



COLOMBIA

CAPITAL: Bogota

POPULATION: 46.2 million

GNI PER CAPITA: \$2,740

SCORES	2005	2007
ACCOUNTABILITY AND PUBLIC VOICE:	5.02	4.56
CIVIL LIBERTIES:	4.39	3.95
RULE OF LAW:	4.21	3.78
ANTICORRUPTION AND TRANSPARENCY:	3.88	3.74

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Harvey F. Kline

INTRODUCTION

In 2006 and early 2007, as if Colombian democracy needed another problem apart from its endemic violence, poverty, and lack of effective law enforcement, a new quandary emerged: hard evidence of the infiltration of paramilitary groups into elections and various branches of the government. Confronting the problem—which has long been suspected by many Colombians and external observers—acquired new urgency on March 11, 2006, when the National Prosecutor's Office arrested Edgar Ignacio Fierro Florez, a lieutenant in the United Self-Defense Forces of Colombia (AUC), a demobilized paramilitary group led by Rodrigo Tovar Pupo (alias Jorge 40).

Fierro Florez had in his possession cash, weapons, and, most important, two computers, two flash drives, many compact discs, and a series of handwritten documents. Lists of criminal and paramilitary activities in the Caribbean coastal area were among the files found on the computer,

Harvey F. Kline is Professor of political science at the University of Alabama–Tuscaloosa. He has taught at the Universidad de los Andes in Bogotá with grants from the Fulbright-Hayes Commission. He has published six books on Colombian politics.

2 COUNTRIES AT THE CROSSROADS

as well as a list of 558 assassinations carried out between 2003 and 2005 in Atlantico department. The recovered files also contained the names of politicians and merchants in Caribbean coastal departments with strong ties to Jorge 40's paramilitary group.¹ In late 2006 and early 2007, what became known as the *parapolitica* (para-politics) scandal grew as evidence emerged that the paramilitary-political connections encompassed members of the National Congress, departmental assemblies, the office of the national prosecutor, large landowners, the armed forces, the national police, and even the Supreme Court.

In January 2007, the media published a document signed in July 2001 by four paramilitary leaders and thirty-two politicians calling for cooperation to work toward a new Colombia. This "Ralito Agreement" revealed complicity between paramilitary groups and future allies of the Uribe government. In February 2007, the press reported that a similar pact had been signed between six mayors and paramilitaries in Casanare department in the eastern part of the country,² leaving some to wonder how many other agreements there had been.

Colombia has suffered from the effects of a multisided civil war for decades. The largest insurgent group, the Revolutionary Armed Forces of Colombia (FARC), has been fighting a Marxist-based guerrilla war since the mid-1960s. Another, smaller leftist group, the Army of National Liberation (Ejercito de Liberacion Nacional, ELN), has also been active for decades. In the 1980s and 1990s, landowners increasingly began to collude with drug dealers as well as elements of the security services to provide a counter to the guerrillas in areas where state presence was weak. However, as these paramilitary groups, which eventually coalesced into the United Self-Defense Forces of Colombia (AUC), acquired strength and power, they were increasingly linked to brutal human rights violations, drug trafficking, and land seizures through coercive purchases or outright displacement. Under President Andres Pastrana (1998–2002), serious negotiations were attempted with the FARC, but these collapsed under the strain of unending violence.

The government of Alvaro Uribe Velez successfully challenged the FARC during his first term, engaging in a military offensive that pushed the rebels out of the main cities and deep into Colombia's thick jungle and high mountains. Refusing to negotiate with insurgent groups unless they entered into ceasefires, Uribe also successfully carried out the demo-

bilization of the AUC between 2004 and 2006. Over 30,000 paramilitary troops demobilized by the end of 2006, a number larger than expected by either the government or the AUC itself. The government had less success, however, with the FARC and the ELN. In the case of the FARC, the last half of 2005 and the first half of 2006 witnessed a surge of activity, though attacks slackened considerably in the run-up to the May presidential election. The little dialogue that occurred with the government centered on the possibility of an exchange of FARC kidnapping victims for imprisoned rebels.

On December 12, 2005, the governments of Spain, France, and Switzerland submitted a proposal to the government and the FARC secretariat suggesting a meeting between the two sides in the municipality of Pradera, in the Valle del Cauca department. During the conversations the only presence would be the negotiators of the two sides, the International Red Cross, and the “political organ,” made up of representatives of the three groups charged with the security of the zone. The Colombian government accepted this proposal almost immediately, but the FARC rejected it as insufficient. Although this was the first time that the Uribe government had agreed to demilitarize an area, it was not as large a zone as the FARC wanted. Messages between the two sides continued. There was cautious optimism until October 19, 2006, when the FARC set off a car bomb outside the Superior War College in Bogota. The Uribe government immediately suspended all discussions about prisoner exchange with the FARC.

In the case of the ELN, notable progress has occurred since September 12, 2005, when ELN leader Gerardo Antonio Bermudez Sanchez (alias Francisco Galan) was transferred from prison for three months to a “House of Peace” near Medellin so that he could take part in meetings with representatives of civil society. In November 2005, Galan stated in a formal communique that the ELN was ready to start a dialogue. In December 2005, Peace Commissioner Luis Carlos Restrepo met with Galan and they agreed that the ELN and the government should meet outside Colombia. This phase between Colombia and the ELN began on December 16, 2005, in Cuba, with facilitators from Spain, Norway, and Switzerland. These ELN-government talks in Cuba continued throughout 2006, began again on February 22, 2007, and were set to continue throughout the year.

ACCOUNTABILITY AND PUBLIC VOICE

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS:	4.50
EFFECTIVE AND ACCOUNTABLE GOVERNMENT:	4.25
CIVIC ENGAGEMENT AND CIVIC MONITORING:	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION:	4.50
CATEGORY AVERAGE:	4.56

On paper, Colombian democracy is based on regular, free, and fair elections. There is universal suffrage with multiple political parties, but violence has been common in Colombian elections for many years.

