

Overall Score:

80 - Moderate

Legal Framework Score:

94 - Very Strong

Actual Implementation Score:

67 - Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁹Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

Political Constitution of Colombia, Article 38, "The right of free association for the development of different activities that people engage in society."

The state will contribute to the organization and promotion of civic, professional, labor, community, youth and charity organizations without taking out autonomy, in order to establish democratic representation, control and surveillance established governance.

References:

Constitución Política de Colombia, Título II de los Derechos, Garantías y los Deberes, Capítulo I de los Derechos Fundamentales, Artículo 38.

Constitución Política de Colombia, Título IV, de la Participación Democrática y de los Partidos Políticos, Capítulo I, de las Formas de Participación Democrática, Artículo 103, Párrafo 2.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

The Constitution of Colombia provides legal support for the creation of nonprofit entities:

Article 103: The state will contribute to the organization, promotion and training of professional, civic, labor, community, youth, charitable or nongovernmental without detriment to their autonomy in order to constitute democratic means of representation on the different levels of participation, coordination, control and surveillance of public administration to be established.

Article 355. None of the branches or the public authority can order aid or donations to individuals or private legal entities. The government, at national, provincial, district and city levels may, with funds from the respective budgets, contract with private nonprofit and recognized capacity to promote programs and activities of public interest consistent with the National Plan and Sectional Development Plans.

References:

Artículos 103 y 355. Constitución Política de Colombia.

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

Such organizations are required to disclose their sources of funding for tax deduction. Tax law dictates that all entities are required to report all money transactions.

The authority, governors of the departments or mayor that exercises control and supervision may, in the exercise of statutory powers, request reports from the nonprofit entity or NGOs, and the presentation of their books.

The public will have access to financial information through the “accountability” of the same organizations and local municipal governments. However, public accountability is voluntary.

People can also access financial information through the right to petition.

References:

Párrafo (1), Artículo 31, Ley 488 de 1998; Artículo 125(1), Requisitos de los Beneficiarios de las Donaciones, Estatuto Tributario

In accordance with Article 189, paragraph 26. Constitución Política de Colombia.

Ley 850 de 2003, “Por Medio del Cual se Reglamentan las Veedurias Ciudadanas.”

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

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

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

75

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The creation of a civil society organization is relatively simple in Colombia, but it must meet the legal standards on the subject.

Due to the importance of societal nonprofit entities, the constitution establishes the criteria guiding its creation. Article 2 gives a special character to the participation of citizens in the economic, political, administrative and cultural life of the nation:

Article 2 °. Purpose of the State. The essential goals of the state are: to serve the community, promote prosperity and ensure the effectiveness of the principles, rights and duties enshrined in the constitution; to facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the nation; to defend national independence, maintain territorial integrity and ensure peaceful coexistence and the validity of a just order.

Likewise, the Policy Letter establishes the right of association as a fundamental right.

Article 38. Right of association. The right of free association is granted for the development of different activities in which people engage.

This right is the main legal argument to give life to the nonprofit entities, as is the support for any group of people together under a common ideal and purpose for society and without perceived interest of profit by it.

In order to ensure the proper use of the income of these entities, the constitution entrusts to the president of the republic to exercise the inspection and supervision over them. Thus, Paragraph 26 of Article 189 provides:

Presidential Qualities and Skills. The president of the republic, as head of state, head of government and supreme administrative authority, should:

26) Inspect and survey institutions of public utility to ensure that their incomes are maintained and properly applied and that essentials are in compliance with the will of the founders.

This authority has been delegated by the president at the head of the governors of the departments and in the case of Bogotá, Distrito Capital, this power is exercised by the mayor of Bogotá.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Artículo 2º, Fines del Estado, Constitución Política de Colombia.

Artículo 38, Derecho de Asociación, Constitución Política de Colombia.

Artículo 189, Calidades y Competencias Presidenciales. www.colombiaincluyente.org

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

Comments:

Non-governmental organizations have emerged as a response to fulfill needs that the state does not satisfy. Civil society organizations are looking for alternative and complementary outputs for the full development of these shortcomings. There is no doubt that the role played by the various projects that benefit the community favors development-oriented management.

They are part of the country's politics to the extent that they monitor, record and deliver reports and research. They also offer oversight of policies and government processes and allow the political participation of the community mobilization process because they generate but can not say that they are taking or have direct impact on policy-making.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

www.gerencie.com

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

No

Comments:

Although this possibility is completely prohibited by law, there have been direct confrontations with the government in power.

Semana magazine reports the history of this in its article "The Persecution of NGOs":

"The Authoritarian Spell" is a controversial report in late 2003 that questioned the first year of the administration of Alvaro Uribe, sparking anger. The reaction caused a serious confrontation with civil society organizations on human rights, saying that some of them were accomplices of the guerrillas.

Since then, the Administrative Department of Security, or DAS, began an exhaustive review of most of the organizations that participated in the report as well as others. The following entities were investigated: Asfades, Minga, Codhes, Ilsa, the Colombian Commission of Jurists and Cinep, plus others. The Bank of the Republic was asked for information on their foreign currency movements and their leaders, and their lists of email contacts were spied on and hundreds of emails were explored. DAS also delved into the lives of several of the groups' most senior officials, including following up on children, and mounted other aggressive acts against the NGOs.

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References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

www.semana.com

"La Persecución a las ONG"

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

0

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes

No

Comments:

A group of 23 NGOs reported in Washington in front of the Inter-American Commission on Human Rights on an alarming and growing wave of attacks against human rights defenders throughout the Americas.

According to the organizations, “The situation reflects the persistence of attacks by state actors or acting on his support or tolerance, paramilitaries, and the emergence of new forms of harassment by organized crime and extractive companies with economic interests in the region.”

Although the United Nations in its 2010 report says that from 2004 to 2009 there were more than 146 complaints of threats against human rights defenders in the Americas, advocacy organizations show a more disturbing reality.

According to research in Colombia, between 2002 and 2009 more than 1,000 supporters were assaulted — including killings, threats, arbitrary arrests and torture. In 2010 alone, there were at least 32 killings of defenders.

“Of particular concern are violations against those who work for the rights of displaced persons and the restoration of land and trade unionists. Thus, displaced, 46 active leaders in the process of land restitution were killed between 2002 and 2011,” the organizations say.

The civil society representatives who gathered in Washington, D.C., placed particular emphasis on increasing intelligence of illegitimate actions by states against human rights defenders.

The organizations called on the commission to create a special rapporteur or office responsible for the protection of defenders.

They also asked the agency to require states to implement effective measures to protect and improve public policies that guarantee the work of defenders, and the investigation of acts of violence and threats made against people who risk their lives to report situations of social injustice.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Amazon Watch / Asociación Pro Derechos Humanos (Aprodeh) / Centro de Derechos Humanos de las Mujeres de Chihuahua / Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh) / Centro de Derechos Humanos de la Montaña “Tlachinollan,” México/ Centro de Derechos Humanos Fray Bartolomé de las Casas, México / Centro por la Justicia y el Derecho Internacional (CEJIL) / Corporación de Defensa y Promoción de los Derechos del Pueblo (CODEPU) / Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH) / Comité de Defensa integral de Derechos Humanos “Gobixha,” A.C. / Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH) / Comité de Familiares de Víctimas (COFAVIC) / Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) / Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR) / Fundación Regional de Asesoría en Derechos Humanos (INREDH) / Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (IDHUCA) / Global Rights Partners for Justice/ Observatorio Ciudadano, Chile / Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA) / Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todos y Todos” (Red TDT) / Unidad de Protección a Defensoras y Defensores de Derechos Humanos (UDEFEFUGA) / Washington Office on Latin America (WOLA)

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes

No

Comments:

In the last three years, more than 50 leaders of land restitution were killed and dozens more were attacked and threatened. Many of these leaders not only denounced the illegal expropriation of their lands, but of political participation in acts of corruption that changed ownership documents illegally and made fictitious sales of land.

A group of 23 NGOs, reported in Washington, in front of the CIDH, an alarming and growing wave of attacks against human rights defenders throughout the Americas.

According to the organizations, “The situation reflects the persistence of attacks by state actors or acting on his support or tolerance, paramilitaries, and the emergence of new forms of harassment by organized crime and extractive companies with economic interests in the region. “

Although the U.N. in its 2010 report notes that between 2004 and 2009, there were more than 146 complaints of threats against human rights defenders in the Americas, advocacy organizations show a more disturbing reality.

According to research in Colombia, between 2002 and 2009 more than 1,000 supporters were assaulted — including killings, threats, arbitrary arrests and torture. In 2010 alone, there were at least 32 killings of defenders.

“Of particular concern are violations against those who work for the rights of displaced persons and the restoration of land and trade unionists. Thus, displaced, 46 active leaders in the process of land restitution were killed between 2002 and 2011,” the organizations say.

The civil society representatives who gathered in Washington, D.C., placed particular emphasis on increasing intelligence of illegitimate actions by states against human rights defenders.

The organizations called on the commission to create a special rapporteur or office responsible for the protection of defenders.

They also asked the agency to require states to implement effective measures to protect and improve public policies that guarantee the work of defenders, and the investigation of acts of violence and threats made against people who risk their lives to report situations of social injustice.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

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Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes

No

Comments:

In the last three years, more than 50 leaders of land restitution were killed and dozens more attacked and threatened. Many of these leaders not only denounce the illegal expropriation of their lands, but of political participation in acts of corruption that changed ownership documents illegally and made fictitious sales of land.

A group of 23 NGOs, reported in Washington, in front of the CIDH, an alarming and growing wave of attacks against human rights defenders throughout the Americas.

According to the organizations, “The situation reflects the persistence of attacks by state actors or acting on his support or tolerance, paramilitaries, and the emergence of new forms of harassment by organized crime and extractive companies with economic interests in the region. “

Although the U.N. in its 2010 report notes that between 2004 and 2009, there were more than 146 complaints of threats against human rights defenders in the Americas, advocacy organizations show a more disturbing reality.

According to research in Colombia, between 2002 and 2009 more than 1,000 supporters were assaulted — including killings, threats, arbitrary arrests and torture. In 2010 alone, there were at least 32 killings of defenders.

“Of particular concern are violations against those who work for the rights of displaced persons and the restoration of land and trade unionists. Thus displaced, 46 active leaders in the process of land restitution were killed between 2002 and 2011,” the organizations say.

The civil society representatives gathered in Washington, D.C., placed particular emphasis on increasing intelligence of illegitimate actions by states against human rights defenders.

The organizations called on the commission to create a special rapporteur or office responsible for the protection of defenders.

They also asked the agency to require states to implement effective measures to protect and improve public policies that guarantee the work of defenders, and the investigation of acts of violence and threats made against people who risk their lives to report situations of social injustice.

References:

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Yes: A YES score is earned if there were no documented cases of NGO 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?

04a. In law, citizens have a right to organize into trade unions.

Yes

No

Comments:

According to Article 39, workers and employers have the right to form unions or associations without state intervention. Legal recognition will occur with the simple registration of a charter.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario
www.derechoshumanos.gov.co

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.

04b. In practice, citizens are able to organize into trade unions.

100

75

50

25

0

Comments:

Yes, citizens are allowed to form trade unions, but it's not a widespread practice because the experience has proved to be ineffective, and current hiring methods do not allow stable forms of organization. In some cases, fear of being threatened stops any organization.

The statistics of the trade union movement in Colombia in 2010 on violations against trade unionists show 37 homicides, 201 threats and five disappearances, arbitrary detention and 20 attacks.

In the past 20 years, there have been 4,826 threats and 1,696 forced displacements of union members, according to the Department of Human Rights, the CUT and the National Union School, ENS.

The alleged perpetrators of these threats are unknown group in 445 cases, 163 self-defense and paramilitary forces, the state agency 59 times, 26 guerrillas, 19 common criminals and three employers, according to data supplied by the SINDERH-ENS and Sindhu-CUT.

According to Article 39, workers and employers have the right to form unions or associations without state intervention. Legal recognition will occur with the simple registration of a charter.

The internal structure and functioning of trade unions and social organizations and unions will be subject to the legal order and democratic principles.

Union representatives' immunity is recognized and other guarantees necessary for the performance of their functions.

Members of the armed forces do not have the right of free association.

It is a policy of the government of Colombia to promote and protect labor rights and freedom of association. Advances in protection in Colombia can be seen in particular in four main areas: protection of the right to life of trade, fight against impunity and labor warranties.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario www.derechoshumanos.gov.co

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

The information has to be impartial and truthful. It would not be censored. If any person or even the state finds out that the information given by the media or any other source is not real, there can be legal implications. In addition, the Colombian Constitution protects the freedom of cult, religion and political opposition.

References:

Artículo 20, Constitución Política de Colombia

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

In Colombia, freedom of speech and access to information technology and communications are guaranteed by law.

References:

Artículo 20, Constitución Política de Colombia.

Numeral 7, Artículo 2, Ley 1341 de 2009

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?

88

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

In Colombia, there are no legal barriers to the creation of a newspaper. With simple paperwork, everyone can establish a newspaper.

However, unofficial barriers can be found. For example, most newspapers published today belong to the stronger economic and political groups in the country. It must be noted that this phenomenon of placing newspapers in the hands of the financial and political groups is recent, and contradicts the tradition of Colombian journalism. Although it was always allied with political parties, it had never been controlled so closely by big economic groups, with the implications this has in terms of press freedom.

Colombia's regional reporters, who find their stories with direct sources who many times are the victims, are not telling all they have to tell. Journalists have made a tacit agreement to safeguard their lives and their families

While violent groups and corrupt politicians are responsible for many of the threats and attacks against journalists, working conditions and the advertising achievement system are effective traps for freedom of information.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Libreta de Apuntes

“País Lejano y Silenciado: Autocensura y Prácticas Periodísticas en el Periodismo Regional”

<http://libretadeapuntes.com>

Rincón del Vago

“La Prensa Escrita”

<http://html.rincondelvago.com>

Artículos 20 y 73. Constitución Política de Colombia.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

License is not needed for printed media. However, it is necessary to register with the Chamber of Commerce as a public service. In addition, government censorship can be contested via tutela for the protection of their rights.

References:

Tutela, law mechanism established in Article 86 of the Colombian Constitution. Protects every fundamental right. Tutela is covered by Decrees 2591 of 1991 and 306, 1382, 1992 of 2000.

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required for print media, but some paperwork is required for registration, trade and taxes.

An ISSN issued by the National Centre for ISSN is required. It is an internationally recognized numeric code for identifying serial or continuous understanding such as: magazines, newspapers, newsletters, annuals (reports of institutional management, annual or annual compilations of articles published in a particular subject, directories), proceedings of societies, conference proceedings, journals and monographic series.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Centro Nacional Colombiano del ISSN (www.icfes.gov.co).

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

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?

56

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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

Comments:

There are no formal barriers to forming radio and TV entities.

Some informal barriers have been changed in the last year.

An important decision from the government of President Juan Manuel Santos was to separate the National Television Commission from its constitutional status, due to the discovery of acts of corruption and mismanagement.

Since last September, the government filed a draft law that redefines the television industry in Colombia and created a new structure of the entities that manage it.

It is an initiative of 19 articles that seeks to update the digital convergence industry, i.e. adjust to new technological developments. After removing the National Television Commission from its constitutional status, the entity would be replaced by a board of four members, one being the minister of information technologies and three others nominated by the president from a list of those eligible from the Civil Service. Control functions, content and competence are to be reallocated to the Telecommunications Regulatory Commission, the ministry of ICT and the Superintendency of Industry and Commerce.

On the other hand, the adjudication of the third channel was suspended until all Colombians are guaranteed transparency in the process.

The only barrier that could not be overcome is the high cost of production. Despite 46 TV channels and around 1,300 radio stations in Colombia, just two big chains are in control of much of the audience. This is because of the high costs of good-quality television production and the construction of infrastructure to carry the signal to the whole country.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Periodico El Espectador
"Los Capítulos de la CNTV." June 2, 2011.

Ministerio de Tecnologías de la Información y las Comunicaciones
www.mintic.gov.co

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.

07b. 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:

A license is required for the use of the electromagnetic spectrum. If a broadcast media or station wants to use it, it has to pay a fee for a 10-year license. Inabilities for the use are established by the Law 1341 of 2009. Article 14 cites inabilities that can be contested in court.

References:

Artículo 20, Constitución Política de Colombia.

Párrafo (1), Artículo 14 Inhabilidad para Acceder a los Permisos del Espectro Radioeléctrico, Ley 1341 de 2009.

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.

07c. 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 process of adjudication of licenses for TV is slower than for radio in part because of the politicized character of the National Television Commission (CNTV) and the lack of clear regulation.

However, there have been changes in the last year. An important decision of the government was to remove the constitutional status of the National Television Commission and propose that the commission be replaced with a more technical entity.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Ministerio de Tecnologías de la Información y las Comunicaciones
www.mintic.gov.co

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

Comments:

According to the model of all investment banking, the total value of the licenses is \$819 billion, \$344 billion in the case of each incumbent and \$130 billion for the new channel. There has been some confusion on these ratings, in the sense that these assessments proposed a payment scheme in two parts, one fixed and the second variable.

For their part, private TV channels reported a lack of transparency in the process, especially the lack of clarity about the license cost for the new channel.

The president of the Canal Caracol, Paulo Laserna, said the amount set, \$ 82 million for the extension of the license for 10 years, by the commission is "absolutely absurd" and warned that there was no transparency in the process and all decisions appeared to be "taken out of the hole."

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Memorando. Precio de las Licencias de Televisión Abierta Para el Nuevo Período Regulatorio 2009-2018. Comisión Nacional de Televisión.

Comisión Nacional de Televisión
www.cntv.org.co/

www.elespectador.com, "Rechazo de Canales Privados a Costo por Prórroga de Licencias."

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?

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are no government-imposed impediments to Internet access.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Ministerio de Tecnologías de la Información y las Comunicaciones
www.mintic.gov.co

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

In Colombia, there is no censorship on the content published on the Internet. However, a Senate bill is under way that seeks to regulate copyright violations on the Internet. The proposal, which raises the prison sentences for those who hack through the network, raises doubts among young people, who have promoted discussion through Twitter, Facebook and blogs.

Interior Minister Germain Vargas Lleras was responsible for promoting and defending the bill, hence its name: "Law Lleras."

What does the Law Lleras propose?

Juan Carlos Monroy, director of the National Directorate of Copyright, an organization that gave life to this project, says the proposal "is not against the users," but "against the pirates who sell, publish and make available illegally marketing purposes, copyrighted works without authorization."

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

www.semana.com, April 18, 2011, "Los Pros y los Contras de la 'Ley Lleras'"

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?

67

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

No matter the case, whether a public figure or a regular citizen, libelous statements are punished by the Colombian Penal Code.

References:

Artículos 313, 914, 315, 316, 317, 318, 319, Capítulo Único de la Injuria y la Calumnia, Título XII, del Código Penal Colombiano.

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Comments:

The Foundation for Press Freedom, FLIP, and Media for Peace, MPP, presented the report “Country Distant and Muted: Self-censorship and Journalistic Practices in Regional Journalism. “

The publication, written by journalist Arturo Guerrero, is a final collection of research findings developed by the FLIP and MPP in 2009 and 2010, with support from the Norwegian Embassy and USAID.

The research aimed to identify the existence of self-censorship by journalists and broadcast media, taking into account the levels of risk disclosure in the local context, and analyze the impact of journalistic practices in increasing or decreasing the levels of risk in the practice of journalism in the regions.

Here is a brief excerpt from the document:

“Colombia’s regional reporters, who find their stories via direct sources and often suffer the consequences of these stories, are not telling. They are not telling all they have to tell. Journalists have made a tacit agreement to safeguard their lives and those of their families.

“While violent groups and corrupt politicians are responsible for much of the threats and attacks against journalists, working conditions and ad achieving systems are clamps on effective freedom of information.

“This will set up a map of omission-drilled reality. People often hear of events by way of rumor or alerts to communities, but these facts do not get the space and the recognition that they should by the press.

“Thus, after massacres or attacks against human rights, people ask: Where were the reporters when all this was happening?”

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Fundación para la Libertad de Prensa, or FLIP

Medios para la Paz, or MPP

Informe “País Lejano y Silenciado: Autocensura y Prácticas Periodísticas en el Periodismo Regional,”
Periodista Arturo Guerrero, 2010

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

In Colombia, the holders of political power are closely linked with the holders of economic power. Each one passes to the other side very easily, and some people perate on both sides, and form societies of common interest between them.

When a media outlet is being cheeky, of course, it is not closed or threatened because this would affect the good image that the public has of democracy prevailing, but economic groups will pressure the media that been insubordinate.

The way to do this is to remove advertising contracts, which constitutes a very effective tool for invisible censorship, since all media need advertising to survive. Without advertisers, no media can exist successfully.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

www.gerencie.com

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?

80

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

Yes

No

Comments:

According to the code of commerce, every company, including print media, is obligated to disclose at the Chamber of Commerce its books and records, information about owners, partners and the origins of the capital invested. This information is recorded on the Certificate of Existence and Legal Representation. That information can be obtained by any person paying the equivalent of \$2 at any office of the Chamber of Commerce.

The Certificate of Existence and Legal Representation offers information such as the entity's age and expiration date, address, partners, capital, legal representatives and its social objective among others. In general, this constitutes a summary of the content of the deed. It is supposed to be renewed annually, by March 31 each year.

References:

Artículo 110, Requisitos para la Constitución de una Sociedad, 112 Inscripción de Escritura Pública de Constitución del Registro en Cámara de Comercio, Capítulo II Constitución y Prueba de la Sociedad Comercial, Título I del Contrato de Sociedad.

Ley 527 de 1999. Expedición de Certificados de Existencia y Representación Legal

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:

According to the code of commerce, every company has to disclose its books and records, information about owners, partners and the origins of the capital invested for public and government consumption.

References:

Artículo 110, Requisitos para la Constitución de una Sociedad, 112 Inscripción de Escritura Pública de Constitución del Registro en Cámara de Comercio, Capítulo II Constitución y Prueba de la Sociedad Comercial, Título I del Contrato de Sociedad.

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:

Not all, because the most important media channels are close to the government and are the beneficiaries of official guidelines and agendas set by the government. These practices are mediated by economies, politics and ideologies. It is important to note that despite some mistrust in the media, many constantly consult them.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Fundación para la Libertad de Prensa
www.flip.org.co

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

The law requires such fairness. However, the visibility of a candidate also depends on his level of popularity, resources and political affiliation.

The law guarantees equal access for all presidential candidates to the broadcast media from 60 to eight days before the election. During this period, the state guarantees free spaces on public and private channels for all candidates to disclose their government programs and debates and interventions for a level playing field.

The Electoral Observation Mission concluded that there was balanced coverage in the last presidential election in the amount of information in the press about the candidates, and the media complied with its legal duty to provide a minimum coverage for each candidate.

The gap in the amount of media coverage between candidates appears when two phenomena happen:

First, candidates who do not have the financial means to get more publicity than guaranteed by the law, begin to fall behind.

Second, when a voting intention becomes evident and a group of candidates takes the lead, the media pay more attention to these candidates.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Misión de Observación Electoral
www.moe.org.co

Normas Electorales
Instituto de Ciencia Política
www.icpcolombia.org

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:

The law guarantees equal access for all presidential candidates to the media that use the electromagnetic spectrum, from 60 to eight days before the election. During this period, the state guarantees free spaces on public and private channels for all candidates to disclose their government programs and debates and interventions for a level playing field.

The Electoral Observation Mission in the last presidential election concluded that there was not balanced coverage in the amount of information in the press about the candidates, and the media complied with its legal duty to provide a minimum coverage for each candidate.

The gap in the amount of media coverage between candidates appears when two phenomena happen:

First, candidates who do not have the financial means to get more publicity than guaranteed by the law begin to fall behind.

Second, when a voting intention becomes evident and a group of candidates takes the lead, it is expected that the media pay more attention to these candidates.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Misión de Observación Electoral
www.moe.org.co

Normas Electorales
Instituto de Ciencia Política
www.icpcolombia.org

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

75:

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

25:

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

11. Are journalists safe when investigating corruption?

0

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

Yes

No

Comments:

When a member of the media is being cheeky, of course, it is not closed or imprisoned because this would affect the good image that the public has of democracy prevailing, but economic groups can pressure insubordinate media.

The way to do this is to remove the advertising contracts, which constitutes a very effective tool for invisible censorship.

At the regional level, the threats are direct. The Foundation for Press Freedom said in a statement that it has received several reports of threats to reporters who have pointed out irregularities in the election campaign. For example, in Barrancabermeja, a journalist who questioned a candidate at a press conference was attacked by a group of motorcycle drivers who supported the candidate.

Another case presented by the Foundation for Press Freedom is a journalist in the south who received death threats for denouncing mayoral corruption. The mayor has denied any connection with threats and accused the reporter of belonging to an opposition political group. At election time, the dirty war against journalists of denunciation increases.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media un, National University of Colombia).

www.terra.com.co,

“En Época Electoral Aumentan los Riesgos para Periodistas,” Julio 5 de 2011.

Fundación para la Libertad de Prensa, FLIP.

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:

Sen. Juan Gómez says the increase in cases in which journalists are threatened or killed because of corruption makes him believe that these crimes come from public officials or people linked to power in the regions. “That is a debate that in this country

has not yet been given,” he says. Government advertising in the regions is given as a reward for favors or as a punishment for no favors. Extortion is a relationship in which the journalist is judged according to benefits received or not from public officials.

The Foundation for Press Freedom said in a statement that it had received several reports of threats to reporters who pointed out irregularities in the election campaign. For example, in Barrancabermeja, a journalist who questioned a candidate in a press conference was attacked by a group of motorcycle drivers who supported the candidate.

Another case presented by the Foundation for Press Freedom is a journalist in the south who received death threats for denouncing mayoral corruption. The mayor has denied any connection with threats and accused the reporter of belonging to an opposition political group.

References:

Interview with Sen. Juan Gomez.

www.terra.com.co,

“En Época Electoral Aumentan los Riesgos para Periodistas,” Julio 5 de 2011.

Fundación para la Libertad de Prensa, FLIP.

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:

According to Reporters Without Borders, Colombia is a high-risk country for journalists.

The Foundation for Press Freedom says eight journalists were slain in 2011, but their killers have yet to be convicted. Two more such killers could go unpunished “if justice does not act,” the group warned.

Reporters have been victims of threats, extortion, kidnapping and killings in the Andean country, which has seen more than 40 years of armed conflict between guerrillas and paramilitary forces. Drug traffickers and corrupt politicians are also known to attack journalists who report on their illegal activities.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media un, National University of Colombia).

Fundación para la Libertad de Prensa, FLIP

flip.org.co

Reporteros Sin Fronteras (RSF)

es.rsf.org/

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

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

70
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

Citizens have the right to request government records.

References:

Artículos 23, 74, y 209 de la Constitución Política de Colombia.

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

Central among the legal mechanisms for the protection of equality in Colombia is the tutela, which is an easily accessible and quickly resolved writ for the satisfaction of fundamental rights. As such, it has become a popular mechanism for ordinary Colombian citizens to claim their constitutionally protected rights.

References:

Tutela, law mechanism established in Article 86 of the Colombian Constitution and protects every fundamental right. Tutela is

covered by the Decrees 2591 of 1991 and 306, 1382 and 1992 of 2000.

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:

Yes, there is a number of dispositions for accountability. Tutelas, the right to petition and the government program “Urna de Cristal” are widely known instruments to access government records.

References:

Artículos 23 y 74 Constitución Política de Colombia.

Urna de Cristal
www.urnadecristal.gov.co/

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 to information requests effective?

