 45 in what refers to the attributions of the Legislature (the fourth place among the eight assessed countries). Yet the specific item that refers to the existence of public debate on the budget has a low score.

References:

Índice Latinoamericano de Transparencia Presupuestaria

2005. <http://www.fundar.org.mx/indice2005/docs/paises/ReporteColombia2005.pdf>

Presupuesto de la Nación está inflado: senador Camilo Sánchez

Fuente: Dirección de la Cámara de Representantes Fecha: 12 de agosto de 2009

http://direccion.camara.gov.co/prontus_senado/site/artic/20090812/pags/20090812175326.html

Se salvó" el presupuesto general de la Nación de 2009

Caracol Octubre 20 de 2008

<http://www.caracol.com.co/nota.aspx?id=693916>

Aprobado presupuesto General de la Nación que recorta diez mil millones para el mantenimiento y adecuación de vías terciarias

Fuente: Polo Democrático.net Fecha: 20 de octubre de 2008

Protección social será el sector con más inversión en 2010

Fuente: Semana.com Fecha: 30 Julio 2009

<http://www.semana.com/noticias-economia/proteccion-social-sera-sector-inversion-2010/126821.aspx>

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Presupuesto de 2010: más deuda, mayor déficit y menor inversión 29 Jul 2009

<http://www.elespectador.com/articulo153404-presupuesto-de-2010-mas-deuda-mayor-deficit-y-menor-inversion>

Presupuesto General de la Nación de 2010 recibió duros cuestionamientos en primer debate en el Congreso

Fuente: Portafolio.com Fecha: 14 agosto de 2009

http://www.portafolio.com.co/economia/economiahoy/ARTICULO-WEB-NOTA_INTERIOR_PORTA-5844148.html

Ley para fortalecer el control fiscal

Fuente: LA NACIÓN, NEIVA Fecha: 16. junio 2009

http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/Ley-para-fortalecer-el-control-fiscal

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: 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.

41b. 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 the Law 5 of 1992. According to those rules citizens can attend any public session of congress, unless there is a request to make it closed, and sessions are transparent.

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 not much change on the budget with inputs provided by citizens.

Some recognized economists, experts, and economic groups have more influence than common citizens or CSOs, and usually this influence does not occur officially in debates.

For the 2009 and 2010 budget discussions, experts criticized heavily the government because the proposal increased expenditures despite the meager prospects of economic growth and the low levels of a collection.

These criticisms can have an impact on the approval process, but other less powerful voices are less heard. For example, for the 2009 budget cultural sectors complained about drastic cuts in expenditures in budget yet their complaints did not have any impact in the final approval of the budget. Similar situations have emerged with cuts on expenditures for maintenance of roads or cuts that affected the functioning of special judges.

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 discussed 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 Planeación, 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 also 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 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.

According to the 2005 IBP assessment of budget process in eight Latin American countries Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score among the eight countries) and 45 in what refers to the attributions of the Legislature (the fourth place among the eight assessed countries). Citizen participation is one of the components with lowest scores in the overall assessment although it improved significantly between 2003 and 2005.

References:

El plomo arrasa, el bronce recuerda

Fuente: El Espectador Fecha: 24 Abr 2009

<http://www.elespectador.com/columna137687-el-plomo-arrasa-el-bronce-recuerda>

Presupuesto de 2010: más deuda, mayor déficit y menor inversión

Fuente: El Espectador Fecha: 29 Jul 2009

<http://www.elespectador.com/articulo153404-presupuesto-de-2010-mas-deuda-mayor-deficit-y-menor-inversion>

Consejo de la Judicatura cierra más juzgados por falta de presupuesto

Fuente: WRadio Fecha: Julio 14 de 2009

<http://www.wradio.com.co/nota.aspx?id=844777>

Los balances agrícolos de la seguridad democrática

Fuente: Fundación Nuevo Arco Iris Fecha: 07/29/2009

<http://www.nuevoarcoiris.org.co/sac/?q=node/469>

Ayala, Ulpiano and Perotti, Roberto. 2000. The Colombian Budget Process. Working paper series. 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.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the information, and it is easily available on the website of the Ministry of Finance. The government has developed tools to use the XBRL language to report financial information. This change would facilitate the access and analysis of the state's financial information.

According to the 2005 IBP assessment of budget process in eight Latin American countries, Colombia scores 58.1 on 100 point scale in the index of budgetary transparency (the second best score among the eight countries).

References:

LEY No. 1260 (Diciembre 23 de 2008)
<http://www.minhacienda.gov.co/MinHacienda/haciendapublica/presupuesto/programacion/inicio/Leypresupuesto2009>

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.

43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Given that economic commissions are not formal oversight committees, heads of agencies do not send regular reports to them. 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 issues related to their

functions. Thus, the economic commissions in congress can use the faculty to call high level officials as an oversight mechanism on the budget.

Most national institutions must present yearly reports of activities to congress, including budget and financial aspects. However, sometimes these reports can be sent very close to the session in which they will be discussed giving little time for a serious review. Yet comments on the budget made by the central bank or the Supreme Audit Institution are publicly available, whereas the studies, investigations, and reports made by the legislature's economic and accounting commissions are not publicly available.

According to the constitution, 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. In some cases the commission calls managers and directors of institutions in order to clarify deficiencies reflected in the general balances and accounts.

In conclusion, even though the legislators in economic commissions are among the most powerful in congress and the commissions are highly technical, their control on the budget is not completely systematic or routine. Routine and systematic control is mostly in the hands of the General Comptroller (Contraloría).

References:

Comentarios del gerente general del banco de la república al proyecto de ley de presupuesto general de la nación de 2009
www.banrep.gov.co/documentos

Comision tercera – Informe de actividades- Legislatura 2008-2009

<http://direccion.camara.gov.co/camara/site/artic/20090707/pags/20090707165007.html>

Turbay Quintero expuso sus comentarios preliminares al Proyecto de Presupuesto 2010: Proyecciones de crecimiento económico para 2009 y 2010 son optimistas, dice Contralor. 2009/8/14

http://www.contraloriagen.gov.co:8081/internet/cartelera/Archivos/4177/info_noticia.jsp?id=4177

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.

43b. 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 through the electoral system, among lists proposed by parties. In practice, the most experienced legislators and those with more political power are the ones elected to the most important commissions, such as the economic commissions. Thus, economic commissions are seen as more technical and professional than other commissions in congress.

However the ruling coalition may have an overwhelming influence in the election of members of these commissions, thus reducing their independence.

The presidents in both commissions are currently from the government's coalition, and nine of about 30 legislators of the third commission in the Lower Chamber are from the opposition. In the fourth commission of the Senate only three out of 18 legislators are from the opposition. Yet, this composition is consistent with the overall breakdown of political forces in congress.

References:

Chávarro, presidente de la Comisión Tercera Fecha: 29. julio 2009

Fuente: LA NACIÓN, NEIVA

http://www.lanacion.com.co/index.php/ezflow_site_user/Noticias/Politica/Chavarro-presidente-de-la-Comision-Tercera

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.

43c. 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 investigation on financial irregularities.

The Supreme Audit Institutions is in charge of initiating these investigations. Even though 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 issues related to their functions, these calls do not entail formal investigation. These debates may lead eventually to uncovering issues, but they do not constitute an investigation itself.

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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. 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 (the Third and the Fourth Commission) 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 do not have the specific mandate to oversee expenditures, this is a mandate of the Supreme Audit Institution.

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 upon 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.

The Constitution of 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).

Category IV. Administration and Civil Service

IV-1. ⁶⁵Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Law 909 of 2004 regulates the civil service and establishes that merit is one of the main principles of the functioning of the civil service.

It means that professional and personal qualities are the main substantial elements in 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 to use party affiliation as a determinant of the selection, promotion or removal of public servants.

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.

The Constitution of Colombia 1991, article 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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

According to the constitution, public servants can not appoint relatives unless they participate in a competitive selection processes, thus prohibiting nepotism. Although the norm is not restricted to some level of the civil service, in practice it covers mostly managerial posts (those with power to appoint).

There are competitive selection processes for members of the civil service, although there is a group of posts that are free from appointment and dismissal. This group includes managerial staff in agencies of the executive and posts of confidence", which perform advising and assistant functions to managerial levels.

References:

The Constitution of Colombia 1991, article 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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

According to the 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. Other laws that refer to the commission are the Laws 1033 and 1093 that modify Law 909.

References:

Comisión Nacional del Servicio Civil. Normas de Carrera.

The Constitution of Colombia 1991, article 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.

Ley 1033 Modificaciones Ley 909 de 2004 y carrera administrativa especial

Ley 1093 Modificaciones Ley 909 de 2004 – carrera general y específica

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

There are restrictions for getting public employment following a corruption conviction but these restrictions are not lifetime bans.

According to the Law 909 of 2004, a person is unable to get public employment if she or he has: a prison sentence more than four years, except in case of political offenses; more than three disciplinary sanctions four years before gaining employment; a penal or disciplinary sanction in force when the employment is related to that sanction; a sanction for fiscal responsibility in the

five years before getting the employment. The latter inability ceases when the employee pays back to the Supreme Audit Office (Contraloría).

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.

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

56

45a. 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 the case especially in the regions where local political chiefs have notable influence on appointments and then try to influence civil servants in their decisions.

At the national level, the political independence of public servants has increased with laws that have been issued to modernize civil service. However, recent national scandals illustrate how clientelism and patronage still permeate hiring decisions in some important sectors of civil service and how positions in civil service can be used to pay for political favors.

As of July 2009, there have been three legislators convicted for receiving posts in exchange of their favorable vote of a constitutional reform that allowed presidential re-election in 2004. During the study period evidence emerged suggesting that the distribution of notaries was used to compel legislators to vote in favor of the 2004 constitutional reform. This evidence led to the initiation of investigations by the Supreme Court of Justice. Similar irregularities have been denounced regarding the exchange of public posts for a favorable vote in congress to approve a referendum that would eventually allow the second presidential re-election. These political interferences in conjunction with the well documented influence of criminal actors on wide sectors of the public administration (documented in judicial processes such as the so called parapolítica) reflect that civil service is still subject to political pressures derived both from political and criminal actors.

While employees that enter through competitive process cannot be fired without justification, employees of free appointment and removal" (managerial levels and their advisers) can be removed without relevant justification, and in this case, it is possible to have politically-motivated firings.

References:

Reflexiones sobre el trámite de la reforma política de cara a las elecciones 2010. Por: Víctor Andrés Barrera¹

Fuente: Cinep

<http://www.cinep.org.co/node/723>

Yidispolitica: 8 años de cárcel a Teodolindo Avendaño; 6 para Ivan Diaz Mateus

Fuente: Radio Santa Fe Junio 3, 2009

<http://www.radiosantafe.com/2009/06/03/yidispolitica-8-anos-de-carcel-a-teodolindo-avendano-6-para-ivan-diaz-mateus/>

Empieza la 'cuello-política'

Fuente: Revista Semana Fecha: 22 Agosto 2009

<http://www.semana.com/noticias-nacion/empieza-cuellopolitica/127671.aspx>

Gobierno conocía entrega de notarías: Cuello Baute

Fuente: Terra Colombia Fecha: Julio 8 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu23046-gobierno-pago-la-reeleccion-con-notarias-cuello-baute.htm>

Manuel Cuello Baute denunció intimidaciones del Gobierno 29 de Julio de 2009

<http://www.vanguardia.com/archivo/35090-manuel-cuello-baute-denuncio-intimidaciones-del-gobierno>

Corte llama a hijo de Uribe por caso de las notarías Actualizado: Julio 27 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu23604-corte-llama-a-hijo-de-uribe-por-caso-de-las-notarias.htm>

Checho al acecho entre Representantes a la Cámara

Fuente: Semana.com Fecha: 24 Agosto 2009

Lo de Teodolindo y Yidis Medina se va a quedar en pañales: Rafael Pardo

Fuente: El Espectador Fecha: 23 Ago 2009

<http://www.elespectador.com/noticias/politica/articulo157568-de-teodolindo-y-yidis-medina-se-va-quedar-panales-rafael-pardo>

¿Qué hay detrás de las dudas de los conservadores frente al proyecto de referendo? ¡Puestos! Fecha: 16 de Abril, 2009

Fuente: La Silla Vacía

<http://www.lasillavacia.com/historia/1085>

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.

45b. 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 the civil service and these are especially noted in national level institutions.

However, discretion is still an important component of appointments and recent national scandals illustrate how clientelism and patronage permeate hiring decisions in some important sectors of the civil service, and how positions in civil service can be used to pay for political favors.

As of July 2009, there have been three legislators convicted for receiving posts in exchange of their favorable vote in favor of a constitutional reform that allowed the presidential re-election in 2004. During the study period evidence emerged suggesting that the assignment of notaries has been used to compel legislators to vote in favor of the 2004 constitutional reform. This evidence led to the initiation of investigations by the Supreme Court of Justice. Similar irregularities have been denounced regarding the exchange of public posts for a favorable vote in congress to approve a referendum that would eventually allow the second presidential re-election.

According to the most recent evaluation of transparency in national institutions conducted by Transparency for Colombia, the lack of processes of recruitment and appointment is still a huge problem for public institutions and the overall score on recruitment was 52.4 out of 100. In other words the probability that a public employee can get his/her job based on professional criteria is only 50 percent. Forty-six out of 158 evaluated institutions had a score of zero on the indicator. Institutions from the defense sector seem to have the worst record, whereas institutions in the environmental sector seem to fare better.

For career employees, evaluations of performance are formal requirements rather than tools to measure real performance; for managerial levels evaluations of performance are highly political.

In the case of employees of free appointment and removal, party affiliation can be clear, even though they have merits for the post.

During the study period there was a case of an appointment in the presidency of the republic of a person with low professional qualifications in an important post. According to the most recent study of institutional performance conducted by the National Statistics Department among employees of different national and local institutions in 2008, employees in public institutions consider that rules and processes for hiring and firing are followed more consistently for career employees than for employees of free appointment and removal.

The overall score in the indicator that measures processes of recruitment in civil service remains stable compared to 2007 (3.7 out of 5 points). At the regional level the score is lower (3.5) although it has improved compared to 2007. According to this evaluation, the worst sector score is for the foreign service, and in fact there are several illustrations of how the appointment of ambassadors and consuls is based on political rather than professional criteria.

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 in making meritocracy and control on civil servants more effective.

References:

Meritocracia y contratación siguen marcando en rojo en índice de Transparencia Pública
Fuente: Programa presidencial de modernización, eficiencia, transparencia y lucha contra la corrupción. Fecha: julio 29 de 2009
<http://www.anticorruptcion.gov.co/noticias/2009/julio/090729a.asp>

Meritocracia es el único proceso válido para ocupar cargos públicos: Corte Constitucional
Fuente: El Tiempo.com Fecha: 13 Ago 2009
http://www.eltiempo.com/colombia/justicia/meritocracia-es-el-unico-proceso-valido-para-ocupar-cargos-publicos-corte-constitucional_5844528-1

Manualita
Fuente: Semana.com Fecha: 15 Agosto 2009
<http://www.semana.com/noticias-opinion/manualita/127420.aspx>

Moreno ¿a Suiza? Fecha: Agosto 18 de 2009
Fuente: Colombia para todos.net
http://www.colombiaparatodos.net/noticia-colombia-gaviria_no_duerme_tranquilo-id-8389.htm

Así opera la meritocracia en Colombia
<http://www.gerencia.com/asi-opera-la-meritocracia-en-colombia.html>

Empleados interinos aseguran su ingreso a carrera administrativa
Fuente: Radio Santafe Fecha: Noviembre 25, 2008
<http://www.radiosantafe.com/2008/11/25/empleados-interinos-aseguran-su-ingreso-a-carrera-administrativa/>

Entierro de tercera para la meritocracia
Fuente: Semana.com Fecha: 27 Noviembre 2008
<http://www.semana.com/noticias-mundo/sube-numero-victimas-bombardeo-israel/118164.aspx>

DANE. Encuesta Desempeño Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

Cuando la sal se corrompe: CLIENTELISMO EN LA ELECCION DE LA CNTV
Fuente: Periódico El Sol Fecha: 29 Ene 2009
<http://www.periodicoelsol.net/noticia.php?id=827>

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.

45c. 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 as they consider that political recommendations and familiar relations are important.

With the legal reforms conducted in recent years nepotism has been reduced, but it is still influential in civil service. Some of the most visible examples appear in the Foreign Service where familiar and personal relations appear crucial for high level appointments. For example Senator Jose Name's son was a consul in New York, when Name decided not to run for office anymore, his son came back to the country but in exchange Name's daughter became adjunct Ambassador before the United Nations. Nepotism has also been denounced in the INPEC (the agency that administers prisons) and at the regional level, for example in Montelibano where a former major openly declared that his son's close relation to government would facilitate their recuperation of the municipality's power.

According to the most recent study of institutional performance conducted by the National Statistics Department among employees of different national and local institutions in 2008, employees in public institutions consider that rules and processes for hiring and firing are followed more consistently for career employees than for employees of free appointment and removal.

The overall score in the indicator that measures processes of recruitment in civil service remains stable compared to 2007 (3.7 out of 5 points) although a specific indicator measuring the influence of familiar, personal or friendship links has a very low score (2.93). At the regional level the overall score is lower (3.5) although it has improved compared to 2007. Although political considerations appear as having more influence on appointments than personal considerations, the overall influence of familiar links has been in the center of some of the most important political debates during past years, such as the para-politica" scandal.

According to the most evaluation of transparency in national institutions conducted by Transparency for Colombia, the lack of processes of recruitment and appointment is still a huge problem for public institutions and the overall score on recruitment was 52.4 out of 100. In other words the probability that a public employee got his/her posts based on professional criteria is 50 percent. Forty-six out of 158 evaluated institutions had a score of zero on the indicator. Institutions from the defense sector seem to have the worst record, whereas institutions in the environmental sector seem to fare better.

References:

Lazos familiares Fecha: 30 Sep 2008

Fuente: Semana.com

http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=95213

Denuncian nepotismo de directivo sindical del Inpec

Fuente: Caracol Fecha: Abril 15 de 2009

<http://www.caracol.com.co/nota.aspx?id=794971>

Clientelismo con regalías

Fuente: Revista Cambio Fecha: 19 Mar 2009

http://www.cambio.com.co/paiscambio/820/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4885849.html

http://www.cambio.com.co/paiscambio/820/4885849-pag-2_2.html

DANE. Encuesta Desempeño Institucional 2008.

http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

Meritocracia y contratación siguen marcando en rojo en índice de Transparencia Pública

Fuente: Programa presidencial de modernización, eficiencia, transparencia y lucha contra la corrupción. Fecha: julio 29 de 2009

<http://www.anticorruptcion.gov.co/noticias/2009/julio/090729a.asp>

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.

45d. 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 systems of information of the civil service, and thus it is difficult to identify how coherent 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 inflexibility for job mobility.

In recent years there have been advances in creating information systems that centralize all the information about public employees: the MECI (Standard Model for Internal Control) and the SUIP (Centralized System of Personnel Information). Regarding the MECI, there have been advances in implementation but some of the reports are not publicly available. Regarding the SUIP, it mainly has information on the characteristics of employees and not on job descriptions, yet it has facilitated some characterization of work areas and the distribution of professions and disciplines across sectors. The Administrative Department of the Civil Service DAFP and the Superior School of Public Administration ESAP have developed a methodology for a functional analysis of public administration. All these initiatives can contribute to higher quality and more clarity on job descriptions.

According to the most recent study of institutional performance conducted by the National Statistics Department DANE among employees of different national and local institutions in 2008, an indicator considering whether job descriptions were documented formally had a fairly good score (3.87 out of 5) yet the correspondence between job descriptions and actual tasks carried was scored only 3.22.

References:

Longo, Francisco. 2005. Diagnostico institucional comparado de sistemas de servicio civil.

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

Guía metodológica para la identificación y estandarización de competencias laborales para los empleos públicos colombianos.

Elaborada por: Martha Eugenia Serrano Experta ESAP

Fuente: Departamento Administrativo de la función pública.

<http://www.dafp.gov.co/Documentos/guia%20metodol%C3%B3gica%20para%20la%20ident.%20y%20estand.%20de%20competencias%20laborales.pdf>

Fecha: 2008

Resultados de encuestas sobre el avance de la planificación, implementación y validación del MECI
Fuente: Departamento Administrativo de la Función Pública.
<http://mecicalidad.dafp.gov.co/reporteDic/marco.htm>
<http://mecicalidad.dafp.gov.co/reporteDic/marco.htm>
Fecha: Diciembre 2008

INFORME DE CARACTERIZACIÓN DEL EMPLEO PÚBLICO EN COLOMBIA
JUNIO DE 2007
http://www.dafp.gov.co/Documentos/3000_caracterizaci%C3%B3n_2007.pdf

Sistema Único de Información de Personal SUIP
www.esap.edu.co/viernes%20del%20concejal/Libros/Suip.PDF

Modelo Estandar de Control Interno para el Estado Colombiano – MECI 1000:2005
http://www.dafp.gov.co/listar_Seccion_Completa.asp?IdPublicacion=69&IdDependencia=2001

DANE. Encuesta Desempeño Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. 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, under the figure of prima técnica (technical bonus), managerial levels 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.

In some cases bonuses can represent more than 50 percent of the basic assignment. In 2009, the DAFP authorized a one-time technical bonus for social productivity for employees in the local administration of Bogota that does not count as part of the salary. A special "public order" bonus exists for members of the armed forces that are held captive by armed groups.

For general staff, there are other bonuses that may represent a significant share of the total pay such as representation expenses, antiquity bonus, transportation bonus, travel expenses.

According to the most recent study of institutional performance conducted by the National Statistics Department (DANE) among employees of different national and local institutions in 2008, employees in public institutions considered that the salaries of contractors are much higher compared to the salaries of career employees with identical functions and qualifications (a score of 2.8 out of 5 was given on this indicator). The overall score for job welfare is 3.54 at the national level and 3.5 at the regional level.

References:

Buscan beneficios para cerca de 130.000 soldados

Fuente: Sitio Senador Miguel Virgüez

http://manuelvirguez.com/senador/index.php?option=com_content&task=view&id=115&Itemid=43

Fecha: 01 de agosto de 2008

LEY 1279 DE 2009 Por medio de la cual se modifican algunos artículos sobre ascensos en cautiverio del personal de Oficiales, Suboficiales y del nivel ejecutivo de la Fuerza Pública, contemplados en los Decretos 1211, 1212, 1213 y 1214 de 1990; 1091 de 1995; 1790, 1791, 1793 de 2000 y se dictan otras disposiciones.

Diario Oficial No. 47.223 de 5 de enero de 2009

Fuente: Secretaría del Senado

http://www.secretariassenado.gov.co/senado/basedoc/ley/2009/ley_1279_2009.html

Fecha: Enero de 2009

DANE. Encuesta Desempeño Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

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.

45f. 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:

The government publishes the number of positions available when competitions are open, but 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 Único de Información de Personal (Centralized system on personnel information, or SUIP) which has updated information on job openings, comparing the number of positions with the number of appointments actually made.

Currently, the SUIP has information on 315 entities, 40 more than in 2008.

References:

Sistema Único de Información de Personal SUIP
www.esap.edu.co/viernes%20del%20concejal/Libros/Suip.PDF

Informe del DAFP al Congreso de la República. http://www.dafp.gov.co/listar_Seccion_Completa.asp?IdPublicacion=240&IdDependencia=120101

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.

45g. 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 started to work more strongly (after reforms) just very recently.

According to the most recent evaluation of work presented by the CNSC to Congress, between January and April 2008, the CNSC conducted 54 selection processes, evaluated performance, administered information on the civil service and provided posts in the civil service. It provided support to 4,062 persons in total: 1,575 persons by chat, 320 in person, 1,472 via email.

Due to the lack of personnel, the CNSC had not been able to answer requests received by another email address.

The CNSC also responded to complaints made about selection processes and on 913 rights mechanisms.

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 president (DAFP), and in fact, 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. The work of the CNSC is also considered to be highly politicized and the recruitment processes it has conducted since 2004 have not been the most transparent or expedited processes.

By the end of 2008, the CNSC was also widely criticized because it did not oppose a law approved by Congress by which provisional employees could enter the civil service even though there were competitions opened for those posts. The law was in the end objected by the government and declared unconstitutional, but the position of the CNSC revealed its weak power and politicization.

References:

Comisión Nacional del Servicio Civil presenta su informe de actividades. SENADO

La carrera administrativa en el marco de la función pública: experiencia colombiana
XIII Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública, Buenos Aires, Argentina, 4 – 7 nov. 2008
<http://www.planejamento.gov.br/hotsites/seges/clad/documentos/puentesg.pdf>

Empleados interinos aseguran su ingreso a carrera administrativa

Fuente: Radio Santafe

<http://www.radiosantafe.com/2008/11/25/empleados-interinos-aseguran-su-ingreso-a-carrera-administrativa/>

Fecha: Noviembre 25, 2008

Entierro de tercera para la meritocracia

Fuente: Semana.com

<http://www.semana.com/noticias-mundo/sube-numero-victimas-bombardeo-israel/118164.aspx>

Fecha: 27 Noviembre 2008

El concurso docente, embuste del gobierno

http://notasobrerass.net/index.php?option=com_content&view=article&id=228:concurso-docente-embuste&catid=3&Itemid=21

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.

45h. 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. However, there are some reports of delays in payments over the past year, especially in institutions of the health and education sectors at the local level.

In the department of Guajira, teachers went on strike in November 2008 given the large amount of money owed to them by the regional government. A similar situation occurred in Buenaventura in May 2009 as teachers have not been paid in eight months. In the municipality of Suaita, department of Santander, as of June 2009 employees of two public hospitals have not been paid in eight months. A similar situation occurred in the municipality of Chinchina-Caldas and the city of Manizales.

Some of the delays are due to inefficiencies in outsourcing schemes.

References:

Profesores se tomaron Comfamiliar de Mocoa

Fuente: Ministerio de Educación

<http://www.mineducacion.gov.co/observatorio/1722/articulo-196999.html>

Fecha: 23 de Julio de 2009

La incertidumbre ronda la Clínica Manizales

Fuente: La Patria

http://lapatria.com/Noticias/ver_noticia.aspx?CODNOT=74273&CODSEC=2

Fecha: 25 Ago 2009

Hospital San Marcos sin superar la crisis

Fuente: Periódico La Patria

http://www.lapatria.com/Noticias/ver_noticia.aspx?CODNOT=72287&CODSEC=14

Fecha: 1 de Agosto de 2009

40.000 estudiantes de Buenaventura, sin clases

Fuente: Ministerio de Educación

<http://www.mineducacion.gov.co/cvn/1665/article-126956.html>

Fecha: 31 May 2009

Siete meses adeuda el hospital a sus empleados

Fuente: Periódico La Vanguardia

<http://www.vanguardia.com/santander/comunera/29848-siete-meses-adeuda-el-hospital-a-sus-empleados>

Fecha: 03 de Junio de 2009 00:00

La Alcaldía de Popayán cancelará el total de la deuda contraída con los educadores del municipio

Fuente: Ministerio de Educación

<http://www.mineducacion.gov.co/cvn/1665/article-186203.html>

Fecha: 26 de marzo de 2009

En veremos terminación de clases en colegios públicos de La Guajira

Fuente: El Tiempo

http://www.eltiempo.com/colombia/caribe/en-veremos-terminacion-de-clases-en-colegios-publicos-de-la-guajira_4680775-1

Fecha: 21 Nov 2008

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.

45i. 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 that those convicted for corruption do not get into civil service again is made throughout the system of disciplinary antecedents issued by the Procuraduría General de la Nación (General Attorney's Office).

This certification is required to be contracted or to make contracts with the state. Since 2008, it can be requested for free (Law 1238 of 2008).

This change reflects more interest and practical action to prevent those convicted for corruption to get into the civil service again. During 2008, the attorney's office issued 1,309,000 certificates of disciplinary records.

Despite the increasing effectiveness of this system, the score on this indicator reflects that sanctions for wrongdoing are effective but temporary. At the managerial level there are some cases in which previous convictions or investigations do not prevent people from entering office, and it is often the case with elected officials that take office even though they have public convictions (for example Senator Marco Cortes arrived to Senate in January 2009 to replace an elected senator despite having a long history of disciplinary investigations in his region of origin).

Another notable case is the Chief of Internal Control in the National Television Commission, who was appointed in 2009 even though she was previously the executive secretary of the Convenio Andres Bello (an educational international agreement) and ended her tenure suddenly with serious questions over her administration and the alleged embezzlement of US\$8000 million. Although there were no formal investigations against her, the case illustrates both the limits of investigations and the limits of restrictions to enter office.

According to the most recent study of institutional performance conducted by the National Statistics Department among employees of different national and local institutions in 2008, employees in public institutions consider that the sanction of irregular practices and the methods for internal control are not very good (a score of 3.5 out of 5 was given to this indicator).

References:

Gobernador destituido quiere repetir

http://www.terra.com.co/elecciones_2007/articulo/html/vbe653.htm
VOTEBIEN.COM
09/14/2007

El nuevo Senador de La U
<http://www.elperiodico.com.co/seccion.php?codigo=18024&seccion=5&fecha=2009-01-21>
21 de enero de 2009

DANE. Encuesta Desempeño Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

Procuraduría Rendición de Cuentas 2007.
[www.procuraduria.gov.co/descargas/rendiciondecuentas/rendicion2007/balancesocial\(28-01-08\).pdf](http://www.procuraduria.gov.co/descargas/rendiciondecuentas/rendicion2007/balancesocial(28-01-08).pdf)

Los pájaros tirándoles a las escopetas
<http://www.semana.com/noticias-opinion/pajaros-tirandoles-escopetas/117980.aspx>
22 Noviembre 2008

Muchos lo sabían y pocos lo decían, hasta que por fin explotó el Convenio Andrés Bello
http://universidad.edu.co/index.php?option=com_content&view=section&layout=blog&id=1&Itemid=52

En sorpresivo congelamiento de pagos entró el Convenio Andrés Bello al parecer por falta de liquidez
Fuente: Ministerio de Educación
<http://www.mineduccion.gov.co/observatorio/1722/article-198180.html>

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

58

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

According to the article 122 of the constitution, every member of the civil service has to file an asset disclosure form when taking or leaving office and upon request of any competent authority.

References:

The Constitution of Colombia, article 122

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. 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 rule trying to prevent conflicts of interests. The Law 734 of 2002, or disciplinary code for civil servants, states that a public servant cannot become a creditor or debtor of someone interested in his office business and should recuse himself from policy decisions when there is a direct particular interests for himself, his relatives or his business partners.

In general, public servants should recuse themselves from policy decision 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 themselves 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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

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.

Although there is some regulation about post public sector employment, some people consider that the problem is not the lack of a specific regulation, but the lack of enforcement of the existing inabilities and incompatibilities.

In any case, the revolving door" of the transfer of employees from the public to the private sector is seen as one of the core problems of public administration in the country.

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The constitution makes an express prohibition to accept posts, honors, and hospitality from foreign governments and international entities. The Law 734 of 2002 makes a general prohibition for public servants to accept directly or indirectly, gifts, hospitality and any kind of benefits.

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 formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

Comments:

The Law 190 of 1995 only states that asset disclosure forms' 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.

It is stated that the chief of personnel has to review every six months the veracity of declarations using a random selection method, but there is no specific provision for an independent auditing exercise.

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".
LEY 734 DE 2002. (febrero 5). por la cual se expide el Código Disciplinario Unico

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. 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 cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In recent years there has been an improvement in terms of regulations preventing and punishing bribing and gift giving practices, and thus there is a perception that petty corruption has decreased. Yet bribery and gift giving are still widespread practices.

According to a recent survey conducted by Transparency for Colombia among businessmen, 91 percent of the surveyed consider that businessmen offer bribes in their operations mostly because they consider licensing and operation processes to be highly complicated.

Although such responses do not necessarily reflect that civil servants do indeed accept these bribes, it still illustrates the persistence of a bribing culture. During the study period there were denunciations that Philip Morris was actively trying to influence legislators so they did not approve further bans on smoking in public spaces. Although in this case, gift giving practices were not successful (smoking bans have not been lifted) in other cases they seem to be successful as it is apparently the case for the multinational Sab Miller. During the past year, there have denunciations that Sab Miller has given gifts to President Uribe's sons and in turn has received tax exemptions and other benefits.

Some sectors are more prone to bribery and receiving gifts than others. The health sector and procurement sector are two areas in which risks of conflicts of interest are bigger. According to the most recent study of institutional performance conducted by the National Statistics Department among employees of different national and local institutions, most employees consider that bribes affect decisions in procurement processes benefiting bidders who make extra official payments (the indicator scored 2.59 out of 5, where five means that no bribing takes place).

Surprisingly unlike 2007, the score seems to be better at the local level (3.5) suggesting that dynamics in national institutions have worsened in the past year (it is important to note that these surveys only refer to perceptions and not actual practices).

The Procuraduría General de la Nación (General Attorney's Office) reports that as of 2008 it has reduced the backlog in disciplinary cases against civil servants which indicates an advance in effectively sanctioning public servants. Presumably, some of the sanctions imposed by the Attorney's Office refer to receiving bribes, and increased sanctions have helped in reducing the extent of bribery and gift giving. Yet, statistics are not disaggregated enough as to determine the real extent of sanctions against bribery.

