

National Integrity Systems

Country Study Report

Colombia 2001

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Colombia

Introduction

This text is part of the final report, along with the questionnaires on the different elements in the National Integrity System. Consequently, the two components of the work should be taken into consideration together so as to avail oneself of the detailed and specific information that was incorporated into the answers of the questionnaires, as well as the analytical and assessed information in the report.

The methodology used to fill out and complete the questionnaires, as well as the contents of the report, followed the instructions set out in the terms of reference that Transparency for Colombia received. The product is the result of a collective team effort by the Transparency for Colombia Corporation, with the support of Professor Daniel Mazuera Gómez and the participation of generous people who represent different facets of Colombian society and who participated actively in the focus groups.

Because the questionnaires go into considerable detail, the report does not reproduce the answers but rather concentrates on the analytical exploration of the pillars of the National Integrity System. Consequently, the different sections of the report should be consulted and referenced in conjunction with the answers to the questionnaires. As such, the aggregate value of the report is its in-depth analysis of the different issues. All the affirmations made in the report are based on the information presented in the questionnaires.

The report was drawn up using the conceptual framework defined by Transparency International that also has served as a support for the Transparency for Colombia Corporation. It takes a very critical yet constructive look at the Colombian institutions. It acknowledges the courage, the strength and the valour of the Colombian people but it warns about the fragility of the institutions and illegal actions by their leaders. It values the contributions of the millions of honest men and women who daily gave their testimony of endeavour and sacrifice to help the country get ahead, as well as the exceptional courage of the brave leaders who oftentimes have given all, even their very lives, to defend Colombia. It does not make sweeping generalisations about corruption and crime, because in Colombia a strong contingent of good citizens, hailing from all economic circumstances and walks of life, is alive and well. But it warns about the progressive downward spiral of values and principles among the powerbrokers, the political leadership and the official sector. In general, it acknowledges the difficult situation that Colombia is experiencing.

Although it acknowledges that corruption has brought the nation to a turning point, it lauds the progress that has been made in terms of interest in the subject, collective involvement, improvements to public disclose, citizen participation, the development of tools, the verification of successful procedures for building integrity, visibility and for denouncing. There is a critical mass of experts in the fight against corruption and of citizens who are committed to this cause. Another significant achievement has been to establish broad-based coalitions within civil society, which in the future will play a determining role in successfully waging the battles against corruption and in making progress on the construction of the National Integrity System.

Finally, it is necessary to position the reflections contained in this report within the context of a broader debate that refers to the common condition of fatigue in the Latin American democracies. This has eroded the legitimacy of the political system's legitimacy, the efficacy of the democratic institutions and the transparency of public administration. Nonetheless, without losing sight of the deterioration in the national sphere or disregarding the warning signs, this report appreciates the collective lessons. To quote a phrase from our popular lexicon, the night is darkest before the dawn.

A Brief Review of a Necessary History

From the time of its independence in 1810, Colombia's history has been marked by intense internal conflict. Records of conflicts in the 19th century abound and a succession of civil wars and new constitutions was the hallmark of the nascent republic.

In 1886, a lasting Constitution was finally issued and it remained in force for over a century. Nonetheless, it was reformed on many occasions, successively incorporating adjustments meant to be conducive to democratic governability, in a setting that was dominating by two parties that historically were very strong.

After the bloody war between the two parties, know by the generic name of "La Violencia," midway through the 20th century, in 1958 a constitutionally approved political power-sharing system, using alternating terms in government, came into effect. This was the National Front.

For 16 years, from 1958 to 1974, the two traditional parties, the Liberals and the Conservatives, held the office of the presidency for alternating four-year terms. Thus, from 1958 to 1962, the Liberals were in the presidency. From 1962 to 1966, it was the Conservatives' turn. From 1966 to 1970, the Liberals again. And from 1970 to 1974, once again the Conservatives. This formula dictated party control over public administration in such a way that half the public offices were held by Liberals and the other half were held by Conservatives, in practice excluding other political forces from participating.

Although presidential elections were decided by means of popular vote and universal suffrage, because of the National Front agreement, only the political party whose turn it was to enter office would run candidates in the elections.

The National Front was successful in its endeavour to contain the violence between the parties and this gave rise to a long period of peace between the Liberals and Conservatives. However, it also led to a widespread phenomenon of democratic exclusion and a severe blocking of the electoral system and the forums for participation. The unnatural Liberal and Conservative stronghold on the structures of power in the republic did considerable damage. In terms of corruption, it weakened the control systems, consolidating the political powers and the parties' bureaucratic political machinery of cronyism.

During the National Front, the institutional priority was not to create an atmosphere of security, nor to fight corruption. The priority was to guarantee the above-mentioned political peace and harmony between the parties.

The National Front ended and since 1974, all Colombian political movements have been free to run presidential candidates. Still, the seven presidents elected since that time have all hailed from the two same traditional parties, without exception.

The forums for participation were inadequate. The independent forces were blocked. There were structural factors associated with land ownership and more generally the distribution of wealth. Against the backdrop of a country accustomed to the internal armed conflict, these conditions were conducive to founding and establishing leftist guerrilla organisations, whose visibility was constant during the second half of the 20th century. The guerrillas were ideologically affiliated to the Cuban revolution, under Soviet tutelage. Others followed a divergent political line that held with Chinese communism.

Nowadays the strongest Colombian guerrilla groups are the FARC (Revolutionary Armed Forces of Colombia) and the ELN (National Liberation Army). They dominate in considerable regions of the national territory and the government is undertaking political negotiations and peace talks with them, which are at different stages. Elsewhere, in recent years right-wing paramilitary organisations have sprung up. Heavily armed, they are sworn to fight the guerrillas, becoming the protagonists in the escalation of violence that has unleashed a bloodbath upon Colombia. The authorities allege that both the guerrillas and the paramilitaries, to a considerable degree, finance themselves through drug trafficking.

During the 1970s, powerful organisations dedicated to growing, processing and trafficking in illicit substances, began to appear in Colombia. These had strong ties to the political structures.

The first drug boom was the marijuana industry on the Atlantic coast. Prominent regional families and networks of contraband runners in the northern part of the country set up the first organisations. However, during the early 1980s, the marijuana networks began to give way to the organisations that were to become the most powerful and feared in the drug world: the Medellin and Cali cartels, as well as the lesser coast cartel, plains cartel and Bogota cartel.

During the past 25 years, the state structures have been constantly contaminated by the drug cartels, which have permeated public institutions and undermined the pillars of the national integrity system.

Drug trafficking money progressively spread its taint throughout the different branches of public power in Colombia, dashing values, sacrificing principles, buying political leaders, judges, policemen, soldiers, reporters, and academics from the municipal to the national level. In turn, in this race, the

armed guards at the drug cartels' service, have murdered hundreds of leaders and upright people from different fields of endeavour who have attempted to stand up to them or contain their power.

During the presidential campaign for the 1990-1994 term, three candidates were murdered, including Luis Carlos Galán, an outstanding democratic leader, committed to do battle with the corrupting power of drug trafficking, and the candidate favoured to win the election. During the campaign there were several murder attempts against political leaders and against another presidential candidate, Ernesto Samper, who would later become president in the midst of an enormous political tempest concerning the infiltration of drug trafficking money in his electoral campaign.

Furthermore, the cartels embarked on a terrorist strategy of setting off bombs and car bombs in heavily populated areas, blowing up commercial flights and kidnapping renowned public figures, in their opposition to extraditing drug traffickers to the United States. "We prefer a tomb in Colombia to a prison in the United States," was the motto of a group of drug traffickers that called themselves the "Extraditables," under the command of Pablo Escobar and Gonzalo Rodríguez Gacha. Escobar, as well as being the top leader of the Medellín cartel, had been elected to Congress as a representative from Antioquia Department. Rodríguez Gacha, known as "The Mexican," was the second-in-command in the Medellín cartel and was the head of a powerful corps of paramilitaries that operated in the Middle Magdalena region and his hometown of Rionegro, Cundinamarca Department.

In this context, after Galán's murder, Cesar Gaviria, a young Liberal former cabinet minister, took over the Liberal presidential campaign. Simultaneously, a grassroots process was underway to form a constituent assembly, based on an extraordinary process that the Supreme Court of Justice upheld. Elected president, Cesar Gaviria took office in 1990 and called elections for the constituent assembly, which held its sessions until July 4, 1991, when it issued the new Colombian Constitution, which is the one that is currently in effect. ,

Framework for Issuing the Current Constitution

The constituent assembly was subject to three clear sources of pressure. First, there was pressure from the drug traffickers that had managed to infiltrate significant state forums. This was especially true of the Cali cartel, which was engaged in overt confrontation with the Medellín cartel, whose leaders ordered terrorist strategies against the Cali adversaries and furthermore kept the country on edge over the threat of extradition. Elsewhere, there were the traditional political players that felt that their power was threatened because, although they represented the majority of delegates in the assembly, for the first time an independent movement saw more of its delegates elected than those from the traditional party slates. Thirdly, at a time of high emotion, public opinion was clamouring for profound political change.

The constituent assembly was infiltrated by the drug traffickers' allies, especially those from the Cali cartel that operated within the state structure. In the complex negotiations with the government, Pablo Escobar prevailed in one of his objectives, in that one of the constituent assembly's first decisions was to forbid the extradition of Colombians. (Years later this decision was reversed.) As soon as extradition was outlawed, Pablo Escobar turned himself in to the authorities, to face justice in Colombia, serving his time in a prison build on his own property. There, so many irregularities took place that it was the shame of the Colombian justice system, right up to the moment of his embarrassing escape.

The traditional political forces also achieved their purpose. Although their mandate in Congress was revoked, the conditions that were agreed upon for the new elections and the section on the electoral system and the political parties in the new Constitution overtly upheld the most harmful political habits. The effect was to make change more difficult, eroding the parties' ability to convoke and lead, and paving the way for the decaying political class –tainted by drug trafficking and corruption— to take over large swathes in the Congress and the executive branch, both at the national and regional level. The biggest corruption scandals in Colombia's history took place after the 1991 Constitution was issued. It is true, however, that new forces have also entered the corridors of power, but their presence has been timid and minor.

Public opinion, euphoric over the illusion of change, could not comprehend the perversity of the process that was gestating. Through the façade of purification, the constituent assembly eventually upheld a political atmosphere dominated by dark forces and, in practice, it widened the gap between law on books and the sadly battered reality of the basic pillars of the National Integrity System.

Although in 1991 Colombians believed that the anti-corruption inspiration of the new Constitution would translate into a much cleaner and more transparent system, the reality was very different. Rich

in rights and liberties, as well as the description of instruments to protect these, the 1991 Constitution also defined a political system that favoured the growth of administrative corruption. It limited the independence of public powers. It was conducive to accepting gratuities. It favoured the appropriation of public funds into private pockets. And it limited the control entities' real powers.

In interest of providing a balanced perspective on the 1991 Constitution, it is worth mentioning the important charter of rights and the mechanisms for their protection, as well as the commitment to broaden mechanisms for participation, although their application is still very occasional.

Formal Elements of the National Integrity System in Colombia¹

The text of the 1991 Constitution and the set of norms of a legal and regulatory nature that make up the Colombian juridical system, formally establish the pillars for the National Integrity System, within the framework of a democratic republic. The legislation is abundant and, in fact, much of the current legislation has been issued in pursuance of the fight against corruption. Nonetheless, there is a noticeable gap between the current laws and reality, or to put it another way, between the letter of the law and its application.