67

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

100 | 75 | 50 | 25 | 0

Comments:

Colombia’s official website, Government Online, involves organizational change for a citizen-centered state, where Colombians do not have to learn the structure of the state, know how each institution interacts with them or go from one place to another to get information, meet their needs or meet their obligations.

However, at the regional level, some problems still occur. One of the conclusions of the last seminar “Access to Public Information,” organized by Transparency for Colombia, revealed that the national government has the challenge of recovering the weakened institutions, the three ministries of Justice, Environment and Work, reversing the decision of 2002 during the first term of President Alvaro Uribe.

Besides being a right in itself, access to information is a guarantee of other rights. For example, insecurity or lack of information prevents citizens from exercising their rights to political participation and limits their access to basic services such as education, health care and state subsidies. Thus, in the 168 municipalities evaluated in the latest Transparency measurement, advertising for social programs in general was found to be low.

To mention only a few cases, in terms of school places and meal plans, only 2.7 percent of municipalities published the list of beneficiaries and 11.49 published eligibility criteria. Similar figures in housing subsidy programs are 4.05 percent and 13.51 percent; for the Families in Action program, the figures are 6.7 percent and 17.5 percent, respectively.

This means that many citizens are denied the right to these services due to lack of information or, at best, because, not having access to it, compete on unequal terms for the services.

Producing quality, comprehensible information in real time is an opportunity and a challenge for the government to strengthen the cross support of good governance, fighting corruption and increasing citizen participation. This involves the construction of a public policy and the strengthening of institutions that could permit these purposes, from the recognition of access to public information as a right.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Transparencia por Colombia
www.transparenciacolombia.org.co
"Seminario: El Derecho a la Información Pública"

Portal del Estado Colombiano
www.gobiernoonlinea.gov.co/

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Colombia's official website, Government Online, provides quality information immediately for free.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Portal del Estado Colombiano
www.gobiernoonlinea.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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

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

Comments:

Colombia's official website, Government Online, provides quality information immediately for free.

However, at the regional level, some problems still exist. This means that many citizens are denied the right to these services due to lack of information or, at best, because, not having access to the information, compete on unequal terms for the services.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Transparencia por Colombia
www.transparenciacolombia.org.co
"Seminario: El Derecho a la Información Pública"

Portal del Estado Colombiano
www.gobiernoonlinea.gov.co/

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 information requests within a reasonable time period.

Comments:

The law allows for denials of requests for information when exceptional situations occur.

The petitioner has the right to insist, by filing the appeal with the superior of the undersigned, in order to exhaust administrative remedies as a precondition to the exercise of administrative action. However, these actions can be delayed for more careful re-evaluations because of tougher criteria.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

www.uniderecho.com

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:

An appeal of a request is free, except when it becomes part of a case when it can result in high costs for the citizens.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Pontificia Universidad Javeriana
 "El Derecho Fundamental de Petición"
www.javeriana.edu.co

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.

100 | 75 | 50 | 25 | 0

Comments:

Officials can refuse to allow release of certain documents or their copies in cases when they're confidential.

The citizen does have recourse in this event. The citizen must notify both the petitioner and the Attorney General's Office, in accordance with Article 8, Decree Law 262 of 2000.

If the applicant insists on the request, the respective unit shall send, within 10 working days, copies of all documentation to the Administrative Court to resolve what is pertinent in compliance with the order in Article 21 of Law 57 1985. This term will be discontinued if the court asks for a copy or photocopy of the documents on the disclosure which it may decide and the date of official receipt.

On the other hand, denial of information also occurs in some cases by ignorance of staff in the management of information. The state is required to train the staff to be clear what information it can provide to the public. People do not have to justify why they want access to public information.

Finally, the reason is also financial. The Dane, the IGAC, IDEAM, DNP, Dian and the Bank of the Republic, among other state institutions, have made substantial effort to make available to the public, free of charge, the information, but it is still not enough.

For example, flat files of a number of surveys conducted by the Dane, or the historical series of rains available to the Ideam, or IGAC cadastral plans, are now charged to citizens who wish to access them. Free access to this information could facilitate and improve decision-making, both in research and business areas, especially for small businesses.

Public entities that generate the information are publicly funded, which, ultimately, come from taxes from citizens. If an organization or a citizen pays for access to these databases, they are financing the same spending twice: first with their taxes, and again when the entity requests payment for access.

It is not just for transparency and strengthening our democracy; free access also improves our competitiveness. For example, in agriculture, allowing free use of the information on weather, prices and other areas would be a great contribution to medium and small farmers, who can't easily increase their productivity without that information.

References:

Interview with Carlos Alberto Patiño Villa, director of analysis and unimedios (media unit, National University of Colombia).

Transparencia por Colombia
"Derecho al Acceso a la Información Pública"
www.ongporltransparencia.org.co

Biblioteca Luis Ángel Arango
"Excepciones al Derecho de Acceso a la Información"
www.banrepcultural.org

Revista Portafolio
"Acceso a la Información Pública"
www.portafolio.co

Artículo 8, del Decreto Ley 262 de 2000. Constitución Política de Colombia.

Artículo 15, Constitución Política de Colombia

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 2. Elections

2.1. ⁸⁴Voting and Party Formation

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:

Suffrage is guaranteed to all Colombian citizens. The vote is secret.

References:

Párrafo (1), Artículo 103, Constitución Política de Colombia.

Párrafo (1) Artículo 190, Constitución Política de Colombia.

Artículos 258, 259 and 260 Capítulo I del Sufragio y Elecciones, Título IX De las Elecciones y la Organización Electoral.

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:

Colombian elections are held every four years. Citizens directly elect the president, vice president, senators, representatives, deputies, governors, mayors, municipal and district councilors and members of the local boards.

References:

Artículos 190 y 258, Constitución Política de Colombia.

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

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

15. Can all citizens exercise their right to vote?

67

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

100 | 75 | 50 | 25 | 0

Comments:

In practice, according to the Electoral Observation Mission, 40 percent of the observed positions have presented at least one case in which a citizen said he could not vote for some reason. This means that, although, the law allows all citizens to vote with the exceptions mentioned, there are some cases that prevent citizens' voting.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Biblioteca Luis Angel Arango
Historia Electoral de Colombia
www.banrepcultural.org

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:

The Electoral Observation Mission reported that 83.3 percent of its observation positions confirmed ballot secrecy; with that, we can say the electoral authority is ensuring the secrecy of the vote. However, it is true that citizenship itself compromises the secrecy of the vote for confirmation of voter fraud. In this way those who corrupt or constrict to require voter verification halfway to vote in order to effectively pay for the meeting or vote or withdraw the threat.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Decreto 2241 de 1986. Constitución Política de Colombia.

Informe de Observación Electoral – Elecciones de Congreso (14 de Marzo de 2010) Misión de Observación Electoral

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:

The Electoral Code mandates the dates and procedures for elections by law. However, a special election for a mayor or governor could be needed outside the specified dates.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Decreto 2241 de 1986. Constitución Política de Colombia

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?

70

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

Yes

No

Comments:

All citizens have the right to form political parties but cannot take part in two or more parties at the same time.

References:

Párrafo (1), Artículo 107, Capítulo II de los partidos y de los movimientos políticos, Título IV de la Participación Democrática y de los Partidos Políticos, Constitución Política de Colombia

Artículo 1, Derecho a Constituir Partidos y Movimientos, Título I, Disposiciones Generales, Ley 130 de 1994. Constitución Política de Colombia

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:

All Colombian citizens by birth have the right to run for office after they fulfill basic requisites.

References:

Artículo 191, Capítulo I De la Presidencia de la República, Título VII de la Rama Ejecutiva.

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:

Any citizen has the possibility of forming a political party, taking into account the requirements of the standard. However, the law tends to seek to establish and keep only those groups that have a permanent character and majority support.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Biblioteca Luis Angel Arango
Historia Electoral de Colombia
www.banrepcultural.org

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

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:

Colombian legislation is expected to cover campaign expenses through the system of replacement costs. In this sense, the state covers the expenses of the campaign given the vote each candidate gets. This allows candidates the opportunity to aspire to elected office without risking their capital as long as they get a minimum of votes established according to the positions they want.

This legislation favors the candidates endorsed by political parties and gives access to independent candidates backed by significant groups of citizens (for signatures). But the freedom to run for elected office may be limited by any armed conflict or security restrictions, especially in rural areas.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Cuadro de Análisis Realizado por la MOE de la Ley 1475 de 2011.

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

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:

With the entrance of the Green Party into the National Unity coalition, the government will have the support of 95 percent of Congress and the five major political parties.

This is the highest level of governance for a government in recent decades. Since the National Front (the covenant of Liberals and Conservatives that lasted 16 years) ended in 1974, there has not been a political unit as established as the one of President Juan Manuel Santos.

Although the Greens are few in number in Congress (holding eight of the 268 seats), their move into the coalition reduces the opposition in Congress to only 5 percent, represented by the Democratic Pole, which is experiencing the worst crisis in its short history.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

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.

2.2. Election Integrity

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

100

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

Yes

No

Comments:

They are Unidad de Reaccion Inmediata para la Transparencia Electoral, or URIEL, and the Commission for the Coordination and Follow-up of Electoral Processes, or CCEP.

References:

Decreto 810 de 2007. Constitución Política de Colombia.

Decreto 2390 de 2003. Constitución Política de Colombia.

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.

18. Is the election monitoring agency effective?

90

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

Yes

No

Comments:

URIEL and CCEP are entitled to initiate disciplinary proceedings if anomalies are detected.

References:

Numerals 6 y 7, Artículo 5, Funciones, Decreto 2390 de 2003. Constitución Política de Colombia.

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:

Colombia depends on the National Registrar and National Electoral Council (CNE) as its primary monitoring agency, and CNE is a totally independent entity of the state. Appointments are made for the elections, and in some cases, municipal delegates are switched for transparency and independence.

However, the National Electoral Council is an organ of state control. It has an administrative structure, legal, financial and budgetary independence and autonomy in its decisions, but it is open to the global possibilities of interaction with other public entities.

The effectiveness and independence of the CNE was reflected in the last election. CNE revoked the registration of 821 candidates, nullified 464,554 card registrations and received countless complaints of threats to the electoral exercise that are currently under investigation.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Periódico El Nuevo Siglo, octubre 4 de 2011,
"CNE Anuló la Inscripción de 821 Candidatos,"
www.elnuevosiglo.com.co

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 Registrar and the CNE have a full-time staff and hire temporary workers for the electoral process. The Electoral Observation Mission also has a full-time staff that works year-round on political and electoral monitoring.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

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:

The National Registrar is known for its timely publication of electoral results. Within two to three hours of the polls closing in elections, results are declared. The Electoral Observation Mission also releases timely reports on the developing elections.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

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

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:

Non-election monitoring organizations that have no basis of authority cannot impose penalties on candidates or political organizations.

In the case of the Electoral Observation Mission, the organization has the media influence and likewise helps collect information for public authorities and observers on the irregularities that affect the electoral process so that they can perform the actions they deem pertinent.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

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

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

75:

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

25:

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

19. Are elections systems transparent and effective?

75

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

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

Comments:

In practice there is a clear, and some would say lax, system of voter registration. Citizens may register anywhere in the country with a national identification card. There are no residency requirements, given that the system is based on good faith. Only afterward is there a process of voter nullification if the registrar proves that the person should not have registered in a given municipality.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

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

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

75:

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

25:

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

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

Yes | No

Comments:

In Colombia, election results can be contested through the judicial system to guarantee the proper procedure and the defense of political and election rights. In addition, a violation or interference in the election system, can be contested.

References:

Párrafo 1, Artículo 264, Capítulo II, de las Autoridades Electorales. Constitución Política de Colombia.

Página 730, II Consideraciones, Registraduría Delegada en lo Electoral, Registraduría del Estado Civil. 2007. Constitución Política de Colombia.

Artículo 238, Constitución Política de Colombia.

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 are appellate mechanisms such as action for annulment.

It is settled law of the State Council, in addition to the cases provided by law, that an action for annulment may be brought against individuals and specific events when the status of individual character to which it refers, of particular interest to behave in the community of that nature and importance, which is coupled with the desire of legality, especially when you are in between a collective interest or community outreach and local content, with far-reaching impact on the national economy and undeniable and unquestionable projection in the development and welfare and economic development of large number of Colombians.

As an example of the last election, there is the case of John David Balo, Cota elected mayor removed by the attorney general for 10 years for involvement in politics when he served as councilman.

Also, the attorney general “disabled” Benito Antonio Pacheco, elected mayor of Cáceres in the Bajo Cauca Antioquia, to hold public office for 11 years.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Constitución y Ciudadanía.

Artículo 137. Ascción de Nulidad. Constitución Política de Colombia

Periódico El Colombiano, 30 de diciembre de 2011,

“Destituido Alcalde Electo de Cáceres.”

www.elcolombiano.com

<http://blogjus.wordpress.com>

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:

There is neutrality by the public forces. In fact, active officers are not allowed to vote in public elections.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Periódico El Tiempo, "El Voto para los Militares"
www.eltiempo.com

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 overly 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:

International missions are allowed to monitor the democratic process, and their work is widely supported and respected by authorities.

References:

Numeral 12, Artículo 5, funciones, Decreto 2390 de 2003. Constitución Política de Colombia.

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Observation Mission requires its observers not be actively working in any campaign or have any electoral authority. Given the Electoral Observation Mission's system of local observation, the civic platform counts on local residents to monitor their own neighborhoods. The only time that observers from outside the municipality are present is with the international observation mission.

An isolated but disturbing case occurred in past elections when an election observer and environmental leader in the department of Putumayo was killed by unknown assailants while chatting with his family on the banks of a river near Mocoa. This case is under investigation and muddies the process.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

www.elmundo.com, 29 de noviembre de 2011,

"Asesinan a un Observador Electoral y Líder Ambiental en el Putumayo."

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.

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

Yes

No

Comments:

The constitution recognizes the authority of the state to establish spending limits for campaigns, including private contributions intended for campaigns. Indeed, the Law 130 of 1994 provides that any candidate for elected office cannot spend on his campaign an amount exceeding that fixed by the National Electoral Council, even at his own expense, with family money or through individual contributions.

References:

Artículo 12, Financiación de los Partidos, Constitución Política de Colombia.

Artículo 13, Financiación de la Campañas y Artículo 14, Financiación de Particulares, Ley 130 de 1994. Constitución Política de Colombia

Cartillas de la Misión de Observación Electoral

www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

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:

Established by law and regulated by the National Electoral Council.

The law is clear: Failure to comply with the ceilings on campaign spending is punished with loss of investiture or position, exclusion from financing, and penalties.

As of late November 2011, there were 12 specific allegations at the National Electoral Council of violations of campaign ceilings. The council's courts of guarantees across 24 departments (administrative and political subdivisions) in the country strengthened the monitoring of candidates in the October regional elections to verify whether they complied with campaign finance laws.

References:

Artículos 14 y 16, Financiación de Particulares, Ley 130 de 1994. Constitución Política de Colombia

President of National Electoral Council, Dr Joaquín José Vives Pérez.

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:

This provision is to put candidates from various political organizations on an equal footing, with the intellectual and moral fitness of the candidates, rather than their economic capacity, to be the reasons for their election — or rejection by voters.

References:

Artículo 18, Informes Públicos. Constitución Política de Colombia.

Artículo 20, Rendición de Cuentas. Constitución Política de Colombia.

Artículo 21, Clases de Gastos, Título V, Publicidad y Rendición de Cuentas. Constitución Política de Colombia.

Ley 130 de 1994. Constitución Política de Colombia.

Cartillas Misión de Observación Electoral.

www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

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:

The political constitution requires the parties, movements and candidates to publish accounts of the origin, volume and destination of their economic resources. In development of this provision, the Act 130 of 1994 imposed a duty on political organizations to submit to the National Electoral Council public reports about:

Annual revenues and expenditures of the political organization, due before Jan. 31 each year.

Destination and execution of public funds allocated to the organization.

Revenues and expenditures made during the campaigns. This obligation must be fulfilled no more than one month after the elections.

References:

Párrafo (1), Artículo 20, Rendición de Cuentas. Constitución Política de Colombia.

Ley 130 de 1994. Constitución Política de Colombia.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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 National Electoral Council may request statutory audits on income and expenditures in campaign finances at any time. Based on such monitoring or at the request of a party, it may initiate investigations on compliance with funding rules.

References:

Artículos 41 y 49, Auditoría Interna y Externa, Título IX del Control Ético, Ley 130 de 1994. Constitución Política de Colombia.

Resolución 3476, Consejo Nacional Electoral.

Artículo 21, Vigilancia de la Campaña y Sanciones, Constitución Política de Colombia.

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:

There are two entities: the National Electoral Council and the National Registry of Civil Status.

References:

Párrafo (2) Artículo 49, Auditoría Interna y Externa, Constitución Política de Colombia.

Título IX del Control Ético, Ley 130 de 1994. Constitución Política de Colombia.

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 non-governmental organizations.

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

100

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

Yes

No

Comments:

Winning candidates who exceed spending ceilings will be punished with the loss of the endowment or exclusion from the votes replacement fund (reimbursement of campaign costs).

References:

Artículo 14, Aporte de Particulares. Constitución Política de Colombia.

Título IV, de la Financiación Privada y Estatal. Constitución Política de Colombia.

Ley 130 de 1994. Constitución Política de Colombia.

Cartillas de la Misión de Observación Electoral. www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

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:

It is the duty of the National Electoral Council to set the maximum amounts of money spent on political campaigns.

Those responsible for the accountability of the respective campaign shall carry the general ledger balances, daily and at least one columnar ledger, which will be registered with the electoral organization when the candidate registers. A list of contributions, donations and loans, with the name, address and telephone number of the donor shall be provided.

Failure to comply with the ceilings on campaign spending is punishable with loss of investiture or position, exclusion from state financing and penalties.

References:

Artículo 13, Financiación de Campañas. Constitución Política de Colombia.

Título IV, de la Financiación Privada y Estatal. Constitución Política de Colombia.

Ley 130 de 1994. Constitución Política de Colombia.

Cartillas de la Misión de Observación Electoral. www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

President of National Electoral Council, Dr Joaquín José Vives Pérez.

Periódico El Nuevo Siglo, Noviembre 29 de 2011,
"CNE Investiga 12 Denuncias por Violación de Topes de Gastos de Campaña."
www.elnuevosiglo.com.co

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:

Title V of the Act 130 of 1994 regulates the obligation of political parties and movements with legal personality and independent candidates to file public reports on income and expenses of election campaigns in which they participate.

References:

Artículo 18 (c), Informes Públicos. Constitución Política de Colombia.

Título V, Publicidad y Rendición de Cuentas. Constitución Política de Colombia.

Artículo 20, Rendición de Cuentas. Constitución Política de Colombia

Título V, Ley 130 de 1994. Publicidad y Rendición de Cuentas. Constitución Política de Colombia

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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 National Electoral Council may request statutory audits on income and expenditures in campaign finances at any time. Based on such monitoring or at the request of a party, it may initiate investigations on compliance with funding rules.

References:

Resolución 3476 Consejo Nacional Electoral.

Artículo 21, Vigilancia de la Campaña y Sanciones. Constitución Política de Colombia.

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 campaign finances. The final costs of campaigns should be established within six months of the vote. The reports must take into account the real cost of campaigns, the electorate of the constituencies and the state appropriation made to replenish costs incurred by the campaigns.

References:

Artículo 18, Informes Públicos. Constitución Política de Colombia.

Artículo 19, Candidatos independientes. Constitución Política de Colombia.

Artículo 20, Candidatos Independientes. Constitución Política de Colombia.

Título V, Ley 130 de 1994. Publicidad y Rendición de Cuentas. Constitución Política de Colombia.

Cartillas de la Misión de Observación Electoral. www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

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 non-governmental organizations.

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

71

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:

Political parties, movements and citizens groups had a December 2011 deadline to submit their accounts of income and expenses for the campaigns of their candidates from the October elections to the Electoral Council. But that's not the only source of information that the nine judges on Electoral Council have to verify the candidates' accounting records. There is also an application called "Clear Accounts," as well as reports of oversight from 24 guarantee tribunals.

The Internet application "Clear Accounts" was implemented by the Electoral Council to force candidates to make their books of income and expenses accessible to all citizens.

Currently, the Electoral Council is comparing the accounts of the campaigns that the candidates delivered through the parties against the information on "Clear Accounts" and the reports from 24 tribunals of electoral guarantees.

Although there are complaints about electoral offenses, including 12 complaints for violation of campaign spending in regional elections last October that saw more than 100,000 candidates, violations of campaign spending ceilings are now, since the last elections, severely penalized. In the case of elected candidates, penalties can include automatically losing office.

In case of political parties and movements that violate or condone the violation of campaign finance rules, the annual funding provided by the government for its operation can be suspended. Penalties also include the suspension or cancellation of legal status, and the suspension of the right to register candidates or lists in the circumscription in which the infringement occurred.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

Ley 1475 de 2011 y Ley 130 de 1994. Constitución Política de Colombia.

Article 14 of Act 996 of 2005 says:
Maximum amount of contributions or donations by individuals.

Twenty percent (20%) of the top of the campaigns expenditures may be funded by individuals, but presidential campaigns cannot receive individual contributions or donations from individuals over two percent (2%) the amount set as the maximum of the campaign.

The contributions of the candidates and their relatives within the fourth degree of consanguinity, affinity two or civil first, together may not exceed four percent (4%) of the amount set as a ceiling by the National Electoral Council.

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:

The CNE received several complaints of alleged violations of corporate donations limits, and initiated 12 formal investigations (which were ongoing at the time this report was prepared).

Authorities started monitoring the flow of money in the last political campaign while the campaign was in progress in hopes of collecting potential evidence and also to dissuade corporations from giving hidden donations (free advertising, free goods, etc.). As a result, several instances of hidden advertising were registered.

The prosecutor's office was also active in 2011 with investigations into the finances of former President Alvaro Uribe's campaign in 2002, requesting Congress (entity in charge of investigating ex-presidents in the country) to investigate a few of Uribe's relatives.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

Ley 1475 de 2011 y Ley 130 de 1994. Constitución Política de Colombia.

President of National Electoral Council, Dr Joaquín José Vives Pérez.

Periódico El Nuevo Siglo, Noviembre 29 de 2011, "CNE Investiga 12 Denuncias por Violación de Topes de Gastos de Campaña." www.elnuevosiglo.com.co/articulos/11-2011-cne-investiga-12-denuncias-por-violación-de-topes-de-gastos-de-campañ.html

Notimexm, "Colombia: Piden Investigar Dinero Ilegal en Campaña de Uribe en 2002," 5 de agosto, 2011, mx.noticias.hispavista.com/internacional/20110805180400010/colombia-piden-investigar-dinero-ilegal-campa-a-uribe/

Article 14 of Act 996 of 2005 says:
Maximum amount of contributions or donations by individuals.

Twenty percent (20%) of the top of the campaigns expenditures may be funded by individuals, but presidential campaigns cannot receive individual contributions or donations from individuals over two percent (2%) the amount set as the maximum of the campaign.

The contributions of the candidates and their relatives within the fourth degree of consanguinity, affinity two or civil first together may not exceed four percent (4%) of the amount set as a ceiling by the National Electoral Council.

Failure to comply with the ceilings campaign spending, is sanctioned with loss of investiture or position, exclusion from financing by way of replacement of votes, and penalties.

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:

In practice, in presidential election campaigns, the campaign manager is responsible for managing all the resources of the campaign. The campaign manager is the official representative of the presidential campaign election to the National Council for all purposes related to the political campaign, financing and the subsequent reporting bills and replacement costs of the campaign.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Financiamiento Electoral en Colombia
www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

Resolución 3476, Consejo Nacional Electoral.

Artículos 265(5) de la Constitución Política de Colombia; 39 y 49 la Ley 130 de 1994; y 18 y 20 de la Ley 996 de 2005.

The National Electoral Council through Resolution 3476 regulates the systems of internal and external audit of revenues and expenditures of political parties and political movements with legal and electoral campaigns.

Title V of the Act 130 of 1994 regulates the obligation of political parties and movements with legal personality and independent candidates to file public reports on income and expenses of election campaigns in which they participate.

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:

Yes, in fact, on the eve of the last elections, the National Electoral Council opened an investigation of 120 candidates for not reporting campaign expenses.

The National Electoral Council said candidates had not complied with their obligation to publish on the website www.cnecuentasclaras.com accounting movements.

Since these elections, after a CNE resolution, all candidates are required to publish on the web the books. That is why the president of the council, José Joaquín Vives, said the charges will be made against 120 candidates.

The sanctions, given the irregularity, can lead to penalties from 10 to 100 million pesos.

Also, as of late November 2011, the Electoral Council had 12 specific allegations of campaign ceiling violations, as its courts of guarantees across 24 departments strengthened the monitoring of candidates for governors and mayors of capital cities in the October elections, just to verify whether they complied with campaign finance laws.

Failure to comply with the ceilings for campaign spending is sanctioned with the loss of investiture or position, exclusion from financing by way of replacement of votes, and penalties.

The National Electoral Council, through the fund for financing of political parties and election campaigns, will be responsible for conducting external audits on the financial resources of parties and political movements, as required by Article 49 of Law 130 of 1994.

References:

Interview with Alejandra Barrios, Electoral Observation Mission director.

Interview with President of the National Electoral Council, Dr. José Joaquín Vives.

Noticias Caracol, 19 de Octubre de 2011,
"Investigan a 120 Candidatos por No Reportar sus Cuentas de Campaña,"
www.noticiascaracol.com

Ley 996 de 2005. Constitución Política de Colombia.

Resolución 3476, Consejo Nacional Electoral.

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, though 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:

An example of the penalties for election infractions is the one imposed by the National Electoral Council against the Foundation Colombia First, Luis Guillermo Giraldo and other promoters.

According to the ruling, developers incurred in “violation of individual ceilings of contributions, omission of expenditures and omission of contributions that were recorded as a non-existent credit,” which produced a penalty of nearly 200 million pesos.

Also, the NEC endorsed the theory of triangulation made by the promoters of that referendum and led to Luis Guillermo Giraldo Hurtado and other promoters facing trial for fraud and misrepresentation.

The National Electoral Council, through the fund for financing of political parties and election campaigns, will be responsible for conducting external audits on the financial resources of parties and political movements with legal and electoral campaigns, per Article 49 of Law 130 of 1994.

Article 21 of Campaign Monitoring and Sanctions says that the National Electoral Council may request statutory audits on income and expenditures of campaign finances at any time. Based on such monitoring or at the request of a party, it may initiate investigations to ensure strict compliance with funding rules set forth herein. If any irregularities are found in the financing, sanctions will be imposed in accordance with the assessment made of the faults, in the following order:

1. Fines between 1 percent and 10 percent of the funds disbursed by the state for the respective campaign.
2. Freeze respective drafts.
3. If resources exceed the allowable limit, either by private donations greater than those authorized or exceed spending caps, partial or total repayment of the resources given may be imposed.
4. In the case of winning the election, it may declare the loss of office under the procedure referred for investigations and prosecutions for political indignity.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

President of the National Electoral Council, Dr. José Joaquín Vives.

Ley 996 de 2005. Constitución Política de Colombia.

Resolución 3476, Consejo Nacional Electoral.

Artículo 21, Vigilancia de la Campaña y Sanciones. Constitución Política de Colombia

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:

Those responsible for the accountability of the respective campaign shall carry the general ledger balances, daily and at least one columnar ledger, which will be registered with the electoral organization at the time of registration of candidates. They will carry a list of contributions, donations and loans, with the identification, address and telephone number of the natural or legal persons who made the contribution or donation.