Other problems Colombia faced in 2005–2006 included the difficulty of maintaining fairness in the first presidential election in many decades in which an incumbent president was running for reelection, as well as determining what role demobilized paramilitary troops could play in politics. The first problem arose in October 2005, when the Constitutional Court declared presidential reelection constitutionally permissible on the condition that Congress pass, and the Court approve, a law to resolve the fairness issue. That November the Court deemed permissible the Law of Guarantees, which includes several stipulations designed to level the playing field: the campaign period was shortened for the incumbent, who would also be required to spend less than challengers. Moreover, several clauses were designed to ensure that media coverage and access be made as equal as possible.³

On the question of whether demobilized paramilitary troops could participate in the 2006 elections, President Uribe made his position clear in the last days of October 2005, when he introduced a policy, later affirmed by the Law of Guarantees, barring members of groups outside the law who had not been fully reincorporated into civilian life from participating in the campaign or providing support for candidates. As a result of this pressure, several AUC members announced their withdrawal from electoral activities later in the month. One was a member of a new party established to support Uribe's reelection.

Violence and the threat thereof affected all political parties during the congressional campaigns. It culminated with the early December 2005 assassination of Jaime Lozada, Conservative party leader and former gov-

ernor and senator from Huila, allegedly committed by the FARC. Amnesty International concluded, “These killings raise serious concerns for the safety of state and elected officials in the run up to the 12 March congressional elections, and other civilians in other parts of the country in a context of similar restrictions on movement ordered by the FARC.”⁴

Following the Lozada assassination, Minister of the Interior Sabas Pretelt de la Vega stated that candidates clearly needed more protection. In response, the government started a special program of security for the candidates, assigning a colonel to each candidate’s campaign. In addition, the Administrative Security Department (DAS) undertook coordination of candidates’ safety measures. Pretelt made it clear that the elections would not be suspended. Nonetheless, opposition party members declared that the government’s measures were inadequate.

The transition of the Colombian party system continued, with many new groups offering candidates. Although an early 2006 attempt to form a single party to back President Uribe was unsuccessful, five major groups ran on the basis of supporting the chief executive and congressional candidates backing his ideas: the Social Party of National Unity (Partido Social de Unidad Nacional, commonly called the Partido de la U); the traditional Conservative party; and three new groups—Radical Change (Cambio Radical), Democratic Colombia (Colombia Democrática), and Wings Team Colombia (Alas Equipo Colombia—the recent fusion of a party with wings as its insignia and another that called itself a “team”). The opposition was made up of the traditional Liberal party and the Democratic Alternative Pole (Polo Democrático Alternativo or PDA), a new party representing the left that subsequent to the election became instrumental in advancing the para-political scandal and demanding accountability.

On paper, Colombia has tough campaign finance laws; however, over the years there have been clear cases when they were broken, most famously by drug cartels supporting Ernesto Samper’s successful presidential campaign in 1994. On January 16, 2006, President Uribe ordered investigations into campaign financing in order to prevent former paramilitaries from influencing the political process. These and other investigations did not stop subsequent to the election but rather acquired an ever-faster pace toward the end of 2006 and beginning of 2007. As of February 2007, eight pro-Uribe members of Congress had been jailed for on the basis of financial connections to paramilitary

groups, and more than sixty former and current legislators, mayors, and other elected officials were under investigation.⁵

In the March 12, 2006 congressional elections, the Uribista coalition, led by the Partido de la U, the Conservatives, and Cambio Radical, won sixty-one senate seats (to twenty-eight for the opposition and eleven for independents), while in the lower house Uribistas captured ninety-one seats, with forty-five going to the opposition and thirty to the independents.⁶

On May 28, 2006, President Alvaro Uribe easily won a second term, the first president to do so since the nineteenth century, prevailing in the first round with 62 percent of the slightly over 11 million votes cast. Second was Carlos Gaviria of the PDA, who gained approximately 22 percent of the vote, thereby demonstrating surprising strength. Horacio Serpa, in his third try for the presidency as the Liberal candidate, finished third with only 11 percent.⁷ The Organization of American States deemed the elections free and fair, reporting that the vote was conducted “in an atmosphere of freedom, transparency, and normalcy.”⁸ The opposition concurred that the process, including the checks on incumbent power, had functioned relatively well.

Among the new complications marking the first 100 days of Uribe's second term was disarray within the Uribe coalition in Congress. The legislative operation of the Uribe bloc did not function with the same efficiency as its electoral apparatus. In late 2006, the coalition lost key votes due to infighting. Furthermore, the opposition parties voted as a bloc, as called for in the recent Law of Groups (*Ley de Bancadas*), which requires members of parties in the Congress to vote together unless the party specifies that its members may vote independently. While this could be leading to the formation of an opposition offering a coherent alternative, the practical implications of the law remain uncertain.

As in most Latin American countries, Colombia's executive branch is more powerful than the other branches of government. The Colombian Congress, however, is one of the strongest in the region and at times refuses to accept presidential initiatives. The power of the judicial branch, especially the Constitutional Court, has grown in recent years, to the point where some have suggested that the Court is usurping legislative functions. One example of the judicial branch's expanding clout occurred in February 2007, when the court, ruling that Law 54 of 1990 was discriminatory, granted gay couples inheritance rights equal to those

of heterosexual unions.⁹ Following the para-political revelations, the judicial branch further demonstrated its growing independence by initiating investigations of members of Congress accused of working with the paramilitary groups.