In some cases, this discrepancy is because there are legal vacuums that make it possible to avoid abiding by the laws. In others there is nothing said concerning the procedures that provide for a wide margin of discretionary power for the authorities. There are sterile provisions. There are lax interpretations that have not been unified in the national jurisprudence. And in other instances, the gap between reality and the letter of the law is due to simply breaking the law or the system's inability to enforce it or to sanction those who violate it.

Throughout the text of the Constitution and the body of legislation it is possible to identify the formal elements to build a National Integrity System. However, it is also true that the political structure that the current Constitution upholds and the political culture that derives from this, have generated a fertile environment for administrative corruption.

A *National Integrity System* is a set of elements that enable the various components of the State and civil society to become organized and act with transparency, efficiency and effectiveness'. Conceptually, the National Integrity System has an implicit multiple disciplines focus, combining different political, legal, sociological and administrative elements aimed at securing, among other things, the control between the different powers of the State and of society over them; at having clear objectives for the administrative apparatus; at the strengthening of civil society and citizenry participation; at the effectiveness of justice; at an open and competitive public resources contracting; at the development of entrepreneurial ethics and responsibility and at a free press overseeing what is public.

The National Integrity Systems exist, to a larger or lesser degree of development, almost in all modern nations and, in the case of Colombia- defined in the Constitution as a Social State of Law, organized in the form of a single, decentralized republic - this is not an exception to the rule. A democratic political - administrative system is foreseen for our country, with autonomous territorial entities, participative, pluralist and founded on the respect for human dignity, on work and solidarity of those making up the Nation, on the prevalence of the general interest and on the respect for human rights.

Further to the above principles, rules have been foreseen for the operation of the State, such as the independence of the executive, the legislative and the judicial branches of the public power, and of the watch-dog agencies, with a mutual control system, and other rules related to public functions and the performance of public servants. The Constitution stipulates that sovereignty lies solely on the people, from which public power stems. The country has a presidential regime. The right to create, organize and develop political parties and movements is guaranteed and currently, around 19 of them have a representation on the Congress.

The Pillars of The System

Governmental Institutions

For the case of Colombia, the integrity system's institutional foundations are the following:

The **National Congress** made up by two chambers, the Senate and the Chamber of Representatives, whose members are elected by the people. In addition to passing laws it has judicial and political control functions over the executive. In this respect it may prosecute the President and top ranking judicial branch officers and exercise political control over the government and the Administration by summoning ministers and directors of national institutions, conducting debates and eventually, submitting and approving motions of censure for these top ranking officers.

The **Judicial Power** has several jurisdictions:

- The ordinary, headed by the Supreme Court of Justice, that prosecutes State top ranking officers; the action under administrative law, led by the State Council, highest instance for

administrative litigation, in addition in charge of trying nullity actions due to the unconstitutional nature of governmental decrees and of conducting the processes against congressmen due to loss of investiture. The members of these two instances are appointed by the respective agency from lists sent by the Higher Judiciary Court.

- The constitutional jurisdiction, headed by the Constitutional Court, in charge of safeguarding the integrity and supremacy of the Constitution.
- The Nation's General Prosecutor, who investigates offenses and prosecutes the presumed offenders before the judges. Appointed by the Supreme Court of Justice for a four-year term from a list of three candidates submitted by the President of the Republic. ,
- The High Council of the Judiciary, with duties such as administering the judicial career and acting as disciplinary court for the judicial branch officers and for trial lawyers. Its members are appointed as follows: out of the 6 magistrates of the Administrative Division, 2 are appointed by the Supreme Court of Justice, 1 by the Constitutional Court and 3 by the State Council; the 7 members of the Disciplinary Division are appointed by the Congress of the Republic from lists of three candidates submitted by the government; all of them are appointed for an eight-year period and none of them may be, at the time, a magistrate of the nominating agencies.

The **Executive Branch**. Made up by the President of the Republic (elected by the people), the ministers, directors of administrative departments, superintendents, directors of public establishments and of State industrial and commercial companies at national level (appointed by the President of the Republic). At territorial level, by the governors and mayors (elected by the people).

The **Police** makes part of the public force² and is under the jurisdiction of the Nation, this is to say that it is organized in a centralized manner.

In the framework of this branch's competencies, and for the purpose of this work, we highlight the governmental concern for the corruption issue in Colombia, resulting in the adoption of corruption fighting policies during the past 4 administrations. The current administration of President Andrés Pastrana has set up the Presidential Program to Fight Corruption, with the following duties:

- Assist the President of the Republic and the National Government in the design of governmental policies destined to promote the fight against corruption.
- Conduct studies, evaluations, sound out, statistics aimed at determining the main causes for corruption or inefficiency in administrative matters.
- Prepare bills of law, decrees, resolutions, guidelines and, in general, any other relevant instrument to implement the government's administrative ethics and efficiency related policies.
- Recommend controls and mechanisms aimed at an enhanced efficiency and at a guaranteed transparency in administrative acts.
- Receive accusations against any public servant, submit them before the relevant authority and conduct their follow-up.
- Perform overseeing of national public entities in order to verify the quality and value of the procurement of goods and services.
- Recommend corrective measures in the specific events of inefficiency or violations of the administrative ethics.
- Establish contact and coordination with the Nation's General Inspector Office and the Republic's General Comptroller Office for administrative ethics and inefficiency related issues.
- Set up communication tools between society and the administration, regarding the development of mechanisms aimed at strengthening the civic overseeing at various levels.
- Cooperate with the Territorial Planning Council in joint actions that enable conducting an efficient follow-up of the National Development Plan.
- Submit reports requested by the Vicepresident of the Republic on the progress of the program.
- Coordinate with the Ministry of the Interior and the Public Function Administrative Department, the actions, programs and policies in connection with the fight against corruption.

- The remaining duties that correspond to the nature of the area.

The **Nation's General Accounting Office** also makes part of the Executive Branch, and its duty is determining the accounting policies, principles and regulations that must govern the entire public sector of the country, keeping the Nation's General Accounting, issuing opinions on the income and expenses classification system of the Nation's General Budget, indicating and defining the Financial Statements and Reports that public sector entities and agencies must prepare and submit, and preparing the Nation's General Balance. The Nation's General Accountant is appointed by the President of the Republic.

Watchdog Agencies made up by the "**Ministerio Público**" and the **Republic's General Comptroller Office**.

The **Nation General Prosecutor's Office**, the **People Ombudsman Office** and the **Municipal Ombudsman³ Offices**, make up what in Colombia is called the "Ministerio Público" (Public Ministry), in charge of safeguarding and promoting human rights, protecting the public interest and overseeing those performing public functions.

The General Prosecutor is appointed by the Senate for a four-year term, from a list of three candidates submitted by the President, the State Council and the Supreme Court of Justice. The People's Ombudsman is appointed by the Chamber of Representatives, for a four-year term from a list of three candidates submitted by the President of the Republic. The Municipal Ombudsman is appointed by each Municipal Council for a three-year term.

It is worth noting the creation of the General Public Prosecutor Delegated for Public Morality, in charge of investigating and imposing disciplinary penalties to top ranking officers of the State.

The **Republic's General Comptroller Office** is the entity in charge of making a subsequent and selective monitoring of the administration's fiscal management and of the individuals or entities that manage funds or goods belonging to the Nation. The General Comptroller is appointed for a four-year term from a list of three candidates submitted by the Supreme Court of Justice, the State Council and the Constitutional Court.

Departmental and District Comptrollers are appointed by the Departmental Assembly and the District Councils, respectively.

Another watch-dog agency is the **Republic's General Audit Office**. Its mission is to control the management of the . General Comptroller's Office and the Departmental and District Comptroller offices, contributing to its refinement and modernization, to encourage a self-control culture and foster citizenry participation in the fight against corruption.

The auditor is appointed for two-year terms by the State Council from a list of three candidates submitted by the Supreme Court of Justice.

Civil Society: Social Organizations and Movements, Private Sector and the Media

Civil Society incorporates various social actors and, therefore, different operational logics⁴, so it is relevant to make a distinction between the different actors in order to have a clearer methodology for the analysis and design of policies to be followed to strengthen the National Integrity System. We basically differentiate those actors that express a social or political logic from those who basically express an economic logic.

Social organizations and movements: peace, environmental, cultural, Indian, ethnic, Negro, peasant, women, education, sexual minorities, juvenile, neighborhood, public utilities, sports, aid movements and organizations, among others, make up this type of expressions by civil society. There are 42.000 community action boards, 2.700 juvenile clubs and 5.346 NGOs in Colombia⁵. However, this figures do not allow to conclude that the country has a strong civil society, since the existence of civil society organizations is necessary but not sufficient to consider a civil society as strong. Other factors to be considered are: the social legitimacy of what is public, respect for the rules of the democratic game, the citizenry rights culture, citizenry participation, the equitable distribution of power. With the coming into force of the 1991 Constitution citizenry participation has improved, in particular social control, applying mechanisms such as citizenry overseeing by means of which a citizenry rights culture starts to arise, though incipient, and strongly affected by the country's armed conflict situation.

The private sector. The country has important sectors of entrepreneurs who are to a larger or lesser extent involved in an active and influencing manner in the national and regional political life. Several of them are grouped in organizations such as the National Association of Industrialists –ANDI-, the National Federation of Traders –FENALCO-, the Colombian Association of Small and Medium Size Entrepreneurs –ACOPI-, the Colombian Association of Financial Institutions –ANIF-, the Bank Association –ASOBANCARIA-, the Confederation of Chambers of Commerce –CONFECAMARAS- and the Colombian Society of Farmers –SAC, among others. The efforts of entrepreneurs encouraging honesty in businesses and social responsibility, are recent. Non-profit entities have been set up (Foundations), made up by some economic groups in order to develop programs that contribute to the social and economic development of the country, or to the Chambers of Commerce themselves that bring together entrepreneurs and through which the social entrepreneurial responsibility awareness is promoted.

The media. The Constitution acknowledges the freedom of expression, establishment of media and freedom of press. Television and radio frequencies are public property but are awarded under the concession mode to be used by the private sector. In practice, the ownership of the media (press, radio and TV) is fairly concentrated, with a high incidence of economic groups thus influencing the specialized management of information. There are research journalism currents that have made important work on the corruption issue and conducting research and providing information on this phenomenon has become, mainly at regional level, a high risk factor for the life of journalists.

There are 4 regular newspapers with national coverage and at least 10 with regional coverage. Regarding Television Channels there are 3 national ones that are State property, and 2 private. At the regional level there are at least 5, 4 of them public and 1 private.

In this civil society scenario the confluence of two corruption fighting initiatives in the country stands out, “Transparencia Colombia” and the group called “Private Initiative Against Corruption”, that have joined efforts, strengths, expertise and resources and have created “Corporación Transparencia por Colombia”. This new organization has been conducting important actions to summon the various social, trade sectors and the media, in order to build a strong alliance for honesty.