Failure to comply with the ceilings for campaign spending is sanctioned by the loss of investiture or position, exclusion from financing by way of replacement of votes, and penalties.

For example, on the eve of the last elections, the National Electoral Council opened an investigation against 120 candidates for not reporting campaign expenses.

The National Electoral Council through Resolution 3476 regulates the systems of internal and external audit of revenues and expenditures of political parties and political movements with legal and electoral campaigns.

The function of enforcing the rules on political parties and movements, attributed to the National Electoral Council by Article 265 of the Constitution, imposes a duty on this corporation to ensure the proper management of public resources that the state grants parties, movements and candidates, bound for the financing of election campaigns in which they participate.

It corresponds to the National Electoral Council in development of the aforementioned constitutional provision to ensure compliance with standards related to the internal audit system, external auditing and monitoring of presidential campaigns.

Title V of the Act 130 of 1994 regulates the obligation of political parties and movements with legal personality and independent candidates to file public reports on income and expenses of election campaigns in which they participate.

Article 39 of Law 130 of 1994 gives the council power to order the National Electoral and practice tests, review books and public and private documents, and inspect the accounts of financial institutions.

Article 49 of Law 130 of 1994 ordered for the parties and political movements or candidates who receive state subsidies, the creation and accreditation of a system of internal audit. It also ordered the hiring of an external audit system to monitor the use made of the resources provided by the state to finance operating expenses and election campaigns, and audit the cost borne by beneficiaries of the contributions in proportion to the amount received.

Article 18 of Law 996 of 2005 provides that, in order to ensure the proper internal control of revenue and expenditure in the presidential campaign, that political parties, political movements with legal personality, social movements and significant groups of citizens will create and have accredited with the National Electoral Council an internal audit system as a precondition to receive contributions from individuals and / or state funding.

In accordance with Article 20 of Law 996 of 2005, the National Electoral Council has the power to regulate the audit system.

The internal audit system is the set of bodies, policies, standards and procedures which should be created or adopted by the political parties and movements with legal personality and independent candidates for the proper control and monitoring of revenues and operating costs and / or election campaigns in which they participate.

External audit system: The National Electoral Council, through the Fund for Financing of Political Parties and Electoral Campaigns, will be responsible for conducting external audits on the financial resources of the functioning of political parties and movements with legal and electoral campaigns.

References:

Interview with Alejandra Barrios. Electoral Observation Mission director.

Cartillas de la Misión de Observación Electoral. www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

President of National Electoral Council, Dr Joaquín José Vives Pérez.

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www.elnuevosiglo.com.co

Resolución 3476, Consejo Nacional Electoral.

Artículos 265(5) de la Constitución Política; 39 y 49 la Ley 130 de 1994; y 18 y 20 de la Ley 996 de 2005.

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?

75

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.

Comments:

Article 14 of Act 996 of 2005 sets the maximum amount of contributions or donations by individuals.

Up to 20 percent of a campaign's expenditures may be funded by individuals, but presidential campaigns cannot receive individual contributions or donations from individuals over 2 percent of the amount set as the maximum of the campaign.

The contributions of the candidates and their relatives within the fourth degree of consanguinity, affinity two or civil first together may not exceed 4 percent of the ceiling set by the National Electoral Council.

As of late November 2011, there were 12 complaints at the NCE claiming violation of campaign finance ceilings. NCE tribunals across 24 departments in the country strengthened monitoring in the October regional elections, just to verify whether candidates complied with campaign finance laws.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Interview with President of National Electoral Council, Dr Joaquín José Vives Pérez.

Periódico El Nuevo Siglo, Noviembre 29 de 2011,
"CNE Investiga 12 Denuncias por Violación de Topes de Gastos de Campaña."
www.elnuevosiglo.com.co

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

Ley 1475 de 2011 y Ley 130 de 1994. Constitución Política de Colombia.

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.

Comments:

Article 14 of Act 996 of 2005 sets the maximum amount of contributions or donations by individuals.

Up to 20 percent of a campaign's expenditures may be funded by individuals, but presidential campaigns cannot receive individual contributions or donations from individuals over 2 percent of the amount set as the maximum of the campaign.

The contributions of the candidates and their relatives within the fourth degree of consanguinity, affinity two or civil first together may not exceed 4 percent of the ceiling set by the National Electoral Council.

As of late November 2011, there were 12 specific complaints at the National Electoral Council claiming violation of campaign finance ceilings. The courts of guarantees across 24 departments in the country strengthened the monitoring of candidates for governors and mayors of capital cities in the October regional elections, just to verify whether they complied with the spending caps.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Interview with President of National Electoral Council, Dr Joaquín José Vives Pérez.

Periódico El Nuevo Siglo, Noviembre 29 de 2011, "CNE Investiga 12 Denuncias por Violación de Topes de Gastos de Campaña." www.elnuevosiglo.com.co

Ley 130 de 1994. Constitución Política de Colombia.

Ley 1475 de 2011. Constitución Política de Colombia.

Ley 1475 de 2011 y Ley 130 de 1994. Constitución Política de Colombia.

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.

Comments:

Yes, in fact, on the eve of the last elections, the National Electoral Council opened an investigation against 120 candidates for not reporting campaign expenses.

The council said the candidates had not complied with their obligation to publish their accounting on the website www.cnecontasclaras.com.

Since these elections, after a CNE resolution, all candidates are required to publish their books online.

The sanctions can lead to penalties of from 10 to 100 million pesos.

As of late November 2011, 12 specific complaints were at the CNE alleging violation of campaign finance ceilings. The courts of guarantees across 24 departments in the country strengthened the monitoring of candidates for governors and mayors of capital cities in the October regional elections, just to verify whether they complied with campaign finance laws.

The National Electoral Council, through the Fund for Financing of Political Parties and Election Campaigns, will be responsible for auditing the financial resources of parties and political movements with legal and electoral campaigns, as required by Article 49 of Law 130 of 1994.

Article 21. Campaign Monitoring and Sanctions: The National Electoral Council may request at any time statutory audits on income and expenditure in campaign finance. Based on such monitoring or at the request of a party, it may initiate investigations on strict compliance with funding rules set forth herein.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Interview with President of the National Electoral Council, Dr. José Joaquín Vives.

Noticias Caracol, 19 de Octubre de 2011,
"Investigan a 120 Candidatos por No Reportar sus Cuentas de Campaña."
www.noticiascaracol.com

Ley 996 de 2005. Constitución Política de Colombia.

Resolución 3476, Consejo Nacional Electoral.

Artículo 21. Vigilancia de la Campaña y Sanciones. Constitución Política de Colombia.

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, though 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:

An example of the penalties is the one imposed by the National Electoral Council against the Foundation Colombia First, Luis Guillermo Giraldo and other promoters of an election initiative.

According to the ruling, developers incurred in “violation of individual ceilings of contributions, omission of expenditures and omission of contributions that were recorded as a non-existent credit,” which produced a penalty of nearly 200 million pesos.

They are facing trial on charges of fraud and misrepresentation.

The National Electoral Council, through the Fund for Financing of Political Parties and Election Campaigns, will be responsible for auditing the financial resources of parties and political movements with legal and electoral campaigns, as required by Article 49 of Law 130 of 1994.

Article 21, Campaign Monitoring and Sanctions: The National Electoral Council may request at any time statutory audits of income and expenditure of campaign finance. Based on such monitoring or at the request of a party, it may initiate investigations on strict compliance with funding rules set forth herein. If irregularities are found in the financing, sanctions will be imposed in accordance with assessment of the faults, in the following order:

1. Fines between 1 percent and 10 percent of the funds disbursed by the state for the respective campaign.
2. Freeze of respective drafts.
3. If resources exceed the allowable limit, either by private donations greater than those authorized, or exceed spending caps, penalties may include partial or total repayment of the resources given.
4. In the case of winning the election, the office could be lost under the procedure referred for investigations and prosecutions for political indignity.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Congreso de la República – Cámara de Representantes
CNE Falla en Contra de Promotores de Referendo
www.camara.gov.co

President of the National Electoral Council, Dr. José Joaquín Vives.

Ley 996 de 2005. Constitución Política de Colombia.

Ley 996 de 2005. Constitución Política de Colombia.

Resolución 3476, Consejo Nacional Electoral.

Artículo 21, Vigilancia de la Campaña y Sanciones. Constitución Política de Colombia

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:

Those responsible for the accountability of the respective campaign shall carry the general ledger balances, daily and at least one columnar ledger, which will be registered with the electoral organization at the time of registration of candidates. They will also have a list of contributions, donations and loans, with the name, address and telephone number of the donors.

Failure to comply with ceilings on campaign spending is punished by loss of investiture or position, exclusion from financing by way of replacement of votes, and other sanctions.

For example, on the eve of the last elections, the National Electoral Council opened an investigation against 120 candidates for not reporting campaign expenses.

The National Electoral Council through Resolution 3476 regulates the systems of internal and external audit of revenues and expenditures of political parties and political movements with legal and electoral campaigns.

The function of enforcing the rules on political parties and movements, attributed to the National Electoral Council by Article 265 of the Constitution, imposes a duty to ensure the proper management of public resources that the state grants parties, movements and candidates, for the financing of election campaigns in which they participate.

The National Electoral Council ensures compliance with standards related to internal audit systems, external auditing and monitoring of presidential campaigns.

Title V of the Act 130 of 1994 regulates the obligation of political parties and movements with legal personality and independent candidates to file public reports on their election campaigns' income and expenses.

Article 39 of Law 130 of 1994 gives the council power to order the National Electoral and practice tests, review books and public and private documents, and inspect the accounts of financial institutions.

Article 49 of Law 130 of 1994 ordered the parties and political movements or candidates who receive state subsidies to create an accredited a system of internal audit. It also ordered the hiring of an external audit system to monitor the use of the resources provided by the state to finance operating expenses and election campaigns and also to audit the cost borne by beneficiaries of the contributions in proportion to the amount received.

Article 18 of Law 996 of 2005 provides that, in order to ensure the proper internal control of revenue and expenditure in the presidential campaign, that political parties, political movements with legal personality, social movements and significant groups of citizens will create and have accredited with the National Electoral Council an internal audit system as a precondition to receive contributions from individuals and / or state funding.

In accordance with Article 20 of Law 996 of 2005, the National Electoral Council has the power to regulate the audit system.

The internal audit system is the set of bodies, policies, standards and procedures that should be created or adopted by the political parties and movements with legal personality and independent candidates for the proper control and monitoring of revenues and operating costs and / or election campaigns in which they participate.

External audit system: The National Electoral Council, through the Fund for Financing of Political Parties and Electoral Campaigns, will be responsible for conducting external audits on the financial resources of the functioning of political parties and movements with legal and electoral campaigns.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Cartillas de la Misión de Observación

Electoral. http://www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf

President of National Electoral Council. Dr Joaquín José Vives Pérez

Periódico El Nuevo Siglo

CNE investiga 12 denuncias por violación de topes de gastos de campaña. Noviembre 29 de 2011

<http://www.elnuevosiglo.com.co>

Resolución 3476 Consejo Nacional Electoral

Artículos 265-5 de la Constitución Política; 39 y 49 la Ley 130 de 1994; y 18 y 20 de la Ley 996 de 2005

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?

81

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All candidates and political parties are obliged to publish all ledgers at www.cnecontasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for candidates, and through them for political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the CNE under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The external audit system is regulated by the National Electoral Council.

Article 19, Head of Accountability: The campaign manager will be responsible for the reporting of campaign accounts in which they participate. The candidate, the manager, treasurer and auditor of the campaigns are jointly and severally liable for the timely submission of financial reports and the due performance of the campaign finance system. Any change in the appointment of manager, treasurer or auditor of the campaigns will be reported to the electoral authority.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Portal del Consejo Nacional Electoral — Cuentas Claras
www.cnecuentasclaras.com/

Transparencia por Colombia
www.transparenciacolombia.org.co

Ley 996 de 2005. Responsables de la Rendición de Cuentas. Constitución Política de Colombia.

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:

At present, this rarely happens, but a new system for accountability and advertising will be used in elections held after Oct. 30, 2011, which seems to aim to improve this.

Law 1475 of 2011: Of the Organization and Functioning of Political Parties and Movements. Article 10 says it is the duty of political parties and movements to keep their members constantly informed about their political, administrative and financial matters in a move toward transparency. For compliance, accountability must be carried out annually.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Ley 1475 de 2011. De Organización y Funcionamiento de los Partidos y Movimientos Políticos. Constitución Política de Colombia.

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:

All candidates and political parties are obligated to publish all ledgers at www.cnecontasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for the candidates, and through them the political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the electoral council under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The service is free of cost.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Portal del Consejo Nacional Electoral — Cuentas Claras
www.cnecontasclaras.com/

Transparencia por Colombia
www.transparenciacolombia.org.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 NGOs. 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 NGOs 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:

All candidates and political parties are obligated to publish all ledgers at www.cnecontasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for the candidates, and through them the political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the electoral council under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The CNE requires that the information be complete, detailed and high quality.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Portal del Consejo Nacional Electoral — Cuentas Claras
www.cnecuentasclaras.com/

Transparencia por Colombia
www.transparenciacolombia.org.co/

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?

81

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All candidates and political parties are obligated to publish all ledgers at www.cnecuentasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for the candidates, and through them the political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the electoral council under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The external audit system is regulated by the CNE.

Article 19, Head of Accountability: The campaign manager will be responsible for the reporting of campaign accounts. The candidate, the manager, treasurer and auditor of the campaigns, jointly and severally, are liable for the timely submission of financial reports and the due performance of the campaign finance system. Any change in the appointment of manager, treasurer or auditor of the campaigns will be reported to the electoral authority.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Ley 996 de 2005. Responsables de la Rendición de Cuentas. Constitución Política de Colombia

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.

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

Comments:

At present, this rarely happens, but government elections will use a new system for accountability and advertising after Oct. 30, 2011, which seems to aim to improve this. Law 1475 of 2011, the Organization and Functioning of Political Parties and Movements, says in Article 10 that it is the duty of political parties and movements to keep their members constantly informed about their political, administrative and financial matters, and annual accounting is required.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Ley 1475 de 2011. De Organización y Funcionamiento de los Partidos y Movimientos Políticos. Constitución Política de Colombia.

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:

All candidates and political parties are obligated to publish all ledgers at www.cnecontasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for the candidates, and through them the political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the electoral council under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The information is free of cost.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Portal del Consejo Nacional Electoral — Cuentas Claras
www.cnecontasclaras.com/

Transparencia por Colombia
www.transparenciacolombia.org.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 NGOs. 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 NGOs 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:

All candidates and political parties are obligated to publish all ledgers at www.cnecontasclaras.com/ portal, in order to be reviewed by the National Electoral Council (CNE) and the public. It is a tool that facilitates for the candidates, and through them the political organizations, the processing and reporting of income and campaign expenses, the terms and forms required by the electoral council under Resolution 285 2010 of the CNE.

It should be used for two functions: to consolidate the reports that correspond to the same corporation and constituency, and for each party to record the income and expenses associated with that corporation and constituency.

The CNE requires candidates and political parties to provide information that is complete, detailed and high quality.

References:

Interview with Alejandra Barrios, director, Electoral Observation Mission.

Portal del Consejo Nacional Electoral — Cuentas Claras
www.cnecuentasclaras.com/

Transparencia por Colombia

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁷⁸Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

Comments:

"All persons are born free and equal before the law." Two subsequent paragraphs in Article 13 of the Colombian Constitution provide for the adoption of measures that support groups which are discriminated against or marginalized, in the context of "real," effective and material equality and the protection of those in situations of manifest weakness because of their economic, physical or mental states.

References:

Artículo 1, Objeto, Capitulo I, Disposiciones Generales y Procedimiento. Constitución Política de Colombia.

Decreto 2591 de 1991. Constitución Política de Colombia.

Artículo 13, Personas Contra Quien se interpone la Acción e Intervinientes. Constitución Política de Colombia

Capítulo I, Disposiciones Generales y Procedimiento. Decreto 2591 de 1991. Constitución Política de Colombia

www.urnadecristal.gov.co

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.

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

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

There are acts not subject to control, such as the appointment of ministers. However, any general or executive order has particular judicial control, often before litigation.

The executive must report annually to Congress on his efforts. In addition, each executive's office should also report to Congress.

The government is accountable to the public for the results during a president's first year in office.

Colombians will follow Twitter, Facebook and the website of Crystal Urn to find out about major actions of the administration of President Juan Manuel Santos.

These media offer an opportunity to strengthen democracy and transparency in public administration, as noted by the head of state from the day of his inauguration a year ago.

The balance of the government of President Santos may be consulted at the following social media:

- Main results Twitter by @ urnacristalgov
- Results More Jobs, Less Poverty, More Security Urnadecristal Facebook page (www.facebook.com/urnadecristal).
- Results by sector: <http://twitter.com/#!/Infopresidencia>
- Facebook: Presidency of the Republic of Colombia — <http://on.fb.me/qyOLPU>
- YouTube: SIG — www.youtube.com/sigcolombia

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Official website of the presidency of the republic:

www.presidencia.gov.co

www.urnadecristal.gov.co

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:

Colombia is a structured state with a division of powers — executive, judiciary and legislative — where all powers check and balance one another.

References:

Artículo 114, Capítulo I, de la Estructura del Estado. Constitución Política de Colombia.

Título V, de la Organización del Estado. Constitución Política de Colombia.

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:

The court is the highest organ of interpreting the law. For example, if legal provisions clash because of gaps or holes in the law, the court is the one that determines if it is unconstitutional and contrary to the law.

In the new government of President Juan Manuel Santos, relations between the executive branch and the judiciary have changed remarkably from the previous government. However, in January 2012, a Supreme Court decision caused divisions between the president and the judges. The president of the Criminal Chamber of the Supreme Court called Santos' words "objectionable." Santos had apologized to the Army and former President Belisario Betancur for the decision made by the Superior Tribunal of

Bogota, which ordered the military to ask forgiveness for the disappearances that occurred during the retaking of the Palace of Justice and ordered that the former president be investigated by the International Criminal Court.

References:

Periódico El Tiempo
"Corte Cuestiona Críticas de Santos a Fallo de Palacio de Justicia"
www.eltiempo.com

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Revista Semana
"El Fallo del Coronel Plazas"
www.semana.com

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:

In 2011, President Juan Manuel Santos started a major reform of the state, which involved resurrecting the Ministries of Justice, Labor and Environment and the possible intervention or removal of state agencies now publicly involved in corruption scandals.

It is not the first time that a president asked for extraordinary powers to reform the state. Cesar Gaviria, Ernesto Samper, Andres Pastrana and Alvaro Uribe also asked and received special powers in their respective mandates.

According to the chief executive, the reason is to build an efficient, modern, less expensive, high-quality system to provide public services and promote equity, legitimacy and the elimination of corruption.

Since his inauguration speech, and as part of his principles of transparency and good governance, Santos has taken the first brush strokes for the new state model that aims to implement and fulfill the role of the new ministries, which had been unified by former President Uribe

However, although these powers are granted by law, sometimes they produce discord. Interior Minister German Vargas Lleras urged the legislators to "trust" the statement by the president and his commitment to the reorganization of the state. "We always said that some powers are broad, but we have never said it is a blank check. ... The powers are not dangerous because the draft limits the same use of them," he said.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Diario El Espectador

"Para qué Son las Facultades Extraordinarias al Presidente Santos"

www.elespectador.com

Diario El Espectador

"Facultades Especiales al Gobierno Enreda Proyecto que Separa Tres Ministerios"

www.elespectador.com

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 head of state can only be investigated and judged by Congress' Comisión de Acusaciones.

References:

Artículos 198 y 199, Capítulo I del Presidente de la República.

Título VII, de la Rama Ejecutiva.

Numeral 2, Artículo 235, Constitución Política de Colombia.

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:

The executive leadership can be prosecuted by the attorney general.

References:

Numerals 6 y 7, Artículo 277, Capítulo II del Ministerio Público, Constitución Política de Colombia.

Numerals 1, 2 y 6, Artículo 278, Capítulo II del Ministerio Público, Constitución Política de Colombia.

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?

69

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

It is the duty of all public officials, including the executive branch headed by the president, to fill out the Single Affidavit of Assets and Income and private economic activities form that must be completed by all public servants. This form is completed at the time of hiring.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995.

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

(Leyes 190 de 1995 y 443 de 1998)

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:

It is the duty of all public officials, including the executive branch headed by the president, to fill out the Single Affidavit of Assets and Income and Private Economic Activities form that must be completed by all public servants. This form is completed at the time of hiring.

References:

Interview with the President of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de cuentas establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995

Formato Unico Declaracion Juramentada de Bienes y rentas y Actividad Economica Privada Persona Natural

(LEYES 190 DE 1995 Y 443 DE 1998)

<http://www.inder.gov.co>

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:

According to the provisions of the Code of Ethics of Civil Servants and Single Disciplinary Code for Public Officials in Colombia, officials are prohibited from the following:

Soliciting, directly or indirectly, gifts, entertainment, favors or any other kind of benefits.

Accepting, without permission from the appropriate authority, positions, honors or rewards from foreign governments or international organizations or contracts with them, without prior government approval.

References:

Estatuto Anticorrupción Ley 190 de 1995, Ley 734 de 2002.

Código de Etica del Servidor Público y Código Disciplinario Unico para Funcionarios Públicos de Colombia.

Artículo 125, Deducción por Donaciones, Estatuto Tributario Colombiano.

Artículo 125(4), Requisitos de las Deducción por Donaciones, Decreto 624 de 1989.

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:

Legal or regulatory requirements for the independent auditing of executive branch asset disclosures do not exist. Requirements do allow for state auditing as mentioned below:

It is the duty of all public officials, including the executive branch headed by the president, to fill out the Single Affidavit of Assets and Income and Private Economic Activities form that must be completed by all public servants before taking possession of a public office or employment and upon retirement. Furthermore, it must be completed for all public servants by the last day of March each year. It is linked to the state in accordance with the provisions of Article 1 of Decree 736 of 1996.

On this form should be included:
Debts and obligations that are applicable.

Private economic activities: These are all activities that the public servant does as an occasional or permanent manner, in order to secure additional funds accruing to the state.

Real property: The set of assets a person owns. These assets include real and personal property. The value to be submitted is the commercial, or resulting from the use of depreciation methods and adjustments allowed by accounting standards.

Membership: Refers to the type of appointment or participation that a person has within a board or corporation established by law.

Nature of the company: Refers to whether in public or private entities.

City and date: Decree 2232 of 1995.

Affidavit: Affidavit is considered completed in submitting this form, duly filled in and signed, to the employer.

Article 10 of Decree 2150 of 1995 abolishes the requirement of submission before a Notary Public.

Income and taxable income last year: All income earned in the calendar year immediately preceding the filing of this form.

Participation in boards, councils and societies: Refers to any link as a partner, associate and/or owner of any corporation, partnership or association legally established.

First-degree relatives: This refers strictly to parents and children of public servants.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1° del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural (Leyes 190 de 1995 y 443 de 1998)

www.inder.gov.co

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:

Public servants may not go from working for the state to working with companies or private entities with which they had direct contact, or if they supervised the position, for at least two years.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción <http://wsp.presidencia.gov.co>

www.semana.com 04/10/2011. La puerta giratoria

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:

New anti-corruption statute puts an end to the “revolving door.”

“Public servants may not go to work from the state to work with companies or private entities with which they had had direct contact, or which supervised the office, for at least two years,” said President Juan Manuel Santos in enacting the Anti-Corruption Act.

The president also mentioned another new regulation in the statute: “No accountant or auditor may invoke the privilege to refrain from reporting known acts of corruption.” Failing to report such cases will cancel one’s registration.

The law has an entire section providing tools to combat corruption in social security and health, with the objective being to prevent behaviors such as those currently under investigation.

It was also noted that the statute severely punishes influence peddling.

“We know that corruption has two prongs: the official and the particular. That is why the exemplary punishment for private influence-peddling,” Santos said.

However, the Colombians still live with the consequences of the behavior of past government officials. The newspaper La Republica reported that a group of former ministers who had just left their offices already had places on boards of companies with which they worked when they were in the Cabinet. Only now the complaint is in the media, after a group of citizens pleaded with officials to look into the cases of the former ministers, Hernán Martínez, Luis Guillermo Plata and Jaime Bermudez, who have seats on the boards of Pacific Rubiales, Bavaria and group Sura, respectively.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Diario La Republica, June 26, 2011, “El Lío de la ‘Puerta Giratoria’ en la Economía.”

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción <http://wsp.presidencia.gov.co>

www.semana.com, “La puerta giratoria.”

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:

Prior to his position as president, Juan Manuel Santos said his team would not take gifts and state property before taking office.

Santos and his government team undertook the decision of not receiving gifts and declaring the goods they had before taking up their posts after a new government summit was held near Bogota.

"We did an exercise to establish principles and values of good governance, principles and values that have to do with the system of government, with public ethics, behavior of individual government officials," Santos told reporters.

With the declaration of principles and values issued at the end of the session, officials also pledged to avoid any conflicts of interest with the public.

The officials also warned of "zero tolerance" on corruption, ringing a warning bell to colleagues by calling for: "commitment to social prosperity, transparency, zero tolerance for corruption, fairness, pluralism, efficiency, effectiveness and austerity."

In addition to public ethics, it was emphasized that decisions would focus on the public interest and that abuse of power or influence peddling would not be tolerated.

It is also stressed that officials have a duty to report irregularities and illegalities and not use privileged or confidential information to benefit themselves or others.

They also pledged to act with restraint in awards and decorations and not accept gifts or donations that would create potential conflicts of interest.

They promised to respect differences and correct any errors or mistakes.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

www.terra.com, Aug. 4, 2010, "Santos Compromete a Su Equipo a No Recibir Regalos y Declarar Bienes Antes de Posesión."

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.

Comments:

It is the duty of all public officials, including the executive branch headed by the president, to fill out the Affidavit of Assets and Income and Private economic Activities, which must be completed by all public servants before taking possession of a public office or employment and upon retirement. It must also be completed by the last day of March each year.

This form should include:

Debts and obligations that are applicable: refers to all debts public servant has, the possession date, data updating or removal of the entity.

Private economic activities: These are all activities that the public servant does as an occasional or permanent manner, in order to secure additional funds accruing to the state.

Real property: The set of assets a person owns. These assets include real and personal property. The value to be submitted is the commercial, or resulting from the use of depreciation methods and adjustments allowed by the country's accounting standards.

Membership: Refers to the type of appointment or participation that a person has within a board or corporation established by law.

Nature of the company: Refers to whether in public or private entities.

City and date: Corresponds to the court of accounts established by Decree 2232 of 1995.

Affidavit: Affidavit is considered submitting this form, duly filled in and signed, to the employer.

Article 10 of Decree 2150 of 1995 abolishes the requirement of submission before a Notary Public.

Income and taxable income last year: All income earned in the calendar year immediately preceding the filing of this form.

Participation in boards, councils and societies: Refers to any link as a partner, associate and/or owner of any corporation, partnership or association legally established.

First-degree relatives: This refers strictly to parents and children of public servants.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996. Constitución Política de Colombia.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995.

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural (Leyes 190 de 1995 y 443 de 1998) www.inder.gov.co

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?

38

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes

No

Comments:

In Colombia, there is no specific legal provision for citizen access to the financial records of heads of government.

The asset disclosure forms are available only for the Attorney General's Office, the heads of personnel offices in each entity, and the National Registry Office. The reservation of this information occurs because of safety regulations.