Since the beginning of his first term, President Uribe, aiming to overturn the traditional system of patronage in the civil service, has adopted a merit-based system for the selection, promotion, and naming of bureaucrats. His efforts appear to have achieved some success: according to a report of the Inter-American Development Bank, in 2006 Colombia had the fourth most efficient bureaucracy in Latin America, following only Brazil, Chile, and Costa Rica.¹⁰

Nongovernmental organizations (NGOs) have the freedom to operate in Colombia, although some are suspected of being allied with leftist groups and face harassment. Civil society has less influence in Colombia than in other Latin American countries, and the groups continue to play minor roles in the peace process, even though the ELN has constantly sought to include civil society. The creation of zones of martial law and the restrictions of movement for foreigners under Decree 2002 have put a damper on the activities of human rights groups, which also face direct threats. Multiple human rights groups received death threats throughout the summer and fall of 2006, and in January 2007 Yolanda Izquierda, who worked on behalf of paramilitary victims seeking restitution of their lands, was assassinated in Cordoba department.¹¹

Press freedom is seriously affected by the violence in Colombia, yet government interference remains relatively limited. Until 2004, when only one journalist was killed, Colombia had one of the highest tallies of journalist deaths in the world. As a means of basic protection, journalists regularly exercise self-censorship. In its 2005 report on Colombia, Reporters Without Borders made no reference to government intervention in the media. However, it emphasized that Colombia “is still one of the region’s most dangerous for journalists, with constant threats and pressure, including from guerrilla groups. Among taboo subjects are corruption, the guerrilla war and drug trafficking. More journalists fled into exile in 2005 after getting threats.”¹²

The Foundation for Freedom of the Press (FLIP), a Bogota-based press watchdog, reported an increase in violations against the press in 2006, particularly surrounding the March and May elections. Two journalists were killed as a result of their reporting during 2006. In February,

radio announcer Gustavo Rojas Gabaldo was shot in Cordoba by paramilitaries in retribution for criticism of links between the local government and paras. Community radio host Milton Fabian Sanchez was killed in Valle del Cauca in August 2006 following his condemnation of local drug traffickers. There were numerous reports of harassment and intimidation of journalists reporting on similar issues. The government has taken some steps to protect journalists, establishing a program to assist reporters who have received threats and a special prosecutorial unit focused on journalist assassinations.

Libel and defamation remain criminalized, though penalties seldom go beyond the obligation to rectify a statement and rarely include a fine. In 2006, the Uribe government proposed a law that would create a wider definition of libel, giving more latitude to the government. However, this proposal failed following debate in the national congress. While the national government does not use selective distribution of advertising to influence media coverage, local governments frequently do so. In early 2007, a judge issued a temporary restraining order against a Barranquilla newspaper for alleging connections between paramilitary forces and city government. The judge's decision was condemned by President Uribe and the Committee to Protect Journalists.¹³ At other times, however, Uribe has been less generous with the press, such as his 2006 criticism of the newsweekly *Semana* for its reporting on the parapolitical scandal. Internet access is not hindered.

Recommendations

- The Colombian government should actively seek to prevent fraud and voter intimidation in the 2007 local elections by maintaining a law enforcement presence at all voting sites.
- Demobilized paramilitaries should not be able to run for elected office while the process of investigation and prosecution remains pending and new evidence continues to emerge regarding their criminal activities.
- The Colombian government must give adequate protection to all qualified candidates, regardless of political party.
- Members of the Uribe administration and its congressional supporters should refrain from rhetorical attacks on NGOs and human rights groups and the government should respond with immediate protection when these groups report intimidation and threats.

CIVIL LIBERTIES

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE:	2.86
GENDER EQUITY:	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS:	3.25
FREEDOM OF CONSCIENCE AND BELIEF:	5.67
FREEDOM OF ASSOCIATION AND ASSEMBLY:	4.00
CATEGORY AVERAGE:	3.95

In the middle- and upper-class sectors of Colombia's major cities, civil liberties are generally respected. However, this does not hold for Colombia's poor and rural citizens, who face encroachment on their rights by state and nonstate actors. This gap in civil liberties was noted in Human Rights Watch's 2006 report, which noted that the Colombian conflict "continues to result in widespread abuses by irregular armed groups . . . as well as by the Colombian armed forces."¹⁴ These abuses include kidnapping, torture, and murder, as well as rape, land theft, and forced conscription.

Overall statistics indicate that the level of crime has been decreasing during the Uribe era. The 2006 homicide rate was the lowest in twenty years.¹⁵ The number of kidnapping victims declined to 621 in 2006, as compared to 3,572 in the record-setting year of 2000. The Free Country Foundation, an NGO that gives aid to victims of kidnapping, extortion, and disappearances, cited Uribe's Democratic Security Policy, initiated in 2003 and defined by the president as "the achievement of the complete control of the territory to assure the rule of law,"¹⁶ as the reason for this decline.¹⁷

Torture is banned under Colombian law. However, since neither the armed forces nor the national police are effectively monitored, torture continues to occur. Recent reports indicate that prison conditions are deplorable. The number of medical doctors and provision of medicine is insufficient, while water pressure is too low for both consumption and sanitary needs. One study reported that there were forty-eight prisoners for each toilet.¹⁸ This is a particularly unfortunate situation for

citizens subjected to arbitrary arrest, which only rarely occurs in urban areas but is somewhat more common in rural conflict zones.

The Colombian constitution prohibits discrimination on the basis of gender. Colombian women have the same literacy rate as men, and their participation at all levels of the educational system equals that of males. Yet this equality does not extend to employment opportunities in either the public or private sector. Unemployment is higher among women, and those employed tend to be in inferior positions.

In January 2007, representatives of the Women's Rights section of the Inter-American Commission on Human Rights visited Colombia for the first time since June 2005. Colombian journalist Claudia Lopez suggested that the representatives would not find any improvement in the status of women since the last visit. Specifically, Lopez stated that 75 percent of the country's 1.5 million displaced people are women and children. Overall, 28.5 percent of the households in Colombia are headed by women; however, among displaced families the figure is 40 percent, within indigenous households it is 47 percent, and among Afro-Colombians the figure reaches 49 percent. Ms. Lopez concluded that implementation of laws protecting women was lacking and that "neither the protection nor the courts have worked. The legal mandates are still ignored."¹⁹

Women also suffer from a high incidence of domestic and sexual violence. In late 2006, the Administrative Department of Social Well-Being of Bogota reported that 20 percent of the city's women had suffered physical violence from their husbands, while 35 percent had suffered verbal abuse. In addition, there was evidence that 11 percent had been raped.²⁰ The media tends to cover only sensational cases, such as that of Lizeth Ochoa in Barranquilla in July 2006, who was beaten for three hours by her husband. Ms. Ochoa declined to file civil charges, and the prosecutor's office dropped attempted murder charges.²¹

Women's groups have responded to violence and inequality in several ways. The wives and girlfriends of gang members in the central Andean city of Pereira threatened not to have sexual relations with their significant others until they disarmed and stopped their violent activities.²² Female members of the National Congress indicated their intention to introduce a law that would require political parties to include women as 50 percent of their candidates. The proposal was not approved. However, a 2002 quota law does require that 30 percent of high posts in the executive, legislative, and judicial branches be held by

women, excluding elected posts. No quota for women in elected positions was passed for 2006; in the most recent parliamentary elections, 14 out of 166 seats in the lower house and 12 out of 102 seats in the upper house were filled by women.