References:

Procuraduría General de la Nación. Balance del Mandato 2001-2008 http://www.procuraduria.gov.co/descargas/rendiciondecuentas/rendicion2008/Balance_del_Mandato_2001_2008_e-book1_final.pdf

DANE. Encuesta Desempeño Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

Primera encuesta nacional sobre prácticas contra el soborno en empresas colombianas (Colección Cuadernos de Transparencia)

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/BOLETINES/Bolet%C3%ADn52/Primeraencuestanacionalsobrepr%C3%A1cticascontrae/tabid/221/Default.aspx>

Fecha: Julio de 2008

Phillip Morris niega sobornos para tumbar ley antitabaco

Fuente: El Espectador Fecha: 12 Jun 2009

<http://www.elespectador.com/noticias/politica/articulo145666-phillip-morris-niega-sobornos-tumbar-ley-antitabaco>

Porque la palabra del paisa vale oro, el Gobierno está maniatado para desmontar las gabelas tributarias que ya otorgó

Fuente: La Silla Vacía Fecha: 3 de julio, 2009

<http://www.lasillavacia.com/historia/2825>

Contra los hechos nadie puede

Fuente: Inforiente Fecha: 19 de mayo de 2009

<http://inforiente.info/content/view/13492/80/>

Revelan grabación que enreda a candidato a Fiscal Juan Ángel Palacio con tráfico de influencias

Fuente: Elección Visible

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=614:revelan-grabacion-que-enreda-a-candidato-a-fiscal-juan-angel-palacio-con-trafico-de-influencias&catid=56:noticias&Itemid=199

Fecha: Jueves 23 de Julio de 2009 14:05

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

In recent years there has been an improvement in terms of regulations preventing conflicts of interest, yet 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. Conflicts of interest are more common in some areas than in others, and procurement processes are especially prone to be plagued by conflicts of interest.

The frequency of scandals that have affected national institutions and high level politicians and public officials in the country (such as the links between paramilitaries and politicians, the links between illicit firms and politicians, or scandals about influence peddling for the approval of major legal reforms) have increased conflicts of interest as many members of the government and of the legislature are directly involved or have family members involved in these scandals.

The recent election of a new General Attorney has increased the fear that conflicts of interest may increase in the disciplinary decisions of this institution because of the high politicization of his election. He was elected mainly because of his active role in absolving legislators involved in the parapolítica scandal when he was member of the Supreme Court of Justice (the attorney is elected by Congress).

The Procuraduría General de la Nación (General Attorney's Office) reports that as of 2008, it has reduced the backlog in disciplinary cases against civil servants which indicates an advance in effectively sanctioning public servants. Presumably, some of the sanctions imposed by the Attorney's Office refer to conflicts of interests, and increased sanctions have helped in reducing the extent of conflicts of interests at lower levels of authority. Yet, statistics are not disaggregated enough as to determine the real extent of sanctions against conflicts of interest.

References:

Procuraduría General de la Nación. Balance del Mandato 2001-2008 http://www.procuraduria.gov.co/descargas/rendiciondecuentas/rendicion2008/Balance_del_Mandato_2001_2008_e-book1_final.pdf

DANE. Encuesta Desempeño Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=section&id=103&Itemid=1190

Yo te absuelvo, tú me eliges& Revista Semana Sábado 6 de diciembre de 2008 <http://www.semana.com/noticias-nacion/absuelvo-eliges/118473.aspx>

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure forms of civil servants are sometimes audited within personnel offices of each entity but there is no mechanism or procedure to ensure regular auditing (or the systematic performance of random audits). Sometimes asset disclosure forms may be audited as part of penal or disciplinary investigations, but in general the data compiled in asset disclosure forms is rarely revised or processed especially at medium levels of management.

The Law 190 of 1995 obliges all public servants to declare their participation in private affairs as well as foreign accounts, loans and credits, but 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. 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 a software named SÍDEC to file and monitor asset disclosure forms, and it constitutes an advancement 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. According to the OAS, it is expected that the new system of Information and Management of Public Employment (SIGEP) could improve the registry and auditing of asset disclosure forms.

According to the most recent report of the Colombian government regarding the implementation of the Interamerican Convention Against Corruption, the Government is taking measures to allow the publication of elected officials' asset disclosure forms, but these efforts do not extend to all civil service.

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".

The Constitution of Colombia 1991, article 15

Sentencia de Unificación de Jurisprudencia de la Corte Constitucional de Colombia SU-082/95, del 1 de marzo de 1995.

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. 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 to request those records, but it might be difficult to access given habeas data restrictions.

References:

The Constitution of Colombia 1991, articles 20 and 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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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 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.

According to the habeas data law, the constitution and the rulings of the Constitutional Court, in order to access information about citizens registered in databases of public institutions, individuals should authorize such access. In conclusion, common citizens might not be able to access asset disclosure forms of civil servants.

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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

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.

47c. 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 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.

According to the habeas data law, the constitution and the rulings of the Constitutional Court, in order to access information about citizens registered in databases of public institutions, the individuals should authorize such access. In conclusion, common citizens might not be able to access asset disclosure forms of civil servants.

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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

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.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Given the difficulties to access asset disclosure forms, it is difficult to know the quality of these reports.

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.

Estado Actual de la Ley de Habeas Data. <http://www.habeasdata.com.co/>

OEA INFORME sobre la implementación de las disposiciones de la Convención seleccionadas para ser analizadas en el marco de la Segunda Ronda 7 DIC 2007

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

38

48a. 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 the 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 used for protection in penal processes and those involving human rights violations.

The Law 104 of 1993 created a witness protection program for victims and employees from the general prosecutor's office (Fiscalía General). In the Law 241 of 1995, this protection was extended to disciplinary processes in the same office.

Currently this program is based on the law 418 of 1997, and its most recent extension, the law 1106 of 2006. The general prosecutor's office program is not working, but the general prosecutor 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.

48b. 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:

According to the 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 used for protection in penal processes and those involving human rights violations.

The Law 104 of 1993 created a witness protection program for victims and employees from the general prosecutor's office (Fiscalía General). In the Law 241 of 1995, this protection was extended to disciplinary processes in the same office.

Currently this program 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 no longer working, but the general attorney is very active in supporting and promoting other witness protection programs.

According to a recent evaluation of the governmental Policy for the Fight Against impunity conducted by the nongovernmental organization Corporation Excellence in Justice, even though the coverage of witness protection programs of the Prosecutor's Office expanded significantly in 2007, it decreased again in 2008. Such situations may result from an increasing demand that does not meet with enough capacities to cover it, and also from the social, familiar and work consequences that can derive from enrolling in protection programs.

The former director of the presidential office against corruption, who is currently a senator, proposed in 2008 a new anti-corruption law including new protection measures for public servants reporting corruption. This proposal would specify that retaliation against employees reporting corruption is a serious fault and is necessary because whistle-blowing protection is still very weak, but a new law has not been issued.

Given the lack of whistle-blowing protection, public officials may decide to come forward with denouncements publicly, but face negative consequences such as threats and even physical attacks. For example the Regional Auditor (Comptroller) of the Department of Putumayo was threatened after releasing a report about an auditing exercise on the governorship.

References:

SENADO Congreso estudiará nuevo Estatuto Anticorrupción 24 de julio de 2008

Buscan nuevo estatuto anticorrupción para el país EL ESPECTADOR

GTZ. 2005. ANEXO 1: TABLA DE SINTESIS (MEMORIA DE TRABAJO DE MARINO TADEO HENAO, DICIEMBRE, 2005) CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA CORRUPCIÓN.

Corruptos mataron a veedor de San Pelayo, asegura presidente de veedurías

Fuente: El Tiempo.com

http://www.eltiempo.com/colombia/caribe/corruptos-mataron-a-veedor-de-san-pelayo-asegura-presidente-de-veedurias_5235008-1

El contralor departamental denuncia amenazas de muerte

Fuente: Ministerio de Educación

<http://www.mineducacion.gov.co/observatorio/1722/article-198855.html>

Fecha: 12 de Agosto de 2009

Corporación Excelencia en la Justicia. Primer informe de seguimiento a la política de lucha contra la impunidad. Septiembre 11 de 2009. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

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.

48c. 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, yet there are whistle-blower protection programs based on different laws such as the Law 104 of 1993, which created a witness protection program for victims of human rights violations. Currently this program is regulated by the laws 418 of 1997, and its most recent extension, the law 1106 of 2006. These witness protection programs are usually related to human rights violations rather than to whistle blowers and witnesses in corruption cases. However, it is important to note that given the existence of an armed conflict in Colombia, protection to whistle blower in human rights violations means protection to those denouncing corruption cases.

According to the Law 734 of 2002, it is a duty of public servants to offer guarantees to citizens that report wrongdoing of public servants. Once again, this measure can potentially protect whistleblowers in the private sector, but the norm is not explicit.

A study conducted by Transparency for Colombia about bribing practices in private enterprises shows that most surveyed enterprises (47 percent) do not have a system to protect whistle blowers (both employees or external whistleblowers). The lack of these mechanisms is very worrying considering that in the same survey 91 percent responded that bribing is used in the private sector to accelerate processes or licensing.

References:

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

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."

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.

48d. 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:

Although there are witness protection programs in place, they do not effectively cover private 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 witness means protection to those denouncing corruption cases.

A study conducted by Transparency for Colombia about bribing practices in private enterprises shows that most surveyed enterprises (47 percent) do not have a system to protect whistle blowers (both employees or external whistleblowers). The lack of these mechanisms is very worrying considering that in the same survey 91 percent responded that bribing is used in the private sector to accelerate processes or licensing.

References:

Primera encuesta nacional sobre prácticas contra el soborno en empresas colombianas (Colección Cuadernos de Transparencia) Fecha: Julio de 2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/BOLETINES/Bolet%C3%ADn52/Primeraencuestanacionalsobrepr%C3%A1cticascontrae/tabid/221/Default.aspx>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Given that 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 citizens. It is important to note also, that although no specific statistics are available, it is considered that reports of corruption made by public servants are less common than reports made by common citizens.

The most important mechanisms for reporting public sector corruption are those located in the Presidential Anti-corruption Program, the General Attorney's Office, the Supreme Audit Institution and the General Prosecutor's Office (Fiscalia).

The existence of these mechanisms has strengthened a culture of reporting 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 limitations, important reports received are usually acted upon with efficiency.

An increasing number of reports 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 is monitoring continuously the cases reported and directs denunciations to the appropriate agencies.

Between July 2008 and May 2009 the program received 8,995 complaints.

The General Attorney's Office (Procuraduría) reported that between January and July 2008 it acted on 2,932 declarations, complaints or denunciations made through the open reporting systems. By law, the institution has an office exclusively dedicated to attend to the reports made through the phone line or email.

Personnel to adequately respond to complaints might be limited in some offices, as said by the Ombudsman's office in Bogota, which reported in July 2009 that personnel and funding are not enough to respond to an increasing number of denunciations on human rights violations and power abuses.

References:

Balance de mandato 2001 - 2008

Fuente: Procuraduría General de la Nación Fecha: noviembre de 2008

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesacongreso.htm

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.

Personería de Bogotá pide auxilio por avalancha de denuncias de DD.HH.

<http://www.elespectador.com/noticias/bogota/articulo153373-personeria-de-bogota-pide-auxilio-avalancha-de-denuncias-de-ddhh>
29 Jul 2009

Programa Presidencial de Lucha Contra la corrupción. Informe al Congreso Julio 2008 a Mayo

2009. http://www.anticorruptcion.gov.co/areas/apoyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

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.

50b. 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 important to note also, that although no specific statistics are available, it is considered that reports of corruption made by public servants are less common than reports made by 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. These mechanisms are generally not only for civil servants to report. The existence of these mechanisms has strengthened a culture of complaint filings and as reported by the Presidential Anti-corruption Program in 2004, those mechanisms had increased the number of reported corruption cases.

Funding to adequately respond to complaints might be limited, as stated by the Ombudsman's office in Bogota, which reported in July 2009 that personnel and funding are not enough to respond to an increasing number of denunciations on human rights violations and power abuses.

There is no specific budget allocation for reporting mechanisms, and their funding is usually 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.

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.

Since the priorities of the office are set by the director in charge, there are differences in how directors evaluate the budget of the program. Some former directors consider that it is not adequate to fulfill the activities of the office, while others consider that budget is not the most serious problem.

For the Supreme Audit Institution and the Attorney General's Office, funding sources are more reliable and consistent from year to year, however funding sources can be very limited in regional offices. The 2009 budget included significant funding for oversight institutions, but still lower than what was requested by them to operate. The 2008-2009 Auditor's report states that a lack of resources is particularly worrying at local auditing offices, especially considering that regional offices receive 75 percent more complaints than centralized and national level offices.

While some offices receive more than enough funding, others are notably underfunded and sometimes even lack computer and other basic work elements.

According to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, the Supreme Audit Institution gets a lower score than the Attorney General's office in the indicator evaluating resources are enough to fulfill institutional mandates (the scores are 3.36 and 3.69 out of 5 respectively).

In general, important reports received are usually acted upon with efficiency, but an increasing number of reports may 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. There is no specific information on the available resources for the reporting mechanism at the General Attorney's Office, but the amount of reports received testifies the relevance of these mechanisms for the institution.

The General Attorney's Office reported that between January and July 2008 it acted on 2,932 declarations, complaints or denouncements made through the open reporting systems.

By law, the institution has an office exclusively dedicated to attending to the reports made through the phone line or email. The Attorney General and the Ombudsman's office assign a budget to programs which may strengthen reporting mechanisms. That is the case with a program for training municipal ombudsmen funded by the national Ombudsman's office.

References:

Encabezados extraídos de El Personero impreso, Informativo No 12 de julio de 2009 de la Personería Distrital de Bogotá

Fuente: Personería de Bogotá, D.C.

<http://www.personeriabogota.gov.co/?idcategoria=2396>

Fecha: Julio de 2009

Personería lanza la Gaceta Disciplinaria

Fuente: Personería de Bogotá, D.C.

<http://www.personeriabogota.gov.co/?idcategoria=3210>

Fecha: Julio 23 de 2009

Premiadas mejores audiencias de rendición de cuentas: audiencia en Santa Isabel (Tolima) ganadora del primer puesto

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/noticias_2008/noticias_436.htm

Fecha: 1 de octubre de 2008

Capacitación en DDHH a Personeros del Valle

Fuente: Defensoría del Pueblo

<http://www.defensoria.org.co/red/?item=0301&secc=03&ts=2&n=326>

Fecha: agosto 19 de 2008

Proyecto PRESUPUESTO Organismos de Control Y Rama Judicial 2009

Fuente: Cámara de Representantes

http://direccion.camara.gov.co/camara/site/artic/20080911/asocfile/informe_subcomision_presupuesto_2009_hr_german_olano.doc

DANE. Encuesta Desempeño y ambiente institucional 2008. Resultados por sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Balance de mandato 2001 - 2008

Fuente: Procuraduría General de la Nación Fecha: noviembre de 2008
http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesacongreso.htm

Personería de Bogotá pide auxilio por avalancha de denuncias de DD.HH.
<http://www.elespectador.com/noticias/bogota/articulo153373-personeria-de-bogota-pide-auxilio-avalancha-de-denuncias-de-ddhh>
29 Jul 2009

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf
Fecha: abril de 2009

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

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 considered that reports of corruption made by public servants are less common than reports made by common citizens.

In general the perception is that when reports are made, they are quickly directed into investigation when relevant.

Yet, according to the Attorney General's Office one frequent problem to act on investigations is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late. The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way is how long does it take to solve a case. The Attorney General's Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints.

Regarding the Supreme Audit Institution, according to a report of the General Auditor the number of final decisions on processes of fiscal responsibility has increased by 392 percent since 2000, and most of these decisions are made in regional audit offices. Yet, all the sanctioned cases represented only 18 percent of all the cases initiated.

As in the Attorney General's Office the major problem is the prescription of cases or the lack of sufficient documentation to make final decisions.

It is important to note that available statistics do not show the average time that takes institutions to act on different denunciations by type of offense or how many processes reported by civil servants become effectively investigated.

Regarding the Presidential Anti-corruption Program, when it is considered that a complaint is 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 it may take for an investigation into the respective institution.

Between July 2008 and May 2009, the program received 8,995 complaints, redirected 1,601 to the Attorney General, 505 to the Supreme Audit Institution, 646 to the General Prosecutor, 200 to Superintendencies, 66 to the Judicial Police, 1,406 to other institutions. Another 2,702 were returned to obtain more information from citizens.

Although most institutions have made efforts in recent years to act quickly on complaints there are delays and backlog accumulated from past years. Processing times of denunciations may vary widely among different cases, sometimes reflecting political interests.

References:

Balance de mandato 2001-2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infainstitucional/infainst_informesacongreso.htm

Fecha: noviembre de 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

AUDITORÍA GENERAL DE LA REPÚBLICA INICIA INTERVENCIÓN ESPECIAL A LA CONTRALORÍA DEPARTAMENTAL DEL CHOCÓ

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/templates/6_PrensaArchivo_310709.asp

Fecha: 31 de julio de 2009

Hallan millonario fraude con pensiones del ISS

Fuente: El País

<http://www.elpais.com.co/paisonline/notas/Junio042009/jud1.html>

Fecha: 4 Jun 2009

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

Fecha: Julio 30 de 2009

Irregularidades por \$113.888 millones en Casanare revela la Contraloría

Fuente: El Espectador

<http://www.elspectador.com/economia/articulo153793-irregularidades-113888-millones-casanare-revela-contraloria>

Fecha: 31 Jul 2009

Avanza juicio por fraude a Electrohuila

Fuente: La Nación

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Al-Cierre/Avanza-juicio-por-fraude-a-Electrohuila

Fecha: 05 julio 2009

Hay muchas denuncias y pocos condenados El País, Cali. 6 de septiembre de 2009

<http://www.anticorupcion.gov.co/noticias/2009/septiembre/090907b.asp>

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

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 considered that reports of corruption made by public servants are less common than reports made by common citizens.

In general the perception is that when reports are made, they are quickly directed into investigation when relevant. Yet, according to the Attorney General's Office one frequent problem to act on reports of corruption is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late.

The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way how long it takes to solve a case. The Attorney General's Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. Between January 2008 and September 2009, the Delegate Attorney General for Decentralization has registered 178,544 denunciations and initiated 3,777 processes against Mayors, 448 against Governors and 514 against councilmen.

Regarding the Supreme Audit Institution, according to a report of the General Auditor the number of final decisions on processes of fiscal responsibility has increased by 392 percent since 2000 and most of these decisions are made in regional audit offices.

Yet, all the sanctioned cases represented only 18 percent of all the cases initiated. As in the Attorney General's Office the major problem is the prescription of cases or the lack of sufficient documentation to make final decisions.

It is important to note that available statistics do not show the average time that takes institutions to act on different denunciations by type of offense or how many processes reported by civil servants become effectively investigated.

Regarding the Presidential Anti-corruption Program, when it is considered that a complaint is 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 may take an investigation on the respective institution. Between July 2008 and May 2009, the program received 8,995 complaints, redirected 1,601 to the Attorney General, 505 to the Supreme Audit Institution, 646 to the General Prosecutor, 200 to Superintendencies, 66 to the Judicial Police, and 1,406 to other institutions. Another 2,702 were returned to obtain more information from citizens. In words of the Director of the Anticorruption Office although there are many denunciations, there are very few condemned people.

Although most institutions have made efforts in recent years to act quickly on complaints there are delays and backlogs accumulated from past years. Processing times of denunciations may vary widely among different cases, sometimes reflecting political interests.

References:

Balance de mandato 2001 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesacongreso.htm

Fecha: noviembre de 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

AUDITORÍA GENERAL DE LA REPÚBLICA INICIA INTERVENCIÓN ESPECIAL A LA CONTRALORÍA DEPARTAMENTAL DEL CHOCÓ

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/templates/6_PrensaArchivo_310709.asp

Fecha: 31 de julio de 2009

Hallan millonario fraude con pensiones del ISS

Fuente: El País

<http://www.elpais.com.co/paionline/notas/Junio042009/jud1.html>

Fecha: 4 Jun 2009

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

Fecha: Julio 30 de 2009

Irregularidades por \$113.888 millones en Casanare revela la Contraloría

Fuente: El Espectador

<http://www.elespectador.com/economia/articulo153793-irregularidades-113888-millones-casanare-revela-contraloria>

Fecha: 31 Jul 2009

Avanza juicio por fraude a Electrohuila

Fuente: La Nación

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Al-Cierre/Avanza-juicio-por-fraude-a-Electrohuila

Fecha: 05 julio 2009

Programa Presidencial de Lucha Contra la corrupcion. Informe al Congreso Julio 2008 a Mayo

2009. http://www.anticorrupcion.gov.co/areas/apoyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

Hay muchas denuncias y pocos condenados El País, Cali. 6 de septiembre de 2009

<http://www.anticorrupcion.gov.co/noticias/2009/septiembre/090907b.asp>

Corrupción, el sida del Estado en Colombia

<http://www.elpais.com.co/paionline/notas/Septiembre062009/corrupt.html>

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. 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 prosecutor, the ombudsman, the general attorney, the presidential program against corruption and the internal control offices in each entity.

These entities have free phone lines or internet reporting mechanisms. According to the Law 190 of 1995, each public entity shall create a free phone line for citizens to report recommendations, denouncements or criticisms related to the service offered by the respective institution.

According to the same law, each entity shall report every three months to the Citizen Commission for the fight against corruption the main complaints and the resolution of the complaint.

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

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.

63
IV-3. Procurement

51. Is the public procurement process effective?

65

51a. 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.

The same restriction applies to relatives of public servants, societies in which any member has familiar links with another bidder, former members of the entity conducting 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.

In 2007, congress issued a new law (Law 1150) complementing Law 80 in order to increase transparency in procurement processes.

References:

LEY 1150 DE 2007 (julio 16) 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.

The Constitution of Colombia 1991, article 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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

Comments:

There is no specific regulation on training for public procurement officials.

The Law 909 of 2004 that regulates civil service states that in general, training is aimed at improving the professional capacities of employees and the development of their duties. It also 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 define training programs.

Yet, there is not legally-mandated training specifically tailored for public procurement officials. According to the diagnosis made by the DAFP, training of public procurement regulations constitutes the main interest for many public employees, and thus the agency is increasing training programs related to procurement. The DAFP in its national plan for training of public employees included procurement as one of the priority areas in its training programs.

Lack of knowledge on procurement rules is frequently presented by the officials as one of the main reasons for irregular procurement processes and this problem is even more acute considering that there are multiple regulations. For example only in 2008 and 2009, 16 decrees on procurement were issued. The Country Procurement Assessment Report made by the World Bank identifies the lack of ethics and training on the part of procurement officials as one of the main obstacles for transparent procurement processes.

References:

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 VI Chapter I.

TRANSPARENCIA POR COLOMBIA INFORME DE PAÍS – CONTRATACIONES PÚBLICAS COLOMBIA

CONTRALORÍA GENERAL DE LA REPÚBLICA. Edición 321 Contratación Estatal: Transparencia y eficiencia

Portal Unico de Contratacion. <http://www.contratos.gov.co/puc/reglamentacion.html>

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. 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 through different mechanisms used to circumvent regulations such as: the inappropriate use of urgency or exception modalities of procurement, specifications previously negotiated with contractors, use of figureheads, contract fractions, non competitive process in which the winner is favored from the beginning, and the use of non real prices which are then compensated with additional contracts.

During the study period, major irregularities were detected in procurement processes for gambling monopolies (which represent a source of funding for public health) at the local level and in procurement processes for the defense sector.

In the case of gambling, businesses connected to paramilitary groups have been notably favored in regional bids where local mayors usually declare urgency in procurement in order to be able to extend existing contracts without a competitive process of evaluation. These cases in the gambling business also reflect a common source of irregularities in procurement by which those who fund political campaigns are then favored in procurement processes.

Currently, the governor of the department of Amazonas is under investigation due to irregularities in procurement process in the order of US\$500,000 in infrastructure projects. Irregularities in procurement processes have also been detected in the spending of oil royalties. The case of the municipality Montelibano is notable in this respect. During the study period, denunciations have also been made regarding the unclear role that major businesses which have contracts with the state have in funding the campaign for a referendum on presidential re-election.

Some sectors appear to be more at risk than others. For example, health and infrastructure are sectors where irregular procurement processes appear constantly. In general, entrepreneurs report very low levels of confidence in public institutions for procurement processes. According to Confecamaras, corruption in the private sector is very high, 70 percent of entrepreneurs say that they do not participate in procurement processes because they are irregular, and 90 percent of entrepreneurs consider that bribery is a common practice in the private sector, but only 8 percent of cases are reported.

Sixty-six percent of experts on procurement consulted by Transparency for Colombia and other organizations consider that there are risks in public procurement and that the real practices deviate from the legal norms. They consider that the judiciary institutions that should follow up on conflicts of interest do not work properly. Delays in the solution of conflicts are extreme.

It is important to note that the Attorney General's Office (Procuraduría General de la Nación) has been very active in overseeing major procurement processes such as the remodelling of the airport in Bogotá or the assignment of concessions for a third private television canal. During the study period the Attorney General's Office imposed sanctions on the mayors of Soledad and Pereira due to irregularities in procurement processes.

References:

Gobierno señala corrupción en contratación del chance

Fuente: Terra.com

<http://www.terra.com.co/noticias/articulo/html/acu20876-gobierno-senala-corrupcion-en-contratacion-del-chance.htm>

Fecha: Abril 22 de 2009

Índice de Transparencia Nacional Resultados 2007-2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Fecha: Julio de 2009

'Ad portas' de un fallo de la Corte Suprema, el Gobernador de Amazonas prepara su retiro a Tabatinga

Fuente: Revista Cambio

http://www.cambio.com.co/informeespecialcambio/824/ARTICULO-PRINTER_FRIENDLY-PRINTER_FRIENDLY_CAMBIO-4989327.html

Fecha: Abril 15 de 2009

Cientelismo con regalías

Fuente: Revista Cambio

http://www.cambio.com.co/paiscambio/820/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4885849.html

http://www.cambio.com.co/paiscambio/820/4885849-pag-2_2.html

Fecha: 19 Mar 2009

La contratación no es clientelismo, es participación política

<http://www.elespectador.com/noticias/bogota/articulo119492-contratacion-no-clientelismo-participacion-politica>

19 Feb 2009

Meritocracia y contratación siguen marcando en rojo en índice de Transparencia Pública

Fuente: Programa presidencial de modernización, eficiencia, transparencia y lucha contra la corrupción.

<http://www.anticorruptcion.gov.co/noticias/2009/julio/090729a.asp>

Fecha: julio 29 de 2009

Balance de mandato 2001 2008

Fuente: Procuraduría General de la Nación Fecha: noviembre de 2008

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesacongreso.htm

Oficina Anticorrupción de la Presidencia investiga a ex ministro J. Manuel Santos

Fuente: El NuevoDía.com

<http://www.elnuevodia.com.co/nuevodia/nacional/notas-nacionales/8912-oficina-anticorruptcion-de-la-presidencia-investiga-a-ex-ministro-j-manuel-santos-.pdf>

Fecha: 26 de Mayo de 2009

Denuncian que contratistas del Estado financiaron campaña para reelección del presidente Uribe

Fuente: Periódico Vanguardia

<http://www.vanguardia.com/archivo/26432-denuncian-que-contratistas-del-estado-financiaron-campana-para-reeleccion-del-presidente-uribe>

Fecha: Miércoles 22 de Abril de 2009

¿Hay investigación por apoyo de paramilitares a Uribe en elecciones presidenciales?

Fuente: Comisión Intereclesial de Justicia y Paz

<http://justiciaypazcolombia.com/Hay-investigacion-por-apoyo-de>

Fecha: Miércoles 1ro de julio de 2009

El Triángulo del referendo.

Fuente: Noticias 1

<http://www.noticiasuno.com/noticias/mas-dudas-cuentas.html>

Fecha: 30 Nov 2008

El caso Amín. Autor Ernesto McCausland Sojo
Fuente: El Tiempo
<http://www.eltiempo.com/archivo/documento/CMS-4817963>
Fecha: 15 de febrero de 2009

Zar Anticorrupción Alerta Por Negocio Que Mueve 2 Billones De Pesos Al Año El Chance, En Las Mismas Manos
eltiempo.com
<http://www.eltiempo.com/archivo/documento/MAM-3409794>
22 de abril de 2009

DMG también armó su mapa político: Salpicado por segunda vez gobernador de La Guajira
Fuente: El Pílon
<http://www.elpilon.com.co/noticias/not00021348.htm>

Corrupción, el sida del Estado en Colombia
<http://www.elpais.com.co/paisonline/notas/Septiembre062009/corrupt.html>

Piden a la Procuraduría intervenir licitación para construcción de corredores viales
Fuente: Caracol
<http://www.caracol.com.co/nota.aspx?id=753241>
Fecha: Enero 26 de 2009

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.

51d. 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 the Law 190 (The Anti-corruption Law) and the 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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

According to the Law 80 of 1993 and its most recent reform introduced in July 2007 (Law 1150), all major procurements require competitive bidding. The amount of procurements that require bidding is determined according to the yearly budget of the respective institution.

The 2007 reform changed one of the problems that had been identified as the main difficulties of the Law 80, and it was the existence of a great number of exceptional regimes for procurement. Although the Law 1150 included some institutions previously excluded, it left others with exceptional regimes.

References:

ECONOMÍA COLOMBIANA. CONTRALORÍA GENERAL DE LA REPÚBLICA. Edición 321 Contratación Estatal: Transparencia y eficiencia

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

LEY 1150 DE 2007 (julio 16) 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 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).

51f. 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.

In practice, there can be cases in which contracts that should be assigned through bidding are assigned directly by arguing that they belong to the categories mentioned above. According to an evaluation conducted by Transparency for Colombia 41 percent of public procurement processes were conducted with only one offer and this constitutes one of the biggest problems in public procurement.

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".

Índice de Transparencia Nacional Resultados 2007-2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Fecha: Julio de 2009

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.

51g. 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 can also express observations when those reports or decisions are presented. However experts consider that one of the main problems in procurement processes is that judicial institutions that should review processes are not efficient and do not function adequately, thus the solution of conflicts is rarely expedited.

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

TRANSPARENCIA POR COLOMBIA INFORME DE PAÍS – CONTRATACIONES PÚBLICAS COLOMBIA

Contratación estatal: ¿reina la incertidumbre? Juan Pablo Estrada Sánchez

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.

51h. 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 created to appeal any public decision: reposition, appeal, nullifying and reparation can be presented before the courts.

Bidders can request to make void an action previous to the adjudication if the complaint relates to the bids specifications; such request has to be presented within 30 days after bids are communicated. If there are controversies, bidders can request the declaration of void contracts. Such request can be made before the administrative jurisdiction, the Supreme Audit Institution (Contraloría) the General Prosecutor's Office (Fiscalía) or the General Attorney (Procuraduría General de la Nación).

References:

Ley 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.

51i. 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 for bribery or other corruption acts can not participate in procurement processes.

The prohibition is extended to the societies or companies to which they belong. However, the law does not create a formal blacklist. All companies and individuals who wish to contract with the state should register in the Registro Unico de Proponentes (RUP).

References:

LEY 1150 DE 2007 (julio 16) 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.

Decreto 3083 de 2009. <http://www.contratos.gov.co/Archivos/normas/Decreto%2003083%20de%202009.pdf>

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. 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:

According to the most recent amendment to the Procurement Law, issued in July 2007, individuals who have been convicted for bribing or other corruption acts cannot participate in procurement processes.

The prohibition is extended to the societies or companies to which they belong. However, the law does not create a formal blacklist, and thus it is practically impossible to know whether bidders in procurement processes have been sanctioned in the past. In fact, not only companies, but also civil servants sanctioned due to irregularities in procurement may remain active despite sanctions.

That is the case of the director of the Road Institute (Invias), who despite having a disciplinary sanction from the Attorney General's Office carried out a procurement process for road construction.

References:

TRANSPARENCIA POR COLOMBIA
REPORTE ANUAL 2007

http://www.transparenciacolombia.org.co/Portals/0/descargas/reporte_anual/Informe%20de%20Gesti%C3%B3n%202007.pdf

Piden a la Procuraduría intervenir licitación para construcción de corredores viales

Fuente: Caracol

<http://www.caracol.com.co/nota.aspx?id=753241>

Fecha: Enero 26 de 2009

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.

52. Can citizens access the public procurement process?

71

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Regulations for public procurement are covered in the 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:

The Constitution of Colombia 1991, article 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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

All procurement processes are public, and if there is a request there can be a public audience for adjudication. 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. The most recent amendment to Law 80 was aimed at increasing transparency in procurement processes.

References:

Ley 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

The Constitution of Colombia 1991, article 273

LEY 1150 DE 2007 (julio 16) 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 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.

52c. 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.

Furthermore, many specific aspects of the law were left to regulation by the executive, and according to experts, the differences in interpretation and mistakes in the first regulation issued by the government created a chaos in implementation in the first semester of implementation of the law.