However, it is possible to obtain it. The rights to privacy and good name have been enshrined as fundamental rights of human beings. However, for reasons of public interest, social order and concurrence of other rights as the right to information, privacy cannot be considered an absolute right. So the historical evolution of Habeas Data in the Colombian experience begins with a strong protectionist sense for the right to privacy progressing toward a system that balances the protection of privacy and the freedom of information.

For this reason, and taking into consideration Article 17 of Law 812 of 2003 titled "The Obligation of the Servers and Public Entities to Provide Information," and defending the fundamental right to request information, citizens can access the affidavit of assets and income of the heads of state and government as long as they justify the legality and good faith of the intention in the request.

References:

Decreto 2232 de 1995. Constitución Política de Colombia.

Artículo 23. Derecho de Petición. Constitución Política de Colombia.

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 74, Del Derecho de Petición de Informaciones.

Artículo 17, Ley 812 de 2003, Obligación de Suministrar Información.

Resolución N° 734/2007. Constitución Política de Colombia

Ley 25.188. Constitución Política de Colombia.

Leyes 190 de 1995 y 443 de 1998. Constitución Política de Colombia.

Universidad de Cartagena
Eficacia del Derecho de Petición en Colombia como Habeas Data
<http://unicartagena.academia.edu>

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:

This information can be found on the government's Economic Transparency Portal. This information portal is related to budget execution and payment of the entities that make up the general budget of the nation: sectoral ministries, administrative departments, Congress, the judiciary, public institutions, corporations and autonomous bodies and electoral control.

It is also possible to make a "right to request" and receive an answer within 15 working days.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República
<http://congresovisible.org>

Decreto 2232 de 1995. Constitución Política de Colombia.

Artículo 23, Derecho de Petición, Constitución Política de Colombia.

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:

This information can be found free of cost on the government's Economic Transparency Portal. This information portal is related to budget execution and payment of the entities that make up the general budget of the nation: sectoral ministries, administrative departments, Congress, the judiciary, public institutions, corporations and autonomous bodies and electoral control.

It is also possible to get a response within 15 working days through the free mechanism known as the “right of petition.”

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República
<http://congresovisible.org>

Decreto 2232 de 1995. Constitución Política de Colombia.

Artículo 23, Derecho de Petición, Constitución Política de Colombia.

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 NGOs. 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 NGOs 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

Comments:

High-quality information can be found on the government’s Economic Transparency Portal. This information portal is related to budget execution and payment of the entities that make up the general budget of the nation: sectoral ministries, administrative departments, Congress, the judiciary, public institutions, corporations and autonomous bodies and electoral control.

It is also possible to get an answer within 15 working days through the free mechanism known as the “right of petition.”

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República
<http://congresovisible.org>

Decreto 2232 de 1995. Constitución Política de Colombia.

Artículo 23, Derecho de Petición, Constitución Política de Colombia.

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.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

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

Comments:

In principle, the party that gets the executive position develops a platform of government.

However, there's a history of vulnerability in the control of the use of state money for political purposes. One example is the Agricultural Income Insurance, a program created by the Ministry of Agriculture to strengthen the agricultural sector with a view toward entering the North America Free Trade Agreement with the United States.

The documents released at the time by the presidential campaign of Alvaro Uribe, and for the re-election campaign for the referendum, showed that among the contributors to the 2002 presidential campaign of Uribe were 45 recipients of Agricultural Income Insurance, as was the case with 10 contributors to the re-election referendum.

Documents from Andrés Felipe Arias' presidential campaign revealed that several of its donors were beneficiaries of Agro Ingreso Seguro.

A major contribution was made by and to the group Mayagüez, when it received more than 3 billion pesos of Agro Ingreso Seguro. In this case, the CTI experts concluded, after crossing data and expert opinion, that the campaign of Andrés Felipe Arias gave AIS grants to beneficiaries through three different entities.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

www.lasillavacia.com

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

Yes

No

Comments:

In addition to the pronouncements made by the Constitutional Court and the Council of State, the highest court of administrative jurisdiction has been attributed in the “action for annulment of unconstitutionality” the pronouncement on the decrees issued by the national government whose competence is not assigned to the Constitutional Court and also a judge, or even an administrative authority, may, by the so-called constitutional exception, refrain from applying a rule on a case which blatantly contradicts the text of the Constitution.

References:

Artículo 241, Constitución Política de Colombia.

Artículo 243, Constitución Política de Colombia.

Congreso de la República. <http://congreso.us.es/cidc/Ponencias/justicia/EmiliaGiron.pdf>

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.

Comments:

The Constitutional Court reviews laws passed by Congress to decide if the laws are in line with the Constitution. For example, the Constitutional Court completed its evaluation of the Statute of Political Reform and endorsed, almost entirely, the epitome of reforms within it.

The court's mandate that the lists of candidates for election must have a minimum participation of 30 percent women promotes gender equality in the country.

However, the clauses that allowed the presence of electoral witnesses with distinctives or clothing proper to their party or candidate on Election Day and/or during the counting of the votes, were overturned by the court, which considered them to be acts against the basic principle of reflection and privacy of the vote.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Periódico El País
 "La Corte Aprobó el Estatuto de la Reforma Política"
www.elpais.com.co

Periódico El Colombiano
 "Corte Constitucional Declara Exequible la Reforma Política"
www.elcolombiano.com

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:

More than 110 former and elected congressmen face investigations and prosecutions before the Supreme Court. More than 40 have been convicted in recent years.

References:

Artículo 179, Capítulo VI de los Congresistas, Constitución Política de Colombia.

Artículo 180, Capítulo VI de los Congresistas, Constitución Política de Colombia.

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

64

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes

No

Comments:

According to the law, candidates may not be elected who have managed to negotiate or conclude contracts on their own or third party interest, or have been legal representatives of entities that administer taxes or quasi-tax contributions, within six months prior to the elections.

References:

Ley 144 y 136 de 1994. Ley 446 de 1997. Constitución Política de Colombia.

Ley 617 del 2000. Ley 734 del 2002 o Código Disciplinario Unico (Artículo 40).

Artículo 133, Constitución Política de Colombia.

Artículo 149, Constitución Política de Colombia.

Artículos 182 y 183, Constitución Política de Colombia.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes

No

Comments:

The existing provisions have been strengthened through the recently approved "Political Reform."

References:

Numeral 22, Artículo 35, Ley 734 de 2002.

Numeral 2(f), Artículo 8, Ley 80 de 1993. Reforma Política 2011.

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 provisions of the Code of Ethics of Civil Servants and Single Disciplinary Code for Public Officials in Colombia govern gifts and hospitality offers.

References:

Artículo 125, Deducción por Donaciones, Estatuto Tributario Colombiano.

Artículo 125(4), Requisitos de las Deducciones por Donaciones, Decreto 624 de 1989.

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:

Legal or regulatory requirements for the independent auditing of asset disclosures by members of the national legislature don't exist. Requirements do allow for state auditing as mentioned below:

It is the duty of all public officials, including members of the national legislature, to fill out the Affidavit of Assets and Income and Private Economic Activities that must be completed by all public servants before taking possession of a public office or employment and upon retirement. The form must be completed by the last day of March each year.

Included on the form should be:

Debts and obligations that are applicable.

Private economic activities done as an occasional or permanent manner, in order to secure additional funds accruing to the state.

Real property: The set of assets a person owns. These assets include real and personal property. The value to be submitted is the commercial, or resulting from the use of depreciation methods and adjustments allowed by the country's accounting standards.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República
<http://congresovisible.org>

Decreto 2232 de 1995. Constitución Política de Colombia.

Artículo 23. Derecho de Petición. Constitución Política de Colombia.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995.

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural (Leyes 190 de 1995 y 443 de 1998)

www.inder.gov.co

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:

The new Anti-Corruption Statute puts an end to the “revolving door.”

“Public servants may not go to work from the state to work with companies or private entities with which they had had direct contact, or who supervised the occasion of his office, for at least two years,” President Juan Manuel Santos said in enacting the Anti-Corruption Act.

The president also mentioned another measure from the statute: “No accountant or auditor may invoke the privilege to refrain from reporting known acts of corruption.” He added that failing to report would cancel an accountant’s or auditor’s registration.

He explained that there is an entire section dedicated to providing tools to combat corruption in social security and health, with the objective that behaviors do not occur as those currently under investigation.

It was also noted that the statute severely punished influence peddling.

"We know that corruption has two prongs: the official and the particular. That is why the exemplary punishment of private influence-peddling," Santos said.

However, Colombians still deal with the consequences of having had no restrictions on retired legislators working in the private sector.

For example, the magazine Ecos Políticos reported:

"For several years a congressman, and to be more precise, president of the Senate [...] paid 21 million pesos [for] two cars, which were not his but at his disposal, including drivers and bodyguards paid for by the public sector."

The words of Juan Manuel Corzo Conservative outraged the nation. This is the same senator who sought to revive his parliamentary immunity and who did not blush when proposing (despite the clear conflict of interest as a congressman under investigation for influence peddling) appointments to Cucuta during the presidential re-election and the director of the Northeast Independent Corporation, CORPONOR. He was also investigated for alleged links with the paramilitaries and a unholy relationship with Miranda Jency, who was extradited.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

www.ecospoliticos.com, Sept. 27, 2011, "Patente de Corzo."

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción <http://wsp.presidencia.gov.co>

www.semana.com, "La Puerta Giratoria."

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.

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

Comments:

It is common that an industry shows its interest and then lobbies to facilitate the approach to the parliament. However, this activity on many occasions becomes an offer of perks in exchange for favors. This behavior can lead to loss of independence.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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:

All public officials are required to submit an affidavit statement of assets and update it every year. Any inconsistency in the audit can lead to an investigation.

Examples of investigations that led to official removals include the attorney general's removal of Angelo Moralesrussi as comptroller of Bogota and the representative German Olano, who was banned from office for 12 years after his wealth inexplicably increased.

The affidavits of goods made by the comptroller and former congressman were instrumental in the cases.

In the Constitution, fiscal control of public administration went from pre- and perceptive to posterior and selective. However, the new approach allows the application of a control or prevention warning to the administrator, real-time public awareness of the inconsistencies detected by the comptroller and, by applying a correction control, proceed to remedy them, thereby achieving more efficient and effective institutions and fulfilling the ultimate goal of the continuous improvement of public entities.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Joanpa News

"Destituidos e Inhabilitados Germán Olano y Miguel Ángel Moralesrussi, por 12 y 20 Años, Respectivamente"

<http://joanpa.com/news>

www.congresovisible.org

www.senado.gov.co/transparencia

www.rcnradio.com, 29 de septiembre de 2011,

"Emisión"

Artículo 267, Constitución Política de Colombia.

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?

94

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes

No

Comments:

On the “transparencia” (transparency) link in the official site of the Senate of the republic (www.senado.gov.co/transparencia), citizens can find financial information from senators.

In this section, citizens can find the following information:

- Name of senator.
- Party.
- Voting (Resolution No. 1787 of 2010, the National Electoral Council).
- Affidavit of Assets and Income.
- Recording of conflict of interest.
- Members of the Legislative Work Unit (UTL).

The portal www.congresovisible.org provides professional information on Congress but not the financial information of members.

There is also the fundamental right to petition. Article 17 of Law 812 of 2003, titled “The Obligation of the Servers and Public Entities to Provide Information,” allows citizens to ask to see the affidavits of assets and income of national legislators as long as the citizens justify the legality and good faith of the intention in the request.

References:

Artículo 74, Del Derecho de Petición de Informaciones.

Artículo 17, Ley 812 de 2003, Obligación de Suministrar Información.

Resolución N° 734/2007. Constitución Política de Colombia.

Ley 25.188. Constitución Política de Colombia.

Leyes 190 de 1995 y 443 de 1998. Constitución Política de Colombia.

Universidad de Cartagena
Eficacia del Derecho de Petición en Colombia como Habeas Data
<http://unicartagena.academia.edu>

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, non-governmental 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:

On the “transparency” icon on the official website of the Senate, citizens can find immediate information on the finances of senators.

The section includes the following information:

- Name of senator.
- Party.
- Voting (Resolution No. 1787, 2010, the National Electoral Council).
- Affidavit of goods.
- Recording of conflict of interest.
- Members of the Legislative Work Unit (UTL).

The portal congresovisible.org is for personal and professional information on Congress but not financial information.

The “right to petition” mechanism enables citizens to make a respectful request to the entity for which such records are disclosed as permitted by law, and this will be answered within a maximum of 15 working days.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Resolución N° 1787 de 2010 del Consejo Nacional Electoral.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República Congreso Visible
www.congresovisible.org

Senado de la República
www.senado.gov.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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

On the “transparency” icon on the official website of the Senate, citizens can find information about the finances of the senators for free.

The “right to petition” that enables citizens to make a respectful request to the entity for which such records are disclosed as permitted by law and get an answer within 15 working days is also free to use.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República Congreso Visible
www.congresovisible.org

Senado de la República
www.senado.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 NGOs. 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 NGOs 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:

On the “transparency” icon of the official website of the Senate, citizens can find information on the finances of the senators.

They also have the “right to petition” mechanism, which enables citizens to make a respectful request to the entity for which such records are disclosed as permitted by law.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República Congreso Visible
www.congresovisible.org

Senado de la República
www.senado.gov.co

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?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes

No

Comments:

At the www.congresovisible.org portal, the history of legislative activity such as bills, quotes, voting and agenda is available immediately. Citizens can also inquire about the political parties and committees and get full information about Congress. as well as participate in different forums within the portal.

References:

www.senado.gov.co

www.secretariassenado.gov.co

www.camara.gov.co/

www.congresovisible.org

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:

At the www.congresovisible.org portal, the history of legislative activity such as bills, quotes, voting and agenda is available immediately. People can also inquire about the political parties and committees and get full information about Congress. They can also participate in different forums within the portal.

Most debates are televised.

The website also has the mechanism known as the “right of petition.”

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República Congreso Visible
www.congresovisible.org

Senado de la República
www.senado.gov.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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

At the www.congresovisible.org portal, the history of legislative activity such as bills, quotes, voting and agenda is available. Citizens can also inquire about the political parties and committees and get full information about Congress. They can participate in different forums within the portal.

It also has the mechanism known as the “right of petition.”

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

www.congresovisible.org

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 NGOs. 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 NGOs trying to access this information.

90

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes

No

Comments:

Although there are institutional mechanisms for the election of judges from institutions that are part of the judicial branch, it has been argued that in the case of justices of the Supreme Court and the Council of State (election regulated by the Article 231 of the Constitution), the choice should go through some sort of citizen control.

References:

Artículo 231, Constitución Política de Colombia

Artículo 239, Constitución Política de Colombia.

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.

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

Comments:

There is a judiciary career, implemented by statutory law and the Supreme Judicial Council; career at all levels except for the high courts, which is considered that can and should be staffed by professionals from diverse litigation, academia, etc.

However, Caracol Radio rang alarm bells about the existence of a "carousel of contracts" in the Judicial Council and showed a series of appointments made in 2010. Semana investigated the issue and found that this is just the tip of the iceberg in the scandal.

In 2 1/2 years, judges of the Disciplinary Chamber of the Supreme Judicial Council had been given "gift jobs" as auxiliary magistrates to about 90 people (excluding auxiliary judges who are active today), and thanks to those "gifts," at least half of them retire with billionaire pensions, which could cost the state a total of 140 billion pesos.

The most shocking detail was that a judge who makes 4 million pesos, if he/she can get the "job" as auxiliary magistrate, only for a month, gets his pension multiplied and reach to be calculated on a salary of between 14 million and 17 million pesos.

The title of Chapter V of the Higher Council criminal policy determines:

Article 126, Judicial ethics conditions server. You can only hold positions in the judiciary if your conduct is in accordance with the dignity of the function.

Article 127. General requirements for performance fees of officers of the judicial branch. To hold office as a judge of the court, justice of the republic or the prosecutor, the following qualities and general requirements are required:

1. Be Colombian by birth and citizenship rights and be in full enjoyment of their civil rights;
2. Having a law degree issued or validated under the law, except in the case of justices of the peace, and,
3. Not be in causal inability or incompatibility.

Article 128, Additional requirements for performance fees of officers in the judicial branch. To hold the position of officer of the judicial branch must meet the following additional requirements:

1. For the office of municipal judge, having at least two years of professional experience.
2. For the position of circuit judge or equivalent: at least four years of professional experience.
3. For the office of judge of court: at least eight years of professional experience.

Delegates to the prosecutor shall have the same requirements demanded of officials to which they act.

Paragraph 1. The experience listed in this article is that acquired after obtaining a law degree in legal activities either independently or in public or private office or in the exercise of the judicial function. In any case, for this purpose, professional experience as a law clerk counts only that performed after obtaining a law degree.

References:

Revista Semana
www.semana.com, 19 de febrero de 2011,
“El Carrusel de los Magistrados.”

Caracol Radio
www.caracol.com.co

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Título V. Política Criminal Capítulo Único del Consejo Superior de la Política Criminal.

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:

Confirmation is required.

References:

Artículos 231, 232 y 233, Constitución Política de Colombia.

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?

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

Comments:

Yes, the national-level judiciary gives reasons to the head of state or the person who is at that moment in charge of the state.

References:

Numeral 2, Artículo 242, Constitución Política de Colombia.

Artículo 244, Constitución Política de Colombia.

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:

Any court order has three basic sections: the introduction, the motivation and the operative paragraphs.

1. The introductory part is one that defines the process, identifies the dispute, determines the procedural stage to which it will refer the decision, states the plaintiff's and defendant's positions, relates the evidence, places the issue in its most important aspects and determines the nature of the task that the judge will play in the respective instance.

Experience has shown that these are often the longest and most tedious part of judicial decisions.

2. The relevant part is one in which the judge determines the arguments and judgments through which he justifies the reason for his decision. Three elements are involved: the ratio decidendi, the mere dictum and obiter dicta.

a) The ratio decidendi: The basic formulation of the principle, rule or general reason is the fundamental basis of the court decision.

It is, in essence, the logical/legal opinion that directly underlies the resolution, which imposes values that go beyond the specifics of the case.

3. The operative part: The desicum, the specific resolution of the case, that is, the determination made by the judge after the sacramental formula "applying justice on behalf of the republic and the will of the law ... resolved" and that in essence is the reason for any process. It is the part that can never be deleted from a sentence.

The explanation of the decision is a vital part of the judicial practice. For example, Judge Juan Carlos Henao explained the reasons the underlying issue of the marriage of same-sex couples should be a topic of discussion in Congress, and not a decision of the court.

According to the president of the Constitutional Court, the issue "is a problem of balance between democratic principle and operation of the constitution" and the court is not responsible for establishing a legal framework.

The Constitutional Court recognized same-sex couples as families. In this sense, the court urged Congress to legislate the recognition of homosexual unions, with a deadline: if in two years this has not happened, "gay couples can go to a public notary and legalize their union," said Judge Juan Carlos Henao, Constitutional Court president.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Periódico El Tiempo

“Corte Explica por qué Matrimonio Homosexual es Decisión del Congreso”

www.eltiempo.com

Universidad Externado de Colombia

El Precedente en Colombia

<http://foros.uexternado.edu.co>

Universidad de Santander del Norte

Los Principios de Igualdad y Seguridad Jurídica Como Presupuesto de la Doctrina Probable

www.uninorte.edu.co

Academia Colombiana de Jurisprudencia

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 Higher Judicial Council's Disciplinary Board and the Sectional Councils have the responsibility, as appropriate, to examine the conduct and punish misconduct by officials of the Judicial Branch Courts and Magistrates sectional councils of the judiciary.

References:

Numerals 1 y 4; Numeral 9 párrafo 1, Artículo 250, Constitución Política de Colombia.

Numerals 1 y 3, Artículo 251, Constitución Política de Colombia.

Numerals 1 y 7, Artículo 277, Constitución Política de Colombia.

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:

Article 127 of the Colombian Constitution established, within the prohibitions for public officials, that: "All state employees and employees of decentralized institutions which exercise civil or political authority, employees who exercise administrative positions or who hold judicial, electoral, or control positions, are prohibited from participating in partisan activities or in political debates, without prejudice to their right to freely exercise their right to vote.

"All public employees not included in this prohibition may participate in such activities in accordance with the conditions established by law."

References:

Artículo 127, Constitución Política de Colombia.

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 Colombian Constitution provides that the Supreme Judicial Council and Sectional Councils are empowered to "examine the conduct and punish the faults of the judicial branch officials, as well as those of lawyers in the exercise of their profession." In furtherance of this constitutional provision, statute law of the Administration of Justice (issued in 1996) states that "disciplinary judicial function" influences the Supreme Judicial Council through its disciplinary board.

However, the government recognizes the existence of numerous cases of misconduct of judges that are investigated promptly by the Supreme Judicial Council. At the time, Defense Minister Rodrigo Rivera gave judges of the Supreme Judicial Council reports of possible corruption of some officials of the judicial branch. The government estimates that there is sufficient evidence to send them to prison.

"It's very disheartening to see how we capture dangerous drug traffickers who have dealt tons of cocaine and after any legal maneuver are released," Rivera said on the meeting with the judges.

He said that these releases "impose a stationary bike, a revolving door" that affects the fight against criminal groups.

At the meeting which took place at the ministry, it was pointed out that the biggest problems arise in cases of drug trafficking, criminal gangs and rebellion.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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 Supreme Judicial Council is responsible for two main functions for the proper functioning of the judicial branch: first, manage the judicial branch, and two, exercise disciplinary functions for faults committed by judicial officers and lawyers in the exercise of their profession.

During its 18 years of existence in Colombia, the disciplinary jurisdiction has advanced more than 330 000 inquiries, of which 12,205 ended in sanctions against lawyers and 1,791 for judges of courts, judges and prosecutors.

However, recent accusations between the two rooms that compose the Supreme Judicial Council, together with investigations of the supposed corruption inside the court, have returned to spark the controversy over the effectiveness of the disciplinary procedures.

Among the most recent scandals are those of the supposed existence of a “carousel of pensions” for officials and political allies of the magistrates, and the alleged waste in procurement and travel expenses that was reported by the comptroller.

For this reason, for several years, both Congress and the government have raised the idea of removing the judicial council “to end corruption and better control actions of judges and magistrates,” as noted by Interior Minister Germain Vargas Lleras.

References:

Diario El País
“Se ‘Agudiza’ Polémica Sobre el Consejo de la Judicatura”
www.elpais.com.co

Noticias La Nación, 21 de Enero del 2012,
“Los Jueces También Tienen Quien los Vigile.”
www.lanacion.com.co

Ley 734 de 2002., Título XII. Del Regimen de los Funcionarios de la Rama Judicial.

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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?

64

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes

No

Comments:

It is the duty of all public officials, in this case the judiciary branch, to fill out the Affidavit of Assets and Income and Private Economic Activities that must be completed by all public servants, before taking possession of a public office or employment and upon retirement.

References:

Interview with the President of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1° del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995.

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

(Leyes 190 de 1995 y 443 de 1998)

www.inder.gov.co

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:

They can accept donations from the government or any other person working for the state, but must report them to the proper authorities.

References:

Artículo 125, Deducción por Donaciones, Estatuto Tributario Colombiano.

Artículo 125(4), Requisitos de las Deducciones por Donaciones, Decreto 624 de 1989.

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:

Legal or regulatory requirements do not exist for independent auditing of asset disclosures by members of the national-level judiciary. Requirements exist that allow for state auditing as mentioned below:

All public officials, in this case members of the national-level judiciary, must fill out the Affidavit of Assets and Income and Private Economic Activities, which must be completed before assuming public office or employment and upon retirement. Furthermore, it must be completed the last day of March each year.

This form includes:

Debts and obligations that are applicable.

Private economic activities, which are defined as activities that a public servant does in an occasional or permanent manner, "in order to secure additional funds accruing to the state."

Real property, or the set of assets a person owns. These assets include real and personal property. The value to be submitted is the commercial, or resulting from the use of depreciation methods and adjustments allowed by the country's accounting standards.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995 .

www.inder.gov.co

Portal de Transparencia Económica
www.pte.gov.co/

Portal del Congreso de la República
www.congresovisible.org

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 new Anti-Corruption Statute puts an end to the “revolving door.”

Public servants may not go from state employment to work for companies or private entities with which they had direct contact, or if they supervised an office, for at least two years.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción <http://wsp.presidencia.gov.co>

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:

This year, Congress and the government approved the new Anti-Corruption Statute. One of its most celebrated provisions limits the work that public servants may do for two years after they leave their government positions.

The law is supposed to be the remedy to fix the “revolving door,” a practice that has prevailed for decades in Colombia. The revolving door is the rotation between work in the public and private sectors by an individual.

Examples of this are the current minister of finance, Juan Carlos Echeverry, a world-class economist who has alternated between the public and private sectors nationally and internationally with full success; Hernando Jose Gomez, director of national planning; and even President Juan Manuel Santos.

Under the new law, none can exercise his profession until two years after leaving the government.

So far, it is not possible to measure the consequences of this new law. However, there is the risk that people with expertise will not want to accept public office because salaries are generally bad and then they will face the prohibition of work for two years in the private sector, which always pays better.

References:

La Silla Vacía
“La Puerta Giratoria, Otro Punto de Vista”
www.lasillavacia.com

Periódico El Tiempo
“Vargas Criticó Uso de ‘Puerta Giratoria”
www.eltiempo.com

Ley 1474 de 2011, Estatuto Anticorrupción

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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:

The Anti-Corruption Statute aims to regulate lobbying activity with the creation of a national commission; substantial changes in the rules on disciplinary processes; redesign of the functions of the anti-corruption czar; elimination of benefits such as suspended sentences, probation or home detention for those convicted of crimes against public administration; installation of a national citizens commission for the fight against corruption; and changes in the contracting statute.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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:

All public officials are obligated to make an affidavit statement of assets and update it every year. Any inconsistency in an audit can lead to an investigation

The asset disclosure forms of the judiciary are audited when scandals emerge, but there is no mechanism or procedure to ensure regular auditing.

The affidavits of goods submitted by the members of the judiciary are instrumental in finding suspiciously irregular increases in assets and subsequent initiation of investigations.

In the constitution, fiscal control of public administration went from pre-control and perceptive control to posterior and selective controls. However, the new approach allows the application of a control or preventive warning to the administrator, real-time public awareness of the inconsistencies detected by the comptroller and, by applying a correction control, a process to remedy them. This achieves more efficient and effective institutions and fulfills the ultimate goal of the continuous improvement of public entities.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Georgetown University
"Responsabilidad de los Funcionarios Públicos"
<http://pdba.georgetown.edu>

Ley 190 de 1995. Régimen de los Servidores Públicos.

Artículo 46, Decreto Nacional 1950 de 1973; Decreto Nacional 2232 de 1995

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?

38

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes

No

Comments:

No specific provision makes asset disclosure forms available to the public, and citizens cannot easily gain access to judiciary asset disclosure records.

The asset disclosure forms are available only for the Attorney General's Office, supervisors of personnel offices in each entity, and the National Registry Office. This information is "reserved" because of safety regulations for judges and magistrates. However, it is possible to obtain it.

For example, the Foundation Poder Ciudadano and the newspaper La Nacion requested and were given the affidavits of assets of judges for a journalistic investigation. Some data were changed because judges considered the information sensitive — for example, the name and surname of a spouse or children, location of property, or the identification of the banks where a judge has accounts or loans in pesos, dollars or euros.

The rights to privacy and good name have been enshrined as fundamental rights of human beings. However, for reasons of public interest and social order, the right to privacy cannot be considered absolute. So the historical evolution of Habeas Data in the Colombian experience begins with a strong protectionist sense toward privacy, progressing toward a system that balances privacy's protection with the freedom of information.