General Application Legislative Measures

Public Function. Based on constitutional provisions that regulate the public function, such as purpose, entrance, responsibility, regulations, inabilities and incompatibilities, various legal norms have been developing these issues:

- *The inabilities and incompatibilities regime.* Colombian legislation establishes an incompatibilities regime for public servants in general and in particular for some of them. They refer to criminal penalties, having had business with the government in the six months prior to elections in the case of congressmen, family relations or kinship with public servants, prohibition to receive more than one compensation from the Public Treasure, appointing relatives as employees, performance of any other public or private post, incapacity to contract, among others.
- *Sole Disciplinary Code.* Law 200 of 1995 comprises the principles, purposes of disciplinary penalties, duties and prohibitions for public servants and the penalties to be imposed in the event they are infringed. The main authority regarding discipline is applied by the General Inspector’s Office of the Nation, but there are also internal discipline control offices in each entity. At municipal level this role is performed by the ombudsman’s office.

National Planning System. The Constitution foresees the existence of this System made up by the National Planning Council and the Territorial Planning Councils (Departmental, District and Municipal). These are combined participation instances that by means of consultation formulate concepts on the development plans for each territorial entity. The Plan includes a general part stating the long term purposes and objectives, the goals, medium term action priorities and the strategies and general guidelines of the economic, social and environmental policies adopted by each ruler, as well as an investment program including multiple year budgets.

Administrative law and regulation of the advertising principle. In principle, every administrative act by the State must be published or at least susceptible to be known by the citizenry. This possibility is legally guaranteed through the exercise of the right of petition and the application of the relevant regulations of the Code of Administrative Law.

The public contracting Statute. Contracting of public resources is regulated by Law 80 of 1993 and its regulatory norms. It establishes general procedural principles and rules aimed at securing free competition, transparency, advertising, economics and objective selection. It sets forth exceptions for the implementation of the above principles, among others when contracting under a declaration of evident urgency and for small sums.

Citizenry rights and participation mechanisms. The Political Constitution of 1991 acknowledges the civil, political, economic, social and cultural rights of Colombians living in the country. As to the civil and political rights we may highlight the right of petition and the judicial mechanisms to make fundamental and collective rights effective, such as the injunction and popular actions. Likewise, the right to political and citizenry participation guaranteed by means of several institutional mechanisms and tools such as popular consultation, referendums, revoking of a term of office, open municipal council, public hearings, citizenry overseeing, etc.

Anti Corruption Statute. Law 190 of 1995 includes norms aimed at preserving public morality and eradicating corruption. In particular it regulates the public servants' regime in connection with their recruitment, incentives, income and property statement (Only Resume Form and Only System for Personal Information in the Public Function Administrative Department), the penal system characterizing the following behaviors as offenses: embezzlement in which a public servant takes possession of State goods for his benefit or for the benefit of a third party that have been assigned for his custody, embezzlement by extension, extortion, bribery of a public servant to procrastinate or omit an action inherent to that position or to execute an act contrary to his duties, bribery of a public servant to execute an act in the exercise of his duties, bribery for providing or offering traffic of influences to obtain a benefit from a public servant, illegal use of privileged information, prevarication by public servant who issues a resolution or decision contrary to the law, prevarication by a public servant who omits, procrastinates or refuses to conduct an act inherent to his duties and prevarication for illegal advise. Furthermore, the anti corruption statute regulates aspects related to the financial system, in order to guarantee access by research agencies to information on accounts, sets up control systems over non-profit entities, determines social control mechanisms and creates the National Commission for Moralization and the Citizenry Commission to Fight Corruption, that have not been summoned. In general, the application of the Statute has been below the citizens expectations.

Party and elections expenditure control. As a mechanism to encourage accountability and transparency in democratic processes, Law 130 of 1994 was passed, regulating state and private funding of parties, political movements and electoral campaigns, and mechanisms to submit accounts and make them public. The Law makes no distinction or establishes conditions for the establishment of the amount of personal donations authorized, with the stipulation that no candidate exceeds an investment limit set by the National Electoral Council, taking into account the cost of campaigns, the electoral census of the districts and the allocation the State makes to replace, in part, the expenses made during the campaign.

The Law provides for the submission of public reports to the National Electoral Council, at the latest one month after each electoral debate. Reports must include the party's annual income and expenses or movements before January 31st of each year, the destination and use of public resources assigned, income obtained and expenses incurred during the campaign. These reports must be published in a nationwide newspaper, after reviewed by the National Electoral Council.

Its effectiveness has been uncertain and the reform of the system has been subject to exhaustive public debate in Colombia.

Signing and internal adoption of the Inter American Convention for the Fight Against Corruption. Through Law 412 of 1997 Colombia approved the cited Inter American Convention. In compliance of the commitments therein established, the new Criminal Code – that will come into force on July, 2001 – defined transnational bribery.

International Cooperation Colombia has received cooperation from friendly governments through the United States International Cooperation Agency (US-AID), the German International Cooperation Agency (GTZ) and from the World Bank.. The Colombian Agency for International Cooperation ACCI, is currently studying the possibility of signing an agreement with the Crime Prevention Commission of the UN, so Colombia becomes a pilot to implement the World Program Against Corruption.

The Reality of the Fundamental Elements of the National Integrity System

This chapter refers to the conditions for applying the different elements that make up the National Integrity System. There is a noticeable gap between the development of legal texts and their application in society, as the appended questionnaires make evident. Starting with this evidence and based on the comparative answers in the questionnaires, the following sections of this report concentrate on exploring the causes of this discrepancy.

Transparency and Public Accountability on Procurement Processes and Decision-making in Public Institutions

Colombia has a long history of legal statutes that regulate the subject of public procurement processes for the acquisition of goods, the contracting of services and the construction of public works. In fact, the debate concerning administrative contracting statutes has been on all the legislative agendas, without exception, for the past 20 years.

The legal provisions go into wide-ranging and extensive detail on the classification of contracts, the procedures for entering into them, the bid specifications, the conditions for awarding them, the conditions for their execution and the norms referring to payments and their disbursement.

There is always room for improvement in the legal provisions and, in fact, significant initiatives are underway to make these improvements. But the weakest link in the process derives from the fact that the system is vulnerable relative to the political determinants that preclude the awarding of contracts and that, in practice, destroy the transparency of the processes. This does not mean that the law is always being broken. To the contrary, the law is applied.

Nonetheless, cases often arise in which the law does not serve to reveal illegal agreements prior to the start of the procurement process, or to stop them. The complex legal web often serves to cover up the corrupt objectives of the different parties to the contracts. These deviations take place through several means. Let us consider them.

An agreement between political forces, a determined executive branch department will favour a political sector or party or movement in exchange for its backing in a coalition majority in the corresponding seat of government at the relevant territorial level. Thus, the appointment of officials based on merit is displaced by political recommendations from the sector that corresponds to the entity in question. Once the official has been appointed through the agreement, he acquires the power to use the entity's budget for contracting and to name his subordinates, which he does in a way that defends his group's political and economic interests. In doing so, sheltered by the trappings of legality, he predefines the bid specifications for purchases, contracts and competitions before making them public, so as to favour the contractors that operate in his camp. They, in turn, once they have won the contract, pay back a certain percentage of their profits to the official, the movement or the political boss.

In a strict juridical sense, these cases have not violated any particular law. The officials take care to abide by the details of the laws on procedures, deadlines, requirements and legal requisites. However, all the formalism covers up conniving fraud, from the moment of drawing up the bid specifications and recording the bidders offers. Curiously, the law serves to cover up corruption.

Elsewhere, there are the cases of corrupt officials who, not acting in pursuance of any underlying political plan, take advantage of their posts and simply demand a commission for awarding contracts to bidders or contractors who want to do business with the state. There are cases of veritable administrative contracting cartels that are protected in the Congress of the Republic, the Departmental Assemblies and the City Councils, with the complicity or the participation of officials from the executive branch. And there are also cases of corrupt officials who operate on their own, ready to take advantage of opportunities and the convergence of circumstances.

The offices of the control entities receive a large number of reports of irregularities in the contracting process. However, the rate of effective resolution is very low. This is often because of the complicity of the control organs themselves. They are part in the political deal, which works by blocking their actions. In other words, the selection of officials to head up the control entities also falls to the majority coalitions in power in the public corporations, in such a way that structures a complex chain of favours that paralyses the control entities.

In 1995, the Justice Ministry revealed statistics that showed that the rate of impunity in the Colombian justice system was 97 percent. There is no reason to believe that in the area of crimes involving public funds, which include the crimes associated with administrative corruption, that this rate would be any different.

As well as the actions by the penal justice system and the control entities, the other democratic tool for investigating, reporting and eventually sentencing corrupt persons is that which is known as political control, which is exercised in the popularly elected public corporations. Members of Congress, deputies and councillors may call upon officials to explain and defend their actions. Once again, the paralysing effect of the agreements undermines this tool.

Although these observations refer directly to administrative contracting, they also apply to other decisions that public officials make in the exercise of their duties. Thus, when the political conditions favour these accords, the opportunities for holding the officials responsible for their actions become increasingly remote.

The Comptroller General and Attorney General

As was mentioned in the questionnaires, the constitutional norms set out a complex process for electing the Attorney General of the Nation and the Comptroller General of the Republic. In both cases the procedure seeks to ensure the officials' independence and to safeguard the integrity of the public administration system and the use of public funds. The resulting reality has been quite different. The system involves different branches of public power and confers a determining role to the political bodies in their selection of the comptroller and attorney general, and this has produced bitter results.

Half a dozen of the state's highest-ranking officials have been charged with criminal offences and sentenced to serve time in prison. If they have not wound up in the country's regular prisons, it is because they have received special privileges that have allowed them to serve their time under house arrest. At the departmental and municipal level, the situation repeats itself and multiplies directly in terms of the number of territorial entities that exist in Colombia.

In theory, this was meant to be an opportunity for harmonious collaboration among public powers so as to ensure transparency in public administration. However, it has become a tortuous road for creating unholy commitments and for imposing conditions on the control entities' actions, from the moment that the highest-level officials are elected. The constitutional demand to keep the body that nominates candidates separate from that which makes the selection has resulted in double vulnerability in terms of the independence and integrity of the control entities.

The above does not mean that the control entities cannot take steps to fight corruption. Effectively they do take them. What it does mean is that most of the corruption in Colombia, at the different administrative levels, goes on right under the control entities' noses. This creates the impression that even the control entities' most effective measures in recent decades have been adopted more out of considerations of alliances and antagonism, rather than in the due fulfilment of their missions.

Furthermore, traditionally the control entities at all levels have had large and unwieldy bureaucracies, making them an attractive target for consolidating political cronyism and repaying electoral favours. There have often been information leaks concerning the investigations that the control entities are undertaking. This increases the risk of buying favourable rulings or absolutions, intimidation and pressure of different types. Also, because of the above-mentioned conditions, many officials report feeling stronger ties of loyalty to the political leaders who appointed them, than to the success of the investigation or the prestige of the control entity.

Freedom of the Press and Access to Official Information

Colombia has a long history of defending freedom of the press and information. The first chapters of our history as an independent republic are linked to the translation and printing of the New Granada of the Rights of Man. For this reason, the freedom of the press has always been of central concern to Colombians.

This is evident in the 1991 Constitution, which guarantees all persons the right to freely express their thoughts and opinions, to inform and receive true and impartial information, and to found communications media. Furthermore, it declares that the media are free and have social responsibilities. It guarantees the right to rectification in conditions of equality and it categorically states that in Colombia there shall be no censure.