References:

Portal Unico de Contratacion. <http://www.contratos.gov.co/puc/>

Contratación estatal: ¿reina la incertidumbre? Juan Pablo Estrada Sánchez

http://www.google.com/search?q=Contrataci%C3%B3n+estatal%3A+%C2%BFreina+la+incertidumbre%3F&rls=com.microsoft:*:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117GGLL_es

TRANSPARENCIA POR COLOMBIA REPORTE ANUAL

2007 http://www.transparenciacolombia.org.co/Portals/0/descargas/rerporte_anual/Informe%20de%20Gesti%C3%B3n%202007.pdf

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.

52d. 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 at at the cost of photocopying, 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 scope of regulations.

Furthermore, many specific aspects of the law were left to regulation by the executive, and according to experts, the differences in interpretation and mistakes in the first regulation issued by the government created a chaos in implementation in the first semester of the law.

References:

Portal Unico de Contratacion. <http://www.contratos.gov.co/puc/>

Contratación estatal: ¿reina la incertidumbre? Juan Pablo Estrada Sánchez

[http://www.google.com/search?](http://www.google.com/search?q=Contrataci%C3%B3n+estatal%3A+%C2%BFreina+la+incertidumbre%3F&rls=com.microsoft:*:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117GGLL_es)

[g=Contrataci%C3%B3n+estatal%3A+%C2%BFreina+la+incertidumbre%3F&rls=com.microsoft:*:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117GGLL_es](http://www.google.com/search?q=Contrataci%C3%B3n+estatal%3A+%C2%BFreina+la+incertidumbre%3F&rls=com.microsoft:*:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117GGLL_es)

TRANSPARENCIA POR COLOMBIA REPORTE ANUAL

2007 http://www.transparenciacolombia.org.co/Portals/0/descargas/reporte_anual/Informe%20de%20Gesti%C3%B3n%202007.pdf

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The law effectively recognizes as effective advertising media for procurement: bulletins of the chambers of commerce, national newspapers, posters in public spaces, and websites. Since a multiplicity of procurement regimes persists even after the latest reform to Law 80, effective advertising in some cases is subject to the criteria of each entity. Experts consider that until norms oblige all institutions to make public procurement processes, a lot of information will continue to escape from civil society control.

According to a recent evaluation conducted by Transparency for Colombia around 70 percent of national institutions publish imprecise or incomplete information regarding procurement processes.

Lack of access to information is considered the second major risk factor in procurement processes. Institutions in the general regime are obliged to publish the calls, the terms of references, the evaluation of offers and the results of the bidding processes.

However, there is no information on aspects like the follow up on contracts, lists of sanctions, results of investigations or blacklists. This information can be accessed but it would require a lot of time and effort.

There are two online systems of information on public procurement, which have improved the capacity of 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.

In 2000 through the law 598, 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 president created the Portal Unico 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, leasing of real state, among others.

The Documento Conpes 3249 of October 2003 proposed to integrate both online information systems and it is an ongoing process.

Currently 8,478 public entities register information on the SICE. However, there is still a lack of consistency in what is published in SICE and the information individual institutions have.

The portal fares better, but CPAR from the World Bank proposes to reduce the costs of registering in SICE and unify it with the portal. The new law created the Electronic System for Public Procurement (SECOP) plans to unify the Register of the Chambers of Commerce, the Portal Unico de Contratación, the SICE, and the Daily Journal of Public Procurement in order to unify all the procurement process in one place. The results of this initiative can be very positive but are still to be seen. Another important aspect is that currently more than 700 municipalities in the country are using IPRC (Internet for accountability) an online platform that helps them to publish information on the mayors' offices websites.

There are problems for accessing specific bids. In fact, entrepreneurs consider that negotiations take place before the procurement process starts, giving privileged access to information to certain bidders, and constituting major constraints for all to participate in fair procurement processes. The score on this indicator reflects that the problem is not with the high cost of accessing information, but with the existence of privileged information for specific bids.

There is an internet site where all procurement bids are published, yet according to Transparency for Colombia only 67 out of 138 institutions assessed in the latest round of the Transparency Index actually report their purchase plans on internet.

References:

Índice de Transparencia Nacional Resultados 2007-2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Fecha: Julio de 2009

Informe Mecanismo de Seguimiento a la Implementación de la Convención Interamericana contra la corrupción MESICIC

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access results on public procurement on two web pages, the Portal Unico de Contratación 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.

According to a recent evaluation conducted by Transparency for Colombia around 70 percent of national institutions publish imprecise or incomplete information regarding procurement processes.

The quality of information published online has improved over the past years, and in many cases the publication of results is limited to those directly interested in the process. The reform to the procurement law approved in July 2007 was aimed at improving publicity processes, and created the Electronic System for Public Procurement (SECOP) that plans to unify the register

of the Chambers of Commerce, the Portal Unico de Contratacion, the SICE and the Daily Journal of Public Procurement in order to unify all the procurement process in one place. The results of this initiative can be very positive but are still to be seen.

There is an internet site where the results of public procurement processes are published. (<http://www.contratos.gov.co/puc/>)

In fact, it is possible to search the results of these processes. Yet according to Transparency for Colombia there are still many institutions that do not publish their information.

References:

Informe Mecanismo de Seguimiento a la Implementación de la Convención Interamericana contra la corrupción MESICIC http://www.oas.org/juridico/spanish/mesicic_estruct_IIIronda.pdf

Índice de Transparencia Nacional Resultados 2007-2008

Fuente: Corporación Transparencia por Colombia

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Fecha: Julio de 2009

Portal Unico de Contratacion. <http://www.contratos.gov.co/puc/>

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

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

Comments:

According to the Law 226 of 1995, all individuals and enterprises can access all state stocks privatized by the state. In recent years processes of privatization opened to the public have increased, the most recent one was the privatization (or capitalization) of Ecopetrol, the national oil company.

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.

53b. 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 rule aimed at preventing conflicts of interest for public servants in general, which may be applicable to privatization processes. The Law 734 of 2002, or disciplinary code for civil servants, states that a public servant can not become a creditor or debtor of someone interested in his office business and should be recused from policy decisions when there is a direct particular interest to himself, his relatives or his business partners.

In general, public servants should recuse themselves 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 themselves from procurement decisions. However, since according to the law, employees in state enterprises which are being privatized have to be offered shares in the first place, it is not clear how to regulate 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.

53c. 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.

It is reported that big economic groups with interest in privatization processes may exert undue influence on the functionaries conducting the process, and that real interests are not transparent. During the study period, irregularities were reported in the decision to divide the Enterprise of Public Services Emcali in order to privatize its communications sectors.

According to critics, councilmen and the mayor of Cali responded to private, rather than to public, interests in this decision. Due to irregularities in March 2009 the Mayor of Neiva decided to cancel the privatization of the Public Enterprises of Huila which had been conducted in 2007. Senator Hernan Andrade declared that there were several irregularities in the adjudication of the privatization and as a result there were several problems in the delivery of water and sanitation.

The process of planning the privatization of the electric company Isagen has also been controversial because the government has important interests in the resources potentially derived from this privatization. Due to the complexities and time that the privatization could take, the government is considering a direct selling.

Often one of the contentious issues in privatization is the definition of selling prices. Experts consider that the definition of real prices reflects interests that are not clear to the public.

It is important to note that the Supreme Audit Institution and the General Attorney's Office have increased their involvement in the oversight of privatization processes. During the last year, the Attorney and the Supreme Audit Institution oversaw the privatization of food distribution centers (centrales de abastos).

According to the Corporation Latinobarometro on its 2008 report, about 34 percent of surveyed citizens in Colombia are satisfied with the operation of privatized public services. Although this figure is 2 points above the Latin American average, it still reflects the limitations in privatization processes.

References:

CONCEJALES DE CALI VOTAN IRREGULARMENTE LA PRIVATIZACION Y DESMEMBRACION DE LAS EMPRESAS PUBLICAS MUNICIPALES DE CALI EMCALI

Fecha: 3 de septiembre de 2009

Fuente: http://www.ajpl.nu/radio/index.php?option=com_content&view=article&id=1146:concejales-de-cali-votan-irregularmente-la-privatizacion-y-desmembracion-de-las-empresas-publicas-municipales-de-cali-emcali&catid=80:conflicto&Itemid=180

Anular la oscura privatización de Empresas Públicas de Neiva era la mejor decisión para la ciudad Fecha: 29 de marzo de 2009
Fuente: Senado de la República: http://abc.camara.gov.co/prontus_senado/site/artic/20090330/pags/20090330095429.html

Economía El gobierno está buscando una manera rápida de vender Isagén. Ofrecérsela a EPM, como dijo el presidente Uribe, es la vía más expedita, pero también la más polémica.

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.

54. Can citizens access the terms and conditions of privatization bids?

85

54a. 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. According to the constitutional principle that guarantees the right to access of 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

The Constitution of Colombia 1991, article 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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

There is no formal process of advertising privatization processes, although through the media, major processes are known.

The government presents yearly privatization plans, which are included in the general budget, yet detailed reports or lists or privatization plans are not easily available. There are sectors in which advertisements have 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 (as in the case of the state oil company Ecopetrol in 2007).

In other cases, such as the financial or the health 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, and little is known about the privatization process itself.

References:

Presupuesto de Colombia para 2009: análisis

Fecha: 9 dic 2008
<http://www.gananciaoptima.com/2008/12/presupuesto-de-colombia-para-2009.html>

En 2009, el hueco fiscal del Gobierno será de \$15 billones: Fedesarrollo
Fuente: <http://www.elespectador.com/noticias/negocios/articulo90015-2009-el-hueco-fiscal-del-gobierno-sera-de-15-billones-fedesarrollo>
Fecha: 12 nov 2008

Todo o nada.

Economía Los fondos de pensiones quieren Ecogás. Sería la primera vez que los seis millones de trabajadores afiliados al régimen pensional compran una empresa estatal.
Fuente: <http://www.semana.com/wf/ImprimirArticulo.aspx?IdArt=94671>
Fecha: 3 Oct 2008

Lo que un comprador de acciones debe saber sobre Ecopetrol. 12 de septiembre de 2007 Por Luis Humberto Hernandez <http://www.polodemocratico.net/Lo-que-un-comprador-de-acciones>

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.

54c. 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. The results of the privatization processes conducted in 2006 are available on the webpage 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.

54d. 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 in fact citizens can easily access the laws governing privatization processes.

However, the details of each privatization process are difficult to access or the access is more limited to the common citizen.

For example, the plan to privatize the electric company ISAGEN is highly complex and the government decided to carry out a direct selling one week after announcing that the company was going to be privatized. This decision was made due to the time and complexities this privatization could take at a time when the government was expecting resources. But it is difficult for the public to know what are the rules that govern the process.

Senator Jorge Robledo, a recognized opponent of the government, has denounced recurrently irregularities in the way privatization processes are conducted, without being clearly regulated before the public. According to the Law 226 of 1995, specific privatization programs should be designed by the Minister of the respective sector and by the Finance Minister, and then submitted to the cabinet and the government for final approval, and then sent to be known by Congress.

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

Economía El gobierno está buscando una manera rápida de vender Isagén. Ofrecérsela a EPM, como dijo el presidente Uribe, es la vía más expedita, pero también la más polémica.

Fuente: Semana: http://www.semana.com/wf_imprimirArticulo.aspx?IdArt=127116

Fecha: 9 Ago 2009

Robledo prueba con documentos oficiales que privatización a menos precio de electrificadoras fue impuesta por el FMI Jorge Enrique Robledo Miércoles 11 de junio de 2008

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.

54e. 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 in fact can easily access the laws governing privatization processes. However, the details of each privatization process are difficult to access or the access is more limited to the common citizen. For example, the plan to privatize the electric company ISAGEN is highly complex and the government decided to carry out a direct selling one week after announcing that the company was going to be privatized. This decision was made due to the time and complexities this privatization could take at a time when the government was expecting resources, but it is difficult for the public to know what are the rules that govern the process.

Senator Jorge Robledo, a recognized opponent of the government, has denounced recurrent irregularities in the way privatization processes are conducted, without being clearly regulated before the public. According to the Law 226 of 1995, specific privatization programs should be designed by the Minister of the respective sector and by the Finance Minister, and then submitted to the cabinet and the government for final approval, and then sent to be known by Congress.

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

Economía El gobierno está buscando una manera rápida de vender Isagén. Ofrecérsela a EPM, como dijo el presidente Uribe, es la vía más expedita, pero también la más polémica.

Fuente: Semana: http://www.semana.com/wf_imprimirArticulo.aspx?IdArt=127116

Fecha: 9 Ago 2009

Robledo prueba con documentos oficiales que privatización a menos precio de electrificadoras fue impuesta por el FMI Jorge Enrique Robledo Miércoles 11 de junio de 2008

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. National Ombudsman

56. Is the national ombudsman effective?

73

56a. 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.

56b. 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, attorneys and ombudsmen are more politically constrained. It is important to note; however, that the selection process for general staff in the public ministry is one of the independent civil service regimes that works better and more transparently in the country.

Although the ombudsman and the attorney are formally independent, and their selection is made by the Lower Chamber (Ombudsman-Defensor) and the Senate (Procurador-Attorney) from candidates proposed by the president in the case of the ombudsman, and the President, the Supreme Court, and Council of the State in the case of the prosecutor. This selection method links the heads of these agencies to political commitments, which then can be reflected in the personnel structure and the decisions made by them, limiting the independence from political influence.

During the study period a new Attorney General was elected by Congress and this election was perceived to be highly political and was widely criticized because even though the new attorney was perceived to be radical he was elected given his evident willingness to absolve legislators investigated within a scandal known as para-política when he was a member of the State Council. The politicization of his election has been reflected in his willingness to introduce a legal reform that would eliminate the power of the attorney to investigate congressmen. Similarly in December 2008 the Ombudsman was re-elected among criticisms of those who consider that his close relationships to government has prevented him from being more active in denouncing human rights violations.

At the local level, political pressures derived from the armed conflict make it very difficult for local attorneys and ombudsmen to conduct their jobs. However, it is important to note that the independence and importance of control organizations to protect rights and defend citizens before the state has been on the increase.

References:

Yo te absuelvo, tú me eliges&
<http://www.semana.com/noticias-nacion/absuelvo-eliges/118473.aspx>
 Sábado 6 de diciembre de 2008

Uribe y su bancada proponen quitarle facultades al Procurador
 Fecha:14 Ago 2008
 Fuente: <http://www.elespectador.com/noticias/politica/articulo-uribe-y-su-bancada-proponen-quitarle-facultades-al-procurador>

Abrumadora mayoría en el Senado designa a Alejandro Ordóñez como nuevo Procurador . El Tiempo.
 Fuente: http://www.eltiempo.com/colombia/politica/abrumadora-mayoria-en-el-senado-designa-a-alejandro-ordonez-como-nuevo-procurador_4718360-1

Reelegido Vólmar Pérez como Defensor
 Fuente: <http://www.semana.com/noticias-politica/reelegido-volmar-perez-como-defensor/118802.aspx>
 Fecha: Lunes 15 Diciembre 2008

¿Defensor de quién? (Opinión) <http://www.elespectador.com/opinion/columnistasdelimpreso/mauricio-garcia-v/columna-defensor-de-quien>, El Espectador. 22 Agosto 2008.
 Por: Mauricio García Villegas

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.

56c. 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 unless there is a sanction. This prescription is respected in practice.

References:

The Constitution of Colombia 1991, articles 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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman's and Attorney General's offices have full-time staff and their own system to select career employees. This system has received a certification of quality (ICONTEC) for its impartiality and quality. Yet, recently there have been denunciations that political criteria may be influencing decisions in this system, particularly that union members in the Ombudsman's office are not being taken into account for promotions.

Since 2005 the Ombudsman started to increase its staff due to the creation of the National System of Public Defense (Sistema Nacional de Defensoría Pública). According to the most recent survey on institutional performance made among employees of the Ombudsman's offices, employees consider that personnel resources are not enough to carry out the mandate of the agency (a score of 2.68 out of 5 points).

The same score for the Attorney General's Office is 3.46. The Ombudsman in its 2008 report declared that even though it has consolidated its system of public defense it still lacks resources and personnel to adequately respond to the increasing demands originated from the Law of Peace and Justice (a process of truth and reparation between the paramilitaries and the government), the new accusatory system, and the changes made to criminal laws of underage offenders. This situation is further complicated given that victims are dispersed throughout the territory and usually are located far from competent judicial authorities. The Attorney General also considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported.

According to an evaluation of the governmental policy to fight impunity conducted by the nongovernmental organization Corporation Excellence in Justice, the average number of processes handled by attorneys has remained relatively stable since 2006, but it is very high, reflecting that more personnel would be required.

Since 2004, the Ombudsman's Office has experienced an increase of personnel at the professional, technical, and assistance levels while managerial levels remained constant, yet for the reasons explained above there are still personnel shortages.

References:

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la Republica. <http://www.defensoria.org.co/red/?item=090501&secc=09&ts=2&hs=0905>

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Corporacion Excelencia en la Justicia. Primer informe de seguimiento a la política de lucha contra la impunidad. Septiembre 11 de 2009. http://www.cej.org.co/index.php?option=com_docman&Itemid=191option=com_content&task=category&ionid=103&id=619&Itemid=1193

Sindicalistas de la Defensoría denuncian persecución

Fuente: <http://www.semana.com/noticias-problemas-sociales/sindicalistas-defensoria-denuncian-persecucion/128694.aspx>

Fecha: 15 de septiembre

Procurador reconoce que corrupción desborda sus capacidades. Revista Semana Septiembre 15 de 2009. <http://www.semana.com/noticias-justicia/procurador-reconoce-corrupcion-desborda-capacidades/128744.aspx>

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman's and Attorney General's offices have sufficient full-time staff and their own system to select career employees. This system has received a certification of quality (ICONTEC) for its impartiality and quality. Yet, recently there have been denunciations that political criteria may be influencing decisions in this system, particularly that union members are not being taken into account for promotions.

Political criteria seem to be significant in hiring decisions at managerial levels while general staff is less permeated by political criteria, but selected more on the base of professional qualifications and merit. According to a recent survey on institutional performance made among employees of the attorney's and ombudsman's offices, employees in both institutions consider that political criteria do influence hiring decisions of free removal and appointment employees (the score for an indicator measuring these influence is 2.88 out of 5 for the ombudsman's office and 2.75 for the attorney's office). By contrast the overall evaluation of career systems in these institutions is well scored, especially for the General Attorney's Office.

During the study period, a new Attorney General was elected by Congress, and this election was perceived to be highly political and was widely criticized because apparently there were bureaucratic pacts by which the new attorney promised all legislators to provide bureaucratic equity".

In fact he has appointed people very close to those who were crucial for his election.

Similarly in December 2008, the Ombudsman was re-elected among criticisms of those who consider that his close relationship to government has prevented him from being more active in denouncing human rights violations. The decrease on the score for this indicator reflects the apparent increase in clientele appointments that take place outside the career systems.

References:

Mojigatería y politiquería.

Claudia López (Opinión-Columnistas) http://www.eltiempo.com/opinion/columnistas/claudialopez/mojigateria-y-politiqueria_4724620-1

Alejandro Ordóñez fue elegido como nuevo Procurador General por el Senado
Fecha: 11 dic 2008.

Fuente: <http://www.eltiempo.com/colombia/p>

Ordóñez elegido Procurador por absoluta mayoría

Fecha: 11 dic 2008

Fuente: <http://www.semana.com/noticias-politica/ordonez-elegido-procurador-absoluta-mayoria/118653.aspx>

La ordóñez-política

Fecha: Sábado 21 Marzo 2009

Fuente: <http://www.semana.com/noticias-opinion/ordonezpolitica/121971.aspx>

Suspenden elección del Defensor del Pueblo, Vólmar Pérez

Fecha: 12 Oct 2008

Fuente: www.eltiempo.com/.../suspenden-eleccion-del-defensor-del-pueblo-volmar-perez_4593569-1

Reelegido Vólmar Pérez como Defensor

Fuente: <http://www.semana.com/noticias-politica/reelegido-volmar-perez-como-defensor/118802.aspx>

Fecha: Lunes 15 Diciembre 2008

¿Defensor de quién? (Opinión) <http://www.elspectador.com/opinion/columnistasdelimpreso/mauricio-garcia-v/columna-defensor-de-quien>, El Espectador. 22 Agosto 2008.

Por: Mauricio García Villegas

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Sindicalistas de la Defensoría denuncian persecución

Fuente: <http://www.semana.com/noticias-problemas-sociales/sindicalistas-defensoria-denuncian-persecucion/128694.aspx>

Fecha: 15 de septiembre

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.

56f. 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, and the public ministry is given a fixed percentage of the budget each year. However, there are funding restrictions in local offices of both institutions where employees sometimes do not have basic resources to conduct their work, such as enough computers.

Referring to the 2010 budget project the General Ombudsman declared that it is necessary to provide more generous funding to this institution in order to continue promoting the defense of the most vulnerable sectors of society. The Attorney General also considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported.

According to a recent survey on institutional performance made among employees of the attorney's and ombudsman's offices, employees consider that the budget assigned to fulfill the offices mandate is regular. The score is considerably lower for the Ombudsman's Office (3.11 out of 5) than for the Attorney's Office (3.69).

References:

Intervencion del Defensor sobre el Presupuesto de

2010. http://direccion.camara.gov.co/prontus_senado/site/artic/20090825/pags/20090825202937.html

Proyecto PRESUPUESTO Organismos de Control Y Rama Judicial 2009

Fuente: Cámara de Representantes

http://direccion.camara.gov.co/camara/site/artic/20080911/asocfile/informe_subcomision_presupuesto_2009_hr_german_olano.doc.

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Procurador reconoce que corrupción desborda sus capacidades. Revista Semana Septiembre 15 de

2009 <http://www.semana.com/noticias-justicia/procurador-reconoce-corrupcion-desborda-capacidades/128744.aspx>

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The General Prosecutor and the ombudsman must make a yearly report of their activities to congress and these reports are available on the website of the agencies, although there is no clarity as to when these reports should appear on the web page.

For example the Ombudsman's yearly report for 2008 was published online only in September 2009. Although reports are usually comprehensive, statistics are not very detailed. According to the Transparency Index presented by Transparency for Colombia, the Ombudsmen has very low levels of visibility (a score of 44 out of 100), which make it a institution with medium level of corruption risk, whereas the General Attorney has a better score in visibility but is still a institution with medium levels of corruption risk (a score of 75.4). The most recent survey on institutional performance made among employees of the attorney's and ombudsman's offices by the DANE presents a similar panorama where scores for accountability in the Ombudsman's Office are lower than in the Attorney's General Office although both institutions present very high scores in what refers to the organization of public audiences to present performance reports.

References:

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Attorney General has the mandate and does start investigations aggressively.

During the study period there were sanctions against the mayors of the municipalities of Soledad and Pereira. The Attorney General's Office has also been active in requesting and/or initiating investigations in major corruption cases such as the illegal wiretapping conducted by Intelligence Agency (DAS), apparent corruption in the State Council, and influence peddling by legislators.

It also was very active in reactivating prescribed cases such as the investigation on the assassination of presidential candidate Luis Carlos Galán in 1989.

Yet, according to the Attorney General's Office one frequent problem of acting on investigations is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late.

The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way is how long it takes to solve a case. The Attorney General's Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. Between January 2008 and September 2009 the Delegate Attorney General for Decentralization has registered 178,544 denunciations and initiated 3,777 processes against mayors, 448 against governors and 514 against councilmen.

The ombudsman does not have the power to initiate investigations but can start popular actions to protect human rights and demand on behalf of citizens it be sent to the proper judicial agency.

The most recent report of the ombudsman shows that in 2008 the office received 72,456 petitions: 33,007 for advising, 23,564 were complaints and 15,885 requests.

Of those 24,304 were requests for public defense and the office acted directly before judicial courts in 4,965 requests (20.43 percent), obtaining decisions in 3,326 cases (2,766 favorable decisions on 83 percent). Of the remaining requests, the Ombudsman's Office did not act before courts because it was not proper or because the cases are under review.

In those cases where the offices do not act, advice is given to the citizen. Ombudsmen also acted on 7,714 requests for investigation from public defenders and finished 58 percent of those investigations. The ombudsman office acts immediately upon requests.

During 2007, it concluded its action on 90.41 percent of petitions for public defense.

The score presented on this indicator shows the effectiveness of both the Attorney General'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 or sometimes due to the lack of political will of local officers (especially in the prosecutor's office).

The Ombudsman in its 2008 report declares that even though it has consolidated its system of public defense it still lacks adequate resources and personnel to respond to the increasing demands originated from the Law of Peace and Justice (a process of truth and reparation between the paramilitaries and the government), the new accusatory system, and the changes made to criminal laws of underage offenders. This situation is further complicated given that victims are dispersed throughout the territory and usually are located far from competent judicial authorities.

According to an evaluation of the governmental Policy to fight impunity conducted by the nongovernmental organization Corporation Excellence in Justice, the average number of processes handled by attorneys has remained relatively stable since 2006 but it is very high such reflecting that more personnel would be required.

References:

Investigar a magistrado Escobar Araújo por posible corrupción en Consejo de Estado pide Procuraduría

Fecha: 11 agosto de 2009

Fuente: http://www.eltiempo.com/colombia/justicia/primeras-decisiones-de-procuraduria-por-red-de-corrupcion-en-consejo-de-estado_5987589-1

Procuraduría exige efectuar nombramiento de ganadores de concurso del Servicio Civil

Fecha: Diciembre 16, 2008 9:25 pm

Fuente: <http://www.radiosantafe.com/2008/12/16/procuraduria-exige-efectuar-nombramiento-de-ganadores-de-concurso-del-servicio-civil/>

Procuraduría pide pérdida de investidura y aseguramiento para Alirio Villamizar
Fecha: Sábado, 05 de Septiembre de 2009
Fuente: <http://www.vanguardia.com/politica/93/38732>

Procuraduría destituyó a ex Comandante de Policía de Carreteras de Santander
Fuente: <http://www.iodelar.com/node/2705>
Fecha: Jueves, Julio 30, 2009

Procuraduría investiga por corrupción a funcionarios del Consejo de Estado
Fecha: agosto 31 de 2009
Fuente: <http://www.caracol.com.co/nota.aspx?id=870417>

Procuraduría suspende a gobernador de Bolívar, Joaco Berrio
Fecha: Lunes 24 Agosto 2009
Fuente: <http://www.semana.com/noticias-politica/procuraduria-suspende-gobernador-bolivar-joaco-berrio/127771.aspx>

Magistrado Escobar Araújo explica por qué Procuraduría pidió que lo investiguen
Fuente: http://www.eltiempo.com/colombia/justicia/magistrado-escobar-araujo-explica-por-que-procuraduria-pidio-que-lo-investiguen_5986647-1
Fecha: 31 ago 2009

Procuraduría investigará recientes denuncias sobre el trámite del referendo reeleccionista
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-investigara-recientes-denuncias-sobre-el-tramite-del-referendo-reeleccionista_5925467-1
Fecha: 24 ago 2009

Procuraduría: Tribunal forzó argumentos para absolver a Santofimio de muerte de Galán
Fuente: http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5802027.html
Fecha: 11 ago 2009

Procuraduría revive caso de Gloria Lara; 27 años después podría ir a cortes internacionales
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-revive-caso-de-gloria-lara-27-anos-despues-podria-ir-a-cortes-internacionales_5761114-1
Fecha: 2 ago 2009

Procuraduría está investigando a 550 docentes por abuso sexual y maltrato infantil
Fecha: 8 nov 2008
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-esta-investigando-a-550-docentes-por-abuso-sexual-y-maltrato-infantil_4655221-1

César Gaviria le pide a Fiscalía y Procuraduría sancionar a responsables de 'chuzadas'
Fuente: http://www.eltiempo.com/colombia/politica/cesar-gaviria-le-pide-a-fiscalia-y-procuraduria-sancionar-a-responsables-de-chuzadas_4835089-1
Fecha: 23 feb 2009

Investigación contra tres funcionarios del Gobierno abrió la Procuraduría por las 'chuzadas'
Fecha: 16 mayo de 2009
Fuente: http://www.eltiempo.com/colombia/justicia/investigacion-contra-tres-funcionarios-del-gobierno-abrio-la-procuraduria-por-las-chuzadas_5194988-1

Balance de mandato 2001 2008
Fuente: Procuraduría General de la Nación
http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesalcongreso.htm
Fecha: noviembre de 2008

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la República. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

Comments:

The Attorney General can impose penalties on public officials. For example, during the study period, there were notable sanctions against the mayors of the municipalities of Soledad, Palmira, Sesquile, Regidor and Pereira, against employees of the Council of State, and against councilmen in the city of Montería among others.

When investigations do not refer directly to disciplinary faults of public officers the Attorney's Office sends its report to the Prosecutor's Office (for penal offenses) or the Supreme Audit Institution (for fiscal offenses).

According to the Attorney General's Office one frequent problem in acting quickly on corruption cases is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late.

The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way is how long it takes to solve a case. The Attorney General's Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in imposing penalties.

Yet during the study period there was a increasing perception that due to the politicized election of the new Attorney General. He has been less active in imposing penalties and has allowed the closure of important cases against a senator and against a former military general linked to paramilitaries. In a controversial decision he also absolved two ministers accused of influence peddling for the approval of a constitutional reform that allowed presidential re-election in 2006. The politicization of the Attorney General thus affects the effective imposition of penalties.

Although the statistics available for 2008 do not allow for a disaggregated analysis of the sanctions imposed by the Attorney General (unlike 2007), available press information and attorney's reports reflect that the range of cases in which the attorney imposes penalties is wide, from irregularities in public procurement to irregularities in the appointment of public officials. The Attorney's Office also reports that the majority of sanctions target managerial levels (63 percent on the first request of investigation). The Attorney Office issues the certificate of disciplinary antecedents that is required for every contract with the state, and that can now be obtained for free. The effectiveness of this certificate shows in part the effectiveness of attorneys in sanctioning faults of public officials.

The ombudsman, unlike the attorney, does not have the power to impose penalties, but it reports that from all the petitions to act received in 2008, it acted on 90.41 percent leaving a very small backlog. The most recent report of the ombudsman shows that in 2008 the office acted directly before judicial courts in 4,965 requests, obtaining decisions in 3,326 cases (2,766 favorable decisions on 83 percent).

The score presented on this indicator shows the effectiveness of both the Attorney General's and Ombudsman's office in protecting rights but also the limitations that their functions face at the national level due to politicization of managerial levels, and at local levels of government due to pressures derived from the armed conflict and to the lack of political willingness of local attorneys.