Taking into consideration Article 17 of Law 812 of 2003 titled, "The Obligation of the Servers and Public Entities to Provide Information," citizens can access the affidavit of assets and income of judicial branch officials as long as the citizen justifies the legality and the good intention of his request.

References:

Artículo 74, Del Derecho de Petición de Informaciones.

Artículo 17, Ley 812 de 2003. Obligación de Suministrar Información.

Resolución N° 734/2007. Constitución Política de Colombia.

Ley 25.188. Constitución Política de Colombia.

Leyes 190 de 1995 y 443 de 1998. Constitución Política de Colombia.

Universidad de Cartagena
"Eficacia del Derecho de Petición en Colombia Como Habeas Data"
<http://unicartagena.academia.edu>

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:

Judiciary asset disclosure records are not easily available to citizens, and there is no specific provision to make asset disclosure forms available to the public. However, any citizen can request information through the rights of petition.

The asset disclosure forms are available only for the Attorney General's Office, supervisors of personnel offices in each entity, and the National Registry Office. This information is "reserved" because of safety regulations for judges and magistrates; however, it is possible to obtain it.

The Foundation Poder Ciudadano and the newspaper La Nacion requested and were given the affidavits of assets of judges for a journalistic investigation. In the information, some data were changed because judges considered the matter sensitive — for example, name and surname of a spouse or children, location of property, or the identification of the banks where a judge has accounts or loans in pesos, dollars or euros.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Declaraciones Juradas de Funcionarios Judiciales
www.taringa.net

Resolución N° 734/2007. Constitución Política de Colombia.

Ley 25.188. Constitución Política de Colombia.

Leyes 190 de 1995 y 443 de 1998. Constitución Política de Colombia.

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.

Comments:

Judiciary asset disclosure records are not easily available to citizens, and there is no specific provision to make asset disclosure forms available for the public. However, any citizen can request information through the right of petition, which is free.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Derecho de Petición

www.gerencie.com

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

Comments:

Some data can be changed in affidavits released to citizens because judges consider the information sensitive — for example, name and surname of a spouse or children, location of property, or the identification of the banks where a judge has accounts or loans in pesos, dollars or euros.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Declaraciones Juradas de Funcionarios Judiciales

www.taringa.net

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.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

92

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

Congress will decide on approving the budget, with the limitations established by the constitution. Once the budget is approved, spending can be executed.

The constitution, while considering that the government exercises technical functions of public administration and Congress the political functions, does limit the range of popular representation. Thus, if Congress raises the proposed expenditures or includes a new one, it must have written permission from the minister. One may not remove or reduce items of expenditure proposed to cover debt, contractual obligations, routine-care administration, and investments authorized by plans and programs

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Departamento Nacional de Planeación
www.dnp.gov.co/

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:

Significant public expenditures always require legislative approval, and emergency states also have judicial review and subsequent approval by Congress.

The public budget is a maximum authorization of expenses and income projection. The maximum expenditure authorization is supported in the appropriations bill, which is really what is approved by the legislature. The revenue projection is simply an estimate to take into account as the basis of costs because costs must correspond to income.

Budgets are developed at the national, departmental and municipal levels. The work on the budget shows a symbiotic relationship between the executive and popular representation:

To include an executive item, there must exist a rule establishing an obligation for the state to meet by spending, which usually comes from the appropriate legislative or popular corporation. The government presents, on an annual basis, to the representative body (Congress, or city council) the draft budget, and members discuss and approve it.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Departamento Nacional de Planeación
www.dnp.gov.co/

Universidad de Antioquia
<http://huitoto.udea.edu.co>

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:

Congress adopts the budget and then approves the spending in the appropriations bill.

An example illustrates the interrelationship of functions and organs in budget matters: The statute on administration of justice establishes creation of the administrative courts. Congress will decide on the approval of the operation, with the limitations established in the constitution. Once the budget is approved, spending can be executed.

In general, if Congress raises proposed expenditures or includes a new one, it must have written permission from the minister. Expenditures that may not be removed or reduced are those proposed to cover debt, contractual obligations, routine-care administration, and investments authorized by the plans and programs.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Departamento Nacional de Planeación
www.dnp.gov.co/

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?

83

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Every law is subject to debate, and the debate is aired on television, on the institutional channel and on the websites of Congress and the Ministry of Finance.

In a public plenary session that lasted six hours, the Senate approved the national budget for 2012 by a vote of 55-6.

The approved National General Budget contains spending of 165.3 trillion pesos and has, among other things, an additional bonus for the military and the police in the middle and low pay ranges equivalent to 100 percent of their salaries.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

RCN La Radio
"Plenaria de la Cámara Aprueba Presupuesto Nacional"
www.rcnradio.com/noticias

Ministerio de Hacienda
www.minhacienda.gov.co/

Canal Institucional
www.institucional.gov.co/

Portal del Congreso de la República
www.congresovisible.org

Portal del Senado de la República
www.senado.gov.co

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:

Citizens can assist by submitting information via the rules outlined in Law 5 of 1992 for all congressional debates. They can be summoned and heard, if so requested, in informal hearings.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 5 de 1992. Constitución Política de Colombia .

www.comisionseptimasenado.gov.co

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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 detailed information on websites, thanks to economic transparency by the presidency and the finance ministry.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Portal de Transparencia Economica
www.pte.gov.co

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

Comments:

The Comptroller General's Office provides a separate oversight of public funds.

References:

Artículo 119, Artículo 187, Numeral 13, Párrafo 2, Artículo 268, Constitución Política de Colombia.

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

58

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

All ministers and public officials are required to send budget information to Congress, which holds political control, and to the Comptroller General's Office, which has financial and management control. They could face disciplinary sanctions if they failed to do so.

Congress exercises political control over the executive. The motions of censure, as well as citations to ministers and other public officials, are mechanisms of political control exercised by the legislature over the executive.

The citation is a mechanism Congress has to investigate the actions and/or omissions of government officials and to obtain relevant information about management. Also, Congress invites officials to explain and expand certain actions related to their work.

An example of such a citation came from the president of the Sixth Committee of the Senate, who wanted Minister of Transport German Cardona Gutierrez to clarify why he allowed the extension of the truck drivers' strike for 15 days.

References:

Emisora Caracol Radio
17 de febrero de 2011, "Congreso Llama a Debate de Control Político a Mintransporte."
www.caracol.com.co

Revista Gobierno
"Qué Es y Qué Hace el Congreso por Colombia"
www.revistagobierno.com

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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:

All committee members are elected through the electoral system, from among the lists proposed by the parties. The most powerful politicians are elected to the most important commissions, such as the economic commission.

When draft laws, programs or projects are in Congress, they are discussed by committees with different areas of expertise. These committees discuss the viability, relevance and especially the legality of proposals.

The vote is public and, following the new blocs law passed by Congress in 2005, members must agree with their parties on how they will vote on a law. For example, if the Colombian Liberal Party leadership decides that a law will be opposed, all members of Congress elected as representatives of the party must vote against the bill. If the leadership of the National Unity Party decides that it will vote in favor of a project, all elected representatives of the party must vote likewise. If a member of a political party decides to vote differently from his/her party, the party must decide, within its rules of procedure, on the disciplinary sanctions.

Each commission of Congress, through its board of directors, will choose a quorum for voting on laws and the majority required for approval.

This law of blocs and government coalition has known benefits. However, it reduces the independence of members and the possibility of minority blocs to belong to the most important committees.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Biblioteca Luis Ángel Arango
“¿Cómo se Elige un Gobierno Como el Colombiano?”
www.banrepcultural.org

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:

Legislators can call ministers, deputy ministers, heads of agencies, the director of Republic Bank, directors of decentralized entities and other executive branch officials to discuss bills or issues related to their functions. These do not represent formal investigations, though the discussions may lead to the discovery of problems.

For example, Sen. Jorge Robledo said, as part of a debate in the Senate Economic Committee concerning the status of royalty payments made by big mining companies, that Colombia was close to losing around 23 tons of gold that could be related to money laundering.

Any possible investigations would be the responsibility of the attorney general, comptroller and prosecutor general.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 5 de 2002 Constitución Política de Colombia.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁸⁰Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

Comments:

The Manual of Control on the Recruitment of Civil Servants includes these provisions:

Article 1: Every candidate for a public office, employment or contract for management services shall submit to the personnel unit of the corresponding entity, or the agency that replaces it, a completed résumé with this information:

1. Academic training, indicating the years of schooling at different levels of education and degrees and certificates obtained.
2. Work experience, linking each of the jobs or positions held in both public and private sectors, as well as address, telephone number or post office box for verifying the information.
3. Absence of any fact or circumstance that implies an inability or incompatibility to take the job or position and to hold services contract with management.

References:

Artículo 1, Manual de Control Sobre la Contratación de los Servidores Públicos.

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:

In Colombia, government employees have been judged for nepotism.

Lobbying is also regulated, to ensure transparency of public decisions.

References:

Artículo 68 (g), Funciones Comisión Nacional Ciudadana.

Artículo 73, Ley 190 de 1995.

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:

In Colombia there is a non-governmental organization called Transparencia por Colombia. Its functions include reviewing every process involving corruption and lobbying that involve the government and any other private or public organization.

References:

www.transparenciacolombia.org.co

Artículo 68 (g), Funciones Comisión Nacional Ciudadana.

Ley 174 de 2010. Artículo 73, Ley 190 de 1995. Constitución Política de Colombia

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:

The attorney general has the power granted in the System of Disqualifications and Incompatibilities of the Single Disciplinary Code to disqualify public officials from employment in accordance with the severity of their offenses. If the offense is severe enough, the disqualification can be for life.

Article 46, the Limit of Sanctions, says:

The general inability will be for 10 to 20 years, and the special inability will not be less than 30 days or more than 12 months. But when the fault is criminal or affects the state's economic patrimony, the ban is for a lifetime.

References:

Ley 734 de 2002. Código Único Disciplinario. Régimen de Inhabilidades e Incompatibilidades. Notas de Vigencia 2011.

Artículo 70, Requisitos, Ley 174 de 2010. Constitución Política de Colombia

Ley 7 de 2007. Del Estatuto Básico del Empleado Público.

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?

64

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Article 127 of the Constitution established, within the prohibitions for public officials, that "employees of the State and its decentralized entities which exercise civil or political authority, employees with administrative positions, or who hold judicial, electoral or control positions, are prohibited from participating in partisan activities or political debates, without prejudice to freely exercise their right to vote." Employees not covered by this prohibition "may participate in such activities in accordance with the conditions established by law."

In practice, the Attorney General's Office investigates allegations of participation in politics by public officials.

Elespectador.com reported Sept. 27, 2011, that the Public Ministry had received more than 100 complaints about the influence of mayors and councilors in political campaigns. The attorney general, Alejandro Ordóñez, announced that there would be investigations to determine disciplinary action.

The chief public prosecutor said the complaints mostly originated in the Atlantic Coast.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 127, Constitución Política de Colombia.

Procuraduría General de la Nación.

www.elespectador.com, Sept. 27, 2011, "Procuraduría Investiga Denuncias de Funcionarios Públicos por Participar en Política."

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:

The Manual of Control About the Recruitment of Public Servants includes these provisions:

Article 1: Every candidate for a public office, employment or contract for management services shall submit to the personnel unit of the corresponding entity, or the agency that replaces it, a completed résumé with this information:

1. Academic training, indicating the years of schooling at different levels of education and degrees and certificates obtained.
2. Work experience, linking each of the jobs or positions held in both public and private sectors, as well as address, telephone number or post office box for verifying the information.
3. Absence of any fact or circumstance that implies an inability or incompatibility to take the job or position and to hold services contract with management.

In theory, standards of transparency and merit are applied in the choice of public officials. However, there have been cases of selection without sufficient merit and disruption of public announcements.

In 2005, under the government of former President Alvaro Uribe, calls were made for employees for the executive branch agencies, such as ministries, state governments and municipalities.

Administrative careers in government had the possibility of providing 60,000 posts. But the contest to fill them, overseen by the the National Civil Service Commission, has become the longest in the administrative history of Colombia.

The process is now at the stage of publishing eligibility lists. And it's likely to be suspended again because of draft legislation that would in effect disqualify those candidates who have been contesting for more than six years, and "stick" in their position officials who are currently serving.

References:

Noticias Soy Periodista
"Concursos de Méritos a la Palestra Pública"
www.soyperiodista.com

WordPress

"Senador Luis Carlos Avellaneda, Ponente del Acto Legislativo 15 de 2010 (empleados provisionales), Presentó Ponencia Positiva a la Comisión Primera de Senado"
<http://provisionales.wordpress.com>

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1, Manual de Control Sobre la Contratación de los Servidores Públicos.

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:

In 2009, the attorney general, Alejandro Ordonez, reported that more than 4 billion pesos had been lost in the past 15 years in the hands of corrupt officials.

The director of public prosecutions stated that this looting of state coffers was being investigated across the country, and involved about 40 000 civil servants.

The attorney stated that all 32 governorates in the country had disciplinary proceedings going forward for the same offense.

He revealed that his organization received more than a thousand complaints a month, most of them for corruption, and that as of Sept. 1, 2009, there were 37,533 disciplinary proceedings, involving 48,766 people, with more than 30 governors, 818 mayors and 327 municipal councils investigated.

He said that a survey conducted in 2006 by Confecamaras found that 84.4 percent of employers refrained from participating in contracting with the state because they believed that competition was not fair, that there was politicization in the hiring process and that there were unofficial payments. Ninety-one percent felt that bribery was present in the course of the exercise of their business.

Today, despite efforts by the new government, authorities warn that campaigning politicians and public officials are using the name and benefits of the government-support program Families in Action to manipulate voters, such as threatening to cut off benefits. The attorney general and Social Action research revealed 193 complaints of such pressure. The attorney general has received nearly 100 complaints of public officials using the Families in Action program to pressure voters.

It is expected that the implementation of the new Anti-Corruption Statute will bring significant changes, since it provides valuable tools for combating corruption in sectors such as health and recruitment.

It also states that companies or corporations that have financed political campaigns for “president of the republic, to the governors or mayors with contributions in excess of 2.5 percent of the maximum amounts to be invested by candidates in election campaigns in each constituency may not enter into contracts with public bodies, including decentralized, at the respective administrative level for which the candidate was elected.”

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Procuraduría General de la Nación.

www.radiosantafe.com, Sept. 16, 2009, and Sept. 27, 2011.

RCN radio, Sept. 27, 2011.

Ministro del Interior, Germán Vargas Lleras.

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:

Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensation, and some job descriptions may not map clearly to pay or responsibilities.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Departamento Administrativo de la Funcion Publica.

Escuela Superior de Administracion Publica.

www.registraduria.gov.co

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:

According to law, all public employees enjoy the social benefits system designated for them.

These include health services in the mandatory health plan, POS, and the features provided by the respective health promoter (EPS).

The general system of social security pensions recognizes the following benefits: old-age pension, disability pension for common risk, survivor pension, funeral help, and refund or replacement compensation, when not meeting the minimum requirements to access the pensions provided.

Pension sanction (exclusively for public servants who have the status of public employees).

Welfare benefits: medical, surgical, therapeutic and pharmaceutical; hospitalization services; dental service; drug supply; auxiliary diagnostic and treatment; prosthetics and orthotics, repair and repair only in cases of deterioration or maladjustment, when rehabilitation approach is recommended; physical and vocational rehabilitation; moving expenses, under normal conditions that are necessary for the provision of these services.

Economic benefits: temporary disability allowance; compensation for permanent partial disability; disability pension originating from accident or occupational disease; survivor pension; funeral aid; repayment of balances or compensation in lieu of disability or death resulting from a work accident or occupational disease.

Social and economic benefits: vacation bonus, Christmas bonus, severance pay, dress shoes, family allowance.

Those with high positions in government and statutory authorities have other benefits that increase their incomes even more.

In December 2011, the directors of the Aqueduct company of Manizales applied the extralegal premium or bonus to 240 employees, including managers. The outlay represented resources of about 2 billion pesos and generated controversy in different sectors of the city .

The director of the Civic Corporation of Caldas, Patricia del Pilar Ruiz, said that though it was legal, at least managers should abstain from receiving the resources representing 48 percent of the total salary of each employee.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Decreto 1919 de 2002, en el Régimen Prestacional de Empleados Públicos de la Rama Ejecutiva del Nivel Territorial

Ministerio de Hacienda y Crédito Público
www.irc.gov.co

Caracol Radio
"Polémica por Pago de Prima Extralegal a Empleados de Agua de Manizales por 2 Mil Millones de Pesos,"
www.caracol.com.co

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 National Planning Department has been directly responsible for the coordination and direction of the reform program of the public administration. The implementing partners have included the Vice President's Office, the Legal Secretariat of the Presidency, the Ministry of Finance and individual ministries as appropriate.

One of the main implementing partners is the Administrative Department of the Civil Service, which is responsible for providing figures on the current composition and history of the state apparatus in relation to public employment.

Citizens can find detailed information on employment in the public sector, including provided versus total jobs, at <https://empleopublico.gov.co>

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Departamento Nacional de Planeación
Programa de Renovación de la Administración Pública
<https://empleopublico.gov.co>

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 non-governmental organization Transparencia por Colombia reviews with high effectiveness every process involving corruption and lobbying that involves the government and any other private or public organization.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Corporación Transparencia por Colombia
www.transparenciacolombia.org.co

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, payments for public employees are made promptly. Isolated cases have been reported, such as that of the municipality El Banco, Magdalena. The case involved the delay and / or breach of payments to city employees and retirees.

Sanctions were imposed by the First Court Municipal Promiscuous in March 2011.

References:

Interview with the President of the Supreme Court in 2009, Judge Augusto Ibañez.

www.elbanco-magdalena.gov.co

Decreto 1919 de 2002, en el Régimen Prestacional de Empleados Públicos de la Rama Ejecutiva del Nivel Territorial.

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:

The Attorney General's Office holds "the preferred exercise" of disciplinary power, according to the Unified Code Disciplinary or Act 734 of 2002.

Attorney General Alejandro Ordonez removed and disqualified for 20 years the former governor of Santander, Hugo Aguilar, after finding that he promoted and collaborated with paramilitaries.

The Attorney General's Office also dismissed and disqualified for 16 years the former minister of agriculture and rural development, Andres Felipe Arias Leiva, for irregularities in the Agro Ingreso Seguro Program. The program was responsible for promoting and encouraging the domestic agricultural sector.

After analyzing information found on computers of the alias Raul Reyes, the attorney general took disciplinary action against Sen. Piedad Cordoba Ruiz Esneda. He was dismissed and "disabled" for 18 years, for having promoted and collaborated with the FARC guerrillas.

These are just some examples of rulings against officials, but not all officials are fully subject to disciplinary measures

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Código Único Disciplinario ó Ley 734 de 2002.

June 23, 2011, <http://laud.udistrital.edu.co>

Sept. 28, 2010, www.elpais.com.co, "Computadores de 'Raúl Reyes,' Prueba Reina Contra Piedad Córdoba"

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?

67

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes

No

Comments:

It is the duty of all public officials, in this case the executive branch headed by the president, to fill out the Single Affidavit of Assets and Income and Private Economic Activities form before taking public office or employment and upon retiring.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995.

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

(Leyes 190 de 1995 y 443 de 1998)

www.inder.gov.co

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:

The law establishes that if a civil servant's interest is involved, she/he has to quit or assign the task to another person.

References:

Artículo 6, Constitución Política de Colombia. Inciso Modificado por el Artículo 1 A.L. de 2004, Artículo 25, Constitución Política de Colombia.

Artículos 126 and 127, Constitución Política de Colombia. Numerals 17 and 25, Artículo 35, Prohibiciones, Ley 734 de 2002.

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:

Colombia's new Anti-Corruption Statute puts an end to the "revolving door."

Public servants may not go to work for companies or private entities with which they had direct contact, or if they supervised an office, for at least two years.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Diario La Republica, June 26, 2011, "El Lío de la 'Puerta Giratoria' en la Economía."

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción <http://wsp.presidencia.gov.co>

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:

Officials have a duty to report irregularities and illegalities and not use privileged or confidential information to benefit themselves or others.

References:

Artículos 129 and 130, Constitución Política de Colombia.

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:

There are no requirements for the independent auditing of asset disclosure forms filed by senior members of the civil service.

It is the duty of all public officials, in this case the senior members of the civil service, to fill out the Affidavit of Assets and Income and Private Economic Activities before taking public office or employment and upon retiring. Furthermore, it must be completed by all public servants the last day of March each year.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1° del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

(Leyes 190 de 1995 y 443 de 1998)

www.inder.gov.co

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:

The new Anti-Corruption Statute is designed to put an end to the “revolving door.”

“Public servants may not go to work . . . with companies or private entities with which they had had direct (contact), or who supervised the occasion of his office, for at least two years,” President Juan Manuel Santos said after the enactment of the new law.

The president also noted another feature of the statute: “No accountant or auditor may invoke the privilege to refrain from reporting acts of corruption that (they) know.”

The president said an entire section is dedicated to providing tools to combat corruption in social security and health, with the objective being to prevent behavior like that currently under investigation.

The statute also severely punishes influence peddling.

“We know that corruption has two prongs: the official and the particular. That is the reason for the exemplary punishment of private influence peddling,” Santos said.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción

<http://wsp.presidencia.gov.co>

www.semana.com, April 10, 2011, “La Puerta Giratoria.”

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:

The Anti-Corruption Statute regulates lobbying activity with the creation of a National Commission for Moralization; substantial changes in the rules on disciplinary processes; redesign of the functions of the anti-corruption czar; elimination of benefits such as suspended sentences, probation or home detention for those convicted of crimes against public administration; installation of a National Citizens Commission for the Fight Against Corruption; and changes in the Contracting Statute to prevent government contracts from becoming sources of acts that injure public morality. It also establishes that there will be no extension of time or money for public works concessions.

However, there are still cases like that of the strong guild firework manufacturers who were able to get Congress to dismiss a draft law seeking a total ban on the manufacture and sale of fireworks.

References:

Periódico El Heraldó
"No Prosperó Iniciativa para Prohibir la Pólvora"
www.elheraldo.co

La Silla Vacía
"Esta es la Cara Visible del Lobby"
www.lasillavacia.com

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción.

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:

There has been improvement in terms of rules to prevent conflicts of interest in recent years. However, there is still a perception that public officials participate in and influence policy decisions that may involve their interests.

All public servants must be declared unable to act on a subject when they have direct and particular interest in its regulation, management, control or decision making, or do their spouses or some of their relatives within the fourth degree of consanguinity, affinity two or first civil, or their partner or partners of fact or law

The Attorney General's Office filed charges against Francisco Rojas Birry, ombudsman of Bogotá, for having committed the disciplinary offense of alleged conflict of interest with the firm DMG.

References:

Revista Semana
"Rojas Birry Debió Declararse Impedido para Intervenir DMG: Procuraduría"
www.semana.com

Contraloría General de la Nación
www.contraloriagen.gov.co

Artículo 40. Act 734 de 2002. Constitución Política de Colombia.

Ley 610 de 2000. Capítulo II: Impedimentos y Recusaciones.

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:

All public officials must fill out the form called the Single Affidavit of Assets and Income and Private Economic Activities before they take public office or employment and when they retire. This affidavit is important in an investigation of suspected illicit enrichment. The declaration will be audited by the control entity that initiates investigations of irregularities.

Victor Ernesto Polania Vanegas, the former mayor of Palermo, Huila, was sentenced to six years and eight months in prison, and the same number of years of disqualification from public office. In addition, the former mayor must pay a penalty of 116,702,000 pesos.

The sentence was imposed by the High Court after it received an analysis of evidence from representatives of the Public Ministry and the Prosecutor's Office. The court noted the disparity between what was stated in the asset disclosure form and the property actually owned by the defendant and relatives.

References:

Diario del Huila
"Pujacho' Regresa a la Cárcel por Enriquecimiento Ilícito"
www.diariodelhuila.com

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

Artículo 10 del Decreto 2150 de 1995

Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

(Leyes 190 de 1995 y 443 de 1998)

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?

56

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes

No

Comments:

Colombia has no specific legal provision for citizen access to the financial records of senior civil servants.

The asset disclosure forms are available only to the General Attorney's Office, the supervisors of personnel offices in each entity and the National Registry Office. Access to this information is reserved because of safety regulations.

However, it is possible to obtain it. The rights to privacy and good name have been enshrined as fundamental rights of human beings. However, for reasons of public interest and social order, the right to privacy cannot be considered absolute. So the historical evolution of Habeas Data in the Colombian experience begins with a strong protectionist sense toward privacy, progressing toward a system that balances privacy's protection with the freedom of information.

Taking into consideration Article 17 of Law 812 of 2003 titled, "The Obligation of the Servers and Public Entities to Provide Information," citizens can access the affidavit of assets and income as long as they can justify the legality and the good intention of their requests.

References:

Derecho de Petición, Artículo 23, Constitución Política de Colombia.

Artículo 74, Del Derecho de Petición de Informaciones.

Artículo 17, Ley 812 de 2003. Obligación de Suministrar Información.

Resolución N° 734/2007. Constitución Política de Colombia.

Ley 25.188. Constitución Política de Colombia

Leyes 190 de 1995 y 443 de 1998. Constitución Política de Colombia.

Universidad de Cartagena

"Eficacia del Derecho de Petición en Colombia Como Habeas Data"

<http://unicartagena.academia.edu>

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

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.

100 | 75 | 50 | 25 | 0

Comments:

Information on the finances of senators can be found under “Transparency” on the official Senate website. Information about Congress can be found at:
www.congresovisible.org

One may obtain information on executive branch officials through the mechanism of the “right to request,” which is to be answered within 15 working days.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

www.congresovisible.org

www.senado.gov.co/transparencia

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.

100 | 75 | 50 | 25 | 0

Comments:

Under “Transparency” on the official Senate website is information free of cost on the finances of the senators. Financial

information about congressmen and ministers can be found at:
www.congresovisible.org

Financial information about executive branch officials may be obtained free of charge through the “right to request” mechanism, which is to be answered within 15 working days.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

www.congresovisible.org

Senado de la República
www.senado.gov.co/transparencia

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 NGOs. 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 NGOs 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:

Under “Transparency” on the official Senate website is high-quality information on the finances of the senators. This information about members of Congress can be found at:
www.congresovisible.org

Because the “right to petition” does not always bring an affirmative answer, it is difficult to know whether information on executive branch officials will be forthcoming and whether it will be good.

References:

Interview with the president of the Supreme Court in 2009, Judge Augusto Ibañez.

Artículo 1º del Decreto 736 de 1996.

Corte de Cuentas Establecido en el Decreto 2232 de 1995.

www.congresovisible.org

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.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

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:

A new paragraph in Article 48 of Act 734 of 2002 will read:

"Article 48. Serious offenses. Serious offenses are the following:

Without prejudice to the adoption of measures under the Act 1010 of 2006, commit, directly or indirectly, on the occasion of his duties or the exercise of overstepping them, arbitrary and unjustified act against another public servant who has denounced acts of corruption ".

References:

Ministerio de Interior y Justicia
www.mij.gov.co/

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción

Artículo 48, Ley 734 de 2002.

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:

The Attorney General's Office revealed in October 2011 that it was investigating 120 reports of political violence against mayors, governors and other officials in the country and announced that it would intensify the protection of the most threatened.

Despite such efforts to protect officials, so far in 2011 there had been 21 killings, 8 attacks, 6 kidnappings and 2 reported cases of extortion.