In May 2006, the Constitutional Court decriminalized abortion in cases of rape, when the life or health of the woman was threatened, or when there was evidence that the fetus was deformed.²³ Doctors performed the first legal abortion in Bogota in August 2006 on an eleven-year-old who had been raped by her stepfather. This procedure was quickly condemned by the Roman Catholic Church. Pedro Rubiano, archbishop of Bogota, threatened to excommunicate any woman, doctor, or judge who practiced or facilitated abortion.²⁴ The government, meanwhile, issued a decree regulating abortion, stating that within the limits of the Court's ruling, any woman over fourteen could have the procedure without authorization.²⁵

A law adopted in 2005, Law 905, criminalizes every aspect of human trafficking, from approaching a victim to the trafficking itself. It also establishes standards of care for victims and provides a national trafficking strategy.²⁶ Child sex tourism in resort areas on the Caribbean coast remains a problem. On December 27, 2006, Colombia ratified the Optional Protocol of the Convention on the Elimination of Discrimination against Women (CEDAW), which allows women or groups of women to submit claims of rights violations to the CEDAW committee.

The situation of Colombia's indigenous citizens, who comprise 8 percent of the national population, is dire. Indigenous reservations, which make up 30 percent of the national territory, are neglected, with insufficient medical care and children dying of malnutrition. Indigenous groups have been devastated by both indiscriminate and selective murders, massive displacement from their traditional lands, the forced recruitment of young people by insurgent groups, frequent cases of rape, the entry of the drug trade, and land seizures.

Many indigenous groups live in isolated regions, which causes further problems. The Embera people of the Pacific department of Choco, for example, suffer from malnutrition and lack of health care. In the case of the Embera of the Alto Baudo area, the nearest hospital is eight hours away by boat. As a result, between September and November 2006, seventy-five people died of malaria, of whom seventy-one were children

under four years of age.²⁷ During a meeting of indigenous groups, the Embera also decried the assassination of fifty-two of their people and the disappearance of twenty-nine others in 2006.²⁸

Guerrilla and paramilitary violence continues to have a negative effect on indigenous groups. In May 2006, the National Indigenous Organization of Colombia described how constant conflicts left indigenous groups in Choco caught between FARC guerrillas and paramilitary troops (even though the latter were officially demobilized).²⁹ At other times, indigenous groups have been caught in the crossfire between guerrilla and government troops. Some indigenous groups in the southern Andes have attempted to stay neutral, assisting neither the government nor the guerrillas. One of the most famous of these groups is the peace community of San Jose de Apartado in Antioquia department, which has received international recognition for its efforts to avoid the conflict. However, over 160 members of the community have been killed since 1997, and in March 2005 one of the community's leaders and seven other villagers were massacred. As of February 2007, no arrests had been made, though witnesses pointed to military involvement and dozens of soldiers were under investigation.³⁰

Afro-Colombians are estimated to comprise about 10 million people, nearly a quarter of the Colombian population. Though historically concentrated in villages along the coast, displacement due to the rampant violence has led to intense migration to the major cities. While there is no legal discrimination against them, they have had few representatives in high levels of politics and suffer from lower income and education levels.³¹ The state has taken no recent significant action to combat discrimination against Afro-Colombians.

Over the last decade more forceful laws and regulations have been developed to enable a larger number of people with disabilities to gain equal access to education, public spaces, and the health and social security systems. These efforts, however, have not achieved their full potential as they receive insufficient funds and are not high among the government's priorities.

Freedom of religion is generally respected in Colombia. Evangelical protestant groups have grown substantially in recent decades. Roman Catholics clearly remain the dominant group, however, both in numbers and among leaders of the country. Despite the constitutional sep-

aration of church and state, in February 2007, President Uribe asked the bishop to allow him to lead prayer at a mass and asked “the Holy Virgin to help us in having a Colombia in which peace is consolidated, jobs are found, poverty is overcome, and equity is constructed.”³² The homepage of the High Commissioner for Peace includes a “Prayer to Our Lord of Peace” superimposed on a crucifix.³³ These examples demonstrate the less-than-complete separation of church and state in the country. According to a decree from the minister of education, all schools must offer classes on religion no later than April 2007.

Freedom of assembly and association are guaranteed by the Colombian constitution. Protests are generally permitted, though Colombia is not nearly as mobilized as its Andean neighbors. Labor unions have legally existed since the 1930s, although the government retains the right to suspend their activities if the law is broken. Violence against trade unionists has become a hot-button issue in the context of Colombia’s attempt to forge a free-trade agreement with the United States. Since Uribe took office, over 400 trade unionists have been killed in Colombia, with only seven convictions; shockingly, this represents a decline in violence from the previous period.³⁴ Though much of the violence is blamed on paramilitaries, security forces have also been implicated in numerous killings. In January 2007, the National Prosecutor’s Office named thirteen prosecutors to investigate the violence.³⁵ Also that month, a permanent new International Labor Organization office began operating in Bogota.