References:

El nuevo Procurador General y sus primeros 70 días de impunidad

Fuente: <http://www.colectivodeabogados.org/El-nuevo-Procurador-General-y-sus>

Fecha: Domingo 29 de marzo de 2009

Procuraduría pidió investigar al Magistrado Escobar Araújo por tráfico de influencias

Fecha: Lunes 31 Agosto 2009

Fuente: <http://www.semana.com/noticias-justicia/procuraduria-pidio-investigar-magistrado-escobar-araujo-trafico-influencias/128065.aspx>

Procuraduría suspende a Alcalde de Palmira

Fecha: 01 sept 2009

Fuente: <http://www.elpais.com.co/paisonline/notas/Septiembre012009/suspensional.html>

Procuraduría pide reabrir proceso al general (r) Rito Alejo del Río

Fuente: <http://www.rcn.com.co/noticia.php3?nt=29628>

Fecha: 3 de marzo de 2009

Procuraduría: se absuelven dudas

Daniel Samper Pizano

Opinión-Columnistas

Fuente: <http://www.eltiempo.com/opinion/columnistas/danielsamperpizano/procuraduria-se-absuelven-dudas>

Fecha: 21 mar 2009

Procuraduría pide la captura del general Miguel Maza Márquez en proceso por el magnicidio de Galán

Fecha: 17 ago 2009

Fuente: http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5806667.html

Procuraduría destituyó e inhabilitó por 11 años a 18 de los 19 concejales de Montería

Fecha: 13 mayo 2009

Fuente: http://www.eltiempo.com/colombia/caribe/procuraduria-destituyo-e-inhabilito-por-11-anos-a-18-de-los-19-concejales-de-monteria_5184170-1

Procuraduría sancionó con destitución a ex alcalde de Regidor, sur de Bolívar

Fuente: http://www.eltiempo.com/colombia/oriente/procuraduria-sanciono-con-destitucion-a-ex-alcalde-de-regidor-sur-de-bolivar_6070328-1

Fecha: 10 sept 2009

Procuraduría de Zipaquirá inhabilitó por diez años a alcalde de Sesquile, Cundinamarca

Fuente: http://www.eltiempo.com/colombia/cundinamarca/procuraduria-de-zipaquirá-inhabilito-por-diez-anos-a-alcalde-de-sesquile-cundinamarca_5301347-1

Fecha: 28 mayo 2009

Procuraduría destituye a funcionaria de hospital de Florencia (Caquetá)

Fecha: 9 ago 2009

Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-destituye-a-funcionaria-de-hospital-de-florencia-caqueta_5587347-1

El 'delete' del procurador Ordóñez

(Opinión)

Fecha: 12 abril de 2009

Fuente: http://www.eltiempo.com/opinion/columnistas/maraisabelrueda/el-delete-del-procurador-ordonez_4959044-1

Con tres años menos de inhabilidad, ratificada destitución del director de Inviás Daniel García

Fecha: feb 18 de 2009

Fuente: http://www.eltiempo.com/colombia/justicia/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-4823986.html

Procurador no creyó en cambio de versión de Yidis; por eso absolvió a Diego Palacio y Sabas Pretelt

Fecha: 17 mar 2009

Fuente: http://www.eltiempo.com/colombia/justicia/procurador-no-creyo-en-cambio-de-version-de-yidis-por-eso-absolvio-a-diego-palacio-y-sabas-pretelt_4881321-1

Perdón, señor Procurador, por la molestia

Ramiro Bejarano Guzmán, 'Notas de Buhardilla'

Fecha: 22 de marzo de 2009

Fuente: http://www.eltiempo.com/opinion/columnistas/otroscolumnistas/perdon-senor-procurador-por-la-molestia_4921088-1

Ni Job ni DMG

Por: Ramiro Bejarano Guzmán

Fuente: <http://m.elespectador.com/columna129616-ni-job-ni-dmg>

Fecha: mar 21 2009

'No hay contradicción de la Procuraduría en casos de 'Yidispolítica', dice Alejandro Ordóñez

Fuente: http://www.eltiempo.com/colombia/justicia/no-hay-contradiccion-de-la-procuraduria-en-casos-de-yidispolitica-dice-alejandro-ordonez_4949482-1

Fecha: 3 abril de 2009

Investigan a 28 gobernadores por acciones ilegales o actos de corrupción, revela Procurador General

Fecha: 21 jun 2009

Fuente: <http://www.eltiempo.com/colombia/politica/investigan-a-28-gobernadores-por-acciones-ilegales-o-actos-de-corrupcion-revela-procurador-gen>

Embarradas y algo más

Lucy Nieto De Samper

Publicado el 11 de Abril de 2009

Fuente: http://www.eltiempo.com/opinion/columnistas/lucynietodesamper/embarradas-y-algo-mas_4958398-1

Procuraduría prepara decisiones en caso de Álvaro Gómez

Fecha: 12 jun 2009

Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-prepara-decisiones-en-caso-de-lvaro-gomez_5427627-1

Balance de mandato 2001 - 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesalcongreso.htm

Fecha: noviembre de 2008

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la

República. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

Comments:

The concepts of the attorney are influential even though they may sometimes find resistance within the government; in other cases there is collaboration as was the case with the efforts of the Attorney General to reactivate the investigation of the assassination of former presidential candidate Luis Carlos Galán in 1989.

Both the Attorney General and the Ombudsman also can present law projects in matters of their interest. This situation of influence may change because a new Attorney General was elected by Congress, and this election was perceived to be highly political and favorable for the government and legislators, thus hindering the independence and credibility of the Attorney General. The politicization of his election has been reflected in his willingness to introduce a legal reform that would eliminate the power of the attorney to investigate congressmen.

The most recent report of the ombudsman shows that in 2008 the office acted directly before judicial courts in 4,965 requests, obtaining decisions in 3,326 cases (2,766 favorable decisions or 83 percent), thus showing the increasing effectiveness of the Ombudsman's action. Yet, there are many cases in which the government may ignore recommendations and denunciations made by the Ombudsman.

A notable example is that since 2007 the Ombudsman's Office had reported irregularities in the supposed recruitment of young men in rural areas by armed groups and had alerted about the disappearance of young men which sometimes were then reported as members of armed groups. The government ignored these alerts until in 2008 when it became evident that a practice colloquially known as false positives was systematically taking place among the military (the practice consisted in dressing up young men and killing them to make them appear as killings of guerrilla members in combat, and thus, as a military success).

Although there have been important advances in what refers to collaboration with other branches of power, coordination is still one of the major problems for the action of the ombudsman and especially the Attorney General's office. According to an evaluation of the governmental policy to fight impunity conducted by the nongovernmental organization Corporation Excellence in Justice, there have been advances in reducing impunity in the country but the lack of coordination among institutions is still one of the main difficulties in fighting impunity.

References:

Defensoría del Pueblo dice que ya había advertido sobre falsos positivos

Fecha: 14 Abr 2009 – 5:03 pm

Fuente: <http://www.elespectador.com/articulo135851-defensoria-del-pueblo-dice-ya-habia-advertido-sobre-falsos-positivos>

Procuraduría pedirá acelerar la investigación del asesinato de Luis Carlos Galán

Fecha: 20 Jun 2009

Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-pedira-acelerar-la-investigacion-del-asesinato-de-luis-carlos-galan_5494107-1

Condena para Alberto Santofimio por el magnicidio de Luis Carlos Galán pedirá la Procuraduría Fecha: 6 ago 2009

Fuente: http://www.eltiempo.com/colombia/politica/condena-para-alberto-santofimio-por-el-magnicidio-de-luis-carlos-galan-pedira-la-procuraduria_5784907-1

Yo te absuelvo, tú me eliges&

<http://www.semana.com/noticias-nacion/absuelvo-eliges/118473.aspx>

Sábado 6 de diciembre de 2008

Uribe y su bancada proponen quitarle facultades al Procurador

Fecha: 14 Ago 2008

Fuente: <http://www.elespectador.com/noticias/politica/articulo-uribe-y-su-bancada-proponen-quitarle-facultades-al-procurador>

Abrumadora mayoría en el Senado designa a Alejandro Ordóñez como nuevo Procurador . El Tiempo.

Fuente: http://www.eltiempo.com/colombia/politica/abrumadora-mayoria-en-el-senado-designa-a-alejandro-ordonez-como-nuevo-procurador_4718360-1

Reelegido Vólmar Pérez como Defensor

Fuente: <http://www.semana.com/noticias-politica/reelegido-volmar-perez-como-defensor/118802.aspx>

Fecha: Lunes 15 Diciembre 2008

¿Defensor de quién? (Opinión) <http://www.elespectador.com/opinion/columnistasdelimpreso/mauricio-garcia-v/columna-defensor-de-quien>, El Espectador. 22 Agosto 2008.

Por: Mauricio García Villegas

Balance de mandato 2001 – 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infointst_informesalcongreso.htm

Fecha: noviembre de 2008

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la

República. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

Corporacion Excelencia en la Justicia. Primer informe de seguimiento a la política de lucha contra la impunidad. Septiembre 11 de 2009. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Attorney General's Office (Procuraduría) has relieved the congestion of processes over the past seven 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. According to the Attorney General's Office one frequent problem in acting quickly on corruption cases is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late. The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way is how long it takes to solve a case.

The number of files in process went from 61,803 in 2000 to 23,447 in June 2008.

The Attorney General's Office reported that in 2006 it received 500,000 documents reporting irregularities or offenses. Of those, 31 percent were directed for disciplinary processes and 22 percent for preventive processes.

The Attorney General'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. It has invested resources on training and personnel to strengthen the responses to claims and complains made by citizens. From all the petitions to act received in 2008, it acted on 90.41 percent, leaving a very small backlog. The most recent report of the ombudsman shows that in 2008 the office acted directly before judicial courts in 4,965 requests, obtaining decisions in 3,326 cases (2,766 favorable decisions or 83 percent).

References:

Balance de mandato 2001 - 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informosalcongreso.htm

Fecha: noviembre de 2008

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la

República. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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.

57. Can citizens access the reports of the ombudsman?

83

57a. 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 pages of the respective entities.

References:

The Constitution of Colombia 1991, articles 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.

57b. 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 Attorney General can be found online or directly at the offices, but more detailed information can be difficult to obtain for most citizens.

The Attorney General'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 web page of the Defensoría del Pueblo (Ombudsman) citizens can access a list a popular actions taken to protect human rights. Both the General Attorney's and Ombudsman's Office publish online their yearly reports.

According to an analysis conducted by the Media Observatory of the Universidad de la Sabana, the Attorney General's Office ranks second as one of the state institutions that has more credibility in its press releases and that manipulates less the information it publishes. According to the Transparency Index presented by Transparency for Colombia the Ombudsmen has very low levels of visibility (a score of 44 out of 100) which make it a institution with medium level of corruption risk, whereas the General Attorney has a better score in visibility but is still a institution with medium levels of corruption risk (a score of 75.4). The most recent survey on institutional performance made among employees of the attorney's and ombudsman's offices by the DANE presents a similar panorama where scores for accountability in the Ombudsman's Office are lower than in the Attorney's General Office although both institutions presents very high scores in what refers to the organization of public audiences to present performance reports.

References:

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

57c. 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 and have no cost, however it may be difficult for citizens to understand and use properly the information systems which are not user-friendly.

According to the Transparency Index presented by Transparency for Colombia the Ombudsman has very low levels of visibility (a score of 44 out of 100) which make it a institution with medium level of corruption risk, whereas the General Attorney has a better score in visibility but is still a institution with medium levels of corruption risk (a score of 75.4). The most recent survey on institutional performance made among employees of the attorney's and ombudsman's offices by the DANE presents a similar panorama where scores for accountability in the Ombudsman's Office are lower than in the Attorney General's Office although both institutions presents very high scores in what refers to the organization of public audiences to present performance reports.

References:

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Procuraduría General de la Nación. www.procuraduria.gov.co

Defensoría del Pueblo. www.defensoria.org.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. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. 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, 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, human rights protection, and the defense of society's interests.

To protect human rights the prosecutor has the assistance of the ombudsman (Defensor del Pueblo), who has the constitutional responsibility of protecting the promotion, exercise and assurance of human rights. According to the constitution, the attorney and the ombudsman can request public servants and particulars of all the information considered relevant. The Attorney has judicial police power.

References:

The Constitution of Colombia 1991, Articles 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.

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

According to the Constitution, the Supreme Audit Institution (Contraloría) is a technical institution which has administrative and budgetary independence, and belongs to the oversight institutions.

References:

The Constitution of Colombia 1991, article 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.

59b. 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 is elected by both Chambers of Congress for a four-year term. He or she can only be removed if there is a sanction or inability or an incompatibility. In some cases local auditors can be forced to resign due to threats but this situation is less likely for the director of the agency.

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.

59c. 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. It is

composed of 4,057 posts, 74 percent at the professional level, 17 percent at the assistential level, 4 percent at executive levels, 2 percent at the managerial and technical level, and 1 percent at the advising level.

Yet according to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, the Supreme Audit Institution gets a low score in the indicator evaluating whether personnel is enough to fulfill institutional mandates (the score is 3 out of 5). Most importantly, a recent evaluation of auditing exercises concluded that it is impossible for auditors at the local level to conduct their missions properly because they do not have adequate resources and the personnel is not enough. In some offices, it is impossible to maintain the minimum personnel, a situation that stands in contrast with other offices which receive significant investments from foreign aid and from the national government. In some offices under fiscal pressure there are problems for paying employees, as in the case of the Atlántico regional office. The situation has been worsened in certain cases with budget cuts that reduce personnel, as in the case of the regional government of Santander where budget cuts led to 500 employees of the regional audit institution being laid off.

References:

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

Informe de Gestión y Estados Financieros. Contraloría General de la República.

http://www.contraloriagen.gov.co:8081/internet/central_doc/Archivos/363/Informegestion2007-2008.pdf

\$300 Millones, Déficit De Contraloría Del Atlántico

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-577025>

Fecha: 27 sept 2008

Saldrán 1.400 Empleados Del Gobierno De Santander

Fecha: 28 sept 2008

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-849307>

Aprobada reestructuración de la Contraloría que crea 45 nuevos cargos

Fecha: 19 dic 2008

Fuente: <http://www.elespectador.com/noticias/bogota/articulo100486-reestructuracion-de-contraloria-crea-45-nuevos-cargos>

Contraloría, En Formación De Servidores Públicos

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3572205>

Fecha: 16 ago 2009

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Although the auditor is formally independent, his or her selection is made by Congress, and this links the head of this agency to political commitments, which are then reflected in the personnel structure and decisions.

According to the Transparency Index presented by Transparency for Colombia the Supreme Audit Institution is at moderate level of corruption risk. However, there is a widespread perception that at the local level staffing decisions are strongly supported by political criteria.

Similarly, according to the most recent survey on institutional performance conducted by the DANE, employees of the Supreme Audit Institution consider that political criteria play a very important role in the appointment of free appointment and removal employees (a score of 2.22 out of 5). The process of hiring through the civil service gets better scores (average 4.01), thus showing that most political interferences occur through non civil service appointments.

For a long time there has been a huge controversy about the pertinence of municipal auditors, as it is considered that their functions can be carried out by departmental auditors. A recent index of regional transparency shows that the audit offices at the regional level are very weak institutionally and are at a very high level of corruption risks. This risk has increased over the years, and accountability and transparency at the local level are very weak. This situation is even more worrying considering that regional auditing offices receive 75 percent more complaints than the central level, and thus their action is crucial.

An example of the political influences in local offices of the Audit Institution are the favorable decisions issued by the Auditor (Comptroller) in the city of Barranquilla in exchange of posts in a public hospital under liquidation.

References:

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

El cambalache del Contralor de Barranquilla

Fecha: 7 abril de 2009

Fuente: <http://www.semana.com/noticias-justicia/cambalache-del-contralor-barranquilla/122651.aspx>

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding sources are reliable and consistent from year to year. At the local level however, the situation is more difficult as there are huge differences among different Audit Offices. Most importantly, a recent evaluation of auditing exercises concluded that it is impossible for auditors at the local level to conduct their missions properly because they do not have adequate resources.

Some of them have very good funding and count with considerable resources from international cooperation and investment from the central government, while others lack budget having difficulties to pay its employees and to purchase basic supplies such as computers.

Some offices face considerable budget deficits (such as the regional offices in the departments of Atlántico and Nariño) while in others resources may be undermined due to corruption or inadequate use of resources. According to a recent survey on institutional performance made among employees of the Supreme Audit Institution, employees consider that the budget assigned to fulfill the office's mandate is regular (3.36 out of 5).

References:

\$300 Millones, Déficit De Contraloría Del Atlántico

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-577025>

Fecha: 27 sept 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

DANE Encuesta Desempeño Institucional Resultados Nacionales 2008 <http://www.dane.gov.co/index.php?>

Contralor de Bogotá es cuestionado por destinar una camioneta de su despacho a su esposa

Fuente: http://www.cambio.com.co/paiscambio/826/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-5098607.html

Fecha: 30 abril de 2009

Investigan a Contraloría por posible desvío de recursos de un programa de lucha contra la corrupción

Fecha: 2 nov 2008

Fuente: http://www.cambio.com.co/paiscambio/796/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4578323.html

Proyectos de ordenanza serán estudiados por Asamblea Departamental del Tolima

Fecha: enero 28 de 2009

Fuente: http://www.eltiempo.com/colombia/tolima/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-4779453.html

Salario de ministros y directores de departamento administrativo ascenderá este año a \$11'748.891

Fecha: 19 mar 2009

Fuente: http://www.eltiempo.com/economia/portafolio_redireccion/home/salario-de-ministros-y-directores-de-departamento-administrativo-ascendera-este-ano-a-11748891_4887863-1

Polémica por compra de costosos vehículos en Personería y Contraloría de Bogotá

Fecha de Publicación: 3 de abril de 2009 Sección: Nación. Autor: Yesid Lancheros.

Fuente: El Tiempo <http://www.eltiempo.com/archivo/documento/CMS-4994729>

Informe de Gestión y Estados Financieros. Contraloría General de la República.

http://www.contraloriagen.gov.co:8081/internet/central_doc/Archivos/363/Informegestion2007-2008.pdf

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.

59f. 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: a 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 (Colombian Economics) magazine and special reports.

According to the Transparency Index presented by Transparency for Colombia the Supreme Audit Institution has very good levels of visibility (a score of 91.7 out of 100), which make it a institution with a moderate level of corruption risk. However, transparency at the local level is more limited: some regional offices may publish reports regularly while others do not. For example the auditor in the regional office of Caldas has been strongly criticized for not presenting accountability reports on time.

References:

Críticas a gestión de Contraloría General de Caldas

Fecha: 16 feb de 2009

Fuente: http://www.eltiempo.com/colombia/ejecafetero/criticas-a-gestion-de-contraloria-general-de-caldas_4821641-1

Informe de Gestión y Estados Financieros. Contraloría General de la República.

http://www.contraloriagen.gov.co:8081/internet/central_doc/Archivos/363/Informegestion2007-2008.pdf

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

59g. In practice, the government acts on the findings of the audit agency.

Comments:

Usually reports of the Supreme Audit Institution are taken seriously at the national level and lead to action from the pertinent authorities. However, at the local level the situation is different.

Local auditors themselves are often involved in corruption cases, and it is considered that their mandate can be carried out by departmental and national auditors. In some of the strongest regional offices, reports from auditors can cause serious debates. Some of the recent reports from auditors at the national – and the stronger – local offices refer to irregularities in procurement processes, and may in some cases generate opposition from the government, as they directly involve local authorities. This was the case of the Regional Auditor (Comptroller) of the Department of Putumayo, who was threatened after releasing a report that unveiled irregularities in the governor's office.

In some cases, audit agency reports are acted as exemplified in the initiation of a penal investigation against the former mayor of Majagual after denunciations of irregular use of public funds. In other cases, executive authorities may refuse, or be ineffective while acting on reports, as in the case of the mayor of the municipality of Puerto Gaitán, who criticized reports made by the regional office in the department of Meta about irregularities in contracts aimed at investing oil royalties.

Another example is the persistence of irregularities in the management of toxic waste from hospitals despite recurrent requests of the Supreme Audit Institution to act on these irregularities. It is important to note that in some cases reports from the Supreme Audit Institutions have caused wrong interventions as in the case of a recommendation to evacuate 2,500 children from a public school because they were supposedly under threat from intense electromagnetic activity, yet no technical study supported this recommendation.

References:

El contralor departamental denuncia amenazas de muerte

Fuente: Ministerio de Educación

<http://www.mineduacion.gov.co/observatorio/1722/articulo-198855.html>

Fecha: 12 de Agosto de 2009

Contralor solicitó a la DNE que actualice valor de anticipo por \$4.200 millones al Club Los Millonarios

Fecha: sept 11 2009

Fuente: http://www.portafolio.com.co/economia/pais/ARTICULO-WEB-NOTA_INTERIOR_PORTA-6071387.html

Actual terminal de pasajeros de El Dorado debe demolerse dijo Contralor General

Fecha: agosto 25 de 2009

Fuente: <http://www.radiosantafe.com/2009/08/25/actual-terminal-de-pasajeros-de-el-dorado-debe-demolerse-dijo-contralor-general/>

Ultimátum del Contralor General, Julio César Turbay, a responsables de descontaminar el río Bogotá

Fecha: 9 jun 2009

Fuente: http://www.eltiempo.com/colombia/bogota/ultimatum-del-contralor-general-julio-cesar-turbay-a-responsables-de-descontaminar-el-rio-bogota_5395587-1

Sigue haciéndose mal manejo de desechos hospitalarios, según denunció la Contraloría

Fecha: 27 feb 2009

Fuente: http://www.eltiempo.com/vidadehoy/salud/sigue-haciendose-mal-manejo-de-desechos-hospitalarios-segun-denuncio-la-contraloria_4845360-1

Plan de aumento del gasto en infraestructura del Gobierno estaría en riesgo por déficit fiscal

Fecha: 27 agosto 2009

Fuente: http://www.eltiempo.com/economia/noticias_portafolio/home/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5968931.html

Piden reversar decisión de aprobar la exploración en la mina de oro La Colosa (Tolima)

Fecha: 5 mayo de 2009

Fuente: <http://www.eltiempo.com/colombia/justicia/piden-reversar-decision-de-aprobar-la-exploracion-en-la-mina-de-oro-la-colosa-tolima-5143888-1>

Abren investigación penal contra Francisco Gómez, ex alcalde de Majagual, Sucre

Fecha: 5 agosto 2009

Fuente: http://www.eltiempo.com/colombia/caribe/abren-investigacion-penal-contra-francisco-gomez-ex-alcalde-de-majagual-sucre_5784607-1

Grave perjuicio al patrimonio público si no se corrigen fallas en contrato del túnel de La Línea

Fecha: 20 enero de 2009

Fuente: http://www.eltiempo.com/colombia/tolima/grave-perjuicio-al-patrimonio-publico-si-no-se-corrigen-fallas-en-contrato-del-tunel-de-la-linea_4756924-1

Manejo de regalías petroleras causa lío entre Contraloría del Meta y Alcaldía de Puerto Gaitán

Fecha: 19 sept 2008

Fuente: http://www.eltiempo.com/colombia/lano/2008-09-18/manejo-de-regalias-petroleras-causa-lío-entre-contraloria-del-meta-y-alcaldia-de-puerto-gaitan_4535438-1

Contralor Turbay Quintero dice que Gobierno se extralimitó en política de cobro de gasolina

Fecha: 8 de mayo de 2009

Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4939128>

Gobierno no ha cumplido con el compromiso de construir 46 colegios para población vulnerable

Fecha: sept 2 de 2009

Fuente: http://www.cambio.com.co/paiscambio/844/ARTICULO-PRINTER_FRIENDLY-PRINTER_FRIENDLY_CAMBIO-6004094.html

En riesgo extremo vecinos del relleno sanitario de Henequén en Cartagena

Fecha: 21 dic 2008

Fuente: http://www.eltiempo.com/colombia/caribe/2008-09-15/en-riesgo-extremo-vecinos-del-relleno-sanitario-de-henequen-en-cartagena_4528793-1

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fecha: Julio 30 de 2009

Fuente: http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

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.

59h. 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 begin investigations on fiscal responsibility before the competent authorities providing all the necessary documentation.

It can request the immediate suspension of public officials while penal or disciplinary investigations are ongoing. Every three months, the Audit Institution publishes the name of all the civil servants convicted for fiscal irresponsibility. It also issues a certificate of antecedents for fiscal responsibility. That is now required for any contract with the state. This certificate can now be obtained easily online, showing an increasing interest and visibility of the sanctions imposed by the auditors.

Some of the most notable investigations conducted by the Audit Institution at the national level and by the most active offices at the local level during the study period refer to irregular procurement processes, irregular distribution of royalties, fraud and violations to environmental regulations.

The action of the Audit Institution 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 or resources. In some cases, the ability of auditors to finish investigations may be hindered by threats or attacks as those received by the auditors in Meta and Putumayo during the study period.

A recent evaluation of auditing exercises concluded that it is impossible for auditors at the local level to conduct their missions properly because they do not have adequate resources and personnel is not enough. In some offices it is impossible to maintain the minimum personnel, a situation that stands in contrast with other offices, which receive significant investments.

The score on this indicator is explained by the uneven capacity to initiate investigations which may be significant in some offices and more limited in others.

References:

Contralor del Meta salió ileso de atentado, la Policía ofrece diez millones de pesos como recompensa

Fecha: 31 de agosto de 2009

Fuente: http://www.eltiempo.com/colombia/llano/contralor-del-meta-salio-ileso-de-atentado-la-policia-ofrece-diez-millones-de-pesos-como-recompensa_5986087-1

Informe de Gestión y Estados Financieros. Contraloría General de la República.

http://www.contraloriagen.gov.co/8081/internet/central_doc/Archivos/363/Informegestion2007-2008.pdf

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

Investigaciones por corrupción serían el origen del atentado contra el Contralor del Meta

Fecha: 4 sept 2009

Fuente: http://www.eltiempo.com/colombia/llano/investigaciones-por-corrupcion-serian-el-origen-del-atentado-contra-el-contralor-del-meta_6022468-1

El contralor departamental denuncia amenazas de muerte

Fecha: 12 agosto 2009

Fuente: <http://www.mineducacion.gov.co/observatorio/1722/article-198855.html>

10 municipios son inviables: Contralor

Fecha: 2 sept 2009

Fuente: <http://www.eluniversal.com.co/v2/monteria/local/10-municipios-son-inviales-contralor>

Contralor revela presunta irregularidad con regalías por \$1.506 millones

En Coveñas las irregularidades tendrían un valor de \$1.490 millones, mientras en Tolú \$16 millones.

Fecha: 8 jun 2009

Fuente: <http://www.elespectador.com/articulo144759-contralor-revela-presunta-irregularidad-regalias-1506-millones>

Contraloría General de la República anuncia 18 procesos fiscales por concesiones

Fecha: 25 ago 2009

Fuente: http://www.eltiempo.com/economia/noticias_portafolio/home/contraloria-general-de-la-republica-anuncia-18-procesos-fiscales-por-concesiones_5943047-1

Contraloría General de Caldas comenzó a investigar extravío de 50 cajas de ron

Fecha: 28 de mayo de 2009

Fuente: <http://www.eltiempo.com/colombia/ejecafetero/contraloria-general-de-caldas-comenzo-a-investigar-extravio-de-50-cajas-de-ron-5299169-1>

Superintendencia de Operaciones Central de Ecopetrol viola normas ambientales: Contraloría general

Fecha: 12 sept 2009

Fuente: http://www.eltiempo.com/colombia/lano/superintendencia-de-operaciones-central-de-ecopetrol-viola-normas-ambientales-contraloria-general_6078387-1

Contraloría Habló De Hallazgos Por 16 Mil Millones Investigan Detrimento En El Mío

Fecha: 9 sept 2009

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3597305>

Sancionarán a siete municipios del Tolima que no informaron sobre destino de regalías

Fecha: 3 sept 2009

Fuente: http://www.eltiempo.com/colombia/tolima/sancionaran-a-siete-municipios-del-tolima-que-no-informaron-sobre-destino-de-regalias_6011509-1

Contraloría de Boyacá encontró múltiples problemas administrativos en centro de salud de Siachoque

Fecha: 14 mayo de 2009

Fuente: http://www.eltiempo.com/colombia/boyaca/contraloria-de-boyaca-encontro-multiples-problemas-administrativos-en-centro-de-salud-de-siachoque_5186660-1

Contraloría investiga si se utilizaron recursos públicos en 'chuzadas' del DAS

Fecha: 30 abril de 2009

Fuente: http://www.eltiempo.com/colombia/justicia/contraloria-investiga-si-se-utilizaron-recursos-publicos-en-chuzadas-del-das_5106787-1

Contralor del departamento encontró falencias en planes habitacionales del Meta

Fecha: 7 jul 2009

Fuente: http://www.eltiempo.com/colombia/lano/contralor-del-departamento-encontro-falencias-en-planes-habitacionales-del-meta_5578667-1

Contraloría presentó varias irregularidades en MIO durante 2006-2007

Fecha: 31 agosto 2009

Fuente: http://www.eltiempo.com/colombia/occidente/contraloria-presento-varias-irregularidades-en-mio-durante-2006-2007_5986868-1

Encuentran inconsistencias en proyectos de vivienda de interés social de Sogamoso

Fecha: 26 feb 2009

Fuente: <http://www.eltiempo.com/colombia/boyaca/encuentran-inconsistencias-en-proyectos-de-vivienda-de-interes-social-de-sogamoso-4843345-1>

No Informaron Sobre El Destino De Las Regalías Sancionarán A Siete Municipios

Fecha: 4 sept 2009

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3602604>

Diez formas de robarse el país

Fecha: 13 de sept de 2009

Fuente: <http://www.cambio.com.co/paiscambio/812>

El cartel de los comisionistas

CORRUPCIÓN Así se desaparecieron más de 120.000 millones de pesos de las regalías.

Fecha: Sábado 5 Septiembre 2009

Fuente: <http://www.semana.com/noticias-nacion/cartel-comisionistas/128280.aspx>

Contralorí A Investiga A Curi Por \$ 26 Mil Millones

Fuente: www.eltiempo.com/archivo/.../MAM-3588497

Fecha: 27 ago 2009

Contraloría pide cuentas por el Plan de Desarrollo de Cali 2008-2011

Fecha: 9 sept 2009

Fuente: http://www.eltiempo.com/colombia/occidente/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5986950.html

El escándalo de la basura

Por: Laura Ardila Arrieta Fecha: 4 sept 2009

Fuente: <http://www.elespectador.com/impreso/articuloimpreso159680-el-escandalo-de-basura>

En riesgo extremo vecinos del relleno sanitario de Henequén en Cartagena

Fecha: 21 dic 2008

Fuente: http://www.eltiempo.com/colombia/caribe/2008-09-15/en-riesgo-extremo-vecinos-del-relleno-sanitario-de-henequen-en-cartagena_4528793-1

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.

60. Can citizens access reports of the supreme audit institution?

83

60a. 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, and even though it is not specified that these reports are public, they are usually published on the webpage of the institution.

References:

The Constitution of Colombia 1991, article 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.

60b. 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 its offices, but more detailed information can be more difficult to obtain for most citizens, especially information regarding regional offices or more politically-sensitive processes of investigation. At the national level, the auditor produces reports regularly and, in general, the Supreme Audit Institution has a good record of transparency, yet records can be more difficult to retrieve from regional offices, causing delays in accessing information, as in the case of the regional office of Caldas.

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. The Supreme Audit Institution also issues the Certificate of Antecedents of Fiscal Responsibility that can be now accessed online. These are important advances in facilitating citizen's access to information.

References:

Contraloría General de la República. www.contraloriagen.gov.co

Índice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Críticas a gestión de Contraloría General de Caldas

Fecha: 16 feb de 2009

Fuente: http://www.eltiempo.com/colombia/ejecafetero/criticas-a-gestion-de-contraloria-general-de-caldas_4821641-1

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.

60c. 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 and at no cost, although some of the information found online can be too general. In other cases it may be difficult for citizens to understand and use properly the information systems which are not user-friendly.

Furthermore, even though levels of transparency at the national level are very good, and can be more easily accessed, at the regional level records can be more difficult to retrieve.

References:

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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 supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. 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 (Supreme Audit Institutions) is the agency that oversees fiscal management of all public servants and entities managing public resources.

References:

The Constitution of Colombia 1991, article 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.

84 V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In recent years there has been an advance in the level of institutionalization of the tax system in Colombia, due partially to the professionalization of tax agencies. Yet according to a recent study conducted by the DANE, among employees of institutions at the national level, employees still assign a low score when they are asked if personnel is adequate to fulfill the institutional mandate (3.14 out of 5). The DIAN has an independent regime of civil service, but there is a widespread perception that such system requires a reform; according to the same DANE survey, the overall score for the civil service system is still regular (around 3.7).

It is important to note that during the study period there were positive advances to solve some problems like the lack of competitive processes for promotion since 1997. There was a large amount of employees that were supernumeraries, which meant they were employed temporarily.

After a strike took place in October 2008 (employees protested the lack of respect to negotiations regarding salary increases, promotions, and increases of personnel), the DIAN conducted a process of restructuration and opened a competitive process for promotion, thus making a positive step in improving the personnel structure of the institution. For the first time a career employee became the Director of the Institution. A better score on this indicator compared to last year reflects these changes despite the persistence of some problems.

References:

DANE. Encuesta de Desempeno y Ambiente Institucional 2008.

http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Trabajo sí hay. Fecha: 12 jul 2009.

Fuente:

Funcionarios de la Dian se tomaron el Ministerio de Hacienda

Miembros del sindicato de empleados de la Dian se tomaron en la mañana del jueves el tercer piso del edificio San Agustín, en donde funcionan las oficinas del Ministerio de Hacienda, para reclamar ajustes salariales.

Fecha: 16 oct 2008

Fuente: <http://www.elespectador.com/noticias/judicial/articulo84268-funcionarios-de-dian-se-toman-el-ministerio-de-hacienda>

Funcionarios de la Dian se tomaron el Ministerio de Hacienda

Fecha: 16 oct 2008

Fuente: <http://www.elespectador.com/noticias/judicial/articulo84268-funcionarios-de-dian-se-toman-el-ministerio-de-hacienda>

Cese de actividades inician sindicato de la Dian en Bogotá y el de la Registraduría a nivel nacional

Fecha 17 oct 2008

Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4608762>

Empezó paro indefinido de trabajadores de la Dian en Bogotá, y de Registraduría en todo el país

Fecha: 17 oct 2008

Fuente: http://www.portafolio.com.co/economia/pais/2008-10-17/ARTICULO-WEB-NOTA_INTERIOR_PORTA-4608867.html

Paro en la DIAN: 4 consecuencias inmediatas para los contribuyentes

Fuente: <http://www.actualicase.com/actualidad/2008/10/21/paro-de-la-dian-causas-y-efectos/>

Fecha: 21 oct 2008

Gobierno apura normas para reestructurar la Dian y poner fin a paro

Fecha: 22 oct 2008
Fuente: <http://www.elespectador.com/noticias/negocios/articulo85479-gobierno-apura-normas-reestructurar-dian-y-poner-fin-paro>

La DIAN se renueva
Fuente: <http://www.elespectador.com/impreso/articuloimpreso85783-dian-se-renueva>
Fecha: 23 oct 2008

En Noviembre Arranca La Reestructuración De La Dian
Fecha: 24 oct 2008
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3155028>

Gobierno aceptó la renuncia del director de la Dian, Óscar Franco Charry
Fecha: 2 enero de 2009
Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4741175>

Tengo la coraza bien puesta
Fecha: Sábado 31 Enero 2009
Fuente: <http://www.semana.com/noticias-economia/tengo-coraza-bien-puesta/120261.aspx>

Sorpresa en Cúcuta por detención de presidente de Fendipetróleos en Norte de Santander
Fecha: 17 oct 2008
Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4607046>

DIAN. Informe de Rendición de Cuentas
2008. <http://www.dian.gov.co/dian/14cifrasgestion.nsf/pages/Redicion%20de%20cuentas?opendocument>

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 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 (score 3.45 out of 5).