The new Anti-Corruption Statute decrees that an office shall immediately suspend a public servant indicted for an offense against the public administration. A public servant who reports corruption is to be protected.

A new paragraph to Article 48 of Act 734 of 2002 reads:

"Article 48. Serious offenses. Serious offenses are the following:

Without prejudice to the adoption of measures under the Act 1010 of 2006, commit, directly or indirectly, on the occasion of his duties or the exercise of overstepping them, arbitrary and unjustified act against another public servant who has denounced acts of corruption ".

References:

Ministerio de Interior y Justicia
www.mij.gov.co/

Caracol Radio/Radio Munera Eastman
"Fiscalía Investiga 120 Denuncias de Violencia Contra Funcionarios Públicos"
www.radiomunera.com

Caracol Radio
"Defensoría Reclama Protección para Funcionarios y Líderes Sociales Amenazados en un Panfleto"
www.caracol.com.co

Dirección Nacional del Cuerpo Técnico de Investigación
www.fiscalia.gov.co

Ley 1474 de 2011. Nuevo Estatuto Anticorrupción

Artículo 48, Ley 734 de 2002

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:

No specific law protects whistle-blowers in the private sector. Protection programs are based on different laws, such as Act 104 of 1993, which created the program to protect victims of human rights violations. Today this program is regulated by Law 418 of 1997 and its latest extension, Law 1106 of 2006. This witness protection programs are often related to human rights violations rather than corruption cases.

References:

Ley 104 de 1993, Protección a las Víctimas de Violaciones de Derechos Humanos.

Leyes 418 de 1997. Constitución Política de Colombia.

Ley 1106 de 2006. Constitución Política de Colombia.

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:

Colombia has legally established, under the direction and coordination of the Attorney General's Office, a program in which witnesses are granted full protection and social assistance, as well as their relatives to the fourth degree of consanguinity, second of legal relationship first civil and spouse or permanent partner when they are at risk of aggression or their lives are in danger.

However, according Transparencia por Colombia and GTZ studies, the program is not effectively covering the potential complainants or witnesses, or they do not realize it is. The report on Colombia's implementation of the Inter-American Convention against Corruption gives these results of the survey "Governance and Anticorruption":

"82 percent of public officials argued as the main reason for not reporting, the fear of retaliation for those who denounced; the second reason for not reporting was the perception of the failure of public institutions to carry out investigations and punish those responsible. . . ."

Protection programs are based on different laws, such as Act 104 of 1993, which created the program to protect victims of human rights violations. Today this program is regulated by Law 418 of 1997 and its latest extension, the Law 1106 of 2006. This witness protection programs are often related to human rights violations rather than corruption cases.

References:

Transparencia por Colombia
Agencia de Cooperación Técnica Alemana — GTZ

“La Protección de las Víctimas en la Ley”
<http://hechosdelcallejon.pnudcolombia.org>

Ley 104 de 1993, Protección a las Víctimas de Violaciones de Derechos Humanos.

Leyes 418 de 1997. Constitución Política de Colombia.

Ley 1106 de 2006. Constitución Política de Colombia.

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.

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

49a. 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:

The primary sanctioning and investigating agencies are:

Attorney General’s Office:

This is the place civil servants can go when the facts they know are related to the possible commission of crimes. These include the improper use of state assets, abuse of a position to induce someone to offer money or other object to slow down or make a decision, cheating on the conclusion of a contract, or abuse of authority and / or misuse of information.

The Attorney General’s Office is also responsible for disciplinary action against public officials such as for failure to perform duties; inefficient execution of development plans and budgets; misuse of state assets, resources and information made available for additional benefits to their salary; breach of the requirements to hold the office; parochial interests; and acting with partiality.

Comptroller General’s Office:

This office is responsible for issuing decisions on fiscal responsibility when it finds irregular handling of public resources.

References:

Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha Contra la Corrupción

www.anticorruccion.gov.co

Fiscalía General de la Nación

Procuraduría General de la Nación.

Contraloría General de la Nación.

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The presidential program for combating corruption responds to the presidential commitment to attack the structural causes of corruption in the Colombian government. It was established by Decree 2405 of Nov. 30, 1998, which from the restructuring of the Administrative Department of the Presidency of the Republic, was replaced by Decree 127 of Jan. 19, 2001, and later modified by Decree 519 of March 5, 2003. The latest decree was to create the Departments and Programs of the Presidential Administrative Department.

The president tasked the vice president with designing and implementing a specific anti-corruption strategy.

The presidential program to fight corruption is the responsible organization within the Office of the President to coordinate the implementation of government policies aimed at curbing corruption in public administration.

References:

Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha Contra la Corrupción

www.anticorruccion.gov.co

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.

100 | 75 | 50 | 25 | 0

Comments:

Since its inception in 2003, the Presidential Program of Modernization, Efficiency, Transparency and Fight Against Corruption has received approximately 18 million pesos in resources. These resources come from the general budget of the nation.

References:

Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha Contra la Corrupción
www.anticorruccion.gov.co

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:

The Presidential Program of Modernization, Efficiency, Transparency and Fight Against Corruption receives complaints and delves into them. It keeps track of an entity as the organization resolves the situation. The presidential program cannot participate in the way the complaint is resolved.

References:

Interview with Miguel Francisco Prado, director of the Presidential Program of Modernization, Efficiency, Transparency and Fight Against Corruption.

www.elpais.com.co, April 2, 2011, "La Corrupción le ha Cogido Ventaja al País."

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:

The Presidential Program of Modernization, Efficiency, Transparency and Fight Against Corruption receives complaints and delves into them. When evidence is sufficient, it begins to work with an entity on a complaint. It keeps track of how the entity resolves the situation.

However, the effectiveness of anti-corruption legislation and the efforts of the entities are threatened by the absence of a integrated state policy to prevent and fight corruption. According to Transparency for Colombia, the control and investigation agencies do not have the tools to implement the Anti-Corruption Statute, enacted this year by the government.

The government has not yet expanded the staff in institutions such as the Attorney General's Office and the Comptroller's Office to monitor public and private companies. both in Bogota and in the regions.

References:

Interview with Miguel Francisco Prado, director of the Presidential Program of Modernization, Efficiency, Transparency and Fight Against Corruption.

Transparencia por Colombia

"Prevención, Investigación y Sanción: Claves para la Construcción de una Política Integral de Lucha Contra la Corrupción"
www.transparenciacolombia.org.co

Caracol Radio

"Sistema Penal no Sirve para Luchar Contra Corrupción: Transparencia por Colombia"
www.caracol.com.co

Diario El País, April 2, 2011,

"La Corrupción le ha Cogido Ventaja al País"
www.elpais.com.co

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.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

73

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Officials working with the government and the state may not bring personal interests to bear on the positions they hold, according to the Guiding Principles on Disciplinary Law of the Single Disciplinary Code.

References:

Codigo Único Disciplinario.

Articulos 55 and 142, Ley 190 de 1995.

Articulo 3, Ley 1474 de 2011.

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:

Some studies suggest that the public officials assigned to the areas of recruitment are perceived as poorly trained and ignorant of the rules applicable to their duties.

Act 734 of 2002 (Single Disciplinary Code) included provisions on the implementation of disciplinary control offices, and periodically, the Attorney General's Office issues guidelines for proper management of the units or offices of disciplinary control. Something similar happens with the areas of internal management control, which are supported by the Administrative Department of Civil Service.

In April 2011, civil servants received free training on government procurement issues during the first state fair Expoestatal. The main objective was to update officials on legislation, optimal management, efficiency and public resources.

However, training of public procurement officials is still sporadic and voluntary.

References:

Ley 1150 de 2007. Constitución Política de Colombia.

Artículo 734 de 2002. Código Disciplinario Único.

Directiva No.10 del 20 de Agosto de 2002 — Programa de Renovación de la Administración Pública.

Directiva No.12 de 2002 — Lucha Contra la Corrupción en la Contratación Estatal

Portal Único de Contratación
www.contratos.gov.co

“Contratación Estatal: Transparencia y Eficiencia”
www.transparenciacolombia.org.co

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:

Colombia has multiple reporting mechanisms and institutions empowered to investigate and punish irregularities regarding procurement. But from the existing information on registration and processing of complaints, one does not deduce the effectiveness, timeliness and/or productivity of these mechanisms and institutions to sanction corrupt practices.

In the private sector, there is apprehension about reporting corruption. This is mainly because of the fear of reprisal and the distrust of authorities responsible for investigating complaints.

To aid individuals, it is suggested that control organs of special channels be created to receive reports of corruption in procurement and to implement systems to track a claim and / or a process.

Likewise, it is important to enlist the private sector and civil society as leading players in the fight against corruption. It is necessary to explore new ways of working together through the creation of centers or alert reliable channels for receiving complaints, helping process the protests, documenting complaints and alerting the competent organs of the irregularities and acts of corruption that occur in business relationships with the state.

Such initiatives could help reduce the fear of entrepreneur reprisal or leaks.

In relation to judicial decisions, sanctions should be imposed on contractors who engage in corrupt practices. This would help allay the perception of state indifference to corruption promoted by individuals.

References:

Transparencia por Colombia
"Evaluación de la Integridad y Transparencia del Sistema de Adquisiciones Públicas de Colombia Resumen y Recomendaciones."
www.transparenciacolombia.org.co

Contratación Estatal
www.contratacionestatal.com

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:

It is the duty of the nation's comptroller general to require reports on the fiscal management of public employees of any order or any person or public or private entity that administers the funds or assets of the nation.

Also, all public officials must fill out the Affidavit of Assets and Income and Private Economic Activities before they take public office or employment and when they retire.

However, the Comptroller General's Office does not have sufficient infrastructure for a truly effective centralized system to constantly monitor each procurement expenditure.

References:

Artículo 10 del Decreto 2150 de 1995. Constitución Política de Colombia.

Ley 190 de 1995. Constitución Política de Colombia. Formato Unico Declaracion Juramentada de Bienes y Rentas y Actividad Economica Privada Persona Natural

Funciones del Contralor
www.eleccionvisible.com

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:

The government issued Decree 3485, which regulates the electronic procurement processes for the advancement of contracts through “transactional stage Secop I.” This provides the possibility for contracting authorities and bidders to develop contract performance through electronic means.

References:

Portal Unico de Contratación
www.contratos.gov.co

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:

The Principle of Concurrency imposed on the administration measures for the development of specifications to enable access and effective participation of all potential participants and to promote competition, as well as the greatest number of possible deals.

References:

Contratacion Estatal — Principio de Concurrency: Garantiza la Libre Competencia

Ley 80 de 1993, Artículo 3; Ley 1150 de 2007, Artículo 5; Decreto 2474 de 2008, Artículo 12.

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:

Within the procedure, there is the lawsuit or “Acción de Tutela” if the rights of the bidders are violated.

References:

Inciso 6.3, Artículo 6, Ley 1150 de 2007. Numeral 3, Artículo 5, Ley 80 de 1993. Constitución Política de Colombia

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:

There is the procedure of lawsuit or “Acción de Tutela” if the rights of bidders are violated.

References:

Inciso 6.3, Artículo 6, Ley 1150 de 2007. Numeral 3, Artículo 5, Ley 80 de 1993. Constitución Política de Colombia

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:

The new Anti-Corruption Statute defines in Article 1 those who may not engage in contracts:

They are individuals who have been held liable in court for committing crimes against the public administration for which the penalty is deprivation of freedom or affecting the assets of the state or who have been convicted of offenses related to membership, promotion or financing of illegal groups, crimes against humanity, drug trafficking in Colombia or abroad, or transnational bribery.

This inability to engage in contracts extends to companies that are partners with such people, their parents and their subordinate companies, except open stock.

The inability applies for 20 years.

References:

Nuevo Estatuto Anticorrupción.
Capítulo I. Medidas Administrativas para la Lucha Contra la Corrupción.

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:

The new Anti-Corruption Statute stipulates in Article 1 who is not allowed to engage in contracts:

They are individuals who have been held liable in court for committing crimes against the public administration for which the penalty is deprivation of freedom or affecting the assets of the State or who have been convicted of offenses related to membership, promotion or financing of Illegal groups; crimes against humanity; drug trafficking in Colombia or abroad; or transnational bribery.

This inability to contract extends to companies that are partners of such people, their parents and their subordinate companies, except open stock.

The inability applies for 20 years.

Because of the serious cases of repeated noncompliance of contractors, anti-corruption authorities created a "red notice" with the names of companies sanctioned for failing to meet commitments. The circular was created through a decree, which also sets criteria for verification of proponents and their accreditation in the National Register of Proposers. Each state agency must report to the Chamber of Commerce fines and penalties for contractors.

This information is to be recorded in a database on the website of the Single Business Registration (UCR) and the Presidential Anti-Corruption Program. Information will be updated every month. "The objective is to make visible contractors who are defaulted, irresponsible and undesirable within the state," Oscar Ortiz, anti-corruption czar, said in 2010. Though the list does not imply a criminal or administrative process, he said, it does serve as a criterion for choosing who gets lucrative contracts. "The parties may use that information as a criterion for not including them in selection processes, subtract points for those with fines and sanctions and as a value judgment . . ."

References:

www.eltiempo.com, June 24, 2010, "'Circular Roja' a Contratistas Corruptos; Figuran los Nombres de Incumplidos y de Sancionados."

Nuevo Estatuto Anticorrupción.
Capitulo I. Medidas Administrativas para la Lucha Contra la Corrupción.

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?

83

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

If citizens feel that their rights have been violated, they have the right to appeal and access to public procurement regulations.

References:

Artículo 65, Ley 190 de 1995. Constitución Política de Colombia.

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:

According to law, information on public contracts is disclosed in The Unified Government Procurement Journal and on the Single Procurement Portal.

References:

Artículos 59 and 61, Ley 190 de 1995. Constitución Política de Colombia.

Portal Unico de Contratación
www.contratos.gov.co

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.

Comments:

Colombian law encourages easy access to procurement information by means of wide circulation and availability. Information provided by state agencies is centralized through the Single Portal Recruitment and Information System for Government Contracts — SICE. The publication of relevant and complete information is also required. However, neither of the two systems has achieved the goals set for the use and registration of information by public contracting entities.

An analysis of Colombia's situation by Transparencia por Colombia indicates that the country's weaknesses in contractual disclosure of information occur primarily in the performance of entities rather than in regulatory gaps. The report recommends that the Colombian government promote measures that help improve the management units responsible for procurement. It should provide them with the tools to ensure proper management of technology information and communications and the correct and complete publication of the contractual information in the media willing to do so, the report says.

It suggests especially promoting the ongoing collaboration between an intersectoral commission on public contracting and the areas of recruitment in institutions, particularly those at the territorial level that have greater difficulty with knowledge and connectivity and are also subject to greater pressure from local political interests, both legal and illegal.

References:

Transparencia por Colombia

"Evaluación de la Integridad y Transparencia del Sistema de Adquisiciones Públicas de Colombia Resumen y Recomendaciones."

www.transparenciacolombia.org.co

Portal Unico de Contratación

www.contratos.gov.co

Sistema de Información para la Vigilancia de la Contratación Estatal. SICE

www.sice-cgr.gov.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. 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.

Comments:

Colombian law encourages that procurement information be easily accessible by means of wide circulation and availability.

References:

Portal Unico de Contratación
www.contratos.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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

On the Single Procurement Portal, one can find all the information regarding the contractual process of state entities that are registered in the portal.

The main objective of the portal is to promote transparency, efficiency and use of technologies in the Internet publication of public procurement for the benefit of employers, public agencies and the general public, as well as ways to improve access to information about state purchases and contracts.

References:

Portal Unico de Contratación
www.contratos.gov.co

Sistema de Información para la Vigilancia de la Contratación Estatal. SICE
www.sice-cgr.gov.co/

Nacion Visible
"Que es la Contratacion Publica en Colombia"
www.nacionvisible.org

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:

On the Single Procurement Portal, one can find all the information regarding the contractual process of state entities registered on the portal.

References:

Portal Unico de Contratación
www.contratos.gov.co

Sistema de Información para la Vigilancia de la Contratación Estatal. SICE
www.sice-cgr.gov.co/

Nacion Visible
"Que es la Contratacion Publica en Colombia"
www.nacionvisible.org

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

It depends if a business has the proper authorization of the government and Congress. Any businesses is eligible if its social reason is in accordance with the contract tender.

References:

Numeral 11, Artículo 73, Ley 190 de 1995. Numerals 2-4, Artículo 2, Ley 1150 de 2007. Constitución Política de Colombia.

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:

The anti-corruption and transparency law says that when conflicts of interest arise the National Citizens Commission for the Fight Against Corruption controls and defines irregularities.

References:

Artículo 68 (d), Ley 1474 de 2011. Constitución Política de Colombia.

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:

Helena Garcia-Herreros Villamizar, in an article appearing on polodemocratico.net in June 2011, says that there have been many cases in which studies show investment banking conflicts of interest, made evident when public companies are undervalued for the new owner.

She cited the planned privatization of the telecom operator ETB and quoted Cesar Giraldo: "The recommendation came from the partner out of a study commissioned by ETB to Banco Santander, a Spanish bank that has owned part of the capital and one of

the two candidates for a strategic partner.”

He added: “There is no logical relation between diagnosis (economies of scale) and conclusion (financial need), especially when the company for eight years has been qualified in financial markets as triple A, it has a highly positive cash flow, and pension liabilities are well anchored.”

This rating was been confirmed by a report by Fitch Ratings.

References:

Helena García-Herreros Villamizar, “El Embeleco Privatizador de la ETB.”
www.polodemocratico.net

Informe de Calificación a Empresa de Telecomunicaciones de Bogotá ETB S.A. E.S.P.

Fitch Ratings Colombia S.A.
www.fitchratings.com.co

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?

90

54a. In law, citizens can access privatization regulations.

Yes

No

Comments:

Citizens may access privatization regulations if they think some of those regulations have been violated. The comptroller general does the investigation on disclosure, or to allow this access.

References:

Artículo 268 (a,b), Constitución Política de Colombia.

Artículo 2 (e), Ley 1150 de 2007. Constitución Política de Colombia.

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 for advertising privatizations, although major processes are known through the media.

The government presents yearly privatization plans, which are included in the general budget. Yet, detailed reports, lists or privatization plans are not easily available.

References:

Presupuesto colombia 2011.
www.colombia.com

www.dnp.gov.co

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:

Yes, it is. Because what the government is able to privatize belongs to the entire nation.

References:

Articulos 1 y 2, Ley 226 de 1995. Constitución Política de Colombia.

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:

The official website of the National Planning Department enables citizens to find information on private investment in the public sector.

References:

Departamento Nacional de Planeación
www.dnp.gov.co

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:

On the website of the National Planning Department, reports are free for citizens who need to find information on private investment in the public sector.

References:

Departamento Nacional de Planeación
www.dnp.gov.co

Centro de Investigación para la Sociedad de la Información
"El Derecho de Acceso a la Información Pública"
www.imaginar.org/

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

Yes, the ombudsman works and reports directly to the attorney general. His/her functions are to publicize human rights and defend them.

References:

Artículo 282, Constitución Política de Colombia.

Defensoría del Pueblo
www.defensoria.org.co

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.

56. Is the national ombudsman effective?

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

The attorney general and the ombudsman have no interference from the government.

References:

Artículo 284, Constitución Política de Colombia, Numeral 3 y 9.

Defensoría del Pueblo
www.defensoria.org.co

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:

The ombudsmen are autonomous in the exercise of their functions. Most of the governing body and regional advocates come from previous administrations; public defenders come from years ago. Other officials are permanent in the exercise of their office. The ombudsmen do not receive guidance from political parties, and their public positions may or may not coincide with those of the government.

However, there was a strongly worded letter that the public defenders' union sent to public defender Volmar Perez, the ombudsman, asking him to act with more responsibility and assume the defense of human rights with greater commitment. The president of the National Association of Public Defenders, Maria Eva Villate, called on Volmar Perez, as head of the institution, to improve the quality of their service and take a position independent of government policies.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados
Ley del Defensor del Pueblo
www.acnur.org

Revista Semana
"El Defensor del Pueblo Debe ser Independiente del Ejecutivo"
www.semana.com

Constitución Política de Colombia Artículos 118 y 281. Artículo 1, de la Ley 24 de 1992.

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:

The ombudsman may not be removed from office except by trial, and criminal prosecution under Supreme Court judgment. But if the ombudsman is negligent in duty, or has a permanent disability, he/she can be removed at any time by joint provision of Representatives, after notice and hearing. Anyone who has been removed from the employment of the ombudsman can be reappointed to that office.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados
Ley del Defensor del Pueblo
www.acnur.org

Revista Semana
"El Defensor del Pueblo Debe ser Independiente del Ejecutivo"
www.semana.com

Bibliotecas Virtuales
De la Contraloría General de la República
www.bibliotecasvirtuales.com

Constitución Política de Colombia Artículos 235.4 y 281.

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 has a team of professionals that is part of the mission area and a full-time administrative staff.

However, new responsibilities assigned in the recently enacted Victims Act.requires extending the staffing.

Simon Gaviria Muñoz, director of the Liberal Party and current president of the Chamber of Representatives, called the current ombudsman, Volmar Perez, a political enemy of the victims law promoted by the government. He asked the head of state, Juan Manuel Santos, not to include Volmar Perez in the short list of candidates for ombudsman, which was to go to the lawmakers for a vote.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Cadena de Radio Melodía
“Ley de Víctimas y de Tierras, Requiere un Defensor del Pueblo Más Comprometido: Simón Gaviria”
www.cadenamelodia.com

Artículo 35 de la Ley 24 y 134 y siguientes de la Ley 201 de 1995. Constitución Política de Colombia.

Act 1424 de 2010 y Act 1448 de 2011. Constitución Política de Colombia.

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:

Sandra Morelli, the nation’s comptroller general, reported in November 2010 that there were almost 7,000 contracts outside plant payroll of several entities. She also said that in the Ombudsman’s Office were 2,207 contracts to provide services in a parallel payroll.

The comptroller said she had to check if these contracts represented patrimonial detriment to initiate prosecutions.

On the other hand, there just emerged in the Congress, with the full support of the high courts, a movement to save the Ombudsman’s Office that, according to reports, virtually disappeared more than 10 years ... and became simply an employment

agency.

References:

Ministerio de Educación Nacional
"Contralora Denuncia Nóminas Paralelas en el Inpec, la Defensoría del Pueblo y dos Universidades"
www.mineduacion.gov.co

Noticiero CMI
"El Defensor del Pueblo ya Resolvió su Encrucijada en el Alma y Está Buscando su Tercera Reelección"
www.cmi.com.co

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:

The ombudsman's administrative and budgetary autonomy means that the expenditures required for the office's operation are set out in the national budget allocated each year by the Colombian government.

Some projects being conducted by the Ombudsman's Office have been receiving contributions from international cooperation and support mentoring programs for displaced victims of violence and prevention of human rights violations.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Georgetown University
"Atribuciones del Defensor del Pueblo"
<http://pdba.georgetown.edu>

Artículo 1 de la Ley 24 de 1992. Constitución Política de Colombia.

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 Ombudsman's Office publishes reports and resolutions through which it exerts moral magistracy. It also issues press releases, investigates the degree of realization of fundamental rights and identifies and evaluates risk situations for the civilian population in the context of armed conflict prevention. It reports to the authorities on the probable occurrence of massive violations of human rights through the warning system SAT.

As part of its constitutional and legal mandate, the office presents an annual report to Congress on the performance of its duties and responsibilities. This report is public. The office also presents an annual report of accountability to society.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Universidad del Valle
Informe del Defensor del Pueblo al Congreso de la República
<http://opac.univalle.edu.co>

Constitución Política de Colombia, Artículo 282, y Ley 24 de 1992.

Defensoría del Pueblo
www.defensoria.org.co

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 ombudsman investigates situations that pose a threat of infringement or violation of human rights without criminal or

disciplinary scope, including fundamental or collective.

These investigations are addressed in ombudsman reports or resolutions containing recommendations to the relevant government agencies. In some cases, they are used to help develop the tasks of the government's research bodies.

An example is the criminal complaint that the Ombudsman's Office introduced with Prosecutor General Viviane Morales against Brig. Gen. Gustavo Ricaurte, Inpec director, for alleged acts of torture in jail.

Furthermore, the ombudsman reported that Alejandro Ordóñez, the attorney general, and Alvaro Faccini, president of the Medical Ethics Tribunal, were advised of the situation in order to investigate the behavior of medical personnel assigned to the facility.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Movimiento Nacional de Víctimas de Crímenes de Estado
"Defensoría del Pueblo Presenta Denuncia Penal en Contra del Director del Inpec por Tortura"
www.movimientodevictimas.org

Defensoria del Pueblo
www.defensoria.org.co

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.

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

Comments:

The ombudsman cannot impose sanctions. For acts that may constitute a criminal offense or a disciplinary offense, the ombudsman sends the information to the authorities.

An example is the criminal complaint that the Ombudsman's Office introduced with prosecutor Viviane Morales against Brig. Gen. Gustavo Ricaurte, Inpec director, for alleged acts of torture in jail.

Furthermore, the ombudsman reported that Alejandro Ordóñez, the attorney general, and Alvaro Faccini, president of the Medical Ethics Tribunal, were advised of the situation in order to investigate the behavior of medical personnel assigned to the facility.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Constitución Política de Colombia, Artículo 282, y Ley 24 de 1992.

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).

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

Comments:

Sometimes the authorities take action on the reports and recommendations of the ombudsman. Sometimes, they are embraced in part.

The ombudsman, Volmar Perez, asked the attorney general to conduct investigations and the authorities to protect the Indians returned to their places of origin. The indigenous Indians sometimes felt endangered by the clashes between guerrillas and paramilitary forces.

Volmar Perez said the attorney general should investigate the death of indigenous villager Alderson Dagua Yunda, 31, victim of several gunshots who appeared to be dressed in a camouflage suit, during violence in Los Chorros village in the municipality of Caloto in the department of Cauca.

The ombudsman said there had been several reports of risk and early warning of attacks and killings of community leaders, along with the presence of armed groups in the area.

References:

Interview with the ombudsman of Colombia.

Caracol Radio

“La Defensoría del Pueblo Pide a la Fiscalía que se Investigue Asesinato de Comunero Indígena”
www.caracol.com.co

Campaña Nacional e Internacional por el Derecho a Defender los Derechos Humanos en Colombia
<http://ddhhcolombia.org.co/>

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 Ombudsman's Office through the Office of Examination and Processing of Complaints handles complaints, petitions and applications according to the procedure regulated by Law 24 of 1992 and the General Instructions for Comprehensive Care System.

All requests are to be answered within 15 days. If is not possible to meet this time frame, management must communicate the reasons and set a date, to be determined.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Agencia de la ONU para los Refugiados, or ACNUR
Defensoria del Pueblo
www.acnur.org

Ley 24 de 1992 y el Instructivo General del Sistema de Atención Integral.

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?

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

This information is available when the ombudsman reports to Congress on the number of lawsuits and tutelas, or quickly resolved writs for the satisfaction of fundamental rights.

References:

Funciones del Defensor del Pueblo
Defensoría del Pueblo.
www.defensoria.org.co

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:

Immediately. Reports published by the ombudsman are public and generally accessible. Everyone can access the website of the institution without restrictions of time or content.

References:

Interview with the ombudsman of Colombia.

Fundación para la Libertad de Prensa
"La Calidad de la Información, Atendiendo a las Condiciones de la Respuesta al Derecho de Petición"
www.flip.org.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:

The ombudsman's reports are free for citizens on the official website, and physical publications can be consulted in the library of the Ombudsman's Office at no cost.