Recommendations

- The government should continue to curb violence through expansion of constabulary forces and organize them so that districts most affected by bloodshed receive additional forces.
- The government should provide resources to educate women regarding their rights to equal treatment in job hiring and establish a hotline that women can call to report discrimination in job hiring.
- The government should establish a unit to investigate complaints of spousal abuse and enact specific protections that will be granted to women who fear for their physical safety.
- The government should establish a greater state presence in rural areas in order to provide better protection for indigenous Colombians from illegal armed groups.

- The government should continue to emphasize that violence against trade unionists will receive special investigatory and prosecutorial focus, and direct substantial resources toward doing so.

RULE OF LAW

INDEPENDENT JUDICIARY:	5.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS:	3.83
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES:	2.75
PROTECTION OF PROPERTY RIGHTS:	4.00
EQUAL TREATMENT UNDER THE LAW:	3.33
CATEGORY AVERAGE:	3.78

The inability of the Colombian state to enforce the rule of law throughout its territory is arguably the original sin from which most of Colombia's biggest problems emanate. Though conflict continues and the state still lacks significant presence in many zones, recent years have seen some efforts to broaden and deepen application of the law in the country.

The Colombian judiciary is widely regarded as more independent than most of its regional peers. This perception is based largely on the reputations of the Supreme Court and the Constitutional Court, which have each demonstrated a willingness to investigate and rule against the government in important cases. However, the fact that Colombia has four courts of maximum instance overseeing different juridical elements sometimes leads to incoherence and jurisdictional conflict that Colombians refer to as "the train wreck." For instance, when, in July 2006, the Constitutional Court overturned a decision of the Supreme Court, the head of the Supreme Court characterized the decision as "going against the juridical security of the country."³⁶ The primary point of dispute is use of the *tutela*, a legal mechanism used by Colombians to assert that a violation of their rights has occurred. Lower courts are considered less independent, due in large part to vulnerability to the same pressures and threats that negatively impact other aspects of Colombian society.

Inefficiency is one of Colombians' primary gripes about the justice system. Justice is bottlenecked; even as crime rates decline, the backlog of criminal cases continues to grow. In 2006 alone, 105,984 new cases entered the system, yet only 11,405 verdicts were issued.³⁷ Because of prison overcrowding, the Supreme Court ruled that criminals sentenced to four years or less would not have to serve any time. In May 2006, in the face of the government's refusal to implement a retroactive salary increase, 38,000 workers from the judicial branch initiated an indefinite stoppage of activities. This paralyzed all judicial proceedings taking place in the country until the strike ended in early June. Since 1995, employee salaries had been adjusted just below the inflation rate.

Under the constitution defendants are considered innocent until proven guilty and have the right and access to counsel.³⁸ A system is in place to provide counsel to indigent defendants and the number of public defenders has risen, but resources remain scarce. Moreover, illegally armed groups have influenced and coerced prosecutors, judges, investigators, and witnesses in Colombia, resulting in impunity and continued difficulty in consolidating the rule of law.³⁹

One important, ongoing change over the last number of years is the shift away from a written, European-style justice system modeled after the Napoleonic Code to an oral, accusatory system much like the one used in U.S. courts, which went into effect in 2005 in Bogota and other cities and will extend to all regions by the end of 2008.

The most important development in recent years, however, is the beginning of legal proceedings under the Justice and Peace Law, passed in June 2005 to govern the demobilization process. The success of demobilization is critical, both in terms of removing one of the most brutal actors from the Colombian stage and by possibly establishing a mechanism for left-wing insurgents to eventually lay down their arms. For leaders of demobilized groups, it suspends traditional imprisonment, replacing it with a lighter sentence given in exchange for full confessions and the return of ill-gotten assets. Persons convicted of atrocious crimes, such as massacres, will be confined between five and eight years in government-designated locations, which could include agricultural colonies. The law encompasses only acts committed during and related to membership in an illegal group; those who lie about their crimes or return to illegal activity will be disqualified from receiving the law's

benefits. Victims of paramilitary violence, human rights groups, and opposition leaders strongly objected to the law in its original form, contending it was too lenient and would perpetuate the culture of impunity already enjoyed by many paramilitaries.

In May 2006, the Constitutional Court tightened the law, removing a provision that gave prosecutors only sixty days to conduct each para investigation and decreeing that any seized assets should be used to compensate victims. In August, fourteen senior leaders were arrested pending court hearings, and a further four turned themselves in. In total, 2,695 paramilitary leaders currently charged with crimes against humanity signed up for recourse under the law.

Both accusations against paramilitaries and requests for compensation have inundated government offices. In early January 2007, Luis Gonzalez, director of the Justice and Peace section of the National Prosecutor's Office, reported that some 400 accusations against the paramilitary groups arrived in his office each day and that the total received since the law was approved was about 100,000. While Gonzalez has affirmed that the Prosecutor's Office would have enough resources if the other parts of the judicial system cooperated, many commentators have argued that far more attorneys and resources are needed to implement the law efficiently.⁴⁰

Although more than 30,000 AUC troops had demobilized by the end of 2006, highly fraught disputes between the government and top paramilitary leaders surfaced with respect to several issues, including the conditions of confinement and the need for assurances that extradition to the United States—the paramilitaries' worst nightmare—would be avoided. By December 2006, the government had moved fifty-nine paramilitary leaders to a maximum security prison after alleging that an escape was being planned from their previous location in a run-down former recreation center. President Uribe also suggested the AUC leaders were ordering assassinations of other leaders and added, "If people who are in the peace process are killing people, those people should lose the benefits of the law, should be submitted to the ordinary laws, and if someone involved in these crimes has extradition suspended, I will immediately end the suspension."⁴¹

The first trial of a paramilitary leader began in December 2006, when former AUC leader Salvatore Mancuso began his deposition. He argued that the paramilitary squads existed because the government did

not provide adequate protection from guerrilla groups. Coldly using a PowerPoint presentation to recount over 300 murders, he further alleged that Colombian military officers had assisted the paramilitary groups; interestingly, he only named officers who were either dead or already jailed for helping the paramilitary groups.⁴² Mancuso was scheduled to continue his deposition in May 2007. Many others are slated to follow; at time of writing it remains unclear to what degree the tenets of the Justice and Peace Law will be fulfilled.