The history of the press in Colombia in prior centuries was dominated by newspapers founded by and with explicit affiliations to one of the two traditional political parties. Usually, prominent Liberal or Conservative families owned the press in Colombia. They put their newspapers or magazines to work for their parties and their most illustrious members held important political posts. In recent years a significant evolution has been observed, toward the constructive independence of the press, away from political directives. In terms of market share, until the 1980s there were two main nationally circulating newspapers that were published in Bogota. One of them went into crisis. It lost readership and faced serious economic problems. A large economic conglomerate, which we will discuss further on, bought it. The other newspaper consolidated as the only one with true national circulation, as well as being the clear forerunner in Bogota. It became the basis for a publishing house with involvement in other information-related fields. In the different regions, there are local newspapers.

In radio, the trend in recent years has been the consolidation of the two major national networks that today dominate 90 percent of the national radio market, although three much smaller national radio networks exist as well as numerous small local stations. Both the AM and the FM bands are quite congested. In Colombia, where television arrived in the latter half of the past century, radio has established a firm presence. The two main networks belong to the country's biggest economic groups. As well as media, they have holdings in airlines, cellular phone services, beer, juices, soft drinks, drinking water, fast foods, textiles, banks and financial entities, automobile factories, sugar plantations and processing plants, among others. Furthermore, one of the two groups owns Colombia's oldest magazine and a long-running newspaper.

Three years ago, these groups were granted the right to broadcast on two private national television channels which today attract 80 percent of viewers. This fact radically changed television information offerings. Until then, there had been only two public television channels that 95 percent of the viewers watched. The information programming on these two channels –newscasts and opinion programs— were granted to former presidents' families or to their closest friends. Nowadays, although many are still presenting their programming, these broadcasts have lost many viewers to the new channels run by the above-mentioned economic groups. At the local level, the only private channel that operates in Bogota was granted to a publishing house. This publisher owns, among other things, the most widely circulated newspaper (which also has the country's most visited web site), a national economic newspaper, five regional newspapers, a fleet of magazines, and holdings in subscription television services, satellite television and communications systems.

Despite the democratic risks that a concentration of media ownership implies for the freedom of the press, the greatest source of intimidation to the free press in Colombia comes from the agents of the armed conflict, the illegal groups, drug trafficking and violence. More journalists have been murdered in Colombia than in any other country in the Americas. Currently the country's five most outstanding journalists have been forced to seek refuge in other countries after receiving death threats from different agents in the conflict. In Colombia groups of killers for hire exist that operate as authentic mercenaries and place themselves at the disposal of whomsoever is willing to pay them, be that an insurgent group, a paramilitary group, a drug cartel or a source of administrative corruption.

In terms of access to official information, solid constitutional and legal protection exists that even consecrates the right to petition the authorities citing the pretext of general or personal interest, and to receive a prompt answer, as a fundamental right. In general terms this provision is upheld and when the entities are reluctant to provide the requested information, the official in charge may be sanctioned. There are, however, some documents that are restricted such as those that refer to judicial indictments or those that could endanger national sovereignty.

A Responsible Business Sector

Traditionally, discussions of corruption in Colombia have focussed on public officials. It has become a habit to blame the public sector exclusively for corruption in Colombian institutions. However, in recent years a much more comprehensive perspective on corruption has developed, which warns businesses and the private sector in general about its responsibilities on the subject of corruption. In turn, the business community has shouldered this commitment. Following the lead of outstanding figures in the field, and with the support of the labour unions, encouraging results are beginning to be seen.

The groundbreaking debates on businesses' social responsibility are now over a decade old. As the debate goes further into depth, the business community reaffirms its commitment to the causes that are fundamental for improving living conditions in the country.

In recent years, the business sector's contribution has been central in the creation of non-governmental organisations dedicated to philanthropy, caring for children and the elderly, fighting child abuse, preventing drug addiction and alcoholism, rehabilitating those injured during the war, and intervening in the conflict zones to defend civil rights. Thanks to generous donations from the business sector, non-governmental organisations have been founded to strive for judicial excellence, improve hospital management, foment entrepreneurial innovation, improve the quality and coverage of the education system, and to reflect on peace and reconciliation in Colombia, among other issues. Mixed public-private corporations have also sprung up to promote educating Colombians abroad and to encourage the cultural and musical skills of the country's most underprivileged youths.

In particular, in the fight against corruption, the strongest and most active organisation of its kind in Colombia is the Transparency for Colombia Corporation. The corporation is the result of joint collaboration among business and civil society leaders. The response from the Colombian business community during the corporation's regional presentation, which took place during the first quarter of 2001, underlines the business sector's consciousness, interest and commitment to the subject.

In effect, there has been unanimous acclaim for the Colombian business sector's contributions to the common good and its increasingly clear willingness to develop a culture of social responsibility in the private sector. In this scenario, it is easy to foresee clearly identifiable leadership and joint commitments with businessmen and companies. However, there is still a long way to go. Although many companies have set up foundations and have trained their executives in social service and collective responsibility issues, the private sector is still a long way off from public service. It has remained on the sidelines of many processes that have been fundamental in the country and it has been accused of having a certain degree of indifference at critical moments.

The most tenuous area and, as such, the most dangerous for the Colombian business sector, is the issue of campaign financing. The system for financing electoral activities has given rise to a series of inappropriate commitments and pending favours with governors, members of Congress and officials elected by popular vote. The system is not completely transparent and it often leads to behaviours, conduct and decisions that affect collective wellbeing.

Certainly, on this front it is indispensable to improve both the norms and the practices on the subject of financing political campaigns. Currently, the financing system is mixed in that the candidates are allowed to receive donations from private enterprise and at the same time the state reimburses the party or movement for expenses in proportion to the number of votes that the candidate receives. Furthermore that state pays a small sum to pay for transporting voters, depending on how many votes were received.

Finally, on the subject of relations between the business community and the political leadership in the analysis of the National Integrity System, it is necessary to regulate the parliamentary lobbying process. Currently there are no regulations, a situation that lends itself to introducing private interests into legislative bills without due transparency and without making the motives for the bills explicit. The absence of regulations has also led to problems that arise as the bills are being debated. The legitimate interests of legally established businesses get mixed up with the interests of groups that operate outside the boundaries of the law or than engage in illegal practices.

Independence of the Judicial Branch

The formal structure of the Colombian State is based on the principle of powers that are separate, yet work together harmoniously. Furthermore, one of the fundamental motives that led to the creation and inspired the deliberations in the constituent assembly was to reinforce the judicial branch.

In this context, Article 228 of the Constitution states that the administration of justice is a public function. Judicial decisions are independent. Proceedings shall be public and permanent. The norms consecrate a number of provisions that seek to dignify the judicial branch, to make it effective, independent, and furthermore to ensure the right to the administration of justice, with fair judges, as fundamental to the state of law.

Since 1991, the amount of public spending on the justice system and its share of the GDP has increased considerably. However, its quantitative and qualitative performance still leaves much to be desired. Although it is said that the figures on impunity cited in the previous section have come down, there is no other trustworthy indicator that demonstrates the collective effectiveness of increased spending on the justice sector.

Prestigious academic sectors have come down hard on the branch's top administrative and disciplinary authority, the High Council of the Judiciary, for its high costs, low efficiency and the notorious interference that political pressure exerts on its different chambers. In fact, intense political debate is underway on bills to reform the judicial branch.

The Constitutional Court has developed a significant body of doctrine since it was created in 1991, after the Constitutional Chamber of the Supreme Court of Justice was eliminated. The Senate elects the court's magistrates, from triptychs proposed by the president of the republic, the Supreme Court of Justice and the Council of State. Although at first glance this would appear a healthy procedure, it has saddled the magistrates with a heavy political burden.

Recently a new set of magistrates were elected to the court, including some renowned judges. However, the process of electoral campaigning before the Senate was frankly unsuitable for the future independence of the country's highest constitutional court, in that the process lends itself to political deals and it increases the candidates' vulnerability to the legislators the political factions' requests and interests.

, The Supreme Court of Justice in Colombia also bears an ever-present reminder of death. In 1985, an M—19 guerrilla commando took over the Supreme Court building and in the ensuing bloody battle with the Army, the building caught fire and many of the Supreme Court judges were killed. The 1991 Constitution established constitutional justice and eliminated the Supreme Court's Constitutional Justice Chamber, giving rise to the Constitutional Court. The Supreme Court is the highest level of the ordinary jurisdiction and it is divided into chambers. The court's judges are appointed from lists drawn up by the High Council of the Judiciary and the Council of State, which is the high tribunal for administrative and disciplinary issues in the judiciary.

The Supreme Court of Justice is responsible for judging cabinet ministers, the attorney general, the ombudsman, high-ranking attorney general's office officials, the directors of administrative departments, the comptroller general of the republic, ambassadors and diplomatic or consular mission heads, governors, court magistrates, and public forces general and admirals, once charges have been laid by the prosecutor general of the nation. .

The Office of the Prosecutor General of the Nation, created in 1991, is also part of the judicial branch. This office is responsible for investigating crimes and accusing the alleged lawbreakers before the corresponding courts and tribunals. The Constitution guarantees its administrative and budgetary autonomy. However, it has found itself in the line of fire in this country where drug trafficking, violence and political corruption are the order of the day. The institution's concrete and effective performance has been much less outstanding than what was expected of it at the time of its creation. The particular accusatory system that has been developed in Colombia has not produced the expected results.

Furthermore, in the performance of the three prosecutor generals who have filled this role to date, political considerations have clearly been seen operating. , The Supreme Court chooses the prosecutor general from a triptych proposed by the president of the republic. In the atmosphere of strong political polarisation that has gripped Colombia in recent years, as well as its own functions, the Office of the Prosecutor General has become a key piece in national political dynamics. Inclusive, one of the prosecutor generals ended his term prematurely to run as a presidential candidate. The deputy prosecutor general ran as a candidate to the Senate and the secretary general ran as a candidate to the Chamber. Although none of them were elected, their campaigns were based on different political platforms, causing the impression that politicisation has not been fully overcome. In the upcoming months a new prosecutor general will be elected for a four-year term and already the debate is much more political and party-oriented, rather than judicial and academic, concerning this election.

The history of violence and intimidation against the judicial branch and its officials in Colombia is long and painful. Many judges, prosecutors, magistrates and officials have been the victims of violence. For this reason, as well as the political factors that clearly limit the judicial branch by blocking its actions and favouring corruption, armed violence has been a clear and constant threat to the independence, integrity and lives of members of the judicial branch.

This office's work is not limited to cases dealing with drug trafficking and terrorism by members of the drug cartels, subversives or paramilitary groups. It also handles penal, civil and administrative cases that have to do with corruption.

Finally, it must be said that the judicial branch and the institution of judges have lost dignity and prestige in Colombian society. Although there are honourable exceptions, in the collective prioritisation

of national values, being a judge in Colombia does not rank very high in terms of dignity and this fact has a harmful affect on the legitimacy, credibility and dignity of the justice system.

Legislative Power

The Constitution states that Congress is responsible for reforming the Constitution, passing laws and exercising political control over the government and the administration. Congress is elected by direct, popular vote. Every citizen has the right to elect and to be elected and to take part in elections. The senators and members of the Chamber are elected for four -year terms and the Constitution states that they represent all the people and must act in accordance with justice and the common good. It also establishes that those who are elected are politically accountable before society and before the electors for fulfilling the obligations of office.

Congress meets in ordinary sessions during two semesters per year. It is based in the capital of the republic and it is made up of the 102-member Senate (100 chosen in national elections and two elected in special indigenous elections) and the 169-member Chamber (elected from territorial districts: two representatives from each district and one more for every 250,000 inhabitants and from special districts).