References:

Interview with the ombudsman of Colombia.

Fundación para la Libertad de Prensa

"La Calidad de la Información, Atendiendo a las Condiciones de la Respuesta al Derecho de Petición"

www.flip.org.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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The name in Colombia for this job is auditor general of the nation. The auditor general works directly with the comptroller general.

References:

Artículo 274, Constitución Política de Colombia. Decreto 272 de 2000. Funciones Auditoría General de la Nación

www.auditoria.gov.co

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.

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

It is protected from political interference and works independently on budget, contract and administrative issues.

References:

Artículos 1, 5 and 6, Decreto 272 de 2000. Constitución Política de Colombia.

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.

Comments:

The comptroller general may not be removed from office except by trial, and criminal prosecution under Supreme Court judgment. But if the comptroller general is negligent or permanently disabled, he/she may be removed at any time by joint provision of Representatives, after notice and hearing. Anyone who has been removed from the employment of the comptroller general can be reappointed to that office.

References:

Contraloría General de la República
www.contraloriagen.gov.co/

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Bibliotecas Virtuales
 De la Contraloría General de la República
www.bibliotecasvirtuales.com

Constitución Política de Colombia, Artículos 235.4 y 281

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.

Comments:

The comptroller has a team of professionals that is part of the office's mission and a full-time administrative staff.

As part of the strategy to "clean house," the new comptroller general was to produce explanations in January 2012 concerning about 40 current and former comptroller general officials and at least 46 contractors, including Nule Group companies, involved in the process of fiscal responsibility. The testimony concerning alleged irregularities was scheduled for the hearing room of the comptroller general.

References:

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Contraloría General de la Nación
www.contraloriagen.gov.co

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:

Appointments made with the agency's resources are preceded by selection processes that ensure the independence of the office's activities.

Actually, the comptroller is forming a group of 11 experts who have the technological, documentary and forensic tools to attack corruption in public bodies.

The vice comptroller general, Alvaro Navas, said this team would be assigned to the office of Comptroller General Sandra Morelli. Its members possess the skills to do searches, gain access to classified documents and even do transnational operations.

References:

Contraloría General de la Nación
www.contraloriagen.gov.co

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Periódico El País
"Contraloría Crea Grupo Elite para Investigar Corrupción"
www.elpais.com.co

Artículo 35 de la Ley 24 y 134 y siguientes de la Ley 201 de 1995

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:

For 2011, the budget of the comptroller general amounted to 325 billion pesos. Of that, 86.46 percent was for operating expenses and the remainder for investment.

Comptroller Sandra Morelli's request for the creation of 500 positions to strengthen surveillance of royalties provoked discord with the finance minister, Juan Carlos Echeverry, in a debate of the national budget in the fifth joint committees of Congress.

Morelli stated that "The country must know that the comptroller general has a budget of 325 billion pesos, while the attorney general has 900 billion and the prosecutor general 1,600 billion." The comptroller asked for 30 billion more pesos, according to estimates, to strengthen her operation structurally.

"The country and state, the administration and Congress have to decide what they want on fiscal control because the institutions are created to serve, not to appear to serve. And really, with the delegate of Mines and Energy that we have today, I cannot take the challenge of the royalties," she said.

Echeverry countered that "the royalty cannot be used to finance bureaucracy."

"These are resources to implement projects," he said.

References:

Periódico El Mundo
"Chocan Contralora y Minhacienda"
www.elmundo.com

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Contraloría General de la Nación
www.contraloriagen.gov.co

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:

On the official websites of the comptroller general and Congress, citizens have access to accountability processes undertaken by the entity. They can get information on the financial statements, management and internal control.

Also, the Institutional Channel broadcasts live to the public a hearing on the accountability of the Comptroller General's Office.

At the hearing, a presentation is given on the main audit projects managed by the comptroller relating to fiscal control in sectors such as infrastructure, health, mining, royalties, care for victims and reconstruction after a rainy season.

During transmission, journalists ask questions about the management of the comptroller, from their respective regions.

References:

Congreso de la República
www.congresovisible.org/

Contraloría General de la Nación
www.contraloriagen.gov.co

Canal Institucional
 Contraloría General de la República Rinde Cuentas al País Este Lunes
www.institucional.gov.co

Interview with the ombudsman of Colombia.

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.

100 | 75 | 50 | 25 | 0

Comments:

A function of the comptroller is to establish liability arising from financial penalties and collect the amount.

The office is also an advocate with relevant authorities, providing evidence in criminal or disciplinary investigations against those who cause harm to the state. The comptroller may suspend officials during investigations or criminal or disciplinary proceedings.

Criminal and disciplinary processes are carried out by the Justice Department and the Attorney General's Office, respectively.

An example of action by the comptroller was the seizure of goods that Comptroller General Sandra Morelli began against former Minister of Agriculture Andres Felipe Arias. The case involved diversion of resources in the Agricultural Security Income Program. "He has records in our office in the issues of flowers credits, loans to Miky Ramirez Finagro, and advertising issues," Morelli said. "All were resources of Agricultural Security Income."

References:

Periódico El Universal
"Contraloría: Se Inició el Embargo de Bienes a Andrés Felipe Arias"
www.eluniversal.com.co

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Elección Visible
www.eleccionvisible.com

Contraloría General de la Nación
www.contraloriagen.gov.co

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:

The Comptroller General's Office is authorized to review and close accounts and determine the degree of efficiency, effectiveness and economy with which public workers handled the accounts.

It also keeps a record of the public debt of the nation and the territorial entities.

The comptroller general can require reports on the fiscal management from official employees of any order or any person or public or private entity that manages funds or assets of the nation.

On Dec. 30, 2011, the comptroller general began the fiscal trial on the patrimonial detriment, or asset impairment, of 198 billion pesos against the former mayor of Bogotá, Samuel Moreno, and his predecessor, Luis Eduardo Garzon. The case includes the Nule construction group; a former director of the Urban Development Institute, Liliana Pardo; 13 officials; and 59 contractors in the city district.

The action comes in what is sometimes referred to as the "carousel of contracting in Bogota." Comptroller General Sandra Morelli said the former officials have to answer for their alleged responsibility in the infrastructure corruption case.

Morelli said the Prosecutor General's Office had been given all the information that allows for charges.

References:

Radio Santafé
"El Viernes Inicia Juicio Fiscal Contra Samuel Moreno y Lucho Garzón"
www.radiosantafe.com

Blog Colombia Buena
www.colombiabuen.com

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

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?

100

60a. In law, citizens can access reports of the audit agency.

Yes

No

Comments:

On the official websites of the Comptroller General and Congress, citizens have access to accountability processes undertaken by the entity. Information is also posted on financial statements, management and internal control.

Also, the Institutional Channel broadcasts live to the public a hearing on accountability of the Comptroller General's Office.

References:

Artículos 268 y 272, Constitución Política de Colombia.

Ley 42 de 1993

Decreto Ley 1421 de 1993

Acuerdo 16 de 1993

Ley 142 de 1994

Contraloría General de la Nación
www.contraloriagen.gov.co

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:

Immediately. On the official websites of the Comptroller General and Congress, citizens have access to accountability processes undertaken by the entity. Information is posted about financial statements, management and internal control.

Also, the Institutional Channel broadcasts live to the public a hearing on accountability of the Comptroller General's Office.

References:

Congreso de la República
www.congresovisible.org/

Contraloría General de la Nación
www.contraloriagen.gov.co

Canal Institucional
Contraloría General de la República Rinde Cuentas al País Este Lunes
www.institucional.gov.co

Interview with the ombudsman of Colombia.

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:

For free. On the official websites of the Comptroller General and Congress, citizens have access to accountability processes undertaken by the entity. Information is posted about financial statements, management and internal control.

Also, the Institutional Channel broadcasts live to the public a hearing on accountability of the Comptroller General's Office.

References:

Congreso de la República
www.congresovisible.org/

Contraloría General de la Nación
www.contraloriagen.gov.co

Canal Institucional
Contraloría General de la República Rinde Cuentas al País Este Lunes
www.institucional.gov.co

Interview with the ombudsman of Colombia.

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 NGOs. 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 NGOs trying to access this information.

94

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

The tax department is called Dirección de Impuestos y Aduana Nacionales de Colombia, also known as DIAN.

References:

Artículos 4 y 5, Decreto 1071 de 1999. Constitución Política de Colombia.

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.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The National Tax and Customs Office has a team of professionals that is part of the agency's mission and a full-time administrative staff.

The image of the entity has been heavily tarnished by recent allegations against numerous officials. Illegal VAT refunds, quantified at more than \$ 3 billion, were exposed in the Administration of Taxes and Customs, DIAN. Officials and former officials of the entity were allegedly involved.

In November 2011, the government announced the package of decrees that orders the profound restructuring of the state to combat corruption and restore efficiency. It will create new organisms, including one to monitor the DIAN.

The General Inspection of Taxes will be an entity under the Ministry of Finance whose function will be internal surveillance of the DIAN, to monitor the actions of officials of that entity

References:

Noticiero RCN

"El Gobierno Presentará un Paquete de Medidas que Ordena un Revolucion Estatal"

www.canalrcnmsn.com

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Dirección de Impuestos y Aduanas Nacionales

www.dian.gov.co

www.elpais.com.co, July 13, 2011, "Fraude en la Dian se Detectó Hace Seis Meses"

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 National Tax and Customs Office, or DIAN, is organized as a Special Administrative Unit of the National Order. It has a highly technical and specialized character, with legal, administrative and budgetary autonomy and its own assets, under the Ministry of Finance and Public Credit.

This year, the DIAN will increase its budget by 65 percent, from \$631 billion to more than \$1 trillion. The anti-evasion plan will cost \$143 billion; an additional \$232 billion will go for investment.

References:

Revista Dinero
"Los 'Micos' del Presupuesto"
www.dinero.com

Ministerio de Hacienda y Crédito Público
Aspectos Generales del Presupuesto
www.minhacienda.gov.co

Dirección de Impuestos y Aduanas Nacionales
www.dian.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Camilo Rodriguez, director of income for DIAN, said the country had an avoidance of 27 percent, and the wealth tax was one of the most paid items by Colombians.

This is because those who pay this tax are in the formal sector. There is also a strong penalty, 160 percent of the total amount, for failing to make the payment deadline.

The National Association of Financial Institutions believes that one of the factors promoting income and tax evasion is keeping the “4 (pesos) per thousand” levy on financial transactions until 2017, as the current government asks.

Restaurants and bars have been under scrutiny because they evade the payment of the value added tax, or VAT. DIAN data indicate that those who are enrolled in the common system and are obliged to issue an invoice do it in less than 50 percent of their operations.

References:

Interview with the ombudsman of Colombia.

Dirección de Impuestos y Aduanas Nacionales
www.dian.gov.co/

<http://actualicese.com>, “Evasión Tributaria es del 27%, Continúa la Búsqueda para su Disminución”

Asociación Nacional de Instituciones Financieras
www.anif.co

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

64a. In law, is there a national customs and excise agency?

Yes

No

Comments:

It is called the National Tax and Customs Office, or DIAN.

References:

Artículos 4 y 5, Decreto 1071 de 1999. Constitución Política de Colombia.

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.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The National Tax and Customs Office has a team of professionals that is part of the agency's mission and a full-time administrative staff.

The image of the entity has been heavily tarnished by recent allegations against numerous officials. Illegal VAT refunds, quantified at more than \$ 3 billion, were exposed in the Administration of Taxes and Customs, DIAN. Officials and former officials of the entity were allegedly involved.

In November 2011, the government announced the package of decrees that orders the profound restructuring of the state to combat corruption and restore efficiency. It will create new organisms, including one to monitor the DIAN.

The General Inspection of Taxes will be an entity under the Ministry of Finance whose function will be internal surveillance of the DIAN, to monitor the actions of officials of that entity

References:

Noticiero RCN

"El Gobierno Presentará un Paquete de Medidas que Ordena un Revolcón Estatal"

www.canalrcnmsn.com

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Dirección de Impuestos y Aduanas Nacionales

www.dian.gov.co/

www.elpais.com.co, July 13, 2011, "Fraude en la Dian se Detectó Hace Seis Meses"

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 National Tax and Customs Office, or DIAN, is organized as a Special Administrative Unit of the National Order of a highly technical. It has a specialized character, with legal, administrative and budgetary autonomy and its own assets, under the Ministry of Finance and Public Credit.

This year, the DIAN will increase its budget by 65 percent, from \$631 billion to more than \$1 trillion. The anti-evasion plan will cost \$143 billion; an additional \$232 billion will go for investment.

References:

Revista Dinero
"Los 'Micos' del Presupuesto"
www.dinero.com

Ministerio de Hacienda y Crédito Público
Aspectos Generales del Presupuesto
www.minhacienda.gov.co

Dirección de Impuestos y Aduanas Nacionales
www.dian.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In the next few years, as the new customs regulations take effect, the agency will seek to strengthen its principles, simplify foreign trade operations, create exemplary punishment and apply risk analysis to users.

With the tools and strategies to combat smuggling and contraband, the agency seeks to drastically reduce these problems and to speed up business operations.

The goal for 2014 is to reduce smuggling, now estimated at 14 percent of total imports, to 6 percent or less.

Officials hope to reduce the time of clearance for goods from 19 hours to 5 hours.

References:

Interview with the ombudsman of Colombia.

Dirección de Impuestos y Aduanas Nacionales
www.dian.gov.co/

<http://actualicese.com>, “Le Llegó la Hora al Nuevo Estatuto Aduanero.”

www.rcnradio.com, Sept. 29, 2011, “Nuevo Estatuto Aduanero Será Implacable con el Comercio Ilegal.”

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

The entities responsible for monitoring the behavior of state enterprises are the superintendents and ministries

References:

Artículo 117; Artículo 119; Artículo 267; Numerals 1 y 4, Artículo 268; Numeral 2, Artículo 242; Numerals 1, 7 and 9, Artículo 277,

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. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

65

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

Comments:

The superintendencies are created by law with administrative and financial autonomy, without legal status. Their inspection and monitoring functions are assigned by law or by the president, after legal authorization. Superintendents direct them. Some superintendencies are attached to a ministry but have administrative and financial autonomy. Others are part of the decentralized sector and have independent patrimony but are part of the general budget of the nation.

Since Feb. 14, 1985, the Supreme Court of Justice modified the structure of the superintendencies and gave them independence from the ministries. Article 82 of Law 489 of 1998 defines the superintendencies as decentralized entities with administrative autonomy and assets, if such functions are not specifically assigned to another authority.

References:

Decreto Ley 1050 de 1968. Constitucion Política de Colombia.

Ley 489 de 1998. Constitucion Política de Colombia.

Corte Suprema de Justicia. Sala Plena. Sentencia No. 8 del 14 de Febrero de 1985.

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.

Because oversight responsibilities are extended over different institutions, it is difficult to determine the adequacy of all the staff that oversees state-owned enterprises.

Usually the actions of the superintendences are delayed. In many cases, these bureaucracies are extremely diligent when they perceive that their interventions will obtain some media benefit. But interventions are usually delayed, as in the case of the Financial Superintendency against the pyramid scheme company DMG. There is also the tolerance of the Superintendency of Societies with the “companies of paper” linked to the carousels of contracting and its complacency with irregular liquidation of companies flouting the law, judges, creditors and employees.

Employees of the Superintendency of Family Subsidy claimed in June 2011 that the entity was “politicized” and that staff recruitment was being used to pay for political favors. They said contracts were given for four months, so three contractors could be hired in a year.

In the previous nine months, the Superintendency of Family Subsidy had signed 109 contracts for the provision of services for a total of 1.75 billion pesos. Most contracts were, in fact, for the length of time that had been mentioned. Among the people involved was the son of a congressman with little work experience.

References:

Periódico El Tiempo

“Denuncian ‘politización’ de la Superintendencia del Subsidio Familiar”

<http://m.eltiempo.com>

Diario El Lider

“Mercado Sin Guardianes”

www.ellider.com.co

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

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.

100 | 75 | 50 | 25 | 0

Comments:

The superintendencies and ministries have a budget every year. However, the amount of the funding differs for agencies.

References:

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Zona Cero

“A Propósito de la Vigilancia y Control ...”

www.zonacero.info

Pontificia Universidad Javeriana

“Las Funciones de Inspección, Vigilancia y Control de las Superintendencias, su Estructura y Funciones”

www.javeriana.edu.co

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

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.

Comments:

The superintendencies are entities of control that inspect and monitor the supply of public service. Surveillance is exercised in two ways:

- 1) In the delegation of presidential duties, which the law and the Constitution established.
- 2) Superintendents are also able to initiate investigations and impose sanctions related to the specific service they supervise. In fact, citizens can find information on research conducted by the superintendents on the official website of each superintendent entity.

In cases of grand corruption, investigations can be conducted by the prosecuting authorities (prosecutor general).

Usually the actions of the superintendencies are delayed. In many cases, these bureaucracies are extremely diligent when they perceive that their interventions will obtain some media benefit. But interventions are usually delayed, as in the case of the Financial Superintendency against the pyramid scheme company DMG. There is also the tolerance of the Superintendency of Societies with the “companies of paper” linked to the carousels of contracting and its complacency with irregular liquidation of companies flouting the law, judges, creditors and employees.

Employees of the Superintendency of Family Subsidy claimed in June 2011 that the entity was “politicized” and that staff recruitment was used to pay for political favors. They said contracts were given for four months, so three contractors could be hired in a year.

In the previous nine months, the Superintendency of Family Subsidy had signed 109 contracts for the provision of services for a total of 1.75 billion pesos. Most contracts were, in fact, for the length of time that had been mentioned. Among the people involved was the son of a congressman with little work experience.

References:

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Periódico El Tiempo
 “Denuncian ‘Politización’ de la Superintendencia del Subsidio Familiar”
<http://m.eltiempo.com>

Diario El Lider
 “Mercado Sin Guardianes”
www.ellider.com.co

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

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 initiate investigations and impose sanctions related to the specific services they supervise. In fact, citizens can find information on research conducted by the superintendents on the official website of each superintendent entity.

In cases of grand corruption, investigations can be done by the prosecuting authorities (prosecutor general).

In December 2011, the Superintendency of Industry and Commerce imposed penalties amounting to 2,624,440,000 pesos after finding that some of the providers in public bidding conducted by FONADE agreed to some facts in order to determine who would be the winner, in other words, bid rigging.

The superintendent of industry and commerce sanctioned firms MP and ML Engineers, Colombian Highway Consortium members and three legal representatives for violating provisions of Article 1 of Law 155 of 1959; paragraph 9 of Article 47 of Decree 2153 of 1992; and paragraph 16 of Article 4 of Decree 2153 of 1992.

Usually the actions of the superintendences are delayed. In many cases, these bureaucracies are extremely diligent when they perceive that their interventions will obtain some media benefit. But interventions are usually delayed, as in the case of the Financial Superintendency against the pyramid scheme company DMG. There is also the tolerance of the Superintendency of Societies with the “companies of paper” linked to the carousels of recruitment and its complacency with irregular liquidation of companies flouting the law, judges, creditors and employees.

References:

Superintendencia de Industria y Comercio

“La Superintendencia de Industria y Comercio Impone Histórica Sanción por Colusión en Contratación Pública”

www.sic.gov.co

Periódico El Tiempo

“Superintendencia Impone Multa a RCN Televisión”

<http://m.eltiempo.com>

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

www.superfinanciera.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

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?

90

69a. In law, citizens can access the financial records of state-owned companies.

Yes

No

Comments:

State enterprises are obligated to publish a detailed and current financial management report on the official website of each company.

References:

Resolución Orgánica 5472 de 2003. Constitución Política de Colombia.

By which regulates accountability and review and is unified Information to be provided by the Public Services Companies, which are control subjects of the Comptroller General for the establishment of fiscal statistics.

Artículo 268, Ley 42 de 1993. Constitución Política de Colombia.

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

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:

As a result of the policy of total transparency of the current government, all state enterprises are obligated to publish a detailed and current financial management report on the official websites of each company.

For example, on the official site of Bogota Water and Sewer, citizens can check the financial statements and the auditor reviews and download the application and review documents. Other available information includes the public debt, bonds and loans, contracts, securitization 2006 and financial statements from 2003 to today.

References:

Transparencia por Colombia
"Políticas y Mecanismos de Transparencia en Empresas de Servicios Públicos"
www.transparenciacolombia.org.co

Presidencia de la República
www.presidencia.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.
www.gobiernoenlinea.gov.co

Empresa de Acueducto y Alcantarillado
www.acueducto.com.co

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.

Comments:

In principle, the audit is done by the internal control of the company, through the implementation of internal auditing.

Control is also exercised by:

- 1) The state corporate control of the government through the ministries and, in particular, the civil administration of the state.
- 2) The control of an external nature, of the permanent economic-financial activity of the state, exercised by the Comptroller General's Office, which is the highest body charged with auditing the accounts and financial management of the state.
- 3) The control of both houses of parliament (Congress and Senate) structured in plenary sessions, commissions and presentations.

References:

Pontificia Universidad Javeriana
 "El Control Fiscal en Colombia"
www.javeriana.edu.co

Contraloría General de la Nación
www.contraloriagen.gov.co

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

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.

Comments:

This can be done immediately. As a result of the policy of total transparency of the current government, all state enterprises are obligated to publish a detailed and current financial management report on the official websites of each company.

For example, on the official site of Bogota Water and Sewer, citizens can check the financial statements and the auditor reviews and download the application and review documents. Other available information includes the public debt, bonds and loans, contracts, securitization 2006 and financial statements from 2003 to today.

References:

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

Transparencia por Colombia

“Políticas y Mecanismos de Transparencia en Empresas de Servicios Públicos”

www.transparenciacolombia.org.co

Presidencia de la República

www.presidencia.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia

www.gobiernoenlinea.gov.co

“Empresa de Acueducto y Alcantarillado”

www.acueducto.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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This can be done for free. As a result of the policy of total transparency of the current government, all state enterprises are obligated to publish a detailed and current financial management report on the official websites of each company.

For example, on the official site of Bogota Water and Sewer, citizens can check the financial statements and the auditor reviews and download the application and review documents. Other available information includes the public debt, bonds and loans, contracts, securitization 2006 and financial statements from 2003 to today.

References:

www.superfinanciera.gov.co/

www.sic.gov.co/

www.supersociedades.gov.co/

www.superservicios.gov.co/

www.supernotariado.gov.co/

www.supersalud.gov.co/

www.supervigilancia.gov.co/

Transparencia por Colombia
"Políticas y Mecanismos de Transparencia en Empresas de Servicios Públicos"
www.transparenciacolombia.org.co

Presidencia de la República
www.presidencia.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia
www.gobiernoenlinea.gov.co

"Empresa de Acueducto y Alcantarillado"
www.acueducto.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 NGOs. 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 NGOs trying to access this information.

85 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

94

70a. In law, anyone may apply for a business license.

Yes

No

Comments:

If an import business wanted a license, for example, it could apply for registration or amend registration online and attach the requested documents.

References:

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Resolutions 1271 y 2234/2005. Constitución Política de Colombia.

Presidencia de la República
www.gobiernoonlinea.gov.co

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:

In 1991, the Constitution consecrated the “right of petition” as a fundamental right and gave it the characteristic of being a rule of immediate application.

If an import license is denied, for example, the citizen has the right of petition in the Single Information System Procedures, coordinated by the Department of Public Administration. Because the right of petition is fundamental, the entity that denied the license must not only explain the reasons but also give a solution. This means that the applicant should be instructed on what to do to obtain the license.

If the entity does not comply with the obligation that gives the right of petition, the applicant can appeal with “Acción de Tutela.” Article 86 of the Constitution provides that all people may claim Acción de Tutela for the immediate protection of their fundamental constitutional rights whenever those rights are violated or threatened by the action or omission of any public authority.

References:

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Resolutions 1271 y 2234/2005. Constitución Política de Colombia.

www.gobiernoonlinea.gov.co

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:

Registering an import business or amending the registration can be done electronically on the official website of the government, with the requested documents attached.

Payments may be made electronically, based on the amount calculated by the system (Resolutions 1271 and 2234/2005), and applications can be routed electronically to the institutions that require approval, or authorization.

The status of the application or the Import Registry can be checked on the site.

Approval or denial of an import license takes five business days.

References:

BusinessCol
"Guía de Importación (Trámites)"
www.businesscol.com

Resolutions 1271 y 2234/2005. Constitución Política de Colombia.

Portal del Estado Colombiano
Aprobación o Modificación de Licencias de Importación
www.gobiernoenlinea.gov.co

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

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:

The Importer Registry value for every 1,800 characters is 30,000 pesos.

References:

BusinessCol
"Guía de Importación (Trámites)"
www.businesscol.com

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

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:

By law, the requirements described below must be met once the company becomes operational:

Register for Professional Risk Management (Private or ISS). Likewise, the employer must affiliate its employees with a Family Compensation plan (pay ICBF 3 percent of payroll, SENA, 2 percent) and family allowance funds (4 percent).

Affiliate workers with the Social Security system and pensions to the Health Promoting Entities (EPS) and the Pension Fund.

Affiliate workers with unemployment funds.

Subscribe to an industrial safety program.

References:

Artículo 43 de Ley 590. Constitución Política de Colombia.

Camara de Comercio
www.camaramed.org.co

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:

Decree 483 of Oct. 22, 2007, consolidates and coordinates a unified district system. This system looks to simplify and improve monitoring and control inspection by the municipal government of the Ministry of Local Government, the District Department of Environment, the District Department of Health and the Fire Department. It is administered by the Directorate of Inspection, Monitoring and Control of the District Direction of Citizen Services of the General Secretariat.

References:

Decreto 483 del 22 de Octubre de 2007. Constitución Política de Colombia.

Alcaldía de Bogotá
www.bogota.gov.co

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:

Through Decree 483 of Oct. 22, 2007, is consolidated and coordinated a unified district system, looking to simplify and improve the processes of Monitoring and Control Inspection by the municipal government of the Ministry of Local Government, the District Department of Environment, District Department of Health and the Fire Department, administered by the Directorate of Inspection, Monitoring and Control of the District Direction of Citizen Services of the General Secretariat.

References:

Decreto 483 del 22 de Octubre de 2007. Constitución Política de Colombia

Alcaldía de Bogotá
www.bogota.gov.co

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?

58

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

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

Comments:

The owners of establishments who apply for sanitary licenses must meet the following basic sanitary conditions: owning water and sewage mains; keeping floors, walls and ceilings in a hygienic way and easy to wash and clean; and providing light, and natural or artificial ventilation according to the activity undertaken.

Other requirements are: installing sanitary units in the ratio of one toilet for every 20 women and a bathroom and urinal for every 20 men, with sink and toiletries (soap, drying elements); providing waste storage and complying with its collection; and keeping the premises free of insects and rodents, and clean and neat.

Establishments must meet other standards set out in Act 9 of 1979 and its regulations.

However, there have been complaints about owners of establishments who bribe officials to obtain sanitary licenses without rigorous inspections. However, such situations are seldom reported.

References:

Colombia Aprende

"A Qué se Refiere la Licencia Sanitaria o Acta de Visita?"
aplicaciones.colombiaaprende.edu.co

Resolución 10984 de 1993. De los Requisitos Básicos para la Obtención de la Licencia Sanitaria.

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

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:

The Ministry of Environment is responsible for determining the minimal standards and general regulations for mining, transportation and industrial activities, or any activity that can directly or indirectly cause environmental damage. The ministry is to define and regulate the administrative instruments to prevent and control environmental damage.