After a strike took place in October 2008 (employees protested the lack of respect to negotiations regarding salary increases, promotions, and increases of personnel), the DIAN conducted a process of restructuring and opened a competitive process for promotion thus making a positive step in improving the personnel structure of the institution. Yet, low salaries are still a big problem in the institution.

References:

DANE. Encuesta de Desempeño y Ambiente Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

DIAN. Informe de Rendición de Cuentas
2008. <http://www.dian.gov.co/dian/14cifrasgestion.nsf/pages/Redicion%20de%20cuentas?opendocument>

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.

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although in recent years there has been an advancement in the level of institutionalization of the tax system in Colombia, due partially to the professionalization of tax agencies, according to a recent study conducted by the DANE, among employees of institutions at the national level employees still assign a low score when they are asked if personnel is adequate to fulfill the institutional mandate (3.14 out of 5).

The DIAN has an independent regime of civil service, but there is a widespread perception that such system requires a reform; according to the same DANE survey, the overall score for the civil service system is still regular (around 3.7).

It is important to note that during the study period there were positive advances to solve some problems like the lack of competitive processes of promotion since 1997 and the large amount of employees that were supernumeraries, which meant they were employed temporarily.

After a strike took place in October 2008 (employees protested the lack of respect for negotiations regarding salary increases, promotions, and increases of personnel), the DIAN conducted a process of restructuring and opened a competitive process for promotion thus making a positive step in improving the personnel structure of the institution. For the first time a career employee became the Director of the Institution. A better score on this indicator compared to last year reflects these changes despite the persistence of some problems.

References:

DANE. Encuesta de Desempeno y Ambiente Institucional 2008.

http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Trabajo sí hay. Fecha: 12 jul 2009.

Fuente:

Funcionarios de la Dian se tomaron el Ministerio de Hacienda

Miembros del sindicato de empleados de la Dian se tomaron en la mañana del jueves el tercer piso del edificio San Agustín, en donde funcionan las oficinas del Ministerio de Hacienda, para reclamar ajustes salariales.

Fecha: 16 oct 2008

Fuente: <http://www.elespectador.com/noticias/judicial/articulo84268-funcionarios-de-dian-se-toman-el-ministerio-de-hacienda>

Funcionarios de la Dian se tomaron el Ministerio de Hacienda

Fecha: 16 oct 2008

Fuente: <http://www.elespectador.com/noticias/judicial/articulo84268-funcionarios-de-dian-se-toman-el-ministerio-de-hacienda>

Cese de actividades inician sindicato de la Dian en Bogotá y el de la Registraduría a nivel nacional

Fecha 17 oct 2008

Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4608762>

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Fecha: 17 oct 2008

Fuente: http://www.portafolio.com.co/economia/pais/2008-10-17/ARTICULO-WEB-NOTA_INTERIOR_PORTA-4608867.html

Paro en la DIAN: 4 consecuencias inmediatas para los contribuyentes

Fuente: <http://www.actualicese.com/actualidad/2008/10/21/paro-de-la-dian-causas-y-efectos/>

Fecha: 21 oct 2008

Gobierno apura normas para reestructurar la Dian y poner fin a paro

Fecha: 22 oct 2008

Fuente: <http://www.elespectador.com/noticias/negocios/articulo85479-gobierno-apura-normas-reestructurar-dian-y-poner-fin-paro>

La DIAN se renueva

Fuente: <http://www.elespectador.com/impreso/articuloimpreso85783-dian-se-renueva>

Fecha: 23 oct 2008

En Noviembre Arranca La Reestructuración De La Dian

Fecha: 24 oct 2008

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3155028>

Gobierno aceptó la renuncia del director de la Dian, Óscar Franco Charry

Fecha: 2 enero de 2009

Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4741175>

Tengo la coraza bien puesta

Fecha: Sábado 31 Enero 2009

Fuente: <http://www.semana.com/noticias-economia/tengo-coraza-bien-puesta/120261.aspx>

Sorpesa en Cúcuta por detención de presidente de Fendipetróleos en Norte de Santander
Fecha: 17 oct 2008
Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4607046>

DIAN. Informe de Rendición de Cuentas
2008. <http://www.dian.gov.co/dian/14cifrasgestion.nsf/pages/Redicion%20de%20cuentas?opendocument>

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.

65b. 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 consider that the agency has sufficient budget to fulfill its responsibilities (score 3.45 out of 5). After a strike took place in October 2008 (employees protested the lack of respect to negotiations regarding salary increases, promotions, and increases of personnel), the DIAN conducted a process of restructuring and opened a competitive process for promotion thus making a positive step in improving the personnel structure of the institution. Yet, low salaries are still a big problem in the institution.

References:

DANE. Encuesta de Desempeno y Ambiente Institucional 2008.
http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

DIAN. Informe de Rendición de Cuentas
2008. <http://www.dian.gov.co/dian/14cifrasgestion.nsf/pages/Redicion%20de%20cuentas?opendocument>

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.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

According to the Decree 2117 of 1992, the DIAN (National Tax and Customs Agency) is the responsible agency for tax collection. It is a technical agency reporting 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.

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There has been an advance in the level of institutionalization of the tax system in Colombia, due partially to the professionalization of tax agencies. In fact, during 2007 the DIAN collected 15.1 percent more money than in 2006. There have also been advances in information systems of contributors and in creating a system of information of suspicious operations that can help to avoid tax evasion (the system is called MUISCA). Through this system there has been an increase in the ratio of collections per employee, and in the ratio of money collected as a proportion of budget assigned to the DIAN.

However, there are still many problems in enforcing tax regulations consistently because there are many differential rates and exemptions which are created by the influence of vested interests. According to the 2010 Global Competitiveness Report, tax regulations and tax rates are among the four factors that hinder business the most.

Differential treatments can be exacerbated when executive authorities create incentives (such as free trade areas in municipalities) seeming to respond in many cases to inadequate influences. Although these exemptions tend to be justified as incentives for investment they can be too exaggerated, as expressed by a former Finance Minister. For example, income taxes for companies in free trade areas can decrease from 33 to 15 percent. This situation tends to reinforce huge gaps in tax treatments, which are paradoxical considering the government's pressure to increase tax collections in order to finance security policies. As a result, individual taxpayers may end up carrying the burden for fiscal pressures on resources.

A notable debate regarding domestic free trade areas emerged around the business conducted by the sons of President Alvaro Uribe during the study period. Their businesses highly benefited from the declaration of free trade areas in a municipality nearby the capital city of Bogotá and by other tax benefits. Their businesses seem to have benefited widely from decisions made by the DIAN and by other local and national authorities. Irregularities in tax collection also became evident during the study period in relation to pyramid schemes.

The most notable case was the company DMG, a holding company that held a large pyramid scheme that provided huge profits both to individual investors who put their savings in the company, and to the company owners. DMG was shut down in 2008 because such collection of funds was illegal and because DMG was apparently a façade for money laundering from drug trafficking.

The existence of a long list of tax exemptions and deductions is the base of unequal and discretionary treatment. There are many problems in collecting rent taxes. Many big land owners, especially in rural areas pay rent taxes well below the market price of their properties. This is due partially to the fact that the price of about 2 million properties has not been updated and can be up 80 percent of the real price of the property, but also is due to political and or armed pressures. (Self defense groups and drug traffickers have greatly benefited by these problems in collection of rent taxes).

It is important to note that during the study period there was an improvement in income tax collection with a decrease in the evasion rate from 36 percent to 30 percent, but there is still a huge gap between the expectations and the actual collection rate.

In sum, there have been important improvements in tax collection in recent years such as the implementation of online filling systems, making Colombia one of the fastest reformers in taxing systems. Yet, despite the legal character of tax exemptions, experts coincide that tax exemptions, evasion, and differential treatments are still a huge hindrance for transparent taxing system and transparent collection practices. In fact in June 2009 the IMF suggested that Colombia still needs to reform and simplify its taxing system in order to make it easier to implement, to collect, and to monitor.

References:

DIAN. Informe de Rendición de Cuentas
2008. <http://www.dian.gov.co/dian/14cifrasgestion.nsf/pages/Redicion%20de%20cuentas?opendocument>

Sigue a la baja evasión en renta y en IVA

Fecha 6 Nov 2008 – 9:06 am

Fuente: <http://www.elespectador.com/noticias/negocios/articulo88559-sigue-baja-evasion-renta-y-iva>

Cundinamarca podría llegar a ser el departamento más industrializado del país

Fecha: 14 mar 2009

Fuente: http://www.eltiempo.com/colombia/cundinamarca/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-4769399.html

Sobrados de lote
Daniel Coronell
Fecha: 17 abril de 2009
Fuente: http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=122986

Procuraduría investiga a funcionarios públicos por escándalo de pirámides
ESCÁNDALO.
Fecha: Viernes 14 Noviembre 2008
Fuente: <http://www.semana.com/noticias-justicia/procuraduria-investiga-funcionarios-publicos-escandalo-piramides/117720.aspx>

Los delfines-empresarios.
Por: MariaElvira Samper
Fecha: 22/04/09

'Gusticos' que no se ven muy bien

Luis Noé Ochoa
Fecha: 24 abril de 2009
Fuente: http://www.eltiempo.com/opinion/columnistas/luisnochoa/gusticos-que-no-se-ven-muy-bien_5061431-1

'Utilidades que obtengamos en zona franca irán para inversión social', dicen Tomás y Jerónimo Uribe. Fecha: 12 may 2009
Fuente: http://www.eltiempo.com/colombia/politica/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5180247.html

La Dian y los hijos del Presidente
Fecha: 9 mayo 2009
Fuente: <http://www.semana.com/noticias-carta/cartas/123855.aspx>

Impuestos a la carta
Fecha: 15 de mayo de 2009
Fuente: http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=124039

The Global Competitiveness Report 2009-2010
<http://www.weforum.org/documents/GCR09/index.html>

Indicador Global de Competitividad de las ciudades colombianas, 2008
http://www.puertadelasamericas.com.co/documentos/2008121726_competitividad13.pdf
16 Dic 2008

Doing business 2010. <http://www.doingbusiness.org/ExploreEconomies/?economyid=46>

¿Todos ponen?
Fecha: 21 jun 2009
Fuente: http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=125282

\$180.000 Millones De Faltante En Impuestos
Fecha: 21 ago 2009
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3580128>

Dian Dice Que 9.000 Contribuyentes Tendrían Que Pagarlo Nuevo Impuesto Al Patrimonio Sería Desde Los \$2.000 Millones
Fecha: 3 jul 2009
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3510394>

Fuerte descuadre en el recaudo del 4x1000 reporta la DIAN
Fuente: Caracol <http://www.caracol.com.co/nota.aspx?id=878661>
Fecha: Septiembre 14 de 2009

Dian, Más Mecanismos Con Firma Digital
Fecha: 15 agosto 2009
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3572209>

Seguirán Decomisos En Maicao: Dian Disturbios Por Control A Contrabando De Gasolina
Fecha: 4 ago 2009
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3555484>

La Dian, Con Más Acciones Para Controlar La Evasión
Fecha: 21 jul 2009
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3534239>

Cotelco le pide a la DIAN actuar contra los parahoteles
Fecha: 18 ago 2009
Fuente: <http://www.eltiempo.com/colombia/occidente/cotelco-le-pide-a-la-dian-actuar-contra-los-parahoteles-5835967-1>

Dian analiza viabilidad de correr calendario del impuesto de renta para segundo semestre
Fecha: 20 nov 2008
Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4677664>

La Dian Puede Proceder A Inscribir En El Rut De Oficio
Fecha: 22 dic 2008
Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3247945>

94,5% de los comerciantes de Villavicencio pasaron primera prueba ante la Dian de expedir facturas
Fecha: 8 jul 2009
Fuente: http://www.eltiempo.com/colombia/llano/945-de-los-comerciantes-de-villavicencio-pasaron-primera-prueba-ante-la-dian-de-expedir-facturas_5598847-1

La Cámara de Comercio de Casanare y la DIAN presentaron esta semana la Defensoría del Contribuyente

Fecha: 12 ago 2009

Fuente: http://www.eltiempo.com/colombia/lano/la-camara-de-comercio-de-casanare-y-la-dian-presentaron-esta-semana-la-defensoria-del-contribuyente_5833868-1

Personas Naturales Pueden Pagar Impuestos Por Internet

Fecha: 4 agosto 2009

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3555573>

A Orlando Beltrán lo embargaron por no pagar impuesto mientras estuvo secuestrado

Fecha: 11 mayo 2009

Fuente: http://www.eltiempo.com/colombia/justicia/a-orlando-beltran-lo-embargaron-por-no-pagar-impuesto-mientras-estuvo-secuestrado_5179435-1

El aguardiente y el ron reviven sus diferencias con la cerveza

Fecha: 19. Mayo 25 de 2009

Fuente: http://www.eltiempo.com/colombia/politica/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5272047.html

FMI Recomienda una reforma tributaria completa. El Espectador. Junio 26 de

2009. <http://www.elespectador.com/economia/articulo147699-fmi-recomienda-una-reforma-tributaria-completa>

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.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

According to the 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 under 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.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:

In recent years there has been an improvement in reducing customs procedures in Colombia. According to the 2009-2010 Global Competitiveness Report, Colombia ranks 77 out of 133 countries in reference to the burdens imposed by custom procedures to business operation.

The rank is considerably worse in what refers to the existence of trade barriers (128/133).

In recent years there has been an advance in information systems for custom control, because all imports and exports have to be registered in a tax database, and thus it will be less easy to evade taxes. During 2008 the DIAN conducted 20.8 percent more operations of custom control than in 2007; these operations produced an 8 percent increase in seizures and a 21 percent increase in the value of these seizures. Operations against smuggling and money laundering also increased during 2008.

However, both entrepreneurs and customs officers state that there are still many problems in enforcing customs regulations consistently.

The first problem relates to the time that customs procedures take.

According to Doing Business Report 2010, while the number of documents and time required to export in Colombia are a bit lower than in the rest of Latin America (and higher than in OECD countries), the cost of exporting, and the number of documents, time and cost of importing are significantly higher in Colombia than in the rest of Latin America (and the OECD). Delays increase costs and discourage businesses (especially domestic ones) 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, which may help in making customs revisions 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 a lot on the will of officers who are not properly trained.

As a result of these weaknesses, smuggling activities are still widespread and in some cases custom officers may be involved in facilitating these activities as was the case with the Chief of Customs in the city of Cucuta (in the border with Venezuela), detained due to his apparent link to oil and gasoline smuggling.

References:

Sorpesa en Cúcuta por detención de presidente de Fendipetróleos en Norte de Santander

Fecha: 17 oct 2008

Fuente: <http://www.eltiempo.com/archivo/documento/CMS-4607046>

Seguirán Decomisos En Maicao: Dian Disturbios Por Control A Contrabando De Gasolina

Fecha: 4 ago 2009

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3555484>

Contrabando tiene en jaque a las finanzas de Bolívar

Fecha: 23 sept 2008

Fuente: http://www.eltiempo.com/colombia/caribe/2008-09-23/contrabando-tiene-en-jaque-a-las-finanzas-de-bolivar_4544850-1

Encuentran contenedores con más dólares en Buenaventura

Fecha: 15 sept 2009

Fuente: http://www.eltiempo.com/colombia/justicia/encuentran-contenedores-con-mas-dolares-en-buenaventura_6108527-1

Colombia presenta en Cartagena el proceso de modernización de las aduanas nacionales.

Fecha: Sep 07 2009 – 11:34 am.

Fuente: <http://m.elespectador.com/economia/articulo160024-aduanas-de-america-debaten-operaciones-de-comercio-global>

Dian aprehende mercancía por \$1.000 millones

Fecha: 6 Abr 2009 – 1:10 pm

Fuente: <http://www.elespectador.com/economia/articulo134488-dian-aprehende-mercancia-1000-millones>

Condenan a la Dian a pagar millonaria suma por una incautación irregular

Fecha: 31 oct 2008

Fuente: <http://www.elespectador.com/noticias/negocios/articulo87112-condenan-dian-pagar-millonaria-suma-una-incautacion-irregular>

Contrabando por \$4.500 millones incauta la Dian

Fecha: 13 Feb 2009 – 2:55 pm

Fuente: <http://www.elespectador.com/noticias/judicial/articulo117698-contrabando-4500-millones-incauta-dian>

Autoridades colombianas superan marca de decomiso de contrabando

Fecha: 3 Dic 2008 – 11:22 am

Fuente: <http://www.elespectador.com/noticias/judicial/articulo98738-autoridades-colombianas-superan-marca-de-decomiso-de-contrabando-200>

The Global Competitiveness Report 2009-2010

<http://www.weforum.org/documents/GCR09/index.html>

Indicador Global de Competitividad de las ciudades colombianas, 2008

http://www.puertadelasamericas.com.co/documentos/2008121726_competitividad13.pdf

16 Dic 2008

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

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The oversight of state-owned enterprises is the hands of the respective ministry or entity to which they fall under and to the superintendency that oversees the respective economic activity.

Each superintendency, although independent in terms of administration and budget, is a subordinate of the respective ministry. Thus, the Superintendency for Industry and Commerce reports 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.

The Constitution of Colombia 1991, article 267

YES: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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 and, in fact, there have been proposals to join all regulatory agencies in order to reduce costs and extend coverage.

According to a survey on institutional performance conducted by the National Statistics Department made among public servants, most institutions that have responsibilities in overseeing state enterprises have bad scores in an indicator measuring whether personnel is enough to carry out its institutional mandate. The Superintendency of Health scores 2.49 out of 5, the Ministry of Mining and Energy (2.89), the Superintendency of Industry and Commerce (2.48), the Ministry of Commerce (3.06), the Ministry of Social Protection (2.30). Because oversight responsibilities are extended over different institutions, it is difficult to determine with high levels of accuracy how adequate is 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 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 needed more. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face moderate or medium corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, thus showing that mechanisms to oversee state enterprises have some weaknesses.

References:

Avance: Uribe plantea unidad de Superintendencias

Fecha: 19 agosto de 2009

Fuente: <http://www.vanguardia.com/pais/103-pais/37110-avance-uribe-plantea-unidad-de-superintendencias>

La red de superintendencias se constituye en un factor de confianza para una tasa sostenida y elevada de inversión

Fecha: 19 ago 2009

Fuente: <http://web.presidencia.gov.co/sp/2009/agosto/19/05192009.html>

DANE Encuesta Desempeno y Ambiente Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Transparencia por Colombia. Indice de Transparencia Nacional 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

Comments:

The superintendencies and the ministries have consistent budgets from year to year. However, the pertinence of funding differs across agencies, and in some cases it is stated that superintendencies lack teeth⁷ or power to carry out their mandates.

According to a survey on institutional performance conducted by the National Statistics Department made among public servants, most institutions that have responsibilities in overseeing state enterprises have medium scores in an indicator measuring whether budget and resources are enough to carry out their institutional mandates. The Superintendency of Health scores 3.42 out of 5, the Ministry of Mining and Energy (3.30), the Superintendency of Industry and Commerce (2.79), the Ministry of Commerce (3.25), the Ministry of Social Protection (2.57). Because oversight responsibilities are extended over different institutions it is difficult to determine with high levels of accuracy how adequate are resources in institutions that oversee state owned enterprises.

Considering that risks of corruption appear to be higher in state enterprises of the health sector, and that 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 needed more. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face moderate or medium corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, thus suggesting that mechanisms to oversee state enterprises have some weaknesses.

References:

DANE Encuesta Desempeno y Ambiente Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Transparencia por Colombia. Indice de Transparencia Nacional 2007-2008.

<http://www.transparenciacolombiana.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Cuatro 'leyes' rigen desde ayer sustentadas en el Estado de Emergencia Social

Fecha: 17 nov 2008

Fuente: http://www.eltiempo.com/colombia/justicia/cuatro-leyes-rigen-desde-ayer-sustentadas-en-el-estado-de-emergencia-social_4671601-1

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

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

Comments:

Superintendents are able to initiate investigations and impose sanctions related to the specific service they oversee. In fact, it is possible to find information on investigations conducted by superintendencies (see media reports referenced), showing that they do have power to initiate investigations.

Yet it is more difficult to find information on specific investigations regarding state-owned enterprises. As the oversight responsibilities are extended across different institutions, and the information is fragmented it is difficult to determine with high levels of accuracy how effective the initiation of investigations on state-owned enterprises is.

When large corruption cases are unveiled, investigations can be taken up by penal authorities (the General Prosecutor). It is the case with Cajanal, the pension fund of the health sector which was officially dismantled in 2009 after being the center of huge corruption and embezzlement scandals over the last ten years.

According to the most recent survey on institutional performance most institutions that may have a responsibility in overseeing state enterprises have levels of development that are neither high nor low. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face moderate or medium corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, thus suggesting that mechanisms to oversee state enterprises have some weaknesses.

References:

Transparencia por Colombia. Indice de transparencia de entidades publicas 2007-2008

<http://www.transparenciacolombiana.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

DANE Encuesta Desempeno y Ambiente Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Cuestionan A Saludcoop Por Uso De Recursos

Fecha: 7 de julio de 2009

Fuente: <http://www.eltiempo.com/archivo/documento/MAM-3515481>

Superintendencia de Sociedades empezó inventario de bienes de DMG en Montería

Fecha: 29 nov 2008

Fuente: http://www.eltiempo.com/colombia/caribe/superintendencia-de-sociedades-empezo-inventario-de-bienes-de-dmg-en-monteria_4697783-1

Pérdidas por \$27 mil millones a la salud de Bogotá podría ocasionar concesión para manejo del chance

Fuente: http://www.eltiempo.com/colombia/bogota/perdidas-por-27-mil-millones-a-la-salud-de-bogota-podria-ocasionar-concesion-para-manejo-del-chance_5372647-1

Fecha: 13 jun 2009

Cierre definitivo de Cajanal ordena el Gobierno; afirma que la entidad es 'insostenible'

Fuente: http://www.eltiempo.com/colombia/justicia/cierre-definitivo-de-cajnal-ordena-el-gobierno-afirma-que-la-entidad-es-insostenible_5431987-1

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Superintendents are able to impose sanctions related to the specific service they oversee. In fact, it is possible to find information on sanctions imposed by superintendencies (see media reports referenced), showing that they do have power to initiate investigations. Yet it is more difficult to find information on specific investigations regarding state-owned enterprises. As the oversight responsibilities are extended across different institutions, and the information is fragmented, it is difficult to determine with high levels of accuracy how effective the initiation of investigations on state-owned enterprises is. When large corruption cases are unveiled, investigations can be taken up by penal authorities (the General Prosecutor). It is the case with Cajanal, the pension fund of the health sector which was officially dismantled in 2009 after being the center of huge corruption and embezzlement scandals over the last 10 years.

According to the most recent survey on institutional performance, most institutions that may have a responsibility in overseeing state enterprises have levels of development that are neither high nor low. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face moderate or medium corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, thus suggesting that mechanisms to oversee state enterprises have weaknesses.

The lack of clarity and coordination among different institutions which have responsibility in overseeing state enterprises may create problems in the imposition of penalties. These problems are more acute in some sectors (health) and areas of the country (local hospitals) than in other sectors such as electricity and public services. The low score reflects the lack of penalties in those sectors such as health.

References:

Transparencia por Colombia. Índice de transparencia de entidades públicas 2007-2008
<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

DANE Encuesta Desempeño y Ambiente Institucional 2008. http://www.dane.gov.co/index.php?option=com_content&task=category&Itemid=103&id=619&Itemid=1193

Superintendencia de Sociedades intervino cuatro firmas este lunes por ofrecer Forex

Fuente: http://www.portafolio.com.co/economia/economiahoy/2009-01-06/ARTICULO-WEB-NOTA_INTERIOR_PORTA-4743326.html

Sancionan a Comcel por violar normas de protección al consumidor

Fecha: 2 feb 2009

Fuente: http://www.eltiempo.com/enter/actualidad_a/home/sancionan-a-comcel-por-violar-normas-de-proteccion-al-consumidor_4788960-1

Superintendencia de Industria ratifica sanción de \$15 mil millones a Redeban y Credibanco

Fecha: 17 sept 2009

Fuente: <http://www.todolar.com/noticias/gustavo/superintendencia-de-industria-ratifica-sancion-de-15-mil-millones-redeban-y-crediba>

Cierre definitivo de Cajanal ordena el Gobierno; afirma que la entidad es 'insostenible'

Fuente: http://www.eltiempo.com/colombia/justicia/cierre-definitivo-de-cajanal-ordena-el-gobierno-afirma-que-la-entidad-es-insostenible_5431987-1

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

70

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

There is no specific rule for citizens to access financial information of state-owned enterprises. However, according to law, the main principles of the administrative function are efficacy, efficiency, participation, publicity, responsibility and transparency. Thus, indirectly 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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

On the webpage of the National Planning Department, as well as on the webpage of the enterprises it is possible to find financial data on state enterprises.

Although 2008 and 2009 budgets are not easy to find, there is easily available information on the distribution of financial surpluses.

According to the Transparency Index produced by Transparency for Colombia, most state enterprises face medium or moderate corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, yet they have made significant advances in making information public. On average, state enterprises have very good scores in what refers to financial and accounting performance (87.3 out of 100) but lower scores in the publicity of procurement process (76.5).

References:

CIFRAS PRESUPUESTALES – EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO Y SOCIEDADES DE ECONOMÍA MIXTA

Transparencia por Colombia. Índice de transparencia de entidades públicas 2007-2008

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

Documento Conpes 3592. DISTRIBUCIÓN DE LOS EXCEDENTES FINANCIEROS DE LOS ESTABLECIMIENTOS PÚBLICOS Y LAS EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO NO SOCIETARIAS, DEL ORDEN NACIONAL, CON CORTE A 31 DE DICIEMBRE DE 2008 Ministerio de Hacienda y Crédito Público DNP: DIFP Versión aprobada Bogotá, D.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Since state enterprises are formed with public funds, they are subject to the fiscal control of the Supreme Audit Institution (Contraloría General de la República) according to the article 267 of the constitution. However, state enterprises are not required to contract external auditing exercises according to the Sentencia C-290 de 2002 of the Constitutional Court.

However, they are required to apply the Standard Model of Internal Control that is applied over all public institutions. According to the Law 87 of 1993, internal control is a system aimed at organizing information, evaluating and improving performance of state institutions. In 2005, the Administrative Department of the Civil Service (DAFP) in association with the Supreme Audit Institutions adopted a unified system of internal control for all state institutions, which is based in international accounting standards.

According to the Transparency Index produced by Transparency for Colombia, most state enterprises face medium or moderate corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption, yet on average they obtain good scores in reference to the improvement of systems of internal control (87.3 out of 100) and good scores in reference to their financial and accounting performance (86.9).

References:

Concepto SSPD 556 de 2006. Superintendencia de Servicios Públicos Domiciliarios. EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO. No se les aplica el artículo 203 del Código de Comercio [LINK][CURR_CAT]=E00530000000000000 00000000000000000000
Concepto SSPD 663 de 2006 EMPRESAS INDUSTRIALES Y COMERCIALES DEL ESTADO.- Obligación de rendir

Transparencia por Colombia. Índice de transparencia de entidades públicas 2007-2008

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

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.

69d. 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 webpage of the National Planning Department also has some financial information on state enterprises, but it is not constantly updated. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face medium or moderate corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption. On average the report shows that state enterprises have advanced in terms of making their performance more public while publishing more information online and making it easily accessible.

Yet the report also shows that there are important weaknesses in areas such as making procedures available online or making available feedback mechanisms for citizen requests. Most importantly the publishing of information about procurement is weak. Enterprises may publish their yearly purchase plans, but they do not report the qualifications given to different bidders in procurement processes. Commercial and industrial enterprises have better levels of transparency than public services enterprises. And enterprises in the mining and energy sectors have better transparency levels than enterprises in the health sector.

The lack of a unique 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:

Transparencia por Colombia. Indice de transparencia de entidades publicas 2007-2008

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

69e. 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 it is not the case for all state enterprises. The webpage of the National Planning Department also has some financial information on state enterprises, but it is not constantly updated. According to the Transparency Index produced by Transparency for Colombia, most state enterprises face medium or moderate corruption risks and only two of them – Bancoldex (a banking enterprise) and Ecopetrol (the state oil company) – face low risks of corruption.

On average the report shows that state enterprises have advanced in terms of making their performance more public while publishing more information online and making it easily accessible. Yet the report also shows that there are important weaknesses in areas such as making procedures available online or making available feedback mechanisms for citizen requests. Most importantly the publishing of information about procurement is weak. Enterprises may publish their yearly purchase plans, but they do not report the qualifications given to different bidders in procurement processes. Commercial and industrial enterprises have better levels of transparency than public services enterprises. And enterprises in the mining and energy sectors have better transparency levels than enterprises in the health sector.

The lack of a unique 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 may delays and additional costs for obtaining information, but in general all documents found are available at the cost of photocopying. Yet, there are notable differences on accessibility between enterprises.

References:

Transparencia por Colombia. Indice de transparencia de entidades publicas 2007-2008

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

According to the Law 489 of 1992, state-owned enterprises are subject to the oversight of the entity to which they are a part of.

There are two big groups of state enterprises. First, industrial and commercial enterprises, which are subject to private law regulations except in their administration and organization. The second group includes those that belong to 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:

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.

The Constitution of Colombia 1991, article 267

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. 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 public benefit. Nobody can exclude citizens from applying for a business license.

References:

The Constitution of Colombia 1991, article 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

70b. 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 that are used to appeal any other administrative decision. The mechanisms to appeal any administrative decision are: reposition, appeal, nullify and reparation.

Additionally, when citizens consider that they have used all available appeal mechanisms they can use the constitutional mechanisms created to protect basic rights if they consider, for example, that their right to equity has been violated.

The constitution contemplates three mechanisms to defend basic human rights: the Accion de tutela" (resource to protect basic rights or tutela) 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" usually used as an appeal mechanism for "tutelas"; and "Acciones populares" are focused 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

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.

70c. 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:

According to the International Finance Corporation in its report Doing Business 2010, Colombia moved up 12 places in the Doing Business report between 2009 and 2010 and ranks 37 among the nations analyzed in the report.

Yet subindicators show that the overall score derives mostly from the level of protection given to investors (rank 5) whereas starting a business ranks 74.

Thus, it is still a country in which doing business is considered not easy because there are many bureaucratic procedures to obtain licenses and registries to pay taxes. According to the report, the average time to obtain a license is 20 days, considerably lower than the Latin American average (61) but still higher than the OECD average (13.0).

The Global Entrepreneurship Monitor also considers that entrepreneurship in Colombia is dynamic and is growing continuously. Yet, the Global Competitiveness Report 2009-2010 presents a less optimistic panorama. Colombia ranks 75 out of 133 countries in terms of the number of requirements needed to create business, and 94 out of 133 countries in terms of the time required to obtain a business license.

According to the report, corruption, tax requirements and regulations, lack of financing, and inefficient government bureaucracies are identified as the main factors hindering business creation. The scores for Colombia in this report have been fluctuating over the past years sometimes improving, and sometimes declining.

References:

Colombia, tercer país con mayor actividad emprendedora, según el informe GEM
Fuente: Sistema Nacional de Competitividad
http://www.snc.gov.co/prensa/noticias-snc/2009/agosto/nsnc_090827g.asp
Fecha: 27 Ago 2009

Colombia, cada vez mejor para hacer negocios

Fuente: Revista Semana
<http://www.semana.com/noticias-economia/colombia-cada-vez-mejor-para-hacer-negocios/128430.aspx>
Fecha: 8 Septiembre 2009

The Global Competitiveness Report 2009-2010

<http://www.weforum.org/documents/GCR09/index.html>

Indicador Global de Competitividad de las ciudades colombianas, 2008

http://www.puertadelasamericas.com.co/documentos/2008121726_competitividad13.pdf
16 Dic 2008

Doing business 2010. <http://www.doingbusiness.org/ExploreEconomies/?economyid=46>

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.

70d. 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 the tax identification number can be acquired for free. Registration before the Chamber of Commerce requires 0.7 percent of capital in registration tax plus 341,000 pesos (US\$173) for trade registration, plus 21,000 pesos (US\$10.70) fixed fee, plus 21,000 pesos (US\$10.70) for a registration fee for each company book plus 2,900 pesos (US\$1.47) 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.

According to the International Finance Corporation in its report Doing Business 2010, Colombia moved up 12 places in the Doing Business Report between 2009 and 2010 and ranks 37 among the nations analyzed in the report.