The Constitution sets out a comprehensive list of regulations that govern the process of issuing laws and for reforming the National Constitution. In turn, these laws are further detailed in the Statute of Congress and the legal provisions and regulations applicable to the subject of legislative activity.

On the subject of political control, each chamber may ask the government for the reports that it needs for its activities and it may summon and oblige ministers to attend the sessions. These summonses must be issued no less than five days in advance and must be made in writing. The ministers must be listened to in the sessions to which they have been summoned, and their presence does not preclude that the debate may continue in subsequent sessions at the respective chamber's will. If the ministers do not attend without an excuse that the corporation accepts, then it may level a motion of censure against them.

Members of Congress may propose a motion of censure against ministers for affairs related to the performance of their jobs. A motion of censure, if it is warranted, must be proposed by at least 10 percent of the members that make up the respective chamber. Its approval requires an absolute majority of the members of each chamber. Once it has been approved, the minister is removed from the post. If it does not pass, another motion of censure may not be proposed for the same issue, unless new developments arise.

Although ministers are often summoned before Congress –which has even abused the mechanism— as well as commission summons for other officials from the executive branch, to date, in the 10 years that the Constitution has been in effect no motion of censure has been applied. There has not been a single instance of motion of censure in the Congress of the Republic. This reflects real weakness in the corporation's ability to exercise political control. But, above all, it is evidence of the unholy mixing of the executive and legislative powers in Colombia, from the time that the new Constitution was issued.

This has generated dangerous political incest. To create parliamentary majorities to support its initiatives, the government turns over bits of the state to members of Congress to whom it delegates, in practice, the power to choose the officials who occupy official positions and allows them to make use of the funds meant for official contracting. This has done serious harm to national integrity but in exchange it guarantees that the laws that are in its interest are passed and it neutralises the risk that the majority blocs of parliamentarians may approve a motion of censure.

In our view, this is precisely the most complicated stumbling block, referring to the consolidation of the independence of the powers needed to build a National Integrity System. This unholy relationship between the executive branch and the public corporations is conducive to guaranteeing impunity in public administration. It not only eliminates the possibility of exercising real control, but it also involves the control and oversight entities, the guardians of the system's integrity.

This unholy relationship, an incubator for corruption and inefficiency, has taken place in Colombia in the context of political parties that are historically atomised within their ranks, converted into anachronistic federations of small scale electoral machinery workings and with the clear immaturity of the new independent political forces in the parliamentary exercise. In practice, the parliamentary blocs have disappeared and although, for electoral effects, the parliamentary majorities still maintain their affiliations to the two traditional parties, the reality is that the political deliberations have been

diminishing gradually until they have become retail negotiations, one-on-one, between the government and the parliamentarians.

The approval ratings surveys that are periodically done in Colombia, have repeatedly coincided that the Congress of the Republic has lost its prestige, is corrupt and inoperable. This perception is reinforced because, with exceptions, the members of the five most recent Chamber directive tables have come under investigation. This perception of widespread corruption and inoperability clearly does not do justice to the other brave and honest Colombians who have won seats in Congress.

The Constitution states that members of Congress must disclose to the Chamber any moral or economic circumstances that could preclude their ability to participate in the issues that are presented for their consideration. Public opinion holds that this provision is not judiciously applied. As has been mentioned, a serious source of concern in this area is the inadequate rules on political campaign financing.

Although members of Congress are inviolable for the opinions and votes that they manifest during the exercise of their functions, loss of office for violating the regime on conflict of interest and incompatibility has been consecrated and applied for the inappropriate use of public funds and for proven influence peddling.

Congress is not exempt from the pressure and intimidation of the agents of violence. Many members of Congress have been kidnapped or murdered. Nor is it immune to the infiltration of drug trafficking money, which has sparked some of the biggest political scandals in recent years, implicating members of Congress with considerable political power.

Currently mechanisms are being discussed to increase the visibility of Congress' decisions, to identify how members of Congress are voting and to regulate the relations between members of Congress and the different sectors of society that could benefit from their actions.

Active Civil Society

Until 1991, the definition of the rules that organise civil society in Colombia were framed within the context of a democracy that was much more representative and participative. The 1886 Constitution that was in effect for over a century did not contemplate stimulating citizen participation as part of its ideology. The forums for collective deliberation and mobilisation were geared toward the public institutions and the political leadership.

Furthermore, as has already been mentioned, the National Front political model blocked the participation of forces other than the two traditional parties, and had paralysing effects on civil society's processes for organising, mobilising and participating. Certainly Colombian civil society faced hostile conditions in the search for effective forums for participation.

These conditions were tellingly reflected in the charity-focussed and paternalistic nature of the non-governmental organisations that arose during those years, with counted exceptions. Inspired by noble purposes, they sought to address timely needs rather than acting on the environment that was the cause, and they were not focussed on developing the social fabric or collective movements.

Elsewhere, the debate on the responsibility and the role of non-governmental organisations in Colombian society had a strong political flavour that even led to the stigmatisation of some organisations for alleged ties to subversive groups. This dangerous generalisation spread a mantle of disreputability over many attempts at social mobilisation. Colombian law did not place any emphasis on participation mechanisms. Opportunities for citizen participation were practically limited to voting in elections.

In the late 1980s, despite these conditions, significant social and academic sectors undertook an endeavour to raise consciousness concerning the urgency of recovering lost time in the field of developing the social fabric and about the democratic riskiness of maintaining a system that was closed to citizen participation.

In fact, the process of developing the 1991 Constitution arose from citizen mobilisations meant to structurally reform the system. The traditional political forces subsequently smothered the mobilisation but significant seeds had been sown. Section I of the Constitution, which sets out the fundamental principles, states that Colombia is "a social state governed by law and organized in the form of a republic that is unitary, decentralized, with autonomous territorial entities, democratic, participatory and pluralistic, and based on respect for human dignity, on the labor and solidarity of its individual members, and on the prevalence of the general interest."

The next line goes on to declare that the state's essential ends are to serve the community, to promote general prosperity and to guarantee the effectiveness of the principles, rights, and duties consecrated in the Constitution, and to facilitate participation by all in decisions that affect them and in the economic, political, administrative, and cultural life of the nation, among others. It is clear that as of 1991, there is emphasis on reviving citizen participation, reinforced by a special section in the Constitution that describes ways of democratic participation.

In undertaking the above, let it be noted that the state must continue to contribute to the organisation, promotion and training of professional, civic, union, community, youth, charitable or non-governmental public service organisations. The idea is to develop democratic mechanisms for representation in the different forums for participation, consensus-seeking, control and oversight of the public administration, without affecting the organisations' autonomy.

Although these norms have not yet been fully developed, and despite the fact that civil society has been hesitant in appropriating them, there has been notable change compared to what existed before the Constitution. The community organisations that were already established have started to lose their political overtones to embrace the communal purposes for which they were created. The former stigmatism against the non-governmental organisations has been overcome and the business and industry sectors have progressively begun to create NGOs. The fields in which NGOs work have expanded and the number of grassroots organisations has multiplied. In general terms, we can say that civil society has awakened. It is indispensable to recall that on the subject of the peace process, it is calculated that nearly 15 million Colombians took to the streets throughout the country, responding to the call of the Free Country Foundation, to let their voices be heard and calling for a cease in the barbarities, kidnappings and massacres.

As is natural in these processes, the emotional climate is variable. There are times of heightened enthusiasm and times of despair. There are times of euphoria and times of frustration. Throughout it all, what can be seen is that civil society, that has traditionally been unmotivated and unheard, is collectively beginning to acknowledge the importance of its organisation, its participation and its mobilisation and it has managed to realise its initial intuition concerning its own potential.

Executive Branch

Traditionally, the Colombian political system has been top-heavy, from the presidency down. The country has been presidential. Although Colombia made only a brief foray into the conditions of dictatorship that affected Latin America during the past century, and this lapse exhibited very particular characteristics. The country has nonetheless maintained the notorious print of adoring strong military leaders in its political culture.

The presidential institution has been strong and Colombians guard it closely, despite the tempests that most presidents have had to face during the republic's existence. The establishment of the 1991 Constitution was no exception, quite to the contrary. The Constitution clearly states that the president of the republic symbolises national unity and in swearing to uphold the Constitution and the laws, the president is obliged to guarantee the rights and freedoms of all Colombians.

The president of the republic is the head of state and the top administrative authority. He is empowered to freely name and remove the cabinet ministers. He directs international relations. He appoints diplomatic and consular staff. He directs the public forces and makes use of them as the top commander of the Armed Forces of the Republic. He directs war operations when he feels they are warranted. He opens and closes Congress' sessions. He regulates the laws. He appoints the presidents, directors and managers of public entities. He eliminates or fuses entities. He modifies the structure of ministries by making changes to the law. He oversees the strict collection of taxes and decrees how the income shall be spent in accordance with the law. He inspects and oversees the provision of public utility services as well as the performance of the persons who undertake activities related to finances, the stock exchange, insurance or any other occupation related to the management, use or spending of funds collected from the public. He organises public debt. He is accountable for the national debt. He inspects and oversees state-owned enterprises, among many other responsibilities.

The president of the republic is elected for a four-year term in office. He must win half plus one of the votes in a direct election by the citizens who cast their votes in secret ballots. If no candidate gets this majority, a run-off election is held three weeks later and the president is the one who gets the most votes. The president of the republic, for the time that he is in office, shall not be tried or judged for

crimes unless he is accused by the Chamber of Representatives or if the Senate has declared that there is cause.

The president and the cabinet make up the government. The fulfilment of their labours is defined in the administrative function which, in turn, must serve the general interest and be undertaken based on the principles of equality, morality, efficacy, celerity, impartiality and disclose, through decentralisation, delegation and diffusion of functions. The administrative authorities –and all this applies to the departments and municipalities— must coordinate their actions in the suitable fulfilment of the state's ends and must have internal controls.

Noting that executive power is designed to operate in a framework of harmonious cooperation between public powers, most official contracting and the appointment of a significant number of public service officials is done at this level. Despite the fact that there are career-track administrative officials (as will be discussed in a separate section), the number of freely appointed posts remains considerable and this includes the entire cabinet. Following the same logic, it is the freely appointed officials who are in charge of making crucial decisions on public contracting.

In practice, what has happened in Colombia is that governments have sought to control the parliamentary majorities by offering participation at the state's directive level. Seeing as the political parties are atomised, in order to create parliamentary coalitions the government is forced to enter into tortuous negotiations, one by one, to ensure that it gets a sufficient number of votes for its key bills and, as had been mentioned, to keep its ministers from being censured.

In terms of the fight against corruption, this political practice has had devastating effects because it has incubated severe impunity by offering political protection to incompetent or corrupt officials. It has weakened the control entities. It has allowed contracts worth millions of pesos to be signed with the objective of favouring the friends and protégés of the political leaders at the heads of the entities. And it has served to impede the appointment of public officials, based on merit.

Historically the executive branch has managed to squelch debates concerning the integrity of governors and, referring specifically to the institution of the presidency, it has managed to halt all the investigations that the Chamber of Representatives Accusation Commission has undertaken against presidents.

At the regional level, governors and mayors are chosen in popular elections. The governors are the regional administrative leaders, the departments' legal representatives and the president's agents for keeping the peace. Mayors are the heads of the local administration and they are the municipalities' legal representatives. Although Colombia is rich and diverse in regional contexts, the weaknesses mentioned concerning the national government also apply to the departments and municipalities.