The entire existence of the AUC phenomenon underscores the complicated dynamic between civilians and security forces in Colombia. The evidence that some politicians and members of the military collaborated with paramilitaries is overwhelming, yet the ability of the state to hold such forces accountable barely existed prior to the demobilization process. Viewed from the narrow angle of civilian supremacy over the military, Colombia performs relatively well; unlike nearly all other Latin American countries, the country has been led by civilian governments since 1958. However, the persistence of conflict has meant that the military has remained a powerful actor. It has also been a troubled one, with accusations of corruption and human rights abuses common. An incident in the town of Jamundi in Valle del Cauca department in May 2006 in which ten elite antidrugs police were killed by military fire exemplifies how far the problem can go. Though it was first characterized as a friendly fire incident, the story soon unraveled, and it became clear that the military unit was in the pay of drug traffickers; over a dozen soldiers and a colonel were eventually arrested. Soldiers have also been accused of other abuses in recent years, including keeping millions of dollars of confiscated drug money and killing civilians and dressing them as rebels in order to inflate body counts.

The military criminal justice system is also undergoing a crisis. Cases involving human rights abuses are already transferred to civilian courts. Still, due to the overwhelming number of cases in 2006 and 2007, the vice minister of defense suggested in February 2007 that the military justice system be removed from the executive branch and transformed into an independent judicial system.⁴³

Property rights are guaranteed under Colombian law. Property that is being used for illegal purposes—for instance, in the drug trade—is confiscated by the government. In February 2007, the government

decided to use the US\$80 million in drug money found in the Cali area to build houses for poor people.⁴⁴ The Colombian government remains unable to protect the property rights of foreign investors from insurgent attacks, which has led in some cases to those investors seeking to protect themselves through alliances with paramilitaries. In March 2007, the U.S. government fined the banana giant Chiquita for paying \$1.7 million to the AUC for protection of its properties and employees since 1997.

Colombia ranks second only to Sudan in the number of internally displaced persons (IDPs), with 3.6 million. Citizens are forced from their land through threats and violent acts by paramilitary and guerrilla groups, which then use the land to consolidate their local power and further their drug operations. Some of the land is obtained by forcing the landowners to sell their property at low cost or face execution or mutilation, such as the amputation of an index finger to provide the fingerprint for false paperwork. Through collaboration with paramilitary groups and failure of the military or police to protect citizens' land rights, the Colombian government is partially responsible for the large number of IDPs. Colombia ranks poorly in contract enforcement in the World Bank's Doing Business report, and contractual disputes often lead to long and costly court cases.⁴⁵

Recommendations

- As more information becomes available about the relationships between the armed forces and paramilitary groups, the Colombian government should intensify its efforts to punish all members of the military who have had such relationships.
- The functions of the different judicial organizations should be clarified so that resources are not lost in jurisdictional disputes.
- The government (with help from the international community) must provide sufficient investigatory resources so that paramilitary confessions can be investigated and corroborated, with those who fail to confess to all crimes, withhold the return of ill-gotten assets, or continue criminal activity disqualified from benefits under the JPL.
- As part of the overhaul of the justice system and implementation of adversarial trial proceedings, the backlog of criminal cases should be reduced through a substantial increase in funding for court proceedings.

ANTICORRUPTION AND TRANSPARENCY

ENVIRONMENT TO PROTECT AGAINST CORRUPTION:	4.00
EXISTENCE OF LAWS AND ETHICAL STANDARDS BETWEEN PRIVATE AND PUBLIC SECTORS:	3.75
ENFORCEMENT OF ANTICORRUPTION LAWS:	3.50
GOVERNMENTAL TRANSPARENCY:	3.71
CATEGORY AVERAGE:	3.74

Despite being awash in violence and drug money, corruption in Colombia is not perceived to be out of control. Nonetheless, corruption continues to infect many institutions and hinder development.

In 2006, Colombia ranked 59th in Transparency International's Corruption Perceptions Index. With 3.9 points out of 10, the country fell slightly from its 4.0 score of the previous year, ending a four-year trend of decreasing perceptions of corruption.⁴⁶ Margareth Florez, director of Transparency for Colombia, noted that corruption was far from defeated due to the weakness of political institutions, the insufficient visibility of public contracting, and "the danger of the capture of the state by large economic and delinquent groups."⁴⁷

In December 2004, the Uribe government presented the Presidential Program of Modernization, Efficiency, Transparency, and Fight against Corruption. Its objective is to build a state policy for the fight against corruption and corresponding actions that can be used by public institutions, private enterprise, citizens, the media, and civil society organizations in the prevention, investigation, and punishment of acts of public corruption.⁴⁸ In September 2005, this plan was revised through the "State Policy Proposal for the Control of Corruption" and the National Anticorruption Program.⁴⁹ Corruption czar Rodrigo Lara Restrepo indicated the huge task of the Presidential Program when he stated that it would be applied "wherever we have evidence of corruption that involves politicians, bureaucrats, and the paramilitary groups."⁵⁰

In February 2007, the national procurator argued that the system was beginning to work. As evidence he cited a recent report indicating that four public officials were expelled for corruption each week, with a total of 232 in 2006. The procurator argued that this was not due to

greater corruption than previously, but rather because of a new disciplinary code combined with new technology to enforce it.⁵¹ However, while the inspector general and national procurator have both been active in investigating and prosecuting graft, there is little evidence that these efforts have led to a significant decline in overall corruption. The para-political investigations in late 2006 and early 2007 revealed extensive financial connections between paramilitaries and politicians, such as those found on the computer belonging to paramilitary leader Jorge 40 (see Introduction).