Yet subindicators show that the overall score derives mostly of the level of protection given to investors (rank 5) whereas starting a business ranks 74. Thus, it is still a country in which it is considered that doing business is not easy because there are many bureaucratic procedures to obtain licenses and registries and to pay taxes. According to the report the cost of launching a business (percent of income per capita) is 12,8, considerably lower than the Latin American average (36,6) but still higher than the OECD average (4,7).

According to the report, corruption, tax requirements and regulations, lack of financing, and inefficient government bureaucracies are identified as the main factors hindering business creation. The scores for Colombia in this report have been fluctuating over the past years sometimes improving, and sometimes declining.

References:

Doing Business Report 2010. <http://www.doingbusiness.org/ExploreEconomies/?economyid=46>

Colombia, tercer país con mayor actividad emprendedora, según el informe GEM

Fuente: Sistema Nacional de Competitividad
http://www.snc.gov.co/prensa/noticias-snc/2009/agosto/nsnc_090827g.asp
Fecha: 27 Ago 2009

Colombia, cada vez mejor para hacer negocios

Fuente: Revista Semana
<http://www.semana.com/noticias-economia/colombia-cada-vez-mejor-para-hacer-negocios/128430.aspx>
Fecha: 8 Septiembre 2009

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. 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 those that can have impact on public and individual health. Regulatory requirements can be found on the INVIMA's webpage.

However, there are weaknesses in the articulation of the INVIMA's responsibilities with the activities of control performed at the local and regional levels. Therefore, even though information is public, it can be difficult for citizens to understand regulatory requirements. The INVIMA issues sanitary registries and importation registries.

The Law 1220 issued in 2008 increased the penalties (fines and prison terms) for those poisoning, altering or contaminating foods, pharmaceuticals, alcoholic beverages and cleaning products. Penalties are higher if those contaminating are the same who sell the product.

The Law 715 of 2001 regulates the responsibilities of territorial authorities regarding public health and environmental standards.

References:

INVIMA.

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.

Decreto 2676 de 2000. Los Desechos Hospitalarios Deben Ser Incinerados

Ley 1220 de 2008 (julio 16) Diario Oficial No. 47.052 de 16 de julio de 2008

CONGRESO DE LA REPÚBLICA

Por la cual se aumentan penas para los delitos contra la Salud Pública, de que trata el Título XII, Capítulo I del Código Penal.

http://www.secretariassenado.gov.co/senado/basedoc/ley/2008/ley_1220_2008.html

Ley 715 de Diciembre 21 de 2001 Por la cual se dictan normas orgánicas en materia de recursos y competencias de conformidad con los artículos 151, 288, 356 y 357 (Acto Legislativo 01 de 2001) de la Constitución Política y se dictan otras disposiciones para organizar la prestación de los servicios de educación y salud, entre otros.

<http://www.minproteccionsocial.gov.co/vbeContent/library/documents/DocNewsNo17370DocumentNo6807.pdf>

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

According to the Law 99 of 1993, the Ministry of Environment is responsible for determining the minimal standards and general regulations about the environment that have to be met by mining, transportation and industrial activities, or any activity which can directly or indirectly cause environmental damages. It is a 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 webpage 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 the given the complex universe of regulations.

The Law 715 of 2001 regulates the responsibilities of territorial authorities regarding the control of environmental standards. The Laws 599 of 2000 and 1259 of 2008 specify violations and sanctions for environmental damages. According to a recent survey about the environment, environmental regulations still seem to be inadequate and insufficient to protect the environment, although the government has been working on creating a comprehensive environmental framework in areas such as preventing air pollution.

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"

Ley 715 de Diciembre 21 de 2001 Por la cual se dictan normas orgánicas en materia de recursos y competencias de conformidad con los artículos 151, 288, 356 y 357 (Acto Legislativo 01 de 2001) de la Constitución Política y se dictan otras disposiciones para organizar la prestación de los servicios de educación y salud, entre otros.

<http://www.minproteccionsocial.gov.co/vbeContent/library/documents/DocNewsNo17370DocumentNo6807.pdf>

LEY 599 DE 2000 (julio 24) por la cual se expide el Código Penal. TITULO XI
De los Delitos contra los Recursos Naturales y el Medio Ambiente

Fuente: Rama Judicial

http://www.ramajudicial.gov.co/csj_portal/Min/5992000.htm

LEY 1259 DE 2008 (diciembre 19) Diario Oficial No. 47.208 de 19 de diciembre de 2008

Por medio de la cual se instaure en el territorio nacional la aplicación del comparendo ambiental a los infractores de las normas de aseo, limpieza y recolección de escombros; y se dictan otras disposiciones.

Fuente: Secretaría del Senado

http://www.secretariassenado.gov.co/senado/basedoc/ley/2008/ley_1259_2008.html

Comparendo ambiental y cárcel a quienes dañen el ambiente

Fuente: Radio Santafe

<http://www.radiosantafe.com/2009/03/13/comparendo-ambiental-y-carcel-a-quienes-danen-el-ambiente/>

Fecha: marzo 13 de 2009

Encuesta revela que la legislación ambiental no satisface las necesidades del país

Fuente: El Tiempo

<http://www.eltiempo.com/colombia/antioquia/encuesta-revela-que-la-legislacion-ambiental-no-satisface-las-necesidades-del-pais-4874990-1>

Fecha: 13 Mar 2009

POLÍTICA NACIONAL DE PREVENCIÓN Y CONTROL DE LA CONTAMINACIÓN DEL
AIRE (Borrador)

Fuente: Asociación Nacional de Empresarios de Colombia

<http://www.andi.com.co/dependencias/ambiental/Documentos/politicacontrocalidadaire.pdf>

Fecha: Septiembre de 2008

RESOLUCIÓN 601 DE 2006 Diario Oficial No. 46.232 de 5 de abril de 2006 Por la cual se establece la Norma de Calidad del Aire o Nivel de Inmisión, para todo el territorio nacional en condiciones de referencia.

http://www.icbf.gov.co/transparencia/derechobienestar/resolucion/minambientevd/resolucion_minambientevd_0601_2006.html

RESOLUCIÓN 627 DE 2006 Diario Oficial No. 46.239 de 12 de abril de 2006. Por la cual se establece la norma nacional de emisión de ruido y ruido ambiental.

http://www.icbf.gov.co/transparencia/derechobienestar/resolucion/minambientevd/resolucion_minambientevd_0627_2006.html

RESOLUCIÓN 0909 DE 2008. Diario Oficial 47051 de julio 15 de 2008. Por la cual se establecen las normas y estándares de emisión admisibles de contaminantes a la atmósfera por fuentes fijas y se dictan otras disposiciones.

http://www.minambiente.gov.co/documentos/res_0909_050608.pdf

RESOLUCIÓN NÚMERO (0910) 5 de Junio de 2008. Por la cual se reglamentan los niveles permisibles de emisión de contaminantes que deberán cumplir las fuentes móviles terrestres, se reglamenta el artículo 91 del Decreto 948 de 1995 y se adoptan otras disposiciones.

http://www.minambiente.gov.co/documentos/res_0910_050608.pdf

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.

71c. 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. For the operation of transportation services it is necessary to obtain permissions for operation which are given by the DIMAR (for maritime transportation) and the AEROCIVIL (for aerial transportation). To obtain those permissions it is necessary to meet financial and public safety standards. There is a general policy for safety in roads which regulates responsibilities of transportation enterprises.

In case of the creation of businesses open to the public and in the case of public shows, a certification of public safety from the Firemen Body is required.

There are several laws and resolutions that refer to the prevention of professional risks within companies and to the public safety standards this should be met for employees.

Thus, basic regulatory requirements are public and can be found at the webpage of the Ministry of Transportation, the Chambers of Commerce, and the Superintendents of Industry and Commerce, Public Services and Health. 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 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 LEY 336 DE 1996 (diciembre 20) Diario Oficial No. 42.948, de 28 de diciembre de 1996

ESTATUTO GENERAL DE TRANSPORTE. Art. 12

CÓDIGO SUSTANTIVO DEL TRABAJO Artículos 29, 30, 31, 34, 56, 57, 58, 60, 62, 108, 200, 201, 202, 205, 206, 207, 210, 211, 216, 217, 348, 349 y 351.

RESOLUCIÓN 1075 DE 1992 Los empleadores deben incluir campañas de fármacodependencia, tabaquismo y alcoholismo en el subprograma de medicina preventiva del Programa de Salud Ocupacional.

DECRETO-LEY 1295 DE 1994 Establece la organización y administración del Sistema General de Riesgos Profesionales.

LEY 776 DE 2002 Establece la organización y administración del Sistema General de Riesgos Profesionales.

CIRCULAR UNIFICADA EN SALUD OCUPACIONAL 2004 Instrucciones para los empleadores y para los administradores de riesgos profesionales.

RESOLUCIÓN 2346 DE 2007 Regula la práctica de evaluaciones médicas ocupacionales y el manejo y contenido de las historias clínicas ocupacionales.

RESOLUCIÓN 2844 DE 2007 Adopción de las Guías de Atención Integral de Salud Ocupacional (GATISO) como referente obligatorio.

RESOLUCIÓN 2646 DE 2008 Se establecen disposiciones y se definen responsabilidades para la identificación, evaluación, prevención, intervención y monitoreo permanente de la exposición a factores de riesgo psicosocial en el trabajo y para la determinación del origen de las patologías causadas por el estrés ocupacional.

DIRECTIVA 90270 CEE Disposiciones de Seguridad y de Salud Relativas al trabajo con Equipos que incluyan pantallas de visualización NTP – 139 Normativa Técnica Relacionada con el trabajo con pantallas de visualización

RESOLUCIÓN 1401 DE 2007 Investigación de Accidentes e Incidentes de Trabajo

RESOLUCIÓN 3673 DE 2008 Reglamento Técnico de Trabajo Seguro en Alturas

RESOLUCIÓN 2318 DE 1996 Reglamenta la expedición de Licencias de Salud Ocupacional

RESOLUCIÓN 2709 DE 1996 Acerca de la Renovación o Sustitución de Licencias de Salud Ocupacional

PLAN NACIONAL DE SEGURIDAD VIAL " HACIA UNA NUEVA CULTURA DE SEGURIDAD VIAL "

Fuente: MINISTERIO DE TRANSPORTE

http://www.mintransporte.gov.co/servicios/biblioteca/documentos/PDF/PLAN_NACIONAL_SEGURIDAD_VIAL.pdf

Fecha: Diciembre de 2004

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. 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:

All business that have products registered before INVIMA should get a surprise visit yearly. In practice, many businesses know when those visits can take place and what inspectors are looking for, so the substance of the inspection is reduced. It is also perceived that the standards are much harder on big enterprises than on small ones. When irregularities are found, instead of imposing penalties, there are negotiations, because there is fear of firing people or closing enterprises.

Despite problems, there have been advances in Colombia. Regulations in Colombia are stricter than in other Latin American countries, for example regulations on cosmetics are almost as strict as those required for pharmaceuticals and microbiological products. In general, the lack of clarity, the dispersion and lack of specific rules governing business requirements may hinder expedited processes for inspections relating to public health standards.

Problems with management of waste from hospitals has become a huge problem since 2008 and have been on the rise since then. Despite calls from the Attorney General's Office and the Supreme Audit Institution, the problems persist and seem to be aggravated given the lack of clear responsibilities for investigation and sanction in this area. As a result, in several areas of the country (including both cities and rural areas) biohazardous materials continue to be found in open spaces without having any proper treatment. Although fines have started to be imposed on waste management companies, these events have made evident problems in public health regulations. Sanitary authorities do not have any plans to sanction bad management. That means they face a sanitary crisis.

Similar problems are found in slaughterhouses, where waste management and sanitary control on meat are of very bad quality, creating high public health risks. The INVIMA along with the Ministry of Social Protection has developed a plan in this area trying to better enforce the regulations, and has closed some of these places for not having adequate sanitary procedures. Thus interventions and controls in this area seem to be better than in the case of waste management. Yet, illegal slaughter houses have proliferated.

Another area in which enforcement is notable is in the control of pharmaceuticals, where there have been seizures of contaminated or not properly treated pharmaceuticals. Yet despite controls there is evidences that black markets in pharmaceuticals exist.

The INVIMA has also seized contaminated foods, but a notable case of a rat found in a soda can from one of the main companies in the country reflects that previous enforcements and controls may be weak in some cases, and adequate controls may only emerge when irregularities are found.

References:

Control de calidad en los alimentos.

¿Una rata en la gaseosa? Un caso que busca resolverse en instancias internacionales

<http://www.elespectador.com/noticias/investigacion/articulo120210-una-rata-gaseosa>
21 Feb 2009

Incautan una tonelada de queso y 70 kilos de carne

<http://www.eluniversal.com.co/v2/monteria/local/incautan-una-tonelada-de-queso-y-70-kilos-de-carne>

Incautan alimentos vencidos por un valor de 130 millones de pesos

http://www.bogotaampm.com/contenido/index.php?option=com_content&task=view&id=5842&Itemid=1

Cierre de plantas de sacrificio de animales ha disparado creación de mataderos clandestinos

<http://www.eltiempo.com/colombia/cundinamarca/ARTICULO-PRINTER-FRIENDLY-PLANTILLA-PRINTER-FRIENDLY-5902831.html>

Agosto 20 de 2009

El Invima mete en cintura a los mataderos del país

Fuente: Caracol

<http://www.caracolradio.com/nota.aspx?id=641499>

Fecha: Julio 29 de 2008

No habrá cierres masivos de plantas de beneficio (Mataderos)

Fuente: Ministerio de la Protección Social

<http://www.minproteccionsocial.gov.co/vbecontent/NewsDetail.asp?ID=17750&IDCompany=3>
Fecha: 30/07/2008

Procuraduría exige a gobernadores hacer cumplir normas sanitarias en los mataderos

Fuente: Radio Santafé

<http://www.radiosantafe.com/2009/07/29/procuraduria-exige-a-gobernadores-hacer-cumplir-normas-sanitarias-en-los-mataderos/>
Fecha: Julio 29, 2009

Toneladas de desechos hospitalarios son comercializados a Bogotá

<http://www.elspectador.com/articulo-toneladas-de-desechos-hospitalarios-son-comercializados-bogota>
16 Sep 2008

Desechos hospitalarios

<http://www.elspectador.com/noticias/salud/video-desechos-hospitalarios>
16 Nov 2008

Desechos hospitalarios fueron encontrados cerca a colegio Héctor Abad Gómez en el barrio San Lorenzo

http://www.eltiempo.com/colombia/antioquia/desechos-hospitalarios-fueron-encontrados-cerca-a-colegio-hector-abad-gomez-en-el-barrio-san-lorenzo_5981527-1

Desechos hospitalarios de San Juan de Río Seco, Cundinamarca eran arrojados en basurero de Ambalema

<http://www.elnuevodia.com.co/nuevodia/inicio/archivo/7473-desechos-hospitalarios-de-san-juan-de-rio-seco-cundinamarca-eran-arrojados-en-basurero-de-ambalema.html>
18 de Abril de 2009

Desechos hospitalarios en la calle

http://elmeridianodecordoba.com.co/history/23052009/index9c22.html?option=com_content&view=article&id=6240:desechos-hospitalarios-en-la-calle&catid=41:principales&Itemid=75
23 de mayo de 2009

Desechos hospitalarios en parque del Amor y la Amistad

<http://www.diariodelhuila.com/comunidad/item/514-desechos-hospitalarios-en-parque-del-amor-y-la-amistad>
17 de Julio de 2009

Hallan desechos hospitalarios en zona aledaña a Armenia

<http://www.caracol.com.co/nota.aspx?id=853794>
Julio 30 de 2009

Encuentran desechos hospitalarios en playas del Atlántico

<http://www.elpais.com.co/paionline/notas/Agosto232009/desechos.html>
23 Ago 2009

Hallados desechos hospitalarios en una calle al norte de la ciudad

<http://www.radiosantafe.com/2009/08/25/hallados-desechos-hospitalarios-en-una-calle-al-norte-de-la-ciudad/>
Agosto 25, 2009

En El Banco (Magdalena), Menores encontraron desechos hospitalarios al pie de un árbol

<http://www.elinformador.com/detreg.php?id=52884>
30 Jun 2009

Incautan medicamentos vencidos en droguerías de Palmira

http://www.eltiempo.com/colombia/occidente/incautan-medicamentos-vencidos-en-droguerias-de-palmira_4904813-1
27 Mar 2009

Allanan IPS y farmacias en busca de medicamentos falsos

<http://co.globedia.com/allanan-ips-farmacias-busca-medicamentos-falsos>
Fecha: 20-06-2009

Incautan cargamento de medicamentos vencidos

<http://www.citytv.com.co/videos/14988/incautan-cargamento-de-medicamentos-vencidos>
10 de julio de 2009

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.

72b. 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.

Comments:

Even though there are many laws that reference environmental standards, monitoring processes are very weak and usually inspections are reactive, that is, they take place when there are problems, and they are not routine. For example, since June 2008 there have been huge problems with the management of waste from hospitals, because in several areas of the country biohazard materials have been found in open spaces without having any proper treatment. Despite calls from the Attorney General's Office and the Supreme Audit Institution, the problems persist and seem to be aggravated given the lack of clear responsibilities for investigation and sanction in this area and the question that remains for citizens is why this situation was possible in the first place.

The INVIMA monitors some environmental issues but not in a very demanding way. The Ministry of Environment can be very active but its action is subject to the priorities of the minister heading the agency. For example, the former minister was very active in following up and investigating irregularities, but as soon as he stepped out, huge macro projects (a gold mine, a dam, and two large road projects) which may negatively affect the environment in zones of environmental protection, were approved. These projects are justified on the need to promote foreign investment in the country, but generate extensive opposition from environmental activists.

Reforestation issues are not really taken care of. There is no regular procedure for business to compensate the government when their activities have an environmental impact. There is no adequate management of packages, and no culture of recycling and waste management.

Adequate monitoring in environmental aspects is difficult because it requires very detailed knowledge of many laws and may be dependent on political criteria. The weaknesses of environmental regulations are reflected in the extension of illegal trade of animals, the contamination of rivers and water sources due to inadequate management of waste from companies.

References:

Crece el tráfico ilegal de animales silvestres en el Valle de Aburrá (Antioquia)

Fuente: El Tiempo

http://www.eltiempo.com/colombia/antioquia/crece-el-traffic-ilegal-de-animales-silvestres-en-el-valle-de-aburra-antioquia_5632207-1

Muere a bala hipopótamo que era de Pablo Escobar

<http://www.semana.com/noticias-medio-ambiente/muere-bala-hipopotamo-pablo-escobar/126073.aspx>

Piden renuncia a minambiente por caza de hipopótamo de Escobar

<http://www.terra.com.co/noticias/articulo/html/acu23230-piden-renuncia-a-minambiente-por-caza-de-hipopotamo-de-escobar.htm>

Expertos recomiendan sacrificar o castrar a hipotamos de Escobar

<http://www.terra.com.co/noticias/articulo/html/acu24775-expertos-recomiendan-sacrificar-o-castrar-a-hipopotamos-de-escobar.htm>

Incautan Boa que utilizaban para fotos con rumberos

<http://www.citytv.com.co/videos/11066/incautan-boas-que-utilizaban-para-fotos-con-rumberos>

Sucedió en el Barrio Kenedy de Bogotá

Principales ríos de la capital 'rajados' por la contaminación

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/principales-rios-de-la-capital-rajados-por-la-contaminacion_4637875-1

El 90% de los ríos de Colombia, afectados por la contaminación

Fuente: Red de Gestores Sociales

<http://www.rgs.gov.co/noticias.shtml?x=25524>

Fecha: 29 Sep 2008

Rios de Cali totalmente contaminados

Fuente: Universidad ICESI

http://www.icesi.edu.co/blogs_estudiantes/lasbasurasenlaciudaddecali/2009/04/21/rios-de-cali-totalmente-contaminados/

Fecha: 21 Abril 2009

Pacto contra el tráfico ilegal de madera

Fuente: Revista Semana

<http://www.semana.com/noticias-medio-ambiente/pacto-contra-traffic-ilegal-madera/127859.aspx>

Fecha: 27 Agosto 2009

La salud de los bogotanos está amenazada por contaminación del aire

Fuente: Caracol

<http://www.caracol.com.co/nota.aspx?id=846404>

Fecha: Julio 16 de 2009

En Colombia mueren seis mil personas al año por contaminación del aire, revela Ministerio de Ambiente

Caracol

Fuente: Caracol

<http://www.caracol.com.co/nota.aspx?id=846956>

Fecha: Julio 17 de 2009

POLÍTICA NACIONAL DE PREVENCIÓN Y CONTROL DE LA CONTAMINACIÓN DEL

AIRE (Borrador Ministerio del Medio Ambiente)

Fuente: Asociación Nacional de Empresarios de Colombia

<http://www.andi.com.co/dependencias/ambiental/Documentos/politicacontrolcalidadaire.pdf>

Fecha: Septiembre de 2008

La fiesta de las licencias
Fuente: CINEP
<http://www.cinep.org.co/node/737>
Fecha: 18/08/2009

Especial Periodístico: Megaproyectos: Megaimpactos Ambientales
Fuente: CINEP
<http://www.cinep.org.co/node/739>
Fecha: 19/08/2009

El Quimbo no dejará una sola acción para el país: Miller Dussán
Fuente: CINEP
<http://www.cinep.org.co/node/738>
Fecha: 18/08/2009

Lo que opinan los ambientalistas
Fuente: CINEP
<http://www.cinep.org.co/node/736>
Fecha: 18/08/2009

Índice de Transparencia Nacional Resultados 2007-2008.
<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

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.

72c. 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:

Safety inspections are tighter in some sectors than in others, and there are still many loopholes. For example, aerial security is hindered by inappropriate regulation of the length of work days for pilots, and it has been suggested that the AEROCIVIL has responded more to the interests of big airlines rather than to public safety interests.

In maritime and land transportation, most public safety problems derive from the lack of appropriate controls outside control points in toll roads; safety problems are more acute in isolated roads. Yet in land transportation there have been improvements in enforcing rules about the use of security belts, especially for companies that transport children to schools. The enforcement of public safety norms is notably weak in mines where accidents occur often (as a death in the gold mine in the Department of Cauca in December 2008) even in mines controlled by big multinationals.

There are no policies of drugs and alcohol use in workplaces, and although norms like ISO 9000 have improved knowledge about public safety, in practice they do not really reflect better practices.

The Protection Ministry controls the safety of workers and, in general, regulations protect workers, but in practice few people take seriously safety standards. The ministry does not conduct regular inspections unless complaints exist. However, since the creation of ARPS (Administrators of Professional Risks) knowledge about public safety has increased.

References:

Seguridad aérea en riesgo por extensas jornadas laborales

Fuente: Radio Nacional de Colombia

http://radionacionaldecolombia.gov.co/programas/contenido/1/Seguridad_aerea_en_riesgo_por_extensas_jornadas_laborales.html

Fecha: 5 May 2009

La seguridad aérea está en riesgo

Fecha: Revista Semana

<http://www.semana.com/noticias-enfoque-principal/seguridad-aerea-esta-riesgo/123554.aspx>

Fuente: 2 Mayo 2009

Empezaron controles de lanchas de transporte marítimo
Fuente: El Informador
<http://www.el-informador.com/detgen.php?id=56436>

Lanzan programa de seguridad marítima para las vacaciones en Cartagena
http://www.eltiempo.com/colombia/caribe/lanzan-programa-de-seguridad-maritima-para-las-vacaciones-en-cartagena_4735641-1
22 Dic 2008

Piratas navegan" en las ciudades
Fuente: El País
<http://www.elpais.com.co/paisonline/notas/Julio262009/piratas.html>
Fecha: 26 Jul 2009

Cinturones de seguridad para el transporte de los menores de edad
Fuente: Colorín Coloradio
<http://www.colorincolorradio.com/papas.asp?id=859711>
Fecha: 08/11/2009

Asegurados 11 individuos por piratería terrestre
Fuente: Radio Santafé
<http://www.radiosantafe.com/2009/03/30/asegurados-11-individuos-por-pirateria-terrestre/>
Fecha: Marzo 30, 2009

Cien vehículos de transporte escolar sancionados por llevar sin cinturón de seguridad a los niños
Fuente: El Tiempo
http://www.eltiempo.com/colombia/bogota/cien-vehiculos-de-transporte-escolar-sancionados-por-llevar-sin-cinturon-de-seguridad-a-los-ninos_5931887-1

Superando la crisis con infraestructura ¿Promesas nuevas o promesas viejas?
Fuente: Cinep
<http://www.cinep.org.co/node/675>
Fecha: 24/04/2009

Muerte en mina del Cauca evidencia grave peligro para miles de trabajadores
Fuente: Caracol TV
<http://www.caracol.tv.com/noticias/nacion/articulo95748-muerte-mina-del-cauca-evidencia-grave-peligro-miles-de-trabajadores>
Fecha: 3 Diciembre 2008

Rescatan a tres personas atrapadas en una mina en Antioquia
<http://www.elespectador.com/articulo102743-rescatan-tres-personas-atrapadas-una-mina-antioquia>
29 Dic 2008

Atrapados cinco obreros en mina de Zaragoza (Antioquia)
<http://www.rcn.com.co/noticia.php3?nt=28678>

Que se establezca si la Drummond es responsable por la muerte del trabajador Dagoberto Clavijo, pide Robledo
http://www.polodemocratico.net/Que-se-establezca-si-la-Drummond_6757

Desconsolado adiós a los dos obreros sepultados por un alud
<http://www.vanguardia.com/archivo/32321-desconsolado-adios-a-los-dos-obreros-sepultados-por-un-alud>
01 de Julio de 2009

Dos obreros murieron mientras abrían una zanja para la instalación de una tubería de aguas lluvias
Fuente: El Tiempo
http://www.eltiempo.com/colombia/bogota/dos-obreros-murieron-mientras-abrian-una-zanja-para-la-instalacion-de-una-tuberia-de-aguas-lluvias_5329089-1
Fecha: 1 Jun 2009

Vivienda de interés social no cumple condiciones de habitabilidad, dice investigación de U. Nacional
Fuente: El Tiempo
http://www.eltiempo.com/colombia/bogota/vivienda-de-interes-social-no-cumple-condiciones-de-habitabilidad-dice-investigacion-de-u-nacional_5481572-1

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.

VI-1. ⁷⁵Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

The penal code does not make an express mention of attempted corruption as being illegal.

However, certain offenses may include the attempt as a crime. For example, both the anti-corruption law (Law 190 of 1995) and the penal code consider that the offer of bribes to a public servant is a crime. The law states, "The person who gives or offers money or gifts to a public servant in order to get a favorable decision or to keep the public servant from making decisions, will incur in prison from three to six years, fines equivalent to \$50 to \$100 minimum wages and the elimination of the rights associated with public office."

The penal code also specifies as a crime when a public servant takes advantage of his/her functions, or coerces another public servant to get a benefit.

Thus, the crime exists even if the coerced person does not actually get the benefit.

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. 143

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". (art 407)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

According to the penal code, it is a penal offense to constrain someone to do or refrain from doing something for illicit benefit. It is punished with 8 to 15 years of prison.

References:

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

Código Penal Colombiano Art. 244

<http://www.derechos.org/nizkor/colombia/doc/penal.html>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Article 407 of the penal code states that offering or giving of money or a privilege to public servants is a crime. Article 404 says asking for a bribe by a public servant is a crime.

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.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Articles 405 and 406 of the penal code say that receiving money or any other items to make a decision or to withhold or delay decisions, 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.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

The Penal Code, article 433, states that offers of money or any other privileges to a foreign official, directly or indirectly, in order to influence a decision is a crime.

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.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Under the penal code, articles 397 and 398 say that it is a crime when a public servant uses or takes possession for himself or for a third party of public goods or resources. The penalties for this offense were increased through the 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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

The penal code, article 420 states that the undue use of confidential information by a public servant for personal benefit is a crime.

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.

73h. In law, money laundering is illegal.

YES | NO

Comments:

The Penal code article 323 states that 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, offences 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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

The Penal code article 340 states that conspiracy to commit a crime is a penal offense. The punishment for this offense increases when the crime is genocide, kidnapping, torture, homicide, terrorism, drug trafficking, extortion or money laundering. Article 434 includes conspiracy as a crime.

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

75. Is the anti-corruption agency effective?

64

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Presidential Anti-corruption Program is under the control of the president and thus, it is not independent. 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:

The Constitution of Colombia, articles 267 and 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.

75b. 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 most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Prosecutor's Office (Fiscalía General de la Nación), the Attorney General's Office (Procuraduría) 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 subordinate to the president, but on the other hand, the direct relationship of the office with the president has facilitated obtaining information when the agency has decided to follow up on a corruption case. One of the vulnerabilities of the program is that the orientation and actions taken by it depend highly on the priorities set by the person heading the agency.

The Attorney General's office and Supreme Audit Institution are formally independent but as the selection of the General Attorney is made by the Senate (Attorney) and the Congress as a whole (General Auditor) there can be political commitments, which are then reflected in the personnel structure and the decisions made by them, limiting the 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 job.

During the study period a new Attorney General was elected by Congress, and this election was perceived to be highly political and was widely criticized because even though the new attorney was perceived to be radical, he was elected given his evident willingness to absolve legislators investigated within a scandal known as para-politica when he was a member of the State Council. Likewise the selection of candidates for new General Prosecutor (Fiscal) appointed by the Supreme Court of Justice among candidates presented by the president, has been criticized because all candidates are known to be very close to the government.

The oversight CSO Eleccion Visible even asked the candidates to withdraw their names and the Supreme Court has asked the president to reconsider the candidates.

References:

Yo te absuelvo, tú me eliges&

<http://www.semana.com/noticias-nacion/absuelvo-eliges/118473.aspx>

Sábado 6 de diciembre de 2008

Candidatos a fiscal admitieron su cercanía con el gobierno

Fuente: Elección Visible – WRadio

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=514:candidatos-a-fiscal-admitieron-su-cercania-con-el-gobierno&catid=57:columnas-de-opinion-y-editoriales&Itemid=200

Fecha: 06 de julio de 2009

Corte Suprema considera pedirle al Presidente Uribe que revalúe terna para Fiscal

Fuente: Corporación Excelencia en la Justicia – El Tiempo

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1653:corte-suprema-considera-pedirle-al-presidente-uribe-que-revalue-terna-para-fiscal&Itemid=168

Fecha: 06 de Agosto de 2009

Elección Visible pide a los ternados que declinen de su aspiración a ser Fiscal General de la Nación.

Fuente: Elección Visible

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=642:eleccion-visible-pide-a-los-ternados-que-declinen-de-su-aspiracion-a-ser-fiscal-general-de-la-nacion&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

Fecha: Julio 29 de 2009.

Elección Visible pide a los medios, su respaldo en la solicitud de renuncia a los candidatos a Fiscal.

Fuente: Elección Visible

http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=684:eleccion-visible-pide-a-los-medios-su-respaldo-en-la-solicitud-de-renuncia-a-los-candidatos-a-fiscal&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

Fecha: Agosto 4 de 2009.

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.

75c. 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 most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the General Prosecutor's Office (Fiscalía General de la Nación), the Attorney General'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 of free appointment and removal, which means that he or she can be removed at any time.

However, to date, since the creation of this type of agency in 1998 no director has been removed by pressure on their actions, but because of differences of concept 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. At lower managerial cases there have been cases of auditors that resign due to threats or pressures. For example in August 2009, the Auditor of the Department of Guajira received threats after releasing a report on corruption in the governorship.

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.

El contralor departamental denuncia amenazas de muerte

Fuente: Ministerio de Educación

<http://www.mineduccion.gov.co/observatorio/1722/article-198855.html>

Fecha: 12 de Agosto de 2009

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.

75d. 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 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 anti-corruption agency, appointments are made on professional qualifications; however, individuals may have clear party loyalties. The majority of posts are assigned as contracts and therefore the control on merit is less rigid than when employees belong to a civil service career.

Both the Supreme Audit Institution and the General Attorney's office have independent regimes of civil service.

The regime of the Attorney's Office has been very well scored for its efficiency and transparency, and the one of the Supreme Audit Institution seems to work better at the national level than at the local level, where there is widespread perception that staffing decisions are strongly supported by political criteria. According to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, both institutions get good scores in indicators referring to the administration of career employees, whereas the indicators that refer to the existence of political influences in the selection of free appointment and removal employees and contractors score very low.

References:

DANE. Encuesta Desempeño y ambiente institucional 2008. Resultados por sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

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.

75e. 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 most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the Attorney General's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República). The Supreme Audit Institution and Attorney General's Office have sufficient full-time staff which is regulated by independent civil service systems. Some staffing problems may exist at the local level, but in general, lack of staff is not the most important problem in the work of these institutions. According to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, the Supreme Audit Institution gets a lower score than the Attorney General's office in the indicator evaluating whether personnel is enough to fulfill institutional mandates (the scores are 3 and 3.44 out of 5 respectively).

The Presidential Anti-corruption Program has limited staff (about 43 people) and most of it is not from civil service but independent contractors. The problem is, of course, that the continuity of the program is limited by these staff restrictions.

The Attorney General considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported.