In theory, decentralisation should reduce the level of corruption to the degree that the people are able to oversee the state's performance by giving them the tools to satisfy their needs and by stimulating processes to control the leaders' work. But it has been seen in Colombia, as evidenced by the questionnaires, that administrative corruption has also become decentralised. The national level shortcomings have reincarnated at the regional level and the regional institutions require considerable reform in order to enable the decentralising process to serve its objectives and not be subverted.

In fact, currently a heated debate is underway over the proposal to reduce the amount of the transfer payments that the nation makes to the departments and municipalities. If decentralisation were operating correctly, there would be no questioning of the resources that are transferred to the regions.

Finally, the political processes in the departments and municipalities are still extremely vulnerable to the old practices of ruling party cronyism, manipulation and votes buying. At the regional level and in most Colombian municipalities, conditions are not conducive to public opinion education and the task of building a strong sense of conscientious and free voting. In effect, there is a notable gap between the level of political maturity observed in the nation's capital and some departmental capitals, compared to the situation in other regional entities. All of this implies greater institutional vulnerability to corruption.

Protecting Civil Rights

We have already mentioned how the 1991 Constitution led to enormous frustration in terms of fighting corruption, building integrity, purging the political system, national reconciliation, economic reactivation and the fight against poverty. Where it did make a significant contribution was terms of improving the people's Charter of Rights, Guarantees and Duties.

The Constitution includes a generous, modern, ambitious, audacious and wide-ranging charter of rights. So much so, that it has sparked debate concerning the demands on the state and the excessive costs that fulfilling these rights could entail for the weak Colombian treasury.

As soon as the Constitution was issued, debate on the subject began. The government of the time defended the initiative, pointing out that the Charter of Rights should be understood as a set of objectives, as the goal of maturation for Colombian society rather than as a tangible and present reality. It furthermore noted that such an encompassing Constitution was due to the need to refer to a diverse and pluralistic country. Such comprehensiveness, it said, would serve to build a country in which we all have a place.

As a complement to the Charter of Rights, came the tutela [petition for protection], designated as a mechanism for requesting the protection of fundamental individual rights. Colombians have taken full benefit of the tutela, called amparo [writ of protection] in other countries' legislation. It has become the most significant manifestation of democratic justice in the country's judicial history. However, nowadays the respective courts have been swamped by the large number of tutelas that have been presented and it has not been possible to satisfy the citizens' expectations.

The Constitution also created the Ombudsman's Office, a branch of the Attorney General's Office. The ombudsman works for the promotion, exercise and dissemination of human rights. To date, the ombudsman's Office has had a very limited budget and, at times, it has been subject to political pressure by the members of Congress who select the ombudsman, which has weakened its profile.

The National Integrity System - Specific Issues

The Executive and Contracting

Within the effectiveness of the Colombian legislation framework, the perception the various sectors of the country have regarding the corruption phenomenon in connection with public contracting and the exercise of power by the Executive. The analysis was intended to determine to what extent the formal statement of the Colombian legislation matches reality, in the performance of public servants in the following aspects:

- Disclosure and monitoring of the net worth, assets and income of top ranking officers.
- Conflict of interest
- Power of top ranking public servants (ministers and other officers) to grant contracts.

The analysis then evaluated the circumstances that allow for corrupt actions by public servants and proposed different alternatives for the existing discrepancy between the regulations and practice in the against connection with public contracting by the Executive, in order to contribute to fight corruption.

Executive

Are there any procedures in place for the disclosure and monitoring of the net worth, assets and income of the president, ministers and other top ranking officers?

Spokesmen for the main sectors participating agree that rules and procedures do exist. The problem lies not on the absence of laws regulating the issue but on the fact that existing instruments are not suitable for the disclosure and monitoring of the net worth, assets and income of top ranking officers. In this respect, the following factors – that hinder the effectiveness of such instruments – were found:

- Secrecy protecting the Resumes of officers, under a constitutional protection system such as the Habeas Data, further to the country's public order situation (kidnapping for extortion purposes), make difficult getting the true information on the net worth of an officer and hinder its monitoring. There are two stances in this respect:
- Representatives of base organizations and the Government consider that the financial situation of the officers must be known nationwide, since they are public personalities.
- On the other hand, spokesmen for the Academy, the media and entrepreneurs contracting with the Government, state that this kind of information must be kept secret, since its disclosure may jeopardize the officer's security and his family property.
- The existence of a very short fiscal term, thus preventing effective monitoring of increase in officer's net worth, that is surfaced by practices such as nominees, money laundering, accounts abroad, etc. This makes control over the financial status of top ranking public servants to look naïve with a feeling that "though an attempt is made to do something, at the end of the day nothing is done".
- Use of corporations, thus facilitating the officer to hide his actual net worth, rendering control ineffective.
- Lack on awareness by the public servant to submit the required information. In general, this information is not furnished and, when so, it is incomplete.
- There are no regulations that define the public servant's responsibilities in connection with management of confidential information.
- Absence of a true information system that makes possible to overcome the existing problems related to information reliability and systematization.
- Awareness of the fact that holding a public post implies "becoming impoverished", in other words, making an economic sacrifice. Thus, a person who is going to earn little by holding a public post, will not have the proper behavior, since that person will need a salary that enables him to live a dignified life.

The parties agree that the problem is practical rather than formal, in other words, it is not the absence of regulations but their management and the way in which existing instruments are used. In this respect, several solutions are proposed:

- Having a cross information system that includes the information on the amount of money the officer has when taking office, and how much when he steps down.
- Expand the scope of the formal statement instruments currently in place, extending the fiscal terms, as well as the type of information required to learn the net worth status of the officer.
- The basic element to make regulations work consists on creating a citizenry culture on this issue, enabling the citizenry to know the officer's income before and after holding his position.

Are there any rules for the conflict of interest?

The conflict of interest is regulated both by the Constitution and the legislation. "The problem lies on the fact that where the constraint ends, corruption starts":

The following problems were identified:

- The conflict of interest is an encompassing concept (operates in the light/dark where the public and the private blend together) therefore it is difficult to regulate.
- It is a systematic concept expressing different types of legal incapacity and incompatibility.
- The conflict of interest is closely linked to the regional space and the patronage system that rule the country, since jobs are obtained based on political affiliation or resulting from the support of some economic group.
- Despite the fact that the regulatory capacity is exhaustive both at preventive and repressive levels, it is exceeded by reality. For this reason, the conflict of interest is considered more an ethical and education rather than a lack of legislation problem.
- The conflict of interest problem cannot be separated from the issue of privileged information, whose improper management threatens the exercise of free competition. In this respect there are legal inabilities and incompatibilities that prevent risk situations that, on their turn, develop into corruption situations.
- Regulations set forth the important risk situations, acknowledging the existence of certain circumstances. However, there are conflict of interest problems that lie outside the norm.
- Frequently corruption arises at middle management levels and not at the top direction level.
- There is no control over those who exercise control. Conflict of interest is related with the discretion capacity of whoever evaluates processes.

The following possible solutions – not fundamentally legal - were found for the above problems:

- It is necessary that whoever leads an entity has a true ethic behavior that is adopted by the institution that person belongs to, and further overcomes the improper uses that permeate day to day relations.
- The professionalization of the administrative function that - as in other systems - enables the public servant to gain the training necessary to carry out his duties and to be socially acknowledged.
- Extend social control mechanisms that enable recovering what is public and separate it from what is private.
- An instance that oversees those who exert public control must exist.

Do ministers and other same level officers have and exert the power to decide on contract awarding or license concessions? is this power limited to special circumstances?

The problem does not arise from lack of legislation. Each first level officer has the capacity of awarding contracts, subject to Law 80. This is a problem that involves several circumstances:

- Patronage, thanks to which the way to access a position depends on political affiliation. The officer's capacity and competence are subject to political compromises previously assumed.

- A large percentage of contracting accounts for small contracts (surveillance, office supplies, etc.) in which the decision making responsibility and security must be delegated, since there are other higher level decisions that require the officer's entire attention. In this respect, responsibility in decision making and how such responsibility is delegated is questionable in terms of corruption.
- When an officer takes office, he regularly has to take on contracting processes related responsibilities, left by the previous administration.
- Improper distribution of competencies (to whom and how to delegate). Though the Ministers and officers of the same level have this responsibility, their multiple activities related with national issues, force them to delegate the decision making power. This leads them to sign contracts they have not studied in detail, thus making them run the risk of falling in a corrupt act.
- his contracting power is made. This proves that the solution arises from reaction policies rather than from a strategic plan.

The following solutions were proposed, under this perspective:

- Claim awareness. Build a collective ethics that leads the citizen to become interested and to denounce the issue. If we manage to make the citizen aware that the money that gets lost is his (taxes and contributions), corruption levels will fall as a result of an ongoing control over public monies.
- Establish commitment levels for decision making.

Contracting

In connection with the scope of public contracting rules, there are various stances that supplement each other. From the base organizations' perspective, Law 80 of 1993 makes no clarity on public contracting since it allows for the deviation of resources and corruption. On the other hand, the representatives of the Academy, the media and the companies contracting with the state, consider Law 80's principles and rules to be good. However, their limitations arise when put into practice because though there are clear rules as to the adoption of goods and service contracting, they consider transparency must be sought in the practice rather than in the norms.

From the above we may infer that:

- There is no true planning, thus most mistakes are made due to haste rather than corruption.
- How to use the norm. The complexity of regulations makes people prone to make mistakes when participating in a bidding process.
- The limit between what is legal and what is technical is fading away. Usually, lawyers are hired to manage the projects that must be under the responsibility of engineers or other professionals whose competency is related to goods and services contracting. The precarious definition of duties leads to process standardization and to lose having various disciplines.
- The contracting statute intends to standardize goods and services contracting.
- This is a concern by the government's representative on making the anti corruption and the free competition statutes, compatible.

The media and the Academy representatives highlight the importance of improving participation in contracting processes.

It is necessary to emphasize that though progress has been made in the fight against corruption, the stumbling blocks of this phenomenon – in other words the contracting process - have not been hit. Therefore, it is necessary to:

- Enrich the Statute with practices such as citizenry control and transparency in the dissemination of the bidding process.
- Planning and implementing a pedagogical process. In this respect, the media has a huge responsibility, if we consider its mass nature.
- Implementing a contracting ethics culture and making things public.

- Have knowledge of multiple disciplines that break standardization of the exercise of public functions.

Watchdog Agencies and the Judicial System

To acknowledge the perception of the various sectors of the national life with respect to the watch-dog agencies and the Jurisdictional Branch, as these refers to the regulatory and institutional framework, the analysis then sought:

To determine the precise instance at which the formal presentation of the Colombian legislation and reality do coincide when concerning the development of the watch-dog agencies and the Jurisdictional Branch on the following issues:

- Their independence from other public sector authorities
- The scope of their performance
- Accountability
- Determine the conditions faced by the average citizen regarding access to justice and to watch-dog agencies .
- To propose different alternatives to overcome existing differences between normative and practical realities, in such a way that they contribute to corruption fighting efforts.

Watchdog Agencies

Are the Watch-Dog Agencies Effectively Independent?