Though the Colombian state traditionally has been less involved in the economy than other Latin American countries and recently has been privatizing some state enterprises, the government remains characterized by excessive bureaucratic regulations and, in many cases, low salaries that increase the probability of corruption. Furthermore, adequate protections against conflicts of interest are lacking. All government employees must make a notarized declaration of property and income. While the procurator and the comptroller are charged with investigating corruption, the quantity of allegations overwhelms their abilities. Comptrollers also exist at the departmental and local levels, but in many cases politicians have placed political friends in those posts, making these levels some of the most corrupt parts of the state apparatus. No adequate mechanisms enable victims to pursue their rights.

Legal protections are in place for whistle-blowers but they are not enforced uniformly. Prominent cases of corruption are widely reported in the national press, yet journalists investigating government corruption have been subject to harassment and violence, particularly outside the major cities.⁵² Furthermore, in recent years whistle-blowers in the military have in some cases been intimidated or prevented from advancing as a result of voicing accusations against superior officers.⁵³

The Colombian government provides some information to the public regarding government expenditures, and the budget is subject to legislative review.⁵⁴ The yearly budget proposal is released to the public, along with several in-year reports and an audit report. However, the Open Budget Index has stated that Colombia's year-end reports do not contain sufficient details to allow comparison between the proposed budget and actual outcomes. The constitution provides for freedom of information, and the Law Regarding Free Access to Information of Public Interest establishes unrestrained access to any documents in a public

office.⁵⁵ Complicated bureaucracy and corruption, however, can at times limit the enforcement of these rights. In addition, the state makes no real efforts to provide information about government services and decisions in formats and settings that are accessible to disabled people.

Recommendations

- The Colombian government should increase transparency in its activities, focusing on rapid dissemination of information through web portals at the agency level and open-meeting laws that allow the people to know more about its operations.
- The government should increase the transparency of public contracting by ensuring that all bidding is carried out through the System of Information for Monitoring State Contracting (SICE).
- The government should improve human resource capacity within the offices of the Auditor General and the Comptroller General in order to increase the government's ability to identify and punish officials who violate anticorruption laws.
- In order to combat self-censorship regarding corruption, the government should enhance the protective and investigatory capacity of the unit in the Attorney General's office charged with protection of threatened journalists.

NOTES

- ¹ "Todo empezó con el hallazgo del computador de Jorge 40," *El Colombiano*, 19 October 2006, www.elcolombiano.com.
- ² "Seis alcaldes del Casanare sellaron pacto con paramilitares al estilo Ralito," *El Tiempo*, 20 February 2007, www.eltiempo.com.
- ³ "Comunicado completo sobre la sentencia relativa al Proyecto de Ley Estatutaria de Garantías Electorales," *El Espectador*, 12 November 2005, www.elespectador.com/elespectador/.
- ⁴ Amnesty International, "Colombia: AI condemns killings by FARC," http://action.amnesty.org.au/index.php/news/comments/colombia_ai_condemns_killings_by_farc/ 2 March 2006.
- ⁵ John Otis, "Scandal forces resignation of top diplomat, Critics said her ties to others were hurting Colombia's international image," *Houston Chronicle*, 20 February 2007.
- ⁶ "El uribismo se apoderó este domingo del Congreso de la República con una mayoría absoluta," *El Tiempo*, 13 March 2006, www.eltiempo.com.
- ⁷ "Uribe logró triunfo de 'primera,'" *El País*, 29 May 2006, www.elpais.com.co.
- ⁸ "U.S. congratulates Colombian president Uribe on election victory," States News Service (Washington, D.C.), 30 May 2006, accessed through Nexis, 13 April 2007.

- ⁹ “Un paso histórico: Las parejas homosexuales han empezado a existir legalmente en Colombia,” *Semana*, 10 February 2007, www.semana.com.
- ¹⁰ *The Politics of Politics* (Washington, D.C.: Inter-American Development Bank [IDB], IPES 2006 Report), www.iadb.org/res/ipes/2006/chapter4.cfm.
- ¹¹ Constanza Vieira, “Colombia: The Limits of Paramilitary Repentance,” Inter-Press Service, 9 February 2007, <http://ipsnews.net/news.asp?idnews=36512>.
- ¹² “Colombia—Annual Report 2006” (Paris: Reporters Without Borders [RSF]), www.rsf.org/article.php3?id_article=17418.
- ¹³ “COLOMBIA: CPJ alarmed by gag order against daily” (New York: Committee to Protect Journalists [CPJ]), 30 January 2007, www.cpj.org/news/2007/americas/columbia30jan07na.html.
- ¹⁴ “Colombia: Events of 2006” (New York: Human Rights Watch, 11 January 2007). <http://hrw.org/englishwr2k7/docs/2007/01/11/colomb14884.htm>.
- ¹⁵ “Cifra de homicidios más baja en 20 años,” *El País*, 3 January 2007, www.elpais.com.co.
- ¹⁶ “Lineamientos de la política de seguridad democrática,” Presidencia de la República de Colombia, 29 June 2003, http://www.presidencia.gov.co/prensa_new/sne/2003/junio/29/08292003.htm
- ¹⁷ “Siguen bajando casos de secuestro en Colombia,” *El País*, 24 January 2007, www.elpais.com.co.
- ¹⁸ “Deficiente es el servicio de salud en cárceles de Colombia,” *El Tiempo*, 21 September 2006, www.eltiempo.com.
- ¹⁹ Claudia López, “¿Año nuevo, vida nueva?” *El Tiempo*, 16 January 2007, www.eltiempo.com.
- ²⁰ “11 de cada 100 bogotanas han sido violadas por sus cónyuges, dice informe del Dabs,” *El Tiempo*, 27 November 2006, www.eltiempo.com.
- ²¹ “Lizeth Ochoa, golpeada por su marido, renunció a reclamar daños materiales y morales del agresor,” *El Tiempo*, 29 November 2006, www.eltiempo.com.
- ²² “Mujeres de pandilleros en Pereira declaran ‘vigilia sexual’ para que dejen la Violencia,” *El Tiempo*, 11 September 2006, www.eltiempo.com.
- ²³ Juan Forero, “Colombian Court Legalizes Some Abortions,” *New York Times*, 12 May 2006, www.nytimes.com.
- ²⁴ Ricardo Arias Trujillo, “Sermón Permanente,” *Semana*, 18–25 December 2006, www.semana.com/home.aspx.
- ²⁵ “Mayores de 14 años pueden abortar sin autorización,” *El Espectador*, 14 December 2006, www.elespectador.com/elespectador.
- ²⁶ “Discussion Focuses on Measures to Prevent Human Trafficking as Women’s Anti-discrimination Committee Reviews Colombia’s Report,” States News Service, 25 January 2007.
- ²⁷ “75 Emberas murieron de malaria mientras esperaban ser trasladados a un lugar de atención,” *El Tiempo*, 28 November 2006, www.eltiempo.com.
- ²⁸ “Emberas denunciaron 52 asesinatos y 29 desapariciones durante encuentro indígena,” *El Tiempo*, 25 October 2006, www.eltiempo.com.
- ²⁹ “Denuncian que grupos indígenas están sitiados por combates entre las Farc y paramilitares desmovilizados,” *El Tiempo*, 13 May 2006, www.eltiempo.com.