In some cases, environmental controls are not effective. Owners of operations violate rules on noise, emission and waste management. Bribery to obtain business licenses without complying with the all requirements is generally known, but not reported

References:

Colombia Aprende

"A Qué se Refiere la Licencia Sanitaria o Acta de Visita?"

aplicaciones.colombiaaprende.edu.co

Resolución 10984 de 1993. De los Requisitos Básicos para la Obtención de la Licencia Sanitaria.

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Ministerio del Medio Ambiente

www.minambiente.gov.co/

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.

Comments:

Safety certificates are issued by the respective fire department. Standards include such requirements as fire extinguishers, emergency exits and first aid kits.

References:

Unidad Administrativa Especial Cuerpo Oficial de Bomberos de Bogotá

www.bomberosbogota.gov.co/

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

Corruption is illegal in Colombia, whatever its origin.

References:

Artículo 1, Ley 1474 de 2011. Constitución Política de Colombia.

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:

No person, whether public or private, may engage in extortion.

References:

Artículo 13; Artículo 15; Parrafo 1, Artículo 39, Ley 1474 de 2011. Constitución Política de Colombia.

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:

Bribing an officer, public official or any other person for personal reasons or to avoid prison time is condemned by law.

References:

Artículos 13 y 32, Ley 1474 de 2011. Constitución Política de Colombia.

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:

To receive a bribe is illegal. However, the person who received it can report the act to authorities and cooperate with them.

References:

Artículos 13 y 32, Ley 1474 de 2011. Constitución Política de Colombia.

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:

To bribe a foreign official is illegal because it can harm the business or international relationships of the nation, and also because it is condemned by international law.

References:

Artículo 13, Ley 1474 de 2011. Constitución Política de Colombia

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:

No citizen or public force may use resources or private information of the state for his/her benefit.

References:

Artículo 16, Ley 1474 de 2011. Constitución Política de Colombia.

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:

No citizen or public force may use resources or private information of the state for his/her benefit.

References:

Artículo 13, Ley 1474 de 2011. Constitución Política de Colombia

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:

Illegal money transactions, forgery and money laundering violate the law.

References:

Artículo 13, Ley 1474 de 2011. Constitución Política de Colombia.

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:

Conspiracy to commit a crime is illegal. It goes against the public order and the laws established by the government for the care of goods.

References:

Artículo 471, Código Penal Colombiano.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

There is the presidential anti-corruption program, or Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha Contra la Corrupción. The Attorney General's Office has the highest responsibility for overseeing the discipline of public servants. The Comptroller General's Office oversees fiscal management, and the Prosecutor General's Office investigates and files charges for penal crimes. The police and the Intelligence Service have created specific units to investigate corruption cases.

References:

Artículos 66 y 72, Ley 1474 de 2011. Constitución Política de Colombia.

Artículos 267 y 275. Constitución Política de Colombia.

Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha Contra la Corrupción
www.anticorruptcion.gov.co/

Corporación Transparencia por Colombia
www.transparenciacolombia.org.co/

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.

75. Is the anti-corruption agency effective?

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.

The Comptroller General's Office, the Prosecutor General's Office and the Attorney General's Office are autonomous agencies.

References:

Artículos 38, 39, 103 y 355, Constitución Política de Colombia.

Artículos 267 y 275, Constitución Política de Colombia.

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 presidential program to fight corruption provides guidelines to the state to combat public corruption. The aim of formulating a state policy and associated action plan is to give tools to public institutions, private enterprises, citizens, the media and civil society organizations to fight public corruption.

The attorney general is elected by the Senate from a list of candidates from the president, the State Council and the Supreme Court. The comptroller general is elected by Congress from a list of candidates submitted by the Supreme Court, Council of State and the Constitutional Court. There cannot be political commitments, which could be reflected in the staffing structure and the decisions, thereby limiting the independence from political influence

At the local level, political pressures and the pressures of armed conflict make it extremely difficult for local attorneys to carry out their work

The prosecutor general is elected by the Supreme Court of Justice, from a list made by the president if the republic. During the time of research for this scorecard, the election of the prosecutor general, Viviane Morales, was annulled by the Council of State. The council cited the lack of a signature and the mix of interpretations on the minimum number of votes necessary in the Supreme Court for her election in ruling that it was invalid.

The questions surrounding the unexpected decision aim to establish which political pressures existed outside the purely legal discussion on the election of Morales.

The declaration of nullity generates speculation that, despite the efforts of the current government to banish corruption, political pressures of Uribe government officials under investigation for corruption have been able to damage the present government's intention.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Periódico El Espectador

“De Presiones, Conjeturas y Argumentación Jurídica”

www.elespectador.com

El Pílon

“La Elección del Procurador y Contralor en el Proyecto de Reforma a la Justicia”

www.elpilon.com.co

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 director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption is appointed by the president in response to the requirements of the civil service.

The attorney general is elected by the Senate from a list of candidates from the president, the State Council and the Supreme Court. The comptroller general is elected by Congress from a list of candidates submitted by the Supreme Court, Council of State and the Constitutional Court. The two may be removed only if they are wrong, or exceeded through the demand to the Council of State.

The prosecutor general is elected by the Supreme Court of Justice, from a list made by the president of the republic. During the research for this scorecard, the election of the prosecutor general, Viviane Morales, was annulled by the Council of State. The council cited the lack of a signature and the mix of interpretations on the minimum number of votes necessary in the Supreme Court for her election in ruling that it was invalid.

The questions surrounding the unexpected decision aim to establish which political pressures existed outside the purely legal discussion on the election of Morales.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Combat against Corruption.

“Los Organismos de Control y Vigilancia en el Estado Colombiano”
www.monografias.com

Periódico El Espectador
“De Presiones, Conjeturas y Argumentación Jurídica”
www.elespectador.com

El Pílon
“La Elección del Procurador y Contralor en el Proyecto de Reforma a la Justicia”
www.elpilon.com.co

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 presidential anti-corruption program, the Attorney General's Office, the Comptroller General's Office and the Prosecutor General's Office assign staff to career posts. The jobs are open to everyone who meets the requirements for performance, in compliance with the principles of equality and merit.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency Fight Against Corruption.

La Silla Vacía
“Servidores Públicos o el Problema de los Limones en el Auto-Servicio Público”
www.lasillavacia.com

Universidad Militar Nueva Granada
“Situación del Regimen de Carrera Administrativa en Colombia”
www.umng.edu.co

Servidores Públicos
Biblioteca Virtual Luis Ángel Arango
www.banrepcultural.org

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 Attorney General's Office, the Comptroller General's Office, the Prosecutor General's Office and the president's anti-corruption program have teams of professionals that are part of the programs' missions and full-time administrative staffs.

However, the presidential anti-corruption program has a team of only 13 permanent employees and a support group linked by contract to provide services for the implementation of strategies throughout the country. This is insufficient to fulfill the program's mandate.

Also, there is a growing disenchantment among graduates of the best academic programs with work in the public sector, including employment in the most prestigious technocratic entities at the national level. The aversion to excessive control now exercised over public officials seems to outweigh the prestige, salary and benefits, the beginning of a political career, or simply the satisfaction from public service.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

La Silla Vacía
"Servidores Públicos o el Problema de los Limones en el Auto-Servicio Público"
www.lasillavacia.com

Servidores Públicos
Biblioteca Virtual Luis Ángel Arango
www.banrepcultural.org

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.

Comments:

The Attorney General's Office and the Prosecutor General's Office have an adequate and constant budget allowing them to comply with their mandates.

However, for 2012 the budget approved for the comptroller general amounted to 325 billion pesos, of which 86.46 percent was for operating expenses and the rest for investment.

Comptroller Sandra Morelli's request for the creation of 500 positions to strengthen surveillance of royalties provoked discord with the finance minister, Juan Carlos Echeverry, in a debate on the national budget in the fifth joint committees of Congress.

Morelli stated that "The country must know that the comptroller general has a budget of 325 billion pesos, while the attorney general has 900 billion and the prosecutor general 1,600 billion." The comptroller asked for 30 billion more pesos, according to estimates, to strengthen her operation structurally.

"The country and state, the administration and Congress have to decide what they want on fiscal control because the institutions are created to serve, not to appear to serve. And really, with the delegate of Mines and Energy that we have today, I cannot take the challenge of the royalties," she said.

Echeverry countered that "the royalty cannot be used to finance bureaucracy."

"These are resources to implement projects," he said.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Servidores Públicos
Biblioteca Virtual Luis Ángel Arango
www.banrepcultural.org

Periódico El Mundo
"Chocan Contralora y Minhacienda"
www.elmundo.com

Contraloría General de la Nación
www.contraloriagen.gov.co

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.

Comments:

The ombudsman, the prosecutor general and the attorney general report to Congress on the performance of their duties and responsibilities. This report is public. They also present an annual report of accountability to society

On the official websites of the comptroller general and Congress, citizens have access to accountability processes undertaken by the entity. There is also information about the financial statements, management and internal control.

Also, the Institutional channel broadcasts live to the public the hearing of accountability of the comptroller general and the hearing of the ombudsman, the prosecutor general and the attorney general.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Interview with Volmar Perez Ortiz, ombudsman of Colombia.

Ambito Jurídico

“Procuraduría Presenta Informe Sobre Avances y Falencias del Proceso de Justicia Transicional”

www.ambitojuridico.com

Universidad del Valle

“Informe del Defensor del Pueblo al Congreso de la República”

<http://opac.univalle.edu.co>

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.

Comments:

The attorney general, the prosecutor general and the comptroller general were relegated to the background until recently. A reason was that then-President Alvaro Uribe monopolized the media’s attention, which eclipsed the failures occurring in other bodies of government.

During Uribe’s eight years in office, corruption metastasized in the drug enforcement agency DNE, Ingeominas, Incoder, the National Office of Taxes and Customs, the National Institute of Concessions, and the health system. This was not just because of infiltration by the corrupt, but also because the agencies responsible for detecting and eradicating the corruption did not act in time

In that context, three figures in the current administration, Prosecutor General Viviane Morales (who has since resigned after the Council of State ruled that her election by the Supreme Court was invalid), Comptroller General Sandra Morelli and Attorney General Alejandro Ordonez, seem to have a common ingredient: strength

Among other actions by these three, Ordonez removed more than 50 mayors, suspended the mayor of Bogota and removed six governors. The comptroller general detected serious irregularities in her own entity. And Morales led prosecutions against senior officials accused of ordering the DAS intelligence agency to spy on some of Uribe's political opponents..

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Revista Semana
"¡Se Acabó el Recreo!"
www.semana.com

ColombiaYA
"Ramas del Poder Colombiano"
www.colombiaya.com

Procuraduría General de la Nación
Función Disciplinaria
www.procuraduria.gov.co

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 attorney general removed more than 50 mayors, suspended the mayor of Bogota and removed six governors. The comptroller general detected serious irregularities in her own entity. And the prosecutor general led prosecutions against senior officials accused of ordering the DAS intelligence agency to spy on some of President Alva Uribe's political opponents..

The prosecutor also dismantled the "mafia" network in health care, and the comptroller has run a plan of express audits to control the money for the country's rainy season.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Revista Semana
"¡Se acabó el recreo!"

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?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Administrative Disputes Code provides that requests of citizens should be attended to within 15 days. The policy of the Administrative Department of the Presidency is to respond to requests within this time period.

References:

Organización de Estados Americanos
"Informe de Avances Presentado al MESICIC Colombia"
www.oas.org

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

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:

The presidential anti-corruption program recognizes the option of anonymous denunciation under the special protection of information protocol.

The secretary-general of the Organization of American States wants to improve protection of whistle-blowers. "If we want public officials and citizens in general to comply with their duty (to report), the least we can do is offer them protection against the intimidation of those who steal public funds, which sometimes are mafias or cartels with large capacity to dissuade those who want to denounce them," José Miguel Insulza said in June 2011.

References:

Organización de Estados Americanos
"Informe de Avances Presentado al MESICIC Colombia"
www.oas.org

Associated Press
"OEA Propone se Proteja a Denunciantes para Combatir Corrupción"
www.ap.org/

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

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.

77. Is there an appeals mechanism for challenging criminal judgments?

92

77a. In law, there is a general right of appeal.

Yes

No

Comments:

Citezen have the right to appeal and the right to due process.

References:

Articulos 23 y 29, Constitucion Politica de Colombia..

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 appeal shall proceed against interlocutory orders dictated in the first instance, and must be filed at the same hearing orally or in writing within three days if the notification is made by states.

The judgments of first instance also can be appealed, the suspensive effect of word in the act of notification, or in writing, within three days; filed at the hearing, the judge immediately granted or denied, whether in writing, decides within the next two days.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Pontificia Universidad Javeriana

"La Viabilidad y Eficacia del Recurso de Apelación Como Requisito de Procedibilidad para Acudir a la Jurisdicción de lo Contencioso Administrativo"

www.javeriana.edu.co

Decreto Ley 2158 de 1948. Constitución Política de Colombia.

Artículo 65 — Modificado por el Artículo 29, Ley 712 de 2001. Procedencia del Recurso de Apelación.

Artículo 66 — Modificado por el Artículo 10, Ley 1149 de 2007. Apelación de las Sentencias de Primera Instancia.

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 appeal resource is free of charge for all citizens.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Pontificia Universidad Javeriana

“La Viabilidad y Eficacia del Recurso de Apelación Como Requisito de Procedibilidad para Acudir a la Jurisdicción de lo Contencioso Administrativo”

www.javeriana.edu.co

Decreto Ley 2158 de 1948. Constitución Política de Colombia.

Artículo 65 — Modificado por el Artículo 29, Ley 712 de 2001. Procedencia del Recurso de Apelación.

Artículo 66 — Modificado por el Artículo 10, Ley 1149 de 2007. Apelación de las Sentencias de Primera Instancia.

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?

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

The State Council, rejecting threats against judges and magistrates, called the situation a “high risk to the existence of the state.”

Members of the judiciary are forced to accede to the demands of their victimizers or escape to preserve their life.

“The functioning of a strong and independent judiciary, free of threats, is essential and irreplaceable guarantee of the democratic system,” the State Council said.

The State Council issued the statement to repudiate the death of Jose Fernando Patiño, the judge of execution of sentences, and threats and attacks that have been prepared against some judges of the Supreme Court.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Consejo Superior de la Judicatura. “Amenazas Contra Jueces Ponen en Riesgo la Existencia del Estado: Consejo de Estado.”

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?

79a. In practice, are judicial decisions enforced by the state?

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

Comments:

With the beginning of the new government of President Juan Manuel Santos, the “train crash” between the executive and the

judiciary and the meddling in judicial decisions was left behind.

The president and the government say the intention is that relations be harmonious and respectful to guarantee the independence of the judiciary. This allows major reforms in the sector to move ahead and overcome the “train crash” and promote initiatives for decongestion of justice and easy access to it.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Germán Vargas Lleras, interior and justice minister.

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?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes

No

Comments:

The judiciary is independent in its decisions and budget.

References:

Artículos 228, 235 y 237, Constitución Política de Colombia.

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.

Comments:

The ability of a judicial system to deal with major corruption normally and impose exemplary punishment is essential to counter organized crime and corruption in the future. However, many obstacles become visible when high courts face a past of political corruption, atrocities and human rights violations.

In Colombia, the opening of multiple investigations against people who have exercised, exercise, or who have sought public office by popular vote — at both the national and regional levels — for associating with armed groups outside the law within “para-politics” is generating a great challenge to the autonomy and independence of the judiciary.

There is international concern, reflected in the letter from the prosecutor of the International Criminal Court to the ambassador of Colombia in “La Haya” (the Hague). The prosecutor seeks to ensure that national courts show full respect for international standards of due process for crimes under the jurisdiction of the ICC, including political leaders and members of Congress linked to the demobilized groups.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

International Center for Transitional Justice. “Judicial Independence, Political Corruption and Democracy: The High Courts Face the Challenges of Parapolitics.”

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:

The attorney general has the authority to distribute cases to national-level judges.

References:

Artículo 259, Constitución Política de Colombia

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:

If national-level judges break the law, they come under investigation and are removed from their duties. The attorney general makes the justification for this.

References:

Artículo 251, Constitución Política de Colombia.

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?

0

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

The president of the Administrative Chamber of the Supreme Judicial Council, Judge Hernando Torres, confirmed that 700 judges have been threatened in Colombia in the past four years.

He said those most affected include specialized judges, as well as the judges of the Criminal Division of the High Courts and High Courts.

According to the judge, the state has invested nearly 100 billion pesos to design a special security program. "We have worked with the police authorities," he said. "It required the support of judges."

The judge said the judicial branch has received threats from illegal groups in armed conflict, drug trafficking and common criminality, without ignoring pressure from forces of the state in different regions of the country, in capital cities and towns with complexity in public order.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Combat against Corruption.

Judge Hernando Torres, president of the Administrative Chamber of the Supreme Judicial Council.

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:

Judge Hernando Torres, president of the Administrative Chamber of the Supreme Judicial Council, confirmed that five judges have been killed in the past four years. Last year, gunmen killed Cristian Patiño Riaño, the penalties enforcement judge, and Diego Fernando Escobar Munera, the 8th Criminal Circuit Court judge.

The number was provided 24 hours after the killing of Judge Gloria Constanza Gaona, who was in charge of the judicial process for the rape and murder of three children in Arauca. An army officer was accused in the case.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption

Judge Hernando Torres, president of the Administrative Chamber of the Supreme Judicial Council.

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?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

Comments:

The Attorney General's Office has an information system that records gender, age and court proceedings but not "the descriptive features of the racial status," according to the report "Racial Discrimination in Colombia: Alternative Report to the Committee for the Elimination of Racial Discrimination."

That means the Colombian government does not have statistical information on Afro-Colombians and indigenous people who are investigated for criminal behavior. For that reason, it is not possible to determine whether the law is applied equally to people of African descent and mixed heritage.

The Supreme Judicial Council, which is responsible for administering the judicial branch and exercising the disciplinary function, does not know the data of indigenous peoples and the black population who have been tried, or convicted.

Therefore, it is impossible to know whether the justice system is acting impartially against indigenous peoples and Colombia's black population.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

"Racial Discrimination in Colombia: Alternative Report to the Committee on the Elimination of Racial Discrimination"
www.justiciaglobal.info

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.

Comments:

In recent years, Colombia's legislative progress in gender rights and women's political participation has been significant and even internationally recognized. In comparison, the field of justice seems sluggish.

Colombia's legal system reflects the country's patriarchal society. Gender as a category of the study of law has been very slightly treated, except for a few important initiatives, mostly from the Colombian Constitutional Court.

Women face barriers in accessing justice. The female victim of sexual abuse is re-victimized and even "tried" for being as guilty of the act as her assailant. A female victim of domestic violence, despite Law 1257 of 2008, still has to contend with the presence of her attacker in the house, even after reporting the facts.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Coalición de Justicia de Género Nodo Caribe
www.limpalcolombia.org

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:

The Ombudsman's Office provides free legal assistance and legal representation for those who cannot afford their own defense.

The Attorney General's Office also can provide a public attorney, chosen by it for the defense.

References:

Defensoría del Pueblo
www.defensoria.org.co/

Artículo 29, Constitución Política de Colombia.

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:

The Public Defender Service is organized, directed and controlled by the ombudsman to help people who need legal advice and representation in criminal matters.

The Public Defender Service receives more than 300 visits a day of people who require legal assistance. All are heard and assisted.

References:

Universidad Santo Tomás

"La Defensoria del Pueblo Mediante Convenio con el Consultorio Jurídico de la Universidad Santo Tomas dan Asistencia Jurídica Gratuita"

consultoriojuridico.usta.edu.co

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Defensoria del Pueblo

www.defensoria.org.co/

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.

100 | 75 | 50 | 25 | 0

Comments:

A lawsuit can be expensive, but the Ombudsman's Office provides free legal assistance and legal representation. Public defenders defend the fundamental rights and guarantees of people who cannot afford their own defense in the penalty area and also do civil and administrative litigation work.

References:

Universidad Santo Tomás

"La Defensoria del Pueblo Mediante Convenio con el Consultorio Jurídico de la Universidad Santo Tomas dan Asistencia Jurídica Gratuita"

consultoriojuridico.usta.edu.co

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Defensoria del Pueblo

www.defensoria.org.co/

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.

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

Comments:

For a retail business, the quality of legal representation depends on the merchant's ability to pay. There are attorneys at recognized law firms who guarantee a higher probability of success, at a high price. There are also public defenders and university legal offices, which provide free or low-cost legal advice but also a likely reduced quality of representation.

References:

Pontificia Universidad Javeriana
"Honorarios de Abogado: Criterios para su Fijación"
www.javeriana.edu.co

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

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.

Comments:

There is a big contrast among regions of the country. In rural areas especially, the formal judicial mechanisms are weak. Where they exist, they lack resources and personnel, or are reported to be corrupt. Although alternative resolution mechanisms have facilitated access to justice in simple cases, in some areas access to formal mechanisms is still very limited.

The Justice Access Program USAID started 2012 with four partnerships for technical support on specific topics of justice in Meta. Those who joined the project include Mission to Support the Peace Process in Colombia/Organization of American States and through it, the Alliance for the Prevention of Forced Recruitment of the Department of Meta. The others are the Pan American Development Foundation, Colombia Answers and the Regional Development Corporation of the La Paz Department.

The training process for new legal clinic students in the program began Jan. 18. The first workshop was to help them build skills to provide constitutional protection services for special populations.

References:

USAID Colombia
 "Programa de Acceso a la Justicia"
www.programadeaccesoalajusticia.com

Mapp — OEA
www.mapp-oea.net/

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

Comments:

To join the National Police in Colombia, one must be Colombian, single, without children and remain in the country during training.

Applicants also must not have been sentenced to imprisonment, or have a disciplinary history.

They must pass the selection process conducted by the National Police.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

Policía Nacional de Colombia.
www.policia.gov.co

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.

Comments:

The defense and security budget increases in 2012 by 7.8 percent to 23.8 trillion pesos, according to the finance minister.

Social Protection will receive more resources, 33 trillion pesos, while Education will receive the same as defense, 23.8 trillion pesos.

References:

Periódico El Espectador
"Senado Aprobó Presupuesto por \$165,3 Billones para 2012"
www.elespectador.com

Ministerio de Hacienda.
Clasificación de Presupuesto de 2011
www.minhacienda.gov.co

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:

The National Police are subordinate to the executive and can be influenced by political incentives. The police are powerless, even in states of emergency, i.e., they cannot restrict rights and freedoms.

The governors are the heads of branch administration, legal representatives of the respective department and agents of the president for the maintenance of public order.

Some experts consider the unclear lines of authority between local mayors and local police commanders to be a big problem for the police. It is precisely the dual nature of the police, as a civilian institution but with the structure of an armed institution (such as the National Army), that makes its operation more difficult. On the one hand, the organization can be immune from political control, but on the other, it is a subordinate of the executive.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

National Police
www.policia.gov.co
(Powers, Functions and Police Activity)

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.

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

The ombudsman is the person who defends citizens from any government or public- force actions against citizens.

References:

Artículo 282, Constitución Política de Colombia.

Defensoría del Pueblo
www.defensoria.org.co

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:

The Ombudsman's Office is the national human rights institution that is able to receive any allegations of police abuse and provide guidance on solutions. Citizens may go to any office of the ombudsman, call, send a letter or correspond by email.

The ombudsman can use the tutela action, habeas corpus or other means to protect the interest of a person or group.

The Antioquia regional ombudsman introduced tutela action against the 8B Municipal Police Inspection Unit of Antioquia, the Ministry of Interior, the governor of Antioquia and the city of Medellin. The tutela argued that the eviction order against families occupying property in the neighborhood Isaac Gaviria — in the area of Villatina in Medellin — threatened their fundamental rights to equality, good name, work and due process.

Fourteen days later, the Criminal Circuit Court denied the tutela action.

The court stated that the police inspection unit followed the rules in Law 57 of 1905 and Decree 992 of 1930, regulating the procedure of eviction. To oppose the eviction, the occupants of the property should have provided evidence that legally justified their presence, the court said.

But the court also said the occupied land was in a high-risk area, where landslides had occurred.

In two weeks, the application for protection had been resolved.

References:

RCN Radio

"Ciudadano Denuncia Abuso de Autoridad por Parte de la Policía"

www.rcnradio.com

Biblioteca Luis Ángel Arango

"Organismos de Control Gubernamental"

www.banrepcultural.org

Disaster information (Desastres)

"Acciones de Tutela Instauradas por la Regional de Antioquia de la Defensoría del Pueblo Contra la Inspección 8B Municipal de Policía de Antioquia, el Ministerio del Interior, la Gobernación de Antioquia y la Alcaldía de Medellín"

www.disaster-info.net

Interview with Volmar Perez Ortiz, the ombudsman of Colombia.

Artículo 282, Constitución Política de Colombia. De las Funciones del Defensor del Pueblo

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:

The Attorney General's Office is responsible for initiating, conducting research and deciding on actions involving disciplinary offenses committed by public servants and individuals exercising public functions or handling state funds.

References:

Artículo 175, Constitución Política de Colombia.

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:

The Attorney General's Office is responsible for initiating, conducting research and taking action against disciplinary offenses committed by public servants and individuals exercising public functions or handling state funds.

In November 2011, for example, the Attorney General's Office requested the investigation of the deputy commander of the Bogota Metropolitan Police, Col. Javier Vivas, and the commander of the police station in Suba within the disciplinary process being conducted into the death of the young graffiti artist Diego Felipe Becerra. The attorney general sought to determine whether the crime scene was manipulated to make the shooting by a patrol officer look like self-defense.

Article 175 of the Constitution says disciplinary proceedings against members of the security forces will apply the substantive rules contained in their respective special disciplinary statutes in compliance with the guiding principles and the procedure set out in this code, whichever is the authority on the investigation.

References:

W Radio

"Procuraduría Pide Investigar a Subcomandante de la Policía de Bogotá por Caso del Grafitero"

www.wradio.com.co

Artículo 175, Constitución Política de Colombia.

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

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:

Members of the public force who commit crimes will be judged by the military criminal courts or regular courts as provided by Act 522 of 1999:

Article 1. Military courts. For the crimes committed by members of the armed forces on active duty, and in relation to the same service.

Article 2. Crimes related to the service. They are service-related crimes committed by those members of the security forces from the exercise of the military or police function..

Article 3. Crimes unrelated to the service. In no case shall these be considered service-related crimes: torture, genocide and forced disappearance, understood in the terms defined in international conventions and treaties ratified by Colombia. They will be judged by the ordinary courts.

References:

Ley 522 de 1999. Constitución Política de Colombia.

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:

The proposal by Defense Minister Juan Carlos Pinzón for a new legal framework for the military, which includes strengthening the military justice system, generated intense debate in the Senate.

“In no way, no one can think that what we are looking at is to create a framework for generating impunity in the country,” the minister said.

The minister explained the initiative: “When a situation arises in case of service, that process comes to the military justice system and what happens there is that if, for example, proves that there is a violation of the provisions of Article 3 Military Criminal Code (torture, murder, forced disappearance, human rights violations) will go to the ordinary courts.”

Social Organizations Colombian Center East say that with this project that courses in the House of Representatives, it is intended that the military and police treatment applied to them different than the ordinary courts and could enjoy forgive and forget, through which, under the pretext of contributing to a lasting and stable peace can not punish them for their crimes.

According to statistics, more than 4,000 military investigations related to crimes and serious violations of general human rights and international humanitarian law.

References:

Interview with Miguel Prado, director of the Presidential Program for Modernization, Efficiency, Transparency and Fight Against Corruption.

www.elmundo.com, 6 de Octubre de 2011, “Fuero No Es Impunidad.”

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.