From the formal standpoint the incumbent legal and constitutional regulations guarantee the independence and impartiality of these entities. Nevertheless, practical issues do give origin to the following problems:

- **Election Mechanisms.** As this process is effectively conceived (candidacy in triplets and election by the Legislative Branch), there exist strong ties between high ranking officials and the traditional political sectors. Political compromises are required that limit their independence, which makes officials realise the need to generate support and parliamentary favours in order to reach desired positions. On the other hand, such dynamics do fragment the very nature of these entities since in practice, the nominating faculty is delegated to congressmen. Added with specific features of the regional processes, these scheme is repeated at the territorial level (departments and municipalities).
- **Bureaucratic Quotas.** As a result of the above situation, there exists a mechanism that reproduces the parliamentary majorities which elect the General Comptroller, in the directive ranks of the Watch-dog agencies. .
- **Interference from the Executive Branch.** Since all budgetary initiatives concerning Watch-dog agencies emanate from the Executive Branch, the situation by itself serves for conditioning of appointments and decisions.

In light of the above situation, the following solutions are suggested:

- Creation of a temporary electoral body, to be eliminated upon fulfilment of this function, integrated by the different sectors of the country's life, to elect the directors of the Watch-dog agencies in order to try to minimise political compromises acquired as a result of the nature of the selection process.
- To include more democratic elements, not for direct election purposes but as a way to strengthen political parties and communication media: "The more democracy, the more popular participation".
- As to internal control mechanisms, it is convenient to make clear that the Presidential Program for Corruption Fighting ("PPLCC") establishes the direct dependence of the chief of internal control to be solely with the President of the Republic and never with the specific nominator.

- To make of public knowledge all contact meetings between the candidates and their electors, as well as between the very candidates and other officials, in order to prevent "off the record-behind the door agreements": "Do not ask me in private what you can not ask for in public".

Is the scope of watch-dog agencies sufficient ? does the scope cover what it needs?

As a result of the 1991 Constitution, Control in Colombia is of selective and posterior nature. Performance of such function, however, does present the following limitations:

- The selective and posterior nature makes control a repressive, not a preventive function. "It covers what is politically desired to cover".
- There exist too many constitutional guarantees that make control processes rather cumbersome. For instance, by virtue of the Injunction Action, many processes are brought to a halt and the very Constitutional Court does many times lack review capacity of these Actions.
- There is no precise determination or availability of the mechanisms, human and logistic resources to perform the assigned functions and whatever is available is of deficient nature. Personnel selection systems are not appropriate and do not permit suitable filling of available positions. There is much talk about the administrative career as a mean to prevent corruption but as such, it is not adequately conceived.
- File prescription and politicization of Justice. Control Entities generate too many files that effectively prescribe due to lack of timely investigation.
- There are no external social controls on the system.

The watch-dog agencies: to whom do they account ?

Formally perceived, the institutional structure "is that of an almost perfect system" and there always is someone to whom it is accountable (the President of the Republic, Congress, The General Comptroller, the General Audit, etc.) Nevertheless, the following barriers arise: .

- The constitutional system is of perverse nature in itself as a result of power crossings and cohabitation. The very system was designed to act against systems that were pure, independent and technical in nature.
- There exists not enough citizenry surveillance primarily as a result of the complex nature of the terms for rendering fiscal accounting, which make their comprehension difficult; this situation contributes to the atomisation of civil society. Besides, there is need for more Citizen Overseers.
- There is no legal way to revoke the mandate of the directors of the Watch-dog agencies.

Possible solutions to the above mentioned problems are:

- For things to function in a proper way a political reform is required that permits the construction and maintenance of an organised political system.
- To articulate civil society to generate social pressure mechanisms that allow the creation of a culture involving accountability and demand for accountability together resulting from a more efficient apparatus.
- Build up of conditions that permit watch-dog agencies not to be an instrument for the reproduction of the political system. In this sense, more accountability pressure on performance is required.

May citizens present their accusations without fear?

All civilian sectors coincide in their appreciation that it is necessary for citizens to present their accusations and that there exist legal mechanisms for their due channelling. Nevertheless, there exist various factors that prevent these accusations from being made in the due course of exercising freedom rights:

- The average citizen does not present accusations, be it for the risks being faced -lack of political support or Government guarantees- or as a result of the lack of confidence generated by the system itself, given the fact that results are very often not clear.

- The country's public order situation -a war like factor- in which threats originated from armed factions do constitute an obstacle for their presentation. The price of public accusations has turned too high, forcing those who complain to leave the country or, instead, to make their accusations from an anonymous stand point.
- There does not exist a generalised consensus to denounce. In general terms, those citizens in capacity to do so are basically those who do not depend, directly or indirectly, on the Government, and they don't do it since there exists "a modus operandi: thy who denounces is immediately labelled, stigmatised and socially isolated.
- There is no clear information available on the manner to present an accusation, which makes people tend to use public communication media as a way to achieve a positive result. However, this type of denouncing normally turns out to be legally or disciplinary incomplete and consequently does not generate any result, finally generating a feeling of frustration amongst the general public.

Judicial System

The judicial system: is it independent ? Efficient ? Accountable ?

There is consensus on the consideration that the judicial apparatus is deficient and on the lack of trust on the Judicial Branch. Nevertheless these are not the only known inconveniences presented by this Branch of Public Power:

- Notwithstanding the fact that this Branch has large resources and means to operate, it was not designed to function in the midst of the political and economical crisis presently faced by the Nation, which makes the situation more demanding and, as a result, generates more congestion.
- The larger investments made into the Judicial Branch have not translated into a higher quality justice.
- Those integrating the trios of candidates do most times not fulfil established requirement for the positions (the careers do not match).
- There is lack of managerial capability. The political origin of the selection of high-ranking public officials makes the first level of the judicial system to be under the influence of the interests of the politicians. Besides, the very 1991 Constitution imposes power crossings that add perversion to the system.
- There are no clear legislative policies that allow active fighting of this arbitrariness.
- The judiciary apparatus is neither accurate nor effective. This is easily brought to evidence by mechanisms such as the Injunction Action –one conceived to make people feel closer to the administration of justice- initially created for the purpose of speeding up the ordinary judiciary processes and its decongestion but that turned out to produce a completely opposite effect, thus generating distrust amongst those having to approach the judicial system (in most cases already paralysed by the volume of Injunction Actions submitted, since Judges give them preferential attendance over other processes).
- Even though the Attorney General's Office makes public announcement of all preliminary rulings, it does not publish final judgements –where effectiveness of their performance might be evaluated- which means that no proper follow up of ongoing cases is possible.
- Loss of faith is increasingly occurring concerning judicial standardisation of conflict solution. As a result, a step has been taken aside from the formal institutional judicial mechanisms towards more informal approaches, as is the arbitrage clause. An instrument that, in the midst of a crisis and as a result of mistrusts in the system turned out to be an excellent alternative for controversy solution.
- There is more mistrust on the individual than on the system per se. Prior to the adoption of the 1991 Constitution, it was the general public's opinion that the failure of the judicial system was due to lack of adequate resources, of suitable proofs, etc. Nowadays, it is the common appreciation that the problem lies on those in charge of justice administration.

- As it is conceived, under the Disciplinary Code there solely exist ten individual conducts meriting destitution from office. All others only merit admonition. It is required that more conducts meriting destitution be instituted.

Education, Media and Civil Society

The final issues concerned the perception that the various sectors of the country's life have on education, the handling of freedom of press and the participation of civil society, as they refer to the issue of public corruption in the country. The analysis was intended to:

- Examine the issue of formal education and corruption
- Determine up to what instance there exists or there not exists freedom of press in Colombia, as to its applies to the issue of public corruption.
- Determine up to what instance the press and civil society have access to public documents.
- Determine civil society's reach on the issue of corruption.

Education

Formal education: does it emphasise corruption to be a crime or an ethical failure ?

The basis on which the educational system is constructed do not include corruption. Under these circumstances, public officials are not prepared to fight it. (It must be taken into account that education, for this purpose, is not referred solely within the scope of the public official but also to that of the general public.) Most important problems arising from the educational issue are:

- Lack of truly in-depth training on the subject, which actually is theoretical in nature thus generating a "learn from your mistakes" culture, which is a rather slow (inefficient) process.
- There is no integral training bringing together the theoretical and technical approaches with investigation processes that permit the adequate handling of the corruption issue. It should nevertheless be mentioned that efforts are being made from the academic standpoint to implement magisterial teaching on the moral and ethical exercise of any profession.
- All training is cored on job promotion not on the pertinent qualifications.
- The lack of formal personnel selection processes (according to profiles and not to political favours) makes all public officials appear as lacking moral authority.
- The various entities lack permanent anti-corruption departments that ensure continuity and effectiveness in the processes being carried out.
- "Society does not adequately reward the honest man". There in no talk nowadays on the ethical behaviour of a citizen but on rapid enrichment regardless of the way it is achieved. It is a cultural problem aggravated since the mid sixties by drug trafficking which significantly altered scales of principles. It is common saying nowadays "any honest guy is a dummy".
- General public has rather limited and precarious information concerning corruption. Wide spread information is solely that of accusation and scandal. "Efforts being made by the various institutions are rather isolated and loosely maintained".
- Anti-corruption duties are considered to be those of "the work of brave men" or " a miraculous work"; anti-corruption fighting is looked upon as an individual task and never as a collective effort.

In light of these problems it is considered necessary to construct a true social sanction system and to make of public knowledge any changes in the life style of public officials.

Media

Does really exist freedom of the press in Colombia ?

According to the National Constitution, there is freedom of the press in Colombia and there is no censorship. However, in the daily exercise of media activity the following circumstances arise that contradict the provisions established by Law and by the Constitution:

- Article 20 of the Constitution generates confusion because it does not establish differentiation between freedom of speech, freedom of the press and freedom of enterprise.
- Freedom of the press is not complete in Colombia and it does not warrant either democracy or freedom of expression because there are many marginal sectors. "A concept of cultural exclusion" has been developed that effectively denies freedom of expression to certain sectors through a limited access to media resources. Thus, the first value of information is denied since for it to be valid honest, it must be inclusive.
- The situation of unrest prevailing in the country's public order does affect freedom of the press since at different locations diverse armed factions do manipulate available information.
- There exists freedom of press on certain issues. An outstanding addressing/directioning of information is evident as a direct function of political and economic interests. This addressing goes far beyond analytical considerations of depth, criteria and criticism.
- There has been a traditionally strong linkage between the communication media and the executive power.
- Freedom of the press is an issue that is permanently solved when within a debating society. This attitude has begun to arise at the local and regional level in Colombia. "We need to take previous steps on civility and tolerance in order to debate, in order to think differently without being stigmatised, so that available information becomes useful".
- Lack of due freedom of the press is not exclusively a problem of the communication media. Freedom of expression and information are two-way rights that are constructed from down upwards and not reversibly, a result from citizenship' demand and not from an imposition of media owners. In order to enjoy a truly democratic communication media, it is required to also enjoy an impelling democratic system.
- The Constitution does not establish a prohibition to monopoly situations concerning communication media. The economic conglomerates, shielded by the inadequacy of pertinent articles, manipulate available information. "Communication media should not be the property of any economic conglomerate in order for free press to be warranted".

In order to overcome the aforementioned obstacles, it is required that the media accepts their responsibility in the construction of civil society.

Is there censorship in Colombia ?

Formally there is no censorship whatsoever in Colombia; however, in a real sense there can be no mention of press freedom because there is no liberty to choose what is not to be mentioned amidst the premises exerted by the various interest groups.