References:

DANE. Encuesta Desempeño y ambiente institucional 2008. Resultados por sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Procurador reconoce que corrupción desborda sus capacidades. Revista Semana Septiembre 15 de 2009 <http://www.semana.com/noticias-justicia/procurador-reconoce-corrupcion-desborda-capacidades/128744.aspx>

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.

75f. 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 most important agencies with a mandate to address corruption: the Presidential Anti-corruption Program, the Attorney General'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 predictable sources of funding, the budget may change yearly, and as it is a small program, the budget is limited. Since the priorities of the office are set by the director in charge, there are differences in how directors evaluate the budget of the program. Some former directors consider that it is not adequate to fulfill the activities of the office, while others consider that budget is not the most serious problem. For the Supreme Audit Institution and the Attorney General's Office, funding sources are reliable and consistent from year to year, however funding sources can be very limited in regional offices.

According to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, the Supreme Audit Institution gets a lower score than the Attorney General's office in the indicator evaluating resources are enough to fulfill institutional mandates (the scores are 3.36 and 3.69 out of 5 respectively).

The Attorney General considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported.

References:

DANE. Encuesta Desempeño y ambiente institucional 2008. Resultados por sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Encabezados extraídos de El Personero impreso, Informativo No 12 de julio de 2009 de la Personería Distrital de Bogotá
Fuente: Personería de Bogotá, D.C.

<http://www.personeriabogota.gov.co/?idcategoria=2396>
Fecha: Julio de 2009

Personería lanza la Gaceta Disciplinaria
Fuente: Personería de Bogotá, D.C.
<http://www.personeriabogota.gov.co/?idcategoria=3210>
Fecha: Julio 23 de 2009

Premiadas mejores audiencias de rendición de cuentas: audiencia en Santa Isabel (Tolima) ganadora del primer puesto
Fuente: Procuraduría General de la Nación
http://www.procuraduria.gov.co/html/noticias_2008/noticias_436.htm
Fecha: 1 de octubre de 2008

Capacitación en DDHH a Personeros del Valle
Fuente: Defensoría del Pueblo
http://www.defensoria.org.co/red/?_item=0301&_secc=03&ts=2&n=326
Fecha: agosto 19 de 2008

Proyecto PRESUPUESTO Organismos de Control Y Rama Judicial 2009
Fuente: Cámara de Representantes
http://direccion.camara.gov.co/camara/site/artic/20080911/asocfile/informe_subcomision_presupuesto_2009_hr_german_olano.doc

DANE. Encuesta Desempeño y ambiente institucional 2008. Resultados por sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Balance de mandato 2001 - 2008
Fuente: Procuraduría General de la Nación Fecha: noviembre de 2008
http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesalcongreso.htm

Personería de Bogotá pide auxilio por avalancha de denuncias de DD.HH.
<http://www.elespectador.com/noticias/bogota/articulo153373-personeria-de-bogota-pide-auxilio-avalancha-de-denuncias-de-ddhh>
29 Jul 2009

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República
http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf
Fecha: abril de 2009

Procurador reconoce que corrupción desborda sus capacidades. Revista Semana Septiembre 15 de 2009 <http://www.semana.com/noticias-justicia/procurador-reconoce-corrupcion-desborda-capacidades/128744.aspx>

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.

75g. 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 Attorney General's Office (Procuraduría General de la Nación) and the Supreme Audit Institution (Contraloría General de la República).

Commonly the most important decisions taken by the Presidential Anti-corruption Program are publicized on the webpage but there is no periodic reporting mechanism and the frequency of reports depends highly on the style of the director in office, who may set the priorities for the office in different way from their predecessors.

The Attorney General and the Supreme Audit Institution must make a yearly report of its activities to congress, and these reports are available on the website of the agencies. Although reports are usually comprehensive, statistics are not very detailed and these institutions. According to the Transparency Index presented by Transparency for Colombia the Supreme Audit Institution has very good levels of visibility (a score of 91.7 out of 100) which make it a institution with moderate level of corruption risk, whereas the General Attorney has a lower score in visibility which makes it a institution with medium levels of corruption risk (a score of 75.4).

There is no comprehensive system to access information and statistics of corruption cases. This situation creates problems in terms of transparency but also in terms of effective action since judges and investigators do not count on a structured body of doctrine on corruption.

References:

Contraloría General de la República. Informe al congreso 2007-2008. http://www.contraloriagen.gov.co:8081/internet/central_doc/Archivos/363/Informegestion2007-2008.pdf

Indice de Transparencia Nacional Resultados 2007-2008.

<http://www.transparenciacolombia.org.co/Portals/0/ITN%202007-2008/ITN%20Resultados%2007-08.pdf>

<http://www.anticorrupcion.gov.co/index.asp>

Programa Presidencial de Lucha Contra la corrupción. Informe al Congreso Julio 2008 a Mayo

2009. http://www.anticorrupcion.gov.co/areas/apoyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

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.

75h. 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 Prosecutor'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. The influence of this office is highly determined by the political style of the head of the agency.

Between July 2008 and May 2009 the program received 8,995 complaints, redirected 1,601 to the Attorney General, 505 to the Supreme Audit Institution, 646 to the General Prosecutor, 200 to Superintendencies, 66 to the Judicial Police, and 1,406 to other institutions. Another 2,702 were returned to obtain more information from citizens. Yet, in the words of the director of the office, there are many denunciations and few condemnations. If there is enough political will the anti-corruption agency may not initiate investigations, but can be active enough to promote them while directing corruption reports.

The Attorney General has the mandate and does start investigations aggressively. During the study period there were sanctions against the mayors of the municipalities of Soledad and Pereira.

Between January 2008 and September 2009 the Delegate Attorney General for Decentralization has registered 178,544 denunciations and initiated 3,777 processes against mayors, 448 against governors and 514 against councilmen. Regarding the Supreme Audit Institution, according to a report of the General Auditor the number of final decisions on processes of fiscal responsibility has increased by 392 percent since 2000, and most of these decisions are made in regional audit offices. Many regional offices may lack resources and personnel, and thus have little power to conduct investigations. It is a worrying situation considering 75 percent of complaints and cases of fiscal responsibility are reported at the local level.

The Attorney General's Office and the Supreme Audit Institution have the legal power to initiate investigations and to gather information. In recent years, and especially at the national level, both institutions have increased their credibility, which facilitate the fulfillment of their responsibilities. At the local level, given the armed conflict, the lack of resources in some regional offices, and the high influence that corrupt individuals may have, the scope of the work of anti-corruption agencies is more limited.

The Attorney General considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported, therefore he considers more appropriate on the investigations of prominent corruption cases which can become exemplary sanctions.

References:

Balance de mandato 2001-2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesalcongreso.htm

Fecha: noviembre de 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

AUDITORÍA GENERAL DE LA REPÚBLICA INICIA INTERVENCIÓN ESPECIAL A LA CONTRALORÍA DEPARTAMENTAL DEL CHOCÓ

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/templates/6_PrensaArchivo_310709.asp

Fecha: 31 de julio de 2009

Hallan millonario fraude con pensiones del ISS

Fuente: El País

<http://www.elpais.com.co/paisonline/notas/Junio042009/jud1.html>

Fecha: 4 Jun 2009

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

Fecha: Julio 30 de 2009

Irregularidades por \$113.888 millones en Casanare revela la Contraloría

Fuente: El Espectador

<http://www.elespectador.com/economia/articulo153793-irregularidades-113888-millones-casanare-revela-contraloria>

Fecha: 31 Jul 2009

Avanza juicio por fraude a Electrohuila

Fuente: La Nación

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Al-Cierre/Avanza-juicio-por-fraude-a-Electrohuila

Fecha: 05 julio 2009

Programa Presidencial de Lucha Contra la corrupción. Informe al Congreso Julio 2008 a Mayo

2009. http://www.anticorruptcion.gov.co/areas/apoyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

Hay muchas denuncias y pocos condenados El País, Cali. 6 de septiembre de 2009

<http://www.anticorruptcion.gov.co/noticias/2009/septiembre/090907b.asp>

Corrupción, el sida del Estado en Colombia

<http://www.elpais.com.co/paisonline/notas/Septiembre062009/corrupt.html>

Procurador reconoce que corrupción desborda sus capacidades. Revista Semana Septiembre 15 de

2009 <http://www.semana.com/noticias-justicia/procurador-reconoce-corruptcion-desborda-capacidades/128744.aspx>

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.

75i. 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 Prosecutor'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.

The influence of this office is highly determined by the political style of the head of the agency. Between July 2008 and May 2009 the program received 8,995 complaints, redirected 1,601 to the Attorney General, 505 to the Supreme Audit Institution, 646 to the General Prosecutor, 200 to Superintendencies, 66 to the Judicial Police, and 1,406 to other institutions. Another 2,702 were returned to obtain more information from citizens. Yet, in the words of the director of the office, there are many denunciations and few condemnations.

The Attorney General has the mandate and does start investigations aggressively. During the study period there were sanctions against the mayors of the municipalities of Soledad and Pereira. The Attorney General's Office has also been active in requesting

and/or initiating investigations in major corruption cases such as the illegal wiretapping conducted by Intelligence Agency (DAS), apparent corruption in the State Council, influence peddling by legislators. It also was very active in reactivating prescribed cases such as the investigation on the assassination of presidential candidate Luis Carlos Galán in 1989.

Yet, according to the Attorney General's Office one frequent problem of acting on investigations is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late.

The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way how long it takes to solve a case. The Attorney General Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints.

Between January 2008 and September 2009 the Delegate Attorney General for Decentralization has registered 178,544 denunciations and initiated 3,777 processes against mayors, 448 against governors and 514 against councilmen. Regarding the Supreme Audit Institution, according to a report of the General Auditor the number of final decisions on processes of fiscal responsibility has increased by 392 percent since 2000 and most of these decisions are made in regional audit offices. Yet, all the sanctioned cases represented only 18 percent of all the cases initiated. As in the Attorney General's Office the major problem is the prescription of cases, the lack of sufficient documentation to make final decisions, and the lack of resources and personnel. While some regional offices may have considerable funding, others are notably understaffed and underfunded and have little power to conduct investigations.

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 lack of resources and personnel, the lack of coordination and the prescription of cases, and the pressures derived from the armed conflict or political pressures.

The Attorney General considers that the extent of corruption surpasses the capacity of the office to investigate and sanction the large number of corruption cases reported, therefore he considers it more appropriate to focus on the investigation of prominent corruption cases which can then provide exemplary sanctions.

References:

Programa Presidencial de Lucha contra la corrupción. Informe al Congreso 2008-2009. http://www.anticorruptcion.gov.co/areas/apgyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

Balance de mandato 2001 - 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesalcongreso.htm

Fecha: noviembre de 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

AUDITORÍA GENERAL DE LA REPÚBLICA INICIA INTERVENCIÓN ESPECIAL A LA CONTRALORÍA DEPARTAMENTAL DEL CHOCÓ

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/templates/6_PrensaArchivo_310709.asp

Fecha: 31 de julio de 2009

Hallan millonario fraude con pensiones del ISS

Fuente: El País

<http://www.elpais.com.co/paionline/notas/Junio042009/jud1.html>

Fecha: 4 Jun 2009

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

Fecha: Julio 30 de 2009

Irregularidades por \$113.888 millones en Casanare revela la Contraloría

Fuente: El Espectador

<http://www.elespectador.com/economia/articulo153793-irregularidades-113888-millones-casanare-revela-contraloria>

Fecha: 31 Jul 2009

Avanza juicio por fraude a Electrohuila

Fuente: La Nación

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Al-Cierre/Avanza-juicio-por-fraude-a-Electrohuila

Fecha: 05 julio 2009

Programa Presidencial de Lucha Contra la corrupción. Informe al Congreso Julio 2008 a Mayo

2009. http://www.anticorruptcion.gov.co/areas/apgyo_administrativo/gestion/documentos/Info_congreso_jun08may09.pdf

Hay muchas denuncias y pocos condenados El País, Cali. 6 de septiembre de 2009

<http://www.anticorruptcion.gov.co/noticias/2009/septiembre/090907b.asp>

Corrupción, el sida del Estado en Colombia

<http://www.elpais.com.co/paionline/notas/Septiembre062009/corrupt.html>

Investigar a magistrado Escobar Araújo por posible corrupción en Consejo de Estado pide Procuraduría

Fecha: 11 agosto de 2009

Fuente: http://www.eltiempo.com/colombia/justicia/primeras-decisiones-de-procuraduria-por-red-de-corruptcion-en-consejo-de-estado_5987589-1

Procuraduría exige efectuar nombramiento de ganadores de concurso del Servicio Civil
Fecha: Diciembre 16, 2008 9:25 pm
Fuente: <http://www.radiosantafe.com/2008/12/16/procuraduria-exige-efectuar-nombramiento-de-ganadores-de-concurso-del-servicio-civil/>

Procuraduría pide pérdida de investidura y aseguramiento para Alirio Villamizar
Fecha: Sábado, 05 de Septiembre de 2009
Fuente: <http://www.vanguardia.com/politica/93/38732>

Procuraduría destituyó a ex Comandante de Policía de Carreteras de Santander
Fuente: <http://www.todelar.com/node/2705>
Fecha: Jueves, Julio 30, 2009

Procuraduría investiga por corrupción a funcionarios del Consejo de Estado
Fecha: agosto 31 de 2009
Fuente: <http://www.caracol.com.co/nota.aspx?id=870417>

Procuraduría suspende a gobernador de Bolívar, Joaco Berrio
Fecha: Lunes 24 Agosto 2009
Fuente: <http://www.semana.com/noticias-politica/procuraduria-suspende-gobernador-bolivar-joaco-berrio/127771.aspx>

Magistrado Escobar Araújo explica por qué Procuraduría pidió que lo investiguen
Fuente: http://www.eltiempo.com/colombia/justicia/magistrado-escobar-araujo-explica-por-que-procuraduria-pidio-que-lo-investiguen_5986647-1
Fecha: 31 ago 2009

Procuraduría investigará recientes denuncias sobre el trámite del referendo reeleccionista
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-investigara-recientes-denuncias-sobre-el-tramite-del-referendo-reeleccionista_5925467-1
Fecha: 24 ago 2009

Procuraduría: Tribunal forzó argumentos para absolver a Santofimio de muerte de Galán
Fuente: http://www.eltiempo.com/colombia/justicia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-5802027.html
Fecha: 11 ago 2009

Procuraduría revive caso de Gloria Lara; 27 años después podría ir a cortes internacionales
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-revive-caso-de-gloria-lara-27-anos-despues-podria-ir-a-cortes-internacionales_5761114-1
Fecha: 2 ago 2009

Procuraduría está investigando a 550 docentes por abuso sexual y maltrato infantil
Fecha: 8 nov 2008
Fuente: http://www.eltiempo.com/colombia/justicia/procuraduria-esta-investigando-a-550-docentes-por-abuso-sexual-y-maltrato-infantil_4655221-1

César Gaviria le pide a Fiscalía y Procuraduría sancionar a responsables de 'chuzadas'
Fuente: http://www.eltiempo.com/colombia/politica/cesar-gaviria-le-pide-a-fiscalia-y-procuraduria-sancionar-a-responsables-de-chuzadas_4835089-1
Fecha: 23 feb 2009

Investigación contra tres funcionarios del Gobierno abrió la Procuraduría por las 'chuzadas'
Fecha: 16 mayo de 2009
Fuente: http://www.eltiempo.com/colombia/justicia/investigacion-contra-tres-funcionarios-del-gobierno-abrio-la-procuraduria-por-las-chuzadas_5194988-1

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.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

Comments:

According to the Attorney General's Office one frequent problem in acting quickly on corruption cases is the prescription of disciplinary actions because complaints are often made late or because reports from other institutions (such as the Supreme Audit Institution or the National Planning Department) come late.

The Attorney General's Office has made increasing efforts to avoid the prescription of cases, yet it is still difficult to determine in a reliable way is how long it takes to solve a case. The Attorney General's Office has relieved the congestion of processes over the past five years, which means that there is more efficiency in acting on complaints. Regarding the Supreme Audit Institution, according to a report of the General Auditor the number of final decisions on processes of fiscal responsibility has increased by 392 percent since 2000, and most of these decisions are made in regional audit offices. Yet, all the sanctioned cases represented only 18 percent of all the cases initiated. As in the Attorney General's Office the major problem is the prescription of cases or the lack of sufficient documentation to make final decisions.

It is important to note that available statistics do not show the average time that it takes institutions to act on different cases. Regarding the Presidential Anti-corruption Program, the program acts quickly in submitting reports 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 may take an investigation on the respective institution. Between July 2008 and May 2009 the program received 8,995 complaints, redirected 1,601 to the Attorney General, 505 to the Supreme Audit Institution, 646 to the General Prosecutor, 200 to Superintendencias, 66 to the Judicial Police, and 1,406 to other institutions. Another 2,702 were returned to obtain more information from citizens. Yet in words of the director, there are many denunciations and few condemnations.

Although most institutions have made efforts in recent years to act quickly on complaints, there are delays and backlogs accumulated from past years. Processing times of denunciations may vary widely among different cases, sometimes reflecting political interests. In both the Attorney General's and Auditor's office at the regional level there are more problems in acting quickly on complaints.

References:

Balance de mandato 2001 – 2008

Fuente: Procuraduría General de la Nación

http://www.procuraduria.gov.co/html/infoinstitucional/infoinst_informesacongreso.htm

Fecha: noviembre de 2008

INFORME DE GESTIÓN Y RESULTADOS – RENDICIÓN DE CUENTAS – 2007-2009

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/9_documentos/jdcano/InformeGestion2007-2009.pdf

Fecha: abril de 2009

AUDITORÍA GENERAL DE LA REPÚBLICA INICIA INTERVENCIÓN ESPECIAL A LA CONTRALORÍA DEPARTAMENTAL DEL CHOCÓ

Fuente: Auditoría General de la República

http://www.auditoria.gov.co/templates/6_PrensaArchivo_310709.asp

Fecha: 31 de julio de 2009

Hallan millonario fraude con pensiones del ISS

Fuente: El País

<http://www.elpais.com.co/paionline/notas/Junio042009/jud1.html>

Fecha: 4 Jun 2009

Según Personería, Secretaría de Educación gastó 660 millones por decisión errónea de Contraloría

Fuente: El Tiempo

http://www.eltiempo.com/colombia/bogota/ARTICULO-PRINTER_FRIENDLY-PLANTILLA_PRINTER_FRIENDLY-5738068.html

Fecha: Julio 30 de 2009

Irregularidades por \$113.888 millones en Casanare revela la Contraloría

Fuente: El Espectador

<http://www.elespectador.com/economia/articulo153793-irregularidades-113888-millones-casanare-revela-contraloria>

Fecha: 31 Jul 2009

Avanza juicio por fraude a Electrohuila

Fuente: La Nación

http://www.lanacion.com.co/index.php/ezflow_site_user/Ultima-Hora/Al-Cierre/Avanza-juicio-por-fraude-a-Electrohuila

Fecha: 05 julio 2009

Hay muchas denuncias y pocos condenados El País, Cali. 6 de septiembre de 2009

<http://www.anticorupcion.gov.co/noticias/2009/septiembre/090907b.asp>

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.

76b. 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 and although there are programs to protect witnesses, it is difficult to access those programs. The High Commissioner for Human Rights from the United Nations reported that in 2006 it received complaints of witnesses protected by the army who were attacked, showing the weakness of whistle-blowing protection programs.

During the study period there have been cases of auditors that resign due to threats or pressures. For example in August 2009 the Auditor of the Department of Putumayo received threats after releasing a report on corruption in the governorship.

In a similar way, a citizen overseer in the municipality of San Pelayo was assassinated after he denounced irregular practices with public resources. The citizen overseer of the department of Cordoba has also received reiterated death threats, and he is permanently escorted by three police agents. These cases illustrate that even though the anticorruption agencies support citizen complaints there are still several limitations for citizens to report corruption without fear of being threatened or harassed usually through unofficial means. This is especially notable at the local level.

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

Corruptos mataron a veedor de San Pelayo, asegura presidente de veedurías

Fuente: El Tiempo.com http://www.eltiempo.com/colombia/caribe/corruptos-mataron-a-veedor-de-san-pelayo-asegura-presidente-de-veedurias_5235008-1

Fecha: 20 May 2009

El contralor departamental denuncia amenazas de muerte

Fuente: Ministerio de Educación

<http://www.mineduccion.gov.co/observatorio/1722/article-198855.html>

Fecha: 12 de Agosto de 2009

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.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. 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 within their mandate have responsibilities regarding the investigation or prosecution of corruption, or that have created specific units to investigate corruption. This is the case of the Attorney General's Office (Procuraduría General de la Nación), which has the highest responsibility in overseeing the discipline of public servants, the Supreme Audit Institution (Contraloría General de la República) which oversees fiscal management, the National Audit Institution

(Auditoría General de la Nación) and the General Attorney's Office (Fiscalía General) that investigates and accuses all penal crimes.

The police and the Intelligence Service (DAS) have created specific units to investigate corruption cases.

There is an agency from the central government with the specific mandate to address corruption. In 1998, then President Andres Pastrana created the presidential program for the Fight Against Corruption through the Decree 2405 of Nov. 30, 1998. Such a decree was modified with the decree 127 of Jan. 19, 2001, and the decree 519 of March 5, 2003. Currently the program is known as the Presidential Anti-corruption Program. Its main function is to advise the president about anti-corruption policies

References:

Programa Presidencial Anticorrupción.

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.

67 VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. 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 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:

Constitution of Colombia 1991, articles 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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The tutelage action¹⁰⁰ to protect basic rights has become one of the most widely used mechanisms for citizens to appeal decisions given the fact that decisions have to be made within a very specific and short time period (10 days).

The number of tutelas has increased exponentially: 2 million tutelas have been requested in 17 years, but it is calculated that in 2008 alone there were 600,000 tutelas. The increase is particularly high in tutelas related to health care. This increase has led the government to propose a reform on the tutela, but experts and members of the judiciary argue that the problem is not the mechanism but the fact that public administration is having serious problems in guaranteeing basic rights. One of the crucial problems is that in many cases judges are not aware of the rulings of the Constitutional Court and solve tutelas in a direction contrary to the rulings of the court. Better information and communication systems are needed to solve these coordination problems.

The tutela is a last resort action for cases involving fundamental rights, and thus, normal appeals may take longer given the congestion and backlog that characterizes the Colombian judicial system. The ombudsman (Defensor del Pueblo) reports that the right to due process and the right of defense are among those rights that citizens consider violated most frequently. In 2008 the ombudsman received 660 requests to conduct tutelas about violations of this right (2.44 percent of all requests received, a 2 percent decrease compared to 2007).

Although in recent years there have been important efforts in all judicial institutions in order to reduce backlogs, they are so big that there are still cases unsolved from many years ago and thus it is difficult to compel judges to act within the legal time frame. An increase in the number of judges in recent years has contributed to reduce backlogs. The number of judges increased 10 percent between 1995 and 2007, especially due to the creation of 257 administrative judges in 2006. Yet, according to an evaluation of the governmental policy to fight impunity conducted by the nongovernmental organization Corporation Excellence in Justice, the average number of processes handled by prosecutors in the General Prosecutor's Office increased from 9.9 in 2007 to 26.8 in 2008 thus hindering the efforts to reduce impunity (and to expedite appeal decisions). The average number of processes handled by specialized judges and attorneys has remained relatively stable, but it is very high for attorneys.

The reform of the penal system (from mixed to accusatory or oral) has meant some advances in reducing backlogs while speeding up processing times by 80 percent according to the Superior Council, yet also it has created more personnel demands and it is still to be implemented in 60 percent of all courts in the country. The Superior Council of the Judicature reports that during 2007 judges and justices acted on 1,632,369 processes, including 265,656 tutelas (20.8 percent). These numbers correspond to 91 percent of the processes that entered the judicial system during the year.

Yet, the Council reports that within each judicial office for every 100 processes that enter, eight become part of the backlog, and that one process accumulates each 10 days (35 each year). It is, from 403 cases received the offices acted on 368 during 2007. The worst performance is that of administrative tribunals which acted on 78 percent of all incoming processes during 2007 and the best is the Council of State which acted on 107 percent of all incoming processes. The Superior Council of the Judicature has directed resources to reduce backlog by increasing or reallocating personnel, but in 2007 it was able to use 32 percent fewer resources for these purposes than in 2006. Some of these resources were directed to the solution of very old and prominent cases such as the Mapiripan massacre in 1997 and the assassination of presidential candidate Luis Carlos Galán in 1989.

According to the General Prosecutor's Office (the accusation instance in the penal system) some of the problems in carrying its mandate have to do with the lack of appropriate training for intelligence officers and the difficulties in collecting evidence in an efficient way. The prescription of processes is another crucial problem.

Despite the advances made in recent years, according to the People's Tribunal, chapter Colombia, and based on jurisprudence of the Interamerican Court on human rights and on several public audiences, the judicial system is still unable to respond adequately to justice demands made by citizens. According to the nongovernmental organization Corporation Excellence in Justice there have been advances in reducing impunity in the country but many difficulties persist such as lack of resources, lack of coordination among institutions, political influence in the definition of policy priorities, and a notable difference in capacities at the local level compared to those existent at the national level.

References:

Consejo Superior de la Judicatura. Informe al Congreso 2007-

2008. http://www.ramajudicial.gov.co/csj_portal/assets/INFORME%20CONGRESO%202007%20-2008.pdf

Impunidad en Colombia es masiva y generalizada. Julio 30 de 2008. <http://www.polodemocratico.net/Impunidad-en-Colombia-es-masiva-y>.

Conceden acción de tutela que controvierte providencia judicial Fuente: La Republica
Martes, 21 de Abril de 2009 00:00

http://www.cej.org.co/index.php?option=com_content&view=article&id=1250:conceden-accion-de-tutela-que-contravierte-providencia-judicial&catid=10:noticias-del-sector-justicia&Itemid=168

Defensoria del Pueblo. XVI informe al Congreso

2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

Corporacion Excelencia en la Justicia. Primer informe de seguimiento a la politica de lucha contra la impunidad. Septiembre 11 de 2009. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The tutelage action⁷⁸ 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. Tutelas represent 20.8% of all demand for justice in the country. 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, 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, and thus, 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 the widespread use of the “tutela” has increased the congestion of the judiciary. In fact the government has proposed to reform the tutela. Experts and high level Justices argue that the problem is not the tutela itself but the fact that the government is not able to guarantee basic human rights or to make expedite decisions.

During 2007 the Superior Council of the Judicature took some actions to expand the overage of justice, and thus reduce the costs for accessing justice, for example the organization of non-traditional sites for the administration of justice, using CADES (a place where citizens can do a number of different public procedures).

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

Consejo Superior de la Judicatura. Informe al Congreso 2007-2008. http://www.ramajudicial.gov.co/csj_portal/assets/INFORME%20CONGRESO%202007%20-2008.pdf

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The situation of armed conflict and corruption represents the biggest obstacles for the judiciary to follow written law, as armed actors and corrupt networks threaten judges or try to buy them. During the study period it became public that a former justice in the Council of State (current candidate for General Prosecutor) was involved in a network of influence peddling that worked for decisions favoring certain private sectors. Although the investigation was closed given the lack of proof, it generated widespread doubts about transparency in judicial decisions.

Therefore, corruption is one big obstacle for judges to follow written law, but the structural limitations in the administration of justice also work against decisions based on written law. According to a recent report of Transparency International, Colombian judges are among the worst paid judges in Latin America, and the gap between their salaries and those of justices and magistrates is too high. These salary imbalances and problems constitute an incentive for judges to follow other criteria rather than just written law when adjudicating decisions.

At the local level there are evident weaknesses in the investigative skills of the police and of the justice institutions. According to the General Prosecutor’s Office, some of the problems in carrying out its mandate have to do with the lack of appropriate training for intelligence officers. Citizens may also consider that the social position of claimants influences the outcome of judicial

processes. Some experts consider that with the transition from a mixed penal system to an accusatory one, people who lack adequate resources to pay good lawyers end up being in a weaker position in the system. The system has helped to expedite decisions in minor offenses, but more complicated cases such as drug trafficking are not necessarily expedited with the process.

According to an expert evaluation of the Justice system conducted by the nongovernmental organization Corporation Excellence in Justice, there is a perception that judicial decisions answer more to the political context or other elements rather than to written law and that many judges lack autonomy. The evaluation also notes that there is a conflict between written law and case law and although preeminence should be given to the latter, in practice judges at the local level tend not to follow written law.

According to the 2007-2008 transparency indexes produced by Transparency for Colombia the level of corruption in the judiciary increased compared to the former assessment, although it is still lower than in the Executive, Legislature and the General Attorney's Office. One of the institutions perceived to be more corrupt is the Superior Council of the Judiciary, and this is very worrying considering that this court is in charge of disciplinary oversight in the judiciary. These perceptions may reflect the lack of confidence in the fairness and legitimacy of judicial decisions. Citizens are not certain about the access, opportunities, and efficiency in the judiciary.

References:

VI. APUNTES SOBRE EL FUNCIONAMIENTO Y LOS DESAFÍOS DE LA JUSTICIA. Corporación Excelencia en la Justicia. http://www.cej.org.co/index.php?option=com_docman&task=doc_view&gid=230&tmpl=component&format=raw&Itemid=191

En 23 entidades estatales acecha la corrupción Fecha: 29 Julio 2009
<http://www.semana.com/noticias-politica/23-entidades-estatales-acecha-corupcion/126779.aspx>

Percepción de corrupción en la justicia en Colombia
<http://www.transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/transparencia/tabid/67/Default.aspx>

Global Corruption Barometer 2009. Fuente: Transparency International http://www.transparency.org/policy_research/surveys_indices/gcb/2009

La Hora de la Justicia, entrevista con Gloria María Borrero Directora de la Corporación Excelencia en la Justicia. Revista Semana. Septiembre 8 de 2008. <http://www.semana.com/noticias-politica/hora-justicia/128395.aspx>

Jueces colombianos, entre los peor pagados de América Latina. Revista Cambio. Noviembre 2 de 2008. http://www.cambio.com.co/paiscambio/796/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4578156.html

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.

79. In practice, are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are generally enforced. Yet during President's Uribe government conflicts between the executive and the judiciary (more specifically the Supreme Court of Justice) have increased. As executive power increases along with the popularity of the president, the guarantees for non-political criteria in the selection of justices are weakened, and therefore the independence of the judiciary is threatened.

The Supreme Court of Justice is still recognized by its opposition to the government, but the Constitutional Court and the Superior Council of the Judiciary seemed to be increasingly tied to the executive. The government has criticized the Supreme Court of Justice and accused it of abusing its power and taking on responsibilities not belonging to it. In some cases, members of the government suggested the existence of links between the court and armed groups.

During the last two years, the Supreme Court of Justice has been very active in requesting explanations from the executive on certain controversial decisions. In May 2009 the president of the Supreme Court of Justice on behalf of an inter-institutional commission of the judiciary, requested the president give a public statement regarding a scandal involving illegal wiretapping and

investigation of civic leaders, journalists, members of the judiciary, and politicians conducted by the Central Intelligence Agency DAS.

During the same month the court also decided to initiate preliminary investigations against 86 congressmen regarding their vote in the law regulating a referendum for presidential reelection because such voting took place before the director of the National Registry (Registrador) expressed his opinion about the viability of the reform.

The court also condemned to eight years in jail the member of the lower chamber, Ivan Diaz Mateus, for exerting influence on the positive vote of another member of the chamber to support the reform that eventually allowed presidential re-election.

The critiques made by the president on the court's actions have led experts and some international organizations to compel the president to respect the decisions made by the courts. The conflict between the court and the executive can represent a risk to the independence of the courts, especially given the high popularity of the president and the willingness of citizens to accept the declarations made by the president against the court.

References:

Ibáñez insiste en pedir explicaciones, Uribe no responde

Fuente: Revista Semana 6 Mayo 2009

<http://www.semana.com/noticias-politica/ibanez-insiste-pedir-explicaciones-uribe-no-responde/123688.aspx>

El enfrentamiento de Gobierno colombiano y Corte llega a la CPI

Fuente: AFP Fecha: 26/08/2008

<http://afp.google.com/article/ALeqM5jSg16rwlMnXjCX3Z1bt6-Wakf5g>

Uribe Vélez se compromete con CPI a respetar el poder judicial

Fuente: El Financiero en línea Fecha: 27 de agosto

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=140356&docTipo=1&orderBy=docId&sortBy=ASC>

Pulso de poder

Fuente: Prensanet.com Fecha: 24 de junio de 2009

http://www.prensanet.com/images/news/2009/06/25/news_1177014.html

Uribe-Corte, ¿diferencias irreconciliables? 14 Jun 2009

<http://www.elpais.com.co/paionline/notas/Junio142009/na13.html>

Conmoción interior para enfrentar paro judicial decretó el Gobierno

Fuente: El Tiempo Fecha: 10 Oct 2008

http://www.eltiempo.com/colombia/politica/2008-10-10/conmocion-interior-para-enfrentar-paro-judicial-decreto-el-gobierno_4595212-1

Corte tumbó la Conmoción Interior de Uribe

Fuente: Radio SantaFe Fecha: Febrero 12, 2009

<http://www.radiosantafe.com/2009/02/12/corte-tumbo-la-conmocion-interior-de-uribe/>

Corte Constitucional pide explicaciones por chuzadas

Fuente: Corporación Excelencia en la Justicia. Fecha: 19 de Mayo de 2009

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1353:corte-constitucional-pide-explicaciones-por-chuzadas&Itemid=168

Corte Constitucional denuncia presiones en fallo sobre reelección

Fuente: Terra.com Fecha: Mayo 26 de 2009

<http://www.terra.com.co/noticias/articulo/html/acu21815-corte-constitucional-denuncia-presiones-en-fallo-sobre-reeleccion.htm>

Atención a desplazados: Corte Constitucional evaluó al Gobierno y el balance aún es negativo

Fuente: El Tiempo Fecha: 12 Jul 2009

http://www.eltiempo.com/domingoadomingo_eltiempo/atencion-a-desplazados-corte-constitucional-evaluo-al-gobierno-y-el-balance-aun-es-negativo-5614150-1

Marcado sesgo en candidatos de Uribe a la Constitucional

Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

Marcado sesgo en candidatos de Uribe a la Constitucional

Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009

http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

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.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

According to the constitution, decisions of the judiciary are independent. The Law 270 of 1996 states that independence is a crucial principle in the Administration of Justice.