- ³⁰ “Amnesty International Welcomes Advances in Investigations Into 2005 Colombia Peace Community Massacre” (New York: Amnesty International USA), 27 February 2007, <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20070227001>.
- ³¹ “La comunidad afrocolombiana,” *El Tiempo*, 28 May 2004, www.eltiempo.com.
- ³² “Uribe pide por Colombia a la virgen de los Remedios” (Bogota: Presidency of the Republic, 2 February 2007), www.presidencia.gov.co.
- ³³ Alto Comisionado para la Paz, homepage, www.altocomisionadoparalapaz.gov.co.
- ³⁴ “Colombia Fact-sheet: Murder of Trade Unionists and Impunity” (Chicago: U.S. Labor Education in the Americas Project [USLEAP], www.usleap.org/Colombia/Government%20Documents/MPS%20Document%20Analysis.pdf, accessed 13 April 2007).
- ³⁵ “Los líderes sindicales de Colombia aseguran que el Estado los acorrala con muerte y amenazas, y también con leyes que terminan favoreciendo a los patronos y evitando el derecho fundamental a la asociación,” *El Espectador*, 6 January 2007, www.elespectador.com/elespectador.
- ³⁶ “Un nuevo choque de trenes por una tutela,” *El Colombiano*, 22 July 2006, www.elcolombiano.com.
- ³⁷ Corporación Excelencia en la Justicia, www.cej.org.co/scripts/index.php#.
- ³⁸ *Colombia Country Report* (Washington, D.C.: Organization of American States [OAS], Inter-American Commission on Human Rights [CIDH], www.cidh.oas.org/countryrep/Colombia93eng/chap.4.htm, accessed 17 April 2007).
- ³⁹ “World Report: Colombia” (HRW, www.unhcr.org/home/RSDCOI/45aca29c20.html, accessed April 17, 2007).
- ⁴⁰ “Tougher Challenges Ahead for Colombia’s Uribe” (Brussels: International Crisis Group [ICG], Policy Briefing, 20 October 2006).
- ⁴¹ “Gobierno ordenó el traslado de los jefes de las autodefensas a la cárcel de Itagüí,” *El Tiempo*, 1 December 2006, www.eltiempo.com.
- ⁴² Juan Forero, “Paramilitary Leader Submits to Justice: Seeking ‘Real Truth,’ Victims Gather for Testimony on Colombian Violence,” *Washington Post*, 30 December 2006, <http://www.washingtonpost.com>.
- ⁴³ “Ubicar en el poder judicial a la Justicia Penal Militar busca el Gobierno: Viceministro de Defensa,” *El Tiempo*, 4 February 2007, www.eltiempo.com.
- ⁴⁴ “Siete mil viviendas en Buenaventura y Cali serán construidas con plata de las caletas,” *El Tiempo*, 13 March 2007, www.eltiempo.com.
- ⁴⁵ “Enforcing Contracts in Colombia,” in *Doing Business* (World Bank, 2007), www.doingbusiness.org/ExploreTopics/EnforcingContracts/Details.aspx?economyid=46, accessed 17 April 2007.
- ⁴⁶ “Colombia cayó al puesto 59 en el Índice de Percepción de la Corrupción (IPC) de 2006,” *El Tiempo*, 1 November 2006, www.eltiempo.com.
- ⁴⁷ “Colombia ocupa el quinto puesto de corrupción en América Latina,” *El Colombiano*, 6 November 2006, www.elcolombiano.com.
- ⁴⁸ “Propuesta de una política de estado para el control de la corrupción y Plan Nacional Anticorrupción” (Bogotá: Programa Presidencial de Lucha Contra la Corrupción, 16 September 2005), www.anticorrupcion.gov.co/control_cor/index.htm.
- ⁴⁹ Ibid.

- ⁵⁰ “Zar Anticorrupción propondrá que los ‘paras’ también confiesen casos de corrupción,” *El Tiempo*, 10 January 2007, www.eltiempo.com.
- ⁵¹ “Destituyen a cuatro funcionarios públicos cada semana en Colombia,” *El Tiempo*, 6 February 2007, www.eltiempo.com.
- ⁵² “Journalist threatened after reporting on corruption in Sincelejo municipal government” (Toronto: International Freedom of Expression Exchange [IFEX], www.ifex.org/en/content/view/full/79158, accessed 12 April 2007).
- ⁵³ “Why is this man crying?” (Washington, D.C.: Center for International Policy: Colombia Program, 6 February 2005), www.cipcol.org/archives/000059.htm, accessed April 12, 2007.
- ⁵⁴ “Colombia” in *Open Budget Index 2006* (Washington, D.C.: Center on Budget and Policy Priorities, International Budget Project, Open Budget Initiative), www.openbudgetindex.org/CountrySummaryColombia.pdf, accessed 12 April 2007.
- ⁵⁵ “Colombia” in *freedominfo.org Global Survey* (Washington, D.C.: freedominfo.org, 2006), www.freedominfo.org/countries/colombia.htm#7, accessed 12 April 2007.