- The issue of censorship must be analysed from two different stand points: the administrative perspective (the way in which media owners are under the influence of political and economic concerns and their consequent handling of the information) and opinions contrary to those of the incumbent regime (censorship of the Government).
- Revival of the self-censorship concept is mandatory to prevent media persons to selectively address/direct the information. The commitment and responsibility of those constructing and delivering information must be reviewed. Self Censorship is not elaborated in a concept form and therefore not enough responsibility is exerted when concerning management of available information.
- There effectively is censorship in Colombia but it is exerted particularly against those who dare to denounce or investigate corruption events.
- Press freedom is limited by self-censorship voluntarily applied by media persons. Such an attitude is generated by fear arising from public unrest and by compromises acquired with the media he works for.
- At the regional level, primarily, there is an evident threat menacing those who denounce or investigate corruption events.
- Armed factions beyond the scope of the Law effectively censor press freedom through their particular pressure mechanisms. As a result, many of the newspersons denouncing and/or

investigating corruption cases have been forced to migrate to other countries in order to protect their integrity.

How is the assignment of media coverage time administered ?

Although there is formal existence of pluralism and due equity in the assignment of media coverage timing in communication media, it should be noted that:

- The assignment process is always under the influence of the incumbent government and of political relationships already established; "access to the media is subject to intermediation of representatives of the political and economic hierarchy". The husbandry between political power and communication media is unquestionable as well as unmentionable in other areas of this world.
- It could be thought that upon the creation of the National Television Council, the overall environment would register a change, but the Council is not in a position to freely exercise its duties under conditions of independence and autonomy. "Although not open and precise, there exist assignment bias based on political and economic benefits".
- When facing existing problems in terms of assignment of media coverage time, the need to "work on and build serious autonomies and on the overall redesigning of the framework" is necessarily brought up. The administration and handling of television widely differ from the regional to the national level. At the national scope, handling is based on centralist codes both for assignment as well as for contracting.

Civil Society

Does the general public have real access to documentation issued by public authorities ?

Even though the 1991 Constitution was ensured to provide the necessary access mechanisms to available information, significant portions are concealed and barriers are often created.

- Overseers of Public Rights feel that the Right of Petition is often violated because incumbent officials do not release demanded information on the basis of formal argumentation. Added to this feature is the general lack of knowledge as to the various instances that may be utilised for submission of pertinent claims.
- There is a lack of information on available mechanisms.
- Communication media does not warrant time availability for diffusion and advertisement of access mechanisms to public originated documents. There is no debate whatsoever on this issue.
- Within and from the very Government, limitations exist for the production and delivery of information. As a result it is difficult to provide adequate answers to the general public.
- There is no confidence on civil society and public officials mistrust the attitude of the average citizen, thus feeling forewarned when information is requested. Ties between the Government and civil society are not duly strengthened and, as civil society does seldom find an answer to their demands, participation in the process becomes meaningless.

Facing existing problems in civil society's access to information from the public sector, it becomes necessary to promote the creation of a more active society and not leaving the entire task in the hands of the Government. It is likewise required that the educational process on this issue be strengthened and is also necessary to create space in communication media that allow diffusion of formal access mechanisms.

It is most important to realise that the anti-corruption model is gradually destroying the legitimacy of the very concept of public officials. Unless honesty conception is generated and widespread, the public and political roles are being destroyed.

Is there a commitment in favour of honesty and integrity in Colombia?

There have been commitments in favour of honesty and integrity; however, the following problems have been identified:

- Some sectors of society consider that the existence of non-governmental organisations dedicated to fight corruption evidences the interest of civil society on the issue as well as the Government's weakness when trying to face the problem.
- On the other hand, there are those who think that civil society has been weak when concerning this problem since, although some anti corruption efforts have been identified, most efforts in this direction have been originated from Governmental initiatives.
- Even though some corruption fighting approaches may be identified within Government's initiatives and also in some actions initiated by Watch-dog Agencies, there is lack of proper directioning of isolated efforts. There is no consensus on desired goals nor there is unanimity on the probity models that should be used to reach them.
- Society's collective image, as presently constructed, is weak. Consequently, negative perceptions outweigh positive impulses and, efforts are thereafter oriented to corruption fighting instead of being pro-honesty developers.
- An "anti-corruption" model is one geared to Not Do but to deny. A menace originates of falling into dependence and trust on corruption fighting traps without having previously established a national scope probity project.
- There is a cultural problem deeply reflected in today's Colombian society: criteria have been built inside that it is difficult to be successful while being honest. This issue is very much the joint responsibility of criteria makers (Government, Academy, consumer society and communication media).

In light of existing problems identified as surrounding existing commitments and in favour of concepts such as probity and integrity a solution is presented on the basis that: Government and country may well work successfully together if capable of creating required conditions to ensure probity. The Nation must position itself on this issue and consequently determine what is the project country that it wants.

Media and civil society mutually need each other. There shall be a better media if there are more democratic citizens. Strengthening of civil society and promotion of supporting communication media are required. It must be herein considered that society works on the basis of stimuli and rewards.

Should communication media change theme preference scales of the official agenda and thereafter orient them towards the general citizens, forthcoming information shall hereafter lack specific directioning and orientation.

The Need for Reform and Initiatives that are Underway

As has been indicated in different parts of this document, Colombians have developed collective consciousness of the need for profound political change, accompanied by changes to the design of certain institutions that are currently blocking the consolidation of a National Integrity System.

In fact, Congress is debating over 10 institutional reform bills that may have direct bearing on the fight against corruption. Throughout the investigation and composition of this report, intense parliamentary activity has been underway. In particular, it is worth mentioning the bill to reform some aspects of the electoral system. The reform is half-hearted and inadequate and it appears to be more of a cosmetic touch-up than a structural reform. Its fate is uncertain.

Another constitutional reform that is in the works is the one to reduce the amount of the transfer payments to the departments and municipalities and a goodly part of this discussion, as has already been mentioned, addresses considerations concerning corruption. Its fate is also uncertain. Another bill proposes to reform the Office of the Prosecutor General and to make changes to the judicial branch.

Furthermore there is a bill that proposes regulations for parliamentary lobbying. After having been voted down several times, it may pass in this legislature. The bill seeks to bring transparency to the process of passing bills in Congress and to improve the tools that address conflict of interest situations. Another bill that is doing well is the one to make it compulsory for the government to use the Internet to publicise official procurement processes and that obliges public entities to put their homepages at the citizens' disposal.

Progress has also been made on regulating the *acción de repetición*, an instrument by means of which the state may hold public employees responsible for corruption or negligence that has resulted in rulings against the state, obliging the employee to repay the damages that their acts or omission caused.

Finally, a bill is being debated that substantially reduces over 200 official procedures, making it possible for the people to interact directly with the state. It is understood that the problem here is not only about morals and corruption, but also that excessive paperwork and run-around have weakened the nation's competitiveness.

However, beyond the changes and legal reforms, it is important to note an interesting surge in Colombian society that is beginning to become aware of the need to defend the frontiers of ethics, honesty and public efficiency. As has been mentioned, Although the results are not yet palpable, Colombian society, accustomed to living with a high rate of corruption, has begun to understand that it is necessary to build a solid public culture that values collective wellbeing over individual interests.

It is also understood that offences against public funds affect the nation's economic development, worsen poverty and endanger the budget and the quality of life for all citizens. Within this framework, there is an interesting discussion concerning the treatment that white-collar criminals receive, meaning high-level corrupt officials. To date, they have enjoyed special penal treatment and favourable conditions for imprisonment in their sentencing. They do not go to the ordinary prisons and sometimes serve their sentences under house arrest. There is a strong movement calling for sentences to be more severe and demanding that their privileged conditions, which had been seen as mitigating factors, be considered as aggravating factors in their criminal responsibility.

Major citizen culture initiatives, and public and civic education must still be undertaken in Colombia to find the fertile ground on which to build the National Integrity System. There is an enormous pedagogical, educational and cultural vacuum in the Colombian population. It is necessary to spread to the masses the knowledge of citizen rights and duties, instruction for their protection and, above all, about the actions that may be taken to fight corruption.

There are many institutions that could play a determining role in the construction of a National Integrity System. But they are not operating correctly, they do not receive due recognition, they lack the necessary clout and, despite the fact that they have had strong leadership, they fail to live up to their missions. Suffice to mention the General Accounts Office of the Nation and the General Auditing Office of the Nation. As has been mentioned, it is necessary to fully restore the institutional independence of the Attorney General's Office and the General Accounting Office of the Nation.

International agents also play an important role in the National Integrity System. In the past, international multinational companies' high-level officials have exerted nefarious influences, which

spread corruption to Colombian society. It is only in the past five years, that the discussion began concerning the new OECD convention, new contracting norms with the World Bank, the OAS convention, and that the international agenda began to systematically address the fight against transactional graft, thanks to the leadership of Transparency International. Only high-level US multinational executives were aware of the Foreign Corrupt Practices Act. Widespread white-collar corruption in Colombia is not simply a homegrown product, it was wrought with the active participation of international corrupters. Today, at least there is awareness of the subject and the alarm has been sounded.

A special section in the questionnaire addresses recent government programs in the fight against corruption. Suffice to say that there has been a notable discrepancy between the noble principles of honest and competent officials and the widespread practices that wind up undermining the collective credibility of the programs. The citizens soon abandoned their faith in the government's sincerity.

Historically, multilateral organisations have not been contributing to consolidating the National Integrity System. To the contrary, the generally held view is that large-scale projects, megaprojects funded with money from the multilateral banks, are not immune to corruption. Worse yet, a debate is underway concerning allegations of corruption in projects that are currently being undertaken with World Bank resources, and doubts have been raised concerning the integrity of UNDP-sponsored projects.

The World Bank's promise to do a large-scale national study on governability and corruption, surveying over 10,000 respondents, has been met with enthusiasm. It will be fundamental for making decisions on the subject of developing the public policies needed to make the institutional corrections to further the National Integrity System.

A few weeks ago, the national government subscribed to a United Nations cooperation convention with the objective of advancing the construction of the National Integrity System. Accompanied by the Colombian ambassador to Vienna, UN officials visited Colombia to carry out a series of interviews to determine the national situation on this subject, to evaluate the state of the system's pillars, to identify interlocutors and allies, and to assess the conditions of cooperation between the government, civil society, the NGOs, the business sector, the networks of citizen oversight organisations and other actors in the national scene.

Today the fight against corruption and the construction of a National Integrity System has widespread citizen support. The challenge is therefore to take the experience, the progress, the achievements, the commitments (and also the mistakes and missteps of the past) and convert them into effective action, with general mobilisation, in a collective endeavour so that the sum of the enthusiasm and support leads to a plural and dynamic process of cultural transformation, new social practices and effective cultural change.

References

¹ The general concepts included in this section are subject of a detailed description in the answers to the questionnaire included in the final part of the main document.

² The public force is made up by the police and the military forces.

³ The main duty of the People Ombudsman is to watch over the promotion, dissemination and exercise of human rights. He doesn't exercise the traditional duties of the ombudsman character, as to protection of public morality, vs. the Municipal Ombudsman who performs both functions.

⁴ Bonamousa Margarita "Que es la Sociedad Civil? Una mirada a Colombia". In "Sociedad Civil, control social y democracia participativa". Fescol, Bogotá, 1.997.

⁵ Ibidem

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