References:

The Constitution of Colombia 1991, Article 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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The political independence of judges has increased since a new constitution was issued in 1991, and their judgments are increasingly influential, even to the point that it is considered that judges have influence in political processes. As such, this is a phenomenon which carries several advantages (such as an increased protection of basic rights) and disadvantages (such as the risk of politicization in the judiciary), and therefore, it is criticized by some and praised by others.

The low score of this indicator compared to last year reflects the increasing politicization in the selection of national level justices. In the second half of 2008 four new magistrates in the Superior Council of the Judicature were elected from lists proposed by President Uribe to Congress, which is mainly Uribista. As a result, the council is now totally pro-government, a novel situation in the country. The rationale in the 1991 Constitution for allowing the president to propose candidates was to give the president power, but this process was thought in a context where presidential re-election was prohibited. In the new context in which the president is now in his second term, this process appears to be too risky for the independence of the judiciary vis-a-vis the executive.

According to some observers such as the nongovernmental organization Excellence in Justice, the selection of candidates for justices by the president is driven more by political criteria than by professional criteria. In March 2009 the government presented candidates to replace magistrates in the Constitutional Court, but none of the candidates appeared to have significant experience in constitutional law and rather seemed to have more experience in private law. Furthermore, five out of six candidates obtained their degrees at the same university, known by its ideological position rather than by its academic quality. High politicization of candidates was also perceived in the process to select the new General Prosecutor (Fiscal General).

In conclusion, as conflicts between the executive and the judiciary increase and executive power increases along with the popularity of the president, the guarantees for non-political criteria in the selection of justices are weakened, and therefore the independence of the judiciary is threatened.

The Supreme Court of Justice is still recognized by its opposition to the government, but the Constitutional Court and the Superior Council of the Judicature seem to be increasingly tied to the executive.

The perception of politicization was historically higher in the Supreme Court of Justice that paradoxically has become the greatest check on executive power. The government has criticized the court and accused it of abusing its power and taking responsibilities that do not belong to it. The critiques made by the president to the court have led experts and some international organizations to compel the president to respect the decisions made by the courts. The conflict between the court and the executive can represent a risk to the independence of courts and judges.

References:

Uribe consigue control del órgano que vigila y sanciona a los jueces . 3 Septiembre 2008
http://semana.com/wf_InfoArticulo.aspx?idArt=115127

Sombra de duda en la tutela a favor del Ministro
Fuente: Revista Semana Fecha: 2 Octubre 2008
<http://www.semana.com/noticias-justicia/sombra-duda-tutela-favor-del-ministro-palacio/116145.aspx>

Marcado sesgo en candidatos de Uribe a la Constitucional
Fuente: Corporación Excelencia en la Justicia Fecha: 20 de Marzo de 2009
http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1165:marcado-sesgo-en-candidatos-de-uribe-a-la-constitucional&Itemid=168

Fiscalía general de la Nación
Gobierno designa terna para escoger Fiscal General
Fuente: El Espectador.com Fecha: 3 Jul 2009
<http://www.elespectador.com/articulo148885-gobierno-designa-terna-escoger-fiscal-general>

Candidatos a fiscal admitieron su cercanía con el gobierno
Fuente: Elección Visible – WRadio
http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=514:candidatos-a-fiscal-admitieron-su-cercania-con-el-gobierno&catid=57:columnas-de-opinion-y-editoriales&Itemid=200

Candidato a Fiscal está siendo investigado por posible soborno Julio 13, 2009
<http://www.radiosantafe.com/2009/07/13/candidato-a-fiscal-esta-siendo-investigado-por-posible-soborno/>

Corte Suprema considera pedirle al Presidente Uribe que revalúe terna para Fiscal
Fuente: Corporación Excelencia en la Justicia – El Tiempo Fecha: 06 de Agosto de 2009
http://www.cej.org.co/index.php?option=com_content&view=article&catid=10:noticias-del-sector-justicia&id=1653:corte-suprema-considera-pedirle-al-presidente-uribe-que-revalue-terna-para-fiscal&Itemid=168

Elección Visible pide a los ternados que declinen de su aspiración a ser Fiscal General de la Nación.
Fuente: Elección Visible Fecha: Julio 29 de 2009.
http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=642:eleccion-visible-pide-a-los-ternados-que-declinen-de-su-aspiracion-a-ser-fiscal-general-de-la-nacion&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

Elección Visible pide a los medios, su respaldo en la solicitud de renuncia a los candidatos a Fiscal.
Fuente: Elección Visible Fecha: Agosto 4 de 2009.
http://www.eleccionvisible.com/index.php?option=com_content&view=article&id=684:eleccion-visible-pide-a-los-medios-su-respaldo-en-la-solicitud-de-renuncia-a-los-candidatos-a-fiscal&catid=44:noticias-comunicados-y-pronunciamientos&Itemid=198

La Hora de la Justicia, entrevista con Gloria Maria Borrero Directora de la Corporacion Excelencia en la Justicia. Revista Semana. Septiembre 8 de 2008. <http://www.semana.com/noticias-politica/hora-justicia/128395.aspx>

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.

80c. 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 adjudicates cases. 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 Conecta

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.

80d. 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 8-year terms. Thus they are protected from removal without relevant justification. Justices and judges belong to the judicial civil service and as such cannot be removed without relevant justification.

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.

81. Are judges safe when adjudicating corruption cases?

50

81a. 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, but there are no official reports of judges physically harmed over the last year.

However, the International Commission of Jurists has expressed concern about the intimidation against high level justices from the Supreme Court of Justice. In August 2009, justices reported again that they are receiving death threats and are being followed.

References:

Comisión Internacional de Juristas. Consejo de Derechos Humanos 3ª Sesión del Examen Periódico Universal, 12 de diciembre de 2008 Contribución de la Comisión Internacional de Juristas al Examen Periódico Universal de Colombia Julio 2008 http://www.icj.org/news_multi.php?id_groupe=11&id_mot=207=es

Latin American Herald Tribune. Colombian Police Probe Threats Against Judges, Politicians <http://www.laht.com/article.asp?CategoryId=12393&ArticleId=342085>

Supreme Court Justices receive death threats. <http://www.colombiareports.com/colombia-news/news/5520-supreme-court-judges-receive-death-threats.html>

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There are no official reports of judges being killed over the last year.

References:

Comisión Internacional de Juristas. 2008. Consejo de Derechos Humanos 3ª Sesión del Examen Periódico Universal, 12 de diciembre de 2008 Contribución de la Comisión Internacional de Juristas al Examen Periódico Universal de Colombia Julio 2008. http://www.icj.org/news.php3?id_article=4375&lang=es

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.

82. Do citizens have equal access to the justice system?

57

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

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 and in eliminating forms of racial discrimination. The special indigenous judicial system as well as the elaboration of specific policies to attend indigenous groups has improved the access of those groups to justice. The special indigenous jurisdiction has expedited the solution of cases that would take considerably longer in the general system. However, there are conflicts of application between the special indigenous jurisdiction and the general judicial system that still need to be solved.

The emphasis on indigenous groups is not coupled with a similar interest on African descendents which represent between 16 and 25 percent of the total population (between 6 and 10.5 million people). Forms of justice employed by afro-colombian groups (such as community councils) are not recognized as those of indigenous groups thus creating asymmetries which threaten the rights of afro-colombian groups.

According to a report of CEJA, the use of racial profiles in detentions, adjudications and treatment in prisons is common. In general, the emphasis given in Colombia to alternative resolution methods has facilitated the access of minority groups to justice. However, those of African descent and indigenous groups are not well aware of the existence or the way these mechanisms work. Adverse incentives such as poverty, displacement dynamics, and violence also prevent these communities from accessing justice effectively.

According to the Committee on the Elimination of Racial Discrimination, discrimination against afro-colombian communities and indigenous groups still persists, mainly in the form of threats, attacks, and human rights violations often committed by armed actors but also by state actors. Particularly notable conflicts have also emerged due to large infrastructure projects in indigenous and afro-colombian lands which have been undertaken without properly consulting the communities.

According to the Ombudsman's 2008 report, ethnic groups complaint mostly about violations to human rights by armed groups (202 out of 376 complaints) but also violations regarding territory, environment, health, sanitation, education, autonomy,

jurisdiction and self government. The increase in the number of assassinations of indigenous and afro-colombian leaders, human right defenders, and peace judges, is of particular concern.

The committee considers it necessary to strengthen civilian presence in areas inhabited by these communities, so these violations can be more easily reported and investigated. The commission considers that the Colombian government has advanced while recognizing indigenous justice systems, yet it expresses concern for the lack of measures directed to protect the rights of indigenous and afro-colombian communities in the penal system.

Most violations against these groups are still in impunity and the General Prosecutor's Office (Fiscalia) does not have complete information on the racial composition of victims, so it makes it more difficult to create policies specifically geared towards them. The fact that indigenous and afro-colombian groups make up a large percentage of displaced communities also constitutes another hindrance for accessing justice because displaced people have less reliable ways to access justice. In the case of indigenous groups, the lack of appropriate translation systems make difficult for non-Spanish speakers to understand their rights and the ways in which they can access justice.

A decrease in the score for this indicator compared to last year reflects the increase of attacks against afro-colombian and indigenous leaders over the past year.

References:

COMITE PARA LA ELIMINACION DE LA DISCRIMINACION RACIAL PRESENTA RECOMENDACIONES A COLOMBIA. Bogota, Septiembre 2 de 2009. <http://www.nacionesunidas.org.co/index.shtml?apc=i1---&s=n&x=59295>.

Carlos Rua Angulo. La Justicia Afrocolombiana se construye en el conocimiento de la diversidad. <http://www.digital.unal.edu.co/dspace/bitstream/10245/982/32/31CAP130.pdf>

PERSISTEN INTIMIDACIONES CONTRA AFROCOLOMBIANOS Y DEFENSORES DE JUSTICIA Y PAZ. Proyecto acompañamiento solidaridad Colombia. <http://www.pasc.ca/spjp.php?article359>

Jueces Indígenas dan ejemplo en Colombia BBC Mundo. Febrero 10 de 2009. http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7882000/7882300.stm

DE HOY EN LOS MEDIOS CARTA DE 25 ONG'S PUEBLOS INDÍGENAS
Viernes 12 de septiembre de 2008. <http://justiciaypazcolombia.com/CARTA-DE-25-ONG-S-PUEBLOS>

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Formally, women enjoy full access to the courts, however different state and non-state actors are still worried about the inefficiency of the judicial system in investigating and prosecuting cases of violence against women, especially those that occur within armed conflict areas and are perpetrated by armed individuals.

In December 2008, the government issued the Law 1257, which it dictates norms aimed at sensitizing, preventing, and sanctioning all forms of violence and discrimination against women.

The Committee on the Elimination of Racial Discrimination in its 2009 report also considers that women of indigenous and afro-colombian descent are significantly more vulnerable than other women, but also more than other members of their communities. 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. Women are significantly affected by crimes against humanity committed within the armed conflict such as prostitution, forced pregnancy and sexual slavery.

Familiar violence and sexual violence, two crimes that affect women prominently have very high impunity rates. According to the latest report of the above mentioned Office for Women and to the nongovernmental organization Sigma Mujer, Colombian women do not report sexual violence acts because they fear being stigmatized in public, because they are not fully aware of the available judicial resources, or because it may be costly to denounce when judicial institutions are far from rural and marginal areas.

The Office for Legal Medicine considers that about 98 percent of sexual violence goes unreported. According to Sigma Mujer some members of the judiciary still consider that women can prevent sexual violence if they oppose or react adequately. This belief coupled with lack of awareness about the psychological, emotional, and physical impacts of sexual violence leads to a completely inadequate follow up of sexual violence cases in the judicial system.

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 have trained public servants on gender and women issues. The Supreme Council of the Judicature has created a training program with gender focus for judiciary employees which prepared 30 trainers during 2007, who will replicate the program.

It is also an important advancement that national level courts, specially the Constitutional Court, have produced a body of doctrine aimed at protecting women's rights. The government has also 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. During the second semester of 2008 (the most recent statistic available) women presented 57.3 percent of all complaints made in Justice Houses. The majority of complaints presented (30 percent) referred to familiar conflicts, thus Justice Houses can be an important alternative for women to solve familiar conflicts.

References:

COMITE PARA LA ELIMINACION DE LA DISCRIMINACION RACIAL PRESENTA RECOMENDACIONES A COLOMBIA. Bogota, Septiembre 2 de 2009. <http://www.nacionesunidas.org.co/index.shtml?apc=i1---&s=n&x=59295>.

Claudia Cecilia Ramírez. Arañando la justicia – Violencia sexual e impunidad en el conflicto armado en Colombia Hegoa. Bilbao. Febrero, 2008 http://www.bantaba.ehu.es/obs/files/view/Ponencia_definitiva_Claudia_.pdf?revision_id=71270&package_id=71230

Consejo Superior de la Judicatura. Informe al Congreso de la República 2007-2008

Censo Nacional de Casas de Justicia y Presencia Institucional. Segundo Semestre de 2008. <http://www.fiu.edu.co/fiu/Casas%20de%20Justicia/CD%20II%20SEMESTRE%202008/index.htm>

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.

82c. 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 right to due process, and therefore, can access a lawyer if they do not have their own lawyer.

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.

82d. 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 as well as caseloads affect the effectiveness of state available aid.

It is considered that with the recent introduction of the accusatory system in Colombia, the weaknesses of state-provided aid can be even more evident since successful defense standards increase and many citizens are not able to access private defense attorneys, thus requiring more state support.

It is important to note; however that several international organizations have given aid to Colombia in order to modernize the judicial system, and a fraction of this aid goes to training of public defenders.

According to 2007 figures, there are 7.7 public defenders per 100,000 inhabitants in Colombia, a figure that is above the Latin American average and has increased in recent years.

According to an evaluation of the governmental policy to fight impunity conducted by the nongovernmental organization Corporation Excellence in Justice, the program has contributed to strengthening public defense as reflected in the increase in the number of victims supported by public defenders of the Ombudsman's Office (27,554 in 2007 to 44,392 in 2008). Yet the Ombudsman in its 2008 report declares that even though it has consolidated its system of public defense it still lacks resources and personnel to adequately respond to the increasing demands originated from the Law of Peace and Justice (a process of truth and reparation between the paramilitaries and the government), the new accusatory system, and the changes made to criminal laws of underage offenders. This situation is further complicated given that victims are dispersed throughout the territory and usually are located far from competent judicial authorities.

Some groups may be more vulnerable given the difficulty to access proper defense and legal counsel. That is the case especially for displaced communities, indigenous and afrocolombian communities despite the legal efforts made by the State to create mechanisms aimed at increasing their effective access to justice. In the case of displaced communities there are very few processes against those responsible for displacement in the ordinary justice system, mainly because victims do not believe to have enough security and procedural guarantees to use ordinary justice. Most processes have been carried out using restorative justice within the Law of Peace and Justice, but in this case there is not enough institutional capacity to process all demands and investigations.

The increasing use of the Casas de Justicia is also a positive advance in state provision of legal aid. The total number of national requests attended daily by the Casas de Justicia increased from 1,396 in the first trimester of 2002 to 5,366 in the fourth trimester of 2008. Citizens are more vulnerable in certain areas where state aid can be more limited, as in cases referred to health, labor issues or public service provision.

References:

Censo Nacional de Casas de Justicia y Presencia Institucional. Segundo Semestre de 2008. <http://www.fiu.edu.co/fiu/Casas%20de%20Justicia/CD%20II%20SEMESTRE%202008/index.htm>

Panorama de Justicia en Colombia 22.06.2009
Indicadores y estadísticas. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

ACNUR. Desplazamiento forzado en Colombia. Derechos, acceso a la justicia y reparaciones.

COMITE PARA LA ELIMINACION DE LA DISCRIMINACION RACIAL PRESENTA RECOMENDACIONES A COLOMBIA.
Bogota, Septiembre 2 de 2009. <http://www.nacionesunidas.org.co/index.shtml?apc=i1---&s=n&x=59295>.

Defensoria del Pueblo. XVI informe al Congreso
2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

Corporacion Excelencia en la Justicia. Primer informe de seguimiento a la política de lucha contra la impunidad. Septiembre 11 de 2009. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

Comments:

The existence of informal justice systems and mechanisms such as the *accion de tutela*, which can be used by any citizen at relatively low cost, have facilitated the access of middle class citizens to justice. The increasing use of the Casas de Justicia is also a positive advance for poor and middle class citizens to access the justice system. The total number of national requests attended daily by the Casas de Justicia increased from 1,396 in the first trimester of 2002 to 5,366 in the fourth trimester of 2008. However, in more complicated cases, the costs are prohibitive and the quality of state-provided aid is low compared to that provided by private defenders.

Costs can be less affordable in rural areas and in certain regions of the country. According to a study of the Corporacion Excelencia en la Justicia (Excellence in Justice), poor citizens are in a situation of high vulnerability because the costs to access good lawyers and to maintain processes can be very high. The study done in two cities (Armenia and Chia) found that approximately 25 percent of citizens consider economic costs to be one of the main obstacles in access to justice.

Costs can be prohibitive for vulnerable groups such as displaced communities, indigenous and afro-colombian communities despite the legal efforts made by the state to create mechanisms aimed at increasing their effective access to justice.

In what refers to informal systems, the functioning of them is not homogeneous throughout the country and therefore in certain areas citizens might not be able to access these alternative mechanisms that reduce costs.

In Colombia, various mechanisms exist for alternative dispute resolution: equity conciliation, legal conciliation, mediation, arbitration and peace judges. For more complex cases, citizens earning a median income might have difficulties in paying for good quality lawyers and in paying for all the necessary administrative procedures.

Since lack of information is identified by citizens as one of the main obstacles for accessing justice, in complex cases it is necessary to find specialized knowledge in order to follow the right procedure, and such knowledge carries significant costs. This situation seems to be aggravated since the establishment of the accusatory penal system that imposes higher standards on defenders although it has favored citizens because the role of the victim is active unlike the previous system.

References:

Censo Nacional de Casas de Justicia y Presencia Institucional. Segundo Semestre de 2008. <http://www.fiu.edu.co/fiu/Casas%20de%20Justicia/CD%20II%20SEMESTRE%202008/index.htm>

Panorama de Justicia en Colombia 22.06.2009
Indicadores y estadísticas. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

ACNUR. Desplazamiento forzado en Colombia. Derechos, acceso a la justicia y reparaciones.

COMITE PARA LA ELIMINACION DE LA DISCRIMINACION RACIAL PRESENTA RECOMENDACIONES A COLOMBIA.
Bogota, Septiembre 2 de 2009. <http://www.nacionesunidas.org.co/index.shtml?apc=1---&s=n&x=59295>.

Defensoria del Pueblo. XVI informe al Congreso
2008. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

Corporacion Excelencia en la Justicia. Diagnostico de necesidades juridicas insatisfechas en los municipios de Armenia y Chia. http://www.cej.org.co/index.php?option=com_docman&Itemid=191

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

Comments:

The existence of informal justice systems and conciliation mechanism can reduce the costs for a small business to redress a grievance. However, in more complicated cases, the costs are prohibitive given the costs that have to be paid to obtain a good private defender. Costs can be more difficult to afford in rural areas and in certain regions.

In what refers to informal systems, the functioning of these systems is not homogeneous throughout the country, so in certain

regions it might be more difficult for a small business to access to those mechanisms that can reduce costs. In Colombia, various mechanisms exist for alternative dispute resolution: equity conciliation, legal conciliation, mediation, arbitration and peace judges.

References:

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas

Presentación de la Investigación sobre Necesidades Jurídicas
Insatisfechas Miércoles, 18 de Junio de 2008

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. 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 courts at a low cost. However, in other areas, especially rural areas, the formal judicial mechanism are weak, and 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 some areas of the country, access to formal mechanisms is still very limited.

References:

CAJPE. 2003. Red de Información Jurídica, SISTEMAS JUDICIALES Reforma y modernización judicial Colombia (enero diciembre, 2003)

Uprimny Yepes, Rodrigo. La judicialización de la política en Colombia: casos, potencialidades y riesgos. Revista Conectas

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

83. Is the law enforcement agency (i.e. the police) effective?

83a. 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 by DANE among public employees in the police, the institution has a level of development that is neither high nor low (3.67 on a 5 point scale) and represents a slight deterioration compared to 2007. It means that the police is in a transition process of improving human resources and using merit-based systems of selection, but still lacks some significant resources.

Employees in the police consider that political interferences are not very strong in processes of appointing employees although transparency in selection process had a score of 3.5 out of 5.

During President Alvaro Uribe's mandate, the number of police and military members has increased by 34 percent. Within the plan to improve the police, there have been programs and decisions oriented to increase professionalism and improve the institution such as the creation of a new disciplinary statute, the separation of the discipline from the operational functions, the creation of specialized training for crimes that affect Colombia the most such as drug trafficking, and the improvement in personnel selection processes.

References:

DANE Encuesta Desempeño Institucional Resultados Generales 2008. http://www.dane.gov.co/files/EDI/Resultados_2008.pdf

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The police budget has increased 20 percent yearly on average between 2000 and 2006. Although there might not be budgetary problems, when the institution faces internal corruption scandals it has been highlighted that there is a problem with the salary structure of the police which might be an incentive for police members to engage in corruption.

However, as a whole, the institution does not face budgetary problems. Under the mandate of President Alvaro Uribe, the budget for the police and the military increased within the democratic security policy. For the 2009 budget defense and security expenditures represent approximately 27 percent of the total budget and the projections for the 2010 budget also show that defense and security are among the sectors that receive more money both for day-to-day operations and for investment. It is important to note; however, that day-to-day expenditures are significantly higher than investments.

United States military support and support to the police's anti-drug trafficking efforts has also contributed to increase funding for law enforcement.

According to the new law 1153 of 2007 minor offenses such as street robberies and pickpocketing can be sanctioned with fines that will become part of the police budget.

Paradoxically it is interesting to note that employees have a different perception about resources in the institution. According to the most recent Survey of Institutional Performance conducted by the National Statistics Department DANE among employees of public institutions, employees in the police consider that resources are not sufficient for the appropriate functioning of the institution, giving a score of 3.14 out of 5 points to the indicator that evaluates the appropriateness of resources (a deterioration compared to 2007). This perception suggests that even though resources are not scarce, they might not be managed appropriately. Employees gave a score of 3.4 to indicators evaluating whether resources and tools to fulfill the mandate of the police are sufficient.

References:

DANE Encuesta sobre ambiente y desempeño institucional. http://www.dane.gov.co/files/EDI/Resultados_2008.pdf

Se salvó" el presupuesto general de la Nación de 2009

Caracol. Octubre 20 de 2008

<http://www.caracol.com.co/nota.aspx?id=693916>

Protección social será el sector con más inversión en 2010

Fuente: Semana.com Fecha: 30 Julio 2009

<http://www.semana.com/noticias-economia/proteccion-social-sera-sector-inversion-2010/126821.aspx>

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.

83c. In practice, the law enforcement agency is protected from political interference.

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

Comments:

By law, the police is an armed institution of civil nature, and as such, is independent to act. It has an independent career system for its employees. However, the police is a subordinate of the executive (the president at the national level, and mayors and governors at the local level), and thus it can be influenced by political incentives.

In fact, some experts consider that one of the big problems in the police is the lack of clarity of authority lines between local mayors and local police commanders. 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 its operation more difficult. On the one hand, it can be immune from political control, but on the other, it is a subordinate of the executive.

During the past year the most notable scandals within the police referred more to its infiltration by drug traffickers or self-defense groups than to the existence of undue political influences. For example in May 2009, 25 police members were removed from their posts in Bahía Solano accused of being permissive with drug traffickers.

According to the most recent survey on institutional performance conducted by the National Statistics Department among public employees, employees in the police consider that political interferences are not very strong in procurement processes or in process of appointing employees, thus political interferences may be stronger at high levels of authority than in the day-to-day operations of the police.

References:

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia

Por Grabaciones Cae Banda De Policías. El Tiempo. Octubre 21 de 2008. <http://www.eltiempo.com/archivo/documento/MAM-3148808>

Catorce policías capturados por corrupción. <http://www.radiosantafe.com/2008/09/05/catorce-policias-capturados-por-corrupcion/> Radio SantaFe Septiembre 5 de 2008.

Relevados 25 policías en Bahía Solano por corrupción. Mayo 9 de 2009. http://www.elcolombiano.com/BancoConocimiento/R/relevados_25_policias_por_corrupcion/relevados_25_policias_por_corrupcion.asp

Policías Envueltos En Atracos. El Tiempo Octubre 6 de 2008. <http://www.eltiempo.com/archivo/documento/MAM-3125947>

DANE Encuesta de Desempeño y Ambiente Institucional Resultados por Sector y entidad. http://www.dane.gov.co/index.php?option=com_content&task=category&ionid=103&id=619&Itemid=1193

Propuesta de Reforma a la policía colombiana. Octubre

2003. <http://www.seguridadydemocracia.org/docs/pdf/instituciones/PropuestadeReformaalaPolicia.pdf>

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.

84. Can law enforcement officials be held accountable for their actions?

79

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The ombudsman receives and follows up on citizen complaints related to human rights violations by police members. According to law, the disciplinary power over police members is in the hands of the institution itself, even though the general attorney's office has preferential disciplinary power in the state. It means that the attorney can request information on disciplinary processes conducted against 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 Policía 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

84b. 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 will it take for a case to be solved, and the perception is that there are high rates of impunity regarding police action.

The police itself has 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. It has invested resources on training and personnel to strengthen the responses to claims and complaints made by citizens.

In 2008, the ombudsman received 63 complaints about police members regarding violations of international humanitarian law, and all of them were sent for investigation. There were 277 complaints about all public forces, including 208 against military forces. Forty two of these cases referred to complaints about threats or attacks from the police on civilians (an increase compared to 2007). However it is not clear how long it takes to investigate and solve a complaint against a police member.

According to the United Nations High Commissioner for Human Rights in Colombia the fuero militar" is irregularly applied to protect police (and army) members in cases of human rights violations, and in these cases there can be substantial delays in the investigation of cases.

References:

Decimo Sexto Informe del Defensor del Pueblo al Congreso de la Republica. http://www.defensoria.org.co/red/anexos/publicaciones/16_informe_congreso.pdf

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

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.

84c. 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 has the responsibility to oversee the operational and disciplinary regime of the police without reducing the responsibility of control organizations, such as the general attorney's office. High ranking police officials are the ones who must know about disciplinary faults of police members.

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.

84d. 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, it has been stated on several occasions that the internal control mechanism of the police has to be strengthened, and that the control of high government officials over the institution has to increase.

In practice, the police work more as a military than as a police institution, but in law it is a civilian-armed institution. This double standard 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 members, as the system to judge and investigate them is independent.

Finally, the responsibilities of the general prosecutor and general attorney regarding police members are not completely clear and generate confusion when cases have to be investigated. Civilian control over police members is weak given the existence of military immunity but also because lines of command between civilian and police members are not completely clear (i.e. relations between mayors and local police commanders)

According to the UN Special Rapporteur on extrajudicial executions in his report about the practice of false positives, there are three main problems in the effective investigation of law enforcement members.

First that the General Prosecutor's Office lacks staff, resources and training. Second in some areas, military judges ignore the rulings of the Constitutional Court and do all in their power to thwart the transfer of clear human rights cases to the ordinary justice system. Third, jurisdictional clashes and delaying tactics are standard. Therefore not only more resources but more coordination and more independence of the investigation mechanisms is required in order to guarantee official investigation.

According to the CEJA Report in 2006, the number of administrative procedures within the police increased by 4 percent compared to 2004 (From 6,959 to 7,442 cases). From these procedures 5.5 percent, or 416 cases, resulted in the removal of the official. However the most notable investigations are those generated outside the police in the Attorney's General and Prosecutor offices.

References:

Pablo Casas Dupuy. REFORMAS Y CONTRARREFORMAS EN LA POLICÍA COLOMBIANA. Fundación Seguridad y Democracia.

DECLARACION DEL PROFESOR PHILLIP ALSTON, RELATOR ESPECIAL DE LAS NACIONES UNIDAS PARA LAS EJECUCIONES ARBITRARIAS <http://www.nacionesunidas.org.co/index.shtml?apc=BB-3-&x=58590>

Human Rights Watch World Report 2009. <http://www.unhcr.org/refworld/country,,HRW,.COL,,49705fa64e,0.html>

Propuesta de Reforma a la policía colombiana. Octubre 2003. <http://www.seguridadydemocracia.org/docs/pdf/instituciones/PropuestadeReformaalaPolicia.pdf>

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Police members can be prosecuted for criminal actions, however they are subject to an independent system which is primarily in the hands of the police institution itself and the Minister of Defense.

According to law, high ranking police members are the ones who must know about disciplinary faults of police members, and the special military jurisdiction is in charge of knowing about the crimes committed by police members 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.

84f. 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 in several occasions that the internal control mechanism of the police has to be strengthened and that the control of high government officials over the institution has to increase. In practice the police works more as military than as a police institution, but in law it is a civilian armed institution. Such double standard 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 members because the system to judge and investigate them is independent. The responsibilities of the general prosecutor and general attorney regarding police members are not completely clear and generate confusion when cases have to be investigated. It is even more complicated when prosecuting police members for criminal offenses.

However, criminal procedures against members of the police have become more visible and have increased in recent years. In September 2008, 14 police members were jailed because they had a scheme under which they extorted criminals in order not to enforce the law against them; yet, as of October 2008 only five of them remained in prison.

In October a group of police members related to robberies in the city of Cali was also dismantled thanks to the investigation of the General Prosecutor's Office. In May 2009, 25 police members were removed from their posts in Bahía Solano accused of being permissive with drug traffickers and of abusing the population. These are examples of the advances in initiating criminal proceedings against law enforcement officials, yet there are still serious problems in reaching effective condemnation of crimes.

During the study period, the details of a widespread practice of extrajudicial killing taking place at least since 2003 known as "falsos positivos" (false positives) became well documented. The practice refers to cases in which members of security forces specially the military, but also the police, killed young men in cities, peasant farmers, members of indigenous and afrocolombian communities, and human rights defenders. They were then presented as guerrilla members killed in combat.

According to Amnesty International, most killings were referred to the military justice system, which usually closed such cases without any serious attempt to hold those responsible accountable.

The UN Special Rapporteur on extrajudicial executions noted in his report about this case that even though there is no proof to affirm that this practice is part of an official government or state policy, the government's explanation that this is only the action of a few bad apples is unsustainable too and disregards the systematic character of the actions. The Rapporteur affirmed that despite multiple government efforts to stop and respond to these killings since 2007, there is still a gap between policies and practices, the number of prosecutions is still low and most cases remain in impunity.

References:

Colombia – Amnesty International Report 2008
<http://www.amnesty.org/en/region/colombia/report-2008>

DECLARACION DEL PROFESOR PHILLIP ALSTON, RELATOR ESPECIAL DE LAS NACIONES UNIDAS PARA LAS EJECUCIONES ARBITRARIAS <http://www.nacionesunidas.org.co/index.shtml?apc=BB-3-&x=58590>

Por Grabaciones Cae Banda De Policías. El Tiempo. Octubre 21 de 2008. <http://www.eltiempo.com/archivo/documento/MAM-3148808>

Catorce policías capturados por corrupción. <http://www.radiosantafe.com/2008/09/05/catorce-policias-capturados-por-corrupcion> Radio SantaFe Septiembre 5 de 2008.

Relevados 25 policías en Bahía Solano por corrupción. Mayo 9 de 2009. http://www.elcolombiano.com/BancoConocimiento/R/relevados_25_policias_por_corrupcion/relevados_25_policias_por_corrupcion.asp

Policías Envueltos En Atracos. El Tiempo Octubre 6 de 2008. <http://www.eltiempo.com/archivo/documento/MAM-3125947>

Human Rights Watch World Report 2009. <http://www.unhcr.org/refworld/country,,HRW,,COL,,49705fa64e,0.html>

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.

